Shri. Asit Kadayan,
Advisor (QoS), Telecom Regulatory Authority of India (TRAI),
Mahanagar Door Sanchar Bhawan, J.L. Nehru Marg, (Old Minto Road)
New Delhi - 110002, India

13 February 2020

Subject: **AIC Representation on TRAI's Consultation Paper on Traffic Management Practices and Multi-Stakeholder Body for Net Neutrality**

Dear Sir,

The Asia Internet Coalition ("AIC") appreciates the opportunity to share our response to TRAI's Consultation Paper on Traffic Management Practices and Multi-Stakeholder Body for Net Neutrality (**CP**). AIC is an industry association that promotes the understanding and resolution of internet policy issues in the Asia Pacific region. We seek to represent the internet industry and participate and promote stakeholder dialogue between the public and private sectors, sharing best practices and ideas on communications technology and the digital economy. In keeping with our objective of supporting public policy and regulatory frameworks that facilitate the development of the national digital industry, we are hereby submitting our responses and views on TRAI's Consultation Paper on Traffic Management Practices and Multi-Stakeholder Body for Net Neutrality (**CP**).

The Internet has become a key part of today's economy, and its critical role in our lives has been recognised even by the Supreme Court of India. In this context, the discussion on fairness and equity in access to the Internet is highly pertinent. Although the basic principles of net neutrality have now been categorically introduced by the amendment of the unified license, there is a need to create regulating principles for traffic management practices (***TMPs***) that will comply with the requirements of net neutrality. The adoption of traffic management practices is a subject that requires consideration from the perspective of access, ease of doing business, and growth of digitisation (especially Digital India).

In the above context, we are grateful for the opportunity to present our views on the Consultation Paper on Traffic Management Practices (***TMPs***) and Multi-Stakeholder Body for Net Neutrality (***CP***).

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact me directly at Secretariat@aicasia.org or +65 8739 1490 or +84 165 839 0988. Importantly, we look forward to offer our inputs and insights directly through meetings and discussions. Thank you for your time and consideration.

Sincerely,

Jeff Paine
Managing Director,
Asia Internet Coalition

Q.1 What are the broad types of practices currently deployed by the Access Providers (APs) to manage traffic? Out of these practices, which ones can be considered as reasonable from perspective of Net Neutrality? Whether list of Traffic Management Practises (TMPs) can be prepared in advance or it would be required to update it from time to time? If latter is yes, then what framework would be required to be established by Multi-Stakeholder Body to keep it up to date? Please suggest with justification.

With the increase in users and demand for Internet access, there arise many situations in which TSPs have to manage traffic so as to manage volumes, manage emergency and time critical services, protect against malware, etc. The CP notes that Telecom Service Providers (***TSPs***) and Internet Service Providers (***ISPs***) "*are expected to expand their capacity to meet the typical traffic demand, however, there might be instances when there may be deficit in capacity due to practical reasons or conditions beyond control of access providers*"[1].

As noted in the CP, the practices and restrictions adopted by TSPs to manage traffic may include putting caps in terms of maximum throughput, and restricting traffic of particular class and nature of applications[2] for certain time periods, etc. It has been noted by the Department of Telecommunications (***DoT***) that in a traffic managed situation, there is potentially more certainty and more transparency, and a better overall quality of experience for the majority of customers.[3] Some current and anticipated TMPs are designed around the following considerations:

- Management of congestion
- Blocking spam, malware, denial of service attacks and other security threats to the network or to user devices
- Ensuring that time sensitive services such as voice, video, online gaming and enterprise services can be delivered in a way which ensures optimal performance of those applications (without the calls dropping, buffering videos and time lags in games)
- Peak load management
- Implementation of any court order or government direction
- Prioritization for communications for emergency and disaster management services

The TMPs employed by TSPs are aimed at ensuring the smooth flow of data traffic across the networks between the end users and content /service providers. However, it is necessary to

1 CP, p. 5.
2 CP, p. 5.
3 Department of Telecommunications Report on Net Neutrality, 2015, p. 54. Available at <https://dot.gov.in/sites/default/files/Net_Neutrality_Committee_report%20%281%29_0.pdf>

ensure that TMPs are deployed only for the purposes related to consumer benefit and in a manner that will not skew access to the Internet. This becomes important as illegitimate TMPs could lead to discrimination by fixed or mobile TSPs / ISPs who have market power, in favour of their own applications, content and services, thus harming both competition and consumers. In this context, it becomes imperative to guide the adoption of TMPs by TSPs.

AIC is of the opinion that such guidance should be undertaken by way of conceptualising principles which will guide the TSPs. TMPs need to be guided by the foundational principles of net neutrality. Technical practices such as measures to slow a user's traffic, to prioritize traffic, or to detect heavy users in order to limit their bandwidth must be proportionate to the respective needs, transient in nature and transparent in practice. In addition, TMPs should further subscribe to the principle of reasonableness.

TMPs can be considered as reasonable when they are based on objective technical requirements. This implies the following: first, TMPs should not favor certain services over others *within* a type of traffic, such as discrimination between services like VoIP and video-conferencing within sensitive traffic. Any use of practices that favour certain services over others would threaten net neutrality and allow TSPs to create inequity in Internet access. For example, practices such as 5G network slicing have the potential to be used to circumvent the core net neutrality principles. It is important that TMPs are not structured in a manner that would lead to blocking, throttling or paid prioritization using advanced technologies such as network slicing. Second, it is important that traffic management not be based on subjective considerations, such as the commercial considerations of any party.

Further, any differentiation between traffic should be permitted on the basis of objectively different technical QoS requirements (for example, in terms of latency, jitter, packet loss, and bandwidth) of the specific classes / categories of traffic only.

The CP has noted that "any such measures (that is, TMPs) to deal with unexpected issues of networks which are continuously evolving, may not be static. It must be dynamic and sometimes may only be known by experience"[4]. Accordingly, it would not be effective for TSPs to list their TMPs or submit such lists to the TRAI. Thus, AIC recommends the practice followed by the United Kingdom's telecommunications authority, Ofcom, where the TSPs are have a policy of informing the end users of the impact of TMPs on users' Internet access, privacy, etc. and the quality of customer's internet service, and the regulator can seek further information as needed.[5]

[4] CP, p. 7.

[5] Regulation (EU) 2015/2120 of the European Parliament and of the Council laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2120&from=EN>

Q.2 Whether impact of TMPs on consumer's experience can be interpreted from its name and short description about it or detailed technical description would be required to interpret it in objective and unambiguous manner? In case of detail technical description, what framework need to be adopted by Multi-Stakeholder Body to document it. Please suggest with justification.

As discussed above in our response to question 1, TSPs may inform end users regarding their TMPs and publish the aspects of the practices that may have a significant impact on the consumer experience.

Given that publication is aimed at assisting consumers to know and understand the TMPs, technical descriptions would not serve this purpose. The information should, instead be provided in a manner that is easy to understand and accessible.

Q.3 What set up need to be established to detect violations of Net Neutrality, whether it should be crowd source based, sample field measurements, probe based, audit of processes carried out by access providers or combination of above? How to avoid false positives and false negative while collecting samples and interpreting Net Neutrality violations? Please suggest with justification.

Any violations of net neutrality need to be assessed in terms of the TMPs of TSPs that may be based on objective and technical criteria. The DoT / TRAI already have mechanisms of monitoring other aspects of the UL. The TSPs may submit a self-declaration of compliance with the provisions on net neutrality in the UL, based on their existing TMPs, and the authorities may seek further information on a particular aspect of the practices either on a *suo motu* basis or on receipt of any complaint from users.

To the extent possible, we believe that the industry should be encouraged to adopt self-regulation and self-certification mechanisms in this regard.

We do not recommend the adoption of a crowd sourced process of detection, as it is not likely to result in informed responses. As a result, any inferences made from such inputs may be unreliable from the perspective of identifying causal factors for the problems in Internet access. The CP has already identified and elaborated upon these concerns, including impact of end user environment, lack of awareness of end users, single versus multiple assessment, and geographical breadth of the sources.[6]

[6] CP, p. 12.

With respect to audit-based process, we submit that any proposed mechanism be in alignment with the QoS audit mechanism as currently undertaken by the TRAI. Further, the specifics of this audit process must be settled through consultation between stakeholders.

With respect to probe and sample field studies, we submit that the TRAI is already empowered to act either on complaints or *suo moto* to investigate the compliance of any TSP with the conditions of the unified license, and hence, there is no utility of devising a wholly new mechanism specifically for net neutrality violations.

Q.4: What should be the composition, functions, roles and responsibilities of Multi-stakeholder Body considering the decision of DoT that Multi-stakeholder body shall have an advisory role and formulation of TMPs and Monitoring and Enforcement (M&E) rest with DoT? Please suggest with justification.

We do not believe that a multi-stakeholder body (***MSB***) is required, even in an advisory capacity, and would defer to the expertise and experience of the DoT in monitoring and enforcement of non-discriminatory principles in the manners described above in our response to Q3.

DoT, following the recommendation of TRAI, had already issued a letter on July 31, 2018 amending existing telecom license agreements (UL, VNO license, UASL, CMTS) to incorporate the principles of non-discriminatory treatment of content, along with exceptions as necessary and to ensure compliance with net neutrality principles, by introducing appropriate disclosure and transparency requirements. This has also been reflected in National Digital Communications Policy 2018 notified on October 22, 2018. In effect, DoT will be monitoring and enforcing the net neutrality principles as they are now included in the licenses.

With the DoT already fulfilling this function, we do not see the need for an additional institutional body. Not only will this add to the bureaucratic process but could cause uncertainty in enforcement and chaos in the industry.

We believe that in the interest of representing industry concerns, it is inevitable that industry-led associations will emerge, as several industry bodies are already in place. Instead of constituting an advisory body, DoT should let industry practices take their course. Industry-developed and monitored codes of conduct and self-regulatory mechanisms to ensure compliance with the existing regulatory framework will help ensure that the net neutrality regulatory framework evolves with the evolution of technology and industry practice, and in the process promote self-regulation. Creating a new, distinct institutional framework for monitoring and enforcement purposes, on the other hand, would make this process rigid, without offering any tangible benefits.

Q.5: Whether entry fee, recurring fee etc. for membership need to be uniform for all members or those may be on the basis of different type or category of membership? What may be these categories? What policy may be adopted for initial set up of Multi-Stakeholder Body. Please suggest with justification.

As explained in our response to Q4 above, we do not see the need to create an MSB for monitoring and enforcement, let alone one based on membership.

DoT should allow an industry-representative body to emerge, if at all, from within the industry itself in the interest of inclusiveness and be engaged in consultations with such bodies in order to ensure dialogue on subjects impacting TSPs.

Q.6: What mechanism may be prescribed to determine fee and other contributions from its members towards expenditure in a fair and non-discriminatory manner? Please suggest with justification.

Please refer to our responses to Q4 and Q5 above.

Q.7: What should be the guiding principles and structure of governance of Multi-stakeholders Body? What may be the roles and responsibilities of persons at different positions such as chairing the organisation or working groups, governing the functioning, steering the work etc. Please suggest with justification.

Please refer to our responses to Q4, Q5 and Q6.

Q.8: Any other issues which is relevant to this subject?

We believe that net neutrality principles should apply only to providers of Internet access services and not all stakeholders in the Internet ecosystem. First and foremost, it is important to understand that not all stakeholders in the Internet ecosystem are comparable. The net neutrality principles are vital for stakeholders that control the underlying and critical infrastructure and enjoy widespread access, such as traditional TSPs.

Additionally, stakeholder-specific regulatory obligations already exist. For example, content providers and other intermediaries are governed by the Information Technology Act, 2000 and the rules thereunder. This framework itself falls under the domain of the Ministry of Electronics and Information Technology (***MeitY***), as opposed to the Ministry of Communications and thus, DoT. The scope of this framework is rather comprehensive and includes monitoring, law enforcement access, intermediary guidelines, and security practices. With the existing framework governing these aspects, we do not see merit in subjecting every stakeholder to the net neutrality principles. An over-prescriptive approach could do more harm than good, especially in case of Over-the-top service providers, for example, which require more flexibility and ability to innovate in order for the industry to grow.