



ITU-APT Foundation of India

ITU-APT respectfully offers these comments in response to the Telecom Regulatory Authority of India's ("TRAI") Consultation Paper on Net Neutrality ("CP"). We appreciate the opportunity to participate in the consultation and commend TRAI's commitment to maintaining an open Internet.

ITU-APT is a strong supporter of net neutrality and believes it is critical for innovation and the internet's continued dynamic growth. In that spirit, we provide the comments below in response to the following question posed by TRAI.

Question: What could be the principles for ensuring nondiscriminatory access to content on the Internet, in the Indian context?

We outline our understanding of the phrase "discrimination" and the scope of net neutrality regulations before we recommend principles for "non-discriminatory access".

"Differential Treatment" is not the same as "Discriminatory Treatment"

ITU-APT believes that while net neutrality seeks to prevent "discriminatory treatment", it does not seek to prohibit "differential treatment". Differential treatment is not inherently discriminatory. We support TRAI's goal of ensuring that consumers have non-discriminatory access to content on the internet. Differential treatment, however, is not inherently the same as discriminatory treatment. Differential pricing – more specifically, zero rating – can be offered in a non-discriminatory manner that is both consistent with the principles of net neutrality and beneficial to consumers.

For example, it is non-discriminatory and consistent with net neutrality when a zero-rated tariff offer includes any content that meets the same, uniformly applied technical requirements. Similarly, it is non-discriminatory when a zero-rating arrangement is available to all TSPs on the same terms and conditions, even if some TSPs choose not to participate. As both the U.S. and E.U. have found, zero rating is not a *per se* violation of net neutrality. In the U.S., zero rating programs are subject to case-by-case evaluation under a flexible general conduct rule. The E.U. also has adopted a permissive regime for zero rating, and has rejected any categorical ban. While some differential pricing offers might be found to be problematic, TRAI should adopt a similarly flexible case-by-case approach to permit those offers that are consistent with the net neutrality principles suggested below.

Net Neutrality regulations should not apply to Online Application Providers

Consistent with the approach taken in other jurisdictions, including the U.S. and E.U., net neutrality regulations should be applied to providers of "internet access service" – **not** providers of online content such as applications ("apps") and websites.

As providers of "internet access service," TSPs have the ability to use their control over the network infrastructure to act as gatekeepers for end users' access to online content and reciprocally for content providers' access to end users. As a result, net neutrality principles are necessary to ensure that providers of internet access service do not use their position as gatekeepers to interfere with users' ability to access the content of their choice, or to favor their own affiliated content to the detriment of other content providers.

Furthermore, while providers of "internet access service" should be required to provide access to all lawful internet endpoints, it would be infeasible to extend the requirements of "internet access service" to online apps and websites. By both definition and function, online apps and websites do not provide a standalone ability to access the entire internet. Instead, they depend on TSPs' internet access service to



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be delivered to end users. If online apps and websites were subject to the same net neutrality requirements as providers of “internet access service,” that would, in effect, be a prohibition on most online apps and websites given that they do not offer standalone internet access.

Principles for “Non-Discriminatory Access”

We recommend adoption of a balanced approach, which protects net neutrality and consumer choice while also keeping room for innovation and growth. The following principles may be adopted by TRAI:

- **Technology neutrality in approach:** The Internet should be open, whether it is provided via wireless or wireline. Providers of Internet access should abide by these principles regardless of how Internet access is provided.
- **Transparency in network management:** Providers of Internet access should be transparent about their network practices.
- **No blocking/throttling of lawful content or non-harmful devices:** Providers of internet access should not block or slow people’s ability to use, send, receive, or offer any lawful content, application, or service; or use any class of non-harmful instruments, devices or network equipment.
- **No prioritized lanes based on commercial considerations:** Providers of internet access should not permit arrangements that provide certain content at faster speeds or that require content providers to pay in order to provide a certain quality of service to the people who use their services.
- **Reasonable Traffic Management:** Providers of Internet access may perform reasonable traffic management activities, provided those activities are publicly disclosed in detail, and do not result in fast lanes for affiliated content or blocking or throttling for specific classes of content and services.
- **Innovative business arrangements:** Providers of Internet access may enter into business arrangements to promote Internet connectivity, provided such arrangements do not involve (1) blocking or throttling users’ ability to connect to the broader Internet under generally available terms and conditions or (2) fast lanes for certain content.

Exceptions for Networks that are Physically or Logically Distinct from the Internet

TRAI should not seek to limit the use of networks that are physically or logically distinct from the Internet. If TRAI were to adopt an exception that permits TSPs to offer a quality of service (“QoS”) higher than “best efforts” internet, such an exception similarly should apply to services provided with low-end technical standards optimized for slower internet connections. Internet services that render only text but no video or photos could be provided to end users at lower costs, or even for free, if capped uniformly with certain quality standards. Such services would be non-discriminatory and consistent with net neutrality because they would apply the same technical standards uniformly to all content.