Response to the Pre–Consultation Paper on Net Neutrality

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At the outset, we would like to thank the Telecom Regulatory Authority of India and the Government of India for taking a keen interest and encouraging a vibrant public discourse on the issue of "net neutrality". The intense debate on net neutrality in India would not have been possible without the conscious efforts of the Authority and the Government of India in creating public awareness through the in-depth Consultation papers that seek to raise basic questions on "the internet". A consequence of these discussions could be seen in the public activity and mobilization towards understanding and preserving the internet.

Please find below our submissions in response to the Pre Consultation Paper on net neutrality, dated 30th May 2016. In our response, we seek to identify the critical issues on the topic of net neutrality and also suggest a way forward in achieving an effective resolution. For ease of reference, our response has been divided into three sections:

Section I- The core principles of net neutrality in the Indian context.

Section II- The Key Issues in ensuring net neutrality & the proposed regulatory approach to net neutrality

Section III- National Security & Data Privacy

Section I

The core principles of net neutrality in the Indian context.

'Net neutrality' propagates that all traffic on the internet must be treated equally. The principle may sound simple but it is one of the most contentious and complex issues facing policy makers/regulators/stakeholders and the public. The issues engulfing net neutrality extends beyond, the conflicts between subscribers and large corporates, which has been the center of the net neutrality debate, making it even more complex.The internet is a web of global networks that works on the same underlying principles hence the basic tenets of net neutrality should be common across the world. At a very basic level net neutrality is based on the universal ideology of 'free internet' i.e. one which is free from any technical interference from the TSPs/ISPs and in our view, India should develop a model that preserves this ideology.

In its Committee Report released on May 2015, the DoT has taken a comprehensive view, and identified the following tenets as the core of net neutrality:

a. *"User Rights: Subject to lawful restrictions, the fundamental right to freedom of expression and non-discriminatory access to the internet will apply*

b. *Content Right to create and to access legal contents without any restrictions*

c. *Application & Services Freedom to create and access any Application & Service*

d. *Devices Freedom to connect all kinds of devices, which are not harmful, to the network and services*

e. *Blocking: No blocking of any lawful content*

f. *Throttling: No degradation of internet traffic based on the content, application, services or end user*

g. *Prioritization: No paid prioritization which creates discrimination*

h. *Transparency : Transparent disclosure of information to the users for enabling them to make informed choice*

i. *Competition: Competition to be promoted and not hindered*

j. *Congestion and Traffic Management*

k. *Reasonable and legitimate traffic management subject to ensuring core principles of net-neutrality*

l. *QoS: QoS to be ensured as per best practices and national regulations*

m. *Interconnection Broad monitoring to ensure Interconnection happens between ISPs/CP/APs as per need and regulations, and intervention only when needed.*

n. *Privacy: Online privacy of the individuals to be ensured*

o. *Security: Scrupulously follow the extant security guidelines*

p. *Data Protection: Disclosure of user information only with consent of the user or on legal requirements."*

While we agree with the above mentioned tenets of net neutrality, we believe that this is an exhaustive list and may pose as a challenge in implementation at this stage. Hence,we propose that the Authority takes a pragmatic approach by identifying few of these principles as the basic tenets of net neutrality and moving in a time bound manner towards including the broader tenets in future. In light of the above, we propose the following as the core tenets of net neutrality :

a. The fundamental right to freedom of expression and non-discriminatory access to the internet.

b. Right to create, upload and access any lawful application or service over the internet.

c. Transparancy to users.

d. No blocking or throttling of websites and applications.

e. No paid prioritization

f. Data Protection /Privacy and Security

g. Maintaining basic standard of QoS.

We believe that the above stated principles must not be compromised and should be upheld at all times in the interest ofnet neutrality.

Section II

Key Issues in ensuring Net neutrality & suggested regulatory approach to net neutrality

The debate for net neutrality involves multiple players with diverse issues that need to be addressed. Highlighted below are a few key issues for consideration of the Authority:

1. **Legislating net neutrality:** Currently, India does not have a legislation enunciating the principles of net neutrality. There are two major factors to consider in this regard:

   - First, internet in India is at a nascent stage
   - Second, despite only 34.8 % of the Indian population being connected to the internet our country has the second largest number of internet users in the world totaling to 462,124,989.[1]

According to the global stats released in January 2016, an average Indian spends about 4.5 hours a day on the Internet[2] and in time to come the average time spent on the internet is bound to increase. The internet industry in India possesses a massive potential, to mobilize the economy towards creating jobs, contributing to the GDP, attracting investments and offering opportunities to entrepreneurs to name a few. The government is exploring digitization of services, M2M,

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[1]http://www.internetlivestats.com/internet-users-by-country/
[2]http://wearesocial.com/sg/

Internet of Things (IoT) and several initiatives have been taken to connect a billion to broadband. While the digital space is developing in an incredible manner and pace, there are weak or nonexistent legislations governing the development of the digital sector. Given the developing stage of internet in India, we propose a legislation that would act as a guiding principle to net neutrality and incorporate the abovementioned tenets, rather than a stringent regulation. A comprehensive regulatory framework could be considered at a later stage. The debate on net neutrality in India has garnered international interest and any legislation that has a positive impact on the evolution of internet also has the potential to set a global benchmark.

2. **Sector Complexity:**

The telecom sector is a highly capital intensive sector. The TSPs incur huge costs on infrastructure, unprecedented costs on spectrum, costs on compliance with regulations among others etc. to ensure connectivity and quality of service. Developments like the Internet of Things and M2M in businesses and governments demand superior networks that are equipped to handle information packets seamlessly and in real-time. As technology evolves and an increasing number of people get connected to the internet, TSPs are under tremendous pressure to continue making large investments to meet QoS norms and to ensure a world class experience to internet subscribers. On February 2016, the TRAI released the Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016, the new regulation prohibits service providers from charging discriminatory tariffs and entering into any commercial arrangements as amongst other reasons, these were perceived as being against the basic tenets of net neutrality. In our view net neutrality is not only about prohibiting certain practices but, also about creating an environment that supports and facilitates net neutrality . One of the core principles of net neutrality suggested by the DoT is a right to access the internet and ensure basic standards of QoS. In addition to having a free access to internet , accessing the internet also means having quality access to internet supported through the infrastructure provided by TSPs. However, the high costs pose a constant challenge to the TSP for upgrading their infrastructure and ensuring ease of access.

The Authority must discuss this critical issue of TSPs ever increasing cost with the Government and explore ways to reduce the burden of costs for the TSPs. As an independent measure, we also support the suggestion of allowing the TSPs to use the USO fund for Broadband. The Authority could also consider using the USO funds to create a common backhaul to be used by all TSPs. While commercial arrangements between TSP's and OTTs have been prohibited, Authority may consider ways to promote innovation and widen customer choices. It is common knowledge that India has the lowest tariffs in the world. Hence the other aspect to consider is ways of sub setting costs through appropriate tariffs. A balance between an appropriate pricing mechanism by TSPs and measures by the government to reduce cost for the TSPs could go a long way in ensuring continued investments in upgrading networks that will provide and enhance accessibility to internet which is one of the basic tenets of net neutrality.

3. **Same Service Same Regulation**

TSPs believe that the services offered by OTTs are similar to the services offered by the TSPs/ISPs and therefore OTTs must be subject to the same regulatory regime as the Topspin our view regulating OTTs will violate the basic tenets of net neutrality by restricting, limiting or interfering with access. Further, the TRAI currently defines OTT Services as Information Communication Services (ICT) and not telecom services.It must also be noted that OTT application services could be developed and uploaded from outside India, hence enforcing any regulation will be a challenge.

4. **Wireless networks**

The mobile internet infrastructure in India is largely wireless and highly dependent on spectrum which is in limited availability and requires large investments from TSPs/ISPs. The government should therefore escalate the plan to provide broadband across India and ensure wi-fi in every household thereby also enabling free wi-fi hotspots across the country.

5. National Security and Privacy

The debate on net neutrality has raised concerns issues of National Security & Data Privacy.

Currently, India does not have a robust cyber security framework in place to ensure safety while using the networks. As mentioned above, 'freedom to access' incorporates our right to access quality and safe internet. Therefore, the principles of net neutrality must include our right to privacy and safety.An unsecure cyber space where our data lies unprotected, poses threats as Hacking, Child Pornography, Cyber Stalking, Virus, Data theft etc. which in turn effects our right to access or upload content and applications over the internet. An unsecure cyber space has the potential of destroying nations, government's, businesses and individuals alike. The *Worldwide Threat Assessment of the US Intelligence Community Senate Armed Services Committee",* in its Committee Report released on February 2016 lists Cyber and Technology as the first and the most potent threat to the global community followed by Terrorism and Weapons of Mass Destruction and Proliferation.[3] National security and data privacy are very critical issues that needs to identified and addressed at the earliest.

India does not have a national security architecture in place that can assess the nature of cyber threats and respond to them effectively.The Government of India passed the National Cyber Security Policy in 2013 to protect the public and private infrastructure from cyber-attacks. However, the policy of 2013 is still not implemented by the Government. India still doesn't have a Draft Privacy Act.

Ensuring security and privacy in the Cyber space is a very difficult task that requires constant monitoring through technological expertise and legal compliances.The Authority could consider working with agencies like the National Technical Research Organization, the National Intelligence Grid, and the National Information Board performing cyber operations etc. along with various ministries like the Ministry of Defense , Information and Broadcasting to identify the critical Privacy and Security risks and address these in a expeditiously in consultation with the various stakeholders.

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[3] Worldwide Threat Assessment of the US Intelligence Community Senate Armed Services Committee, James R. Clapper Director of National Intelligence February 9, 2016

The government should also consider harnessing our highly skilled IT work force to create software's and world class technologies to combat cyber risks. We also recommend creating a cyber security campaign through public advertisements, conducting work shops, engaging people in creating web awareness on issues of security and privacy.