

13 February 2020

To,

Mr. Asit Kadayan,
Advisor (QoS),
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg,
New Delhi - 110002

Subject: NASSCOM Response to TRAI Consultation Paper on Traffic Management Practices (TMPs) and Multi-Stakeholder Body (MSB) for Net Neutrality

Dear Shri. Kadayan,

We appreciate this opportunity to provide our comments on this important issue which has a wide-ranging impact on the 191 billion-dollar Indian IT BPM industry.

With the Department of Telecommunications (**DoT**) having amended the terms of the Unified License in September 2018, to include an obligation for non-discriminatory treatment of internet data by ISPs, the focus of the current Consultation Paper (**CP**) is largely on the monitoring and enforcement of the obligation, i.e. what are reasonable TMPs, what should be the approach to detecting violations, and what role should the proposed MSB play towards ensuring compliance with net neutrality-related obligations.

Traffic Management Practices

NASSCOM has consistently stood in favour of Net Neutrality and for reasonable TMPs as evidenced by our Response to TRAI's earlier Consultation paper on Net Neutrality on April 2017.¹ As large users of internet bandwidth in India, the IT BPM industry supports any measures aimed at inhibiting market distorting practices.

However, and considering the statements made under National Digital Communications Policy, 2018 (**NDCP**) aiming to ensure that "*[...] net neutrality principles are upheld and aligned with service requirements, bandwidth availability and network capabilities including next generation access technologies*", it will be equally crucial to allow for reasonable TMPs towards optimizing network needs, addressing technical bottlenecks, and congestion management. This is particularly true in the context of priority services which require a certain guaranteed Quality of Service (**QoS**) level and not intended to reach all (or substantially all) parts of the internet (e.g. Machine-to-Machine (**M2M**) and Healthcare Networks).

Identification of TMPs adopted by ISPs/Access Service Providers and validation of their reasonableness is a complex issue, requiring technical evaluation.

While as a general principle, any framework for assessing the reasonableness/proportionality of a TMP must be one that ensures that similar kinds of traffic are treated similarly by a TSP; our position is that any form of TMP that is prescribed must be done in a technological neutral manner and that it should provide flexibility to evolve with changing technologies.

¹ See, NASSCOM Response to TRAI Consultation Paper on Net Neutrality (April, 2017), available at: https://main.trai.gov.in/sites/default/files/NASSCOM%20DSCI_17_04_2017.pdf

Accordingly, it may be more prudent to set out a broad framework for TMP and provide targeted guidance where needed.

Some possible network-level uses that can be considered as reasonable TMP are:

- i. Blocking spam, malware, denial of service attacks etc.
- ii. Managing network congestion
- iii. Complying with other laws
- iv. Ensuring that emergency calls are completed;
- v. Preserving integrity and security of the network.

Any exemptions that may sought to be brought in for purposes of TMP should be very clearly set out and should only be for legitimate reasons, such as network/cyber security, emergency measures or legal restrictions – and through clear notifications issued by pre-defined public authorities (either the DoT, or the TRAI or any other authority designated for this purpose).

In line with international frameworks such as the UK Broadband Stakeholder Group's Open Internet Code of Practice, TMP should never be permitted in situations where the ISP/Access Service provider stands to make any commercial gain.

Furthermore, Access Service Providers and ISPs should be mandated to provide information that clearly demonstrates to the public that TMP solutions being implemented by them are proportional. This can be done through disclosures made in tariff plans, which are easily understandable for consumers and through more detailed technical disclosures that can be made available on that Access Service Provider/ISP's website. Providing adequate transparency in this regard will help hold ISP's more accountable for their TMP practices.

Detection and Enforcement

A multi-pronged approach could be adopted for this purpose. This could involve setting up a dedicated consumer redressal portal for Net Neutrality related issues (for example if certain websites are not operating or are operating at a reduced speed). In addition, the TRAI can also conduct market surveys and audits of internet speeds and accessibility of various websites.

Given that there are multiple methods and technologies to ascertain network quality, several methods may also be adopted to reduce statistical errors (such as false positives or negatives).

Some methods that can be considered by TRAI to enforce responsible TMP practices and Net Neutrality. These are:

- Mandatory disclosures by TSPs;
- Collection of information from users through a centralized complaint portal or similar, easy to use mechanism.
- Collection of information from third parties and public domain (research studies, news articles, consumer advocacy reports).

The TRAI can consider implementing a combination of the above methodologies in enforcing TMPs and Net Neutrality. In addition, it would also be necessary to create the protocols and

procedures which ensure the accuracy of the data collected in this process. For this, inputs should also be solicited from members of MSB.

The above, is in line with the approach followed by regulators in other jurisdictions. For instance, the UK Regulator Ofcom also follows a multi-pronged approach. While it conducts investigations primarily by seeking relevant information from network providers, Ofcom also conducts its own analysis of sync speeds of internet lines from various network provers. Further, in order to complement this process, Ofcom has also tied up with a third-party agency and a panel of volunteers. These diverse volunteers are selected based on access technology, geographical location, ISP and broadband package in order to give Ofcom a broad perspective of ISP performance across geographies and technologies.² Ofcom also maintains a Consumer Contact Team which records complaints from consumers on any deficiency in the quality of internet access.

Multi-Stakeholder Body

NASSCOM had in its previous submission, indicated the need for having an advisory board, constituting of a wide array of stakeholders to suggest specific operational aspects, based on which, the TRAI and other relevant regulator can then notify regulations and issue directions.³ Considering broad-based support from industry and other stakeholders, the TRAI in its recommendations had recommended the establishment of a multi-stakeholder body (**MSB**) to advise and assist in the detection of violations, and the enforcement of net-neutrality rules.

Objectives and Composition of MSB:

NASSCOM believes that the proposed MSB, in its capacity to advise the DoT, must place non-discrimination of content as top priority. The MSB must balance factors of accessibility of services; consumer rights and expectations; and, must ensure awareness and benefit of net neutrality in society.

The MSB should be intended to further the concept of net neutrality and must also ensure that there is a diverse representation from various quarters. These could include, (i) industry players from the telecom sector. (ii) government bodies, (iii) representatives of large IT/ITeS/OTT players who are large users of telecom services (iv) representatives of consumer groups or civil society, and (v) network engineering and/or cyber security experts. In addition, participation can also be considered by network equipment and hardware manufacturers to ensure that upcoming technical standards can also be considered by MSB during their deliberations.

Structure:

Given largely the advisory role of the MSB, the TRAI could set out a governing document or constitution for the MSB for governing its function. The MSB may then be set out to function on an issue-based or project-based approach for publishing research and advising regulators.

Functions, roles and responsibilities:

As an advisor to the DoT and to the TRAI on TMP matters, the MSB should advise on suitable technical standards and methodologies that may be adopted for the TMP in the Indian market

² See, UK Office of Communications, Report to the European Commission and BEREC, Monitoring Compliance with the EU Open Internet Regulation, Available at: https://www.ofcom.org.uk/_data/assets/pdf_file/0018/156015/net-neutrality-report-2019.pdf

³ *Supra* Note. 1

and suggest improvements based on technology developments and best practices around the world.

Funding and operations:

The MSB, acting in advisory role to government regulators should primarily be supported financially by the DoT or the TRAI, ensuring that the burden on its members is kept at bare minimum. Ideally, and in order to avoid any potential conflict of interest, there could be a common minimum contribution from its members, that could supplement the funding provided by the DoT or the TRAI.

We once again congratulate the Authority on the significant work undertaken by it towards an open and fair internet infrastructure in the country and thank the Authority for providing the industry an opportunity to collaborate towards shaping up the governing framework for net neutrality in India.

We remain available to address any further queries you may have regarding the present submission.

Thank you.

Yours sincerely,

Ashish Aggarwal,
Sr. Director, Public Policy,
NASSCOM