

Date: 15th March, 2017.

To,

Shri Asit Kadayan

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Re: Comments of Times Internet Limited to the “Consultation Paper on Net Neutrality

Dear Sir/Madam,

Please find attached the comments of Times Internet Limited to the “Consultation Paper on Net Neutrality” floated by Telecom Regulatory Authority of India on January 4, 2017. We request you to kindly take our response on your records.

Yours Sincerely

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COMMENTS OF TIMES INTERNET LIMITED TO THE CONSULTATION PAPER ON NET NEUTRALITY

We applaud the Government and TRAI for giving this opportunity to all stakeholders to contribute in the discussion/ debate on the principles of Net Neutrality. Times Internet has been taking an active part in this activity and will extend support to the Government in coming out with an over-arching policy. Times Internet, while actively participating in this activity, has been submitting its views and suggestions on all the Consultation Papers released by TRAI from time to time on the subject.

Times Internet in this context hereby would like to submit its views and suggestions on the Consultation Paper on Net Neutrality released by TRAI on 4th January 2017 as follows:

Q1. What could be the principles for ensuring non-discriminatory access to content on the Internet, in the Indian context? [See Chapter 4]

Response: We submit the below principles must be ensured for non-discriminatory access to content on the Internet, in the Indian context:

1. **Net Neutrality:** All electronic communication passing through a network should be treated equally, regardless of the content, application, service, device, sender or receiver. Therefore, the first most important principle that TRAI must adopt is Net Neutrality, which mean and include without limitation:
 - All contents/ sites must be equally accessible: No gateways should be created, in order to give preferential discovery to one content provider over another.

- All contents/sites must be accessible at the same speed (at an ISP/Telco level), with no “fast lanes” or “Slow lanes” allowing some content providers to take priority over others.
- The cost of access to all sites content must be the same for all sites (per Kb/Mb) or as per data plan: mean access to everything on the net without any discrimination on basis of content, services or any other issue. ISP/TSPs shouldn't block certain sites or apps just because they don't pay them
- No Zero Ratings: also known as toll-free data or sponsored data, which is the practice of TSPs to not charge end customers for a well defined volume of data by specific applications or internet services via the TSPs mobile network in limited or metered data plans and tariffs. The practice involves TSPs, through a prior agreement with specific content providers, offering free mobile data to allow customers to access particular online content or services at no additional cost. This may also be by granting free access to some websites but charging for others, entails preferential treatment of certain sources of content

2. No Traffic Management Practices (TMP): ISP/TSP should not employ the TMPs unless specifically allowed by TRAI. However, while considering for allowing any TMP, TRAI should consider the below:

- TMP is only an exception and cannot be employed all the time/regularly to manage traffic.
- ISP/TSP must disclose the nature of problem that require TMPs and whether such problem may be permanent, temporary or intermittent?
- Is there possibility to achieve the desired result without TMP or any alternative methods?

- Duration for which TMPs may be allowed, which must be as short as possible.
- ISP/TSP preparations to avoid/overcome such problems that require TMPs
- Difficulties faced by the consumer, content provider and others due to such TMPs?
- There must be some concessions/rebates to consumer who are facing hardship/losses due to such TMPs.
- There must be a mechanism for consumers, content providers and other to complain TRAI facing difficulty due to TMPs, which be excessive, unauthorised and illegal.
- ISP/TSP must be duty bound to disclose and submit the reports about TMPs that were employed, duration, their effects on consumer/content providers, steps taken by ISP/TSP to mitigate the hardship and steps taken to avoid similar circumstances that required TMPs.
- TRAI may have a right to impose penalties in for employing TMPs which are excessive, unauthorised, illegal or in breach of any guidelines/conditions.

3. Transparency:

TRAI may enforce ISP/TSPs to disclose the certain reports which will help non-discriminatory access to content on the Internet and further help in informed decisions, better products in market, diminishing the chances of corruption, unfair trade practices, cheating and/or frauds.

4. Monitoring and report abuse:

TRAI may appoint any committee for monitoring and enforcing the net neutrality provisions and non-discriminatory access to content on the Internet.

5. Complaints, investigations and penalties:

TRAI may create a website page/portal for complaints by consumers, content providers and/or public, wherever they notice any violation of Net Neutrality and/or non-discriminatory access to content on the Internet. Such complaints may be forwarded to concerned ISP/TSP for resolution and explanation. If TRAI gets number of complaints for similar violation from various consumers, content providers and/or public, could be ground for initiating investigation by TRAI. If such complaints and investigation prove the violation by ISP/TSP of Net Neutrality and/or non-discriminatory access to content on the Internet, TRAI may be authorised to impose the penalties.

Q2. How should “Internet traffic” and providers of “Internet services” be understood in the NN context? [See Chapter 3]

Response:

We suggest that “Internet Traffic” should include all data flowing on the Internet; and “Internet Services”, may be defined similarly as defined in EU for “Internet Access Services as below:

“a publicly available electronic communications service that provides access to the Internet, and thereby connectivity to virtually all end points of the Internet, irrespective of the network technology and terminal equipment used”.

(a) Should certain types of specialised services, enterprise solutions, Internet of Things, etc be excluded from its scope? How should such terms be defined?

Response: India apart from being a leading Services Industry Nation is also a hub to over 19400 start-ups as per the Economic Survey reports¹. In order to facilitate the

¹ <http://economictimes.indiatimes.com/small-biz/startups/economic-survey-2016-19400-startups-in-india-exit-valuation-for-investors-still-low/articleshow/51153483.cms>

incubation of such new age companies, it is necessary that any specialised services, enterprise solutions must be confirming to net neutrality and not adversely affecting the start-ups, which may not have the capacity to opt for premium/ quality services.

The Government and TRAI should also take note of cross ownership between a ISP/TSP (a delivery platform) and content owners (such as website and applications), directly or through its subsidiaries. Any specialised services, enterprise solutions or paid privilege arrangement between the two parties/ stakeholders may have negative impediment on any other third party content providers. Such cross ownership and privilege arrangement must be prohibited by TRAI.

It is our submission that the Government has been successful in limiting cross-holding between access provider and product content provider. Relevant to mention here is the television industry where a cable network promoter cannot own more than twenty per cent (20%) of a content provider. The Government and TRAI can also put restrictions on access / access holding should be put in place on the internet. ISPs can harbour conflict of interest and leverage their access to influence content consumption in their benefit. In the current scheme of things, the TSPs may be doing such abuse while giving access to any one.

It is also submitted that TRAI should ensure that TSPs do not misuse the closed electronic communication networks (CECNs) to offer differential pricing to its user for content. Even as the Prohibition of Discriminatory Tariffs for Data services Regulations, 2016 (“Regulation”) governs the Internet, however we feel that there is an ambiguity with respect to the provisions of CECN/intranet. Therefore, the extant application or implication of the Regulation is poised to raise concerns regarding distribution of content over CECN/Intranet and threatens to defeat the entire net neutrality principles.

Consumers do not understand the difference between Internet and Intranet/CECN. In fact, the average consumer would think they are the same word. For instance, if a consumer has two apps, and one is on the 'Internet' and one is on the 'CECN/Intranet' without the consumer understanding the difference, except that one has free access and one has paid access. Therefore, CECN/Intranet will defeat the very purpose of the newly introduced Prohibition of Discriminatory Tariffs for Data Services Regulation, 2016 and Net Neutrality Principles. It is also pertinent to note that the CECN/ Intranet of the top 3 TSPs would hold close to 75% of the total users over the entire Internet. Given the huge number of users, if similar content and services are available over the CECN/Intranet network, a time will come when CECN/Intranet shall easily substitute and finish the Internet. Therefore, the CECN/Intranet platform should be allowed only to provide consumption and product related informative services like network coverage or services related to connectivity, check my balance etc. but any third party content or service that compete with the open internet (media, content, payments, storage, chat, etc.) should not be allowed through CECN/ Intranet. In this context, it is our submission that TRAI must ensure and clarify that -

- CECN should not be used to create large public intranets to serve content and evade the regulations.
- No repackaging of internet content to create different look and feel for public CECN/ intranet.
- No hyper-linking/ deep-linking of internet content on TSPs intranet content.
- No advertisements linked to internet content.
- No integration of TSPs social networking services with internet/ cellular network based social networking websites or SMSes. For e.g. TSPs chat service should not be integrated with FB messenger or Whatsapp or google chat, etc.
- No news services on CECNs.
- TSPs must not be allowed to offer third parties content on their CECNs.

(b) How should services provided by content delivery networks and direct interconnection arrangements be treated?

Response: All the services whether it is content based delivery and direct interconnection should be transparent. Any arrangements for content delivery networks and direct interconnection should not for violating net neutrality. ISP/TSP may be required to report such arrangement to TRAI.

Q3. In the Indian context, which of the following regulatory approaches would be preferable? [See Chapter 3]

(a) Defining what constitutes reasonable TMPs (the broad approach), or

(b) Identifying a negative list of non reasonable TMPs (the narrow approach).

Please provide reasons.

Response: We recommend option (a) Defining what constitutes reasonable TMPs (the broad approach).

Reason being that the broader approach may be able to accommodate new changes/ introduction in technology while also checking the exiting practices. We will support the Government and TRAI in devising and adopting a mechanism that can remain relevant and appropriate and yet is flexible enough to adopt the evolving nature of the content and the increase in traffic.

However, we submit that most of reasons explained for employing TMPs are not agreeable for below reasons:

1. Traffic congestion, Peak-load management and Prioritisation of latency-sensitive traffic: It is stated in the consultation paper that *“In case of network overloads, it may sometimes become important to prioritise/ throttle one content stream over the other until the congestion is resolved...”*

We submit that neither of Traffic congestion, Peak-load management or Prioritisation of latency -sensitive traffic a valid reason for employing TMPs. TSPs are always marketing for acquiring new users and aware about market size, total number of users and demand. If TSPs are not having sufficient capability of its network or not investing/upgrading it's network to overcome the problem of Traffic Congestion to meet the demand, they don't have moral right to acquire new users. In such a situation, TRAI should also take note of inconvenience and hardship to end-users/ consumers, who have been paying the TSP's for the service but not getting the quality of services and/or desired content. Under these circumstances, TRAI should push/panelise the ISP/TSPs to maintain the quality standards and for non-delivery of desired services/content to users; rather than allowing them to deploy TMPs at the cost of inconvenience, service deficiency and other losses to end users/consumers.

Network security and integrity: We submit that to protect networks from viruses, spam, denial of service attacks, hacking attacks against network/terminal equipment, malicious software etc. TSP need the good anti virus/software to protect the network but NOT TMPs. In case of any emergency (technological failure), there may be some pre-approved procedure to follow and reporting requirements after emergency response.

2. Legal requirements: Any court orders and/or government or law enforcement agencies may be for specific purpose and time. However, the same should not

be invoked by ISPs/TSPs or should not be permitted by TRAI at the request or requirements of TSPs to deploy unfair practices.

3. Emergency:

We submit, TRAI should clearly define the situations that may be considered an emergency however there must be some standard operating procedures/ guideline for the ISP/TSPs to follow, in addition to below:

- Informing the TRAI, consumers and public regarding the emergency,
- Urgent steps that need to be taken/have been taken to overcome the emergency;
- Expected timelines to overcome the emergency, and such duration should not last more than few hours (or max-2-3 days).
- A detailed report regarding reasons, counter step taken to overcome the emergency and effects of such emergency.
- Consumers must not be charged during such emergency in case there was disruption or deficiency in services.
- If such emergency is found not genuine or was an artificial emergency, which could have been avoided, consumer/public must have a redressal mechanism to complain and challenge.

Q4. If a broad regulatory approach, as suggested in Q3, is to be followed: [See Chapter 3]

(a) What should be regarded as reasonable TMPs and how should different categories of traffic be objectively defined from a technical point of view for this purpose?

Response: It is submitted that there must be specific denial for deploying any TMP. Only TMPs may be allowed for emergency and avoiding any hardship to the consumers.

(b) Should application -specific discrimination within a category of traffic be viewed more strictly than discrimination between categories?

Response: It is submitted that no TMP should allow application-specific discrimination within a category of traffic.

(c) How should preferential treatment of particular content, activated by a users choice and without any arrangement between a TSP and content provider, be treated?

Response: Any application or device may have a feature for blocking of certain content however TSP's should not be allowed to check the content type flowing through their pipes/network.

Q.5 If a narrow approach, as suggested in Q3, is to be followed what should be regarded as non reasonable TMPs? [See Chapter 3]

Response: This is not recommended.

Q.6 Should the following be treated as exceptions to any regulation on TMPs? [See Chapter 3]

- (a) Emergency situations and services;**
- (b) Restrictions on unlawful content;**
- (c) Maintaining security and integrity of the network;**

(d) Services that may be notified in public interest by the Government/ Authority, based on certain criteria; or

(e) Any other services.

Please elaborate.

Response:

(a) Emergency situations and services: Only in emergency situations, which are caused due to force majeure or act of god, TSP/ISPs may deploy TMPs for the minimum required period to minimise inconvenience to Consumers/ public however such TMP should be employed only in particular effected zone. We would request TRAI to define narrow emergency situations and would recommend that ISP/TSP must be required to inform the TRAI, consumers and public regarding the emergency and publish the below:

- urgent steps to avoid/overcome the emergency;
- Expected timelines to overcome the emergency, and such duration should not last more than few hours (or max-2-3 days).
- A detailed report regarding reasons, counter step taken to overcome the emergency and effects of such emergency.
- Consumers must not be charged during such emergency in case there was disruption or deficiency in services.

If such emergency is found not genuine or was an artificial emergency, which could have been avoided, consumer/public must have a redressal mechanism to complain and challenge.

(b) Restrictions on unlawful content: ISP/TSP may be considered as intermediary as defined under Information Technologies Act, 2000 and further rules, guidelines under such law and therefore, must be duty bound to act in accordance with such rules and guidelines under the same.

- (c) Maintaining security and integrity of the network: Only exception for should be during the emergency.
- (d) Notified in public interest by the Govt.: Maintaining the net neutrality is itself required in public interest. Any exception shall undermine the net neutrality and should not be allowed.
- (e) Any other service: There should not be left such loopholes for violating net neutrality.

Q.7 How should the following practices be defined and what are the tests, thresholds and technical tools that can be adopted to detect their deployment: [See Chapter 4]

- (a) **Blocking;**
- (b) **Throttling (for example, how can it be established that a particular application is being throttled?); and**
- (c) **Preferential treatment (for example, how can it be established that preferential treatment is being provided to a particular application?).**

Response: Blocking, throttling and preferential treatment to certain content and filtering of content are some practices employed by TSPs/ ISPs whereby consumers are denied access to online content and not provided the required bandwidth even after consumers are paying the prices set by the TSPs and ISPs. Usually such techniques are employed by TSPs/ISPs to avoid investment in infrastructure network, to create scarcity and extract more money, providing privilege and better speed to content and/or services provide by them, their affiliate or partners to beat the competitors etc.

In the US, the Federal Communications Commission (FCC) was tasked to classify broadband service as a utility and to impose rules that prevent Internet service providers from blocking and throttling traffic or prioritizing Web services in exchange for payment. This utility rule is meant to apply both to home Internet service and mobile broadband. It is relevant to produce and excerpt here, “The time has come for the FCC to recognize that broadband service is of the same importance as the traditional telephone system and must carry the same obligations as so many of the other vital services do”.²

Below listed may be some of practices to check/detect the blocking, throttling or preferential treatment:

- a) TRAI may establish a website/platform for public complaints for reporting breaches of the NN regulations. A complaint report form may be uploaded on the same, which may be filed by consumers, content providers and/or public. If TRAI finds the complaints over a threshold, it may take notice and investigate.
- b) TRAI may develop technical means (such as the M Lab Network Diagnostic Tools) to create quarterly, detailed diagnostic reports across ISP/TSPs.
- c) It may even consider deploying and creating network probes. This may be similar to the EFF (Electronic Frontier Foundation) Network probes should be set up so as to monitor network traffic in real time. Such probes are highly effective in finding the reasons for the slowdown of the network.

² <https://arstechnica.com/business/2014/11/obama-urges-fcc-to-regulate-broadband-as-a-utility/>

d) ISP/TSPs should be required to furnish data as to adherence with network protocols that is audited and then provided to the TRAI.

Q.8 Which of the following models of transparency would be preferred in the Indian context: [See Chapter 5]

- (a) Disclosures provided directly by a TSP to its consumers;
- (b) Disclosures to the regulator;
- (c) Disclosures to the general public; or
- (d) A combination of the above.

Please provide reasons. What should be the mode, trigger and frequency to publish such information?

Response: (d) A combination of the above.

It is required that ISP/TSP must disclose all the details to all the stakeholders including TRAI, consumers and public. This information may be uploaded on website of respective ISP/TSP. Further such disclosures to consumers and public must be plain language/words understandable by consumers and public and not technical jargons. This is important so that the stakeholders can disseminate the information which can help in devising new policies, rules/ regulations, decisions, better products in market, diminishing the chances of corruption, unfair trade practices, cheating and/or frauds and for trust on each other.

Q.9: Please provide comments or suggestions on the Information Disclosure Template at Table 5.1? Should this vary for each category of stakeholders

identified above? Please provide reasons for any suggested changes. [See Chapter 5]

Response: We submit that the information disclosures should be as much as possible, which shall be in the interest of Consumers, proliferation of internet and digital India.

Q.10 What would be the most effective legal/ policy instrument for implementing a NN framework in India? [See Chapter 6]

- (a) Which body should be responsible for monitoring and supervision?**
- (b) What actions should such body be empowered to take in case of any detected violation?**
- (c) If the Authority opts for QoS regulation on this subject, what should be the scope of such regulations?**

Response:

- (a)** It is our submission that TRAI may be the Authority for adopting and implementing any policy on net neutrality including for monitoring and supervision since it has also powers under unified access service license (UASL) to TSPs to enforce QoS obligations.
- (b)** TRAI may be empowered to levy fine and any other penalties on any entity flouting the NN principles.
- (c)** Broadly, these QoS put an obligation on service provider to maintain certain minimum speed for delivery of content over the internet without blocking/throttling or providing preferential treatment to any particular content or the content from any particular content provider directly or indirectly.

Q.11 What could be the challenges in monitoring for violations of any NN framework? Please comment on the following or any other suggested mechanisms that may be used for such monitoring: [See Chapter 6]

- (a) Disclosures and information from TSPs;**
- (b) Collection of information from users (complaints, user-experience apps, surveys, questionnaires); or**
- (c) Collection of information from third parties and public domain (research studies, news articles, consumer advocacy reports).**

Response: All the three factors (a), (b) and (c) are relevant.

Q.12 Can we consider adopting a collaborative mechanism, with representation from TSPs, content providers, consumer groups and other stakeholders, for managing the operational aspects of any NN framework? [See Chapter 6]

- (a) What should be its design and functions?**
- (b) What role should the Authority play in its functioning?**

Response: We would recommend an advisory working group consisting of all stakeholders. Such group may give their opinion on net neutrality framework. However, the core principal of net neutrality must not be comprised.

Q.13 What mechanisms could be deployed so that the NN policy/regulatory framework may be updated on account of evolution of technology and use cases? [See Chapter 6]

Response: On this we would like to reiterate that TRAI may adopt a broader policy/principle which can remain relevant and appropriate and yet is flexible enough to adopt the evolving nature of the content and the increase in traffic.

Q.14 The quality of Internet experienced by a user may also be impacted by factors such as the type of device, browser, operating system being used. How should these aspects be considered in the NN context? Please explain with reasons.[See Chapter 4]

Response: The quality of Internet or the QoS over Internet should be agnostic to the devices used. This simply means that while the experience of each user may differ with the type of device such as use of advance device/equipments however this difference shall not be attributed to interruptions created by the TSPs. It is submitted that such factors must be outside the purview of net neutrality.

Should you wish to seek information on the above or require further clarification, please feel free to contact us.

Thank you.

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