

Dated: 31st July, 2018

Subject: Regulatory Framework on 'Net Neutrality'

1. Introduction

- 1.1 The Internet is increasingly becoming central to the lives of citizens, consumers and industry. It has emerged as a transformative medium for innovation and economic growth. It has revolutionized not only our lifestyles but also the way governance is done and public services are delivered.
- 1.2 The future growth of telecom sector is largely contingent upon innovation and growth of the Internet infrastructure and many applications, content and services linked to it. However, increasingly, concerns have been raised globally as well as in India relating to the potential for discriminatory treatment of Internet traffic by the entities that control access to the Internet. These concerns regarding non-discriminatory access have become the centre of a global policy debate, often referred to as the debate on 'network or net neutrality'.
- 1.3 'Net- Neutrality' refers to the concept of non-discrimination of Internet traffic by intermediate networks on any criteria. The network should be neutral to all the information being transmitted through it. All communication passing through a network should be treated equally i.e. independent of its content, application, service, device, sender or recipient address.

2. Background

- 2.1 In the Indian context, there have been multiple consultations on the issue of net neutrality and related aspects. Various initiatives taken by TRAI as well as DoT on the subject are as below:
 - 2.1.1 A Committee was established by Department of Telecommunications (DoT) on 19th January, 2015 to provide recommendations on Net Neutrality. The committee submitted its recommendations in May 2015.
 - 2.1.2 TRAI issued a consultation paper on 'Regulatory Framework for Over-The-Top (OTT) Services' on 27th March, 2015. This paper raised


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issues relating to the regulatory framework for OTT services and included questions on the principles of net neutrality, reasonableness of traffic management practices, non-price based discrimination of services and transparency requirements.

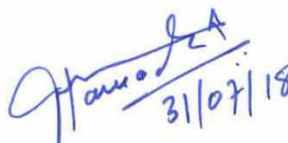
- 2.1.3 On 9th December, 2015, TRAI issued a consultation paper on 'Differential Pricing of Data Services'. After a detailed and widespread consultation process, TRAI issued the 'Prohibition of Discriminatory Tariffs for Data Services Regulations', 2016 in February, 2016. The regulations restricted TSPs from directly or indirectly charging discriminatory prices to consumers based on the content, applications, services or any other data being used by them.
- 2.1.4 In response to request of DoT vide letter dated 3rd March, 2016, TRAI initiated a detailed consultation on issues relating to Net Neutrality. This included publication of a pre-consultation paper on 30th May, 2016, followed by a detailed consultation paper on 4th January, 2017.
- 2.1.5 TRAI provided to DoT its recommendations on 'Net Neutrality' dated 28-11-2017.

3. Policy Directives on Net Neutrality:

- 3.1 The Government is committed to the fundamental principles and concepts of Net Neutrality i.e. keep the Internet accessible and available to all without discrimination. Internet Access Services, therefore, need to be governed by a principle that restricts any form of discrimination, restriction or interference in the treatment of content, including practices like blocking, degrading, slowing down or granting preferential speeds or treatment to any content. To ensure that the regulatory framework on Net Neutrality adheres to the fundamental principles and concepts of Net Neutrality, the policy directives as mentioned in the succeeding paras are hereby issued.

- 3.2 *Principle of non-discriminatory treatment, application, exclusions and exceptions:*

3.2.1 It has been decided to amend the terms of various license agreements governing the provision of Internet services in India (UL, VNO license, UASL and CMTS) in order to incorporate the principles of non-discriminatory treatment of content by Internet Access Services along with the appropriate exclusions and exceptions. This will also help in building uniformity in the terms governing the provision of Internet services by different categories of licensees. The specific amendments to be made in each of the license agreements are listed in Table 1 of Annexure-I.

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3.2.2 The amendments of licence agreements as above shall be issued by the respective licensing wings of DoT hereafter.

3.2.3 The necessary Traffic Management Practices (TMPs) shall be formulated by DoT after recommendations of TRAI in this regard.

3.2.4 In case of the UASL and the CMTS License, which do not contain a definition of Internet, the definition of Internet shall also be included along with the new definition of Internet Access Service.

3.3 *Applicability to Internet of Things (IoT) and Specialized Services:*

3.3.1 The provision of any specialised services, as defined in Table 1 of Annexure-I shall be explicitly excluded from the principle of non-discrimination.

3.3.2 However, IoT as a class of services shall not be specifically excluded from the scope of the restrictions on non-discriminatory treatment.

3.3.3 Those critical IoT services, which shall be identified by DoT as satisfying the definition of specialised services (as stated above), would be automatically excluded.

3.3.4 The classification of critical IoT services shall be done by DoT in consultation with / other departments/ stakeholders / for incorporation in license agreements from time to time.

3.3.5 The specialised services should be provided only if:

- i. such services are not usable or offered as a replacement for Internet Access Services; and
- ii. the provision of such services should not be detrimental to the availability and overall quality of Internet Access Services. This could be monitored using various quality of service parameters.

3.3.6 The Content Delivery Networks (CDNs) shall not be included within the scope of any restrictions on non-discriminatory treatment, which are designed specifically to cover the providers of Internet Access Services.

3.4 *Transparency and Disclosures:*

TRAI shall supplement its existing disclosure and transparency requirements by framing additional regulations in this regard.

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3.5 *Monitoring and Enforcement:*

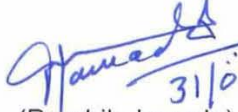
3.5.1 DoT shall establish a multi-stakeholder body with framework for collaborative mechanism among the stakeholders. The body shall have an advisory role.

3.5.2 DoT shall seek recommendations of TRAI on the composition, functions, role and responsibilities of the multi stake-holder body.

3.5.3 The monitoring and enforcement functions with respect to Net Neutrality shall rest with DoT.

This is issued with the approval of competent authority.

Encl: As above


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Copy to:

1. PS to MoS (IC), MoC
2. PSO to Secretary (T)
3. Special Secretary (T)
4. Member (T)/Member (F)/DGT/ Member(S)
5. Secretary, TRAI
6. All Advisors, DoT
7. All TSPs/ ISPs
8. DDG (AS/ CS/ DS), DoT with a request to issue amendments of licence agreements as above.
9. COAI

Table 1

The specific amendments to be made in each of the license agreements are listed in the table below:

Subject	License and Provision to be Inserted	Text
<p>Principle of non-discriminatory treatment</p> <p>Definition of specialised services</p> <p>Reasonable traffic management and other exceptions</p>	<p>UL - Insertion of new Clause 2.3 in Chapter IX</p> <p>VNO License - Insertion of new Clause 2.3 in Chapter IX</p> <p>ISP License - Insertion of new Clause 2.5</p> <p>UASL - Insertion of new Clause 2.7</p> <p>CMTS - Insertion of new Clause 2.4</p>	<p>i. A Licensee providing Internet Access Service shall not engage in any discriminatory treatment of content, including based on the sender or receiver, the protocols being used or the user equipment.</p> <p>ii. The Licensee is prohibited from entering into any arrangement, agreement or contract, by whatever name called, with any person, natural or legal, that has the effect of discriminatory treatment of content.</p> <p>iii. Nothing contained in this provision shall restrict:</p> <p>a) the provision of any Specialised Services by a Licensee, provided that:</p> <ul style="list-style-type: none"> • the Specialised Services are not usable or offered as a replacement for Internet Access Services; and • the provision of the Specialised Services is not detrimental to the availability and overall quality of Internet Access Service. <p>b) any measures adopted by the Licensee that are proportionate, transient and transparent in nature and fall under any of the following categories:</p> <ul style="list-style-type: none"> • Reasonable traffic management practices, as may be specified from time to time;

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		<ul style="list-style-type: none"> • Provision of emergency services or any services provided during times of grave public emergency, as per the process laid down by the Licensor/ TRAI; • Implementation of any order of a court or direction issued by the Government, in accordance with law; • Measures taken in pursuance of preserving the integrity and security of the network and equipment; and • Measures taken in pursuance of an international treaty, as may be specified by the Government. <p>iv. For the purposes of this provision:</p> <p>a) "Content" shall include all content, applications, services and any other data, including its end-point information, which can be accessed or transmitted over the Internet.</p> <p>b) "Discriminatory treatment" shall include any form of discrimination, restriction or interference in the treatment of content, including practices like blocking, degrading, slowing down or granting preferential speeds or treatment to any content.</p> <p>c) "Specialised services" shall mean services other than Internet Access Services that are optimised for specific content, protocols or user equipment, where the optimisation is necessary in order to meet specific quality of service requirements.</p> <p>Provided that the Licensee is authorised to provide such services in accordance with the provisions contained in this License, as</p>
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		modified from time to time.
Definition of Internet Access Service UL	<p>UL - Insertion of new Clause 44A in Annexure- I</p> <p>VNO License - Insertion of new Clause 45A in Annexure- I</p> <p>ISP License - Insertion of new Clause 16A in Annexure - I</p> <p>UASL - Insertion of new Clause 26A in Annexure- I</p> <p>CMTS - Insertion of new Clause 16A in Annexure- I</p>	<p>Internet Access Service is a service to access the Internet that is:</p> <p>i. generally available to the public; and</p> <p>ii. designed to transmit data to and receive data from all or substantially all endpoints on the Internet</p> <p>Explanation: Any service that offers capabilities that are incidental to or provide the functional equivalent of Internet Access Services, shall also be included within the scope of this definition</p>

Note: In case of the UASL and the CMTS License, which do not contain a definition of Internet, the definition of Internet shall also be included along with the new definition of Internet Access Service.

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