

Response to TRAI Consultation Paper
on
'Regulatory Framework for OTT Services'

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My Views on Net Neutrality

Response to TRAI Consultation Paper on "Regulatory Framework for Over TheTop Services"

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A. TRAI's Characterization of Consumer Response to Consultation:

1. There are many aspects of the current Net Neutrality debate apart from the issue itself – I want to just mention them in passing before I get to the substantive issue of Net Neutrality
2. Throughout this submission, I shall use the term Telco/Internet Access Provider to describe all access providers including Internet Service Providers.

3. **Net Neutrality**

There are some efforts to paint Net Neutrality as an issue of Philosophy or something complex or utopian – It is none of these. It is a real issue, it is simple to understand, it is simple to define, legislate and regulate for and is core to preserving the character of the Internet as it is today which is fair, open, innovative, growing and bereft of any central control

The following are the basic principles for a discussion on regulations and policies for the Internet and Net Neutrality:

- i. Internet is a global network of computer networks - consisting of millions of servers and machines interconnected through a complex mesh of gateways and root servers etc. It has no owner and there is no entity that controls access to it. That is the essential character of the Internet. It must remain that way. The defining values of the Internet are its neutrality to content and participants. It is fair and open. It has no owners and no control.
- ii. The Internet is an open collaborative platform that has revolutionized the modern world as we know it today – it is about innovation and on it and in it resides the leading innovations of today's modern world. It has thrown up and is throwing up and will continue to throw up millions of innovative applications, services and

content – all of which are the legitimate right of an Internet user to access. The only exceptions are restrictions of access to those deemed illegal in that country or jurisdiction.

- iii. Telcos/Internet Access Providers are NOT the Internet. They invest in and operate access networks to the Internet.
- iv. While the Internet has been around for many years and so have access providers, it is only in recent years that the Internet is becoming a commercially valuable commercial marketplace – and consumers represent that value. This last point explains the motivations of some of the folk opposing Net Neutrality.
- v. The move of consumers to IP applications on the Internet, is causing challenges to the traditional Telco's voice revenue dependent business plan. They are transitioning to data business models. But for mobile Internet providers as Telcos will soon become, to create a hugely profitable model like the ones they are used to, is a challenge and so again the resistance to Net Neutrality.
- vi. The Telcos/Internet Access Providers like Airtel and Vodafone and also big Internet companies like Facebook or Flipkart or Amazon are legitimately entitled to maximize their business Interests. But they must do so fairly and without prejudicing the rights of Internet consumers or altering the character and nature of the Internet. In our country where 80-85% people still aren't connected, the ability of Telcos/Internet Access Providers to invest and grow the access networks is also important.
- vii. Further compounding the consumer's interest is the fact that in India, competition and choice are very limited. Fixed broadband options are very few. There are serious shortcoming in consumers' ability to choose, as the dismal service standards amongst some Telcos prove. With the proliferation of tablets and smartphones, mobile Internet providers are increasingly the go to access providers. Mobile broadband and Mobile Internet are the fastest growing segments amongst access providers. Here too the market is dominated by two or three players. Portability and choice is dis-incentivized because data is an add-on to telephony services and that further limits the choice and ability of consumers to

move. Compounding it all further is the fact that the sector has a long standing track record of poor Quality of Service(QoS).

B. THE NET NEUTRALITY DEBATE IN INDIA:

1. It is in this uncompetitive landscape that Telcos/Internet Access Providers, i.e. access providers with significant market presence/power and are outside the Internet are attempting to create exclusive platforms that are akin to preferred islands on the Internet, are offering services and applications.
2. The main focus of the Net Neutrality debate in India, is whether these access providers should be permitted to create these preferred islands over the Internet, and also regulate access through pricing and Quality of Service to the rest of the Internet. Creating a situation that the access networks would become Gatekeepers to the Internet, whilst “moving up the stack”. This simple issue lies at the heart of the Net Neutrality debate.
3. There is an added issue about whether Facebook’s Internet.org and other large leading players on the Internet (and I make this distinction from the gatekeeper access companies) represent a threat to the Internet’s character - or whether they represent big corporates that are looking to take over the Internet.
4. Both of these represent real and potential threats to the Internet and to the consumer. Both need to be handled through different responses. They are without doubt baby steps into what already exists in the Cable and Media Industry. Where a few cable operators control access to content and access to consumers and charge exorbitant costs for content transmission. In effect, being gatekeepers to the consumer base for content providers and vice versa gatekeepers for content to the consumer. There is not a thing that this regulator or Government can do once these big monopolies and duopolies are created apart from whistle in the rain! When the Chief Minister of a state doesn’t like what a channel says about him, he simply tells the cable operators to drop that channel and consumers will not see it. At the same time, the cable operator today can charge a content provider exorbitant sums for being carried. Fast forward and see similar tendencies being played out by Telcos/Internet Access Providers who are buying TV channels, setting up Internet Platforms like Airtel Zero and will off course then make it

difficult for any other channel or platform to be visible or accessible by its consumers. Except at a great cost.

5. It is precisely to protect against this that we need Net Neutrality - the prohibition of any form of discrimination by Telcos/Internet Access Providers Vis a Vis content on net. While service and packet prioritization is acceptable as part of Network management, charging commercial for this is unacceptable. This is critical to prevent gatekeeping from starting for the Internet like we have for cable. If we allow this trend of creeping gatekeeping of the Internet to continue now, it will be too late for policy action in the future. This requires policy intervention now. On the second issue, market dominance by Internet players is something that falls squarely under Competition Law. If Facebook or Flipkart grow too big and are therefore crowding out competition, it is for our Competition Laws to scrutinize and penalize. That is an ongoing intervention and oversight of the Internet market place and players.
6. Lastly, If Net Neutrality causes any impact on Telcos/Internet Access Providers' ability to invest and grow that is an issue to be examined transparently by the Government and policy makers, keeping in mind that regulations and policies cannot be expected to smoothen out revenue volatility due to technological and innovative disruptions. Restricting/discriminating access to consumers or gatekeeping the Internet means consumers are paying for it and that clearly is a NO-NO.

We must now advance the Net neutrality debate from the realm of argument, to real solutions and legislations.

Question wise Responses to TRAI Consultation Paper on Regulatory Framework for Over The Top Services

Question 1: Is it too early to establish a regulatory framework for Internet/OTT services, since Internet penetration is still evolving, access speeds are generally low and there is limited coverage of high-speed broadband in the country? Or, should some beginning be made now with a regulatory framework that could be adapted to changes in the future? Please comment with justifications:

1. It is surprising that the TRAI poses this question which makes an inherent assumption on the need for regulation of OTTs. The TRAI overlooks its own observations in a December 2006 Consultation Paper titled "Regulating Internet Services." Page 27 of the paper defined net neutrality as *"the principle that Internet users should be able to access all content they view and all applications they use on the Internet without being discriminated by Internet service provider(s)/ access provider(s)."* In fact, the 2006 paper had also cautioned against a future possibility of a violation of Net Neutrality principles, by stating *"The situation may also rise in India as Internet access providers may use their market power to discriminate against competing applications and/or contents."*
2. OTT Services or any part of the Internet do not require any additional or special regulatory Intervention. The IT Act 2000 already provides legal oversight over all content, apps, service providers and intermediaries. Further, a licensing arrangement exists between ISPs/Telecom Operators and the Government that lists in detail, the obligations and responsibilities of access providers. The Regulator's responsibility is to ensure consumers have free, fair and non-discriminatory access to all services and apps, competition and a net neutral Internet.
3. TRAI's attempt to link Internet penetration or coverage to the fundamental principles of non-discriminatory access and net neutrality do not make sense. There is no relation between the two issues. Net Neutrality is a standalone fundamental principle for the Internet and is critical to the Digital India vision of creativity, innovation and universal access.

4. Diluting Net Neutrality shall allow Telcos/Internet Access Providers the power to steer consumers towards certain services and apps through pricing and other forms of anti-competitive behaviour. Success and failure of services on the Internet would therefore be determined not by creativity and innovation but by the commercial arrangements that OTTs have with the Telco/Internet Access Provider - that will then play the role of a gatekeeper to the Internet.
5. Absence of Net Neutrality means that big content and service providers could predate on smaller apps and service providers as a consequence of commercial arrangements.
6. The ability of Internet businesses to combine types of services to provide innovative, cutting edge products and services shall be restricted, by forcing consumers to pay separately for apps, video and wearables/Internet of things. Therefore economic growth, consumer choice and the growth of businesses, all take a beating.
7. A free and open Internet is crucial for innovation, connection and economic growth, and attempts at regulation will impede innovation. OTTs are a by-product of the opportunity for innovation that a net-neutral Internet provides, and this should encouraged and further evolve and grow.

Question 2: Should the Internet/OTT players offering communication services (voice, messaging and video call services through applications (resident either in the country or outside) be brought under the licensing regime? Please comment with justifications:

1. No. These are applications just like countless other apps and services available on the net. Licensing applications and technological innovations makes no sense, creates governance overheads and costs with no beneficial outcome. It also will have the undesired effect of the Government being in the arbiter of technological innovations and regulating the Internet through the back door.
2. The Internet is a medium where all types of applications have grown and will continue to grow – messaging, voice, video, graphics/imaging, text are all converted and transmitted as packets under the Internet Protocol aka IP packets. Packets are identical as transmitted on the Internet and cost of production of these packets are identical regardless of what the assembled set of packets deliver by way of an application. Given the cost of production of these packets are all same, there is therefore no logic or rationale for differential pricing on for packets. This is a fundamental inviolable principle of Net Neutrality and access to the Internet.
3. The IP packet and IP technologies have evolved and innovated from its early avatar of data and text to richer and richer forms of content. Regulating this is not only foolhardy, it is impossible. Further, regulating innovation has never worked and is not advisable just because some Telcos/Internet Access Providers and their legacy business plans are threatened by a new wave of disruptive technologies. The TRAI has had a dismal record of regulating even basic issues of consumer experience and service.
4. The argument that Consumers use OTTs widely does not preclude the need to use other types of apps now or in future. What one set of users demand should not determine what is made available to consumers. The Internet is about “the long tail”, and diluting net neutrality would kills the long tail, and the opportunity for new innovative businesses to emerge.

Question 3: Is the growth of Internet/OTT impacting the traditional revenue stream of Telecom operators/Telecom operators? If so, is the increase in data revenues of the Telecom Operators sufficient to compensate for this impact? Please comment with reasons.

1. This is an unbalanced question pointing to this consultation papers core flaw. That this consultation is less about consumers, Internet and innovation and more about Telcos profitability and returns.
2. Telcos/Internet Access Providers pay for spectrum. There is no prohibition for them to use this spectrum to develop an IP network and evolve from Telecom service providers to IP service providers for voice and other services. But they cannot expect consumers of the country to pay for or subsidize this change or the fact that they had not anticipated the change in consumer needs, technology or business. It is neither the responsibility of regulations or public policy to protect profitability levels of Telcos in an environment of disruptive technologies and Innovation. The consumer has to experience the full fruits of this innovation without it being impeded by discussions on Telco profitability.
3. Telcos/Internet Access Providers are already earning revenues from customers paying for Internet access and data services – who pay for bandwidth and data packages. In fact, reports suggest that all telecom operators have recorded profits from a rise in data based services. The Economic Times reported in April last year that Bharti Airtel made a net profit for the 4th quarter rose 89% from a year earlier. Net profits for quarter rose to Rs 962 crore from Rs 509 crore a year earlier.
4. Vodafone too profited steeply from increase data usage – It was reported in November last year, that Vodafone India netted an 11.7 per cent rise in service revenue at Rs 20,641.9 crore for the first half of the financial year, on the back of 65.5 per cent jump in data revenue, which alone contributed to Rs 2,552 crore during the period.
5. Even a relatively smaller player, Idea Cellular recorded a 64% rise in quarterly profit, its revenues increasing to Rs. 767 crores in the 3rd quarter of FY 2013-14, compared with Rs. 470 crores in the same quarter last year.

6. It is in fact the case that increased data usage (driven also by OTT use by end consumers) is responsible for the surge in revenues of Telcos/Internet Access Providers. Vodafone Inc. CEO Vittorio Colao himself suggested so according to press reports from February 2015, where he is quoted as saying, "Growth in India has accelerated again (October-December), driven by data."
7. According to a report by Cisco, mobile data usage is growing exponentially. In 2014, mobile data traffic worldwide was nearly 30 times the size of the entire global Internet in 2000. On an average, a smart device generated 22 times more traffic than a non-smart device. TSPs should look to capitalise on the increased demand for data, instead of attempting to curb the growth of OTT services.
8. In India, Bharti Airtel reported mobile data traffic growth of 95% between the 3rd Quarter in 2013 and the 3rd Quarter in 2014, Reliance Communications reported mobile data traffic growth of 75% between 3rd Quarter 2013 and the 3rd Quarter in 2014.
9. Vodafone recently posted a profit owing to higher call rates and increased data usage. Airtel also recently posted a profit, in a major part owing to a surge in data revenue. Idea recently posted a profit, partly owing to its data plans attracting more users. MTS India posted 15% growth in revenue in Quarter 2 of 2014, attributing growth in data revenue as the primary reason.
10. The above statistics prove there is a clear case of a viable business case based on the trend of networks evolving into Data networks. However, as a fundamental non violable principle, Telcos/Internet Access Providers cannot and must not expect consumers of the country to pay for or subsidize changes in business model caused by technological changes and innovations. Regulations and Public policy should not either. Consumers and choice are at the core of Public policy. I repeat that the regulator TRAI has erred severely in the way this consultation paper has been drafted.
11. Technology sector is increasingly seeing shorter and shorter life for technologies and more frequent introduction of new and disruptive technologies. The history of telecommunications is one of constant innovation and change - paging was replaced by

SMS, SMS was in turn replaced by Instant messaging, Circuit voice replaced by IP voice etc.

12. Disruption is the new normal in technology sector and it requires Telcos/Internet Access Providers and Internet Service Providers to be nimble and innovative to survive and thrive. All investors in the technology space are fully aware of the nature of this space. The Regulator has to encourage this nimbleness and innovation and not come in the way of this change since the change is being embraced by and driven by consumers.
13. Consumers cannot and must not be required to give up their right to choice and free access to innovation on the Internet to protect a Telecom Operators investments or business model.
14. Regulations, Public policy should not attempt to and consumers SHOULD NOT be required to fund/subsidize the Telco's/Internet Access Providers or Internet Service Providers requirements to change
15. Neither should regulations or public policy be the inducement for companies not to be nimble, creative, efficient and responsive to technology changes. OTTs today and in the future shall introduce many other apps on the Internet will represent disruptive technologies that should ideally force the telecommunications sector to innovate and adapt to the newest developments. Our policies must encourage companies to be nimble. Regulatory intervention and policies to protect Telcos/Internet Access Providers from this have significant consumer choice and moral hazard implications.
16. The Government may explore other tax/non-tax incentives for existing and new Telcos/Internet Access Providers to continue to invest in their networks.

Question 4: Should the Internet/OTT players pay for use of the Telecom Operators network over and above data charges paid by consumers? If yes, what pricing options can be adopted? Could such options include prices based on bandwidth consumption? Can prices be used as a means of product/service differentiation? Please comment with justifications.

1. Charging OTTs a fee could result in consumers paying more for each service and result in a situation where they are paying double – for data access, and additionally for each OTT service, creating issues as mentioned in section 1.
2. Telcos/Internet Access Providers charge consumers for data access. There is no case for additional charging for access from consumers unless it is based on a higher quality of service to access the Internet. i.e., charging consumers for higher speed, or higher bandwidth, or better service. Telcos should not be permitted to charge for access to a particular website, app or service more than any other. That would run contrary to the principles of cost based tariffing and/or and Net Neutrality and is not justifiable even by the regulatory principles that TRAI has advocated on cost based tariffing.
3. Since data packets are identical and cost of production are the same – there is no logic for charging differentially for different apps/services or content. This goes against the principle of Net Neutrality.
4. See responses to Q 1 to 3 for further answers to this.

Question 5: Do you agree that imbalances exist in the regulatory environment in the operation of Internet/OTT players? If so, what should be the framework to address these issues? How can the prevailing laws and regulations be applied to Internet/OTT players (who operate in the virtual world) and compliance enforced? What could be the impact on the economy? Please comment with justifications.

1. There is no evidence of any 'imbalance' in the regulatory environment Vis a Vis the Internet or OTT players. The TRAI has erred in using this phrase without any evidence. It will create a reasonable suspicion about the bias inbuilt into this consultation by the Regulator. The Regulator cannot and must not make bland assertions of imbalances without evidence. Such assertions can easily stray into an area of moral hazard and blatant bias towards the big corporates.
2. As a matter of fact, a gross distortion and imbalance will be created if net neutrality is violated. The imbalance would tilt the balance of power and influence on the Internet away from large community of consumers and innovation to a few Telcos/Internet Access Providers.
3. The only issue that remains out of this question is that of enforcing the law (IT act) on the Intermediaries and OTTs who operate in the virtual world i.e. those that are untraceable or difficult to serve legal notices and enforce laws on. The solution for this may be to amend the IT legislation if necessary that ensures that laws of India are FULLY enforceable e if and when violated by apps, service providers, content providers and Intermediaries. Neither the TRAI nor the DOT must have a role in this with any form of administrative discretion or power. It should be fully about the law. The legitimate cybersecurity concerns of the Government must not be mixed up in a discussion of Net Neutrality. There should be no attempts to introduce regulation that dilutes Net Neutrality under guise of ensuring security. Cyber security and cyber-crime should be and can be separated from the issue of Net Neutrality.
4. I reject the TRAI proposition that to ensure secure Internet, consumers have to sacrifice open, fair Internet and therefore choice and access to innovation.

5. Net neutrality has no adverse effect on economy. To reiterate, it may lead to a few Telcos/Internet Access Providers having to adapt their business models and investment to the rapid growth of the data market.

Question 6: How should the security concerns be addressed with regard to Internet/OTT players providing communication services? What security conditions such as maintaining data records, logs etc. need to be mandated for such Internet/OTT players? And, how can compliance with these conditions be ensured if the applications of such Internet/OTT players reside outside the country? Please comment with justifications.

1. It must be clear that all OTTs are applications and software products hosted on the Internet.
2. See responses to Q5 on issues of security. To reiterate all Internet content including OTTs such as WhatsApp already fall under the framework of the Information Technology Act, 2000, the Code of Criminal Procedure, Indian Telegraph Act and the Indian Telegraph Rules. When a takedown request is received from the authorities under the law, Intermediaries/ISPs/OTTs are legally bound to respond.
3. There may be a case for amendments/additions to the IT or Cr PC to plug loopholes that may exist or may occur in future relating to security. But these should be after discussion and debate in Parliament and cannot be based on administrative orders and/or regulations unless a clear and urgent case for National security can be made. The legitimate cybersecurity concerns of the Government must not be mixed up in a discussion of net neutrality. There should be no attempts to introduce regulation as a means of ensuring security. Cyber security and cyber-crime should be forensically separated from the larger issue of Net Neutrality.

Question 7: How should the Internet/OTT players offering app services ensure security, safety and privacy of the consumer? How should they ensure protection of consumer interest? Please comment with justifications.

1. Internet consumers will choose those apps and services that they believe adequately safeguard their privacy and safety concerns.
2. Currently, any criminal act committed using these platforms can be tried under the Indian Penal Code and the IT Act, 2000.
3. The current legislations and statute book do not provide enough by way of rights of privacy to an Indian citizen. The Privacy Bill 2014 needs to be discussed in detail in Parliament, and a new framework that guarantees citizen's right to privacy needs to be enforced. But this is beyond the scope of this consultation and needs a wider debate in country and Parliament.
4. The legitimate cybersecurity and privacy concerns of the Government must not be mixed up in a discussion of net neutrality. This question raises a suspicion that the Regulator is seeking to regulate OTTs in a predetermined manner and is using any number of rationale including security as the bogey to justify this. Cyber security and cyber-crime should be separated from the larger issue of Net Neutrality.

Question 8: In what manner can the proposals for a regulatory framework for OTTs in India draw from those of ETNO, referred to in para or the best practices? And, what practices should be proscribed by regulatory fiat? Please comment with justifications.

1. I am deeply surprised by this question and the perceived bias in the thinking of the TRAI this question could represent - The ETNO is the European Telecommunications Network Operators group and its recommendations represent the views of network operators. Network operators have an inherent bias against net neutrality as they tend to protect market positions and business models rather than be change agents or champions of consumer choice. Access Network Operators are increasingly trying to grab a piece of the Internet economics by "moving up the stack" and hence will naturally oppose any attempts to curtail their power, which is precisely the effect of Net neutrality.
2. The consultation process must draw from the submissions and opinions of all stakeholder groups including consumer groups and start-up owners in order to draft a well-rounded and balanced framework. It is clear that from a consumers and nations perspective, there is no justification to regulate OTTs and that a Ne Neutral Internet is the path for a country that is to be a digital society and a Technology leader in the world.

Question 9: What are your views on net-neutrality in the Indian context? How should the various principles be dealt with? Please comment with justifications.

1. India's position on Net Neutrality should be built around the Government's Digital India vision for "Transforming India into a Digitally Empowered Society and Knowledge Society". This requires an enabling policy ecosystem that promotes innovation, choice, freedom, and access of consumers and to protect the character of the Internet. The goal should be to align with what consumers and citizens want – which is a free, open, safe and growing Internet.
2. India's position on net neutrality should be built around an open, accessible Internet that DOES NOT have a few gatekeepers in form of Telcos/Internet Access Providers. These gatekeepers must have clearly defined role as competitive access providers who invest in building and growing access networks with incentives from Government. They must NOT have the power to regulate and influence traffic onto specific parts of the net and discriminate against Net participants or consumers. This is critical to success of India's Digital India vision.
3. The net neutrality principle for India must explicitly PROHIBIT any commercial contracts between Access providers and content providers/Apps/websites that give preferential 'treatment' to that Content provider/App/Website Vis a Vis the consumer access to that Content provider/App/Website. E.g. a Flipkart must be prohibited by entering into Agreement with Airtel that causes Airtel to steer consumers preferentially to Flipkart. Steering here could be referred to any of the following: superior download speeds for Flipkart or slower speeds for competitors or blocking of competitors or both. For purposes of clarity, I stress this is a prohibition of commercial arrangements between Access providers and Content – because this creates commercially induced distortions and creates gatekeepers of the Internet in form of Telcos/Internet Access Providers.
4. Further Competition Commission must be pro-active to ensure that large platforms on the net do not end up being market dominant forces that reduce choice for consumers.
5. A Net neutral Internet shall determine India's digital DNA for the next few decades. The policy ecosystem must create an enabling environment for innovation. Keeping the

InternetNeutral is core to Digital India goals and this includes a policy ecosystem that is conducive to the growth and proliferation of e-start-ups.

6. There is a need for the Government and the Regulator to create a mechanism – through legislation or any other means, a policy that guarantees an open, free, safe and growing Internet. The Government must ensure all licenses of ISPs are amended to enforce this.

Question 10: What forms of discrimination or traffic management practices are reasonable and consistent with a pragmatic approach? What should or can be permitted? Please comment with justifications.

1. This is one of the most bizarre questions in any consultation that I have seen. For a regulator to suggest that it is seeking public opinion or endorsement on a regime of unfair competitive practise or discrimination is remarkable and creates serious questions about the functioning of the TRAI.
2. This is a strange question – It uses the word pragmatism in same breath as anti-competitive practises as discrimination or traffic management practises!
3. There is NO such thing as pragmatic anti-competitive practises and so the answer to the question is NONE. NO!
4. The only thing that is permitted is those bans/prohibitions under the law (for example, IT Act section 69A) in investigating a public threat. In such instances TSPs should follow due protocol as per law, and ensure the interests of consumers are protected.
5. To make it abundantly clear, the only form of pricing differentiation to consumers (Not discrimination) permitted can be on Bandwidth or speed criteria i.e. based on QoS to consumers.
6. Also Net Neutrality doesn't prohibit content providers from using their capital (and not commercial contracts) to loss lead and grow their size and foot-print - as is the norm in all free marketplaces. Issues of market dominance are addressed by Competition Law and CCI.

Question 11: Should the Telecom Operators be mandated to publish various traffic management techniques used for different OTT applications? Is this a sufficient condition to ensure transparency and a fair regulatory regime?

1. In a net neutral environment this is not applicable.
2. The TRAI is betraying its lack of knowledge and capacity by suggesting solutions as these that are unenforceable and un-auditable. TRAI has had very little success even in regulating basic QoS for Telecom Operators and ISPs, and to claim that they can oversee traffic management techniques for the numerous OTTs is truly ridiculous and stretching of limits of TRAI's credibility
3. This question again seems to suggest that TRAI is looking for a solution to dilute net neutrality rather than seek a genuine consultation on it.

Question 12: How should the conducive and balanced environment be created such that Telecom Operators are able to invest in network infrastructure and CAPs are able to innovate and grow? Who should bear the network up gradation costs? Please comment with justifications.

1. Refer to responses to Q3.
2. Any discussion on Telcos viability should be transparent and public. This cannot be anecdotal or based on hearsay and spin.
3. The issue of Investments and Telco viability is an important issue. But whilst it is an important issue, it cannot drive regulation and public policy. Telecom Operators and ISPs are players in technology field, where investors invest with eyes open to the fact that the sector is seeing rapid and fast changes in technology and consumer needs. Telecom Operators know they need to adapt and change and do so with the times to remain successful. Regulations and policies cannot be designed to buffer them from these changes.
4. Telcos/Internet Access Providers pay for spectrum. There is no prohibition for them to use this spectrum to develop an IP network and evolve from Telecom service providers to IP service providers for voice and other services. According to a report by Cisco, mobile data usage is growing exponentially. In 2014, mobile data traffic worldwide was nearly 30 times the size of the entire global Internet in 2000. On an average, a smart device generated 22 times more traffic than a non-smart device. TSPs should look to capitalise on the increased demand for data, instead of attempting to curb the growth of OTT services.
5. As a fundamental non violable principle, Telcos/Internet Access Providers cannot and must not expect consumers of the country to pay for or subsidize changes in business model caused by technological changes and innovations. Regulations and public policy should not either. Consumers and choice are at the core of public policy. The regulator TRAI has erred severely in the way this consultation paper has been drafted.
6. Consumers cannot and must not be required to give up their right to choice and free access to innovation on the Internet to protect a Telcos/Internet Access Provider's investments or business model.

7. Regulations, Public policy and consumers SHOULD NOT be required to fund/subsidize the Telcos/Internet Access Providers requirements to change.
8. Neither should regulations or public policy be the inducement for companies not to be nimble, creative, efficient and responsive to technology changes. OTTs and many other apps on the Internet will represent disruptive technologies that should ideally force the telecommunications sector to innovate and adapt to the newest developments. Our policies must encourage companies to be nimble. Regulatory intervention and policies to protect Telcos/Internet Access Providers from this have significant consumer choice and moral hazard implications.
9. TSPs will have to bear the associated costs for up gradation.
10. A report by the Boston Consulting Group, quoted by the consultation paper reports on page 24 that Bharti Airtel built a network in Rwanda from scratch in only 83 days – which is also “the fastest ever greenfield approach in the region”. This proves that TSPs are capable and forthcoming to rapidly scale up infrastructure whenever required.

Question 13: Should Telecom Operators be allowed to implement non-price based discrimination of services? If so, under what circumstances are such practices acceptable? What restrictions, if any, need to be placed so that such measures are not abused? What measures should be adopted to ensure transparency to consumers? Please comment with justifications.

1. This again is a surprising question in a consultation by a regulator.
2. Refer to responses to Q10 and elsewhere in this response.
3. Prioritization of Packets can be permitted but for a class of services E.g. Government services, Real time content etc. This is purely a network management issue and solution and there cannot be a commercial consideration or discrimination arising out of such prioritization.
4. In any other case, Telcos/Internet Access Providers using any form of discrimination(pricing, QoS) of apps/content would be clearly discriminating and exercising power to determine success or failure. This is unacceptable and contradictory to the fair and open nature of the Net –i.e.Net NeutralInternet.
5. By bringing in discrimination, there may be E.g. a reduction of cost of access, but it will start the trend towards gatekeeping and market influence by Access providers – that is dangerous to the evolution to the net and creates market power problems in the future that will be impossible to restore.
6. It will also inhibit the ability of smaller innovative players offering quality services to compete – because they may not be able to compete with the bigger players who are the beneficiaries of discrimination by access providers.
7. No form of discrimination can be endorsed by Government or Regulator. The only pricing variation to consumers can be based on Product offering data/speed packs to access the Internet – the whole of the Internet.

Question 14: Is there a justification for allowing differential pricing for data access and OTT communication services? If so, what changes need to be brought about in the present tariff and regulatory framework for telecommunication services in the country? Please comment with justifications.

1. Ref to all responses above in Q1-Q13
2. No.
3. Regulations and policies must NOT allow Telcos/Internet Access providers to have the power to select and determine successful apps and service on the Internet. That is a power solely to be in the hands of consumers. Differential pricing for access to services on the Internet puts power of success in the hands of Telcos/Internet Access Providers and the bigger apps and websites rather than Innovation and technology. This is a legacy model where a few companies attempt to control what consumers can do and the balance of power as a consequence of this moves away from consumer to a few big Telcos/Internet Access Providers.

Question 15: Should OTT communication service players be treated as Bulk User of Telecom Services (BuTS)? How should the framework be structured to prevent any discrimination and protect stakeholder interest? Please comment with justification.

1. No. For simple reason that unless it is classified as an enterprise app or service, every service/app/content including OTT is accessed and used by individual Internet users.

**Question 16: What framework should be adopted to encourage India specific OTT apps?
Please comment with justifications.**

1. There is no need for any framework apart from the one that exists currently. The laws of the land provide for regulating for misuse of the Internet and illegalities. Apart from this, all apps and services are to be treated at par and it is the power of the consumer to make apps/services successful or failures.
2. It is unclear what the TRAI means by “India-specific OTT apps”. India-specific could mean a service made by a company in India. It could also mean a service made in some other country, but with a predominantly Indian user base. This needs clarification. I would caution against misleading the consultation on grounds of Indian apps/Content versus Global apps/Content. Internet is global and the Indian consumer has to right to choose from all apps and services available on line without any form of discrimination. Using Indian apps as a new category to justify preferential treatment to apps like Flipkart as was recently attempted is also anti-consumer and anti-competitive.

Question 17: If the App based/OTT communication service players are to be licensed, should they be categorised as ASP or CSP? If so, what should be the framework? Please comment with justifications.

1. Please read responses to all questions. There is no possible way for Government to start licensing OTT services and other apps. The IT law covers the issues of overseeing illegalities and if needed can be amended to address any lacunae.
2. OTT services should not fall under any regulatory regimens since there is an IT Act for the same, for reasons discussed earlier in the document.

Question 18: Is there a need to regulate subscription charges for App based/OTT communication services? Please comment with justifications.

1. The principle of consumer choice is again repeated. Subscription charges may be charged directly by OTT service providers to the end user. The end-user or consumer will have a choice whether to pay that money or to discontinue usage of the OTT service.

Question 19: What steps should be taken by the Government for regulation of non-communication App based/OTT players? Please comment with justifications.

1. In the IP space and on the Internet, there is no such difference between non communication app and communication app in terms of technology or the fact that they are all IP data packet based services. These classifications of OTTs into non communication and communication further strengthens the perception that this consultation is being undertaken to protect voice revenues of Telecom Operators. This is inexplicable and unacceptable given the regulators brief is about consumers and the entire technology sector and all players present and future.
2. This segmenting by the TRAI could represent a moral hazard and must be discarded.
3. No additional regulation outside of IT act is necessary of such OTT Players. The Internet, and the OTTs running on it, are already innovating, competing, and succeeding well and consumers are benefiting from these new technologies and innovations.

Question 20: Are there any other issues that have a bearing on the subject discussed?

1. TRAI's primary role as a stakeholder, as defined in the TRAI Act is to intervene and protect consumer Interest and consumer rights. TRAI should have ideally kept this in mind while drafting the Consultation report. TRAI's credibility is only as good as the swiftness of its intervention and also robustness of its examinations, findings and decisions.
2. The Internet in India cannot be allowed to be controlled by a few access providers and those moving up the stack. This is an urgent requirement else the consumers of India will be presented a fait accompli of market power that would be difficult to unwind. See the case of cable Industry which is beset with unregulated market power, no competition or limited consumer choice.
3. Yes. There is international precedent in allowing net neutrality. This has in all instances dictated that it is the right of all consumers to have access to a free, unfettered, safe, open and accessible Internet. This character of the Internet must not be altered by the Access providers playing gatekeepers and building market power like cable operators.
4. Brazil, Chile, Mexico, Netherlands, Slovenia, Peru and Japan have adopted rules in favour of net neutrality. Norway's regulator NPT also favours net neutrality.
5. Perhaps the most note-worthy would be the United States, where President, Barack Obama, has constantly expressed his commitment to net neutrality. The Chairman of the United States FCC (Federal Communications Commission) Tom Wheeler has also recently spoken out strongly in favour of net neutrality.
6. A free, fair, safe, accessible and open Internet is core to the vision of Digital India and for transforming Governance and empowering a digitally powered economy and citizen. A free, open and non-discriminatory Internet that is also safe can propel India into the next decade as a global economic and democratic power.