

Comments on Pre-Consultation Paper on Net Neutrality

Background: Setting the stage of the debate on net neutrality, the TRAI on 30th May 2016 released a *pre-consultation paper on net neutrality*. The paper examines various issues with respect to net neutrality, including establishing core principles for net neutrality in India. The purpose of the paper is to identify the relevant issues that will assist TRAI in formulating its views on the way forward for policy or regulatory interventions.

Hike's Position: Hike's broad position on the issue of net neutrality is summarized below:

- a. **Net Neutrality:** We strongly believe in the principle of net neutrality and open access to the Internet. TSPs should not be permitted to discriminate against any service/content provider and should deliver traffic from one point to another seamlessly, without any differentiation on speed, access or price. Accordingly, core principles of net neutrality are rooted on three pillars: no blocking, no throttling and no preferential access.
- b. **Traffic Management:** Reasonableness of traffic management practices adopted by TSPs should be tested against the core principles of net neutrality. TRAI should prescribe a list of exhaustive reasonable traffic management processes; violations should incur penalties to deter non-compliance.
- c. **OTT providers:**
 - a. **Policy Framework:** OTT content/service providers are regulated under the Information Technology (IT) Act, 2000 and there's no case for prescribing additional policy framework for them by TRAI. We instead recommend the Government prescribes much awaited Industry relevant encryption standards and norms around server location to give teeth to existing policy framework under the IT Act. This would help protect national security interest.
 - b. **Level playing field:** The DoT Committee in its recommendations proposes a liberal approach towards international VOIP services as against domestic VOIP services. We strongly oppose any policy aimed at discrimination between international and domestic players. Government should ensure a level playing field with respect to OTT services. In fact, we strongly believe the Government needs to take measures to foster growth of domestic players viz-a- viz-international players in order to provide a fillip to domestic technology Industry.

Responses to TRAI's questions: The Paper poses 6 questions for stakeholders:

Question 1: What should be regarded as the core principles of net neutrality in the Indian context? What are the key issues that are required to be considered so that the principles of net neutrality are ensured?

Hike's Response: Use of and access to the internet should be open. TSPs should not discriminate against any kind of traffic or any kind of services/content on the network and all traffic should be treated at par. More importantly, TSPs should not be allowed to restrict or give preferential access that could result in picking winners and losers on the internet. Keeping this in mind, the core principles of net neutrality in India should be:

- a. **No Blocking:** There should be no blocking of applications, websites or any other content on the Internet;
- b. **No Throttling:** There should be no slowing down or "throttling" Internet speeds; and
- c. **No Preferential Access:** There should be no preferential treatment/access provided to any applications, websites or any other content on the Internet.

Question 2: What are the reasonable traffic management practices that may need to be followed by TSPs while providing Internet access services and in what manner could these be misused? Are there any other current or potential practices in India that may give rise to concerns about net neutrality?

Hike's Response: We understand that it is tough to police traffic management given how dynamic data consumption is and as a result TSPs should have flexibility to ensure that innovation in this space is kept up especially in a world of ever increasing data demand as long as within principles of net neutrality.

Question 3: What should be India's policy and/or regulatory approach in dealing with issues relating to net neutrality? Please comment with justifications.

Hike's Response: With a steadily growing user base, the Internet will play a key role in India's economic growth. It is important to adopt a comprehensive policy approach that will foster the growth of the internet and the digital ecosystem. Thus, the issue of net neutrality should be addressed with light touch regulation.

Question 4: What precautions must be taken with respect to the activities of TSPs and content providers to ensure that national security interests are preserved? Please comment with justification.

Question 5: What precautions must be taken with respect to the activities of TSPs and content providers to maintain customer privacy? Please comment with justification.

Hike's Response: Comments with respect to questions 4 and 5 have been provided together.

National security and consumer privacy are two extremely important issues. However, both issues have no bearing on the discussion with respect to net neutrality and must be addressed separately.

Also, it is important to note that OTT content/service providers are regulated under the Information Technology (IT) Act, 2000 and there's no case for prescribing additional policy framework for them by TRAI. We instead recommend the Government prescribes much awaited Industry relevant encryption standards and norms around server location to give teeth to existing policy framework under the IT Act.

To this end, we recommend players providing OTT content/services should be required to establish/host servers/data centres in India and move all data with respect to Indian users to such servers. This would enable the Indian government to effectively address concerns with respect to preservation of national security. With respect to encryption, Ministry should invite stakeholders from the industry to provide inputs and collectively establish encryption standards that may be applicable to all OTT players.

Question 6: What further issues should be considered for a comprehensive policy framework for defining the relationship between TSPs and OTT content providers?

Hike's Response: Net neutrality and regulation of OTT content/service providers are stand-alone issues and should not be discussed in tandem.

Commercial relationships between TSPs and OTT content/service providers should be determined by market forces and not governed by TRAI. TSPs are of the view, that OTT players like Hike, have an unfair advantage, whereby they can offer the services similar to those offered by TSPs (i.e. voice & messaging) free of cost, piggy backing on the expensive infrastructure TSPs have to deploy, while TSPs are forced to charge a fee for such services. As per TSPs, this leads to a 'loss in revenue' as users shift from traditional voice and messaging services to the OTT services. On the contrary, it is noted that growth of OTT players like Hike is driving data revenues for TSPs, hence there is no case for establishing a policy framework for defining the relationship between TSPs and OTT content/service providers.

Further, it is important to note that the recommendations of the DoT Committee referred to in the Consultation Paper also mention that Quality of Service (QoS) issues fall within the jurisdiction of TRAI. However, even with respect to QoS, TRAI's jurisdiction is restricted to TSPs and should not extend to OTT content/service providers.

The DoT Committee in its recommendations proposes a liberal approach towards international VOIP services as against domestic VOIP services. We strongly oppose any policy aimed at discrimination between international and domestic players. Government should ensure a level playing field with respect to OTT services. In fact, we strongly believe the Government needs to take measures to foster growth of domestic players viz-a- viz- international players in order to provide a fillip to domestic technology Industry.