Aircel Response to TRAI Pre-Consultation Paper on Net Neutrality

At the outset, we welcome TRAI's consultative approach in dealing with the telecom subjects. We earnestly believe that TRAI regulations, directions, tariff orders issued with ex-post approach, have taken care of consumer's rights, interests & grievances. It has also infused level-playing field and competition in the telecom sector while enabling TSPs to offer cheapest tariffs in the world and thus, benefitting telecom consumers the most.

We verily believe that the Authority acknowledges that there is an abundant duty casted upon it to take care of the interests of telecom operators as well.

Preamble:

Internationally, there have been extensive deliberations done by various countries and it would be worthwhile to gauge the areas of concerns and the same being dealt, within Indian context.

It is pertinent to highlight that India faces biggest challenge in terms of broadband and internet penetration, which is comparatively low in the global context. With around 1000 mn total subscribers, there are approx 330 mn subscribers accessing the internet, which means almost 670 million yet to access the internet (figures based on TRAI performance indicator report for Dec'2015). This ratio in itself is quite large i.e. almost 200% more addition of internet users to the existing internet network infrastructure, which is to take place. With Government increased focus on e-Governance in past 1/2 years and various services, approvals, documents, public grievances, subsidies becoming available over internet, it would put huge challenge on the existing capacities and infrastructure.

Therefore, for increase in broadband and internet penetration and for basic internet service to be accessed by lower income group consumers, infrastructure creation and capacity building has to be accepted as a major thrust area. Basic internet service in this context would include e-Governance as well, which needs to trickle down to users to bottom of the pyramid as well. This can only happen once infrastructure creation and capacity building are adequately compensated and opportunities are created to generate adequate monetary returns from them.

It is well known concept that 'One size fits all' does not work in telecom and communication sector and telecom networks & infrastructure are inherently designed to differentiate between different types of data packets for treating it differently. Therefore, while theoretical and pure form of Net Neutrality may appear attractive but, firstly it would not be adaptive to practicalities involved in running of a vast & live telecom network and secondly, it would not be conducive for the huge investment required to spread the telecom infrastructure for increasing broadband and internet penetration.

This clearly give impetus for accepting the fact that a light touch approach on Net Neutrality should be adopted with broad framework, at this stage.

Moreover, it should also be acknowledged that National security interests are of paramount importance and should equally apply on communication services over Internet which have been largely promoted by foreign entities with servers generally outside India thus, being outside the active domain of National security agencies. Further, it is also well known that revenues of TSPs are getting impacted due to similar communication services being provided by such OTT players, and hence, loss to the Government as well. Therefore, there is serious and immediate need of regulating the OTT players in terms of bringing them in the purview of national security interests and also for charging proportionate share in their revenues by the Government. This will not jeopardize interests of any stakeholder but, would induce level playing field for all.

Besides, localized content/applications is in its nascent stage in India and has a lot to achieve, as compared to international scenarios. Basic infrastructure of India i.e. Agriculture, Forest, Weather, Education etc with multi-lingual support, are yet to reap true benefits of Internet.

Furthermore, the voice based telecom services are bound to fade over, if not in months then in few years. With launch of 4G services and its spread (in let's a year or two from now), the rate of conversion of voice traffic into Data packet traffic would steadily increase.

Therefore, a balanced approach is needed while dealing with the subject of Net-neutrality.

Question-wise Response

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?

Aircel Comments:

As an outcome of the extensive deliberations done by the DoT committee, we are of the view that in India context the core principles should be generally driven by the criteria list as enunciated in the DoT committee report. We recommend that the core principles should be tested on following principles broadly:

- Ex-post approach of Regulatory intervention

- Innovation – a right of all stakeholders including TSP

- Legitimate innovation not a discrimination

- Non-discriminatory

- End consumer's choice to access specific content with differentiated pricing

- Reasonable and legitimate traffic management

- No blocking of content except in case of Lawful orders

- National security, Privacy & data protection to be of utmost importance

- Regulated level-playing field for TSPs and OTT players, in national security interest.

- QoS as a service differentiator

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?

Aircel Comments:

Need of Reasonable traffic Management Practices

Reasonable traffic management measures are important to preserve the integrity & security of network, attend to congestion issues and provide quality experience to subscribers for specific category of contents. In live scenario when customers are using the services, there are various factors impacting quality of services, obtained from a wireless network, and may deteriorate network quality/user experience unless remedial actions are taken. Examples of such factors are as follows:

- Cyber-attacks with spread of malicious software/spam, denial of service attacks

- Identity theft through spyware

- Voice, video, online gaming, banking, enterprise services requiring optimal quality.

- Current and anticipated traffic congestion

- Social, cultural events leading to gathering of large number of mobile users at a given place, leading to temporary congestion.

- Physical obstructions, lower indoor coverage, varying active users leading to temporary congestion.

- Technical failures such as damage to cables or other major infrastructure/network elements leading to a permanent congestion for a longer time period.

- Emergency situations and disaster management in force majeure events like floods, earthquake etc, leading to permanent congestions.

Above-said instances require traffic management measures to be adopted and is globally acceptable practice as well. The technology supports such traffic management measures and its usage must be promoted for preserving the health of the network infrastructure.

Principles of Traffic management should be adopted:

- Non-discriminatory (this is an existing principle applicable on tariffs – which broadly means that similar services should be available to similar set of customers on similar considerations).

- Reasonable and proportionate

- Should be category specific and not specific to a website / application.

- Reasonable prioritization of vulnerable & time-specific content which requires optimal quality for consumer's experience like voice, video, gaming, banking, enterprise services etc, over other content like email, messaging etc.

- No blocking of content

- Exemption from above principles for Emergency situations and Disaster management during force majeure events like floods, bandhs, earthquake etc.

Ex-Post Approach:

We are of the view that as a first phase, it should be left to TSPs (access providers and ISPs), for adhering to broad principles of traffic management alongwith Regulatory oversight being exercised by TRAI. This ex-post approach would be beneficial and would help in evolvement of the principles and their practical application, in Indian context. With telecom being highly regulated sector, TRAI and DoT have wherewithal to review for ex-ante approach at any point of time in future, depending upon the practical application.

Therefore, we urge TRAI for have a comprehensive deliberation on benefits of ex-post and ex-ante approach on traffic management practices i.e. In phase-1, only principles of traffic management be regulated. We strongly urge the Authority to permit reasonable traffic management practices, in interest of smooth flow of data traffic, integrity of network and user experience.

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

Aircel Comments:

Before this point is responded, we have to revisit the paramount objective of India's policy, which is 'Digital India' and Broadband for all etc. If our policy initiatives are to flourish and be

achieved, a liberal yet regulated approach should be adopted which should involve all stakeholders. The approach should lay down broad principles but, should not set a restrictive and regressive mechanism. It should encourage innovation but, should not restrict to a particular category of stakeholder like TSP or content provider. So far, while Net Neutrality has been extensively debated within the country and globally, we are yet to face any substantial exercise of such power by Indian TSPs which could have led to any undue advantage to any specific set of app/content providers.

In absence of any such problem statement in Indian context, it can be seen as a regressive approach for Modern India, to look for solution in search of a problem.

From a broader perspective, as and when the sovereign state of India has endeavored to adopt liberal market driven approach, it has worked to advantage of people and economy of the country then, be it the financial sector opening in early 1990's or let's say liberalized FDI norms in many sectors (recently in E-commerce in food products, Pharma, civil Aviation, Defence etc). In our view, liberal steps flourish due to oversight (and/or approvals) being exercised by Regulatory bodies/Government, through enabling regimes and not through restrictive practices.

We are of the strong view that while Net neutrality principles should be deliberated comprehensively and upheld but, there should be no restrictive regulations or recommendations. Instead, open market driven policies should be followed with Regulatory oversight except for national security matters where there should be strictly regulated approach with equal norms for TSPs as well as communication content providers.

In this regard, we feel below areas should be attended to:

- Unrestricted access should not be linked or confused with pricing of such access. Almost all other sectors like Railways, Aviation, Transport (having State run entities as well) who provide different levels of quality of service based on pricing, and are not being considered as discriminatory. Similarly, TSPs should also be permitted to price their service depending upon the quality and category of service desired and it should not be treated as discriminatory. An ex-post approach may be adopted to examine their evolvement and impact.

- Reasonable and legitimate traffic management to be permitted.

- Principles of privacy, security and data protection to be equally applicable on all stakeholders.

- Requirements related to National security interests should be made equally applicable on all stakeholders including TSPs and communication content providers.

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.

Aircel Comments:

National security interests should be preserved at all costs and there should not be any differentiation in terms of stakeholders when such National objectives are concerned. For the communication services being provided by the TSPs, following steps are mandatory to be followed:

- Taking permission of Licensor before launch of new services

- Demonstrating Lawful Interception and Monitoring systems

- Content to be within India only

- Responsibility of Privacy and confidentiality of information

- No bulk encryption techniques without prior approval of Licensor

In our view, National Security interests can't have any exceptions, even if it has some form of social benefits, although it is not directly or indirectly linked to economy or sectoral growth of the country. There is not even a single credible reason to exclude OTT players from the purview of mandatory National security related requirements and it is high time that we accept the same and act upon it.

We strongly urge that Same service same rules should be made applicable to all communication based content providers, as are applicable for TSPs.

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.

Aircel Comments:

For TSPs, there are adequate precautions available in the license provisions and local laws pertaining to customer privacy concerns. Also, there are serious punitive actions which can be taken against TSPs in case of breach in privacy of customer information owing to TSPs. However, same is not applicable for the content providers and they are having a free run, posing huge risk to customer's confidential information and their privacy.

Therefore, we strongly urge that similar provisions of upkeeping of privacy and confidentiality of customer information should apply on all content providers, infact on all concerned custodians of information, as is applicable on TSPs.

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

Aircel Comments:

It has been long that TRAI conducted consultation on Regulatory Framework for OTT services. We request Authority to conclude the consultation process on the OTT services and recommend for level playing field in terms of 'Same Service Same Rules'.

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