



Internet: Net Neutrality

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Abstract

Net neutrality can be described as that all Internet data pack should be treated equally, that there should be no fast or slow lanes for Internet, or that users should pay differently for accessing some websites.

For starters, in a country like India, Net Neutrality has vast implications, especially for start-ups many of whom are dependent on the medium for the success of their business. A neutral Internet means a level playing field.

Net neutrality has played a significant role in keeping the internet a level-playing field, simplifying customer outreach for businesses across industries. Further, the platform has encouraged new age entrepreneurs to bring in innovative business models making technology as an integral part of business; be it banking, mobile payments, e-commerce, real estate, etc.

Various net service giants like Face Book, Twitter, and others they welcomed the initiative that there should be different path for those who pays more but for a common internet user there should not be any kind of discrepancy in using of internet.

Now a debate has been started in India whether there should be net neutrality or not. Where a common man wants that there should be full net neutrality, on other side net service tycoons desires that there should be different data pack for different service for internet

It is the government's responsibility to ensure a level playing field for home grown entrepreneurs and at the same time protect the interests of net users. Where licensing is concerned, Internet activists have also pointed out that this just won't work. How would TRAI propose to regulate this, there's no central service. It might not be popular, but it is being used by some already.

There are passionate voices on both sides of the debate and if that was not enough, there's a corporate war going on between a media house and a telecom operator which is confounding already difficult matters.

Keywords: Net neutrality, Over the top services, Zero ratings, EU, TSP,ISP.

Introduction

What is net neutrality?

Actually it is differential pricing for different levels of services were a well-accepted principle across all industries and the concept inherently recognized the economic principle of paying differently for different levels of service and experience.

For example, the differential pricing for the 2nd class, 1st AC, sleeper class, etc. based on different experiences and service levels. In the telecom sector there are virtual highways that need to follow the same principle. European Union (EU) is considering allowing 'specialized services' with few priority services having fast lane Internet connection. More awareness and education needed around the economics of differential pricing and its long-term implications on the industry and the consumer.



While operators might not be happy with this notification, they still have the ability and freedom to create different kind of Internet access packages as long as content was not a parameter to provide or bar access to anyone. Such practices have already started elsewhere with products such as bandwidth on demand, bandwidth calendaring etc. to create premium products. Obviously it will require changes in network and operations but that's where the telecom road map goes.

Net Neutrality Is an Idea

Net neutrality is an idea, hence a movement. It infected Indians a few months ago but the Indian radicals made a bizarre improvisation based on an obtuse and theological interpretation of net neutrality and they issued a fatwa against Face book's free internet for the poor, now called Free Basics, as a violator of the sacred definition of net neutrality. It provides an equal stage on internet.¹

Free Basics provides a scaled-down version of the Internet to anyone with a mobile phone subscription. Right now in India it is available only to Reliance subscribers but Face book has said that it would partner with any service provider and that it would include in its parallel internet any application.

The objective of offering such schemes is claimed to be the desire of various service/content/platform providers to enable consumers, especially the poor, to access certain content on the internet free of charge.

On the one hand, it appears to make overall internet access more affordable by reducing cost of certain types of content. On the other hand, several negative effects might ensue. Differential tariffs result in classification of subscribers based on the content they want to access. This may potentially go against the principle of non-discriminatory tariff.

Zero Ratings

Zero ratings ensure that a Telecom Service Operators (TSP) or Internet Service Providers (ISP) could declare a service or an app as free, and usually these are services that the company has tied-up with. The Face book-Reliance initiative under the Internet.org initiative is a Zero rating system, where the idea was to provide certain services like Facebook, Clear Trip, NDTV, etc for free for users in certain part of the country. A benevolent scheme no doubt, but a violation of Net Neutrality all the same.²

Over the Top Services

On the network of ISP, any other services which are available like video chat, messaging, call etc. are called over the top services. For example suppose someone has purchase simcard of Reliance for his cell phone on which internet data service is available. By this internet service a consumer can download Whatsapp or U-Tube through which he can make message or watch video. This message or video is over the top services.³



Origin

Net Neutrality" It is borrowed from an academic paper published in 2003 by the lawyer and scholar, Tim Wu, titled 'Network Neutrality, Broadband Discrimination'. He does not insult the theory that the alliteration describes, he does argue why it is important, but he does not venerate the idea as much as present-day Internet-Marxists who use his invention as their slogan. It is in fact requirement to point out to the follies of absolutist positions, and argument that the world, and probably every age, has to figure out a meaningful definition of 'net neutrality'.⁴

The broad present-day definition of 'net neutrality' is that a service provider should be barred by law from giving faster or cheaper user access to some software applications that are willing to pay more for the special treatment. Many support this commandment. Many, like the co-founder of Paypal and the co-founder of Netscape and an early investor in Facebook feel that net neutrality is an almost obsolete idea, and they do not like the idea of anymore government regulation.

About a billion Indians are not connected to the internet because it is too expensive for them, but most of them have at least feature phones. So now, in theory, all of India can be online.

When an organization does not possess the moral confidence in itself, it would resort to moral posturing. Any Indian media organization that wishes to capture the regional market is plain imbecilic not to be on Free Basics.

Absence of Net Neutrality

If there will be absence of net neutrality, ISP can have power to provide such internet traffic, through they will be able to acquire maximum revenue. It also stand of ISP that U-tube, Net flicks and other alike video provider companies takes more bandwidths comparatively other general websites so they should be permitted to charge more from them.

There will be possibility of different package plan. For example, in 500 rupees package a man will be able to access only Indian websites whereas for 1000 rupees along with Indian foreign websites shall also be available.

There will be different speed for internet depending upon price of package purchased by consumer.

For providing more speed on internet, ISP companies shall charge fee and internet giants like Google, Face book, alike shall be capable to pay more whereas new websites may have less speed and they will be ousted from market.

Net Neutrality Around the Globe

The Federal Communication Commission (FCC) in the US was caught up with a similar dilemma last year as to whether some Internet Service Providers (ISPs) should be allowed to offer a faster track to send content at a higher cost. In May 2014, It deliberated on two options: First, permitting fast and slow broadband lanes which amounted to compromising the principle of Net Neutrality that emphasizes a 'free and open internet'. The second option was to reclassify broadband services as telecommunication services (instead of 'information services' as it had



been designated then) and disallow differential pricing; this would preserve the principle of Net Neutrality.⁵

There was a heated debate in the US. ISPs strongly lobbied for the first option. But over 100 internet companies including Google, Microsoft, eBay and Face book signed a letter urging the FCC to go for the second option, as the first option would constitute a ‘grave threat to the internet’.

Four million Americans sent a petition to President Barack Obama urging him to preserve the principle of Net Neutrality. In November 2014, President Obama made his position crystal clear: “When I was a candidate for this office, I made clear my commitment to a free and open internet, and my commitments remain as strong as ever.”

As regards the deliberations of the FCC, the President said:” The FCC is an independent agency and ultimately the decision is theirs alone.”⁶

Spelling out his own view, Obama said: “I believe the FCC should create a new set of rules protecting net neutrality and ensuring that neither the cable company nor the phone company will be able to act as a gatekeeper, restricting what you could do or see online.”⁷

Whether President Obama’s ringing endorsement of the Net Neutrality principle influenced FCC to reverse its position taken in April 2014 to allow some ISPs like Comcast and Verizon to offer differential tariff is not known, but in February 2015, it voted in favour of the Net Neutrality principle to keep the internet open and free.

Interestingly, some countries like Chile have banned Zero ratings because they violate Net Neutrality. Exclusive deals like Flipkart, Airtel, or Reliance or Face book or even free Wikipedia, end-up becoming anti-competitive. Discriminatory deals should not be allowed or those that become anti-competitive under Section 3 of Competition act should not be allowed.

If zero-rating can exist in an environment of competition, only then it’s a good thing but government stepping-in isn’t entirely unexpected. The government has now woken up to a new step of disruptive technology. He gives an example of cable television saying that when it first came up in India, the government had no laws to deal with cable.

This is another example of the government playing catch up and it happens all across the world. It’ll happen more often with newer disruptive technologies like robotics, artificial intelligence. For instance, when the driverless car comes the government will have to bring in some legislation.

Net Neutrality in India

The decisive moment has now come for the Telecom Regulatory Authority of India (TRAI). Will it go the FCC way and mix any proposal to compromise the principle of Net Neutrality?

TRAI has received over millions of comments on the discussion paper that they had first put up on their site.



Net neutrality was disseminated by the organization like “Save The Internet” in response to the paper by TRAI. Moreover Congress Vice-President Rahul Gandhi also raised question in parliament.

It is fair to argue that Net Neutrality has helped preserve the Internet’s free and open character in India and that a deviation from the same will hurt users the most. Then there’s the very real picture that India needs to provide Internet access to more of its citizens especially those who can’t afford it. For TRAI, treading a fine line between the two will prove to be a real challenge.

While TRAI’s paper has received criticism, it should be noted that the paper does devote a significant proportion to discussing Net Neutrality and the negative impact it could have if India overlooks the principle.

TRAI’s dilemma is reminiscent of a similar situation that the Federal Communications Commission (FCC), the regulatory authority in the US on telecommunications matters, faced last year.

To be fair TRAI did not seek expert view on Net Neutrality as such, but ‘on a specific matter of differential policy for data services being offered by the operators. Nevertheless this specific matter is an integral and important part of the Net Neutrality debate.

If it were an opinion poll, clearly ‘Free Basics’ would have won hands-down. Since it is not, it has to now be seen what policy TRAI formulates in the days to come on the differential tariff issue.

Net Neutrality Activists and Their Stand

Indian activists, in the heady days of self-congratulatory activism, made a big mistake by clubbing Internet.org with net neutrality. Many of them do realize their error but are too proud to back down. They must know that spans of childhood and adolescence are short.

It is therefore demanded by net neutrality activists that:⁸

- There should be free and open internet is the single greatest technology of our time, and control should not be at the mercy of corporations.
- There should be free and open internet stimulates ISP competition.
- There should be free and open internet helps prevent unfair pricing practices.
- There should be free and open internet promotes innovation.
- There should be free and open internet promotes the spread of ideas.
- There should be free and open internet drives entrepreneurship.
- There should be free and open internet protects freedom of speech.

TRAI and it’s stand:⁹

The Telecom Regulatory Authority of India (TRAI) barred telecom service providers from charging differential rates for data services, effectively prohibiting Facebook’s Free Basics and Airtel Zero platform by Airtel in their current form. Following was laid down:



1. No service provider can offer or charge discriminatory tariffs for data services on the basis of content.
2. No service provider shall enter into any arrangement, agreement or contract, by whatever name called, with any person, natural or legal, that the effect of discriminatory tariffs for data services being offered or charged by the service provider for the purpose of evading the prohibition in this regulation.
3. Reduced tariff for accessing or providing emergency services, or at times of public emergency has been permitted.
4. Financial disincentives for contravention of the regulation have also been specified
5. TRAI may review these regulations after a period of two years.

No different rates for data services, according to TRAI:

“No service provider shall offer or charge discriminatory tariffs for data services on the basis of content,” the regulator ruled in its Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016. It said the prohibition was necessary to keep the Internet open and non-discriminatory.

TRAI said a fine of Rs. 50,000 would be levied per day, subject to a maximum of Rs. 50 lakh, for any violation of these regulations by the service providers. An exemption, however, has been made for offering emergency services. Ruling out case-by-case approval for plans that might be priced differently, the regulator said a clear policy should be formulated.

“We had issued a consultation paper just about 60 days ago on differential pricing .We deliberated on the issue for quite some time. Anything on Internet cannot be differently priced. This is the broad point that we have highlighted in the regulation,” TRAI Chairman R.S. Sharma told reporters at a conference.¹⁰

The TRAI said tariff for data services could not vary on the basis of the website/application/ platform/ or type of content being accessed. For example, a consumer could not be charged differently based on whether she was browsing social media site A or B, or on whether she was watching streaming videos or shopping on the Internet, it added.

It, however, said that to bring more users on the Internet, this prohibition would not apply to other forms of tariff differentiation that were entirely independent of content. “For instance, providing limited free data that enables user to access the entire Internet is not prohibited,” the TRAI said.

Disappointing: Anti net neutrality



In an statement, a Facebook spokesperson said, “While disappointed with the outcome, we will continue our efforts to eliminate barriers and give the unconnected an easier path to the Internet and the opportunities it brings.”¹¹

While the move was cheered by Net Neutrality activists and industry bodies such as Nasscom and IAMAI, telecom operators, who had been pushing for allowing of differential tariff for data service, expressed disappointment saying the ruling would impact the Narendra Modi government’s ambitious Digital India initiative.

Rajan Mathews, Director-General of operators’ body Cellular Operators Association of India (COAI), told The Hindu: “We are very disappointed with the ruling. Differential pricing is an effective marketing tool and would have helped in bringing online the next one billion people. We are confused as the decision comes at a time when the government is pushing adoption of Internet.”¹²

“It will negatively impact the growth of the industry and the consumers who may need such plans to afford data connections. We are looking at this closely to examine TRAI’s rationale as to how this purportedly hurts customers or negatively impacts markets or even hinders internet access,” he said.¹³

The regulator and Face book have been at loggerheads over the issue with the authority terming the social networking giant’s attempt to lobby for its Free Basics initiative a “crude” attempt at turning the consultation over differential pricing of data services into an “orchestrated opinion poll” on Free Basics. Face book had partnered with Reliance Communications in India to offer Free Basics service. However, the services were put in abeyance, post a TRAI order to this effect.

Positive Indications

Meanwhile, Net Neutrality activists see it as a positive indication for future regulations on issues such as regulation of over the top applications such as Whatsapp and Skype.

As per the regulations released on existing plans which are in contravention of the rules can continue for six months, post which they will need to be stopped. Within few hours of the regulations being released, Net Neutrality was the top most trending topic on Twitter in India.

Fight for Superiority and Wealth

There was a time when the only mode for communication was network of telecom companies. Internet became popular and available because of these telecom companies. Today maximum consumers are attached with telephone and internet both. There was no dispute till the moment people were depended for telephone and internet both on telecom companies. Problem arose because of free and wide platform which came in existence through internet before us and because of this reason the bigger change in the nature of companies like Google and Face book. They have turned in to internet giants.

Freedom of trade or business: ¹⁴



The Article 19 (1) (g) guarantees to all citizens the right to practice any profession or to carry on any occupation, trade or business. This freedom is not uncontrolled, for clause (6) of Article 19 authorises legislation which imposes reasonable restrictions on this right in the interest of general public. However, reasonable restrictions can be imposed on the use of this right.

Under Article 19 (6), the State is not prevented from making:

- (1) A law imposing in the interests of general public reasonable restrictions on the exercise of the above right,
- (2) A law relating to professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business.
- (3) A law relating to the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service whether to the exclusion, complete or partial, of citizens or otherwise.

It is thus clear that under Article 19 (6) the State is empowered to impose reasonable restrictions on the right guaranteed by Article 19 (1) (g). The condition, however, is that the restriction:

- (a) Must be reasonable, and
- (b) In the interest of general public.

Conclusion

In any case, TRAI is no FCC. It may be ‘independent’, but like most regulatory bodies in India, it is subservient to the government. India’s telecom minister has already said that the government would firm up its position after it received the recommendation of the TRAI. Clearly, unlike the FCC, TRAI can only recommend; the decision-making authority lies with the government.

The question is: Will the Indian government decide to go the US way and preserve the principle of Net Neutrality?

TRAI, in its consultation paper, had mentioned some plans which amounted to differential tariffs provided by Telecom Service Operators (TSPs). Some of them offered zero or discounted tariff to certain content, websites, applications or platforms.

A policy decision to outright depart from “NN” (Net Neutrality) raises various antitrust and public interest issues. There are concerns that this will discriminate against certain types of content and political opinions.

Such practices may hurt consumers and diminish innovation in complementary sectors such as computer applications and content dissemination. Discriminatory pricing proposals, if implemented, could raise a variety of significant anti-competitive concerns.

People surf the net for information, entertainment or shopping. The whole argument of zero apps making it easy for the underprivileged to access the internet would have been a very persuasive one but for one flaw.

Discriminatory pricing proposals are what we fear could take place if India abandons its stand on Net Neutrality, and users will be the one to suffer.



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