

The facts & myths on Net Neutrality



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One of the most intriguing debates in recent times across the Globe is on 'Net Neutrality'. It is intriguing because :

- (a) Every living educated human being seems to be passionate about it;
- (b) Most people have at best a vague idea about it;
- (c) Believe that but for net neutrality some evil forces for their petty gains would

deprive the universe of much needed technological innovation

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- (d) It is paradoxical that it is almost certain that if a referendum is held across the world, almost 100% (if not 100%) participants would vote in 'favour' of net neutrality.

This article is aimed at first tracking, the history of 'net neutrality' and thereafter attempt to provide clarity on the subject in simple & understandable terms.

First, the history.

While the issue about access to internet has been an issue of contention in U.S.A. among network users & access providers since 1990s, the term "Net Neutrality" was coined by Columbia University Media Law Professor Tim Wu in 2003. Since then, the topic has attracted debates about not only what net neutrality should be but whether it should be required by Law. As expected, the debate started in the U.S. and has extended internationally. The issue has been at the forefront of the debate in the United States of America since 1990s but after five failed attempts to pass the bill in Congress on this subject and various attempts by the Federal Communications Commission (FCC) to issue rules and guidelines which got struck down by various Courts, till 2015 the matter had not been legally settled even in United States.

After lengthy public consultations, on 26th February 2015 FCC finally issued what they termed as "sustainable rules of the roads that will protect free expression and innovation on the internet & promote investment in the nation's broadband networks". These rules are popularly known today as 'FCC's Open Internet Rules' and have become effective from 12th June 2015, but not before being challenged before United States Court of Appeals

for the District of Columbia circuit who upheld these rules on 14th June 2016.

These new rules would apply to fixed and mobile broadband alike & would protect consumers no matter how they access the internet, whether on desktop computer or any mobile device. The order sets three "Bright Line Rules" that ban practices that are known to harm the open internet. These are :

- **No Blocking:** broadband providers may not block access to legal content, applications, services, or non-harmful devices.
- **No Throttling:** broadband providers may not impair or degrade lawful Internet traffic on the basis of content, applications, services, or non-harmful devices.
- **No Paid Prioritization:** broadband providers may not favor some lawful Internet traffic over other lawful traffic in exchange for consideration of any kind—in other words, no "fast lanes." This rule also bans ISPs from prioritizing content and services of their affiliates.

The order notably also authorizes the Commission to address issues that may arise in the exchange of traffic between content providers and network providers by way of appropriate enforcement action if it determines that the interconnection activities are not just and reasonable.

While FCC's open internet order does provide a good set of basic rules to address net neutrality, they seem to have confined their thinking only from an internet user's point of view leaving open some very important issues unanswered with respect to the fair treatment to network providers vis-à-vis content providers.

To my mind, the three fundamental issues that need to be answered clearly & unambiguously to effectively address "Net Neutrality", particularly in the context of India and which are not covered in FCC order, are as under :

- A. To whom does "Neutrality" apply – Network providers or Content providers or both.
- B. What needs to be neutral?
- C. Should the principle of "same service same rules" be applicable to all service providers?

These are explained as under :

A. To whom does "Neutrality" apply?

Net Neutrality is actually "Network Neutrality" as it applies only to Network Providers because as far as content providers (applications, OTTs, etc. by whatever name called), there is no concept of neutrality at all. For instance :

- (a) Most Apps today are free while hundreds of thousands are paid;

(b) For same application, in many instances one version is free while advanced one is paid.

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(c) Even some very advanced & brilliant applications like Google maps are provided free which ensures that smaller developers have no chance of competing.

It is thus ironical that the entities demanding neutrality i.e. mainly content providers themselves do not respect any neutrality.

B. What needs to be neutral? :

Since there is no neutrality on 'charging' by content providers themselves, there should be no logic or justification for demanding it from network providers.

Only neutrality that needs to be ensured to give chance to all applications should be w.r.t. the three Bright Line Rules laid down by FCC – i.e. no blocking, no throttling and no paid prioritization.

C. Applicability of principle of “same service same rules” to all service providers

This is an important universal debate involving a small number of very large global companies offering applications which provide same services as licensed telecom operators. These are known as OTTs (over the top service providers). A few well known examples are WhatsApp, Skype, Viber & Facebook Messenger which offer a combination of messaging, voice & video services.

These are not regulated at all even while providing “voice calls” openly. The argument that this is data is completely wrong & malicious as technology on which you deliver ‘voice’ is irrelevant. Voice is voice whether delivered on 2G, 3G or 4G or satellite and whether using circuit switching or packet switching eg. VoIP (Voice over Internet Protocol) or VoLTE (Voice over LTE).

As a result, unlike telecom operators they pay no license fee to Government, have no QoS (Quality of Service) obligations, pay no termination charges for calls landing on telecom networks, have no security obligations, have no KYC (Know Your Customer) requirements and have no obligation to pay for using telecom networks of operators.

As a consequence of this ‘non-neutral’ treatment in favour of OTTs, our Government loses huge revenue by way of license fee causing loss to exchequer, loses huge amount of foreign exchange and compromises national security on account of lack of KYC or scrutiny obligations.

This principle while is most visible in telecommunications would also apply to various other industries and services. For instance, there could be OTTs/Apps seeking deposits or offering transfer of money, which services are otherwise regulated by Central Banks. Similarly, there could be Apps offering health services & medicines, which would compete with entities who are regulated under relevant Laws ensuring quality of health services offered or for that matter Apps offering education which subject is also regulated. The list could be endless.

I have no doubt that vis-à-vis telecom, as part of the consultation process started by our regulator to tackle this contentious and important issue, the above principles will be addressed with an open and unbiased mind based on facts & logic. India has an opportunity to lead the world in adopting the correct approach & principles in tackling & settling this global debate – not just for telecom but for all industries which are regulated or licensed.

While it is critical that a conducive environment is created to encourage and promote innovation on internet for enriching lives of people through ever evolving technological advancements, it is equally important to create a healthy financial model for network providers to invest continuously in broadband networks to cater to insatiable demand for data. All innovations will collapse if there are no networks capable of transmitting the traffic. The two have no choice but to co-exist and co-thrive. Regulation and policies need to clearly recognize this harsh reality.
