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Dear Sir,

We thank the Authority for this opportunity to provide **supplementary comment to MediaNama's remarks during the recent Open House Discussion on Traffic Management Practices and a Multi-Stakeholder Body for Net Neutrality**.¹ We request that our submission be added to the list of comments to this consultation on the TRAI website.

Ongoing Unreasonable Traffic Management Practices

Telecom operators have not been reasonable when managing traffic during the COVID-19 pandemic. This is especially important in light of the current consultation process. The Department of Telecommunications' license for telcos is clear that traffic management practices should be "proportionate, transient and transparent".

In March, telecom operators essentially [forced](#) internet companies to start reducing the bitrates of their video streams. Since the Cellular Operators Association of India was able to convince the telecom secretary to personally reach out to internet companies, the latter had no choice. They [fell in line](#). **This is a traffic management practice** directed by the telcos, with the only caveat being that they got content providers to execute the task for them.

Was what telcos did proportionate? No. Traffic [surged](#) only 15% after the COVID-19 lockdown started on mobile networks. Airtel has been almost [doubling](#) its traffic every year, so it is hard to imagine that telcos wouldn't be prepared for a 15% spurt in usage.

¹ This submission is based on, and adds to, our remarks at the Open House Discussion on June 24, and [this article](#) that we subsequently published.

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Was what they did transient? The moment telecom operators realized that these restrictions were not necessary, they should have immediately withdrawn their request to internet companies. But they [chose](#) to wait. YouTube continues to cap video quality at 480p for all mobile users in India, even those on WiFi. It has been over three months since the restrictions started.

Were telcos transparent? While we have gotten some general industry-level insights into traffic spikes, individual telecom operators have not responded to our multiple queries on the necessity of these limitations. Asking internet companies to throttle their traffic at this scale is an extraordinary demand, and should be followed by a willingness to share insights from the aftermath of these restrictions. But telecom operators did not even respond to basic questions, nor did they clearly signal to internet companies that they could lift these restrictions.

Lack of commitment to license terms

Telecom operators' apparent failure to adhere to the spirit of their license terms is alarming, especially in the context of the traffic management debate that the Authority is having right now. This episode makes it very clear that telecom operators need to be *required* to provide transparent insight into how their networks manage traffic, as they have **demonstrated carelessness this year in their commitment to the principles that are at the heart of reasonable traffic management.**

In the long term, TRAI should come up with transparency standards and disclosure requirements that will make sure telecom operators have little wiggle room to treat Net Neutrality like an afterthought.

But for now, we submit that TRAI must order telecom operators to formally withdraw their bitrate directive to internet companies. There is precedent for this: when Airtel [tried](#) to charge separately for VoIP calls on its network in 2014, TRAI [told](#) it to stop and wait for a consultation (which would eventually lead to a ban on differential pricing, a significant Net Neutrality win). The same dynamics are at play here, except the consultation process is **already ongoing**. As such, we hope that TRAI will continue to stand up for the Net Neutrality and open internet principles it has shown leadership in for the last five years.

“Same service, same rules” is a distraction

A number of telecom operators say that browsers and handsets affect Net Neutrality and therefore they should also be regulated.

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This is the same old 'same service same rules' argument. The fact is that they are not the same service. Every application and service on the edge of networks will have an impact on web traffic, but that does not mean that they need to be regulated. What we're trying to regulate here for is access discrimination and prioritisation that disadvantages some players over others, which only access providers can meaningfully perform at scale.

The Prohibition of Discriminatory Tariffs for Data Services very clearly creates a distinction between what's on the internet, or what is over the top, and network service providers. Bringing the former into the mix is a distractionary tactic. We request that the argument not be taken into account here.

Discriminatory tariff prohibition principles apply for TMPs

We also need to ensure that there is no application- and class-level discrimination. Professor Vishal Misra had [demonstrated](#) in his presentation on zero rating from a competition perspective, that this practice did cause market distortions in other markets.

While the law around zero rating is thankfully settled, any kind of discriminatory network practices are going to cause market distortions, where some classes or individual applications can get an unfair advantage.

In case of **emergency situations**, we do need some means to make sure that networks can stay active. In that case, some exceptions can be created, but those need to be **based on clear evidence and assumptions**, which isn't the case in the ongoing traffic management practice we have discussed above.

When such decisions are taken, there needs to be evidence of a problem, or some assumptions or data that proves there is a problem.

Class- and application-based discrimination are important to prevent because of the vertical integration happening in the telecom space. Just as we don't want zero-rating of telco services themselves, prioritisation of telco services on networks needs to similarly be prevented.

What such regulation does is create an incentive to provide consumers a better experience, improve network capacity, and offload traffic onto WiFi.

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5G discrimination is easier, but equally wrong

On 5G, there's a fundamental problem: if a technology is better capable of discriminating, should it be allowed to do so? DoT regulations state very clearly that discrimination should not happen. Just because 5G technologies can discriminate more efficiently does not mean that they should be allowed to. We endorse Professor Barbara van Schewick's detailed written submission in her [counter-comment](#) which discusses the issue (page 24), and her remarks at the OHD on June 24.

A Multi-Stakeholder or Industry Advisory Body is not necessary for enforcement

We are fundamentally opposed to another organisation getting created and another structure being added to Net Neutrality enforcement. Decisions to enforce Net Neutrality need to be taken by the DoT. The advisory that the Department seeks for their adjudication should be directly based on their own decisions. We cannot expect industry bodies and telecom operators to be neutral in their own cause.

Operators have, and continue to, oppose Net Neutrality in TRAI consultations. There is a risk of regulatory capture. While we welcome the Authority's clarification during the June 24 discussion that the proposed MSAB would be representative of non-TSP stakeholders, we are still apprehensive about the need for such an institution in the first place for the reasons stated above.

On the issue of a fee, an advisory body, if created, would be providing a public service. As such, we don't see a justification for members to be charged for providing that public service.