

Some suggestions on improvements to the India contribution document for the WCIT meeting

IT for Change, Bangalore, 29th November, 2012

(1) Additional text in the preamble

India should propose an additional sentence to the existing Preamble to the the ITRs which makes clear its intention to promote the right to freedom of expression in all ways possible. Below is the suggested text, with the proposed additions in bold. The text not in bold is the Preamble of the existing ITRs.

"While the sovereign right of each country to regulate its telecommunications is fully recognized, the provisions of the present Regulations supplement the International Telecommunication Convention, with a view to attaining the purposes of the International Telecommunication Union in promoting the development of telecommunication services and their most efficient operation while harmonizing the development of facilities for world-wide telecommunications. **These Regulations will be construed in a manner that promotes the right to freedom of expression and the right to communicate which are the key enablements provided by the new telecommunication technologies.**"

Note: Whereas the freedom of expression is recognized in the Universal Declaration of Human Right, the right to communicate has often been used in ITU documents. For instance see www.itu.int/ITU-D/ict/publications/wtdr_98/wtdr98.pdf . Such a right to communicate will also embody the spirit the recent call by the H'ble Minister for CIT *to move from an 'Internet to Equinet'*.

(2) Net Neutrality

The following part of the India position should be removed. (To us, it seems to be put there to make application of 'sender pays' principle possible at a future time.)

54S 6.D Member States should endeavour to take measures to ensure that an adequate return is provided on investments in network infrastructures in identified areas. If this cannot be achieved through market mechanisms, then other mechanisms may be used.

There are two reasons for demanding removal of this section;

(1) ***Governments cannot take on an international binding commitment of ensuring that private investment in telecommunication networks always gets enough profits.*** Any private investment is fraught with business risks. If governments undertake any such binding commitment, companies will always be able to keep twisting government's arm this way or that, in national and international courts and forums of dispute resolution, to keep giving them different kinds of concessions to ensure that telecom businesses always remain super profitable. This is a very dangerous commitment to make at a global forum, and rather unprecedented as well.

(2) The provision seems to be aimed at building a 'sender pays' regime in the future. And such regime is also very dangerous. By compromising the hallowed principle of net neutrality it will permanently contort the basic egalitarian structure of the Internet, once again highlighted by the H'ble Minister's exhortation to move from *'an Internet to an Equinet'*. India has supported the principle of net neutrality along with other IBSA countries at many global forums, and it may not appropriate to go back on support to this progressive cause which is of the greatest benefit to countries that are late entrant to the global Internet content and applications business, as India is.

Violation of global net neutrality will seriously compromise the oft-articulated desire of the Indian IT industry to move up the value chain. In the networked digital environment, if the currently dominant global content and application companies are able to pay the telecoms to give priority to their content, it puts probably unsurmountable barriers to entry for new players, which should ideally emerge from countries like India. It is a very wrong view that any 'sender pays' regime is favorable to developing countries just because, at present, much of content comes from the developed world. In fact, the opposite is true. Any violation of 'net neutrality principle' whereby content providers can pay for privileged use of networks will crowd out local content and local companies which obviously have much shallower pockets, with much less capacity to pay. Compromising the Internet as a level playing field for all content contributors, which is what comprising 'net neutrality' by introducing a 'sender pays' regime is all about, hurts the developing countries and small users most. ***It goes directly against the commitment to promote the Internet as a tool of empowerment that India has been talking about all along.***

In the light of above, deleting the existing indicated Section **54S** 6.D , the government should replace it with.

Member States should endeavour to take measures to ensure that there is no discrimination by network operators vis a vis different sources of content, and the principle of net neutrality, including in terms of global inter-connections, is upheld as far as possible.