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5G Network Slicing and the Net Neutrality Gap: What India’s Regulatory Framework Does Not Cover

Airtel’s Priority Postpaid launch in May 2026 has put a long-dormant regulatory question on the table. Does India’s net neutrality framework prohibit subscriber-tier-based differentiation of 5G network capacity, or does it simply not address it? The answer, on a careful reading of the applicable instruments, is the latter. The rules are incomplete, and the gap […]

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The Structural Gap in the Existing Framework

India's net neutrality framework rests on two instruments. TRAI's 2016 Prohibition of Discriminatory Tariffs for Data Services Regulations prohibit any service provider from charging discriminatory tariffs on the basis of content. The DoT's July 2018 regulatory framework on net neutrality was subsequently operationalised through amendments to the Unified Licence for Telecom Service Providers in September 2018 and the ISP licence in May 2019.

The core obligation, inserted as Clause 2.3 of the Unified Licence by the October 2018 amendment, requires that internet access services be governed by a principle that restricts any form of discrimination, restriction or interference in the treatment of content, including practices like blocking, degrading, slowing down or granting preferential speeds or treatment to any content. The full amendment document is publicly available on the DoT server.

The critical word throughout both instruments is content. Both the 2016 Tariff Regulation and the 2018 UL amendment frame the non-discrimination obligation entirely around what a user is accessing, not who the user is. Neither instrument says anything express about user-class-based or subscriber-tier-based differentiation that is content-agnostic. That is the structural gap that Airtel's Priority Postpaid service occupies, and it is not a narrow or technical one.

Airtel has argued that the product is implemented in a content-neutral manner and that there is no blocking, throttling, content-specific prioritisation, zero-rating or preferential treatment of any application. That argument has textual support under the current rules. But it cuts against the deeper intent of the framework. The DoT's own policy articulation states that all communication passing through a network should be treated equally, independent of its content, application, service, device, sender or recipient address. The reference to sender or recipient is significant. It points toward a reading that prohibits discrimination based on who the user is, not just what they are accessing. The problem is that this language appears in policy documents, not in enforceable licence text, which leaves regulators without a clean hook to act on it.

Network slicing introduces an entirely new axis of discrimination. Where earlier content-based discrimination involved throttling a streaming service or zero-rating a social media platform, slicing-based user prioritisation operates at the level of the subscriber class itself. A postpaid user on a priority slice receives structurally better network performance than a prepaid user on the same tower, regardless of what either of them is accessing. The existing framework was not designed to address this, and it does not.

The 2020 TRAI Position and Why It No Longer Holds

When TRAI reviewed net neutrality and traffic management practices in 2020, certain stakeholders submitted that the policy needed to be reconsidered and aligned with the principles and standards of 5G technology. TRAI rejected this, concluding that the net neutrality principles adopted by DoT are technology-neutral. Crucially, TRAI's reasoning rested on the fact that no concrete example had been given by stakeholders where the implementation of 5G technology would be impeded by the net neutrality principles.

That factual premise no longer holds. Airtel's Priority Postpaid is precisely the concrete example that TRAI said did not exist. The product uses 5G network slicing to deliver differentiated QoS to a class of subscribers on a permanent commercial basis. TRAI's 2020 conclusion was reasonable given the state of deployment at the time. It is not a sustainable position today.

The compliance question also surfaces a genuine tension in the Telecom Tariff Order 1999. The TTO provides that no service provider shall, in any manner, discriminate between subscribers of the same class, and that such classification of subscribers shall not be arbitrary. On this, the central question is whether a postpaid-versus-prepaid classification used to allocate network

slices is an arbitrary one. Telcos will argue it is commercially rational. Consumer advocates will argue it is arbitrary in the context of a shared, spectrum-constrained network where one subscriber class structurally benefits at the expense of another. There is a reasonable case on both sides, which is precisely the kind of ambiguity that requires regulatory resolution rather than operator self-certification.

UL Clause 2.3 does include a permissible carve-out for reasonable traffic management practices. But those practices must be transient, dynamic, content-agnostic and non-discriminatory between end users in the same class. A permanent commercial product sold as a postpaid feature does not fit within any of those parameters. Airtel's Priority Postpaid is not a traffic management measure. It is a product architecture, and the distinction matters legally.

Jio's submission to DoT has drawn this line more carefully than Airtel's. Jio has stated that deploying different network slices for different business classes or verticals complies with net neutrality norms, but that any differential charging linked to preferential slicing within a particular subscriber class should be allowed only where supported by transparent, application-agnostic and technically justified traffic management requirements. That is a more defensible regulatory position. It distinguishes B2B vertical slicing, which serves discrete enterprise use cases and is more straightforwardly permissible, from intra-class consumer-tier slicing, which requires a higher justificatory threshold that the current framework does not provide.

What New Regulation Must Address

The legal authority to act already exists without requiring fresh primary legislation. The DoT's 2018 UL amendment expressly retained the flexibility in the licensing regime to specify further details and amend regulations regarding the scope and assessment of reasonable traffic management practices. TRAI's 2020 recommendations proposed that DoT maintain and publish a refined list of traffic management practices adopted by all TSPs, identifying those found reasonable after a process of review. That framework was designed five years ago and has never been activated.

What is needed now is a formal secondary instrument that addresses the slicing context directly. At minimum, it must provide for the following.

A non-degradation floor: any priority slice must be verified against an independently auditable non-degradation standard for baseline users. Airtel has claimed that prepaid and other non-priority traffic retains headroom of roughly 60 per cent of total capacity. That ratio, if accurate, may be adequate. But it must be a codified regulatory minimum, independently verified by DoT or TRAI, not a self-reported figure that cannot be audited.

Application-agnostic slicing only: following the BEREC model, priority services must handle different quality of service levels in a manner that is independent of application and not structured by grouping similar applications together. This must be written into Indian licence conditions expressly.

Transparency obligations: operators must publish, in machine-readable formats, the technical parameters of each slice, covering minimum guaranteed throughput, latency and packet loss thresholds. Without this, neither TRAI, nor the courts, nor civil society can meaningfully assess whether non-priority users are being harmed.

A prohibition on anti-competitive bundling: priority slicing must not be tied to exclusive content arrangements or used to structurally disadvantage competing OTT platforms. This is the zero-rating concern transposed into the slicing context, and it must be addressed directly rather than left to case-by-case enforcement.

A clear distinction between critical services and commercial tiers: the existing critical services exemption covering remote surgery and autonomous vehicles must be formally defined and kept separate from commercial premium-tier consumer products. The two are conceptually distinct, and regulators should not permit operators to conflate them in compliance filings.

The EU's position provides a useful template. Under the EU Open Internet Regulation, 5G slicing can be used to deliver differentiated internet access service offers, such as various retail speed or latency profiles, as long as open internet rules are respected, or under defined conditions can underpin specialised services that sit alongside general internet access services. India needs a comparable bifurcated framework with defined legal conditions for each pathway.

The Spectrum Constraint and the Case for Public Consultation

The urgency of getting this right is not abstract. India's spectrum position is structurally weak relative to the demands being placed on the network, and that weakness is directly relevant to whether subscriber-tier differentiation causes real harm to non-priority users.

A Parliamentary Committee has observed that based on current spectrum availability, approximately 50 MHz of spectrum per operator can be ensured, substantially lower than the global average of approximately 100 MHz per operator, and that for 4G, the average spectrum per operator in India is around one-fourth of the global average. An IIT Madras study has projected that by 2027, as much as 80 per cent of the combined network capacity of all telcos will be used, based on data consumption projections of 50 GB per subscriber per month. Download speeds on 5G standalone networks have already fallen by 32 per cent between Q2 2023 and Q2 2024, owing to the sharp increase in subscribers and overall data usage. The sector will need around 2,000 MHz of spectrum by 2030, compared with approximately 900 MHz currently available, according to the Union Telecom Minister and industry estimates.

In a spectrum-rich environment, a priority slice may be additive. In India's current environment, it is more likely to be redistributive. Capacity given to one subscriber class comes at the expense of another, and that is precisely the kind of structural trade-off that should be subject to public deliberation and regulatory oversight before it is locked into commercial product architectures.

The 4G precedent is relevant. TRAI blocked Airtel's Platinum and Vodafone Idea's RedX premium plans in 2020, which offered faster data speeds and priority services to customers, while studying whether these plans violated net neutrality and asking telecom firms to clarify whether priority customers received higher speeds at the cost of service deterioration to other users. The 5G version of the same product raises the same structural concern, but with a more technically durable instrument. Network slicing enforces priority at the network layer, not merely as a scheduling preference. The potential harm to non-priority users is harder to detect and harder to reverse.

A meaningful public consultation, modelled on TRAI's 2020 TMP process but informed by actual deployment data, should address at minimum: minimum quality-of-service floors for non-priority users, independently verified; spectrum adequacy thresholds below which priority slicing must be suspended; how the Telecommunications Act 2023's new authorisation regime should codify slicing conditions in secondary legislation; and whether the multi-stakeholder body proposed in TRAI's 2020 recommendations should be constituted urgently as the standing oversight mechanism rather than remaining a paper proposal.

That last point is especially pressing. The secondary legislation and licence conditions under the Telecommunications Act 2023 have not yet been finalised. This is precisely the window in which public consultation can shape those instruments prospectively. If that window is allowed to close without a formal regulatory position on slicing, India will find itself attempting to unscramble commercial arrangements that operators have already built into product architectures and customer contracts at scale.

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