

Submission to the Consultation Paper on Differential Pricing for Data Services

To,

RS Sharma,

Chairman, TRAI

CC:Vinod Kotwal, Advisor (F&EA), TRAI

Dear Sir,

On the outset, I would request you not to publish my email address on the TRAI website.

Thank you for this Consultation Paper on Differential Pricing for Data Services; this issue is key to securing net neutrality in India.

I am thankful that the TRAI has both highlighted the need for preventing discriminatory practices in this paper, and looked into the issue of making the Internet available to all. Both Internet access and Net Neutrality are important, and we shouldn't be choosing between the two. Instead we should strive for increasing connectivity which complies with Net Neutrality, ensuring meaningful Internet access for all Indians. I would like to point out that some of the questions on price discrimination, raised in this consultation, had already been raised in the consultation on regulation of OTT services, to which over 12 lakh Indians had sent responses. Those answers should be considered by the TRAI in this consultation paper on Differential Pricing for Data services. The TRAI should bring in rules to prevent Net Neutrality violations such as differential pricing - especially the practice of "Zero Rating".

I hope the TRAI considers my answers. In the meantime I request that it:

- a. Ensures that violations of Net Neutrality are paused until a clear policy is finalized
- b. Takes into consideration the submissions made to questions 14 and 15 in the previous Consultation on OTT Services for this current consultation process, and

Thanking you

My answers:

Question 1: Should the TSPs be allowed to have differential pricing for data usage for accessing different websites, applications or platforms?

TSP's should not be permitted to engage in differential pricing for data usage for accessing different websites, applications or platforms, for the following reasons:

- a) A non-discriminatory Internet decentralizes the sources of innovation because everyone can create Internet services and applications without having to obtain permission from telecom companies or platforms. It allows collaborators to create open source and free tools to provide an alternative to proprietary tools, and improve on them. Differential pricing will damage the character of the internet. The internet has developed till date on the basis of the end to end principle, where there has been user choice to determine what content and platforms are accessed. This has

allowed the internet to organically develop into an ecosystem where information is shared across platforms. The power to control information is the biggest weapon in a democracy. Plurality and diversity of both views and platforms are important, and for this, the Internet needs to be kept open and neutral.

Price discrimination will incentivise the use of certain service providers or types of services. This will be against the agonistic function of TSP's and impact the future growth of the internet, where only specialised services which are priced not as per a neutral meter of volume of data consumed. It will likely lead to walled garden and bouquet of services and reduce the diversity of Internet services to, "pay packs" where particular services are bundled together with no user choice or ability to freely access information.

b) It will lead to discriminatory practices that will impact consumer welfare. Consumer welfare at present best served by the transparent billing practices where consumers are billed similarly for access to any website or web service on the sole measure of data usage that is neutrally applied across platforms. Such choice should be left to consumers and not the TSPs. Once the the TSPs are left to decide even if through regulatory oversight the kind of services which can be subsidised and ones on which additional levies are placed it will lead to discrimination that will function against content which is sought by individual users as per their tastes. It will create strong incentives to only use services which are subsidised on the choice of TSPs and prevent consumer discovery of new services and platforms. It will impact the diversity of content and will be against the individual choices of many users, especially those in the minority. Further, given the dynamic nature of content on modern Web services - where audio, video and text is often found within the same service - billing practices will at best be opaque for consumers, leading to unforeseen charges.

c) It will negatively startups/entrepreneurs and the fulfillment of Digital India. Startups are fragile businesses, ever evolving and innovating, at great speed, if not at great scale. For Internet startups to operate efficiently, there needs to be predictability, stability and reliability of Internet access. Many Indian startups have already voiced their opposition to the differential pricing of data services, emphasizing that such practices upset the level playing field. Deepinder Goyal, Founder and CEO of Zomato has taken his Delhi based business to 23 countries, tweeting that he "Couldn't have built Zomato if we had a competitor on something like Airtel Zero".

The letter of more than 450 startups to the Hon'ble Prime Minister lists several reasons why such startups believe that differential pricing, including zero rated services will destroy the startup ecosystem. I echo their concerns from the letter which I quote below:

"We stand to lose if telecom operators are allowed to strike deals to favour some online services over their competitors. Under these deals, companies may pay the ISP to make their competitors' websites inaccessible, slower or more expensive to access than their own. These practices, if allowed, will exclude promising startups from the Internet and end our dream of seeing them flourish. The western companies that dominate the Indian internet ecosystem today will use their deep pockets to perpetuate their position. The few startups that can afford it will be forced to find growth in foreign markets before they can return to India with the funds to pay ISPs, while the rest shut shop."

Allowing differential pricing will transform the Internet economy into a mirror of the Mobile Value Added Services ecosystem, which allows telecom operators to convert an access business into an audience business.

Currently, telecom operators provide Internet access to the interconnected network that is the Internet, and consumers choose where they wish to go. Any form of unnatural advantage that is an outcome of a partnership between a telecom operator and an Internet company converts this into an audience business, with telecom operators allowing businesses access to their "audience". This means lack of permission-less innovation, and can lead to three harmful activities:

1. Predatory activities from telecom operators, as was evident in case of Mobile VAS, which restrict the ability of consumers to access these startups. On Facebook's Free Basics, services that compete with telecom operator services are not allowed, and Facebook reserves the right to reject applicants to Free Basics. Even today, VoIP, Video, file transfers and large images are not allowed on Free Basics/Internet.org. The terms and conditions are determined by Facebook, and it reserves the right to change them as and when it desires. This is despite the fact that in the US, Facebook signed a brief saying that "The open architecture of the Internet creates an innovation-without-permission ecosystem. Consumers (and consumers alone) decide the winners and losers on the open Internet", that without Net Neutrality, "Consumers would lose the ability to choose freely among competitive services and sources of information. It would also significantly decrease the rewards edge providers could realize from innovating, further decreasing consumer choice."

2. Collusion between larger Internet companies and telecom operators, in order to reduce competition for the Internet companies, such as in case of Free Basics. In countries such as Indonesia, research has shown that where free Facebook is made available, consumers end up confusing Facebook as the Internet itself. This impacts access to diversity and plurality of content, especially on a platform which controls what content users get to view in their newsfeed.

3. Zero Rating of vertically integrated services, which are owned by telecom operators. Bharti Airtel, when it launched its online music streaming service Wynk, it waived data charges for Airtel users, using its ownership of content and carriage. This effectively puts competitors like Saavn and Gaana at a competitive disadvantage. Imagine what this might do to competition in case of financial inclusion, if transactions using Airtel Money were made cheaper than those using some other payments bank.

d) There is no commercial need for permitting differential pricing given the large growth in revenues and profits of TSPs. TSPs are today seeing an unprecedented rise in growth in data revenue and profits disclosed in their annual reports and earnings calls. On the basis of this they are investing more in data networks even marketing themselves as high speed cellular data networks to the public. This is clearly a contradiction in the stands of TSPs which are at one end showing profitability and at the same time seeking to engage in practices which turn them from charging carriage fees from content providers. These are unhealthy practices without any commercial justification except to use their monopoly powers to engage in rent seeking behaviour. Private companies which are utilising public spectrum cannot do so to seek windfall profits which comes at the cost of public welfare.

e) Differential pricing practices such as Zero rating, whether paid or unpaid, creates a fundamental and permanent shift in the way the Internet works, by splitting it into free and paid. Services such as Airtel Zero will slice the Internet, and will lead to the launch of similar services from all telecom operators. There might be an Idea Zero, Vodafone Zero, Uninor Zero, Tata Docomo Zero. This means that each user will get a different experience of websites, and may never know the universe of knowledge outside of this collection of websites. That restricts consumer choice. Zero rating is "positive discrimination". Airtel Zero favors those services who pay them to be zero rated. Internet.org favors those services which are low bandwidth, and allow Facebook to access user data even if Facebook is not being used on Internet.org.

f) Usage of the open web declines: When consumers try and move out of a zero rated platform to the open web, they will rightly be informed that they are going to be charged for this. This information is essential in order to prevent charges when the user may not want to be charged. However, adding a layer of confirmation usually leads to reduction in conversion rate, since accessing a link is often on an impulse, whereas choosing to pay to access a link is an additional decision. In case of Free Basics/Internet.org, users would get an advisory asking them to buy a data pack. At this point, many users choose to not access the open web, and continue to use only Facebook and its partners, thereby giving them a competitive advantage.

Additionally, I would like to draw your attention to the 12 lakh submissions to the TRAI on its Consultation Paper on OTT Services to Question Nos. 14 and 15 which similarly called for prohibiting TSPs from having differential pricing for data usage for accessing different websites, applications or platforms.

Question 2: If differential pricing for data usage is permitted, what measures should be adopted to ensure that the principles of non-discrimination, transparency, affordable internet access, competition and market entry and innovation are addressed?

Differential pricing for data usage should not be permitted in principle, given that they will allow TSPs to act as gatekeepers on how Indians experience the Internet. Principles of non-discrimination, transparency, affordable internet access, competition and market cannot be furthered if differential pricing is permitted in any form.

a) Differential pricing on a case to case basis will result in unclear non-discrimination standards, increasing the likelihood of litigation. Again, players which are smaller will not have any ability to negotiate and will be excluded. Differential pricing by its very nature and phrase is a discriminatory practice. Given the clear harms which come through and the considerable costs and delay in evaluating case-by-case behavior, discriminatory pricing for data should be prohibited through firm, clear, bright-line rules.

b) Transparency in a system in which differential pricing is permitted will not serve the public purpose. Even if rate plans are published publicly or prior regulatory approval is demanded the harm is already caused as such plans will be devised by TSPs and not by individual users. Given that large TSPs often face limited competition in practice in specific geographical areas in India with respect to data services, transparency will not aid consumer choice. Quite simply just because a plan is published on the TRAI website will not ensure users can choose - especially if they actually do not actually have to ability to easily switch to other operators when it comes to data services and broadband. Beyond not assisting consumer choice in any meaningful manner, transparency will not aid in mitigating the harms caused to smaller content providers and startups that will be excluded from such plans. Please note that Reliance Communications and Facebook are yet to publish a complete list of services that form a part of Free Basics (Internet.org).

c) Zero rated services such as Internet.org/Free Basics and Airtel Zero are a form of positive discrimination, making some sites free versus others, and ending up making some sites more expensive. Affordable internet access can be furthered in several ways which are consistent with net neutrality. Some TSPs and Facebook through its Internet.Org/Free Basics zero rated offering has posed this in terms of a faustian bargain which completely ignores what some term "equal rated" services and other efforts that seek to expand Internet connectivity to all without compromising network neutrality. These alternatives are described in the answers to Question No. 3.

The submissions are in addition to the 12 lakh submissions to the TRAI on its Consultation Paper on OTT Services to Question Nos. 14 and 15 which similarly called for prohibiting TSPs from having differential pricing for data usage for accessing different websites, applications or platforms.

Question 3: Are there alternative methods/technologies/business models, other than differentiated tariff plans, available to achieve the objective of providing free internet access to the consumers? If yes, please suggest/describe these methods/technologies/business models. Also, describe the potential benefits and disadvantages associated with such methods/technologies/business models?

Yes, several alternatives exist other than differentiated tariff plans or zero rated services that are practical to implement and will provide access to the Internet to millions of Indians who cannot afford it due the costs of data.

a) At the very outset it must be remembered that improving access is public priority - and not one only to be left to some global private corporations. Private corporations cannot guarantee the neutrality and impartiality in exercising such a core government function and will only cite interests of access for furthering their own commercial profits. This will come at the cost of accountability which is at the core of any government process. Many experts have highlighted that access can be improved by the government through, "equal rated" plans that are deployed by the Government. This may be through deployment of the USO fund and creation of a national fiber optic network.

b) The World Wide Web foundation has suggested several alternatives for furthering access without compromising network neutrality which include a free allowance of mobile data for each citizen funded through an universal service fund. Further, TSPs can also offer 2G data services which are capped at 10/20 MB a month which would not violate any forms of network neutrality. Such measures would improve access and give millions of Indians access to the Internet, not some stripped down, wall garden in which content options are determined for them.

c) Further models exist and have been highlighted by entities such as the Mozilla Corporation and others. These are in the forms of, "equal rated" plans and are even being deployed in some countries. Some examples of it include:

"Could the private sector organize itself to provide a baseline "equal rating" for some amount of data necessary for modern life at discounted or no charge? Such a program would integrate the "version 1" private solution of limited access with the citizen demands for the opportunity and full inclusion of the full Open Internet. Perhaps those companies paying for the equal rating might get a "brought to you by" attribution that could bring brand value and network effects. Orange and Mozilla are experimenting with this sort of model in multiple African and Middle Eastern markets, where users purchasing a \$40 (USD) Klif phone receive unlimited talk, text, and 500 MB a month for 6 months.

Another possible way of "equal-rating" content so it is free-of-charge to the user is a model where people watch ads in order to access other sites. Mozilla has been exploring this model in a partnership with Grameenphone (owned by Telenor) in Bangladesh, where users can receive 20MB of unrestricted data per day after watching a short ad in the phone's marketplace."

Some TSPs and Facebook have incorrectly framed a debate around access at the cost of network neutrality to further their commercial interests. As it is evident from the above models access does not come at the price of network neutrality.

Question 4: Is there any other issue that should be considered in the present consultation on differential pricing for data services?

I believe TRAI will take my answers into consideration in forming its opinion. Several experts in the field hold similar views and have expressed their concerns on zero rating and net neutrality violation at various public forums. I would reiterate that several telecom operators and Facebook have launched products and services that violate net neutrality, undermining the consultation process. I request TRAI to put a temporary ban on such services till a decision is reached.

Additionally, it should be brought to your notice that Facebook has also used unscrupulous methods to get its users to submit their responses to the present consultation, misleading its users into believing they will be supporting net neutrality by doing so.

Lastly, I request the regulator to consider the submissions made to Question Nos. 14 and 15 in the Consultation on OTT Services (April, 2015) for the Consultation on Pricing Discrimination and come out with a definitive timetable for the conclusion of both consultation processes.

Thank you.