TRAI Consultation on Differential Pricing for Data Services
Post-Open House Discussion Submission
Monday, January 25, 2015

Dear Ms. Kotwal,

This is to heartily congratulate TRAI once again for taking several steps, including the Open House Discussion, to ensure that various opinions about the topic of 'differential pricing for data services' are presented and are responded to - and are all in full public view.

This brief note is to **a)** add to the positions and arguments submitted previously by the Centre for Internet and Society (CIS), India, **b)** put in writing our comments during the Open House Discussion (January 21, 2016), and **c)** respond to other comments shared at the same event. We have six points to share in this note:

1. Forbearance is not an option: We are of the opinion that though the data services market has thus far been kept un-monitored and unregulated, and there are several reasons why this situation should not continue any more. Although the reality of *differential pricing* (that is data packets originating from different sources being priced differently by ISPs) was highlighted with the recent offering of zero rated packs, it is a general practice in the sector, as illustrated by widely available special/curated content packs for the user to consume data from a specified web-based source. It is not surprising that most such special/curated content packs involve an arrangement between the ISP and a prominent leader in the web-content/platform sector, such as Facebook and Twitter. Serious market distorting impacts of such arrangements are imminent if they are allowed to continue without any monitoring, enforced public disclosure, and regulatory actions by a public authority.

2. Address differential treatment of data, and not only differential pricing: Pricing is only of the three ways in which data services can be treated differently by the ISPs depending upon the source of the data packets concerned. The other two ways are: **a)** differential speed, or throttling of some data packets and prioritisation of the others, and **b)** differential treatment of data protocols, for example, the blocking of peer-to-peer or voice-over-IP traffic by an ISP. If the public authority decides to only regulate differential pricing of data service, it is highly probable that ISPs may shift to other forms of discrimination between data packets - either in terms of prioritising some data packets over others based upon their origin, or blocking of specific protocols such as voice-over-IP to prevent the functioning of certain web-based services - and continue the market distorting impacts through these other means.

3. Allow and define reasonable network management practices: Reasonable network management has to be allowed to enable the ISPs to manage performance on their network. However, ISPs may not indulge in acts that are harmful to users in the name of reasonable

network management. Below is a set of potential guidelines to identify cases when discrimination against classes of data traffic in the name of reasonable network management can be considered justified and permissible:

a) there is an intelligible differentia between the classes which are to be treated differently, and

b) there is a rational nexus between the differential treatment and the aim of such differentiation, and

c) the aim sought to be furthered is legitimate, and is related to the security, stability, or efficient functioning of the network, or is a technical limitation outside the control of the ISP, and

d) the network management practice is the least harmful technical means that is reasonably available to achieve the aim.

4. Establish an effective enforcement mechanism: TRAI must establish an enforcement mechanism that is open to users [and groups of users] and private sector actors as current forums are insufficient. Clear and simple rules must be established ex-ante, if they are violated - ex-post regulation must be undertaken on the basis of principles listed in the TRAI consultation paper, that is "non-discrimination, transparency, affordable internet access, competition and market entry, and innovation" **[1]**.

5. Take regulatory decisions now, but also conduct and commission further research to review and refine the decisions over a defined period of time

6. Need for better collection and proactive disclosure of statistics: TRAI publishes quarterly performance indicators statistics collected from the telecom companies about telephone, mobile, and internet sectors in India **[2]**. It will be very useful for researchers and analysts, and allow for a much more informed public debate on the matter, if the content and form of such data are improved in the following ways:

Content:

a) Please start collection (unless already done) and publication of not only data of *average* incoming and outgoing MOUs, *average* of total outgoing SMSs, *Average* Revenue Per User, and *average* data usage per GSM and CDMA subscriber, but *distributions* of the same in terms of *user deciles* (that is in terms of representative figures for each 10% section of users in ascending order of usage),

b) provide granular data about data usage across service areas and service providers (the numbers on 'average data usage' and total 'revenue from data usage' provided at present are very insufficient for the state of public debate),

c) provide data about internet subscriber base according to network technologies (for both wired and wireless) and the service providers concerned,

d) provide data about IP-based telephony across service areas and service providers,

e) provide data separately for the North Eastern states, and

f) provide granular data (separated from the corresponding state data) for all tier-1 cities.

Form:

a) Please do not publish the data only as part of the quarterly reports available in PDF format, but also as independent machine-readable spreadsheet file (preferably in CSV format),

b) do not only publish quarterly data in separate files, but also provide a combined (all quarters together) dataset that would make it much easier for researchers and analysts to use the data,

c) in some exceptional cases, the data is not provided in the report directly but a diagram containing the data is published **[3]**, which should be kindly avoided, and

d) please publish these statistics as open data, that is in open standards and under open licenses.

Further, we request TRAI to explore possibilities of distributed sourcing of data, perhaps from the users themselves, about the actual network usage experiences, including but not limited to signal strength, data transfer speed (incoming and outgoing), frequency of switches between mobile (GSM and CDMA) and wi-fi connectivity, etc.

References

[1] See: http://trai.gov.in/WriteReaddata/ConsultationPaper/Document/CP-Differential-Pricing-09122015.pdf.

[2] See: http://www.trai.gov.in/Content/PerformanceIndicatorsReports/1_1_PerformanceIndicatorsReports.aspx.

[3] See: http://www.trai.gov.in/WriteReadData/PIRReport/Documents/Performance_Indicator_Report_Jun_2015.pdf, sections 1.43 and 1.44 (pp. 31-32).