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Mahanagar Door Sanchar Bhawan,
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Subject: Consultation Paper (CP)No. 08/2015 dated 8th December 2015 on
"Differential Pricing for Data Services"

Dear Sir,

Association of Competitive Telecom Operators (ACTO), would like to submit its comments(enclosed as Annexure – I) to Consultation paper No. 08/2015 dated 9th December 2015 on **Differential Pricing for Data Services**.

We hope that our comments will merit consideration of the Hon'ble Authority.

Thanking you,
Respectfully submitted

Yours sincerely,
for **Association of Competitive Telecom Operators**

Tapan K. Patra
Director

Encl: As above

Annexure-I

ACTO's comments on TRAI's Consultation Paper (CP) on Differential Pricing for Data Services

The Association of Competitive Telecommunications Operators (ACTO) is pleased to submit the following comments to the Telecom Regulatory Authority of India (TRAI) in response to its consultation paper on Differential pricing for Data Services vide consultation paper No. 08/2015 dated 9th December, 2015.

Background:

As per the Telecom Regulatory Authority of India Act (TRAI Act) 1997 as amended from time to time, TRAI is empowered to notify tariff for various Telecommunication Services under the Act. Hence TRAI while exercising its power, under the Act notified the, Telecommunication Tariff Order, 1999(TTO,1999) which was amended from time to time to reflect the changes in the tariff framework .

We note that the Authority has initiated this consultation in exercise of its authority to regulate tariffs of Telecommunications Service Providers (which includes ISPs and data service providers) under the TTO-1999. The Authority has also noted that it has largely forborne tariffs of majority of services and has accordingly not intervened in the market due to sufficient competition. Although it maintains oversight to ensure that tariff offers are reasonable, transparent, non-discriminatory and are not anti-competitive.

We also understand that the current Consultation Paper is aimed at dealing with differential pricing for data services as it relates to individual internet users, rather than large, businesses, corporate and organization consumption of internet services / data which have specific demands from telecom service providers, in many cases, at sharp variance with the needs of an individual internet user. We trust that under the present review of tariff framework i.e. TTO-1999, the distinction between B2C (Business-to-Consumer) and B2B (Business-to-Business) or B2G (Business-to-Government) consumption of data services and their respective pricing approach, will be taken into adequate consideration.

It is important to highlight that the specialized data and Enterprise Service users (corporate, governments and large organizations) demand services and data packages which are driven by their specific & unique needs, therefore, the pricing of these enterprise services are tailor made to suit their requirements.

The specificities of enterprise service providers **and retail mass customers** (e.g., differing contract provisions and business needs) in the Internet and communications space means that a one size fit regulatory approach is likely to create the substantial risk of disproportionately impacting innovation and investment if applied to business service providers.

Enterprise services are typically sold to enterprise/business customers and are often widely negotiated / contracted for on an individual case basis; consumer services are not individualized (other than through common differentiated service offerings) and are not offered through customized or individually negotiated agreements.

Keeping such distinction in mind and within the framework of TTO-1999, we are pleased to submit the following broad principles. We request the Hon'ble Authority to consider the same while formulating its decision in this matter.

1. There should be no **"One size fits all"** approach and the same should be discouraged.

The paper aims to discuss possible impact of differential pricing on the consumer interest. This is not about enterprise / large businesses users whose requirements and business drivers are different.

We note that the Regulators and Policy makers worldwide have continued to exempt Specialized / Enterprise Services from any prescriptive regulation.

2. What may be relevant for individual internet users may not even apply or be a concern to large enterprise consumers of internet and data, for whom the prime drivers are speed, quality, connectivity and uptime and the need to meet special requirements rather than price or mere affordability.
3. So it will be wrong to subject such large enterprise services users / organisations / businesses to regulations aimed at individual internet users.
4. Keeping in mind the Digital India vision ushered in by Hon'ble Prime Minister, there is also a need to adopt right policy and Regulatory framework aimed at fostering innovation, affordability, user empowerment and investments aimed at bridging the digital divide.
5. As best regulatory practices, there should not be any prescriptive regulations unless there is an absence and demonstrable failure of market forces and competition.

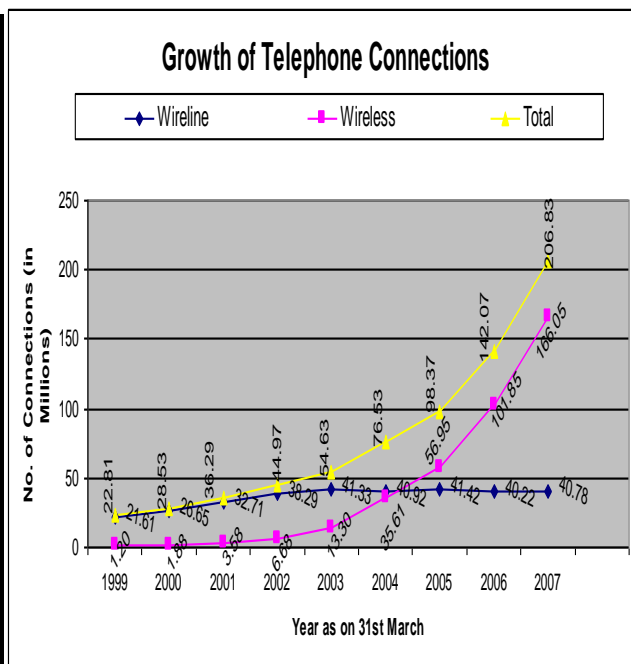
ACTO believes that there is adequate competition in the internet and data services space and therefore any kind of prescriptive regulations is not needed.

6. The existing framework of regulatory oversight in the form of tariff reporting by the TSP's has worked well and should continue.
7. Any incidence of non-discrimination and transparency which is against public interest should be taken note of and suitable measures be taken to correct the aberration.
8. Tariffs are clear indicator of competition and maturity level in the market. Forbearance of tariffs has in fact enhanced the competition level as against caused harm. There is ample evidence to show that the actual growth in the telecom sector happened when tariffs forbearance was introduced. Please see the table below which clearly shows this linkage. Therefore TRAI should continue to implement same policy of forbearance.

Further, TRAI had implemented tariff forbearance for wireless services in the year 2002 and for wireline subscriber in the year 2003 and historical data (in the table below) shows exponential growth in the wireless services in India after year 2002-2003 i.e post tariff forbearance period.

Telecom Subscriber data (in millions) in India for the period 1997-2007:

FY	Fixed line	Mobile	Total	Tele density
1997	14.54	0.34	14.8	1.57
2000	26.65	1.9	28.55	2.81
2001	32.71	3.58	36.29	3.52
2002	38.33	6.54	44.87	4.28
2003	41.48	13	54.48	5.1
2004	42.84	33.69	76.53	7.04
2005	46.19	52.22	98.41	9.11
2006	50.18	90.14	140.32	12.8
2007	48.87	157.96	206.83	18.46



Comments:

Tariffs are generally determined or offered by the TSPs taking into account several factors including input costs, level of competition, commercial considerations and individual business case for each service providers as well as keeping the requirements of different customer groups. What may be important for a customer may not be relevant for another. We note that specifically data tariffs are left on market forces to determine under the present regulatory framework i.e. Tariff are reasonable, transparent, non-discriminatory and are not anti-competitive. We also note that presently differential tariffs are allowed subject to compliance of relevant clauses of the TTD, 1999. The provisions of TTD(33rd amendment) inter alia provides that whenever differential tariffs are offered , it shall be the responsibility of the operators to define in a transparent and unambiguous manner, the eligibility criteria for availing such differential tariffs .

The Authority has very rightly noted that “The criteria for determining a valid classification for the purpose of differential tariff, has undergone change from time to time depending upon the sector’s growth, technological advancement and the emerging and changing regulatory concerns, which the Authority needed to address. Thus, for example, differential tariff or ‘on-net’ terminated calls were viewed as discriminatory tariff in the initial stages of tariff regulations. However, as the competition in the sector increased, such differential pricing was permitted, treating ‘on-network terminated calls’ as a distinct and valid class for price differentiation.”

We note that differential pricing is a well-established and generally accepted business practice across the globe and across the sectors/ services. Therefore, we believe that TSPs should be permitted to offer differential tariffs, for example services provided to the enterprise users having highly specialized and customized requirements to meet their business interests.

In view of above broad principles, ACTO supports the differential pricing for data services, subject to generally accepted best regulatory practices and above stated principles. We expect TRAI to continue to have data services under forbearance following the policy of light touch of regulation and leave it to TSPs to design the tariffs according to the prevailing market conditions as long as there is no demonstrable failure of market and competition.
