IAMAI Submission on the TRAI Consultation Paper on 'Differential Pricing for Data Services'

December 2015

I. Introduction

At the outset we would like to mention that the Consultation Paper ("CP") is based on a very positive note – the need to connect nearly one billion Indians who are not connected today. To address this important need, the Authority has considered forfeiting its policy of price forbearance. The paper also makes it clear that its intervention on pricing is based on certain infallible principles and finally, the paper clearly articulates specific situations of "differential pricing" that are up for consideration. Important from IAMAI's perspective is the fact that the CP clearly identifies the principles that forms the basis of Authority's intervention in pricing. These principles are laid down as *non discriminatory, transparency, non anti-competitive, non predatory, non ambiguous and not misleading*.

The CP also clearly identifies the models of pricing that it seeks to intervene in the context of providing universal access to Internet. These models are:

a) *When the service provider selects the content, which is offered free or bundled together at reduced rates.*

b) *In another form, one content provider creates a platform where other content providers can apply, and be selected. The platform creator then partners with service provider(s) to provide free internet access to participating content providers, for the subscribers of those service providers.*

c) *Charge differently for certain types of internet apps over others* [*On-Network terminated calls]*

While TRAI's vision of universal connectivity is laudable, we have serious issues with the models that are proposed by TRAI to do so. Foremost is our contention that the models raised by the Authority do not pass the muster of its own principles of price intervention. Here is how:

Table 1: Matrix showing how differential pricing violates the principles of TRAI's Pricing Regulation

Principles	Model A	Model B	Model C
Non discriminatory	TSPs get the leeway to disincentivize access to other websites/applications/platforms by either putting higher tariffs or though illicit network management.	Those who want to access non-participating content will be charged more than those who want to access participating content. – This violates the non discriminatory principle.	The very idea of differentiating the internet on the basis of anything will break its inherent neutrality. Such practice will violate the principle of non-discriminatory pricing and will prompt the beginning of such fragmentation.
Transparency	Transparency in pricing is threatened if the service providers become the de facto gatekeepers of the internet. This leads to pricing content differently to advantage certain content providers	There has been no transparency in such models so far, there is no disclosure by ISPs/TSPs of payments made for such deals for selecting discounted content/apps.	The internet should have equal access to all the content/apps at an equal rate to consumers. Free internet should be on the basis of free data not free specific content.
Non anti-competitive	This model is anti-competitive for other websites/applications/platforms, especially the small	Such form of differential pricing will lead to paid prioritisation by the TSPs that will in turn lead to anti-	Charging differently for different internet apps will be anti-competitive, it will break the internet and stifle

Principles	Model A	Model B	Model C
	content providers and the start-ups. Such models will potentially create elite or dominant web services, also known as oligopoly.	competitiveness___amongst the website/application /platform providers.	innovation
Non predatory	Such pricing models are followed to eliminate the rivals from the market.	Any such arrangements viz., cross-vertical collusion, intra-vertical collusion etc clearly fall under predatory pricing. *[This is why in the US predatory pricing is allowed]*	The customers, who use *On-Network terminated calls* which are essentially just data or bandwidth, pay access charges and data charges to the service providers which are determined by market dynamics and competition. The proposal to price such calls differentially from other data apps will hurt consumers and developers of such applications who have successfully created low-cost, data-efficient tools.
Non ambiguous and Not misleading	Discounted pricing in the name of providing wider access and connectivity is fallacious, misleading and ambiguous as the net result will negate all the positive impact.	Such models come at a cost of lowering consumer choice and giving rise to oligopolistic competition. Under privileged and non internet-savvy users will never know the whole of internet under such limitations.	Differential pricing in the name of providing wider access and connectivity is fallacious, misleading and ambiguous as there is no quantified data on increased mobile data subscription due to such discounted or zero-rated programmes.[1]

The differential pricing models in addition to violating TRAI's own principles also break the internet as we have shown in our previous submissions to TRAI and to the DoT. Internet is one and data needs to be priced in the same way. Harmful forms of price discrimination will eat away the neutrality of the internet. Wider internet access is a noble goal, but we will not achieve it by betraying the goal of an innovative, fair transparent and vibrant Internet. Hence, there is an imperative need for the regulator to uphold the core principles of tariff framework to protect the consumers' interest preserve the internet and allow level playing field for small content providers.

II. Responses to Issues for Consideration

(QUESTIONS NUMBERED AS PER CONSULTATION PAPER)

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

No, the TSPs should not be allowed to have differential pricing for data usage for accessing different websites, applications or platforms. The different pricing models mentioned in the TRAI 'CP' are not only violating the core principles of TRAI's pricing regulation but also the Principles of Net Neutrality.

[1] http://www.internetsociety.org /2014/09/zero-rating-enabling-or-restricting-internet-access

The differential pricing models will empower the TSPs to select certain content providers and offer discounted access plans to certain websites/applications/platforms which will be anti-competitive for other websites/applications/platforms, especially the small content providers and the start-ups. The TSPs get the scope to disincentivize access to other websites/applications/platforms by either putting higher tariffs or though illegitimate network management.

Thus, differential tariffs will result in:

- Differential tariffs will disadvantage the small players and the start-ups.
- Giving absolute powers to the TSPs will lead to classification of subscribers based on the content they want to access (those who want to access non-participating content will be charged at a higher rate than those who want to access participating content). This violates the principle of non-discriminatory tariff.
- Differential pricing will lead to paid and unpaid prioritisation by the TSPs that will lead to anti-competitiveness amongst the website/application/platform providers.
- Charge differently for certain types of internet apps [*On-Network terminated calls, as stated in the paper]* over others will break the internet and stifle innovation.
- Differential pricing in the name of providing wider access and connectivity is fallacious, misleading and ambiguous. Such models come at a cost of lowering consumer choice and giving rise to oligopolistic competition. Poor and non internet savvy users will never know the advantages of the internet in its entirety under such limitations. [Pls refer to the Table]

As per research[2] it was reported that harmful forms of price discrimination are eroding the neutrality of the internet. Close to 92 vertically price discriminated zero rated mobile services in OECD countries as of November 2014. Also reported, in OECD 36 mobile operators were zero-rating their own data-hungry mobile video services while 10 operators were zero-rating their own mobile cloud storage services. A German court blocked Deutsche Telekom's similar plans on the basis of consumer protection law.[3] A number of countries—including Japan, Canada, Chile, Norway, Germany, the Netherlands, Finland and Slovenia—have banned these practices.

Hence, IAMAI submits that any pricing mechanism that allows paid or unpaid prioritisation or other discriminatory practices will seriously limit competition, throttle innovation and fundamentally lead to fragmentation of the Internet. Such measures should not be allowed in any case.

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?

Data services cannot be charged with differential pricing [as stated in the answer to Q1], as the positive effects of expanding and accelerating internet access to the unconnected masses will be negated by the various contravening effects that would ensue as a result of this practice.

Question3. 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.

[2] The Digital Fuel Monitor 2014-15, http://www.dfmonitor.eu/downloads/Neelie_Kroes_Specialized_Services_are_a_giant_net_neutrality_loophole_HIGHLIGHTS.pdf
[3] http://webfoundation.org/2015/02

Also, describe the potential benefits and disadvantages associated with such methods/technologies/business models?

Yes, there are various basic models that can provide free/discounted and wider access to the 1 billion unconnected people in India. In India, even though the Mobile adoption landscape is evolving rapidly, the absolute internet penetration is the lowest among the BRIC nations. Besides, India ranks below Sri Lanka and Bhutan, as also acknowledged by TRAI Chairman few months ago.[4] On such grounds, ensuring transparency and preventing differentiated tariff offers in the market is very important for addressing net neutrality concerns. Instead of allowing differential pricing for certain data services over others to provide free and wide access, legitimate and transparent business models can be adopted without breaking the internet or skewing competition. Some examples are given below.

Legitimate Business Models to provide Connectivity without Breaking the Internet or violating principles of net neutrality:

For Large Public Access

- Customer Subsidy Mechanisms**:** Subsidy schemes as adopted under the flagship Government schemes such as MGNREGA could be adopted to provide free data to the customers. Free internet coupons can be given to consumers who will have their own choice to select which apps/websites to use.
- Wholesale Model: TSP/ISP forming partnerships with venue owners so they could propose Wi-Fi networks with a discounted or free model to the end customers. In this model the operator shares the investment costs and revenue with the venue partners.
- Time Based Model**:** The operator offers hourly and daily passes for access to its Wi-Fi network
- Freemium Models: Under this model the service providers can offer managed service for public locations (e.g., coffee shops, hotels, airports, stadiums, railway stations) that want to provide free access to their customers and employees.
- Community Hotspots: This is highly used model in the western countries where the Wi-Fi connections at home hubs enable users to share their Wi-Fi signals with others.
- In Transit Model: There is a demand for Wi-Fi roaming among a broad base of consumers, including those who don't use data at all while roaming for fear of bill shock. Public transport such as Bus, Train and Cabs can be Wi-Fi enabled.
- Bundling Model: Delhi Wi-Fi has adopted the bundling model approach where the government will pay for the actual usage of up to 1GB per month per SIM[5] on actual usage basis or on OPEX. Such free internet usage will be provided in various hot zones, private and government colleges. In transit Wi-Fi in DTC buses and other Public Transport are also planned.

Free Internet as a part of CSR

Lastly, IAMAI suggests that to induce various internet companies to provide free internet packs to the users; the government can introduce this as a part of Corporate Social Responsibility [CSR] activity. The Company Act can be revised to include such services as CSR activities.

[4] http://timesofindia.indiatimes.com/tech/tech-news/Broadband-penetration-India-ranks-behind-Sri-Lanka-Bhutan/articleshow/46959549.cms

[5] http://indianexpress.com/article/cities/delhi/very-soon-1-gb-wifi-free-for-each-sim-a-month/