Response of IT for Change, Bengaluru,

to Telecommunication Regulatory Authority of India's (TRAI)

Consultation Paper on 'Differential Pricing for Data Services'

Before responding to the specific questions 1. 2 and 3, we will like to present an overall rationale and framing of our inputs which can be done as a response to the question 4 which is;

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

(The response to question 4 below is also summarised in a recent op-ed in Deccan Herald, "*So, what could be wrong with free Internet?*")

Internet is a powerful new phenomenon, which renders the issue of its regulation very complex, apart from being an uncharted territory. It can therefore also can be quite confusing, dividing even people and groups who may otherwise have similar interests.

In the circumstances, it is required that regulatory interventions around the Internet are preceded by ***a thorough assessment of the nature of the phenomenon of the Internet, and its role in emerging structures and systems of an information society, or, in this context more aptly called as, a digital network society. The current controversy around net neutrality must trigger such a larger examination by TRAI in the coming months.***

Internet is much more than just a telecommunication system. Traditional telecommunication systems have been a relatively inert and stable layer supporting distance communication, with very little internal differentiation. The typical regulatory issues here therefore have been of inter-connection, universal coverage, quality, and pricing of services. All such issues are relevant to the Internet as well.

Next, ***the Internet is also considered a new form of media***, as the term 'social media' implies. In its 2014 recommendations on 'issues related to media ownership', TRAI did describe the Internet as media. It then made this observation about the Internet, "...the impact of the new media platforms on plurality could be reviewed at a later stage when their penetration becomes deeper and usage substantial". Since, as discussed below, Internet is a key 'design element' in the emerging digital networked social configurations, the issues of plurality of media and Internet must be addressed *now,* before new social designs become too entrenched. The current TRAI consultation paper right employs concepts from media regulation like 'vertical integration' and 'gate-keeping' as being key to Internet regulation as well.

Beyond its role as a telecommunication system and a new form of media, ***Internet has a key constitutive role in the transformations that are currently taking place across all sectors of the society*** from governance, democracy, education, and health, to transport and entertainment, to work, trade and business. (In this regard, it is better to use the composite term 'Internet and its associated digital phenomenon' as the key driver of

transformation. But in this input we will loosely just say 'Internet' in its place.) In this constitutive role in

digital network society transformations, the Internet must provide an even playing field for all actors and activities engaged in these changes. Even the slightest unevenness or deformity in the Internet magnifies into major deformities in the social systems transforming on the top of it, causing both considerable inequities and inefficiencies.

Next to its 'constitutive role', and in part in continuation of it, is ***the role of Internet as the 'people connecting layer' for all new digitally-transformed social systems***. The current early stages of the digital network society suggest a tendency towards increased monopolization in every sector as it becomes digital. The Internet, as the 'people connecting layer' for digital systems, then becomes the all-important 'manoeuvring zone' for people, enabling some degree of resistance to monopolization, allowing interoperability and switch-overs across different options. But if this public connectivity layer can also to be rigged, by selling privileged transit over it, the risk of monopolization and lock-ins by a few corporates over key social sectors gets greatly enhanced.

It is in Internet's such ***dual role, as a constitutive element, and a 'people connecting layer'***, ***with regard to the emerging digital network society paradigm***, that the need to fully protect its net neutrality character is most clearly evident. In this formative stage of a new social paradigm, fiddling with the basic design of the Internet is to compromise the very design of the new social systems. Once, a flaw in Internet's design, like zero or differential pricing, is allowed to take root, it will quickly become a core design element of new digital-social arrangements. At that stage, it will be impossible to recover from it with the new digital social design having become relatively stable and entrenched. It is for this reason that the exigency of protecting the net neutral character of the Internet cannot be met down the line after a greater digital systems maturity has been attained, or by *ex post* interventions. It should be done now, and e*x ante*.

Lastly, regulatory interventions are especially required when the expected market dynamics are too highly loaded in a particular manner which is problematic. It is easy to see that monopoly inclined digital companies, in all sectors, would find it a small price to pay the telcos for a privileged use of the Internet as 'people connecting layer', rather than the consumers paying for connectivity. Telcos also realize that, while the value transiting through their networks with increasing digitalization of society is almost limitless, what they can charge consumers for connectivity has its limits. Instead, charging those who use a privileged transit over their networks to consolidate monopolies, and profiteer from it, is an ever-expanding source of revenue. ***It is so beneficial to all the big economic actors involved, at the expense of the rights and freedom of the people, that the slightest window of ambivalence that may be left in the regulation will be employed to quickly develop new digital social systems models that would then be difficult to reverse.***

It is of course for this reason, for instance, that the telco partners of the Free Basics platform are foregoing revenues in letting their networks to be used for free by the application provider and even allowing the latter to enjoy all the publicity of doing a 'humanitarian act' (while, in fact, Facebook is not the one providing free connectivity). ***This shows how large are the stakes here, and that they pertain to the overall, long-term. model of rent-seeking with regard to the ever-expanding digital social activities.***

In the light of the above framing, we will now respond to the specific questions 1, 2 and 3.

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

No. Price based discrimination for data usage for accessing different websites/ applications/ platforms ***should never be allowed***, in any circumstances. It should not even be allowed for temporary, promotional purposes. If a telco wants to promote its service, it can offer the entire Internet free, if needed, with time and/ or data cap restrictions. The only reason for differential pricing is to open up revenue streams from the content/ applications providers side, which immediately distorts the basic model of the Internet, which distortion will magnify and propagate through all digital social systems, as discussed earlier. I***nternet must always provide all (legal) content and application at exactly the same terms to everyone.*** That is basic to its social role as an egalitarian networking platform, where every actor and node gets treated the same as any other. The slightest compromise in this basic design will be like an interruptible tear that will cut through the fabric of a hoped for digital network society that provides everyone equality of opportunity and formal status.

We must mention here that ***we consider free provision of key public, emergency and other essential services, as determined by the regulator (and regularly revisited) and not a private company – whether a telco or an application provider – not only acceptable but also necessary.*** This must be enforced on all telcos as a licensing condition. After all, as more and more of these services become digital, it is irrational to deny someone an essential public service, or emergency medical help, just because one has run out of one's data pack! TRAI must set up an internal system of assessing and listing such free services and make it compulsory for all telcos to carry them free. To avoid confusion in discussions in this key area, we can employ 'zero rating' as a term only for a situation where selection of free services is made by telcos and not the regulator (a practice which should be fully disallowed). ***Regulator mandated free services can be named with a different term' like 'public and other essential services'.***

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?

Once differential pricing is allowed, no complementing measure will be able to stop the quick slide towards the complete inversion of the Internet's egalitarian model. We will rapidly see emerging new telco and monopoly application/ content providers' business models that would be too potent an economic combination to be able to resisted. These will soon become the dominant models of the Internet, and new social systems will shape around them. Very soon, they will be too entrenched to ever be reversed.

We must remain attuned to the very strong, almost explosive, dynamics at work as Internet shapes new digital social systems. Things that look in control may not remain in control once problematic practices like differential pricing are allowed, even on a tentative basis. Neither can they be controlled through supposed additional cautionary measures nor by *ex post* regulatory interventions. There is a basic systemic design issue at stake here.

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?

Internet is being referred to as a human right in many global discussions, and is being considered as such legally in some countries. Basic connectivity is the very foundation of 'Digital India'. There can be no 'Digital India' without universal connectivity of sufficient quality. Everyone therefore should be connected by Internet, whether one can afford it or not. Apart from the social considerations, there are such huge externalities of universal connectivity that it makes eminent economic sense as well. ***Every citizen should be provided a basic minimum data quota, as set by the regulator, and mandated through licensing conditions on telcos.*** Government may think of initially offsetting some of the revenue losses through USO Funds. However, as per telcos own logic in pushing zero-rated services, citizens that get free data quota are expected to keep aspiring for higher data usage and better data services and thus such a practice of 'free data quota' will only bring more revenue for them in the long term.

Meanwhile, government of India must leverage its National Optic Fibre Network, which should be handed over to local self governance bodies to run the last mile – over both wired and wifi models. These bodies may license local private operators – like the cable operator model – to retail connectivity but with the condition of free supply to community institutions like school, hospital, anganwadi, etc, ***and a basic free data quota for all***.

There is no alternative to wired, optic fibre connectivity, supported by local wifi networks, to address the issue of universal connectivity of a sufficient quality for all. Mobile operators must also offload to wifi connectivity wherever possible.