

THE TELECOM REGULATORY AUTHORITY OF INDIA
PRESS RELEASE NO.70/2015
CONSULTATION PAPER ON DIFFERENTIAL PRICING FOR DATA SERVICES
NEW DELHI-09.12.2015

Introduction

The consultation paper on “Differential Pricing for Data Services” hereinafter referred to as the (**“Consultation Paper”**) released by the Telecom Regulatory Authority of India, (**“TRAI”**), on 09.12.2015 has been mistakenly reported and promoted by the media as a paper on Net Neutrality. While, it is true that this paper plays a defining role in taking forward the principle of “Net Neutrality” which has been the most debated topic in the year 2015-2016, it must be remembered that the principle of “Net Neutrality” would be unattainable if reviewed in isolation. To ensure Net Neutrality prevails there must be:

- A neutral pricing or tariff mechanism in place which currently is directly handled by the TRAI.
- Amendment to the relevant legislations as the Indian Telegraph Act, 1885 which would need to include and define the term Over the Top Services (**“OTTs”**) in order to bring them within the realm of the Central Government.
- There must be an amendment in the Unified License (**“UL”**) to incorporate all the tenets of Net Neutrality applicable to the Telecom Service Providers (**“TSPs”**) and Internet Service Providers (**“ISPs”**).

All this while, the debate on the topic of Net Neutrality has drawn extreme or rather absolute responses. The Internet forms the fundamental basis of our society, that apart, the debate on Net Neutrality is important to us because any discussion on the future of internet would bring out the volatility on the future of communication, innovation, culture and speech. All apprehensions, that the Government and the Telecom Service Providers are hell bent on changing the way we use or have known the Internet is certainly legitimate. Our past experiences with the Telecom Sector in India have left us with very little faith both, on the Government as well as the TSPs.

We believe that:

1. Telecom Service Providers/ Internet Service Providers (TSPs/ISPs) want to control the internet.
2. TSPs/ISPs would like to control what we access over the internet and would ideally move towards monopolising access to the internet.
3. Certain websites would be readily available, while the others would struggle and die down.

4. Innovators will stop innovating new applications.
5. Internet will be divided, we will be charged for accessing different websites, applications, attaching files etc.
6. Competition in the market would die down, all our innovators will have no incentive to innovate and make India the most promising market in the world.
7. Everything for us will change, the way we know or use the internet.
8. Digital India will remain a “Digital Dream”.

The above is not a meticulous list on the “Evils of Net Neutrality”, it is just indicative one. The only point that I am trying to drive home is; please do not stop believing that, India can be the “largest” and the best “Testing Ground”, for Net Neutrality. We should not underestimate the power of a nation that witnessed a 49% jump on the number of people connected to the internet in matter of a year, while struggling for food, water, pollution, shelter, corruption, governance and other basics that make “Connectivity” a privilege, and not a “Necessity” for us.

Keeping this mind, below are a few Responses to the Consultation Paper. The responses below in no way, suggest or imply that Net Neutrality is not important for India, it only tries to explore responses that go beyond an absolute ‘No’ or an absolute ‘Yes’.

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

Response I: TSPs should not be allowed to apply differential pricing for data usage, accessing different websites, applications or platforms.

In the entire debate on Net Neutrality, the terms, ‘zero’ and ‘free’ have been the most dreaded terms. Airtel faced public backlash and hatred with its ‘Airtel Zero’, Facebook has been making statements justifying its services ‘Free Basics’ ever since it contemplated launching in India.

Zero-rated plans as Promotional Offers- A large number of ‘Netizens’, aggressively pursuing the debate on Net Neutrality would be surprised to know that the Internet is provided by telecommunications companies which is a investment oriented and highly regulated sector. The Government i.e the Department of Telecommunications (DoT) decides on who provides ‘telecommunication’ services thus regulating who provides us with ‘Internet’. The TRAI controls how these telecommunication services are tariffed (which includes how internet

services are priced), through various pricing mechanism, the TRAI determines the different services that may be offered in the market and how they may be offered. Under the various regulations/directions issued by the TRAI through the Telecom Tariff Order, 1999 there is a special mention of 'Promotional Offers' which allows telecom companies to offer various services that they deem fit to their consumers/subscribers for a limited period of 90 days (ninety). Such offers are subject to the TRAI's approval which is based on careful considerations of the parameters set out in the Consultation paper i.e plans should be transparent, reported, non-discriminatory *vis a vis* their consumers (the principle of non discrimination as mentioned here has nothing to do with Net Neutrality, the term non discrimination mentioned in the Telecom Tariff Order, 1999 means, non discrimination among subscribers. For example: as an Airtel customer, if I wish to subscribe to the Promotional Offer, I cannot be denied of the same as against another Airtel customer who subscribed for the same services.) Zero-rated plans should be given an opportunity to be tested for a period of 90 (ninety) days under the current legal framework.

While I agree that access to the internet should be "Open", "Free" and "Full", the way it is today. This idea of Open, Free and Full would not make much sense to a Farmer who has never had access to the internet. Zero-rated plans can be offered as hand-holding basic plans that could serve as an effective guide, first time users into the world of 'Internet'.

Non discrimination: Paragraph 9, @ pg 4 of the Consultation Paper mentions that the key principles for Tariff orders issued by the TRAI are non-discrimination and transparency. Both these principles today apply to Telecom Companies in relation to the Subscribers. This essentially means that TSPs and ISPs cannot discriminate in offering their services among classes of subscribers. This principle is not applicable to a Facebook, Google, Twitter etc. In the absence of clarity under the current regulatory framework a Content Provider can tie-up with a Telecom company to provide any form of service as they like. However, the telecom company would be bound to provide the service to all their Customers/Subscribers without discrimination. Developing regulations focussed at the right direction is essential today. However, it's unfortunate that we are fighting issues based on presumptions and assumptions.

Conclusion: give Zero-rating a chance. Let India be the testing ground.

Query II: 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?

Response II: If Zero-rated plans are adopted for a limited period of time. Listed below are few things that the TRAI must consider through its various directions and orders issued under the Telecom Tariff Order, 1999 (“TTO”);

1. Under the present legal framework all the regulations with respect to the Telecommunications sector, specifically govern the relationship between the TSP and its Subscribers. ¹Under the current framework the TRAI makes it mandatory for Telecom Service Providers to report different tariffs, not discriminate between classes and categories of subscribers, and report their plans in a transparent manner to their subscribers, refrain from over charging their subscribers by setting a tariff ceiling on certain classes of services while maintaining forbearance.

2. The current regulations would need to extend to include Content Providers to adhere to the principles of transparency, competition, non-discrimination, innovation etc.

Illustration: If Airtel, would like to launch a zero rated application in the market. TRAI should develop regulations that make it mandatory for the Application Provider/ Content Provider to maintain the principles of transparency, reason, benefits, non-discrimination, accountability, reporting and non-discrimination. Thus, giving Consumers/Subscribers a choice to make an informed decision while ensuring that the Regulator ensures it maintains the basic principles of transparency, accountability, competition etc. as mentioned above.

Query III: 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?

Response III: Permit zero-rated plans on a trial basis as described above.

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

Response IV: Please consider for first time internet users Zero-rated applications that specifically provide access to information, news, education, health and other basic services may be an essential guide. While a free and open Internet is what we would like to have eventually, but baby

¹ Please see the Directions issued by TRAI since the original Telecom Tariff Orders, 1999
http://www.trai.gov.in/content/VerReg/97_0_2.aspx

steps towards progress will prevent misuse and help realise the power and potential of the Internet. Most Net Neutrality proponents believe zero-rated plans limit exposure, while this is absolutely true, but it is not reason enough to stop such plans even before testing it.

Suggestions as Cash-Backs and Coupons are feasible options. Also, the suggestions for providing free 250 MB -350 MB of free 2G or 3G data are a very good. However, in light of the above, if we take a step back to analyse how much sense would it make to a first time internet user who works as a farmer by the day to get free access to limited data? What would he do, he is not a man who knows Google/Firefox/the internet explorer.

Disclaimer: The opinions expressed in the Opinion above are the personal opinions of the author.