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Response to TRAI Consultation Paper on

**Differential Pricing for Data
Services**

**Consultation Paper No. 8/2015
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I. Introduction

Issues concerning Differential Pricing for Data Services need careful consideration because of their possible impact on Net Neutrality. The importance of preserving Net Neutrality was clearly brought out in our response to the TRAI consultation paper on Regulation of OTT Players in April, 2015. Our response to that paper may therefore be taken as an integral part of this response. For convenience of reference, it is annexed to this response. At the outset therefore, we reiterate the characteristics of Net Neutrality set out in that response.

Excerpt from NASSCOM submission to TRAI in April 2015 - In response to OTT consultation paper

Net Neutrality in our view should be characterized by the following attributes

- 1** User to have the unfettered right of making an informed choice in deciding content / services to access
 - 2** No discretion to TSPs to censor or block access to any legal content, applications, services, or non-harmful devices or determine how users use internet
 - 3** No right of TSPs to throttle lawful internet traffic on the basis of content, applications, services or non-harmful devices. In fact, opening of the content of transmissions other than when required under laid down legal processes, is illegal.
 - 4** No right of TSPs to speed-up / favour lawful internet traffic over other lawful traffic in exchange for consideration of any kind¹
 - 5** Critical that there be a level playing field for all Internet platforms and services including particularly entrepreneurial start-ups so that they are not squeezed out by either TSPs or large/global Internet Platforms and Service providers through anti-competitive tie-ups or practices
 - 6** Prioritization of Emergency or any other services as prescribed by the regulator accompanied by public declaration and without price discrimination
 - 7** Clear and declared definition of acceptable technical practices by TSPs for management of network traffic in conformity with above principles
 - 8** No double dipping by Telecom Service Providers. Charges would be levied only from end customers based on data consumption and not from Internet Platforms and Applications
 - 9** Security restrictions as required for ensuring reliable services and lawful demand of security agencies.
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¹ Commercial or non-commercial gains

A sustainable and fair pricing plan should abide by the following:

- *Pricing should not be used as an entry barrier/ enabler against competing Internet Platforms and Services, by ISPs that provide substitute services.*
- *Data plans offered by telecom companies to the consumer has to be neutral between their own and competing Internet Platforms and Services*

In continuation of our previous submission, we therefore maintain that TSPs should not be allowed to don the role of gatekeepers and use tariff plans to decide what users should access.

We appreciate the reiteration of the core principles of Net Neutrality in this Consultation Paper. We believe that the principles indicated by us in our earlier response and by TRAI in this paper should not be compromised. We advocate application of these principles to the Indian context.

Presently, India is characterized by low Internet penetration and even lower broadband penetration. Even where connectivity is available, reliability of power supply affects availability. Additionally there are challenges of low levels of digital literacy and limited local language support/ content in a country wherein less than 10% of the population speak English.

Proliferation of socially and locally relevant content and services is still at an early stage of evolution even though e-commerce has spread fairly rapidly. These monumental challenges lead to the conclusion that continuous innovation, both in technology solutions and business models is an essential ingredient of any solution to these daunting challenges. Hence the need to preserve a conducive environment for continuous innovation is a critical national priority.

At the same time, business models and innovations that enhance access or affordability without violating the principles of Net Neutrality listed should not be barred. Equally, faster proliferation of access or enhancing affordability should not come at the cost of constraining the innovation eco-system/ environment even marginally. The Government's initiatives towards Start up India, Stand up India are important efforts to promote innovation in the country. Given the obvious need for collective, concerted and focused efforts to enable/ incentivize relevant content, services, access and overcome the digital divide, it is also important that subject to the overriding priority of not constraining innovation or violating Net Neutrality principles, the regulator should, where warranted, mandate/ allow differential pricing for certain types/ classes of services that are deemed by the regulator to be in public interest.

Parameters based on technical aspects of the network connection maybe used to offer different enabling tariff models as is in vogue today -

- Time (e.g. price per minute varies between day and night or workday and weekend) - Subscribers are offered incentives, such as better QoS or discounts, when they use mobile data at specific times or locations when the network is typically underutilized. The mobile service provider benefits by subscribers using capacity that would otherwise be wasted. This network optimization might also slow a provider's need to grow network capacity.
- Bandwidth - Quality of service (QoS)-based offers in real time. Subscribers pay more on a monthly or per-use basis to receive a higher QoS or better speed than the average user e.g. additional speed for a certain amount of time or application-based QoS.
- Volume (e.g. price per Megabyte) or capacity based

We believe that the regulator has an important role as innovative services and products are introduced, including innovation in pricing and business models.

II. Response to Questions posed by TRAI consultation paper**Question 1**

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

Based on the criteria of Net Neutrality outlined by NASSCOM - *No discretion to TSPs to censor or block access to any legal content, applications, services, or non-harmful devices or determine how users use internet* - as well as the principles outlined in the Consultation Paper, we oppose any model where TSPs have a say or discretion to choose content that is made available at favourable rates, speed etc. TSPs should not be allowed to price different kinds of services differently, for example higher prices for video streaming, accessing ecommerce website etc., thereby segmenting the Internet. These cardinal principles remain applicable even in cases where differential pricing is proposed in partnership with a platform provider. Any differential pricing for a priority set of services that are deemed to be in public interest, eg. Emergency services, TSPs own maintenance/billing services, wi-fi hotspots, etc. should be offered only on the basis of explicit directives/ approvals of the regulation.

Question 2

If differential pricing for data usage is permitted, what measures should be adopted to ensure that the principles of nondiscrimination, transparency, affordable internet access, competition and market entry and innovation are addressed?

In India, low cost solutions are a key focus area for India in diverse technology fields. This is also true for telecom and data services, where from a consumer perspective, affordability is important, and much development effort and innovation is targeted towards this objective.

Given the undeniable imperative for collective, concerted and focused efforts to enable/ incentivize relevant content, services, access to overcome the digital divide, it is important that subject to the overriding priority of not constraining innovation and not violating Net Neutrality principles, the regulator should be empowered, such that where and when warranted, they can mandate/ allow differential pricing for certain types/ classes of services that are deemed by the regulator to be in public interest. This could include for example emergency and essential citizen services. TSPs own maintenance/ billing services, wi-fi hotspots, etc. may also be offered with lower rates / nil rates only on the basis of explicit directives/ approvals of the regulator.

Based on recent debates globally, it is important that any differential pricing proposals by TSPs² or TSPs and their partners are evaluated carefully by the regulator, *prior to launch*, to ensure net neutrality is maintained. The regulator will therefore need to play a key role in evaluating such programs even if they are projected to enable increased access or any other such socially desirable end. All such programs should abide by the basic principles of net neutrality. Such programs should not discriminate between content providers thereby leading to or enabling anti-competitive behavior. It is also critical that such differential pricing should not become a tool that facilitates market dominance or enables anti-competitive behavior by either TSP or platform provider or result in direct or indirect commercial benefit including by leveraging the value of customer data that gets generated in the process. This is particularly important in the Indian context, wherein the absence of a privacy law, enables widespread abuse/ misuse of such information for commercial gain.

If differential pricing is permitted by the regulator in the larger public interest in response to a request by the service provider(s), the onus of proving the larger public good should be on the TSP and its partners, if any and subject to a wider public consultation by the regulator before arriving at a final decision. Further, even after approval, a suitable oversight mechanism, either by the regulator directly, or through regulator designated, independent third party not-for-profit entities would be desirable to avoid misuse/ expansion of any authorization given.

We therefore recommend independent not for profit entities with independent Boards, that could own and manage such differential pricing programmes that are deemed to be in the public interest and philanthropic in nature and they should be an integral part of the proposal to the regulator for approval. Such not for profit entities may be allowed to raise funds from multiple sources including TSP / platform provider. All contributions to these not for profit entities should be eligible to be counted as a part of CSR contribution as mandated by Companies Act.

With many TSPs themselves offering different apps, competing products and services differential pricing where rates are lower for select service providers within a class of services will lead to anticompetitive behavior. The same apprehensions are valid in case of collaborative partner services. Therefore, lower prices for own or partner content/ service should be explicitly disallowed, lower prices in exchange of consideration received from the partner content/service provider should not be allowed, except for the purpose of short term business promotions that have explicit time duration not exceeding 3 months.

Differential pricing may lead to anti-competitive behavior or preferential access that can act as a barrier to new entrants. Further, creating walled Internet with select services and content can also potentially drive up the cost of the internet outside of the set of select services/ content / products.

We are therefore unequivocally against any plan where there is any sort of commercial consideration from any content / app provider in order to be included in any in any plan that has a walled garden. We are also opposed to any plan that creates a walled garden that could potentially unfairly discriminate against certain apps, content providers.

² TRAI has regulatory mandate on TSPs only

Further, conformance to norms of data privacy as well as full disclosure of terms and conditions including creating awareness of all implications should be required.

Therefore tariff plans that offer concessional rates with the specific purpose of greater social good such as increasing access should require prior approval of the regulator, even if they are non-commercial in nature and are stated to abide by basic tenets of Net Neutrality as outlined by the TRAI. Full justification including details of the terms and conditions and how these map onto the principles of net neutrality as stated by TRAI in the discussion paper would be essential. As a standard practice, public consultations maybe initiated on the specifics of any plan, before a regulator decision is made. TRAI would need to check data tariff plans for consistency with various regulatory principles/guidelines, which include the following:

- *Non-Discriminatory*
- *Transparency*
- *Not Anti-competitive*
- *Non-Predatory*
- *Non-Ambiguous*
- *Not Misleading*

In summary, we propose mandatory prior approvals by the regulator, and sharing of periodic information on tariff plans that seek to price lower or zero rate services and content under. These programs should abide by the principles of net neutrality.

Differential pricing plans and options should be an exception rather than the rule, including those positioned to address the difficult problem of getting more and more people online in India without compromising on the principles of Net Neutrality.

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?

Instead of prioritizing differential pricing for select data services for wide access, legitimate and transparent business models should be adopted without segmenting the internet or skewing competition.

Some examples are already quoted in the paper. Government is offering hot spots and free WIFI in various public spaces. Similar models can be adopted by companies who wish to work towards increasing access to internet usage and this maybe proposed to be counted under the CSR mandate of corporates as governed by the Companies Act in India. For example, corporates can come together to bridge the digital divide through training, distribution of bandwidth amongst first time users etc. maybe considered, where neither content / service provides nor TSPs have a role to play. Suggested models

1. **Free data access by TSPs, Content and Service providers:** Free data is provided to the customers without any stipulations thereby offering to the customers, choice to select which apps/websites to use. This could be done through coupons, that maybe issued by the TSPs or service / content providers but do not have any stipulations or restrictions on how it should be used. Under this model 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. Similarly content / service providers can offer discount coupons for data access to their customers.
2. **Government offers free data:** An example is the proposed initiative of the Delhi Government that is offering free internet access subject to cap on data used / day or month. This could be through identified wifi zones.
3. **Corporates channelize their efforts towards digital literacy and access:** While many corporates are investing in digital literacy programs today, corporates maybe encouraged to consider developing programs whereby they invest and cover opex cost to offer free/ discounted data to the uninitiated, without any stipulations on usage. This can be done in partnership with TSPs. *E.g. Public transport such as Bus, Train and Cabs can be Wi-Fi enabled. The time available during travel and commute can therefore be used to explore and access. This can be done as a part of their CSR initiative³ or otherwise.*
4. **Time based models (e.g. price per minute varies between day and night or workday and weekend) -** Subscribers are offered incentives, such as better QoS or discounts, when

³ As mandated in the Companies Act in India, and therefore there is need to provide for it in the Companies Act.

they use mobile data at specific times or locations when the network is typically underutilized. The mobile service provider benefits by subscribers using capacity that would otherwise be wasted. This network optimization might also slow a provider's need to grow network capacity.

Therefore zero rating is not and should not be the only model to achieve the larger goal of increased access and utility of the Internet in India.

Question 4

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

From a customer perspective, zero rate access to TSPs billing portals and online help functions is much desired. No one wants to pay for such services and information. The differential pricing norms should not make such services expensive.

Any tariff plan of the telecom service provider should ensure

1. Innovation without permissions
2. Data charges that are application agnostic
3. Customer has the unfettered right to choose

One other aspect is that in the present day context, the commercial value of user information is an important parameter. In that context, differential tariff plans can exploit this value in direct and indirect ways. The lack of a privacy law in the country is a concern here, since such a law would have circumscribed the legitimate use of such user generated and privileged information. In the absence of such a law, it is all the more important that differential pricing plans are vetted carefully by the regulator.