

**Reliance Communications Limited's Response to the Consultation Paper on  
Differential Pricing for Data Services**

**Executive Summary**

- A. **Data tariffs be kept under forbearance permitting the TSPs to price their data services as per the market dynamics.**
- B. **The Authority should allow the offering of differential pricings within the scope of the existing regulations itself.**
- C. **Imposition of any further regulations on data services will only distort the market and could be to the detriment of the end users.**
- D. **It is imperative that TRAI takes a balanced approach towards differential pricing regime and ensures that the TSPs innovations for serving the larger good is not ignored.**
- E. **At no point is a TSP in a position to impose its will on the consumer and hence, the contention that the TSPs will indulge in selective disincentivized access is unfounded.**
- F. **Pay for use principle actually leads to more value for money for the consumer, whereas in the absence of discounted rates all subscribers pay at standard rate despite accessing only a limited set of websites / applications.**
- G. **TSPs should have the freedom of developing and promoting their own websites / apps as a value add to their services on their own network.. It is felt that the same should be permitted as a legal business practice.**
- H. **Just as voice and SMS services are considered as bearer services and have toll free services provisioned through them, data services too should be construed as bearer services and should be permitted to provisioned toll free services e.g. access to TSPs website for services such as down loading / payment of bills or registering of complaints, weather report, passport application status, railway enquiry, flight enquiry etc. without the requirement of explicit consent of the consumer.**
- I. **'Differential Pricing' cannot be construed as 'Gate Keeping'; these two are totally different and the apprehension about TSPs employing differential pricing as a 'gatekeeping tool' is incorrect and unfounded and the same should not be considered even as 'Theoretical'.**
- J. **TRAI is empowered to examine the reported tariffs and take suitable action if the tariffs are against the principles of non-discrimination, transparency, predatory, vertical squeeze etc.**
- K. **TRAI therefore should persevere with its existing policy of forbearance which affords the flexibility of introducing innovative methods of aiding proliferation of data services.**
- L. **There are already available mechanism in the existing regulations of the Authority by which the principles of transparency, non-discrimination etc. can be taken care of. Imposing further regulations will not only hamper the growth of the data services but also put the subscribers in loss. Hence, we request the Authority to allow the TSPs to continue with their data tariff offerings based on the market dynamics and innovations.**

## Preamble

1. Within the first license cycle of the Indian telecom Industry, it has witnessed an exponential growth leading to a subscriber base which is about to breach the billion mark. This phenomenal growth has been possible due to the existence of a progressive regulatory regime and promulgation of balanced policies which aided in creation of an environment conducive for the operators and the subscribers alike.
2. The competitive intensity in the telecom industry in India is one of the highest in the world and has led to offering of services to the customers at very reasonable tariffs. The increasing adoption of data services is now encouraging the operators to compete with each other and innovate with their data product offerings, as per their consumers' usage pattern to create more value for their money for them.
3. Recognising the existence of adequate competition in the Indian Telecom industry, TRAI, initiated its 33<sup>rd</sup> amendment to telecommunication Tariff Order, dated 8<sup>th</sup> December, 2004, thus,

*“...Evidence on trends in retail tariff published by the Authority suggests that there is intense competition in the mobile service segment. Further, with the unified access regime already in place and with unified licensing regime on the anvil and the Authority having forborne the retail tariff in general, the concerns relating to inadequate competition have substantially abated....”*

4. Having envisaged the intensity of the competition in the telecom market TRAI adopted the policy for keeping the tariffs at forbearance, even for data services, allowing the market to be driven by the competition. Ever since, this policy of forbearance has resulted in cheaper data tariffs to the subscribers. To illustrate, even if we take minimum rack rate of 2Paisa / 10KB, or 2 Rs / MB, then the consumer has to spend 400 Rs for its average monthly consumption of 200 MB for OTT services like FB / Twitter / Whatsapp etc, wherein the same is being provided in the 30 Rs pack by TSPs. Thus, any intervention to stop these discounted tariffs, will not only disrupt the innovation / packaging, but would be against consumer's benefit.
5. The faith that TRAI has reposed in the Indian Telecom Industry by allowing differential pricing for telecom services has been proven to be in the best interest of the consumers as the industry has lived upto its responsibility of pricing its services as per the principles of being reasonable, transparent, non-discriminatory, non-ambiguous, not anti-competition, not predatory and not misleading, defined by TRAI. Persevering with its earlier decision, TRAI should continue permitting differential pricing in data services rather than taking the regressive step of regulating the tariff for the data services.
6. Our specific comments on the issues posed by the Authority are given in the subsequent paragraphs.

## Detailed Response

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

### Our Response

**Yes. The TSPs should be allowed to have differential pricing for data usage for accessing different websites, applications or platforms.**

1. **Tariff Forbearance.** The Authority's decision to keep tariffs under forbearance in the year 2002 and 2003, was indeed the tonic that contributed towards the superlative growth of the

Indian Telecom market by not only keeping the tariffs in check but also keeping them highly affordable. **The resultant increased intensity of competition, that forbearance of tariffs introduced, created innovative products in the market wherein operators were able to provide variety of tariffs to the consumers keeping in mind the interest and usage pattern of the consumers. In the last 3-4 years, there has been a manifold increased in the usage of data services wherein consumers require the same innovation and customised data services as has been offered for voice services. Thus, it is highly recommended that Authority should continue with its time tested principle of forbearance for data services, the end beneficiary of which would be the consumer. Any intervention at this time would not let the fruit of data services to get matured and would defeat the Govt. own vision for increasing the broadband adoption in the Country.**

2. **Apprehensions / concerns expressed by TRAI for differential pricing.**

- a. The Authority's apprehension that *"TSPs could come up with differentiated tariff offers wherein they disincentivize access to certain websites by putting higher tariffs for accessing them"*. We would like to submit that TSPs provide either standard tariffs or discounted rate and all these tariff plans are offered to all the consumers of the TSP, without any discrimination. These are also open to all type of website / application in a non-discriminatory manner. It is brought out that the Telecom services products including data services are based on consumer's choice and are as per the market dynamics, wherein the TSPs are only offering the customised services. **At no point is a TSP in a position to impose its will on the consumer and hence, the contention that the TSPs will indulge in selective disincentivized access is unfounded.**
- b. TRAI has opined *"differential tariffs results in 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)"*. It is submitted that internet is an ocean of content and most of the subscribers access a limited number of sites based on their preferences. Introduction of products based on the preferences of consumers is to their benefit as they pay for what they use most. These are similar to STVs / combo packs wherein TSPs offers different tariffs for the call or data charges at reduced rate or get a particular amount of data or voice quota against the STVs / combo packs. Since the Authority in the consumer interest has already allowed these STVs/rate cutters/toll free services/discounted tariffs in night calling/discounted data from BSNL wireline services, there should not be any objection for discounted/differential data tariffs packs provided to the consumers for their customised needs. This is similar to the DTH industry wherein TRAI has allowed packaging of various channels wherein consumers also have a choice to avail these channels in a-la-carte format, although the package is offering all these channels at a much cheaper rate compared to their a-la-carte value. It is the pricing innovation which drives the market and operators should have the flexibility to innovate the pricing of their services as per the consumer's desire. Authority may note that fact that **the pay for use principle actually leads to more value for money for the consumer, whereas in the absence of discounted rates all subscribers pay at standard rate despite accessing only a limited set of websites / applications.**
- c. TRAI's contention that the content providers may have difficulty in attracting users if substitutes exist for free. As per TRAI, *"this may thus, create entry barriers and non-level*

*playing field for these players stifling innovation*” It is submitted that the content on the internet is popular solely on its ability to appeal to the masses. The internet is replete with examples of start-ups having taken on goliaths viz., Google usurped yahoo as the preferred search engine, Facebook has succeeded against Orkut, WhatsApp proved better than Facebook Messenger and presently, Telegram is proving to be a formidable competitor to WhatsApp. Therefore, **the contention that such products create entry barriers is unfounded.** Authority may note that any intervention for such services would stifle the growth of data services and innovation in the market wherein various start ups and existing business units are eyeing on such services for their business growth. For example, banks have started using Apps provided at negligible data cost as a replica/substitute of customers stepping in banks at a much larger cost to them.

- d. Another contention of TRAI that the “*TSPs may start promoting their own websites / apps / services platforms by giving lower rates for accessing them*” viz-a-viz other TSPs”; It is submitted that the TRAI concern seems uncalled for. In order to promote their services, TSPs provide handsets to their subscribers bundled with their tariff plans. However, the same tariff plans are also made available to all their other subscribers who do not take the bundled handset. Such promotions do benefit the customer purchasing the services bundled with the handset than otherwise. Similarly, **TSPs should have the freedom of developing and promoting their own websites / apps as a value add to their services on their own It is felt that the same should be permitted as a legal business practice.** At this stage, any regulation on operator's flexibility to drive innovation led internet adoption, in which pricing will play an important role, will only stifle country's digital growth. Cheaper data services will only ensure customer adoption, and competitive dynamics will ensure that operators will not charge high prices. Moreover, **TRAI is empowered to examine the reported tariffs and take suitable action if the tariffs are against the principles of non-discrimination, transparency, predatory, vertical squeeze etc.**
- e. **Free Access.** In this digital age, consumers prefer to access their tweeter and Facebook posts the first thing in the morning. Voice is considered as yesterdays' service and most innovations are occurring in data services. Today's consumers like to access services such as railway enquiry, status of passport, etc through the internet even though they are accessible through toll free voice service. Therefore, it would be in consumer's interest if a TSP decides to provision the access to such services like weather report, passport application status, railway enquiry, flight enquiry etc. **free of charge irrespective of their plans. Additionally, if a TSP decides to provide the access to its own website at no cost to its subscribers, especially for services such as down loading / payment of bills or registering of complaints, we see no reason why the same should not be permitted or why should it be considered as an exception of differential pricing which could lead to distortion of the markets?** It is submitted that TRAI is enabler of digitization and e-governance to people of India. The regulation of differential tariff should be enabling and not disabling TSP's freedom. Hence, **is it suggested that just as voice and SMS services are considered as bearer services and have toll free services provisioned through them, data services too should be construed as bearer services and should be permitted to provisioned toll free services e.g. access to TSPs website for services such as down loading / payment of bills or registering of complaints, weather report, passport application status, railway enquiry, flight enquiry etc. without the requirement of explicit consent of the consumer.**

- f. In fact the success of the programs like “Digital India”, are solely dependent on the rate of adoption of data services by the Diaspora. **Facilitation of free trials and testing of the data services would eventually result in increasing subscription to data services and not denial of access.** The concern that discounted / free data access could serve as a means to “*create entry barriers and non-level playing field for these players stifling innovation*” are misplaced as despite the existence of differential pricing regime these apprehensions have remained unsubstantiated. Albeit, **the industry has witnessed a very positive impact of such regulatory framework and the end users have been the ultimate beneficiary of such a framework. Such products are purely a price based product differentiation from the competition and should be construed as a normal product offering business strategy from the TSP.**
- g. **Gatekeeping.** We would like to highlight that ‘Differential Pricing’ cannot be construed as ‘Gate Keeping’; these two are totally different. In a mature and highly competitive telecom market as India, a TSP indulging in selective access practices would lead to preclusion of certain set of subscribers from its subscriber base, which the TSPs can ill afford. It is submitted that regulating a presumptive scenario, instead of aiding the growth of the data services proliferation, would in all likelihood prove to be prohibitive. As brought out earlier, it is the customer whose preferences define the products of TSPs and in no way can a TSP impose his will (which should not be termed as Gatekeeping) on the consumers. It is in TSPs business interest to facilitate a consumer to exercise his choice and provide the freedom to the consumer to decide what *he wants to access, from where he wants to access and on the device he wants to access.* Therefore, it is felt that the apprehension about TSPs employing differential pricing as a ‘gatekeeping tool’ is incorrect and unfounded and the same should not be considered even as ‘Theoretical’.
3. It is further submitted that TRAI can mandate that the data tariff charged to customers for any specific app/platform service should not cross the data tariff applicable to the subscriber. Any service which is being free or charged to the customer lower than the data tariff applicable to the customer should be kept under forbearance. This will ensure that TSPs do not charge customers higher tariff for any specific app/platform while allowing flexibility to TSPs to drive internet penetration through various innovative products & services. **Price Differentiation – a legitimate business practice.** Success in business is all about the ability to attract customers / consumers to buy the goods / services sold by the individual or an organization. Price differentiation is one of the innovations that businesses employ for attracting the buyer / consumer. The market place has plethora of examples, wherein the same services are priced differentially with the sole purpose of attracting the buyer / the consumer. Some of these examples are as given below,
- a. Differential prices for the same seat, in the same flight, to the same destination, under the same taxation conditions are employed by the air transportation services provider to ensure capacity utilization.
- b. Differential prices for the same room, in the same hotel, in the same place, at the same instance, under the same taxation conditions are employed by the hospitality services provider to ensure capacity utilization.
- c. Differential Sale discount percentage on the same product(s) is made available, at the same instant, over different e-commerce sites under same taxation conditions.

- d. Differential pricing being offered for various services if availed in bulk or otherwise.
4. Therefore, **TSPs too should be permitted to use price based differentiation of products as being a legitimate business practice.**

### **Our Recommendations**

5. In a clearly competitive market there is no plausible reason to regulate the packaging and pricing of products and services. TRAI has always voiced the requirement of light touch regulations and wherever possible the same has been acted by the Authority. Any conditional provisions / intervention at the pricing and packaging of products will go against the principle of forbearance and will be seen as a paradox situation where with increase in competition, market is moving from forbearance to regulations hence, **it is recommended that, the data tariffs be kept under forbearance permitting the TSPs to price their data services as per the market dynamics.**

**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?**

### **Our Response**

**Existing regulatory framework along with the reporting requirement of tariffs is considered to be adequate for ensuring adherence to the principles of non-discrimination, transparency, affordable internet access, competition and innovation in the market.**

Market is working smoothly, driven by competition and product innovation, under the existing regulatory regime. Stakeholders are working in consensus in this eco system and any alteration in this framework will only hamper the growth of the data services. Offering of differential pricing for data usage is well under the ambit of the current regulations. Further, any product / service offers by the TSPs to the subscribers are required to be reported to TRAI as per the Reporting Requirement. TRAI is empowered to examine such tariffs and if these tariffs are in violation of any of the above stated principles, TRAI can always direct the TSP to withdraw such tariffs. Hence, we believe that there is no necessity of imposing further regulations on the offerings of the TSPs.

### **Our Recommendations**

It is recommended that for ensuring that the principles of non-discrimination, transparency, affordable internet access, competition and market entry and innovation are addressed,

- a. **The Authority should allow the offering of differential pricings within the scope of the existing regulations itself.**
- b. **Imposition of any further regulations will only distort the market and could be to the detriment of the end users.**

**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?**

### **Our Response**

**Yes, there are alternative methods / technologies / business models, other than differentiated tariff plans, that are available to achieve the objective of providing free internet access to the consumers and the industry is already exploiting them.**

1. It is brought that both the alternative methods suggested by the TRAI are already being offered by the TSPs and websites viz,

- a. TRAI has rightly observed that *“the TSP could provide initial data consumption for free, without limiting it to any particular content. Current examples of this approach include allowing free browsing or discounted tariffs for specified time windows, or giving away a certain amount of data daily for free”*. Such initiatives have been adopted by the TSPs to decrease the digital divide between the connected and the unconnected.
  - b. Even the other suggestion by TRAI that of *“promoting access through the Internet could be initiated by the content providers wherein they could reimburse the cost of browsing or download to the customers directly irrespective of which TSP he / she has used to visit the website”*, is already being offered by the websites (such as Freerecharge, PayTM, etc) to their subscribers. It is brought out that various businesses promote the use of web / apps for accessing their services by providing freebies in various forms such as HDFC promotes the use of web by providing privilege points on use of its cards online, Food Panda provides additional discounts on food ordered through its app, etc. It is pointed out that such mechanisms of attracting web access are provided to the customers who already have web access and are initiated to data services. However, for initiating the uninitiated, it is imperative that facility for access itself is provisioned without charges so that a seed can be sown by showcasing the utility of the data services.
2. However, it is brought out that such initiatives are limited in achieving the stated goal of enticing the unconnected subscribers to subscribe to the data plans due to the regulatory requirements of getting explicit consent of the consumer before activation of the data services.
  3. Some additional pitfalls with these initiatives are that,
    - a. They are subject to the subscriber subscribing to a data plan.
    - b. If such benefits are in the form of certain data quota free, then these content providers are required to be in agreement with the TSPs. It is not feasible for these content providers to be in agreement with all the existing TSPs. Further, it is not possible for the content providers to gauge the requirement of the subscribers based on their usage pattern.
  4. With the latest innovations of pricing that the TSPs are offering they are endeavouring to not only enhancing their own revenues but are also contributing towards bring the unconnected onto the connected world. Therefore, **it is imperative that TRAI takes a balanced approach towards differential pricing regime and ensures that the TSPs innovations for serving the larger good is not ignored.**

### **Our Recommendations**

5. Based on the foregoing, it is recommended that,
  - a. **It is imperative that TRAI takes a balanced approach towards differential pricing regime and ensures that the TSPs innovations for serving the larger good is not ignored.**
  - b. **TRAI therefore should persevere with its existing policy of forbearance which affords the flexibility of introducing innovative methods of aiding proliferation of data services.**

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

**Our Response**

1. TRAI has further raised the issue of transparency in data tariff offerings in the market. We are in concurrence with TRAI's concerns regarding informing the customers about their data offerings in a transparent manner; however, we would like to highlight certain points which can take care of this issue:
  - a. TRAI has issued Directions regarding misleading advertisements which is sufficient to take care the advertisement of the TSPs regarding offering of different data tariffs.
  - b. Recently issued TCPR (8<sup>th</sup> amendment) Regulations mandates the TSPs to provide alerts to the subscribers if he is consuming data beyond specified limits. This will ensure no excess charging to the customers for their data services is possible.
  - c. The annual audit mechanism of TRAI exists to ensure proper charging to the subscribers by the TSPs. In case of wrong charging TRAI have the power to impose penalty on that TSPs based on the audit report.
  - d. TRAI can always ask the TSPs to give a demo of their services where they are alerting/informing the subscribers if the subscribers will get charged to access certain content which is not free of cost against particular data pack/offerings.
2. **In view of the above, it is submitted that there are already available mechanism in the existing regulations of the Authority by which the principles of transparency, non-discrimination etc. can be taken care of. Imposing further regulations will not only hamper the growth of the data services but also put the subscribers in loss. Hence, we request the Authority to allow the TSPs to continue with their data tariff offerings based on the market dynamics and innovations.**