



a step ahead

## **Sistema Shyam TeleServices Limited [SSTL]'s comments/response to Consultation Paper on Free Data issued by Telecom Regulatory Authority of India [‘TRAI’] on 19.05.2016 [‘CP’]**

### **Earlier Consultation**

1. CP is an extension of the earlier ‘Consultation Paper on Differential Pricing for Data Services dated 09.12.2015’ whereby TRAI had sought comments/views of the stakeholders on number of issues including the issue that ***“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”***.
2. Pursuant to the response to the aforesaid Consultation Paper of December 2015 [SSTL had also placed its response, which is attached hereto and comments therein are reiterated], TRAI concluded that a clear rule should be formulated i.e. practice of offering or charging discriminatory tariffs for data services based on content is to be prohibited and TSPs were prohibited from offering differential tariffs based on content, service, application or other data that a user is exercising or transmitting on the internet. TSPs were also prohibited from entering into any arrangement that has same effect as charging discriminatory tariff on the basis of content.
3. Consequently, TRAI on 08.02.2016 issued Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016 [‘**TRAI Discriminatory Tariff Regulations**’]. These Regulations, inter alia, prohibit discriminatory tariffs for data services on the basis of content.
4. In the Explanatory Memorandum, TRAI, at paragraph 19 has, inter alia, noted as under:-

*“19. In India, given that a majority of the population are yet to be connected to the internet, allowing service providers to define the nature of access would be equivalent of letting TSPs shape the users’ internet experience. This can prove to be risky in the medium to long term as the knowledge and outlook of those users would be shaped only by the information made available through those select offerings. Further, to the extent that affordability of access is noted to be a cause for exclusion, it is not clear as to how the same users will be in a position to migrate to the open internet if they do not have the resources to do so in the first place.”*

TRAI has further correctly noted down the regulatory and legal principles namely Clause 2.2(i) of the ISP License and Clause 10 of TTO, 1999 as under:-

*“24.1 Clause 2.2(i) of the ISP Licence Agreement, while defining Internet access, provides for access to the Internet and all content available without any access restriction. Similarly, Clause 2.1 of Chapter IX of the Unified Licence Agreement provides that “The subscriber shall have unrestricted access to all the content available on Internet except for such content which is restricted by the Licensor designated authority under Law.” Restrictions on accessing all content on the Internet could take several forms one of them being price based differentiation. Price-based differentiation would make certain content more attractive to consumers resulting in altering a consumer’s online behaviour. While this might not be a major concern in a country where the majority already has Internet access, in a nation like India which is seeking to*

*spread Internet access to the masses, this could result in severe distortion of consumer choice and the way in which users view the Internet. While not a direct restriction on a subscriber's access to the Internet, such practice acts as an indirect restriction by affecting the way consumers view content online.*

24.2 As per Clause 10 of the Telecommunication Tariff Order, 1999 (TTO) , service providers are prohibited from discriminating between subscribers of the same class, and any classification of subscribers should not be arbitrary. While all differential tariffs for telecommunication services are not prohibited, certain differential tariffs have been held to be discriminatory. A subscriber accessing content that is differentially priced, at reduced or nil rates, would be paying lesser or no charges for such content while another subscriber (or the same subscriber) would be paying regular charges for accessing similar content that is not offered at a reduced or nil rate. This kind of differentiation in tariff amounts to discrimination.”

5. It is noteworthy that in the comments provided to the Consultation Paper of 9<sup>th</sup> December 2015, most of the service providers including SSTL had submitted that differential pricing is the best method and there may not be any other alternate methodology to achieve the objective of universal access to the internet. SSTL reiterates such stand.

## Present Consultation

6. The present Consultation Paper has been issued to seek response from the stakeholders on possible options to facilitate free access to certain websites/contents or incentivising users to visit certain websites/applications without violating the existing TRAI Discriminatory Tariff Regulations. In this context, the following questions have been framed and put for consultation:-

### **“Question 1:**

*Is there a need to have TSP agnostic platform to provide free data or suitable reimbursement to users, without violating the principles of Differential Pricing for Data laid down in TRAI Regulation? Please suggest the most suitable model to achieve the objective.*

### **Question 2:**

*Whether such platforms need to be regulated by the TRAI or market be allowed to develop these platforms?*

### **Question 3:**

*Whether free data or suitable reimbursement to users should be limited to mobile data users only or could it be extended through technical means to subscribers of fixed line broadband or leased line?*

### **Question 4:**

*Any other issue related to the matter of Consultation.”*

7. The objective of consultation seems to facilitate free access to certain websites/contents or incentivizing users to visit certain websites/applications and to

facilitate the un-connected and under-connected consumer to become better connected.

8. From the reading of the TRAI Discriminatory Tariff Regulations, it is clear that TSPs are prohibited from:-
- (a) Offering or charging discriminatory tariff for data services on the basis of content.
  - (b) Entering into any arrangement or contract by whatever name called, with any person, naturally or legally, that has the effect of discriminatory tariff for data services.
9. Taking into consideration the aforesaid principles of the Regulations, our view on the CP and the questions are set out below.

***Question 1: Is there a need to have TSP agnostic platform to provide free data or suitable reimbursement to users, without violating the principles of Differential Pricing for Data laid down in TRAI Regulation? Please suggest the most suitable model to achieve the objective.***

10. In our view, there is no need to have a TSP agnostic platform to provide free data or suitable reimbursement to the users for accessing certain websites/content or incentivizing users to visit websites/applications as such platform/scheme effectively entails and will eventually result in differential pricing which runs contrary to the objective of the TRAI Discriminatory Tariff Regulations and CP. However, if TRAI deems it necessary to have TSP agnostic platforms to provide free/incentivized access to the internet to users, the following models may be considered:-
- (a) Free Bandwidth / Subsidy Model – Under this model, data may be provided to users in a subsidized manner either by ISPs or by third parties or by the Government in the following ways:-
    - (i) ISP may provide free data to users for either limited period of time everyday in the manner free wi-fi is provided at public places or provide fixed quantity of free data (example 100 MB) per day or completely free internet access at lower speeds (example 64 kbps).
    - (ii) Third parties may provide free access to internet limited by time (example 15 minutes) or by data (100 MB) to certain groups (example low income groups or users in rural areas) by subsidizing TSPs from a portion of their funds earmarked for CSR purposes.
    - (iii) Government may provide free access to internet to certain groups or for certain websites (example websites promoting agriculture, education etc.) in the form of a direct benefit transfer or by subsidizing TSPs by exempting them from paying a part of their USOF contributions.
  - (b) Rewards Model – Under this model, third parties may provide free/incentivized access to internet limited by time (example 15 minutes) or by

data (100 MB) to users as a reward for watching associated advertisements, purchasing associated products (example handsets) etc.

In our view, the Option (a)(iii) is the most suitable to achieve the objective. While the users will be incentivized, the operators will also be compensated.

***Question 2: Whether such platforms need to be regulated by the TRAI or market be allowed to develop these platforms?***

11. TRAI has always maintained forbearance as far as tariffs are concerned and had also followed the light-touch regulations. We believe that market forces are best for allowing development of these platforms. Our view is that the market should be allowed to develop these platforms without any regulatory or minimal regulatory intervention by TRAI.

***Question 3: Whether free data or suitable reimbursement to users should be limited to mobile data users only or could it be extended through technical means to subscribers of fixed line broadband or leased line?***

***And***

***Question 4: Any other issue related to the matter of Consultation.***

12. The objective of being access to the internet, in our view, it cannot be limited only to the mobile data. We believe that most of the villages will be connected by broadband and leased line though mobile penetration also be there. In order to achieve the objective fully, we believe that free data and reimbursement should also be extended to subscribers under broadband/leased line streams. It is only then the internet access to all shall be achieved.
13. Apart from above, our view is that educating the subscribers about the internet and its advantages is among the most important aspects that need special attention.