



IT *for* CHANGE

NGO in Special Consultative Status with United Nations' Economic and Social Council

Counter-response of IT for Change, Bengaluru,
to the responses to Telecommunication Regulatory Authority of India's (TRAI)
Consultation Paper on 'Free Data '

Going through various inputs to TRAI's consultation paper on 'Free Data', we have the following points to make.

Regulate by outcomes and not the involved actors

As could be expected, the issue is now caught in an inter-industry conflict, with TSPs asking how can content providers do what has been denied to them. And if indeed the latter are to be allowed to zero-rate, then TSPs should as well. This shifts the focus from 'what' to 'who'. It is of little interest to the society and people who causes damage or loss because of some business practices, the real issue is of what kind of social loss, and how to prevent it. As has been discussed in the earlier TRAI order, and the DoT report on net neutrality, this is an issue of immense social importance, especially in countries with rampant inequalities, like India, and violations of net neutrality would have severe long term negative consequences. In the circumstances, TRAI should regulate 'by outcomes' and not on the basis of whether one set of actors is involved or another.

Therefore, in the spirit of its earlier order on 'differential pricing' which was clear that 'what cannot be done directly, cannot also be done indirectly', TRAI should ban both direct zero rating by TSPs and surrogate zero-rating by TSP facilitated platforms, or those developed by service providers that may not even be facilitated in such a way. Since all such services have a direct material effect on telecom/ data practices, as seen from the consumer's end, on whose behalf the regulator acts, TRAI must assert its authority over them.

Internet is not an ordinary market service or good

With the current consultation re-opening the basic net neutrality debate, after what was a clear and definitive ruling on 'discriminatory pricing', we once again hear familiar arguments that Internet is just like any other service or product, and for the sake of

innovation, the market should largely be allowed to take care of it. TRAI's mandate is based on recognising that telecom infrastructure is no ordinary service or product, but one which is of fundamental social importance and therefore needs special regulatory interventions. If anything, Internet or data services are even more socially important, with the Internet being behind transformations in practically all sectors.

The Internet has this special 'playing field' role for almost all sectors today, and its 'equality' or 'evenness' must be maintained at all costs. It is not like other market verticals, where any systemic changes remain largely confined to the particular vertical. It is a society wide horizontal, supporting layer, where the smallest distortion multiplies and manifests across all sectors, mostly causing very significant path-dependent changes that cannot be easily reversed. This horizontal layer, or playing field nature, of the Internet, supports not only society-wide economic activity, but also larger social, civic-political, and cultural engagements. It can therefore never be treated as a normal market service or product. Special measures are required to protect its neutrality and equality for all.

Account for the *jugaad* practices in the Indian markets

We see a lot of responses making an interesting distinction between toll-free services and data rewards. Many consider the former as net neutrality violation, but not the latter, since the data reward can be used to access any content. Such an erroneous view comes from not considering the ground-situation in which such business practices will operate. It must be obvious that it is the more price sensitive consumers, i.e. poorer people, who will be most conscious of directing their Internet practices to the allure of data rewards. Most higher end consumers would simply not bother, and focus on what they really want to do on the Internet. Now, we know the various kinds of '*jugaad*' practices that the poorer consumers resort to in the Indian markets – like 'missed call', and juggling between 2 or more sims, and different kinds of very inexpensive tariff plans. Such practices become almost the mainstream in these markets, and are widely known and well-established, including through the counsel and help of the petty-shopkeepers who sell top-ups.

Under the circumstances, if data rewards are allowed, it should be but obvious that a practice will quickly develop whereby people maintain a minimum credit in their account, and then almost fully rely on those platforms that provide data rewards, to keep replenishing the account. Both the local shopkeepers and the platform owners will do everything to facilitate such a practice, which will become very common, or even

mainstream among the poorer consumers. We would then be in exactly the same situation as with any kind of zero-rating practice, with consumers locked in to a narrow range of sponsored content. To make a relatively emotive connection; we will just have Free Basics like services back through a backdoor. That would be such a disaster, and also flout what was a pretty popular message from across the country against such net neutrality violating practices.

There should be no doubt that permitting any kind of models proposed in the paper (other than public interest ones that promote access to the full Internet) will degenerate quickly to the standard lock-ins to walled gardens on the Internet. There are just too many very powerful forces in favour of so distorting the Internet, that the slightest opening is enough for them to cause large-scale devastation. Such is the power of the Internet, and thus also the distortions in it, to provide immense commercial gains for the big players, in the form of gate-keeping positions.

If you simply must – then specifically tailor the model to small providers, excluding the larger one

Lastly, we are concerned how the new consultation, and various media statements around it, keep speaking of the interests of start-ups and small content providers. This is strange because till now the discussion was always about how it is the deep-pocketed providers who will corner most of the benefits from net neutrality violations, which assessment is shared across the world. We have been completely unable to see how in the current discussions it is now made to appear that these would basically benefit the small providers.

To repeat, we remain against any 'innovations' that basically violate the even playing field nature of the Internet, done by whosoever, and in whichever way. However, to test the proposition that the new proposals are entirely for the benefit of small providers and start-ups, mostly local ones, and also sensing that TRAI may be intent to allow some kind of special considerations for them, very tentatively, we may suggest the following. How about allowing only such providers who can qualify under some criteria of being small providers and/ or starts-up, and being local, (i.e. Indian) to buy bulk data and zero-rate some of their services in a promotional manner? These criteria would be of being an Indian company, having less than, say, 15-20 percent of the market in any sector, or being a start-up less than 3-4 years old, and so on. This would be similar to how local Small and Medium

Enterprises have been promoted in the earlier industrial policies. This will still make the playing field uneven with regard to non-commercial content and services, but if TRAI is simply intent to allow some allowance on zero-rating or promotional content/ services to improve competition and the proportion of local businesses online, it may think of going down this route.