Internet Society
Delhi Chapter

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Sub: Internet Society India Delhi Chapter's comments on the TRAI Consultation Paper on Consultation Paper on Tariff Issues of Telecom Services

Dear Sir,

At the outset, we wish to thank TRAI for giving us the opportunity to submit our comments on the consultation paper, on issues pertaining to the tariff's of telecom services.

Please find enclosed a copy of our comments in response to the questions raised in the consultation paper, where responses have been sought along with a reference report "Minimum Price Floors for Mobile Data Services: An Economic Review" by Beard and Ford

Thanking you and looking forward for favorable consideration of our suggestions.

Thanking you.

On behalf of Internet Society India Delhi Chapter

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Internet Society India Delhi's submission to TRAI on the consultation paper on Tariff issues of Telecom Services

We from Internet Society India Delhi Chapter (ISOC Delhi) are grateful for the opportunity to submit our views on the TRAI's Consultation Paper on Tariff Issues of Telecom Services (CP). Our responses are set out below.

Q1. Do you foresee any requirement of regulatory intervention at this stage in tariff fixation to protect the interest of telecom service providers as well as the consumers? Please support your comments with justification.

ISOC Delhi Response:

No, we do not see any need for regulatory intervention in end user tariffs. Tariff control is a poor method to enforce fair competition in the mobile market. Such changes reward inefficient players and risk delivering windfall profits by boosting margins of players who have lower costs. They also do not have any proven positive impact on consumer welfare.

Impact on Telecom Service Providers

As we understand, under the current tariff framework, except for the ceiling tariffs for national roaming, fixed rural telephony, international private leased circuits, domestic leased circuits and mobile number portability charges, tariffs for all other telecommunication service are under forbearance. The Telecommunication Service Providers (TSP) have the freedom to design the tariffs according to prevailing market conditions. Resultantly, the market has witnessed emergence of new and innovative products in the market, designed to provide telecom services at affordable and competitive price to the consumers. In fact, TRAI has acknowledged in the Explanatory memorandum to its Telecommunication Tariff (Sixty Third Amendment) Order, 2018 that thepolicy of forbearance has resulted in "emergence of new and innovative products in the market that are designed to provide telecom services at affordable and competitive price to the consumers"[1]Forbearance in tariff restriction has benefitted the TSPs as there has been a significant increase in usage allowing them to bring their per-unit costs down. Further, the low tariffs have significantly benefitted the customers, increasing connectivity in rural parts of India. Price regulation is bound to limit the flexibility of the TSPs in their ability to provide tailored plans to different segments of subscribers as per their differential needs[2] and purchasing power, this in turn limits the choices available to the customers. This will particularly impact marginal consumers, such as late technological adopters, the poor, rural and traditional households, and so on.[3] Therefore, any attempt to raise them would be counterproductive.

It has been found that floor prices benefit financially incumbent and high cost sellers due to reduced price competition and higher prices, at least in the short to intermediate run.[4]As noted in the CP, many studies have pointed out the market distortionary effects of regulatory intervention in pricing.[5] From these studies, and the evolution of pricing mechanisms under the Telecom Tariff Orders, it is clear that tariff control is a poor method to enforce fair competition in the market. On the contrary, regulatory interventions in pricing can lead to rewarding inefficient players and also risk delivering windfall profits by boosting the margins of players who have lower costs. In fact, there

There is little evidence that mature regulatory regimes set price floors or that such controls help consumers. Lack of tariff restriction ensures that that the market operates in a competitive manner. The recent tariff hike by TSP demonstrates that

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[1]The Telecommunication Tariff (Sixty Third Amendment) Order, 2018, Available at: https://main.trai.gov.in/sites/default/files/TTO_Amendment_Eng_16022018.pdf
[2]Consumers May Be Hurt By Telecom Industry Demand Of Fixed Floor Prices For Voice And Data Plans, Available at:https://www.firstpost.com/tech/news-analysis/consumers-may-be-hurt-by-telecom-industry-demand-of-fixed-floor-prices-for-voice-and-data-plans-3835255.html
[3]T. Randolph Beard, George S. Ford, 'Minimum Price Floors for Mobile Data Services: An Economic Review', Applied Economic Studies, January 2018
[4]T. Randolph Beard, George S. Ford, 'Minimum Price Floors for Mobile Data Services: An Economic Review', Applied Economic Studies, January 2018
[5]CP, p. 13.

there is sufficient competition in the market and disproves suggestions of market failure.As per the Australian Energy Market Commission, where price controls are put in place in competitive markets, it can result in retailers basing their market offers only in relation to regulated price thereby impeding market innovation.[6] Further, a regulated price may enable retailers to set a very similar market price without active collusion.[7]

Given that the market sees strong competition between Mobile Network Operators, there is no reason to believe that regulatory intervention is necessary, and there is no evidence of market failure. In fact, a floor price runs counter to promotion of broad diffusion of service, reducing network benefits for all users.[8]

Accordingly, any regulatory intervention on pricing is only likely to reduce efficiency, and deviate from the competitive equilibrium that the current market conditions have led to. Introducing price floors, for example, will likely lead to higher prices, and reduced efficiency, as TSPs will be less incentivized to innovate to reduce costs. In the past, TRAI has rejected the need to intervene by way of tariff fixation after consulting the stakeholders. In light of the recent hike in prices by all, there is no compelling reason for TRAI to deviate from its policy of forbearance which has worked in favour of the telecom sector for a long time.[9]

To protect the interest of the TSPs, the regulators must, instead, work to remove the underlying incentives for anti-competitive behaviour. For instance, if spectrum charges are flat fee and delinked from revenues, an operator's cost of free services

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[6] Australian Energy Market Commission, Review of Competition in the Retail Electricity and Natural Gas Markets in New South Wales, Final Report, 3 October 2013, pp. 59-60

[7] The Centre For International Economics, Final Report, Telstra's retail price controls Economic and social impacts, Available at:https://www.communications.gov.au/sites/default/files/CIE_Final_Report_-_Telstras_retail_price_controls.pdf?acsf_files_redirect

[8] T. Randolph Beard, George S. Ford, 'Minimum Price Floors for Mobile Data Services: An Economic Review', Applied Economic Studies, January 2018, p. 2

[9] Setting floor for telecom tariffs may not be practical: TRAI, Available at: https://economictimes.indiatimes.com/industry/telecom/telecom-news/setting-floor-for-telecom-tariffs-may-not-be-practical-trai/articleshow/71931610.cms

would rise. Similarly, interconnection rates have a strong bearing on competition in the telecom marketplace. Regulators must work to identify and remove unfair cost advantages, if any, of any market player. It is better to keep a close check on quality of competition in the telecom marketplace, and act effectively to discourage and prevent market abuse.Further, there is a hugefinancial burden that telecom sector suffers from in the form of high taxes, spectrum charges and licensing fee.[10]Rather than trying to set a floor for tariffs, the government can consider reduction in spectrum prices, license charges are other steps that can be considered to provide relief to the 'ailing telcos'.

At the current stage of development of telecom markets TSPs must be encouraged to deliver best value to consumers through multi-sided markets or creative partnerships with other businesses and communities.

Impact on Consumers

It is worthwhile to consider that with half of the country still on 2G networks, a floor price will create new barriers for those without access to data from reaping the digital dividend at a time when India dreams of a $5-trillion economy by 2024.[11]This may create a disruption to the goal of Digital India and other projects that are dependent on the access to data. A floor price is likely to obstruct public and private programs to increase Internet adoption through low-price or free services. In this context, it must be noted that low price offerings often target new, low income, or underserved markets where buyers are quite price-sensitive. A data price floor may result in a large reduction in consumption, possibly leading to a reduction in industry revenues.

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[10]High levies, low tariffs double whammy for telecom industry, Available at: https://www.livemint.com/industry/telecom/high-levies-low-tariffs-double-whammy-for-telecom-industry-11573671920438.html

[11]Floor price for telecom, a boon for ailing telcos, could disrupt Digital India Available at, https://www.livemint.com/industry/telecom/floor-price-for-telecom-a-boon-for-ailing-telcos-could-disrupt-digital-india-11577881757255.html

Q2. Do you foresee any need for change in TRAI policy of forbearance in tariffs? Please give reasons for your response.

ISOC Delhi Response:

No, we do not see any reason for a shift from the current policy of forbearance. The policy of forbearance has greatly benefitted TSPs due to increased usage and penetration of telecommunication services. It has also benefited consumers, as competition between TSPs has led to lower prices, better products, and more innovation.

While it may be argued that fixation of floor prices and / or any other form of tariff restriction may eliminate the possibility of predatory pricing, such a concern is better addressed under the Competition Act, and the complexities involved in fixing any minimum floor price and / or tariff, increase the risk of market distortion, leading to sub-optimal outcomes. In the event that any anti-competitive concerns arise in the market, the Competition Commission is well-placed to address the same.

Regulators in developed countries have avoided fixing any minimum floor price as it is considered anti-competitive, and hence anti-consumer. In competitive markets, the international best practices prescribe that the prices must not be regulated.[12] The European Union report finds to this effect that in competitive markets, there should not be ex-ante price control regulations.[13] For instance, Greece lifted majority of retail price controls which were imposed on market after their national telecom regulator EETT concluded that the markets should not be subject to ex-ante regulation.[14]Similarly, Canada's primary telecom regulator has maintained a policy of

[12] International Best Practices Report on Telecommunications Regulations, Presented to Ministry of Communications and Information Technology Republic of the Union of Myanmar May 22, 2013, Available at: https://ppiaf.org/documents/3676/download

[13]Commission Staff Working Document Explanatory Note, Available at: https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=7056

[14] The International Comparative Legal Guide to: A practical cross-border insight into telecoms, media and internet laws and regulations, 12th Edition, Available at: https://www.acc.com/sites/default/files/resources/20190314/1494557_1.pdf

forbearance when it comes to price regulation. The International Telecommunications Union ("ITU") maintains an ICT Tracker scores countries on their telecommunication sectorafter considering various parameters such as regulatory authority, regulatory mandate, regulatory regime and competition framework.[15] Greece has a score of 91.33 out of a maximum of 100[16] on the ITU Tracker whereas Canada has a score of 85.50 out of 100. Their scores point to the success that their telecom sectors have achieved while refraining from any price control.

Any intervention will reduce the freedom and ingenuity of the TSPs to offer consumer-friendly tariff offerings. Further, it also reduces the efficiencies in the system and encourages inefficiencies. It can delay the adoption of new technologies and create hidden entry barriers for new operators to enter the market.

Further, any decision to introduce price regulation has a risk of becoming a self-perpetuating system, in which the price regulation leads to lack of competition, driving the need for continuing price regulation. This is particularly concerning as there is evidence to believe that any short run financial benefits that may arise from a floor price will dissipate over time as the structure of the wireless services market adjusts. In the absence of further intrusive regulation, industry profits will, in time, decline to normal levels. In the long run, such a move will spell a decline in the health of India's telecom industry.[17]

In any case, in the current framework, forbearance, however, does not imply "No Regulation" or "Nil Regulation". Tariff forbearance for a service does not mean end of regulation for that particular service, it is simply the application of the economic rationale that price regulation is not necessary when the markets are functioning in a

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[15] ICT Regulatory Tracker 2018 Available at: https://www.itu.int/net4/itu-d/irt/#/tracker-by-country/regulatory-tracker/2018

[16] ICT Regulatory Tracker 2018 Available at: https://www.itu.int/net4/itu-d/irt/#/tracker-by-country/regulatory-tracker/2018

[17] Australian Energy Market Commission, Review of Competition in the Retail Electricity and Natural Gas Markets in New South Wales, Final Report, 3 October 2013, pp. 59-60

competitive manner. Even under the current forbearance, tariff for the service continues to be monitored and appropriate regulatory measures are put in place so that the interests of consumers are protected."[18] Accordingly, through light touch regulation, there is enough scope to regulate the telecom sector through other regulations without meddling/fixing the prices. This clearly means that even under the present regime of forbearance the tariffs have been continuously monitored and customer interest has been protected. Therefore, the change in policy does not serve any additional purposes as in the current framework tariff is already being monitored in order to protect consumer interest.

Q3. If the answer to Q1 is in affirmative, is fixing a floor price, i.e. a standing prohibition on TSPs not to offer services below a predetermined price level, the answer? Please give detailed reasons for your response.

ISOC Delhi Response:

The question is not applicable as we do not consider that there is any need for regulatory intervention in end user tariffs.

Q4. Do you perceive a need to fix floor price despite the fact that the TSPs have increased their tariff recently? Please support your response with detailed justification.

ISOC Delhi Response:

No. Prescription of minimum floor price would effectively imply replacing market forces with regulatory intervention. It will make the telecom services moreexpensive for the consumers and can, thus, have a cascading effect on the other sectors of the economy that ride on telecom for the provision of their services, including OTT services which are the backbone of the digital economy in many ways.

[18] TRAI, Consultation Paper on Review of Policy of Forbearance in Telecom Tariff 6th February, 2012 https://main.trai.gov.in/sites/default/files/CP_Review-Policy-Forbearance-Telecom-Tariffs.pdf

Further, with each TSP having a different cost structure, setting of minimum floor price would also be complex and counterproductive for the consumers.

The most probable impact of a minimum price floor will naturally differ between markets as it is heavily dependent upon the nature of competition in the regulated market. However, several studies have shown that the impact of minimum price laws that use some index of product "cost" to establish the minimum price, as applied in the EU, have turned out to be counter productive or dubious in their benefits.[19]

Q5(a). What methodology should be used to fix floor price by the Authority and why? Please give detailed methodology with calculations and supporting justification.

ISOC Delhi Response:

There is no sound methodology that can be used to fix the floor price. Setting up of a floor price by the regulator restrains the TSPs from offering their services below a fixed minimum price. The setting up of floor price, therefore, must be made dependent on the cost of provision of service. Different TSPs have different cost structures and, different cost of delivery of services. Therefore, the most critical question is the selection of a representative cost for the exercise. Indeed, the absence of a credible methodology is an important reason for TRAI to reject any proposal for setting price floors.Such price floors are bound to be arbitrary, contentious, and potentially distortionary of competition in the telecom market and therefore anti-consumer.

Q5(b). If a floor price is considered, what should be the mark up over the relevant costs for arriving at a floor price? Please give detailed calculations and justification for your response.

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[19] T. Randolph Beard, George S. Ford, 'Minimum Price Floors for Mobile Data Services: An Economic Review', Applied Economic Studies, January 2018, p. 3

ISOC Delhi Response:

Such a computation will be retrograde. It evokes the now out-of-favour “cost plus regulation” popular in the days when telecom companies were monopolies.

In the alternate, if the TRAI considers resale-below-costs, we note that the OECD Competition Committee in its report on such laws has found that the stated benefits of these laws on consumers are “economically dubious” and “empirically unsupported.”[20]

Thus, there is clearly no method of fixing a floor price that does not carry certain clear anti-competitive dangers, which is why such measures should be avoided to the extent possible.

Q6: Considering that cost of delivery of telecom services is likely to be different for different TSPs, what parameters should be considered to decide floor price and why? How can it be ensured that such a floor price fixation exercise does not result in windfall profits to few TSPs? Please give your response with detailed reasoning.

ISOC Delhi Response:

As already highlighted above, it is very likely that such price fixation will have exactly this impact, in addition to a plethora of other unintended consequences. In light of this, we recommend not setting a floor price. Any issues currently plaguing the telecom sector can be addressed through liberalisation of the legacy restrictions that create such constraints, instead of through price fixation. We re-iterate that it is impossible to accurately fix a floor price that will take into account all parameters influencing cost of delivery and prevent abuse of price floors by companies with lower costs.

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[20] OECD, Resale Below Cost Laws and Regulations, Directorate For Financial And Enterprise Affairs, Competition Committee, DAF/COMP(2005)43 (February 23, 2006) (available at: https://www.oecd.org/competition/abuse/36162664.pdf).

Q7. Is there a need to fix floor price for mobile data service? If yes, can such floor price be applied uniformly to different categories of subscriberssuchasretail consumer, corporate, tendered or otherwise contracts, segmented and any other including one on one? If it cannot be applied uniformly, will it not result in discrimination between various categories of subscribers? Please give your answer with detailed reasons and justification.

ISOC Delhi Response:

No, there is no need to fix a floor price for mobile data services. A minimum floor price for mobile data services interferes with public and private programs to increase internet adoption through low-price or free services. In fact, data price floors may prohibit low price and free services that have been shown to be a critical tool in helping bring more people online and providing baseline connectivity for those that would otherwise be offline. Limiting or precluding such programs deprive the public of the benefits of expanded internet use. Further, the categories will be contentious, and could be used as a tool for abuse in the hands of the companies for discriminatory pricing between categories. Lastly, given that most TSPs sell mobile data as part of composite plans for voice and data services, setting a floor price for just data services may be additionally unfeasible.

Q8. What should be the basis and methodology for floor tariff fixation for mobile data service? Give detailed justification and calculations for your response.

ISOC Delhi Response:

As stated in response to query 5(a), there is no sound methodology for tariff fixation of mobile data service due to, *inter alia,* difference in cost structures of different companies.

Q9. What should be the representative cost for fixing a floor price for mobile data service? Give detailed calculations and justification for your response.

ISOC Delhi Response:

There is no sound methodology that can be used to fix the floor price. Indeed, this is an important reason to reject any proposal for setting price floors: as they would be arbitrary, contentious, and potentially distortionary of competition in the telecom market and therefore anti-consumer.

Any segmentation of the market for setting price floors is fraught with similar difficulties. It would without basis, difficult to implement and lead to large scale arbitrage opportunities.

Q10. Should fixation of floor price be considered for voice calls also? Please give your comments with detailed justification.

ISOC Delhi Response:

No, we do not see any justification for considering fixation of floor price for voice calls. As TRAI acknowledges, with growth of 4G networks, voice calls are increasingly de facto data services, and there exists no case for fixing floor prices for the same.

The floors will hurt more vulnerable customers, for whom access to telecom resources has significantly expanded in the last few years due to low tariffs.

In any case, TRAI acknowledges that TSPs have not advocated price floors for voice calls.

Q11. If the answer to Q10 is affirmative, given that different technologies are being used to provide voice services (2G, 3G and4G), what should be the methodology used to arrive at a floor price for voice services? Please give detailed calculations and justification for your response.

ISOC Delhi Response:

This question is infructuous in light of our response to Q.10.

Q12: Should there be any limit on TSPs to offer free offnet calls? Please explain your response with justification.

ISOC Delhi Response:

No, there should no limit to offering any free calls, if the consumer is not penalised in any other manner e.g. by having to pay disproportionately more for other services.

Q13. If your answer to Q12 is affirmative, how should unlimited voice calls be defined? Please give your comments with detailed justification.

ISOC Delhi Response: Not applicable

Q14. If a floor price is considered, should there be any floor price prescribed for bundled offers, including those having unlimited voice calls and data? Please give your comments with methodology and detailed justification.

ISOC Delhi Response:

No, we do not believe any floor price -whether for individual services of bundled offers are necessary or fair to consumers.A data price floor runs counter to promotion of broad diffusion of service,reducing network benefits for all users. Bundled offerings are beneficial due to the changing requirements of the customers and made service more affordable for the consumers. As in case of voice calling and data services, minimum floor price for bundled services will make it costly for the consumers, especially who in the rural areas or among the low income groups who largely rely on these product offerings. A floor price on bundled services will allow the TSPs to vary their products and discriminate between different categories of customers.

Q15. If a floor price is considered, should there be a price ceiling also to safeguard consumer interest? Please give your comments with detailed justification.

ISOC Delhi Response:

No. We do not believe that a price ceiling will safeguard consumer interest. Presently, India is one of the fastest growing telecommunication markets for voice and data usage.Given that the telecom market is highly competitive, it allows the

TSPs to offer new and innovative products at affordable price. A price ceiling on the other hand will act as an entry barrier for a new player. It may also disincentivise a TSP to invest in order to provide better quality of services, meet the requirements of network expansion, and technology upgradation,to satisfy the ever increasing appetite for data usage. Therefore, the consumer may continue to face slow data download speeds, insufficient mobile network coverage, poor voice quality on telecom networks are some of the concerns of the consumers. Hence, there should be no minimum floor price or a price ceiling.

Q16. If your answer to Q15 is in affirmative, what should be the methodology used for fixing a price ceiling for mobile data service, voice services and bundled offers. Please give detailed calculations and justification for your response.

ISOC Delhi Response:

There is no evidence that there exists a methodology that can simulate the existing complex market consisting of wired and wireless players, 2G, 3G and 4G technologies, new and old players, private and government stakeholders. This applies as much for individual or bundled services. Any attempt to adopt a methodology, without a sound basis in economics, will exacerbate, instead of easing regulatory challenges. It would be prone to challenges that could bring the regulatory process into needless controversy.

Q17. Should all the tariff plans (retail consumer, corporate, tendered or otherwise contracts, segmented and any other including one on one) offered by the TSPs be subject to floor price tariff orders? Please give detailed justifications for your answer.

ISOC Delhi Response:

None of the tariff plans offered by the TSPs should be subject to floor price tariff orders.

Q18. How can it be ensured that all the tariff plans of TSPs (retail consumer, corporate, tendered or otherwise contracts, segmented and any other including one on one), comply with the floor tariff orders? Please give you response with detailed justification.

ISOC Delhi Response:

As mentioned above, given the large number of connections and the multiplicity of tariff plans, including bundled offers, it will be extremely challenging and expensive to monitor compliance and enforce the rules. Competitive markets are the best way to ensure better outcomes for consumers.

Q19. Any other relevant issue that you would like to highlight in relation to the above issues?

ISOC Delhi Response:

Price floors are an indirect and poor method to improve the health of market players. A more effective approach to encourage investment is to reduce the high regulatory costs incurred by market players. Moving to a fresh design for spectrum auctions that prioritizes coverage over the revenues of the exchequer could free up large funds for investment in expanding the reach and capacity of networks.