

Consultation Paper No. 8/2015



Telecom Regulatory Authority of India



Consultation Paper on Differential Pricing for Data Services

New Delhi, the 9th December, 2015

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Stakeholders are requested to furnish their written comments by 30th December, 2015 and counter-comments by 7th January, 2016 to Ms. Vinod Kotwal, Advisor (F&EA), TRAI. The comments may also be sent by e-mail to advisorfea1@traigov.in. Comments and counter-comments would be posted on TRAI's website www.traigov.in. For any clarification/information, Advisor (F&EA) may be contacted at Tel. No. : +91-11-23230752, Fax: +91-11-23236650

Chapter 1

Background

1. The Telecom Regulatory Authority of India Act, 1997 empowers the Authority to notify tariff for various Telecommunication Services. In exercise of this power, Telecommunication Tariff Order, 1999 (TTO, 1999) was notified for the first time on 9th March, 1999. Amendments in the TTO, 1999 were issued from time to time to reflect the changes in tariff framework. Initially, the tariffs were regulated. However, as the market matured and competition increased, TRAI gradually moved towards a 'forbearance' regime and forbore the tariffs for the wireless and the wire line segment in 2002 and 2003 respectively. Currently, except for the national roaming, rural telephony and leased lines, the tariffs for other telecommunication service are under forbearance. As per the policy of 'light-touch' regulation being followed, the tariff framework provides the Telecom Service Providers, which include Internet Service Providers and Data Service Providers (hereinafter referred to as TSPs) the freedom to design the tariffs according to the prevailing market conditions.

2. While the tariff regime has been left to forbearance, regulatory oversight is required so that the tariff framework follows the broad regulatory principles elaborated hereafter. Thus, TRAI needs to regularly watch and review the tariffs prevalent in the market. TTO provides for filing of tariffs by TSPs within seven working days of launch. The tariff filing provision plays a critical role in enabling TRAI to scan the prevalent tariff landscape and effectively intervene, wherever required to ensure that the tariff offers are reasonable, transparent, non-discriminatory and are not anti-competitive.

3. The TSPs have the flexibility to decide various tariff components for different service areas of their operation subject to the reporting requirement and other regulatory guidelines in vogue. Tariffs are offered by the TSPs taking into account several factors including input costs, level of competition, commercial considerations

and individual business case for each service provider. Even though tariff forbearance and flexibility to the TSPs to determine the rates are core principles of tariff framework, several regulatory guidelines have been prescribed to ensure orderly growth of the telecom sector and protection of consumer interest. Prevention of discriminatory tariff offers and ensuring transparency in tariff offers are amongst the most important principles which the Authority has consistently endeavored to uphold.

Non-discriminatory tariff:

4. "Non-discrimination" as defined in Clause 2(k) of the TTO is that service provider shall not, in the matter of application of tariffs, discriminate between subscribers of the same class and such classification of subscriber shall not be arbitrary. Clause 10 of the TTO provides that no service provider shall, in any manner, discriminate between subscribers of the same class and such classification of subscribers shall not be arbitrary. The provisions of TTO (33rd Amendment) *inter alia* provides that whenever differential tariffs are offered, it shall be the responsibility of the operators to define in a transparent and unambiguous manner, the eligibility criteria for availing such differential tariff. The Authority would consider such criteria to assess their consistency with the provisions of TTO relating to the non-arbitrary classification of subscribers.

5. The criteria for determining a valid classification for the purpose of differential tariff, has been undergoing change from time to time depending upon the sector's growth, technological advancement and the emerging and changing regulatory concerns, which the Authority needed to address. Thus, for example, differential tariff for 'on-net' terminated calls was viewed as discriminatory tariff in the initial stages of tariff regulations. However, as the competition in the sector increased, such differential pricing was permitted, treating 'on-network terminated calls' as a distinct and valid class for price differentiation.

Transparency in tariff offers:

6. In the past the Authority has issued several directions to telecom service providers to enhance and ensure transparency in the matter of service provision. The objective of the Authority in issuing these directions has been to provide the consumers with the opportunity to make free and informed choice and also to protect them from subscribing to or getting billed for any service due to lack of proper information or understanding. The issue of consumer transparency is increasingly becoming a major area of attention with the rapid growth of subscriber base and plethora of tariff offers in the market.

Regulatory principles in pricing of data tariff:

7. Till a few years ago, when only 2G networks (built on GSM and CDMA-1X technology) were available for data offerings in the country, most of the subscribers consumed wireless data on lap-top computers through dongles. However, with the introduction of 3G technology (WCDMA and EVDO) in telecom networks and subsequently the mass adoption of smart-phones in the country, the consumer experience in accessing Internet on the handsets has improved dramatically. As a result, the number of subscribers accessing data on their handsets in the country has risen significantly necessitating the need to examine the regulatory principles as they would apply to the tariff for data services

8. The regulatory prescriptions hitherto, on non-discrimination and transparency in tariff offers were more focused to address the regulatory concerns in voice telephony. The past few years have witnessed tremendous growth in data usage and quite a large number of data tariff offers are made available by TSPs. The data tariff offerings have taken various constructs. Under one form, the service provider selects the content, which is offered free or bundled together at reduced rates. In another form, one

content provider creates a platform where other content providers can apply, and be selected. The platform creator then partners with service provider(s) to provide free internet access to participating content providers, for the subscribers of those service providers. This evolving scenario calls for a re-look at the regulatory principles of non-discriminatory tariff and transparency measures in the context of data tariff offers.

9. Two key principles of tariff regulation emerge in this regard –*first*, the principle of non-discrimination and *second*, transparency. Regulation must strive to seek a balance between ensuring wider access to the internet, and the manner in which such wider access is provided does not violate these principles. Offers involving free or reduced rates have to be studied in this context, and within the broader tariff regulatory regime. The Authority monitors the tariff for various services offered in the country through the reporting mechanism put in place. While scrutinizing the tariff proposals, TRAI checks their consistency with various regulatory principles/guidelines, which include the following:

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

The various issues involved in the differential pricing for Data Services are discussed in chapter 2.

CHAPTER 2

Differential pricing for Data Services

10. About 25% of the total wireless subscribers use wireless data (Internet) services in India. There were about 300 million wireless Internet subscribers in the country as on 30.06.2015. Out of this subscriber base, about 207 million subscribers use 2G (GPRS, EDGE and CDMA-1X) networks to access Internet, about 92 million subscribers use 3G (HSPA, WCDMA, EVDO etc.) and rest are 4G LTE subscribers. The average data usage per data user for 2G service is about 200 MB per month and the average data usage per data user for 3G service is about 800 MB per month.

11. In recent past, some plans have come to the notice of TRAI which amount to differential tariff plans of the TSPs who offer zero or discounted tariffs to certain contents of certain websites/applications/platforms. The objective of offering such schemes is claimed to be the desire of various service providers/content providers or platform providers to enable people of this country especially the poor to access certain content on the internet free of charge. There are a number of variations of these plans. Under one design, an entity creates a platform wherein content providers and TSPs can register. Subject to the approval of the platform provider, the customers of the TSPs, registered on the platform, will be able to access those websites (either in full or only certain content of those websites) which are listed on this platform. Another method is to provide discounted data offers by the TSPs for some identified websites/apps. The idea, as stated before, is to provide free internet service to the users of the TSPs. The net result of these offers is that it empowers/enables the TSPs to select certain content providers (either through the platforms or directly) and offer discounted access plans to these websites/applications/platforms.

12. It may be argued that while these preferential tariffs offers effectively result in easy access to these websites etc., it may also result in making the entry of certain websites through the pipes of the TSPs more difficult. For example, a TSP or a group

of TSPs could come up with such differentiated tariff offers wherein they disincentivize access to certain websites by putting higher tariffs for accessing them. In other words, accepting the principle that the TSPs should be able to provide differential and attractive tariff offers for different websites/content providers, whom they 'like', one is accepting the principle that service providers may also effectively prescribe non-attractive/prohibitive tariffs for some websites whom they may 'not like'.

13. Where reduced rates are tied to specific content, potentially, both positive and negative effects may arise from an economic and regulatory perspective. On the one hand, it appears to make overall internet access more affordable by reducing costs of certain types of content. In addition, it enables people who have so far not been able to use Internet services and content, to access at least part of the Internet. This could have the benefit of expanding and accelerating internet access, as first-time users of the free internet could experience its benefits and start paying for full access.

14. On the other hand, several negative effects might ensue. 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). This may potentially go against the principle of non-discriminatory tariff. Secondly, differential tariffs arguably disadvantage small content providers who may not be able to participate in such schemes. Such providers may have difficulty in attracting users, if there exist substitutes for free. This may thus, create entry barriers and non-level playing field for these players stifling innovation. Therefore, the tariff offerings have to be studied from the perspective of whether it promotes or harms competition.

15. In addition, one can also argue that differential tariffs can be used as a tool by the TSPs to incentivize or disincentive access to different contents available on the internet by varying the price of access, upward or downward. Theoretically this might entail providing certain content for free while making other content prohibitively expensive for subscribers to access. Allowing service providers to perform what effectively amounts to

a gate keeping function might potentially empower TSPs to select certain content providers and disadvantage others, thereby adversely affecting public interest.

16. With ever declining prices of Smartphone handsets, it is expected that these would soon become affordable to the mass market. This is expected to translate into usage of more data and the TSPs are offering a bouquet of data products at various price-points through which a consumer can access select websites and apps.

17. Some may argue that if above practice is permitted, TSPs may start promoting their own websites / apps/ services platforms by giving lower rates for accessing them. They may take advantage of owning the primary access of the consumer by offering better, unlimited connectivity, free or near free, when using their own service or service of their partner, while offering limited or capped connectivity at higher price when consumer accesses some other website/platform. This may be perceived to be an anti-competitive move that stifles innovation and competition, leaving absolute power in the hands of the TSPs.

Therefore, the potential benefits and disadvantages of such practices have to be weighed in order to determine the regulatory approach.

Alternative Models

18. The laudable goal of providing the benefits of internet access to those without it must not be forgotten while considering these schemes. Given the concerns outlined above, it is worthwhile considering whether there are any viable alternative models that can serve this goal.

19. One approach might be to delink free internet access from specific content, and instead limit it by volume or time. For instance, a 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.

20. Similarly, the other approach 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. Coupons, direct money transfers or other methods/technologies can be employed to reward the users for their visits to these websites. The direct money transfer approach has been adopted in some initiatives that offer mobile credit to all consumers, in exchange for viewing advertisements.

Transparency in data tariff offerings

21. Analysis of the terms and conditions of certain offers launched in the market claiming free access to certain services shows that though there is no charge in accessing the platform itself, the moment a consumer clicks on any other link which directs him to a different website or clicks on the pictures or videos, applicable data usage charges is payable. In addition, if the smart phone has some application running in the background utilizing data, charges would be payable irrespective of the fact that the customer is using a free facility at the relevant time. Therefore, there is every chance of such consumers ending up paying for data usage. Since such 'free' facility is availed primarily by non-users of data, they would not have availed any data packs providing lesser effective usage charges. Tariffs for wireless data as per default tariffs are considerably higher (up to even 100 times higher) than the effective tariffs in data packs. The magnitude of price differential is huge and can have dangerous implications for users of such facilities which are claimed to be free, if not conveyed to the consumer transparently and effectively.

In view of the issues discussed above, following questions are being raised for comments of the stakeholders:

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

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?

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?

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