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**Zero-Rating Services and Differential Pricing as
Tools to Promote Access and Development**

Submitted to the Telecom Regulatory Authority of India

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

Differential pricing, as has been observed by the background Chapter 1 of the consultation paper, can manifest in numerous forms, each with different impacts on the market. Regulatory responses therefore ought to be calibrated accordingly, rather than either tolerating or banning all prevalent business models.

The theoretical and practical scope of differential pricing can vary widely in terms of its economic basis. It may be paid for by the end-user subscribers, for example, or subsidized by Internet Service Providers or subsidized by content providers. It may be subsidized or otherwise promoted by governments, or even government imposed. It may be available only on one provider or across all providers. It may be based on market transactions between content and service providers or based on criteria imposed by a platform or a service provider. A platform that seeks to be differentially rated may be based on content or agnostic to it, and imposed by the service provider with or without an opt-out. It may be offered by the service provider and actively opted into by the customer with transparent criteria.

This submission argues that services offered with differences in each of these parameters (and combinations thereof) require different treatment.

Service specific packs paid for by end-user subscribers and provided on a non-exclusionary basis by ISPs.

- Currently available Facebook- and WhatsApp-only packs work under the

rationale that users use these services significantly more than they would other parts of the Internet. These should be allowed to exist, as the market corrects for the irregularities. TSPs will only provide those service-specific packs that show high demand, and users will only buy those packs if they see value in purchasing them separately, rather than buying a full volume-based data pack.

- However, TSPs should not be allowed to sign exclusionary deals with content providers to provide only specific packs of their services while excluding other services in the same category and/or those in direct competition.
- Whenever a user exits the purview of these packs, they must be notified of costs they may incur in cases where they do not have a full data-usage subscription.

Platforms such as Airtel Zero, which allow content providers to subsidize end-consumers' costs through a platform owned and operated by a TSP.

- Airtel Zero is clearly anti-competitive and works against the interests of newer/smaller business that do not have the startup capital to engage in such a transaction.
- Precedent shows these agreements often aren't signed and negotiated transparently, which exacerbates the pricing problems stemming from information asymmetry.
- Leads to the problem of black-holing, where every content provider feels the need to sign up to be a part of these platforms to be able to compete fairly.
- These must not be allowed.

Free access to TSP-provided services such as Wynk that is subsidized by the TSP.

Vertical integration of TSPs and branching out of TSPs into the content market is an emerging trend. This poses both threats as well as opportunities, depending on the TSP's market share and how it seeks to position itself. As a rule of thumb, to the extent that TSPs seek to engage in exclusionary practices that shut out competition in the vertical into which they are expanding (video-streaming, in the case of Wynk), they ought to be banned. However, practices such as T-Mobile's Binge On program in the United States, which provides for free low-bitrate streaming of any content on the Internet, must not be treated the same and ought to be allowed. Aircel has opted to provide free access to 64kBps Internet for all users, which is also a policy that ought to be welcomed instead of clamped down upon.

A curious case arises if the TSP that seeks to zero-rate the service happens to be a TSP without a significant market share and the service happens to be a unique way of differentiating itself in the market as a TSP (not as a content provider). In these instances, an evaluation ought to be made on a case-by-case basis on the potential harms to the market through an application of the principles enshrined in antitrust law.

Zero-rated platforms such as Internet.org/Free Basics/Wikipedia Zero that are subsidized by TSPs, owned and operated by Internet companies and free-for-use to end consumers

- As long as the service is non-exclusionary and open to all developers, they

ought to be permitted.

- However, opportunities must exist for ALL TSPs to sign up with such intermediary platforms (i.e., they ought not be exclusively signed with one/few TSPs in a way that does not permit other TSPs to access them).
- Wikimedia’s 10 principles are a reasonable rubric for providing content in a manner that is beneficial to end-consumers but does not adversely impact competition. These principles are as follows:
 - *“A full Wikimedia experience. Carriers will zero-rate access to the regular mobile version of Wikipedia and other Wikimedia sites in all languages. We provide a notice to users with zero-rated access. To ensure that users do not mistakenly incur data charges, they will be prompted with a notice if they are about to leave a zero-rated page.*
 - *Working with local Wikimedia communities. Wikipedia Zero also provides us with another opportunity to work with local community members when approaching carriers and locally promoting the free use of the Wikimedia sites.*
 - *Promoting open-source. Consistent with our guiding principles, the software we develop to implement Wikipedia Zero is open source licensed. We hope that this will make it easy for other similar nonprofits to spread their information to the people of the world.*
 - *Carriers do not get editorial control. Wikipedia articles and other Wikimedia content are community curated and will remain that way.*
 - *No exchange of payment. The Wikimedia Foundation does not pay carriers to zero-rate access to the Wikimedia sites and does not receive payments from carriers through Wikipedia Zero.*
 - *Personal user information is never shared. Carriers get the IP addresses of sites that will be zero-rated so that they can identify Wikipedia Zero traffic. Wikipedia Zero does not enable carriers to collect or receive personal information about Wikimedia users.*
 - *Wikipedia Zero cannot be sold as part of a bundle. Access to the Wikimedia sites through Wikipedia Zero cannot be sold through limited service bundles.*
 - *No exclusive rights. We try to partner with as many carriers as possible to maximize the number of users that can benefit from the initiative.*
 - *Limited trademark license. Carriers get a license to use Wikipedia trademarks to promote Wikipedia Zero. They cannot use the trademarks to suggest that they are sponsored, approved, or endorsed by the Wikimedia Foundation or Wikipedia.*
 - *Open to collaborating with other public interest sites.”¹*

Question 2: If differential pricing for data usage is permitted, what measures should be adopted to ensure that the principles of nondiscrimination, transparency, affordable Internet access, competition and market entry and innovation are addressed?

While evaluating the debate on differential pricing, the first consideration for

¹ https://wikimediafoundation.org/wiki/Wikipedia_Zero_Operating_Principles

regulators ought to be the potential impact on access to the Internet. Services offered by content providers on zero-rated platforms create demand in low-revenue markets. With some platforms (such as Free Basics) opening to all developers, the ability of providers to supply their content to these hitherto untapped markets is comparatively lower than in the status quo. Further, uptake of differentially priced services expands competition to provide access to these communities, through the operation of the forces of demand and supply. Given that, currently, the primary actor in facilitating broadband access to rural communities is the government, expanding the number of players is of value to achieve the noble goals of missions such as Digital India. If differential pricing of various data offerings can catalyze this process by signaling the demand in rural communities to telecommunications service providers, it ought to be adopted wholeheartedly. Caution must be exercised, however, before adopting this mechanism as the panacea to proliferate broadband access. Allowing for this should ideally act in consonance with, as opposed to deterring, other policies in this realm.

On the issue of lock-in and an inability to ever escape a so-called ‘walled garden’, TRAI must evaluate this consideration comparatively: is this phenomenon of free services likely to lock-in users in perpetuity to the use of limited services in a manner that irreparably harms the intrinsic value of an undefined full and free Internet? The answer to that question is currently informed by ideological leanings of various interest groups on the issue: while some believe low-income users are likely to never expand their horizons to explore the potential of the full and free Internet due to the additional costs incurred, others would argue that a glimpse into the potential of the Internet acts as a segue to fuel demand for more and more services on the Internet. How these platforms affect user choice, especially in an era where social media websites often act as gateways to content on the rest of the Internet, is a subject that merits more evidence-backed empirical research. Such evidence-based research to determine the full impacts of this practice is essential before further regulatory responses, such a ban or a clamp down on such services.

Content-agnostic zero-rating, and zero-rating provided by Internet companies being available on all services, will ensure barriers to market entry are minimized and that competition can be preserved among both TSPs and content providers who seek to zero-rate their services. Transparency must be enshrined by the regulator to ensure the end consumer is aware of the costs of accessing the Internet outside of the free data available.

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?

Equal-rating plans propagated by the Mozilla Foundation, which provide for content-agnostic access to the Internet, form a crucial prong of policies that provide for free

Internet access without a differentiated tariff plan. Other plans include Facebook's policy to use drones to beam Internet access to end consumers, Google's Loom project that uses hot air balloons, and a wide array of experiments in community networks to provide low-cost alternatives for reasonable Internet access in otherwise inaccessible markets.

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

A study of the pricing trends of full-service data offerings compared to the zero-rated service-pack offerings may provide useful insight on whether TSPs are proceeding in a manner that makes it unviable for end consumers to switch from a service-specific data pack offering to access to the full Internet.