
**COMMENTS OF TIMES INTERNET LIMITED
ON
CONSULTATION PAPER ON DIFFERENTIAL PRICING FOR DATA
SERVICES
DATED 9TH DECEMBER, 2015**

Times Internet Limited's submission to the above mentioned consultation paper is in two parts, the first part is the executive summary of the response which is followed by detailed issue wise submissions in the second part.

Executive Summary:

TSPs should NOT be allowed to have differential pricing for data usage for accessing different websites, application or platform:

We are of the view that Differential Pricing for Data usage will:

- **Make the TSPs 'gatekeepers of the internet'**, rather than the access provider, by allowing them to choose and select amongst the same class of online services to be on their DP platform. Moreover, basis of such selection will be purely commercial interest. This will cause discrimination among the websites and online applications (apps) which are start-ups or low scale/ cost.
- **Start a race for controlling of internet traffic amongst TSPs.** A cheaper and popular broadband access will attract user base in large numbers for the TSPs. This will lead TSPs revenue soaring disproportionately, simply as they can offer exposure to their large user base to an internet service. There will be a natural tendency amongst the TSPs that they somehow owe a cut of advertising and content revenue simply because internet services traffic touches their network or they can divert the traffic to such internet services by giving them class exclusivity or cutting down on their competition.

- **Discourage innovation.** No scope for innovation or entrepreneurship as it will discourage the ones who cannot afford to pay additional taxes, levy or charges to enter a TSP's 'lower-priced' version of the broadband access.
- **Potentially threaten free speech and free access to information.** When a media outlet owned or commercially associated with a TSP, it will get a preferred treatment in terms of access exclusivity, speed, pricing and quality vis-à-vis its competitors or small online media outlets/ content providers. This would have a material impact on access to information in the public's interest, lack of free speech and media plurality.
- **Become anti-competitive and support only big players.** It will skew the competition by giving either platform exclusivity or access advantage to a selected few. TSPs will control which internet services is to have an attractive and easy access over others. It will initiate practices like free data for preferred partners and slow and/ or paid access for others.
- **Invasion of privacy of users.** In order to cross-subsidized their low cost broadband access, TSPs may be tempted to do away certain type of personal information of the users of its platform to the online companies for the purpose of user centred advertising.

Suggestions for measures that should be adopted to ensure that the principles of nondiscrimination, transparency, affordable internet access, competition and market entry and innovation are addressed:

- **Non-discriminatory access and open internet.** TSPs should not be allowed to influence data access to users by way of speed, pricing, or any other form.
- **No DP plans for smart phone or with unbound mobility.** Reasons:
 - Price arbitrage by retailers and urban users.
 - TSPs will only eye the data-hungry video and cloud markets of the Smart Phones.

- Fixed line or limited mobility ensures the intended usage of DP plans.

Alternative methods/ technologies/ business models, other than DPs

- **Indirect Subsidy:** Rather than subsidized plans for the broadband access at retail level, user's subsidy can be reimbursed by government after the user makes payment to its TSP.
- **Direct Subsidy:** As a part of TSP's universal service obligation, broadband access tariffs should be regulated, to be offered with subsidy, to cater to low-income and rural users.
- **Government should initiate low-cost broadband access:** Government led institution should run the low-cost broadband access schemes, this way it will be transparent, non-discriminatory and equal service to users and online services/ content providers.

Issues Wise Detailed Response:

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

As this Consultation Paper suggests the concept of 'Differential Pricing for data usage' ("DP") is predominantly about discounted pricing offered by TSPs (include ISPs) for making access to internet/ digital platforms affordable for rural and lower income group users. What this connotes is that for providing the DP, the TSPs shall have the freedom of creating different versions of the broadband, where discounted version may have an inferior (limited) broadband access to certain internet content than the normal (undiscounted) version. However, there may also be a case that TSPs may charge a premium, by cross-subsidizing the discounts offered by them to the users, by charging premium from the websites/ apps to be on their discounted version owing to its popularity and potential subscriber base. TSPs will also have the option to grant free access to its users to some websites but charging for others and entailing preferential treatment of certain sources of content. Another way of cross-subsidizing the discounted broadband access is by commercially exploiting user's personal information and details that is aggregated with the TSPs.

We foresee DP having some serious issues, including breach of privacy of the users. These issues are a direct challenge to various regulatory principles/guidelines, highlighted in para 9 of this Consultation Paper (“CP”), that the Authority endeavours to uphold while scrutinizing the tariffs. DP is nothing but the ‘Zero Rating’ in disguise, indirectly challenging the ‘Net-Neutrality’.

Internet is a platform where TSPs should provide no competitive advantage to any specific website, Apps or online services, either through differential pricing or quality or service. To put it simply, the internet should be neutral and TSPs should not provide any advantage to any particular online service. Hence, it is pertinent that in a DP environment, TSPs/ ISPs must be made responsible for ensuring a minimum quality of network for all websites/ apps/ services. Such level playing field or non-discrimination will offer entrepreneurs and startups unbridled freedom to innovate.

In the digital age, the internet traffic determines revenue for website or an app. One of the most important determining factors of how much money a website/ app can make from advertising revenue is directly proportionate to what is the amount of website traffic it receives. Apparently, more the traffic more the advertisement revenue for the website/ app.

Typically, the advisement revenue for a website/ app would look like:

| Monthly Page Views | CTR%¹ | Actual Clicks | CPC² | Estimated Earnings |
|---------------------------|-------------------------|----------------------|------------------------|---------------------------|
| 50,000 | 0.02 | 100 | US\$0.73 | US\$73 |

Whereas, the kind of websites/ apps that the TSPs wants to have it on their subsidized or incentivized broadband plans would have starting numbers of Monthly Page Views of 3 million and going to 2 billion. Facebook, which was frontrunner for zero rated plans and wants to start its own internet viz. internet.org or its new rechristened version ‘free basics’³, officially has Daily active users (DAUs) of 936 million on average for March 2015, an increase of 17% year-over-year, its Mobile DAUs were 798 million on average for March 2015, an increase of 31% year-over-year, Monthly active users (MAUs) were 1.44 billion as of March 31, 2015, an increase of 13% year-over-year and Mobile MAUs were 1.25 billion as of March 31, 2015, an increase of 24% year-over-year⁴.

¹ Click Through Rate Percent

² Cost Per Click

³ <https://developers.facebook.com/docs/internet-org>

⁴ <http://investor.fb.com/releasedetail.cfm?ReleaseID=908022>

The other big thing is ad-supported business model and the creation of a secondary market in consumer information. Companies like Google and Facebook, both of which earn much of their revenue by selling targeted marketing opportunities, demonstrate the commercial potential of ad-supported Internet platforms.

These figures suggest that the magnitude of revenue riding on the internet traffic alone is humongous. TSPs are well aware of this and wish to cash-in on the proposition of ensuring bulk internet traffic to the websites/ apps which wants to come on-board their low tariff broadband access business. The idea of country's growth churning out of easy access to broadband loses its significance in all this and remains just good sounding marketing tagline for TSPs for their public relation campaigns and corporate social responsibility obligations.

As mentioned above, DP has a very high probability making TSPs fall for unignorablely lucrative and overarching commercial gains and becoming discriminatory and anti-competitive in the process. So the direct consequences of TSPs power to make the choices for choosing their partners for their (low cost) popular broadband access are:

- **Discrimination:**

If an unregulated DP is allowed, TSPs shall have the unlimited choice to determine which website/ apps to allow free or with low cost access to the consumers. This would also mean that a TSP may promise not to count one website/ app or group of websites/ apps against user's monthly data cap or provide such service free of cost. Such choice will allow them to even block or throttle speed by slow access, who doesn't sign up with them for their programme. This will lead to illegitimate network management techniques and discrimination that will lead to fragmentation of internet.

- **Unfavourable to start-ups and SMEs:**

DP fundamentally limits access to all services that have not signed for DP plan with TSPs --which benefits only the larger companies. This reduces long-term competition and concentrates on dominance of only well-funded companies. Also, if DP becomes the norm, it will become a tax on the Internet industry, where start-ups and SMEs will need to pay for their properties to be available on the low cost version broadband or otherwise they will lose exposure to such a big market.

Moreover, increasing start-up costs to access customers is totally anti-competitive, making it harder for emerging entrepreneurs/young and innovative start-ups to be discovered, and creating yet another hurdle for them. DP plans put dominant global players having huge spending prowess at advantage and puts new crop of indigenous players, small and medium enterprises and local content and service developers at a significant disadvantage. Hence, accepting a framework whereby access is differently priced, and governed/controlled by a select few parties, is bad for the meritocratic platform that is the internet.

DP transfers value from consumers to shareholders, which generally leads to an increase in inequality and can therefore be inefficient from a utilitarian standpoint. This is particularly true in settings where there is no or very less competition, where single or limited players exist in each online category, even if such services come for free.

- ***Against Innovation:***

DP tariffs are likely to subdue innovation, because startups will not have the financial clout to come on board the low tariff high penetration broadband plans offered by TSPs to the users. In most cases, internet based players offering communication services through applications are relatively new companies that have based their product on technological innovation in both software and hardware. Binding such communication services with licensing regimes will do nothing but dis-incentivize innovation and discourage entry of global players in the Indian market. The extent of innovation that has been witnessed over the years has been greatly aided by an open and non-discriminatory internet. Any form of regulation or licensing, which is contrary to the principle of open and non-discriminatory internet, will increase the entry cost, thereby hindering innovation and equal opportunity to start-ups to establish themselves in the market. The impossibly onerous burdens imposed by such licensing would result in many such globally developed services and apps not being launched in India and our own start-up efforts to develop local versions of such websites/ apps being killed in their early stages. The net results would be decreased consumer benefit and a massive slowdown in innovation and reduced efforts due to the regulatory cost of doing business becoming very high.

Net neutrality facilitates innovation and competition, as economic actors take advantage of the level-playing field in communication networks to launch new services. The concept of “innovation without a permit”, where new entrants compete fairly with the incumbent giants is at the root of the

development of the Internet as we know it. Entrepreneurs of the Internet have become the linchpin of the emergent knowledge economy. Beyond prominent examples of companies that became huge thanks to the possibility to innovate and grow on a neutral Internet, there are thousands of smaller companies and services that represent an even bigger contribution to growth and social welfare. Free/open source software or open contents services count among the most-used services in the world, and only exist thanks to the neutral and decentralized nature of the Internet. Many other essential parts of the Internet took advantage of an open network, and became widely used all over the world only a few months after being created, because it was relatively cheap to produce and distribute their innovative services.

Obviously, powerful actors in the telecom industries have an interest in imposing their control over information and communication networks. It would be like that the last mile operator, which is the TSP, shall only decide which social networking website or e-commerce website or the for that matter news and information website its subscriber should watch. Such a scenario will have lack of media plurality issue lurking in it.

- **Against Competition:**

'DP' plans per se violates norms of competition laws. Obviously, a free or subsidized service will be a popular service and may outplay everybody else in the area of internet access, such dominant player shouldn't be allowed to decide the terms of access for its platform. This will lead to indiscriminate and personal interests & commercial gain will remain the only criteria of engagement, completely overlooking the principal of equal opportunity.

Thus level-playing fields for online service providers must be maintained. Open access must be non-negotiable and leading online service providers cannot be allowed to influence telecom operators to disadvantage their online competitors.

- **Issues of Free Speech and Media Pluralism:**

Another victim of free choice of selecting the content by the TSPs for their DP service would be the free speech. Preferential treatment in any form by the TSPs to certain online services would pose threat to innovation and free speech. The start-ups, small businesses and low-cost online media outlets will often be unable to pay to be in the popular version broadband access supported by DP.

Net neutrality is also about media plurality. If some media companies can pay so that their content loads faster or does not count against users' bandwidth cap, then those who can't pay won't have a chance to compete and be heard, this will be an issue of media pluralism. We already have Reliance's Jio launching its 4G service streaming content based on its prior agreement with specific content providers. Thus far the 4G service delivering content like any media player is not regulated by TRAI or MIB⁵. Naturally, such like TSPs will gravitate towards big content providers who will not shy away from spending big moneys to get platform exclusivity. Media plurality is important for a healthy and informed democratic society. It would be dangerous for any platform like broadband to have only limited media outlets because media, especially news and information media has the ability to influence opinions and set the political agenda.

- **Invades Privacy:**

An issue that is often conflated with DP, but represents a valid concern in its own right, is privacy. Concerns over privacy, data quality, and fairness are especially salient when considering DP. In particular, internet service involves the aggregation, sale, and use of large amounts of personal information, often in ways that individual consumers know very little about. What if the TSPs in order to cross-subsidized their low cost access broadband starts sharing personal information about the users with online sellers? Much of this activity will facilitate personalized tracking and targeting, which creates value by helping online sellers better identify buyers' needs. The result is un-fair deals and arbitrary pricing to the online users, cleverly and lucratively inducing a user to buy or shoot up the price of an article knowing from the user's browsing history clubbed with its location and personal information that the user is very keen to buy that product.

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?

To ensure that the above said principles are addresses, we suggest that the policy for DP plans offered by the TSPs to have the following essential features:

- *All websites/application/ online services should be equally accessible.*
- *All websites/application/ online services should be accessible at the same speeds.*

⁵ Ministry of Information and Broadcasting, Government of India, which is the content regulator for television other media platforms.

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- *All websites/application/ online services should be accessible at the same data costs.*
 - *No arbitrary filtering/ blocking allowed for websites/application/ online services at the TSP or Internet Gateways level.*
 - *No setting up of Information Superhighways restricted to certain websites/application/ online services.*
 - *No free access to certain websites/application/ online services.*
 - *Stricter privacy and data sharing policy for TSPs.*
 - *No cross holding or vertical integration between TSPs and websites/ apps/ online services, except in TSPs own digital platforms for their core businesses.*

In addition to the above, it is also essential to remind us that the real purpose for the discounted or free broadband access is to usher innovation and growth from the rural and low-income users. However, as the commercial interests sometime overtakes the real interests, it would be necessary to have the following checks and balances in the DP policy:

- ***DP Plans should NOT be made available for smart phones:***

Consumers have several tools that can be used to undermine the real purpose for the discounted or free broadband access. One of those tools is arbitrage, or the ability to buy as a rural and low-income user and using it in urban areas for non-specified purpose. Another tool is that the retailers could purchase several connections from the low-price market and resell them at a profit in the high-price market.

Once the mobility is available with the broadband then propose becomes more commercial for both the user and TSPs away from the real objective. TSPs will only eye the data-hungry mobile video and cloud markets. Even the consumers will not be able to make out which content is under DP plan and which is under the normal plan, eventually consuming data allowances in the matter of hours or set them back a few hundred rupees per month, ultimately defeating the core purpose of DP plans i.e. innovation and growth amongst the under-privileged and rural markets.

- ***DP Plans only on Fixed line Broadband and Public Wi-Fi:***

The resident user is always the bonafide user, be it the home user, a shop, office or education institute. Fixed line ensures bonafide usage and constant speed. Broadband access through the

fixed line and public Wi-Fi shall ensure that the user is the intended user and at the intended place.

Standalone mobile broadband wireless modems (or wireless data cards) can also be used for but their mobility has to be restricted to periphery areas of their user's residence or work place.

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?

We are of the view that methods/ technologies/ business models for the TSPs to achieve the objective may remain the same as they have for their normal services. However, to achieve the intended object of DP plans, we recommend two models for subsidizing the DP plans:

- **Indirect Subsidy:** *Like the subsidy as in for the domestic LPG connections. Where the user pays for the connection like any other normal connection and then the Government pays the subsidy directly in to his bank account.*
- **Direct Subsidy:** *This can be done directly by the TSPs, where the connections are given on subsidized rates only. The subsidy or discount can be released to TSPs/ ISPs as per the public policy, in this regard, one of the option can be the Universal Service Obligation Fund⁶ as a vehicle for this purpose.*

Lastly, it would not be a good idea to allow institutionalized free internet programmes like 'free basics', 'Airtel Zero' or any such like zero ratings services to ride on the DP schemes. Howsoever philanthropic the approach may be, eventually in corporatized schemes, commercial interests are bound to prevail over all other interests. What is not desired is that the corporations have a tight control over how we access websites and services. A free and open internet is the single greatest technology of our time and control should not be at the mercy of some corporations or institutions. Only a free and open internet promotes the spread of ideas and drives entrepreneurship. A free and open internet protects freedom of speech.

⁶ <http://www.usof.gov.in/usof-cms/home.jsp>

The idea of free or affordable internet services is simplistic enough to be driven by the government and public institutions either on their own or with the help of TSPs and other corporates, atleast by this way the internet can remain truly 'free and open'.