Response to Consultation Paper

On

Differential Pricing for Data Services (8/2015)

Response of Zee Network

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In Response to Consultation Paper on Differential Pricing for Data Services (8/2015)

1. Introductory Comments

1.1 Zee Network has reviewed the extant consultation paper on differential pricing of Data Services. We note that TRAI had previously issued a consultation paper on Net Neutrality (Consultation Paper on Regulatory Framework for Over-the-top (OTT) services March 2015). The responses as uploaded on the TRAI website were overwhelmingly negative on any policy that violates net neutrality. Zee network had also responded to the Paper on any policies or workarounds which violate net neutrality.

1.2 The present consultation paper on differential pricing of data services (for different websites) is in fact raises the very same questions which were sought in the previous consultation paper, where it was stated that the Data Service Providers , (referred to as TSP's) derive revenues primarily from data, which originates from OTT services. We believe that the very same questions have been reframed while avoiding the use of the term net neutrality but leading to the very same outcomes where there is a differential tariff for different websites and applications, leading to the violation of net-neutrality.

1.3 The questions posed by the TRAI in this paper are essentially whether the content providers could be made to compensate the TSPs to provide differential pricing, which in our opinion does not differ from the previous consultation paper, as the very basis of differential pricing in an environment where net-neutrality does not exist would be the fact that the sites the access to which is offered by TSPs at zero (or lower rates) would need to be compensated. This is borne out by the statement of TRAI itself in the consultation paper on Net Neutrality Para 4:

> *"The characteristics of OTT services are such that TSPs realise revenues solely from the increased data usage of the internet-connected customers for various applications (henceforth, apps). The TSPs do not realise any other revenues, be it for carriage or bandwidth".*

It would have been more appropriate if the TRAI had in fact clarified its response and views on the previous consultation paper and detailed reasoning for issuing another consultation paper with similar questions and objectives, by merely omitting the use of the word net-neutrality.

Please find our response to the questions as framed in the consultation paper.

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

Zee Response:

The TSPs merely provide the data services infrastructure using the network which they have been licensed to operate. They price their data services by volume, data rates, network type (2G, 3G and 4G or WiMaX) which is then offered to all customers.
Differential pricing is completely contrary to the concept of net neutrality.

We are of the clear view that differential pricing cannot be on the basis of type of services consumed, rather the basis of pricing ought to be only on the amount of data consumed. It is akin to electricity consumption – consumers are charged the same per unit consumed. The more you consume the more you pay – you either pay for

- time used (as in cyber cafes)
- data consumed (as in our personal plans).

As already pointed out, differential pricing is innately against the concept of net neutrality, and competition, and can have the impact of throttling the fledgling digital space in the country.

There is already a differential of pricing built in by pricing the bandwidth by volume slabs. For example, if a streaming Content Delivery Network (CDN) uses 1000 GB of data usage a day, it can have a different pricing slab vis-a-vis another customer who uses 1GB per day. The end customers, when they access such websites (say Youtube or Facebook) however pay the same price per GB of usage as per their own data plan without discriminating which website they are accessing/visiting.

However the current question is whether for the same volume, customers can be offered differential tariffs, and the difference be bartered from the Content provider or application provider website.

This leads to the same outlook as violation of net-neutrality as the dominating Content or application providers can make their access free, and thereby causing severe disadvantage to the newer startups which do not have the muscle to pay charges to TSPs on behalf of customers.

<u>Non-Discriminatory Access</u>

It is the principle that calls for the Internet to remain free and open - with no "fast lanes" that would allow some content providers to take priority over others. The core principles that best outline the scope of the concept are:

(i) **<u>All sites must be equally accessible:</u>** ISPs and telecom operators shouldn't block certain sites or apps just because they don't pay them. No gateways should be created, in order to give preferential discovery to one site over another.

(ii) **<u>All sites must be accessible at the same speed (at an ISP/Telco level):</u>** This means no speeding up of certain sites because of business deals. More importantly, it means no slowing down some sites.

Non-discriminatory access is the heart of net neutrality. Differential pricing if allowed would result in discriminatory regime thereby violating the very essence of net neutrality. It is

Zero Rated Plans

The cost of access must be the same for all sites (per Kb/Mb or as per data plan): This means no **"Zero Rating"**. In countries like India, Net Neutrality is more about cost of access than speed of access as Internet speeds in India have not yet caught up with the developed world. Zero-rating which is also known as toll-free data or sponsored data, is the practice of TSPs to not charge end customers for a well defined volume of data by specific applications or internet services via the TSPs mobile network in limited or metered data plans and tariffs. The practice involves TSPs, through a prior agreement with specific content providers, offering free mobile data to allow customers to access particular online content or services at no additional cost.

Zero-rating, by granting free access to some websites but charging for others, entails preferential treatment of certain sources of content. If normalized, it would prompt TSPs to launch similar discriminatory deals on the premise of maximizing their revenue at the expense of smaller businesses. The most prevalent zero-rated programmes involve giant US-based providers such as Facebook, Google and Twitter makes the issue more contentious as it also poses a threat to local content development.

Zero-rated mobile traffic is blatantly **anti-competitive price discrimination** designed to favor TSPs own or their partners' apps while placing competing apps at a disadvantage.

While the TRAI has not used the term Zero Rated Plans, the fact remains that the outcome of differential tariffs, if permitted will lead to the following:

(i) One or more Application Providers (Whatsapp, Google, Facebook , Expedia (just examples) will offer Zero rated plans

TRAI is well aware that Internet services like Facebook, Wikipedia and Google had built in the past, and have practice of building special programs to use zero-rating as means to provide their service more broadly into developing markets.

It is a different matter that regulators in different countries have declared such plans as illegal and these had to be ceased, such as Chile.

(ii**) One or more TSPs (such as Airtel,Idea, Reliance, Vodafone) may offer Zero Rated Plans**

T-Mobile in USA has offered Zero rated Plans as a major strategy to win over customers by providing Zero priced access to all streaming websites such as Hulu, Netflix, Youtube etc. The customers of all these websites did not have to make any additional payment over and above their regular data plan for unlimited access to streaming, and such data usage was not debited from their internet pack and was free.

Under the T-Mobile Uncarrier initiative:
-T-mobile made all Video services such as Netflix, Hulu and Youtube outside the data plan (They are free).
- Removed the Subscription Plan periods (anyone can unsubscribe any time).

-Removed the Roaming Charges. (Data and Texting is free in 140+ Countries), Voice is only 20 C per min.The result was that T-Mobile added 30 Million customers up from 30 Million to 61 Million.

-launched the biggest single initiative of Mobile Video Binge where it made 24 Video streaming services completely free, apart from doubling the size of mobile data packages.

The consultation Paper issued by TRAI in March 2015 on Net-Neutrality largely appeared to address (i) above (Zero rating by Application providers) while the current consultation paper has changed tracks to address the same issue under (ii) above i.e. Zero rated plans by TSPs. The question posed by TRAI is whether the TSPs can offer such plans and obtain in barter the charges from the Application providers.

As TRAI is aware, Zero Rated plans are in fact permitted by some regulators specifically in developed countries, these are in fact not favored in developing countries. **However selective Zero Rating is not permitted.**

For example T-Mobile offers Zero rated access to 24 Streaming providers, and any other providers can join at Zero Cost. Hence it was held not violating Net Neutrality by the FCC. As indicated by **T-Mobile:**

"This is not a net neutrality problem," T-Mobile US CEO John Legere said during t announcement. "It's free, the providers don't pay, the customers don't pay. Most importantly… you can shut it off, it's complete customer choice."

However any Zero rated plan or discriminatory pricing has been opposed in EU, OECD and other countries. Details are given below.

European Union

(i) As reported by World Wide Web Forum, In Europe, ten small member states put forward a net neutrality proposal that, if adopted, would ban harmful price discrimination practices such as zero-rating. The proposal is fiercely opposed by big EU member states and their dominant telecom groups. **The Netherlands and Slovenia, two countries that have already enshrined real net neutrality in their national laws, issued enforcement orders for zero-rating violations.**

(ii) In January 2014, the Dutch Consumer and **Markets Authority, ACM, fined Vodafone for zero-rating HBO Go mobile video streaming** while the Slovenian regulator ordered Telekom Slovenia and Telekom Austria to stop zero-rating music streaming and cloud storage applications. Chile's 2014 net neutrality legislation also bans price discrimination practices such as zero-rating. **In 2014, the Norwegian, German and Austrian telecom regulators publicly asserted that zero-rating infringes net neutrality.**

(iii) **Canadian telecom and media regulator (CRTC) has banned zero-rated mobile video streaming services** while in the US the Federal Communication Commission (FCC) has released its much anticipated draft net neutrality rules. The FCC has proposed to reclassify broadband internet access service as a telecommunication service under Title II of the US Communication Act and centred its net neutrality proposal on three so called Bright Line Rules: 1) no blocking 2) no throttling 3) no paid prioritization commonly referred to as 'fast lanes'.

(iv) The European Parliament's and President Obama's interventions in April and November 2014 respectively tipped the scales against paid prioritization and internet 'fast lanes'.

On the same lines, Zee Network would like to oppose any selective Zero rating or differential rating plan where, for example, one Streaming Website of content is offered at Zero Cost, but other Streaming Websites which offer similar streaming are charged. In this context, it is pertinent to point out that the network cannot differentiate between different types of data (the fundamental principle of net neutrality)

The reasons are as follows:

(i) Internet is dominated by some large international players in all fields (Search (Google), Apps(Facebook, WhatsApp), Social sites, Streaming (Netflix, Hulu etc). Because of their scale and valuations they can completely dominate and smother any small startups if zero rated plans are permitted.

(ii) Non-discriminatory internet access Internet is key to India's startups and innovative service providers. We need them to grow to global levels, rather than allow the Indian landscape to be dominated by selective international players who are able to pay for content.

The views of the Zee Network have been very clear on this issue vide our response to the net neutrality issue. In summary we would like to state that any differential pricing is undesirable at this stage, and in no case there should be differential pricing which is not equally applicable to all sites which provide the same application or service.

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?

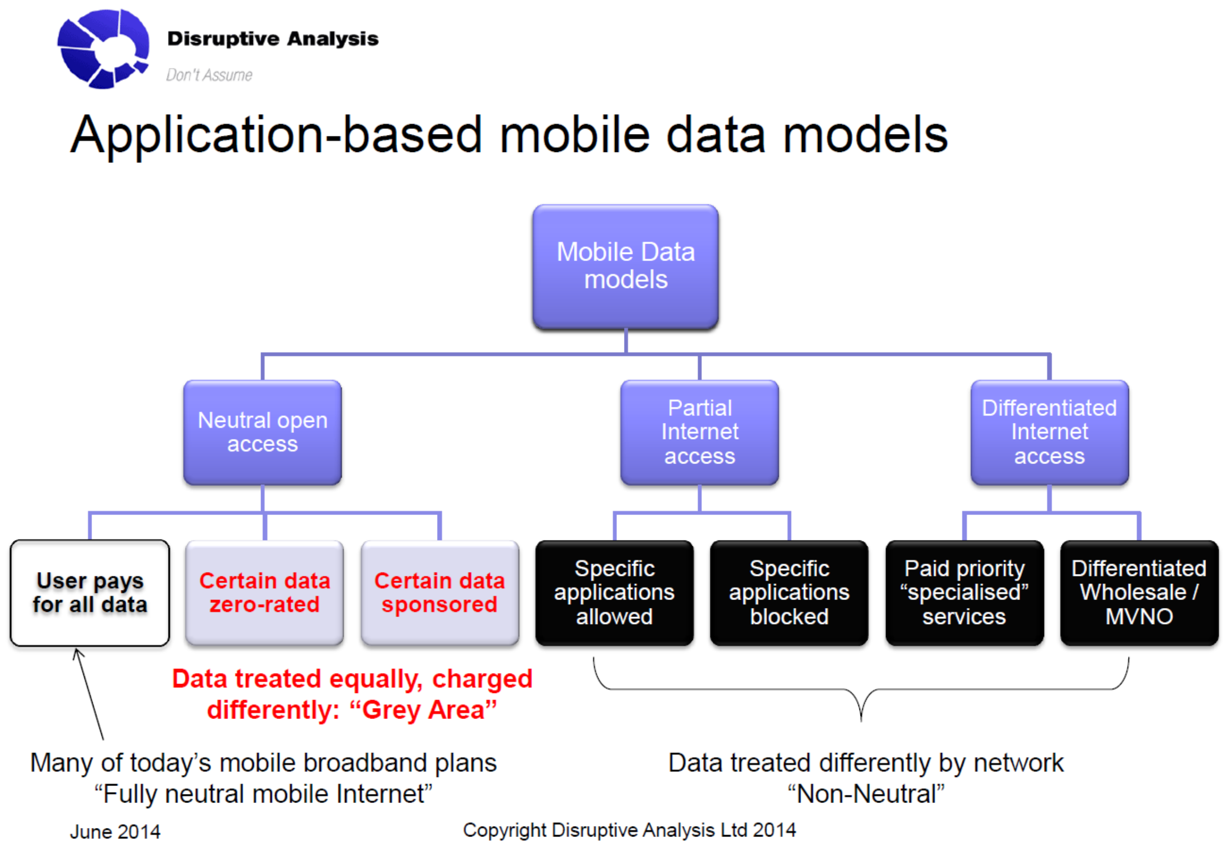
Zee response: We have partially addressed this in the previous question, and the Zero rated plan by T-Mobile as a TSP where it does not charge either the Application provider or the users for such plans, as per FCC does not violate net-neutrality. For example, Services that don't count against data caps are Netflix, HBO Now, HBO Go, Hulu, Sling TV, Sling Box, ESPN, Showtime, Starz, Movieplex, Encore, Vevo, Vessel, Univision Deportes, Major League Baseball, Fox Sports, Fox Sports Go, NBC Sports, Crackle, Vudu, and Ustream. It works either in the providers' apps, or in mobile Web browsers. Other providers can join at Zero charge as well.

However the same is not true for other providers which provide discounted plans for their own services and the FCC view on this matter is expected to announce the same. “zero-rating” services aren’t outlawed by the Federal Communications Commission’s net neutrality rules. The rules allow for complaints against zero-rating schemes, with the commission judging on a case-by-case basis whether a practice "unreasonably interferes" with the ability of consumers to reach content or the ability of content providers to reach consumers.

Zee Network would like to specifically caution against:

(i) A TSP selecting one (or more but not all) particular Site(s) or application(s) for a Zero rating Plan or a discounted tariff plan. Hence all such reduced or differential tariff plans should be non-discriminatory for all similar sites.

(ii) Any discriminatory pricing plan offered by companies compensating for consumers usage by a scheme similar to “Toll-Free”



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?

If differential pricing is offered it would nominally follow one of the following models:

1) TSPs providers cover the costs to users of accessing certain hand-picked sites and apps which are their own. (This is a TSP and Content Owner combination) and should under no circumstances be permitted.

2) A company pays to provide access to a suite of different services; - Zee Network View is that this should not be permitted as the data charges are very high in India and only very large well established International players can afford the same killing competition.

Hence we would like to coin the term **Equal rating** for similar services and products.

The principle of Cross ownership between TSPs and their own sites for Application or content needs specific attention and should be specifically prohibited. In some cases, TRAI may need to lift the "Corporate Veil" and ensure that the rules are not being violated by restructuring entities.

3) A company pays to subsidize access to only their services.

Such subsidy, if offered by a company should be on their subscription or content usage charges, and not the data medium charges. For example, a company which streams movies may offer free access via one of the TSPs and this would be discriminatory. Under the "Equal Access" proposed by us, such discounts should propagate to all TSPs or providers without any discrimination.

4) Device Specific Discriminated Tariffs

Some providers have been known to offer low or Zero tariffs against user devices supplied by them. It is possible that in near future, some providers may offer Zero rated plans provided used by their own locked devices, say for access to streaming video etc.

This would be highly discriminatory and distort the market. We would like to support a Bring Your Own Device (BYOD) regime to be well defined and institutionalized by TRAI.

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

We need to understand that while India is still developing its technologies and has a vibrant start up market, there are well established companies which would easily pay for user access for access to their own websites or content. Hence:

(i) Net Neutrality should in no case be violated.

(ii) Creation of network owning companies where they own their network and also create content repositories should be entirely prohibited.

(iii) Zee Network would also like to strongly advise against device specific discriminated tariffs.

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Annexure-1- Zero Rating Plan – Approaches in EU and Other Countries

As reported by WWW Forum

Back in April 2014 in a GigaOM op-ed, we warned that zero-rated traffic is blunt anti-competitive price discrimination designed to favour mobile operators' own or their partners' services while placing competing internet services at a disadvantage. A zero-rated app is an offer consumers can't refuse, I wrote. The telecom industry dismissed our assertions as fear mongering and was quick to highlight the positive side of zero-rating. Indeed, zero-rating enables poor and disadvantaged communities that do not have access to affordable fixed broadband or cannot afford mobile internet subscriptions, to gain access to parts of the internet. Or to be more precise, to gain access to Facebook or ISPs' walled gardens. Zero-rating data-light applications such as Facebook in emerging markets where even the tiniest volume of open mobile internet (e.g. 500MB per month) is unaffordable to the masses causes consumer and competitor harm. In OECD markets, where open mobile internet usage prices are, generally speaking, more affordable for data-light applications such as Facebook and Twitter than in emerging markets, ISPs eye the data-hungry mobile video and cloud markets. As shown in the table below, by zero-rating their own mobile TV & film store services, operators are foreclosing the mobile internet video market by placing all other competitors (e.g. Netflix, Vimeo) at a disadvantage. Zero-rated video offered by mobile operators is an offer consumers cannot refuse.

DIGITAL FUEL MONITOR
MONITORING MOBILE CONNECTIVITY COMPETITIVENESS
By Rewheel

Operator group	EU market	Price & Gigabytes (Smartphone plan with unlimited mins & SMS)	Price additional Gigabyte	Telco zero-rated video (TV/films) (T-Mobile TV)	Open internet video (max allowed time to watch HD video in open internet plans) (NETFLIX, vimeo, PLUTO.TV)
TeliaSonera	Finland	€25 (50 Gigabytes)	€0.2	No	Practically unlimited
Hutchison 3	Austria	€36 (14 Gigabytes)	---	Yes (Unlimited 24/7)	5 hours per month Not allowed to buy more!
Orange	Spain	€40 (5 Gigabytes)	€10	Yes (Unlimited 24/7)	2 hours per month (€30 per additional hour)
Deutsche Telekom	Hungary	€45 (5 Gigabytes)	---	Yes (Unlimited 24/7)	2 hours per month Not allowed to buy more!
TELEKOM AUSTRIA	Bulgaria	€55 (10 Gigabytes)	---	Yes (Unlimited 24/7)	3 hours per month Not allowed to buy more!
vodafone	Romania	€59 (6 Gigabytes)	€10	Yes (Unlimited 24/7)	2 hours per month (€30 per additional hour)
TELECOM ITALIA	Italy	€86 (13 Gigabytes)	---	Yes (Unlimited 24/7)	5 hours per month Not allowed to buy more!

Telecom groups are foreclosing the internet video market by overpricing mobile internet Gigabytes while prioritizing (zero-rating) their TV/film services!

Digital Fuel Monitor has shown in November 2014 that in many OECD markets where mobile operators launched zero-rated film stores and TV services, consumers are either not allowed to buy more than a few (5-10) gigabytes at all or most likely, they cannot afford to buy more because the price of additional gigabytes is prohibitively expensive (e.g. €10 per gigabyte). Consumers are harmed because their choice of internet video services is severely restricted.
Zero-rating is particularly harmful in mobile internet access markets where ISPs collectively set low volume caps. In most fixed internet access markets where gigabyte volumes are unlimited and as well in few mobile internet access markets where gigabyte volumes are very accommodative (e.g. Finland) zero-rating poses a benign threat. However, this could soon change. In 2013, Deutsche Telekom announced a plan that will cap the volume of fixed internet access connections but it will exempt its own IPTV (zero-rated) video service. The reaction from German authorities was swift. A German court blocked Deutsche Telekom's plan on the basis of consumer protection law while the German telecom regulator Bundesnetzagentur carried and investigation and warned Deutsche Telekom that zero-rating could infringe net neutrality.