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Letter No. RP/FY 15-16/087/069

Dated: 7<sup>th</sup> January 2016

To,

**Ms. Vinod Kotwal,**

**Advisor (F&EA),**

Telecom Regulatory Authority of India

Mahanagar Doorsanchar Bhawan

J.L. Nehru Marg, Old Minto Road

New Delhi - 110002

**Subject: Bharti Airtel Limited Response to the Consultation Paper on Differential Pricing for Data Services.**

Madam,

This is with reference to your above mentioned consultation paper. In this regard, please find enclosed our response for your kind consideration.

Thanking You

Yours Sincerely

**For Bharti Airtel Limited**

A handwritten signature in blue ink, appearing to read 'Ravi P. Gandhi', is written over a horizontal line.

**Ravi P. Gandhi**

**Chief Regulatory Officer**

**9871106558**

## **Bharti Airtel Limited's Response to Consultation Paper on "Differential Data Pricing"**

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At the outset, we thank the Hon'ble authority for providing us an opportunity to submit our views on this consultation paper.

India ranks<sup>1</sup> 131<sup>st</sup> in fixed broadband penetration and 155<sup>th</sup> in mobile broadband penetration despite being the 10<sup>th</sup> largest economy of the world in terms of GDP<sup>2</sup>. This positioning is a way below than some of our neighboring countries like Bhutan and Sri Lanka. The Government of India has listed 'Digital India' as a national priority/objective with 'Broadband for All' as one of the most important pillars.

India is one of the most competitive telecom markets in the world, with nearly one billion wireless voice customers. This growth has been made possible by light touch regulations, private entrepreneurship and tremendous innovation across a large ecosystem of networks, devices and applications/VAS, which has resulted in customers enjoying the best of services at the lowest of tariffs in the world.

To connect a billion data/broadband customers, we need to continue with the same spirit and expand the complete eco-system. Therefore, we believe that the following principles, which have contributed to the growth of voice services should also be applied for data services:

### **1. A light touch regulatory approach on tariffs:**

The mobile industry in India has scaled dramatically over the past few years to become one of the country's biggest success stories. A light touch regulatory approach (tariff forbearance regime) has been the key factor in the proliferation of voice services in our country.

India is now at the cusp of data revolution. Although data is growing strongly due to affordable tariffs, devices and growing uptake of new applications and services, 70% Indian population still has no access to Internet services. The average data service revenues, as compared to voice revenues, are below 15%, compared to more than 30% in other countries. In an intense competitive market where TSPs have invested thousands of crores for creating the broadband network and buying spectrum, a rigid tariff framework will slow the data penetration to a great extent. At this stage, when

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<sup>1</sup> <http://www.broadbandcommission.org/documents/reports/bb-annualreport2015.pdf>

<sup>2</sup> <http://www.thehindubusinessline.com/news/in-terms-of-gdp-indias-economy-is-10th-biggest-world-bank/article6196736.ece>

the technologies, services and commercial models of the Internet ecosystem are evolving, the best way is to allow the market forces to work freely to meet customers' expectations.

## **2. Differential data tariffs encourage innovations:**

Pricing flexibility is a core tenet of marketing and innovation. The differential pricing or marketing innovation is critical for the growth of data services. Customers find differential offerings, a great value proposition as these enable them to use various products/services of their choice at a much lower price. Thus, TSPs should continue to have the flexibility to offer a variety of packages to consumers. Needless to say, the existing legal and regulatory framework in India provides for adequate safeguards against any potential concerns arising out of differential charging.

In India, barely 30% of the population currently has access to the Internet. With approximately 1 billion people who are yet to be connected, a majority of customers are price sensitive. Therefore, Internet access cost needs to be low enough for its adoption by the masses. Differential pricing allows the telecom operators to create the suitable/targeted tariff packages which suit the need of various types of users and hence, such differential tariffs should be continued.

Globally, differential tariff plans/ STVs are quite popular and are not seen as anti-competitive or discriminatory to any content provider. Some of the telecom markets which have encouraged differential tariff plans/STVs are Singapore, Hong Kong, Thailand, Malaysia, New Zealand, UAE, Bangladesh, and Philippines.

## **3. Regulatory Intervention to ensure that the differential tariffs are non-discriminatory and transparent:**

We believe that marketing interventions such as free sampling, try to buy, toll free, zero ratings or sponsored data should continue to be encouraged to allow more and more users to come online and use Internet services.

Regulators across the world have acknowledged the potential benefits of sponsored data arrangements. While mindful of possible anti-competitive concerns, they have chosen to review such arrangements on a case-by-case basis (FCC, 2015<sup>3</sup> and EU,

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<sup>3</sup> FCC Open Internet Order, 2015 available at <https://www.fcc.gov/document/fcc-releases-open-internet-order>

2015). We firmly believe that sampling of the Internet and allowing free experience of sites is core to Internet adoption. Pricing innovation such as zero rated websites holds great socio-economic merit, and as such must be evaluated pragmatically. However, TRAI can review all such schemes to ensure that the differential charging/zero rating is provided in a non-discriminatory and transparent manner.

A para wise, detailed response to the questions posed in consultation paper is as under:

**Q1. Should the TSPs be allowed to have differential pricing for data usage for accessing different websites, applications or platforms?**

**Q2. 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?**

**Airtel's Response:**

1. We believe that the questions posed in the current consultation paper are only confined to differential charging for Web browsing (access of the Internet through websites/applications) hosted by various content providers and do not cover the differential charging based on 'content type' such as VoIP, M2M etc.
2. At present, there is a huge pricing arbitrage, of the order of 1:6, between VoIP (data services) and Voice Services. Differential charging for VoIP is required to eliminate the arbitrage which leads to subsidization of rich data customers using smart phones by the customers using voice through ordinary feature phone. VoIP/OTT Voice also creates a non-level playing between licensed TSPs providing voice services and OTT Communication Service Providers providing same services. Therefore, we believe that any regulation on OTT communications and/or charging of underlying data services should follow the principle of "**Same Service, Same Rules.**" Further, M2M requires a creation of a differential quality network to meet the technical requirement of M2M/IOT. Therefore, any disallowance to such differentiation would stifle innovation in M2M domain and will disincentives TSPs to upgrade their network to meet requirements of M2M. Since the consultation paper is confined to content side tariff differentiation of web browsing, therefore, we have confined our response to this classification only.
3. Currently, the voice tariff plans of TSPs allow differential charging to the customers based on type/destination. Such voice differential charging is done based on local call, STD call, ISD call, on-net and off-net, day and night, national roaming and international roaming. If TSPs are mandated to offer a uniform tariff for all types of voice call (local, STD and ISD), it will increase the tariffs of local calls, and the local call users will end up subsidizing the users of STD and ISD calls. Therefore, such differential tariffs have enabled TSPs to provide affordable services, and have benefited the industry & consumers at large while not being found as anti-consumers, misleading or ambiguous.

4. Therefore, we firmly believe that the differential pricing, trial packs, STVs/rate cutters are critical for promoting innovation in the Internet eco-system.
5. It is not practically feasible to foresee every innovation in the Internet eco-system and deals with it through regulatory intervention. While, there could be some issues with differential pricing from competition and level playing field perspective, these can be addressed by placing adequate safeguards.
6. An appropriate and reasonable approach would be to outline certain broad principles **{(Fair, Reasonable and Non-Discriminatory (FRAND))}**, which not only foster the growth of Internet eco-system and innovative business models, but also empower TRAI to address any genuine concern related to competition, level playing field, transparency, etc. TRAI may prescribe that the business practices of TSPs adhere to these broad principles, and their differential tariffs are tested against these principles on a regular basis (as already being done by TRAI under the existing tariff regime).
7. Currently, every player in Internet eco-system is experimenting with various marketing innovations and business models to promote their content/website/services. Furthermore, enterprises world over for a long time have been trying to get more customers on-board by providing a method to connect with them. Some of these examples are; toll-free voice, business paid postage, etc. Similarly, free sampling mechanisms for the Internet will certainly play an important role in bringing more and more customers on board for Internet services.
8. As per our estimates, sponsored data allows Internet companies to cut their marketing budgets to 30%, especially since such arrangements are cheaper than direct advertising. The ultimate goal for any edge provider is to attract users to its service/content/application, and sponsored data offers a cost-effective alternative to traditional marketing efforts. Therefore, any policy framework should not take away the pricing innovation and flexibility in Internet eco-system and telecom service providers should not be barred from using zero/discounted platform.
9. Connecting a billion Indians to the Internet will only be possible if cost of access is low enough for price sensitive customers. Innovative pricing, such as zero-rating, and other commercial constructs will be critical for making services affordable enough for large-scale consumption, and should be permitted.

10. Toll free or zero rating enables first-time users and marginal customers, who cannot afford Internet services, to experience them for free and later on, such users become regular data users, which is good for both the government and the industry. There is evidence to show that if structured appropriately, Zero Rating may drive innovation and competition in the Internet economy<sup>4</sup>.
11. Any TSP's zero/discounted rating platform should be open to all application developers, content providers and Internet sites on a completely transparent and non-discriminatory basis. All business practices of TSPs related to their zero/discounted rating platform must be held up to the Fair, Reasonable and Non-Discriminatory (FRAND) standard.
12. To conclude, differential charging is an effective mean of bridging the digital divide, and we believe such arrangements should be continued. Additionally, it is important to note that in the case of zero rating, social welfare increases because benefits are directly passed on to consumers, and not to commercial entities such as in the case of paid search. Such pricing innovation holds great socio-economic merit, and as such must be evaluated pragmatically.

**Q3. 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?**

**Airtel's Response:**

1. We believe that differential data tariff plans are important to promote innovations in the Internet eco-system and to cater to the needs of different segments. Any concern of market abuse/discrimination to any specific party, should be addressed on a case to case basis rather than imposing a blanket ban on any particular business model/pricing innovation.
2. We firmly believe that Direct Benefit Transfer (DBT) has the potential to be misused for bypassing the non-discriminatory nature of zero/differential rated content.

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<sup>4</sup> FCC Open Internet Order, 2015 available at <https://www.fcc.gov/document/fcc-releases-open-internet-order>

3. A DBT done by TSPs is no different from zero rating. While, DBT also achieves zero rating but it comes with one significant disadvantage, i.e. it only targets digitally-enabled customers. Whereas in case of zero ratings provided by TSPs, customers are allowed to see zero-rated content without being Internet customers. Therefore, zero rating is a better way to promote digital inclusion.

**Q4. Is there any other issue that should be considered in the present consultation on differential pricing for data services?**

**Airtel's Response:**

1. Differential pricing is recognised both in law and by courts. It is a well-established principle applied across sectors with respect to water, electricity, gas, railway etc.
- a) Electricity  
Tariff rates are fixed based on nature of supply, and the purpose for which the supply is needed. Courts in various judgments have held that differential pricing is not a violation of Article 14 of the Constitution.<sup>5</sup>
- b) Water  
Various agencies such as the Delhi Jal Board make a distinction between different consumers, rate and flow. This includes:
- Residential
  - Partially Residential/Mixed
  - Industrial/Commercial
- c) Gas  
Gas companies distinguish charges on the basis of consumer and purpose of use. The distinction is based on-
- Usage -
- Commercial, such users are provided no subsidy, and their cost of purchase is directly linked to the market forces and global cues.

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<sup>5</sup> Coimbatore Stock Exchange Ltd. and Ors. Vs. Tamil Nadu Electricity Regulatory Commission and Ors. 2013(6) SCALE408, Rohtas Industries Ltd. and Ors. Vs. Chairman, Bihar State Electricity Board and Ors. 1984(1)SCALE465, Association of Hospitals Vs. Maharashtra Electricity regulatory Commission and Reliance Energy Ltd. (Now renamed as R Lnfra), Reliance Energy Centre 2011ELR(APTEL)1612, Association of Industrial Electricity User Vs. State of Andhra Pradesh and Ors. (2002)3SCC711



- Domestic, such users are given gas via LPG cylinders/pipeline at subsidized rates. They are not linked to the global market rates.

d) Railway

The railways also follow the practice of price discrimination.

e) Coal

The principle of dual pricing can be found in the coal industry.