

New Delhi, 14 June 2016

To,
Shri Arvind Kumar,
Advisor (Broadband & Policy Analysis)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan,
Jawahar Lal Nehru Marg,
New Delhi – 110002

Subject: Submission of counter- comments on TRAI's Consultation Paper on Free Data

Dear Sir,

The Digital Empowerment Foundation (DEF) wishes to thank the Hon'ble Authority for the opportunity to submit our counter-comments on the Consultation Paper on Free Data.

Digital Empowerment Foundation is a New Delhi-based not-for-profit organisation. It was born out of the deep understanding that marginalised communities living in socio-economic backwardness and information poverty can be empowered to improve their lives almost on their own, simply by providing them access to information and knowledge using digital tools.

We recognise unhindered and universal access to the internet as a key driver of development and empowerment amongst the digital excluded masses in India. We are grateful that the TRAI has sought greater clarity on the discriminatory tariff regulations and has approached the concept of providing free data to all.

My colleagues, Mr. Rajat Kumar and Ms. Shivani Lal, who have drafted our response can provide additional material and DEF is happy to provide any further support to TRAI.

Yours sincerely,



Osama Manzar
Founder & Director
Digital Empowerment Foundation

Question 1: Is there a need to have TSP agnostic platform to provide free data or suitable reimbursement to users, without violating the principles of Differential Pricing for Data laid down in TRAI Regulation? Please suggest the most suitable model to achieve the objective.

No, there is no need for a TSP agnostic platform to provide for free data. When consumer behaviour is driven by the sites that are willing to subsidise their visit, we enable large companies to unfairly control the market. These companies would leverage their greater potential to pay to provide subsidised access to their sites.

A limited TSP agnostic platform will also create potentialities for the violation of the Discriminatory Pricing Regulations as put forward by the Hon'ble Authority. Improving internet access requires the coordinated deployment of multiple technologies at the local, district, state and national levels. Equal access is essential to improving the browsing experience of consumers and efforts should be made to ensure user choice to select and use web services.

To accurately recommend suitable models for free data access, it is necessary for us to review the three models as laid down in the Consultation Paper.

Model 1: Reward to consumers

This model is inherently against the principle of network neutrality as laid down by the Hon'ble Authority earlier this year. The act of providing a reward based on downloading certain applications or accessing certain websites leaves this model open for abuse and violation of the Discriminatory tariff rules.

Firstly, the very nature of this model reduces the choice for consumers and directs their traffic towards websites or services that would incentivise or subsidise their cost of access. Further, it also creates the opportunity for the TSP to develop their own applications and provide differential access to it and therefore, unequal access to rewards to their subscribers.

Additionally, the model would disincentivize the exploration of the internet by the consumer, leading to the creation of online fiefdoms where companies may have disproportionate power to influence consumer behaviour and limit choice.

Finally, this model also precludes the requirement of data access for consumers to access the platform in the very first place.

Model 2: Toll Free APIs

This model is also against the Discriminatory tariff rules of the TRAI due to its provision of providing free access to select channels discriminating it against the others. This deters smaller firms from entering as they may not be able to offset the cost of free provision of services. Also it should be noted that the definition of toll free access is different from toll free numbers. Toll free numbers are meant to provide a particular service essentially, emergency services. The cost of providing toll free numbers is offset by the social value it creates. Toll free access would still require the provisioning organization to offset the cost.

This model enables the TSP's to differentiate their own apps or some selected portals providing it at lower rates than the others which violate the principles of net neutrality. One also needs to note that his model requires monitoring of data at an individual level which is nearly impossible and is in violation of an individuals' privacy.

Model 3: Direct money transfer

The first question that arises on review of this model is that “who will pay the subsidy” or the “cash back”; the USO, the Government, through a different channel or TSPs themselves? This has not been stated clearly, which makes the current model ambiguous in its approach.

Additionally, big firms find themselves in a better position to direct or influence consumer behaviour by initially lowering the prices or incentivizing their portals by, as their capacity to bear the cost of the “cash back” is much higher than smaller firms. This is contradictory to

the intention of the consultation paper and the government's approach through the Digital India plan which tries to promote start-ups rather than encouraging monopolistic ecosystem. Finally, as with the previous model, it again requires monitoring the browsing habits of each individual which has implications on their rights to privacy.

Access to Internet is increasingly being regarded as a human right in international discussions and some countries have reflected this perception in legislation. The Hon'ble Prime Minister, during the launch of the Digital India Plan also stated that the Internet is a human right. The Digital India Plan also approaches universal Internet access as a key activity vertical.

We recommend the following alternative models towards the provision of free data access to consumers in India.

The primary alternative model that we recommend is the provision of free data quota/packs. This model would entail a certain limit of data use free of charge and any data usage above that basic pack would be charged at a rate in accordance to the fair pricing regulations of the Hon'ble Authority. Studies by the Association for Affordable Internet (A4AI) have shown that users prefer unrestricted access to the internet even if time or data limits are enforced. The provision of free data would incentivize individuals to engage online and consequently pay for additional access. This would encourage more users sign on, increasing digital penetration and the revenues for the ISPs.

This free data quota could be implemented in either of the following means:

- Making the provision of free data pack mandatory for mobile operators as part of their license conditions or
- Subsidizing the cost of this free data pack through the USOF as an incentive to mobile operators who implement this free data.

A modification to the above model is the provision of free data during certain times of the day. TSP's can provide free data to everyone without restrictions for a particular part of the day. This would give an incentive to the consumers and would also adhere to the guidelines of TRAI. This would enable traffic management as a particular part of the day with low usage would be off-set by the high usage.

Question 2: Whether such platforms need to be regulated by the TRAI or market be allowed to develop these platforms?

As stated in our response to the previous question, it is our belief that there should be no TSP agnostic platform for free data access. Rather, free data should be provided to every mobile subscriber; as part of the TSP license conditions or as an incentivised option subsidised through the USOF.

It is our submission that further work needs to be done to augment the existing regulations on Differential pricing of data. Regulatory intervention is strongly recommended in cases where a platform differentially prices access to certain applications or services. This sort of discriminatory access is not possible without an accord with TSPs.

Further, TSP agnostic platforms create monetary hurdles for low-cost innovators, start-ups and non-profit organisations. This creates entry barriers that the TRAI has raised in the *Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016*, and it is our recommendation that the Hon'ble Authority apply Regulation 3(2) of the Discriminatory Tariff Regulation and order TSPs not to allow any such platform to integrate and operate on their networks.

Question 3: Whether free data or suitable reimbursement to users should be limited to mobile data users only or could it be extended through technical means to subscribers of fixed line broadband or leased line?

The same regulatory regime should be made applicable to mobile data users and subscribers of fixed line broadband or leased lines as long as they connect to the Internet. The policy choices examined by the TRAI in making the discriminatory tariff regulation do not distinguish between mobile and broadband data services.

Given the rapidly changing convergence in definitions and technologies one cannot guarantee the definition of broadband or mobile internet will remain the same. The same devices already seamlessly hop between mobile, Wi-Fi and even Bluetooth bands. The same

operators already provide mobile telephony, wireless broadband, wired broadband etc. There will be no easy or clear way to define how data flows through a telecom network and through a user's device. Using these definitions to craft differential policies will only result in regulatory vagueness and would allow TSPs to seek out loopholes using advancements in converged telecom networks and technologies.

Unless a compelling policy reason exists otherwise it is requested that the same regulatory regime for network neutrality should be followed for both.