



Joint Industry Submission

Counter Comments - TRAI Consultation Paper On Free Data

Released on May 19, 2016

At the outset, we would like to highlight key submissions made in our response to the Consultation paper in order to provide a clear perspective on the issues involved:

1. At our stage of development, our **highest need is internet adoption and increased data usage** and whatever facilitates the same needs to be supported.
2. In a competitive market such as India, **Regulator should not interfere with market flexibility**, without having any evidence of market distortions.
3. A TSP agnostic platform is outside the jurisdiction of TRAI
4. A TSP/ISP agnostic platform to deliver free Internet for some sites, apps & services can possibly lead to the content/platform owner and provider acting as a 'Gatekeeper' who could operate in a completely uncontrolled/unregulated manner and thus carry far higher possibilities of misuse of market power and/or anticompetitive behaviour.
5. Allowing the content providers to offer services as per business models suggested in the paper and restricting the TSPs from offering the **same is an unjustified and arbitrary restriction on the TSPs' rights to conduct business**.
6. The proposal of TRAI would also cause **loss of revenue to the exchequer** as content provider will be able to provide the services under particular business model and will not be required to pay any License fee for the same, being non-licensee.
7. **TSPs should be permitted to offer Free Data.**

8. It should be left to TSPs to decide whether they want to enter into arrangements with the content providers or not basis their business case and requirement of technical development.
9. **No ex-ante regulation** is required since the market is vibrant enough. On the ex-post basis, **TRAI can examine tariff plans on a case by case basis** after giving a reasonable opportunity to the operators of being heard.

We would like to make following submissions on the comments received from various stakeholders:

1. **TSP's as Gatekeepers**: Some stakeholders have suggested that TSP agnostic platforms should be permitted as otherwise TSPs may act as 'Gatekeepers'. In this regard, we would like to make the following points for consideration of the Authority:
 - a. We would like to submit that it is the TSPs who have invested heavily in telecom infrastructure to tune of INR 8.5 lakh crores and they have more stakes in the growth of the Internet and to connect the unconnected than any other stakeholder in the entire eco-system.
 - b. Indian telecom companies have every incentive to act as a gateway as opposed to a gatekeeper to Internet access by bringing more people online. A TSP has no reason to preclude a set of subscribers from its subscriber base or from accessing the content of his/her choice on the internet and hence, will certainly not indulge in any practices that create hurdles for access to a certain portion of the internet.
 - c. The TSP business is usage driven, thus TSP has every incentive to increase the data usage rather than working as a gatekeeper and stall the same.
 - d. Also, in this model the consumer demand will drive the shape of free data/differential offerings and not the TSPs.
 - e. Further, it is reiterated that the TSPs cannot ensure the popularity of any Website/App as it is entirely dependent on its ability to appeal to the end users and at no point can it be influenced through any differential tariff plans by the TSPs. TSPs should be allowed commercial flexibility for addressing the needs of different types of customers.
2. **TSP Agnostic Model**: One of the stakeholders has commented that some of the models which the TRAI has mentioned in this consultation paper might use to evade or bypass the Discriminatory Pricing regulations, in case they allow telecom operators to collude with content providers. In this regard, we would like to make following submission:

- a. The model suggested by TRAI cannot be provided by the content providers without the involvement of the telecom operators. The content providers, being a non licensed entity, cannot directly provide voice or data recharges to the users. They can only do so by entering into agreements with the TSPs wherein the TSPs will provide the data/voice recharge to the users on behalf of the content provider.
 - b. The Content Providers are not the actual end users, but they are commercial entities and have commercial interests. Further, the content providers are not even licensed players. Such commercial 'unlicensed' entities cannot be treated as end users.
 - c. Further, as highlighted above, we would like to submit that it is misplaced assumption that the operators will act as a gatekeepers or offer discriminatory pricing to the end user for the data services.
3. **Pricing of free data:** Some of the stakeholders have suggested that operators should not discriminate between subscribers of their data services, whether they are end users or platforms which purchase data recharges from them for rewarding customers. Further telecom operators should not be allowed to discount the bulk purchase of data plans which will inevitably happen when a website receives high traffic. We would like to submit that unrestricted access as per license conditions does not envisage the provisioning of each type of content at the same price or charging only the end user and not the content provider or both simultaneously.
 4. **Mandatory Free Data Plan by operators:** Some of the stakeholders have suggested that it should be made mandatory for mobile operators to provide a minimum free data pack as part of their license conditions. We would like to submit that no mandatory requirement needs to be prescribed. We would further like to submit that the TSPs have always been in favour of freedom to do business wherein the TSPs / content providers can offer free access / discounted data / rewards to the consumers for accessing certain contents which can be through the mutual agreements between the TSP(s) and the content provider(s). However, TSPs find themselves in a quandary wherein the significant investments in their networks through acquisition of spectrum at high prices and investment in physical infrastructure is being used by the OTT players to attain huge valuations while the ROI and profitability of the Telecom companies has been under considerable strain.
 5. **Same Service Same Rules:** Some stakeholders have suggested that net neutrality framework and its enforceability through TRAI is only through TSPs. In this regard, we would like to submit:
 - a. The regulatory framework of Net Neutrality should not be limited to TSP only, but apply to all other stakeholders such as website, content/application providers and handset manufacturers. For example, while TSPs are subjected to strict data privacy rules and consumer information confidentiality provisions, however, the other stakeholders are not subject to such rules.

- b. Hence, same service, same rules between the OTT Communication Service Providers and TSPs are required.
6. **Traffic Management:** Some stakeholders have commented that all sites must be accessible at the same speed (at an ISP/Telco level) which means no speeding up of certain sites because of business arrangements. In this regard, it is submitted that this issue is the subject matter of another consultation and not relatable to tariffs.
