

To,
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Sir,

our counter-comments to comments made by some of the submissions in response to questions raised in the Consultation Paper on Free Data are below.

Firstly,

- The TRAI must view all such consultations from the perspective that all users are creators. We have the potential in India to have a billion creators, who currently have the freedom to chop, change and remix audio, video, text and interactivity to reimagine new experiences for other users, who are also creators. Even today, innovators are creating completely new experiences, such as the substantial success of Pokeman GO in the last few days alone. India has the potential and the talent to create such experiences, and creators should not be denied the opportunity, just to fill the coffers of telecom operators whose only goal is to maximise shareholder value, even if at the cost of the rest of India's citizens.
- A reading of regulatory filings from telecom operators over the years will point towards the use of:
 - An appeal to emotions (farmers, education, fishermen in Kerala), whereas their primary responsibility is to investors.
 - An appeal to fear (privacy, national security concerns because of unlicensed companies)

- A fallacious cry for help (telecom operators have been voicing worries about bankruptcy and debt for over 10 years, despite many of them being profitable, and sustainable).
- A fallacious claim of unfair treatment: while they benefit from spectrum auctions which allows them exclusivity in terms of usage of spectrum and provisioning of access, they invariably complain of having to pay too much, and having paid, of seeking preferential treatment.

Anything out of this standard playbook ought to be ignored, since it is disingenuous.

- Telecom operators have disproportionate resources to allocate to the regulatory processes, as compared to users who participated in the TRAI consultations on Net Neutrality and Differential Pricing over the last year. Multiple consultations on similar issues ensure that those who don't have the resources to participate repeatedly in the process are disadvantaged. While we understand that ***eternal vigilance is the price of liberty***, the TRAI must not test this via multiple consultations on issues already considered and responded to. It must adhere to the principles it outlined in the Differential Pricing regulations. Using this Free Data consultation to either go against those principles, or dilute that ruling will impact the TRAI's credibility, and the faith that citizens repose in the open consultation process that the TRAI adopts.
- We would suggest that the TRAI ignore any submission from the COAI and AUSPI, given that most major telecom operators have already submitted their views to the TRAI. To that end, any association of which telecom operators are key members should also be ignored, given their disproportionate influence over decision making in these bodies.

- In particular, we'd like to point out that Reliance Jio is conspicuous by its silence, and we'd like to remind the TRAI [of its submission last year](#), wherein it asked for:
 - Bringing online (OTT) services under the regulatory framework
 - Bilateral arrangements between stakeholders, such as TSPs and content providers, in terms of commercial and technical arrangements.

Reliance Jio is offering several of its own communication and content services, and given that they have extensive spectrum and bandwidth, and are planning to offer high speed low cost Internet, care, in particular, that policy does not allow discriminatory practices from such a potentially dominant player.

- Lastly, many points made by telecom operators do not pertain to the current consultation on Free Data, but to the issues of Differential Pricing and/or Net Neutrality. We would request the TRAI to completely ignore all submissions from telecom operators that pertain to differential pricing, since that issue has already been addressed. It might also help to inform these telecom operators and their associations, in writing, that the Differential Pricing consultation process ended with the TRAI's regulation on February 8th, 2016.

Responses to stakeholder comments

1. **India's broadband growth is weakening:**
 - 1.1. **Airtel:** "out of 6 new smartphones being added, only 2 smartphones are getting connected to data / Internet. Post TRAI regulation on Discriminatory Tariffs, the growth in data has further slowed down due to non-availability of sample data packs and One-Touch Internet (OTI) samples. TRAI regulation has also reduced the affordability of

data services."

MediaNama's response to 1.1: Airtel hasn't provided evidence to substantiate this. For the quarter that the TRAI regulations came into force, Mobile broadband (3G + 4G) users stood at 35.46 million, up 80% year on year from 19.71 million in the same quarter last year. Even then, percentage growth may not be the correct metric, since it would be on a larger base. Secondly, we don't have data growth information for the preceding quarters since Airtel changed its reporting by combining reporting for 3G and 4G. In fact, since 4G customers end up using more data, and they "[tend to blow through their allowances a little bit faster](#)," according to its India CEO Gopal Vittal, Airtel might want to lower their data charges to allow users to consume data cheaper, and consume more data. Data consumption on Airtel networks increased 69% year on year to 146.76 billion MBs.

The TRAI had given telecom operators a six month deadline to shut services which violate the Free Data guidelines.

We'd appreciate it if Airtel could:

- **list the services it has shut down before its submission to the TRAI, and**
- **provide data to substantiate its claims.**

2. **Gatekeeper / Gateway is a myth:**

2.1. **Airtel:** "there is a myth that TSPs may act as a Gatekeeper and compromise the growth of some content providers or affect their level playing field or freedom of Internet as they are holding a valid telecom licence and conduct their business under a regulatory framework."

- 2.2. **Airtel:** "However, TSPs, who have great technical knowhow and have already invested hugely in the technology setup, can also be such aggregators and can follow a similar business model in a fair and non-discriminatory manner."
- 2.3. **Idea Cellular:** "The whole assumption in the CP is that the TSP will act as a gatekeeper and that the 3rd party's role will be neutral and unbiased is without a basis. It is not understood (and neither has TRAI explained) how a 3rd party, which is unlicensed (unlike TSPs) and for which no ground rules exist , have business interests and also be neutral?"
- 2.4. **Aircel:** "TRAI can very well exercise its powers to have oversight over such tariffs being offered to consumers, and intervene wherever it violates TRAI's principles. In this way, the said imaginary fears will continue to remain non-existent. " - Aircel

MediaNama's response: To say that service providers won't act as gatekeepers is an outright lie: to quote Netcore CEO Rajesh Jain in 2009, [whose services were blocked by Vodafone](#) because MyToday's services competed with Vodafones VAS SMS services:

- "Today's [Business Standard has an article](#) about Vodafone blocking our shortcode to stop people from subscribing to our (MyToday) opt-in SMS services. The real unstated reason for the block is that Vodafone believes our free SMS services are competitive to their paid services (Vodafone Alerts). So, rather than let the market and consumers decide, they chose the path of blocking a service which has grown word-of-mouth to 3.8 million subscribers in India in the past two years."

- "Since about 18 months ago, Vodafone has blocked access to our mobile portal (<http://mytoday.com>) for their Vodafone Live subscribers (which comprise the bulk of the GPRS subscriber base)"
- "Talking to Vodafone is nigh impossible – their pre-condition is we shut down the free SMS services."

Lets not forget that [Airtel blocked MyToday as well](#). In all these instances, and some of those mentioned below, the failure of the TRAI as a regulator to prevent gatekeeping and discrimination is evident. We don't believe the TRAI is equipped to deal with each and every instance of violation, or on a case by case basis, as is also evidenced from its failure in preventing VAS fraud and SMS spam, despite having regulations and a complaint mechanism.

Airtel has Wynk Music, and its sister concern Hike is a messenger service. Reliance Jio has its own movies, music and news apps. Idea [is also planning its content services](#). Remember that Measurement Lab had also reported that Airtel and other ISPs had been throttling BitTorrent traffic in India for years ([read](#)).

We really can't prevent TSPs from integrating vertically and starting online content services, but we can remove a gatekeeping role, and ensuring a level playing field via net neutrality.

Also, in response to point 2.2: just because telecom operators have invested in setups that allow them to do aggregation isn't a sufficient reason to allow them to launch them. They should have waited for the regulations to be finalized before making these investments. Their investors should take cognizance of this wasteful expenditure. Please note that, in terms of

providing evidence and being transparent, Airtel hasn't disclosed how much it invested in this setup, neither to investors, nor to TRAI.

Thus:

- **Licensing does not allow telecom operators to get a gatekeeping role over Internet access**
- **The TRAI has no obligation to determine policy based on wasteful expenditure on a net-neutrality violating platform from Airtel**
- **In the past, the TRAI has failed to prevent telecom operators from gatekeeping, discriminating and manipulating user Internet access.**
- **Vertical integration creates incentives for telecom operators to favor their own services to others. Net Neutrality creates a level playing field.**

3. **Definition of Net Neutrality:**

3.1. **Idea Cellular:** "The CP is vague and adhoc in the absence of net neutrality rules that should be first laid down to give clarity to the industry. Without this clarity, decision making process will be adhoc & complex and prone to hamper the data user's long term interests."

MediaNama's take: The TRAI doesn't necessarily need to define Net Neutrality. As was mentioned in the DoT report, it should identify principles of non discrimination. The DoT [had said](#): "We don't need to hardcode definition of Net Neutrality, but define principles, which include: No blocking, no throttling, no paid prioritization, freedom of access and to receive or use content, no discriminatory practices, reasonable traffic management and support for innovation, the need for transparency, prescription of QoS, low cost of switching." In any case, this consultation

does not pertain to the definition of Net Neutrality. It's about provisioning of free data.

Thus:

- **TRAI should define principles on the basis of the DoT's recommendations, and not worry about definitions.**

4. **Agnostic platform can also act as a gatekeeper:**

- 4.1. **Idea Cellular:** "Moreover TRAI does not have any jurisdiction on regulating any platform which is not owned by the licensed TSPs. TRAI can only regulate the telecom licensees." "It is submitted that a multi-player non-TSP platform model would result in a very complex market place with multiple platforms and service providers striving to provide free data. From a governance point of view, this market place being outside the purview of the regulator, it will become extremely complex to manage, monitor and regulate."
- 4.2. **Airtel:** "there is no guarantee that a TSP agnostic platform will not act as a Gatekeeper as content providers could operate in a completely uncontrolled/unregulated manner and thus carry far higher possibilities of misuse of market power and/or anti-competitive behavior."
- 4.3. **Airtel:** "It would be inappropriate that an aggregator/content provider is allowed to operate a business model without any regulatory oversight but a TSP is prohibited from offering the same services despite holding a valid telecom licence and operating in a stringent regulatory framework."
- 4.4. **Airtel:** "it could support the content providers with additional rights, to continue in an unregulated environment. "Also, as per TRAI Act,

interconnection can be regulated between different service providers and not between a TSP and 3rd party."

MediaNama's take: While we agree with Airtel on this, it's pertinent to remember that this is a company that:

- once blocked services on its platform (MyToday)
- Has been found to perform gatekeeping functions [with YouTube](#), and [possibly with Ogle](#)
- Allegedly has throttled traffic in the past
- And allegedly inserts code into user Internet connections without their consent and possibly snoops on them.

It is hypocritical for Airtel to say that agnostic platforms can play gatekeeper but telecom operators won't.

Also, in response to 4.3, licensing does not give telecom operators exclusivity over online content or services. TSPs are given exclusivity over spectrum, provisioning of PSTN services and Internet services, pricing of calls and data, and for this, others are excluded from provisioning access services. It is by virtue of this disproportionate power over access that they may be prevented from gatekeeping functions, because of their propensity to abuse this position, as has been explained earlier. Even if the regulator allows an online service provider to enable data-back services, they will have to go through a telecom operator. Thus the two aren't comparable.

While we oppose the idea of platforms taking control over which services are allowed to be free for users, we do believe that the regulator, unlike what Idea says, does not need to manage online platforms. Given that the regulations would apply to telecom operators, the TRAI should regulate the way telecom operators disburse their data through recharge providers, which further sell this data to platforms.

Thus:

- **Telecom operators have a history of discriminatory behavior.**
- **Licensing does not give telecom operators right to provide discriminatory access to the Internet. They have sufficient exclusivity by virtue of licensing and exclusive access to spectrum, and they get paid by users for this access.**
- **The regulators does not need to manage online platforms, but it can control the way telecom operators disburse data to platforms and recharge providers.**

4. Debt:

Reliance Communications: "Coupled with prevalence of highly competitive tariffs in the Indian telecom market, the ROI and profitability of the Telecom companies has been under considerable strain. The overall telecom industry's debt of almost INR 2.5 lakh Cr bears testimony to the same"

MediaNama's take: Bad business decisions by any telecom operator, whether it is taking on extensive and/or expensive debt, overpaying for spectrum, loss of money due to the 2G scam, or changing their business model from CDMA to GSM because the CDMA model isn't working out, are not the responsibility of the TRAI. Under no circumstances should the TRAI bail them out, and a users freedom of speech, when it comes to the unfettered ability to create legitimate content and services, shouldn't be constrained because of poor management decisions. In any case, as per their filings, many listed telecom operators are profitable, and they are free to use their profits to pay of their debt, or sell their business if it is unviable. Given 100% FDI in telecom, they may find buyers.

Thus:

- **It is not the TRAI's mandate to compromise a users free speech to address poor business practices from telecom operators.**

5. **Evidence needed:**

- 5.1. **Aircel:** "We are of the view that unreal fears have been used in the consultation paper, without quoting any evidence or study papers to substantiate. If the consultation papers are based on such nonexistent facts, it is bound to create distortions in the mindset of stakeholders and would lead to responses on incorrect situation/problems. "
- 5.2. **Airtel:** "Moreover, even the thought behind a TSP agnostic platform shows an unfounded mistrust towards the licensed and heavily regulated TSP, without any actual evidence of any TSP acting against the growth of Internet and not acting in a non-discriminatory manner."

MediaNama's take: As indicated earlier, evidence of discrimination from telecom operators is clear, and therefore, there is sufficient basis to mistrust telecom operators. Airtel Zero was meant to be a discriminatory platform, which allowed only those websites paying Airtel on it. By making only Whatsapp packs and Facebook packs available to users, and partnering to make Twitter or Facebook access free, Airtel, Idea and Vodafone were exercising discriminatory power. Given that telecom operators want evidence based regulation, the TRAI should direct all telecom operators to first provide data on usage patterns of these data packs, especially Reliance Communications, which ran the net neutrality violating Free Basics service for Facebook.

The real challenge here is the impact on innovation and freedom: how is it possible to provide evidence that a startup didn't start because one would

have to tie up with a telecom operator to be on a platform? How would we know that a service didn't launch because Reliance Jio, has the exact same service, and zero rates it for its users? Gödel's incompleteness theorem, [as the novelist Zia Haider Rahman put it](#), is that "Within any given system, there are claims which are true but which cannot be proven to be true." Thus, the regulation should be on principle, and on the principle of a neutral pipe for Internet access: Net Neutrality.

Thus:

- **The TRAI should seek evidence from telecom operators on growth of various Internet services on their platform, and compare zero rated services such as Facebook, Whatsapp and twitter, with the growth of comparable non zero rated services such as WeChat, Line etc. This evidence must be put in the public domain.**
- **It is impossible to measure the impact on innovation, because we will not know of a service that did not launch.**

6. Zero rated platforms are a security risk:

- 6.1. Airtel:** "A zero rated platform / API at aggregator level may require the connectivity with the IN system of every TSP, since such connectivity cannot be provided/regulated considering the huge security risks it causes to the integrity of whole TSP network/system."

MediaNama's take: Zero rating platforms, which make specific websites zero rated, should not be allowed, whether by independent platforms or by telecom operators. Additionally, we'd like to point out that [Airtel inserting super cookies into user connections is a security risk for users](#).

7. Disclosure of rate cards:

- 7.1. **Airtel:** "Any anti-competitive concerns associated with zero rated platforms can be adequately addressed by mandating TSPs to clearly disclose rate cards for sponsoring data on their respective platforms as well as by enforcing a framework to protect edge providers from denial-of-service by any TSP."
- 7.2. "The toll free data platform is open to all application developers, content providers and Internet sites on a non-discriminatory basis."

MediaNama's take:

- A disclosure of rates might bring about transparency, but it doesn't address other issues of gatekeeping and discrimination, such as favoritism and collusion.
- Disclosure of rates do not address bribery and corruption, which was/is rife in case of Mobile Value Added services.
- Disclosures do not address discrimination: There is evidence of discrimination in the VAS environment: everyone could apply to start a VAS service, but being allowed to apply doesn't mean that the service will be made live.
- Disclosures do not address the cost of negotiation: addition of another layer of permission and negotiation before a service can be made live to users. The Internet is about permission-less innovation, and any gatekeeping that is allowed will hurt Indian Startups.
- Disclosures haven't been made historically: Airtel did not, and still has not, disclosed its rate card for Airtel Zero despite repeated requests. There were no disclosures regarding which startups had applied to be a part of Airtel Zero. Airtel also has not disclosed the rate cards either. The toll free data platform isn't open, and just because you apply doesn't mean that they'll be listed.
- Zero rated platforms also distinguish between paying and non-paying creators (users). The Internet is a platform where any creator can create and

make their service available, without having to pay a fee to any service provider, or having to negotiate for access with a TSP. India can have a billion creators without gatekeeping from telecom operators: how many of these will be able to negotiate with a telecom operator to make their service available.

Thus:

- **Disclosures are not a substitute for prevention of discriminatory practices, and not sufficient either.**
- **They do not address issues of gatekeeping and discrimination, such as favoritism and collusion, bribery and corruption, additional cost of negotiation. Disclosures have not been made historically.**
- **Zero rating, including toll free data, prevents permissionless innovation and hurts Indian startups and users alike, because they create a distinction between paying and non paying creators (all users are creators).**

8. **No Zero rating for VoIP:**

8.1. **Airtel:** “The technology based aggregator would need to ensure that business model of TSP is protected and does not result in any displacement/loss of business to the parent TSP. For example, this cannot be used to zero rate VoIP calls and messages or create a B2B service that impacts postpaid revenue or impacts M2M.”

MediaNama's take: The aggregator, even if allowed, will have to purchase data from the telecom operator, at a rate determined by the telecom operator. Therefore, telecom operators make money, no matter what the data is used for. To restrict the usage of data for a particular service would be a net neutrality violation, and amount of blocking of access of a particular type of service. To also monitor what the data is being used for, and prevent some types of access is a privacy concern, since this is not possible without

deep packet inspection.

Lastly,

9. Privacy and security:

9.1. **Airtel:** "Inherent risk of misuse of user information with Third Party Model The model of aggregation platform carries high inherent risk of misuse of user information. "

9.2. **Airtel:** "TSPs are bound by stringent conditions with regard to privacy and confidentiality of the subscriber data as also significant security conditions."

MediaNama's response: Airtel has been found to [insert tracking code into user connections](#), and more recently, found to insert and iframe into users https connections. [MTNL](#) and [BSNL also both insert code](#) into user connections, in partnerships with companies that have systems to track users. In the past, Airtel also had a partnership [for a mobile advertising platform called AudiencePro](#), based on user data. In case this violates the governments conditions regarding privacy and confidentiality, the government must take these TSPs to task. We'd also like to point out privacy concerns with Free Basics, as was indicated in our submission on differential pricing.

Thus:

- **The idea that telecom operators care about user privacy is laughable. They would happily sell user data for money, or allow advertisers access to users and usage data, as MTNL and BSNL apparently do.**

10. Fishermen in Kerala etc:

10.1. **Idea Cellular:** "Similarly, fishermen in Kerala may be interested in weather updates while the farmers in Maharashtra may be more interested in agriculture related applications, students may prefer educational content while migrants may want banking services."

MediaNama's take: Telecom operators have no interest in increasing access, unless it brings about greater monetization for them. They want to enable a gatekeeping mechanism because that brings about even more disproportionate monetization. We'd like to remind the TRAI that even in terms of cellular connectivity (not data), the rural teledensity is much lower, even though most large telecom operators are profitable. Their responsibility, rightly so, is towards their shareholders. However, their responsibility is not towards citizens, as is evidenced by the increasing of call rates over the past couple of years, and the history of VAS fraud (which the TRAI has failed to clamp down on effectively). Lest we forget, the same telecom operators stole Rs 30 per month from many a illiterate person.

This talk of fishermen and farmers is a fallacious appeal to emotions, **and a part of the standard telecom operator playbook** in regulatory consultations, as mentioned in the beginning of these counter comments. It is the Indian government's responsibility ensure broadband access for all citizens, and bring data prices down through means in its control: spectrum auction prices, right of way costs, interconnections with NIXI, public WiFi. **It is unlikely that telecom operators will bring down prices even if their operating costs lowered.** It is also likely that, like it happened with Mobile VAS and increases in telecom operator share of revenue shares, the cost of provisioning free data for consumers, will increase, if it is allowed. The TRAI may create incentives for telecom operators to reduce data prices, failing which it may choose price control mechanisms.

11. **It's like marketing:**

- a. Hindustan Unilever: "these TSP/ISP agnostic internet data arrangement activities by any company is identical to traditional marketing/consumer incentives or promotions to invite consumers/subscribers to purchase or use their product/service (in this case, on an Internet based platform/website/application) and present across industries for long. For example: free soap on purchase of a body wash product, get 1 gym bag free with membership to the

XYZ gym, 25% more quantity/volume of the product for the same price, 5% discount on purchase of a car from ABC dealership, Free Talktime to consumers, Cashback offers on E-commerce and free TV channels without subscription fees. Consumers across industries use incentives/promotions to attract consumers/subscribers and public in general which are acceptable marketing practice including under law.

MediaNama's response: This ignores the fact that reimbursements can be the same as Zero Rating, which has been banned: the impact of reimbursing data post usage is the same as reimbursement during usage. If I give you 20 mb of data for every 20 mb you use, it is zero rating, whether that data is given to you before or after usage. The giving of data should not be linked to an access related activity.

Secondly, access to third party services online are not comparable with products.

The following comparisons from HUL are fallacious:

- Soap: “free soap on purchase of a body wash product”
- Gym membership: “get 1 gym bag free with membership to the XYZ gym”
- Products: “25% more quantity/volume of the product for the same price, 5% discount on purchase of a car from ABC dealership”
- Talktime: “Free Talktime to consumers”
- Cashback: “Cashback offers on E-commerce”
- TV: “free TV channels without subscription fees.”
- Milk: normal bottle of milk or a bottle of milk with 25% more in quantity

On TV Channels, the correct comparison is with carriage fees, not subscription fees, and [Network18 and Quint founder Raghav Bahl has written about the harms of that model](#). On cashback, as long as it is not access linked, there shouldn't be an issue. In the other cases, the comparison is not valid because of many reasons, the key reason among them: the comparisons assume that consumers are being given a product, which is access. However, access is not a product, it's a means of available a product, and telecom operators and telco-agnostic platforms can perform gatekeeping functions.

12. Competition issue:

- 12.1. **Hindustan Unilever:** “Any such concerns with respect to competition law of such free data/ reimbursement of data

activity/platform can, should and would be addressed under the competition act, not requiring further regulations by TRAI.”

MediaNama’s response: This is myopic, because it views the Internet purely as a business medium where competition might be a concern. The fact is that a majority of the content and services on the Internet are user generated, and generated not as a business, but as freedom of speech and expression. Thus, to limit this merely to the idea of competition is false. Let’s not forget that Wikipedia exists because of user contributions. Much of the Internet runs on open source solutions, built on the basis of user contributions to society. The community aspect of the Internet is much greater than the commercial aspect, and hence the Internet should be viewed as a global public commons, not a marketplace.

Please refer to the points made in our submission on Free Data [here](#).

13. HUL points towards declining consumer ARPU, saying that it is “declining due to the consumers capability and willingness to spend on different types of internet data.”

MediaNama’s response: This is factually incorrect, and HUL provides no data to support it. In fact, telecom operators have shown an increase in Data ARPU and an increase in customers, across 2G, 3G and 4G over the past few years. The truth is, in fact, exactly the opposite: for Airtel ([KPI](#), [Excel file](#)), for example, Data ARPU was in fact as high as Rs 198 per customer at the end of March 2016, and has increased year on year from Rs 176 in March 2015. If the overall ARPU has fallen marginally from Rs 196 in March 2015 to Rs 194 in March 2016, it is clearly not because of data. Data is keeping ARPU up for most of the major telecom operators.

14. **FRAND Principle:**

- 14.1. **Airtel:** “an appropriate approach would be to ensure that all stakeholders offering free/subsidized data follow the broad principles {(Fair, Reasonable and Non-Discriminatory (FRAND))} and market forces allow all stakeholders to develop their business models and operate within the defined regulatory framework.”

15. **CIS India:** “Beyond transparency, a regulation could take the form of insisting on standard rates and terms for all OTT players, with differential usage tiers if need be, to ensure that access is truly nondiscriminatory. This is how the market is structured on the retail side. Since there are transaction costs in individually approaching each TSP for such provision of free data, the market would greatly benefit

from a single marketplace where OTTs can come and enter into agreements with multiple TSPs.”

MediaNama’s response: The FRAND principle is discriminatory, in that it creates a threshold in terms of whom it will be applicable to: only those who can negotiate and work with telecom operators. Those who can’t pay, won’t be heard or given a chance to participate in terms of creating Internet services or content. This disadvantages small startups, small businesses, and anyone who doesn’t have money. The problem doesn’t go away just because someone is willing to pay money, or willing to deal with telecom operators. Also, allowing telecom operators or platforms to do zero rating, with direct deals between telecom operators and zero rating platforms, creates incentives for keeping bandwidth caps low, to make it attractive for application developers to pay or zero rating. As indicated in our differential pricing submission, there is evidence of this from the EU.

Lastly, the TRAI in its FEB 2016 rules on Differential pricing restricted telecom operators from differential pricing for data services, whether telecom operators were doing this by themselves or in collusion with others, despite them making a similar argument then. The TRAI overruled this FRAND argument then, and it should continue to do so.

15. **Idea:** "All operators have committed to a network where there is no blocking, no throttling and no paid prioritization. Under the circumstances, it may be better to allow market forces to grow the data business rather than muddy the waters with dos and don'ts."

MediaNama's take: We welcome Idea's commitment to such principles. Apart from paid prioritization, this should be extended to any preferential treatment from telecom operators, paid or unpaid, and this includes lowering the price of access to a service or website.

13. Zero rating 0.example sites:

13.1. **Center for Internet and Society:** “0.example” sites Other forms of free data, for instance by TSPs choosing not to charge for low-bandwidth traffic should be allowed, as long as it is not discriminatory, nor does it impose increased barriers to entry for OTTs. For instance, if a website self-certifies that it is low-bandwidth and optimized for Internet enabled feature phones and uses 0.example.tld to signal this (just as

wap.* were used in for WAP sites and m.* are used for mobile-optimized versions of many sites), then there is no reason why TSPs should be prohibited from not charging for the data consumed by such websites, as long as the TSP does so uniformly without discrimination. In such cases, the TSP is not harming competition, harming consumers, nor abusing its gatekeeping powers.

MediaNama's response: this is harming competition because it creates incentives for users to use lower bandwidth websites with relatively poor features, and without rich media. If such sites are zero rated, and telecom operators are made to bear the cost of this zero rating, this will impact the pricing of access for the open web, and increase the pricing gap between the "regular" Internet and zero rated websites. As it is, video is, a key means of education, entertainment and information, will be excluded from this medium. Thus, such form of zero rating only favors the literate. While one might see benefit in Wikipedia Zero remaining, one should realize that there are other useful sites such as the Khan Academy, MIT Open Courseware, which are also beneficial. In that context, how does the regulator or the telecom operator decide which sites should be free, and should the regulator or the telecom operator even have the right to do so? The regulator should ensure that the TSP remains neutral, and users pay the same price for each bit accessed. Free Data may be bought by users on the bases of a direct cash transfer to their accounts, and access should be unrestricted, and conditional, when it comes to such data.