



**RAJEEV CHANDRASEKHAR**  
MEMBER OF PARLIAMENT  
RAJYA SABHA

Member of Standing Committee on Defence  
Member of Consultative Committee on Defence  
Member of Central Advisory Committee for the National Cadet Corps  
Co-Chairman, Vigilance & Monitoring Committee, Bangalore Urban District  
Vice Chairman, National Military Memorial Management Trust, Bangalore

*Dear Ravishankar,*

26 May, 2016

Sub.: Need for Immediate Government Intervention in ICT Space to protect Consumer Interest and Enhance Investor Confidence

Congratulations on completing 2 years as the Minister of Communications & IT. Congratulations on the progress made by you in the improved functioning of MTNL/BSNL and also on assuming a multi-stakeholder approach to Internet Governance.

However, as discussed during our Telecon recently, I wish to bring to your kind attention the fact that two years on, consumers are at the same place on a number of key issues concerning their welfare, albeit due to TRAI's problems and despite the Government's good intentions and objectives.

1. No Relief on Call Drops

The recent Judgment of the Hon'ble Supreme Court which has set aside TRAI's regulations on a serious public interest issue impacting several States and pockets across the country, leaves the consumers at the mercy of mobile operators. It also points to serious lacunae, both with regards to the procedural rigour and capacity / expertise that the TRAI possesses in matters of consumer interest.

This situation needs to be remedied urgently, with Government stepping in and addressing this.

2. No Movement on Net Neutrality

As you are aware, I first brought this to your attention in late 2014 / early 2015. While the discussion on Net Neutrality across media, consumer groups and especially in Parliament is nearly 18 months old, there is no roadmap or timelines in place on how to deal with this



situation. TRAI had launched a Consultation Paper on Regulatory Framework for OTT Services dated 27 March, 2015. Regrettably, that proceeding lies incomplete even after 15 months. The DoT Committee's Report on Net Neutrality dated May 2015 is also one year old, and no further steps have been taken. I have now learnt from media reports that DoT had sent a reference with regard to Net Neutrality to the TRAI. However, while that Reference is pending, it is unclear as to when this Consultation will begin and towards what end. Yet again, the interest of consumers, but equally uncertainty amongst investors – both telcos and content providers – remains unaddressed.

### 3. Differential Pricing

On the issue of Differential Pricing, while the TRAI took steps in the right direction, its Order on "Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016" dated 08 February, 2016, suffers from serious technical and implementation flaws in addition to making inferior regulatory choices of outright "ban". I had pointed these lacunae in detail to the TRAI vide my letter dated 18 February, 2016 (enclosed herewith). No surprise then that the TRAI, in less than four months, has come up with a second Consultation Paper on Free Data dated 19 May, 2016, on the exact same issues, which is merely 7 pages and three questions - in an attempt to find a face saver for its decision to "ban" differential pricing. In the second Consultation Paper, TRAI seek exemptions to its own ruling which is less than six months old. This, again, exhibits lack of capacity, accountability and a cavalier attitude towards consumer interest. Further, such sharp U-turns and reviews can trigger off deep concern and even panic amongst investors, who are unsure of TRAI's approach or direction.

It is clear from the above that both on areas of consumer interest and investor confidence, TRAI's recent performance needs examination, and steps need to be taken to improve its capability and powers.

In continuation of my previous requests, I would urge you to kindly evaluate, on an immediate basis:

- (a) Government stepping in on the issue of Call Drops. Where appropriate, the Government could step in with executive action to ensure that consumer interest and investor confidence does not become hostage to the current prevailing uncertainties.



- (b) Amending the TRAI Act to give it appropriate powers where issues of consumer interest are concerned.
- (c) Amending the TRAI Act to increase accountability of the TRAI to Parliament. TRAI's performance must come under direct Parliamentary scrutiny.

As always, in case you wish to discuss this any further, I will be available for a detailed discussion.

Sincerely,

RAJEEV CHANDRASEKHAR

Shri Ravi Shankar Prasad  
Hon'ble Minister of Communications & IT  
Government of India  
New Delhi

Encl :

1. Copy of my letter to Shri R. S. Sharma, Chairman, TRAI dated 18 February, 2016 with detailed comments on the TRAI's Regulation on Discriminatory Tariffs
2. Copy of my letter to you dated 13 June 2014, about the need for TRAI reforms

Copy to : Hon'ble Prime Minister, Government of India





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18 February, 2016

Dear Shri Sharma,

Sub. : TRAI's Regulation on Discriminatory Tariffs – My Comments

I write to you further to the Telecom Regulatory Authority of India's (TRAI) regulation on "*Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016*" dated 08 February, 2016 – which was an outcome of the Consultation Paper on "Differential Pricing of Data Services" issued by the regulator in December last year.

At the very outset, I must congratulate you for a transparent and speedy consultation process and for the TRAI's prompt order on Discriminatory Pricing – an important part of the Net Neutrality framework of law and regulation. Through this decision, the TRAI has moved the pendulum of regulations to where it ought to be, i.e. the consumer, reversing a long period of extraordinary regulatory influence of Telcos.

While there is no doubt that Indian consumers have welcomed this Order, there are serious questions that emerge from TRAI choosing an ex-Ante ban on differential pricing, rather than a more alert surveillance/interventionist role that could have been adopted. I am also deeply concerned that while the Net Neutrality proceedings and consultation is pending and remains incomplete, the perception is that TRAI has side-stepped some of the main issues by taking a subset of the questions, and attempting to solve those, without settling on a definition or principles of Net Neutrality in the Indian context.

And so, please find enclosed some comments that may be seen as constructive inputs, basis my analysis of your Order - attached as Annexure 1.



In summary, while I join Indian consumers in welcoming and congratulating you in taking this decision, these questions do point to the significant travel still required for TRAI to emerge as a regulator of Global standards – important for us to, in turn, attract the big Marquee investors into the Telecom and Internet space. I am enclosing herewith my recent edit piece in Economic Times for your review.

I would urge you to review the attached points that I have culled out after multiple reads of the Order. It is crucial that the TRAI, in the years to come, steps up to the challenge of delivering world-class regulations that will enable the Government's Digital India vision, and to accelerate the process of connecting the 800 million unconnected Indians to the internet.

Sincerely,

RAJEEV CHANDRASEKHAR

Shri R. S. Sharma  
Chairman  
Telecom Regulatory Authority of India  
Mahanagar Doorsanchar Bhawan  
Jawaharlal Nehru Marg  
New Delhi 110 002

Encl.:

1. My Comments on the TRAI Regulation on "*Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016*" dated 08 February, 2016 enclosed as Annexure I
2. My edit piece in Economic Times dated 17 February, 2016

Copy to:

1. Shri Narendra Modi, Hon'ble Prime Minister
2. Shri Ravi Shankar Prasad, Hon'ble Minister of Communications & IT



## ANNEXURE 1

There are issues of robustness / completeness in the Order that stand out. This makes the Order vulnerable to legal challenges. Such wide gaps, mostly based on assumptions, even when making the right decision, can be faulted for citing wrong facts. In particular:

### General Comments:

1. The Order should have laid out explicitly the principles of Net Neutrality and discrimination – based on which this ban on Differential Pricing stands.
2. The breadth of the Order now encompasses not only programs like Airtel Zero, FreeBasics, but also prohibit temporary promotions, such as a month's access to Wikipedia, WhatsApp, Snapchat, or other popular services. This might be an undesirable consequence of a broadly written Order.
3. In general, the Order makes multiple assumptions about the harm that might be caused in the future. It provides little or no evidence of any such harm having been caused currently. Under the circumstances, rather than engage in careful regulation based on evidence, TRAI chose a lazy route of applying a "ban". *Ex ante* regulation is best applied when serious evidence of harm is already available, rather than in anticipation of such harm based on appeals being made by one of the two parties engaged in what is now becoming a commercial dispute, between ISPs and content providers.

### More specifically:

- a) TRAI has grounded its Order in some of the "key relevant features that form its structural underpinnings". Virtually, all of those are non-controversial. However, TRAI's assertion that data charging schemes are linked to the interoperability of Internet's component networks, is a subject on which it has provided no supporting evidence.
- b) Using the above assertion, TRAI proceeded to conclude that price differentiation and discounting were the equivalent of denying access to certain sites or services. It then built upon this theory that "discounting discretion affects the internet access experience", by claiming that such conduct would be particularly harmful in India.





- c) In doing so, TRAI made the *sub silentio* judgment that depriving the poor/unconnected of all internet (until they could afford and find a reason to spend money on such connectivity) was better than offering a limited range of internet experiences for free. Further, TRAI put forth an unsupported market based rationale for its decision.
- d) TRAI ignored the US FCC's open internet docket which shows substantial economic evidence that differential pricing would be used by small content players to acquire an audience, on which they could build an advertising and subscription base; the large incumbent content sites would hesitate to implement such a program due to the high cost of supporting the usage of the existing base and relatively small increment of new users attracted.
- e) Further, TRAI's description of the current market ignores the advantages large companies such as Google, and now Netflix (who recently entered India), already possess, by being able to build/ lease data center and content delivery networks that startups cannot afford. An incumbency advantage that would be overcome by startups if the new provider could offer a price differentiated product.
- f) TRAI has put a 3<sup>rd</sup> rationale for its decision based on the novel concept of customers' economic decision making, serving as an "indirect restriction", and a new interpretation of the term "discrimination".
- g) Its arguments seem to ignore both i) the economic decisions that consumers make daily in choosing the internet sites they choose to visit and, ii) that every subscriber would be able to access every site on the same terms as every other subscriber, and that all content providers could (assuming a tariff program), take advantage of an offered Zero or discount rated program from the carrier/ISP.
- h) In effect, TRAI has banned certain carrier/ISP practices, based upon definitions of "restrictions" and "discrimination" that never existed before, namely ones based on subscriber decision making and operating methods, and business models selected by a content provider.



- i) Having found that Zero and discount rating plans were discriminatory in theory, the decision discussed TRAI's choice to engage in *ex ante* regulation as opposed to monitoring the market to identify and correct any harms resulting from such plans. While acknowledging that United States and European Union have elected to take a case by case approach by allowing such program such as T-Mobile's "Binge On", AT&T's "Sponsored data" and Vodafone Italy's "Spotify" program, TRAI concluded that an immediate ban on the differential pricing plan would be best for India, not by citing a consumer harm or interest proposition, but instead quoting the virtue of regulatory certainty and avoiding costly legal and regulatory proceedings.
- j) In choosing an outright ban over a more diligent case-by-case of offerings, TRAI could only cite two – Chile and Netherlands - as case studies from amongst 195 UN member states, without any analysis that both Chile and Netherlands were dramatically different vis-à-vis India in population size, network type and internet access/penetration. In effect, it can be argued that in absence of facts and evidence, the decision was to make things easier for the Regulator.
- k) Finally, perhaps the weakest aspect of the TRAI Order remains the absence of any discussions regarding technical implications of a wireless-only network. Additionally, section 17 makes patently unsubstantiated assumptions in favour of a ban over a diligent approach of case-by-case regulation. Contrary to the assertions of TRAI, it is obvious from vast majority of the countries – with a varying range of teledensity and internet connectivity, where "differential pricing" has not been outrightly banned - that "openness of the internet as we know it" has neither been altered nor affected in any manner.



## NET NEUTRALITY

# After TRAI, It's Now Go!



**Rajeev Chandrasekhar**

On February 8, the Telecom Regulatory Authority of India (Trai) pronounced its decision on differential tariffing, a big first step to net neutrality. Almost as important as the content of the order, was what it represented: the swinging of the pendulum towards the consumer after many years of extraordinary regulatory influence by telcos.

The ban on differential pricing, however, is only part of the battle for net neutrality. There are other tricks in the telcos' bag that can still be deployed to discriminate and exercise control on the internet. These include commercial deals that allow faster data speeds to some sites and slower to other sites, referred to as 'slow/fast lanes', sponsored data or prioritisation.

So why did Trai not handle all this together? Partly because Trai's powers in these areas are not foolproof under the law, unlike in tariffing, where it has legislated powers to intervene and regulate. Which, therefore, moves the ball to the government's court, where it either amends the Trai Act, or gives Trai more powers, or legislates a separate new net neutrality legislation that has the power of law on all telecom licensees.

So, while we welcome the Trai decision, there are some niggling issues with the order.

First, the characterisation of the minister that "it is an expression of popular will" is retrograde to the growth, development and Trai's credibility. Trai is an independent regulatory institution, determining its regulations and orders on facts, data and carefully researched assumptions. It definitely is not supposed to simply reflect

popular opinion.

Trai's explanatory note also is weak in parts: especially on how it examines the evidence of access and affordability benefits linked to zero rating. While it accepts that zero rating "may" have benefits, it weighs those pros against the cons of allowing this power to telcos that may be misused to discriminate and form cabals.

In balance, given the serious trust deficit that telcos have created for themselves with policymakers and consumers, Trai's cautionary approach at banning zero rating is welcome. If there was better trust with the telecom companies, one could have suggested a trial period for zero rating for the regulator to observe and surveil its benefits and drawbacks.

The Trai order also brings the focus back to its role, functioning and capabilities, and its ability to regulate this fast-changing, often disruptive technological space. Trai must stop being an episodic regulator — waking up from time to time only when consumers become shrill.

Instead, a culture of surveillance and continuous regulation will put Trai ahead of the curve and be more proactive than reactive to consumer and investor needs for policy and regulatory consistency and continuity.

So, while there is reason to be plea-

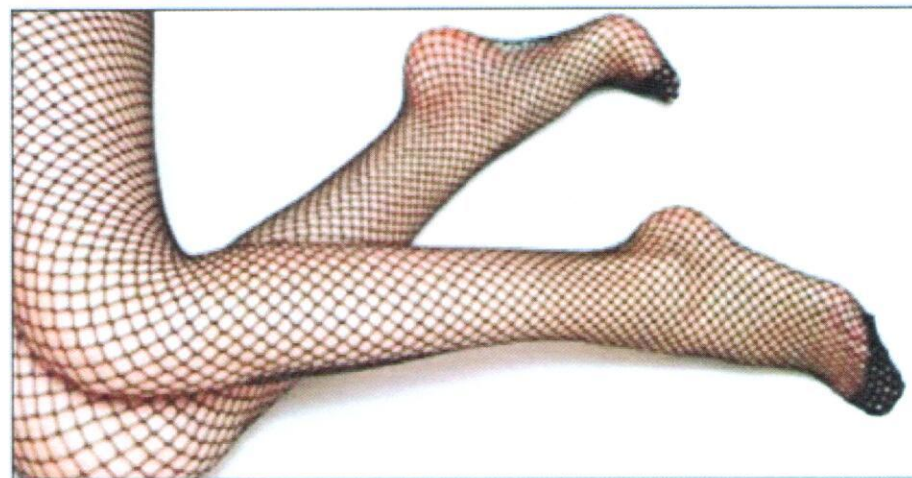
sed with this first policy action by the regulator under its new chairman, there is plenty of work required for it to deliver world-class regulation and credibility. This, in turn, is required to attract the big, marquee, long-term investors into the Digital India and internet space that the country requires to accelerate connecting the almost 800 million unconnected Indians.

That remains a huge government policy objective that has to be independently dealt with as we create the architecture of a neutral internet.

The ball is now in the government's court. In addition to completing the remaining parts of the net neutrality legal framework, the time is ripe for minister of communications and information technology Ravi Shankar Prasad and the government to evolve a magna carta, a grand charter, of digital consumer rights for citizens.

This would include the right to privacy, a stringent regulatory framework to ensure adherence to quality-of-service norms, and adequate competition within the sector. These issues, along with net neutrality, will have to feature topmost on the government's action plan to accelerate Digital India and transform the yet-unconnected Indians into Digital Indians.

*The writer is a member of Parliament*



**Ensure there's no tear**





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Vice Chairman, National Military Memorial Management Trust, Bangalore

13 June, 2014

*Dear Ran Shankar,*

Sub.: Need for a resolution of various issues facing the Telecom and IT sector

Congratulations on your appointment as the Minister of Communications & IT.

As you are aware, the telecommunications sector has suffered greatly on account of excessive litigation arising out of poor policies, lack of governance, faulty procedure and oversight by the UPA Government – causing serious regulatory uncertainty for investors – which has become the biggest hurdle to sustained investment flows into the sector, and works against the interests of telecom & Internet users as well as the general citizens of India. It is essential that the Government implements measures to revive investor confidence by making the sector more viable, through a range of measures.

As you may be aware, I have been at the forefront of raising several issues pertaining to the telecom sector, through letters to the UPA Government, as well as within the Parliament through debates and questions. Through this letter, I would like to draw your attention to some of the important issues facing the Telecom & IT sector, which need to be addressed at the earliest:

1. Need for enhancement of the TRAI Act to address the Regulatory Inadequacies and Impediments in the effective discharge of TRAI's Functions

One of the key issues which underpins the current situation in the telecom sector is the lacunae in the powers and functioning of the telecom regulator, TRAI. The main reason for such regulatory failure and uncertainty has been on account of a weak legislation and a regulator whose authority and credibility stands eroded over time. The National Telecom Policy 2012 (NTP 2012) recognises this challenge, but provides no timeline or specifics - both of which are critical to rebuild investor confidence and protect public interest.



Therefore, there is an urgent need for a review of the existing TRAI Act with a view to strengthen the following areas, namely:

- a) TRAI's powers of licensing which currently reside with DoT.
- b) Enhancing the role of TRAI in management, allocation and pricing of spectrum.
- c) Instituting an accountable and transparent process for receiving, processing and implementing recommendations made by TRAI under Section 11 of the TRAI Act. Also to improve the process for modifying or rejecting TRAI recommendations, and avoidance of cherry-picking its recommendations or using them out of context.
- d) Strengthening the procedure of re-referring recommendations back to TRAI in case of disagreement etc.
- e) Enhancing the accountability of TRAI to Parliament and citizens of the nation.
- f) Strengthening the regulatory capacity within TRAI by reviewing its structure and providing a much higher level of funding from the massive revenues collected.
- g) Providing TRAI the appropriate enforcement powers vis-à-vis telecom operators and Government.
- h) Reviewing the salary structure of the staff in TRAI with the objective of hiring the best-in-class talent that is extremely critical to the success of this sector.
- i) Improving the consultation process and competition management function of TRAI as currently mentioned under Section 11 of the TRAI Act, or establishing a formal relationship for advice and evaluation of all competition-related decisions between the TRAI and CCI.

I urge the government to take immediate action through wide consultation with stakeholders, industry, regulatory specialists, media, representatives of the people etc. and, in a time bound manner, introduce an amending Bill in Parliament.

## 2. Urgent Need to address the Deteriorating Financial Situation of BSNL and MTNL

You are already aware of the deteriorating financial situation and management of the two Navratna PSUs - Bharat Sanchar Nigam Limited (BSNL) and Mahanagar Telephone Nigam Limited (MTNL). From being profitable companies in the telecom sector with a total valuation of over Rs.50,000 crores at one point in time - both these companies have been reeling under huge losses and battling with falling revenues, profits and market share over the last few years.





For the year ended March 2013, MTNL and BSNL together posted losses to the tune of approx. Rs.13,500 crores. Further, reports indicate that MTNL has suffered significantly higher losses during FY 2012-13, as compared to FY 2011-12.

The current trend points to these companies becoming yet another example of PSUs transforming into a state of financial incapacity in the near future. These Navratna companies are strong public sector assets, owned by taxpayers, and therefore, their revival is essential.

In order to curb any further decline of these prestigious national corporations, it is essential that the entire management structure and Boards of these companies be revamped to bring in considerable talent and expertise on board. The Government must take the necessary steps at the earliest, to improve their financial performance and save them from collapse and causing losses to taxpayers and citizens of this country – the owners of these companies. Further, this financial performance also reduces their value, which in turn, is a loss to the exchequer and people of the country.

### 3. India should take the lead in the Global Debate on Internet Governance

- a) India can emerge as one of the world's largest Internet user bases. However, Indian Internet penetration and growth lags behind Asian peers. With approx. 200 million Internet users, which corresponds to 16% Internet penetration, India, by May 2014, had an Internet penetration lower than Africa (at 20%) and Asia Pacific (at 34%) and an average of 32% penetration in developing countries (*Source - ITU 2014 ICT figures*).
- b) The UPA Government had taken a badly thought-of position of intergovernmental control (rejecting the multi-stakeholder model) – which, in turn, is being rejected by most democracies and India's largest ICT investors as well as the largest markets for India's IT and ITeS revenues (EU, Americas, South Korea, Japan & Australia). This position needs to be changed. The world is looking at India to take the lead in the current debate on Global Internet Governance - and therefore, the Government should take the necessary steps to strengthen and enhance existing mechanisms, and take a new enlightened position on this issue that is consistent with our democratic values & commitment to free speech, through an open, transparent & truly multi-stakeholder process.



- c) Such a position by India will also create diplomatic alliances and bridges with people of Western Europe/Americas and Korea/Japan.
- d) The current laws on Internet regulation in India have alienated youth and business alike, and have too much administrative discretion. The Internet regulation rules should be annulled and a new set of rules framed through a public, multi-stakeholder consultation.

In case you want me to explain these issues in greater detail, I am available personally to provide more information, including on ideas on how to begin the process of consultation with stakeholders before arriving at the specific areas which need improvement.

Yours Sincerely,

RAJEEV CHANDRASEKHAR

Shri Ravi Shankar Prasad  
Hon'ble Minister of Communications & IT  
Government of India  
New Delhi