

**Responses to TRAI Consultation Paper on Free Data**  
**dated 19 May, 2016**

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**Member of Parliament**

**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**

- a) I wish to draw the attention of the Regulator to the fact that the Internet, in itself, is a TSP Agnostic platform and the objective of Net Neutrality legislation/policies is to preserve the Internet's character of being TSP Agnostic.
- b) Yes, I concur that there is a need to have TSP agnostic platforms that can provide a service of Reimbursement to users by websites/apps.

In fact, I have said in my response to the TRAI consultation on Differential Pricing, dated 30-Sept-2015

*“TSPs could be free to zero-rate or offer discounted access to websites as part of promotion or improving affordability or mandated by Government for public service. But this cannot be on the basis of financial arrangements or Interests between websites/apps and TSPs, i.e., No financial benefit must accrue to TSPs by providing cheaper tariffs to access some parts of the net. TSPs must also have no financial interest (including direct or indirect equity/ownership) in the sites that are being offered price-offs or any form of evidence or action of subsidy”.*

It follows that Free Data as a consequence of a promotion and reimbursement to the user by the Promoting website/App be permitted and this still be consistent with Net neutrality, because this free data is not due to any intervention, power or role of the TSPs.

Therefore, such TSP agnostic platforms that provide reimbursements by websites to consumers will ensure the twin objectives of net neutrality (no gatekeeping by Telcos) and increased affordability.

- c) The ability of websites/apps to use TSP agnostic platforms for promotions, rebates, price-offs, reimbursing/discounting access to or services on their site is perfectly acceptable on the Internet.
- d) To ensure Net Neutrality, these Platforms should be permitted to enter into commercial agreements with only websites that are being promoted and/or consumers, and are expressly prohibited from doing so directly with Telcos/TSPs.
- e) All other models that have worked effectively for free data globally revolve around the core principle of being content and site agnostic, i.e., free of any discrimination or selective access to the Internet. These include:
  - i. Using USO and Equal Rated Plans: There are studies that suggest that access can be expanded by the government through “equal rated” plans that are deployed by the Government. The Universal Service Obligation funds could be tapped for this purpose. Corporations such as Mozilla are experimenting with this sort of model in multiple African and Middle Eastern markets, where users purchasing a US\$40 Klif phone receive unlimited talk, text and 500 MB a month for 6 months.

Another possible way of “equal-rating” content so it is free-of-charge to the user is a model where people watch ads in order to access the Internet.

- ii. Offering of low speed internet plans with Caps: Further, TSPs can also offer 2G data services which are capped at 10/20 MB a month, that is simply a lower grade of service which still remains content/site Agnostic. Such measures could improve access and give millions of Indians access to the Internet.

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

- a) The Internet/web requires continuing Surveillance and Regulatory Intervention to protect consumer interest by preserving the open, non-discriminatory nature of the Internet. With presence and growth of large Internet companies (Non TSPs), legitimate consumer interest challenges like free and fair competition, market power and other distortions are bound to arise, and these will need regulatory intervention.
- b) It is for the TRAI to evolve an effective, capable and transparent form of regulation, either jointly with other domain expert regulators like CCI or on its own. But given the complex legal and economics expertise and capabilities required, it is collaborative regulation with other regulators that must be explored and developed.
- c) There are genuine limitations to TRAI's powers that further require them to explore joint regulation.
- d) To quote my response to the TRAI Consultation Paper on Differential Pricing for Data Services - *“Net Neutrality must be regulated independently from Competition regulation for Market power, distortions in Market place etc. Consumer concerns of Facebook Free Basics, Google’s search neutrality or any pure web entity relating to market power or competition issues on the web must and can be exercised through competition regulation.”*

**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?**

I have already pointed out earlier to the TRAI, that its current approach to Net Neutrality is wireless centric, and hence flawed. Its current approach ignores present and future wireline, fixed broadband subscribers. Besides according to R.S Sharma's own admission in an interview, TRAI has been recommending the promotion of wired internet because it does not burden the spectrum. This has been acknowledged by TRAI in a recent press interview.

The toll-free platform proposed by TRAI in its consultation paper requires further scrutiny. If controlled by TSPs, these could lead to gatekeeping by TSPs and therefore a violation of Net Neutrality.

**Question 4: Any other issue related to the matter of Consultation**

- a) The core and crux to Net Neutrality is to ensure zero Gatekeeping or discriminatory powers are exercised by TSPs. If this basic principle is ensured, every other form of distortion in the present or future can be effectively regulated on a continuing basis.
- b) The gatekeeping/cabelization of the Internet by TSPs is a clear and present danger. There is ample evidence of the permanent non-regulatable situation it creates, if left unregulated today.
- c) TRAI must define Net Neutrality urgently, and this definition must focus on preventing gatekeeping/cabelization by Telcos.
- d) Free Data must not be regulated through an ex-ante ban, but on a case-by-case basis. Regulation must not dampen competition or innovation on the web.
- e) Continuing regulation to regulate and takedown anti-competitive practices and market dominance/discrimination on the Net is the way forward.
- f) The regulation of Net Neutrality today will decide the future structure of Internet which is increasingly a valuable commercial market place with many opposing commercial interests attempting to increase their control/influence on it.

For India and its vision of Digital India – “Access to the Internet must be as important as the phone and should be available to all.”

The Internet needs simple regulations that are based on fundamental consumer rights, innovation and connectivity. The TRAI has, for many years, been less than responsive to consumer needs, and this is an opportunity for TRAI to demonstrate both its regulatory

maturity to regulate on issues like Net Neutrality, Competition and Market power without stifling creativity and innovation, as well as regulate for Internet consumers' rights and greater access to the unconnected. While these may seem objectives difficult to align, good regulation can ensure this.