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January 13, 2016

Ms. VINOD KOTWAL

Advisor (F&EA), Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi – 110 002

Re: Consultation Paper no. 8/2015 on Differential Pricing for Data Services dated December 09, 2015 - Submission of Counter Comments on behalf of Sony Pictures Networks India Private Limited

Ma'am,

We are thankful to the Telecom Regulatory Authority of India for affording us an opportunity to submit our counter comments.

We hereby tender our counter comments and request you to consider the same. We would also request a personal audience, before any final view is taken on the subject.

Should there any need for clarifications, please feel free to revert.

For SONY PICTURES NETWORKS INDIA PRIVATE LIMITED


Bishwarup Chakrabarti
AVP - Legal



**SONY PICTURES NETWORKS INDIA PRIVATE LIMITED'S
Counter Comments on
TRAI's Consultation Paper on Differential Pricing for Data Services dated December 09, 2015**

In response to some of the comments made by certain telecom and/or content service providers with regard to TRAI's Consultation Paper on Differential Pricing for Data Services dated December 09, 2015 ("CP"), please find hereinbelow our counter comments to the same. For ease of reference, the counter comments have been formulated in accordance with the original questions raised for the comments of the stakeholders.

Question 1: *Should the TSPs be allowed to have differential pricing for data usage for accessing different websites, applications or platforms?*

Question 2: *If differential pricing for data usage is permitted, what measures should be adopted to ensure that the principles of non-discrimination, transparency, affordable internet access, competition and market entry and innovation are addressed?*

For ease of reference and for the sake of brevity, the comments and counter comments for the Question 1 and 2 are being taken up together.

Comments to the CP

01. *The Social Welfare Argument:* It has been suggested on behalf of some service providers that differential pricing, trial packs, rate cutters are critical for promoting innovation in the internet eco-system. It has also been suggested that differential pricing regimes for data services holds great socio-economic merit as an effective means of bridging the digital divide, wherein social welfare benefits are passed on directly to consumers, and not to commercial entities.
02. *Bridging the Gap Argument:* It has also been argued that sponsored data, as in the differential price regime, allows service providers to attract first-time users and marginal customers, who cannot afford internet services to experience them for free and who later on, become regular data users, which is good for the internet eco-system.
03. *The Forbearance Argument:* In light of increased competition and innovative products in the data services sector, most service providers have also identified forbearance with regard to tariff as an essential component for growth. It has been argued, at the risk of repetition, that forbearance creates an eco-system wherein consumers benefit from a varied tariff structure bearing in mind consumer interest and usage pattern.

Counter Comments

04. *Discriminatory Regime:* It is submitted that differential pricing, is a discriminatory regime of charging different consumers different prices for the same product or services and is antithetical to the fundamental rationale of openness and equality.



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Differential pricing of data services is conceptually the very antitheses of net neutrality, and competition. Providing sponsored or subsidized data to consumers, is a prime example of a differential pricing regime since it involves charging different consumers different prices for the same product or services. Even though service providers have suggested time and again that any concern of market abuse/discrimination, should be addressed on a case to case basis rather than by imposing a blanket ban on any particular business model/pricing innovation, it is submitted that differential pricing is against competition and a level playing field and cannot be addressed by placing adequate safeguards.

05. *Restriction of Information:* Differential pricing leads to restriction of access to information. It enables TSPs to play the role of gate-keepers to the internet where they are in a position to differentiate between data packets. The principle of net neutrality clearly prohibits any blocking, differentiation or prioritization of data packets based on their type. Once differential tariffs for data are in place, the principles of net neutrality no longer hold valid since such tariffs are based on differentiation of data packets. While they may be portrayed as means of subsidizing costs of accessing the internet, it needs to be understood that such subsidization is also a way of differentiation which can distort the equilibrium of the internet as it is enjoyed today, where everybody has unrestricted access and also has equal opportunities.
06. *Content Based Pricing Model:* Allowing TSPs to charge differently for different uses of data essentially would essentially create a tariff regime where TSPs would have the right to create different classes of subscribers based on the kind of content they want to access and determine different prices for different websites, applications and platforms. Such differential pricing would thus allow TSPs to fundamentally alter the nature of competition between these websites, applications and platforms in a manner not linked to the quality of the services they deliver to consumers, but on the business arrangement between the TSPs and the websites, applications, platforms etc. This would also end up distorting and altering the primary role of TSPs.
07. *Anti-Competitive:* The possibility of competition between different companies could be subverted if competitors could collude with TSPs. Such collusion would invariably result in financially able entities paying carriers to ensure that a competitor's website loads slowly, or is inaccessible altogether, or the use to it is more cost intensive. It is therefore submitted that a differential pricing arrangement in addition to having the effect of directly determining the price of data would also limit or control access to or control of the provision of data services while having an appreciable and adverse effect on competition which does not form a part of such an arrangement. It is



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submitted that such activities in addition to being anti-competitive and unfair, would also give rise to increasing market entry costs for non-participating entities, using dominance in the market to abuse the same through service tie ups and predatory pricing. It is therefore submitted that any such differential pricing arrangement for data services between the TSPs and websites/applications/service/content providers etc. would be violative of the provisions of the Competition Act, 2002. In recent times, it has been seen that a prominent telecom service provider in the country is providing access to one of the foremost social media networking sites on a zero rating plan. It is submitted that such an arrangement would have an appreciable and adverse effect on competition which does not form a part of such an arrangement. Such service tie ups and predatory pricing would ensure that there is an increase of market entry costs for non-participating entities, which incidentally did not exist when the said social media networking site itself was a start-up. It is also submitted that TRAI should also seek the opinion of the Competition Commission of India to understand the anti-competitive effects of the differential price regime.

08. *Other Countries:* It would probably also be pertinent to mention that differential pricing, as a model has been banned in countries such as Japan, Chile, Norway, Netherlands, Finland, Iceland, Estonia, Latvia, Lithuania and Malta. Earlier this year, the Dutch regulator fined Vodafone and KPN for zero rating certain internet-based services while in Slovenia, the regulator fined Telekom Slovenia and Telekom Austria because they zero-rated music and cloud-based apps.
09. *Digital Divide - Versions of the Internet:* It is submitted that differential pricing of data services would enable large incumbents to create a framework with TSPs that allow them, covertly or overtly, to create different versions of the Internet which they package and control. This would inevitably result in various versions of the internet, with or without all features, including ones that are available at lower prices and include only the content and the service providers that have chosen to play by the regime established by the large incumbents, and another version being the less privileged one which would be expensive, more difficult to discover, and occupied by the smaller players who don't have the financial ability and muscle to take on their powerful counterparts.
10. *Replicating the Cable Eco-System:* Such a differential pricing regime would also create a system which replicates the harmful effects of arrangements between carriage and content playing out in the cable and satellite space wherein MSOs instead of consumers have been prioritizing the content to be carried on their cable platforms. The basis of such prioritization being the carriage and placement fees being paid by content owners. This anticompetitive behavior by MSOs has led to small content providers being hit the most as carriage and placement fees act as



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entry barriers for new content providers. Differential pricing with regard to data would inevitably create the same concerns as in the MSO and content space.

11. It is submitted that our stand on differential pricing for data services is not meant to stifle an innovative data regime. However, we strongly believe that while there is an urgent need to connect a billion unconnected people and narrow the digital and developmental divide, we certainly believe that there are other transparent and more effective ways of achieving that goal.

Question 3: Are there alternative methods/technologies/business models, other than differentiated tariff plans, available to achieve the objective of providing free internet access to the consumers? If yes, please suggest / describe these methods /technologies/ business models. Also, describe the potential benefits and disadvantages associated with such methods/technologies/business models?

01. Investing in infrastructure for common access and providing subsidized and non-discriminatory access directly to the consumers could be some of the ways that could be explored. Subsidized time based models, creations of public or community networks are some of the other routes available to expand access to the Internet.
02. Additionally, local data center requirements could also reduce costs of accessing the internet. Local data center requirements mandate that enterprises establish a data center within a country as a condition of being permitted to provide certain digital services in that country. Such requirements prevent data from being produced, stored, and processed anywhere. Brazil, China, Indonesia, Malaysia, South Korea, Venezuela, and Vietnam are among the many countries that have imposed or are considering imposing local data center requirements. We could also consider having similar data center requirements in India. Additionally, any such requirement would also have the added advantage of enhancing security of data since they would lie on servers within the country.

Question 4: Is there any other issue that should be considered in the present consultation on differential pricing for data services?

01. The Consultation Paper doesn't talk about Big Data. Big Data is a broad term which is generally used to refer to the use of predictive analytics or certain other advanced methods to extract value from data. In the differential pricing regime, since the TSPs would be acting as gatekeepers to certain packets of data, based on their business arrangement, they would also tend to obtain sensitive information of consumers such as their data usage patterns.



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02. Such data patterns in addition to raising issues of privacy would effectively make it easier for sellers to identify new customer segments and target those segments with customized marketing and pricing plans. The increased availability of behavioral data would also encourage a shift from demographic categories towards personalized pricing. While such a personalized pricing regime may present several practical challenges, it not be that far off and may become an offshoot of any differential price regime.

Conclusion

In conclusion, while we strongly believe that there is an urgent need to connect a billion unconnected people and narrow the digital divide, we certainly believe that there are other transparent and more effective ways of achieving that goal.