



## **iSPIRT Counter Comments to TRAI Consultation Paper on Differential Pricing for Data Services Consultation Paper No. 8/2015 Dec 2015**

### **Introduction**

1. iSPIRT – Indian Software Product Industry Round Table - is a non-profit think tank formed by leading practitioners of the industry to assist in the cause of building a healthy, globally-competitive and sustainable software product industry. iSPIRT puts India first and does not take donations from MNC or VC to protect its mission. Reflecting its success, iSPIRT is taught as a case study at Stanford GSB.
2. iSPIRT creates public goods without asking for public monies. India Stack is a set of technology building blocks that make presence-less, paperless and cashless service delivery possible. They are the foundation of the Digital India movement. iSPIRT has been involved in other policy efforts as well. It is focused on stopping exodus to technology startups from India. To make a conducive environment for startups in India it has worked closely with SEBI on the new ITP platform (“startup exchange”) to make more listings happen in India. It is now working with DIPP on “Stay in India Checklist” to stop and reverse the redomiciling of startups to Singapore and US. Other policy engagements include the push for Challenge Grants in India.
3. iSPIRT favors Net Neutrality as it is a core issue to prevent market foreclosure for technology startups in India. To form a view we first released a White Paper on this topic on 13th April 2015 and thereafter have taken a position to support net neutrality, specifically against any forms of price discrimination on the types of data services. iSPIRT believes that Indian startups are finally taking root today after decades of efforts and this is increasingly being put to risk by larger global players. Efforts by these foreign entities digital colonization are compromising the prime ministers digital india programme and three protective policies are needed to mitigate this risk. Net Neutrality is one of these policies. Others relate of Intellectual Property Protection (without use of software patents) and use of India’ digital identity, Aadhaar.

### **Counter Comments**

iSPIRT would like to provide counter comments in response of NASSCOM’s submission on TRAI Consultation Paper on Differential Pricing for Data Services Consultation Paper No. 8/2015 Dec 2015. We believe the response contains



several points that require further clarity and substantiation in the interest of the startup community in India.

#### A. Key points from NASSCOM's Submission and iSPIRT rebuttal

- NASSCOM has cited low levels of Internet penetration in India to call for derogations to principles of network neutrality. These figures are not firmly established and are based on readings of data that is faulty in itself. On this we would like to offer the following comments:
  - As per latest reports Internet adoption is rapidly rising in India. The latest report by IAMAI notes that around in just last year India added another 100 million internet users. This was without the need for zero rated plans. The report has noted that, ““While Internet in India took more than a decade to move from 10 million to 100 million and 3 years from 100 to 200 million, it took only a year to move from 300 to 400 million users. Clearly, Internet is mainstream in India today”.
  - Inherent to greater adoption is the utility that can be offered by local startups and Indic language content. This can only arise in an environment where innovation wins and not partnerships with TSPs and global internet companies. What is needed to further access is net neutrality and not its derogation.
  - NASSCOM also fails to appreciate that lower levels of Internet adoption are also tied to quality and reach of networks and infrastructure as well as sociological causes such as literacy. The former TRAI Chairperson Mr. Rahul Khullar in an Op-ed dated Jan. 5, 2016 in the Business Standard has stated that, “Over 20 years, telecom connectivity has massively expanded. But 50,000 villages have been left behind, with no connectivity whatsoever.” Hence, to improve access what is needed is actual physical infrastructure and not zero rated data packs such as Free Basics.
- NASSCOM in parts of its response suggests a case-by-case basis based permission system to be permitted for differential pricing. We strongly oppose this suggestion that would open the door for all possible network neutrality violations. It would further lead to the entrenchment of systems where startups will have to make their technical products as per the specifications of larger TSPs zero rated plans or enter into commercial relationships with them. Startups will not have the ability to engage with regulatory processes given their small size and limited resources and the case by case system will only benefit larger companies who will use their market power to foreclose innovation.



- NASSCOM has suggested an inclusive category of data services that can be granted exemption from a general prohibition on differential pricing. It has not clearly stated in which categories and to what services such exemption should be made available. This is for the stated objective of public interest however; there is a large degree of ambiguity present here. This by itself is demonstrable of the creeping approach, where an exemption to network neutrality will slowly become bigger and later, the exemption will become the rule.
- The NASSCOM proposal suggests both an ex-post and an ex-ante approach to regulation. This is another version of the case-by-case basis approach that has high policing costs and is difficult to implement. Network studies will be inherent to any such function which start-ups will not be able to implement.
- A case-to-case basis approach fails to consider the harms, which would result from the market foreclosure that would be suffered by startups.
  - For a theoretical explanation on how such harms may result please refer to the testimony of Barbara Van Schewich testimony to the FCC where she clearly outlines the case against case by case systems and the high potential for their abuse. [https://transition.fcc.gov/broadband\\_network\\_management/041708/vanschewick-oral.pdf](https://transition.fcc.gov/broadband_network_management/041708/vanschewick-oral.pdf)
- NASSCOM also fails to have appreciated that Start-ups scale up and grow on the basis of funding. Such funding is driven by Venture Capitalists and Private Equity firms that usually make these decisions when technology can be implemented innovatively without the need to bargain or negotiate with telecom companies. By permitting a case-by-case system an environment of uncertainty would be created that would discourage funding. This is not a moot point with several VC's voicing concern how they are no longer funding start-ups which roll out products that are bandwidth intensive.
  - How case by case makes funding decisions difficult for investors: <http://www.networkworld.com/article/2176684/lan-wan/net-neutrality-ruling-scaring-vcs-away-from-investing-in-certain-startups.html>
  - Also see the open letter signed by 50 VC's to the FCC to protect net neutrality [https://docs.google.com/document/d/1v34\\_bFesbfyF\\_MbQgtZtUQNfSByAgUKTICEB9pjH3jk/pub](https://docs.google.com/document/d/1v34_bFesbfyF_MbQgtZtUQNfSByAgUKTICEB9pjH3jk/pub)



- NASSCOM's proposal that third-party not-for-profit entities should be permitted to offer differential pricing of data fails to consider that the same harms would accrue to startups in such a system. Here many startups in education, medicine, health or any social sector would be forced to partner with the not-for-profit entity. Such an entity would bargain like any other commercial entity. Many startups will not have the ability to undertake and enter into such agreements and market foreclosure would result. Questions on independence also exist for such not-for-profit entities, as India at present does not have a developed body of conflict of interest provisions in law. In such a situation such an exemption will likely be used by foundations and trusts set up and funded by commercial entities with commercial interests in the sector.
- Shorter duration offers for a period of three months present the same risks that are available for longer terms such as three year. The three-month term is a pernicious proposal for the following reasons:
  - Most startup ventures succeed on the basis of attracting more users initially. Hence, if a competing service is offered for a cheaper data cost for a period of three months then it will again cause the same risks of market foreclosure and raise entry barriers for startups.
  - Startups will not have the ability to bargain or negotiate deals even for three months.
  - Undue power to pick winners and losers will accrue to TSPs.

## B. List of International Startups for Net Neutrality

**Indian startups have time and again raised the issue of net neutrality as being inviolable to their survival. This issue cannot be left purely to market forces given the ability of larger firms to distort the conditions present for competition. Startups which are still growing to ones which have are now credited as bringing an e-commerce revolution in India can all attest to this fact. This list is long and includes companies from Cleartrip, Flipkart to Zomato.**

**In this, Indian startups are not alone. Startups all over the world have voiced similar sentiments tying network neutrality to their survival. These include associations of startups in the United States, Europe and Germany.**

US - <http://www.startupsfornetneutrality.org>

EU - <http://www.startupsfornetneutrality.eu>

Germany - <https://germanstartups.org/news/position-regulation-of-laying-down-measures-concerning-open-internet-access/>



**It may be noticed that all these foreign jurisdictions have developed a large and sophisticated body of competition and anti-trust regulations. Even despite such a developed body of competition law, net neutrality has been considered a core issue of regulation for telecoms and technology. In this same measure, we hope the TRAI exercises its power for tariff regulation urgently to prevent any further violations of network neutrality.**

*14th Jan 2015*