

This is a counter comment to some of the arguments used by telecom companies in their responses on differential pricing for data services.

## **SECTION -1 :**

### **IDEA CELLULAR - GOVT DOES IT, WHY CAN'T WE?**

This is a counter comment on the comment made by Ms Idea Cellular Ltd (and Bharti Airtel) under the title "Differential Pricing is recognized in law"

In their comments, Idea and Bharti have claimed that at present, differential pricing is already in existence in various sectors such as cooking gas, electricity and airline, and therefore must be allowed in Data also.

Idea gives the following examples to prove its point:

"For instance: Electricity a. Distribution companies provide electricity at different rates to different categories of consumers. b. Part VII (Tariffs) section 28 (7) (a) of the Delhi Reforms Act, 2000 reads as under "The tariff implementation shall not show undue preference to any consumer of electricity, but may differentiate according to the consumer's load factor or power factor, the consumer's total consumption of energy during any specified period, or the time at which supply is required ."

The basis for fixation of tariff is based on the nature of supply and the purpose for which the supply is required without showing undue preference. In a catena of judgments, [1] the Courts have held that favourable treatment to a certain class of consumers on account of economic disparity does not violate Article 14 of the Constitution of India. Water Various state agencies such as the Delhi Jal Board differentiate between Residential, Partly Residential and Industrial / Commercial consumers.

The rate and volume of water supply is dependent on the categorization:

a. Residential: Water supplied to and used purely for residential purpose. b. Partially Residential / Mixed: Water supplied to residential buildings where commercial activity having non - intensive use of water exists, such as private clinic, consulting chambers, shops, property dealer's office etc. For Group Housing Societies and Apartments with one bulk connection for water, the dwelling units which have mixed use activity, are charged at tariff applicable for mixed use rates after taking average consumption for each unit . The office bearer with meter reader will assess such units

after every two billing cycles

b. Industrial/Commercial: Water supplied to property where intensive use of water is envisaged such as hospitals, schools, offices / office complexes, Railway Stations , Police Stations, Airports, Bus - stand, Petrol Pumps, Hotels, restaurants, marriage halls, industry / factories, amusement parks etc. d. Notwithstanding that all these categories use the same standard and quality of commodity i.e. water - there is differential pricing.

Gas

a. The LPG distribution model followed by gas companies such as Indian Oil Corporation, Bharat Petroleum etc. recognises and makes a distinction between a Commercial and Domestic Consumer (like in the broadcasting sector where there is a commercial subscriber and ordinary subscriber).

b. Commercial consumers include LPG used by non - manufacturing establishments or agencies primarily engaged in the sale of goods or services such as hotels, restaurants, wholesale and retail stores etc. The cost of purchase is directly linked to the market forces. c. Domestic consumers include usage by private dwellings, including but not limited to apartments for the purposes of cooking, heating and other household usages who are given gas via LPG cylinders/pipeline at a reduced rate.

Applying the same principles, internet can be made accessible to all and can narrow the digital divide in India."

## **COUNTER COMMENT**

The facts mentioned above are undeniably correct.

However, the following fallacies can be seen in the argument.

### **1) IDEA CELLULAR IS NOT SUBSIDIZED GOVT SERVICE**

First fallacy is that Idea is comparing itself to subsidized government services (lpg gas, electricity), which it is not. The government may provide PDS rice at 2 kg to a BPL family at at Rs 10 per kg to an APL family. But if Reliance Fresh also starts charging people based on their monthly salary, it will not be considered fair. The reason why it won't be considered fair is that government services are ENTITLEMENTS and often massively subsidized. Telecom services are not

subsidized. Zero Rating is not a subsidy by the telecom operator. In fact, going by certain reports, telecom companies charge as much as Rs 1000 per GB from content companies when a consumer uses their website or app. If IDEA CELLULAR was providing subsidized or concessional services, and restricts it to BPL families, there was still an argument to be made.

The only relatively comparable example is that of airlines, where Idea claims that different prices are charged based on which class of seats someone books, how many seats are left etc..

Here is where the second fallacy crops up. Idea's claim that such differential pricing is not allowed in data is totally wrong. Service providers do offer all kinds of differential data pricing -- based on various factors such as the class of consumer, volume of usage, circle and town and other factors such as when a subscriber signed up with it.

The only difference is that Idea's differential pricing is in the OPPOSITE direction from that of government services. For example, telecom companies give cheaper rates to commercial customers than to retail customers. They give cheaper rates to those who use more compared to those who less (the opposite of govt. service pricing). They also provide different prices in different circles, and to new customers versus old customers and so on.

## 2) END USE MONITORING vs CONSUMER CATEGORIZATION

So, the question is -- do other industries do what the Idea wants to do -- which is to sell a commodity or service, and charge differently based on the end use of the consumer (please note, the 'end use of the consumer' is not the same as 'class of consumer' or 'income of the consumer'.)

An analogy will be an Airline saying "my charges depend on whether you are going to meet your aunt or your mom" or an electricity company saying "my charges depend on whether you used my power to watch Star Plus or Sony TV" etc..

'End Use' based charging (as distinct from class of consumer, subscription plan of consumer etc) does not happen in India. As a result, to claim that "differential pricing is already in existence in various sectors such as cooking gas, electricity and airline" is not correct.

Idea is free to charge differently based on the class of the consumer (commercial vs retail, bulk vs retail, loyal vs new etc) and it is already doing so. But once the class of consumer is decided, a power company cannot then enter into 'tie ups' with Samsung

and raise power tariffs for all those who use non-Samsung appliances and lower it for those who use Samsung appliances (which is what telecom companies want to do.)

### 3) PURPOSE OF DIFFERENTIAL CHARGING AND TRANSPARENCY

Another crucial point to note is the purpose of differential charging. When an Airline charges more for the final two seats, it is part of its overall tariff structure. It is not taking money from another company to overcharge for certain seats and charge less for other seats. In other words, its pricing structure is transparent. There are no hidden motivations. But if Idea or Airtel charges more or less for certain websites vs others, it is not a transparent pricing structure. The 'true price' paid by the consumer is not disclosed to the consumer, as much of the money that the telecom operator makes will come from the website owner. In case of the airline, there is no such factor. If Idea or Airtel want to follow a transparent, demand-based pricing like in case of airlines, they can charge more for data during daytime (when demand is high) and less when demand is less (at night.) And yes, they already do.

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## **AIRTEL**

### **SECTION 2 - IT'S IN VOICE, WHY NOT IN DATA?**

From Airtel's submission -- "Currently, the voice tariff plans of TSPs allow differential charging to the customers based on type/destination. Such voice differential charging is done based on local call, STD call, ISD call, on - net and off - net, day and night, national roaming and international roaming. If TSPs are mandated to offer a uniform tariff for all types of voice call (local, STD and ISD), it will increase the tariffs of local calls, and the local call users will end up subsidizing the users of STD and ISD calls. Therefore, such differential tariffs have enabled TSPs to provide affordable services, and have benefited the industry & consumers at large while not being found as anti - consumers, misleading or ambiguous. Therefore, we firmly believe that the differential pricing, trial packs, STVs/rate cutters are critical for promoting innovation in the Internet eco-system."

In the above case, local calls are charged less than STD calls, which are charge lower than ISD calls because the cost of providing each of these services is different. The same can be said for on-net calls and off-net calls, congestion (daytime) charges etc. However, the cost of providing connectivity to Flipkart's website and Amazon's websites are not different. Therefore, this analogy is invalid.