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CHARTING A PATH FORWARD FOR INTERNET ACCESS IN INDIA

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INTRODUCTION

When India's network-neutrality activists won an overwhelming victory in February, their first impulse was to celebrate on social media, including Twitter and Facebook. It was an ironic victory celebration, since the civil-society advocates had succeeded in scuttling broad Internet access initiatives that might have allowed hundreds of millions of Indian citizens to wage their own Facebook media campaigns.

Now that the celebrations are mostly over, those cricket chirps one hears signify that India's civil-society stakeholders and policymakers are giving little further attention to the problem of getting the next 1 billion Indians online.

As an American lawyer and an Indian public-policy analyst, we make the case in this policy brief that the current policy vacuum in India represents a missed opportunity. It's time for all stakeholders to look past Facebook's proposed zero-rating program in India – the crux of the recent dispute before the Indian telecoms regulator – and instead find com-

mon ground on effective policies to promote the speedy and inclusive buildout of Internet infrastructure in the world's second-largest nation. Right now, there's essentially no program in place in India to do this.

INDIA'S UNCONNECTED MILLIONS

Less than 20 percent of India's vast population currently has access to broadband Internet, leaving roughly 1 billion Indians without, a shocking figure for what often is classed as the world's next superpower. This fact should trouble policymakers, not simply because of the emerging consensus that Internet access is a human right.[1] Whether or not one agrees with that notion, the next century of progress in the developing world indisputably will rely, in large part, on the economic and democratic opportunities that Internet access provides

Last month, the Telecom Regulatory Authority of India handed down a one-size-fits-all regulation that included a flat ban on "differential pricing," including what's commonly referred to as "zero rating."[2] The ban on differential pricing prohibits Internet service providers from offering or charging rates of data services that discriminate based on content. In a "zero rated" service, a provider excludes certain data, applications or services from counting against a customer's limited or metered data plan.

The authors of this brief went on record during the TRAI's consultation period to call for a more nuanced approach to the issue of differential pricing.[3] In our view, this is an issue the U.S. Federal Communications Commission essentially got right when it committed to a fact-based, analytical approach in its sweeping net-neutrality order.[4] Our comments also looked to the principles outlined by the Wikipedia Zero project as a model for how zero rating could be implemented without hurting competition or innovation.[5] We made the case that this kind of zero-rating implementation actually could have pro-market and pro-development impact, while we recommended regulating or banning other forms of differential pricing with explicitly anti-competitive implementations.

India's regulator instead concluded, on scant evidence, that the FCC had taken the wrong approach. The TRAI order essentially declares that it is simply too difficult to gauge the difference between subsidized access to Wikipedia and bundled access to a service like WhatsApp.

To be clear, neither Facebook's Free Basics nor any other proposed bundling of zero-rated services would be sufficient by themselves to fund the infrastructure needed to connect India's unconnected. There's no obvious way for a free service with no advertising to tap funding from nonsubscribers, particularly the poorest nonsubscribers who need Internet

access the most. For India's poor to access the larger Internet, other sources of revenue are needed. Even the nation's Universal Service Obligation (USO) Fund, which isn't currently being used, is an order of magnitude or more too small to reach India's unconnected billion. To support building out the Internet, India needs market interest and market demand. To put this more bluntly, it needs foreign capital and foreign-infrastructure investors.

Free Basics – and its precursor, Internet.org6 – was a program designed to build a market that would attract such investors. By giving away valuable content, essentially for free, the hope was that those who are not yet connected would see value in Internet services generally. The only way for the model to sustain itself is if consumers eventually want to pay for more services. The final iteration of Free Basics – the one halted and later categorically prohibited by TRAI – was content-neutral. Anyone could create an Internet resource or application that served any content at all, provided it met Free Basics' content-neutral, low-bandwidth technical specifications.

There's data that suggest high conversion rates of zero-rated service users transitioning to for-pay services. As Helani Galpaya, CEO of the Learning Initiatives on Reforms for Network Economies Asia (LIRNEasia), summarized the issue for the Council of Foreign Relations' Net Politics blog:

> According to the company, 50 percent of Free Basics users purchased a data package with their cellphone provider within 30 days of joining. This is an impressive conversion rate, considering fewer than 20 percent of Indians are online decades after the telcom market was liberalized and despite having among the lowest connectivity prices in the world. Other research showed zero-rated content increased adoption overall, even on Wi-Fi networks.[7]

Complicating the debate is the need to rely on wireless technologies, which are the only way to build out vast Internet connectivity quickly. The cost of spectrum allocations in India are among the highest in the world, with most spectrum belonging to the nation's defense forces. Wired broadband proliferation has been a miserable failure in India. The country's National Optical Fiber Network (OFN) plan to connect 250,000 Indian villages has achieved only 8 percent of its target goals over the past five years.

WALLED GARDENS AND DIFFERENTIAL PRICING

There are two primary causes for the failure of India's current policies to expand broadband access. First, the OFN framework's focus on laying cables and lack of service provisioning have meant significant added costs for content providers who try to service low-revenue markets. It's basically a losing proposition.

Second, the government of India realistically can lay only about 46,000 kilometers of cable per year, which doesn't come close to reaching the plan's targets.

Are there other ways to get the provinces wired? Some activists have urged that policymakers look to community networks, but these also likely won't be enough. Community networks are technically challenging to set up in rural communities, which lack connections to big Internet "pipes" and which also lack the local expertise needed to maintain them. Worse, such networks also require geographically stable user bases. Given fluctuating demand, due to seasonal rural-urban migration patterns, the viability of this model as a low-cost success story remains to be seen.

Free Basics and its predecessors were designed to try to address both the access problem and the demand problem simultaneously by including only "lightweight," low-bandwidth services in the package of free offerings. Targeted at mobile phone networks – the most common devices to connect to the Internet, especially in rural India – the program was envisaged not merely to bring the unconnected online, but more quickly than other alternatives. That this proposal made a lot of sense in light of India's infrastructure challenges didn't matter—TRAI killed it anyway.

The net-neutrality activists made compelling arguments that India's regulator should be alert to competition issues. But there's a clear need to differentiate anti-competitive bundles like Airtel Zero from open and responsible ones like Wikipedia Zero and the later, refined Free Basics. This becomes harder to do when all zero-rated services are painted in popular media with the same broad brush by net-neutrality absolutists. An overview of just how surreal the debate ultimately became in India can be found in a recent column by the *Seattle Globalist*'s Kirsten O'Brien, in which some activists characterized zero-rating approaches as "economic racism."[8]

Activists no doubt feel anxiety about the potential emergence of "walled gardens." Twenty years ago – before the term "network neutrality" was coined, but when the principles of common-carrier status still applied – some in the United States worried that AOL's flat pricing for unlimited access within its "walled garden" would lead to public misunderstanding of the potential of the Internet. In practice, however, the exact opposite happened. AOL users ended up demanding and receiving full access to the larger Internet through the World Wide Web and other larger-scale uses of the Internet. And AOL turned out not to be a bone-crushing monopolist after all—instead, 20 years later, it's close to irrelevant.

Transplanting that decades-old "walled garden" anxiety to India (or elsewhere) in 2016 has never made sense. If users actually were blocked from the broader Internet, telecoms would have little reason to provide Free Basics. Telephone companies need subscribers to migrate to the larger Internet to gauge what services are worth buying. They need Free Basics users to become sufficiently interested in the Internet that they would pay for it. A "walled garden" is precisely the opposite of what they want. As Mike Johnson of *Life, Data, Tech* put it:

> The walled garden would become a burden upon America Online as time would go on. Many users were unaware that the World Wide Web even existed outside of the garden walls of America Online, but those who had opened a web browser and had a taste of the wild, wild, west of the World Wide Web began to clamor for more content, content that wasn't accessible inside America Online.[9]

CONCLUSION

TRAI's categorical ban on *any kind* of differential pricing constitutes the kind of stumble that other expansive net-neutrality regulations, like the FCC's 2015 order, carefully avoided. TRAI's documentation of likely harms from case-by-case analysis is thin and speculative, at best.

But the current focus should be less on criticizing India's regulator and more on helping all stakeholders to seize this moment and revitalize a pro-Internet-access debate. As Pranesh Prakash of the Centre for Internet and Society put it:

> [I]f these regulations end up furthering digital exclusion, increasing barriers to access, reducing speech diversity and harming freedom of expression, we might claim victory in the net neutrality battle, but we would have lost the war for an open Internet that empowers all.[10]

What's needed is a new focus – perhaps through a conference, perhaps an annual one –devoted to solving how to deploy the Internet to India's unserved millions. This gathering should bring together multiple stakeholders, just as gatherings like the Internet Governance Forum have done, but with a particular focus on reaching the rest of India.

This means including not just policymakers and NGOs, but also telecoms and Internet-platform providers. It means that Facebook, Google and other well-known Internet companies should be part of the colloquy—giving them the opportunity to invest in helping India develop its own Internet-access program. Wherever possible, conference participants should "assume good faith" on the part of all of these stakeholders,

the same principle that guided development of the massively successful open-source reference project Wikipedia.

Everyone from net-neutrality activists to private companies to the unconnected billion themselves want all of India to have full access to the full Internet. Neither accusations of "economic racism" nor defenses of colonialism are productive means to achieve that goal. Getting everyone connected is a central problem for the 21st century. We need a plan, and the time for the plan is now.

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ENDNOTES

1. David Kravets, "U.N. Report Declares Internet Access a Human Right," *Wired*, June 3, 2011. http://www.wired.com/2011/06/internet-a-human-right/

2. Mike Godwin, "What the 'Zero Rating' Debate Reveals About Net Neutrality," *Reason*, April 8, 2015. http://reason.com/archives/2015/04/08/nothing-but-net

3. Mike Godwin and Sharada Srinivasan, "Zero-Rating Services and Differential Pricing as Tools to Promote Access and Development," R Street Institute, Dec. 29, 2015. http://trai.gov.in/Comments_Data/Organisation/R_Street.pdf

4. Federal Communications Commission, "Report and order on remand, declaratory ruling and order," GN Docket No. 14-28, March 12, 2015. https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1_Rcd.pdf

5. Wikimedia Foundation, "Wikipedia Zero Operating Principles," accessed March 7, 2016. https://wikimediafoundation.org/wiki/Wikipedia_Zero_Operating_Principles

6. Facebook, "Internet.org is connecting the world," Internet.org, accessed March 7, 2016. http://internet.org/

7. Helani Galpaya, "India Takes a Step toward Net Neutrality, Ignores the Millions of Unconnected," Net Politics, Feb. 16, 2016. http://blogs.cfr.org/cyber/2016/02/16/india-takes-a-step-towards-net-neutrality-ignores-the-millions-of-unconnected/

8. Kirsten O'Brien, "Are Facebook's Free Basics for the developing world as great as they sound," The Seattle Globalist, Feb. 29, 2016. http://www.seattleglobalist.com/2016/02/29/net-neutrality-facebooks-free-basics-india/47955

9. Mike Johnson, "The Walled Garden Is Returning," *Medium*, Nov. 4, 2015. https://medium.com/@EditorMJ/this-story-originally-appeared-on-life-data-tech-you-can-read-the-full-original-story-here-3ff57e3d19c4#.hwoqncx2o

10. Pranesh Prakash, "TRAI order: A sledgehammer, not a scalpel," *The Indian Express*, Feb. 11, 2016. http://indianexpress.com/article/opinion/columns/net-neutrality-debate-trai-facebook-free-basics-campaign/