



**Eastern Caribbean Telecommunications Authority (ECTEL)
5th Floor Conway Business Ctr**

Waterfront

Castries, Saint Lucia

August 21, 2019

REF.: Response to Draft Electronic Communications (Net Neutrality) Regulations, Consultation Document 1/N0.1

To whom it may concern,

I am pleased to contact you, as Executive Director of the Latin American Internet Association (ALAI)¹, a non-profit international civil association whose main mission is to promote and develop the Internet in Latin America and the Caribbean. Our core values are freedom, education, innovation, entrepreneurship, economic growth and users' empowerment. ALAI is an association that works in and for the region, willing to contribute to enrich the Internet ecosystem by building bridges between distinct actors and developing public policy recommendations aligned with our mission and vision. Some of our members are Amazon, Despegar.com, Facebook, Google and Mercado Libre.

ALAI celebrates that the Eastern Caribbean Telecommunications Authority ("ECTEL") is discussing recommendations for the modernization of legal frameworks to promote the development of the digital economy in the Caribbean and grasp the opportunities that it brings in terms of development and technological innovation. We also welcome the opportunity given to provide comments to the Draft Electronic Communications (Net Neutrality) Regulations, Consultation Document 1/N0.1, as we believe that a modern approach to understand connectivity is the cornerstone to promoting innovation in many economic sectors, boosting productivity and digitalization.

In our opinion, supporting net neutrality as a principle is a key element to ensure the Internet growth, therefore setting clear guidelines to secure it remains open is of vital importance. This can definitely contribute to promote competition and development, both economic and social, while taking into account the interest and protection of the region.

Consequently, we are deeply invested in supporting this debate with our contributions and commentaries, aimed at achieving a legal framework that provides the necessary protections regarding traffic management practices and at the same time stimulates the growth and development of the digital economy. Our experience shows that a well implemented public policy that sets clear rules while also allowing practices like zero rating, can certainly contribute to the development of the society.

¹ More information available at www.alai.lat/en/



Please find attached to this letter our main comments regarding the referenced open consultation with their due foundations. We hope they will be useful and contribute to the discussion and enrichment of this debate.

We remain at your disposal to continue the discussion of the aforementioned consultation and, if necessary to hold a meeting in order to explain in detail our main comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Navarro', is written over a diagonal line that extends from the bottom left towards the top right.

Gonzalo Navarro
CEO
Latin American Internet Association (ALAI)
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I. Zero - Rating

On the one hand, zero-rating programs have existed worldwide for many years, what has encouraged the development of connectivity in several areas around the world. In this regard, there has not been concrete evidence that this type of practice, *prima facie*, constitutes an abuse or exercises harm. Therefore, there is no concrete evidence that could sustain its banning. Zero-rating offers and mobile data programs can have positive effects for consumers and competition, while following open Internet principles and treating all traffic and content providers fairly. For example, zero-rating programs can be an excellent opportunity to connect more people, bringing them all the social and economic benefits that the Internet can provide, helping consumers to pursue different tasks in a more productive way.

That being said, we support ECTEL's proposal to continue permitting zero-rating programs², as we understand that allowing zero-rating programs does not necessarily collide with the adoption of net neutrality principles. Zero-rating programs can be designed in ways that are fair to competitors and consumers, developed on a non-exclusive basis and be open without charge to any comparable service of a given type (like messaging services or video).

We believe that addressing any concerns that could arise on a case-by-case basis, without depriving the consumers of the benefits zero-rating programs can bring, is an interesting approach over this matter. In this regard, setting general principles to address a case-by-case review could be an excellent way to satisfy any concerns. Hereof, the principles of non-exclusivity³, non-affiliation⁴ and transparency⁵ could become suitable to fulfill this purpose.

Zero-rating programs generate interesting short and long-term benefits, in terms of direct and indirect impacts for the under-connected or unconnected. Regarding the first group, zero-rating programs offer the chance for those who are under-connected to enjoy a more consistent connection, providing a baseline of connectivity, and certainty over the price of their data plan. This allows them to stay online within the zero-rating services instead of dropping off when they run out of data, what softens the gaps in connectivity. For those who are unconnected, zero-rating programs can provide the first step into experiencing the relevance and opportunity that the Internet can provide. This can incentivize them to continue this online experience outside the offered zero-rating services. Therefore zero-rating programs can be seen as a tool for helping people stay connected even when they have

² Draft Net Neutrality Regulations, 8(2).

³ Zero-rating programs would be available to all operators, and operators would be free to enter arrangements with any content providers.

⁴ Independent arrangement between operators and content providers, as not to favour the operator's own content over other content providers.

⁵ Clear disclosure of the terms of the offering.



temporarily exhausted their data balance. Being that said, we back ECTEL's proposition regarding the facilitation of creative pricing options through zero - rating, as providing flexibility in this regard can have a significant positive impact on connectivity and consumer choice. Nevertheless, the Draft Net Neutrality Regulations proposes prohibiting zero-rating programs from being exempt from any restrictive measures once an applicable data cap or threshold has been exceeded.⁶ Regarding this matter, we suggest that reasonable transitional period of time is given, where unconnected or under-connected consumers can enjoy zero-rated services while still being able to acquire extra data.

II. Net Neutrality

Net neutrality protections are necessary to ensure that providers of IAS (Internet Access Service) do not leverage their control under the network infrastructure to refrain consumers from accessing certain content or service. If these kind of practices were to happen, innovation could be strongly hampered, SMEs could be affected and consumers choice could be heavily harmed. A wide range of jurisdictions have currently banned blocking, throttling and paid prioritization traffic management practices, as these could clearly affect competition and consumers choice.

In this regard, ECTEL's proposal of adopting protections over net neutrality is an excellent opportunity to generate a legal framework that encompasses the growth of innovative businesses, while empowering competition and consumers choice, by prohibiting IAS from engaging in blocking, throttling, or paid prioritization and that reasonable traffic management practices should be based on objective technical criteria, not commercial considerations, under the principles of transparency, non-discrimination, and proportionality. Therefore, we support ECTEL's proposal to prohibit providers of IAS from blocking or throttling certain content, applications or services, or engaging in paid prioritization⁷ and the establishment of requirements of reasonability, proportionality, transparency and non-discrimination.⁸

III. Conclusions

ALAI welcomes the opportunity given to subscribe comments to ECTEL's proposal, regarding these very important topics. As stated above, net neutrality protections are vital for fostering innovation, creating a healthy digital ecosystem and maximizing the economic benefits that the Internet can provide. We encourage ECTEL to continue working on permitting zero-rating practices, addressing any concerns that could arise on a case-by-case basis, without depriving the consumers of the benefits zero-rating programs can bring.

⁶ Draft Net Neutrality Regulations, 8(2)(a).

⁷ Draft Net Neutrality Regulations, 6(2).

⁸ Draft Net Neutrality Regulations, 9(3)(a).