

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

I. Introduction

Facebook welcomes the opportunity to submit comments in response to the Eastern Caribbean Telecommunications Authority's (ECTEL) Recommendations on Draft Electronic Communications (Net Neutrality) Regulations ("Draft Net Neutrality Regulations"). We appreciate ECTEL's focus on these important issues and support ECTEL's goal of establishing clear rules to protect net neutrality.¹

By adopting strong net neutrality protections and continuing to permit zero-rating programs, ECTEL can promote competition, innovation, and connectivity while protecting the open internet and interests of consumers.

II. Net Neutrality Principles

Facebook is a strong supporter of net neutrality and believes it is critical for keeping the internet open for everyone. We support ECTEL's adoption of strong net neutrality protections to ensure that providers of internet access service (IAS) do not leverage their control over underlying infrastructure to interfere with consumers' access to the online content and services of their choice. In particular, we agree with ECTEL's proposal to prohibit providers of IAS from blocking or throttling certain content, applications or services, or engaging in paid prioritization.² We further support ECTEL's proposal to require traffic management practices to be reasonable, proportionate, transparent, and non-discriminatory.³

Jurisdictions around the world have recognized that net neutrality is essential to innovation, competition, and consumer choice, and have adopted similar protections. Facebook supports ECTEL's proposal to do the same by adopting the net neutrality principles above.

III. Zero-Rating

Facebook also supports ECTEL's proposal to continue permitting zero-rating programs.⁴ There is nothing inconsistent with adopting the net neutrality principles above while permitting zero-rating programs that benefit consumers and competition. As discussed below, zero-rating programs can offer significant benefits for consumers and connectivity.

Numerous studies have shown that zero-rating programs can enhance consumer welfare. For example, a study of zero-rating programs in Chile, the Netherlands, and Slovenia found no

¹ See Eastern Caribbean Telecommunications Authority (ECTEL), Recommendation of ECTEL to the National Telecommunications Regulatory Commission to consult on the Draft Electronic Communications (Net Neutrality) Regulation, Consultation Document 1/N0. 1, July 31, 2019, at 4(1).

² Draft Net Neutrality Regulations, 6(2).

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

⁴ Draft Net Neutrality Regulations, 8(2).

evidence that consumers limited their internet access to zero-rated content or that the practice resulted in any adverse market effects.⁵ Similarly, studies of zero-rating programs in Africa found increased internet access without any market distortions.⁶ Another report concluded that zero-rating programs are unlikely to harm the open internet and are actually a sign of healthy product differentiation that improves consumer value.⁷

Facebook supports ECTEL's view that zero-rating should be permitted in order to facilitate creative pricing options. The Draft Net Neutrality Regulations, however, also propose prohibiting zero-rating programs from being exempt from any restrictive measures once an applicable data cap or threshold has been exceeded.⁸ In light of the significant connectivity and consumer benefits that can be provided by zero-rating programs, we encourage ECTEL to provide greater flexibility on this specific issue.

Zero-rating programs can offer a critical tool for bringing more people online and helping people stay connected – particularly where people have not yet purchased data or have temporarily exhausted their data balance:

- **Onramp to Internet:** For people not yet on the internet, zero-rating programs can provide an important opportunity to “test” and experience the relevance and opportunities of connectivity. Many unconnected consumers – even in countries with robust broadband coverage – are not on the internet because they are unaware of the relevance of being online and therefore have not chosen to buy data in the first place.⁹ By enabling people to experience the relevance of connectivity for free, zero-rating programs can provide an onramp for citizens to begin purchasing data to access the broader internet.¹⁰
- **Baseline of Connectivity:** For those already online but who may only be able to afford data intermittently (e.g., someone living paycheck to paycheck), zero-rating programs can provide an important baseline of connectivity to help them stay online more consistently. Rather than dropping off the internet completely every time an individual runs out of data, the baseline of connectivity from zero-rating programs can help smooth the gaps in connectivity, thereby facilitating more consistent adoption and regular use of the internet when consumers are able to purchase data again.¹¹

⁵See Roslyn Layton and Silvia Calderwood, *ZERO RATING: Do Hard Rules Protect or Harm Consumers and Competition? Evidence from Chile, Netherlands, and Slovenia*, SOCIAL SCIENCE RESEARCH NETWORK (Aug. 15, 2015).

⁶ Diana Carew, *Zero-Rating: Kick-Starting Internet Ecosystems in Developing Countries*, PROGRESSIVE POLICY INSTITUTE, at 8-9 (Mar. 2015).

⁷ Doug Brake, *Mobile Zero Rating: The Economics and Innovation Behind Free Data*, INFORMATION TECHNOLOGY & INNOVATION FOUNDATION, 1 (May 2016).

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

⁹ See, e.g., The Economist, Intelligence Unit, “The Inclusive Internet Index” (2019), <https://theinclusiveinternet.eiu.com/>.

¹⁰Oxera, “An Economic Assessment of Zero-Rating” at 5 (Apr. 25, 2018), (“a 2016 survey across a number of developing countries found that 60% of respondents that said they had used a zero-rating service, had since upgraded to using paid services”).

¹¹ Phoenix Centre, Policy Bulletin No.8 Private Solutions to Broadband Adoption: An Economic Analysis, at 17-21 (Sep. 2016).

Rather than preventing these benefits where consumers exhaust their data balance (or have not purchased data), we encourage ECTEL to assess such scenarios on a case-by-case basis and, at a minimum, provide greater flexibility where zero-rating programs have the following characteristics:

- *Non-Exclusive*: The zero-rating program is available to all operators on the same terms and conditions, and operators are free to enter into the same, or similar, arrangements with other content providers.
- *Independent/Non-Affiliated*: The zero-rating arrangement between an operator and content provider is non-affiliated and independent. The offer does not favor the operator's own content over other content providers.
- *Open*: The zero-rating program is open to all content providers that qualify under objective standards (e.g., objective technical criteria).
- *Transparent*: The operator discloses in a clear and transparent manner the terms of the offering and its scope.

One example of the type of zero-rating program that benefits consumers is the Free Basics program.¹² In partnership with mobile operators, Free Basics allows people to access low-bandwidth, basic services – such as health information, job sites, communications tools, education resources, and local government information – without data charges. By enabling people to experience the benefits and relevance of connectivity for free, Free Basics helps to bring more people online and transition them to using data to access the broader internet. The program also provides a consistent baseline of connectivity for consumers who may have data only intermittently.

Consistent with the strong net neutrality protections in the Draft Net Neutrality Regulations, Free Basics is non-exclusive and available to any operator that wants to participate. Free Basics also is open to any content provider whose service meets the program's technical guidelines, which are openly published.¹³ No one is charged for accessing the services available on Free Basics. Content providers are not charged for participating in the platform, and operators do not receive payment for providing Free Basics.

At a minimum, the Draft Net Neutrality Regulations should allow for a reasonable transitional period of time during which unconnected or under-connected consumers can continue to access such zero-rated programs while purchasing additional data. Allowing this continued access to zero-rated programs would smooth the gaps in connectivity and make it easier for consumers to continue topping up with data for more consistent use of the internet.

¹² Free Basics is currently live in over 55 countries around the world.

¹³ Free Basics, Technical Guidelines, <https://developers.facebook.com/docs/internet-org/platform-technical-guidelines>.

IV. Conclusion

Facebook welcomes the opportunity to submit these comments and appreciates ECTEL's consideration of these important issues. Maintaining strong net neutrality protections is critical for protecting the open internet and ensuring that citizens everywhere, including in ECTEL member states, are able to access the content and services of their choice on the internet. Furthermore, by continuing to provide flexibility for zero-rating programs as discussed above, ECTEL can promote connectivity, foster innovation, and benefit consumers while protecting net neutrality.

Respectfully submitted,

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