

Draft Regulations on Net Neutrality

Explanatory Memorandum – East Caribbean Telecommunications Authority (ECTEL)

This summary is intended to provide a brief, readable overview of the selected regulations of this draft regulation and is not intended to be comprehensive or definitive. Readers are strongly advised to read the full regulation for a complete understanding of all its provisions. In this summary, Licensee means a person (generally a company) holding a license to provide electronic communications services; Commission means the National Telecommunications Regulatory Commission in each ECTEL country; “electronic communications” is used instead of “telecommunications services”.

Part I: Preliminary

Scope and purpose (See regulations 4 and 5)

- The objective of the regulations is to define a licensee’s obligations in respect of net neutrality.
- The regulations do not limit or modify any applicable legal restrictions on the communication or distribution of otherwise unlawful content and do not relieve a licensee from its obligations to comply with lawful orders and enactments.
- The regulations apply to all licensees who provide internet access services, but do not apply to the operation of private networks.

With these objectives, the Net Neutrality Regulations:

- define the licensee’s obligations to treat content and devices in a neutral manner and to refrain from price discrimination;
- define permissible “reasonable network management” by reference to a set of permissible purposes and a set of obligations that such measures must satisfy;
- require transparent disclosure of network management practices, including specific required information about the impact on the user and the conditions or circumstances in which a measure will be applied;
- provide for an ex-post review of a licensee’s network management practices by ECTEL;
- provide for a process to resolve user complaints; and
- set out sanctions for non-compliance.

Part II: Neutrality Principles

Content neutrality (See regulation 6)

- Licensees shall treat lawful content equally, without discrimination, when providing an internet access service.

“Internet access service” is defined to mean an electronic communications service which provides or enables access to the internet by a retail customer.

- Examples of prohibited conduct include blocking, degrading, altering, restricting, throttling, or allowing paid prioritization of, specific content.
- Prohibited discrimination, including blocking of sites or content, is permitted only when necessary, and only for so long as necessary, to comply with a lawful order of a competent authority. It is neither the obligation, nor in the purview of, a licensee to determine what content is or is not lawful.
- Licensees may not enter into any agreement, including terms of service applicable to users, which would conflict with its obligations under these Regulations.

Device neutrality (See regulation 7)

- Licensees shall not limit users’ free choice of otherwise lawful telecommunications devices (such as telephones, modems, or computer equipment that are connected to the licensee’s network) that does not interfere with normal operation of the network.
- This regulation does not modify other obligations to avoid, prevent, and/or mitigate harmful interference (including under Sections 87 or 91 of the Act, as applicable), or limit the licensee’s ability to take reasonable measures to prevent harm to the network or users of the network.

Price Discrimination (See regulation 8)

- Differential pricing models that have the effect of materially restricting user choice of content, services, or applications, are prohibited.
- Zero-rating of specific services or content (i.e. exclusion of zero-rated traffic from applicable data caps) is permissible, but only if the practices are disclosed, in accordance with regulation 10, and the zero-rated traffic is not exempted from restrictive measures (such as reduced speeds or blocking) applied after applicable data caps have been exceeded. This allows for creative pricing options while avoiding situations where users are only able to access the licensee’s preferred content.

Part III: Network Management

Network management (See regulation 9)

- Reasonable network management practices (consistent with the requirements outlined in this regulation) are permissible.
- To qualify as reasonable, network management practices must meet certain criteria. They must be implemented for one or more of the following authorized purposes: –

- (a) reduction or mitigation of network congestion;
 - (b) addressing quality of service concerns;
 - (c) optimizing transmission quality;
 - (d) serving the purpose of network maintenance and contributing to the efficient use of network resources; or
 - (e) protecting the integrity or security of the network.
- They must also: –
- (a) be non-discriminatory
 - (b) be employed for, and rationally connected to, an authorized purpose;
 - (c) be proportionate – i.e. not more restrictive than reasonably necessary to address the harm;
 - (d) be transparently disclosed to consumers (as described below); and
 - (e) be objectively justifiable based on the quality of service requirements of the affected communications.
- These requirements do not apply to traffic or content control measures required by law, which are outside the scope of regulation 9.

Transparency (See regulation 10)

- Licensees must provide clear, accurate, and complete information about their network management practices.
- This information must include, at least, clear explanations of: –
- (a) the impact of the practice on the user including any reduction of advertised upload or download speeds;
 - (b) the conditions or circumstances that would trigger the application (or the withdrawal of) the practice; and
 - (c) how to contact the licensee for additional information or to address complaints.
- The disclosure requirements are intended to be similar to the related obligations under the Consumer Protection Regulations.
- Licensees must also provide at least 30 calendar notice to users of changes to network management practices.

Review of Network Management Practices (See regulation 11)

- Network Management Practices are reviewable by ECTEL on an ex-post basis.
- A review can be triggered: –
 - (a) by a written request from a user or licensee, or
 - (b) by the NTRC on its own initiative if it reasonably suspects that any network management practice does not comply with these Regulations, or has reasonable grounds to believe a proposed change to any practice may have a significant impact on users.
- Licensees must provide all information requested for such a review.
- ECTEL may invite submissions from the licensee and other interested persons.
- The NTRC, on ECTEL’s recommendation, may direct the licensee to change or discontinue a non-compliant network management practice, or to modify its public communications relating to any network management practice.

Complaints (See regulation 12)

- Consumer complaints relating to a licensee’s network management practices or related matters will be subject to the process required under Part VI (Complaints Handling) of the Consumer Protection Regulations.

Part IV: Compliance and Enforcement

Compliance and enforcement (See regulation 13)

- A six month transition period is provided for licensees to come into compliance.
- Following the transition period, non-compliance may be prosecuted as a summary conviction offence, subject to fines of up to \$50,000 for a single offence or \$5,000 per day for a continuing offence. These maximum fines correspond to the penalties under Section 12(4) of the draft Electronic Communications Bill for failure to comply with a direction of the Commission.
- Other administrative enforcement options may include suspension or revocation of a licensee’s licence, the imposition of conditions of licence, or directions to the licensee to implement a remedial plan or to publish additional information.