

CONSULTATION DOCUMENT

Recommendation of the Eastern Caribbean Telecommunications Authority ("ECTEL")

To the National Telecommunications Regulatory Authority to consult on A DRAFT DISCUSSION PAPER FOR A POLICY ON INTERNET NEUTRALITY

Comment on Comments Addendum

31st October 2013

1. On 23rd September 2013 the National Telecommunications Regulatory Commission received a submission from ECTEL containing ECTEL's recommendation on Internet Neutrality.
2. The Initial Comments period ended on the 28th October 2013 and comments were received from:
 - (i) Digicel
 - (ii) Cable and Wireless
 - (iii) Columbus Communications
3. On the 31st October 2013, NTRC St. Lucia and Gerry George tendered responses to the consultation and ECTEL accepted the same in the interest of obtaining and airing the views of stakeholders.
4. The initial comments of NTRC St. Lucia and Gerry George are hereto attached and ECTEL now invites comments to these comments.
5. The Comment on Comments period will run from **4th November to 15th November 2013**.
6. These initial comments are hereto attached and ECTEL now invites comments to these comments.
7. Following the Comment on Comments period, ECTEL's Directorate will finalize and submit a draft policy for the recommendation of Board and Council for adoption in the ECTEL Member States.
8. All responses to this Consultative Document should be written and sent by post, Fax or email **no later than 4: 30 pm on 15th November 2013** to: -

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ECTEL
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Disclaimer

This consultative document does not constitute legal, commercial or technical advice. The consultation is without prejudice to the legal position of ECTEL's duties to provide advice and recommendations to the Ministers with responsibility for telecommunications and the National Telecommunications Regulatory Commissions.

The following are the comments submitted by NTRC St. Lucia and Gerry George.

(Please see below for comments received)

Responses to Consultations - POLICY RECOMMENDATION ON INTERNET NEUTRALITY

NTRC Saint Lucia's Comments

SUMMARY OF ECTEL's POSITION

1. The practice of blocking websites and throttling speeds interferes with regional objectives to utilize ICT as a way of transforming economies and transitioning towards knowledge based economies.

[YES, with COMMENT]

“The blocking of content in fixed or mobile broadband networks is only allowable in extremely limited circumstances and even where such circumstances exist providers must demonstrate that the action of blocking is reasonable and proportionate.”

We suggest that blocking of content only be allowed where it is in contravention of the law (objectionable content), or technical purposes (misconfigured equipment, harm to the integrity of the network infrastructure) and not leave it up to the whims and fancies of the provider to determine what traffic is worthy of such action. The burden of proof by the provider should also be maintained.

“ECTEL does not support the practice of providers cutting internet speeds once a consumer has exceeded his agreed usage limit.”

This may be a viable option to be considered in terms of customer protection and avoidance of “Bill Shock”, similar to that imposed by the EU with respect to mobile roaming. A reduction of speeds – where one is charged by quantity (per megabyte/gigabyte) will continue to allow for access to basic services – e-mail, web sites such as online accounts, web-based complaint and service portals and online banking, travel, to name a few, while limiting the ability to continue to generate high charges for downloads. This throttling can be for a limited time combined with a notice to suspend after such time has expired.

This comment refers to the practice of throttling or reduction of available of speeds to a pre-defined standard, as opposed to the cutting off of access or temporarily suspending of the account, which is equivalent to a denial of service. The triggering of such action would be similar to a mobile customer exceeding their credit limit – calls can still be received, but outgoing is restricted. Consider the case where a customer's account has

been subject to abuse (hijacking, malware or other such threat) and as a result, has caused the exceeding of the data caps. Customer then legitimately attempts to use the Internet for a normal and legitimate purpose, only to discover that service has been suspended overnight. Customer may then have no recourse until next available business hours, assuming that the customer's schedule permits it. (example: finalizing travel arrangements, scheduling an activity or event that one may be enroute to, online payment of said Internet account, etc). It is recognized that while throttling would not explicitly block specific websites, the speed reduction would make some sites such as high-bandwidth sites unusable. We are of the opinion that this would only be implemented in specific cases, does not run contrary to the stated goals of ECTEL's mandate, and is an acceptable compromise.

SUMMARY OF ECTEL'S POSITION

2. In order for providers to restrict customer access to particular websites telecommunications providers must engage in DPI which constitutes an interference with the privacy rights of individuals. The practice of DPI breaches legislative provisions on privacy and confidentiality as well as the terms of the licences currently issued by ECTEL. ECTEL as the regulatory authority cannot support actions which are contrary to the law nor as a public institution condone actions which interfere with the constitutional rights of individuals. ECTEL recommends that providers of fixed and mobile broadband services refrain from the practice of DPI and the subsequent blocking customer access to content irrespective of the end device utilized.

[YES]

It should be noted that traffic management and minimizing traffic slowdowns does not necessarily prevent traffic prioritizing of one's own traffic or for favored content. The focus on ensuring the avoidance of anti-competitive practices is lauded and should address this issue.

SUMMARY OF ECTEL'S POSITION

3. It is noted that the countries which have addressed the issue of net neutrality all acknowledge that the provider must be able to utilize certain techniques that will enable the efficient use of their infrastructure. ECTEL recognizes that there

may be merit to the argument that providers must engage in some form of traffic management. However, traffic management techniques must not interfere with the fundamental right to privacy nor can it be applied to achieve anti-competitive ends and as such practices which are discriminatory or which are tantamount to an abuse of competition are not acceptable. As such whilst ECTEL will note the position that providers must be able to efficiently manage their networks, it reiterates the view that providers refrain from actions which infringe on the individual right to privacy and have anti-competitive objects and/or effects. To that end ECTEL is of the view that for traffic management techniques to be countenanced, the provider must demonstrate to the satisfaction of the regulator that the said techniques do not unduly interfere with the individual right to privacy and are not discriminatory and are reasonable and proportional in the circumstances.

[YES]

P13. “ECTEL concurs with the ICTA’s position that DPI is not necessary to ensure effective traffic management.”

Agreed!!

SUMMARY OF ECTEL’S POSITION

4. ECTEL has noted that within the Caribbean region providers have implemented usage based pricing schemes for mobile data services. ECTEL recommends that providers utilize usage based pricing schemes and application agnostic network management as a method to control network congestion.

[YES]

SUMMARY OF ECTEL’S POSITION

5. When one examines the approaches to net neutrality, it is noted that information transparency is often regarded as one method in which to promote net neutrality. It involves providing customers with relevant information on the traffic management practices used by the provider and the impact of the practices on the service that will be supplied. Once consumers are given access to the information they are able to make better decisions about whether they would want to obtain service from a particular provider. ECTEL recognizes that this approach by itself does not resolve the issues caused by the providers restricting access to content but concurs that information transparency does

play a role in furthering the overall aim of net neutrality. As such, ECTEL recommends that providers in keeping with the provisions of the Quality of Service Regulations provide customers with clear, readily accessible and relevant information on the traffic management practices used by providers, the quality of service that they should expect and all other terms and conditions relating to their broadband service. This information would allow customers to make informed choices.

[YES]

Personal Comments

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ADDITIONAL INSTRUCTIONS FOR OTHER STAKEHOLDERS

In responding to ECTEL's recommendations also indicate whether:

- (1) in your experience as a consumer applications such as Skype, Viber have been blocked by a telecommunications provider

[NO]

- (2) you consider DPI an interference with your right to privacy

[YES, as there are no guaranteed that action will not be taken based on content, or information accessed will not be used in a manner either to my personal detriment (or that of my friends, colleagues, associates) or for the direct gain of the person accessing the data (or their friends, colleagues, associates)].

- (3) would be willing to pay based on how much data you use and pay extra if you exceed the agreed amount of data;

If the levels and caps set were reasonable and flexible, and reflected the requirements of an information-based society, then yes. However, the current practices seem to indicate that the providers do not seem to have a proper grasp on such "needs" and seem to have a preference towards profits, even at a detriment of the uptake and utilization of technology.

- (4) You would support the introduction of regulations by Parliament to control the use of DPI and similar technologies

I'm not sure that we would need separate laws to control the use of DPI – it seems like we are heading towards micro-managing of the technology networks by Parliament. Other legislations (e-communications bill, data protection act, etc) should be able to sufficiently deal with those issues.