

**ELECTRONIC COMMUNICATIONS (NET NEUTRALITY) REGULATIONS**

**[NAME OF CONTRACTING STATE]**

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**Electronic Communications (Net Neutrality) Regulations**

[NAME OF CONTRACTING STATE]

[STATUTORY RULES AND ORDERS/STATUORY INSTRUMENT], No. [-] of 201[-]

(Gazette [Date])

Made by the Minister under regulation [-] of the Electronic Communications Act, 200[-] No. [-] of 20[-].

**Part I**  
**PRELIMINARY**

**1. Citation**

These Regulations may be cited as the Electronic Communications (Net Neutrality) Regulations, 20[-].

**2. Commencement**

These Regulations shall come into force on the date of its publication in the Gazette.

**3. Interpretation**

In these Regulations –

“**Act**” means the Electronic Communications Act No. [-] of 200[-];

“**Complaint Handling Procedure**” means the licensee’s complaint handling procedure as set out in Regulation **Error! Reference source not found.**;

“**electronic communications services**” has the meaning set out in the Act;

“**internet access service**” means an electronic communications service which provides or enables user access to the internet, or which is offered or advertised as providing or enabling such access;

“**user**” means a legal entity or natural person using or requesting a publicly available electronic communications service; and

“**zero-rating**” means any practice or pricing model whereby free access is provided to one or more application, service or website.

**4. Objective**

- (1) The objective of these Regulations is to define a licensee’s obligation to adopt and comply with the principle of net neutrality.

- (2) These Regulations are made to—
  - (a) further define a licensee’s obligations in respect of net neutrality;
  - (b) outline the meaning of “reasonable network management”;
  - (c) define a licensee’s obligation to provide clear information to users about its network management practices;
  - (d) define a process for *ex post* review of a licensee’s network management practices;
  - (e) define a process to resolve user complaints about a licensee’s network management practices and other matters within the scope of these Regulations; and
  - (f) set out sanctions for non-compliance.

**5. Application and Non-Application**

- (1) These Regulations apply to all licensees who offer internet access services.
- (2) For greater certainty, these Regulations do not apply to any purely private electronic communications network.
- (3) Nothing in these Regulations limits or relieves a licensee from a licensee’s obligation to comply with a lawful order of a competent judicial or administrative authority or an enactment.

**Part II**  
**NEUTRALITY PRINCIPLES**

**6. Content Neutrality**

- (1) A licensee shall treat all lawful traffic equally, without discrimination based on the origin, destination, or content of such traffic, when providing internet access services.
- (2) Without limiting sub-regulation (1) (but subject to regulation 9) a licensee shall not block, degrade, alter, restrict, interfere with, discriminate between, or allow paid prioritization of, specific instances or categories of content, applications or services.
- (3) For the purpose of sub-regulation (1), traffic shall be presumed to be lawful, unless determined by a competent judicial or administrative authority to be unlawful.
- (4) Notwithstanding sub-regulation (1) and (2), a licensee may block or restrict content, applications, or services solely as necessary, and only for as long as necessary, to comply with an order or determination of a competent judicial or administrative authority.

- (5) A licensee shall not enter into any contract, or impose terms of service, that conflicts with or purports to modify or waive the licensee’s obligations under these Regulations.

**7. Device Neutrality**

- (1) A licensee shall not restrict a user’s choice of lawfully operated terminal equipment, provided that such terminal equipment does not interfere with the normal operation of the electronic communications network.
- (2) Nothing in these Regulations limits a licensee’s ability to take reasonable measures to prevent harm to the electronic communications network or to users of the electronic communications network.

**8. Price Discrimination**

- (1) A licensee shall not apply preferential or discriminatory pricing models for electronic communications services that have the effect of materially restricting a user’s choice of content, services, or applications.
- (2) Without limiting the generality of sub-regulation (1), a licensee may apply zero-rating and may exclude zero-rated traffic from any applicable data cap, provided that—
  - (a) the licensee does not exempt zero-rated traffic from restrictive measures, if the licensee applies restrictive measures such as blocking access or reducing network speeds once an applicable data cap or threshold has been exceeded; and
  - (b) the licensee discloses its zero-rating practices, which shall be deemed to be a network management practice for the purpose of regulation 10.

**Part III**  
**NETWORK MANAGEMENT**

**9. Network Management**

- (1) Notwithstanding anything to the contrary in these Regulations, a licensee may adopt reasonable network management practices, in accordance with this regulation 9.
- (2) In these Regulations, subject to sub-regulation (3), “reasonable network management” means practices employed by a licensee to –
  - (a) reduce or mitigate the effects of congestion on the electronic communications network;
  - (b) address quality of service concerns;
  - (c) optimise overall transmission quality;
  - (d) serve the purpose of network maintenance and contribute to an efficient use of network resources; or

- (e) protect the integrity and security of the electronic communications network.
- (3) A licensee shall ensure that any network management practice it employs or authorises—
- (a) is reasonable, proportionate, transparently disclosed (in accordance with regulation 10), non-discriminatory, and auditable;
  - (b) is rationally connected to one or more of the purposes set out in sub-regulation (2); and
  - (c) is objectively justifiable based on the quality of service requirements of the electronic communications affected by the practice.

## **10. Transparency**

- (1) A licensee shall—
- (a) provide or make prominently available to users, information on its network management practices that is clear, accurate, free of material omissions, relevant, current, and comprehensive;
  - (b) provide at least 30 calendar days’ notice to users of any changes to its network management practices; and
  - (c) ensure that such information is communicated in a manner appropriate to the user’s communications needs including those with special needs.
- (2) The information referred to in sub-regulation (1) shall include clear and comprehensible explanations of –
- (a) the impact of the practices on the user including, where applicable, any reduction of advertised upload or download speeds;
  - (b) the conditions or circumstances under which the practices will or will not be applied, including if applicable, when a measure that has been applied will cease to be applied; and
  - (c) how the user can contact the licensee for more information about the practices, or to address complaints relating to the practices.
- (3) For the purposes of these Regulations, a network management practice which has not been disclosed in accordance with sub-regulation (1) and (2) is not a reasonable network management practice.

## **11. Review of Network Management Practices**

- (1) The Commission may request ECTEL to review one or more of a licensee’s network management practices if —
- (a) a user or a licensee requests a review in writing;

- (b) the Commission reasonably suspects that any network management practice does not comply with these Regulations; or
  - (c) the Commission has reasonable grounds to believe a proposed change to a network management practice has or would be likely to have a significant impact on users.
- (2) A licensee shall provide all documents or other information requested by ECTEL or the Commission, for the purpose of such a review.
  - (3) ECTEL may, at its discretion, invite submissions from the licensee and from other interested persons.
  - (4) ECTEL shall make recommendations under this regulation in writing.
  - (5) The Commission may, on the recommendation of ECTEL, direct the licensee to discontinue or modify a network management practice, which does not conform to these Regulations or to modify, clarify, or supplement its public disclosures and other communications about or relating to any network management practice.

## **12. Complaints**

Part VI (Complaints Handling) of the Electronic Communications (Consumer Protection) Regulations, S.R.O. ●, will apply to consumer complaints relating to a licensee's network management practices or any related matter.

### **Part IV COMPLIANCE AND ENFORCEMENT**

## **13. Compliance and enforcement**

- (1) A licensee to whom these Regulations apply shall comply with the obligations provided for in these Regulations within [6] months of the coming into effect of these Regulations.
- (2) A licensee who—
  - (a) fails to comply with these Regulations after [six] months have elapsed from the coming into effect of these Regulations; or
  - (b) communicates or publishes false or misleading information relating to its network management practices;

commits an offence and is liable on summary conviction to a fine not exceeding [\$50,000] or if the offence is a continuing offence, the licensee is liable to a further fine not exceeding [\$5,000] for every day that the offence continues after conviction.

- (3) Without prejudice to sub-regulation (2), the Commission may take one or more of the following enforcement measures—
  - (a) recommend to the Minister to suspend or revoke the licensee's licence;

- (b) recommend to the Minister to impose, remove, or modify a condition attached to the licensee's licence;
- (c) direct the licensee to implement a remedial plan over a period to be determined by the Commission; and
- (d) direct the licensee to publish additional information about its network management practices and, if so determined by the Commission, the results of its implementation of the remedial plan.