

Response to Open Internet Consultation:  
Comments on Open Internet Framework General Determination

## I. Introduction

Facebook welcomes the opportunity to submit comments in response to the Regulatory Authority of Bermuda's (the "Authority") Open Internet Consultation. We appreciate the Authority's focus on these important issues and support the Authority's goal of setting out clear guidelines to ensure that the internet continues to be an open, innovative ecosystem.<sup>1</sup>

Facebook continues to be a strong supporter of net neutrality and believes it is critical to the internet's continued growth. By seeking to adopt strong net neutrality protections, the Authority can continue to promote competition, innovation, and the development of the Bermudian economy while protecting the interests of the people of Bermuda.<sup>2</sup>

## II. Traffic Management (Section V.A.2, Questions 5-7)

Facebook supports the Authority's proposal to adopt strong net neutrality protections. In particular, we support the Authority's proposal to prohibit providers of internet access service ("IAS") from engaging in blocking, throttling, or paid prioritization.<sup>3</sup> We further support the position that any reasonable traffic management practices should be transparent, non-discriminatory, proportionate, and based on objective technical considerations rather than commercial considerations.

These net neutrality protections are necessary to ensure that IAS providers are not permitted to leverage their control over the underlying network infrastructure to prevent end-users from accessing the content and services of their choice. Without strong rules, IAS providers could, for example, block certain apps or services, favor their own content over the content of competitors, or charge consumers more for applications that have not contracted with the IAS providers for guaranteed "fast lanes" or other preferential treatment. Such practices would discourage innovation, inhibit new entry by small and innovative businesses, harm consumer choice, and undercut the open nature of the internet.

The Authority highlights a range of international jurisdictions which prohibit blocking, throttling, and paid prioritization practices.<sup>4</sup> These jurisdictions around the world have recognized that net neutrality is essential to innovation, competition, and consumer choice, and have adopted similar net neutrality principles. Facebook supports the Authority's proposal to do the same by adopting the type of net neutrality protections outlined above.

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<sup>1</sup> See Regulatory Authority of Bermuda, Open Internet Consultation Document, at para 6. ("Open Internet Consultation").

<sup>2</sup> Open Internet Consultation, at para 2, citing section 12 of the Bermuda Regulatory Authority Act 2011.

<sup>3</sup> Open Internet Consultation, at para 72.

<sup>4</sup> Open Internet Consultation, at para 53.

### III. End-Users Right to Access and Distribute Legal Content of Their Choice (Section V.A.3, Question 11)

For the same reasons discussed above, Facebook supports the Authority's proposed position that end-users should have the right to access and distribute legal content, as well as to use legal applications and services, of their choice on the internet.<sup>5</sup> This protection goes to the core of maintaining the internet as an open forum where people can access the content and services of their choice, and content providers are not impeded from reaching end-users on the internet.

### IV. Zero-Rating (Section V.A.1, Questions 1-3)

There is nothing inconsistent with adopting the strong net neutrality principles above while also continuing to permit zero-rating programs that benefit consumers and competition. Facebook respectfully encourages the Authority to continue permitting zero-rating while addressing any concerns with particular practices on a case-by-case basis. This approach would be consistent with the Authority's goal of promoting an ecosystem that provides consumers with "choice, innovation, efficiency and affordability."<sup>6</sup>

Speculative concerns, without evidence of actual harm, should not be a basis for broadly banning zero-rating arrangements. Zero-rating programs have existed around the world for years, and there is no concrete evidence of harm to justify a categorical ban of all forms of zero-rating. To the contrary, as discussed below, zero-rating programs can offer significant benefits to consumers, and provide a critical tool for bringing more people online and helping people stay connected.

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 evidence that consumers limited their internet access to zero-rated content or that the practice resulted in any adverse market effects.<sup>7</sup> Similarly, studies of zero-rating programs in Africa found increased internet access without any market distortions.<sup>8</sup> 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.<sup>9</sup>

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<sup>5</sup> Open Internet Consultation, at para 82.

<sup>6</sup> Open Internet Consultation, at para 27(c), citing section 5 of the Electronic Communications Act of Bermuda.

<sup>7</sup> See 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).

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

<sup>9</sup> Doug Brake, *Mobile Zero Rating: The Economics and Innovation Behind Free Data*, INFORMATION TECHNOLOGY & INNOVATION FOUNDATION, at 1 (May 2016).

Zero-rating programs also can provide significant short-term and long-term benefits for those who are unconnected or under-connected:

- 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.<sup>10</sup> By enabling people to experience the relevance of connectivity for free, zero-rating programs provide an onramp for citizens to begin purchasing data to access the broader internet.<sup>11</sup>
- For those already online but who may only be able to afford data intermittently, zero-rating programs can provide a baseline of connectivity to help them stay online more consistently. Rather than dropping off the internet completely when an individual runs out of data, the baseline of connectivity from zero-rating services can help smooth the gaps in connectivity and make it more likely the consumer will continue topping up with more data.<sup>12</sup>

The Authority, in particular, expresses concern with zero-rating where a content provider “could not afford to subsidise the cost of delivery of its own service, in order to compete against a zero-rated service from an ISP which ... is cross-subsidising the zero-rated service.”<sup>13</sup> There are many different forms of zero-rating arrangements, however, to which this concern does not apply. The concern cited by the Authority, even if raised by certain practices, does not warrant a broad ban on all forms of zero-rating and could be addressed on a case-by-case basis.

As the Authority has noted, other jurisdictions that have examined these issues have concluded that net neutrality does not require banning zero-rating.<sup>14</sup> Consistent with the approach taken by

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<sup>10</sup> See, e.g., The Economist, Intelligence Unit, “The Inclusive Internet Index: Bridging Digital Divides,” at 11 (2017), <http://bit.ly/2XYpa5o> (“The Inclusive Internet Index”).

<sup>11</sup> Oxera, “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”).

<sup>12</sup> Phoenix Centre, Policy Bulletin No.8 Private Solutions to Broadband Adoption: An Economic Analysis, at 17-21 (Sep. 2016).

<sup>13</sup> Open Internet Consultation, at para 38.

<sup>14</sup> For example, the EU rejected a categorical prohibition on zero-rating and instead adopted a permissive regime that allows regulators to conduct assessments on a case-by-case basis. See Body of European Regulators for Electronic Communications (“BEREC”), BoR (16) 127, “BEREC Guidelines on the Implementation by National Regulators of European Net Neutrality Rules” (Aug. 2016), <http://bit.ly/2Hq3CJQ> (listing the “seven basic principles” of an open Internet) (“BEREC 2016 Net Neutrality Guidelines”). Similarly, even under the previous net neutrality rules adopted in the U.S. in 2015, zero-rating was not a *per se* violation of net neutrality but instead was subject to a flexible case-by-case assessment. See also *Protecting and Promoting the Open Internet*, 30 FCC Rcd 5601, at para 151 (2015).

the vast majority of countries, we respectfully encourage the Authority not to deprive Bermudian consumers of the benefits of zero-rating by prohibiting such programs. Instead, the Authority can address concerns with any particular practices on a case-by-case basis.

A number of general principles can help to guide any case-by-case review. At a minimum, we recommend that zero-rating programs with the following characteristics should be viewed favorably:

- *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.
- *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 would satisfy these criteria would be the Free Basics program.<sup>15</sup> In partnership with mobile operators, Free Basics allows people to access 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.

Consistent with the net neutrality principles above, 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.<sup>16</sup> 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. Finally, the program is transparent with all participation guidelines and technical criteria published and available online.<sup>17</sup>

## V. Conclusion

Facebook welcomes the opportunity to submit these comments and appreciates the Authority's careful consideration of these important issues. Maintaining strong net neutrality protections is

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<sup>15</sup> Free Basics is currently live in over 55 countries around the world.

<sup>16</sup> Free Basics, Technical Guidelines, <https://developers.facebook.com/docs/internet-org/platform-technical-guidelines>.

<sup>17</sup> Free Basics, Technical Guidelines.

critical for fostering economic opportunity, promoting competition, and ensuring that citizens everywhere, including Bermudians, are able to access the content and services of their choice on the internet. Accordingly, we support the Authority's proposals to prohibit IAS providers from engaging in blocking, throttling, or paid prioritization.

By maintaining an open approach for zero-rating, guided by the general principles above, the Authority can continue to provide flexibility for the development of innovative approaches to expanding connectivity while also providing appropriate protections for consumers and the open internet, for the benefit of consumers in Bermuda.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lester Garcia', written over a horizontal line.

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**Lester Garcia**  
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**Facebook, Inc.**