



European Parliament

To the European Commission

Margrethe Vestager, Executive Vice-President „A Europe Fit for the Digital Age“

Thierry Breton, Commissioner „Internal Market“

Brussels, 12 July 2022

Dear Commissioners,

European citizens rely on a free and open internet. The 2015 Open Internet Regulation ensures that citizens are free to use whichever apps and websites they wish, businesses can acquire new customers, and innovators can build new services.

This is why we, as Members of the European Parliament, are writing to express our deep concern about the European Commission's plans to change our net neutrality legislation in the upcoming Connectivity Infrastructure Act to be proposed in autumn, without having consulted the public, technology experts, academics, civil society, or expert regulatory agencies.¹

Though no specific proposal is known, statements to the press indicate that a new provision would require payments from online service providers to broadband providers – ostensibly to fund the rollout of 5G and fiber to the home.² This would reverse decades of successful internet economics by requiring the providers of websites and applications to pay fees to ISPs that have never existed before. This would abolish key net neutrality guarantees that Europeans fought hard for.

This radical proposal should not be pursued without consulting expert agencies, technologists, and the public.

While the provisions of the Broadband Cost Reduction Directive were subject to a public consultation from December 2020 to March 2021, no one outside the Commission has been able to evaluate the announced proposal of access fees. To us it sounds very similar to ones that have been rejected many times already.

Large telecom companies have tried for decades to require compensation from content providers for providing access to customers,³ despite the fact that the telecom companies are already being paid by their own customers to provide access.

Proposals for such access fees are not new and have consistently been rejected as harmful. BEREC studied and rejected them in 2012.⁴ ETNO's attempt to impose these kinds of fees via the ITU in 2012 was rejected by the OECD, European governments, and the European

Commission.⁵ And every strong net neutrality regime has banned these fees, including in the EU,⁶ India,⁷ the U.S.,⁸ and California.⁹

Adopting a model that allows for or mandates access fees would be a disastrous return to the economic model for telephony, where telecommunications companies and countries leveraged their termination access monopolies to make communication expensive. Because phone companies had a monopoly over their customers, they could charge exorbitant prices to anyone seeking to call their customers.

Broadband providers have the same monopoly over their customers. Allowing them to charge content providers for access could cause significant harm to the internet economy.

This isn't hypothetical. When such fees were permitted in the past, consumers and innovation have suffered:

- In the U.S., when the largest ISPs tried to charge such fees, tens of millions of Americans suffered significant harm, including being unable to watch videos, work remotely, and for one school system, upload payroll data.¹⁰
- In South Korea, forced access payments led online services to exit the country, reduced network investment, harmed local application providers, and slowed internet service for ordinary Koreans.¹¹
- In Germany, universities saw a huge increase in online learning traffic as a result of the pandemic. But Deutsche Telekom refused to handle this additional traffic without compensation from universities, and as a result the German Research Network became effectively unusable.¹²

These incidents, along with many others, demonstrate how access fees can cause severe harm to both citizens and online services. Core net neutrality protections exist to protect consumers and content providers from these exact harms.

Furthermore, while the stated goal of these fees is to improve connectivity, it is unclear that access fees would help. Factors such as permits or construction capacities can act as more severe barriers than lack of funding. For instance, in Spain 76.24% of its citizens are offered fiber to the home, while Germany, with the EU's highest GDP, lags at 6.37%.¹³ Even if funding is the issue, economic theory and history show that these kinds of forced fees charged by telecoms do not translate into increased new infrastructure.¹⁴

Because access fees pose serious risks to the internet as we know it and are unlikely to solve the broadband deployment problem, we request that the Commission officially consult BEREC, experts and the public before proposing major changes to Europe's net neutrality protections and internet economics.

European consumers, businesses, and markets depend on a free and open internet. They all deserve the opportunity to evaluate, debate, and weigh in on any proposal that threatens it.

While we support increased deployment of next-generation broadband, there is no emergency that requires action in autumn 2022. There is plenty of time for an official consultation, and BEREC has already announced the timeline of their analysis on this issue.¹⁵

This analysis as well as input from technology experts, rights groups, and the public will provide further clarification on whether radically reshaping the internet in Europe is the right way to

increase broadband deployment. We call on you to pursue a better strategy for promoting connectivity in Europe.

Sincerely,

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¹ <https://pro.politico.eu/news/151325>.

² <https://www.reuters.com/business/media-telecom/eus-vestager-assessing-if-tech-giants-should-share-telecoms-network-costs-2022-05-02/>

³ <https://arstechnica.com/information-technology/2012/12/dear-itu-please-dont-bill-internet-use-like-phone-calls/>.

⁴ https://berec.europa.eu/eng/document_register/subject_matter/berec/others/1076-berecs-comments-on-the-etno-Proposal-for-ituwcit-or-similar-initiatives-along-these-lines; BoR (12) 130

https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/1130-an-assessment-of-ip-interconnection-in-the-context-of-net-neutrality; BoR (17) 184

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⁵ <https://www.oecd-ilibrary.org/docserver/5k918gpt130q-en.pdf?Expires=1651916588&id=id&accname=guest&checksum=1FB72501B36D36DD4E6856AEEDC6B188>, pp.

13-14, 33; <https://cepa.org/whats-old-is-new-again-is-retrograde-telecom-policy-returning-to-europe/>; https://ec.europa.eu/commission/presscorner/detail/de/SPEECH_14_647.

⁶ BEREC Open Internet Guidelines BoR (16) 127 (paragraphs 5-6).

⁷ https://dot.gov.in/sites/default/files/DoT%20Letter%20on%20Net%20Neutrality%20Regulatory%20Framework%20dated%2031%2007%202018_0.pdf?download=1.

⁸ FCC 2010 Open Internet Order (paragraphs 24-34, 67); FCC 2015 Open Internet Order (paragraphs 80-84, 113, 120, 193, 195, 206).

⁹ California Net Neutrality Law SB 822, § 3101(a)(3),(9) & § 3101(b).

¹⁰ <https://www.wired.com/story/jammed/>.

¹¹ https://www.bundesnetzagentur.de/EN/Areas/Telecommunications/Companies/Digitisation/Peering/download.pdf?__blob=publicationFile&v=1, pp. 36-37.

¹² <https://www.heise.de/hintergrund/Missing-Link-Regulierer-vs-Monopolisten-Streit-im-Markt-der-Peering-Anbieter-4886694.html?seite=all>.

¹³ <https://www.oecd.org/sti/broadband/broadband-statistics-update.htm>.

¹⁴ https://www.mercatus.org/system/files/Telecom_Dourado_v1-0.pdf;
<https://arstechnica.com/tech-policy/2012/12/sender-pays-rule-doesnt-necessarily-increase-telecom-investment/>.

¹⁵ https://berec.europa.eu/files/document_register_store/2022/6/Presentation%20-%20BEREC%20public%20debriefing%20June%202022.pdf, p. 12.