

30 June 2016, Vantaa

NN-Consultation@berec.europa.eu

MATTER: FINNET ASSOCIATION'S STATEMENT REGARDING THE PUBLIC CONSULTATION ON DRAFT BEREC GUIDELINES ON IMPLEMENTATION OF NET NEUTRALITY RULES

Finnet Association (hereinafter "Finnet") thanks the Body of European Regulators for Electronic Communications (hereinafter "Berec") for the opportunity to give a statement in relation to the matter described above in the headline.

For avoidance of doubt, Finnet gives this statement on behalf of itself and the following companies, which are members of Finnet:

Anvia Oyj, Blue Lake Communications Oy, Eurajoen Puhelin Osuuskunta, FNE-Finland Oy, Härkätien Puhelin Oy, Ikaalisten-Parkanon Puhelin Osakeyhtiö, JAPO, Kainuun Puhelinosuuskunta, Kaisanet Oy, Karjaan Puhelin Oy, Kemiön Puhelin Oy, Laitilan Puhelin Osuuskunta, Lounea Oy, LPOnet Oy Ab, Länsilinkki Oy, Mariehamns Telefon Ab, Mikkelin Puhelin Oyj, Paraisten Puhelin Oy, Pietarsaaren Seudun Puhelin Oy, Pohjois-Hämeen Puhelin Oy, Tampereen Puhelin Oy, Vakka-Suomen Puhelin Oy ja Ålands Telefonandelslag.

1. GENERAL COMMENTS

As such the draft Berec guidelines on implementation of net neutrality rules (hereinafter "Guidelines") have been drafted in a manner which is easy to read as it follows the articles contained in the Regulation (EU) 2015/2120 of the European Parliament and of the Council (hereinafter "Regulation") in the same order as they have been included in the Regulation.

The main problem Finnet seems with the Guidelines is that at places its specifications and instructions go further than those described in the Regulation. An example of such possible over-regulation is contained in section 156 of the Guidelines. Finnet is also worried that even though the Guidelines contain wordings such as "NRA should" or "NRA could do this by", for example in its section 180, the officials of the NRA:s would not risk deviating from the Guidelines and instead would take the risk-free route and implement the Guidelines word for word, i.e. in the strictest manner. It should also be mentioned that the Finnish Communications Regulatory Authority (the Finnish NRA, hereinafter "Ficora") has already announced to Finnish telecommunications operators in their related meetings that they will follow closely the Guidelines. Finnet therefore sees that there is a clear risk that the aforementioned approaches will result into over-regulation in Finland.

The telecommunications companies in Finland differ to great extent in relation to e.g. the amount of customers, employees, geographic operating and resources at their disposal. Should Berec want to specify the aforesaid additional requirements in comparison to those already specified in the Regulation to NRA:s, a general clause in the guidelines should be drafted requiring the NRA to take into consideration the different resources available for different telecommunications companies when implementing the Guidelines: it should be ensured that any over-regulation should not be implemented for smaller, local telecommunications companies with lesser resources at their disposal.

The other issue worth mentioning is that the Regulation should have been drafted in a technology-neutral manner. This is especially important when different telecommunications technologies, mobile and fixed networks, are being regulated. For example the article 4 (1) (d) of the Regulation requires different information to be submitted by the ISP to its customers depending on which technology it uses to provide services to its customers. Berec should ensure that their Guidelines would not make any such technology-related regulation distortions wider when regulating different technologies in a non-coherent manner.

As a summary Finnet proposes that Berec will re-evaluate and redraft the Guidelines in a manner, which would ensure:

- 1) as technology-neutral implementation of the Regulation as possible and
- 2) that the Guidelines will not contribute to national over-regulation in comparison to the Regulation.

If such additional regulation would on good grounds deemed absolutely necessary, it should be ensured that the implementation of the Guidelines would in any case take into consideration the different resources telecommunications companies have at their disposal.

2. SPECIFIC COMMENTS

Section 11 seems to refer to VPN network services being a subject to Regulation's articles 3(1)-(4) to the extent such services provide access to the Internet, while according to section 111 it seems that such services would fall under article 3(5) instead. This should be clarified further in the text of the Guidelines.

Section 131 requires the NRA:s to ensure that the ISP:s include in their contracts and publish a concise and comprehensive explanation of traffic management techniques applied. In such cases where according to the Guidelines specific explanations should be provided to customers, it would be beneficial for the Berc to draft some examples, which Berc would deem as appropriate under the Regulation or require the NRA:s to draft such examples to help the work of the ISP:s when implementing the Regulation.

Section 139 should be rewritten as it has been drafted in a manner which is difficult to interpret. If the idea of the section is to state that should the ISP not advertise any speeds to its customers, it would not have to explain such non-advertised speeds to the customer either, this idea should be put forward in a more direct and concise manner.

3. ADDITIONAL INFORMATION

If necessary, additional information regarding this statement can be received from:

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In Vantaa 30.6.2016,

FINNET ASSOCIATION

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