



Brussels, 21/09/2012

Mr R. Rustema (coordinator)

Internet Society European Coordinating Council
c/ Carme 47, 08001, Barcelona, Spain

cc: European Commission, Current Presidency of the CEPT and the EP (PPE, S&D, ALDE, Verts, GUE/NGL, ECR, EFD)

RE: your letter of 14 September 2012 / CWG-WCIT12 Contribution 109 Source: ETNO

Dear Mr Rustema,

I have read with great interest the letter you have addressed to my attention concerning the ETNO proposal for the revision of the ITU ITRs. In your letter you raise a number of concerns, shared by the European Chapters of the Internet Society, that you hope will bring ETNO to reconsider its current position.

Having taken into consideration the arguments you have developed, and the consequent reaction that you will find hereunder, I confirm that ETNO is all the more convinced of its position and will continue to defend it in the public discussions on ITRs revision, as well as in the appropriate institutional and public fora.

- **Multi-stakeholder participation in Europe:** As you rightly point out, as far as Internet governance issues are concerned, ETNO has supported the multi-stakeholder approach, and will continue to do so. The positive elements of such approach are well acknowledged by ETNO and we are convinced that fora such as the IGF will keep contributing substantially to the multi-stakeholder debate on all Internet governance issues.

To this extent, we believe that ETNO's proposal on ITRs review is not against this model. On the contrary, it strengthens the principles of openness, transparency and multi-stakeholder discussion on issues that are very important for a solid and future-proof development of the Internet, in the interest of citizens, of all stakeholders of the digital value chain and, ultimately, of society as a whole. ETNO is committed to ensure the highest possible level of transparency for its proposals and is genuinely open to a multi-stakeholder dialogue, keeping however in mind that the ITRs revision is an institutional process that needs discussions and negotiations within the appropriate institutional bodies and organizations. On this point, we are surprised that the ISOC has tried to block the ETNO proposal, thereby preventing a full and open discussion on it.

- **The scope of the International Telecom Regulations:** The ISOC stresses that the ITRs regulate relations between governments. ETNO agrees on this point. However, since the 1988 revision, we all know the telecommunications world has changed and the digital industry is today radically different from the telecommunications industry of the 1980s. As ETNO has made very



clear since its submission to CEPT, the revision of the ITRs could foresee the inclusion of some principles that, in full respect of the competences of jurisdictions and regulatory bodies around the world -including of course the EU-, will help the development of the Internet and enhance consumers welfare in the digital sector. Indeed, the ITU is the only globally recognized telecoms organization where all countries are actively involved. The ITRs treaty is therefore the only truly global treaty on telecoms and, as such, ETNO sees the ITRs as a fitting 'home' for the principles that it wishes to see introduced during the revision process.

Network neutrality: ETNO fully supports the principle of an open Internet and does not believe that its proposal could hamper, to any extent, the "principle of an open internet" and "the quality of "best effort service delivery". By contrast, ETNO's proposal aims at providing the inclusion in the ITRs of a forward-looking principle regarding the value of "commercial agreements". This will contribute, in the years to come, to the development of new advanced services to consumers, based on QoS, for the benefit of all societies around the world. In particular, reading the statements made by the Internet Society European Coordinating Council, we would like to point out the following considerations:

the key goal of Net Neutrality principles and of an Open Internet is the ability to send and receive, over the Internet, any content and to have access to any web site/IP address;

- Net Neutrality is, in general, not related to the IP connectivity performance but to connectivity only in extreme situations such as the block of IP addresses or web sites.

Differentiated QoS (such as the priority given to specific type of content) is related to the service requirements not to Net Neutrality. As an example, real time video streaming is needed for some specific services and it is crystal clear that the performance of real time streaming cannot be provided (due to evident cost issues) to any IP traffic. According to the Internet Society statement, no differentiated quality should be provided for real time video streaming and then many of the services today offered by OTTs/CPs should not be allowed.

- Moreover it must be taken into account that differentiated QoS has always been used in the public Internet and today the need for QoS delivery is growing. No claim was ever made on QoS delivery against Net Neutrality. Examples of differentiated QoS are: use of CDN, use of ADN, web acceleration, caching, buffering for some of the contents. Google, Akamai, L3/GX, Limelight and many other OTTs/CPs/Aggregators/CDN Providers are using differentiated QoS for some traffic and then, according to the Internet Society statement these companies are hurting freedom of communication and are against Net Neutrality.

The previous points give evidence that commercial agreements with differentiated QoS delivery are widely used over the Internet.

With reference to the statement on "quality of best effort delivery threatened by differentiated QoS", we would like to point out the following scenario :



- The internet ecosystem is open and competitive. In every country many ISPs compete to get more market share and to get more end user paying for broadband and ultrabroadband internet access service.
- Differentiated QoS is not provided to all internet traffic, it is used only for the high value traffic (i.e. for the traffic that gives revenues to OTT/CP). The “not high value traffic” is delivered by best effort.
- Telcos end users receive both best effort and differentiated QoS traffic.

According to this scenario it is crystal clear that, if a Telco operator does not give good performance for best effort traffic delivery, it will lose clients and market share due to the high competition among ISPs.

The previous points give evidence that commercial arrangements with differentiated QoS do not threaten the quality of best effort delivery.

ETNO wants to avoid decisions that would prevent new business models from emerging or that would hamper differentiated offers, hence limiting consumer choice. The risk of undesirable economic and technical regulation of operator rates, terms and conditions will be much higher if the development of the Internet continues to be jeopardized by the lack of sustainability and/or by the lack of end-customer satisfaction.

On many occasions ETNO members have reiterated their commitment to sustain an open Internet and to continue enabling consumers to access services and applications of their choice, as well as guaranteeing complete transparency about terms, conditions and limitations. As recognized by the European Commission, operators should not be prevented from developing differentiated offers based on customer needs, in addition to the best effort Internet. It is important to note that nobody will be cut off from the Internet as the best effort Internet will continue to exist and to evolve. New business models based on differentiated offers will ultimately create more choice for consumers.

- **“Sending party network pays”:**

ETNO is not proposing to use SPNP model as the founding principle for IP interconnection. ETNO proposal is based on commercial agreements between parties, therefore the SPNP approach is not imposed, but can be used when commercially suitable.

To present examples, SPNP model could be used for:

- Telco-to-Telco peering agreements with a threshold
 - Telco-to-OTT/CP interconnection, where paid peering is adopted; paid peering is generally used when OTT/CP have to terminate high-value traffic such as commercial movies. A well-known example is the Netflix/Level3/Comcast agreement, that moved from “free on net” interconnection to paid peering between Level 3 and Comcast.
- On your final remark (**Economic considerations, “fair remuneration” and broadband investment**), we would like to highlight that ETNO represents the major investors in broadband deployment in the EU and acknowledges the beneficial role of a competitive and liberalized market in providing better services for citizens. By recognizing the value of such principles, the



ETNO proposal is fully in line with the ongoing process of market liberalization and is in no way against the principles defined in liberal legal policy and regulatory frameworks, as is the EU framework for electronic communications and services.

On the contrary, the advocacy of a principle that would recognize, at the international level, the role of commercial agreements, is in itself a liberal principle. In fact, it would help prevent that ITU members could one day approve legislation that might result into blocking a liberal and successful development of the Internet and digital industries.

The ETNO proposal calls for a new IP interconnection ecosystem that provides end-to-end Quality of Service delivery, in addition to best effort delivery, enabling the provision of value-added network services, to both end-customers and OTT players and content providers. Moreover, the contribution states that, in order to ensure an adequate return on investment in high bandwidth infrastructures, operators shall negotiate commercial agreements to achieve a sustainable compensation for telecommunications services.

By endorsing the concept of “quality based delivery”, it will be possible to establish new interconnection policies based on the differentiation of the QoS parameters for specific services and types of traffic (not only on the “volume”), enabling new business models and implementing an ecosystem where operators’ revenues will not be disconnected from investment needs. The ETNO proposal is not imposing any premium service obligations on network operators, since the QoS delivery will be based only on commercial agreements.

Indeed, the ETNO contribution aims at creating the best enabling environment to foster commercial agreements based on QoS delivery and to avoid any regulations that can prevent the development of these agreements.

In view of the points explained above, we are confident that the ISOC will change its opinion on ETNO’s proposal and will share our active commitment towards innovation and our interest in defending principles that will help the Internet to evolve towards better services for consumers and higher societal welfare.

Yours sincerely,

Luigi Gambardella
ETNO Executive Board Chairman