

Access submission on zero rating and the Marco Civil da Internet

Access wishes to present the following comments to the public consultation on Net Neutrality for the regulation of the Brazilian Marco Civil da Internet. Our submission examines zero rating practices and their negative impact on the free, open, and secure internet. We argue that zero rating would drastically harm internet development in Brazil.

Access is a global organization dedicated to defending and extending the digital rights of users at risk around the world. We provide policy recommendations to the public and private sectors to ensure the internet's continued openness and universality. We are an independent, non-partisan charity and we are not affiliated with any country, corporation, or religion.

1. What is zero rating?

Zero rating, sometimes called "toll-free data" or "sponsored data," relates to special offers by telecommunications companies which allow users to access specific applications, content, or online services without counting the data consumption against their bandwidth limits. This practice can concern [several types of internet services](#), such as cloud storage, TV or movie streaming, music streaming, as well as social media or messaging. Zero rating can also take the form of offers giving "internet access" restricted to a [limited number of online services](#).

2. How zero rating stifles competition and innovation.

In the majority of cases, zero rating allows for exclusive deals between internet connection providers and service providers. In other cases, connection providers favor services of their own. Agreements like these, if allowed, obligate start-ups to negotiate zero-rating partnerships with operators as a [prerequisite to be able to reach customers](#) and enter the market. This greatly undermines the possible development of cost-effective, home-grown, and neutral offerings in the future, as newcomers would be unable to compete with established companies.

In addition, the barriers to entry created by zero rating would remove incentives for companies to innovate or to offer low data services, which are precisely the ones that could help increase access to the internet in areas where the cost of data plays a prohibitive role. For instance, the spreading of zero rated plans has been mirrored by the [global decline of unlimited data plans](#), with only 1 percent of operators offering such deals in 2014, when they represented 35 percent of plans in 2012. Operators have an incentive to favor their own services by including them in zero rated deals, and simultaneously [overpricing other online services](#).

3. Zero rating harms free expression and enables surveillance.

Zero rating poses a serious risk to freedom of expression and the ability of users to seek, receive, and impart ideas through the internet. With respect to privacy, telecommunication operators will need to examine user traffic to determine which services to prioritize. This normally requires the deployment of privacy-invasive techniques such as deep packet inspection. Government [surveillance and censorship would become easier](#) because information would only flow through a limited number of easily identifiable channels. Several applications and services developing zero rated offers, such as Facebook or Google, have been [involved in the NSA PRISM](#) surveillance program to collect internet communications of users.

4. Other countries prove that banning zero rating is good for innovation and improving access to the internet.

Several countries, such as [Norway](#), [Chile](#), the [Netherlands](#), and [Canada](#), have banned zero-rated services and passed laws protecting Net Neutrality principles. Banning zero rating schemes often leads to cheaper mobile broadband plans, as the example of the Netherlands [proves](#). A few weeks after adopting legislation banning zero rating in early 2015, the Dutch operator KPN doubled mobile internet volume caps. Prior to the ban on zero rating, KPN announced the launch of an online TV-on-demand service on mobile and tablet to all its users. Following the ban of zero rating services, KPN only had two options: 1) launch a video service that customers would not use as it would mean constantly exceeding their monthly caps; 2) increase the volume caps of mobile internet plans. [KPN chose the latter option](#). This case study shows that banning zero rating can create an incentive for telcos to offer more data at a reasonable price.

5. Brazil should protect Net Neutrality by establishing an explicit ban on zero rating.

In line with the spirit and language on Net Neutrality in Chapter III, Section I of the Marco Civil, we strongly encourage the Brazilian government to ban zero rating to ensure that the internet remains an open platform where innovation, competition, and human rights can thrive. Zero rating drastically undermines the principles for which the Marco Civil stands.

Please feel free to contact us for further information.

Respectfully,

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