



Ottawa, Canada K1A 0H5

Mr. Bob Zimmer, M.P.
Chair
Standing Committee on Access to Information, Privacy and Ethics
House of Commons
Ottawa, Ontario K1A 0A6

Dear Colleague:

Pursuant to Standing Order 109 of the House of Commons, I am pleased to respond on behalf of the Government of Canada to the report of the Standing Committee on Access to Information, Privacy and Ethics entitled *The Protection of Net Neutrality in Canada*, which was tabled in the House of Commons on May 9, 2018.

The Government of Canada would like to thank the Committee for its detailed study of net neutrality protections in Canada and for the recommendations made within the report. The government appreciates the insights and views provided by the witnesses who offered their testimony before the Committee.

The government agrees with the Committee on the importance of net neutrality and is committed to ensuring that Canada's net neutrality framework remains strong. Preserving an open Internet is vital for the free flow of information and future economic prosperity of Canadians.

The government will address the recommendations put forward by the Committee by grouping them under two themes: (1) Net neutrality in Canada and (2) International considerations.

**Net neutrality in Canada
(Pertaining to recommendations 1, 2, and 5)**

The Government of Canada recognizes the importance of preserving an open Internet and is committed to defending the principle of net neutrality. As more and more activities are shifting online and networks are carrying an increasingly diverse range of applications, the open Internet will be an important platform both to ensure that Canadian citizens, consumers, and businesses can continue to communicate and access information freely and to foster economic growth and innovation.

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Canada has a strong net neutrality framework. It is based on core principles in the *Telecommunications Act* and enforced by the Canadian Radio-television and Telecommunications Commission (CRTC), Canada's telecommunications regulator. Net neutrality principles are embedded in the Act, through subsection 27(2), which prohibits unjust discrimination or the granting of undue preference by a Canadian carrier in relation to the provision of a telecommunications service or the charging of a rate for it, as well as through section 36, which prohibits Canadian carriers from controlling the content or influencing the meaning of the telecommunications they carry. These provisions in the Act are written in a technology-neutral manner, and they have allowed the CRTC to respond quickly to concerns as they emerge. Canada has been a world leader in this regard.

In 2009, the CRTC established Canada's first net neutrality regulatory framework and was one of the first telecom regulators in the world to do so. This piece of the net neutrality framework establishes high-level guidelines for service providers to follow when managing online traffic on their networks. For example, the provisions include that Internet service providers (ISPs) are to make investments in their networks as the primary means to manage online traffic; that measures to manage traffic should be fair and proportionate (that is, not unjustly discriminatory nor unduly preferential); and that carriers must be transparent about any measures that they use.

Since then, the CRTC has also made various decisions on technical and consumer issues that have further strengthened its net neutrality framework. In 2015, for example, the CRTC issued a decision to prevent certain service providers from unfairly favouring their own mobile TV traffic, compared to competing services. The decision was a response to complaints against vertically integrated companies in the Canadian market that were using applications to make their own video content available at very low prices compared to the data usage costs for downloading the same amount of video from another content provider.

The CRTC framework allows for Canadian consumers and businesses to bring forward complaints if they feel rules or obligations relating to net neutrality are not being respected. For example, the CRTC actively investigates complaints about Internet traffic management practices and publishes a summary of the number and types of complaints it has received on its website every three months. The CRTC's framework has been very successful in addressing new developments that have arisen more recently. For example, in 2017, the CRTC acted on complaints about a network operator's offering of zero-rated plans and launched a proceeding to investigate whether such practices violated net neutrality rules. The CRTC's systemic study of this issue led to its landmark ruling on differential pricing practices. The CRTC declared that ISPs should treat all data that flows across their networks equally, regardless of the content, with regard to these types of pricing practices. This has essentially prevented ISPs from exempting particular

applications from a user's monthly data plan or charging different prices for similar (or the same) products and services.

Given the technical and fast-moving nature of the issues at hand, the CRTC, as an expert regulator, is best positioned to regulate with respect to these issues. However, where warranted, the government can intervene in respect of a decision of the CRTC. For instance, section 12 of the *Telecommunications Act* provides that the Governor in Council can vary, rescind, or refer a CRTC decision back for reconsideration. That noted, it would be inappropriate for the government to comment substantively on or otherwise intervene in open matters before the CRTC, as doing so would conflict with considerations of procedural fairness and fail to respect the independence of the CRTC.

The government continues to recognize the need to ensure that Canada's net neutrality framework remains strong and well-positioned for the future. The government recently expressed its full support for motion M-168, which called on the government to include net neutrality as a guiding principle of the upcoming review of the *Telecommunications Act* and the *Broadcasting Act*. In the review, the government will look to examine issues such as telecommunications and content creation in the digital age, net neutrality, and cultural diversity, as well as how to strengthen the future of Canadian media and Canadian content creation. The review will be an opportunity to consider changes to strengthen Canada's net neutrality protections.

International considerations (Pertaining to recommendations 3 and 4)

The Government of Canada pursues a dialogue with other countries and actively engages with the multi-stakeholder private-sector network that maintains the operational aspects of the transborder Internet. The Government of Canada is also an institutional supporter and participant in the global Internet & Jurisdiction Policy Network, working with other governments, major Internet companies, and civil society on innovative collective solutions that address the tension between the borderless Internet and national jurisdictions.

Equally, through working directly with governments, Canada, as part of its approach to negotiating trade agreements, includes commitments on co-operation in the electronic commerce chapters of its free trade agreements (FTAs). These provisions, recognizing the global nature of electronic commerce, commit Canada and its trade partners to maintaining a dialogue to address international issues related to electronic commerce.

The Government of Canada is mindful of the concerns of Canadian enterprises and citizens over the recent changes in the United States (US) to its net neutrality regime and will seek to address with the US any situation whereby a Canadian enterprise is

negatively affected by the traffic management practices of a US ISP. In the event that US ISPs engage in traffic management practices that harm Canadian interests, the Government of Canada will proactively seek to address these concerns to ensure that the US is meeting its commitments under the North American Free Trade Agreement (NAFTA), including through the established NAFTA committees and co-operation provisions, and will engage with its international trade partners to promote an open Internet based on international best practices. Furthermore, the Government of Canada will pursue outcomes in the renegotiation of NAFTA that continue to provide for reasonable and non-discriminatory access for Canadian businesses to US telecommunications networks and services, including those of an ISP, and recognize the importance for consumers being able to access and use services and applications of their choice on the Internet.

Conclusion

Once again, the Government of Canada expresses its sincere gratitude to the members of the Standing Committee for their hard work on this very important issue. The government has taken the Committee's recommendations into consideration and would like to take this opportunity to reiterate its firm support for net neutrality and its commitment to the principles of openness and innovation that have supported the continued growth of the Internet.

Sincerely,



The Honourable Navdeep Bains, P.C., M.P.