



By Electronic Delivery

March 7, 2015

Re: Marco Civil da Internet

As Brazil begins the process of implementing the Marco Civil da Internet, we would like to take the opportunity to provide some suggestions to preserve the Open Internet while recognizing different business models demanded by the marketplace. Each country must come to its own conclusions as to the extent it wishes to regulate Internet services, but it is clear that light-touch regulatory approaches that maximize the benefits of competition have shown to be the most successful in expanding broadband deployment.<sup>1</sup> While net neutrality rules must be carefully considered for their potential effect on the broadband market and for infrastructure investment, we specifically urge the Government of Brazil to exclude enterprise services from the net neutrality provisions of the Marco Civil.

Enterprise services, which comprise voice and data services offered by network operators to businesses rather than individuals, require contractual Service Level Agreements that differ from the consumer protections applied to mass-market Internet access services. Businesses need products and services different from those used by average consumers. Not only are the products different but the services purchased by businesses are often differentiated services tailored to the needs of particular enterprise customers. Enterprises generally negotiate to get the service that best meets their needs with the levels of assurance that they may demand. Businesses also have an opportunity to ask any questions they may have during the negotiation, thus minimizing the needs for standardized disclosures.

Products provided to enterprise customers run mainly on private IP networks (PIP), which are distinct from the public Internet. PIP services ride proprietary networks and generally involve a high degree of traffic management to meet customer's demands and needs. Traffic management that ensures the efficient use of the network is a widely recognized necessity by all enterprise stakeholders.

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<sup>1</sup> *U.S. vs. European Broadband Deployment: What do the Data Say?*, by Christopher Yoo, Center for Technology, Innovation and Competition, University of Pennsylvania Law School, 2014. Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2510854](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2510854) Please Note: Yoo's conclusions pre-date the proposal by the FCC to reclassify broadband services as a Common Carrier Service. The broadband industry in the United States has raised significant concerns that the heavy-handed nature of these regulations will have a negative impact on the incentives for continued broadband development and deployment.

When it comes to the provision of IP-based services, network management concepts are critical to a network provider's ability to comply with the service levels agreed upon with the business customer, and as such, network management requires traffic shaping tools to comply with contractual obligations.<sup>2</sup>

Although many corporate customers also purchase and use "Internet access," such access service is embedded in broader data communication products, generally in a secure manner with quality of service requirements very often dictated by the business customer.

For the reasons stated above, we believe that it is important that Brazil exempt enterprise services from the Marco Civil Da Internet's net neutrality provisions. Both the product and its delivery operate under different market conditions and requirements that differ from mass-market Internet access services.

Thank you for your consideration and we stand ready to answer any questions you may have.

Respectfully submitted,

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<sup>2</sup> Chapter III, Section I, Article 9, Paragraph 1 of the Marco Civil da Internet suggests that traffic management techniques could be applied for the purpose of "technical requirements essential to the adequate provision of services and applications."