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Computer & Communications Industry Association

18<sup>th</sup> July 2013

*Via Electronic Mail*

Mrs. Neelie Kroes  
Vice-President of the European Commission  
B-1049 Brussels, Belgium

*Re: Clear rules on net neutrality in the proposed Regulation laying down measures to complete the single market for electronic communications*

Dear Vice-President Kroes,

On behalf of the Computer & Communications Industry Association (CCIA), I write to express our opinions on the Commission's proposals for a Regulation to complete the European single market for electronic communications.

The CCIA welcomes the Commission's drive to enhance the Single Market, and in particular the Regulation's objective to lay down rules to guarantee an open Internet or what is commonly referred to as 'net neutrality'. The Internet has proven to be a unique catalyst for economic growth and jobs, having become a crucial platform for the dissemination and exchange of ideas, information, trade and communications. To ensure that the Internet fulfils its obvious potential as a crucial pillar for European growth, open Internet rules are necessary to safeguard and clarify the interests of European consumers, telecom operators, and Internet content, application and service providers across the Union.

To enable innovations and businesses to flourish, the Regulation needs to enshrine robust 'rules of the road', which ensure that Internet-enabled innovation is protected from the kind of discrimination catalogued by BEREC<sup>1</sup>.

We understand Article 20 of the proposed Regulation intends to set out these 'rules of the road'. To fully preserve the open Internet as intended, I believe the following amendments are necessary and should be reflected in the Commission's final proposal:

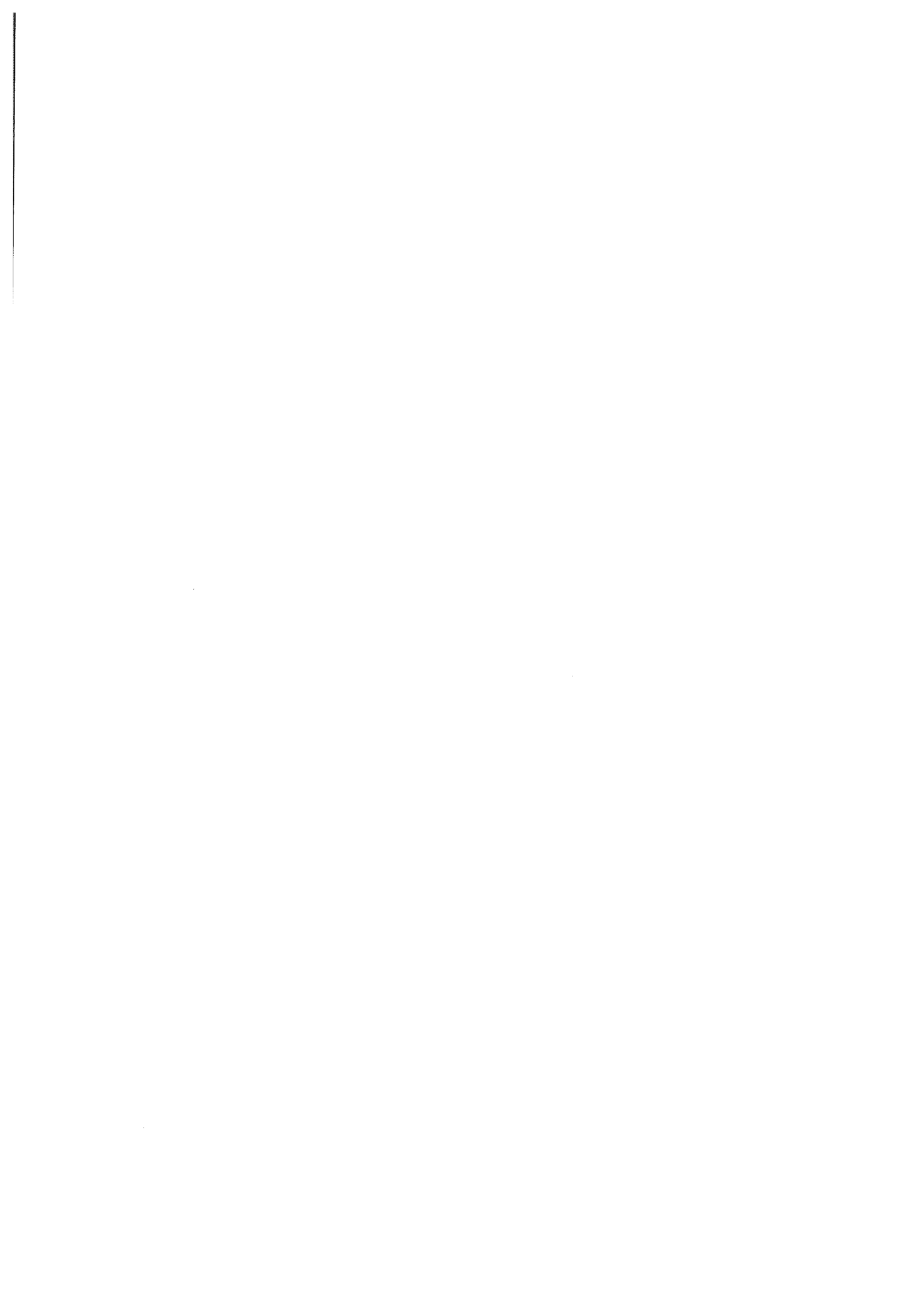
**1) There must be an overarching principle of non-discrimination**

This should include blocking and throttling of legitimate Internet services and content *as well as* new forms of discrimination that may emerge.

Article 20 of the Commission's draft Regulation aims to guarantee the right of end-users to access and distribute information and content, run applications and use Internet-based services of

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<sup>1</sup> [http://berec.europa.eu/files/news/bor\\_12\\_31\\_comp\\_issues.pdf](http://berec.europa.eu/files/news/bor_12_31_comp_issues.pdf)



their choice. However, to be effective, it must be complemented with an overarching and general principle of non-discrimination which safeguards the interests of both users and providers of content, services and applications on the open Internet, and prohibits telecommunication operators from favouring their own or their partners' content, applications and services or from discriminating against third party unaffiliated content, applications and services.

We must aim for genuinely competitive markets in *both* Internet access and in services, which run over the Internet. The principle of non-discrimination should be broad enough to cover new forms of discrimination that could arise in the future. The French electronic communications regulator, ARCEP, has developed model language based on a broad principle of non-discrimination that can serve as a valuable point of reference.

It is important to note that this does not preclude operators from the freedom to experiment with tiered pricing where users pay for how much data volume they consume or pay for different speeds, nor would it impede innovative managed services. The non-discrimination principle aims to preclude network operators unfairly controlling *what*, in content terms, users consume or produce on the open Internet and *who* provides services to whom.

## **2) There needs to be a clear distinction between 'Internet access' and 'managed services'**

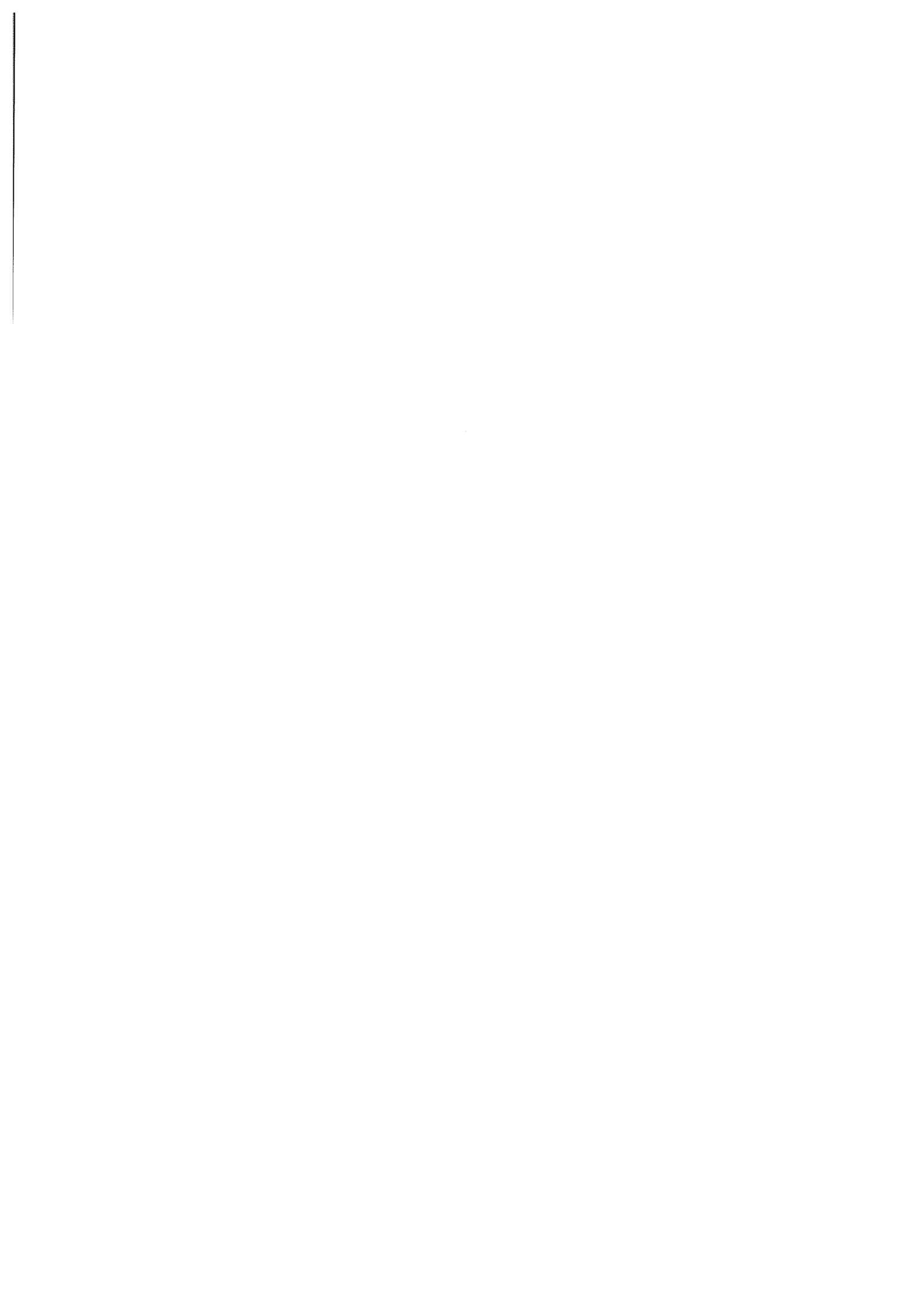
Currently there is no distinction in the draft between a 'managed service' and 'Internet access'.

The term "managed service" refers to the way a network operator provides services comprising content, services and/or applications through electronic means marketed by the network operator over and above, and separately from, internet access. These are value-added offers such as IPTV or Video-on-Demand where users enjoy a guaranteed quality of delivery within a *closed network* wholly operated and controlled end-to-end by the telecommunications provider.

In contrast, 'Internet access' refers to the global *public* network providing consumers with the ability to send and receive data by using the Internet Protocol from all of the interconnected public and private networks around the world that make up the Internet. Clearly distinguishing the two, as has been done in existing regulatory practice such as that of the French National Regulatory Authority "ARCEP", to name just one, gives network operators flexibility and the assurance that they can develop new services, while protecting unambiguously the open nature of the Internet.

## **3) Reasonable network management must comply with the principles of relevance, proportionality, efficiency, transparency and non-discrimination**

Article 20.2 has identified reasonable grounds for legitimate traffic management. As noted above, unrestricted Internet access should be the norm with the only exception to the overarching principle of non-discrimination being reasonable traffic management. We believe this Article should explicitly state that traffic management practices must only be deemed reasonable if they comply with general criteria of relevance, proportionality, efficiency, transparency and non-discrimination, as well as existing laws including *inter alia* privacy and data protection. These



principles have been developed and advocated by BEREC and ARCEP, and should be added to the final draft Regulation.<sup>2</sup>

**4) Enforcement: national regulatory authorities need to be empowered to play a proactive role**

National regulatory authorities (NRAs) should play a crucial role in enforcing the ‘rules of the road’ on Internet access set out above. We welcome Article 20.3 as a good starting point. We also suggest that NRAs be required to *proactively* monitor the market to ensure the respect for end-user rights and enforce the non-discrimination principle whenever a failing is observed, swiftly and effectively. NRAs need the political backing to engage with this issue and a legal basis to intervene where they see problems.

Several amendments are necessary to guarantee this. First, NRAs should have a duty to monitor proactively for discriminatory practices. Second, this Regulation must give content and application providers standing to complain about discrimination by network operators – many NRAs believe companies do not currently have the standing under EU law to intervene. Finally, NRAs must develop efficient and timely processes for investigating such complaints, so that remedies can be made quickly to minimize damage to fast moving and innovative businesses that rely on their users’ Internet access for their revenue.

We thank you for your attention and remain at your disposal for any further questions or comments.

Yours sincerely,

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<sup>2</sup> See e.g. BEREC. (2012). Summary of BEREC positions on net neutrality. Available online at: [http://berec.europa.eu/files/document\\_register\\_store/2012/12/BoR\\_\(12\)\\_146\\_Summary\\_of\\_BEREC\\_positions\\_on\\_net\\_neutrality\\_2..pdf](http://berec.europa.eu/files/document_register_store/2012/12/BoR_(12)_146_Summary_of_BEREC_positions_on_net_neutrality_2..pdf)

