Netzneutralität: regionale Antworten auf eine globale Frage

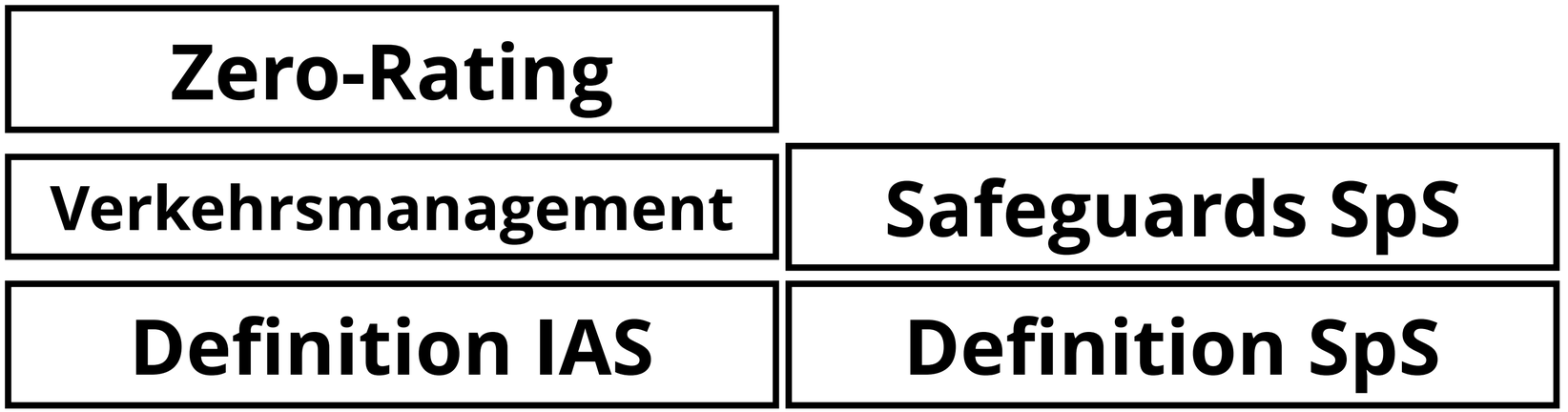
20. Salzburger Telekom-Forum

Thomas Lohninger, Salzburg 27. August 2019

EPICENTER .WORKS

for digital rights

Generalisierte Bausteine



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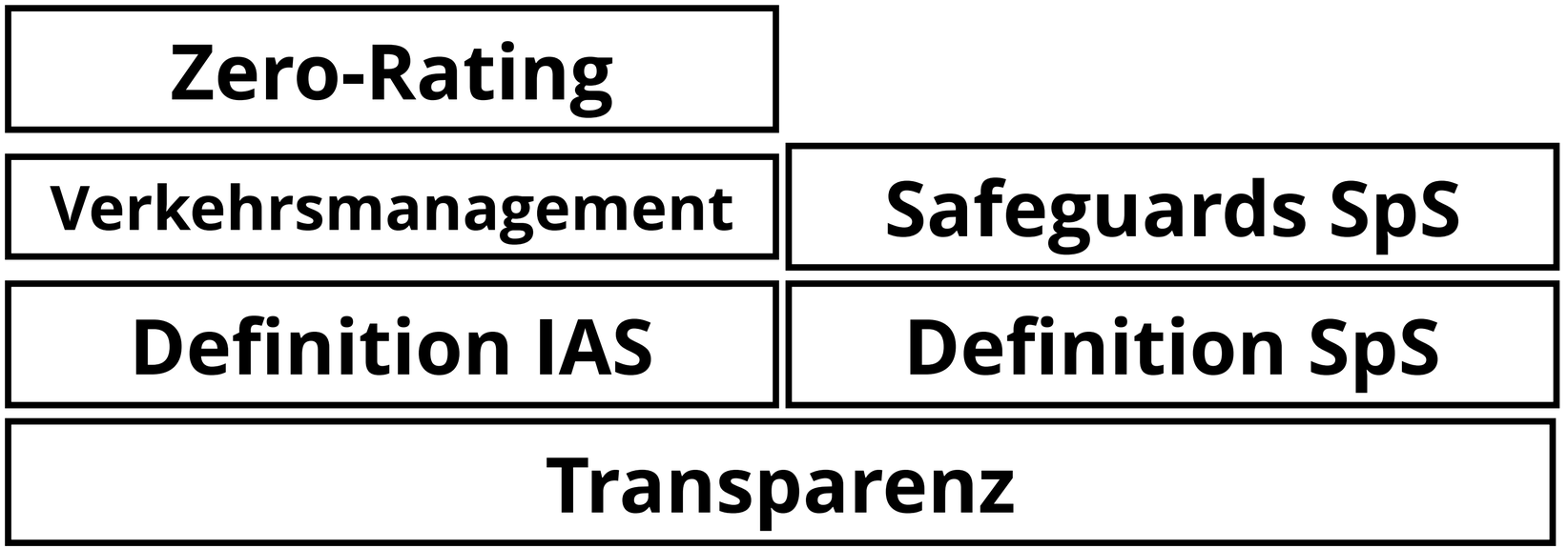

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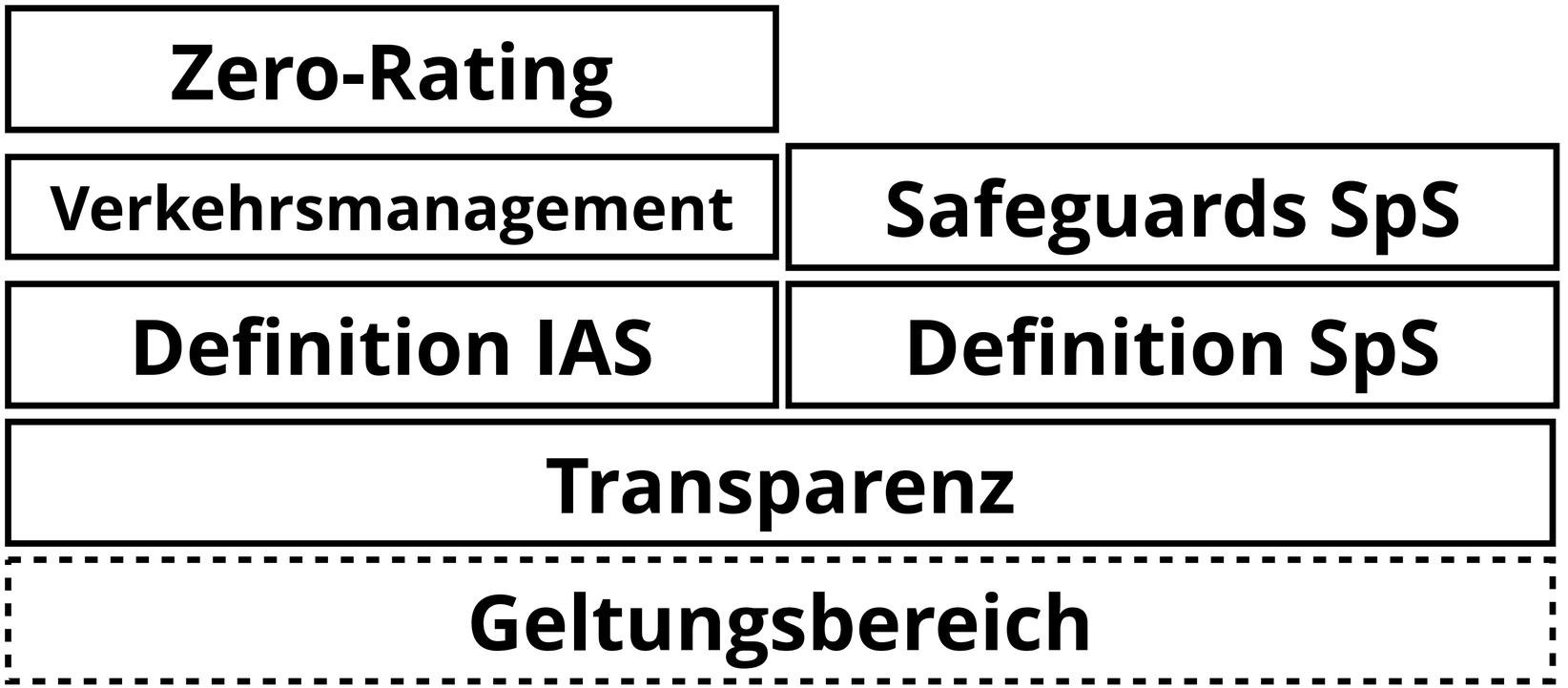

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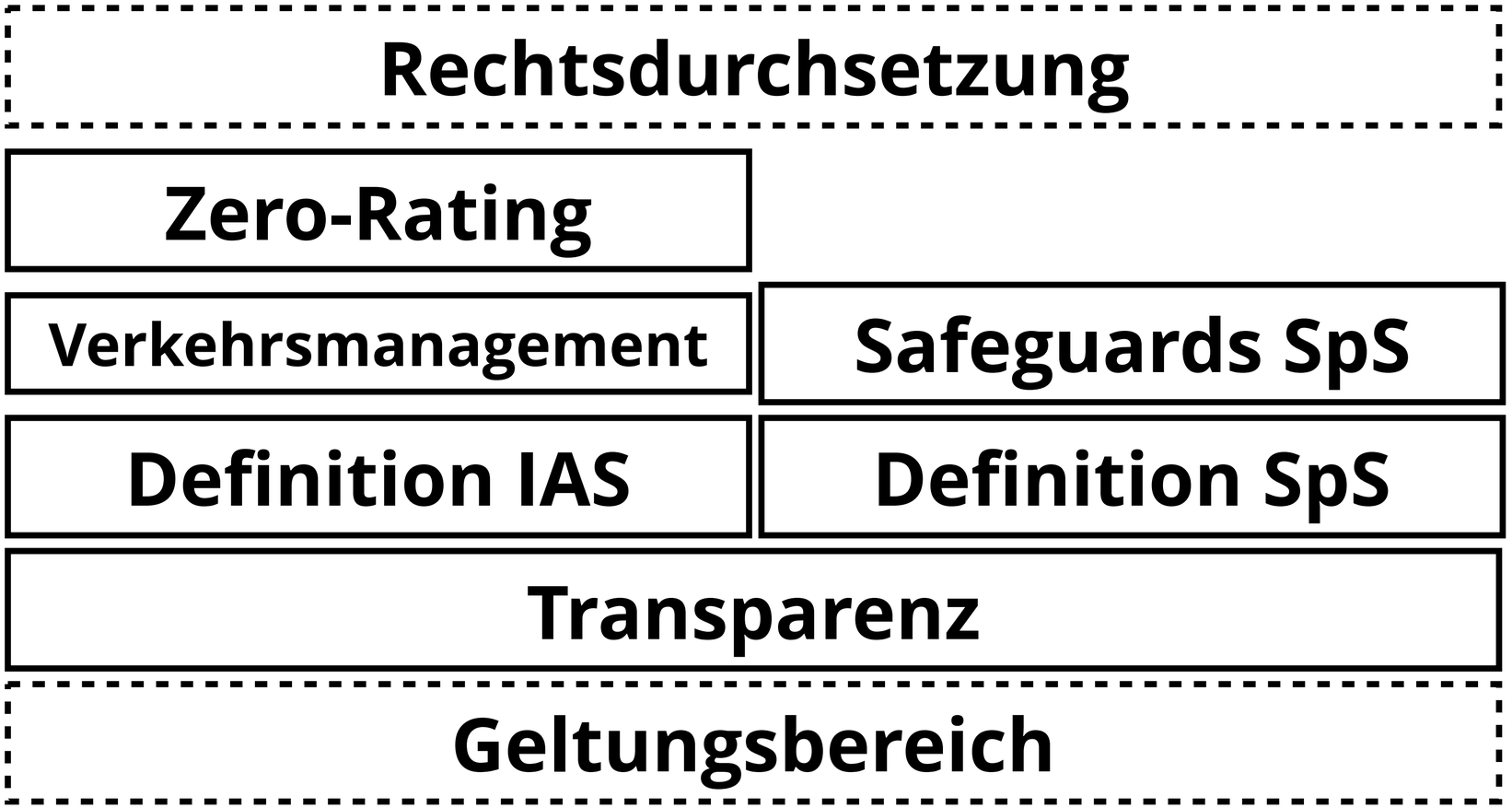
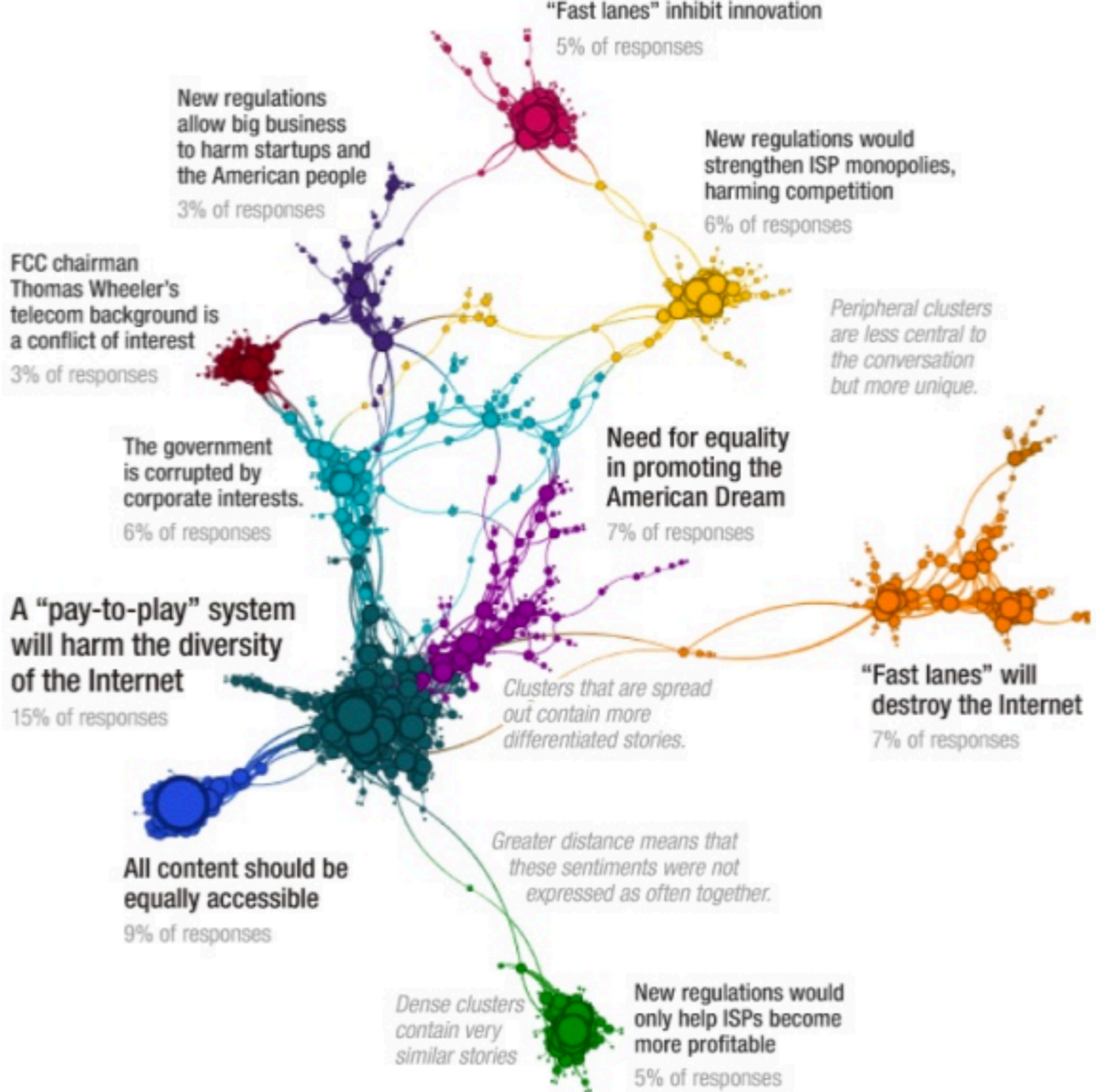


1 Kontexte der betrachteten Regelungen

USA: FCC Open Internet Order

- Zeitraum: 2015 – 2017
- Rechtsgrundlage: Entscheidung der Regulierungsbehörde
- Betroffene: 332 Millionen Menschen
- Motivation: Meinungsfreiheit, Virtuous Circle, Marktzentralisierung oder Inter-Connection Disputes


"Fast lanes" inhibit innovation
5% of responses
New regulations allow big business to harm startups and the American people
3% of responses
New regulations would strengthen ISP monopolies, harming competition
6% of responses
FCC chairman Thomas Wheeler's telecom background is a conflict of interest
3% of responses
Peripheral clusters are less central to the conversation but more unique.
The government is corrupted by corporate interests.
6% of responses
Need for equality in promoting the American Dream
7% of responses
A "pay-to-play" system will harm the diversity of the Internet
15% of responses
Clusters that are spread out contain more differentiated stories.
"Fast lanes" will destroy the Internet
7% of responses
Greater distance means that these sentiments were not expressed as often together.
All content should be equally accessible
9% of responses
Dense clusters contain very similar stories
New regulations would only help ISPs become more profitable
5% of responses

Europa: Telekom Binnenmarkt Verordnung

- Zeitraum: 2016 – heute
- Rechtsgrundlage: Verordnung (EU) 2015/2120
- Betroffene: 512 Millionen Menschen
- Motivation: Forderungen des Europa Parlaments, Vermeidung der Fragmentierung des digitalen Binnenmarktes durch nationale Regelungen, Abtausch für Roaming Regelung oder Erhalt des Internets als Treiber der Innovation

Indien “Prohibition of Discriminatory Tariffs for Data Services Regulations”

- Zeitraum: 2016 / 2018 – heute
- Rechtsgrundlage: Entscheidung der Regulierungsbehörde / Teil der Lizenz zum Betrieb eines Telekommunikationsdienstes
- Betroffene: 1. 387 Millionen Menschen
- Motivation: Facebooks Zero-Rating Pläne, Digitaler Kolonialismus, erste Massenmobilisierung durch Internetkampagne

Gemeinsamkeiten

Definition von Internetzugangsdiensten

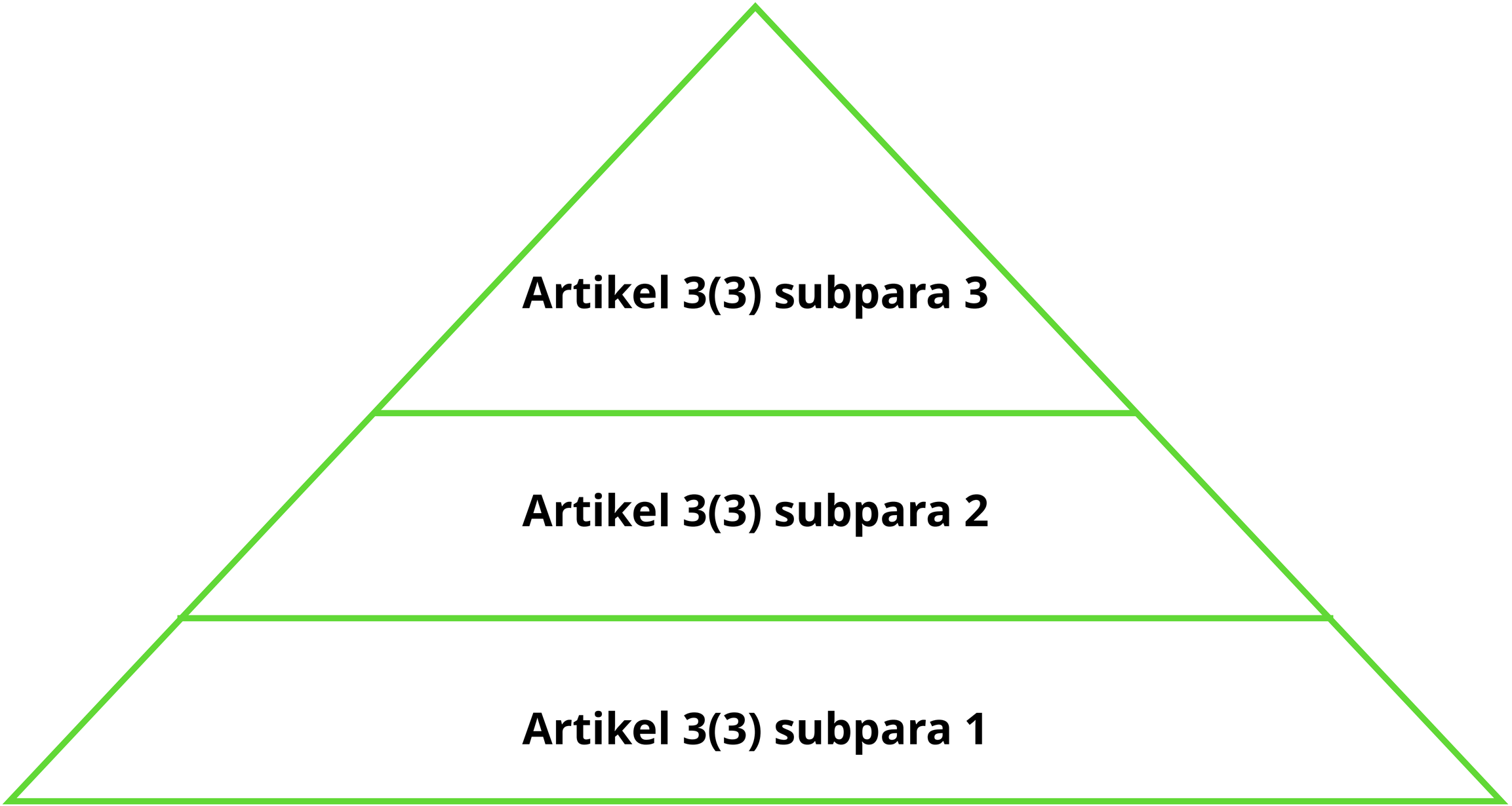
- Provides connectivity to substantially all end points
- “publicly available”
- (including functional equivalent)

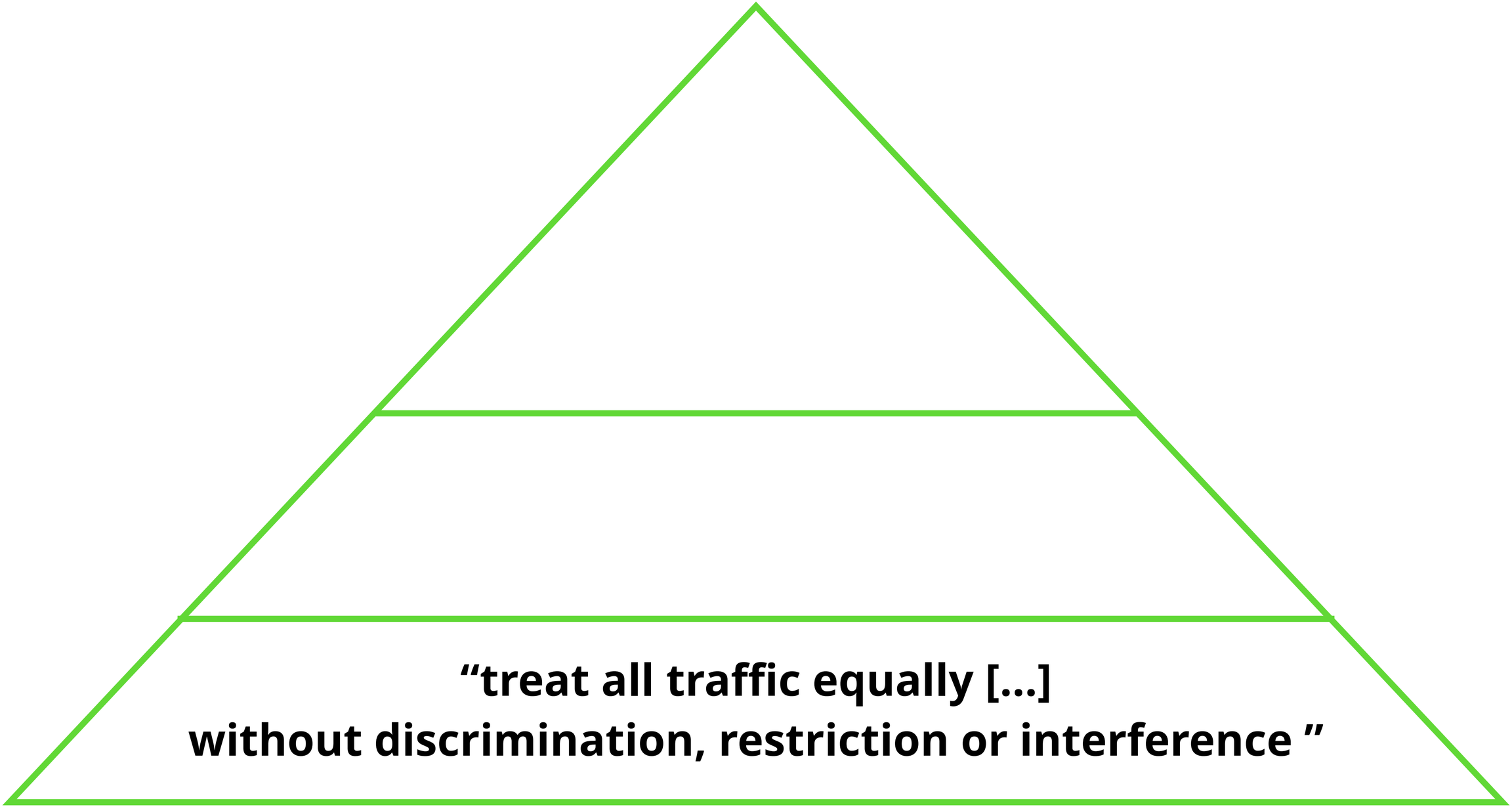
Gemeinsamkeiten

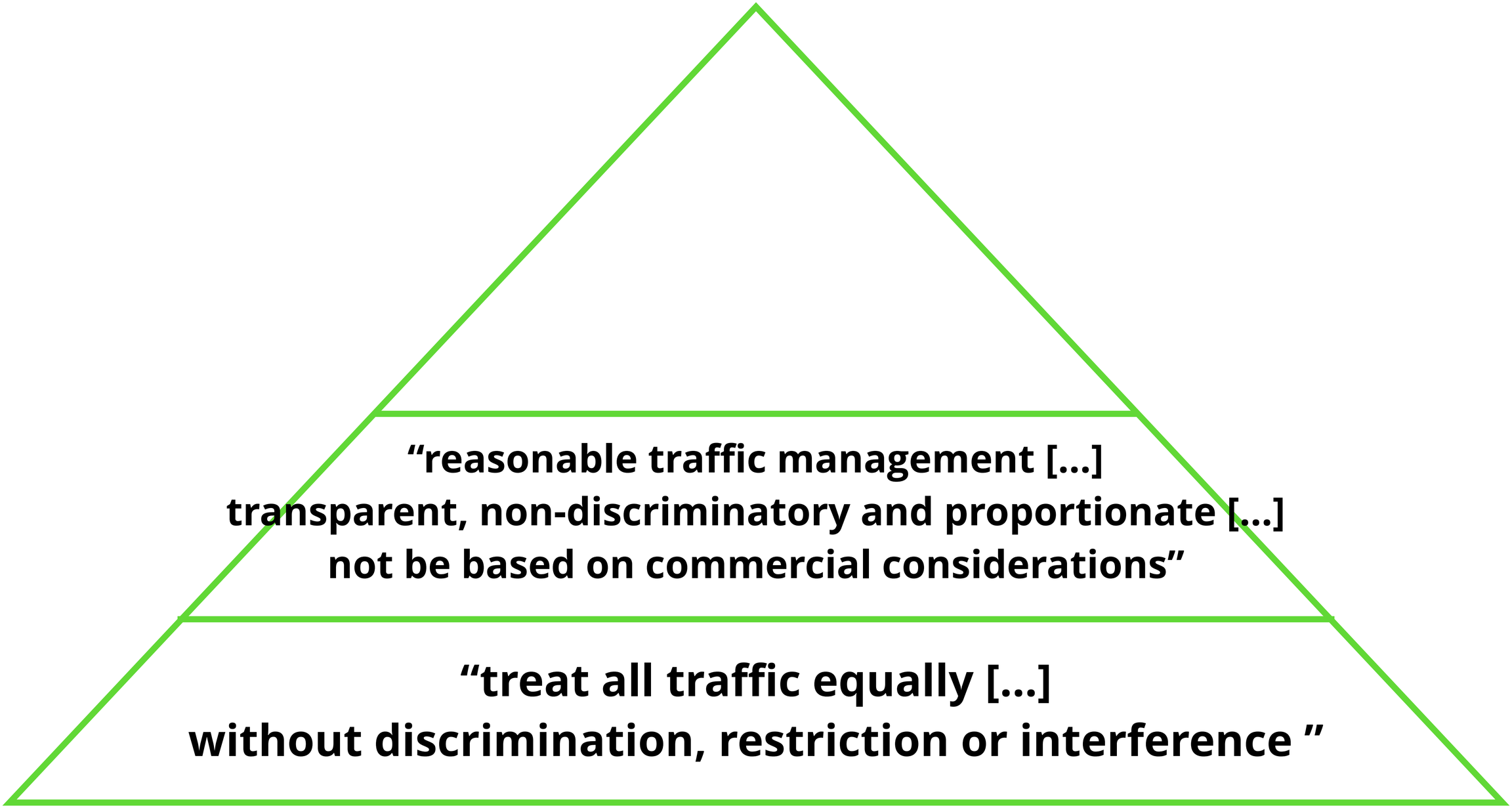
- Einschränkung auf “lawful content”
- Mobil und Festnetz
- Keiner wagt sich an inter-connection heran

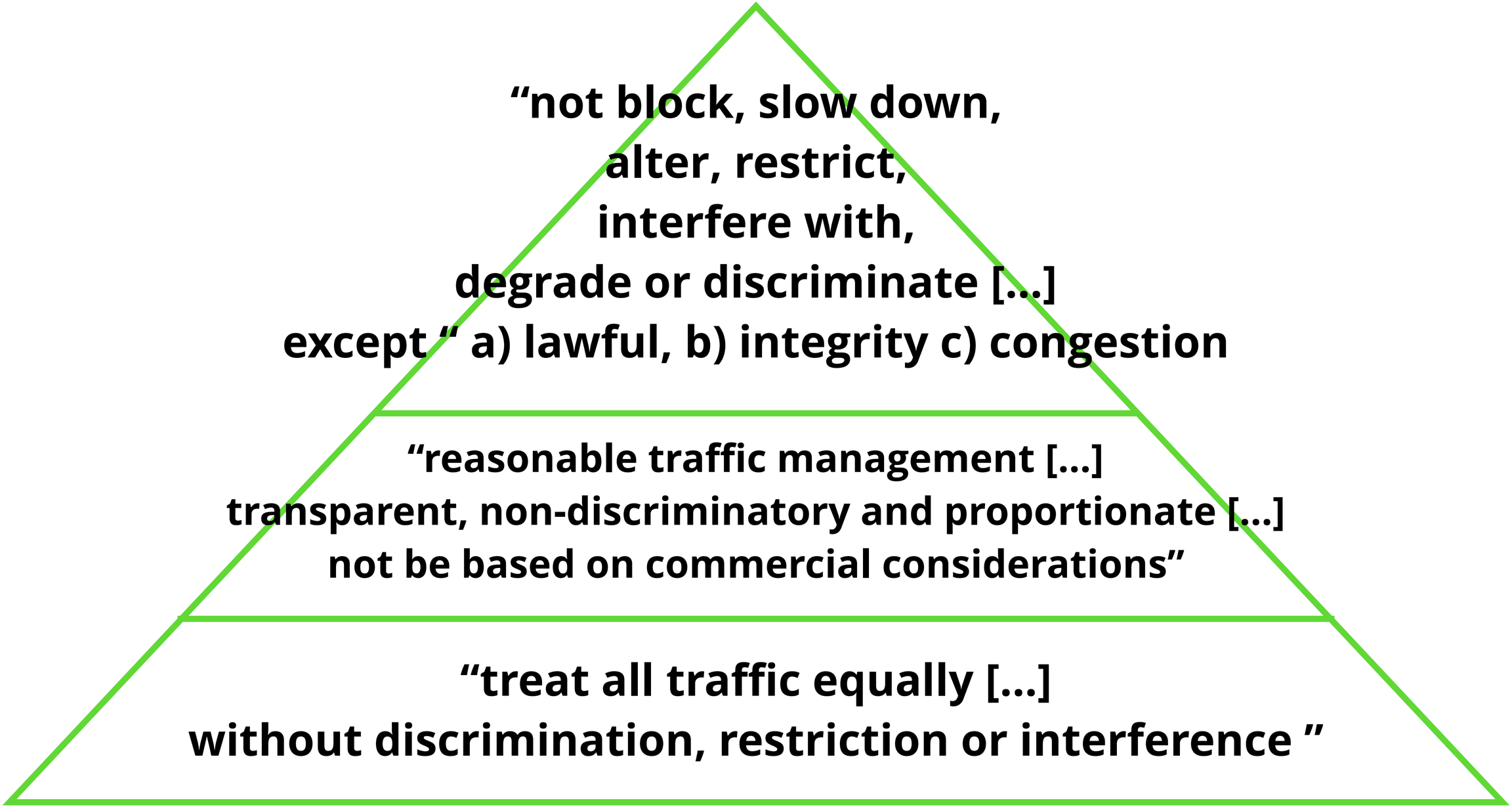
3 Verkehrsmanagement

EU


Artikel 3(3) subpara 3
Artikel 3(3) subpara 2
Artikel 3(3) subpara 1


“treat all traffic equally [...]
without discrimination, restriction or interference ”


“reasonable traffic management [...]
transparent, non-discriminatory and proportionate [...]
not be based on commercial considerations”
“treat all traffic equally [...]
without discrimination, restriction or interference ”


“not block, slow down,
alter, restrict,
interfere with,
degrade or discriminate [...]
except “ a) lawful, b) integrity c) congestion
“reasonable traffic management [...]
transparent, non-discriminatory and proportionate [...]
not be based on commercial considerations”
“treat all traffic equally [...]
without discrimination, restriction or interference ”

USA

Bright-Line Rules

1. No Blocking

2. No Throttling

3. No Paid Prioritization

Bright-Line Rules

1. No Blocking

2. No Throttling

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General Conduct

4. No Unreasonable Interference or Unreasonable Disadvantage to Consumers or Edge Providers

Bright-Line Rules

1. No Blocking
2. No Throttling
3. No Paid Prioritization

Reasonable
Network Management

General Conduct

4. No Unreasonable Interference or Unreasonable Disadvantage to Consumers or Edge Providers

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Binge On with benefits.

Video streaming has become the #1 way people use data. And these days, streaming video means you'll get slammed with overages from those other carriers. Now on qualifying plans, Binge On lets you stream unlimited video for FREE without watching your data.

Stream as much video as you want from your favorite providers without using a drop of your high-speed data.

We've optimized streaming to your mobile device so you can watch 3X more video.

“216. For a practice to even be considered under this exception, a broadband Internet access service provider must first show that the practice is <u>primarily motivated by a technical network management justification rather than other business justifications</u>. ”

–FCC, Open Internet Order 2015, Paragraph 216

“122. […] If the Commission were **concerned about the particulars of a data plan**, it **could review** it under the no-unreasonable interference/disadvantage standard. **In contrast, if a broadband provider degraded the delivery of a particular** application (e.g., a disfavored VoIP service) or **class of application** (e.g., all VoIP applications), **it would violate the bright-line no-throttling rule**.”

–FCC, Open Internet Order 2015, Paragraph 215

Indien

(i) *A Licensee providing Internet Access Service shall not engage in any discriminatory treatment of content, including based on the sender or receiver, the protocols being used or the user equipment.*

(ii) *The Licensee is prohibited from entering into any arrangement, agreement or contact, by whatever name called, with any person, natural or legal, that has the effect of discriminatory treatment of content.*

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(ii) The Licensee is prohibited from entering into any arrangement, agreement or contact, by whatever name called, with any person, natural or legal, that has the effect of discriminatory treatment of content.

(iii) Nothing contained in this provision shall restrict:

b) Any measure adopted by the Licensee that are proportionate, transient and transparent in nature and fall under any of the following categories:

- Reasonable traffic management practices as may be specified from time to time;
- Provision of emergency services or any services provided during time of grave public emergency, as per the process laid down by the Licensor/TRAI;
- Implementation of any order of a court or direction issued by the Government, in accordance with law;
- Measures taken in pursuance of preserving the integrity and security of the network and equipment; and
- Measures taken in pursuance of an international treaty, as may be specified by the Government.

4

Spezialdienste

Indien	USA	Europa

Indien	USA	Europa
Specialised Services	Non-Broadband Internet Access Service (non-BIAS)	Services other than Internet Access Services

Indien	USA	Europa
Specialised Services	Non-Broadband Internet Access Service (non-BIAS)	Services other than Internet Access Services
-	• connectivity bundled with e-readers • heart monitors • energy consumption sensors • automobile telematics • services that provide schools with curriculum-approved applications and content	“responding to a public interest or by some new machine-to-machine communications services”

	Indien	USA	Europa
Keine Umgehung der Netzneutralitätsregeln	x	x	x
Optimiert für spezielle Inhalte/Applikationen	x	x	x
Keine Verschlechterung der Qualität & Verfügbarkeit von IAS	x	x	x
Kein Substitut für IAS	x		x
Keine Wettbewerbs-nachteil für OTTs		x	
Optimierung objektiv notwendig			x

	Indien	USA	Europa
Keine Umgehung der Netzneutralitätsregeln	x	x	x
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Kein Substitut für IAS	x		x
Keine Wettbewerbs-nachteil für OTTs		x	
Optimierung objektiv notwendig			x

Country	NRA	English Report 2017			English Report 2018		
		Compliant	Ambitious	Pages	Compliant	Ambitious	Pages
Austria	RTR	Non-existent			Yes	Yes	46
Belgium	IBPT / BIPT	Non-existent			Almost (TC)	Yes	24
Bulgaria	CRC	No	No	4	No	No	10
Croatia	HAKOM	No	No	11	No	No	11
Cyprus	OCECPR	Almost (C)	No	11	Almost (C)	No	9
Czech Republic	CTU	No	No	14	Almost (C)	No?	0
Denmark	DBA	Non-existent			Non-existent		
Estonia	ETRA	No	No	9	Almost (UD)	No	11
Finland	FICORA	Non-existent			Non-existent		
France	ARCEP	No	Yes	87	No	Yes	93
Germany	BNetzA	Almost (C)	No	22	Almost (C)	No	31
Greece	EETT	Non-existent			Non-existent		
Hungary	NMHH	Yes	Yes	23	Non-existent		
Iceland	PTA	Non-existent			Non-existent		
Ireland	COMREG	No	Yes	13	No	Yes	14
Italy	AGCOM	Non-existent			Non-existent		
Latvia	SPRK	Non-existent			Non-existent		
Luxembourg	AK	Non-existent			Non-existent		
Lithuania	RRT	Almost (UC)	No	5	Almost (UC)	No	7
Luxembourg	ILR	Non-existent			Non-existent		
Malta	MCA	No	No	13	No	No	16
Norway	Nkom	Yes	Yes	11	Yes	Yes	17
Poland	UKE	Non-existent			Almost (D)	No	21
Portugal	ANACOM	Yes	No	46	Non-existent		
Romania	ANCOM	Almost (D)	No	16	Yes	No	16
Slovak Republic	RÚ	Almost (TC)	No	17	Yes	No	24
Slovenia	AKOS	Non-existent			Non-existent		
Spain	CNMC	Non-existent			Non-existent		
Sweden	PTS	Yes	Yes	26	Yes	Yes	19
The Netherlands	ACM	Non-existent			No	No	4
United Kingdom	OFCOM	Yes	No	21	Yes	Yes	25

Zero-Rating

Indien

2. Definitions. – (1) In these regulations, unless the context otherwise requires, -

(g) "discriminatory tariffs for data services" means charging of different tariffs by a service provider for data services based on the content accessed, transmitted or received by the consumer;

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3. Prohibition of discriminatory tariffs.– (1) No service provider shall offer or charge discriminatory tariffs for data services on the basis of content.

(2) No service provider shall enter into any arrangement, agreement or contract, by whatever name called, with any person, natural or legal, that has the effect of discriminatory tariffs for data services being offered or charged to the consumer on the basis of content:

USA

“152. We are mindful of the concerns raised in the record that sponsored data plans have the potential to distort competition by allowing service providers to pick and choose among content and application providers to feature on different service plans. At the same time, new service offerings, depending on how they are structured, could benefit consumers and competition. <u>Accordingly, we will look at and assess such practices under the no-unreasonable interference/disadvantage standard, based on the facts of each individual case, and take action as necessary</u>.”

–FCC, Open Internet Order 2015, Paragraph 152

EU

“1) **End-users shall have the right to access and distribute information and content, use and provide applications and services, and use terminal equipment of their choice**, irrespective of the end-user’s or provider’s location or the location, origin or destination of the information, content, application or service, via their internet access service.

–TSM (EU) 2015/2120, Artikel 3

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2) **Agreements between providers of internet access services and end-users on commercial and technical conditions and the characteristics of internet access services such as price, data volumes or speed, and any commercial practices conducted by providers of internet access services, shall not limit the exercise of the rights of end-users laid down in paragraph 1.** ”

–TSM (EU) 2015/2120, Artikel 3

“Providers of internet access services **shall treat all traffic equally**, when providing internet access services, **without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used**. ”

–TSM (EU) 2015/2120, Artikel 3(3) subpara 1

“(7) […] National regulatory and other competent authorities should be **empowered to intervene** against agreements or commercial practices which, by reason of their scale, **lead to situations where end-users’ choice is materially reduced in practice**. To this end, the assessment of agreements and commercial practices should, inter alia, take into account the respective market positions of those providers of internet access services, and of the providers of content, applications and services, that are involved. **National regulatory** and other competent authorities **should be required**, as part of their monitoring and enforcement function, **to intervene when agreements or commercial practices would result in the undermining of the essence of the end-users’ rights.**”

–TSM (EU) 2015/2120, Erwägungsgrund 7

epicenter.works/document/1522

Kanada

Telecom Regulatory Policy CRTC 2017-104

PDF version

Reference: Telecom Notice of Consultation 2016-192

Ottawa, 20 April 2017

File numbers: 8661-P8-201510199, 8622-V42-201510735, 1011-NOC2016-0192

Framework for assessing the differential pricing practices of Internet service providers

In order to provide clarity to stakeholders, including consumers, content providers, and Internet service providers (ISPs), the Commission establishes a framework and sets out the evaluation criteria it will apply to determine whether an ISP's specific differential pricing practice is or is not consistent with subsection 27(2) of the Telecommunications Act.

In this decision, the term "differential pricing practice" refers to the zero-rating or discounting of retail Internet data traffic. Practices associated with ISPs' own managed Internet protocol networks are not included in the analysis and determinations set out in this decision.

The evaluation criteria are the following:

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- *the degree to which the treatment of data is agnostic (i.e. data is treated equally regardless of its source or nature);*
- *whether the offering is exclusive to certain customers or certain content providers;*
- *the impact on Internet openness and innovation; and*
- *whether there is financial compensation involved.*

Framework for assessing the differential pricing practices of Internet service providers

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In this decision, the term "differential pricing practice" refers to the zero-rating or discounting of retail Internet data traffic. Practices associated with ISPs' own managed Internet protocol networks are not included in the analysis and determinations set out in this decision.

The evaluation criteria are the following:

Kalifornien

“3101. It shall be unlawful for a fixed/mobile Internet service provider [...]:
(5) Engaging in zero-rating in exchange for consideration, monetary or otherwise, from a third party.
(6) Zero-rating some Internet content, applications, services, or devices in a category of Internet content, applications, services, or devices, but not the entire category. ”

– Kalifornisches Gesetz für Netzneutralität, Senate Bill No. 822, Paragraph 3101 (a), (b)

Gesamtschau

✅ = erlaubt, ❌ = verboten, 〰️ = case-by-case

	Indien	USA	EU	Kanada	Kalifornien
Applications Agnostisch					
Gegen Bezahlung					
Einzelne Dienste					
Klassenbasiert					

✅ = erlaubt, ❌ = verboten, 〰 = case-by-case

	Indien	USA	EU	Kanada	Kalifornien
Applications Agnostisch	✅				
Gegen Bezahlung	❌				
Einzelne Dienste	❌				
Klassenbasiert	❌				

✅ = erlaubt, ❌ = verboten, 〰 = case-by-case

	Indien	USA	EU	Kanada	Kalifornien
Applications Agnostisch	✅	〰	〰		
Gegen Bezahlung	❌	〰	〰		
Einzelne Dienste	❌	〰	〰		
Klassenbasiert	❌	〰	〰		

✅ = erlaubt, ❌ = verboten, 〰 = case-by-case

	Indien	USA	EU	Kanada	Kalifornien
Applications Agnostisch	✅	〰	〰	✅	✅
Gegen Bezahlung	❌	〰	〰	❌	❌
Einzelne Dienste	❌	〰	〰	❌	❌
Klassenbasiert	❌	〰	〰	〰	〰

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