Montevideo, Uruguay
August 18th, 2017

Ref: Members of the Council Working Group on International Internet-related Public Policy Issues.
International Telecommunications Union (ITU)

Dear Madam/Sir,

My name is Gonzalo Navarro and I am the Executive Director of the Asociación Latinoamericana de Internet (ALAI).

ALAI is an international, nonprofit association that seeks to promote the development of the Internet in Latin America and the Caribbean. Our guiding principles are freedom of expression, education, innovation, entrepreneurship, economic growth and the empowerment of our users.

We truly appreciate the opportunity to participate in this consultation process and provide our comments, being truly convinced about the significant and positive impact that online applications bring to the wellbeing of their users, whether individuals, organizations, or governments.

Attached to this letter you will find a more comprehensive analysis and explanation to the questions presented to this public consultation process. Should you have further questions or queries related to the content of our comments, please do not hesitate in contact us.

Sincerely,

Gonzalo Navarro
Executive Director
Asociación Latinoamericana de Internet (ALAI)
gnavarro@alai.lat
www.alai.lat

1 What are the opportunities and implications associated with OTT?

Internet-based applications, (sometimes referred to as online service providers or “OTTs”) have many different functionalities. Companies such as MercadoLibre (e-commerce), Workana (jobs), Despegar.com (tourism), PedidosYA (delivery), Rappi (logistics) and Shippify (logistics), are just some examples of different kind of successful Internet-based applications born in Latin America and they all provide innovative services and solutions in diverse areas and ways. More details about these success cases in Latin America can be found at www.late.online

The use of the term "OTT" has expanded over the past few years. While it was originally used to refer to IP-based content or voice-over-IP (VoIP) services competing with traditional telecom operators, it is increasingly being used to refer to almost any service delivered over digital networks. This use of the term is unnecessarily broad, generates confusion and has important implications as more and more services are digitized.

Online applications contribute to the wellbeing of their users (whether individuals, organizations, or governments) and of the local communities where these applications are used. They also allow disseminating alerts in case of natural disasters or implementing remote learning, telecommuting and telemedicine initiatives, helping people with disabilities while breaking language barriers and offering simultaneous translation in multiple languages, among many other benefits.

From an economic point of view, online applications contribute directly to the growth of the Gross Domestic Product. In this regard, a study[1] published in May 2017 concludes that each 10% increase in the use of Internet-based services and applications has added on average US$5.6 trillion in GDP across 164 countries in the period 2000 to 2015. This shows the importance of fostering the development and growth of these services and applications around the world, especially in less developed or developing countries.

In addition to these economic benefits, Internet-based applications contribute to the exercise of universally recognized human rights[2], such as the right to access culture and education, the right to work and trade, the right to information and freedom of expression, among many others. This role as facilitator of the exercise of human rights should not be underestimated and should be taken into account when analyzing the social value and positive contributions of Internet-based services and applications.

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[1] Wik report on the Economic and Social Value of Rich Interaction Applications (RIAs) (May 2017).

[2] Universal Declaration of Human Rights, approved by the United Nations General Assembly in 1948.

All of the above shows that Internet-based applications generate multiple opportunities for society as a whole, and these opportunities must be leveraged without artificial limitations or barriers.

ALAI appreciates the ITU's core mission "to allocate global radio spectrum and satellite orbits, develop the technical standards that ensure networks and technologies seamlessly interconnect, and strive to improve access to ICTs to underserved communities worldwide." We encourage the ITU to continue focusing on its remit and mission rather than focusing on issues outside of its core competence, which are already being addressed by other entities. We invite the ITU and member states to participate in existing processes rather than duplicating efforts and distracting from the ITU's key work on telecommunications network standards, radio spectrum allocation, and capacity-building programs.

2 What are the policy and regulatory matters associated with OTT?

The purpose of regulation in network economies – or in markets with infrastructure based entry – is related to the need of generating better conditions for users regarding prices and service availability (access)[3].

In the case of traditional telecommunications services, the operator controls and in many cases is the sole owner of the network infrastructure needed to provide the service. Therefore, this forms a vertically integrated market with high entry barriers (scarce resources and essential facilities) and grants operators monopoly power over users[4]. This disrupts competitive conditions, generating the need for regulatory intervention, as to create better conditions for users and competitors.

In the case of Internet-based applications, developers and service providers have no control over the broadband infrastructure, plus the market is not restricted by these same conditions. Market entry is open in mostly every market for different platforms and applications to compete. Users can freely change services with no associated costs and even take advantage of competing applications at the same time and with the same device (multi-homing).

From this perspective, the 'level playing field' and 'same services, same rules' argument proposed by some traditional telecommunications services operators is clearly erroneous yet tempting for regulators, as they seek to apply regulations designed based on the use of scarce resources or

[3] Kahn, A. E. (1988). The economics of regulation: principles and institutions (Vol. 1). Mit Press.
[4] Mitchell, B. M., & Vogelsang, I. (1991). Telecommunications pricing: Theory and practice. Cambridge University Press.

the control of essential facilities to services and applications born in a global innovation and investment environment.

Updated policy and regulatory frameworks should achieve outcomes that serve the public interest. Smart, light touch policies that simplify and/or harmonize are potential mechanisms, and there should generally be a reliance on generally applicable laws, such as those pertaining to consumer protection and competition. Reduction in regulation should especially be the case when it is found that economic, social or safety policy goals are being sufficiently addressed through a wider perspective of competitive market forces, particularly when the regulation originally responded to technologies and legal frameworks of a different era, and different competitive conditions.

Adopting a different approach – one where obligations, e.g., requiring prior authorizations, licenses, registrations, or permits, are transferred to Internet-based applications – would undoubtedly create a barrier to innovation that would discourage investment and inhibit the positive effects of social and economic value creation described in the answer above.

Regulatory intervention should be kept to a minimum and limited to cases where it is strictly necessary to protect competition and consumer rights, as well as the public good associated with the use of Internet-based services and applications. All regulations should focus on consumer welfare, not on the business models used to provide those services. Regulating specific types of services exclusively on the basis of how they are provided will fundamentally harm the consumer. If arbitrary barriers are set for some types of services, but not for others, consumers will face cost increases and fewer options for innovative solutions.

In this regard, the most appropriate regulatory model is one that encourages 'permissionless innovation,' where no authorizations, licenses, registrations or government permits are needed prior to the development and/or use of an Internet-based application, as this type of model favors private initiative, entrepreneurial freedom, and creativity and makes the power of technology available to the largest number of people around the world.

Finally, it is important to point out that the development and use of Internet-based applications require clear and stable rules that ensure that those who control the connectivity infrastructure necessary for users to access different applications and services maintain net neutrality, avoiding any form of discrimination that might affect competition.

3 How do the OTT players and other stakeholders offering app services contribute in aspects related to security, safety and privacy of the consumer?

All stakeholders, including governments, companies, civil society organizations, and users, play a critical roles in contributing to the security, safety, and privacy of the consumer. Presently, there are robust multistakeholder mechanisms that bring together application providers, broadband service providers, governments, the technical community, academics, and civil society organizations to ensure security, safety, and consumer privacy. Examples include standards-setting bodies like the Internet Engineering Task Force (IETF), which are productive venues for ITU member states to engage on these issues. There are also national and regional bodies that focus on security, safety, and privacy of the consumer. Therefore, there is no need to specifically legislate these online applications, as they are subject to existing privacy and security processes, rules, and principles.

In this regard, governments should promote the adoption of security and privacy policies by different ecosystem actors, as well as the dissemination of industry best practices to enable innovation in the search for solutions that make privacy and security compatible with the benefits associated with the Internet.

Governments, businesses and civil society organizations should promote awareness-raising and education campaigns aimed at achieving the adoption of recommendations and policies put forth by existing multistakeholder mechanisms, as well as the dissemination of best practices for user protection.

These campaigns could use private-public funding schemes, allocating these funds mainly to the education of children and adolescents, as well as to the education of senior citizens, as many are not very familiar with the use of the Internet and technology in general and are therefore more vulnerable.

4 What approaches might be considered regarding OTT to help the creation of environment in which all stakeholders are able to prosper and thrive?

The development of the digital economy is something for policy makers and regulators to welcome and encourage, and it calls for policies that promote both investment in and deployment of broadband infrastructure. Such development also requires a positive environment in which the applications, and content accessible over those facilities can thrive. Policies should encourage investment, innovation, and new ways of bringing the advantages

of the digital economy to all, particularly unconnected populations.

The private sector makes the investments required by innovation and the creation of new Internet-based applications. It also invests to improve existing services and applications and meet new communication and social interaction demands.

For governments, it is essential to enable necessary investments and innovation, avoiding the need for those who wish to offer Internet-based applications to first obtain licenses, registrations, permits, or authorizations.

Likewise, governments should implement policies aimed at achieving universal access through initiatives that will allow the largest number of people to access broadband connections and thus benefit from available services and applications.

Digital literacy is also an essential element for leveraging the Internet and its associated resources. This is a joint challenge for governments, companies, civil society organizations, and academia.

Ultimately, the approach for creating an ecosystem that benefits every stakeholder should be one in which each actor plays a leading role and does not dominate over the others, seeking collaboration agreements that will enable the investments and innovation needed for the development of the benefits associated with the Internet as a whole.

5 How can OTT players and operators best cooperate at local and international level? Are there model partnership agreements that could be developed?

Internet-based applications and broadband networks for fixed and mobile services of traditional telecommunications operators share a mutually beneficial, symbiotic relationship: without telecommunications networks, users could not access and enjoy services and applications; without these services and applications, there would be less demand for broadband access provided by operators and users would have less opportunity to benefit from the advances in Internet technology.

What is more, Internet-based applications are not *'free riders',* as they may make their own investments in connectivity infrastructure, cache servers and data centers to bring content and services closer to users, which optimizes quality and leads to better user experiences on the broadband access providers' networks, or, also, in the way in which the use of its platforms leads to economic gains for other actors in the digital economy, such as ISPs and other service providers.

Governments should foster cooperation by means of rules that promote self-regulation and collaboration agreements between different public and private actors within the ecosystem that will enable innovation and the development of new Internet-based applications to meet the needs of individuals, businesses, organizations, and governments.

These collaboration agreements are perfectly possible in a framework that protects competition, where each party takes advantage of the synergies created within an innovative ecosystem without harming others.

In this regard, the goal of these agreements might be the deployment of broadband infrastructure to allow more users to take advantage of Internet-based applications through the generation of innovative funding sources such as *crowdfunding* that will allow the appearance of new entrepreneurs, small- and medium-sized companies and cooperatives focused on the creation of new services and applications.

Agreements are also needed to establish incubator and promotion programs for new technological projects, such as service provider and Internet-based application startups, particularly in less developed countries, so they will contribute to the social and economic development of local communities and generate legitimate sources of income for the people who are part of those communities.

The Internet is based on the interconnection of networks and devices by means of technical agreements that allow global connectivity not limited by geographic borders. These agreements must be replicated at economic and social level in order to achieve effective cooperation and collaboration among the various stakeholders (governments, companies, organizations, and users) and expand the benefits of the Internet, seeking to include all those who, for various social, political or geographical reasons, do not yet enjoy the benefits and positive effects of the Internet and technology-based services and applications.