Net Neutrality in Peru

Luis Pacheco

Regulatory and Competition Department

June 2017

Peru: General Information

- Population: 31.5 Millions[1]

- GDP (PPP): US$ 366 MM[2]

- GDP per capita: (PPP): US$ 12 529[2]

- Fixed Internet Service Penetration: 6,7%[3]

- Mobile Internet Service Penetration: 60,2%[3]

- Individuals, older than 12 years old, that use Internet Service: 13,5 Millions[4]

1/ Instituto Nacional de Estadística e Informática, 2016.
2/ World Bank, 2015.
3/ Telecommunications Operators. Fixed Information at Dec-2016. Mobile Information at March-2016.
4/ Encuesta Residencial de Telecomunicaciones, OSIPTEL. 2015.

National Fiber Optic Backbone (RDNFO) and Regional projects

National Fiber Optic Backbone (RDNFO)

Regional projects

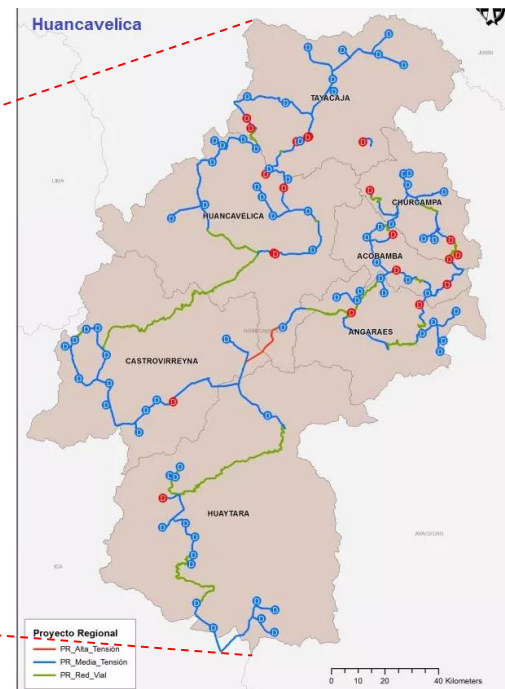|		
13 500 km		29 000 km
$ 333 millions	US$	$ 2000 millions
180 Provincial capitals (out of 195)		1516 District capitals (out of 1854)
23 regions (out of 24)		21 regions
$ 27 for Mbps (Transport)*	$	S/. 82.7 for 2Mbps (access) Max. without IVA

Totally operative 8 clients = 5Gb aprox. ⟷ Current situation ⟶ **8 awarded, 5 in tender process, 6 with SNIP feasibility**

*Modificable por OSIPTEL a partir del 5° año de suscripción del Contrato

General challenges in a Connected World

- Information privacy,

- Cybersecurity and Information security,

- Global service providers,

- Hyperconnectivity requirement (5G, smart cities, smart home),

- Restrictions on energy support,

- Digital Production and consumption,

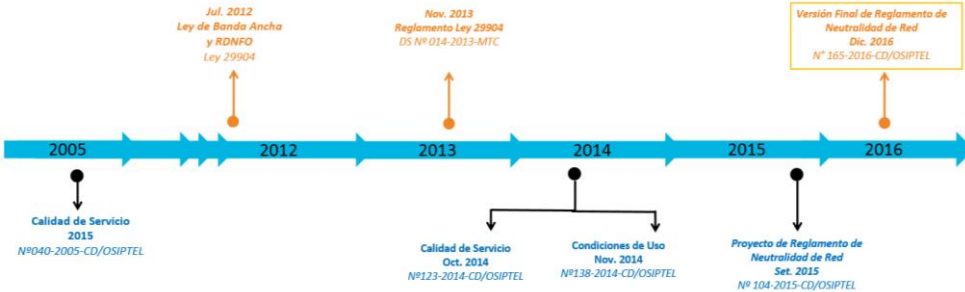- Affordable access for homes and users to telecommunications services.

- Neutral Internet allows:
  - Promotion of innovation
  - User's rights respect.
  - Free and fair competition

- Should not restraint the ability to innovate, nor to generate new plans and promotions.
  - Ex post regulation allows flexibility, in contrast to interventionist ex ante regulation.

- In Peru, OSIPTEL listened to different groups of interest in order to establish a NN regulation that basically promotes:
  - Respect to users' rights.
  - Flexibility to operators.

Net Neutrality regulation process

Timeline

Process:

- 2014: Operators sent information about their actions.

- 2014/2015: Working meetings with stakeholders.

- 2015: The draft net neutrality regulation was published.

- 2015/2016: OSIPTEL analyzed the stakeholders comments

- 2016: The Network Neutrality Regulation was published

Ley 29904 - Broadband law and National Fiber Optics Backbone construction

Article 6º.- Freedom of choice of broadband protocols and applications. providers (…) **can´t arbitrarily block, interfere, discriminate or restrict the right of any user to use an application or protocol**, regardless of its origin, destination, nature or property. **OSIPTEL determines behaviors that will not be considered arbitrary**, regarding net neutrality.

D.S. Nº 014-2013-MTC – Rule of the Law 29904

Article 10º.- Freedom of choice of broadband protocols and applications – Net Neutrality.

10.2 In case any provider intends to implement actions (..), previously must have OSIPTEL´s authorization.
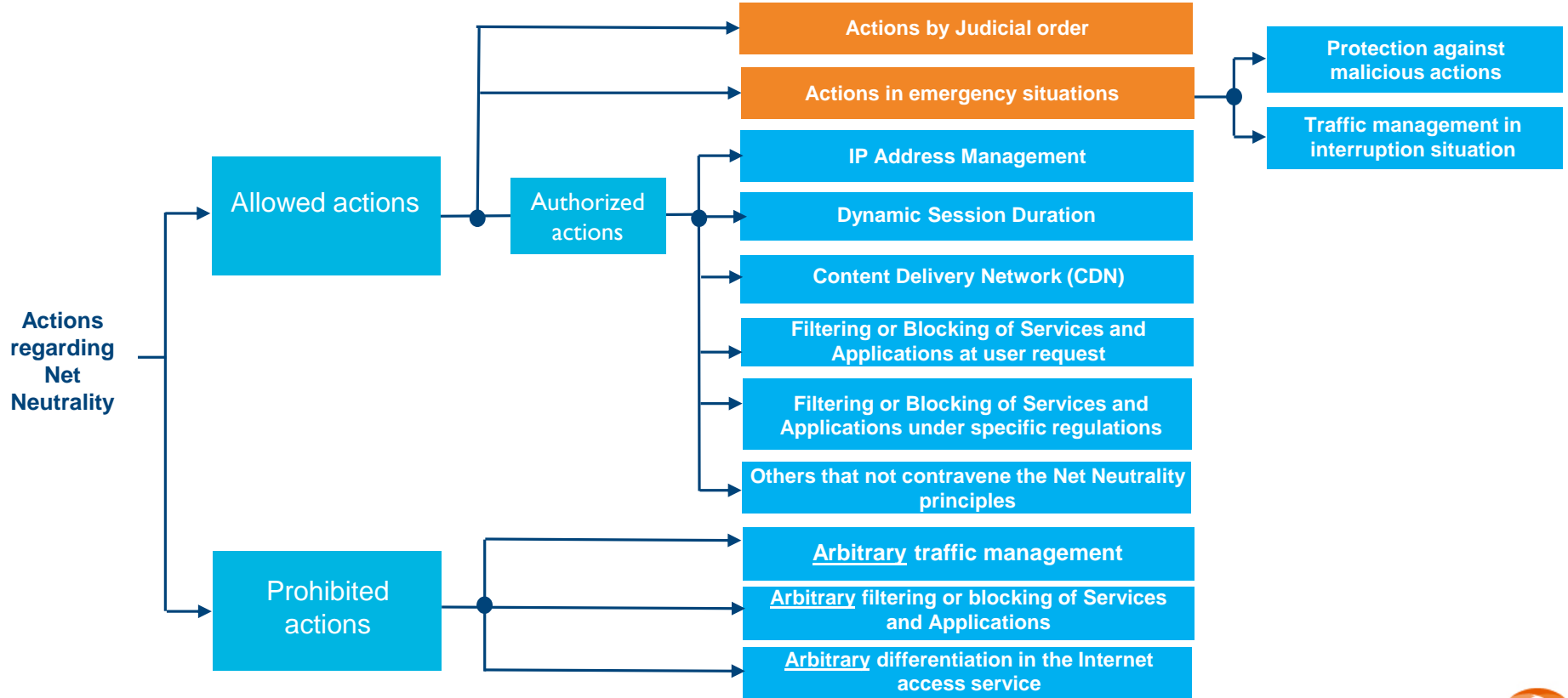
10.3 Excepted (…), actions in **network management for emergency situations** or cases in (...) **compliance with a judicial mandate**.

Protection of user's rights and competition

- Principles of NN Regulation:
  - Freedom of use
  - Precautionary
  - Equity
  - Transparency
- NN Regulation has **two different legal assets**: user's free use and choice, and competition promotion.
- **Legal asset** under **NN Regulation** scope is **user's freedom of use.**
- Also, as a competition agency in telecommunications, **OSIPTEL regulates competition and penalizes anticompetitive actions related to NN**, evaluating:
  - If operators have Significant Market Power.
  - If anticompetitive actions have effects in any telecommunications market under OSIPTEL jurisdiction.

Net Neutrality regulation

Actions regarding Net Neutrality

- **Allowed actions**
  - **Authorized actions**
    - Actions by Judicial order
    - Actions in emergency situations
      - Protection against malicious actions
      - Traffic management in interruption situation
    - IP Address Management
    - Dynamic Session Duration
    - Content Delivery Network (CDN)
    - Filtering or Blocking of Services and Applications at user request
    - Filtering or Blocking of Services and Applications under specific regulations
    - Others that not contravene the Net Neutrality principles
- **Prohibited actions**
  - Arbitrary traffic management
  - Arbitrary filtering or blocking of Services and Applications
  - Arbitrary differentiation in the Internet access service

Structure based on information sent by stakeholders
Regulation of the Law 29904 (D.S. 014-2013-MTC).

Zero-rating y Traffic management

Zero-rating

- Operator may design plans or commercial products containing Components with Differentiated Treatment (CTD).

- It is considered arbitrary when the CTD presents:
  - (i) Restricted access,
  - (ii) Prioritization
  - (iii) Additional charges, and
  - (iv) Quality and Functionality limitations

Arbitrary traffic management

Traffic management is not arbitrary when:

(I) Preserve the security and integrity of the network.

(Ii) Prioritize emergency communications systems.

(Iii) Prevent, reduce or mitigate the unpredictable effects of severe congestion.

Not allowed to prioritize according to an specific service / application / protocol / traffic within service classes or based on the origin and destination,

Traffic management among service classes, classes of applications and / or classes of protocols can exceptionally be allowed in order to guarantee continuity in events of severe network congestion.

Potential cases to be regulated by OSIPTEL

- An operator offers **plans that restrict access to legal contents or services** → **prohibited** by **NN Regulation**.
  - V.g.: Operator "A" blocks ports, domains or IP addresses.

- An operator offers **zero-rating** and **prioritize** contents (traffic management) included in zero-rating offer → **prohibited** by **NN Regulation**.
  - V.g.: Operator "B" offers application "X" under zero rating and also prioritize traffic of application "X" against other similar applications.

- **Exclusive agreement** between operator and Content Provider in order to offer zero-rating. → This case **could** be analyzed by OSIPTEL under **competition law and regulations** (eventually, competition authority beyond telecommunication market –INDECOPI- could intervene when necessary).
  - V.g.: Operator "C" offers application "Y" under zero rating, under an exclusive agreement with developers of application "Y" (no other operator but "C" can offer application "Y" in their networks).

Pending Challenges in NN enforcement

- **Complexity in obtaining evidence of infractions**, due to networks' technological developments.

- Generation of **mechanisms** in order that users could **evidence affectation** of their Internet service related to NN:
  - M-LAB tool: *"The Internet Health Test", shows degradation of internet service.*
  - *Google tool to test video quality:* https://www.google.com/get/videoqualityreport
  - *National IXP, key element in supervision process of NN regulation.*

- Generation of **transparent information mechanisms** related to NN actions implemented by Telecommunications Operators.

- Preserve **user's freedom of choice** in an ecosystem with a variety of offers.

- New services: Internet of things and the need for specific traffic patterns and/or network management or prioritization for its use; beyond scalability problems on defining several VPNs or specialized services for these devices. ➔ Evolution of the rules

Fonoayuda
0-801-121-21

Facebook
f /OsiptelOficial

Twitter
@OSIPTEL