

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52
)	

COMMENTS OF NTT CORPORATION

Nippon Telegraph and Telephone Corporation (“NTT”) respectfully submits these comments in the response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”) in the above captioned proceeding.¹ NTT traces its roots back to 1869 when the telegraph was first introduced in Japan. Originally government-owned, NTT was privatized in 1985. Since then, the company has been diversifying into new markets, forming new subsidiaries and developing leading-edge technologies. NTT has subsidiaries and affiliates in 22 countries/regions around the world, employing over 193,000 people worldwide.²

I. INTRODUCTION

NTT agrees with the Commission that the proliferation of the global Internet is primarily the product of its open and transparent nature.³ The preservation of such Internet openness and

¹ *Preserving the Open Internet; Broadband Indus. Practices*, 24 FCC Rcd 13,064 (2009) (*Notice of Proposed Rulemaking*) (“NPRM”).

² Further information about NTT and its history of innovation can be found in the company’s recent comments submitted in response to National Broadband Plan Public Notice # 13. *See* Comments of Nippon Tel. and Tel. Corp., GN Docket Nos. 09-47, 09-51, 09-137 (filed Nov. 16, 2009) (“NTT Comments”).

³ *NPRM*, 24 FCC Rcd at 13,069 (¶ 17).

transparency has been a principal FCC goal that is globally important and for which the agency justly deserves praise.⁴

The current NPRM represents a departure from long-standing FCC Internet policies by proposing to codify the four principles of the Commission’s *Internet Policy Statement*,⁵ including the addition of new obligations of non-discrimination⁶ and transparency,⁷ and an extensive discussion and definition of what qualifies as “reasonable network management” practices.⁸ NTT in principle upholds transparency, but cautions the Commission that operators require significant flexibility to manage their networks, both to create incentives for future investment and to ensure that the public can continue to be assured a safe and secure Internet experience.

Further, the Commission should consider the international impact of any decision in this proceeding. Apart from the direct effects on operations within the United States, the global nature of the Internet ensures that the Commission’s actions will have broad effects worldwide. Indeed, through directly regulating Internet access for the first time, the FCC inadvertently may encourage interventionist Internet manipulation by other nations—some with little or no commitment to openness, competition or free speech.

⁴ *NPRM*, 24 FCC Rcd at 13,074-075 (¶¶ 28-30) and 13,082 (¶ 47).

⁵ *Id.*, 24 FCC Rcd at 13,100-104 (¶¶ 88-102).

⁶ *Id.*, 24 FCC Rcd at 13,104-108 (¶¶ 103-117).

⁷ *Id.*, 24 FCC Rcd at 13,108-111 (¶¶ 118-132).

⁸ *Id.*, 24 FCC Rcd at 13,112-115 (¶¶ 135-141).

II. NETWORK OPERATORS SHOULD BE ALLOWED TO ACTIVELY MANAGE NETWORK TRAFFIC IN ORDER TO PRESERVE COMPETITIVE INVESTMENT AND MEET CONSUMER EXPECTATIONS.

As the Commission correctly recognizes in the NPRM, “[t]he Internet’s openness, and the transparency of its protocols, have been critical to its success.”⁹ NTT shares the Commission’s belief in empowering consumers and enabling entrepreneurs and others to enjoy the benefits of an interconnected society. These ideals must, however, be pursued intelligently, with an eye towards maximizing the value of the network for all users. The broad nondiscrimination rule coupled with the narrow “reasonable network management” exception, as currently written, could impede network operators from delivering fast, reliable, and secure broadband services to all subscribers.

As discussed in NTT’s recent FCC comments, the key to broadband growth in Japan has been facilities-based competition, not government intervention.¹⁰ Successful Internet deployment and adoption demands significant investment in network construction and installation.¹¹ These sorts of infrastructure projects demand massive capital expenditures by network operators, who in turn expect the ability to efficiently deliver popular, high quality services while recouping their investments.

Though normally limited to circumstances where it is necessary to avert network congestion, flexible network management policies are critically important. Rules that limit a

⁹ *NPRM*, 24 FCC Rcd at 13,065 (¶ 3).

¹⁰ *See* NTT Comments at 4-8.

¹¹ As Commissioner Baker indicated in her separate statement on the NPRM, “we must never cease to find ways to create incentives for investment across the Internet, an economic engine that is just beginning to demonstrate its power to transform the way we live, to energize our economy and to solidify our leadership internationally.” *See Separate Statement of Comm’r Meredith A. Baker, Preserving the Open Internet; Broadband Industry Practices*, 24 FCC Rcd at 13,168.

network operator's ability to dynamically manage traffic on its network and to experiment with new service offerings could chill network expansion. Indeed, Japan's successful competitive and pervasive broadband and fiber to the home ("FTTH") deployment that was done absent such rules suggest that their adoption in the United States is both unnecessary and could retard expansion of high-speed Internet access.

Active network management also is pro-consumer. Broadband users reasonably expect that they will receive a reliable level of speed and service quality every time they use their Internet connection. This expectation may be thwarted, however, if a small number of users can capture a disproportionate amount of network capacity through abnormal-bandwidth applications. Operators must be empowered to employ dynamic network management to ensure every user has fair access to resources. Network operators also must be able to continue delivering a secure and safe Internet experience by helping to mitigate unwanted content (*e.g.*, viruses and spam) and illegal content (*e.g.*, child pornography). A broad nondiscrimination rule coupled with a limited definition of reasonable network management potentially could impair such practices, resulting in a less equitable, secure, and safe user experience.

Broadband connections are increasingly being used for new kinds of consumer and enterprise applications, which also call for special forms of network management. Video conferencing, distance learning, streaming media, and online gaming are but a few examples of the growing number of Internet-based applications that demand reliable, real-time, synchronous data transfers. Whereas minor delays in the processing of web page, email, or file transfers may go largely unnoticed by users, similar delays to these real-time applications can be devastating to the user experience. As such uses expand in popularity, the traditional "best-effort" paradigm of

Internet traffic will naturally migrate toward applications-specific service level expectations—without governmental regulation.

This pro-consumer outcome has been true in Japan. For example, in accordance with its “New Competition Promotion Program 2010,”¹² Japan’s Ministry of Internal Affairs and Communications (“MIC”) called upon a broad range of industry members to establish a consensus on “packet shaping” that could respond effectively to the ever-changing broadband market.¹³ The resultant voluntary industry Guideline for Packet Shaping¹⁴ reflects the reality of network management, encourages fair competition, guarantees transparency to subscribers with respect to network practices, and enables network operators to best meet consumer expectations.¹⁵ Rather than banning discrimination, the Guideline specifically allows for it and provides guidance on how to engage in beneficial forms of discrimination while linking this flexibility with transparency to consumers, ensuring that subscribers are aware of the network management techniques utilized by network operators.

¹² Ministry of Internal Affairs and Commc’n, Japan, *New Competition Promotion Program 2010* (rev. Oct. 23, 2007) available at http://www.soumu.go.jp/main_sosiki/joho_tsusin/eng/Releases/Telecommunications/pdf/news071023_2_ap.pdf.

¹³ See Working Group on Network Neutrality, Ministry of Internal Affairs and Commc’n, Japan, *Report on Network Neutrality* at 29-30 (Sept. 2007) available at http://www.soumu.go.jp/main_sosiki/joho_tsusin/eng/pdf/070900_1.pdf (“Report on Network Neutrality”).

¹⁴ Japan Internet Providers Ass’n, Telecomms. Carriers Assn., Telecom Servs. Ass’n, Japan Cable and Telecomms. Ass’n, *Guideline for Packet Shaping* at 1 (May 2008) available at http://www.jaipa.or.jp/other/bandwidth/guidelines_e.pdf (“Guideline for Packet Shaping”).

¹⁵ Additionally, it is important to recognize that Japan’s packet shaping guideline applies only to fixed wireline broadband networks because mobile broadband is recognized as having different technical and economic considerations, especially in light of the spectrum-based constraints on network capacity. Thus, no packet shaping or network neutrality policies now apply to mobile broadband network operations.

III. THE COMMISSION SHOULD CONSIDER THE POTENTIALLY NEGATIVE INTERNATIONAL CONSEQUENCES OF ITS UNPRECEDENTED DIRECT REGULATION OF THE INTERNET.

The Commission should not ignore the possible international consequences of any new American network neutrality regulations. *First*, NTT—like other global Internet backbones—carries a substantial amount of traffic originating or terminating in the U.S. on its network, and thus NTT—and its customers—are directly affected by U.S. Internet policies. Accordingly, restrictions on the ability of U.S. network operators to manage their networks may cause NTT’s network to experience an increase in unwanted or harmful traffic or create other operational difficulties.

Second, the United States, through the FCC, has long been a role model for communications regulators across the globe. Especially in light of its history of “hands off” Internet regulation, if the Commission for the first time directly regulates Internet access, as suggested in the NPRM, its actions will certainly be noticed abroad. The Commission’s ultimate decision—however justified—may be interpreted as creating *ex ante* regulation for the purpose of achieving “national goals,” a potentially negative precedent for other governments having differing national interests.

There is a significant risk that this sudden shift in United States policy will embolden other nations to take actions, in disguise to further their own identified “national goals”, that will undermine the Commission’s purposes of preserving the open Internet—not every country shares the Commission’s and Japan’s commitment to openness, free flow of information and transparency.¹⁶

¹⁶ Commissioner McDowell identified this very risk when he indicated that “[a]fter I spoke with regulators from other nations, it became obvious to me that some countries are waiting for the U.S. to assert more government authority over the Internet to help justify an increased state role over Internet management internationally.” With such a limited record of anticompetitive

IV. CONCLUSION

NTT strongly supports the principles of Internet openness, transparency and innovation. But the best way to preserve incentives for continued investment and growth of the Internet is to recognize the needs of operators and desires of consumers for flexible and dynamic network management. Furthermore, by directly regulating the Internet, the Commission risks opening the door for other countries to engage in more restrictive regulation of consumer conduct and network operations on the Internet in furtherance of their own national interests. NTT submits that the Commission should consider the example of Japan, one of the most advanced broadband market in the world where voluntary industry guidelines allowing for dynamic network management coupled with a transparency principle have been working without any major problem .

Respectfully submitted,

Nippon Telegraph & Telephone Corporation

By:

/s/ Satoshi Miura

Satoshi Miura

President and CEO

Dated: January 14, 2010

behavior both in the United States and elsewhere, Commissioner McDowell's concerns are well-founded. *See Separate Statement of Comm'r Robert M. McDowell, Preserving the Open Internet; Broadband Industry Practices*, FCC Rcd at 13,160. *See also* Remarks of Ambassador Philip L. Verveer, U.S. Coordinator for International Communications and Information Policy, at House of Sweden: International Innovation and Broadband (Dec. 3, 2009), <http://www.state.gov/e/eeb/rls/rm/2009/133802.htm> ("[T]he Network Neutrality proceeding has attracted extensive attention around the world. I think it is fair to say that the level of international interest is very nearly universal. In some countries it is being interpreted as an initiative by the United States to regulate the Internet. And we are concerned that in some countries it may be used as a justification for blocking access for purposes of preventing unwelcome political, social, or cultural information from being disseminated to their citizens.").