



January 14, 2010

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Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Matter of Preserving the Open Internet, GN Docket No. 09-191;
Broadband Industry Practices, WC Docket No. 07-52

Dear Ms. Dortch:

BT Americas Inc. ("BTA") files this comment letter on behalf of itself and BT plc's other wholly-owned indirect U.S. subsidiaries (hereinafter referred to as "BT"). BT submits this letter pursuant to the Notice of Proposed Rulemaking released on October 22, 2009, seeking comment on proposed rules that the Federal Communications Commission ("FCC" or "Commission") believes are necessary to preserve an open Internet. While BT welcomes action by the Commission to preserve the openness of the Internet, BT believes that Commission action should be focussed on ensuring fully competitive broadband markets by addressing upstream access bottlenecks both in the residential and business services markets. The Commission's emphasis is instead on adopting rules in the downstream Internet services market to avoid potential harm caused by upstream access market failures. This seems misdirected and potentially harmful given the nascent stage of development of the Internet.

We have commented previously in June 2007 to the FCC about its policies,¹ which in our opinion have since 2001 led to the maintenance of market power in residential broadband access in many local areas across the US, as well as to monopoly power in facilities-based business broadband services. Coupled with the vertical integration of the main broadband access providers this has given rise to concerns about the potential, and indeed the incentive, for such providers to raise additional charges or impose unreasonable restrictions on their customers' Internet use. BT would argue that it is the lack of competition that should be addressed at this time.

¹ See *Comments of BT Americas Inc.*, WC Docket 07-52 (June 15, 2007).

Policymakers should protect and encourage innovation on the Internet not by imposing regulation in the downstream Internet services market where it will struggle to adapt itself to technological change and risk stifling innovation, but by addressing the infrastructure bottlenecks that are the source of the power to discriminate unfairly. The Commission should develop policies that encourage both intermodal and intramodal competition and apply common carrier regulation to broadband providers with significant market power where bottlenecks exist.

The Internet, including its associated access networks, is evolving in terms of its technology, applications, role in Society, and its position within different commercial business models. Nobody can predict with confidence how it will, might, or should change. Current technologies and services should not be fettered, favoured or enshrined in legislation. BT believes that competition is the best way to guarantee freedom to use the Internet while allowing maximum innovation in technology and business models.

BT disagrees with imposing the proposed rules on downstream services instead of fixing the access bottlenecks. That having been said, we have particular concerns about the proposed non-discrimination rule. The Commission's proposal to depart from its common carrier standard of prohibiting only "unjust and unreasonable" discrimination is unwise. To require there to be absolute non-discrimination between "*content, applications, and services*" would, in our opinion, fetter the development of the Internet. It fails to recognize that content, applications, and services all have different carry requirements and to ensure that consumers obtain value for money and choice different technical and commercial models will need to be applied. In the enterprise market, for instance, it is common for customers to demand and pay for different classes and priorities of services in order to ensure reliable performance of business-critical applications. These types of beneficial enterprise services could run afoul of the Commission's proposed ban on discrimination. The danger would be especially high if the enterprise customer is a content, application, or service provider. The approach proposed by the Commission would be a retrograde step in the development of the Internet. The Commission should therefore clarify, as it did with the AT&T/BellSouth merger condition on net neutrality, that any non-discrimination rule would not apply to "enterprise managed IP services, defined as services available only to enterprise customers [] that are separate services from, and can be purchased without . . . wireline broadband Internet access service, including, but not limited to, virtual private network (VPN) services provided to enterprise customers."²

BT also has concerns about the sixth principle of transparency as drafted. BT believes the language, "*must disclose such information concerning network management and other practices as is reasonably required for users and content, application, and service providers to enjoy the protections specified in this part*" is overly burdensome and would result in significant differences of opinion in what may or may not be reasonably required. Competition is the best way to tackle such matters as it then becomes a commercial imperative to ensure that users and

² See *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, p 154.

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service providers receive the information that they need at any one time and are highly satisfied with the service offered.

BT welcomes the detailed analysis by the Commission on network neutrality but believes that any proposed action should be focussed on ensuring that consumers and service providers are served by fully competitive markets rather than creating laws designed as proxies for competition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "SChacko". The signature is written in a cursive, slightly slanted style.

Sheba Chacko
Head, Global Operational Regulation and Americas
Regulation – BT Global Services