

**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
)	
Further Inquiry into Two)	
Under-Developed Issues in)	Public Notice DA 10-1667
the Open Internet Proceeding)	

Reply Comments of TDS Telecommunications Corp.

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1. Introduction and Overview

TDS Telecommunications Corp. (“TDS Telecom”) provides communications services to business and residential customers in 30 states. With 1.1 million access line equivalents in service, TDS Telecom connects customers to phone, broadband, and digital television service in hundreds of rural, suburban, and metropolitan communities. TDS Telecom is the eighth-largest wire-line company in the nation.

An important and relatively new line of business for TDS Telecom and its customers is managed Internet Protocol services (“managed IP services”). This is a suite of services currently marketed to business customers that affords the customer highly flexible control over VoIP services as an alternative to today's switched telephony. TDS Telecom's managed IP services allow users to forward calls from the office to other numbers, to have an inbound call ring simultaneously or sequentially on multiple numbers, and to set up instructions for schedule-dependent call forwarding along with many other features through an on-line interface. TDS Telecom's managed IP services offering involves managed bandwidth between the customer's premises and TDS Telecom's data center; the bandwidth over the facility is managed to support the quality of service needs of the customer's voice and data applications. Priority is accorded to packets identified as voice traffic to ensure quality of service for such traffic as compared to the “best efforts” Internet service available in non-managed offerings by TDS Telecom and other providers. It is readily foreseeable that TDS Telecom's residential customers will be able to subscribe to a version of managed IP services, as today's switched telephony is increasingly supplanted by VoIP.

TDS Telecom's Digital Television offering is an Internet Protocol Television (“IPTV”) product that also relies on managed services. IPTV subscribers enjoy television seamlessly delivered over broadband because the packets are managed and prioritized so as to ensure the requisite quality of service and reliability with minimized latency and jitter.

TDS Telecom focuses in these comments on the portion of the Commission’s Public Notice that inquires about the treatment of specialized services. TDS Telecom uses this term interchangeably with the term “managed services”.

2. The Commission’s Proposed Nondiscrimination Rule is Not Compatible with Managed Services Offerings

In its Comments and Reply Comments on the NPRM in this Docket, TDS Telecom explained that the Commission’s proposed nondiscrimination rule is fundamentally incompatible with managed service offerings. This is because managed services rely upon, in their essence, packet prioritization to deliver the promised service to the customer. The Commission’s adoption of a rule that flatly prohibits discrimination would impose a deprivation upon TDS Telecom customers who subscribe to and rely upon these services and currently consume them with satisfaction. For that reason, TDS Telecom opposed the adoption of the rule in its Comments and Reply Comments on the NPRM and continues to oppose it.

The Public Notice aims to drill down on several aspects of managed services, but is still fundamentally flawed, TDS Telecom most respectfully suggests, because it presses forward with an attempt to treat managed services within a nondiscrimination construct on the theory that managed services may inflict various harms. The Public Notice is premised on the supposition that managed service providers will use managed services offensively to crowd out non-managed services customers from

being able to use the Internet, that providers will intentionally degrade service on the Internet to induce customers to buy managed services to meet their needs, and that they will engage in anti-competitive conduct to favor their own managed services over competitive substitutes. The Public Notice does not cite any evidence that these harms have occurred or that they are even likely to occur, and the comments and reply comments cited to support the concerns and problems rely heavily on speculation that the concerns and problems possibly could occur. In that light, the approaches proposed in the Public Notice go much further than necessary to address hypothetical problems and abuses.

The NPRM is also premised, as AT&T pointed out in its comments on the NPRM, on a mistaken understanding of how traffic moves on the Internet today as it has evolved over time.¹ The same observations apply to this Public Notice. AT&T's comments explain how existing transmission protocols used in broadband Internet access service, separate and apart from managed services offerings, already accord priority to certain kinds of packets in certain circumstances. TDS Telecom endorses AT&T's explanation in this regard to underscore the point that the Internet is already managed to deliver services and managed to minimize the effects of congestion. TDS Telecom urges that the existing system, which offers both managed services and broadband Internet access service, has delivered highly satisfactory results to users of both, apart from a handful of instances that the Commission has handled effectively and efficiently through enforcement proceedings. Pursuing and developing this approach is far preferable to the prescriptive approaches to investment and network management suggested in the Commission's Public Notice.

¹ See AT&T NPRM Comments at 41-43.

3. Robust Disclosure and Enforcement Tools will Protect Consumers and Preserve Innovation More Effectively Than Several of the Approaches Proposed in the Public Notice

The Commission's Public Notice suggests two approaches that rely essentially on providing robust and, of course, accurate information about managed services to consumers and others. TDS supports consumer disclosure as the most important way of ensuring that consumers of broadband Internet access service – for example, a current DSL offering – understand the parameters of the service they purchase and whether and how its performance could be affected by managed services. Such plain English disclosures could also spell out recourse available to the consumer from the provider and from the Commission in the event of underperformance of the service.

TDS Telecom agrees with the positions that AT&T and Verizon outlined in the comments they filed in connection with this Public Notice concerning consumer disclosure and transparency. TDS Telecom emphasizes two key points of agreement with AT&T and Verizon.

First, consumer disclosure should be developed by providers and tested in the marketplace by consumers, not dictated by regulation.² Managed services are evolving quickly and in many directions, which makes this area ill-suited to government regulation and better suited to the development of industry best practices. With robust and transparent disclosure available, consumers can make choices about services and make choices among providers.

Second, public disclosure should focus on what is useful and informative for consumers regarding the terms of conditions of available services and any limitations that may apply to those services. As AT&T points out, detailed technical disclosures beyond such service-related information generally will not be useful to consumers and

² AT&T Public Notice Comments at 37-39; Verizon and Verizon Wireless Public Notice Comments at 40

could provide a roadmap for those who would do mischief or harm to the networks. If the Commission determines that it requires for its own supervisory purposes information to understand the evolution of managed services and their impact on networks, this can be accomplished with high-level requests for information to providers from the Commission, handled with appropriate protections to ensure the confidentiality of such information.³

TDS Telecom believes that the impact of managed services on non-managed services customers will be rare and negligible for the most part. In that light, the Commission should not overweight the hypothetical concerns of commenters to adopt any approach that assumes that managed services will routinely or significantly interfere with other services. The disclosure and enforcement approach that TDS Telecom favors will directly address the likely small number of cases that may arise where there is an actual problem. It avoids the erroneous approach of retooling the entirety of the network of networks and regulating managed services to avoid a small number of hypothetical problems that can be handled within existing legal enforcement regimes.

A disclosure and enforcement approach is far better targeted to police abuses while continuing to foster innovation than those discussed in the Public Notice. It is far preferable to the approach called “Limit Specialized Service Offerings”, which appears to contemplate that regulators would decide which providers’ service offerings really needed to be offered via managed services. This approach would stifle experimentation and creativity in developing new ways to use the Internet and is fundamentally inconsistent with the stated goals of the NPRM.

³ AT&T Public Notice Comments at 39.

Disclosure and enforcement is also preferable to addressing what likely will be a handful of problems by ordering providers to invest in government-prescribed ways or to operate their network in mandated ways as is apparently contemplated in “Guaranteed Capacity for Broadband Internet Access Service”. Such a government mandate may foreseeably conflict with market signals concerning the best ways for companies to invest and operate, and delay overall capacity growth.

A disclosure and enforcement approach is also superior to the proposal that would require “Non-exclusivity in Specialized Services”. The apparent aim of this approach is to make managed service offerings a Title II common carrier service and appears to be premised on the erroneous assumption that managed services are provided over separate “protected channels”.⁴ Requiring a provider to make all managed services offerings available to all comers on the same terms and conditions will reduce providers’ incentives to innovate to increase the availability of Internet-based services of all varieties.

4. Conclusion

For all these reasons, TDS Telecom urges the Commission to take a targeted approach to actual problems if they arise due to managed services offerings by encouraging the development of industry best practices regarding disclosure from each provider to its customers of the services that the provider provides to the customer and any limitations that may pertain to the functionality offered, including any limitations that arise from the provider’s offering of managed services. Deviations from those disclosed practices would then be subject to enforcement actions by the Commission in the event that the provider did not provide prompt and satisfactory redress to the consumer. TDS Telecom urges that this targeted approach

⁴ Vonage NPRM Comments at 28-29

is far superior to investment and engineering mandates concerning how to operate networks, which have performed to provide largely satisfactory service to customers of managed services and all other services to date.

Respectfully submitted,
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By Its Attorney
//signed//



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