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December 14, 2010

Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

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

Dear Chairman Genachowski and Commissioners:

We write today to bring to your attention to a real-world consequence of a Commission policy that fails to fully preserve the open Internet for mobile wireless users.

Today, Allot and Openet, a DPI company and a billing software company, respectively, gave a presentation that reveals in startling detail what harms will be visited upon consumers if the Commission adopts Chairman Julius Genachowski's proposal to explicitly allow mobile wireless operators to violate the long-standing principle of network neutrality.¹ The unholy alliance between these two companies and wireless carriers is a sneak peek at the future we can expect if the Commission passes policies that divide the Internet along mobile and fixed connections -- a market defined by business partnerships built around nickel and diming consumers and controlling the pace of mobile app innovation.

The presentation unveiled new "policy control" hardware/software that will enable mobile wireless providers to block, prioritize and discriminate against Internet content based on its source.² The two companies stated that their new "policy control" solution "enables operators to

¹ This letter's characterization of the draft Order in the Open Internet proceeding is based on numerous widely publicized press reports, each based on unattributed sources both within and external to the Commission. Many reports state that the draft Order's treatment of wireless networks mirrors that in never-introduced legislation by Rep. Henry Waxman (D-Calif.), filed in this proceeding earlier this month. See Letter from Henry A. Waxman, December 1, 2010.

² http://event.on24.com/event/26/70/02/rt/1/documents/slidepdf/final_slide_deck.pdf [also attached to this *ex parte*].

monetize their networks, with a focus on online content-based charging of OTT applications."³ Openet lists among its clients the two largest U.S. mobile wireless providers, AT&T and Verizon.⁴

Slide 7 (see below) of the presentation depicts a customer of Vodafone, a wireless network operator, using a tablet computer, and illustrates how the "Policy Enforcement & Charging" network management tool can be used to charge different discriminatory rates based on the source of Internet content. The slide suggest that the consumer can access Vodafone content free of charge, while paying 2 cents per MB for facebook, 3 euros per month for Skype, and 50 cent per month for the privilege of accessing YouTube.

Slide 9 (see below) discusses how mobile operators will be able to implement "application-specific pricing," and "tiered services."

And slide 18 (see below) discusses "split billing," depicting an iPhone watching a movie. The slide details how such a system would work: "First 15 minutes of the movie streamed for free to user as a promotion. If user doesn't purchase movie, content provider is billed for the 15 minutes of network consumption. If user purchases movie, revenue is shared between operator and content provider."

These slides are not hypothetical scenarios – they reflect active desire by industry participants to engage in such behavior. In fact, the press release announcing the presentation stated that it was being conducted “[d]ue to the great interest shown in this joint solution.”⁵

This brave new discriminatory mobile Internet world should give policymakers pause. Mobile wireless services will never be viable competitors to the telco-cable duopoly if this is their future. And these discriminatory practices will destroy the mobile Internet as an open platform for innovation, which will disproportionately harm the low-income, minority and rural users who are more likely to rely on mobile wireless services as their sole connection to the Internet.

Sincerely,

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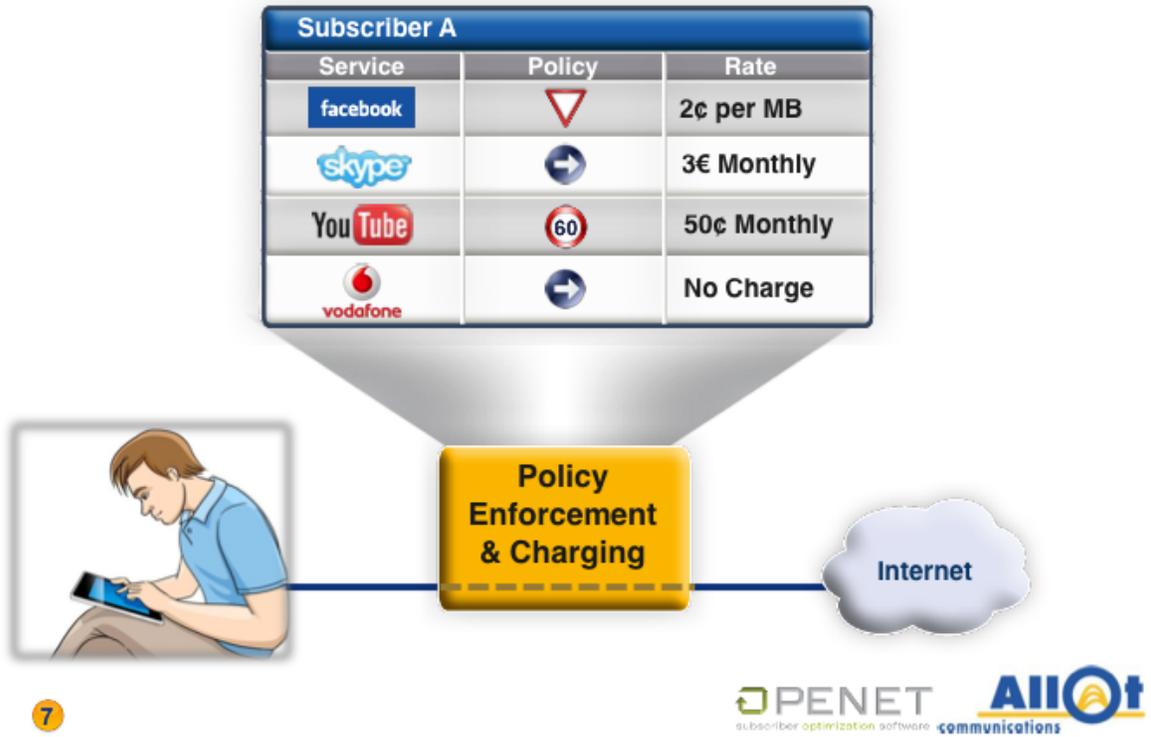
³ <http://www.openet.com/company/news-events/press-releases?id=322&elq=2b49d047c8904a9a84edce5667a7467f>

⁴ <http://www.openet.com/company/clients>

⁵ *Supra* note 2.

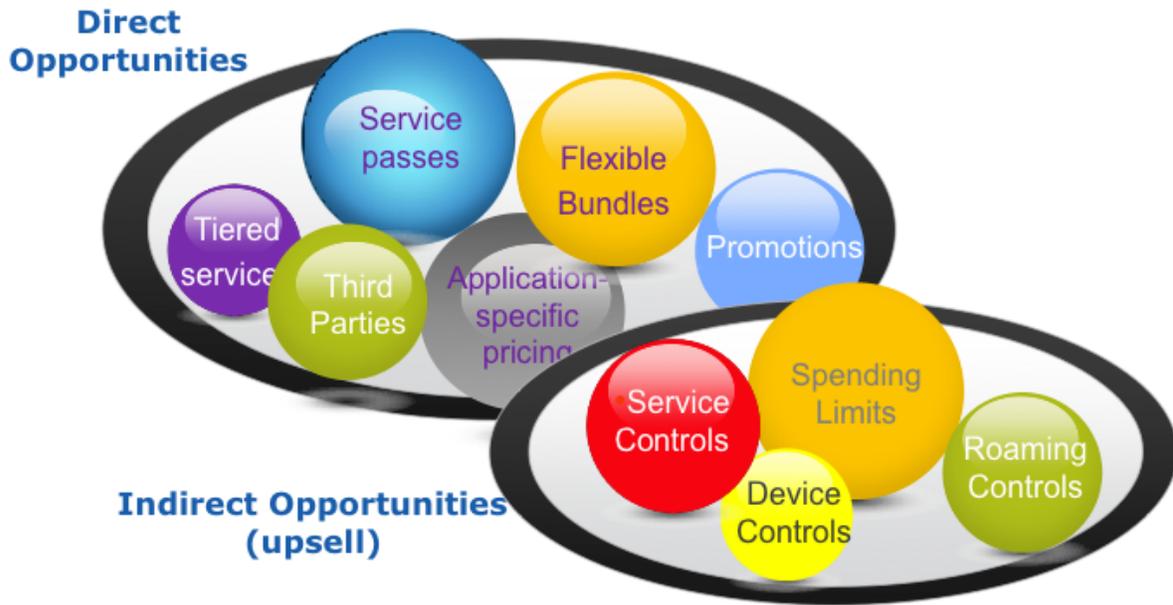
Slide 7

DPI integrated into Policy Control & Charging



Slide 9

Fresh Thinking about Billing, Control, and Usage



9

Slide 18

Use Case: Split Billing



- **First 15 minutes of the movie streamed for free to user as a promotion**
- **If user doesn't purchase movie, content provider is billed for the 15 minutes of network consumption**
- **If user purchases movie, revenue is shared between operator and content provider**

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