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*Via Electronic Filing*

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

***Re: Matter of Protecting and Promoting the Open Internet, GN Docket No. 14-28, WC Docket No. 05-25, RM-10593, Technology Transitions, GN Docket No. 13-5; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, GN Docket No. 12-353***

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 May 15, 2014, seeking comment on proposed rules that the Federal Communications Commission ("FCC" or "Commission") believes are necessary to promote and protect an open Internet.

BT is committed to an open Internet, providing the benefits of full customer choice and commercial innovation. We welcome action by the Commission to preserve the openness of the Internet. BT believes, however, that in order to answer the fundamental question posed by FCC of the right public policy to ensure an open Internet, the Commission should focus on the root of the problem: unregulated market power resulting in infrastructure bottlenecks. The dominance over broadband access exercised by vertically integrated providers, both in the residential and business broadband services markets, could impede an open Internet absent targeted, proportional regulation of bottleneck access services. The Commission should address the problem at its root cause instead of adopting rules in the downstream Internet services market to avoid potential harm caused by upstream access market failures. This approach has the potential to inadvertently restrict innovation and consumer benefits. The Commission should develop policies that encourage both intermodal and intramodal competition and apply

Title II common carrier regulation to the transmission component of broadband services provided by operators with control over bottleneck services. Continuing to rely on telecommunications versus information services distinctions and to further complicate distinctions by treating broadband services provided to edge providers using Title II authority while treating services to end users as information services takes policymakers, industry and consumers further down the path of complexity, uncertainty and unsustainability. The Commission should stick with the tried and true. It has well-established authority to regulate transmission components as telecommunications services. It should do so and foster competition as a method of preserving an open Internet instead of tying the industry and consumers in knots with further complicated rules in the downstream Internet services market.

We have commented previously on open Internet issues in June 2007 and January 2010 to the FCC about its policies,<sup>1</sup> 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 industry consolidation and 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. Easing the negative effects of unconstrained market power in the high capacity special access market, where ILECs earn supra-normal margins<sup>2</sup>, would go a long way to preserving an open internet. This has been the experience of the regulator, telecoms industry and consumers in the UK.

As the US continues with the transition to all-IP networks, the need to ensure an effective competition policy becomes all the more important. Incumbent providers are seeking regulatory and legislative changes that would eviscerate existing network services competition and further entrench and extend their dominance over network chokepoints. After they transition networks to all-IP networks, the major ILECs could have greater control over access chokepoints than they had in a TDM and TDM/IP environment.<sup>3</sup> The concerns about the openness of the Internet that the Commission and commenters have articulated would only increase by greater monopoly control of incumbents over network access facilities.

Policymakers can protect and encourage innovation on the Internet by addressing the infrastructure bottlenecks that are the source of the power to discriminate unfairly – not by imposing regulation in the downstream Internet services market where it will struggle to adapt itself to technological change and risk stifling innovation. The Internet, including its associated access networks, is evolving in terms of its technology,

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<sup>1</sup> *Comments of BT Americas Inc.*, WC Docket 07-52 (June 15, 2007) and GN Docket No. 09-191 (January 14, 2010).

<sup>2</sup> *Economic Benefits of Special Access Price Reductions*, Economists Incorporated (March 2011).

<sup>3</sup> *Comments of BT Americas Inc.*, GN Docket. No. 12-353 (February 25, 2013).

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. Targeted regulation of infrastructure bottlenecks and next generation infrastructure investment can co-exist, and must be embraced to achieve full broadband potential. In the UK, BT is continually upgrading our network so that Internet access service is improving in parallel to the introduction of innovative new services – these are mutually reinforcing and occur against the backdrop of equal, non-discriminatory access to essential inputs.

Regarding the Commission’s NPRM on Protecting and Promoting an Open Internet, BT supports the tentative conclusion to exclude enterprise services from the scope of the rules, as established in the 2010 Open Internet Order.<sup>4</sup> We similarly agree with the Open Internet NPRM’s proposal to exclude virtual private network services, hosting, and data storage services. The distinction between mass market broadband and enterprise services recognizes the very different requirements needed to meet the demands of customers in the enterprise market.

BT supports the Commission’s focus on a “more flexible” approach than the 2010 non-discrimination rules, with the introduction of a “commercially reasonable” standard.<sup>5</sup> Reasonable traffic management practices should be allowed, balanced by transparency. Content, applications, and services all have different carry requirements and to ensure optimum quality of service for all customers at the best price, different technical and commercial models will need to be applied. This is particularly applicable in the enterprise market, where, 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. The tentative conclusion to exclude enterprise services from the rules should clearly extend throughout the Open Internet Order to the non-discrimination rules.

## UK Experience

In the UK, BT along with other major ISPs, operate under a net neutrality Code of Practice launched in July 2012, which lays out a clear, consistent and transparent set of net neutrality principles, treating all traffic consistently, regardless of its source, and being fully transparent about any types of traffic we may manage in order to minimise network congestion.<sup>6</sup> This code, combined with UK regulator Ofcom’s existing powers, and the high degree of existing competition in the UK, provide an extremely strong safeguard for the neutrality of the internet. BT believes that if access is effectively

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<sup>4</sup> *Notice of Proposed Rulemaking, Protecting and Promoting the Open Internet*, GN Docket No. 14-28, FCC, (May 15, 2014) (“Open Internet NPRM”) ¶ 58.

<sup>5</sup> *Open Internet NPRM* ¶ 116.

<sup>6</sup> <http://www.broadbanduk.org/2012/07/25/isps-launch-open-internet-code-of-practice/>

regulated, vibrant competition will emerge, and if the major industry players commit to net neutrality codes of conduct to protect consumers, there is no need to layer on numerous open Internet regulations as well.

It is our belief that competition maximizes broadband investment and innovation. Competition in the provision of communication services in the UK has delivered real benefits for consumers in terms of choice, quality and value for money, including real GDP growth for the UK economy. Consumers in the UK are benefiting from one of the world's most price competitive marketplaces for communications services.<sup>7</sup> In contrast, the failure to effectively regulate the US wholesale access market has left Americans with higher prices and slower speeds.<sup>8</sup> BT encourages the Commission to address access bottlenecks – the resulting competition will guarantee an open Internet while allowing maximum innovation in technology and business models, and maximizing the potential of the Internet for all customers.

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,

*/s/ Jennifer Taylor Hodges*

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BT

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<sup>7</sup> *International Communications Market*, Ofcom (December 2013).

<sup>8</sup> Ookla Net Index and OECD Broadband Portal both show broadband prices higher and speeds lower in the US than in parts of Europe.