



United States Federal Communications Commission
Submission to the 2010 ITU Global Symposium for Regulators' Consultation
Dakar, Senegal

Consultation: Principles for Enabling Open Networks

The United States Federal Communications Commission has a statutory responsibility to preserve and promote advanced communications networks that are accessible to the people of the United States, and that serve national purposes.

The Commission has considered the issue of Internet openness in a wide variety of contexts and proceedings, and has provided abundant opportunities for public participation, including through public hearings and requests for written comment, which have generated over 100,000 pages of input in approximately 40,000 filings from interested companies, organizations, and individuals.¹ Throughout this extensive process, one point has attracted nearly unanimous support: the Internet's openness – the absence of gatekeepers, either government or private sector -- has been critical to its success.

In October 2009, the FCC released a Notice of Proposed Rulemaking (NPRM) seeking public input on draft rules intended to safeguard the openness of the Internet. We submit these principles and rules to the 2010 ITU GSR consultation for consideration in the ***best practices for enabling open networks*** to be released at the conclusion of the Symposium. Specifically, to encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet, the Commission proposed in the NPRM to codify the following four principles contained in the FCC's 2005 *Internet Policy Statement*:

- Consumers are entitled to access the lawful Internet content of their choice.
- Consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement.
- Consumers are entitled to connect their choice of legal devices that do not harm the network.

¹ These include: a unanimous policy statement, a notice of inquiry on broadband industry practices, public comment on several petitions for rulemaking, conditions associated with significant communications industry mergers, the rules for a major spectrum auction, and specific enforcement actions against particular parties. *See Preserving the Open Internet/Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Notice of Proposed Rulemaking, 24 FCC Rcd 13064, para. 2 (2009).

- Consumers are entitled to competition among network providers, application and service providers, and content providers.²

Accordingly, the NPRM proposes to implement these principles through the following draft rules:

- A provider of broadband Internet access service may not prevent any of its users from sending or receiving the lawful content of the user's choice over the Internet.
- A provider of broadband Internet access service may not prevent any of its users from running the lawful applications or using the lawful services of the user's choice.
- A provider of broadband Internet access service may not prevent any of its users from connecting to and using on its network the user's choice of lawful devices that do not harm the network.
- A provider of broadband Internet access service may not deprive any of its users of the user's entitlement to competition among network providers, application providers, service providers, and content providers.

The NPRM also proposes to codify two new additional principles of nondiscrimination and transparency through the following draft rules:

- A provider of broadband Internet access service must treat lawful content, applications, and services in a nondiscriminatory manner.
- A provider of broadband Internet access service must disclose such information concerning network management and other practices as is reasonably required for subscribers and content, application, and service providers to enjoy the protections specified above.³

Each of the six principles and proposed rules would be *subject to reasonable network management practices*, and would apply to all platforms for broadband Internet access, though how and when the principles apply to mobile wireless broadband may differ. These principles are not intended to discourage or stop broadband Internet access service providers from preventing the transfer of unlawful content, such as the unlawful distribution of copyrighted works, or from complying with other laws.

In addition, the principles would not supersede any obligation a broadband Internet access service provider may have—or limit its ability—to deliver emergency

² 20 FCC Rcd 14986 (2005) (*Internet Policy Statement*).

³ *See Preserving the Open Internet/Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Notice of Proposed Rulemaking, 24 FCC Rcd 13064, paras. 16, 92 (2009).

communications or to address the needs of law enforcement, public safety, or national or homeland security authorities, consistent with applicable law.

The formal comment period for the Open Internet proceeding recently closed on November 4, but the public may still provide input on this proceeding through comments on the blog at OpenInternet.gov.