



James W. Cicconi
Senior Executive Vice President
External and Legislative Affairs

AT&T Services, Inc.
1120 Twentieth Street, NW
Suite 1000
Washington, DC 20036

T: 202.457.2233
F: 202.457.2244
james.cicconi@att.com
www.att.com

December 15, 2009

Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Preserving the Open Internet, GN Docket No. 09-191

Dear Chairman Genachowski:

Your speech earlier this month at the Innovation Economy Conference, titled “Innovation in a Broadband World,” neatly summarized the last 25 years of Internet innovation – technological, business and social – that has transformed the world economy. You correctly highlighted that the United States has been at the forefront of innovation but that we face several challenges around broadband infrastructure deployment and adoption that the communications industry and government policymakers must work together collectively to solve. At AT&T, we are committed to working with the President, the Congress and the Commission to achieve the goal of ubiquitous, affordable broadband as set forth in your speech. We also understand that this proceeding, Preserving the Open Internet, is a key part of your plan to achieve those goals.

As the “net neutrality” debate has evolved over the past several years, there are three points on which all parties seem to agree. First and foremost, consumers must remain at the center of every discussion we have on Internet policy. Second, preserving the open character of the Internet is critically important to ensuring that all consumers have the opportunity to be creators of content and innovators from their homes or their garages. Finally, and most fundamentally to AT&T, government policy must preserve and expand incentives that drive the substantial private investment necessary so that the promise of the Internet is fully realized and maximally available. Any Internet policy should balance these three objectives.

The Commission has adopted a notice of proposed rulemaking to examine whether and how to formalize and expand its Internet principles to include, among other things, the concept of nondiscrimination. While we believe that the current policy framework for the wireline broadband Internet set forth in the *Internet Policy Statement* achieves the balance identified above, we support the Commission’s efforts to engage in a productive discussion on these important issues. In that spirit, AT&T believes that, should the Commission choose to move forward on the issue of nondiscrimination, some recent proposals provide a constructive framework for that discussion. On October 22, 2009, Senator Olympia Snowe submitted a letter on the topic of “net neutrality.” Senator Snowe identified a set of objectives for federal policy in this area: maintaining Internet “openness and freedom” for all Americans while at the same time ensuring that regulations do not undermine our efforts to deploy affordable, ubiquitous broadband or inappropriately infringe on the “flexibility for network operators to effectively manage their networks in order to ensure quality of service to all customers.” In Senator

Snowe's words, the Commission should be seeking to safeguard both consumers and application developers from "unreasonable and anticompetitive discrimination that would adversely affect Internet users' experience or choice." Although we believe that specific, prescriptive regulatory requirements are not needed to accomplish this objective – particularly in the robustly competitive wireless broadband environment where there are a multitude of complex network management challenges – we agree with Senator Snowe that any policy promoted here by the Commission that seeks to achieve "non-discrimination" should, at a minimum, be flexible enough to accommodate the types of voluntary business agreements that have been permitted for 75 years under Section 202 of the Communications Act of 1934 which forbade "unjust or unreasonable discrimination."

In addition to Senator Snowe's letter, on October 21, Verizon Wireless and Google jointly issued a blogpost, titled "Finding Common Ground on an Open Internet," by Lowell McAdam, CEO of Verizon Wireless and Eric Schmidt, CEO of Google. Those companies agreed that an open Internet is crucial for consumer choice while recognizing that "broadband network providers should have the flexibility to manage their networks to deal with issues like traffic congestion, spam, 'malware' and denial of service attacks, as well as other threats that may emerge in the future – so long as they do it reasonably, consistent with their customers' preferences, and don't unreasonably discriminate in ways that either harm users or are anti-competitive." Consistent with Senator Snowe's observations, Verizon Wireless and Google also both recognized the importance of private investment for "increasing broadband capacity and the intelligence of networks," thereby "creating the infrastructure to support ever more sophisticated applications."

As discussed, AT&T supports Commission efforts to achieve these same objectives. If the Commission ultimately goes beyond the *status quo* in this proceeding, it should carefully consider the framework proposed by Senator Snowe, and echoed, in our view, by Verizon Wireless and Google, which eschews a strict nondiscrimination standard and instead focuses on "unreasonable and anticompetitive" forms of discrimination that adversely affect consumers. By focusing on unreasonable and anticompetitive discrimination, the Commission can enable innovation to occur at all levels of the Internet but still maintain the ability to respond on a case-by-case basis to allegations of unreasonable and anticompetitive conduct that materially harms consumers. By contrast, a strict nondiscrimination standard could inadvertently limit the availability of creative and innovative services that consumers may want to purchase. Worse still, a strict nondiscrimination rule would completely ban *voluntary* commercial agreements for the paid provision of certain value-added broadband services which would needlessly deprive market participants, including content providers, from willingly obtaining services that could improve consumers' Internet experiences. Thus, such a ban could harm innovation and potentially delay critical infrastructure investment by prohibiting services that prove to be neither anti-consumer nor anti-competitive. While some of these services may in the end be classified as "managed services" that are not subject to the proposed rules, we believe there should be no regulatory uncertainty when it comes to innovation and that Senator Snowe's framework would help ensure that result.

In addition, consistent with Senator Snowe's emphasis on performing "the essential due diligence in collecting the necessary information to develop sound public policy" in this area, AT&T applauds the Commission's proposal to establish a "Technical Advisory Process." The

Internet ecosystem has long enjoyed a robustly interactive and collaborative process for the examination and resolution of engineering questions and concerns. With the right process in place, such issues can be identified and discussed among experts *before* they ever require attention from policymakers. Indeed, it is conceivable that had such a process been in place, the Comcast-BiTorrent dispute might have been avoided entirely.

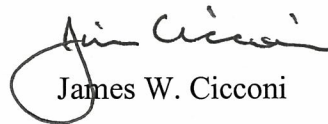
Such a process is far more likely to succeed if it results in all Internet players having a better understanding of each other's concerns and interests. Ultimately, the process may require the creation of multiple "interconnected" bodies to address various sets of issues. A Commission advisory group could foment such private sector linkages by initiating these discussions. Such a group could be a source of expert advice for the Commission on complex technical issues. It could also provide a venue for airing concerns and seeking consensus, without the need for regulatory intervention. Finally, it could lead to the creation of other collaborative efforts between and among the participants.

We believe that all stakeholders will benefit from the Technical Advisory Process if, as proposed, the Commission obtains "the best technical information from a broad range of engineers" based on "sound engineering principles and not on politics." To ensure that it receives the "best technical information," we encourage the Commission to include in the advisory process Chief Technology Officers and other similarly qualified individuals that have practical experience in dealing with the myriad network management challenges facing the broadband industry today and in the future.

* * *

We welcome the opportunity to work with the Commission in shaping a wireline Internet policy and Technical Advisory Process that furthers these goals, and we are grateful to Senator Snowe for illuminating a framework for further discussion.

Sincerely,



James W. Cicconi

cc: Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker

Your submission has been accepted

ECFS Filing Receipt - Confirmation number: 20091215607995

Proceeding

Name	Subject
09-191	In the Matter of Preserving the Open Internet Broadband Industry Practices. .

Contact Info

Name of Filer: AT&T Services, Inc.
Attorney/Author Name: James W. Cicconi

Address

Address For: Filer
Address Line 1: 1120 20th Street, N.W.
Address Line 2: Suite 1000
City: Washington
State: DISTRICT OF COLUMBIA
Zip: 20036

Details

exparte: YES
Type of Filing: NOTICE OF EXPARTE

Document(s)

File Name	Custom Description	Size
JWC to Genachowski 12 15 09.pdf		2 MB

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