



VERIZON France

Tour Franklin
La Défense 8
100 – 101, Terrasse Boieldieu
92042 Paris La Défense Cedex
France

Tél. : +33 1 53 75 82 00

Fax : +33 1 47 78 05 94

**Direction Générale de la Compétitivité
de l'Industrie et des Services
STIC/SDRU
Le Bervil
12 rue Villiot
75012 PARIS CEDEX 12**

Paris La Défense, le 17 mai 2010

Objet : Réponse de Verizon à la consultation publique sur la « Neutralité du Net »

Monsieur le Directeur,

Verizon remercie le Secrétariat d'Etat à la Prospective et au Développement de l'économie numérique de lui donner l'occasion d'exprimer ses points de vue et avis sur la « neutralité du Net » dans le cadre de la consultation publique lancée à cet effet, et nous vous prions de bien vouloir trouver ci-joint sa contribution de Verizon en réponse à ladite consultation.

Eu égard au caractère crucial des questions abordées, le sujet a été traité avec la plus grande attention par la Direction Internationale des Affaires Réglementaires du groupe Verizon Communications Inc., notre maison mère aux Etats-Unis. C'est la raison pour laquelle la réponse ci-jointe est rédigée en anglais. Une traduction en français pourra cependant vous être adressée si vous le souhaitez.

Nous précisons par ailleurs que les commentaires de Verizon transmis ici dans le cadre de la consultation publique susvisée ne comportent aucun élément relevant du secret des affaires.

Demeurant à votre disposition et à celle de vos services pour tout complément d'information que vous souhaiteriez, nous vous prions d'agréer, Monsieur le Directeur, l'expression de notre considération distinguée.

Pascal Hugueny
Directeur des Affaires Publiques et Réglementaires
Verizon France

Cc : Chris Boam, Director International Regulatory Affairs & Public Policy – Verizon Communications Inc.



PUBLIC CONSULTATION ON “NET NEUTRALITY”

FRANCE – May 17th, 2010

Contribution from VERIZON

The depth of detail solicited by the questionnaire is such that a truly comprehensive response would not have been possible. However, we have attempted to provide responses to several of the questions posed by drawing from our experiences on these issues – both in Europe and in the context of the current proceeding in the U.S.

Given that reply comments were due into the FCC’s Net Neutrality Notice of Proposed Rulemaking (NPRM) in the U.S. on Monday, April 26th, the timing of that deadline has also helped facilitate some responses here. Where appropriate, we have also referenced other documents and filings that might provide information relevant to particular questions.

Question: Do you agree with the definition of Net Neutrality and the dimensions of the debate as presented in the consultation document?

An overarching characteristic of the “net neutrality” debate globally has been that the meaning of the term varies greatly and changes continually. While there are aspects of the definition with which we support, there are others that represent an extreme – and largely discredited – aspect of the debate. For instance, the four principles cited on page 2 of the public consultation paper are very similar to the broadband “Connectivity Principles” previously endorsed by the FCC. These principles are consistent not only with consumers’ expectations, but also with the manner in which Verizon and other providers of wireline Internet access service have provided their services.

We agree with these four principles as general guidelines to govern the behavior of participants throughout the ecosystem. The dynamic nature of the Internet, and its rapid growth as a tool for commerce and social change, is best supported through industry principles and best practices. Creating prescriptive new regulation, on the other hand, would deter investment and innovation and is unnecessary given the lack of any evidence of current problem to be addressed. A competitive market where innovation is permitted to continue will mean more options for consumers and more opportunities for new investments, new business models and new services.

In contrast to the above, the consultation paper also refers to what it terms “a principle of non-discrimination of traffic carried on the Internet – in other words, the idea that from a technical perspective, all data are transported and treated in an undifferentiated way, from their point of origin to destination.” This form of strict nondiscrimination is an extreme view, as most parties concede that many forms of differentiation or discrimination benefit consumers. The limited number of “net neutrality”



advocates taking this extreme view have typically suggested that what the Internet really needs is a first-in-first-out traffic model of packet delivery – an ‘all bits must be treated the same’ approach. This would be a radical change – the medium simply has never worked that way.

By prohibiting the beneficial differentiation among different types of network traffic, or forcing network operators to pre-justify use of certain network management technologies, many network responses to real consumer needs would cease or be far less effective. The services potentially implicated would include:

— For businesses:

- Blocking a distributed denial of service attack
- Implementing new file compression techniques
- Adding bandwidth to links regularly exceeding 80% of their designed capacity
- Facilitating seamless video and interactive conferencing solutions
- Providing virtual private networks (VPNs).
- Delivering enterprise-wide Voice-over-IP (VoIP) and ‘IP centrex’ services

— For consumers:

- Blocking spam or phishing emails
- Using parental controls for the purpose of protection of minors from inappropriate online content
- Enabling real-time home medical monitoring
- Facilitating multi-player interactive gaming
- Delivering the highest quality IP television experience

Many of the net neutrality-related concerns with regard to network management tools relate to behaviors that, in the absence of market power, would tend to enhance consumer welfare – whether service provision is for consumers or enterprises – by creating service choice and improving the quality of those choices.

Question: Have you ever been faced with difficulties related to Net neutrality on the French market? If yes, which?

To our knowledge, we have not encountered any difficulties – or for that matter, rumours of difficulties – related to key concerns often raised in support of “net neutrality” rules. This conclusion would be in line with our experience in the U.S. as well – many of the concerns raised in the context of “net neutrality” generally are purely theoretical concerns that have not manifested themselves in the marketplace. This is not surprising. The notion that providers are disciplined by the competitive market, and the need to retain and add customers by responding to consumer demand, has proven to be true, and existing competition already prevents practices that are anticompetitive and therefore harmful to consumers. For instance, in mid-2009, a customer survey found that an Internet service provider restricting or limiting the use of internet services or applications would lose more than a quarter of its customers to competitors,¹ underlining the fierce competition in European broadband markets. Moreover, existing law is in place

¹ Number of consumers who would switch to another ISP with either the same or higher prices, in Synovate, “Consumer expectations of the Internet”, research done on behalf of Skype, Google and Yahoo.



and provides a backdrop to deter and address any anticompetitive practices. EU sector-specific rules and competition law will either prevent or severely sanction any such behaviour.

Question: Do rules that exist today in sectoral regulation and competition seem sufficient to you to answer the questions raised about net neutrality? If not, in what areas should they be clarified or strengthened, and by what means (legislation / regulation, definition of general guidelines by the regulator, collective agreement, etc.)?

The Network Management Coalition – which is composed of twenty-seven international companies and industry associations representing a broad cross-section of Internet industries – framed four principles of key importance to consumers. These principles were framed to underscore the issues of consumer choice that were at stake in the context of the network management-related language debated in revision of the European Electronic Communications Regulatory Framework:

- **Meaningful Transparency** – That users will receive adequate information about the products / services they purchase in order to make the choice most appropriate to them (including, for example, such elements as relevant rates, terms and conditions, or any limitations that apply).
- **Responsible behavior** – That service providers and others in the Internet value chain will act responsibly in the broadband world or be held responsible by the relevant regulatory authorities.
- **Continuous Innovation** – to preserve and improve the quality of the user experience, ensuring, *inter alia*, that:
 - Internet mailboxes will not be overstuffed with spam.
 - Users’ online experiences will not be unfairly degraded or disrupted due to congestion from the online activities of their neighbor next-door.
 - The services that users pay for will not be susceptible to a variety of online attacks or other threats from malware of various kinds.
 - The market will continue to offer new and differentiated services and content.
- **Choice** – When consumers have meaningful information about the nature of their services and the practices of their providers, in a competitive market, they will choose their own ‘winner’ in the marketplace according to their own needs and budget.²

In the comments that have been filed in response to the FCC’s NRPM, including the most recent reply comments filed on April 26th, virtually all commenters have been in agreement that greater transparency would be particularly beneficial, and that the FCC should encourage self-governance efforts, as described below, to develop practices and standards for transparency.³ An increased and comprehensive focus on transparency, included in the promotion the adoption of best practices and industry

² See Ensuring Network Stability and Consumer Confidence in Competitive Markets (16 Feb. 2009), p1, at: <http://www.cableeurope.eu/index.php?mact=Publications,cntnt01,details,0&cntnt01documentid=113&cntnt01returnid=74>.

³ See Preserving an Open Internet: Summary of Verizon’s Reply Comments on the FCC’s Net Neutrality Notice of Proposed Rulemaking, in FCC Dkt. 09-191, WC Dkt. 07-52 (Apr. 26, 2010), at 3.



guidelines, would be fundamental to enable well-informed consumer choices under the principles outlined above.

As Verizon wrote to the FCC, providers typically already are disclosing key terms and conditions related to use of their services. Indeed, a highly competitive market for broadband services means that providers have a strong incentive to develop and maintain a reputation for treating customers fairly – which includes providing clear and accurate information that is material to consumers in choosing what products and services to use.⁴ Moreover, the absence of any regulatory prescription for what disclosures are required gives providers the flexibility to respond to consumer feedback and disclose the information that is most meaningful and relevant to their services and to try different and innovative ways of delivering and improving those disclosures.

A focus on informed consumer choice also will help deter providers from adopting network management or other practices that are anticompetitive and harm consumers. The notion that providers are disciplined by the competitive market, and the need to retain and add customers by responding to consumer demand, has proven to be true in this case as well. For instance, as discussed in the context of the FCC’s NPRM, in both the *Comcast* and *Madison River* examples to which the FCC had referred, the provider had not previously disclosed that it was blocking specific applications desired by users, and it ceased or altered its practices once they were disclosed.⁵ Thus, to the extent a “problem” existed at all, increased transparency addressed it.

Importantly, the need for transparency applies to providers throughout the broadband space – whether providers of networks, applications and content, or devices. In particular, application and content providers should be expected to disclose practices that may affect a consumer’s use of the Internet. For example, an application provider should disclose the fact that a particular application “hogs” bandwidth and thus may degrade a consumer’s ability to simultaneously use another service or consume a significant portion of a consumer’s bandwidth allocation. Likewise, a search engine should disclose algorithms that block particular types of content or applications – a practice that can clearly implicate a user’s ability to access lawful content and applications as a practical matter.

A number of the comments filed in response to the FCC’s NPRM, including Verizon and Google in their joint filing,⁶ also noted that the Internet has thrived in part because of its model of self-governance and industry collaboration, guided by expert bodies such as the Internet Engineering Task Force. The filing proposes a process to develop standards for dealing with bad actors on the Internet, including the creation of a “Technical Advisory Group” – that will help discipline the industry, resolve disputes without the necessity of government intervention, and be an advisor for policymakers.

The Technical Advisory Group (or “TAG”) recommended in the Verizon/Google joint filing would be made up of technical experts from a wide array of

⁴ See Comments of Verizon and Verizon Wireless, in “in the Matter of Preserving the Open Internet and Broadband Industry Practices” [hereinafter “Verizon Comments”], FCC GN Dkt. 09-191, WC Dkt. 07-52 (14 Jan. 2010), at 50.

⁵ See *id.* The FCC’s NPRM pointed only to two isolated instances on the wireline side: an incident in which a small rural telephone company, Madison River, tried to block users from placing VoIP calls over their DSL connections, and a case in which Comcast degraded BitTorrent P2P traffic.

⁶ See Google and Verizon Joint Submission on the Open Internet, in FCC Dkt. 09-191, WC Dkt. 07-52 (Jan. 14, 2010), at: <http://www.scribd.com/doc/25258470/Google-and-Verizon-Joint-Submission-on-the-Open-Internet>.



interests and sectors. One of its primary roles would be to set the norms of behavior and operation that will continue to preserve and protect the Internet as we know it today. The TAG would also provide a forum for dispute resolution. Technical advisory groups, which can provide guidance about particular issues raised, help develop best practices and standards, and help to resolve disputes, should be encouraged.

Question: Do you think that a distinction between fixed Internet and mobile Internet is necessary in the analysis?

Yes. While the case for new regulation of any broadband services has not been made, regulating wireless broadband services would be particularly harmful to consumers given the unique competitive, technical, and operational circumstances of these emerging services.

First, as the FCC has repeatedly found in the U.S., wireless services are highly competitive, with ongoing investment and innovation that have brought tremendous consumer benefits, and the wireless industry has moved decisively to promote openness in response to consumer demand and technological advancements that allow it to do so. *Second*, wireless services face unique technological and operational constraints, such as having to deal with variable demand at cell sites given the changing volume and mix of subscribers resulting from mobility and the capacity constraints imposed by spectrum. *And third*, wireless broadband services are still in their infancy, and carriers are now making massive investments to begin deploying fourth-generation (“4G”) technologies that will provide far greater speeds and produce the long sought after ubiquitous third (indeed, fourth, fifth and sixth) broadband pipe into the home.

Question: Do you think that a distinction according to various Internet services is necessary in the analysis?

This is a question that we addressed in part in our initial comments on January 14, 2010 to the U.S. FCC in its NPRM. In those comments, we stated that:

The dividing line between Internet access and “managed services” is becoming increasingly blurred as more and more services integrate content or features from the Internet or connect directly or through a proxy with the Internet. Any attempt to define a fixed category of permissible services inevitably will create ambiguities and limit development of innovative new services that do not fit neatly within any definition adopted today. Such innovations, of course, benefit consumers by offering them even more choices.⁷

In its NPRM, the FCC had proposed to define “broadband Internet access service” as the provision of IP data transmission between an end user and any “endpoints reachable, directly or through a proxy, via a globally unique Internet address assigned by the Internet Assigned Numbers Authority.”⁸ However, we continued:

[S]ome services that clearly should be deemed “managed” or “specialized,” including many private network offerings, would appear to fall within that definition. For example, many VoIP services used by enterprise customers draw on

⁷ See Verizon Comments, supra note 4.

⁸ See in the matter of Preserving the Open Internet and Broadband Industry Practices, FCC NPRM, GN Dkt. 09-191, WC Dkt. 07-52 (Oct. 22, 2009), Appendix A, § 8.3, at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-93A1.pdf.



public IP addresses. And, as noted above, more and more services increasingly integrate selected content or features from the Internet (e.g., the ‘Widgets’ component of Verizon’s FiOS FTTH service, which allows users to access certain endpoints such as Facebook that are reachable using the Internet). There is no basis to impose the proposed regulations on these services just because they draw in part of specific content or features from the Internet or just happen to involve the use of a public IP address.

That is particularly true with respect to private IP services provided to enterprise customers that allow them to deliver data over Verizon’s IP network with the flexibility to control the priority and security afforded that traffic. Because such services are distinct from Internet access services (even if some customers may also incidentally use their private network to access content on the public Internet), they, and other services sold to business customers, have not been considered subject to the Commission’s wireline broadband principles or been the focus of debates concerning “net neutrality,” and these offerings presumably would not be affected by the Commission’s proposed rules. Indeed, it would make little sense to impose requirements about access to all content and applications on the public Internet or “nondiscrimination” when customers of such services are not intending to purchase undifferentiated access to the public Internet.⁹

Although the lines as to what is or is not an ‘Internet access’ service are increasingly blurred, the above does help particularly to illustrate that network neutrality-related powers, however relevant some may consider them in the context of consumer services, would be wholly inappropriate to apply in the context of enterprise service delivery. Given the present drive to implement the revised European Electronic Communications Regulatory Framework into national laws, this distinction is particularly relevant.

For instance, most of our corporate customers seek services on our private IP (PIP) network, which is distinct from the Public Internet. Certain services such as PIP involve proprietary networks and a high degree of management, often at the customer’s direction. These clearly should fall within any “managed services” exception to the powers envisaged in the revised Universal Service Directive’s Recital 34, and particularly, the application of Article 22(3) powers to set minimum quality levels for network transmission services.¹⁰ However, as discussed above, it is also true that corporate customers purchase and use what might be termed as traditional ‘Internet access’, for instance, as a component of our Verizon Secure Gateway mobility offering. Such services utilize the Public Internet, but do so in a secure manner with bespoke quality of service requirements that are not only transparent, but also very often dictated by the customer. Thus, it would insufficient to solely suggest that the revised Framework’s rules, as implemented into national powers, should exempt proprietary networks. And further, it would not be a basis upon which to distinguish infrastructure providers from others in the Internet ecosystem and single them out for exclusive regulatory burdens.

As we recommended to the FCC in the context of the NPRM, rather than trying to define or predetermine a fixed category of “permissible” services in some static or artificial way, it would be more appropriate to emphasize transparency – to make clear that

⁹ See Verizon Comments, *supra* note 4, at 77-78.

¹⁰ Directive 2009/136/EC, on Universal Service and Users’ Rights relating to Electronic Communications Networks and Services, amending Directive 2002/22/EC, O.J. vol. 52, L 337/11 *et seq.* [Universal Service Directive].



any provider that offers traditional Internet access that allows consumers to access any lawful content and applications also is free to offer consumers the option of purchasing any and all additional services that the provider chooses to provide.¹¹ This will give consumers additional choices and allow market forces to determine what services best meet consumer demand. And, it would certainly be a preferable alternative to having national regulatory authorities be in the business of trying to identify or define what is or is not a permissible “managed service” in the course of exercising power pursuant to the Universal Service Directive. However, to the extent that an NRA needs to develop a dividing line as to how or where the new rules should be applied, they should limit application only to traditional wireline public Internet access services – i.e., services that are expressly sold as offering the public access to all lawful endpoints on the public Internet – as well as providers of content, applications, and services on the public Internet that use those connections. Although Verizon does not see a need for additional regulation of any providers in the Internet space at this time, given that the lines between “network providers” and providers of other Internet services, content and applications has blurred and is becoming increasingly meaningless, it would be particularly inappropriate for policymakers to single out those investing in broadband infrastructure for additional regulation. Doing so would undermine needed investment and innovation in smarter and more capable networks, distort competition, and deny consumers the benefits resulting from the ongoing evolution of broadband networks and services.

¹¹ See Verizon Comments, supra note 4, at 78. Several other commenters in the U.S. proceeding, who were otherwise equivocal on the issue of whether network neutrality rules are necessary, agreed with the need for caution, particularly in the context of enterprise services provision:

“As it considers adopting new regulations in this area, the Commission [FCC] should mitigate any potential negative effects of such regulations on Internet innovation, development, and investment. The Commission should adopt any such regulations only for providers of broadband Internet access services, and it should not seek to regulate enterprise services, including those provided by Akamai, that do not “supplant or otherwise negatively affect” the public Internet.”

E.g., Comments of Akamai Technologies, Inc., in FCC GN Dkt. 09-191, 07-52 (Jan. 14, 2010), at 18, at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020376186>.