



## MiCTA Legislative & Regulatory Update Special Update – November 2009

### ***The News You REALLY Can Use!***

By  
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With a number of important items being released by the FCC recently, we thought it would be appropriate to provide this “Special Update” between the regular quarterly issues to make sure MiCTA members have access to this information.

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#### **FCC Seeks Public Input on Net Neutrality Options**

In the next chapter of a longstanding effort to preserve the free and open Internet, the Federal Communications Commission is seeking public input on draft rules that would codify and supplement existing Internet openness principles. As such, on October 22<sup>nd</sup>, they issued a Notice of Inquiry.

The FCC has addressed openness issues in a variety of contexts and proceedings, albeit without codifying specific rules for such. Their efforts did, however include: a unanimous policy statement in 2005, a notice of inquiry on broadband industry practices in 2007, public comment on several petitions for rulemaking, conditions associated with significant communications industry mergers, the rules for the 700 MHz spectrum auction in 2007, specific enforcement actions, and public en banc hearings. During this time period, opportunities for public participation have generated over 100,000 pages of input in approximately 40,000 filings from interested parties and members of the public.

The process this Notice initiates will build upon the existing record at the FCC to identify the best means to achieve the goal of preserving and promoting the open Internet.

In their announcement, it was good to hear that the FCC Recognized that the proposed framework needs to balance potentially competing interests while helping to ensure an open, safe, and secure Internet, they stated the draft rules would permit broadband Internet access service providers to engage in reasonable network management, including but not limited to reasonable practices to reduce or mitigate the effects of network congestion.

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Under the draft proposed rules, subject to reasonable network management, a provider of broadband Internet access service:

1. would not be allowed to prevent any of its users from sending or receiving the lawful content of the user's choice over the Internet;
2. would not be allowed to prevent any of its users from running the lawful applications or using the lawful services of the user's choice;
3. would not be allowed to 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;
4. would not be allowed to deprive any of its users of the user's entitlement to competition among network providers, application providers, service providers, and content providers;
5. would be required to treat lawful content, applications, and services in a nondiscriminatory manner; and
6. would be required to disclose such information concerning network management and other practices as is reasonably required for users and content, application, and service providers to enjoy the protections specified in this rulemaking.

With such a massive and critical aspect of the future of the Internet, I'm hoping some MiCTA member companies will choose to make comment to the FCC. I do have to say that a lot of discussion I've heard at some higher levels is so esoteric in nature that it precludes the practicality of being a provider trying to run their network, but instead presumes an idealistic or almost-utopian Internet environment, which most certainly does-not and never-will exist on this planet.

To access the Notice of Inquiry (NOI):

[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-09-93A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-93A1.pdf)

### **In the Meantime, Canada Makes Net Neutrality Rules**

In late October, the Canadian Radio-Television and Telecommunications Commission (CRTC) issued a ruling on Net Neutrality.

The CRTC essentially said that the telecom and cable providers have a right to manage traffic on their networks and as such should not be hindered by overly restrictive regulation on issues of "net neutrality. However, the CRTC said they have to provide their wholesale customers at least 60 days notice. They also have to seek government approval before they would throttle video conferencing applications or block or slow-down delivery of time-sensitive traffic. The carriers will also be able to manage traffic by charging more to customers during peak hours/traffic times.

It will be interesting to see how this plays-out, particularly as we in the U.S. try to determine how to deal with net neutrality issues.

### **FCC Releases Draft of "Must-Read" Broadband Study (FCC Seeks Comments from Public on the Study)**

On July 14, the FCC announced in a press release that Harvard University's Berkman Center for Internet and Society would conduct an expert review of existing literature and studies about broadband deployment and usage throughout the world to inform the Commission's development of a National Broadband Plan.

Admittedly, I was a bit skeptical about the outcome of this study. However, in October a draft of the study had been released, and I am thoroughly impressed to the point of saying this document is a total "MUST READ" for every MiCTA member! In addition, the FCC is seeking public comment on the study, and has posted the draft for public review.

I was particularly interested in how the study discussed the various aspects of the numerous broadband "global ranking" reports, indicating where they had value.....and where they did not. While this study does not mention the examples I

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will note here, in so many discussions revolving around rankings there is little discussion on specifics that account for the differences; and which ones are "best practices" that can work elsewhere or those that just "would not fly" in other areas for any number of reasons. For example, many people do not know that one reason for higher broadband throughput/distance using DSL in some areas of the world is because the infrastructure wiring in those areas is of a lower gauge (thicker), so it can handle more traffic for a greater distance. Regarding the subscriber cost of broadband, in at least one country (whose broadband prices are relatively high), citizens can pay for their broadband service via "pre-tax" earnings (but this country also has an extremely high income tax rate).

Specifically, the FCC seeks comment on the following:

1. Does the study accomplish its intended purposes?
2. Does the study provide a complete and objective survey of the subject matter?
3. How accurately and comprehensively does the study summarize the broadband experiences of other countries?
4. How much weight should the Commission give to this study as it develops a National Broadband Plan?
5. Are additional studies needed along the lines of the Berkman study?
6. Please provide any other comments on the Berkman study that you deem relevant.

To access the draft:

[http://www.fcc.gov/stage/pdf/Berkman\\_Center\\_Broadband\\_Study\\_13Oct09.pdf](http://www.fcc.gov/stage/pdf/Berkman_Center_Broadband_Study_13Oct09.pdf)

### **FCC Announces Barriers to Broadband Report**

On October 23<sup>rd</sup>, the FCC announced that the Advanced Communications Law & Policy Institute (ACLPI) at New York Law School released a report identifying major barriers to broadband adoption among senior citizens and people with disabilities, and across the telemedicine, energy, education, and government sectors. This report was prepared in coordination with staff of the Omnibus Broadband Initiative (OBI) for use in the development of the FCC's National Broadband Plan.

ACLPI Director Charles M. Davidson said "The report provides the FCC with a comprehensive analysis of major barriers to broadband adoption among under-adopting demographic groups and sectors of the economy. Our hope is that this report will be used as a starting point for further discussions regarding ways to maximize the adoption rate across every demographic group and sector."

Brian David, OBI Program Director, Adoption and Usage, said "The report will contribute to the FCC's understanding of policies that directly and indirectly impact demand for and adoption of broadband, and will help us craft a comprehensive and effective plan." (Edited from FCC Press Release)

To access the report:

<http://fjallfoss.fcc.gov/ecfs2/document/view?id=7020142497>

### **FCC To Address "Special Access" Issue**

Although the FCC has essentially "danced" around the issue of special access for some time, and while it is a highly debatable issue, on October 8th they issued a Public Notice seeking comment on a number of items surrounding this issue.

As noted by the FCC, in their *National Broadband Plan Notice of Inquiry (NOI)*, they specifically requested parties to provide information on whether "backhaul costs...stand as impediments to further broadband deployments." As such, they believe it is appropriate and necessary for them to seek comment so they can more fully understand the cost and availability of these facilities, and how that relates to making broadband accessible to all Americans.

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In their Public Notice, they provide a good explanation of terms as well as what it is they hope to learn from the comments. From what information has been circulated in the debate over special access, it is easy to become a bit perplexed, as each side in this debate provides logical examples to back-up their claims.....but how does one verify these claims, to reach a conclusion and opinion that is sound, and based totally on facts, and not potentially on propaganda? Hopefully the results of this NOI will help move us in that direction.

I encourage all MiCTA members to read this FCC Public Notice, as it in itself provides a bit more clarity on what this issue is all about.

To access the FCC Notice on Special Access:

[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-09-2186A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-2186A1.pdf)

### **Smartphones are Surprise Pressure on Wireless Nets**

In discussing various throughput and other attributes with wireless carriers, for quite some time I've been thinking that smartphones are going to begin to have a major impact on their networks. Now it appears not only are the wireless providers figuring that out as well (albeit a bit late), but there has been a study that confirms it.

*Reuters* carried a story about a study from Airvana, Inc., that indicates data traffic from smartphones can generate up to **eight times** the network signaling load than the same traffic from a laptop using a data card. In fact, in a presentation at the CDG Technology Forum, one slide shows the signaling consuming more network resources than the data traffic itself! The presentation notes that data calls from smartphones are more numerous but shorter, which is one reason for the increase in signaling. Airvana attributes much of this activity to the increased and quick access to social networking sites, Twitter, etc., where "quick checks" of any new activity happen quite frequently, but that the length of each activity is indeed relatively short.

The rapidly increased traffic on cellular carriers' networks has caught some by surprise, and they are finding themselves at or near capacity.....looking for solutions. So, from this standpoint, if you've been thinking about some in-building or DAS solutions to bolster your cellular coverage at your site, there may be potential for more cooperation from cellular providers in collaborating on such a solution, to off-load some of your traffic (if substantial), so the carrier can use their own resources to cope with this unexpected and increasing growth.

To read the presentation on this study:

[http://www.airvana.com/files/Smartphone\\_Capacity\\_Impact\\_Airvana2009.pdf](http://www.airvana.com/files/Smartphone_Capacity_Impact_Airvana2009.pdf)

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