



TABC Position on the OPEN INTERNET

1. Background

We are currently witnessing a renewed interest in the Open Internet debate on both sides of the Atlantic. While the Open Internet has been broadly supported, the ways to safeguard its open nature have been in discussion for years: how best to approach Net Neutrality and access to users on a non-discriminatory basis ensuring that the Internet remains open for innovation and vigorous economic and social development, while ensuring that network operators have the economic incentives to continue to make the substantial investments in networks, both wireline and wireless. The latter are necessary to keep pace with consumer demand and also recognize the legitimate needs of network operators to reasonably manage their networks and to offer innovative business models to offer a variety of choices in terms of services and applications for consumers.

Europe possesses a balanced framework to support and protect open access to the Internet (ex-ante, ex-post and case by case basis). The latest iteration of the Connected Continent Regulation adopted in the European Parliament addresses these principles. However some of the language is too prescriptive.

On the US side, the FCC has released a new Notice of Proposed Rulemaking (NPRM) in the matter of protecting and promoting Open Internet. This has created a fresh opportunity for the FCC to review and consider whether to reinstate or revise some parts of its 2010 Open Internet Order in the light of recent legal and market developments.

2. TABC position

TABC believes that new and innovative ICT and Internet-related services are essential to furthering economic growth, societal benefit and job creation. The Open Internet and broadband services are the cornerstones that facilitate these opportunities.

It is important to ensure that the Internet remains open, which has been so crucial for consumers globally. It is equally important that network operators continue making investments to upgrade and expand networks and continue managing their networks using principles of reasonable network management to avoid network congestion that would harm consumers. It is important that there be no material degradation of the Internet and that consumers continue to have access to all lawful content.

As we consider the issues of Net Neutrality and the development of new and innovative technologies and service offerings, a number of factors must be addressed:

- Ensuring that robust and competitive best effort Internet Access service offerings are in place allowing consumers to choose the options that best match their needs.
- While service differentiation offered by network operators is foreseen, these services should not unlawfully discriminate against or exclude users, or groups of users, from using such services under the applicable terms.
- Such services shall be permitted until they are demonstrated to be discriminatory with anticompetitive purposes in a relevant proceeding.
- Legitimate traffic or network management features related inter alia to network congestion, service/site blocking where required by law or court order, deployment of child protection controls and/or safeguarding network security shall be permitted.
- Measures to realize the efficient and quality-assured provisioning of specialized services include enforcement of prioritization policies in case of network congestion.

As **guiding policy principles for the Open Internet** applicable to all actors in the value chain, TABC would support the following:

- **Transparency:** Transparency is critical to ensure that customers are clearly informed and confident about the different choices available to them and also that online service providers are duly aware of the practices of Internet service providers
- **Real Customer Choice:** Internet Access providers must provide end users with the ability to send and receive the content of their choice, use the services and run the applications of their choice and connect the hardware and use the programmes of their choice, provided they do not harm the network integrity and security or violate any other applicable laws.
- **Non-discrimination:** Neither Internet service providers nor any other player in the digital value chain shall enter in anti-competitive discrimination related to the transmission of any particular Internet services. A Net Neutrality framework must also accommodate co-existence with specialised services that do not constitute best effort Internet Service. Scrutiny by Regulatory Authorities should prevent any actor in the Internet value chain from engaging in anti-competitive behaviour.
- **Consumer Protection and Public Interest:** Regulation must not ban measures aimed at, *inter alia*, child protection, preventing access to illegal content, preserving network security and integrity, whilst ensuring freedom of expression, information and access to information.
- **Ensuring Innovation:** Innovation anywhere in the broadband Internet value chain for the benefit of customers can only happen with the fair participation of all the stakeholders, under a regulatory environment that allows experimentation, ensures a robust best-effort Internet and keeps a competitive online playing field. Commercially reasonable practices and relationships between different actors that benefit consumers should be permitted since they increase choice for consumers and support competition across different services in the Internet, as long as entering in exclusive prioritisation deals with certain content providers that prevent other providers from receiving the same service will be prevented. Regulatory approaches that would *a priori* disallow innovative commercial options should be avoided. Examples of innovations using economic arrangements that are starting to happen include sponsored traffic / cap-exempt traffic, special offers that include some quota of traffic to specific applications or services, allowing an end user to choose differentiation of traffic, etc. Allowing innovation to flourish both at the edge and at the core of IP networks will **foster investment** in broadband.

3. Conclusion

In conclusion, maintaining an open Internet is crucial. TABC supports policies that guard against practices that harm competition or consumers and allow service providers flexibility for practices or business models that do not have that effect. Strong transparency, non-discrimination, a vigorous competition from a wide offer of Internet access and services and permitting users to access all available services of their choice are cornerstones to ensure an open Internet. Regulators should ensure a competitive level playing field.