BEREC -
Body of European Regulators
for Electronic Communications
via e-mail to: berec@ec.europa.eu

Brussels, Nov. 2nd 2011

Consultation on
"Guidelines on Net Neutrality and Transparency: Best practices and recommended approaches"

Dear Sirs,

We thank you for the invitation to respond to the above mentioned consultation. Kindly find herewith enclosed the official reply of the FTTH Council Europe.

If there are any queries please do not hesitate to contact us.

Yours sincerely,
FTTH Council Europe

Chris Holden   Hartwig Tauber
President of the Board   Director General

The FTTH Council Europe (hereinafter the FTTH Council) welcomes the opportunity to participate in BEREC's consultation on its 'Guidelines on Net Neutrality and Transparency: Best practices and recommended approaches'. The FTTH Council agrees with the proposals on transparency regarding traffic management on a network but believes that transparency regarding network performance is at least as important an indicator for consumers to be aware of and manage. We look forward to a more systematic measurement of network performance in the future[1] to complement the work being done today by certain regulators to inform and protect consumers.

The FTTH Council Europe is an industry organisation with a mission to accelerate the availability of fibre-based, ultra-high-speed access networks to consumers and businesses. The Council promotes this technology because it will deliver a flow of new services that enhances the quality of life, contributes to a better environment and increased competitiveness. The FTTH Council Europe consists of more than 150 member companies. Its members include leading telecommunications companies and many world leaders in the telecommunications industry (additional information is available at www.ftthcouncil.eu). Telecoms operators are not members of the FTTH Council and we have our own perspectives regarding the appropriate regulatory policies to accelerate NGA deployments.

The FTTH Council's position is set out below:

Openness of the Internet

The FTTH Council fully supports an open internet, based on the fundamental principle that any end-user should be able to access any content of its choice, with any device of his choice. These principles are now enshrined in the recently revised European telecoms framework. We are therefore opposed to blocking or any anti-competitive traffic management which would restrict innovative service development or competition.

We believe in an internet where demand is met and indeed created through the provision of new and innovative services, such as for example cloud computing, high definition video conferencing solutions, telemedicine or smart grid applications. For these new services to thrive, a consistent quality of service is required.

Fair competition

The FTTH Council believes that a competitive market is the best way to protect everyone's interests rather than regulation. Customers should have a wide choice of internet access providers and should be able to switch between providers without penalty subject to their contracts.

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[1] http://www.samknows.eu/

Transparency

The FTTH Council believes customers should have access to meaningful information on their broadband plan, the minimum and general level of experience they can expect, and the conditions under which their traffic is handled. We therefore fully support enhanced transparency requirements in the revised Framework, in particular as it relates to broadband quality parameters. For the moment many broadband quality and product descriptions are often inadequate or misleading.

Traffic management

The FTTH Council believes the discussion on network management highlights an advantage of FTTH networks. FTTH access networks have much more capacity available so the degree of network management is likely to be less.

However, the FTTH Council recognizes traffic management is a requirement for all networks, and congestion will also shift and occur in other parts of the network (e.g. backhaul, core, transit). Therefore, effective management tools are needed to manage congestion and optimise the performance of the various applications using the networks.

Support for innovation and new business models

FTTH Council Europe believes a fair distribution of the Internet value chain is key for industry actors. This is particularly true for FTTH deployments given the investment that is required and the need to monetize those investments.

The FTTH Council believes that network owners should have the freedom to offer added value services and to dedicate capacity to specific managed services on their networks with enhanced or guaranteed quality of service. A variety of commercial models may develop, some of which may include customers or application providers paying for enhanced capability, such as prioritised delivery. For the moment such models cannot be anticipated but there should be no presumption against innovative business model, case by case assessments are the appropriate means of review.

In an FTTH network, a network owner should have complete freedom to determine how much capacity is allocated to dedicated services. Mobile and other restricted access technologies should also be allowed to offer managed services while ensuring the "best effort" internet access is not degraded. In this context, a potential concern could arise if networks with restricted bandwidth dedicate a lot of capacity to specific services restricting the available internet capacity to end users with potentially negative impacts on the competitive outcomes.

Regulatory Framework

The FTTH Council believes that the legal framework and regulatory practice to date appear to be sufficient to ensure the smooth operation of the internet. In most circumstances, a case-by-case consideration of whether certain practices threaten the smooth operation of the internet is appropriate.

The FTTH Council believes that the European framework provisions regarding net neutrality are well balanced and that a competitive access market with some transparency and consumer protection measures are the best solutions to prevent anticompetitive network management or behaviour.

Conclusion

The FTTH Council supports the work that BEREC is doing to enable the practical application of the current provisions in the Regulatory Framework especially as regards transparency. The FTTH Council Europe fully supports BEREC's proposal that transparency policy should be accessible, understandable, meaningful, comparable and accurate if it is to be effective. The FTTH Council also believes that there must be a viable choice for consumers that they can act upon if they are not getting the service they want.

The FTTH Council would also note in that transparency measures are at least as important in terms of the network performance. While some NRAs such as Ofcom in the UK and CMT in Spain have tested network delivery speeds against advertised speeds and have highlighted the persistent underperformance of DSL networks, a more systematic and Europe-wide assessment would be a good complement to the current proposals on transparency regarding what is delivered over those networks. Well informed consumers with choice of suppliers will be enable a more dynamic and responsive market to the benefit of consumers and industry.