

# Economuse, 27 July 2011

## Smartphones – too smart for mobile operators?

*In June, the net neutrality debate took an unexpected turn when the Netherlands leapfrogged the USA to become the first country to legislate for mobile net neutrality. Business models for fixed and mobile networks must shift toward volume charges.*

The net neutrality debate has been seen not having much relevance outside the USA because the plight of carriers there was aggravated by unlimited usage. US carriers objected to carrying the extra traffic generated by the likes of YouTube and BitTorrent and others including Google objected to the carriers' crude attempts to manage traffic by restricting customers' access to such sites.

The issue came to a head in 2008 when the FCC ordered Comcast, a cable TV and Internet access provider, to cease blocking or downgrading certain users' access to some peer-to-peer download services. The FCC's ruling, however, was subsequently struck down on appeal over the FCC's authority to implement net neutrality regulations.

### US state of play

The FCC rallied and in December 2010 issued a new policy (still to be tested in a federal court) that sets three basic rules for net neutrality [1]:

- **Transparency.** *Fixed and mobile broadband providers must disclose the network management practices, performance characteristics, and terms and conditions of their broadband services;*
- **No blocking.** *Fixed broadband providers may not block lawful content, applications, services, or non-harmful devices; mobile broadband providers may not block lawful websites, or block applications that compete with their voice or video telephony services; and*
- **No unreasonable discrimination.** *Fixed broadband providers may not unreasonably discriminate in transmitting lawful network traffic.*

It is interesting to note that only the first of the FCC's three rules applies equally to fixed and mobiles providers. But for mobiles, the no-blocking rule applies only to services "that compete with their voice or video telephony services" and mobile providers are not mentioned at all in the third rule because "existing mobile networks present operational constraints that fixed broadband networks do not typically encounter. This puts greater pressure on the concept of "reasonable network management" for mobile providers".

But mobiles are under pressure. Free Press wants the FCC to take a close look at Google's move to curtail access (making them "*unavailable for download*" via the Android Market) to independent tethering apps. Google says it is doing this in response to requests from wireless carriers. But Google's Droid partner Verizon says "*Google manages what's available in the Android Market.*"

When Verizon acquired massive amounts of spectrum in the 700MHz "C Block" auction back in 2008 it promised to adhere to the FCC's "Open Access" rules which forbid carriers from trying to "*deny, limit, or restrict the ability of their customers to use the devices and applications of their choice.*" In the new Report and Order (Paras 134-135), the FCC has hinted that its powers may not be restricted to users of this part of the spectrum. Again, this must be tested in court.

### **Dutch policy**

The Netherlands has gone further. In April 2011, KPN announced plans to charge mobile customers extra for using Skype and WhatsApp (an application that for \$2 pa enables smart phone users to send messages for no additional charge). KPN does not reveal much but last year Telstra's messaging revenues were over \$1 billion and over 9 billion SMS were sent from its mobile phones. So, losing voice and message revenues to Skype, Facebook and WhatsApp could seriously dent profitability.

To charge users access to such services, KPN would need to look at the data being transferred, using "deep packet inspection." Following protests about possible privacy violations, politicians moved quickly to stop the plan. In June 2011, the Dutch parliament passed a bill which will force mobile Internet providers to let customers use Skype and other rival services on their networks without charging extra or giving preferential treatment to their own offerings (and not to place cookies without express permission from the end user). [2]

KPN has responded [Business Week 19 July] saying that from September the cheapest advertised price for one gigabyte of mobile data will be part of a euro50 (\$70)/month package, compared with current packages under euro20 (\$28) that include unlimited data. This is similar to the moves that US fixed carriers have made by moving towards Australian style monthly caps.

Expect to see mobile handset prices increase and more volume-based charging. The latter makes sense for both fixed and mobile networks and is the next logical move after caps.

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[1] FCC (December 2010) Open Internet Rules, Report and Order 10-201.

[2] <http://www.physorg.com/news/2011-06-dutch-parliament-mobile-net-neutrality.html>