

## Honesty is the Best Policy

By Adriana Kissel and Andrea Person

Providing broadband? What you need to know. As the industry increasingly focuses its attention on the Internet and the opportunities it presents, the FCC has similarly turned its attention to those providing access to it.

Last November, the FCC's first regulations detailing disclosure of how broadband Internet service providers manage their networks went into effect. Since that time, broadband Internet service providers' network management practices operate under new levels of scrutiny. A key component of these regulations, often called the "net neutrality" regulations, is transparency. Complying with the transparency regulation requires up-to-date, prominent, and easy to access website disclosures detailing network characteristics and the reasonable network management practices provider's use to manage the network.

The aim of the net neutrality disclosure requirement is to help consumers and web developers understand how a provider manages the Internet data flowing over its network.

So what do you have to disclose? In general, honesty is the best possible policy. Because no single disclosure satisfies the requirement, the more of your company's network management practices you disclose, the less risk your com-

pany has of facing an enforcement action. That said providers are not required to disclose practices that are competitively sensitive or undermine the effect of reasonable network management practices. To assist providers in knowing what information should be disclosed, the FCC has suggested disclosing information in three general categories:

- **Network Management Practice:** Congestion Management, Application-Specific Behavior, Device Attachment Restrictions, Security
- **Performance Characteristics:** Service description and impact of specialized services
- **Commercial Terms:** Pricing, privacy policies, redress options

Many operators may not realize their disclosures need to include common management practices within these general categories. For example, often providers perform virus and spam filtering, block traffic to customers because of parental controls, or slow down traffic to address congestion. These are all examples of the kinds of information that disclosures should include. In addition, operators using more than one type of technology to offer broadband Internet service, whether cable modem, DSL, fiber-to-the home or other technology, should take into consideration whether the characteristics and

practices disclosed apply to all technologies—disclosures should be technology-specific where applicable.

The regulations require disclosure by all fixed broadband service providers but not all companies need to start from scratch. Acceptable use policies, terms of service, and related Internet service policies may be incorporated with disclosures on network characteristics and reasonable network management practices to satisfy the disclosure requirement. Because much of the information required for the disclosures may already exist in providers' customer documents, broadband providers should review existing policies to see if the information required for the network neutrality disclosures is already disclosed, accurate, and conforms to FCC requirements. Net neutrality disclosures must be prominently displayed on a company's website and provided at points of sale.

How much do you disclose? Complicating compliance efforts is the FCC's decision to give operators flexibility on how much they need to disclose. The FCC provides some guidance, but also makes clear there is no safe harbor. Because no single disclosure is guaranteed to comply with the rules, the best approach is to be honest and transparent—providing consumers with sufficient information to make informed choices and third-party content, application, and device providers with sufficient information to develop, market, and maintain Internet offerings.

The FCC and other governmental agencies continue to focus their attention on broadband Internet service providers as the gatekeepers of the Internet. Those providing end-users with access to the Internet and third-party developers' content, applications, and devices should carefully consider how to best comply with the FCC's network neutrality regulations and devise appropriate disclosures for their customers. □

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