Network Neutrality in S.Korea

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1. **Regulation and laws that affect NN**

The Ministry of Science, ICT and Future Planning(MSIP), telecommunication regulatory authority, has a big hand over the existing telecommunication services. Even internet access service provider is defined as common carrier, which natually should obtain service license from MSIP and be regulated by the Tecommunications Business Act.

**Telecommunications Business Act**

The Telecommunication Business Act granted enourmous power for telecommunication regulatory authority to regulate telecoms practices undermining unfair competition and users interests. Therefore, although there is no clear statement of network neutrality, telecommunication business act has some provisions which could be used for net neutrality regulation. (You can refer to annex 1 for provisions related to network neutrality)[[1]](#footnote-0)

The act had not been intended for regulating communications over the Internet but is still aimed at the telephone industry as common carriers. But to keep up with the shift towards all-IP communications in the telecom industry, some amendments have been made to the act to include communications over the internet into the definition of common carriers and, therefore, a common carrier which provides Internet access service is subject to the same duties as apply to telephone service providers.

Article 2 (11) defines the term “common telecommunications services” as telecommunications services for transmitting or receiving sounds, data, images, etc. without any change in the form or contents thereof and to lease telecommunications line equipment and facilities for the use of transmission or reception of sounds, data, images, etc., such as telephone services or Internet services. This provision states that common telecommunications services providers have the obligation to transmit sounds, data, images, etc. “without any change in the form or contents” thereof on the Internet, which can be interpreted as no restriction, one of the net neutrality principles. In addition, the Article 3 (1) of the act prohibits telecommunications business operator from refusing to privide any telecommunications service, without justifiable grounds.[[2]](#footnote-1)

Article 28 (3) of the act provides grounds to regulate the terms and conditions of use of authorized operators, as follows: 1) they shall consider their influence over fair competition environments, etc.; 2) they shall not put users at a disadvantage in terms of cost-sharing methods; 3) they shall not unfairly restrict the use of telecommunications line facilities by other telecommunications business operators or users; 4) and they shall not unfairly discriminate specific persons. These provisions provide grounds for implementing net neutrality principles of no restriction and no discrimination.

Article 50 defines ‘prohibited acts’, among which acts of unfair discrimination and undermining of user’s interests by a telecommunication carrier are included.

While the act could be interpreted and used for net neutrality as seen above, Korean regulatory authority has the perception that the current act has nothing to do with net neutrality or net neutrality is a complex matter that should be determined by social consensus, so set up consulatative body, network neutrality forum, to discuss network neutrality guideline on May, 2011.

**The Guidelines on the Net Neutrality and Internet Traffic Management**

Korea Communications Commission (KCC), which was a telecommunication regulatory authority at that time[[3]](#footnote-2), announced a guideline on net neutrality and Internet traffic management (NN guideline) which specifies net neutrality principle on December, 2011.[[4]](#footnote-3) The guideline stipulated user’s right to access to any lawful contents, application and services of their choice, using devices which are not harmful to network, and to get informed of traffic management informations. It also stated transparency of traffic management, no blocking and no unreasonable discriminations. (You can refer to annex 2 for the full text of the guideline)

The guideline clarified Net Neutrality prinicples broadly, but had a limitation to be applied to current issues, eg throttling of mVoIP. KCC told in the announcement that it would continue to discuss on the detailed standard on traffic management and policies for new services such as mVoIP as a next step since 2012, which means that the guideline had no practical use for regulaing the practice of throttling mVoIP by telecoms.

**The standard on reasonable management and usage of communication network and transparency of traffic management**

In 2012, KCC launched ‘policy consultative committee on NN’ and let it develope so-called traffic management guideline. The draft of traffic management guideline, released on July, 2012, had many poisonous clauses which override NN guideline. For example, it allows discrimination of certain traffic, such as P2P, heavy user’s traffic. It also allows the terms and conditions of use which could discriminate certain contents and applications. Eventually, the traffic management guideline had been dismissed by KCC at the end of 2012, due to the opposition of civil societies and some politicians.

In 2013, the MSIP, new telecommunication authority of new government, reignited it. It revised the draft and, in the end, announced ‘the standard on reasonable management and usage of communication network and transparency of traffic management’ on 5 December, 2013.[[5]](#footnote-4)

It mainly aimed at preventing arbitrary traffic management by network operators and publishing traffic management information to users in a transparent manner in 2013. It proposes four criteria to consider in assessing the reasonability of traffic management as follows : 1) transparency - whether traffic management policy is disclosed enough, 2) proportionality - whether traffic management is proportionate to its aim and motive, 3) non-discrimination - whether there is unfair discrimination between similar type of contents, and 4) technical characteristics of network.

However, it allows network operators to provide different price bands according to service quality and volume, which could be interpreted as allowing discrimination of mVoIP in lower price bands. Actually, the MSIP told in the announcement that mVoIP rate system would be in principle within the remit of network operators, so should be decided by them autonomically, but it would guide them to allow mVoIP in all price bands since 2014.

On 30, June, 2014 MSIP announced the plan on 'reduction measure of consumer communication cost', which included the policy that mVoIP would be allowed in all price band, but with limited volume depending on price bands, which means that users can’t use mVoIP after they run up the volume allowed for mVoIP even if they still have the volume for other internet services.

There is a guideline on NN in S.Korea, but it is little more than a name.

1. **Net Neutrality disputes**

**Disputes related to mVoIP**

As seen above, throttling of mVoIP such as Voice Talk, Line, skype and viber etc, brought about heated debate on NN in S. Korea.

The Citizens’ Coalition for Economic Justice and Korean Progressive Network Jinbonet reported telecommunications carriers to the KCC on November 23, 2011 for charging users more for mVoIP applications or blocking their use entirely on the ground that such acts violate Article 3 which defines the duties of telecommunications business operator to provide service, Article 50 (1)-1 which defines prohibited acts that place unfair or discriminative conditions or restrictions, and Article 50 (1)-5 which defines prohibited acts that provide telecommunications services in a manner which substantially undermines telecommunications users’ interests. However, the regulators avoided to give a judgment on the claim and only responded to CCEJ on Dec 26, 2011 that it would not rush to conclusion and rather look at the issue from a longer-term point of view by thoroughly examining technological progress, market competition situation, etc. Actually,the throttling of mVoIP by mobile incumbents depended on their terms and conditions of use which had been approved by KCC.

Meanwhile, KCC deveoped and announced NN guideline on Dec, 2011, it clarified its policy position on mVoIP, that it would not directly intervene in the market.

Telecoms argued that mVoIP service, which is the substitue of their existing voice communication service , would decrease their profit, and so finally reduce their capacity for further investment to network, which in other words means that they admitted they wanted to kill their competitors using their superior market power as owners of physical infrastruture.

Korean telecommunication market is being dominated by the oligopoly of three big telecom incumbents, SKT, KT and LGU+. Especially in mobile market, their total market share is almost 98%, in terms of subscribers

But, they charged this kind of application service is a free riding activity on their network and argued application providers should share the expenses of futher investment to network infrastructure.[[6]](#footnote-5)

As explained above, Telecoms allowed mVoIP in all price bands, but with limited volume according to the price band since 2014, which is criticised by NN advocates as still violation of NN.

**Disputes related to Smart TV**

On Feb 10, 2012, KT started to block its high-speed internet service subscribers from using Smart TV by using four security routers (2 located near Guro-dong and 2 located near Hyehwa-dong) to identify and discard data that was being sent to Samsung Smart TV server (identified by IP addresses). But, by the arbitration of KCC, KT withdrew the restriction on Feb 14, 2012.[[7]](#footnote-6)

In this case, KCC determined that Smart TV was a type of PC by which one could connect to the Internet and hence blocking Internet access, while there was no grounds that would justify such an act in the terms and conditions of use, constituted prohibited acts which provide telecommunications services in a manner different from the terms and conditions of use stipulated in the former part of Article 50 (1)-5 of the Act; and that blocking Samsung’s SmartTV alone while allowing LG’s product constituted prohibited act which provide telecommunications services in a manner which discriminates users based on their device manufacturer (the latter part of Article 50 (1)-5 of the Act and Article 42, starred item 3 V.(5) - a of the Enforcement Decree of the Telecommunications Business Act.

However, while KCC was dealing with a dispute related to net neutrality, the regulator stated that it was needed to determine whether the access should be allowed or not based on the current Telecommunications Business Act and the terms and conditions of use, aside from the net neutrality debate. In other words, KCC was presenting an explanation that the no restriction and no discrimination clauses included in the Telecommunications Business Act were different from net neutrality principles without giving any ground. It seems that the main reason regulator made such an explicit statement was the upcoming net neutrality guideline which was under discussion at the time.

1. **Civil Society responses to NN issues**

**Network Neutrality User Forum of S.Korea**

To respond NN issues, Network Neutrality User Forum(NNUF), which had been composed of eleven civil society organizations[[8]](#footnote-7), end users, and some experts, has been formed on May, 2012. (<http://nnforum.kr>)

To promote public discourse on net neutrality, NNUF have held many meetings and fora including three fora, three public lectures, an open forum, three open seminars as well as a citizen’s request. It published out one book, <Speaking of Net Neutrality> in January 2013, which is an outcome of discussion and its acivities.

**Proposed amendment of law with regard to NN**

NNUF is preparing to legislate so-called ‘net neutrality act’, the amendment of Telecommunication Business Act.

Though the act potentially provide a substantial basis for resolving net neutrality dispute as mentioned above, the duties stipulated in the act are still not based on the net neutrality principle, but laid down by expanding the scope of common carriers regulations which used to apply to traditional telephone service providers alone to include Internet business operators. Given that, even though the provisions that have net neutrality elements can potentially be used as grounds to resolve such disputes, there still remains the fundamental issue of the lack of legal basis in the telecommunications law that guarantees users’ right to choose. NN guidelines are not legally binding, which makes it hard to apply them in reality. In this respect, it is time to find a fundamental solution to the issue by officially enacting the ground provisions in the Telecommunications Business Act, laying down legislation that specifies net neutrality principle.

Major proposed changes in the act is as follows :

1) Create provisions on the definition of Internet user and users’ right : To define the term “end user” in the Internet technology field with a conventional term “Internet user” and establish grounds for Internet users’ right with regard to net neutrality,

2) Create provisions on managed service : To define managed service and establish grounds upon which such services are prevented from influencing the internet network,

3) Create provisions on limited reasonable traffic management : To establish grounds upon which the scope of traffic management can be limited for human rights reasons, and

4) Create provisions to mandate monitoring of traffic management technologies : To establish grounds for mandating the monitoring of traffic management technologies by considering their impacts on the privacy of Internet users and making the results public

<Annex 1>

**Provisions related to NN in the Telecommunication Business Act**

**Article 2 (Definitions)**

11. The term "common telecommunications services" means telecommunications services for transmitting or receiving sounds, data, images, etc. without any change in the form or contents thereof and to lease telecommunications line equipment and facilities for the use of transmission or reception of sounds, data, images, etc., such as telephone services or Internet services: Provided, That this shall not include telecommunications services (referring to detailed independent services among telecommunications services under subparagraph 6; hereinafter the same shall apply) determined and publicly announced by the Ministry of Science, ICT, and Future Planning;

**Article 3 (Duties to Provide Services, etc.)**(1) No telecommunications business operator may refuse to provide any telecommunications service, without justifiable grounds.

**Article 28 (Reporting, etc. on Terms and Conditions of Use)**

(3) In cases under the main sentence of paragraph (2), the Ministry of Science, ICT, and Future Planning shall authorize the terms and conditions of use, if they satisfy the following requirements:

1. Telecommunications service charges shall be determined with reasonable consideration of the cost for supply, profits, classification of expenses and profits corresponding to each service, cost saving depending on the methods of service delivery, influence over fair competition environments, etc.;

2. They shall not put users at a disadvantage in terms of matters concerning the responsibility of common telecommunications business operators and relevant users or cost-sharing methods for installation works of telecommunications facilities and other works;

3. They shall not unfairly restrict the use of telecommunications line facilities by other telecommunications business operators or users;

4. They shall not unfairly discriminate specific persons;

**Article 50 (Prohibited Acts)** (1) No telecommunications business operator may commit any of the following acts (hereinafter referred to as "prohibited acts") which undermine or are feared to undermine fair competition or users' interests, or allow other telecommunications business operators or third parties to commit such acts:

1. Acts which place unfair or discriminative conditions or restrictions on the provision of equipment and facilities, joint utilization, interconnection or joint-use services, wholesale services, provision of information, etc.;

5. Acts which provide telecommunications services in a manner different from the terms and conditions of use (limited to the terms and conditions of use reported or authorized under Article 28 (1) and (2)), or in a manner which substantially undermines telecommunications users' interests;

<Annex 2>

**The Guidelines on the Net Neutrality and Internet Traffic Management**

* This is the unofficial translation of ‘The Guidelines on the Net Neutrality and Internet Traffic Management’.

**The Guidelines on the Net Neutrality and Internet Traffic Management**

Ⅰ. Objective

1. These guidelines aim at fostering an open and fair Internet usage environment, and to improve a healthy and sustainable Information and Communication Technology (hereinafter referred to as “ICT”) ecosystem through the basic principles for Net Neutrality and Internet Traffic Management.

Ⅱ. Basic Principles

User’s Rights

1. Internet users have the right to use lawful content, application, service, and not harmful devices or equipment freely, and to be provided with information regarding Internet traffic management by related carriers.
* Internet users mean end users.

Transparency on Internet Traffic Management

1. An Internet access service provider shall disclose the traffic management policy which clarifies objectives, scopes, conditions, processes, and ways, etc. of Internet traffic management. When implementing the necessary measures of traffic management, it shall inform the relevant users of the facts and the effects. (However, when there are unavoidable reasons that prevent them from informing users of important information, it can be replaced by a notice.) The Korean Communications Commission could lay down additional rules regarding the scopes and the ways of disclosure, and the information to be provided.
* An Internet access service provider means a Telecommunications carrier which provides a fixed and wireless Internet access service pursuant to the Telecommunications Business Act.

No Blocking

1. An Internet access service provider shall not block lawful content, applications, services, or not harmful devices or equipment. However, it is allowed when the need for reasonable traffic management is approved.

No Unreasonable Discrimination

1. An Internet access service provider shall not unreasonably discriminate against any lawful contents according to the types or providers of these contents, applications, and services. However, it is allowed when the need for reasonable traffic management is approved.

Reasonable Traffic Management

1. The need for reasonable traffic management includes, but is not limited to, the following subparagraphs. The Korean Communications Commission will lay down additional rules on the scope, condition, processes, ways of reasonable traffic management; a standard of judgment on whether traffic management is reasonable, etc. In these cases, it could be different, according to the type of network (fixed or wireless, etc), and technology characteristics.
2. For Net security and stability
3. For protecting most users’ interests by avoiding net congestion caused by temporary overload etc.
4. For the request of states’ agencies according to the laws, or need of enforcement by other laws.

Ⅲ. Managed Service

1. An Internet access service provider could provide Managed Service, without quality deterioration of Best Effort Internet below the reasonable standard. The Korean Communications Commission additionally monitors the Best Effort Internet’s quality, and the effect on the market when Managed Service is implemented.
* Managed Service means a service which guarantees the traffic transmission quality, such as transmission bandwidth, etc., by traffic management technology other than generally Best Effort Internet.

Ⅳ. Mutual Cooperation

1. Internet access service providers and content/application/service providers, etc. shall collaborate with each other for the healthy and sustainable development of the ICT ecosystem, and according to principle of good faith, they especially shall cooperate to give information regarding providing content/applications/service, and operating a stabilized net, etc. when necessary. Also they could organize a policy consultative body for building market self-regulating standards, etc. regarding Net Neutrality and Internet traffic management when necessary.

Ⅴ. Building and Managing Policy Consultative Body

1. The Korean Communications Commission builds and manages the additional policy consultative body in which interest groups, specialists, etc., participate, for the improving Internet traffic management transparency, pertaining to the necessary measurement of these guidelines implementation, such as providing judgment standards for reasonable traffic management scopes, conditions, procedures, whether it is reasonable, discussing on policy direction for spreading emerging services, such as mVoIP, etc., and trying to find a way for new market order according to the ICT ecosystem change. The Korean Communications Commission additionally will decide its requirements regarding its members, management, etc.
1. refer to the URL below for the full text of Telecommunication Business Act in english, which is translated by Korea Legislation Research Institute. However the version is old one which is revised on 22 Mar, 2010. and latest version is revised on 15 October, 2014. The provisions in Annex 1 reflects changes after the 2010 revision.

http://law.go.kr/engLsSc.do?menuId=0&subMenu=5&query=%EC%A0%84%EA%B8%B0%ED%86%B5%EC%8B%A0%EC%82%AC%EC%97%85%EB%B2%95#liBgcolor0 [↑](#footnote-ref-0)
2. Meanwhile there are some counterarguments such as “the existing regulations only applies to an explicit refusal to provide service such as rejecting a subscription request or failure to provide Internet service due to the lack of proper Internet network.” (Na, Seong-hyun, Dec. 2011, A Study on Net Neutrality for the Smart Communications Environment, Korea Information Society Development Institute) [↑](#footnote-ref-1)
3. MCIP took over the telecommunication regulatory authority from KCC since 2013, while KCC remained as an authority for broadcasting regulation and user protection. [↑](#footnote-ref-2)
4. Press release of KCC on ‘The Guidelines on the Net Neutrality and Internet Traffic Management’ , on December 2011. (in Korean)

http://kcc.go.kr/user.do?mode=view&page=A05030000&dc=K05030000&boardId=1113&cp=3&ctx=ALL&searchKey=ALL&searchVal=%EC%A4%91%EB%A6%BD%EC%84%B1&boardSeq=32867 [↑](#footnote-ref-3)
5. Press release of MISP on traffic management guideline, on December 2013. (in Korean)

http://www.msip.go.kr/www/brd/m\_211/view.do?seq=1088&srchFr=&srchTo=&srchWord=%ED%8A%B8%EB%9E%98%ED%94%BD&srchTp=0&multi\_itm\_seq=0&itm\_seq\_1=0&itm\_seq\_2=0&company\_cd=&company\_nm=&page=1 [↑](#footnote-ref-4)
6. At a press conference in 2013, KT CEO, Lee Seokchae, told that “there is no free lunch”. Telecoms had criticized that contents and application providers got a free ride on their network. [↑](#footnote-ref-5)
7. A case on a corrective order for the infringement on the interests of high-speed Internet users with regard to KT’s restriction on Samsung’s Smart TVs, consideration/deliberation by Korea Communications Commission, 2012-25-095 (case number: 201203, proceeding: 001) [↑](#footnote-ref-6)
8. Citizen’s Coalition for Economic Justice, Citizen’s Coalition for Democratic Media, Democratic Legal Studies Association, People’s Coalition for Media Reform, OpenNet, OurNet Korea, Korean Progressive Network Jinbonet, People’s Solidarity for Participatory Democracy, Young People’s Coalition for Economic Democracy, Korean Womenlink Fair Media, Citizen’s Action Network [↑](#footnote-ref-7)