

Introduction and Summary

The US Internet Industry Association ("USIIA") submits these comments with regard to the Notice of Inquiry adopted by the Commission on March 22, 2007, regarding broadband industry practices.

The Commission seeks to enhance its understanding of the nature of the market for broadband and related services, whether network platform providers and others favor or disfavor particular content, how consumers are affected by these policies, and whether consumer choice of broadband providers is sufficient to ensure that all such policies ultimately benefit consumers. The Commission asks for specific examples of beneficial or harmful behavior and whether any regulatory intervention is necessary.

USIIA submits that the Commission has correctly identified the problematic nature of public calls for a regulatory regime that would limit the ability of network service providers to innovate and upgrade their networks. Specifically, USIIA submits that:

- The USIIA has no evidence that network services providers have engaged in behaviors that favor or disfavor any particular content sufficient to require a regulatory or legislative response.
- While consumers are affected by the policies of network service providers with respect to prioritization of traffic transiting their networks, these policies act to enhance the Internet experience of consumers with no detriment to that experience.
- The available choices of broadband service providers – including wireless, cellular, satellite, cable and DSL – is sufficiently competitive to ensure network services policies ultimately benefit consumers.
- There exists a set of policies that is sufficient to the needs both of consumers and network service providers, and that these policies are consistent with those already adopted by the Commission.

USIIA concludes that regulatory intervention is unnecessary and is likely to prove harmful to consumers.

Statement of Standing

USIIA is a national trade association of competitive companies engaged in Internet commerce, content and connectivity. Its members constitute a broad cross-section of the Internet industry, providing consensus on policy issues that breach the competitive interests of any single member or segment of the industry.

USIIA reaches its public policy positions through a process of consensus that is directed by a Board of Directors elected annually by the members of the Association. Those positions are based on the best interests of the majority of members and of the industry as a whole. These positions are not subject to the whim of any single segment of the industry, and are not affected by financial arrangements, marketing agreements or other external forces.

As the appointed representative of its members charged with advancing their economic interests and assisting in achieving and maintaining their legal and competitive parity, and to continue to advocate for the expansion of broadband networks, USIIA has standing to file these comments.

Statements and Conclusions

Specifically, the Association submits that:

1. The USIIA has no evidence that network services providers have engaged in behaviors that favor or disfavor any particular content sufficient to require a regulatory or legislative response. The idea that network services providers have, or might at some point in the future may, act in some manner to favor or disfavor particular content, is hypothetical and speculative. The single case in which a provider was alleged to have engaged in an effort to block one type of content (VoIP traffic) was the Madison River Communications case, and was resolved by the FCC using existing regulatory powers and procedures.

Network service providers in fact support the position of the Federal Communications Commission¹ in this regard. The FCC's policy platform was based on principles initially proposed by the High Tech Broadband Coalition in its 2003 paper entitled "Connectivity Principles." These principles, endorsed by network operators, demonstrate a strong and sustained commitment to the rights of consumers.

On close examination, claims of potential favor or disfavor of particular content tend to fall into two categories – either representing ignorance of how the Internet and other distribution channels work in free and competitive markets; or speculative but unsupported fears of what might come to pass if the Internet continues to evolve in the manner of other industries. None make a compelling argument for the imposition of new regulatory regimes on the broadband industry.²

2. While consumers are affected by the policies of network service, these policies act to enhance the Internet experience of consumers with no detriment to consumers. Claims of potential or actual threats to the interests of consumers are based on three claims: that there is widespread opposition to the implementation of tiers of service on the Internet; that the introduction of service tiers or prioritization of Internet traffic is a substantial departure from Internet tradition and policy; and that the introduction of service tiers or prioritization of Internet traffic must automatically be harmful to consumers. All three of these claims are false.

This is not an issue that consumers care about. Surveys show little or no consumer interest in preventing network operators from offering diverse services. In fact, the only survey conducted among consumers (by the American Consumer Institute) found specific and explicit support for tiered services.³ Outside of the political and Internet circles, it has received only cursory media attention. And advocates of "neutrality" legislation are

¹ FCC Policy Statement issued August 4, 2005

² See "Network Neutrality and tiered Broadband Services," USIIA position paper dated February 5, 2006 and available at <http://www.usiia.org/pubs/neutrality.doc>.

³ See ACI Study at <http://www.theamericanconsumer.org/Consumer%20Internet%20Concerns.doc>

still unable to point to a single example of wrong-doing that the existing legislation or regulation could not have prevented.

Moreover, the idea that prioritization of traffic in some way violates Internet tradition or protocol makes little sense to anyone who truly knows and understands the Internet. To begin with, the TCP/IP protocol that governs the transmission of information packets across the Internet is based on moving each packet along the most efficient network to reach its final destination. That is, the Internet itself prioritizes traffic and moves it along different segments of the network to achieve effective control of transmissions. That's why it is called Transmission Control Protocol and Internet Protocol.

Some executives of broadband companies have expressed a desire to explore tiered network offerings based on price, speed and quality of service. Companies that elect to partner with the broadband company, and to assure consumers a specific level of services, would get an enhanced level of quality assurance – in the same manner that some people pay more for an airline seat in business class than in coach.

The benefits could be significant for advanced applications that include video streaming, Internet gaming and Voice over IP. Likewise, service guarantees could be provided for health, education, disabled access and government service web sites, benefiting the larger population.

In fact, what is being considered is simply to take the successful model used by major content companies and apply it to other parts of the Internet. Google's business model, for example, includes levels of basic price differentiation – that is, people who pay for better placement on the Google search engine get it. That model has been in place for years, with no visible harm to consumers and no media backlash.

The idea that tiered services among network service providers are new is also inaccurate. For nearly the entire existence of the Internet, some providers have offered services that

block some sites on the Internet. Consumers are able to sign up for these services with a full understanding that they are electing to receive some but not all of the content of the Internet, consistent with the FCC principle that consumers should be able to access the content *of their choice*.

Legislation banning such tiered or selective services would eliminate Christian-focused tiers offered by Christianbroadband.com, TrueVine.net and Familysafeviewing.net, forcing these fine ISPs out of business. It would also force out of business the network providers who serve children with filtered, no-porn Internet, including ZKidNetwork, SonMedia.net, KiddoNet and the Children's Safe Internet project in Chicago. This would have the practical effect of forcing families to accept pornography into their homes whether they want it or not, in the name of "Network Neutrality."

Equally important, some service providers offer access only to adult content and specialized interests – such as the Usenet services that offer tiers of access only to the Alt.Binaries content. These also would be forced to shut down their offers of consumer choice.

None of the network service providers has suggested that they will block access to any part of the Internet. In fact, the current FCC commitment to the four principles of interconnectivity and the industry's own commitment to those principles would prevent any such blockage.

Tiered services are a part of nearly every industry, where they serve an important role in both speeding some customers through their desired tasks and permitting the normal flow of commerce in the basic or non-tiered services. The existence of business class does not slow the flight for those who buy airline or train seats in coach. Overnight delivery of letters by UPS or FedEx does not slow the deliveries by the US Postal Service. Even 15-items-only grocery lines do not slow consumers who have more items. In fact, these premium tiers tend to reduce congestion for other consumers, lessening the load for them. These tiered services also permit the distribution of costs in some cases to be equalized so that the industry can reduce the cost burden for lower-income and disadvantaged consumers, as it currently does in other segments of the telecommunications industry.

There are, of course, other arguments and complaints that have been put forth in support of regulation of broadband. Some advocates are determined that broadband must be restricted to the same “common carrier” requires as the century-old telephone system, though there seems no cogent argument for doing so. Others argue that any regulatory schema that benefits corporations must automatically damage consumers, though there is no empirical evidence to support such a conclusion.

3. The available choices of broadband service providers – including wireless, cellular, satellite, cable and DSL – is sufficiently competitive to ensure network services policies ultimately benefit consumers. While not all geographic markets are served yet by multiple broadband providers, the data suggest that broadband markets are, in general, dynamic and competitive. In fact, a recent statement from 19 leading economists notes that competition in broadband is at “workable” levels:

“For example, between 2001 and 2005, the average price of a digital subscriber line dropped by about one-third. In the case of cable, the quality-adjusted price declined significantly, as cable connection speeds increased significantly while prices held steady. In most, but not all, cases, we believe these markets are workably competitive. Moreover, even if some service providers could exercise some market power, the multi-sided nature of the market means that they still have powerful incentives not to block content. In particular, providers need content in order to attract subscribers. If a provider restricted access, its product would be less valuable and attract fewer subscribers. The point is that even firms with market power in one part of the market will not necessarily be able to control content.”⁴

Proponents of broadband regulation resort to dismissing this highly competitive marketplace as a “duopoly” – as though thousands of telecommunications, cable, satellite and wireless network services companies somehow acted in concert with one another without violating existing anti-trust laws.

The reality is that, though the broadband marketplace in the early growth stage of its life cycle is not fully competitive in every niche of the market, that situation is rapidly

⁴ “Economists’ Statement on Network Neutrality Policies,” March, 2007, *AEI-Brookings Joint Center Working Paper No. RP07-08*

changing as broadband is deployed. There is no evidence that competition has failed or will fail going forward.

4. There exists a set of policies that is sufficient to the needs both of consumers and network service providers, and that these policies are consistent with those already adopted by the Commission. The Federal Communications Commission has already embraced four principles that support a consumer-focused and controlled marketplace.

It is critical that the rights of consumers rule the marketplace. However, it should also be acknowledged that other forces within the marketplace – government, law enforcement, network operators and content providers among them – who must also be accorded rights in a free and vibrant marketplace. The FCC in part noted this in adoption of the its principles by interjecting a balance between consumer rights and those of law enforcement.

The US Internet Industry Association likewise enumerated the rights of network service providers in its 2005 position paper, “Principles For Interconnectivity.”⁵

For the purposed of this Notice of Inquiry, USIIA does not propose and would not support the expansion of the principles beyond those already enumerated by the FCC. It is sufficient that the marketplace be permitted to seek an appropriate balance in the rights accorded to all participants in the marketplace, as is currently the case.

Conclusion

The Commission has a duty to establish a national policy that furthers broadband deployment. In the past, the Commission has looked for barriers to broadband investment -- and then removed them. It has the same opportunity to do so with this Notice of Inquiry. By refusing to accede to

⁵ See <http://www.usiia.org/pubs/principles.doc>

the strident but unsupported claims of regulation advocates, and by adopting principles for broadband connectivity and operations that balance the needs of both consumers and network service providers, the Commission may best serve the public interest.

Respectfully submitted,

US INTERNET INDUSTRY ASSOCIATION

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