

BakerHostetler

Baker & Hostetler LLP

Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5304

T 202.861.1500
F 202.861.1783
www.bakerlaw.com

Gary S. Lutzker
direct dial: 202.861.1782
glutzker@bakerlaw.com

April 7, 2015

VIA ELECTRONIC FILING

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Protecting and Promoting the Open Internet, GN Docket No. 14-28; Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services, *Notice of Proposed Rulemaking*, MB Docket No. 14-261; Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations, MB Docket No. 14-57

NOTICE OF ORAL EX PARTE PRESENTATION

Dear Ms. Dortch:

On Wednesday, April 7, 2015, the undersigned, along with Mr. Richard Bilotti, Portfolio Manager for Special Situations for P. Schoenfeld Asset Management LP, met with Commissioner Michael O’Rielly; Robin Colwell, Esq., Commissioner O’Rielly’s Chief of Staff and Senior Legal Advisor for Media; and Amy Bender, Esq., Commissioner O’Rielly’s Legal Advisor for Wireline. The purpose of the meeting was to encourage the Commission to clarify or reconsider rulings in the recently released *Open Internet Order* (the “**Order**”), to clarify the Commission’s tentative conclusions in the above-referenced *Notice of Proposed Rulemaking* (the “**NPRM**”), and to limit application of the newly announced 25 Mbps downstream, 3 Mbps upstream standard in evaluating pending transactions, including the pending Comcast and Time Warner Cable transaction.

With regard to the Order, Mr. Bilotti urged the Commission reconsider its decision to adopt a case-by-case approach exclusively in considering the reasonableness of ubiquitous data allowances and usage-based pricing plans. Inasmuch as the lack of clarity inherent in a case-by-case approach will prevent Internet Service Providers (“**ISPs**”) from creating the long-range business plans necessary for new technology investments, Mr. Bilotti advocated for the Commission’s issuance of *sua sponte* advisory guidance to clarify that tiered billing arrangements based on download speeds and bundled service discounts, are “classes of communications” that are “just and reasonable” and for which “different charges may be made

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

Marlene H. Dortch, Esq.
April 7, 2015
Page 2

for the different classes of communications” under Section 201 of the Communications Act. Mr. Bilotti also urged the Commission to clarify that ISPs are presumptively permitted to charge for interconnection where in-bound and out-bound traffic are asymmetrical.

With regard to the NPRM, Mr. Bilotti argued the Commission should maintain the distinction between a “per program” or “video on demand” video service under Title VI and a specialized internet network service under Title II. Mr. Bilotti stated that video services should be free to offer content on either a “video on demand” or linear basis under Title VI based on their determination of what consumers want.

With regard to the pending Comcast and Time Warner Cable transaction, Mr. Bilotti argued that the 25 Mbps downstream, 3 Mbps upstream announced in the Commission’s recently released 2015 Broadband Progress Report is not an appropriate standard for purposes of evaluating internet market share in pending transactions.

Pursuant to Section 1.1206(b)(2) of the Commission’s rules, 47 C.F.R. § 1.1206(b)(2), an original and one copy of this notice are being submitted to the Secretary’s Office, copies are being provided to the Commission participants in the meeting, and electronic copies are being filed through the Commission’s electronic comment filing system for the above-referenced dockets.

Kindly contact the undersigned if you have any questions regarding the foregoing.

Respectfully submitted,



Gary S. Lutzker
Counsel to P. Schoenfeld Asset Management LP

Encl: Biography and Agenda

cc: Commissioner Michael O’Rielly
Robin Colwell, Esquire
Amy Bender, Esquire

Baker&Hostetler LLP

Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5304

T 202.861.1500

F 202.861.1783

www.bakerlaw.com

Gary S. Lutzker

direct dial: 202.861.1782

glutzker@bakerlaw.com

Biography and Agenda for 11:00 a.m., April 7, 2015 Meeting with Commissioner O’Rielly.

Mr. Richard Bilotti — P. Schoenfeld Asset Management LP

Mr. Bilotti joined PSAM in July 2010 and is Portfolio Manager for Special Situations. Prior to joining PSAM, Richard was a Managing Director with GSO Capital Partners where he focused on public and private investments in the media and telecom sectors. From 1994 to 2006 Mr. Bilotti worked at Morgan Stanley where he held positions as an equity research analyst, Executive Director and most recently Managing Director, focusing on the communications and entertainment industries. Mr. Bilotti also held positions at Prudential Bache Securities, L.F. Rothschild and Kidder, Peabody. Mr. Bilotti holds a BS in Economics from the Wharton School of the University of Pennsylvania.

Agenda:

1. In the ISP Regulation Order, the Commission declined to address the status of ubiquitous ISP data allowances and usage-based pricing plans, and instead stated the Commission would “address concerns under the no-unreasonable interference/disadvantage on a case-by-case basis.” (Order at para. 153, footnote omitted). The Commission should reconsider its reliance on a case-by-case approach because the absence of clarity this creates regarding such widely used, reasonable, and accepted pricing plans will prevent ISPs from creating the long range business plans required for new technology investments. The Commission therefore should issue advisory guidance on its own motion to clarify that tiered billing arrangements based on download speeds and bundled service discounts, are “classes of communications” that are “just and reasonable” and for which “different charges may be made for the different classes of communications” under Section 201.
 - a. Network investment will be negatively impacted absent clarification and protection of usage-based billing.

2. Although the ISP Regulation Order at para 186 indicated “the open Internet rules we adopt today do not apply to” “arrangements for the exchange of Internet traffic,” (*i.e.*, interconnection and peering), the Commission nevertheless held in para. 193 and elsewhere that it would “be available to hear disputes” between ISPs and edge or transit providers “regarding arrangements for the exchange of traffic . . . raised under sections 201 and 202 on a case-by-case basis.” Inasmuch as a case-by-case approach provides no certainty regarding what will be deemed reasonable in interconnection agreements, the Commission should clarify that ISP are allowed to charge for interconnection where in-bound and out-bound traffic are asymmetrical. Increases in in-bound traffic create interconnection system backbone capacity congestion and necessarily will result in the degradation of last-mile service (*i.e.*, back-ups) absent usage-based billing.
 - a. The financial markets will struggle to commit capital to ISP’s if an “edge content provider,” a small group of subscribers, or a combination of the former parties can take control of a disproportionate amount of an ISP’s capacity, and in effect “hijack” the ISP.
 - b. The Commission should consider the likely scenario in which demand exceeds an ISP system’s capacity and implement policies that provide incentives for investment to expand system capacity while establishing protections against the intentional degradation of system functions.
3. In crafting its regulations, the Commission should clarify its tentative conclusions in the MVPD Definition NPRM regarding the distinction between a video service under Title VI and a specialized internet network service under Title II.
 - a. Video services should be free to offer content on either a VOD or linear basis under Title VI based on their determination of what consumers want.
4. Is the 25Mbps/3Mbps standard announced in the Section 706 Report an “aspirational goal” for analyzing reasonable and timely deployment or a benchmark for evaluating internet market share? Given that almost every cable company provides a 25Mbps or faster option, how would a TWC merger with CMCSA change the competitive landscape?
 - a. The Comcast-NBCU merger conditions and consent decree, and the Commission’s existing program access rules, provide a clear framework for video programmers to reach Comcast’s customers. The merger conditions decree and the recently adopted ISP regulations similarly provide clear operating standards for last mile and interconnection services. Given these circumstances, the Commission should not impose additional restrictive conditions on the Comcast-TWC merger. Restrictive merger conditions are likely to discourage rather than encourage the combined company to invest in capacity that will provide even higher speed tiers and robust usage allowances, and therefore will frustrate the Commission’s ultimate policy goals.