



NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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December 10,2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

The Honorable Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

The Honorable Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

The Honorable Jonathan Adelstein
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

The Honorable Michael J. Copps
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation
CS Docket No. 02-52; CN Docket No. 00-185

Dear Chairman Powell and Commissioners:

On November 18,2002, a group calling itself the Coalition of Broadband Users and Innovators -- led by Microsoft and The Walt Disney Company -- filed a letter in the above-captioned docket calling upon the Commission to "assure that consumers and other Internet users continue to enjoy the unfettered ability to reach lawful content and services . . . without impediments imposed by transmission network providers."

We agree that consumer access to Internet content is, and should be, full and unfettered. To the extent the Coalition suggests that government action is necessary to achieve this result, however, we must strongly disagree.

The members of the National Cable & Telecommunications Association ("NCTA"), the principal trade association of the cable television industry, **take** justifiable pride in leading the deployment of broadband facilities and services. In contrast to most of the signatories of the Coalition letter, cable operators have invested more than \$65 billion of private capital since 1996 -- about \$1000 per customer -- in network facilities that allow them to offer their subscribers a wide array of advanced services, including interactive digital cable, high definition television,

broadband Internet access, and digital local telephone service. NCTA's programmer members have likewise been at the forefront of deploying attractive, content-rich websites. Because cable companies risked this massive investment, cable modem service is available today over broadband cable systems to more than 75 million U.S. households. Subscribership to cable modem service continues to grow and recently passed the ten million subscriber mark, with hundreds of thousands of new cable modem subscribers in the third quarter of this year. All of this investment by cable has, in turn, spurred investment by telcos in DSL services, as well as rapidly expanding investment in wireless broadband services. It has been cable's commitment and investment that has stimulated the widespread and competitive deployment of broadband in America.

Cable operators offer their subscribers unrestricted access to Internet content and the ability to run applications of their choice because customers demand those capabilities, not because cable companies were ordered to do so by the government. The imposition of cumbersome, unneeded government requirements on cable operators would actually impede broadband deployment. It would entangle operators in regulatory disputes and create the risk that market participants will exploit government processes to delay or hobble rivals.

Notably, the Coalition letter does not provide any evidence of harm to justify the imposition of common carrier-like requirements on cable operators. In fact, no such evidence exists. Cable operators have made concerted efforts to ensure that networks used for cable modem service are open. For nearly seven years, Cable Television Laboratories, Inc. (CableLabs®), a non-profit cable technology research and development organization, has been working on the Certified Cable Modem Initiative (formerly, Data Over Cable Service Interface Specifications (DOCSIS)). Through this project, cable companies and manufacturers have developed an open specification for broadband equipment.

The specification ensures that cable systems integrate broadband capabilities into their networks according to a uniform set of standards and that cable modems meet defined interface requirements. All that NCTA members require is that equipment attached to the network not jeopardize network operation, security or service. Microsoft, a prominent member of the Coalition, acknowledged the legitimacy of these concerns in recent testimony before the Senate Commerce Committee. More than 265 modems from 68 vendors have been DOCSIS-certified, with many of these already available to the public through retail outlets. Indeed, in the four years since CableLabs began certifying cable modems, more than 11.7 million DOCSIS cable modems have been deployed in North America and millions more deployed around the world.

Significantly, cable modem service functions with any personal or laptop computer the subscriber selects. Likewise, cable customers also can and do interconnect computers and other devices in their home using any of the available devices for establishing wired and wireless local area networks. Cable modem service customers may roam freely over the Internet using the equipment of their choice. When they are connected to the Internet, moreover, they can run any applications they want, play games, or do whatever else they choose, subject only to content-neutral usage management by cable operators to make sure that customers are not exceeding the capacity they have paid for, running a business over a residential connection, or impeding the quality or speed of service of other paying subscribers. In fact, four major cable operators --

Comcast, Charter, Cox, and Time Warner Cable -- were among the charter partners of Microsoft's recently-announced online gaming service, Xbox Live^{1/}

While benignly phrased in terms of network neutrality and nondiscrimination, the Microsoft-led Coalition would seemingly invite the government to preclude cable operators from entering into the kind of business arrangements with content partners that Microsoft itself is actively pursuing. Microsoft and Disney, the two most visible and active Coalition members, have entered into several deals under which Microsoft will provide favored placement and links to Disney owned content.^{2/} The point is not that such arrangements should be prohibited. Rather, government intervention to determine which business models are appropriate for broadband services would inevitably favor some market participants over others. Particularly at this early stage of broadband development, the government's primary goal should be to encourage the massive investment still needed to bring broadband to every home rather than imposing additional risks and uncertainties that will only deter such investments.

To its great credit, the Commission has since 1998 resisted the siren song of those who would impose "access" regulations on the cable industry. The cable industry has repaid that trust with true innovation, billions of dollars of new investment, and service to millions of broadband subscribers. It is remarkable, in the face of these facts, that the Coalition would seek to open the door to unneeded regulation. For the last 20 years, the overarching goal of Federal communications law has been to reduce, not increase, access and price control mechanisms while promoting competitive entry in the creation and provision of networks. In the absence of market failure, there is no basis for straying from this path.

Sincerely,

/s/ **Robert Sachs**

Robert Sachs

cc: Marlene H. Donch, Office of Secretary

^{1/} By contrast, according to press reports, users of Microsoft's new Media Player software must give the company the authority to disable any application on the user's computer that it deems inappropriate. Joseph Menn and Jon Healy, *Hollywood, Tech Piracy Efforts May Curtail Choices*, LOS ANGELES TIMES, Sept. 3, 2002.

^{2/} See Jim Hu, *Microsoft plays ball with Disney*, CNET.COM, **Sept. 6**, 2001 (available at <http://news.com.com/2100-1023-272711.html>) (describing cross-marketing agreement between MSN.com and ESPN.com); *The Walt Disney Company and MSN Launch Disney on MSN Internet Service*, Oct. 24, 2002 (available at <http://www.microsoft.com/presspass/press/2002/Oct02/10-24MSN8DisneyPR.asp>) (describing a "co-branded Internet service that combines the new MSN 8 software with the magic of Disney content").