

COALITION OF BROADBAND USERS AND INNOVATORS

January 8, 2003

FILED ELECTRONICALLY

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
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Commissioner Kevin J. Martin
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Commissioner Jonathan S. Adelstein
Federal Communications Commission
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**Re: CS Docket No. 02-52; CC Docket Nos. 02-33, 98-10 & 95-20;
GN Docket No. 00-185
Ex Parte Communication**

Dear Chairman Powell and Commissioners:

On November 18, 2002, the Coalition of Broadband Users and Innovators filed a letter in the above-captioned dockets urging the Commission to assure in its broadband policy that users are able lawfully to roam over the Internet; to run the applications they want using the equipment they choose; to gather, create, and share information; and to connect to websites absent interference by network operators. The Coalition is unanimous in its belief that an Internet environment that allows users to reach all lawful destinations of their choice has served consumers and public policy well and should be maintained as the model for advanced broadband services.

As a Coalition, however, we do not endorse an "open access" principle, contrary to how some have tried to characterize our position. Instead, the Coalition is asking the Commission to endorse principles of consumer connectivity, so that users are able to go anywhere and attach any nonharmful devices to the network, and network neutrality, so that the FCC's broadband policy applies across all platforms, including the cable and wireline networks that are the subject of the above-captioned proceedings. There is an increasing consensus among large numbers of companies in the e-commerce, software, hardware, and telecommunications industries, as well as groups representing citizens who use the Internet for interactive communications, as to the need for preserving well-accepted user connectivity principles in the broadband era.

The Coalition is pleased to report, as evidence of that increasing consensus, that since submitting its November 18 letter, a number of other companies and associations concerned about the ability of users to connect to and navigate the Internet have joined its ranks. They include:

- the Alliance for Public Technology;
- the Digital Media Association;
- Intertainer;
- Qualcomm; and
- Yankees Entertainment and Sports Network (“YES!”).

These parties have joined the Coalition because they, too, are concerned that the Commission may be poised to create a broadband duopoly, which it consistently has not embraced without adopting substantial safeguards. Though alternative broadband sources are on the horizon, in realistic terms the broadband duopoly will define the Internet for some time, and such a structure facilitates the ability of network operators to infringe or encumber the relationships among their customers or between their customers and destinations on the Internet.

The Coalition also would like to recognize NCTA’s statement in a December 10, 2002, filing at the Commission that cable operators are not now blocking access to Internet content. As Chairman Powell has remarked, the true value of the Internet is its ability to take a user to any information, located anywhere, and at any time. The next generation of Internet broadband applications and services must retain this characteristic, regardless of the platform over which these services are delivered, or risk quelling the very thing that led to the explosive growth of the Internet.

The troubling aspect of NCTA’s submission is that the association and its members conspicuously refuse to assure the public, the Commission, and other interested parties that cable operators will not engage in practices that compromise users’ ability to reach lawful content and use devices that do not harm the network. It is a fair question to ask why, if cable operators are committed to providing users with unrestricted Internet access and to allowing them to attach their choice of devices to the network, they will not provide assurances that they will refrain from interfering with these core principles of network neutrality. NCTA should put some teeth in its statement “that consumer access to Internet content is, and should be, free and unfettered,” by polling its members so that they may publicly commit to not engaging in such practices now or in the future.

In its December 10 letter, NCTA mentions the substantial investment cable operators have made in upgrading cable plant to accommodate broadband services and cites that as critical to the success of broadband. The Commission also must understand that consumers become excited about and willing to invest in broadband services not because of the higher speeds per se, but because those higher speeds enable them to access compelling content. Thus,

the Commission must pay close attention to one of the failings of the current broadband environment: lack of compelling content. The Coalition is concerned that if content providers are beholden to network operators, which could favor affiliated websites by, among other things, reducing bandwidth or restricting access to other websites, then content providers and innovators may be hesitant to invest in the exciting services that will entice consumers to become broadband subscribers.

NCTA also suggests that the adoption of targeted connectivity principles would entangle cable operators in regulatory disputes and threaten broadband deployment. But experience rebuts that. The explosive growth of the Internet has been a direct result of consumers' ability to go anywhere on the network, and for the same reasons consumer connections and network neutrality will contribute to increased broadband deployment. Consumers will not have the incentive to invest in broadband if they cannot use its capabilities to reach their choice of lawful Internet content, applications, and services. Moreover, NCTA has conveniently constructed a straw man and then taken a swing at it. Though some have suggested regulating cable modem service under Title II, the Commission also has ample authority under Title I to ensure that the principles of network neutrality that have been the foundation for the Internet will endure across all platforms in the broadband future. Simply stated, CBUI's proposal is not an example of "unneeded government regulation" of the Internet. CBUI's proposal *is* the Internet.

NCTA also misses the mark by suggesting that the Coalition seeks to preclude cable operators from entering into business arrangements with content partners or have the government determine which business models are appropriate for broadband services. The Coalition merely wants to ensure that consumers continue to have the freedom to access the full spectrum of lawful services available on the Internet. Cable has always been a pay service provided over a closed network with a finite number of choices. The Internet, by contrast, is by definition open. It would be inconsistent with the growth, development, and design of the Internet for a cable operator to interfere with users' ability to access Internet content because the cable operator controls the network.

The Coalition also does not object to cable operators establishing tiered pricing and "mak[ing] sure that customers are not exceeding the capacity they have paid for" provided that they follow the principles set forth in this proceeding by the High Tech Broadband Coalition:

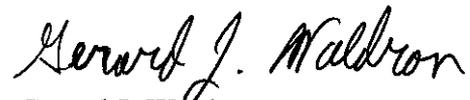
- provide consumers with meaningful information regarding the technical limitations of their service;
- allow consumers unrestricted access to their choice of Internet content using the bandwidth capacity of their service plan;
- allow consumers to run applications of their choice, as long as they do not harm the provider's network and are within the bandwidth limits of their service plans; and

- permit consumers to attach any devices they choose, without prior permission, to their ISP connection, so long as they operate within the agreed bandwidth, do not harm the provider's network, or enable theft of services.¹

This means that cable operators should not, for example, implement arbitrary distinctions between so-called "business" and "residential" uses of broadband spectrum. Many cable operators are charging residential users who desire to use their contracted-for bandwidth to set up virtual private networks ("VPNs"), which are essential for among other things telecommuting, as much as \$50 per month more for so-called "business" or "professional" level service.² Such policies are not consumer-friendly if users can run VPNs without harming the provider's network and within the bandwidth limits of their service plans.

For these reasons, the Coalition renews its call for the adoption of safeguards to ensure "that consumer access to Internet content is . . . full and unfettered" so that Internet users continue to be able to reach lawful content and services and to communicate and interact with each other and reach desired Internet destinations without impediments imposed by transmission network providers.

Sincerely,



Gerard J. Waldron
Its counsel

¹ See Comments of the High Tech Broadband Coalition in CS Docket No. 02-52, at 7-9 (June 17, 2002) ("HTBC Comments").

² See, e.g., HTBC Comments at 12; Ed Foster, *Migration migraines*, InfoWorld, Jan. 25, 2002, at <http://staging.infoworld.com/articles/op/xml/02/01/28/020128opfoster.xml?Template=/story>.

cc: Chairman Michael Powell
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
Commissioner Jonathan Adelstein
Ms. Susan Eid
Mr. Chris Libertelli
Mr. Jon Cody
Mr. Matt Brill
Ms. Stacy Robinson
Mr. Jordan Goldstein
Ms. Alexis Johns
Mr. Dan Gonzalez
Ms. Catherine Bohigian
Mr. Eric Einhorn
Ms. Sarah Whitesell
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