



July 5, 2005

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Dear Chairman Martin:

On behalf of the 300 members of CompTel/ALTS<sup>1</sup>, I am writing to you today to strongly encourage the Federal Communications Commission (“Commission”) to act swiftly and decisively to preserve unfettered consumer access to innovative Internet technologies. Specifically, I urge you to set a clear policy prohibiting network owners from port blocking, or otherwise interfering with the transmission capabilities, of service providers offering voice over Internet Protocol (“VoIP”) services and other competitive alternatives. Such immediate action is crucial in the wake of the U.S. Supreme Court’s recent decision in the *Brand X* case.<sup>2</sup>

On March 3<sup>rd</sup>, the Commission correctly signaled in the *Madison River*<sup>3</sup> consent decree that common carriers could not engage in “port blocking” of VoIP service providers. However, stronger and clearer action is needed in the aftermath of the *Brand X* decision. There, the Court held that cable modem services are not subject to Title II common carriage regulation, and noted that it was making no determination on whether the Commission should apply interconnection obligations on cable modem-based (or DSL-based) information services. In so doing, the Court did not reach the issue of port blocking or other interferences with VoIP service providers’ abilities to offer their services over cable facilities or the facilities of incumbent local exchange carriers without degradation of their bit streams. These important consumer protection and competition

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<sup>1</sup> CompTel/ALTS is the leading industry association representing competitive communications service providers. CompTel/ALTS members are entrepreneurial companies building and deploying next generation, IP-based networks to provide competitive voice, data, and video services in the United States and around the world. CompTel/ALTS members create economic growth and improve the quality of life for all Americans through technological innovation, new services, lower prices and customer choice. CompTel/ALTS members share a common objective: advancing communications through innovation and open networks.

<sup>2</sup> *NCTA v. Brand X Internet Services*, Mo. 04-277; *FCC v. Brand X Internet Services*, No. 04-281 (“*Brand X*”).

<sup>3</sup> *In the Matter of Madison River Communications, LLC and affiliated companies*, File No. EB-05-IH-0110, Order, DA 05-543, (rel. March 3, 2005).

policy questions are currently at issue in several open proceedings before the Commission.

Opponents of competition in the VoIP market may try to argue that the Commission's lack of Title II authority over cable modem services allows cable network owners, or any network owner offering broadband services, to port block or otherwise interfere with VoIP service providers' voice bits. Recent history has shown us that anti-competition-minded network owners, such as Madison River, will try to block VoIP service providers' data streams when they fear the competition such providers are bringing to the market place. As the market share of entrepreneurial VoIP companies grows, the likelihood of such illegal blocking activity is likely to increase as well due to the "threat" of competition brought by new VoIP companies.

Accordingly, if the Commission is serious about creating a regulatory environment that fosters entrepreneurialism in the advanced services market, it should unambiguously declare that all owners of public networks are prohibited from blocking, or otherwise interfering with, the data streams of entrepreneurs offering not only VoIP, but other advanced services as well. If the Commission fails to seize this opportunity to bring pro-entrepreneur regulatory certainty to the market place, it will give an incentive to incumbent network owners to exclude not only VoIP service providers from being able to transmit over their networks, but possibly all forms of data communications that may pose a competitive threat to those same incumbents as well. CompTel/ALTS encourages the Commission to act quickly to preserve consumer choice and competition in this market.

Thank you for your consideration of this matter. Please contact me if you would like additional information.

Respectfully submitted,

Earl W. Comstock  
President and CEO  
CompTel/ALTS