

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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June 15, 2007

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

Re: Comments of the New York State Department of Public Service in WC Docket 07-52; Notice of Inquiry in the Matter of Broadband Industry Practices

Dear Ms. Dortch:

The following Comments are respectively submitted on behalf of the New York State Department of Public Service (NYDPS or Department) in the Federal Communications Commission's (FCC) Docket No. 07-52; Matter of Broadband Industry Practices. In its Notice of Inquiry (NOI) the FCC seeks to enhance its understanding of, among other things, the nature of the market for broadband and related services, whether network providers and others favor or disfavor particular content, whether consumers are affected by these policies, and whether consumer choice of broadband providers is sufficient to ensure that all such policies ultimately benefit the consumers. The New York State Public Service Commission (Commission) confronted similar issues when it adopted its common carrier rules. We urge the FCC to consider those rules at 16 N.Y.C.R.R. Part 605 as a template for establishing network neutrality. The Commission's rules are included herein for your review and consideration.

The Commission adopted its common carrier rules in 1990.¹ In doing so, the Commission noted that the rules were not inconsistent with the move toward a reduction in regulation and an increase in reliance on market forces. Indeed, application of the common carrier rules could allow for a hands-off approach in many other respects, but still ensure important public interests such as informational diversity and consumer protections. These rules

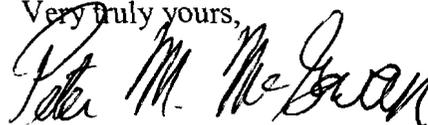
¹ Opinion No. 90-9, Order Adopting Regulations Concerning Common Carriage (issued February 20, 1990).

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are an important component in safeguarding against unreasonable discrimination and establishing the free flow on information neutral as to content.

Accordingly, the NYDPS urges the FCC to consider the Commission's common carrier rules as a template for establishing the relationship between internet providers and the various platforms.

Very truly yours,



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Encl.

PART 605

COMMON CARRIER RULES

(Statutory authority: Public Service Law, §§ 51[1][d], 91[3], 94[2])

Sec.	
605.1	Common carriage
605.2	Availability of services
605.3	Carrier involvement with content

Historical Note

Part (§§ 605.1-605.3) filed Feb. 21, 1990 eff. Feb. 21, 1990.

§ 605.1 Common carriage.

Pursuant to the Public Service Law and the commission's authority and jurisdiction, the rules set forth in this Part establish certain standards and obligations applicable to telephone corporations operating as common carriers.

(a) *Definitions.* (1) *Common carrier* means a corporation that holds itself out to provide service to the public for hire to provide conduit services including voice, data, or video by electrical, electronic, electromagnetic or photonic means.

(2) *Conduit* means the facilities, functions, or media used for providing electric, electromagnetic, electronic, or photonic transmission of communications, including voice, data or video.

(3) *Conduit services* means the provision of conduit or functions integrally related to the provision of conduit.

(4) *Content* means the information or intelligence transmitted over a conduit. Information used solely for the provision of a communications "conduit" is not "content."

(5) *Content services* means those services offered over common carrier conduits, including, but not limited to, point to multi-point connections, which provide content, employ computer processing applications that act on the format, code, protocol or similar aspects of transmitted content; provide additional, different, or restructured content; or involve user interaction with stored content.

(6) *Blocking* means the ability to prevent the completion of a telephonic communication to a specified telephone number.

(b) *General applicability.* (1) These rules are applicable to telephone corporations operating as common carriers, and, except as waived or otherwise stated, shall apply to such corporations.

(2) These rules shall not apply to:

(i) cable television services provided by cable television operators exempted from common carrier regulation under 47 U.S.C. 541(c).

(ii) the provision of content services.

(c) *Waivers.* Where the commission determines that it is in the public interest, it may, for services or types of carriers, waive any portion of these rules.

Historical Note

Sec. filed Feb. 21, 1990 eff. Feb. 21, 1990.

§ 605.2 Availability of services.

(a) *General requirements.* Telephone corporations operating as common carriers must provide publicly offered conduit services on demand to any similarly situated user on substantially similar terms, subject to the availability of facilities and capacity. Such services shall be provided by a telephone corporation on a first-come, first-served basis unless a party is able to

show in a timely fashion that such provision would be unreasonable or unless otherwise ordered by the commission. Additionally:

- (1) conduit services shall be made available as services separate from the provision of content;
 - (2) interconnection into the networks of telephone corporations shall be provided for other public or private networks; and
 - (3) segregable services and functions requested by users shall be provided to the extent technically and economically practicable.
- (b) *Restrictions on network use.* No telephone corporation operating as a common carrier shall unreasonably restrict lawful network. No restriction may impede access between a content service provider and a willing customer, except where required by law. All restrictions shall be administered in a least restrictive fashion.
- (1) Requirements by telephone corporations on users for prior subscription to a particular content services will generally be permissible only where requested by the provider of the service, or required by law, or where a waiver is granted.
 - (2) End-user initiated blocking shall always be available for content services, to the extent technically and economically feasible.
- (c) *Video conduit services.* To the extent that a telephone corporation may provide video conduit services, it may do so only so long as it provides adequate capacity to content service providers seeking its video conduit services, and treats all users in a nondiscriminatory fashion.
- (d) *Individualized contracts.* Where permitted by the commission, individualized contracts may be offered by telephone corporations operating as common carriers, so long as similarly situated customers are provided, upon request, service upon substantially similar terms. Such contracts may not be used to avoid common carrier obligations.

Historical Note

Sec. filed Feb. 21, 1990 eff. Feb. 21, 1990.

§ 605.3 Carrier involvement with content.

- (a) *General requirement.* No telephone corporation operating as a common carrier shall exercise control or influence over the content of lawful communications tendered to it for distribution. In turn, it has no liability for the content of tendered communications. This does not diminish a telephone corporation's duty to provide service of adequate transmission quality, capacity and timeliness.
- (b) *Safeguards against abuse.* Telephone corporations operating as common carriers shall make reasonable efforts to inform each content service provider, serving the public at large, of the need for safeguards against abuse of its service, appropriate to the nature of the service and the cost and difficulty of such safeguards. In addition, they shall incorporate in the tariffs or contracts pursuant to which services are made available to information providers, a requirement that such providers adopt and apply procedures reasonably designed to provide safeguards against such abuse, including, but not limited to, the provision of information concerning complaint mechanisms.
- (c) *Availability of blocking.* Telephone corporations shall make available, once technically and economically feasible, facilities giving end-users the ability to block (or delegate the blocking of) individual content services. Until such time that such blocking is readily available, it shall be permissible for telephone corporations to designate particular special interest central office codes which can be blocked at the subscriber's request. Inclusion in such central office codes shall be left to self-selection by the content service provider with independent arbitration and due process protections in the event of a dispute. Such special interest central office codes should be treated nondiscriminatorily, with respect to terms and conditions of services.

Historical Note

Sec. filed Feb. 21, 1990; amd. filed Dec. 4, 2000 eff. Dec. 20, 2000. Amended (b).