Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	WC Docket No. 07-52
Broadband Industry Practices	)	

INTERNET CONTENT AND SERVICE PROVIDER COALITION COMMENTS

Our companies are part of what has been called the Internet content/service industry, a large and growing part of the high tech industry consisting of companies that provide services - including video, audio, and data content - to over the Internet. We file these Comments in order to respond to the Commission's request for the views of interested parties on the question of whether the FCC should adopt rules that regulate the ability of participants in the Internet content/application industry to enter individualized contracts with broadband network operators for priority packet delivery services.[1]

DISCUSSION

While there may be a perception in some quarters that the Internet content industry speaks with one voice in support of rules to regulate packet delivery contracts between network operators and Internet content companies (a type of regulation which proponents refer to as "net neutrality"), our industry is not unified in support of such regulation since many of us believe that the risks outweigh the theoretical benefits. The CEOs of several prominent Internet content companies - including Disney CEO Robert Iger and Internet entrepreneur Mark Cuban - already have stated their opposition to net neutrality regulation,[2] and leaders of other Internet content companies

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1 Notice of Inquiry at ¶ 10.

2 Mark Cuban, "Hey Baby Bells & Cable, we need multiple tiers of service (Jan. 15, 2006), avail. at http://www.blogmaverick.com/2006/01/15/hey-baby-bells-amp-cable-we-need-multiple-tiers-of-service/ (media

have expressed skepticism about the desirability of net neutrality regulation too.[3] We submit the present comments to make clear that our Internet content/service companies likewise oppose the adoption of such regulations.

One reason we and other Internet content/service companies oppose net neutrality regulation is because there is growing evidence that it could slow the deployment of the super-fast local broadband networks that are crucial to continued growth of our industry. Evidence of this risk comes from the cable, cellular, and telephone carriers who have begun to deploy these extraordinarily expensive networks,[4] from Wall Street analysts,[5] from telecom researchers,[6] and from scores of companies that produce the hardware and software products necessary to make broadband networks work.[7] If investment in local broadband networks were to slow as a result of

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entrepreneur Mark Cuban opposing net neutrality regulation); "Net Neutrality Battle Heats Up", consumeraffairs.com (Mar. 22, 2006), avail. at http://www.consumeraffairs.com/news04/2006/03/net_neutrality_heats_up.html (quoting Disney CEO Robert Iger as stating in a speech before a national telecom industry trade association convention that we "do not support any [network neutrality] legislation at this time").

3 *See, e.g.,* "No Wireless Net Neutrality Rules Needed, Entrepreneurs Say", Commun. Daily, Feb. 23, 2007 at 2 (quoting Jon Jackson, CEO of Internet content company MobilePosse, as stating that such regulation "can have unintended consequences . . . . This falls under the category of 'be careful what you wish for. . . . I'm a businessman, so I typically say, let the market figure it out"); EContent, Aug. 31, 2006 (quoting CEO of travel web site Gusto.com, as being skeptical of net neutrality regulation: "Asking [network owners] to subsidze [content companies] is a model that does not work. If I own something, I should be able to charge what the market can bear, plain and simple").

4 *See, e.g.,* "Verizon White Paper on Broadband Regulation" at 13, 15-17, presented to the Fed. Trade Commission Internet Access Task Force (Mar. 2007).

5 Craig E. Moffett, V. P. and Sr. Analyst, Sanford C. Bernstein and Co. at 3 (Testimony before the U.S. Senate Subcomm. on Commun., Mar. 14, 2006).

6 *See, e.g.,* George S. Ford, Thomas M. Koutsky, and Lawrence J. Spiwak, "Wireless Net Neutrality: From Carterfone to Cable Boxes" at 13-15 (Phoenix Center for Advanced Legal & Economic Public Policy Studies, April 2007); Larry F. Darby, "Consumer Welfare, Capital Formation and Net Neutrality" at 7-8, 31 (rel. by American Consumer Institute, June 6, 2006).

7 *See, e.g.,* Letter from 22 telecom manufacturers to FCC (WC Dkt. No. 06-74, Dec. 8, 2006) ("The vast majority of high tech manufacturers oppose network neutrality regulation because they believe that such regulation. . . would unnecessarily slow the pace of technological innovation and investment"); letter from Alcatel-Lucent (FTC Broadband Connectivity Competition Policy Workshop-Project No. V07000, Feb. 12, 2007 ("Alcatel-Lucent does not

net neutrality regulation, the Internet content industry would be hurt by forcing it to rely on existing and less desirable network technologies. For example, content companies desiring to provide high definition video service or real-time on-line consumer health monitoring services might be hurt since existing technologies make transmission of such services difficult in the absence of new packet prioritization systems that are just now beginning to be deployed.

Even if it were not clear that net neutrality regulation would slow deployment of new local broadband network infrastructure, we <u>still</u> would be reluctant to support such regulation because we believe that it could harm those parts of the Internet content/application industry (and their customers) that will be the primary beneficiaries of packet prioritization services – such as health monitoring services, network security services, high speed video services, VoIP services, and interactive games to name a few. Such regulation could harm these companies and the public by reducing the use of such services. A new economic research study summarized the reasons why this is so:

> "By preventing market exchanges between . . . [local broadband network operators and Internet content/application companies], policymakers would effectively force the broadband service provider to charge only consumers for the services it provides, even if those transactions are far more inefficient than transactions between content and network providers. Effectively barring one form of market exchange between content providers and broadband service providers is not dissimilar from prohibiting cable television operators from accepting payments from content providers or advertisers, as doing so would no doubt lead to higher consumer cable rates, less content, and possibly less-efficient industry structure. . . . One can understand how such rules would increase transaction costs if one considers the impact they might have if applied to another industry, such as the sale of books by online retailer Amazon.com. . . . [B]ecause firms and consumers will act in order to minimize transaction costs, certain ancillary yet important services (like shipping a book from Amazon.com via UPS) are often bundled with the sale of a final product because it is more efficient for those services to be procured by the firm selling the product rather than obtained individually by the consumer. . . .Society is better off because when

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believe it is appropriate . . . for regulators . . . to adopt a broadband Internet access 'nondiscrimination principal' (*i.e.* Net Neutrality) [because doing so] . . . would threaten the continued evolution of our communications infrastructure to next generation platforms").

> Amazon.com offers its customers shipping, it is far more efficient for Amazon.com to bundle shipping with its book sales than to force consumers to contract directly for shipping with the Post Office or UPS for each and every purchase. . . . Similarly, a firm that is in the business of streaming video to consumers is likely to be in a far better position to understand, plan for and ultimately procure special broadband network services necessary to deliver a video program to a consumer, who simply may want to push a button on a remote control and watch a baseball game. . . . [F]oreclosing upstream content providers from directly contracting with broadband network firms to deliver their products could have an impact upon the price and availability of new online services and applications. If rules analogous to . . . 'network neutrality' proposals were imposed on Amazon.com's book sales, then the Postal Service, UPS (and other shippers) would be prohibited from negotiating that bulk arrangement with Amazon.com. . . Instead, every customer that wanted to purchase a book from Amazon.com would need to contact a shipper separately and apart from that purchase to arrange for shipping. Seen in this light, it does not take long to understand how foreclosing or limiting content provider-broadband provider contracts could throw sand into the gears of online commerce."[8]

Not only would network neutrality regulation likely harm the types of Internet content and applications that packet prioritization is designed to help, researchers have found that network neutrality regulation also would be more likely to harm small content/service companies of all types, including those offering Internet content and applications that packet prioritization is not intended directly to benefit.[9] If this finding turned out to be true, the entrepreneurship that has been the hallmark of the content/application industry – and one of its principal publicly beneficial

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[8] George S. Ford, Thomas M. Koutsky, and Lawrence J. Spiwak, "Network Neutrality and Foreclosing Market Exchange: A Transaction Cost Analysis" at 8-10 (Phoenix Center for Advanced Legal & Econ. Public Policy Studies, Mar. 2007). *See also* J. Gregory Sidak, "Consumer Welfare Approach to Network Neutrality Regulation of the Internet" at 90-99, reprinted in 2 Journal of Competition Law & Economics (2006) (Network neutrality regulation would discourage new content providers from entering the market with applications that would benefit from the prioritization that network neutrality regulation complicates, either because of the uncertainty over contracting for priority with access providers or at the very least because transaction costs would rise as access providers are forced to contract for priority delivery of content with end-users; and while discouraging new entrants into this segment of the content market, such regulation also would help entrench the largest incumbent content and application providers).

[9] Benjamin E. Hermalin and Michael L. Katz, "The Economics of Product-Line Restrictions With an Application to the Network Neutrality Debate", Working Paper 07-02 (AEI-Brookings Joint Center for Regulatory Studies, Feb. 2007).

attributes - would be undermined; this is another reason we do not favor the adoption of rules mandating network neutrality regulation at this time.

CONCLUSION

Many companies involved in the Internet content/service industry, including us, oppose the adoption of network neutrality regulations because we believe there is a substantial risk that they would harm our industry, network innovation, and the public.

Respectfully submitted,

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