

DISCUSSION

The Commission initiated this proceeding to better understand the views of a host of broadband industry participants - including platform providers, Internet access providers, broadband transmission providers, Internet service providers, Internet backbone providers, and content and application providers – about whether IP packet management services should be regulated. The Commission is interested in the views of interested parties to help it decide whether to adopt new rules regulating the manner in which packet management equipment is used.

Each company participating in the present *ad hoc* coalition opposes the adoption of rules that regulate services provided *via* IP packet management technology because such regulation is contrary to the public interest for several reasons. First, a growing body of research documents that regulation of this type could reduce investment in local broadband infrastructure by providing a disincentive for incumbent local broadband network operators to invest in their networks, at the risk of fewer innovations and less competition for consumers.²

Even if such regulation did not reduce the incentive of network operators to invest in their local networks, such regulation still would reduce network innovation because a leading Wall Street analyst has testified that, at the very least, such regulation could make it more difficult for network operators to raise the necessary investment capital: “[Such regulation

² T. Randolph Beard *et al*, “Network Neutrality and Industry Structure”, Hastings Comm/Ent. L.J. 149 (2007); 3A Areeda & Hovenkamp, Antitrust Law ¶ 773b2 at 203-04, ¶ 773b3 at 206-07, and ¶ 774c at ¶ 220-21 (1996); Larry F. Darby, “Consumer Welfare, Capital Formation and Net Neutrality” at 7-8, 31 (rel. by American Consumer Institute, June 6, 2006); Comments of the Section of Antitrust Law of the American Bar Ass’n In Response to the Fed. Trade Commission’s Request for Public Comment Regarding Broadband Connectivity Competition Policy at 6 (Mar. 2007) (Network neutrality regulation “could distort . . . investment incentives by increasing the risk that the investments, once sunk, will be prohibited from profit-maximizing and useful purposes”).

would] sour Wall Street's taste for broadband infrastructure investments, making it increasingly difficult to sustain the necessary capital investments."³

According to other research, regulation of this sort also would reduce the incentive of the purported beneficiaries of such regulation (Internet content and application providers) to invest in new local broadband infrastructure of their own to serve their ever increasing bandwidth intensive applications.⁴ This intuitive phenomenon is illustrated by the fact that the nation's largest Internet content and application companies - led by Google, Earthlink and Intel - began investing heavily in new local Wi-Fi and broadband-over-powerline networks almost immediately after the Supreme Court's 2005 decision holding that such regulation is not required by the Communications Act.⁵

Finally, we oppose rules that regulate the manner in which packet management technology is used because nearly all rules regulating the use of telecom technologies negatively affect the development of technologies in ways that are unforeseen and long lasting. For example, the Commission revised the conduct-regulating comparably efficient interconnection ("CEI") requirements in Computer II after finding that those requirements had begun to restrict innovation. While it is nearly impossible for most any regulation to keep up with technology, it is especially difficult for technology regulation to avoid obsolescence in a market as dynamic as the Internet services market in which packet management equipment is used. Unfortunately, the negative impact of such regulation on technological innovation most likely would not be known

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

⁴ 3A Areeda & Hovenkamp, Antitrust Law, *supra*, ¶ 771b at 174-76, ¶ 773a at 201; Hylton, "Economic Rents and Essential Facilities", 1991 BYU L Rev. 1243, 1261 (1991); Alfred E. Kahn, AEI-Brookings Joint Center, Telecommunications, "The Transition from Regulation to Antitrust: at 25 (July 2006, rev. Aug. 14, 2006); "Beyond Network Neutrality", *supra*, 9 Harvard J. Law & Tech. at 29-33.

⁵ *Nat. Cable & Telecom. Ass'n v. Brand X Internet Services*, 545 U.S. 967 (2005).

until after the fact, resulting in the potential for any unintended consequences to overhang the market and chill development of products that may actually be of use in stimulating and managing new broadband networks and Internet-based service applications.

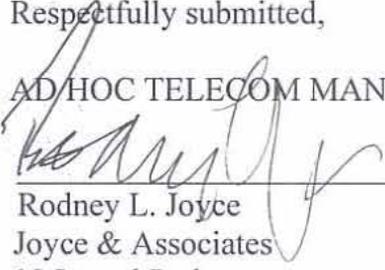
CONCLUSION

Telecom manufacturers oppose new rules regulating the use of packet management equipment because such rules would harm the public interest by reducing investment in broadband networks and by skewing the development of new technologies in ways that are unforeseen and long lasting.

Respectfully submitted,

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