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SUMMARY

The Nebraska Rural Independent Companies (the “Nebraska Companies”), in their support of a balanced Internet policy, agree with some of the arguments advanced by commenters on both sides of the net neutrality debate. Specifically, the Nebraska Companies support adoption of a new principle of nondiscrimination that would prohibit network providers to differentiate their treatment of packets based on the packets’ source, destination or ownership, but oppose a ban on differentiation based on “packet type” or other information that indicates the packet’s need for such treatment. Ultimately, the Nebraska Companies believe, protocols that involve explicit requests for quality of service treatment should replace implicit “packet type” mechanisms, and the Commission can support this transition.

The Nebraska Companies also urge the Commission to reassess the degree of competitiveness in the market for broadband Internet access in the light of arguments and evidence that commenters have placed in the record. Such reassessment will better equip the Commission with a context within which to determine whether a new principle of nondiscrimination is necessary to preserve and promote the open and interconnected nature of the public Internet.

In the unadorned language of BT Americas, for example, the Internet, while “central” to the U.S. economy and society, “rides on a physical infrastructure, the access to which is subject to bottlenecks.”⁴ The Consumer Federation of America, et al. present a more thoroughgoing overview of the nature of the Internet environment,⁵ contrasting the roles and characteristics of “communication” with those of “information,” and making repeated use of terms such as “platform” and “layer.”

The Nebraska Companies believe the Commission can develop sound public policy for Internet access services only while bearing in mind this market architecture, and they offer the following observations in such context.

II. The Nebraska Companies Support a Balanced Internet Policy with Measured Regulatory Intervention.

The Nebraska Companies agree with commenters who argue in support of prohibitions against discriminatory behavior on the part of network providers. Several commenters note the potential harms resulting from discriminatory behavior by network service providers and urge the Commission to add a principle of nondiscrimination to those articulated in its *Policy Statement*.⁶ The Nebraska Companies share this concern and recommended in their comments adding such a principle of nondiscrimination to the Commission’s *Policy Statement*.⁷

³ See *In the Matter of Broadband Industry Practices*, WC Docket 07-52, Comments of AT&T at p. 9; Comments of Open Internet Coalition at p. 2. Hereinafter, “Comments of ...” refers to comments submitted in WC Docket 07-52 in response to the *Notice*, unless stated otherwise.

⁴ See Comments of BT Americas at p. 2.

⁵ See Comments of Consumer Federation of America, et al. at pp. 30-40.

⁶ See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *Policy Statement*, FCC 05-151 (rel. Sep. 23, 2005) (“*Policy Statement*”) at para. 4.

⁷ See Comments of the Nebraska Rural Independent Companies at pp. 5-8. See also Comments of The American Library Association at pp. 4-5 (proposing specific language to convey a principle of nondiscrimination); Comments of The Computer and Communications Industry Association at p. 6 (recommending that the AT&T/BellSouth merger conditions be applied to incumbent LECs and cable companies in all 50 states); Comments of DivX, Inc. at p. 8; Comments of Google Inc. at pp. 38-39 (citing the Snowe-Dorgan amendment and the AT&T/BellSouth agreement as examples of appropriate language);

Other commenters describe the harmful effects of banning differentiated treatment of packets, including differentiation performed to enhance quality of service (“QoS”) delivered to consumers.⁸ This is also a concern the Nebraska Companies share.⁹

Interestingly, however, only one other commenter explicitly advocates both of these policy positions. BT Americas warns against both the effects of market dominance by large wireline carriers and cable operators¹⁰ and the detrimental effects of a ban on QoS.¹¹

Some commenters use the same term, “competitive,” to describe two very different kinds of markets with vastly different degrees of competitiveness.¹² The markets for broadband Internet access could hardly be more different from the consumer markets for Internet-based information applications, such as VoIP, online shopping, gaming, banking and news. The Commission should be skeptical of arguments that conflate these two completely different markets.

Comments of The National Association of Telecommunications Officers and Advisors, the National Association of Counties and the National League of Cities at p. 9; Comments of the New Jersey Division of Rate Counsel at pp. 6-7 (urging the Commission to extend the AT&T/BellSouth conditions to all providers and to eliminate its sunset provision); and Comments of The Open Internet Coalition at pp. 14-15.

⁸ See Comments of AT&T at pp. 71-79; Comments of FreedomWorks at pp. 2-6; Comments of Hands Off The Internet at pp. 35-42; Comments of the Internet Content and Service Provider Coalition at pp. 1-5; Comments of Packet Management System Manufacturers at pp. 3-4; Comments of the National Grange at p. 2; Comments of the telecommunications Industry Association at pp. 3-7.

⁹ See Comments of the Nebraska Rural Independent Companies at pp. 8-9.

¹⁰ See Comments of BT Americas Inc. at pp. 8-12.

¹¹ Id. at pp. 12-15.

¹² See Policy Brief attached to Comments of The American Library Association at p. 3 (“Contrast the quasi-monopoly on broadband pipes with the intensely competitive market of web content and services.”) and p. 4 (“... principles that have made the Internet the most competitive market in history.”); Comments of AT&T at p. 59 (“[...] vigorous cable-telco rivalry [...] is only the beginning of the competitive story in the broadband marketplace.” and at p. 62 (“[...] the broadband marketplace is robustly competitive”); Comments of The Open Internet Coalition at p. 1 (“While the competitive marketplace for Internet content and applications continues to grow exponentially every day, America has seen nearly a decade of decline in its world standing in broadband access services [...]).

In this regard, it is especially unfortunate that one particular passage of the 1996 Telecommunications Act¹³ has been so often mischaracterized as conveying an idea which it clearly does not. This passage, found in section 509 (entitled “Protection for Private Blocking and Screening of Offensive Material”) of Title V (entitled “Obscenity and Violence;” internally also called the “Communications Decency Act of 1996”) of the Act, reads as follows:

It is the policy of the United States [...] to preserve the vibrant and competitive free market that presently exists for the Internet [...], unfettered by Federal or State regulation.¹⁴

Congress made this declaration – in which there is an implicit finding¹⁵ that a “competitive free market [...] presently exists for the Internet” – in 1996. Given the physical nature of the transmission facilities in use *at that time* for consumers’ Internet access (i.e., voice-grade dial-up), it is simply beyond the bounds of rational argument to assert that Congress, in referring here to a “competitive free market,” meant either that the transmission facilities used to provide users with access to the Internet were, in fact, bought and sold in a competitive free market, or that regulators should not promulgate rules pertaining to such transmission facilities, as some commenters assert.¹⁶ A reasonable reading of this portion of the Act leads to the conclusion that Congress was

¹³ See Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (the “Act”).

¹⁴ 47 U.S.C. § 230(b)(2).

¹⁵ The implicit finding in 47 U.S.C. § 230(b)(2) is made explicit in 47 U.S.C. § 230(a), in which five separate findings are articulated. *Every one* of these five findings – in which the phrases “rapidly developing array of [...] services,” “true diversity” and “myriad avenues” appear – describes the *pure information* component of Internet services – i.e. *content* – and makes *no reference whatsoever* to the network delivery systems that *transmit* content to and from Internet users.

¹⁶ Nevertheless, commenters continue to commit this error. See Comments of AT&T at p. 47 (claiming that the deregulatory message of section 230(b)(2) is “the same” as that contained in the preamble to the 1996 Act; Comments of CTIA at p. 3; Comments of Hands Off The Internet at pp. 14-15; Comments of the National Cable and Telecommunications Association at p. 9; Comments of Time Warner Inc. at p. 2; Comments of Verizon and Verizon Wireless at p. 29; Comments of the Wireless Communications Association International, Inc. at p. 7.

referring to the competitive free market in Internet content, not to the market in physical access to the Internet.

As correctly noted by several commenters, the major consumer markets for broadband Internet access are dominated by cable system operators and large incumbent local exchange carriers, forming a duopoly that is, at best, minimally competitive.¹⁷ The Nebraska Companies believe that the existing level of competitiveness in this duopoly market is clearly insufficient to deliver the consumer protections the Commission has claimed it is committed to uphold.¹⁸

The Commission, in its 2005 Broadband *Policy Statement*, listed four distinct policy principles, expressing them as “consumer entitlements,” that the Commission asserted it would “incorporate into its ongoing policymaking activities.”¹⁹ Among these four principles is that “consumers are entitled to competition among network providers ...”²⁰ – meaning the Commission could, upon finding that competition among network providers was absent, take regulatory or enforcement action to rectify the situation by delivering to consumers the competition to which they “are entitled.” Based on the

¹⁷ See Comments of The American Library Association at p. 4; Comments of BT Americas at pp. 3-6 (observing that the business broadband access market is essentially a monopoly); Comments of Computer and Communications Industry Association at pp. 2-3; Comments of The Center for Democracy and Technology at p. 6 (noting that the Commission’s most recent report on high-speed services for Internet access revealed that 95% of residential broadband lines are either cable or DSL); Comments of The Consumer Federation of America et al. at p. 110, pp. 124-136 and Appendix D at pp 19-25; Comments of Data Foundry, Inc. at p. 13 (“The Commission needs to quit pretending that broadband competition is vibrant”); Comments of DivX, Inc. at pp. 10-15 (arguing that competition is insufficient to deter harmful discriminatory behavior); Comments of EarthLink, Inc. and New edge Network, Inc. at pp. 5-6; Comments of Google Inc. at pp. 10-15 (citing a recent Congressional Research Service report describing the market as a “broadband duopoly” and observing that the suggestion in the *Notice* that intermodal competition is “ever increasing” “is not an accurate representation of reality.”); Comments of The Open Internet Coalition at pp. 6-8.

¹⁸ See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report and Order, FCC 05-150 (*Wireline Broadband Internet Access Services Order*) (rel. Sep. 23, 2005), para. 146; p. 62 n. 342.

¹⁹ See *Policy Statement*, FCC 05-151, paras. 4-5.

²⁰ *Id.*, fourth principle. Consumers are also, according to the Commission’s *Policy Statement*, “entitled to competition among [...] application and service providers, and content providers.”

record of comments in this proceeding, the Nebraska Companies urge the Commission to replace this rather idealistic statement with a specific commitment to protect consumers against abuse of market power brought on by a *lack of competition* among network providers.

III. The Commission Must Resolve the Contradiction Inherent in Its Claim That Certain Broadband Service Providers Contribute to Competition Among Broadband Internet Access Service Providers, Even Though They Violate the Commission's Broadband Internet Access Policy Statement.

Some commenters cite the explosive growth in wireless broadband in recent years as evidence that the consumer market for broadband Internet access is increasingly competitive.²¹ These commenters conveniently overlook the fact that many, if not most, wireless broadband service providers indeed appear to violate the Commission's broadband *Policy Statement*. To the extent that wireless broadband service providers violate the Commission's policy principle, according to which "consumers are entitled to connect their choice of legal devices that do not harm the network,"²² such providers cannot be considered to be legitimate contributors to the level of competition in the market for broadband Internet access. The Commission did not, according to its own language, establish these principles merely to *encourage* or *promote* competition, but "to *ensure* that broadband networks are [...] open [...] and accessible to all consumers"²³

Not all broadband services are necessarily Internet access services. The Nebraska Companies have no desire to see the Commission require that all providers of broadband services – including wireless broadband – permit consumers to connect their preferred harmless legal device to the provider's wireless broadband network, so long as such

²¹ See Comments of CTIA at pp. 1-2; Comments of Hands Off The Internet at pp. 10-12; Comments of Sprint Nextel Corporation at pp. 3-5.

²² See *Policy Statement* at para. 4, third principle.

broadband services are not considered to be Internet access services. However, the Commission cannot simultaneously (1) claim that its *Policy Statement* principles are guiding its actual policymaking and (2) permit such restrictive wireless broadband service providers to be counted among participants in the consumer market for broadband *Internet access service*.

A given broadband provider is either providing Internet access or it is not. If the Commission's position is that a broadband provider that violates its *Policy Statement* principles is indeed providing Internet access, then the Commission should take action to address such violation, as it indicated nearly two years ago that it would.²⁴ On the other hand, if the Commission's position is that a broadband provider that violates its principles is, as a consequence of such violation, *not* providing Internet access, then the Commission should not count that provider among the participants in the consumer market for broadband Internet access service. Such exclusion would then more realistically reflect the true level of competitiveness in that market.

Skype Communications, S.A.R.L. petitioned the Commission on February 20 to, among other things, declare that the Commission's *Carterfone* decision applies to wireless networks – i.e., to clarify that consumer are entitled to attach non-harmful devices to wireless networks. The Nebraska Companies note (as did Skype in its petition) that the Commission actually cited *Carterfone* in its *Policy Statement*.²⁵ If the

²³ Id., para. 4 (emphasis added).

²⁴ See *Wireline Broadband Internet Access Services Order* at para. 96: "Should we see evidence that providers of telecommunications for Internet access or IP-enabled services are violating these principles, we will not hesitate to take action to address that conduct."

²⁵ See *Policy Statement* at para. 4, third principle, referencing note 13.

Commission were to deny the Skype petition, as at least one commenter in the instant proceeding advocates,²⁶ this would seem to demonstrate either that:

(1) the Commission does not intend to uphold the all of the principles articulated in its *Policy Statement*; or

(2) the Commission does not consider wireless broadband network operators that, as a consequence of such denial, would be exempt from the third *Policy Statement* principle to be “providers telecommunications for Internet access.”²⁷

IV. The Commission, Through Its Classification of Broadband Internet Access as an Information Service, Has Undermined the Principal Basis of Its Madison River Investigation.

Several commenters claim that the Commission’s swift disposition of the Madison River VoIP-blocking case demonstrates the Commission’s resolute commitment to the preservation of the Internet as an “open platform for innovation.”²⁸ Some commenters refer to this case as the only known instance of an Internet service provider interfering with consumers’ rights.²⁹ The Nebraska Companies have some observations regarding these claims.

First, the Madison River case was instigated and resolved in early 2005, only a few months *before* the Commission released its Wireline Broadband Internet Access Services Order which reclassified the Madison River service at issue (i.e., Internet access via DSL) as an information service, thereby lifting all common carrier regulation from

²⁶ See Letter filed in WC Docket No. 07-52 on behalf of T-Mobile USA, Inc. which submits the comments and reply comments filed by T-Mobile in RM-11361, *In the Matter of Skype Communications S.A.R.L. Petition to Confirm a Consumer’s Right to Use Internet Communications Software and Attach Devices to Wireless Networks*.

²⁷ See *Policy Statement* at para. 4.

²⁸ See Comments of Hands Off the Internet, pp. 23-24, quoting FCC Chairman Powell in a press release - FCC Chairman Michael K. Powell Commends Swift Action to Protect Internet Voice Services (March 3, 2005), available at <http://www.broadbandwirelessreports.com/pressreleases/files/DOC-257175A1.pdf>.

wireline ISPs such as Madison River. The basis of the investigation undertaken by the Commission's Enforcement Bureau was, presumably, the requirement found in section 201(b) of the Communications Act of 1934, as amended, that "[a]ll [...] practices" in connection with communication service *furnished by a common carrier* "shall be just and reasonable"³⁰ – one of the multitude of common carrier duties that were eliminated by the Commission's adoption of the *Wireline Broadband Internet Access Services Order* only a few months later. The Nebraska Companies conclude that the Commission's handling of the Madison case, based as it was on regulatory duties that have since been eliminated, demonstrates only that the Commission must now find a basis for such enforcement action outside the domain of common carrier obligations.

Second, as noted above, the Commission, in the *Wireline Broadband Internet Access Services Order*, not only stated its intention to incorporate the principles articulated in its simultaneously adopted *Policy Statement* into the Commission's future policymaking activities, but also committed itself to "take action" should it "see evidence that providers of telecommunications for Internet access [...] services are violating these principles."³¹ The Nebraska Companies are unaware of such action undertaken by the Commission pursuant to its Title I jurisdiction.

Indeed, the Commission's thrice-repeated policy to rely on its ancillary Title I jurisdiction in formulating Internet policy³² increases the risk that the bases for such policymaking activity will move farther away from the regulatory framework dictated by

²⁹ See Comments of AT&T at p. 69; Comments of Hands Off The Internet at p. 6; Comments of the Internet Freedom Coalition at p. 4.

³⁰ 47 U.S.C. 201(b).

³¹ See *Wireline Broadband Internet Access Services Order* at para. 96.

³² See *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, FCC 07-30 para. 2, notes 4, 5, and 6 citing the Commission's prior actions related to Internet access via cable modem, wireline and broadband over power line.

statute. The Nebraska Companies do not believe that the Commission's reliance on Title I jurisdiction – as imprecise and open to varying interpretations as it is – provides the level of regulatory certainty, and hence the level of investor confidence, that serves the Commission's statutory duty to “encourage the deployment” of “advanced telecommunications capability”³³ – also known as broadband Internet access service.

V. The Commission Should Encourage and Support the Evolution of Quality-of-Service Mechanisms Away From Implicit, “Packet-Type” Treatment, and Towards Explicit, “Service-Request” Treatment.

Several commenters refer to the use of the 8-bit “Type of Service” (“ToS”) field defined for IPv4 packets in the Internet Standard RFC 791 – or the 20-bit Flow Label defined for IPv6 in RFC 2460 – as indicative of the flexibility inherent in Internet protocols.³⁴ As long as these protocol fields remain “abstract”³⁵ or “experimental,”³⁶ it is difficult to see how they can be relied upon to deliver QoS capabilities across multiple networks, unless network operators adopt uniform interpretations and implementations of these parameters, regardless of “official” Internet Standards progress. For example, no commenter quantified the relationship between ToS values and measurements of latency, throughput or packet loss that might be present in a Service Level Agreement.

To point out the shortcomings of present-day QoS management techniques, however, is not to propose that they be prohibited. To the contrary, the Nebraska Companies oppose regulatory prohibitions on QoS delivery – i.e., differentiated treatment of packets – and QoS-based pricing, for the public Internet, *provided that* the

³³ See Telecommunications Act of 1996, Section 706(a), codified in notes under 47 USC 157.

³⁴ See Comments of AT&T at pp. 36-40.

³⁵ See RFC 791 at p. 12, available at <http://tools.ietf.org/html/rfc791>.

³⁶ See RFC 2460 at p. 25, available at <http://tools.ietf.org/html/rfc2460>.

differentiation and pricing are performed in a manner that does not discriminate based on packet origin, destination or “ownership.”³⁷ The Nebraska Companies do oppose QoS-related prohibitions of any kind for private IP networks.

The Nebraska Companies believe the value of QoS-related mechanisms can be best realized in the public Internet through the development of Internet Standard, public domain protocols in which explicit requests for QoS-related packet handling are issued by users’ applications and are served by a collection of network components – which may involve multiple IP networks – delivering levels of performance tailored to the needs of the applications.

A. QoS Mechanisms Involving Techniques Such As “Deep Packet Inspection” Invite Network Operators to Practice Unreasonable Discrimination.

Data Foundry, in its comments, makes a strong case against the use of deep packet inspection on the part of network operators.³⁸ The Nebraska Companies share this concern with respect to packets transported over the public Internet, but believe there should be no prohibitions on this practice with regard to the routing of packets outside the public IP address space. However, as long as the technology exists, there is always a chance that it can be abused.

The Fiber-to-the-Home Council claims that “the Internet is governed by complex and ever evolving market forces that create a ‘balance of power’ among providers and end-users preventing the exercise of” “unreasonably discriminatory practices” by network providers, and that “the practical opportunities for effective discrimination decrease even further because of the high level of vigilance by providers, end-users and

³⁷ There is no IP parameter called “Ownership.” This term refers to implicit signaling through parameters other than those intended, according to Internet Protocols, for QoS management.

government officials.”³⁹ The Nebraska Companies agree that these countervailing forces may exist, but in order for them to have any effect, there must not only be mechanisms that permit these parties – i.e., providers, end-users and government officials – to be made aware of providers’ networks’ actual packet-handling behavior (as opposed to a provider’s publicly announced packet-handling policy), but there must also be a common understanding among the parties of which behaviors are considered to be discriminatory. The Nebraska Companies believe the Commission should use the present proceeding to articulate the characteristics of such “unreasonably discriminatory” behavior for which the above parties, in their “vigilance,” can be on the lookout.

B. QoS Mechanisms Have Limited Value in the Public Internet Unless They Are Adopted by Most Backbone and Access Providers in a Consistent Manner.

AT&T, in its comments, provides a helpful overview of the methods that operators of major IP networks use to manage network traffic.⁴⁰ AT&T also makes the claim that network congestion is “transient,” exists only for “brief periods,” and that “under ordinary conditions, a network [...] can process packets as fast as they are received.”⁴¹ While this may be true for AT&T’s IP networks, the more general case is described by the Fiber-to-the-Home Council in its comments. The Council writes:

Network management practices deal with traffic loads, and it is a ‘complicated’ undertaking. If the traffic load increases beyond engineered volume levels, congestion occurs at switching points or shared transmission facilities. In the local markets, all end-users downstream from the point of congestion will potentially be affected. The degree to which end-users feel the impact of congestion depends, in significant part, on the applications they are running.⁴²

³⁸ See Comments of Data Foundry at p. 11 and at Attachment B, pp. 22-25.

³⁹ See Comments of Fiber-to-the-Home Council at pp. 1-2.

⁴⁰ See Comments of AT&T at pp. 36-44.

⁴¹ Id. at p. 42.

⁴² See Comments of Fiber-to-the-Home Council at p. 27.

In any event, according to AT&T's description of QoS techniques (called "Differentiated service handling, buffering, and queuing"), there are no ironclad QoS guarantees:

To manage latency and jitter for real-time applications like voice and video, network engineers can configure routers to handle network congestion by giving packets *a greater probability* of accessing link bandwidth if they have markings that indicate a high sensitivity to jitter and latency.⁴³

AT&T also explains why QoS techniques have value, and distinguishes between the public Internet and private IP networks in describing on which networks these techniques are normally deployed:

"Queuing" involves deciding the order in which buffers release packets onto a link connecting two routers. If a packet is labeled to indicate that its associated application can tolerate some degree of latency and jitter, it is likely to be kept in a buffer longer than are packets labeled to indicate that their applications are highly sensitive to latency and jitter and thus need to be transmitted immediately. *Because latency and jitter impair the value of real-time applications* much more than non-real-time applications, this technique – *which is used today mainly on managed IP networks, but could potentially be used for Internet traffic as well* – ensures the most efficient and pro-consumer allocation of scarce network resources.⁴⁴

AT&T's discussion of QoS techniques – one category of the traffic management methods addressed in AT&T's overview – concludes with the following paragraph:

Choices among queuing techniques are inherently provider-specific, and there "are no real industry standards" for queuing. Moreover, queuing methodologies are highly dynamic – equipment vendors and network providers are constantly improving existing methodologies and inventing new ones. Thus, each network provider must balance the costs and benefits of the various queuing methodologies to select the one that best meets the needs of its customers.⁴⁵

⁴³ See Comments of AT&T at p. 41 (emphasis added), citing Murat Yuksel, *et al.*, *Value of Supporting Class-of-Service in IP Backbones*.

⁴⁴ Id. at p. 42 (emphasis added).

⁴⁵ Id. at pp. 42-43.

In sum, QoS techniques appear to be used mainly on private IP networks (not the public Internet); their behavior varies from network to network (they are not deployed in any standard fashion); and they can reduce network delays that would, in turn, reduce the value of certain “real-time” applications (that is, they enhance the value of real-time applications). The Nebraska Companies are concerned that these valuable techniques may never be implemented in the public Internet in any significant way, and that the Internet’s future vitality will suffer as a result.

C. The Commission Can Make a Crucial Contribution to the Long-Term Value of the Public Internet by Supporting the Development and Deployment of Public Domain QoS Protocols in the Public Internet.

The Nebraska Companies believe the Commission can play a constructive role in promoting the future development of the public Internet by adopting a clear policy related to QoS protocols. As noted above, QoS techniques have value that should be exploited not only in the domain of private IP networks but in the public Internet as well. Therefore, adoption by the Commission of a clear policy that permits network operators to deploy QoS techniques in both private IP networks and the public Internet will encourage their continued development, and, in particular, their adaptation for use in the public Internet, which is not where they are primarily deployed today.

Further, the Nebraska Companies believe that the encouragement provided by the Commission in this regard will also spur the development of protocols that employ explicit requests for QoS treatment in place of the implicit “packet-type” protocols in use today, and that such migration from implicit to explicit QoS delivery will promote the nondiscriminatory principles the Nebraska Companies urge the Commission to embrace.

VI. Conclusion

The Nebraska Companies believe commenters in this proceeding have demonstrated that the market for broadband Internet access is not sufficiently competitive to prevent discriminatory behavior by network service providers, and that, therefore, the Commission should add to its Policy Statement a principle that reflects the nondiscriminatory conditions to which AT&T and BellSouth agreed as part of their merger agreement – namely, that broadband providers may not discriminate in their treatment of packets based on the packets’ source, destination or ownership.

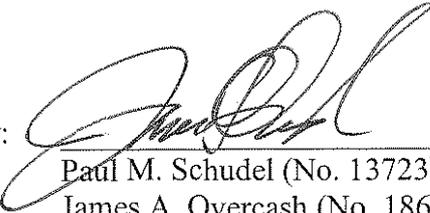
The Nebraska Companies also believe commenters have shown that an outright ban on differentiated QoS treatment would damage the future growth and vitality of IP networks, including the public Internet.

The Nebraska Companies, therefore, advocate a balanced policy that permits, even encourages, the development and deployment of QoS techniques and QoS-based pricing, *provided that such QoS behavior is deployed in a manner than does not differentiate based on packets’ source, destination or ownership.* QoS mechanisms must be open and available for any user’s application to invoke. Ultimately, explicit public domain QoS protocols should govern differentiated packet treatment on the public Internet. The Commission can contribute to the development of public domain QoS protocols by adopting policies now that clearly permit the deployment of QoS techniques.

Dated: July 16, 2007.

THE NEBRASKA RURAL INDEPENDENT
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Consolidated Telco, Inc.,
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Consolidated Telephone Company,
The Curtis Telephone Company,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc.,
Hershey Cooperative Telephone Co.,
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