

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of
Vuze, Inc.

Petition to Establish Rules Governing
Network Management Practices by
Broadband Network Operators

Free Press et al.

for Declaring Ruling that Degrading an
Internet Application Violates the FCC's
Internet Policy Statement and Does Not
Meet an Exception for "Reasonable
Network Management"

Appropriate Framework for Broadband
Access to the Internet over Wireline
Facilities

Review of Regulatory Requirements for
Incumbent LEC Broadband
Telecommunications Services

Computer III Further Remand
Proceedings: Bell Operating Company
Provision of Enhanced Services; 1998
Biennial Regulatory Review- Review
of Computer III and ONA Safeguards
and Requirements

Inquiry Concerning High-Speed Access
to the Internet Over Cable and Other
Facilities

Internet Over Cable Declaratory Ruling

Appropriate Regulatory Treatment for
Broadband Access to the Internet Over
Cable Facilities

Broadband Industry Practices

WC Docket No. 07-52

RM - _____

RM - _____

CC Docket No. 02-33

CC Docket No. 01-337

CC Docket Nos. 95-20, 98-10

GN Docket No. 00-185

CS Docket No. 02-52

WC Docket No. 07-52

Comments of the Computer & Communications Industry Association (CCIA)

CCIA has been a consistent advocate for open networks, open systems and competition in telecommunications since before the antitrust case that broke up AT&T in 1984. CCIA represents a diverse group of companies in the computer, Internet services

and information technology industries. Our member companies and their customers all depend on neutral broadband access and Internet freedom for commercial activity, economic growth and global competitiveness. CCIA applauds the Commission for seeking public comment on the matter of whether a network operator may engage in deep packet inspection in order to block or degrade Internet traffic in the name of routine network management.

We are convinced that diligent FCC enforcement of the basic principles of its Internet Policy Statement are absolutely essential to preserving the enormous social and economic benefits of the Internet for the future.¹ Neutral end user access must be defended against both transparent and clandestine practices of network operators that seek to unreasonably discriminate among data streams. Accordingly, CCIA supports both the Vuze Petition for Rulemaking and the Free Press et al. Petition for Declaratory Ruling in this docket.

I. Background

The Commission's Internet Policy Statement provides that consumers are entitled to access the lawful content of their choice, and to run applications and use services of their choice, subject only to "reasonable network management." Network operators, both telco and cable, have declared they support Internet freedom as defined by the FCC and have no interest in blocking or degrading transmissions that do not harm their networks. In the second half of 2007, however, some Internet users began to experience interference with their use of certain applications. Vuze, a desktop application for downloading and

¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Policy Statement, CC Docket No. 02-33, FCC 05-151, at 3 ("*Broadband Policy Statement*").

viewing licensed and self published high-resolution video content detected stealth attempts by Comcast to degrade and block its users' traffic.

II. Blocking and Degrading of Internet Usage is Occurring

In its Petition for Rulemaking, Vuze details how Comcast surreptitiously interferes with data communications between Vuze's users and other end users so as to disrupt uploads and downloads of video content via BitTorrent technology. Vuze states that Comcast is attempting deliberately to degrade and at times, block content from Vuze and other Internet companies that use similar P2P technology. Meanwhile, video content supplied by others is a form of market competition to Comcast, whose core business is cable TV delivery. Comcast defends its actions as "traffic shaping" in connection with legitimate "network management."

Another major network operator, Verizon, is actually "wary of the sort of 'traffic shaping' system adopted by Comcast....to slow down the exchange of files..."² A senior Verizon executive has been discussing publicly the problems with network operators looking at information transiting the network and then making its own decisions about what social ills to police.

III. The Commission Should Not Hobble Nondiscrimination Enforcement for the Convenience of Narrow Special Interests

The Commission has been urged in *ex parte* communications to give special consideration to copyright content protection in its policy process.³ Such special

² Hansell, Saul. "Verizon Rejects Hollywood's Call to Aid Piracy Fight" [Weblog entry.] New York Times Blog. Feb. 6, 2008. (<http://bits.blogs.nytimes.com/2008/02/05/verizon-rejects-hollywoods-call-to-aid-piracy-fight/>).

³ Ex Parte Letter of NBC Universal, Inc., WC Docket No. 07-52, Feb. 4, 2008.

consideration is inadvisable for two reasons. First, the Commission is not well situated to judge which special interest policy concerns deserve dispensation for network discrimination. Second, previous efforts to accommodate the content protection agenda through communications policy have failed.

The Commission should not compromise openness principles to accommodate specific, parochial policy issues. If non-discrimination is sacrificed in the name of content protection or any other issue *du jour*, the Commission can expect similar petitions for indulgences with respect to obscenity, children's access to social networking, online gambling, and so forth. Accommodating pet issues for special interests would risk transforming the Commission into an arbiter of which social policy concerns are sufficiently meritorious to be excluded from the non-discrimination rule, and which are not. Even assuming that the Commission could successfully undertake this role, the result would be a network safeguard riddled with arbitrary exceptions and thus bereft of principle.

In addition to the fact that such an exercise promises to be a policy quagmire, the particular subject matter at issue – content protection – has proven to be beyond the reach of the Commission's ancillary jurisdiction. The Broadcast Flag proceeding yielded an unambiguous ruling from the D.C. Circuit that “categorically reject[ed]” the “extraordinary proposition” that content protection could be read into the Commission's mandate, observing that “Congress ‘does not... hide elephants in mouseholes.’”⁴ Moreover, even if efforts to provide content protection accommodations did not exceed

⁴ See *American Library Ass'n v. FCC*, 406 F.3d 689, 708 (D.C. Cir. 2005) (quoting *Whitman v. American Trucking Ass'n*, 531 U.S. 457, 468 (2001)).

the Commission's jurisdiction, they would nevertheless risk upsetting the carefully balanced safe harbors in Title II of the Digital Millennium Copyright Act.

IV. The FCC Must Draw the Line Now

Verizon's recently stated concerns about traffic shaping, blocking and degrading are very well-founded, and the stakes are extremely high. Once network operators start down the road of deep packet inspection of content for any reason, not only will rampant violations of the FCC Policy Statement and end user rights proliferate, but private censorship of the public Internet then looms right around the corner. Personal and business privacy and security online vanish overnight whether end users realize it or not. Suddenly, even China's extensive blocking technologies might be defended as "reasonable network management".

For these reasons, the Commission needs to enforce its Internet Policy at this juncture and put a halt to any arbitrary discrimination against traffic carried on the public networks. Network operators' legitimate network management practices involve routing traffic to mitigate actual negative impacts to the network, not to targeting specific services, applications or technologies. If network operators must limit customer usage to prevent "bandwidth hogs" from negatively impacting other users, then those broadband network providers must disclose specific usage limitations to their end users rather than targeting specific applications. Comments filed by CCIA and others last summer in the Commission's original Broadband Industry Practice Inquiry clearly distinguished between unreasonable bit discrimination and traffic discrimination for legitimate network management.⁵

⁵ See Reply Comments of CCIA citing Comments of NATOA, NAC, and NLC, *In the Matter of Broadband Industry Practices*, WC Docket No. 07-52, July 16, 2007, p. 8.

Legitimate network management practices must also be limited to those that are publicly disclosed. We agree with the Free Press petitioners that secretly degrading applications is a deceptive practice which the Commission has ancillary Title I authority to protect consumers from.⁶ The Commission should open a rulemaking proceeding to more comprehensively define legitimate network management practices and to clarify specific prohibited broadband network practices, in order to safeguard an open Internet for all Americans.

At a minimum, the Commission should rule, as requested by Free Press et al., that Comcast's stealth blocking and degrading of traffic, as detailed by Vuze, constitutes impermissible gatekeeper control over applications and content. Degrading particular applications or forging packets so they appear to have come from a different source can never be "reasonable network management." Therefore, this activity should be subject to injunctions and forfeitures to deter continued harm to end users, and to deter other network operators from engaging in such deceptive and discriminatory tactics.

⁶ *In the Matter of the Petition of Free Press et al. for Declaratory Ruling that Degrading an Internet Application Violates the FCC's Internet Policy Statement and Does Not Meet an Exception for "Reasonable Network Management"*, RM Docket No. _____, p. 32.

Respectfully submitted,

A handwritten signature in black ink that reads "E J Black". The signature is written in a cursive style with a horizontal line underneath it.

Edward J. Black, President & CEO

Catherine R. Sloan, VP, Gov't Relations

Matthew Schruers, Sr. Counsel

COMPUTER & COMMUNICATIONS
INDUSTRY ASSOCIATION (CCIA)
900 17th STREET, NW
SUITE 1100
WASHINGTON, D.C. 2006
Ph: 202-783-0070
eblack@ccianet.org

Dated: February 13, 2008