

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Free Press <i>et al.</i>	)	WC Docket No. 07-52
Petition for Declaratory Ruling	)	
Regarding Reasonable Internet Network	)	DA 08-91
Management Practices	)	
	)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
INITIAL COMMENTS**

The National Telecommunication Cooperative Association (NTCA)<sup>1</sup> files these comments in response to the Federal Communications Commission’s (Commission’s or FCC’s) January 14, 2008, Public Notice requesting comment on the Petition for Declaratory Ruling submitted by Free Press, *et al.*, (Free Press). Free Press seeks a declaratory ruling concerning the FCC’s Internet Policy Statement and what constitutes “reasonable network management.”<sup>2</sup> Specifically, Free Press requests the Commission declare that “Internet service providers cannot intentionally degrade any applications, and that such discrimination is not reasonable network management.”<sup>3</sup> NTCA recommends that the Commission modify this specific request by carefully defining the term

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<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents over 580 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, broadband, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> Free Press, Public Knowledge, Media Access Project, Consumer Federation of America, Consumers Union, Information Society Project at Yale Law School, Professor Charles Nesson, Co-Director of the Berkman Center for Internet & Society, Harvard Law School, Professor Barbara van Schewick, Center for Internet & Society, Stanford Law School, Petition for Declaratory Ruling, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, GN Docket No. 00-185, CS Docket No. 02-52, WC Docket No. 07-52 (filed Nov. 1, 2007).

<sup>3</sup> *Id.*, p. 34.

“degrade” in a manner that does not preclude an Internet service provider (ISP or broadband service provider) from reducing a customer’s bandwidth and/or transmission speed so that all customers and Internet protocol (IP) application providers using a broadband service provider’s network receive reasonable and non-discriminatory access to the available capacity in the broadband provider’s network. NTCA recommends that the Commission declare that the intentional reduction in speed of a customer’s data transmission by a broadband service provider is “reasonable network management” when done to ensure that all customers and IP application providers using the network have reasonable and non-discriminatory access to the limited capacity in a broadband service provider’s network.

#### **I. NTCA’s NET NEUTRALITY PRINCIPLES**

In 2007, NTCA filed its net neutrality principles with the Commission which are a balanced approach to Internet policy that weighs the needs of consumers, IP application providers, and broadband service providers. NTCA’s principles are meant to further assist the Commission’s development of sound Internet and broadband policies. NTCA’s principles do not focus on a single aspect of a multi-faceted issue, but rather consider the Internet from a comprehensive consumer/industry based perspective. NTCA’s net neutrality principles are designed to permit reasonable and non-discriminatory management of network bandwidth capacity, establish reasonable prices for special access services to the Internet backbone, and provide reasonable and non-discriminatory access to high-quality IP-based services to all consumers using the network:

1. Communications network providers should be allowed to provide consumers with non-discriminatory access to any lawful content or services on the public Internet through their Internet connection and allow consumers to attach any lawful equipment to their Internet connection.

2. Communications network providers should be allowed to offer quality of service priced public and private services to providers of IP-enabled services who seek to guarantee the quality of their services to the communications network provider's end-user customers.
3. Communications network providers should be allowed to take reasonable and non-discriminatory measures to protect their networks through the management of bandwidth and transmission of content and applications to their customers.
4. Communications network providers defined as a "rural telephone company" pursuant to the Communications Act of 1934, as amended (Act), if required to provide stand-alone/naked broadband service, should be allowed to provide this service with the same level of universal service funding as allocated to their bundled broadband service. Network providers offering stand-alone/naked broadband service must also have adequate price flexibility to address the competitive market conditions in their service areas.
5. Communications network providers, including Internet backbone providers, should be required to provide all communications network providers with non-discriminatory access to the Internet backbone, including special access transport needed to reach the Internet backbone.
6. Communications network providers, including Internet backbone providers, should be required to price their Internet backbone service, including special access transport needed to reach the Internet backbone, based on their cost to provide the service.
7. Communications network providers, including Internet backbone providers, should be required to provide non-affiliated communications network providers with the same terms, conditions, and prices that the Internet backbone providers charge their affiliated companies for access to the Internet backbone, including special access transport needed to reach the Internet backbone.
8. Communications network providers, including Internet backbone providers, should be required to make publicly available all of the terms, conditions and prices for their Internet backbone services, including special access transport needed to reach the Internet backbone.

Considered as a package, NTCA's net neutrality principles constitute a sound basis for protecting the interests of consumers, ISPs/broadband service providers, and IP application/content providers. Nothing in NTCA's principles condones the blocking or

dropping of any lawful IP applications or broadband transmissions used by consumers or IP application/content providers.<sup>4</sup>

**II. THE DEFINITION OF REASONABLE NETWORK MANAGEMENT MUST PROTECT AND BALANCE THE NEEDS OF ALL CONSUMERS, IP APPLICATION/CONTENT PROVIDERS, AND BROADBAND SERVICE PROVIDERS.**

Great care must be given to the question of what constitutes “reasonable network management.” Unmanaged use of broadband provider’s high-speed Internet service will be unfair and discriminatory to the vast majority of consumers that use the service. When internet usage is left unmanaged by a broadband service provider, the usage by some customers can degrade the quality of service to all other customers using the same broadband provider’s network which has finite capacity. When a broadband network is compromised by demand created by a small number of its customers which far exceeds the designed capacity of the network, all other consumers suffer with slower speeds and reduced capacity. Reasonable network management of congestion taking place in a broadband service provider’s network is therefore necessary in order to preserve reasonable and non-discriminatory access to all customers and IP application providers.

When a broadband network is overloaded and customer service adversely impacted it is more prudent, fair and equitable to allow broadband service providers to intentionally throttle down high volume users, commonly known as bandwidth hogs, so that all users of the network can receive the speeds and bandwidth agreed to in their broadband service contracts. Defining “reasonable network management” in this manner is in the public interest and will benefit all consumers, IP application/content providers, and broadband service providers.

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<sup>4</sup> Free Press petition at 3.

It must also be recognized that the Internet is not a single network. Rather, the Internet is a network of interconnected networks. There are vast differences in scope and scale among local broadband service provider networks. Some are large, urban broadband providers serving large mass markets where competition flourishes and consumers have several alternatives for Internet access. Some are small, rural broadband providers serving low density rural markets. Choices available to rural consumers may be vastly different from those available in urban areas. Satellite broadband service is costly and while satellite coverage is theoretically widely available, there are very real limits to its capacity and the number of subscribers that can be served.

In many instances, rural infrastructure supports slower broadband speeds because network capacity limitations. NTCA's 2007 annual broadband survey indicates that 80% of the customers of responding NTCA members or their broadband affiliates can obtain download speeds of 1Mbps, but only 40% are offered speeds above 3Mbps.<sup>5</sup> The rapid increase in the amount of high volume traffic, such as: video streaming, downloading movies and television shows, MySpace videos, online gaming, file sharing, etc., can easily overwhelm the capacity of a rural broadband service provider's network.

Increasing the capacity of the rural broadband infrastructure to enable consumers to fully utilize any IP application without compromising service to other consumers is very costly and cannot be done without extensive government assistance. NTCA submits that the FCC's Internet Policy Statement<sup>6</sup> cannot be fully realized without the deployment of broadband infrastructure throughout the nation, including high cost rural

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<sup>5</sup> National Telecommunications Cooperative Association (NTCA), NTCA 2007 Broadband/Internet Availability Survey, September 2007, at 7.

[http://www.ntca.org/content\\_documents/2007NTCABroadbandSurveyReport.pdf](http://www.ntca.org/content_documents/2007NTCABroadbandSurveyReport.pdf).

<sup>6</sup> Federal Communications Commission, Policy Statement, adopted August 5, 2005, released September 23, 2005, CC Docket No. 02-33.

and insular areas. NTCA further submits that without government financial support for broadband, network infrastructure capable of delivering all of the services to fully satisfy consumer demand cannot be deployed in all areas of the nation. The expense of implementing a nationwide broadband network to all consumers is far too costly for rural communications providers to undertake without economic assistance.

Recent studies released by Discovery Institute and EDUCAUSE indicate that an expenditure of \$100 billion is required to build such a network.<sup>7</sup> Anything less than the network capabilities described in these papers means that the Commission's Internet Policy cannot be fully realized. Indeed, if history is any indicator, it is questionable that this laudable policy can ever be fully realized because no matter how big, no matter how fast, demand will likely always be greater.

The Commission must determine what network management practices are reasonable and non-discriminatory given a network's bandwidth/capacity limitations. To deny broadband service providers the right to exercise reasonable network management is to deny reasonable and non-discriminatory broadband Internet access to all consumers and IP application providers. When bandwidth demand by a single or few customers exceeds network capability and begins to slow or clog the speed and access of all users, broadband service providers must have the right to take necessary action to ensure continued functionality for all users.

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<sup>7</sup> Discovery Institute, Estimating the Exaflood – The Impact of Video and Rich Media on the Internet, Swanson and Gilder, January 2008 at 3, <http://www.discovery.org/scripts/viewDB/filesDB-download.php?command=download&id=1475>. EDUCAUSE, A Blueprint for Big Broadband, Windhausen, January 2008, at i, <http://www.educause.edu/ir/library/pdf/EPO0801.pdf>.

### **III. DISCLOSURE OF TERMS AND CONDITIONS OF SERVICE.**

Free Press alleges that certain broadband service provider practices are deceptive, misleading and discriminatory as compared to the terms and conditions in their service contracts. NTCA believes that the terms and conditions in broadband service contracts should be clear and concise and publicly available to all consumers and IP content and application providers.

#### **a. Broadband Service Provider Disclosure**

Broadband service providers should make publicly available the following terms and conditions under which the consumer is purchasing Internet access.

- Price;
- Description of specific services offered including but not limited to network usage limits and speeds;
- Description of permitted and prohibited uses by the consumer;
- Description of consumer obligations and duties;
- Description of reasonable network management and action the broadband service provider will exercise in order to maintain reasonable and non-discriminatory service for all customers, if terms and conditions are violated by the customer; and
- Description of the consumer's right to appeal and appeal process.

#### **b. Application and Content Provider Disclosure**

IP application and content providers should also make publicly available the terms and conditions of their services. The terms and conditions should include:

- Price;
- Description of what is offered at that price;
- Description of permitted and prohibited uses by the consumer;
- Description of consumer obligations and duties – for example, peer-to-peer (P2P) applications (which rely on consumers to store data on their personal computer and make that data available to other users) should disclose to the consumer how much storage space the consumer must make available on their personal computer as well as other features that will impact application performance and consumer usage;

- Description of what the IP application provider reserves the right to do if terms and conditions are violated;
- Description of the consumer's right to appeal and appeal process; and
- Warning notice that certain uses of this IP application may cause the consumer to violate her/his contract with the broadband service provider.

Such disclosures by broadband service providers and IP application providers allow consumers to make informed choices about the products and services they are considering purchasing and using.

#### **IV. THE REGULATORY FLEXIBILITY ACT REQUIRES THE FCC TO RECOGNIZE AND CONSIDER DIFFERENCES BETWEEN LARGE AND SMALL, URBAN AND RURAL.**

NTCA cautions the Commission to exercise extreme caution when attempting to define "reasonable network management." One-size fits all rules will likely not satisfactorily balance individual consumer rights and network controls in both urban and rural markets. Any rule that strikes a reasonable balance in urban markets may be inappropriate in rural markets and may have unintended negative consequences in rural areas. The Regulatory Flexibility Act (5 U.S.C. §601) requires the FCC to consider alternative rules that will reduce the economic impact on small entities, which includes small rural broadband providers. NTCA's proposed net neutrality principles and definition of reasonable network management will reduce the impact on small rural broadband providers. NTCA therefore urges the Commission to tailor its rules for large and small broadband providers operating in urban and rural areas. A bifurcated approach incorporating a common philosophy with specific rules for urban and rural areas will avoid unintended consequences.

## V. CONCLUSION

The Commission should declare that the intentional reduction of a customer's bandwidth and/or speed of a customer's data transmission by a broadband service provider is "reasonable network management" when done to ensure that all customers and IP applications using the network have reasonable and non-discriminatory access to the available finite capacity in a broadband service provider's network. The Commission should also specifically define the term "degrade" in a manner that does not preclude a broadband service provider from reducing a customer's bandwidth and/or transmission speed so that all customers and IP application providers using a broadband service provider's network receive reasonable and non-discriminatory access to the available capacity in the broadband provider's network. Broadband service providers must have the right to reasonably manage their networks in a competitively neutral manner so that they can maximize the utility of their network bandwidth/capacity for all of their subscribers. Lastly, the Commission should enact rules that allow broadband service providers to manage their networks in a reasonable and non-discriminatory manner to ensure network functionality and integrity that benefits all IP application/content providers, broadband service providers, and, most importantly, consumers.

Respectfully submitted,

**NATIONAL TELECOMMUNICATIONS  
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## CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in WC 07-52, DA 08-91, was served on this 13th day of February 2008 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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