

July 28, 2008

Marlene H. Dortch  
Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

Re: *Broadband Industry Practices*, WC Docket No. 07-52

Dear Ms. Dortch:

On July 25, 2008, representatives of the Telecommunications Industry Association (“TIA”) met with Amy Bender, Legal Advisor to Chairman Martin, and Greg Orlando, Legal Advisor to Commissioner Tate, to discuss the above-mentioned proceeding. Present on behalf of TIA were the following individuals: Doug Cooper, Ciena; Louise Tucker, Telcordia; Jason Friedrich, Motorola; Jeffrey Campbell, Cisco; Rebecca Schwartz, TIA; and Bryan Tramont, Wilkinson Barker Knauer, LLP.

At these meetings, TIA distributed and discussed the attached presentation. TIA emphasized that network management concerns should be addressed case-by-case. The Commission’s *Internet Policy Statement* has been a success precisely because it has afforded network providers with the flexibility to innovate and to optimize their networks in response to evolving consumer needs.

TIA also emphasized the continuing and growing need for network management as Internet traffic expands and traffic patterns shift. New applications are driving increasingly heavy use of broadband networks. While expanded network capacity may be necessary, it will not alone be a sufficient response. Rather, network providers will require flexibility to manage traffic on their systems to best meet consumer needs. Indeed, consumers demand management for other reasons as well, including the control of spam, viruses, and inappropriate content. For these reasons, even the most advanced high-speed networks in use today worldwide are highly managed.

TIA further underscored the threats that would be posed by any regime that required providers to justify network management practices in the first instance. Requiring providers to seek permission from the Commission before implementing or updating network management tools would retard the development and deployment of new offerings. Any framework adopted by the Commission should first require complaining parties to demonstrate (1) net harm (2) to consumers on the whole (3) resulting from an unreasonable network management practice. Only following such a demonstration should providers bear the burden of justifying the challenged practice. TIA also explained that overinclusive and/or vague rules would be similarly dangerous. Categorical and overly broad restrictions on certain behaviors would diminish the market’s ability to respond to changing user needs and lock in current technological assumptions, undermining consumer welfare. Instead, the Commission should render only narrowly construed holdings addressing specific facts, leaving providers as much discretion as possible.

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Please contact the undersigned with any questions.

Respectfully submitted,

/s/ Rebecca Schwartz

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Rebecca Schwartz

Attachment

cc (via electronic mail):

Amy Bender, Legal Advisor to Chairman Martin  
Greg Orlando, Legal Advisor to Commissioner Tate



# **Network Management: Maintaining Flexibility to Promote Investment and Innovation**

Telecommunications Industry Association  
July 24-25, 2008



# TIA's Interest

- With 500 member companies that manufacture or supply the products and services used in the provision of broadband, TIA has a strong interest in this proceeding.
- TIA's goals match the FCC's: Enhancing incentives to innovate and invest in deployment of advanced networks.



# Claims Should Be Assessed Case-By-Case

- TIA supports principles set forth in the *Internet Policy Statement*.
- The *Policy Statement* embraces a flexible approach.
  - Lets network providers innovate and optimize networks for the benefit of users while promoting self-regulation and avoiding bright-line restrictions.
- FCC can ensure continued broadband success by promoting meaningful disclosure regarding material terms of service.



# Reasonable Network Management Critical

- VoIP, streaming media and P2P have fundamentally transformed Internet usage and traffic patterns.
- Increased deployment will be a necessary but not (on its own) sufficient response to increased traffic.
  - Even the fastest networks in the world today (e.g., Japan) require significant management.
- Consumers also demand management to address other concerns (spam, inappropriate content, etc.).



# Potential Pitfall: Placing Burden on Providers

- TIA has urged case-by-case approach.
- Even a case-by-case approach could do tremendous harm if it required providers to justify new network management practices before any substantial harm was demonstrated.
  - This approach would effectively require innovators to seek government's permission before developing and implementing new network offerings, hampering American innovation and undermining competitiveness.
- Thus, complainants should be required to show (1) net harm (2) to consumers on the whole (3) resulting from an unreasonable network management practice.
- Only after such showings should provider bear burden of justifying the challenged practice.



## Potential Pitfall: Overinclusive/Vague Rules

- Categorical or vague restrictions would chill innovation and diminish market's ability to respond to changing user needs and lock in current technological assumptions, undermining consumer welfare.
- Better course: Clear and narrowly construed holdings.



# Contacting TIA

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