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Electronic Submission

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Preserving the Open Internet, GN Docket No. 09-191; Broadband Industry Practices, WC Docket No. 07-52; Inquiry into Google Voice Calling Restrictions

Dear Ms. Dortch:

On behalf of AT&T, Robert Quinn, Jack Zinman and I met yesterday with Commissioner Michael Copps and his legal advisors John Giusti and Jennifer Schneider to discuss the Commission's Open Internet principles and Notice of Proposed Rulemaking, as well as the Commission's inquiry into Google's call-blocking practices. This letter summarizes our discussion. The attached materials provide additional, relevant background information.

The Commission's Open Internet principles have served the Commission and users of the Internet quite well. In enunciating broad principles, framed as consumer entitlements, the Commission has served notice to all that it stands ready to protect the free and open Internet. When practices have emerged that the Commission has viewed as inconsistent with its principles, it has acted according to its understanding of its authority and of sound public policy to protect consumers. This is not to say that the Commission should treat the principles themselves as a basis for regulation in the Internet ecosystem. They are instead a clear statement of objectives that the Commission will promote in evaluating practices throughout that ecosystem and, where necessary and within the Commission's authority, remedying those practices. AT&T has expressed concern that as the Commission considers whether and how to codify its Open Internet principles into more prescriptive rules, it appears to be prepared to diminish its commitment to protecting consumers by declining to exercise oversight over gatekeepers with perhaps the greatest ability to influence consumers' Internet experiences in "non-neutral" ways. The Google Voice episode amply demonstrates exactly why the Commission should not limit its oversight in that manner.

According to Google, it -- and presumably others such as Speakeasy and MagicJack -- is free to block calls whenever it is in Google's economic interest to do so and there is nothing this Commission can do to stop it primarily because it asserts that Google Voice is an information service (AT&T does not so agree).

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If Google is right, then application providers could block calls to their competitors. Voice-over-IP providers could even block calls to Google Voice. Moreover, if Google is right, then Google, or any other application provider, could refuse to complete calls unless paid the equivalent of access charges -- and the Commission could do nothing about it. What Google argues for is an environment that is the antithesis of a "free and open" Internet. Even assuming that the Commission agrees with Google that its service is an information service and not a telecommunications service, the Commission should act here and direct Google and these other entities to stop blocking calls that their competitors are required to complete. And, as this experience demonstrates, the Commission would be remiss if it removed information service providers like Google from the scope of its oversight.

To be clear, AT&T does not believe that the Commission should in all cases apply the same obligations to entities operating in different niches of the Internet ecosystem. This is simply a case where Commission action is both necessary and appropriate.

Sincerely,

/s/ Henry Hultquist

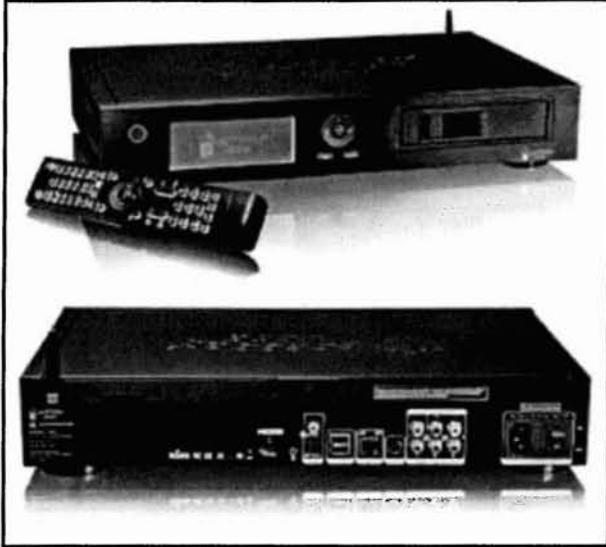
Attachment

Cc: Commissioner Michael Copps
John Giusti
Jennifer Schneider

Epicenter
The Business of Tech

YouTube Blocks Non-Partner Device Syabas as Allegations Fly

By [Eliot Van Buskirk](#)  November 20, 2009 | 6:06 pm | Categories: [Video](#)



Syabas Popcorn Hour devices like this C-200 can no longer play YouTube videos, due to the absence of a deal between Syabas and Google/YouTube.

YouTube is set to become a regular feature of televisions, but only through its partners' hardware. So far one company been blocked from accessing YouTube videos on its set-top box pursuant to a July 2008 change in YouTube's terms of service, with others soon to follow, according to sources close to the situation.

Syabas, which has had about 16 months to sign a contract with Google's YouTube service since the new terms of service went into effect, will no longer be able to show YouTube videos on televisions through its set-top boxes.

The reason there's no deal, according to Syabas COO Alex Limberis, is that YouTube demanded a multimillion-dollar advertising commitment in return for permission to display its videos on televisions through the Popcorn Hour A-110 and C-200 set-top boxes.

"YouTube mentioned that they are only going to work with 'strategic partners,'" Limberis told Wired.com. "When asked what it would take to become a strategic partner, they said we would need to spend 'multiple seven figures' with them on advertising."

A source familiar with the situation who asked not to be named said that while YouTube asks for a "marketing commitment" from device manufacturers who want to display its videos, past deals have not approached seven figures. In addition, some of that money goes towards advertising the devices themselves, not just buying ads on YouTube. More importantly than agreeing to the marketing commitment, according to our source, developers need to use YouTube XL and a browser-based UI

approved by YouTube — something Limberis told us Syabas doesn't want to do.

YouTube responded to Limberis' [blog post](#) explaining the lack of YouTube service on the Syabas hardware by pointing out that Syabas and other companies have accessed YouTube's API from set-top boxes without a contract — in violation of the terms of service — for well over a year.

“Since July of 2008, YouTube's Terms of Service has restricted implementations for televisions based on our APIs. YouTube has been in active discussions with various developers on how best to implement YouTube on set-top boxes and TVs. There are several companies, however, that have deployed solutions, like video-scraping technology, to circumvent the rules and violate YouTube's Terms of Service. Companies that have negotiated agreements to use our APIs, like TiVo, Sony [Electronics], Panasonic and [Sony] PS3 are not impacted.”

YouTube strategic partners that have signed contracts in order to display YouTube content on televisions and set-top boxes include Apple (Apple TV) as well as, according, to [eHomeUpgrade](#), Netgear, Nintendo and Samsung.

“We expect that many of those partners have met the spend requirements,” said Limberis. “Obviously, as a smaller company, we can't handle that type of ad spend.” As a result of losing access to YouTube, he added, his company is exploring options with other online video sites for its next round of set-top boxes.

See Also:

- [YouTube Amigos Univision](#)
- [YouTube's Bandwidth Bill Is Zero. Welcome to the New Net](#)
- [YouTube XL Coming Soon to the Boob Tube](#)
- [Susan Boyle YouTube Video: 100 Million Hits, So Where's the Money](#)
- [You Tube Search-and-Delete Code Makes Money for Rights-Holders](#)
- [YouTube Angling to Offer Premium Movie Rentals](#)

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Comments (14)

Posted by: [careydw](#) | 11/20/09 | 8:50 pm

@Google You're 'motto' is “Don't be evil.” But I have a correction for you ...

“Don't be money grubbing dicks”

I'm willing to hear that there is rational explanation for this, but if you are simply demanding money for someone to show your videos on a TV then you should go F**K yourselves and die.

Posted by: [diginess2](#) | 11/20/09 | 10:47 pm

Bad business move Google. You're not supposed to divide your users into segregated proprietary hardware pools, that engenders distrust. Bad Google!
