



January 14, 2010

FILED ELECTRONICALLY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Preserving the Open Internet, GN Docket No. 09-191
Broadband Industry Practices, WC Docket No. 07-52

Dear Ms. Dortch:

On behalf of our customers and company, Amazon.com is pleased to submit the following brief comments and suggested modifications to the FCC's proposed rules in the above-captioned proceedings on net neutrality. The fundamental and longstanding openness of the Internet is at stake, and Amazon is very grateful to the Commission for taking steps to preserve it.

Amazon first asked the FCC to preserve net neutrality over seven years ago, so we are particularly pleased to be at the point of commenting on specific regulations. As always, the touchstone for Amazon's concerns and involvement in this matter is the lack of meaningful competition among broadband Internet access providers. If consumers and other users were able to choose and easily switch among many providers, government intervention would not be necessary or wise.

Amazon.com is a proud member of the Open Internet Coalition ("OIC"), which also is filing comments in these proceedings. We agree with the sentiments and many of the details of the OIC's filing, particularly its lengthy discussions of the myriad past, present, and future benefits of an open Internet. Amazon commends the OIC comments to the Commission's careful consideration.

Over the years, net neutrality often was portrayed as a zero-sum game, where if one set of stakeholders would win, another necessarily would lose. But Amazon believes that, to the contrary, well-crafted net neutrality rules can benefit all three major classes of stakeholders in this issue: consumers and other users; providers of content, applications, services, and devices (for brevity, hereinafter referred to as "content"); and the broadband Internet access service providers themselves. A win-win-win outcome is possible.

In such an outcome, broadband Internet access service providers would have the regulatory certainty to pursue new business models with users and content providers, while content providers would have opportunities to better serve their customers by using

the network operators' new services. Most importantly, so long as no content is *harmed* by these new services, consumers and other users would realize the benefits of service improvements from broadband Internet access service providers.

With this win-win-win goal in mind, and consistent with the principle of maintaining an open Internet, Amazon respectfully suggests that the FCC's proposed rules be extended to allow broadband Internet access service providers to favor some content so long as no harm is done to other content.

Importantly, we note that the Internet has long been interconnected with private networks and edge caches that enhance the performance of some Internet content in comparison with other Internet content, and that these performance improvements are paid for by some but not all providers of content. The reason why these arrangements are acceptable from a public policy perspective is simple: the performance of other content is not disfavored, *i.e.*, other content is not harmed.

We believe it appropriate to apply the same principle within the networks managed by broadband Internet access service providers: content may be favored, so long as doing so causes no harm – *e.g.*, delays in transmission or other reductions in quality – to other content. The only exception to this rule would be at an individual user's choice: a user could explicitly choose to have some content favored over other content that the user might receive, but *only* so long as the favoring of that content would not harm other users' content. Put another way, if a network operator favors some content, doing so must not harm any other content with respect to *any* users, but if a particular user explicitly chooses to have some content favored, there must be no harm to content for or from any *other* user.

Accordingly, we suggest that Section 8.13 of the Commission's proposed rules be modified as follows:

§ 8.13 Nondiscrimination and No Harm

Except as described herein, and ~~Subject~~subject to reasonable network management, a provider of broadband Internet access service must treat lawful content, applications, ~~and services,~~ and devices in a nondiscriminatory manner. A provider of broadband Internet access service may, for compensation on nonexclusive terms:

(a) Offer enhanced quality, speed, or other functionality to individual providers of lawful content, applications, services, or devices, so long as doing so does not degrade the quality, speed, or other functionality provided for any other lawful content, applications, services, or devices, from any source or for any user; and

(b) Offer individual users the option of enhanced quality, speed, or other functionality for specified lawful content, applications, services, or devices, or any source thereof, provided that such enhancements shall not degrade the quality, speed, or other functionality provided to other users.

Not only would this approach to nondiscrimination comport with the principle and acceptability of today's private networks and edge caches connected to the Internet, it would give broadband Internet access service providers clear authority to develop and deploy innovative new commercial services that would benefit consumers, content providers, and themselves.

Because such commercial services would be permitted explicitly in Section 8.13, there is no need for broad, ambiguous language defining "reasonable network management," as was proposed in Section 8.3. Moreover, because the "no harm" requirement is not present in that definition of reasonable network management, Section 8.3 must be narrowed to cover only non-commercial "housekeeping" activities. Otherwise, a broadband Internet access service provider might, in the name of network management, attempt to justify a commercial practice that causes collateral harm.

Therefore, we suggest that the definition of reasonable network management in Section 8.3 of the Commission's proposed rules be modified as follows:

Reasonable network management.

(a) Reasonable network management consists of
~~(a) reasonable noncommercial~~ practices employed by a provider of broadband Internet access service to, for example:

- (i) reduce or mitigate the effects of congestion on its network ~~or to address quality of service concerns;~~
- (ii) address traffic that is unwanted by users or harmful;
- (iii) prevent the transfer of unlawful content; or
- (iv) prevent the unlawful transfer of content; ~~and.~~

(b) Reasonable network management does not include provision of enhanced quality, speed, or other functionality to specific content, applications, services, or devices, or any source thereof, for any compensation or because of a broadband Internet access service provider's ownership or commercial interests in content, applications, services, or devices. ~~other reasonable network management practices.~~

Lastly, we believe the Commission should clarify that one purpose of adopting clear net neutrality rules is to encourage the development and deployment of innovative new services by broadband Internet access service providers. Thus, we suggest this modification to Section 8.1:

§ 8.1 Purpose and Scope

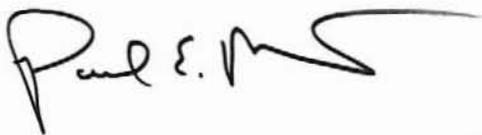
The purpose of these rules is to preserve the open Internet while encouraging the development and deployment of innovative new services by broadband Internet access service providers. These rules apply to broadband Internet access service providers only to the extent they are providing broadband Internet access service.

With these changes, the Commission's proposed rules would clearly preserve the open Internet that has been so good for consumers and innovators, while at the same time clarify that broadband Internet access service providers may provide consumers and content providers innovative new services that would enhance the treatment of some Internet content, and be compensated on nonexclusive terms for doing so, as long as no collateral harm is caused to other Internet content.

Again, Amazon.com greatly appreciates the FCC's attention to net neutrality and the need to preserve the open Internet, and we are grateful for the opportunity to submit these comments. Our suggested modifications to the Commission's proposed rules are collected in the attachment.

Please let me know if you have any questions. I may be reached at 202-347-7390 or pmisener@amazon.com.

Sincerely yours,



Paul Misener
Vice President
Global Public Policy

cc The Honorable Chairman Julius Genachowski
The Honorable Commissioner Michael J. Copps
The Honorable Commissioner Robert M. McDowell
The Honorable Commissioner Mignon Clyburn
The Honorable Commissioner Meredith Attwell Baker

Attachment

Amazon.com's Suggested Modifications to the FCC's Proposed Rules

§ 8.1 Purpose and Scope

The purpose of these rules is to preserve the open Internet while encouraging the development and deployment of innovative new services by broadband Internet access service providers. These rules apply to broadband Internet access service providers only to the extent they are providing broadband Internet access service.

...

§ 8.3 ...

Reasonable network management.

(a) Reasonable network management consists of ~~(a)~~ reasonable noncommercial practices employed by a provider of broadband Internet access service to, for example:

- (i) reduce or mitigate the effects of congestion on its network ~~or to address quality of service concerns~~;
- (ii) address traffic that is unwanted by users or harmful;
- (iii) prevent the transfer of unlawful content; or
- (iv) prevent the unlawful transfer of content; ~~and~~.

(b) Reasonable network management does not include provision of enhanced quality, speed, or other functionality to specific content, applications, services, or devices, or any source thereof, for any compensation or because of a broadband Internet access service provider's ownership or commercial interests in content, applications, services, or devices. ~~other reasonable network management practices.~~

...

§ 8.13 Nondiscrimination and No Harm

Except as described herein, and Subject ~~subject~~ to reasonable network management, a provider of broadband Internet access service must treat lawful content, applications, ~~and~~

services, and devices in a nondiscriminatory manner. A provider of broadband Internet access service may, for compensation on nonexclusive terms:

(a) Offer enhanced quality, speed, or other functionality to individual providers of lawful content, applications, services, or devices, so long as doing so does not degrade the quality, speed or other functionality provided to any other lawful content, applications, services, or devices, from any source or for any user; and

(b) Offer individual users the option of enhanced quality, speed, or other functionality for specified lawful content, applications, services, or devices, or any source thereof, provided that such enhancements shall not degrade the quality, speed, or other functionality provided to other users.

* * * * *