

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
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)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
)	
Broadband Industry Practices)	WC Docket No. 07-52

**COMMENTS OF
SONY ELECTRONICS**

Sony Electronics Inc. (“SEL”)¹ supports the Commission’s proposed rules to preserve an open, safe and secure Internet (generically referred to herein as “network neutrality”).² As broadband deployments have spread throughout the United States, SEL has invested heavily to enhance the consumer value of its products by implementing Internet connectivity and related content discovery, access and playback functionality. This investment has been predicated on consumers having unfettered access to the legal content, applications and services of their choice. Future investment requires the preservation of this underlying principle to protect the common interests of consumers, network operators, content developers and application providers in the Internet ecosystem. Moreover, SEL believes that ultimately the Commission’s proposed network neutrality rules, if implemented, would lead to more expansive broadband deployment and greater consumer uptake of broadband connectivity and services.

Two recent developments justify action by the Commission to foster clarity and certainty for the future of Internet-delivered services. First, SEL and others have begun to offer Internet-

¹ SEL manufactures and sells Internet-connected products, including televisions, personal computers and other devices, for the U.S. market.

² In *The Matter of Preserving The Open Internet; Broadband Industry Practices, Notice of Proposed Rulemaking*, 24 FCC Rcd. 13064 (rel. Oct. 22, 2009) (“*Notice*”).

delivered video services that compete, or may soon compete, with traditional television services. Network operators often provide Internet access services and traditional television services over the same physical facilities, and may therefore have the incentive and capability to undermine competition from Internet-delivered video. To insure against this threat to competition, SEL supports the Commission's proposal to codify a principle of non-discrimination for Internet access services.

Second, to ensure sufficient viewing quality, particularly for higher-resolution video content, Internet-delivered video services require relatively high data transmission speeds and volumes, and thus have the potential to strain network capacity. Faced with the possibility of network congestion, and the resulting degradation of service, network operators have begun to control demand for broadband services through a variety of mechanisms for managing network usage. Although these mechanisms typically do not involve direct blocking of end-user access to particular content, applications or services, they may have the same purpose or effect under certain circumstances. Accordingly, the Commission should define "network management" broadly to capture a wide variety of commercial, legal and network engineering practices used by network operators to control demand for Internet-enabled services. In addition, the Commission should scrutinize these practices carefully to identify anticompetitive purposes or effects, *before* declaring a particular practice to be "reasonable" and therefore exempt from the general network neutrality obligations.

Finally, the Commission should maintain network operator incentives to develop new and innovative uses for their networks. For example, the Commission should encourage network operators to deploy managed or specialized Internet-Protocol ("IP") services that offer enhanced quality-of-service to enable real-time applications, provided that such services do not supplant

the open Internet. SEL expects that such services, if available, will offer significant benefits for consumers, and allow for even greater enhancement of Sony products.

I. Sony Has Invested Heavily To Enhance The Consumer Value Of Its Products By Leveraging Internet-Delivered Content And Services

Sony has invested and plans to invest significant resources to develop new, consumer-friendly services and products that depend on legal content being delivered via the open Internet. Without the assurance and greater certainty afforded by fully-implemented network neutrality rules, Sony and other similarly situated companies would be hard pressed to continue such extensive outlays into developing Internet-based businesses. A non-exhaustive summary of Sony's current and expanding businesses that rely on an open Internet include:

a. Bravia Internet Video Platform

Sony launched the Bravia Internet Video Link ("BIVL") device and broadband-enabled service platform in 2007. BIVL affords consumers access to a wide range of content from sources like Netflix, Amazon, YouTube, Sony Pictures Entertainment, Yahoo and others. And consumers can achieve added functionality via Yahoo's "widgets." The BIVL device is offered both as a "set-back box" add-on to televisions and as an integrated feature of televisions or Blu-Ray disc players. Sony also announced this month at the Consumer Electronics Show ("CES") that the BIVL functionality will be built into televisions with screen sizes as small as 22 inches.

b. The Sony Reader

Sony launched the Sony Reader device and Internet-enabled service platform in September 2006. Sony offers three different Reader devices that can hold up to 350 titles and operate for up to two weeks on a single charge. The Sony Reader on-line e-book store offers

over 125,000 titles for purchase, and consumers can download over a million books for *free* from Google Books and from public libraries across the country.

c. The PlayStation Network

Sony launched the PlayStation Network (“PSN”) with the introduction of the PlayStation 3 (“PS3”) in November 2006. PSN is now part of the overall PlayStation platform and is available on the PS3 and the PlayStation Portable (“PSP”). The PSN began offering non-game video content in the United States in July 2008. Today, the U.S.-based portion of the PSN video service offers nearly 2,700 full-length feature films, with titles from every major motion picture studio, and over 15,000 television episodes. PSN-delivered content can be shared between the PS3 and the PSP, allowing consumers to take their favorite entertainment with them wherever they go. The PSN has grown to more than 38 million registered accounts worldwide, and offers storefronts in 36 countries, 12 languages and 22 currencies. To date, it has delivered more than 780 million downloads of game and video content to end users, and the monthly download volume exceeds 25 petabytes.

d. Sony Network Entertainment, Inc.

Sony announced the formation of Sony Network Entertainment (“SNE”) this month at CES. Briefly summarized, SNE will expand the movie, television, and other content delivered effectuated via the PSN service to Internet-enabled televisions, Blu-Ray players, VAIO computers, and other devices.

II. The Commission Should Codify A General Rule Prohibiting Broadband Internet Access Service Providers From Discriminating Against Or In Favor Of Any Content, Application Or Service

SEL agrees with the Commission’s tentative conclusion that allowing network operators to favor or disfavor different types of Internet traffic or different providers of Internet-delivered

content, applications or services may impose significant social costs.³ Accordingly, SEL supports the codification of a general rule of non-discrimination for Internet access services.

As noted above, network operators frequently offer both traditional video services and Internet access services over the same network facilities. Internet-delivered video services, including those provided by SEL and its affiliates, today offer some of the same commercially-produced content that is available through traditional video services, while also providing an outlet for Internet-only and user-generated content. Although presently complimentary, SEL believes that Internet-delivered video can grow to become a viable and consumer-friendly competitor to traditional video services.

In the absence of a clear prohibition, SEL fears that Internet access providers may seek to diminish the consumer utility of broadband access in general, and of SEL's Internet-delivered video services in particular. The Commission should seek to increase consumer demand for broadband services. Higher-value Internet-delivered content, applications and services, including the delivery of commercial movies and television shows, will help to drive broadband demand, thus enabling a host of attendant social and economic benefits beyond access to commercial video content. Conversely, increasing the cost to deliver content, applications or services via the Internet may increase the cost of these services to end users, and may therefore limit demand not just for these services but for Internet access in general.

In addition, discriminatory pricing would have other negative consequences on end-users and content, application and service providers. On networks that face capacity constraints, allowing access providers to favor certain traffic would necessarily limit the bandwidth available to non-favored content, applications and services. Allowing discriminatory pricing would also

³ *NPRM*, ¶ 103.

reduce incentives to maximize the efficient use of available bandwidth, and would discourage the development of technologies, like variable bit-rate encoding, that seek to enable the best possible end-user experience for the lowest possible cost to the network. Indeed, Internet services providers should not be allowed to – through their network management practices – directly or indirectly dictate the types of Internet-enabled services that are created or the types of technologies that are employed to deliver those services.

Moreover, and as described in greater detail in Section III below, the Commission should clarify that any non-discrimination requirement extends beyond pricing limitations to encompass economic, contractual or other conduct by an Internet access provider that has the same effect of limiting consumer demand for or access to Internet bandwidth.⁴ Discriminatory conduct can take forms other than the simple prioritization of bits through a server or across a network, as Internet access service providers use a variety of economic and non-economic incentives to manage consumer demand for and access to the services provided over the network. Under certain circumstances, mechanisms like download caps, tiered pricing structures, overage charges, or metered billing may have the effect, or even the purpose, of limiting consumer use of bandwidth intensive applications, like Internet-delivered video. Notably, similar usage-based constraints do not typically apply to the multichannel video programming services that are frequently offered over the same facilities as Internet access services.

⁴ The Commission should clarify the meaning of its statement that a non-discrimination requirement “would not prevent a broadband Internet access service provider from charging subscribers different prices for different services.” *NPRM*, ¶ 106. As discussed below, under certain circumstances, usage-based subscriber charges may have the same market impact as a direct charge to the content provider. Either mechanism increases the end-user cost of access to, and therefore decreases demand for, the content, application or service.

III. The Commission Should Rule That Mechanisms For Managing Network Congestion By Limiting Usage Must be Preapproved by the Commission as Exempt from the General Network Neutrality Rules

Although SEL understands and supports the need for reasonable network management, the Commission should rule that proposed network management practices that limit or mitigate the demand for Internet-enabled services must be approved by the Commission *before* being implemented. Moreover, the Commission should acknowledge that the facts and circumstances of a particular network management practice will necessarily impact the reasonableness of that practice, and will thus affect whether the practice qualifies for a general exemption.

The Commission proposes to define “reasonable network management” as consisting of:

(a) reasonable practices employed by a provider of broadband Internet access service to (i) reduce or mitigate 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) other reasonable network management practices.⁵

This definition fails to account for practices that do not involve constraints on the flow of traffic across a service provider network *per se*, but even so deter consumer usage of, and thus demand for, broadband Internet access. Such off-network demand management practices may cause the same harm to the market incentives of the Internet ecosystem as network-based traffic discrimination and, if so, should be deemed to violate the proposed neutrality obligations of network operators.

Usage-based subscriber charges may, under certain circumstances, increase the consumer cost of certain content, applications or services to an unreasonable degree. For example, unreasonably low limits on monthly broadband usage, or unreasonably high overage charges after a subscriber exceeds a monthly limit, may discourage consumers from using broadband to

⁵ *NPRM*, ¶ 135.

access those services, particularly video services, that demand the transfer of high volumes of traffic. Consider, for example, a single-tier broadband service offering priced at \$14.95 per month, with a monthly tonnage limit of 15 GB, and an unlimited, \$2.00 per GB overage charge. An end-user would reach his or her monthly limit after viewing approximately 15 hours of standard-definition video, or just four hours of high-definition video. After reaching that limit, the end-user cost for each additional hour of video would, at a minimum, double, and could increase as much as 400%. It is not difficult to imagine that broadband Internet access offered under these terms would have the same effect on consumer demand for high-volume Internet-delivered services as the service provider directly blocking access to such services.

SEL does not contend that the Commission should categorize usage based pricing, monthly tonnage limits, overage charges, or other similar pricing mechanisms as *per se* violations of the general net neutrality regulations. The Commission should, however, acknowledge that discrimination by network operators can take many forms, and should ensure that the general exemption for reasonable network management does not develop into a loophole that allows network operators to engage in anti-competitive practices through the back door. Accordingly, the Commission should: (1) clarify that any mechanism used by a network operator to limit consumer demand for Internet access services qualifies as network management; (2) evaluate the reasonableness of such network management mechanisms in light of all the relevant facts and circumstances of the service offering; and (3) only allow the use of such network management mechanisms after such an evaluation has been completed.

IV. Summary and Conclusion

Given its broad commitment to enhancing the value of its products through Internet-delivered content and services, SEL supports this effort by the Commission to foster greater

clarity and certainty about the future of the Internet ecosystem. In its relatively short lifespan the Internet has functioned as a powerful mechanism for challenging and improving on established models of information access and distribution. It has succeeded, in large part, because of the interdependent investment efforts by a variety of stakeholders. Thus, the challenge facing the Commission in this proceeding is to protect and sustain this symbiotic relationship, in the face of the conflict between unprecedented and constantly growing demand for broadband access on one hand, and apparent network capacity constraints on the other.

To meet this challenge, the Commission should codify its existing network neutrality principles, and should, at a minimum, take the additional step of codifying its proposed requirement that network operators treat lawful content, applications and services in a nondiscriminatory manner. The Commission should also clarify its definition of “reasonable network management” to ensure that this exception does not swallow the general rule of network neutrality.

SEL believes that, if implemented, this moderate regulatory approach will preserve the vitality, opportunity and consumer value of broadband Internet access services, and will ensure that the Internet ecosystem remains a key engine for economic opportunity.

Respectfully Submitted,

/s/

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