

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

Preserving the Open Internet)	GN Docket No. 09-51
)	
Broadband Industry Practices)	WC Docket No. 07-52

**COMMENTS OF THE
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

I. INTRODUCTION

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits these comments in the above-referenced proceedings. ITTA is an alliance of mid-sized local exchange carriers that collectively provide service to 20 million access lines in primarily rural areas of 44 states. ITTA members offer wireline and wireless voice, broadband, and video services as both incumbent and competitive carriers. In previously-filed comments in this docket, ITTA has stated that regulation of broadband network management practices would be inconsistent with the deregulatory view of the Communications Act (the Act) and would moreover depress incentives for investment in a rapidly expanding broadband market. Now, as the Commission conducts further inquiry with specific regard to managed and specialized services, ITTA reiterates its concerns and opposition to regulatory intervention.

II. DISCUSSION

A. SPECIALIZED AND MANAGED SERVICES

Earlier this year, the Commission sought comment on rules that would codify the four principles of the “Internet Policy Statement,”¹ as well as implement additional network management and consumer disclosure requirements. As explained by the Commission, comments on that NOI “have narrowed disagreement on many of the key elements” of the proposed framework. Nevertheless, the Commission recently issued a Public Notice seeking additional comment on specialized (or, managed) services and the application of open Internet rules to mobile wireless Internet access services.

As noted above and in previously-filed comments, the Commission has exercised a highly successful “hands-off” approach to broadband Internet access services. A half-decade ago, the Commission described a “dynamic and evolving broadband Internet access market . . . where the current market leaders, cable operators and wireline carriers, face competition not only from each other but also from emerging broadband Internet access service providers.”² This paradigm has not diminished: billions of dollars have

¹ *Framework for Broadband Internet Service: Notice of Inquiry*, GN Docket No. 10-127, FCC 10-114 (2010) (NOI).

² *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings – Bell Operating Company Provision of Enhanced Services, 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 USC 160(c) with Regard to Broadband Services Provided via Fiber to the Premises, Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided via Fiber to the Premises: Report and Order and Notice of Proposed Rulemaking*, CC

been invested since then in existing networks that emerged in a non-regulated environment. On that basis, the Commission should refrain from counter-intuitively “fixing what is not broken,” and should avoid measures that would stifle innovation and investment, limit consumer choice, and generate increased costs. To the extent, however, that any limited regulatory intervention is applied to broadband Internet access, specialized and managed services should be specifically exempted from such regulation. Such services are not Internet access, but rather different services that do not compete with Internet access and should not be regulated as such.

Specialized and managed services include VoIP, IPTV, VPNs for business, and applications that enable distance learning and telemedicine applications. These services do not offer general, user-directed Internet access service but, instead use Internet Protocol to deliver additional specific functionalities that customers seek. Regulating managed services would be the same as regulating application providers that happen to deliver their services over the Internet. In this way, the notion of regulating managed services would be an even greater extension of Commission jurisdiction and imposition of regulatory burdens than contemplated by the Chairman’s Third Way proposal. The market for specialized and managed services, which takes advantage of developments in the expanding frontiers of broadband technology, should not be so constrained. There is no factual basis to regulate, only unfounded fears; abstract, supposed risks do not equate to actual harms.

Docket Nos. 02-33, 01-337, 92-50, 98-10, WC Docket Nos. 04-242, 05-271, FCC 05-150, at para. 84 (2005) (Wireline Broadband Order).

Definition

Specialized services should not be defined as regular broadband Internet access. Although specialized or managed services may share similar capabilities with broadband Internet access, they incorporate distinct applications that offer end-users focused services that reach beyond general broadband access to the Internet. As ITTA has stated previously, the Commission should refrain from introducing regulatory intervention to broadband Internet access. The Commission should certainly refrain from exercising such intervention with regard to specialized or managed services, which do not implicate solely *access*, but rather, as their categorical designations apply, specific complex *services* that rely upon such access.

As ITTA has explained, the introduction of regulation to a competitive market will have the effect of depressing incentives for investment. A White Paper issued in response to the “Third Way” cautioned there is “strong evidence that the reclassification scheme will undermine the allocation of new resources to broadband infrastructure, even if the FCC ultimately keeps its word”³ to forbear from applying all Title II regulations to broadband Internet access. While the Commission should be wary of depressing any incentives for broadband deployment, it should be especially wary of depressing incentives for specialized services that promise potential earnings to offset costs that “public” Internet usage cannot cover.

³ George S. Ford, Lawrence J. Spiwak, “The Broadband Credibility Gap,” Phoenix Center for Advanced Legal and Economic Public Policy Studies, Washington, at 33 (Jun. 2010) (Phoenix Report).

Truth in Advertising

The Commission seeks comment on whether it should prohibit broadband providers from marketing specialized services as broadband Internet access services or a substitute for such service. The Commission also asks whether providers of specialized and/or managed services should be required to offer broadband Internet service as a stand-alone service (in addition to any bundled offerings). ITTA opposes both recommendations. As noted above, broadband Internet access contemplates *access* to the Internet, which is distinctly devoid of specialized or managed aspects that are focused toward specific applications such as telemedicine, distance learning, conferencing, or other specialized or managed services.

Providers would be loath to characterize specialized services as “broadband Internet access,” since doing so would instantly devalue a premium offering by masquerading it as “plain Jane.” Conversely, providers would be loath to offer only a premium offering, especially in a competitive market where residential subscribers would presumably seek out providers offering services that meet basic access needs at correspondingly lower costs. Consumers will continue to demand stand-alone broadband Internet access service, devoid of the advanced features that characterize specialized services, and providers with a profit incentive will not refrain from offering those “non-managed” services.

Disclosure

The Commission seeks comment on whether providers should be required to report information that enables consumers, third parties, and the Commission to evaluate and report on specialized services. ITTA opposes the recommendation. The open

marketplace will provide its own “reporting,” enabling consumers to formulate opinions and comparatively weigh the offerings of various providers. Moreover, inasmuch as the broadband Internet access market has expanded, there is no logical basis to presume that specialized and managed services will not continue to develop correspondingly to meet evolving consumer demands. To the extent the Commission seeks to measure marketplace impact on these services, that impact can be determined through publicly available information and, if the Commission deems necessary, public surveys. The Commission should refrain from imposing upon providers additional costly administrative processes that moreover implicate highly confidential and proprietary information. The Commission has stated its interest in promoting innovation, investment, and competition: unnecessary reporting requirements will not further those goals (in fact, they will likely obstruct them), and should accordingly be rejected.

Non-Exclusivity in Specialized Services

The Commission seeks comment on whether it should require that commercial arrangements with a vertically integrated affiliate or third party for specialized services be offered on the same terms to other third parties. ITTA opposes this proposal. Proponents claim that non-exclusivity will “mitigate potential harm to innovation and competition”⁴ But, that argument ignores the factual context of the current market. Providers across a broad swath of the industry have developed and are offering specialized and managed services. These developments occurred within the general context of the Commission’s overall “light touch” approach to broadband Internet access.

⁴ See, *Framework For Broadband Internet Services: Comments of Vonage*, GN Docket No. 10-127, at 29 (Jul. 15, 2010).

The imposition of non-exclusivity requirements will dampen providers' interest in investing in and providing advanced derivations of these services.

Advanced network deployment is burdened by high sunk costs, particularly in the rural markets served by ITTA members. In lower-density markets, and for small business customers, the economics of fiber deployment are already difficult. The Commission should not compromise service providers' incentives to invest by enabling competitors to obtain the benefit of another's investment, but without any of the risk. The market has developed successfully to date -- a report prepared for the Commission demonstrates that broadband market participants have invested heavily in their networks, and intend to continue that trend into the future.⁵ And, as noted by the Commission in the context of unbundling requirements,

The effect of unbundling on investment incentives is particularly critical in the area of broadband deployment, since incumbent LECs are unlikely to make the enormous investment required if their competitors can share in the benefits of these facilities without participating in the risk inherent in such large scale capital investment.⁶

The market has acted successfully to date under the current "light touch" approach. The Commission should refrain from imposing non-exclusivity requirements that would depress provider incentives to invest.

⁵ "Broadband in America: Where It Is, and Where It Is Going (According to Broadband Service Providers), Robert C. Atkinson, Ivy E. Schultz, Columbia Institute for Tele-Information, New York City (Nov. 11, 2009) (CITI Report).

⁶ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability: Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket Nos. 01-338, 96-98, 98-147, FCC 03-36, at para. 3 (2003) (Unbundling Order).

Limit Specialized Service Offerings

The Commission seeks comment on whether it allow providers to offer only a limited set of specialized service offerings, *e.g.*, those with functionality that cannot be provided via broadband Internet access services. ITTA submits that this proposal is the surest way to effectively suffocate incentives in investment and resultant technological development. Consistent with ITTA's positions outlined throughout these comments, limitations placed upon providers in an already successful marketplace will disturb those dynamics and produce effects contrary to the goals of the Commission. The broadband marketplace is one of the bright lights in an otherwise burdened economy. It blends the publics' increasing reliance on broadband with evolving technology that enables users to do more, in more places. The Commission should not diminish incentives for investment in networks and the development of new services that rely on them.

Guaranteed Capacity for Broadband Internet Access Services

The Commission seeks comment on whether it should require providers to continue to provide standard broadband Internet access in addition to specialized services. Like the proposal to limit specialized offerings, above, this proposal contemplates unnecessary, unwarranted, and incomprehensible governmental interference in the marketplace. Broadband providers have made unprecedented investments in network deployment throughout the Nation where either natural economic incentives or sufficient support mechanisms have been present. Providers have responded to market demands and, as noted above, it is highly unlikely that consumers would view specialized services as a substitute for less expensive standard broadband Internet access services. Therefore, the market itself will encourage providers to continue to offer broadband

Internet access alongside whatever specialized or managed services they may develop. The Commission should refrain from instituting artificial regulatory controls.

B. APPLICATION OF OPEN INTERNET PRINCIPLES TO MOBILE WIRELESS PLATFORMS

ITTA has advocated previously that all providers should be subject to substantively similar and equitably designed regulatory conditions.⁷ As noted above and previously in this proceeding, ITTA opposes new regulations for broadband Internet service providers. If, however, the Commission determines to impose regulations, those should be applied in an equitably-effective manner upon all providers. Failure to incorporate regulatory parity will send improper signals to the marketplace, damaging not only providers of the regulated technology, but technological innovation and consumer welfare, as well. The complementary and competitive relationships between wired and wireless offerings enable consumers to weigh features, capabilities, and convenience; each model continues to expand availability and offerings, providing consumers with an ever-broadening array of competitive options. To the extent wireless networks suffer capability constraints based upon the “shared resources” nature of their networks, network management principles can be written to accommodate the parameters specific to wireless networks. Wholesale exemption from such requirements should be foreclosed: it would be wholly improper to exempt wireless providers from the type of regulations that apply to providers of wire-based services. It would be particularly egregious when the intent of the proposed regulations is to protect consumer interests.

⁷ See generally, e.g., *Framework For Broadband Internet Services: Reply Comments of the Independent Telephone & Telecommunications Alliance*, GN Docket No. 10-127 (Aug. 13, 2010).

III. CONCLUSION

The market for broadband Internet access services is competitive and robust. The Commission should avoid imposing regulations, and, in particular, should refrain from intervening in the market for specialized and managed services. The “light touch” regime has encouraged investment, technological development, and the ability of the market to respond appropriately to consumer demand.

Respectfully submitted,



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