

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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

COMMENTS OF NETFLIX, INC.

Netflix, Inc. (“Netflix”) files these comments in response to the Commission’s recent Public Notice in the above-captioned proceedings.¹

In its comments filed earlier in this proceeding, Netflix noted – as did several other parties – that the *NPRM* did not provide sufficient detail as to the scope of the specialized services category and that this category, as outlined in the *NPRM*, could render any openness rules ineffective.² In particular, Netflix expressed concern “that network operators will use so-called managed services in a way that harms unaffiliated content or service providers that compete directly with services provided by the network operator, owing either to their

¹ *Further Inquiry Into Two Under-Developed Issues in the Open Internet Proceeding*, Public Notice, GN Docket No. 09-191, WC Docket No. 07-52, DA 10-1667 (rel. Sep. 1, 2010) (“Further Inquiry Public Notice”). Netflix limits its comments to the portion of the Public Notice addressing specialized/managed services.

² See Comments of Netflix, Inc. at 9 (filed Jan. 14, 2010) (“Netflix Comments”); see also Comments of AT&T Inc. at 101 (filed Jan. 14, 2010); Comments of the Open Internet Coalition at 92 (filed Jan. 14, 2010); Comments of Communications Workers of America at vii and 24 (filed Jan. 14, 2010); Comments of QUALCOMM Inc. at 25 (filed Jan. 14, 2010).

vertical integration . . . or resulting from competitive threats to their legacy ‘managed services’ business.”³ Netflix also noted that this concern is “heightened in light of the fact that such ‘managed services’ are offered over the same physical network as broadband Internet access.”⁴ Netflix warned the Commission of the need to “circumscribe the network operators’ ability to exempt certain services from the openness rules by classifying them as managed services.”⁵

Netflix is heartened that, in the Public Notice, the Commission also identified these concerns.⁶ Netflix continues to believe that the risks posed by specialized services being provided over the same physical network as the public Internet heightens the need for oversight of such services. The Commission must assure that specialized services do not, in effect, transform the public Internet into a private network in which access is not open but is controlled by the network operator, and innovative Internet-based enterprises are permitted effective access to their consumers only if the enterprises pay network operators unreasonable fees or are otherwise seen by such network operators as not threatening a competitive venture.

In order to deal with these concerns and to safeguard the goals of an open Internet, Netflix agrees generally with the approaches outlined by the

³ Netflix Comments at 9.

⁴ *Id.* See also NPRM at 54, ¶ 153.

⁵ Netflix Comments at 10.

⁶ Further Inquiry Public Notice at 2-3.

Commission in the Public Notice. Beyond those specific approaches, the Commission should also make clear that oversight and enforcement will be stressed – even good rules, without Commission oversight and a commitment to prompt enforcement, will accomplish little. Furthermore, the Commission should ensure that specialized services do not unreasonably erode capacity devoted to broadband Internet access services. Requiring service providers to offer some level of guaranteed capacity for broadband Internet services, at reasonable rates to consumers, will ensure that all comers – from today’s Netflix to the “next Netflix” – are able to reach consumers without obtaining the permission of network operators. Under such a “guaranteed capacity” approach, the network operators would remain incented to create specialized services to drive additional investment in their networks while at the same time helping to preserve the Internet as an open platform for competition, innovation and free expression.

* * *

Netflix continues to support the Commission’s effort to adopt rules that will preserve an open Internet. The Commission’s proposed rules, taken as a whole, offer an effective framework for assuring an open Internet – balancing the interests of both network operators and users. By adopting these rules, including those intended to address specialized services, the Commission will help assure that the Internet remains a force for innovation, commerce and consumer choice.

Respectfully submitted,

NETFLIX, INC.

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