



# North American Benthological Society

December 13, 2010

Chairman Julius Genachowski  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Dear Chairman Genachowski:

As the President of the North American Benthological Society, I represent over 1600 members whose research and professional activities focus on the physical, chemical, and biological structure and function of rivers and streams and other shallow-water ecosystems. Our members rely on the Internet for their work and use it in their private life. We have been following the network neutrality debate with great interest and are deeply concerned that your Open Internet proposal fails to adequately protect the interests of users, application developers and content providers, with negative consequences for society. If we – as a society – want to protect the Internet’s ability to serve as a platform for innovation and free speech in the future, we need more protections for users and innovators than your current proposal provides. In particular, we need a meaningful non-discrimination rule, a clear ban on access charges, and meaningful protections for wireless Internet service.

## **1. A meaningful non-discrimination rule**

We understand that your current proposal bans discrimination that is “unreasonable” or “unjust” and leaves it to later case-by-case adjudications to determine which discriminatory practices meet these criteria. This type of rule does not provide the certainty that market participants need: Network providers do not know how they can manage their networks. Application developers and their investors do not know whether they will be discriminated against. Being able to complain to the FCC should discrimination occur does not adequately protect their interests. Innovators often have few resources, and aren’t in a position to pay the lawyers, economists and lobbyists needed to convince the FCC how “unreasonable” and “unjust” should be defined and why discrimination against their application should be prohibited.

Instead, we need a non-discrimination rule that clearly separates acceptable from unacceptable discrimination. We suggest that a rule that bans application-specific discrimination (i.e. discrimination based on application or class of application), but allows application-agnostic discrimination would be the right way to go forward.<sup>1</sup> It provides certainty to network providers and application and content developers (and their investors) alike. It prevents network providers from distorting competition among applications or classes of applications. It leaves the decision over which applications will be successful and how the network can be used to users, instead of moving it to network providers. And it leaves plenty of room for the network to evolve, for example by allowing certain (but not all) forms of quality of service.

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<sup>1</sup> Throughout this letter, we use the term “application” to also encompass “content.”

President: Dr. Lucinda Johnson, Natural Resources Research Institute, University of Minnesota – Duluth, 5013 Miller Trunk Hwy, Duluth, MN 55811: Phone (218) 720-4251; Fax (218) 720-4328

President Elect: Dr. Joseph Holomuzki, The Ohio State University, Mansfield Campus, 1760 University Drive, Mansfield, Ohio 44906: Phone (419) 755-4340; Fax (419) 755-4367

Treasurer: Dr. Michael C. Swift, Biology Department, St. Olaf College, 1520 St. Olaf Ave., Northfield, MN 55057: Phone (507) 786-3886; Fax (507) 786-3968

Secretary: Dr. Susan B. Norton, U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment, 1200 Pennsylvania Avenue NW, Mail Code 8623-P, Washington, DC 20460: Phone (703) 347-8549; Fax (703) 347-8692

## **2. A clear ban on pay-to-play access fees**

In the past, network providers have repeatedly expressed their desire to charge application and content providers so-called access fees.<sup>2</sup> Your current proposal does not explicitly address the legality of this practice. We hope you will reconsider this decision and clearly prohibit network providers from charging access fees in the final rule.

Access fees reduce the profits of all application and content providers, reducing their incentives to innovate. They particularly affect innovators with little or no outside funding, who may not be able to pay these fees. Throughout the history of the Internet, innovators with little or no outside funding have developed many important innovations, and there is no reason to believe this would change in the future. Thus, removing (or at least impeding) the ability of this important subgroup of innovators to develop new applications will significantly reduce the overall amount and quality of application innovation. As a professional not-for-profit society, we are also concerned about the impact access fees would have on the ability of non-profit content providers to make their voice heard. The Internet has become an important vehicle through which we (and our members) educate the public about advances in our respective fields. If we had to pay access fees to get access to users or had to buy better transport to compete with for-profit content providers on an equal footing, our ability to serve this important mission would be severely impeded. At the same time, leaving the decision about the legality of access fees to future case-by-case determinations creates uncertainty in the market. Determining the legality of the practice would require going through a costly process in front of the FCC. Such a proposal puts those who would be most affected by such fees (e.g., innovators with scarce resources or non-profit organizations) at a severe disadvantage, since they lack the resources and capabilities to persevere in this process.

## **3. Meaningful protections for wireless Internet service**

Your current proposal does not extend the same protections to wireless Internet service as to wireline Internet service. We think this is a mistake. Over the next few years, wireless Internet service is predicted to become the dominant technology through which users access the Internet. The threats to application innovation, user choice and free speech are the same in wireless and wireline networks, as is the rationale for protecting these values. Prohibiting the blocking of only some, but not all applications (as your proposal suggests) leaves large swaths of applications, content and services without any protection. Even if you ban all blocking, discrimination provides an easy alternative to blocking, which effectively makes the ban on blocking meaningless. Instead, the same protections should apply to wireline and wireless Internet service. Any technological differences – to the extent they exist – can be accounted for when applying the exception for reasonable network management.

The Internet has become the central infrastructure of our times. We hope that you will take adequate steps to protect it, and look forward to working with you in developing clear rules to protect the open Internet.

Respectfully,

Randall L. Fuller, Chair of the NABS Executive Committee for:

Lucinda B. Johnson, Ph.D.  
President, North American Benthological Society  
Center for Water and the Environment  
Natural Resources Research Institute  
University of Minnesota Duluth  
5013 Miller Trunk Highway  
Duluth, MN 55811

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<sup>2</sup> As we understand the term, access fees are fees that a network providers charges to application and content providers who are not its Internet service customers – either for access to the network provider’s Internet service customers or for enhanced access (e.g. faster transport) to these customers. Access fees are not the same as interconnection charges, so a ban on access fees would not affect interconnection agreements.