

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

In the Matter of)	
)	
Protecting and Promoting the Open Internet)	GN Docket No. 14-28
)	
)	

COMMENTS OF THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL

I. INTRODUCTION

The Information Technology Industry Council (ITI) hereby files these comments with the Federal Communications Commission (“FCC” or “Commission”) in response to the Notice of Proposed Rulemaking (“NPRM” or “rulemaking”) in the above-captioned proceeding.¹

ITI represents 58 of the nation’s leading information technology companies, including computer hardware and software, Internet services, and wireline and wireless networking equipment companies.² Throughout the Commission’s consideration of whether and how to regulate broadband Internet access services, ITI has sought to provide a balanced perspective that reflects both the diverse business interests of its member companies and the need to protect consumers. While many of the participants in the above-referenced proceedings have stuck to their talking points, ITI has tried to find constructive solutions. In that spirit, ITI

¹ Promoting and Protecting the Open Internet, GN Docket No. 14-28, *Notice of Proposed*

² For more information on ITI, including a list of its member, please visit <http://www.itic.org/about/member-companies.dot>.

hereby files the attached comments. In the ITI members' view, the attached proposal, taken as a whole, represents an appropriate balance that provides necessary consumer protections, business certainty, and consideration of past action and court decisions.

This proceeding has the potential to significantly impact current and future business and investment decisions by all of ITI's member companies, startup and small Internet companies, Internet service providers, and numerous other entities not directly providing broadband or Internet services, not to mention end-users. In addition to protecting end-users, the Commission must also protect the incentive to invest by both the network service providers and the online and edge user community. It is the symbiotic relationship, and massive capital investments, between, and by, these two communities that have brought end-users the virtually unlimited choices available today for online services, applications, and content.

There is no question the Internet has been a tremendous engine for job creation and economic growth,³ providing countless opportunities for entrepreneurs to have near-instant access to a global marketplace, and vastly increasing choice across all facets of Americans' lives – healthcare options, educational opportunities, career opportunity, entertainment choices, etc. This has been possible due to significant investments in the physical infrastructure required

³ Including the benefits to other sectors derived from IT use, the IT industry contribution to the gross domestic product (GDP) is approximately \$1 trillion, or 7.1 percent of GDP. See Robert J. Shapiro and Aparna Mathur, "The Contributions of Information and Communication Technologies To American Growth, Productivity, Jobs and Prosperity," September 2011, http://www.sonecon.com/docs/studies/Report_on_ICT_and_Innovation-Shapiro-Mathur-September8-2011-1.pdf.

to provide broadband service,⁴ the significant investments in online services and content,⁵ and the endless opportunity to create, develop, innovate, and experiment with new services, offerings, and business models. While not perfect, the 2010 Open Internet Order⁶ largely recognized this, and allowed companies to continue innovating and investing, while setting boundaries to ensure consumers were protected and new market entrants had the opportunity to offer competitive products and services.

ITI believes this has been possible, in large part, due to the light regulatory touch by the Commission. As such, ITI continues to support an approach that protects consumers within a light-touch regulatory framework rather than under a heavily regulatory common-carriage framework. Consistent with our goal of advancing consumer protection and a light regulatory touch, it should be noted that reclassification of broadband Internet service as a Title II service may raise difficult definitional questions regarding the demarcation between information and telecommunications services, create investment disincentives from regulatory delay or uncertainty, and possibly encourage foreign governments to impose onerous regulation of even Internet services.

⁴ For further discussion of the necessity for infrastructure investment, see McKinsey Global Institute, "Internet matters: The Net's sweeping impact on growth, jobs and prosperity" p. 31-32, http://www.mckinsey.com/insights/high_tech_telecoms_internet/internet_matters.

⁵ In 2013, 74 percent of the \$35 billion spending increase in R&D spending came from the software and Internet (up \$9.3 billion). Booz & Company, "The Global Innovation 1000: Navigating the Digital Future." <http://www.strategyand.pwc.com/global/home/what-we-think/reports-white-papers/article-display/2013-global-innovation-1000-study>.

⁶ Preserving the Open Internet, *Report and Order*, (2010).

The attached comments strike an appropriate balance among the goals of promoting innovation, investment, competition and free expression while at the same time protecting and empowering consumers.

II. THIS PROCEEDING SHOULD FOCUS ON RESIDENTIAL BROADBAND INTERNET ACCESS SERVICE.

As mentioned above, this proceeding should focus on protecting consumers, while protecting the incentive to invest by both Internet service providers and online and edge providers. For that reason, the Commission's approach is appropriate and should not be broadened for purposes of this proceeding.⁷ For the avoidance of doubt, virtual private network services, content delivery networks, caching, Internet backbone services, IP multicast, and similar arrangements should not be considered broadband Internet access services.

To the extent the Commission believes activity elsewhere in the network besides the last mile is impacting end-users in a manner inconsistent with the principles of this proceeding, those issues should be addressed.⁸

III. TRANSPARENCY PROVISIONS CAN PROVIDE CONSUMERS, EDGE PROVIDERS, AND THE COMMISSION CERTAINTY ABOUT BROADBAND SERVICE PROVIDERS PRACTICES THAT ARE NECESSARY TO MAXIMIZE END-USER EXPERIENCE.

Each wireline and wireless broadband Internet service provider must disclose sufficient information regarding the actual price, performance, and network

⁷ NPRM, ¶ 54.

⁸ We also support the Commission's recently begun inquiry into the backhaul or peering portion of the network to determine whether anti-competitive practices are harming consumers. See <http://www.fcc.gov/document/chairman-statement-broadband-consumers-and-internet-congestion>.

management practices of its broadband Internet access service to enable consumers and content, application, service, and device providers to make informed choices regarding the use of the broadband Internet access service. Disclosures should outline what traffic (including applications and content) is filtered or prioritized, what congestion levels trigger traffic management practices and how those traffic management practices are applied to all users or traffic or to heavy users or traffic. The FCC must also ensure that any information disclosed to it that is competitively sensitive or could compromise network security is suitably protected, consistent with existing FCC procedures for treatment of confidential information

IV. CONSUMERS SHOULD BE PERMITTED TO ACCESS LAWFUL INFORMATION FREELY, AND UNFETTERED ON A ROBUST INTERNET ACCESS CONNECTION.

One of the many opportunities basic broadband Internet access service has provided to end-users is the ability to access the information, services, and applications they wish to access on a multitude of devices. The potential exists for family members to all access a home Internet connection simultaneously, and each on different devices for different purposes.⁹ Protecting this choice, as well as protecting the basic level of service that makes this possible is no doubt a central principle in this proceeding.

Therefore, ITI supports the Commission adopting a no-blocking rule for these purposes, and specifically the Commission's proposed rule:

A person engaged in the provision of fixed broadband Internet access service, insofar as such person is so engaged, shall not block lawful content,

⁹ Parents may be working from a laptop, while the kids may be doing homework on a tablet, gaming online from a console, or watching online video or making a video call from a connected television.

applications, services, or non-harmful devices, subject to reasonable network management.

A person engaged in the provision of mobile broadband Internet access service, insofar as such person is so engaged, shall not block consumers from accessing lawful websites, subject to reasonable network management; nor shall such person block applications that compete with the provider's voice or video telephony services, subject to reasonable network management.¹⁰

ITI believes that consistent with consumer choice, all lawful apps, services, and content should be permitted, and broadband service providers should provide a level of service that does not impair the functionality of service over a wireline or wireless broadband connection. This rule should not, however, bar the potential for commercial arrangements that could benefit consumers.¹¹

The Commission should also ensure there is robust broadband Internet access service. To achieve this, the Commission should assess the current capabilities of broadband Internet access service, and assess on a case-by-case basis whether there has been degradation to that service. The Commission should also be able to make future determinations on a case-by-case basis whether a minimum level of service is being offered. This may entail a combination of the "best efforts"¹² and "reasonable person"¹³ standards the Commission details in the notice, or another standard consistent with the goals of Section 706. ITI does not support a specific technical definition of minimum access.¹⁴

¹⁰ NPRM, ¶ 94.

¹¹ NPRM, ¶ 96.

¹² NPRM, ¶ 102.

¹³ NPRM, ¶ 104.

¹⁴ NPRM, ¶ 103.

V. WITH PROPER PROTECTIONS, COMMERCIAL ARRANGEMENTS AND SPECIALIZED SERVICES SHOULD BE PERMITTED.

ITI supports ensuring that broadband Internet access service providers have the flexibility to pursue varied commercial arrangements that benefit consumers, but the Commission must proceed carefully on a case-by-case basis as ITI outlines below. Some of these arrangements may include “zero rating”¹⁵ data, or allowing an end user customer to choose differentiation of traffic. ITI recognizes that without proper protections, commercial arrangements between online service providers and broadband Internet access providers have the potential to adversely impact competition and choice in the online marketplace. ITI believes that it is important that any rules adopted by the FCC preserve both a competitive online playing field¹⁶ and incentives for broadband Internet access providers to invest in and evolve the speeds and capacity of their broadband networks. Therefore, consistent with the no-blocking rule, the Commission should permit opportunities for companies to experiment with commercial agreements that could benefit customers.

Specialized services should also be permitted so long as they do not adversely affect the provision of a robust and evolving basic Internet access tier to consumers or harm competition.¹⁷ Specialized services may also share infrastructure with broadband Internet access service, but again, should be monitored to ensure they are not eroding investment in the basic Internet access

¹⁵ “Zero-rating” allows a third party to pay the broadband service provider for specific data, so as to prevent it from counting toward the end-user’s data allotment.

¹⁶ See NPRM, Sec III, A2.

¹⁷ NPRM, ¶ 60.

offering, nor should the purchase of specialized services be a prerequisite to acquire a basic broadband Internet access service connection.

VI. REASONABLE MANAGEMENT PRACTICES ARE NECESSARY TO NETWORK OPERATION, AS IS RECOGNITION OF THE DISTINCTION BETWEEN WIRELINE AND WIRELESS SERVICE.

The Commission appropriately includes flexibility for broadband service providers to manage network traffic.¹⁸ A network management practice is reasonable if it is appropriate and tailored to achieving a legitimate network management purpose. In determining whether a wireless network management practice is reasonable, consideration should also be given to the technical, operational, commercial, capacity and other differences between wireless and other broadband Internet access platforms

An appropriate network management approach may reflect the following:

- a. Reasonable network management: A network management practice is reasonable if it is appropriate and tailored to achieving a legitimate network management purpose, including but not limited to (i) addressing traffic that is harmful to the network or unwanted by consumers or the controller of the premise; (ii) reducing or mitigating the effects of congestion; (iii) ensuring service quality; or (iv) meeting the needs of public safety. Reasonable network management may also consist of reasonable efforts by a provider of broadband Internet access service to address copyright infringement or other unlawful activity.
 - aa. There shall be a rebuttable presumption that prioritization for quality-of-service purposes, such as to aid latency-, jitter-, or packet-loss-sensitive traffic, is reasonable network management if like traffic is treated alike or if such prioritization is chosen by the consumer.
- b. Reasonable Wireless Network Management: A wireless network management practice is reasonable if it includes any of the practices that

¹⁸ NPRM, ¶ 61.

would be considered reasonable network management generally, or any other practice that is reasonable taking into account the unique technical, operational, commercial and capacity considerations that apply in the context of wireless services, including but not limited to (i) addressing traffic, content, individual applications or services, or classes of applications or services, that may be harmful to the network or that may be harmful to other users' wireless broadband Internet access experience or that are unwanted by consumers or the controller of the premise where the broadband Internet access service is offered; (ii) reducing or mitigating the effects of congestion; (iii) assuring customer satisfaction; (iv) enabling the proper functioning of content, applications or services; (v) meeting the needs of public safety; or (vi) ensuring efficient use of spectrum. In determining whether a wireless network management practice is reasonable, consideration shall be given to the technical, operational, commercial, capacity and other differences between wireless and other broadband Internet access platforms.

VIII. CONCLUSION

ITI appreciates the opportunity to comment on this critical proceeding. The key principles we would urge the Commission to take into consideration as it moves forward with this proceeding are 1) provide reasonable open internet protections for end-users, 2) protect the ability to experiment and innovate across the network, and 3) do no harm with regard to the incentive to invest by both broadband service providers and online service providers. We stand ready to work with you to help achieve a successful outcome in this proceeding.

Respectfully Submitted,

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