

**Before the
Federal Communications Commission**

In the Matter of

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**Protecting and Promoting the
Open Internet**

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GN Docket 14-28

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Reply Comments of Distinc.tt

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Executive Summary

Distinc.tt is a social lifestyle network for the Lesbian, Gay, Bisexual, and Transgender (LGBT) community. We build world class technology that improves the lives of LGBT people and strengthens our community. We were founded in Cambridge, Massachusetts in 2010 and moved to Palo Alto after receiving seed funding from Peter Thiel.

We believe in a free and open Internet, and urge the FCC to enact rules that protect it. Net neutrality and an open Internet spurs innovation, creative exploration, and economic growth. If Chairman Wheeler's proposal to allow Internet Service Providers to negotiate paid prioritization with companies is enacted, you would be allowing ISPs to pick and choose who wins and who loses in the economy. The current architecture of the Internet allows for end users to determine who wins and loses—and that is how it should stay.

If the FCC's proposal had been law when we launched our startup, it is very likely that we would not exist today. Startups have very limited resources, and having to pay ISPs for equal opportunity could be the difference between success and failure. In addition to the difficulties that the proposed rules would create for my startup, I'm worried about the effects they would have on aspiring entrepreneurs living in essential poverty. What makes tech startups such a strong driver of innovation and creativity is that they don't cost much to start today.

The Chairman's proposal, if enacted, would force us to negotiate with ISPs to be in a "fast lane" to compete in our market. Unfortunately, we are a small team of four with no lawyers on staff and with limited resources. The proposed rules, if implemented, will increase the likelihood that we will go out of business, even though our technology is better designed and more stable than our competitors. This is because consumers and advertisers alike judge products based on the speed with which that content is delivered. Being in a slower lane would

result in less engagement and less word of mouth about our product. It would thus make fundraising significantly more difficult, if not impossible.

We urge the FCC to classify Internet Service Providers as common carriers under Title II of the Telecommunications Act in order to protect the open Internet and promote net neutrality. We also want to stress that there should be minimal regulation in order to achieve these goals. New regulations can breed uncertainty and make areas of investment murky.

The “Commercial Reasonableness” standard will not help us. As noted before, we are a small team with limited resources and no lawyers on staff. Having to, at the very least, devote time and resources to monitor the speed at which our content is delivered in comparison to our competitors creates a burden that would make success more difficult. Moreover, should we find that we are facing technical discrimination, adjudication before the FCC would not be an option, again, because we do not have the funds or legal resources to pursue justice.

I. Distinc.tt is a Social Network which Strengthens LGBT Communities

Distinc.tt is a social lifestyle network for the LGBT community. Distinc.tt helps LGBT people find relevant information on what's going on around them, what places are safe for them to be out, and how they can connect with other people in the community. At Distinc.tt we are dedicated to creating technology that improves the lives of LGBT people. We provide content recommendations and other engagement tools to our users.

Instead of focusing on sexual or romantic connections, we provide tools and content that our users can use to find relevant events, places, and friends. For instance, we have a recommendation engine that ranks places based on their measured popularity amongst our users at a given location and time, regardless of if the place is "mainstream" or gay-specific. This is increasingly important in order to maintain a sense of community as LGBT people become more accepted and integrated into mainstream society. Beyond the challenges faced by increased integration, technological advancements by other companies in the LGBT space have had unforeseen consequences. Moreover, "mainstream" social networks don't meet all of the needs of the LGBT community.

To be more concrete, consider the mainstream options. You have probably used a social network to connect with friends, family, or professional contacts. Though social networks do help people connect, there are significant limitations when addressing gay people's specific needs. As an invisible minority in an increasingly integrated society, LGBT people need a way to find gay specific information, like what places are popular with community members, who else around them is gay, and what organizations they can comfortably engage with. Gay people rely on this type of information in order to maintain a sense of community. A lot of the information

that is relevant to the LGBT community is hidden, and this content is hard to acquire. We help organize and uncover the world's gay information.

To understand our business one must understand the changing environment of the LGBT community. Population researchers currently believe that the gay community is in decline, despite the gay population being stable or growing in most cities.¹ Traditionally, gay bars and businesses served as a center of cultural, social, and political life. These venues, along with all gay physical infrastructure, have been decreasing in number. Civic engagement in LGBT organizations has also decreased. As physical venues have declined, the virtual community has increased in importance in the LGBT community. Researchers at the University of Minnesota, as well as journalists from the BBC, the New Yorker, and many others, believe that these structural changes are the result of the technology that has been available to gay people, compounded by assimilation into mainstream society.² Members of the community largely see other mobile apps as “hook-up” apps. Every other gay social app shows its user a grid of mostly headless torsos. We believe technology needs to provide the gay community with ways to connect with each other beyond sexual relationships, especially as the virtual community continues to grow. This has been our immediate goal, and I’m happy to say that we’ve been able to create virtual tools that help people connect with content and each other in the real world. Indeed, the *Wall Street Journal* recently called us “The Gay App You Can Bring Home to Mom.” Technology like ours needs to exist in order to maintain our community and address the new issues that are arising in this changing environment.

II. We Could Have Never Founded Distinc.tt Under the FCC’s Proposal

¹ <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2562784/>.

² <http://www.bbc.com/news/magazine-26817128>

Distinc.tt was incorporated in 2010, when my cofounder, Michael Belkin, started at Harvard Business School. I joined shortly thereafter, believing that technology was the best solution to many of the new issues I noticed in the LGBT community. We both believe that our lives are materially changed by the innovative products and services we use. They help us connect with people, stay organized, maintain a profession, learn new things, and the list goes on. We wanted to do the same for others. With simply an idea and the will to implement it, we can have a positive effect on people's lives and make them, at least marginally, happier.

Over the next two years, Michael learned how to code, taking courses at Harvard College because he believed as strongly as I that something like Distinc.tt needed to exist and was willing to put aside everything to make it happen. We got our first seed investment in the fall of 2012 from Peter Thiel, after showing our ability to effectively acquire users for our test product. If we would have entered a market where established companies had already negotiated priority access to consumers, we would have had to spend money that we did not have up-front and would not exist today. We've since received funding from renowned investors like Keith Rabois, and top entrepreneurs and product managers like Josh Haftel. In the short time that we've been working on Distinc.tt, we've been able to create world-class technology that's superior to our competitors in both stability and design. We give free services to non-profits, and we are assisting some of the world's largest organizations dedicated to ending poverty and promoting human rights.

None of this would have happened under the rules proposed by the FCC. My co-founder and I would have never given up lucrative job offers to take on such a risky and bold initiative as Distinc.tt.

Like all of the startups I've talked with, if there were a fast lane, our survival would have depended on us being in it from the beginning. As I noted earlier, this would not have been possible. Even if the "slow lane" were "pretty fast," it wouldn't matter because we would still

need to be as effective at serving our users as our competitors. Users turn away from websites which are even 250 milliseconds slower than their competitors.³ As a former political scientist, I'm reminded of Plato who said that "democracy is a charming form of government, full of variety and disorder; and dispensing a sort of equality to equals and unequals alike." This is what the FCC protecting net neutrality and an open Internet does—it provides equal access to engage in the market for startups and entrenched competitors alike. The very existence of a "fast lane" creates inequality that would significantly disadvantage us and the majority of other startups.

The challenges that startups face are vast—finding great team members; obtaining funding; acquiring and engaging users; designing and scaling technology; figuring out federal, state and local taxes and laws; developing cybersecurity; dealing with legal issues; and finding strategic partners; etcetera. However, these challenges are surmountable, and our tech sector is vibrant for one reason: It's currently cheap to start a startup. As Sam Altman, President of one of the world's top tech accelerators, Y Combinator, put it: "The Internet has been the great bright spot in US innovation in the last decade. It's mostly been a free and open platform, where anyone can get something started. When the great companies start, they often look like very fragile projects. Any additional barriers, however small, could easily have stopped Google or Facebook from getting going."⁴

III. The FCC's Proposal Threatens Our Company's Future

Today, Distinc.tt's growth and engagement are significantly higher than the industry benchmark.

These metrics impact all aspects of our business, from product design to fundraising.

Consumers are savvy and make quick judgments on whether or not to download and use a

³ <http://www.nytimes.com/2012/03/01/technology/impatient-web-users-flee-slow-loading-sites.html?pagewanted=all>.

⁴ <http://blog.samaltman.com/net-neutrality>.

social product—and in our market, they judge us on speed and stability. As such, having unequal access to consumers would create a negative feedback loop for us. User engagement would decrease due to sub-par performance in comparison to entrenched competitors who have deals with ISPs. This in turn would decrease user acquisition as our retained users would be less likely to recommend our products. Finally, our ability to fundraise would be significantly diminished due to sub-par engagement and acquisition metrics which would in turn cause us to go out of business.

We currently spend considerable resources ensuring that our users can quickly access the content that they need. They view high-resolution photos of restaurants, events, and people; as well as geo-location data to help with coordination. They find out what places around them are most popular and who is currently there. These tools help LGBT people stay connected and maintain a sense of community in this rapidly changing environment. As you can imagine, the amount of bandwidth that this takes up is exponentially related to our growth and success. Having to negotiate with ISPs for the same access that our competitors would enjoy is simply not an option at our stage as a startup, we neither have the time nor the money.

Even if we were in a position to negotiate with ISPs and end up in a “fast lane,” we would have to pass this cost on to our members who are already paying broadband providers for access to our content. It is the content providers, from video streaming services to individuals answering forum questions, that give the Internet its value. It is this content that allows ISPs to exist, without which they would not have a product worth buying.

IV. The “Commercial Reasonableness” Standard Will Not Help Us At All

We have no lawyers on our staff. We can’t hire an outside legal team unless our case is airtight, and our chances of winning are high. It’s unlikely that we could ever build an airtight case based on the FCC’s proposed “commercial reasonableness” standard. We don’t know what that

standard implies for us, and we wouldn't know until after many years of adjudication.

Meanwhile, many of the other companies who would need to bring such cases, startups like us, don't have the resources to bring them. So the commercial reasonableness standard might remain undefined—effectively toothless. We fear that ISPs could be practically immune in all but the most egregious abuses of their power.

We need more effective protection. We urge the FCC to classify broadband providers under Title II of the Communications Act, and to impose bright-line rules against blocking, technical discrimination, and paid prioritization, applicable to both fixed and mobile connections.

Respectfully submitted,

\s\ Thomas McAfee

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Co-Founder & President

Distinc.tt