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Staking a Claim for “Neutral Networks”

Consumer/Internet Advocates Call on Leading High-Tech Associations to Protect Free Flow of Content on the Broadband Internet.

Washington, DC—Several leading consumer and telecommunications advocacy groups called on two leading trade associations today to begin a dialogue designed to ensure that the Internet remains an open and unfettered medium of expression. In letters to the High-Tech Broadband Coalition (HTBC) and the Information Technology Industry Council (ITIC), the advocacy groups explained that they shared the concern of industry that cable broadband Internet users would face “troubling restrictions” in their “use of devices and access to applications and sites.”

The letter, signed by Consumer Federation of America, Consumers Union, Media Access Project and the Center for Digital Democracy, requested a dialogue between industry and the consumer community that would focus on preserving the Internet as a network of networks by establishing the principle of network neutrality for broadband.

In calling on the trade associations to refine and strengthen their recent calls for advanced telecommunications networks to ensure that consumers are not restricted in their ability to choose the devices or services they wish to receive, the consumer organizations urged the HTBC and ITIC to support the key principle that “...every telecommunications network must interconnect and interoperate with any other network or device delivering any application, service or content ... without any additional charge or restriction.”

Such a policy would maintain the “vigorous competition” that has characterized the dial-up Internet, preventing cable operators from interfering with online content and applications. The groups explained that the development of a consensus on Internet logic-layer neutrality was critical, given the cable industry’s traditional business model, which poses “numerous restrictions of functionality, applications, and services embedded in cable industry practices.” In challenging the trade associations to embrace public as well as corporate interests, the consumer organizations urged the HTBC and ITIC to support the key principle that “...every telecommunications network must interconnect and interoperate with any other network or device delivering any application, service or content ... without any additional charge or

“The FCC’s recently announced new policy for cable broadband services threatens to diminish competition and innovation, hurting the economy and the public,” explained Dr. Mark Cooper, research director of the Consumer Federation of America. “We share the concern of industry that vibrant competition remain a hallmark of the Internet era. But

Cooper and the other advocates point to the recent “deal” between AOL Time Warner and Comcast over the former’s access to AT&T Comcast’s broadband lines. Instead of following the dial-up model, in which AOL is able to use the communications network on reasonable terms to establish a direct commercial relationship with the consumer, under Comcast’s regime AOL is forced to become merely an extension of the cable giant’s broadband empire.

“In the broadband context, ISPs and content providers are no longer independent, which will have a chilling effect on innovation and expression on the Internet” noted CDD’s Jeff Chester, “This illustrates how quickly the Internet is being undermined. Other content and software providers, without the immense market power of AOLTW, will face even greater barriers to entry.”

“Cable’s closed, top-down model of content control is directly at odds with the open traditions of the Internet,” added MAP’s Andrew Schwartzman. “And with online access increasingly migrating to cable’s broadband platform, we need to ensure that Internet traffic does not fall under the cable industry’s domination.”

A copy of the group’s letter is available online at www.xyz. The groups will also be asking industry representatives to meet with them to generate a shared vision to present to policymakers, one designed to keep a crucial layer of the Internet open to competition and diversity.

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High-Tech Broadband Coalition

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Dear Mssrs. Diallo and Tanielian,

In your recent filing at the Federal Communications Commission (the FCC or the Commission) you have supported the Commission's decision to classify cable modem service as an information service under Title I of the Communications Act, but you also noted a number of "troubling restrictions" on "subscribers' use of devices and access to applications and sites. You call on the Commission to "vigilantly monitor" the broadband access market for "open and unfettered consumer access" condition. Notwithstanding our doubts about the legality or policy rationale for the Commission's classification of cable modem service, as consumer advocates with a long involvement in this issue, we very much share your concerns and believe a dialogue on your recommendations would be extremely productive.

The debate over the classification of advanced telecommunications services for the Internet access is fully mature and the issue will soon be decided in the courts. However, as your comments suggest, no matter how the debate is resolved, there are no guarantees the FCC, which has lately shown a remarkable disdain for open communications networks, would do the right thing. It would be a disaster for the Internet and our information-based economy if the open nature of the Internet and the communications network on which it rides is undermined.

We have always taken a broad view of "open access" that incorporates your concerns. Our primary focus in the Internet open access debate has not been that the owners of physical infrastructure will charge too much for its uses, but that they will use it as a strategic asset to undermine the dynamic and open nature of the Internet. In fact, when we have complained about abusive pricing of Internet access, it is not because of its negative equity effects (the transfer of "wealth" from consumers to network owners) but because it slows adoptions of service and drains resources from the development of new hardware, applications and content to exploit the unique qualities of the always on, high-speed Internet.

Recognizing a strong area of common interest, this letter outlines our analytic framework and refines and extends principles in the areas you have identified.

NETWORK NEUTRALITY

In essence the High-Tech Broadband Coalition is advocating nondiscrimination[, openness] or neutrality of the network for consumers so that vigorous competition can continue for applications and content. The effect of this “network neutrality” would be to restore or ensure the fundamental principle that service originating on one network would be able to interconnect with all other network, thereby preserving the Internet as a network of networks. We suggest the following statement of the principle.

Any network owner can define levels of service by bit rate or other technical specifications.

Once service is offered to the public, every telecommunications network must interconnect and interoperate with any other network or device delivering any application, service or content that conforms to the consumer’s contracted level of service without **any additional charge or restriction.**

Holding in abeyance our disagreement over whether advanced telecommunications services can be made available to the public at the sole discretion of the service provider, if the above principle is what is intended, we wholeheartedly agree. We believe that this principle is an important starting point for discussion.

It fits well within the broad view of the principles that have come to be seen as central to the dynamic and consumer-friendly Internet. For example, we find a strong parallel between the view of the Internet taken by the Computer Science and Telecommunications Board of the National Research Council, entitled *Realizing the Information Future: The Internet and Beyond*, and the High Tech Broadband Coalition.

Open to users. It does not force users into closed groups or deny access to any sectors of society, but permits universal connectivity, as does the telephone network.

Open to service providers. It provides an open and accessible environment for competing commercial or intellectual interests. For example, it does not preclude competitive access for information providers.

Open to network providers. It makes it possible for any network provider to meet the necessary requirements to attach and become a part of the aggregate of interconnected networks.

Open to change. It permits the introduction of new applications and services over time. It is not limited to only one application, such as TV distribution. It

also permits the introduction of new transmission, switching, and control technologies as these become available in the future.

Consumers should have unrestricted access to their choice of Internet content using the bandwidth capacity of their service plan.

Cable modem customers should be allowed to run applications of their choice, as long as they do not harm the providers network and are within the bandwidth limits of their service plans.

Consumers should be permitted to attach any devices they choose, without prior permission, to their ISP connection, so long as they operate within the agreed bandwidth, do not harm the provider's network, or enable the theft of services.

THE CHALLENGE OF NETWORK NEUTRALITY FOR CABLE

It is important to recognize that this principle is a radical departure from deeply entrenched cable industry practices (and telephone company aspirations). The cable industry has been unwilling to operate a neutral pipe in its core business. It has consistently examined the nature and value of the services delivered and sought to capture part of that value by securing equity ownership or taking variable percentages of the service revenues depending on the type, popularity and content of the service.

Because this is so out of character for the industry and because the cable industry has franchise products that it will seek to protect from competition, the cable industry will be severely challenged by this principle. You note numerous restrictions of functionality, applications and services embedded in cable industry practices, which we believe are quite pervasive and have stifled innovation in this product space.

We suggest that it will be important to focus attention on the technical limitations.

- 1) There must be some mechanisms to ensure that technical limitations are not a cover for anticompetitive practices and to quickly identify and address violations of the principle.
- 2) It is important to agree, as a matter of principle, that public policy should be oriented toward reducing limitations.

It seems to us that your approach, as restated above, solves many of the business practice/customer service issues that have swirled around the open access issues. There is no obvious technical reason why the cable operator should control the relationship between and Internet service provider selling services to the consumer. For example,

- 1) Once the customer contracts with the cable operator for service, the boot screen should be defined at the customer's discretion.
- 2) Any ISP should be allowed to establish a direct relationship with the consumer.
- 3) Privacy and information policy should be defined by the service provider, not the network owner.

We share your desire to have public policy promote competition in facilities while preserving the vibrant competition consumers have enjoyed on the Internet for applications and content. It is critical for policymakers to recognize that the number of competing facilities will, inevitably, be very small. Opponents of open communications platforms have based a large part of their argument on the discredited claim that competition between a very small number of facility owners will be enough to preserve the open nature of the communications platform and the even more absurd argument that we must sacrifice competition in content and applications in order to get competition in facilities.

Combining small numbers competition in facilities and large numbers competition in applications and content would provide the most consumer-friendly, dynamic information environment; network neutrality is the key link between the two. If the consumers who use the network and the industries that sell the hardware and software that make it grow can agree on the need to keep the underlying network open and friendly to innovation, one hopes the Commission will have to take notice.

Sincerely,

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