

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Restoring Internet Freedom	)	WC Docket No. 17-108
	)	

**COMMENTS OF THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

**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.<sup>1</sup>

ITI represents 60 of the nation’s leading information and technology companies, across all verticals of the technology sector. These include device hardware and software developers, wired and wireless network equipment manufacturers, Internet and online services providers, cybersecurity providers, and semiconductor companies. Given the diverse business interests of the companies we represent, ITI is particularly sensitive to the need to provide balance and certainty for all stakeholders in the Internet ecosystem; ISPs will not invest in their networks if they are not able to operate them in a manner allows them to make a return on that investment, and likewise, online businesses will not form or innovate if there are impediments or added costs to reach consumers.

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<sup>1</sup> Restoring Internet Freedom; WC Docket No. 17-108; Notice of Proposed Rulemaking; May 18, 2017. (“NPRM”)

Threats to the open Internet often relate in some way to allocation of limited network capacity. Both in this proceeding and through other work and actions taken by the Commission, ITI therefore implores the FCC to adopt policies that foster investment in our nation's broadband networks and promote competition. Greater investment in broadband networks help address many of the scarcity-related problems and policies being discussed in this proceeding. There are a range of actions the Commission and other federal, state, and local entities can take to remove barriers to deployment, incentivize investment, and promote competition to facilitate investment in wired and wireless networks, thereby increasing capacity, alleviating congestion, and improving overall user experience.<sup>2</sup> Under current conditions, however, appropriate protections should be maintained.

Each ITI member company brings a unique perspective to this ongoing debate, and in each iteration of this decade-long debate, ITI has sought to provide a balanced perspective that 1) protects consumers, 2) reflects the diverse business interest of our membership, and 3) is consistent with the original tenets and principles of an open Internet. To that end, we believe discussion and application of any network neutrality rules should continue to be focused on the interaction between broadband internet access service providers and the residential customer.<sup>3</sup> Accordingly, peering arrangements, traffic exchange, content delivery, and related wholesale broadband market arrangements that are vital to a well-functioning, best-efforts internet

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<sup>2</sup> For example, see the Fiber Broadband Association's "2017 Annual Report", pages 16-18; or Information Technology Industry Council comments to the Broadband Opportunity Council, Department of Agriculture and Department of Commerce, Docket No. 1540414365-5365-01, June 2015; or ITI comments to the Broadband Opportunity Council, Department of Agriculture and Department of Commerce, Docket No. 1540414365-5365-01, June 2015.

<sup>3</sup> NPRM ¶ 42, 43.

should be outside of these issues, and considered only if a robust record demonstrates market failures.

Each iteration of this debate, and the various rulemakings that preceded this, have built a record indicating common ground on many of the underlying open Internet principles. The greatest division is clearly on how to achieve a mechanism to enforce these principles when the Communications Act is ambiguous in how this can be done. Absent Congressional action, which would be the best course of action to provide clarity and certainty to this debate, relying on guidance from previous court decisions is appropriate. As ITI stated in comments in 2014, ITI supports 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 []classification 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.”<sup>4</sup> We believe this is still very much the case today, and for these reasons, we support an outcome that returns to a lighter-touch, regulatory approach for protecting an open and free Internet.

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

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<sup>4</sup> See ITI comments, July 17, 2014; Protecting and Promoting the Open Internet; GN Docket No. 14-28; Notice of Proposed Rulemaking; (2014).

## Certain Bright Line Rules Serve the Public Interest

At the heart of the Commission's efforts on net neutrality for more than a decade has been the idea that certain principles will ensure consumers, through a basic internet subscription, can access any lawful website, content, or service of their choosing in an unfettered manner. This idea ensures consumer choice is not hampered, but also ensures the Internet remains a vibrant platform for any individual, startup, or company to provide new, innovative, and competitive offerings without concern their access to their offerings may be blocked or degraded for competitive purposes. As such, ITI supports maintaining two brightline rules discussed in the NPRM, namely a "no-blocking" rule<sup>5</sup>, and a "no-throttling" rule.<sup>6</sup> ITI supported the straight-forward no-blocking principle adopted in the 2015 Order:

Internet access service, insofar as such person is so engaged, shall not block lawful content, applications, services, or non-harmful devices, subject to reasonable network management.<sup>7</sup>

Similarly, a "no-throttling" rule should be retained to ensure specific traffic is not slowed down for competitive purposes. Similar to the no-blocking rule, impacting a consumer's internet experience through degradation of service for an anti-competitive reason should be prohibited. It should be noted however, that in practice reasonable network management practices may need to be more active in this area. For instance, if certain types of traffic are widely impacting network performance, it may make sense to throttle types of traffic so as to

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<sup>5</sup> NPRM ¶ 80.

<sup>6</sup> NPRM ¶ 83.

<sup>7</sup> Protecting and Promoting the Open Internet; GN Docket No. 14-28; Report and Order; February 26, 2015, ¶ 15.

improve overall user experience, which should be permissible if it is done solely for technical reasons and in a manner that is not anti-competitive.

ITI further believes there is a need to maintain a transparency rule which, at a minimum, provides consumers specific and accurate information about the performance of the broadband internet access service offering they are purchasing. ITI agrees with the 2010 and 2015 order findings that detailed disclosure of service performance in particular, “promotes competition, innovation, investment, end-user choice, and broadband adoption.”<sup>8</sup>

Any transparency measurement system, particularly in wireless measurement, should not be based solely on consumer initiated testing due to potential bias based on when and where consumers tend to perform tests, as well as other factors which may not provide accurate information on network performance. Instead, solutions which utilize passive and/or background collection of results from actual consumer homes and devices are preferred due to the vast amount of data as well as the removal of consumer testing bias. Drive Test or Scanner results can also be utilized to provide insights where deeper engineering details are required for wireless measurement and not available from consumer device apps. Customer network experience (e.g. speed) of specific popular apps in everyday consumer use should also be made available to inform consumers regarding operator performance on the apps that are most important to them. Independent measurements are, and will continue to be a critical component to understand and maximize network performance.

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<sup>8</sup> NPRM ¶ 89.

## **Experimentation with New Commercial Arrangements, Specialized Services, and Consumer Driven Options Should be Permitted with Proper Protections**

As the Commission notes in the NPRM, the Title II Order also had a bright line rule on no-paid prioritization.<sup>9</sup> While ITI favors additional flexibility for commercial arrangements, proper oversight by the FCC is appropriate to prevent potential consumer harm or anti-competitive behavior and to ensure that incentives to invest in the best-efforts internet are not diminished. In particular, flexibility for any forms of paid prioritization would need to be conditioned on having protections that ensure consumers continue to have access to a baseline of robust, best-efforts internet established and enforced by the Commission. ITI recognizes that without proper protections, commercial arrangements between online service providers and broadband Internet access providers have the potential to adversely impact competition, choice in the online marketplace. As discussed above, promoting investment to create more robust broadband networks and competition, along with solving for network scarcity will alleviate many of the potential issues network neutrality rules are attempting to address.

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. Specialized services should also be permitted to share infrastructure with broadband Internet access service, but again, should be monitored to ensure they are not eroding investment in the basic Internet access offering, nor should the purchase of specialized services be a prerequisite to acquire a basic broadband Internet access service connection.

Notwithstanding the no-throttling and no-blocking rules mentioned above, options for

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<sup>9</sup> NPRM ¶ 85.

consumer chosen prioritization, or differentiation of traffic should continue to be permitted. It is not hard to envision a scenario in which a parent in a household with multiple family members connected to one broadband connection, desires to ensure a specific service or application being accessed over that connection operates without latency or jitteriness. In this instance, a “fast lane” as chosen by the customer would be beneficial and should be permitted; these sorts of choices should be available to consumers should an ISP choose to offer them. Similarly, a parent may wish to block specific lawful websites or lawful content from a child or family member, and again, consumer chosen management of sites and content should remain permissible. Other such opportunities for consumers drive choice, and tailoring of services should be permissible and experimentation in offerings that could enhance the consumer experience should be allowed.

Separate from issues of paid prioritization, it is not hard to imagine other commercial arrangements that can benefit consumers. Offering consumers free data through “zero-rating” arrangements, or allowing a third party to pay the broadband service provider for specific data on behalf of the end-user so as to prevent it from counting toward the end-user’s data allotment, are cases in point. Zero-rating, which is currently being offered in many different forms by many Internet service providers, provides consumers the ability to consume significantly more data-heavy content (frequently streaming video or music) without surpassing a data cap they may have on their broadband service plan. As is already the case under the FCC’s existing rules, the FCC should continue to allow for these types of arrangements.

## **Rules Should Focus on Last Mile, Consumer Protections**

All of ITI's member companies rely on a well-functioning Internet to deliver digital products, services, and applications to their customers and/or end-users. For this to happen numerous commercial arrangements must be made in the wholesale broadband market,<sup>10</sup> beyond the last mile, to ensure network traffic flows in an efficient manner. The wholesale market today is characterized by business-to-business arrangements that are critical to improve the performance of the public, best-efforts internet. By continuing to focus the current proceeding on the relationship between a residential broadband access subscriber and their Internet service provider, while refraining from acting in the wholesale broadband market, the Commission can ensure companies operating in the wholesale broadband space can focus on ensuring the efficient delivery and optimal experience of Internet content, thereby improving the Internet experience for all end users.<sup>11</sup>

## **Conclusion**

In conclusion, we again encourage the Commission to craft its rules in a manner that protects consumers and protects all stakeholders' incentives to make investments in broadband networks, products, services, and applications offered over the network consistent with the ideas discussed above. Further we encourage the Commission to remain focused specifically on "last mile" protections in the relationship between consumers and broadband internet access

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<sup>10</sup> "Wholesale broadband market" refers to the "exchange of traffic between networks, whether peering, paid peering, content delivery network (CDN) connections, or any other form of inter-network transmission of data, as well as provider owned facilities that are dedicated solely to such interconnection."

<sup>11</sup> NPRM ¶ 42, 43.

service providers, and refrain from addressing commercial arrangements in the wholesale broadband marketplace in this proceeding. Lastly, we implore the Commission, both in this proceeding and elsewhere, to promote investment in broadband networks to increase capacity thereby alleviating some of the underlying issues in this ongoing debate.

Respectfully Submitted,

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