



Federal Communications Commission  
Washington, D.C. 20554

January 18, 2009

**VIA FACSIMILE**  
**AND FIRST CLASS MAIL**

Kathryn A. Zachem  
Vice President, Regulatory Affairs  
Comcast Corporation  
2001 Pennsylvania Ave. NW, Suite 500  
Washington, DC 20006  
FAX: (202) 466-7718

Re: In the Matters of Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices: Petition of Free Press et al. for Declaratory Ruling that Degrading an Internet Application Violates the FCC's Internet Policy Statement and Does Not Meet an Exception for "Reasonable Network Management," File No. EB-08-IH-1518, WC Docket No. 07-52.

Dear Ms. Zachem:

The Commission has received your submission of September 19, 2008, detailing Comcast's broadband network management practices, Comcast's planned deployment of protocol-agnostic network management practices, and Comcast's plan for complying with the *Comcast Network Management Practices Order*, and your submission of January 5, 2009, certifying Comcast's fulfillment of the compliance plan.

We seek clarification with respect to an apparent discrepancy between Comcast's filing and its actual or advertised practices. Specifically, in Appendix B of your September 19 submission, Comcast notes that if a consumer uses 70% of his provisioned bandwidth for 15 minutes or more when his neighborhood Cable Modem Termination System (CMTS) node has been near capacity for a period of 15 minutes or more, that consumer loses priority when routing packets through congested portions of the network. See Letter from Kathryn A. Zachem, Vice President of Regulatory Affairs, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, App. B at 8-10 (filed Sept. 25, 2008). If such a consumer then places a Voice over Internet Protocol (VoIP) call along a route experiencing actual congestion, Comcast states that consumer may find that his "VoIP call sounds choppy." *Id.* at 13. Critically, the Appendix draws no distinction between Comcast's VoIP offering and those offered by its competitors.

Comcast's website, however, suggests that such a distinction does in fact exist. The website claims that "Comcast Digital Voice is a separate facilities-based IP phone

service that is not affected by this [new network management] technique.” Comcast Help & Support, Frequently Asked Questions about Network Management, at <http://help.comcast.net/content/faq/Frequently-Asked-Questions-about-Network-Management> (last visited Jan. 12, 2009) (“*Frequently Asked Questions*”). It goes on to state, by contrast, that customers of other “VoIP providers that rely on delivering calls over the public Internet . . . may experience a degradation of their call quality at times of network congestion.” *Id.*

We request that Comcast explain why it omitted from its filings with the Commission the distinct effects that Comcast’s new network management technique has on Comcast’s VoIP offering versus those of its competitors. We also ask that you provide a detailed justification for Comcast’s disparate treatment of its own VoIP service as compared to that offered by other VoIP providers on its network. In particular, please explain how Comcast Digital Voice is “facilities-based,” how Comcast Digital Voice uses Comcast’s broadband facilities, and, in particular, whether (and if so, how) Comcast Digital Voice affects network congestion in a different manner than other VoIP services.

To the extent that Comcast maintains that its VoIP offering is a telephone service offering transmission facilities for VoIP calls distinct from Comcast’s broadband offering, then it would appear that the fee Comcast assesses its customers for VoIP service pays in part for the privileged transmission of information of the customer’s choosing across Comcast’s network. As we have stated before, the “heart of ‘telecommunications’ [under the Act] is transmission.” *Pulver.com Order*, 19 FCC Rcd 3307, 3312, para. 9 (2004) (holding that the Internet-based service at issue was not “telecommunications” because the provider “neither offers nor provides transmission to its members”); see 47 U.S.C. § 153(43) (defining “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received”). And offering “telecommunications for a fee directly to the public” is the statutory definition of a telecommunications service. 47 U.S.C. § 153(46); cf. *Cable Modem Order*, 17 FCC Rcd 4798, 4823, para. 40 (2002) (classifying cable modem service as an information service only because the “telecommunications component is not . . . separable from the data-processing capabilities of the service” and because no cable modem service provider made a “stand-alone offering of transmission for a fee directly to the public”). Given that Comcast apparently is maintaining that its VoIP service is a “separate facilities-based” telephone service that is distinct from its broadband service and differs from the service offered by “VoIP providers that rely on delivering calls over the public Internet,” *Frequently Asked Questions*, it would appear that Comcast’s VoIP service is a telecommunications service subject to regulation under Title II of the Communications Act of 1934, as amended.

We thus request that Comcast explain any reason the Commission should not treat Comcast’s VoIP offering as a telecommunications service under Title II — a service subject, among other things, to the same intercarrier compensation obligations applicable to other facilities-based telecommunications carriers. See *IP-in-the-Middle Order*, 19 FCC Rcd 7457, 7466–67, para. 15 (2004) (holding that access charges apply to AT&T’s IP-in-the-middle telephony, given that “[e]nd users place calls using the same method” as

they would otherwise, that the service provides no “enhanced functionality,” and that the service “imposes the same burdens on the local exchange as do circuit-switched interexchange calls”). We understand that Comcast’s VoIP service is not yet complying with such intercarrier compensation obligations.

Please submit your response by the close of business on Friday, January 30, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana R. Shaffer", with a long horizontal flourish extending to the right.

Dana R. Shaffer  
Chief  
Wireline Competition Bureau

A handwritten signature in black ink, appearing to read "Matthew Berry", with a stylized flourish at the end.

Matthew Berry  
General Counsel  
Federal Communications Commission