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See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

FOR IMMEDIATE RELEASE:
October 22, 2009

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COMMISSION SEEKS PUBLIC INPUT ON DRAFT RULES TO PRESERVE THE FREE AND OPEN INTERNET

Washington, D.C. -- In the next chapter of a longstanding effort to preserve the free and open Internet, the Federal Communications Commission is seeking public input on draft rules that would codify and supplement existing Internet openness principles.

In addition to providing greater predictability for all stakeholders, the Notice is aimed at securing the many economic and social benefits that an open Internet has historically provided. It seeks to do so in a manner that will promote and protect the legitimate needs of consumers, broadband Internet access service providers, entrepreneurs, investors, and businesses of all sizes that make use of the Internet.

The Commission has addressed openness issues in a variety of contexts and proceedings, including: a unanimous policy statement in 2005, a notice of inquiry on broadband industry practices in 2007, public comment on several petitions for rulemaking, conditions associated with significant communications industry mergers, the rules for the 700 MHz spectrum auction in 2007, specific enforcement actions, and public en banc hearings. During this time period, opportunities for public participation have generated over 100,000 pages of input in approximately 40,000 filings from interested parties and members of the public.

The process today's Notice initiates will build upon the existing record at the Commission to identify the best means to achieve the goal of preserving and promoting the open Internet.

Recognizing that the proposed framework needs to balance potentially competing interests while helping to ensure an open, safe, and secure Internet, the draft rules would permit broadband Internet access service providers to engage in reasonable network management, including but not limited to reasonable practices to reduce or mitigate the effects of network congestion.

Under the draft proposed rules, subject to reasonable network management, a provider of broadband Internet access service:

1. would not be allowed to prevent any of its users from sending or receiving the lawful content of the user's choice over the Internet;

2. would not be allowed to prevent any of its users from running the lawful applications or using the lawful services of the user's choice;
3. would not be allowed to prevent any of its users from connecting to and using on its network the user's choice of lawful devices that do not harm the network;
4. would not be allowed to deprive any of its users of the user's entitlement to competition among network providers, application providers, service providers, and content providers;
5. would be required to treat lawful content, applications, and services in a nondiscriminatory manner; and
6. would be required to disclose such information concerning network management and other practices as is reasonably required for users and content, application, and service providers to enjoy the protections specified in this rulemaking.

The draft rules make clear that providers would also be permitted to address harmful traffic and traffic unwanted by users, such as spam, and prevent both the transfer of unlawful content, such as child pornography, and the unlawful transfer of content, such as a transfer that would infringe copyright. Further, nothing in the draft rules supersedes any obligation a broadband Internet access service provider may have -- or limits its ability -- to deliver emergency communications, or to address the needs of law enforcement, public safety, or national or homeland security authorities, consistent with applicable law.

The Commission is also seeking comment on how it should address "managed" or "specialized" services, which are Internet-Protocol-based offerings provided over the same networks used for broadband Internet access services. While the proceeding will seek input on how best to define and treat such services, managed services could include voice, video, and enterprise business services, or specialized applications like telemedicine, smart grid, or eLearning offerings. These services may provide consumer benefits and lead to increased deployment of broadband networks.

The Notice asks how the Commission should define the category of managed or specialized services, what policies should apply to them, and how to ensure that broadband providers' ability to innovate, develop valuable new services, and experiment with new technologies and business models can co-exist with the preservation of the free and open Internet on which consumers and businesses of all sizes depend.

The Notice affirms that the six principles it proposes to codify would apply to all platforms for broadband Internet access, including mobile wireless broadband, while recognizing that different access platforms involve significantly different technologies, market structures, patterns of consumer usage, and regulatory history. To that end, the Notice seeks comment on how, in what time frames or phases, and to what extent the principles should apply to non-wireline forms of broadband Internet access, including mobile wireless.

Recognizing that the Commission's decisions in this rulemaking must reflect a thorough understanding of current technology and future technological trends, the Chief

of the Commission's Office of Engineering & Technology will create an inclusive, open, and transparent process for obtaining the best technical advice and information from a broad range of engineers.

The adoption of this Notice will open a window for submitting comments to the FCC. Comments can be filed through the Commission's Electronic Comment Filing System, and are due on Thursday, January 14. Reply comments are due on Friday, March 5. In addition, the rulemaking process will include many other avenues for public input, including open workshops on key issues; providing feedback through openinternet.gov, which will include regular blog posts by Commission staff; and other new media tools, including IdeaScale, an online platform for brainstorming and rating solutions to policy challenges.

Action by the Commission, October 22, 2009, by Notice of Proposed Rulemaking (FCC 09-93). Chairman Genachowski, Commissioners Copps and Clyburn; Commissioner McDowell and Commissioner Baker concurring in part, dissenting in part. Separate statements issued by Chairman Genachowski, Commissioners Copps, McDowell, Clyburn and Baker.

GN Docket No.: 09-191
WC Docket No.: 07-52

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