

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054**

In the Matter of	)	
	)	
Preserving the Open Internet Our Future	)	GN Docket No. 09-191
	)	
Broadband Industry Practices	)	WC Docket No. 07-52
	)	

**COMMENTS OF CONNECT**

CONNECT respectfully submits its comments in response to the Commission’s invitation for “public input on draft rules to preserve an open Internet.” *Preserving the Open Internet; Broadband Industry Practices*, Notice of Proposed Rulemaking, FCC 09-93, ¶ 2 (rel. Oct. 22, 2009) (“*NPRM*”). CONNECT agrees with the Commission that the Internet has been “an engine for creativity, innovation, and economic growth.” *NPRM* ¶ 17. And CONNECT also agrees that one reason this engine has been so successful is the open design of the Internet, which has allowed entrepreneurs to innovate without obtaining “permission” or paying “royalties.” *NPRM* ¶ 18.

But by the same token, CONNECT is concerned that the *NPRM* takes an unnecessarily restrictive view of innovation on the Internet. CONNECT is particularly worried that the adoption of the proposed nondiscrimination rule would undermine the very innovation that this rule is intended to protect.

CONNECT is uniquely positioned to address issues regarding innovation. Founded more than 20 years ago, CONNECT is a regional non-profit organization whose mission is to support research excellence and commercialization of innovation. Specifically, it connects research institutions, angel, venture and institutional capital providers, R&D and business development

arms of corporations, leading professional services providers and trade organizations together to accelerate the commercialization of innovation. CONNECT has been instrumental in facilitating the growth and success of a number of industry clusters, including cyber technology, action and sports innovation, and clean technology.<sup>1</sup>

Although the Commission's proposed nondiscrimination rule is intended to preserve innovation, it actually could have the opposite effect. Today, innovation on and via the Internet is adversely affected by heavy users who do not pay their fair share of network costs and who, by their actual use, create traffic delays that undercut the experience of the low volume users that innovative services necessarily serve. This poor performance makes it difficult for the innovators to prove the value of their services, whether they be in essential services such as healthcare or in traditional sectors such as search and entertainment.

As CONNECT reads the proposed rule, it would function as a complete bar to voluntary business arrangements between broadband network operators and content, application, and service providers for the sale and purchase of enhanced or prioritized services.<sup>2</sup> While we do not have a firm opinion on the manner in which the goal of increasing the opportunity for innovation on and via the Internet, we are concerned that this restriction may have the unintended consequence of threatening innovation and undermining competition by: (i) denying entrepreneurs the ability to obtain the enhanced or prioritized services necessary for their particular applications or services to succeed in the market; and (ii) making it more difficult for entrepreneurs to challenge established technology companies, which are less likely to need

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<sup>1</sup> For additional information regarding CONNECT, please see our website, <http://www.connect.org/>.

<sup>2</sup> Paragraph 106 of the *NPRM* defines "the term 'nondiscriminatory' to mean that a broadband Internet access service provider may not charge a content, application, or service

enhanced or prioritized services from broadband network operators. The network operators should be permitted to offer favorable pricing to small users.

By proposing a nondiscrimination rule, the Commission appears to give credence to the argument that the ability of broadband network operators to distinguish different classes of traffic or offer different qualities of service would be “harmful to innovation by outsiders – individuals and entities unaffiliated with network owners.” *NPRM* ¶ 63. CONNECT respectfully disagrees. In CONNECT’s experience, a broadband network operator’s ability to offer enhanced or prioritized services promotes innovation by facilitating the development of applications that depend upon or benefit from packet prioritization.<sup>3</sup>

For example, providers of online gaming, software service, and e-commerce applications are able to make available to customers a more robust offering if these providers have the option to purchase a “prioritized” class of service from a broadband network operator. With network prioritization, providers of these applications can obtain quality of service levels that enable them to compete more effectively against competitors that utilize virtual or dedicated content delivery networks. The CONNECT Springboard Program – a program that provides hands-on mentoring for innovators at the start-up phase – is currently working with over a dozen different companies that would strongly benefit from the availability of such quality of service arrangements.

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provider for enhanced or prioritized access to the subscribers of the broadband Internet access service provider ....”

<sup>3</sup> Surveys reflect that “consumers want--and are willing to pay for--better, faster, secure services.” Sonia Arrison, *The Double Definitions of ‘Net Neutrality,’* The Heartland Institute (March 1, 2006) (noting a January 17, 2006 study by the American Consumer Institute which found that “84 percent of online households want the option of premium Internet services that are faster, safer and more reliable”) (available at [http://www.heartland.org/policybot/results/18540/The\\_Double\\_Definitions\\_of\\_Network\\_Neutrality.html](http://www.heartland.org/policybot/results/18540/The_Double_Definitions_of_Network_Neutrality.html)).

CONNECT does not believe that a broadband network operator should be permitted to exact “royalties” by imposing unilaterally fees on any content, application and service providers. However, broadband network operators should not be prohibited from entering into voluntary business arrangements with content, application, and service providers for the purchase of enhanced or prioritized services. Such a prohibition would stifle innovation by dooming a host of applications and services that are reliant upon network prioritization. An entrepreneur’s inability to obtain network prioritization from a broadband network operator would deter investment in new and innovative applications and services that would not be commercially successful in the absence of quality of service arrangements.

Network operators, on the one hand, and content, application, and service providers, on the other, add value to one another’s products and services and have a stake in ensuring that both segments are financially healthy enough to invest and innovate; if one segment starves, the other segment will eventually and invariably lose weight. The market – not regulators – should determine how network operators and content, application, and service providers use one another’s assets and services in delivering value to their respective customers. This can and should occur in much the same manner – through bilaterally negotiated commercial contracts – that Internet backbone networks work out interconnection agreements today.

For example, to the extent an entrepreneur “has limited resources” (*NPRM* ¶ 63), it should have the flexibility to “purchase” enhanced or prioritized services by agreeing to share a percentage of its advertising revenue with the broadband network operator. There may be other creative business arrangements that providers and operators are able to negotiate. Such arrangements would foster innovation and should be encouraged, not prohibited, as the Commission’s proposed nondiscrimination rule would do. It should be duly noted, however, that

CONNECT would become concerned if the carriers were allowed to use volume-pricing discounts as this would inevitably favor established users over small entities. CONNECT's main interest herein is to ensure that start-ups receive a fair chance in the competition for quality network services.

CONNECT also is concerned that the proposed nondiscrimination rule would make it more difficult for entrepreneurs to compete against well-established competitors. Many large application providers have taken steps to provide "faster" and "more reliable" service to their customers, either by: (i) using private content delivery networks to enable consumers to access these companies' content more quickly and efficiently; or (ii) deploying their own data centers and entering into peering arrangements with Internet access providers.<sup>4</sup>

The option to purchase enhanced or prioritized services from broadband network operators would give smaller and less well-established entrants the ability to offer the same functionality, but without having to rely on a separate content delivery network or incurring the cost of deploying their own facilities. A new entrant requiring enhanced or prioritized services from a broadband network operator in order to enter the market against a large application provider would have little incentive to invest or innovate if it were prohibited from purchasing the very services it needed to compete.

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<sup>4</sup> Akamai, *Technology Overview, EdgePlatform*, <http://www.akamai.com/en/html/technology/edgeplatform.html>; Akamai, *About Akamai, Our Customers*, <http://www.akamai.com/en/html/about/customers.html> ("Today Akamai handles tens of billions of daily Web interactions for companies like Audi, NBC, and Fujitsu, and organizations like the U.S. Department of Defense and NASDAQ"); Robert Cringely, *Google-Mart: Sam Walton Taught Google More About How To Dominate the Internet than Microsoft Ever Did* (Nov. 17, 2005), available at <http://www.pbs.org/cringely/pulpit/pulpit20051117.html>.

For the foregoing reasons, CONNECT respectfully requests that the Commission decline to adopt the proposed nondiscrimination rule set forth in the *NPRM*.

Respectfully submitted,

**CONNECT**

By:

A handwritten signature in black ink, appearing to read "Duane Roth". The signature is written in a cursive style with a large initial "D".

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