

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
) WC Docket No. 07-52
Broadband Industry Practices)

REPLY COMMENTS OF THE U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce (“Chamber”), the world’s largest business federation representing more than three million businesses and organizations of every size, sector, and region, hereby submits its reply comments and reiterates its opposition to the Petition for Declaratory Ruling filed by Free Press et al. (“Free Press”)¹ and the Petition for Rulemaking filed by Vuze, Inc. (“Vuze”)², which have been incorporated into the above-captioned proceeding.

I. There is No Evidence of a Market Failure that Justifies Imposing Additional Regulations on Broadband Service Providers

The Chamber strongly supports the Federal Communications Commission’s (“Commission” or “FCC”) prior policy decisions to treat broadband Internet access with a “light regulatory touch.” The Internet has succeeded precisely because it has not been burdened with government regulation. Indeed, broadband subscribership has soared

¹ Free Press, Public Knowledge, Media Access Project, Consumer Federation of America, Consumers Union, Information Society Project at Yale Law School, Professor Charles Nesson, Co-Director of the Berkman Center for Internet & Society, Harvard Law School, Professor Barbara van Schewick, Center for Internet & Society, Stanford Law School, Petition for Declaratory Ruling, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, GN Docket No. 00-185, CS Docket No. 02-52, WC Docket No. 07-52 (filed Nov. 1, 2007). (“*Free Press Petition*”).

² Vuze, Inc. Petition for Rulemaking to Establish Rules Governing Network Management Practices By Broadband Network Operators, WC Docket No. 07-52 (filed Nov. 14, 2007). (“*Vuze Petition*”).

precisely because the market is driven, not by government fiat, but by advances in technology, competition between telecommunications companies, and consumer choice.

All broadband service providers manage their networks to ensure that their customers have the best Internet experience possible. To accomplish this, providers need the flexibility to quickly and adeptly maximize the reliability, security, and speed of their networks. For example, proper network management is necessary to combat the exponential growth in spam and other malware.

The comments filed in the proceeding fail to show any evidence that broadband service providers are employing network management techniques that are not reasonable or not consistent with the Commission's Policy Statement on Broadband Internet Access.³ Therefore, without a market failure, there is no justification for the imposition of new regulations or sanctions on the industry.

II. Regulating Broadband Network Management Would Harm Consumers and Small Businesses

The intense competition between cable operators, phone companies, wireless carriers, and others for broadband customers requires providers to quickly respond to market developments and offer differentiated services to attract business. In particular, small businesses have benefited from this type of differentiation. Small businesses have finite resources; therefore, they must allocate their expenses wisely. Today, when choosing a broadband service plan, businesses have the ability to pick the pricing plan that corresponds to their needs. Therefore, as Verizon notes, network management allows it to

³ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Policy Statement, 20 FCC Rcd 14986 (2005) (“*Policy Statement*”). The Policy Statement, in summary, is a series of four principles stating that consumers are entitled to: 1) access their choice of lawful Internet content, 2) use applications or services of their choice, 3) connect their choice of legal devices that do not harm the network, and 4) competition among network providers, application and service providers, and content providers.

distinguish between the customer who selects its 5 Mbps FiOS service and the customer who chooses to pay more for its 50 Mbps service.⁴ Moreover, the ability to offer different pricing models will help consumers and small businesses avoid paying an unfair share of the costs associated with the broadband buildout.

The Chamber concurs with the National Grange's conclusion that to speed the deployment of broadband to rural areas, the Commission should "avoid blanket prohibitions" on activities governing how broadband service providers manage their infrastructure.⁵ Telemedicine and distance learning are vital applications, especially in rural areas. For these applications to work, the ability to employ network management techniques is essential. When sending data over the Internet, latency and jitter may not have a noticeable effect on e-mail, but are potentially devastating to video and other interactive services. Moreover, if providers are prohibited from managing their networks, then they will have to invest in network upgrades at a faster rate than the vast majority of the market requires, potentially raising the cost of Internet access for all consumers and leaving less funds available for rural buildout.

III. Conclusion

The Chamber urges the Commission to deny both the Free Press Petition and the Vuze Petition because neither the petitions nor any of the related comments filed in this proceeding show that there is a market failure that justifies the imposition of new regulations or sanctions on the industry. In fact, the record in the proceeding shows that intrusion by the government into this dynamic market will deter new investment in broadband network infrastructure, slow the deployment of innovative technologies, leave

⁴ Verizon and Verizon Wireless Comments at 18.

⁵ National Grange Comments at 2.

consumers with fewer choices and higher prices, and harm the ability of the United States to compete globally.

Respectfully submitted,

U.S. CHAMBER OF COMMERCE



By: _____

William L. Kovacs
Vice President for Environment,
Technology & Regulatory Affairs

U.S. Chamber of Commerce
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5533

Dated: February 28, 2008