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

In the Matter 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"	) RM - _____
	)
Vuze, Inc.	)
	)
Petition to Establish Rules Governing Network Management Practices by Broadband Network Operators	) RM - _____
	)
Broadband Industry Practices	) WC Docket No. 07-52

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 comments in response to the Public Notices[1] issued by the Federal Communications Commission ("Commission" or "FCC") on January 14, 2008, requesting comments on the broadband network management issues raised in the Petition for Declaratory Ruling filed by Free Press *et al.* ("Free Press Petition")[2] and the Petition for Rulemaking filed by Vuze, Inc. ("Vuze Petition").[3]

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[1] Public Notice, *Comment Sought on Petition for Declaratory Ruling Regarding Internet Management Practice*, DA 08-91 (Wireline Competition Bureau, Jan. 14, 2008), and Public Notice, *Comment Sought on Petition for Rulemaking to Establish Rules Governing Network Management Practices by Broadband Network Operator*, DA 08-92 (Wireline Competition Bureau, Jan. 14, 2008).

[2] 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 &

The Free Press Petition seeks a declaratory ruling "that the practice by broadband service providers of degrading peer-to-peer traffic violates the FCC's Internet Policy Statement"[4] and that such practices "do not meet the Commission's exception for 'reasonable network management,' and shall be subject to injunction and significant fines."[5]

The Vuze Petition requests the Commission initiate a rulemaking proceeding to clarify what constitutes "'reasonable network management,' by broadband network operators and to establish that such network management does not permit network operators to block, degrade or unreasonably discriminate against lawful Internet applications, content or technologies."[6]

Both petitions fail to present 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.[7] Therefore, the Chamber opposes both the Free Press Petition and the Vuze Petition because neither shows that there is a market failure that justifies the imposition of new regulations or sanctions on the industry. The intrusion by the government into this dynamic market will deter new

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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*").

[3] 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*").

[4] *Free Press Petition* at 3.

[5] *Id.*

[6] *Vuze Petition* at 1.

[7] Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Policy Statement, 20 FCC Rcd 14986 (2005) ("*Policy Statement*"), *available at:* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-151A1.pdf.

investment in broadband network infrastructure, slow the deployment of innovative technologies, leave consumers with fewer choices and higher prices, and harm the ability of the United States to compete globally.

I. The United States Must Have a Robust Telecommunications System to Foster Economic Development and to Remain Competitive Globally

The Chamber views telecommunications as the central nervous system of the U.S. economy. In particular, broadband applications and services have the power to transform the American economy by spurring investment and innovation in E-Commerce, education, healthcare, communications, entertainment, government, and countless other sectors.

The ability to engage in E-Commerce is critical for U.S. businesses. E-Commerce allows all businesses, no matter how small or where they are located, to sell to customers everywhere. To remain competitive in the global economy, the United States must continue to invest in telecommunications and broadband. If the United States fails to keep pace with technologies being deployed in the rest of the world, our nation will suffer severe economic consequences as companies move jobs overseas and innovative technologies are invented elsewhere.

As noted in Congressional testimony by Dr. John Rutledge, consultant to the U.S. Chamber and then-President of Mundell International University Business School in Beijing, China, "there is an intense global competition for capital underway. Workers in the United States are not competing with other states for jobs. Our workers and businesses are competing with China, India, Korea, and other Asian economies for the capital to build businesses."[8]

[8] Testimony of Dr. John Rutledge—Consultant for the U.S. Chamber of Commerce, President of Rutledge Capital, and then-President of Mundell International University Business School in Beijing China—*Hearing on S. 2686, the Communications, Consumer's Choice, and Broadband Deployment Act of 2006*,

II. Current Network Management Practices Are Reasonable and Do Not Violate the FCC's Broadband Policy Statement on Broadband Internet Access

A. Discussion of the Commission's Policy Statement

In 2005, the Commission adopted its Policy Statement on Broadband Internet Access ("Policy Statement").[9] In summary, the Policy Statement, 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.[10] In Footnote 15 of the Policy Statement, the Commission recognizes that these principles "are subject to reasonable network management."[11]

Free Press and Vuze (the "Petitioners") filed their petitions in response to an Associated Press report alleging that Comcast "was actively interfer[ing] with attempts by some of its high-speed Internet subscribers" who were using peer-to-peer ("P2P") applications, such as BitTorrent, to share files online.[12] The Petitioners argue that the Associated Press report indicates that broadband service providers are not abiding by the Policy Statement, and that additional rules, sanctions, and/or fines are necessary.

Committee on Commerce, Science & Transportation, U.S. Senate, June 13, 2006, p. 3, *available at* http://www.uschamber.com/issues/testimony/2006/060613_net_neutrality.htm.

[9] *Policy Statement.*

[10] *Id.* at 14988.

[11] *Id.* at n. 15.

[12] Peter Svensson, *Comcast Blocks Some Internet Traffic*, ASSOCIATED PRESS, Oct. 19, 2007, *available at* http://www.msnbc.msn.com/id/21376597/.

However, the Chamber strongly disagrees with this conclusion. The Petitioners failed to show any evidence that broadband providers are blocking subscribers from accessing their choice of lawful Internet content, using applications or services of their choice, or connecting their choice of legal devices that do not harm the network.

The Chamber supports industry efforts to better educate customers about any limitations imposed by the broadband provider on its service. This enhanced disclosure will help alleviate consumer confusion and frustration. Better informed consumers further competition among network providers, application and service providers, and content providers, thereby helping to fulfill the objective of the fourth principle contained the FCC's Policy Statement.[13]

B. Discussion of Network Management

All broadband service providers manage their networks to ensure network integrity. The providers are committed to ensuring the best customer experience possible for their subscribers by maximizing the reliability, security, and speed of their networks. Additionally, the providers cannot allow a small number of users to disrupt the Internet experience of all of their other customers. For example, Time Warner Cable says 50 percent of its broadband network is used by as little as five percent of its broadband customers.[14] By pushing the network to the edge, these extreme users may raise the cost of Internet access for all customers as providers are forced to invest in network upgrades at a faster pace than 95 percent of the marketplace would require. To best serve their subscribers, providers employ a variety of network management techniques. The

[13] *Policy Statement* at 14988.

[14] Steven Levy, *Pay Per Gig*, WASHINGTON POST, Jan. 30, 2008, *available at*: http://www.washingtonpost.com/wp-dyn/content/article/2008/01/29/AR2008012903205_pf.html.

Petitioners have failed to show than any of these techniques are not "reasonable network management" or are not consistent with the Commission's Policy Statement.

1. Spam, Malware, and Other Dangerous and Fraudulent Content

Broadband service providers use reasonable network management tools to help combat and protect subscribers from the exponentially increasing number of e-mails containing spam, malware, viruses, and other dangerous and fraudulent content.

Spam accounted for 90 to 95 percent of all e-mail in 2007, up from 85 to 90 percent of e-mail in 2006, according to a December 2007 report by Barracuda Networks, a Web security firm.[15] In 2007, spam volume increased 100 percent from last year, to more than 120 billion spam messages daily or "about 20 spam messages per day for every person on the planet," according to IronPort Systems, a provider of anti-spam, anti-virus, and anti-spyware solutions.[16]

Additionally, the number of new strains of malware, software designed to infiltrate or damage a computer system without the owner's informed consent, increased tenfold from 2006 to 2007, according to Panda Security, a creator and developer of computer security technologies and services.[17] According to the company, it has catalogued an average of more than 3,000 new strains of malware every day during the past year.[18]

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[15] Press Release, *Barracuda Networks Releases Annual Spam Report*, BARRACUDA NETWORKS, INC., Dec. 12, 2007, *available at*: http://www.barracudanetworks.com/ns/news_and_events/index.php?nid=232.

[16] Press Release, *IronPort Report on Spam, Viruses and Malware Highlights Trends of 2007 and Predictions for 2008*, IRONPORT SYSTEMS, Dec. 3, 2007, *available at:* http://www.ironport.com/company/ironport_pr_2007-12-03.html.

[17] Press Release, *The Amount of New Malware that Appeared in 2007 Increased Tenfold with Respect to the Previous Year*, PANDA SECURITY, Jan. 15, 2008, *available at: http://www.pandasecurity.com/homeusers/media/press-releases/viewnews?noticia=9077*.

[18] *Id.*

By restricting network management techniques, the Commission would introduce regulatory uncertainty and hinder the ability of broadband service providers to quickly and adeptly manage their networks to respond to new techniques used by the senders of these dangerous and unwelcome e-mails.

2. Peer-to-Peer

When discussing network management, it is important to note that P2P applications are not necessarily bad. Indeed, the marketplace is attempting to harness the benefits of P2P, while minimizing its negatives effects on bandwidth. For example, several major broadband service providers have teamed with researchers to form the P4P Working Group.[19] Broadband service providers that adopt P4P's standards will be able to route traffic more efficiently, connecting people who are geographically closer and improving the way in which all P2P traffic is sent across the Internet.[20] According to initial tests, the P4P standards can accelerate P2P downloads by approximately a third, while reducing the provider's P2P bandwidth consumption on their networks by about 60 percent.[21]

BitTorrent is one of the most popular P2P file sharing applications. According to industry experts, "BitTorrent is by far the largest consumer of bandwidth and a single BitTorrent user is capable of generating hundreds of times more network load than conventional applications."[22] As few as 15 BitTorrent users can significantly reduce the

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[19] http://www.dcia.info/documents/P4PWG_Mission_Statement.pdf

[20] Chris Morrison, *Industry Group Aims to Improve Peer to Peer Sharing*, VENTURE BEAT, Oct. 4, 2007, *available at:* http://venturebeat.com/2007/10/04/industry-group-aims-to-improve-peer-to-peer-sharing/

[21] Marguerite Reardon, *Harnessing the Power of P2P*, NEWS.COM, Jan. 24, 2008, *available at:* http://www.news.com/2102-1034_3-6227406.html?tag=st.util.print.

[22] George Ou, *A Rational Debate on Comcast Traffic Management*, ZDNET.COM, Nov. 6, 2007, *available at: http://blogs.zdnet.com/Ou/?p=852&page=3*.

service quality experienced by other users in the area surfing the Web or making Voice over the Internet Protocol (VoIP) phone calls.[23] Bram Cohen, the creator of BitTorrent, acknowledges that when he created BitTorrent, his idea was to "use up a lot of bandwidth."[24] He boasts that he had "a friend who said, "Well, ISPs won't like it," and he replied "Why Should I care?"[25]

However, even those broadband service providers that are concerned by the intensive bandwidth needs of BitTorrent and similar applications do not block subscribers from using the program. At most, a subscriber in a community experiencing heavy broadband congestion at a particular time might experience some momentary delays in uploading content that is being sought by the P2P application.

III. Regulatory Policy Must Incentivize, Not Discourage, Investment in Broadband Infrastructure to Provide Increased Bandwidth as the Demand for Multimedia Applications Increases

Broadband service providers are investing hundreds of billions of dollars in their networks to handle the increased bandwidth needs of P2P applications and other multimedia. Securities analysts at Bernstein Research and other investment banks estimate that deploying these networks will cost as much as $400 billion. Thus, now is not the time to introduce policies that would inflict regulatory

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[23] James J. Martin and James M. Westall, *Assessing the Impact of BitTorrent on DOCSIS Networks*, Fourth International Conference on Broadband Communications, Networks, and Systems, PROCEEDINGS OF IEEE BROADNETS 2007, Sept. 2007, *available at*: http://people.clemson.edu/~jmarty/papers/bittorrentBroadnets.pdf.

[24] David Downs, *BitTorrent, Comcast, EFF Antipathetic To FCC Regulation of P2P Traffic*, SF WEEKLY, Jan. 23, 2008, *available at:* http://www.sfweekly.com/2008-01-23/news/bittorrent-comcast-eff-antipathetic-to-fcc-regulation-of-p2p-traffic/.

[25] *Id.*

uncertainty, stifle investment, slow the development of new technologies, and inhibit U.S. economic development and competitiveness.

IV. Conclusion

The Chamber urges the Commission not to grant either the Free Press Petition or the Vuze Petition. The Petitioners have failed to present any evidence that broadband providers are blocking subscribers from accessing their choice of lawful Internet content, using applications or services of their choice, or connecting their choice of legal devices that do not harm the network. Additionally, the Petitioners have failed to show that any network management techniques used by broadband service providers to ensure the best customer experience possible for their subscribers by maximizing the reliability, security, and speed of their networks are not reasonable or not consistent with the Policy Statement.

Respectfully submitted,

U.S. CHAMBER OF COMMERCE

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