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Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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

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NEWS MEDIA CONTACTS:
Clyde Ensslin, 202-418-0506
Email: Clyde.Ensslin@fcc.gov

Robert Kenny, 202-418-2668
Email: Robert.Kenny@fcc.gov

COMMISSION ORDERS COMCAST TO END DISCRIMINATORY NETWORK MANAGEMENT PRACTICES

FCC Affirms Its Authority to Protect Vibrant and Open Internet

Washington, D.C. – Comcast Corp.’s management of its broadband Internet networks contravenes federal policies that protect the vibrant and open nature of the Internet, the Federal Communications Commission found today.

Ruling on a complaint by Free Press and Public Knowledge as well as a petition for declaratory ruling, the Commission concluded that Comcast has unduly interfered with Internet users’ right to access the lawful Internet content and to use the applications of their choice. Specifically, the Commission found that Comcast had deployed equipment throughout its network to monitor the content of its customers’ Internet connections and selectively block specific types of connections known as peer-to-peer connections.

The Commission’s action today is the result of an exhaustive examination of conduct that was first brought to light by Comcast subscribers who noticed that they had problems using peer-to-peer applications, such as BitTorrent, over their Comcast broadband connections. When first confronted with press reports about these difficulties, Comcast disclaimed any responsibility for its customers’ problems. However, after tests conducted by the Associated Press and Electronic Frontier Foundation suggested that Comcast was selectively interfering with attempts by customers to share files online using peer-to-peer applications, Comcast changed its story and admitted that it did target its subscribers’ peer-to-peer traffic for interference. The company initially claimed that it did so only during periods of peak network congestion and of heavy network traffic. Later, confronted with yet more evidence suggesting that interference was not limited in this manner, Comcast recast its position yet again and admitted that it interferes with peer-to-peer traffic regardless of the level of overall network congestion at the time and regardless of the time of day. The Commission’s extensive investigation into this matter –which included two public hearings, substantial input from experts, and thousands of comments from companies, organizations, and the public at large – confirms that Comcast’s interference is far more invasive and widespread than the company first conceded.

The Commission concluded that Comcast's network management practices discriminate among applications rather than treating all equally and are inconsistent with the concept of an open and accessible Internet. Indeed, the Commission noted that Comcast has an anticompetitive motive to interfere with customers' use of peer-to-peer applications. Such applications, including those relying on BitTorrent, provide Internet users with the opportunity to view high-quality video that they might otherwise watch (and pay for) on cable television. Such video distribution poses a potential competitive threat to Comcast's video-on-demand ("VOD") service.

The Commission also concluded that Comcast's practices are not minimally intrusive, as the company claims, but rather are invasive and have significant effects. The Commission found that Comcast monitors its customers' connections using deep packet inspection and then determines how it will route some connections based not on their destinations but on their contents. In essence, Comcast opens its customers' mail because it wants to deliver mail not based on the address on the envelope but on the type of letter contained therein. The Commission also found that Comcast's conduct affected Internet users on a widespread basis. Indeed, Comcast may have interfered with up to three-quarters of all peer-to-peer connections in certain communities.

The Commission concluded that the end result of Comcast's conduct was the blocking of Internet traffic, which had the effect of substantially impeding consumers' ability to access the content and to use the applications of their choice. The Commission noted that the record contained substantial evidence that customers, among other things, were unable to share music, watch video, or download software due to Comcast's misconduct.

The Commission rejected Comcast's defense that its practice constitutes reasonable network management. While Comcast claimed that it was motivated by a desire to combat network congestion, the Commission concluded that the company's practices are ill-tailored to serve that goal for many reasons: they affect customers who are using little bandwidth simply because they are using a disfavored application; they are not employed only during times of the day when congestion is prevalent; the company's equipment does not target only those neighborhoods suffering from congestion; and a customer may use an extraordinary amount of bandwidth during periods of network congestion and will be totally unaffected so long as he does not utilize an application disfavored by Comcast.

The Commission's determination that Comcast was not engaging in reasonable network management is supported by the overwhelming weight of expert testimony in the record. For example, Professor David Reed of the Massachusetts Institute of Technology, widely respected as one of the architects of the Internet, said that "[n]either Deep Packet Inspection nor RST Injection" — Comcast uses both to manage its network — "are acceptable behavior."

The Commission also concluded that the anticompetitive harms caused by Comcast's conduct have been compounded by the company's unacceptable failure to disclose its practices to consumers. Because Comcast did not provide its customers with notice of the fact that it interfered with customers' use of peer-to-peer applications, customers had no way of knowing when Comcast was interfering with their connections. As a result, the Commission found that many consumers experiencing difficulty using only certain applications would not place blame on Comcast, where it belonged, but rather on the applications themselves, thus further disadvantaging those applications in the competitive marketplace.

The Commission also reiterated that its interest is in protecting consumers' access to lawful content. Blocking unlawful content such as child pornography or pirated music or video would be consistent with federal Internet policy.

The Commission announced its intention to exercise its authority to oversee federal Internet policy in adjudicating this and other disputes regarding discriminatory network management practices with dispatch, and its commitment in retaining jurisdiction over this matter to ensure compliance with a proscribed plan to bring Comcast's discriminatory conduct to an end.

Under the plan, within 30 days of release of the *Order* Comcast must:

- Disclose the details of its discriminatory network management practices to the Commission
- Submit a compliance plan describing how it intends to stop these discriminatory management practices by the end of the year
- Disclose to customers and the Commission the network management practices that will replace current practices

To the extent that Comcast fails to comply with the steps set forth in the *Order*, interim injunctive relief automatically will take effect requiring Comcast to suspend its discriminatory network management practices and the matter will be set for hearing.

Action by the Commission, August 1, 2008, by Memorandum Opinion and Order (FCC 08-183). Chairman Martin, Commissioners Copps and Adelstein, with Commissioners Tate and McDowell dissenting. Separate statements issued by Chairman Martin, Commissioners Copps, Adelstein, Tate and McDowell.

Docket No.: 07-52

Wireline Competition Bureau Staff Contact: Marcus Maher at 202-418-1500

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