

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

In the Matter of)
)
Framework for Broadband Internet Service) GN Docket No. 10-127
)

**COMMENTS OF
THE NATIONAL ASSOCIATION OF MANUFACTURERS**

The National Association of Manufacturers (NAM) hereby submits its comments regarding the Federal Communication Commissions’ (Commission) Notice of Inquiry (NOI) on the Framework for Broadband Internet Service. The NAM applauds the Commission for exploring new ways to continue its oversight of the Internet in light of the *Comcast* decision by the United States Court of Appeals for the District of Columbia Circuit.¹ As explained below, the NAM has great confidence in how the management of the Internet has progressed over the years, and is an advocate for strengthening incentives for broadband infrastructure investment. However, the NAM believes Congress is best suited to determine the framework for the regulation of broadband Internet services, and not the Commission, as any effort to create new regulation without Congress’ express consent in the advanced telecommunications market would harm American consumers, impose burdens on American manufacturers, stifle the rollout of high-speed services to unserved and underserved areas, and prevent the creation of new jobs.

INTRODUCTION

The NAM is the nation’s largest industrial trade association, representing manufacturers in every industrial sector and in all 50 states. Manufacturing has a presence in every single congressional district providing good, high-paying jobs. The NAM’s mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment

¹ *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010) (*Comcast*).

conductive to U.S. economic growth. For more information about the Manufacturers, visit www.NAM.org.

The U.S. manufacturing sector and the broader business community have derived tremendous benefits from our nation's competitive telecommunications market. Moving away from the early days of simple voice calls transferred over copper wires, today's manufacturers utilize VoIP calls, email and instant messaging services, with information and data racing over high-speed fiber optic networks literally at the speed of light. From the cost-savings of Internet Protocol-based communications to just-in-time manufacturing, high-speed broadband access has made the world a smaller place allowing even the smallest of businesses to operate on a global scale.

American manufacturers are truly the beneficiaries of a globally-deployed broadband infrastructure, which has transformed the way they operate. For example, in 2008 U.S. manufacturers led all industry sectors in eCommerce activity, accounting for 39 percent of all eCommerce – over \$2.15 trillion in sales.² The trend is growing – eShipments accounts for 39 percent of all manufacturing shipments in 2008 alone, up from 35 percent in 2007.³ With a robust high-speed Internet, innovations are possible in such areas as electronic healthcare delivery, online education, and smart grid technologies, which the Obama Administration estimates could reduce electricity use by more than 4 percent by 2030 - a savings of \$20.4 billion for businesses and consumers around the country.⁴

It is in this interest that the NAM submits these comments on the Framework for Broadband Internet Service, urging the Commission to work with Congress in developing a statutory Internet oversight plan that will continue to foster growth and investment in high-speed services, so that businesses and consumers in unserved and underserved areas can obtain the critical broadband services and content they need.

² U.S. Census Bureau, Economics and Statistics Administration; www.census.gov/estats, May 27, 2010

³ Ibid.

⁴ White House Announcement, "[President Obama Announces \\$3.4 Billion Investment to Spur Transition to Smart Energy Grid](#)", October 27, 2009.

DISCUSSION

A major factor in the success of the Internet has been the government's light regulatory touch, embodied in the Commission's decisions under the Clinton and Bush Administrations, as well as in the Supreme Court's decision in *Brand X*.⁵ In fact, the NAM has opposed the imposition of any restrictive rules or regulations on the Internet that would impede the deployment of broadband infrastructure. However, in light of the recent *Comcast* ruling, the NAM respectfully requests the Commission refrain from moving forward with the 'third way' approach⁶ absent a clear congressional grant of authority or until Congress has the opportunity to address the issue.

It was Congress' original intent to treat high-speed services as an 'information service' under the Telecommunications Act of 1996 (Telecom Act), specifically codifying the Commission's existing classification of Internet services, as opposed to classifying them as telecommunications services under Title II of the Telecom Act. Since then, Congress, the Commission and the Supreme Court repeatedly have refused to reclassify Internet services as telecommunications services.⁷ In light of the legislative and legal precedents set by both Congress and the Supreme Court,⁸ the NAM believes it is inappropriate for the Commission to attempt to create a new regulatory regime for Internet services without a clear grant of authority from Congress.

Further, any attempt by the Commission to proceed with creating a new regulatory regime for Internet services could generate lengthy and expensive litigation and create legal uncertainty that would prevent much needed broadband infrastructure investment. This is a sentiment also held by Rep. John Dingell (D-MI), Chairman Emeritus of the House Energy &

⁵ See *Nat'l. Cable & Telecoms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005) (*Brand X*).

⁶ The 'third way' refers to FCC Chairman Julius Genachowski's regulatory proposal that would extend portions of Title II of the Telecommunications Act of 1996 to broadband Internet services, entitled, "[The Third Way: A Narrowly Tailored Broadband Framework](#)," released May 6, 2010.

⁷ See *Oversight of the Federal Communications Commission: The National Broadband Plan: Hearing Before the Subcomm. On Communications, Technology, and the Internet of the House Comm. On Energy and Commerce*, 111th Cong., 2d Sess. (March 25, 2010) (written testimony of Hon. Robert M. McDowell, Commissioner, Federal Communications Commission).

⁸ See *Brand X*.

Commerce Committee. In his letter to Commission Chairman Julius Genachowski on May 27, 2010, he states:

... [I have a] grave concern that the Commission's current path with respect to the regulation of broadband is fraught with risk. I fear your "third way" risks reversal by the courts, especially given the scope of its efforts to expand the Commission's authority. It also puts at risk significant past and future investments, perhaps to the detriment of the Nation's economic recovery and continued technological leadership. More importantly, it may paralyze more holistic regulatory efforts to keep the Internet open to consumers, advance cybersecurity, protect consumer data privacy, and ensure universal access to and deployment of broadband.

In addition, more than 280 Members of Congress have also weighed in with Commission Chairman Genachowski, urging him to allow Congress to address this issue through the legislative process.

The D.C. Circuit's decision has made it clear that Congress needs to step in and ensure the Commission has the explicit authority not only to regulate high-speed broadband services, but to guarantee the openness of the Internet. In the meantime, we are confident that existing legal and administrative mechanisms will provide the proper checks and balances against inappropriate behavior. For instance, the Federal Trade Commission has the ability to investigate anti-competitive behavior, as well as false, misleading and deceptive consumer practices, and as recently evidenced by the recent RCN class action settlement,⁹ the courts can provide an appropriate forum when there are evidentiary showings of demonstrable consumer harm.

CONCLUSION

The NAM commends the Commission for a remarkable job in encouraging competition through its regulatory forbearance. By doing so, it has promoted a competitive and innovative Internet that enables broadband network operators to take advantage of technology to maximize capacity, avoid bottlenecks, protect privacy and meet the technical requirements of a wide range of Internet services and applications. The Internet is an ecosystem, its health dependent upon the

⁹ *Chin v. RCN Corporation*, U.S. District Court, S.D.N.Y., Civil Action No. 8 Civ. 7349 (RJS), <http://www.rcn.com/boston/images/pdfs/legal/01-notice-of-pendency-and-settlement-of-class-action.pdf> (S.D.N.Y. 2010).

health of each constituent component – network providers, service providers, content providers, and end-users. The best way to protect this ecosystem is to allow the legislative process to properly address the critical issue of Internet regulation, providing the Commission with a sound legal basis for pursuing its mandate to protect the continued health and strength of the Internet.

The NAM offers its full support to the Commission as it works with Congress to determine and develop the proper, explicit legal authority to address the appropriate regulatory regime for broadband Internet services. We look forward to working with the Commission to ensure the future of the Internet, while avoiding solutions that might raise costs to consumers, limit efficiency, discourage continued investment or disrupt efforts to provide and manage additional capacity so that American consumers can enjoy the full benefits of high-speed broadband.

Respectfully submitted,

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