



Electronic Retailing Association
Bill McClellan
703.908.1032
bmccllellan@retaling.org – www.retailing.org

Topic: “Legislating Net Neutrality” – Necessity?

Background: The congressional debate over proposals to update federal statutes that govern various types of telecommunications has focused on the issue of “net neutrality,” or whether there should be an enforceable statutory provision that assures open access to high-speed, broadband Internet services by consumers and content providers and prohibits the creation of access tiers based on price or other criteria imposed by broadband service providers. The House Committee on Energy and Commerce has reported legislation designed to prohibit discrimination in providing access to the Internet, but is enforceable only in federal courts and would leave standing a 2005 FCC rule that provides cable and telephone companies wide discretion in providing broadband access. The Committee rejected language from H.R. 5273 offered by Rep. Ed Markey (D-MA) that would have established an affirmative obligation enforceable by the FCC on broadband providers to not discriminate regarding access. The Senate Committee on Commerce, Science and Transportation also is considering net neutrality proposals, and the Judiciary Committees of the House and Senate have indicated they will address this issue.

Position: ERA seeks legislation like H.R. 5273 that assures the largest or the smallest content provider will have open access to high-speed broadband Internet services, and that access will not be tiered according to the ownership, source or affiliation of the content or content provider.

Explanation: There is little competition now or in the foreseeable future that assures open access to the Internet by content providers. Consumers have little or no real choice of broadband Internet access. Most must choose the telephone company, a cable company or sometimes both.

In a 2005 rulemaking The Federal Communications Commission (FCC) declared that providers of cable modem access to the Internet were not common carriers and are subject to a lower standard of regulation, even if they attempt to provide tiered access to the Internet for content providers.

ERA supports the position of many Internet experts that Congress should enact legislation to prevent telephone and cable companies from introducing access-tiering to the Internet because it threatens to undermine competition and innovation. Access-tiering would allow carriers to auction bandwidth to the highest bidders and leave the rest with insufficient bandwidth to compete. This will only burden smaller, newer innovators.

Carriers are entitled to fair compensation for investing in Internet access infrastructure. Currently, content providers pay network operators for the amount of connection capacity they use, and network operators can charge consumers differently depending upon how much bandwidth they use. Network operators also can charge consumers for the provision of ancillary services such as affiliated video content.

Based upon our understanding of existing broadband connections and statements by phone and cable providers, we foresee content potentially provided either on very high-speed private channels or on much slower quasi-public channels. Unrestricted access to even semi-public channels would be offered only at a premium price that is likely to bar ready access by smaller, innovative content providers.

ERA respectfully asks Congress to bar phone company and cable operators from extending their market power over broadband Internet access to broadband Internet content.