

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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Secretary

February 12, 2008

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

Re: Comments of the New York State Public Service Commission in WC Docket No. 07-52; In the Matter of Petition of Free Press et al. for Declaratory Ruling that Degrading an Internet Application Violates the FCC's Internet Policy Statement and Does Not Meet and Exception for "Reasonable Network Management" and In the Matter of Vuze, Inc.'s Petition to Establish Rules Governing Network Management Practices by Broadband Network Operators

Dear Secretary Dortch:

The following comments are respectfully submitted on behalf of the New York State Public Service Commission (NYPSC) in the Federal Communications Commission's (FCC) above-referenced dockets on Free Press' and Vuze's Petitions seeking rulings on permissible network management by Internet operators.

The FCC previously issued a Notice of Inquiry (NOI) and is in the process of conducting a comprehensive proceeding to investigate the nature of the market for broadband and related services and whether network providers and others favor or disfavor particular content. The FCC is examining whether consumers are affected by these policies and whether consumer choice of broadband providers acts to ensure that all such practices ultimately benefit consumers. In that NOI, the NYPSC filed comments suggesting that the policies underlying common carriage in New York would serve as an excellent template for network neutrality and appropriate network management practices. We included a copy of those rules in our NOI comments.

NYPSC Comments
Docket No. 07-52
February 12, 2008

By way of background, the NYPSC adopted common carriage rules in 1990. These common carriage rules provide for important public interests including informational diversity and consumer protections, but are not unduly burdensome in other respects. The provisions would clearly proscribe a service provider from deliberately impeding the flow of information between a content provider and a willing subscriber as are the allegations in the Petitions at bar. Our rules require that a common carrier must provide adequate capacity to content service providers and treat all users in a non-discriminatory fashion.

New York recognizes that in times of emergency or high volume use, the need to throttle high capacity users and applications might exist. This would be analogous to the network controls put on portions of the network infrastructure that support high volume calls to radio stations. If such controls are disclosed to subscribers then they could constitute reasonable network management practices.

The NYPSC urges the FCC to consider our common carriage rules as a template for establishing rules governing Internet providers and the various platform providers.

Respectfully submitted,

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