



Consumer Federation of America

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**Statement of Mark Cooper,
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on
The Decision of the Federal Communications Commission to
Request Data on High Speed Data Interconnection Arrangements & Disputes**

The FCC's action to look at the peering relationships between major Internet market participants is welcome and long overdue. As CFA pointed out in comments in both the IP transition and the Open Internet dockets, interconnection on reasonable and nondiscriminatory rates, terms and conditions is one of the core public service principles of U.S. communications policy, a principle that grows more important as digital communications networks become dominant.

From the historical perspective, we have shown that the claim that Internet peering achieved a long period of successful negotiation without any government oversight is wrong. The voluntary peering agreements that typified interconnection for Internet data exchange in the early days of the Internet took place in an environment where the FCC, through the Computer Inquiries, had imposed an obligation of nondiscriminatory interconnection on the dominant data transmission networks, the telephone companies. By preventing the abuse of market power by dominant incumbents, FCC regulation created and preserved a space that was open for new entrants who lacked market power to work things out voluntarily. Our analysis of the history of interconnection supports the conclusion that without the prior FCC regulatory action, the nature of Internet peering would have been very different.

In the contemporary context, in the past decade, the comity that typified peering has broken down. Large increases in the quantity and diversity of traffic have both congested the network and made it more sensitive to the value of the quality of service. At the same time, last mile providers of broadband Internet access service who have market power over terminating access have become strongly vertically integrated into content and application services, which puts them in direct competition with the unaffiliated application and content providers who are driving the increase in traffic.

The recent ruling of the DC Circuit in the Open Internet Order appeal and its earlier ruling upholding the FCC's Data Roaming Order clearly give the FCC authority to adopt policies to promote the seamless interconnection and flow of high speed data across the nation's broadband networks. The FCC would be derelict in its duties if it did not examine the facts underlying disputed high speed data interconnection that affects tens of millions of broadband users. Whether or not the FCC takes any specific action in any specific dispute, gathering this data will inform its decision making in its broader efforts to write an effective Open Internet order that prevents the abuse of market power and preserves the dynamic openness of the Internet.

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The Consumer Federation of America is an association of more than 260 non-profit consumer groups that, since 1968, has sought to advance the consumer interest through research, education, and advocacy.