

**Oral Statement of Gigi B. Sohn, President, Public Knowledge
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Video over the Internet is one of the most important drivers of broadband adoption and utilization today. According to a recent study by comScore, 158 million Americans watched video over the Internet in July 2009. This represents some 81 percent of all U.S. Internet users and serves as a testament to the creativity fostered by an open and decentralized Internet. Unbounded by traditional gatekeepers like broadcasters and Multichannel Video Programming Distributors, Americans have embraced the myriad opportunities that Internet video offers, viewing and producing content that fills a variety of critical civic, educational, economic and cultural needs.

Internet video holds the potential to further some of the most important goals of the National Broadband Plan, by encouraging Americans to adopt broadband services and promoting their use for purposes such as education and civic engagement. Thus, the Federal government must help foster an Internet video ecosystem that is competitive, open to new entrants and accessible to all Americans.

One way that the Commission can achieve this goal is by ensuring that providers that serve video content directly to consumers over the open Internet--often referred to as "over-the-top" video providers--are able to compete fairly with traditional MVPDs. Increasingly, Americans are choosing to "cut the cord," by replacing MVPD services with over-the-top services like Hulu, Netflix, Blip.tv and independently created video podcasts. Because this trend threatens their subscription video business model, traditional MVPDs, many of which also act as Internet Service Providers, have responded with initiatives that limit access to Internet video content to subscribers of certain MVPDs and ISPs. For example, "TV Everywhere," an initiative being pursued by a number of MVPDs, would bundle access to Internet video content with MVPD services. ESPN, meanwhile, limits access to its ESPN360.com programming to subscribers of certain ISPs with which it has negotiated a deal.

Such practices hold the potential to be anticompetitive and to limit consumer choice. Exclusive deals, for example, could block providers of Internet video from offering certain types of content to their customers or prevent programmers from making their content available directly to viewers. This would prevent the emergence of Internet video services that could compete with MVPDs. Such deals could also harm small and rural

ISPs and MVPDs, which may not possess the means to negotiate exclusive deals. This, in turn, would limit choice for customers of those services.

Also worthy of scrutiny is the practice of limiting bandwidth consumption through the use of bandwidth caps. While bandwidth caps can be used for legitimate network management, a system that threatens subscribers with disconnection or overage fees without offering a means to monitor consumption effectively discourages users from engaging in activities that use large amounts of bandwidth, including the viewing and production of Internet video. As such, bandwidth caps should be reasonable, dynamic and treat all content equally. Moreover, users should have access to robust tools for monitoring bandwidth use.

In the interest of fostering competition and protecting consumer choice, Public Knowledge makes the following recommendations to the Commission with regard to the National Broadband Plan:

- The Commission should publicly acknowledge that Internet video is a valuable edge-based tool and should encourage its use by enforcing the principles of openness and non-discrimination with regard to network management. No provider should be allowed to use a network

management technique that privileges or discourages access to lawful content.

- The Commission should closely scrutinize initiatives such as TV Everywhere and ESPN360.com, as well as the use of bandwidth caps and should ensure that these practices are not used to anticompetitive ends.
- The Commission should encourage innovation in the Internet video hardware and software marketplace by rigorously enforcing Section 629 of the Communications Act, to ensure that "cable Carterfone" protections allow Internet video content to be delivered to the television set without interference.
- The Commission should ensure that over-the-top video providers have the same safeguards against anti-competitive activity, and the same access to programming, as do other video providers.
- Consumers should be able to buy video service or broadband service separately, without being penalized if they don't want to buy one or the other.

I look forward to your questions.