

**BEFORE THE
FEDERAL TRADE COMMISSION**

In the Matter of

Competition and Consumer Protection
In the Twenty-First Century Hearings

Project No. P181201

**Comments of the Entertainment Software Association
on**

**Topic # 2 - Competition and Consumer Protection Issues in Communication,
Information, and Media Technology Networks**

The Entertainment Software Association (“ESA”) is a trade association for companies that publish computer and video games for video game consoles, personal computers, and the internet. Its 33 member companies include many of the world’s largest video game producers.¹ Today, video games are one of the leading forms of entertainment. With over \$36 billion in annual domestic revenues and providing for over 220,000 American jobs across the country, the video game industry is a significant and growing part of the U.S. economy.

ESA supports a free and open internet, which has fueled dynamic growth, competition, and innovation in the video game industry. With the rise of digital game distribution, multiplayer game play, and cloud-based game streaming, fast, reliable, and low-latency broadband connections are critical to consumers’ enjoyment of the game play experience. Put simply, the availability and quality of the game play experience increasingly depends on the availability and quality of consumers’ broadband service. The video game industry and our industry’s customers thus depend on open and fair access to the internet.

¹ ESA offers a range of services to publishers of entertainment software, including a global content protection program, business and consumer research, government relations, and intellectual property protection efforts. ESA also owns and operates E3, an annual event showcasing the video game industry.

ESA supports the Commission’s proposal to examine “the application of the FTC’s Section 5 authority to the broadband internet access service business.”² In the wake of the Federal Communications Commission’s *Restoring Internet Freedom Order*,³ it is appropriate for the FTC to examine its authority over broadband internet access service and how it can best apply any such authority to protect and promote an open internet. There is much uncertainty, for example, as to how the FTC’s Section 5 authority would address broadband provider conduct, like blocking or throttling, where that conduct is otherwise fully disclosed to consumers. We appreciate the FTC’s call for public input on this topic and urge the Commission to provide, as an outcome of this process, additional clarity on how it intends to use its authority to safeguard long-held net neutrality principles.

August 20, 2018

Respectfully submitted,

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² *Public Comment Topics and Processes: Hearings on Competition and Consumer Protection in the Twenty-First Century*, FTC, <https://www.ftc.gov/policy/advocacy/public-comment-topics-process> (last visited Aug. 20, 2018). ESA is also filing separate comments related to (1) the FTC’s investigation, enforcement, and remedial processes, and (2) the intersection between privacy, big data, and competition.

³ *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, 33 FCC Rcd. 311 (2018).