Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Protecting and Promoting the Open Internet	)	GN Docket No. 14-28
	)	
	)	

REPLY COMMENTS OF COMPTEL

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I. INTRODUCTION AND SUMMARY

COMPTEL, the leading industry association for competitive communications service providers and their supplier partners, respectfully submits these reply comments in the above-referenced proceeding.[1] COMPTEL submits that the initial comments filed in this proceeding overwhelmingly confirm its view that targeted regulatory oversight through the adoption of open Internet rules will expand innovation, promote economic growth, and protect civic engagement and free expression.[2]

The record in this proceeding reflects the views of a large and diverse group of commenters, who overwhelmingly support the adoption of robust safeguards to preserve a free and open Internet from end-to-end. According to published reports, almost 1.5 million comments have been filed—with approximately 80 percent in support of adopting robust open

[1] *See Protecting and Promoting the Open Internet*, Notice of Proposed Rulemaking, 29 FCC Rcd 5561 (2014) ("*Open Internet NPRM*"). These reply comments reflect the position of a majority of COMPTEL members. Individual members may be filing separate comments where they advocate positions on some issues that are different from those stated herein. Some members do not join in these comments.

[2] *See* Comments of COMPTEL, GN Docket No. 14-28, at 1 (filed July 15, 2014) ("COMPTEL Comments").

Internet protections that would prevent broadband providers from blocking lawful traffic, engaging in paid prioritization, or discriminating against edge providers or their services.[3] Very few Federal Communications Commission ("Commission" or "FCC") proceedings have captured the nation's attention or generated public participation to the extent the current proceeding has. The unprecedented volume of public support for measures to protect and preserve the openness of the Internet is compelling.[4]

Moreover, the record in this proceeding confirms the Commission's well-established findings that solid open Internet protections will promote, not hinder, broadband investment and innovation. In its 2010 *Open Internet Order*, the Commission found that Internet openness "enables a self-reinforcing cycle of investment and innovation,"[5] which it used as grounds for adopting open Internet rules. The D.C. Circuit affirmed this finding in its review of those rules.[6] As numerous commenters in the current proceeding attest, broadband investment has remained strong since the Commission's 2010 open Internet rules were adopted, and will remain strong if the Commission adopts solid new open Internet rules now.

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[3] *See, e.g.*, Chris Welch, *FCC net neutrality debate passes Janet Jackson's nip slip in total comments*, THE VERGE (Sept. 10, 2014, 3:53 p.m.), http://www.theverge.com/2014/9/10/6132429/fcc-net-neutrality-debate-most-public-comments-any-docket; Elise Hu, *A Fascinating Look Inside Those 1.1 Million Open-Internet Comments*, NPR (Aug. 12, 2014, 1:24 p.m.), http://www.npr.org/blogs/alltechconsidered/2014/08/12/339710293/a-fascinating-look-inside-those-1-1-million-open-internet-comments; Barbara E. Hernandez, *1.1 Million Comments to FCC Mostly Pro Net Neutrality*, NBC (Aug. 14, 2014, 11:27 p.m.), http://www.nbcbayarea.com/blogs/press-here/11-Million-Commend-to-FCC-271345471.html.

[4] *See, e.g.*, Cat Zakrzewski, *FCC Extends Net Neutrality Comment Period*, TECHCRUNCH (Aug. 15, 2014), http://techcrunch.com/2014/08/15/fcc-extends-net-neutrality-comment-period/ (reporting that only Janet Jackson's "wardrobe malfunction" elicited more comments).

[5] *Preserving the Open Internet, Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905 ¶ 3 (2010) ("*Open Internet Order*").

[6] *Verizon v. FCC*, 740 F.3d 623, 643-645 (D.C. Cir. 2014) ("[T]he Commission has adequately supported and explained its conclusion that, absent rules such as those set forth in the *Open Internet Order*, broadband service providers represent a threat to Internet openness and could act in ways that would ultimately inhibit the speed and extent of future broadband deployment.").

Given the clear evidence of the need for and broad public support in favor of open Internet protections, it is vital that the Commission adopt the proper legal framework for open Internet rules to ensure that such protections can withstand court challenges and remain in effect. To that end, many commenters also agree that reclassifying the transmission component of broadband Internet access service under Title II provides the clearest and most effective path forward for open Internet rules. Reclassifying the transmission component of broadband Internet access service will provide the Commission with clear authority to adopt non-discrimination and no-blocking rules that can withstand court challenges.

Accordingly, COMPTEL urges the Commission to take heed of the broad public support in favor of strong open Internet protections, and adopt solid open Internet rules that will prevent broadband providers from engaging in discrimination, blocking lawful traffic, or offering paid prioritization for Internet traffic. COMPTEL urges the Commission to ensure that such rules have a strong legal foundation by reclassifying the transmission component of broadband Internet access as a Title II service.

II. THE RECORD REFLECTS BROAD SUPPORT FOR FCC IMPLEMENTATION OF SOLID OPEN INTERNET RULES

COMPTEL submits that the record in this proceeding reflects widespread public support for open Internet rules reflecting three broad principles—specifically, that the Commission should prohibit broadband providers from: (1) blocking lawful traffic; (2) engaging in paid prioritization; and (3) engaging in discrimination.[7]

[7] The allegations that some large broadband Internet access providers are using their market power to charge edge providers terminating access fees are especially troubling because these providers can stifle competition for their traditional MVPD products from over the top providers. *See, e.g.*, Comments of Cogent Communications Group, Inc., GN Docket Nos. 10-127, 14-28 (filed July 15, 2014) ("Cogent Comments"); Comments of Level 3 Communications, LLC, GN Docket No. 14-28 (filed Jul. 15, 2014); Comments of Netflix, Inc., GN Docket Nos. 10-127, 14-28 (filed July 15, 2014) ("Netflix Comments"). Serious examination of this practice is imperative to ensure

First, the record reflects broad agreement that the Commission should adopt a no-blocking rule.[8] For example, the National Association of Rural Utility Commissioners states that "limiting, or otherwise degrading broadband access for users . . . is an unfair practice that 'may reduce the Internet's value to consumers.'"[9] Cogent posits that "an ISP blocking access to lawful Internet content is the antithesis of an open Internet."[10] Microsoft Corp. ("Microsoft") explains that it is critical that the Commission adopt a no-blocking rule "rather than impose[] some vague 'minimum level of access' requirement."[11] And Mozilla warns that defining a no-blocking rule in terms of establishing a minimum level of service is not likely "to prove effective and workable in practice."[12]

Second, the record reflects broad agreement that the Commission should not permit paid prioritization agreements.[13] For instance, the Computer and Communication Industry Association ("CCIA") states that, in addition to no-blocking, the other "fundamental principle" that the Commission should adopt is that traffic prioritization is presumptively unlawful.[14] Netflix, Inc. asserts that paid prioritization is "bad public policy" because it vests the power to

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a robust open Internet as is consideration of how these practices may interfere with the Commission's open Internet objectives in this proceeding.

[8] *See, e.g.*, Comments of Microsoft Corp., GN Docket No. 14-28, at 15-19 (filed July 18, 2014) ("Microsoft Comments"); Comments of Mozilla, GN Docket Nos. 10-127, 14-28, at 16 (filed July 15, 2014) ("Mozilla Comments"); Comments of the Internet Assoc., GN Docket No. 14-28, at 16 (filed July 14, 2014) "(Internet Assoc. Comments").

[9] Comments of the National Association of Rural Utility Commissioners, GN Docket No. 14-28, at 6 (filed July 18, 2014).

[10] Cogent Comments at 13.

[11] Microsoft Comments at 15-19.

[12] Mozilla Comments at 15.

[13] *See, e.g.*, Comments of Vimeo, LLC, GN Docket No. 14-28, at 11 (filed July 15, 2014); Comments of Consumers Union, GN Docket No. 14-28, at 6 (filed July 15, 2014) ("Consumers Union Comments"); Comments of AARP, GN Docket No. 14-28, at v (filed July 15, 2014) ("AARP Comments"); Comments of AOL, Inc., GN Docket No. 14-28, at 5-7 (filed July 15, 2014); Internet Assoc. Comments at 16.

[14] Comments of the Computer and Communications Industry Association, GN Docket No. 14-28, at 14 (filed July 15, 2014).

pick winners and losers in the hands of ISPs rather than consumers.[15] And Public Knowledge *et al.* warn that any form of paid prioritization will lower overall network throughput and raise barriers to entry for new providers.[16] The consensus for open Internet rules prohibiting paid prioritization is so strong that even some major broadband providers acknowledge the legitimacy of such rules. For example, AT&T Services, Inc. ("AT&T") and Comcast Corp. ("Comcast") state that they would not oppose rules that ban paid prioritization arrangements.[17]

Third, the record reflects broad agreement that consumers should be able to access the edge provider services of their choice and that broadband providers should not be permitted to discriminate unreasonably in the transmission of lawful traffic. Just as broadband providers, if left unchecked, could leverage their bottleneck control over last-mile broadband facilities to levy a toll on edge providers for access to consumers, so too could broadband providers leverage their bottleneck control by discriminating in the transmission of Internet traffic. As Cogent observes, a "minimum level of access" is meaningless unless it entails access to the full range of edge providers and edge provider services.[18] Microsoft, meanwhile, states that it "has seen firsthand" how the absence of strong open Internet rules can allow broadband providers to manipulate their networks to "the detriment of specific traffic and services."[19] The broad public input in this proceeding reflects a widespread consensus that broadband providers should not be allowed to

[15] Netflix Comments at 5-6.

[16] Comments of Public Knowledge, Benton Foundation, and Access Sonoma Broadband, GN Docket Nos. 09-191, 10-127, 14-28, WC Docket No. 07-52, at 36 (filed July 15, 2014).

[17] Comments of AT&T Services, Inc., GN Docket Nos. 10-127, 14-28, at 3 (filed July 15, 2014) ("AT&T Comments"); Comments of Comcast Corp., GN Docket Nos. 10-127, 14-28, at 24 (filed July 15, 2014) ("Comcast Comments").

[18] Cogent Comments at 14-15.

[19] Microsoft Comments at 25.

charge edge providers for prioritized higher bandwidth access to their end users or impose access charges on transit and content delivery networks ("CDNs") to reach their end users.

III. SOLID OPEN INTERNET RULES WILL PROMOTE BROADBAND INVESTMENT

A. Broadband Investment Has Remained Strong Since the Commission Adopted Its First Open Internet Rules.

Certain broadband providers would have the Commission and the public believe that adopting open Internet rules could disrupt their incentives to invest in additional infrastructure and next-generation networks.[20] History, however, demonstrates that incentives for investment in broadband infrastructure and innovation will not only remain firmly in place if the Commission adopts open Internet rules—but will actually increase. Specifically, since the Commission's 2010 adoption of the *Open Internet Order*'s transparency, anti-blocking, and anti-discrimination requirements, U.S. investment in broadband infrastructure did not abruptly halt or even begin to dissipate. In fact, quite the opposite happened.

As Comcast points out, "during the short period since the Commission adopted the 2010 *Open Internet Order* . . . broadband providers have raced to give consumers the best access to the content and applications that they demand."[21] Indeed, broadband investment has flourished during this period. As the *Open Internet NPRM* points out, nearly $250 billion in private capital was invested in U.S. wired and wireless broadband networks between 2009 and 2013."[22] Also during this period, the amount spent annually on broadband capital expenditures rose from $64

[20] *See, e.g.*, Comments of Verizon and Verizon Wireless, GN Docket No. 10-127, 14-28 at 34-35 (filed July. 14, 2014) ("Verizon Comments"); Comcast Comments at 13; *see also* AT&T Comments at 51-55 (arguing Title II reclassification will stifle investment and innovation).

[21] Comcast Comments at 7.

[22] *Open Internet NPRM* at ¶ 30.

billion in 2009 to $75 billion in 2013.[23] As a result, Verizon observes, "Internet service [speeds are] double those of just four years ago, when the Commission last considered open Internet issues."[24]

Moreover, the investment in infrastructure has been made by a wide range of companies, some of which have been among the nation's heaviest spenders on infrastructure since the *Open Internet Order* was released. AT&T alone has devoted more than $20 billion annually to capital investment and, in the last six years, "invested more capital into the U.S. economy than any other public company."[25] Verizon boasts that it is "consistently rank[ed] among the top 2 or 3 capital investors in the United States."[26] In addition, Google, AT&T, CenturyLink, Cox, and others have already started to deploy new fiber-to-the-premises networks.[27]

Similarly, as the Commission envisioned when it issued its 2010 *Open Internet Order*, open Internet rules have spurred investment by edge providers, content providers, and other startup endeavors by providing "confidence that the Internet will remain open."[28] Since 2007, $8.33 billion has been invested in mobile media ventures, most of which provide software services, including mobile Web development, carrier-backed software, application development, and cloud-based services in the United States.[29] In 2013 alone, venture capitalists invested more

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[23] USTelecom, *Historical Broadband Provider Capex*, http://www.ustelecom.org/broadband-industry-stats/investment/historical-broadband-provider-capex (last visited Aug. 25, 2014).

[24] Verizon Comments at 14.

[25] AT&T Comments at 9.

[26] Verizon Comments at 11.

[27] *See, e.g.*, Comcast Comments at 8.

[28] *Open Internet Order* at ¶ 42.

[29] *Open Internet NPRM* at ¶ 31.

than $1 billion in mobile media startups.[30] CTIA reported that by 2012 there were more than 20 independent non-carrier mobile application stores offering more than 3.5 million applications for 14 different operating systems.[31]

This continuing flow of investments by broadband providers, edge providers, startups, and other innovators demonstrates conclusively that open Internet rules have not deterred broadband infrastructure investment, but instead have spurred investment in both broadband infrastructure and new Internet products and services.

B. Net Neutrality Requirements Have Not Deterred Broadband Investment in Europe.

Certain broadband providers would also have the Commission and the public believe that net neutrality rules and/or open access policies have led European broadband providers to invest less in broadband infrastructure—as measured on a per capita basis—than their American counterparts in recent years.[32] However, although some European countries adopted net neutrality policies during this time,[33] nothing suggests that the disparity in investment is in any way attributable to those policies.

Other factors in the European economic landscape more likely account for the relative difference in U.S. and European infrastructure investment levels—across several sectors, not just broadband. For instance, Europe's higher labor costs may act as a barrier to investment.[34] In

[30] *Id.* (citing SNL Kagan, Media Trends Actionable Metrics, Benchmarks & Projections for Major Media Sectors 278 (2013)).

[31] Letter from Scott K. Bergmann, Vice President, Regulatory Affairs, CTIA – The Wireless Association, to Tom Wheeler, Chairman, FCC, *et al*., WT Docket No. 13-135, GN Docket No. 09-51, at 2 (filed Nov. 13, 2013).

[32] *See, e.g.*, Comcast Comments at 47-48; Verizon Comments at 14.

[33] *See, e.g*., Comments of Vonage Holdings Corp., GN Docket Nos. 10-127, 14-28, at 11 ("In response [to provider abuses], some EU Member States, in particular the Netherlands, have already adopted Net Neutrality protections.").

[34] *See, e.g.*, McKinsey Global Institute, INVESTING IN GROWTH: EUROPE'S NEXT CHALLENGE 32 n.64 (2012) (describing labor as a barrier to investment that "cut[s] across sectors").

addition, the 27 individual European markets each have their own regulatory authority and tax regimes, erecting significant barriers to taking advantage of economies of scale.[35] Furthermore, the European financial crisis of recent years caused a significant decline in *all* infrastructure investment in Europe, which has yet to return to pre-crisis levels.[36]

For its part, the European Union does not consider net neutrality and/or open access regulations to be a barrier to infrastructure investment. Specifically, the European Union has publicly committed to improving broadband investment,[37] and a number of its member states have recently adopted a range of measures similar to ones adopted by the United States that are intended to encourage deployment—from supporting co-investment initiatives, to providing public funding, to reshaping spectrum policy.[38] Yet this extensive and public European Union commitment to improving broadband investment did not prevent the European Parliament from voting just this April to also adopt aggressive net neutrality protections.[39] Notwithstanding the arguments made by U.S. broadband providers, the European Union itself has not subscribed to any notion of tension between promoting broadband investment levels and adopting net neutrality policies.

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[35] *See* Roslyn Layton, *The EU's Broadband Challenge Part 7: EU Broadband Investment Falling Behind*, TECHPOLICYDAILY.COM (Nov. 8, 2013, 6:00 a.m.), http://www.techpolicydaily.com/internet/eus-broadband-challenge-part-7-american-carriers-invest-nearly-2-5-times-per-capita-broadband-infrastructure-carriers-eu27/.

[36] *See* Linklaters, SET TO REVIVE: INVESTING IN EUROPE'S INFRASTRUCTURE (2014), *available at* http://www.linklaters.com/pdfs/mkt/london/6380_LIN_Infrastructure%20Report%20FINAL_WEB.PDF.

[37] *See, e.g.*, Neelie Kroes, *EU's Member States Agree on Measures to Improve Broadband Investment* (Nov. 7, 2013), *available at* http://ec.europa.eu/commission_2010-2014/kroes/en/blog/boosting-broadband-investment.

[38] McKinsey & Company, A "NEW DEAL": DRIVING INVESTMENT IN EUROPE'S TELECOMS INFRASTRUCTURE 6-7 (2012), available at http://bit.ly/1wun9NO.

[39] *See* Emma Woollacott, *Europe Votes For Net Neutrality In No Uncertain Terms*, FORBES (Apr. 3, 2014, 11:27 a.m.), http://www.forbes.com/sites/emmawoollacott/2014/04/03/europe-votes-for-net-neutrality-in-no-uncertain-terms/.

C. Open Internet Rules Promote Investment.

Far from deterring broadband investment, adopting open Internet rules prohibiting ISPs from blocking traffic, engaging in paid prioritization, and engaging in discrimination against edge providers and their services will promote broadband investment by creating greater certainty across the Internet ecosystem. In fact, this increased certainty—and the investment and innovation that will flow from it—far outweighs any risk of uncertainty that commenters allege may arise from the Commission's use of forbearance to relieve providers from complying with certain common carrier obligations.[40] Edge providers, startups, and other innovators should be able to rely on the open Internet rules to create new Internet products and services, and avoid the substantial transactions costs of separately negotiating rates, terms, and conditions with hundreds of broadband providers across the U.S. so that consumers can reach their products and services through their broadband subscriptions. It is not hard to imagine that a regime without such rules would substantially deter investments in new products and services by Internet edge providers, startups, and other innovators and may even prove cost-prohibitive for smaller, early-stage innovators.

Open Internet rules are necessary to guarantee consumers access to the lawful content of their choice with a broadband subscription. Even broadband providers would have a clearer path for their investment decisions with objective open Internet rules than with a vague standard, the contours of which could only be established piecemeal over time through individual negotiations and case-by-case adjudication.[41]

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[40] *See* AT&T Comments at 64-68; Comments of CTIA – The Wireless Association®, GN Docket Nos. 10-127, 14-28, at 48-50 (filed July 18, 2014).

[41] *See, e.g.*, Reply Comments of Poll Everywhere, GN Docket No. 14-28 at 4-5 (filed Aug. 5, 2014); Reply Comments of SideCar Technologies, GN Docket No. 14-28, at 4 (filed Aug. 14, 2014).

By contrast, the Commission's proposed "commercially reasonable" standard provides insufficient guidance to stakeholders and may inhibit broadband investment and innovation. As COMPTEL and others commenters note, such a standard is far from clear, would be difficult to enforce, and would create significant uncertainty.[42] In addition, it likely would not prevent some broadband providers from exploiting their market power to discriminate among edge providers and end users.[43] Investors, edge providers, start-ups, and consumer groups all emphasize that a "commercially reasonable" standard is likely to create barriers to entry in the edge provider market and to have a chilling effect on both investment and innovation.[44]

IV. TITLE II CLASSIFICATION OF THE TRANSMISSION COMPONENT OF BROADBAND INTERNET ACCESS SERVICE REMAINS THE BEST WAY TO PRESERVE AN OPEN INTERNET

As COMPTEL has stated on previous occasions, prohibiting discrimination through Title II reclassification of the transmission component of broadband Internet access service best preserves an open Internet.[45] Title II reclassification would give the Commission clear authority to adopt non-discrimination and no-blocking rules like those recently struck down by the D.C. Circuit under Title I.[46] In addition, Title II reclassification would also ensure technological

[42] *See, e.g.*, COMPTEL Comments at 6; Comments of the National Association of State Utility Consumers Advocates, GN Docket Nos. 10-127, 14-28, at 15-17 (filed July 15, 2014) ("NASUCA Comments"); Internet Assoc. Comments at 16.

[43] *See, e.g.*, NASUCA Comments at 15-17; Consumers Union Comments at 9.

[44] *See, e.g.*, Letter from Marvin Ammori, Ammori Group & Board Member of Engine Advocacy, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28 (filed July 31, 2014); Letter from Gigi Sohn, Special Counsel for External Affairs, Office of Chairman Tom Wheeler, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28 (filed July 17, 2014) (reporting Chairman Wheeler's meeting with representatives of Etsy, Tumblr, VHX, Kickstarter, Foursquare, Meetup, General Assembly, Spotify, Gilt, Warby Parker, Dwolla, Codecademy, Upworthy, BuzzFeed, Reddit, Vimeo and Union Square Ventures); Letter from Gigi Sohn, Special Counsel for External Affairs, Office of Chairman Tom Wheeler, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28 (filed July 16, 2014) (reporting Chairman Wheeler's meeting with representatives of Union Square Ventures, RRE, Lerer Hippeau Ventures, Nyca Partners, Spark Capital, Venrock, Insight Venture Partners and Softbank); Comments of Free Press, GN Docket Nos. 09-191, 10-127, and 14-28, at 134-35 (filed July 17, 2014); AARP Comments at v, 38.

[45] *See, e.g.*, COMPTEL Comments at 6.

[46] *See id*. at 3-4.

neutrality and promote broadband competition, which will be especially important as the transition to an all-IP network moves forward.[47] In particular, by classifying the transmission component of broadband Internet access service as a Title II service, the Commission will ensure that broadband providers operating last-mile transmission facilities uphold core common carrier values and responsibilities, regardless of the technology used: twisted pair copper, coaxial cable, and fiber to the home would all be subject to the same Title II framework. Meanwhile, employing a light-touch regulatory approach through forbearance from enforcement of certain common carrier obligations would avoid any purported risks of overregulation.[48] This approach has already proved successful for wireless providers, and could be used effectively here as well.[49]

Numerous other commenters, including many members of Congress,[50] agree. For example, Cogent states that reclassification "is the most straightforward and effective way" to accomplish the Commission's goals.[51] The National Association of State Utility Consumer Advocates ("NASUCA") adds that "reclassification of broadband transport as Title II is essential" to achieving an open Internet and that there is "extensive support [for this] already in

[47] *See id.* at 14-16.

[48] *See id*. at 21.

[49] *See id*.

[50] *See, e.g.*, Letter from.Representative Nancy Pelosi, Democratic Leader, United States House of Representatives to Tom Wheeler, Chairman, FCC (Sept. 8, 2014), *available at* http://1.usa.gov/1wejwaQ; Letter from Sen. Ed Markey, United States Senate *et al*. to Tom Wheeler, Chairman, FCC (July 15, 2014) (also signed by Sens. Al Franken, Bernie Sanders, Charles Schumer, Ron Wyden, Richard Blumenthal, Jeff Merkley, Elizabeth Warren, Sheldon Whitehouse, Ben Cardin, Kirsten Gillibrand, and Cory Booker), *available at* http://1.usa.gov/1zFY6X1; Letter from Representative Henry Waxman, United States House of Representatives to Tom Wheeler, Chairman, FCC, GN Docket No. 14-28 (filed May 14, 2014); Representative Alan Grayson, United States House of Representatives to Tom Wheeler, Chairman, FCC, GN Docket No. 14-28 (filed Feb. 6, 2014); Comments of Sen. Al Franken, GN Docket No. 14-28 (filed July 15, 2014); Comments of Sen. Ron Wyden, GN Docket No. 14-28 (filed July 14, 2014).

[51] Cogent Comments at 10.

the record."[52] AARP, meanwhile, points out that the Commission's current classification of broadband Internet access service as an information service "is based on an outmoded view of the Internet."[53] In addition, Public Knowledge *et al.* make clear that the Commission has ample authority to reclassify the transmission component of broadband Internet access service under Title II.[54]

Arguments against Title II classification of the transmission component of broadband Internet access are not persuasive. Some commenters allege, for example, that broadband service is a tightly integrated service that cannot be classified into discreet telecommunications and processing components.[55] These arguments ignore, however, the Commission's history of treating Internet access service as comprising two distinct components: (1) a "basic" physical access or transmission component, which was regulated as a Title II telecommunications service; and (2) an "advanced" content/application component, which was essentially unregulated as an information service.[56] Specifically, the Commission previously determined that it was appropriate to apply Title II regulation to require common carriers that were also providing information services to offer the transmission component of those services as a separate, tariffed telecommunications service.[57] Although a divided Supreme Court applied *Chevron* deference to uphold the Commission's subsequent interpretation that Internet access service is an integrated

[52] NASUCA Comments at 4, 7.

[53] AARP Comments at 5-15.

[54] Public Knowledge *et al*. Comments at 97.

[55] *See, e.g.* Verizon Comments at 57-61; Comments of CenturyLink, GN Docket Nos. 10-127, 14-28, at 42-48 (filed July 17, 2014); Comments of Cox Communications, GN Docket Nos. 10-27, 14-28, at 32-33 (filed July 18, 2014).

[56] *See* Netflix Comments at 22 (filed July 15, 2014) (citing *Amendment of Section 64.702 of the Commission's Rules and Regulations*, Final Decision, 77 F.C.C. 2d 384 ¶¶ 86-101, 115-123 (1980) ("*Second Computer Inquiry*").

[57] *See Second Computer Inquiry* ¶ 114.

information service with no severable telecommunications component, it did so based on its determination that the statutory term "telecommunications service" is ambiguous and that the Commission's interpretation was a reasonable policy choice.[58] At the same time, the Court made clear that the Commission's interpretation was not the only reasonable interpretation or policy choice.[59] The Commission clearly has authority to reclassify the transmission component of broadband Internet access service as a Title II telecommunications service and it should exercise that authority to preserve the open Internet by adopting rules that will withstand judicial challenge.

Arguments that reclassification of broadband services would compel reclassification of other services are similarly misguided. AT&T argues that any interpretation of the Communications Act that permits reclassification of broadband Internet access services would compel reclassification of "any entity in the Internet ecosystem that holds itself out to customers as *arranging* for the transmission of data from one point on the Internet to another."[60] Contrary to AT&T's argument, reclassification of the transmission component of broadband Internet access would not require *de facto* reclassification of other entities that merely use telecommunications as an input to provide information services to the public.[61]

In sum, the Commission can and should reclassify the transmission component of broadband Internet access as a Title II service as the best option for preserving an open Internet.

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[58] *National Cable Telecommunications Assn. v. Brand X Internet Services*, 545 U.S. 967 (2005).

[59] *Id.*, 545 U.S. at 989-91. Indeed, in his dissenting opinion in which Justices Ginsburg and Souter joined, Justice Scalia found that the telecommunications component of cable modem service retains such an independent identity from Internet access service that it must be regarded as a separate offering and that the Commission exceeded its statutory authority in ruling otherwise. *Id.* at 1008-14. In a concurring opinion, Justice Breyer found that the Commission's decision to exempt cable modem service from Title II regulation "falls within the scope of its statutorily delegated authority—though perhaps just barely." *Id.*at 1003.

[60] AT&T Comments at 55-57.

[61] *See id.* at 57.

V. CONCLUSION

COMPTEL urges the Commission to act swiftly to adopt robust open Internet rules—an outcome supported by overwhelming and unprecedented public consensus. For the reasons discussed above, any such rules must prohibit broadband providers from blocking access to lawful traffic and websites, engaging in paid prioritization, and discriminating against edge providers and their services. The clearest and most effective path forward for the Commission to adopt open Internet protections is through Title II reclassification of the transmission component of broadband Internet access service. Far from deterring broadband investment and innovation, sustainable open Internet rules will promote investment and innovation by creating certainty for consumers, edge providers, innovators, and broadband providers, preserving the end-to-end openness that has made the Internet so successful.

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