



Computer & Communications
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December 30, 2014

Chairman Tom Wheeler
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Submission, GN Docket No. 14-28, *Protecting and Promoting the Open Internet.*

Dear Chairman Wheeler:

The undersigned associations urge you to move forward expeditiously with adopting Open Internet rules to prohibit broadband Internet access service providers from blocking, discriminating against, or requiring payment for the delivery of Internet traffic. Broadband Internet access service providers should not be permitted to use their bottleneck control over access to their subscribers to harm online services or consumers, whether by targeting specific Internet traffic or by demanding access tolls from providers or networks that interconnect with them. Strong Open Internet rules are critical for preserving the virtuous cycle of innovation and investment, and to ensure that Internet users can access the lawful online content and services of their choosing. The Commission should move quickly to adopt legally sustainable rules to ensure that the Internet remains a robust platform for consumer choice, economic growth, and free speech.

The Commission's record is sufficient to reclassify retail broadband Internet access services, and it should do so. Application of three provisions of Title II—201, 202, and 208—is all that is required to provide the firm legal foundation for Open Internet rules.¹ This restrained regulatory approach has protected consumers, while

¹ The Commission's forbearance authority under Section 10 of the Act authorizes the Commission to forbear from regulation on telecommunications service providers upon finding that it is unnecessary to prevent unjust and unreasonable discrimination, to

promoting investment and growth in the mobile wireless industry for over 20 years. It has been so successful that in 2001 a prominent telecom executive described it as “produc[ing] what is arguably one of the greatest successes in this industry in the last twenty years—the growth of wireless services.”² Likewise, this focused and light-touch framework will not unduly burden broadband Internet access service providers³ and will encourage investment in broadband networks, as well as in the services and applications on those networks.⁴

protect consumers, or to further the public interest. 47 U.S.C. § 160(a). The Commission, on its own motion, may proceed with forbearance of those provisions that are not necessary for promulgating its Open Internet rules.

The Commission’s consideration of whether to apply Sections 222, 254, and 255, which relate to the protection of end users’ privacy, promotion of universal service, and accessibility by disabled consumers are important, but need not be decided at this time for purposes of moving forward with Open Internet rules.

² See Testimony of Tom Tauke, Verizon’s Senior Vice President for Public Policy and External Affairs, before the House Judiciary Committee on broadband legislation *available at* http://commdocs.house.gov/committees/judiciary/hju72979.000/hju72979_of.htm (last visited Dec. 16, 2014).

³ Recently, Comcast noted that a Title II approach should not use “heavy-handed regulation associated with Title II” due to “substantial risk of harm,” and went on to observe such harms “would be exacerbated to the extent the FCC’s going forward plan includes a Title II approach without broad-based forbearance.” See Letter from Kathryn A. Zachem of Comcast Corporation to FCC, MB Docket No. 14-57, and GN Docket No. 14-28 (filed Dec. 17, 2014). The Commission can avoid such perceived harms by relying on the light-handed approach we endorse herein.

⁴ See Brian Fung, “Why broadband execs are telling Washington and Wall Street different things on net neutrality,” Washington Post, Dec. 17, 2014, *available at* <http://www.washingtonpost.com/blogs/the-switch/wp/2014/12/17/on-net-neutrality-broadband-exec-are-telling-washington-and-wall-street-different-things-heres-why/> > (last visited Dec. 18, 2014), referring to his previous stories including, “Verizon: Actually, strong net neutrality rules won’t affect our network investment,” Dec. 10, 2014, *available at* <http://www.washingtonpost.com/blogs/the-switch/wp/2014/12/10/verizon-actually-strong-net-neutrality-rules-wont-affect-our-network-investment/?wpisrc=nl-swbd&wpm=1>, and “Comcast, Charter and Time Warner Cable all say Obama’s net neutrality plan shouldn’t worry investors,” Dec. 16, 2014, *available at* <http://www.washingtonpost.com/blogs/the-switch/wp/2014/12/16/comcast-charter-and-time-warner-cable-all-tell-investors-strict-net-neutrality-wouldnt-change-much/>. See also Letter from Angie Kronenberg of COMPTTEL to FCC, GN Docket No. 14-28 (Dec. 11, 2014) (urging the Commission “to consider th[ese] disclosure[s] and discount the claims [in the record] that network investment will decline if the Commission reclassifies broadband Internet access services.”)

As the Supreme Court has affirmed, Congress delegated to the Commission the legal authority and discretion to classify broadband Internet access services.⁵ Furthermore, the Commission may modify its regulatory policies as a result of “changed factual circumstances, or a change in administration.”⁶ Such modification requires the Commission to adequately explain its reasons for changing its course, but the Commission faces no heightened standard in doing so.⁷ Changed circumstances provide the Commission with ample justification for reclassification.⁸ First, the Commission’s prior decision to classify broadband Internet access service was predicated on its belief that it had sufficient jurisdiction under its ancillary authority to protect broadband Internet access consumers. This now has been twice undercut by the U.S. Court of Appeals for the D.C. Circuit.⁹ Second, consumers expect that the broadband service they purchase will allow them to access the content of their own choosing without interference from the broadband access service provider. The telecommunications component of broadband Internet access service is not viewed by consumers as an integrated part of a bundle of information services, but rather as a means for obtaining content of their choosing on the Internet without change in form or substance.¹⁰ Returning to the FCC’s original regulatory distinction between the content and facilities-based transmission components of Internet access would better reflect the service that consumers buy and expect from broadband Internet access service providers.

⁵ Such action clearly falls into the Commission’s “expert policy judgment” regarding “subject matter [that] is technical, complex, and dynamic.” *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 1002-03 (2005).

⁶ *Brand X*, 545 U.S. at 981 (citation omitted).

⁷ See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514 (2009) (observing that there is “no basis in the Administrative Procedure Act or in our opinions for a requirement that all agency change be subject to a more searching review” where the agency implements a change in regulatory policy).

⁸ *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010); *Verizon v. FCC*, 704 F.3d 623 (D.C. Cir. 2014). Reclassification of mobile broadband as a “commercial mobile service” is not inhibited by Section 332, which defines the term as a service “interconnected with the public switched network.” 47 U.S.C. § 332(d)(2). Section 332(d)(2) leaves the definition of a “public switched network” to the Commission’s reasonable discretion, while Section 332(d)(3) additionally allows the Commission to apply Title II to “the functional equivalent of a commercial mobile service.”

⁹ *Brand X*, 545 U.S. at 976.

¹⁰ See e.g., Comments of AARP, GN Docket No. 14-28, 7-12 (filed July 15, 2014) (explaining the differences between broadband Internet access service in 2002 and now, including consumer expectations). The Telecommunications Act clearly excluded from the definition of an “information service” the “use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.” 47 U.S.C. § 153(24) (emphasis added).

In closing, it is not necessary that the Commission adopt onerous regulations to accomplish a firm legal foundation for the Open Internet rules. We urge you to move forward expeditiously and adopt Open Internet rules using a light-touch policy framework to provide the clarity and certainty that all stakeholders are seeking from the Commission in this proceeding.

Sincerely,

COMPTEL Engine
CCIA IFBA

cc: Jonathan Sallet