

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Restoring Internet Freedom

WC Docket No. 17-108

MOTION FOR EXTENSION OF TIME TO FILE REPLY COMMENTS

Public Knowledge, Access Now, the American Civil Liberties Union, the Computer & Communications Industry Association, Consumers Union, the Electronic Frontier Foundation, Engine Advocacy, National Consumer Law Center on behalf of its low-income clients, the World Wide Web Foundation, and the Writers Guild of America West (“Movants”) respectfully request an eight-week extension of the deadline for reply comments in the above-captioned proceeding. Given the enormous volume, scope, complexity, and importance of the issues raised in the first round of comments, good cause plainly exists for this request. An extension is necessary to give Movants and other interested persons a minimum of adequate time to work through the initial comment record and prepare thorough and well-informed replies. Nor is such an extension likely to cause any ultimate or undue delay in the Commission’s review and deliberations. If nothing else, the Commission should at least grant the minimum amount of time allowed for reply comments in past Open Internet proceedings. In light of the unprecedented

scale of the record to date, there is simply no justification for maintaining a shorter reply period in this proceeding.

I. The Volume, Diversity, and Complexity of the Comment Record Warrants More Time for Replies

The record in this proceeding is immense, with over 15 million filings to date. According to ECFS, 9,122,582 comments were received through July 17, over 6,000 of which were not “brief comments” as defined by the Commission. This is by far the most comments ever filed in an FCC proceeding, and perhaps the most comments filed in any administrative proceeding in U.S. history.¹

This volume alone warrants an extension of time for the replies. The current schedule does not afford interested persons enough time to read and properly consider the record, let alone to prepare their own replies. Neither Movants nor the Commission can ignore the vast majority of comments merely because they were filed in “express” form, or because they came from individuals or organizations unfamiliar to Washington insiders. Many of these comments go well beyond pre-written templates, expressing individualized views that merit genuine consideration.² Under the Administrative Procedure Act, the Commission must review the record as a whole, to

¹ Cf. Linda Tsang and Alexandra M. Wyatt, CRS Report R44480, *Clean Power Plan: Legal Background and Pending Litigation in West Virginia v. EPA* 6-7 (March 8, 2017), available at <https://fas.org/sgp/crs/misc/R44480.pdf> (stating that, in a 2014 proceeding regarding its Clean Power Plan, the Environmental Protection Agency received “more than 4.3 million public comments, the most ever for an EPA rule”).

² See, e.g., Comments of Jonathan Yarbor and James Ross, NodeCraft Hosting LLC (May 8, 2017) (describing importance of open Internet protections to authors’ Oklahoma-based “small startup which provides direct to consumer server hosting services for gamers”); Comments of Stephanie McGraw, New Heights Naturals LLC (July 13, 2017) (describing importance of net neutrality to author’s recently-launched “natural and organic kids’ skin care company,” based in Texas); Comments of North Dakota Startups & Entrepreneurs for Net Neutrality (July 11, 2017).

identify which comments and arguments merit a further response.³ To produce complete and well-informed replies, commenters must do the same.

The comment record is also exceptional in the diversity and complexity of topics raised therein. Beyond the sheer volume of comments, this constellation of legal, economic, technical, and other issues also warrants more time for replies. To highlight just a few of the many possible examples, the record covers each of the following in significant detail:

- The technical features and operation of the Internet and broadband networks, including in-depth discussion of many specific technologies and protocols—such as the IP Protocol suite, DNS, and caching—and how they functionally compare to the public-switched telephone network.⁴
- The empirical record of how the Commission’s classification of broadband service has or has not affected investment in and expansion of broadband networks.⁵
- Whether the elimination of current net neutrality rules “risk[s] disproportionate harm to communities of color.”⁶
- Competitive conditions and incentives in retail broadband markets.⁷
- The need for each of the specific bright-line rules enacted in 2015, and alternative sources of regulatory oversight other than the Commission.⁸

³ See *Perez v. Mortgage Bankers Ass’n*, 135 S.Ct. 1199, 1203 (2015) (“An agency must consider and respond to significant comments received during the period for public comment.”).

⁴ E.g., Joint Comments of Internet Engineers, Pioneers, and Technologists on the Technical Flaws in the FCC’s Notice of Proposed Rulemaking and the Need for Light-Touch, Bright Line Rules from the Open Internet Order (July 17, 2017).

⁵ E.g., Comments of Free Press at 86-206 (July 17, 2017).

⁶ Comments of Voices for Internet Freedom Coalition, *et al.* (July 19, 2017).

⁷ E.g., Comments of INCOMPAS at 13-40 (July 17, 2017).

- How to understand a half-century of Commission and judicial precedent distinguishing between different types of services, and how to apply this precedent in the present day.⁹
- Legal and factual issues specific to the classification of mobile broadband.¹⁰

Neither commenters nor the Commission can avoid the full scope of this docket. As Commissioner O’Rielly stated when the NPRM was released in May, “any issue that is related to this proceeding and could be part of the decision should be on the table.”¹¹ Each of the individual Movants has strong interests and views on multiple issues within the proceeding, further raising the burden of digesting comments and preparing replies. Of course, most Commission rulemakings involve complex matters and detailed filings. But this proceeding is truly exceptional, not only in the scale and scope of the record, but also in the fundamental questions it raises about the Commission’s regulatory authority over broadband, with far-reaching implications for a host of different policy issues.¹²

Nor do the records from previous open Internet proceedings make a full reply period unnecessary here. The NPRM reopens many findings and legal conclusions in the 2015 *Open Internet Order*, proposing their explicit or implicit reversal. Furthermore, even on issues that

⁸ *E.g.*, Comments of Communications Workers of America and NAACP at 12-18 (July 17, 2017).

⁹ *E.g.*, Comments of AT&T at 59-89 (July 17, 2017).

¹⁰ *E.g.*, Comments of the Open Technology Institute at New America at 65-113 (July 17, 2017); Comments of the Computer & Communications Industry Association at 3, 27-37 (July 17, 2017).

¹¹ In the Matter of Restoring Internet Freedom, WC Docket No. 17-108, Statement of Commissioner Michael O’Rielly, 32 F.C.C. Rcd. 4434, 4508 (May 23, 2017).

¹² *See, e.g.*, Comments of Public Knowledge and Common Cause [Updated Version] at 57-62, 87-100 (July 19, 2017).

have long occupied the Commission’s attention—such as the economics of broadband deployment—parties have submitted extensive new comments that require close consideration.¹³

II. Commission Precedent, Including the Comment Schedule in Previous Open Internet Proceedings, Favors an Extension of the Reply Period

The one-month reply period in this proceeding contrasts with the more generous reply schedule in previous Open Internet proceedings:

- In the 2014-2015 proceeding, the reply date was initially set at 57 calendar days after the comment deadline.¹⁴ This was later extended by 3 business days, for a total reply period of 62 calendar days.¹⁵
- In the 2009-2010 proceeding, the reply date was initially set at 50 days after the comment deadline.¹⁶ The Commission then granted an extension request, adding roughly a month and bringing the total reply period to 84 calendar days.¹⁷

Given the larger record in the instant proceeding, good cause exists for the eight-week extension requested in this motion, consistent with the extended schedule that the Commission granted in 2010. However, at a bare minimum, the Commission should grant commenters at least the two-month reply schedule that was applied in 2014.

¹³ *E.g., Id.*, Declaration of Mark A. Israel, Allan L. Shampine & Thomas A. Stemwedel (July 17, 2017) (detailing opinions of three economists retained by AT&T).

¹⁴ *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Notice of Proposed Rulemaking, 29 FCC Rcd 5561 (May 15, 2014).

¹⁵ *Id.*, Public Notice, 29 FCC Rcd 9714, DA 14-1199 (August 15, 2014).

¹⁶ *In the Matter of Preserving the Open Internet*, GN Docket No. 09-191, Notice of Proposed Rulemaking, 24 FCC Rcd 13064 (October 22, 2009).

¹⁷ *Id.*, Order, 25 FCC Rcd 1834, 1835, DA 10-306 (February 23, 2010) (granting the extension to “help parties develop complete and useful replies”). Note that this calculation of the 2010 reply period does not include a further extension granted in response to the D.C. Circuit decision in *Comcast Corp. v. FCC. Id.*, Order, 25 FCC Rcd 3582, DA 10-607 (April 7, 2010).

Other Commission precedent also supports this request. Although it is “the policy of the Commission that extensions shall not be routinely granted,”¹⁸ the Commission frequently finds good cause to extend comment deadlines in the context of proceedings, like this one, that are anything but routine. In January, for example, the Wireless Telecommunications Bureau granted a 30-day extension in one proceeding, noting the “complexity and breadth of the issues involved with this matter,”¹⁹ and finding that “the filing deadline will allow parties to provide the Commission with more thorough comments that will facilitate the compilation of a complete record in this proceeding, without causing undue delay to the Commission’s consideration of these issues.”²⁰ In another proceeding in March, the International Bureau granted a 15-day extension for reply comments, “to permit parties to properly analyze the complex technical propositions raised by initial comments,” which will “ensure that [the] Commission has a complete record on which to develop its decisions.”²¹

III. A Limited Extension of the Reply Period Will Not Cause Undue Delay or Prejudice

An eight-week extension of the time for replies is unlikely to cause a material delay in the overall proceeding. While Movants do not presume to know the Commission’s scheduling

¹⁸ 47 C.F.R. § 1.46(a).

¹⁹ *In the Matter of Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Mobilite, LLC Petition for Declaratory Ruling*, WT Docket No. 16-421, Order, 32 FCC Rcd 335, para. 2, DA 17-51 (January 12, 2017) (quoting argument of petitioners).

²⁰ *Id.*, 32 FCC Rcd at 336, para. 3.

²¹ *In the Matter of Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, IB Docket No. 16-408, Fourteen-Day Extension of Time To File Reply Comments On Notice Of Proposed Rulemaking Regarding Non-Geostationary Fixed Satellite Service Systems And Related Matters, 32 FCC Rcd 1939, 1939-1940 (March 17, 2017).

expectations going forward, it will likely need quite some time to review and properly consider the initial comment record, given its size, scope, and complexity. The Commission cannot take short-cuts by limiting its attention to the filings of familiar and influential parties, while effectively ignoring everyone else. Instead, the Commission must examine the full record, at least to the extent necessary to identify and address “the relevant matter presented.”²² It seems implausible for the Commission to complete its own review and analysis of initial comments by the current reply deadline, which is just a few weeks away. In that case, extending the deadline for replies will not delay the Commission’s overall progress.

Nor is a handful of extra weeks likely to prejudice any interested parties or make a material difference in the impact of the Commission’s final decision. The value of ensuring a more complete and informed record outweighs any remote risk of delay. This is essential given how much is at stake in this proceeding, for both the Commission’s authority and the Internet ecosystem as a whole. As Chairman (then Commissioner) Pai argued during the 2014 Open Internet proceeding, “getting the future of the Internet right is more important than getting this done right now,” and it is imperative that the Commission “not rush headlong into enacting bad rules.”²³

²² 5 U.S.C. § 553(c) (requiring agency rulemaking to include “consideration of the relevant matter presented” in comments by interested persons).

²³ *In the Matter of Protecting the Open Internet*, GN Docket No. 14-28, Dissenting Statement of Commissioner Ajit Pai, 29 FCC Rcd 5561, 5657 (May 15, 2014).

Movants also note that the Commission anticipates substantial deliberations and ex parte filings, even after the reply comment deadline.²⁴ This casts further doubt on any notion that a reply extension will significantly delay the Commission’s ultimate decision. Nor should the Commission use the possibility of later ex parte filings to justify cutting short the reply period. The Commission’s rules mandate reply comments as an important part of the established commenting cycle, and require that “a reasonable amount of time” be allowed for replies.²⁵ As a practical matter, both Movants and many other interested parties will devote significant time and energy to preparing timely replies. An extension is likely to improve the deliberative value and thoroughness of these filings. Not surprisingly, the Commission has repeatedly recognized the importance of reply comments in other proceedings, and granted extensions accordingly.²⁶

For the foregoing reasons, the Commission should grant the extension requested herein.

²⁴ See *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-508, Order, DA 17-686 at 2, para. 5 (July 17, 2017) (stating that “NHMC is free to address the relevance of any additional documents to this proceeding in its reply comments or in ex parte filings, as the docket in this proceeding does not close when the comment cycle has ended”).

²⁵ 47 C.F.R. § 1.415(c).

²⁶ See *supra* notes 15-17 & 21.

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