

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

Comment of MFRConsulting

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Title II: The Only Thing We Have to Fear is Fear Mongering

Recently three scary headlines about the consequences of reclassifying broadband in the U.S. under a Title II regime have been reproduced in many variations. They are being proclaimed and widely publicized in multiple forums, as these examples demonstrate:

“New PPI Study -- Classifying Broadband Under Title II Would Cost Consumers \$15 Billion Annually”¹

“New Study Projects Investment Declines under Title II”²

“US net neutrality campaign enables foreign governments' Internet control”³

The leading U.S. broadband operators and their industry associations, e.g. the National Cable and Telecommunications Association (“NCTA Outlines Potential Title II Tax Hikes”)⁴ are propagating these assertions at the FCC and on Capitol Hill and elsewhere in order to scare and/or mislead influential constituencies and public opinion so that they will escape any significant regulation, notably Title II. Not only do they protest too much, but interestingly their campaign against reasonable and proportionate regulations is beginning to show cracks in its facade, e.g. “Verizon:

¹ <http://www.broadbandforamerica.com/blog/new-ppi-study-classifying-broadband-under-title-ii->

² <http://www.ustelecom.org/blog/new-study-projects-investment-declines-under-title-ii> - up to an amazing 31.7 % decline

³ <http://thehill.com/blogs/pundits-blog/technology/227827-us-net-neutrality-campaign-enables-foreign-governments-internet> - this post by Randolph May, Chairman of the Free State Foundation refers specifically to Title II reclassification in the U.S. as providing justification to countries such as China, Cuba, Iran and Russia for their actions to control the Internet

⁴ <http://www.multichannel.com/news/cable-operators/ncta-outlines-potential-title-ii-tax-hikes/386010>

Actually, strong net neutrality rules won't affect our network investment."⁵ The broadband incumbents also state in order to denigrate the value of Title II that reclassification would not add much new regulatory power to the FCC⁶. The incongruity of this statement in light of their fierce opposition to Title II is not acknowledged - why fight fiercely against something that is relatively insignificant?

All the findings embodied in the headlines quoted above are hypothetical, unsubstantiated and contradicted by evidence. They are based on unrealistic scenarios and/or fundamentally flawed analysis, and/or on a misleading conflation (a disingenuous synecdoche) of the Internet (the whole) with broadband infrastructure (a part).

The first two scare mongering findings have been thoroughly rebutted in filings at the FCC in the Open Internet Proceeding as well as elsewhere.⁷ The first finding, that increased tax-and fee-based charges under Title II would raise the amounts consumers have to pay for broadband, is derived from unsubstantiated assumptions about how state and local authorities WILL (in contrast to *might conceivably*) either be obliged or choose or try to apply taxes and fees to additional network revenues, as well as on an unjustified attribution of increased costs to Title II reclassification that are independent of this decision. This analysis of consumers' costs for broadband also fails to acknowledge the extra costs imposed on consumers by broadband operators' introduction of so-called "administrative charges" at their sole discretion. These charges that can amount to several dollars monthly are allegedly justified as necessary in order to cover operators' costs that are not included in the costs among other factors on which (consumers might reasonably assume) the retail prices they pay are established.

The second finding about substantial reductions in broadband investment if broadband is reclassified under Title II is based on an economic analysis that confounds correlation with causation. This economic model ignores the real Title II-independent drivers of demand for services delivered over different networks that operate globally in many diverse regulatory regimes. These drivers explain the relative intensity of investments in these networks over the past several years without any justification for linking them causally to whether or not they have been subject to Title II.

But perhaps the most absurd and unsubstantiated of all the attacks on Title II reclassification is represented by the third finding or assertion about the alleged

⁵ <http://www.washingtonpost.com/blogs/the-switch/wp/2014/12/10/verizon-actually-strong-net-neutrality-rules-wont-affect-our-network-investment/>

⁶ <http://freestatefoundation.blogspot.com/2014/10/title-ii-would-not-ban-paid.html>

⁷ See for example: <http://apps.fcc.gov/ecfs/document/view?id=60001010126>;
<http://apps.fcc.gov/ecfs/document/view?id=60001010127>;
<http://apps.fcc.gov/ecfs/document/view?id=60001008598>;
<http://apps.fcc.gov/ecfs/document/view?id=60001009570>

impact of Title II in strengthening the case or providing justification for the actions of Governments known for their intolerance of dissent, and for the suppression of expressions of and access to a wide variety of opinions and ideas. The language employed in this assertion implies that Title II reclassification involves regulation of Internet services, which it does not. It involves regulation of broadband access to Internet services (and other broadband-delivered services as well).

The overall governance of the Internet including questions of the scope of control and management of the services it delivers and the respective rights and obligations of consumers, governments, network operators and services providers is a critical and complex issue. But within that overall framework there is a separable set of issues regarding the rules about the conditions of access to and use of the broadband facilities that are part, but only part of the physical infrastructure of the complete Internet value and supply chain. Conflation of the two is a sign of gross misunderstanding of the nature of networks and their scope of their role in transporting traffic generated by the consumption and delivery of content, applications, and a host of services.

Control by one stakeholder of access to services, content and applications at its discretion, whether a Government or a broadband operator or any other entity with substantial market power, is undesirable and contrary to the philosophy of an Internet that is open to all customers and also to the expression and communication of diverse and heterogeneous opinions, ideas and cultures. This undesirable control can be exercised by blocking and discriminatory actions at the level of or within the broadband access infrastructure and/or at other points within the overall Internet value chain, e.g. at servers and international gateways and even by the complete forced shut down of some services. Title II reclassification of broadband is designed to prevent blocking and unreasonably discriminatory actions that concern the broadband access infrastructure.

Even more damning to the third “finding”, the purpose of Title II is diametrically opposed to the purposes of the actions pursued by the Governments cited. These Governments are trying to bar access to and dissemination of information and ideas they dislike or abhor. As noted to the contrary Title II is designed not to enable but to prevent the blocking of, and discrimination in access to networks over which Internet (and other sometimes overlapping) services are delivered. Moreover in limiting the rights of network operators to exploit traffic management techniques for purely commercial purposes, Title II-based rules can bar the kinds of traffic monitoring techniques that authoritarian and dictatorial Governments employ in order to censor Internet usage and are resisted by and encourage consumers’ use of encryption and VPNs (virtual private networks).

The principles behind Title II are anathema to the regimes that allegedly will be encouraged and find justification in its application. Title II reflects a regulatory environment that exemplifies a powerful repudiation of the restrictive and oppressive philosophy adopted by these Governments. It is perverse to suggest

that Title II reclassification would be a step taken in the U.S. that these Governments could then exploit as a justification for their actions and behavior.

Furthermore the proponents of the theory that Title II reclassification will encourage undesirable Government control and censorship of Internet services ignore the situation in other countries that share the same values and precepts of free speech and the unfettered expression of and access to a wide variety of diverse and even divergent ideas as the U.S. None of these countries make the distinction between broadband and telecommunications services that in the U.S. will persist unless and until broadband is reclassified under Title II. How or why therefore should this reclassification be considered as hostile to the advocacy and protection of ideas that the U.S. shares with other countries? These countries accept, contrary to today's regulatory environment in the U.S., that broadband is a telecommunication, service, or an electronic communications service in the European Union. Title II reclassification is necessary in order for the U.S. to align itself with its traditional allies.

The letter by 33 tech companies⁸ to Congressional leaders and the FCC reproducing the assertion that Title II reclassification would lead to significant reductions in future broadband investments in the U.S. includes a denial that it represents "*idle speculation or fear mongering*," presumably in case that might not be obvious to the readers. Nevertheless fear mongering⁹ is the correct characterization of the contents and tone of this letter and of the repeated assertions of the three findings by the largest U.S. broadband operators and their supporters. These "findings" are based on disingenuous and flawed analyses, derived from unsubstantiated premises, and incorporate multiple errors of omission as well as commission.

⁸ http://www.tiaonline.org/sites/default/files/pages/Internet_ecosystem_letter_FINAL_12.10.14.pdf

⁹ Fear mongering: The action of deliberately arousing fear or alarm about a particular issue.