



3901 North Louise Avenue
Sioux Falls, South Dakota 57107

February 17, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

Re: GN Docket No. 14-28; GN Docket No. 10-127

Dear Ms. Dortch:

I am the Senior Vice President of Public Policy for Midcontinent Communications (“**Midcontinent**”), a mid-sized communications company that for over forty years has provided a variety of video, voice, and high-speed broadband Internet services in urban and rural areas throughout North Dakota and South Dakota, and parts of Minnesota and Wisconsin. On January 21, 2015, I testified on behalf of Midcontinent before the United States Senate Committee on Commerce, Science and Transportation regarding how Congress can update the Communications Act to ensure that Americans continue to benefit from vigorous broadband investment and the existing open Internet.

Midcontinent supports amending the Communications Act (the “**Act**”) because Congress has never given the Commission authority to regulate the Internet as it is proposing to do under either Title II of the Act or Section 706 of the Telecommunications Act of 1996. Midcontinent requests that the Commission make my testimony, which is attached to this letter, part of the record in this proceeding.

Midcontinent has always supported and continues to support a free and open Internet. Midcontinent has been providing broadband Internet services for twenty years, and during that time, no one has ever claimed that Midcontinent has blocked or otherwise impeded access to a free and open Internet. Indeed, no serious debate exists that all Internet users should be able to access any lawful content, service, or application they choose. Broadband providers like Midcontinent do not engage in blocking practices because we understand that our customers purchase our services for the purpose of accessing their favorite content, services, and applications, and exploring the many new offerings emerging on the Internet every day. Broadband providers have nothing to gain and everything to lose by restricting their customers’ access to lawful Internet offerings.

Midcontinent strongly opposes the Commission’s proposals to regulate broadband Internet access services under either Title II or Section 706. Title II was designed for the 1930s telephone monopoly era, and carries with it thousands of common carrier

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regulations and interpretative decisions that will very likely stifle our industry's ability to generate the investment necessary to continue deploying the next generation of high-speed networks. Taking this radical and destructive step to address a non-existent problem simply makes no sense, especially for companies like Midcontinent, which has never engaged, and has no incentive to engage, in any conduct regarding its broadband Internet service that Title II regulation is designed to address. The Commission's proposed regulations as outlined in Chairman Wheeler's "Fact Sheet" also are not authorized by Section 706 because they will erect rather than remove "barriers to infrastructure investment" and because they will do nothing to promote "competition in the telecommunications market."

I urge the Commission to work with Congress toward the goal of amending the Communications Act instead of regulating the Internet under Title II and Section 706.

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, a copy of this letter is being filed via ECFS. If you have any questions, please do not hesitate to contact me.

Respectfully submitted,



W. Tom Simmons
Senior Vice President of Public Policy
Midcontinent Communications

Attachment

TESTIMONY OF W. TOM SIMMONS
SENIOR VICE PRESIDENT
MIDCONTINENT COMMUNICATIONS

on

PROTECTING THE INTERNET AND CONSUMERS
THROUGH CONGRESSIONAL ACTION

before the

Committee on Commerce, Science and Transportation

UNITED STATES SENATE

WASHINGTON, D.C.

January 21, 2015

Chairman Thune, Ranking Member Nelson, and Members of the Committee, thank you for inviting me here today to share my thoughts on the ways Congress can update our Internet laws to ensure vigorous broadband investment and an open Internet for the future. I also appreciate the opportunity to address the proposed legislation for achieving these goals.

My name is Tom Simmons and I am the Senior Vice President of Public Policy for Midcontinent Communications. Midcontinent is the leading provider of cable television services, as well as local and long distance telephone service, high-speed Internet access services, and cable advertising services in North Dakota, South Dakota, and Minnesota. Midcontinent's service area includes over 335 communities serving approximately 300,000 customers. The communities we represent vary in size from densities of 5 to 116 homes per mile of cable plant, and their population ranges from less than 125 in Dodge, North Dakota to our largest community, Sioux Falls, South Dakota, which has a population of more than 160,000. Innovation and foresight have shaped Midcontinent's course for more than 80 years. At Midcontinent, we have made it our mission to ensure that the rural communities we serve are at the leading edge of technology. Our goal throughout our footprint is always to continue to find ways not only to meet, but to exceed the communications needs of our customers.

A Positive Regulatory Environment Has Spurred Broadband Investment

The Federal Communications Commission's ("FCC") decision a decade ago to lightly regulate Internet service encouraged Midcontinent to invest nearly \$400 million in our networks over the past 10 years and to make our network increasingly faster and more robust. This past summer, we doubled our customers' download speeds, raising the speed of the standard wideband 1.0 service tier from 30 Mbps to 60 Mbps and the fastest wideband 3.0 tier from 100 Mbps to 200 Mbps.

In November 2014, Midcontinent unveiled our exciting new Gigabit Initiative. Our new investment will make gigabit Internet speeds available to approximately 600,000 homes and 55,000 businesses along a high-capacity fiber network that covers more than 7,600 miles in North Dakota, South Dakota and Minnesota. Our network will offer download speeds that are five times faster than our current best and 35 times faster than the average high-speed Internet access speed in America. And we are not limiting these speeds to a few neighborhoods in the largest cities. Once the initiative is complete in 2017, gigabit Internet access will be available to the majority of our customers, including those in some of the most rural areas of our country.

Midcontinent's decision to make these investments has been driven by the knowledge that we will not be limited in our ability to use that investment to create and develop the most compelling broadband service offerings possible. Unconstrained by the type of regulations that preclude and hinder our innovation in the television space, we are incented to continue to invest and expand. And we are not alone in this approach. Since 1996, ISPs have invested \$1.3 trillion in their broadband networks. Last year, ISPs invested more in America than any other nonfinancial sector. Today, more than 85 percent of U.S. homes have access to networks that can achieve 100 Mbps speeds or faster. The overall Internet economy in the U.S. supports 869,000 jobs.

Midcontinent Supports Open Internet Principles

While the FCC's light regulatory touch has created an environment that enables investment and innovation by increasing the odds of a positive return on investment, our business decisions are also driven by consumer demand. Our decision to upgrade our network's capacity and download speeds was made in response to our customers' ever increasing demand for – and expectation of – fast and unfettered access to any lawful content, applications, and

services. In 2014 alone, Midcontinent’s customers’ bandwidth usage increased by 77 percent, and we see bandwidth consumption doubling every 15 months. Midcontinent has a tremendous business incentive to ensure that we continue to have the enhanced bandwidth to deliver a superior user experience.

An important part of a positive user experience is ensuring a free and open Internet. From a business perspective, it makes no sense for us to engage in any behavior that would alienate our current and future customers. We do not engage in anti-consumer practices such as throttling or blocking disfavored content or the use of devices because our customers would not tolerate it. Cable ISPs continued to abide by open Internet principles even after the FCC’s net neutrality rules were overturned because many of them make good business sense. The fact is, while it is popular to view the current net neutrality debate as an “us versus them”, “David versus Goliath” battle with broadband ISPs as the villain of the piece, Midcontinent, and the cable broadband industry as a whole, agree with the widespread consensus that certain open Internet principles promote the virtuous cycle of innovation and investment that characterizes the Internet economy.

Midcontinent Supports The Draft Legislation

The draft legislation would establish basic principles of Internet fairness and set this country on a path to regulatory certainty and stability that would incite the broadband deployment that invigorates our American economy. The draft’s thoughtful approach ensures that broadband Internet access service will meet consumers’ expectations for unconstrained use of the service they pay for, that the FCC has the ability to protect consumers from any adverse consequences of a bad actor, that Internet businesses can invest and grow without concern that an ISP can interfere with their access to potential customers, and that ISPs can create, grow and

develop their service freely, subject to important restrictions on anticompetitive behavior. And it will accomplish all these goals without dragging the provision of Internet service back to the monopoly telephone era, resulting in years of litigation, uncertainty and the stifling of innovation and investment enthusiasm.

As I mentioned, many of the draft's obligations reflect the business practices of most ISPs today. There is little debate, for example, that every Internet user should be able to access any lawful content, service, or application that they choose. ISPs like Midcontinent do not engage in blocking practices because we understand that our customers purchase our services because they want access to their favorite content, services, and applications, and they want to explore the many new offerings emerging every day. ISPs have nothing to gain and everything to lose by restricting customers' access to lawful Internet offerings.

Similarly, broadband providers like Midcontinent constantly upgrade their networks to enhance capacity and offer faster speeds to anticipate and get in front of increased consumer demand. Purposely throttling customers would directly interfere with our business strategy of offering the fastest possible broadband speeds. And despite the apocalyptic warnings of a two-tier Internet, no ISP has adopted a strategy of paid prioritization, even in the absence of rules, as there is no real business case today that favors it.

At the same time, we commend the draft legislation for its careful preservation of consumers' ability to choose service plans and features they want. No rule should preclude customers from being able to select the service plan or features they want to receive.

The draft legislation also wisely protects the need for network management. Even the most vocal net neutrality advocates recognize that ISPs need to utilize reasonable network management practices to ensure customers are getting the maximum benefits of their broadband

service. ISP networks are flooded every day with spam attacks, viruses, and times of network congestion. ISPs devote significant time and energy to protecting consumers and the networks against harmful cyber intrusions, and to ensuring that traffic flows as smoothly as possible.

The draft legislation’s transparency principles strike an appropriate balance between consumers’ need for, and right to, clear and easy-to-understand information about their broadband service so that they can make informed choices, and ISPs’ concern that the rules not require so much network information to be posted publicly that potential wrongdoers have a roadmap to the best means of thwarting safeguards put in place to protect the network.

The cable industry supports each of these open Internet principles. Why wouldn’t we? The same open Internet economy that has brought tremendous opportunities to consumers and given birth to industry giants like Google, Amazon, and Netflix has also created significant incentives for ISPs to expand deployment of high-speed broadband infrastructure to all corners of the country.

While it often seems that those of us engaged in the net neutrality debate have diametrically opposing views, the truth is that we are all working towards the same goal – a sensible public policy that preserves and facilitates the “virtuous circle” of innovation, demand for Internet services, and deployment of broadband infrastructure. The only point of debate is how to get there. We commend the Committee on its carefully balanced approach.

Title II Would Be the Wrong Approach

Despite the fact that ISPs have no real incentives to violate the principles of the open Internet, making rules arguably unnecessary, we at Midcontinent understand the concerns that have led us to where we are today, and so we are not necessarily opposed to well-crafted regulations that would effectively support the twin goals of preserving the open Internet and

encouraging continued innovation and investment. But we are adamantly opposed to the imposition of an outdated common carrier regulatory regime that is not equipped to govern the modern communications market.

Title II of the Communications Act was designed for the 1930s telephone monopoly era, and carries with it thousands of common carrier regulations that could stifle our industry's ability to continue deploying the next generation of high-speed networks. Taking this radical and destructive step to fix what isn't even broken simply makes no sense.

As the representative of a relatively small broadband ISP that serves a predominantly rural area, I strongly believe that imposing Title II regulations would work against the government's policy goals of increasing broadband deployment and adoption. The regulatory burdens and costs associated with a Title II approach would have a significant and disproportionate impact on Midcontinent's – and other small- and medium-sized providers' – ability to invest further in our broadband networks.

The idea that Title II reclassification would harm providers' ability to obtain the capital needed to invest is not merely speculation. Roughly 90 percent of the \$73 billion invested in telecommunications infrastructure in 2013 was spent on those industry segments that are exempt from Title II regulation. There can be no better example of the market's disdain for Title II services than Google's decision to forgo offering voice services over their newly built fiber infrastructure due to concerns about common carrier regulation.

Title II proponents often argue that common carrier regulations offer clear and simple answers to difficult policy questions. This is demonstrably false. Attempting to impose an outdated regulatory framework on the modern communications system has led to rampant uncertainty and confusion. The FCC has struggled in a variety of contexts (including special

access regulation, universal service reform, network unbundling) to develop clear and effective policies that adapt outdated regulations to today's complex marketplace. Many point to the FCC's forbearance authority, which is intended to allow the FCC to alleviate some of Title II's regulatory burdens, as the simple solution to any regulatory dilemma. In reality, many of those same Title II proponents who once claimed that forbearance would be easy are now pressing the FCC not to forbear from vast swaths of Title II now that they think the reclassification decision is going their way.

Given these realities, it seems clear that applying the Title II regulatory framework to broadband Internet access service will serve only to interfere with the dynamic Internet marketplace that has had a profound impact to the way we live and work. Yet the FCC is poised to take just this step. Truly there is a better solution to be found, and the proposed legislation is an important part of finding the right path forward. I urge the Committee to move forward with a bipartisan draft so that Midcontinent and others can continue to ensure that all Americans – including those in rural America – receive the full potential of America's broadband networks.

Thank you again for inviting me here today, and we look forward to working with all of you on these important issues.