

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Protecting the Privacy of Customers of
Broadband and Other
Telecommunications Services

WC Docket No. 16-106

OPPOSITION TO MOTION FOR EXTENSION OF TIME

Pursuant to Section 1.46(b) of the Commission's Rules,¹ the undersigned public interest groups (the "Groups") write to oppose a Motion for Extension of Time filed in the above-captioned proceeding by the American Cable Association, Consumer Technology Association, CTIA, Internet Commerce Coalition, National Cable & Telecommunications Association, U.S. Telecom Association, and Wireless Internet Service Providers Association (collectively "Associations") on April 20, 2016.²

The Associations request a 45-day extension for initial comments and a reply comment extension to 75 days, decrying the "mere" 57 days for comment and 30-day reply comment period the FCC established in the Privacy NPRM.³ In the Groups' opposition filed on April 14, they described the extraordinary nature of a similar request for extension, noting that the comment period for the Open Internet NPRM was also set at 60 days. The Groups also made clear that all stakeholders have been on notice for more than a year that the FCC intended to initiate a Section 222 proceeding and that the extensive back-and-forth between the public and the

¹ 47 C.F.R. § 1.46(b).

² The Associations' request follows closely the Association of National Advertisers ("ANA") request filed on April 11, 2016. Request for Extension of Time, Assoc. of Nat'l Advertisers, Dkt. No. 16-106 (Apr. 11, 2016). Public interest organizations also opposed that request. Opposition to Request for Extension of Time, Dkt. No. 16-106 (Apr. 14, 2016).

³ Notice of Proposed Rulemaking, *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Dkt. No. 16-106 (Apr. 1, 2016).

Commission since January 2016 made apparent many of the issues likely to be addressed in the NPRM.

Thus, contrary to the Associations' assertion that the current deadlines for comments and reply comments in this docket leave insufficient time to consider the FCC's questions, there have in fact been many months of public debate over the questions raised in the NPRM. In addition to several public letters staking out particular policy positions on relevant questions, several associations and organizations released, in the months leading to the NPRM, proposed frameworks going into much more detail about the issues in this proceeding.⁴ To the extent it was "impossibl[e]" to know the exact "details that would be contained in the agency's actual proposal,"⁵ these frameworks provided extensive context for the public to formulate answers to the questions likely to be asked by the FCC.

Moreover, past statements made by the Associations suggest that proceeding toward swift resolution of this rulemaking would in fact be *beneficial* to the Associations by establishing greater certainty as to how Section 222 will apply moving forward. For example, less than one year ago, broadband providers and their associations argued to the DC Circuit Court of Appeals that it should have stayed the Open Internet Order because providers simply could not comply with Section 222 without more certainty and clarity from the FCC.⁶ The Associations and others argued that the lack of clarity would cause tremendous hardship in the

⁴ See Notice of Proposed Rulemaking, *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, ¶¶ 278-292 & n.438, Dkt. No. 16-106 (Apr. 1, 2016) (including a discussion of the "Industry Framework" proposed by many of the Associations).

⁵ Request at 5.

⁶ Exhibits to Motions for Stay or Expedition of United States Telecom Association, National Cable & Telecommunications Association, CTIA - The Wireless Association, AT&T Inc., American Cable Association, CenturyLink, and Wireless Internet Service Providers Association, *US Telecom v. FCC*, DC Cir. No. 15-1063 (May 13, 2015), https://www.publicknowledge.org/assets/uploads/blog/15.05.13_Motion_for_Stay_Exhibits.pdf (see specifically declarations of Stephen F. Morris, VP and Associate General Counsel of NCTA at 9-12; Brian Collins, Thomas F. Hughes, and Matthew T. Haymons of AT&T at 2-11; Jennifer W. Hightower, VP of Law and Policy and General Counsel of Cox Communications at 4-7; and others cited herein).

industry. NCTA, one of the Associations on the motion for extension, stated its members would be harmed by “compliance with new and ambiguous obligations under Section 222.”⁷ It further added that its members “are subject to similar burdens and regulatory uncertainty with regard to Section 222(a).”⁸

Other providers made similar arguments at the time. AT&T claimed that “the FCC has provided no guidance” regarding Section 222 in the broadband context, and “the FCC has not yet even determined what constitutes CPNI” for broadband providers.⁹ It further stated that the “absence of clarity as to how” Section 222 “will apply poses[] obvious and severe problems for [broadband] providers.”¹⁰ Cox stated “[t]here is considerable uncertainty as to what processes will be required under” Section 222 and that “[w]ithout further guidance from the FCC, Cox must decide whether to apply” previous interpretations of Section 222 to its broadband service.¹¹ Wisper ISP stated that until the FCC provided “clear guidance” on prohibited uses of CPNI, Wisper would be forced to either cease its existing uses of broadband-related CPNI, or incur “considerable expense” by retaining counsel to comply with ambiguous rules.¹²

⁷ Declaration of Stephen F. Morris, https://www.publicknowledge.org/assets/uploads/blog/15.05.13_Motion_for_Stay_Exhibits.pdf at 9.

⁸ *Id.* at 10.

⁹ Declaration of Brian Collins, Thomas F. Hughes, and Matthew T. Haymons of AT&T, https://www.publicknowledge.org/assets/uploads/blog/15.05.13_Motion_for_Stay_Exhibits.pdf at 6-7.

¹⁰ *Id.*

¹¹ Declaration of Jennifer W. Hightower, VP of Law and Policy and General Counsel of Cox Communications, https://www.publicknowledge.org/assets/uploads/blog/15.05.13_Motion_for_Stay_Exhibits.pdf at 4, 6.

¹² Declaration of Nathan Stooke, CEO of Wisper ISP, Inc., https://www.publicknowledge.org/assets/uploads/blog/15.05.13_Motion_for_Stay_Exhibits.pdf at 3-4. SCS Broadband and KWISP made similar statements, arguing that regulatory uncertainty causes significant compliance costs for smaller broadband providers without legal departments. Those companies will be forced to retain outside counsel until the FCC provides detailed guidance on ambiguous areas of the order, including the issue of how § 222 provisions apply to broadband

Now, these stakeholders seek further delay of the proceeding that would provide them the answers they so desired a year ago. The FCC should not allow it. Instead, it should work toward granting the Associations their initial wish: clarity and certainty from the FCC regarding how Section 222 will apply to broadband providers.

The Associations' also argue that the comment period overlaps with industry events, and cites certain instances where the FCC has graciously provided extra time for comments for that reason. However, the FCC is not *required* to extend comment periods when they overlap with industry events, and in this case it should not.

For these reasons and those articulated in the Groups' previous opposition, an extension is unwarranted. The Commission should reject the Associations' request.

service. Declaration of Ken Hohhof, President of Express Dial Internet, Inc. dba KWISP Internet, https://www.publicknowledge.org/assets/uploads/blog/15.05.13_Motion_for_Stay_Exhibits.pdf at 1-2; Declaration of Clay Stewart, CEO of SCS Broadband, https://www.publicknowledge.org/assets/uploads/blog/15.05.13_Motion_for_Stay_Exhibits.pdf at 1-2.

By:

/s/ _____
Gaurav Laroia
Free Press
1025 Connecticut Ave. NW
Suite 1110
Washington, D.C. 20036

/s/ _____
Emily Hong
Sarah Morris
New America's Open Technology Institute
740 15th Street NW, Suite 900
Washington, DC 20005

/s/ _____
Eric G. Null
Laura M. Moy
Institute for Public Representation
600 New Jersey Ave, NW, Suite 312
Washington, DC 20001
*Counsel for New America's Open
Technology Institute*

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Respectfully submitted,

Center for Digital Democracy
Consumer Federation of America
Consumer Federation of California
Consumer Watchdog
Demand Progress
Free Press
New America's Open Technology
Institute
Privacy Rights Clearinghouse
Public Knowledge