

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

In the Matter of)
)
)
Preserving the Open Internet) GN Docket No. 09-191
)
)
Broadband Industry Practices) WC Docket No. 07-52
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INITIAL REGULATORY FLEXIBILITY ANALYSIS
COMMENTS



Matthew M. Polka
President and Chief Executive Officer
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, Pennsylvania 15220
(412) 922-8300

Christopher C. Cinnamon
Jeremy M. Kissel
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, Illinois 60601
(312) 372-3930

Ross J. Lieberman
Vice President of Government Affairs
American Cable Association
4103 W Street, N.W., Suite 202
Washington, DC 20007
(202) 494-5661

Attorneys for the American Cable
Association

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I. Introduction.

The American Cable Association (“ACA”) submits these Comments in response to the Initial Regulatory Flexibility Analysis appended to the Commission’s Notice of Proposed Rulemaking.¹

ACA and its members, many of whom are small and medium-sized cable operators providing broadband Internet access to small markets and rural areas, share an important interest in reducing any disproportionate burdens imposed by the Commission’s proposed network neutrality regulations. ACA members bring more than a decade of experience in delivering broadband services to lower density markets. As the Commission considers a more active regulatory role in broadband, ACA reminds the Commission of its statutory obligation to evaluate the economic impact of increased regulation on small entities.

In its Comments, ACA describes several areas where the Commission’s proposed network neutrality regulations could have a significant economic impact on small entities. These include regulations that would obligate broadband service providers to:

- Employ specific network management practices;²
- Impose affirmative obligations dealing with unlawful content or the unlawful transfer of content;³
- Accommodate lawful devices that are not supported by a broadband provider’s network;⁴ and

¹ See *In the Matter of Preserving the Open Internet, Broadband Industry Practices*, Notice of Proposed Rulemaking, GN Docket No. 09-191, WC Docket No. 07-52, 24 FCC Rcd. 13064, Appendix C, Initial Regulatory Flexibility Analysis (2009) (“IRFA”).

² See *In the Matter of Preserving the Open Internet, Broadband Industry Practices*, Notice of Proposed Rulemaking, GN Docket No. 09-191, WC Docket No. 07-52, 24 FCC Rcd. 13064, Comments of the American Cable Association (filed Jan. 14, 2010) (“ACA Comments”).

³ *Id.* at 10.

⁴ *Id.* at 13-14.

- Provide information regarding a company’s network management practices through any reporting, recordkeeping, or means other than through a company’s website or webpage.⁵

The Commission states in the IRFA that it has “yet to describe any significant alternatives” that it has considered to minimize the significant economic impact the proposed regulations would have on small entities.⁶ ACA’s Comments in this proceeding provide several instances where the Commission’s proposed network neutrality regulations could have a significant economic impact on small entities. The Commission must evaluate the economic impact of any final regulations on small entities, and provide a comprehensive discussion of these considerations in its Final Regulatory Flexibility Analysis (“FRFA”).

American Cable Association. ACA represents more than 900 small and medium-sized cable companies serving smaller markets and rural areas throughout the United States. ACA’s membership encompasses a wide variety of businesses – family-owned companies serving small towns and villages, multiple system operators serving predominantly rural markets in several states, and hundreds of companies in between. Together, these companies serve more than 7 million households and businesses. Most ACA members provide broadband Internet access, delivering this critical service across the “digital divide.” Many ACA members are offering higher and higher broadband speeds, often with little or no increase in cost to the consumer.

II. The Regulatory Flexibility Act.

The Regulatory Flexibility Act (“RFA”) requires the Commission in its IRFA to describe the economic impact of a proposed rule on small entities.⁷ The RFA also requires the Commission to provide a description of projected reporting, recordkeeping, and other

⁵ *Id.* at 16-17.

⁶ *IRFA*, ¶ 46.

⁷ 5 U.S.C. § 603(a).

requirements of a proposed rule,⁸ as well as a description of any significant alternatives to the proposed rule that would accomplish the stated objective of applicable statutes, and that would minimize any significant economic impact of a proposed rule on small entities.⁹

The Commission has a statutory obligation to consider the economic impact any Commission action would have on small entities. Due to the significant economic impact the network neutrality regulations could have on small entities, the Commission must include in the FRFA a comprehensive discussion of the economic impact its actions will have on small cable operators.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION



By: _____

Matthew M. Polka
President and Chief Executive Officer
American Cable Association
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Pittsburgh, Pennsylvania 15220
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4103 W Street, N.W., Suite 202
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Attorneys for the American Cable Association

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⁸ 5 U.S.C. § 603(b).

⁹ 5 U.S.C. § 603(c).