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February 3, 2010

57739-000020

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Plan, GN Docket No. 09-47; A National Broadband Plan for Our Future, GN Docket No. 09-51; Development of Advanced Telecommunications Capacity to All Americans in a Reasonable and Timely Fashion and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act, GN Docket No. 09-137; Preserving the Open Internet, Broadband Industry Practices, GN Docket No. 09-191, WC Docket No. 07-52

Dear Ms. Dortch:

MetroPCS Communications, Inc. (“MetroPCS”) respectfully submits this letter strongly opposing reclassifying broadband Internet service as a Title II service under the Communications Act. Such an unnecessary action would be completely premature and inappropriate, particularly in light of the progress made in the development of the broadband market and the absence of any compelling evidence that the broadband marketplace is not competitive. Calls for replacing the purposefully light regulatory touch now applied to broadband Internet services with Title II (or Title III) regulation also ignore the myriad adverse unintended consequences that would result from such a reclassification.

A Reclassification of Broadband Internet Services is Unnecessary and Premature

A few groups recently have called for a reclassification of broadband Internet service as a Title II service,¹ in direct contrast to this Commission’s repeated declarations that all such services, regardless of the platform over which they are offered, should be

¹ Reply Comments of Public Knowledge, NBP Public Notice # 30, GN Docket Nos. 09-47, 09-51, and 09-137 (filed Jan. 26, 2010) (“Public Knowledge Comments”); Comments of Public Knowledge, et al, GN Docket No. 09-51 at pp. 24-25 (filed June 8, 2009); Comments of the Consumer Federation of American and Consumers Union, GN Docket No. 09-51 at pp. 17-20 (filed June 6, 2009).

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regulated as information services under the Commission's Title I authority.² The proposed reclassification – which undoubtedly is proposed in order to enable the Commission to impose net neutrality regulations on providers of broadband Internet services following warning signs that the Commission may not have ancillary authority to do so under Title I³ – puts the cart before the horse. The clear impetus for the push to reclassify is solely to implement net neutrality requirements, not because common carrier regulation is otherwise necessary or appropriate. This “ends justifies the means” approach is inappropriate and does not serve the public interest. The Commission should not be working backward from a desire to impose net neutrality regulations. Rather, it should examine the marketplace as it currently exists, and determine from concrete evidence whether the market has changed in such a way that common carrier regulation is appropriate. MetroPCS strongly believes that such common carrier regulation would be wholly improper.

Title II common carrier regulation originally was imposed upon monopolistic telephone companies, in a world where competition simply did not exist. This is completely distinguishable from the present day marketplace for broadband Internet services. Indeed, the aim of the Telecommunications Act of 1996 was to deregulate the telecommunications marketplace as additional competition emerged. As Commissioner McDowell recently noted, the Commission should not break from its repeated declarations that broadband Internet services should not be considered common carrier services without “a reasonable and detailed justification for the change based on record evidence.”⁴ An examination of the marketplace for broadband Internet services demonstrates that such evidence does not exist.

To the contrary, as MetroPCS and a myriad of others demonstrated in detailed comments in response to the Commission's proposed net neutrality regulations, the market for such services is robustly competitive, and is getting more competitive with

² *Inquiry Concerning High-speed Access to the Internet over Cable and Other Facilities, et al*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002), *aff'd*, *NCTA v. Brand X*, 545 U.S. 967 (2005); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al*, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005), *aff'd*, *Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901 (2007); *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, Memorandum Opinion and Order, 21 FCC Rcd 13281 (2006).

³ See Public Knowledge Comments at 11-13.

⁴ “McDowell Warns Against Excessive Broadband Regulation,” *Communications Daily*, Feb. 1, 2010.

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each passing day.⁵ As Commissioner McDowell stated, “innovation and investment in broadband *did not* come about due to a government mandate. In fact, for over three decades now, it has been the bipartisan policy of the U.S. Government to keep information services lightly regulated.”⁶ One need only look at the multitude of currently operating broadband providers to understand the substantial competition and consumer choice that exists today. In certain instances, consumers currently have (or may soon have) their choice of up to six different kinds of “pipes” through which to bring broadband into their home or workplace.⁷ This array of alternatives can result in as many as nine competitors or more per market – which under any standard would be considered highly competitive. In addition, there also is more competition on the horizon. Competitors in each category have extensive plans to expand, improve, speed up and open up their networks, lest they fall behind the competition. Because of this accelerating investment, the Commission must expect competition to intensify and should do nothing to deter these investments. The goal should be to maintain this competition and increase it – not diminish it.

Properly viewed, both the “means” being proposed (reclassification) and the proposed “end” (net neutrality mandates) are unwise. There is no evidence that net neutrality requirements are necessary. As MetroPCS pointed out in its comments, the Commission’s justification for net neutrality arises out of two isolated events, under two different circumstances, separated by considerable periods of time – neither of which involved wireless providers.⁸ Regulation based on such scant evidence is unwarranted, and, quite frankly, unprecedented.

There is no record evidence to demonstrate that reclassification is justified to ensure competition in broadband Internet services or in order to sustain net neutrality regulations, particularly without a demonstrated need for such regulations. Again, the first goal of the Commission should be *primum non nocere* – to do no harm. Reclassifying

⁵ Comments of MetroPCS; AT&T; Verizon Wireless; and CTIA in GN Docket No. 09-191, WC Docket No. 07-52, FCC 09-93, filed Jan. 14, 2010.

⁶ “The Best Broadband Plan for America: First, Do No Harm,” Commissioner Robert M. McDowell, Free State Foundation Keynote, Jan. 29, 2010.

⁷ These include: (i) connections provided by traditional telecommunications companies, including digital subscriber lines (“DSL”) and fiber-to-the-home (“FTTH”) (at least one per market); (ii) cable broadband (at least one per market); (iii) satellite broadband (one or more per market); (iv) wireless broadband, potentially provided by a number of wireless carriers in their market (four or more per market); (v) broadband over power lines (“BPL”) (one per market); and (vi) Wireless ISPs (“WISPs”), which provide important broadband services to many underserved rural communities.

⁸ Comments of MetroPCS in GN Docket No. 09-191, WC Docket No. 07-52, FCC 09-93, filed Jan. 14, 2010.

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broadband Internet service as a Title II service certainly would do substantial harm to both broadband service providers and the consumers who access such services.

A Reclassification of Broadband Internet Services Would Result in Unintended Consequences

Proponents of reclassification ignore the fact that they are asking the Commission to place regulations designed in an era of the telephone monopoly upon a vigorously competitive market. They are so narrowly focused on getting net neutrality principles applied to broadband carriers that they miss the forest for the trees. Consequently, they ignore the fact that enormous negative unintended consequences would flow from a reclassification of broadband Internet services as Title II services. A reclassification would completely turn on their heads all existing relationships in the broadband Internet services market and bog it down with economic regulation, tariffs, and a host of federal and state regulation that would not only hinder the build-out of broadband networks but also stunt the growth of services and applications. It would apply a host of “command and control” regulations upon carriers that have been thriving in a competitive marketplace.

For instance, such a reclassification brings up questions about how universal service, interconnection, pricing and taxes would work or apply in an entirely new regime. It also implicates how broadband providers adopt peering and transit arrangements in order to connect Internet backbones – would such marketplace-based agreements now be subject to Title II regulation? These questions are merely the tip of what would be the huge regulatory iceberg. As Commissioner McDowell recently noted, a reclassification of broadband Internet services would result in a “regulatory Rubik’s Cube,”⁹ that would entangle a variety of companies in a web of regulations that to this point have been inapplicable to them – due to the fact that they are participating in a competitive marketplace.

This Commission should continue its light regulatory touch with regard to broadband Internet services, which has proven to incent carriers to increase the build-out of broadband networks, rather than applying additional regulation. Current broadband Internet service providers have operated under one set of regulatory principles for the last decade – principles that have resulted in the flourishing of the Internet. The Commission should not at this stage turn the provision of such services on its head by imposing regulations that were meant to apply to regulated monopolies. Such an action would be the antithesis to the Commission’s goal of increasing broadband deployment.

Kindly refer any questions in connection with this letter to the undersigned.

⁹ “The Best Broadband Plan for America: First, Do No Harm,” Commissioner Robert M. McDowell, Free State Foundation Keynote, Jan. 29, 2010.

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Respectfully submitted,



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