

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52
)	

REPLY COMMENTS OF THE FREE COMMUNITY PAPER INDUSTRY

Mid-Atlantic Community Papers Association, on behalf of Association of Free Community Papers, Community Papers of Michigan, Free Community Papers of New York, Community Papers of Florida, Midwest Free Community Papers, Community Papers of Ohio and West Virginia, Southeastern Advertising Publishers Association, Wisconsin Community Papers et al. (collectively “Community Papers Commenters”), submits these Reply Comments in response to the Commission’s Notice of Proposed Rulemaking In the Matter of Preserving the Open Internet, Broadband Industry Practices. Community Papers Commenters remain steadfast in the belief that an open and nondiscriminatory Internet is critical to fair competition and the survival of the local media ecosystem.

As we shared in comments filed January 14, 2010 in support of an open, nondiscriminatory internet, the free community paper industry has been providing truly local news and information to our readers for over half a century. Collectively, we’ve served nearly every community in America long before the “pay to read” model of dissemination began to erode. For us, “hyper-local” is not the latest buzzword or strategic bandwagon, rather instead it is our enduring business model.

From our perspective serving the communications needs on Main Street, USA, the U.S. Court of Appeals for the District of Columbia decision in *Comcast Corp. v. FCC* makes this proceeding even more critical and urgent. We applaud and take cautious comfort in the Commission’s official statement on that ruling:

“The FCC is firmly committed to promoting an open Internet and to policies that will bring the enormous benefits of broadband to all Americans. It will rest these policies -- all of which will be designed to foster innovation and investment while protecting and empowering consumers -- on a solid legal foundation. Today’s court decision invalidated the prior Commission’s approach to preserving an open Internet. But the Court in no way disagreed with the importance of preserving a free and open Internet; nor did it close the door to other methods for achieving this important end.”

We reviewed the range of filings in this proceeding, and read with keen interest reams of comments submitted by the relatively small number of incumbent Internet Service Providers (ISPs). We looked for unambiguous language expressing structural guarantees that paying our bills for service, combined with our readers paying their bills for service, shall mean no arbitrary and capricious treatment in the transport of our mutual data from end to end. We found, instead, volumes of tortured and conflicting proscriptions that distill into a bucket of oppositional mud in search of a wall to test adhesive properties.

Our takeaway from the ISP Commenters is that the consensus simultaneously maintains: A) Providing for an open, non-discriminatory internet is a solution in search of a problem; B) the ISPs would never engage in practices that consumer advocates and small businesses fear; C) however, the FCC has no authority to prohibit the ISPs from doing what they maintain they will never do; D) moreover, actually prohibiting ISPs from engaging in practices that most state they will never actually practice will both kill investment and turn smart pipes into dumb pipes; and E) for more than the sake of idle argument, ISP Commenters explicitly refer to a prohibition on practices they won’t practice a “line-of-business restriction.”

Obviously, this week’s ruling in favor of Comcast invalidated the prior Commission’s approach. While it may also provide a sticky surface for additional claims against the FCC’s authority, the catalogued transgressions first denied, then admitted and now cleared by the Federal Judiciary, expose the absurdity of the “solution in search of a problem” and “would never engage in such practices” arguments. As the Commission knows, Comcast’s blatant traffic tampering is not the only such case on record: Cox Communications was also caught blocking access to rival networks, Verizon was caught banning certain text messages, AT&T censored a live webcast, and AOL/Time Warner blocked emails containing reference to a website critical of its practices.

This history of traffic tampering among major ISPs, along with their formal assignment of the euphemism “line-of-business” for such discriminatory practices, is disturbingly compounded by their industry’s widespread adoption of Deep Packet Inspection technology (DPI). Paying large sums of precious capital to purchase and deploy DPI, which has the robust capacity to turbocharge these “lines-of-business,” is the clearest possible signal of intent from within otherwise opaque operations.

The recent possession of these powerful new tools and the demonstrable intent to leverage their full capabilities now greets an already deficient status quo operating within a concentrated market. The majority of communities our publications serve are dominated by ISP monopolies and duopolies, where consumers must settle for the “best effort” internet experience which delivers the qualified vagaries of “speeds up to....” Formal obligations on speed are generally discharged in their collective terms of service, which simultaneously preserve sweeping rights to deny service, content access and tamper with the end to end transport of legal data.

As we wrote in prior Comments, the future of our industry's collective enterprise depends on our readership having uncompromised access to our digital offerings. Advertising revenues are shifting online, and no shortage of major players, from legacy media to data aggregators, are just now "discovering" the promise of serving our neighborhoods' news and advertising needs. We welcome that competition in the realm of tangible factors including quality of content, superiority of customer service and compelling design, utility and innovation.

But such fair and robust competition in the digital age can only be achieved by equal access and neutral treatment of traffic from all players across platforms and devices. Under current law and real world conditions, a reader who paid their internet service provider in full, going to the website of a publisher current on their bills, too, clicking on an ad or a news video and getting deliberately degraded speeds, would still be getting what they paid for under most terms of service.

And unlike the brazen Comcast throttling, under the sublimity of the mundane, neither publisher nor audience would have a clue what is beneath the phenomenon. Meanwhile, any wait for relatively common content that evokes the theme from Jeopardy risks being ultimately abandoned, with the visceral assignment of deficient quality of service landing on the publisher.

The status quo, and the future it portends, will become commercially and democratically degraded for both citizens and businesses if ISPs are allowed continued expansion into the arbitrary and capricious traffic tampering "line-of-business." Now more than ever, an open and nondiscriminatory Internet is critical to fair competition and the survival of the local media ecosystem.

Respectfully submitted,

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Consultant to Community Papers Commenters
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