

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)
)
Framework For Broadband) GN Docket No. 10-127
Internet Services)

To: The Commission

REPLY COMMENTS OF ALLIANCE FOR WOMEN IN MEDIA, INC.

Alliance For Women in Media, Inc. (“AWM”), formerly American Women in Radio and Television, Inc. (“AWRT”) hereby submits these comments in response to the Commission’s *Notice of Inquiry* (“*NOI*”) in the above-captioned proceeding.¹

AWM is a national, non-profit organization dedicated to advancing the impact of women in electronic media and allied fields through educating, advocating and acting as a resource for its members and the industry. AWM members are professional men and women employed in radio, television, cable, digital media, advertising and closely allied fields.

For nearly 60 years, AWM’s mission has been to promote the entry and advancement of women in management and ownership of electronic media. AWM has an interest in any regulatory proposal which may impact the opportunity for participation by women in the electronic media, and therefore submits these Reply Comments in support of those commenters who urge the Commission not to classify broadband Internet “connectivity” as a telecommunications (*i.e.*, common carrier) service. AWM concurs with the great weight of industry comments that the Commission’s proposed approach is fraught with legal and practical difficulties, and is likely to have unintended

¹ FCC 10-114 (rel. June 17, 2010).

results that are contrary to the public interest. AWM agrees with those commenters asserting that the better course would be for the Commission to work with Congress for limited legislation that would allow the Commission to exercise sensible regulatory oversight of Internet access, including net neutrality issues, while leaving this dynamic technology free from the constraints of century-old utilities regulation.

As several commenters noted, an agency changing its course must provide a reasoned analysis for the change. As recently affirmed, the courts review such changes with heightened scrutiny when an agency changes its rules overturning previous factual determinations. *See FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1810-11 (2009). As several commenters note, the FCC's previous finding that there is no telecommunications component to Internet access that is severable from the integrated information service purchased by the consumer was, and remains, factually correct. *See e.g.*, Comments of AT&T, Inc. at 70-78; Comments of Comcast Corporation at 21; Comments of Verizon and Verizon Wireless at 46-55; Comments of the National Cable Television Association ("NCTA") at 8-10. Neither the *NOI* nor the comments in support of such a change provide any credible evidence of a technological change that would now render broadband Internet services more readily severable into "connectivity" versus content access, search capabilities or any of the other functionalities that a consumer expects to be part of his or her user experience. A regulatory determination that is at odds with the facts risks being overturned as arbitrary and capricious. *See e.g.*, *Dickson v. Secretary of Defense*, 68 F.3d 1396, 1404-05 (D.C. Cir. 1995) ("the agency must at least reveal 'a rational connection between the facts found and the choice

made’’’), quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

Moreover, even if legally supportable, the comments contain strong evidence that the proposed regulatory change will disserve the public interest. For example, several commenters have noted the overwhelmingly negative reaction of the investment community to the Commission’s proposal. See e.g., AT&T Comments at 2-4; NCTA Comments at 23-25. Businesses in the information technology sector are as challenged as any in obtaining access to capital, and the record indicates that a classification of some or all Internet networks as common carriers risks further limiting investment in this important industry sector. *Id.* Any further reduction in investment dollars is likely to most severely impact businesses owned by minorities and women, who have historically had difficulty in obtaining access to capital. See Comments of the National Organizations² at 10-12. Cf., *In the Matter of the Future of Media and Information Needs of Communities in the Digital Age*, GN Docket 10-25, Comments of Alliance for Women in Media at 2-3 (filed May 7, 2010). Even if it is not clear what the Commission can do to facilitate the role of historically disadvantaged businesses in the new media, it should avoid taking steps that perpetuates the inequalities of the legacy communications industry.

In addition to adversely impacting access to capital, classifying Internet broadband services as common carriers will impose the costs associated with that status on service providers. Consequently, even if the Commission proceeds with large-scale forbearance of Title II obligations, and that forbearance survives judicial review, Internet

² “National Organizations” is the name under which the comments of Minority Media and Telecommunications Council, *et al.*, were filed.

service providers (“ISPs”) who provide “connectivity” will be faced with Universal Service contributions, regular filing obligations, and other costs that they have not previously incurred. Moreover, these additional burdens and costs are unlikely to be limited solely to the federal level. As NCTA notes in its comments, the classification of Internet access, or some portion of it, as Title II common carriage opens the door to possible State regulation because Section 2(b) of the Communications Act reserves authority over intrastate common carrier services to the States. *See* 47 U.S.C. 152(b); *Louisiana Public Serv. Comm’n. v. FCC*, 476 US 335 (1986) (Section 2(b) “fences off from FCC reach or regulation intrastate matters -- indeed, including matters ‘in connection with’ intrastate service”).

While AWM agrees that the Commission’s analysis in *Vonage* is applicable to all Internet-based services, and that such services are inherently and inseparably interstate, there is no guarantee that all the courts that consider the issue will agree. Indeed, a finding by this Commission that there is a distinct and severable “last mile” to Internet access could well encourage the argument that such service also has a distinct and severable “intrastate” portion. The comments of State regulators in this proceeding indicate that concerns over potentially complex and costly State regulations are not unfounded. *See e.g.*, Comments of California Public Utilities Commission (“California PUC”), Comments of Pennsylvania Public Utilities Commission (“Pennsylvania PUC”). Accordingly, a classification of Internet connectivity as a “telecommunications” service will almost surely open Internet service providers to liability for state universal service contributions and other taxes and fees. *See e.g.*, California PUC Comments at 8-9; Pennsylvania PUC Comments at 4. Moreover, there is reason to believe that some States

may take an even more aggressive regulatory approach. For example, the California PUC has questioned its role in regulating telephone number assignment and E-911 capabilities for the Internet access services in question, even though such services are not remotely equivalent to traditional telephone services, either technologically or with regard to consumer expectations. *See* California PUC Comments at 15-18. Even if the Commission's preemption of the States is ultimately upheld, ISPs will be faced with years of litigation surrounding proposed State regulatory requirements, some of which may not even be feasible to comply with from a technical perspective.

In addition, the costs imposed by burdening ISPs with legacy regulatory status will need to be covered in some manner, and as a general rule, competitive businesses do so by either limiting expenses, raising prices, or both. Several commenters have noted that the proposals in the NOI may well lead to the loss of jobs in technology industries. AT&T Comments at 5; NCTA Comments at 23; Verizon Comments at 12-13; Comments of the National Organizations at 8-12. It is worth noting that the Communications Workers of America ("CWA"), while generally supportive of the Commission's goals in this proceeding, nonetheless opposes the proposed change in regulations. *See* Comments of Communications Workers of America at 3-4. AWM shares these commenters' concerns that the imposition of new regulatory costs may impact employment opportunities generally, and employment opportunities for women and other historically disadvantaged groups in particular, in information technology companies affected by the proposed regulatory changes. *See e.g.* Comments of the National Associations at 10-12 (raising concerns about the adverse effect on opportunities for minorities).

