

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

In the Matter of )  
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 Framework for Broadband Internet Service ) GN Docket No. 10-127  
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**REPLY COMMENTS OF  
THE ARIZONA CORPORATION COMMISSION**

**I. INTRODUCTION.**

The Federal Communications Commission (“FCC” or “Commission”) commenced this Notice of Inquiry (“NOI”) to begin an “open, public process to consider the adequacy of the current legal framework within which the Commission promotes investment and innovation in, and protects consumers of, broadband Internet services.”<sup>1</sup> A cross segment of the industry filed initial comments on July 15, 2010. The Arizona Corporation Commission (“Arizona Commission” or “ACC”) submits the following reply.

This issue is one of the most important issues raised by the Commission since its original *Cable Modem Declaratory Ruling*<sup>2</sup> in 2002. The Arizona Commission commends Chairman Genachowski for seeking comment from parties on an issue that has been and will continue to be the source of continued litigation and regulatory

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<sup>1</sup> NOI at ¶ 1.

<sup>2</sup> *Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities; Internet Over Cable Declaratory Ruling: Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, *Declaratory Ruling and Notice of Proposed Rulemaking*, 17 FCC Rcd 4798 (“*Cable Modem Declaratory Ruling*”) *aff’d sub nom. Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005)(“*Brand X*”)

uncertainty until the issue is revisited and a more appropriate legal framework is put in place.

The existing case law demonstrates that the Commission's authority under Title I of the Communications Act of 1934 is anything but clear. Continuation of the old path of regulation of broadband connectivity as an information service will continue to be fraught with problems and uncertainty.

Chairman Genachowski's approach would resolve these issues and it would also strike a much more appropriate balance between the state and federal jurisdictions. The ACC supports the adoption of Chairman Genachowski's legal framework (with consideration given to retention of a few more provisions of Title II as discussed below) to ensure that a coherent sustainable legal paradigm is in place.

## **II. DISCUSSION.**

The Commission requested comment on three alternative approaches to the classification of broadband service. First, the Commission sought comment on whether the current information service classification of broadband Internet service can still support effective performance of the Commission's core responsibilities.<sup>3</sup> Second, the Commission asked for comment on the legal and practical consequences of classifying the Internet connectivity component of broadband Internet service as a telecommunications service to which the full weight of Title II requirements would apply, and whether such a classification would accurately reflect the current market facts.<sup>4</sup> Finally, the Commission sought comment on Chairman Genachowski's third approach under which the Commission would classify the Internet connectivity portion of broadband Internet service as a telecommunications service but would simultaneously forbear pursuant to Section 10 from all but a small handful of provisions necessary for effective implementation of universal service, competition and small business, and

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<sup>3</sup> *Id.* at ¶ 28.

<sup>4</sup> *Id.*

consumer protection policies.<sup>5</sup> The Arizona Commission comments on each of these approaches below.

**A. Continuation of the “Integrated Services” Approach and Reliance upon Title I of the 1934 Act.**

The legal framework in place now for broadband connectivity was first established by the FCC in its *Cable Modem Order*<sup>6</sup> in 2002. That Order found that when broadband service was utilized with internet access, the combined or integrated service would be classified as an “information service.”<sup>7</sup> This was a marked departure from prior orders of the FCC, including the Computer Inquiries<sup>8</sup> and the FCC’s treatment of Digital Subscriber Line Service (“DSL”), a comparable service offered by telephone companies. However, because broadband when used in conjunction with internet access was now classified as an “information service,” the FCC could no longer rely upon its Title II (common carrier) authority to carry out its policies. It instead had to rely upon its Title I authority, which case law establishes is much more ambiguous and uncertain in its application.<sup>9</sup> The same approach was ultimately applied to telecommunications carriers

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<sup>5</sup> *Id.*

<sup>6</sup> See footnote 2.

<sup>7</sup> The “integrated services” approach as applied to modem providers was ultimately upheld by the United States Supreme Court in a divided opinion in *National Cable Telephone Association v. Brand X*, 125 S.Ct. 2688 (“*Brand X*”), under the deferential framework of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (“*Chevron*”).

<sup>8</sup> *In re Regulatory and Policy Problems Presented by the Interdependence of Computer and Comm. Servs. And Facils., Tentative Decision*, 28 F.C.C. 2d 291 (1970), modified in *Final Decision and Order*, 28 F.C.C.2d 267 (1971)(“*Computer I Final Decision*”), *aff’d in part sub nom. GTE Serv. Corp. v. FCC*, 474 F.2d 724 (2d Cir.), order on remand, 40 F.C.C.2d 293 (1973); *In re Amendment of § 64.702 of the Commission’s Rules and Regs. (“Second Computer Inquiry”)*, *Final Decision*, 77 F.C.C.2d 384 (1980)(“*Computer II Final Decision*”) on reconsideration, *Memorandum Opinion and Order*, 84 F.C.C. 2d. 50 (1980)(“*Computer II Reconsideration Order*”), *Memorandum Opinion and Order on Further Reconsideration*, 88 F.C.C.2d 512 (1981); *In the Amendment of § 64.702 of the Commission’s Rules and Regs. (“Third Computer Inquiry”)*, *Report and Order*, 60 Rad. Reg.2d 603 (1986)(“*Computer III Order*”).

<sup>9</sup> 467 U.S. 837, 104 S.Ct. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694.

DSL offerings,<sup>10</sup> broadband offered over power lines<sup>11</sup> and wireless broadband offerings.<sup>12</sup>

Title I of the 1934 Act established the FCC “[f]or the purpose of regulating interstate and foreign commerce in communications by wire and radio,” and section 2(a) states that “[t]he provisions of this chapter shall apply to all interstate and foreign communication by wire or radio.” Title I, section (h)(i) states that “[t] Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.” The FCC’s authority under Title I is oftentimes referred to as its ancillary jurisdiction (allows the FCC to regulate matters not explicitly provided for in the substantive Titles of the Act such as Title II (common carrier, i.e., telephone, telegraph)), Title III (broadcast, i.e., wireless, radio, TV)) and Title IV (cable) which contain substantive provisions authorizing the FCC to regulate in particular areas.

*United States v. Southwestern Cable Co.*,<sup>13</sup> was the first case to address the FCC’s ancillary authority. That case involved a new service called community antenna television (“CATV”) which did not exist when Congress enacted the Communications Act of 1934. Because it did not exist and was not mentioned in the Act, the Commission did not have explicit authority to regulate it. In a landmark case on the Commission’s

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<sup>10</sup> See *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, *Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 14853 (“*Wireline Broadband Report and Order and Broadband Consumer Protection Notice*”), *aff’d sub nom. Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3rd Cir. 2007).

<sup>11</sup> See *United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, *Memorandum Opinion and Order*, 21 FCC Rcd 13281 (2006) (“*BPL-Enabled Broadband Order*”).

<sup>12</sup> See *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, *Declaratory Ruling*, 22 FCC Rcd 5901 (“*Wireless Broadband Order*”).

<sup>13</sup> 392 U.S. 157, 88 S.Ct. 1944, 20 L.Ed.2d 1001 (1968).

Title I authority, the Supreme Court ruled that the Commission had ancillary authority in this case to adopt regulations over CATV systems applicable to cable to govern the carriage of local signals and the nonduplication of local programming.

The *Southwestern Cable* case held that the FCC could act under Title I of the Communications Act even though there was no express provision in Title II or Title III authorizing to it to regulate CATV service. The Court stated that the FCC had the authority to issue regulations that are “reasonably ancillary to the effective performance of the Commission’s various responsibilities” under the Act. The *Southwestern Cable* case adopted the following two prong test which remains valid today: (1) The regulation must address an interstate or foreign communication by wire or radio (thus falling within its general authority under Title I), and 2) it must be necessary to the performance of the FCC’s other responsibilities under the substantive titles of the Act.

Since the *Southwestern Cable* case, there have been a number of other cases which have addressed the limits of the Commission’s ancillary authority under Title I. Those cases have not always come down in the FCC’s favor, including the recent *Comcast*<sup>14</sup> case which is the genesis for the current NOI. The Arizona Commission agrees with several parties that “the continued reliance on Title I as a legal framework for broadband Internet service is not appropriate... .”<sup>15</sup> “Uncertainty regarding the FCC’s ability to adopt, apply and enforce rules in the wake of the *Comcast* decision provides minimal level of predictability.”<sup>16</sup> “A case-by-case approach would be needed for each assertion of ancillary authority with each case subject to independent appellate review, and no *Chevron* deference.”<sup>17</sup> “The FCC has no statutory mechanism to enforce

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<sup>14</sup> *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C.Cir. 2010)(“Comcast”).

<sup>15</sup> See Comments of the California Public Utilities Commission (“CPUC”) at 5; Comments of the National Association of State Utility Consumer Advocates (“NASUCA”).

<sup>16</sup> See Attachment to Google’s Comments

<sup>17</sup> *Id.*

‘ancillary’ oversight authority.”<sup>18</sup> “Without enforcement authority, there is no effective mechanism to protect consumers and competition.”<sup>19</sup> “[T]his status quo approach will likely plague the FCC with litigation as its ancillary authority is constantly called into question.”<sup>20</sup> A review of the case law on the Commission’s authority under Title I of the 1934 Act underscores the wide degree of uncertainty associated with the Commission’s Title I authority.

While the Commission points out in its NOI, that in classifying the integrated service as an “information service”, it acted with the express understanding that its information service classifications would not impair the agency’s ability to protect the public interest, and that its “ample” Title I authority would permit it to accomplish policy objectives related to consumer protection, network reliability and national security; a good part of these objectives are now shrouded in uncertainty not only with the *Comcast* decision but given prior Title I case law as well.<sup>21</sup>

A review of judicial decisions interpreting the Commission’s authority under Title I, indicates that continuation of the “integrated services” approach may ultimately be unworkable. While it is hard to predict, other cases could certainly be interpreted as suggesting that the *Comcast* decision may just be the tip of the iceberg.

At least one author has come to the conclusion that the courts have been most likely to reject ancillary regulations when the underlying regulatory goal is primarily social in nature. The author also reasons that the less likely that the FCC’s regulatory objectives are aimed at promoting competition, the more skeptical the Courts become. If this analysis is correct, a case-by-case analysis would be needed for any regulation adopted by the Commission pursuant to its Title I authority, and regulations promoting social objectives (perhaps even consumer protection and universal service) could be

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *See Comments of the Public Utilities Commission of Ohio.*

<sup>21</sup> NOI at 11 ( ¶¶ 23 and 24).

adversely impacted.<sup>22</sup> One must ask if this could also explain why the D.C. Circuit struck down the FCC Order imposing regulation on Comcast's network management practices? If this analysis is valid, what category would the Commission's "network neutrality" principles fall under? Would they withstand judicial scrutiny?

In addition, the FCC's broadband and information service policies have been problematic in other regards as well. Some carriers classify their broadband as an information service consistent with the *Cable Modem Order* and *Wireline Broadband Order*; others however classify the broadband even when integrated with internet access as a "telecommunications service." The FCC's current classification of broadband has also resulted in confusion and uncertainty at the state level. State commissions are convenient forums for customers experiencing problems with their communications provider. Classifying broadband as an information service, with all of its attendant ramifications, divests the State commissions of any meaningful oversight with respect to this important service, including their historic consumer protection role.

The Commission should reclassify broadband connectivity as Title II service and should not continue to rely upon its Title I authority to implement its objectives in conjunction with the development and deployment of this critical service.

**B. Application of Title II to Broadband Connectivity Services.**

Second, the Commission asked for comment on the legal and practical consequences of classifying the Internet connectivity component of broadband Internet service as a "telecommunications service" to which the full weight of Title II requirements would apply, and whether such a classification would accurately reflect the current market facts.<sup>23</sup>

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<sup>22</sup> See *Jurisdiction as Competition Promotion: A Unified Theory of the FCC's Ancillary Jurisdiction*, John Blevins, (2009).

<sup>23</sup> *Id.*

As NASUCA points out, this case is about the “wires”<sup>24</sup>. Most parties have always recognized that broadband internet service is actually two services – a telecommunications transport service and an information service. Most people today understand that they can obtain broadband or DSL service at varying speeds and that they have a choice in that regard. We believe that it is commonly understood that internet applications ride on top of the circuit.

Given the distinct and different nature of “telecommunications” and “information” services and the likelihood for problems in classifying the combined service as an information service, the Arizona Commission has consistently advocated an approach where the transmission path or connection would be classified as a Title II service and the services that rode on top of the transmission path would be classified according to whether they were pure transmission or an information service.<sup>25</sup> While not endorsing the so-called “layers approach,” to the extent the approach advocates treating classification of the transmission path as a telecommunications service and classification of the application layer based upon the nature of the service offered, to this extent it would be consistent with the Arizona Commission’s position.<sup>26</sup> Under this approach, Voice-Over-Internet-Protocol (“VoIP”) would be classified as telecommunications subject to Title II and the Internet information service would be classified as an information service.

The advantages of Title II regulation for broadband connectivity are clear from the NOI itself. At page 29, (¶ 66), the FCC states:

If we were to classify Internet connectivity service as a telecommunications service and take no further action, that service would be subject to all requirements of Title II that apply to telecommunications service or common carrier service. If the Commission chose, it could

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<sup>24</sup> NASUCA Comments at 1.

<sup>25</sup> See e.g., *In the Matter of IP Enabled Services*, Docket No. 04-36 (2004), Comments of the Arizona Corporation Commission filed on June 1, 2004.

<sup>26</sup> See NOI at 28 (¶ 60).

provide support for Internet connectivity services through the Universal Service Fund under section 254. Under section 222, the Commission could ensure that consumers of Internet connectivity enjoy protections for their private information. Consumers with disabilities would see greater accessibility of broadband services and equipment under section 255. And the Commission could protect consumers and fair competition through application of sections 201, 202 and 208.

The importance of these Title II provisions cannot be overstated. In addition to these very important protections, the Commission would not face the case-by-case uncertainty and litigation that it now faces and will continue to face when relying upon its Title I authority to implement such protections.

Two of the main arguments urged against this approach have been that the application of Title II will thwart investment and will result in regulation of the internet. Neither of these arguments are valid. First, regulation of the underlying transmission path will not result in regulation of the internet, or the content carried on the wires. No one has ever asserted that regulation of content was appropriate. The Commission's NOI makes this clear. "We do not suggest regulating Internet applications, much less the content of Internet communications."<sup>27</sup> Second, a coherent predictable regulatory regime will promote investment, rather than discourage it.

According to the Commission's NOI, despite being able to avail themselves of the "information service" classification, a large number of carriers have voluntarily elected to have their broadband transmission service regulated under Title II.<sup>28</sup> The Commission points out that while it has classified the integrated service as an information service and allowed providers to classify the broadband transmission facility as an information service when combined with internet information service, it also allowed providers to, at their own discretion, offer the broadband transmission component of their Internet service

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<sup>27</sup> NOI at 5.

<sup>28</sup> NOI at 10 (¶ 21).

as a separate telecommunications service.<sup>29</sup> The Commission states that there are now 840 incumbent local telephone companies<sup>30</sup> that currently offer broadband transmission as a telecommunications service expressly separate from their Internet information service.<sup>31</sup>

This type of regulation, where the carrier is allowed to choose the Title that it will be regulated under, is confusing and inconsistent and may lead to the Commission being able to implement its policies with respect to one set of providers subject to Title II regulation but not another set of providers providing the exact same service subject to Title I.

The Arizona Commission does agree with the Commission's determination not to disrupt the status quo for incumbent local exchange carriers or other common carriers that choose to offer their Internet transmission services as telecommunication services. Nor should the Commission alter the status quo with regard to the application of section 254(k) and related cost-allocation rules to these carriers.

The Commission also inquires on excepting from forbearance any carrier that elects to be subject to the full range of Title II requirements and what mechanism would be most suitable for a carrier to make such an election. The answer to this question may turn more on the nature of the areas served (whether they are rural or urban in nature), and the nature of regulation (price-cap versus rate of return) as to whether forbearance is advisable in all cases. It would be preferable for the Commission to make these

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<sup>29</sup> *Wireline Broadband Report and Order*, 20 FCC Rcd at 14858 (¶ 5), 14900-03, (¶¶ 89-95); 14909-10, (¶ 103); *BPL Enabled Broadband Order*, 21 FCC Rcd at 13289 (¶ 14); *Wireless Broadband Order*, 22 FCC Rcd at 4913014 (¶ 33).

<sup>30</sup> The Commission cites to the Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, GN Docket NO. 09-51, at 30-31 (June 8, 2009) (“[A]ll ROR [rate of return] regulated carriers (which encompasses most rural ILECs) offer broadband transmission on a stand-alone Title II common carrier basis. This means that they are required to offer that transmission at specified, non-discriminatory rates, terms, and conditions, including to non-facilities based Internet service providers (ISPs). (citation omitted)”).

<sup>31</sup> NOI at 10 (¶ 21).

determinations; rather than allow carriers to elect which regulations they will be subject to.

C. **Application of Title II to Broadband Connectivity Services with Forbearance under Section 10 From Select Provisions of Title II.**

Under the “Third Way” offered by the Chairman, broadband internet connectivity service would be classified as a telecommunications service, but the FCC would forbear from applying all but a handful of core statutory provisions – sections 201, 202, 208 and 254 to the service.<sup>32</sup> In addition sections 222 and 225 may also be implemented for the connectivity service.<sup>33</sup>

Forbearance would be accomplished under Section 10 of the 1996 Act. Under that Section, the Commission “shall” grant forbearance relief if:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.<sup>34</sup>

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<sup>32</sup> NOI at 30 (¶ 68).

<sup>33</sup> NOI at 30 (¶ 68).

<sup>34</sup> *Id.* at § 160(a). “In making the determination under subsection (a)(3) [that forbearance is in the public interest,] the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.” *Id.* § 160(b). The Commission may forbear on its own motion. *See* 47 U.S.C. § 160(a).

The Commission seeks comment on whether, because of the current information service classification and the fact that Title II requirements do not now apply, whether the Commission could simply observe the current marketplace for broadband Internet services to determine whether these criteria are met.

The current market place may very well support findings of forbearance of some Title II provisions. The ACC believes that a simple observation without evidentiary support would not be appropriate and would be subject to legal challenge, however. In other words, we believe that the Commission would still have to demonstrate that the statutory criteria have been met. In the end, a proceeding which allowed parties to comment on each provision under scrutiny and offer evidence in support of or against forbearance would produce the best record upon which to make these determinations.

We would recommend that the FCC not immediately forbear from sections of the Act that have been identified by parties as necessary for the protection of consumers or to advance an important policy objective of the Commission. The Commission should at a minimum seek comment on the appropriateness of forbearance from these provisions. For instance, NASUSCA, the CPUC and PAETEC all urge the Commission not to forbear from certain additional provisions of the Act, most particularly § 251 of the 1996 Act.<sup>35</sup> NASUCA points out that in addition to governing intercarrier connection and compensation, Section 251 also contains requirements on unbundling, numbering and other features of a modern, competitive network.<sup>36</sup> PAETEC states that ..”any order must be tailored so that it does not impact existing statutory obligations that LECs and ILECs have to provide non-discriminatory interconnection with their networks under § 251, § 256 and § 271(c), or to provide services and facilities such as special access and UNEs

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<sup>35</sup> See NASUCA Comments at 22; CPUC Comments at 7-16; PAETEC Comments at 9-11.

<sup>36</sup> NASUCA Comments at 22.

pursuant to §§ 201, 251(c) and 271(c).”<sup>37</sup> The CPUC pointed out that “[t]he Commission should also be cautious about forbearing in a manner that would negatively affect the ability to mediate, arbitrate, resolve, and/or approve interconnection agreements.”<sup>38</sup>

The Commission also asks whether the provisions it has identified as those it will not forbear from are appropriate. The Arizona Commission agrees that *at a minimum* all the sections of Title II identified by the Commission should remain in place. This would include 201, 202, 208, 254, 222 and 255. As the Commission notes, “[a]pplying sections 201 and 202 could provide the Commission direct statutory authority to protect consumers and promote fair competition, yet allow the Commission to avoid burdensome regulation.”<sup>39</sup> Section 208 governs complaints filed with the Commission and Commission investigations and is an important enforcement tool for the Commission that should remain.

In addition, the remainder of the FCC’s enforcement regime should remain in place as well for this service which is contained in §§ 207 and 209 of the 1934 Act. Section 254 is the Commission’s statutory foundation of its universal service programs and it is appropriate that the Commission not grant forbearance from any of its provisions. Section 222 requires providers to protect their customers’ confidential information, as well as proprietary information of other telecommunications service providers and equipment manufacturers. The Commission should apply this provision in the broadband context. Section 255 requires telecommunications service providers to make their services accessible to individuals with disabilities unless not reasonably achievable. The Commission should implement section 255 to ensure that Americans with disabilities have access to broadband Internet connectivity services. The

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<sup>37</sup> PAETEC Comments at 5. PAETEC also references §§ 256 and 252 as containing existing obligations that are important to the Company.

<sup>38</sup> CPUC Comments at 14.

<sup>39</sup> NOI at 33 (¶ 76).

Commission also inquired about sections 214(e), 251(a)(2) and 255 and whether it would be appropriate to implement those provisions as well.

The Arizona Commission supports implementation of section 214 which provides the framework for determining which carriers are eligible to participate in universal service support programs, as well as discontinuance, reduction or impairment of service for the reasons given in ¶ 88 of the Commission's NOI. The ACC also supports implementation of 251(a)(2) which direct telecommunications carriers "not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255, and section 225 which establishes the telecommunications relay services program."<sup>40</sup>

The Commission also inquires whether if at some point in the future circumstances require reversal of a forbearance determination, whether it could take action to reconsider its initial determination and reverse any earlier forbearance determination. The ACC believes that the Commission would have that authority.<sup>41</sup> We agree with the Commission that to do so it would have to find that "at least one of the [forbearance] criteria is no longer met with regard to a particular statutory provision."<sup>42</sup> A provision in the order granting forbearance, stating that if the FCC later finds that the forbearance criteria is no longer met, the FCC will again implement and enforce the provision at issue, would be suggested.

The Commission also inquires as to the role of States under the Third Way. The Arizona Commission certainly does not recommend any diminishment to the current role performed by States. We recommend that with respect to broadband connectivity, the FCC provide for a more meaningful State role. We agree with the other Commissions filing comments in this proceeding as to the areas where a strong and complimentary

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<sup>40</sup> See NOI, page 37 (¶ 86).

<sup>41</sup> See *EarthLink v. FCC*, 462 F.3d at 12.

<sup>42</sup> NOI at 41 (¶ 98).

State role is necessary. The Public Utilities Commission of Ohio identified the following areas where a State role is particularly important.

- (1) preserve and advance universal service; (2) safeguard consumers against unfair and deceptive practices and maintain basic consumer protections such as truth-in-billing and reliable E9-1-1 service; (3) provide a local venue for investigation, alternative dispute resolution (ADR) and efficient resolution of both intercarrier disputes and consumer to company disputes; (4) adequately investigate and take enforcement actions where necessary for the protection, welfare and safety of the public; (5) properly inform consumers of their rights in cooperation with the FCC; and (t) ensure that the special needs of customers are met through programs such as Lifeline, Link-UP and telecommunications relay services.<sup>43</sup>

And, the California Public Utilities Commission also identified areas where State involvement is necessary:

- (1) universal service; (2) customers with disabilities; (3) privacy; (4) consumer protection; (5) maintenance of section 201 and 202; (6) maintenance of section 208; (7) Section 251; (8) numbering authority delegated to the states; (9) emergency services; (10) loss of separately powered PSTN network and access to emergency services; (11) E-911; (12) service quality; (12) small carriers serving rural areas.<sup>44</sup> \_

In summary, the ACC believes that Chairman Genachowski's Third Way which involves Title II classification of the broadband connectivity service, would give the FCC a much more solid footing in which to accomplish the objectives and goals contained in the agency's National Broadband Plan and ensure that its consumer protection, network reliability and net neutrality policies are achieved. Absent adoption of this type of approach that has as its cornerstone basic Title II protections, case by case litigation will ensue and the FCC's success may depend more than anything else upon the nature of the regulations under scrutiny. However, the Commission should make its forbearance

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<sup>43</sup> Public Utilities Commission of Ohio Comments at 9.

<sup>44</sup> Finally, we agree with the CPUC that certain provisions (§ 253 and § 224 for instance) do not directly impose obligations on carriers and thus it is unlikely that forbearance would apply in these cases.

determinations on the basis of a solid evidentiary record, or they will be subject to legal attack.

III. CONCLUSION.

The Arizona Commission commends the FCC for tackling this very difficult subject and attempting to find a more appropriate regulatory balance for consumers and carriers alike. Chairman Genachowski's Third Way would provide a sounder legal basis to implement the Commission's important policy objectives with respect to broadband internet connectivity service, including universal service and consumer protection objectives than the Commission's continued reliance upon Title I of the 1937 Act.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of August, 2010.

/s/ Maureen A. Scott

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