



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554  
GN Docket No. 09-191  
WC Docket No. 07-52**

**PUBLIC NOTICE SUBMISSION OF THE INTERNET INNOVATION ALLIANCE**

The Internet Innovation Alliance (IIA) appreciates the opportunity to add to the public record in this important proceeding.

The Federal Communications Commission stands at a pivotal crossroads. Its decisions in this proceeding will significantly impact infrastructure investment, economic growth, job creation and broadband deployment in America over the next decade. They will likewise determine the scope of the Commission's activities and accomplishments over the next two years.

If it provides certainty to network operators and predictability to investors, the Commission can meaningfully advance availability and adoption of high speed Internet across the nation. If it rejects the counsel of bipartisan majorities in Congress and unilaterally pursues a more aggressive regulatory agenda, it can expect years of diminished investment, delayed re-employment in the telecom sector, battles in court and partisan squabbling that disserves our nation. Needless to say, we recommend the former and believe a reasonable path forward exists for sensible compromise.

We appreciate the Commission's recognition that it must move cautiously when considering new regulations by asking the additional questions in the September public notice. We supplement our answers to them as part of this comprehensive response.

**FCC at a Crossroads: Where Things Stand Today**

Broadband was introduced in America roughly one decade ago. Today an estimated 95% of Americans have the ability to subscribe to broadband, and roughly 63% of citizens choose to do so. While consumers enjoy an ever-expanding list of provider options, data rates, user applications and innovative services, we share the Administration's goal of getting more and faster broadband to more Americans.

To realize 100% availability at speeds that enable the next-generation of innovative applications, the FCC estimates the need for \$350 billion in additional investment. Given the federal budget deficit and national debt, those investments are not going to come from the government. We need private investors to see the business case for continually upgrading existing networks and deploying competing infrastructure



platforms. For this investors need certainty: certainty that infrastructure investments can generate market returns, certainty that network operators retain freedom to make reasonable business decisions, and certainty that Washington will not substitute a political agenda for market forces.

To realize 100% adoption of broadband, we need to overcome the barriers to adoption identified by research done by the Commission, Pew, IIA and countless others. The identified barriers include:

- Insufficient digital literacy, especially among communities of color;
- Concerns over the cost of service and value provided, especially among lower-income Americans;
- Concern over online safety and security.

To-date, the lack of more aggressive regulation has not been identified as a barrier to broadband adoption in any analysis we have seen. To the contrary, many observers warn the new regulations proposed by the Commission risk exacerbating problems in these areas, rather than fostering improvements. Solutions that have been proven to help address these adoption challenges include:

- Community digital literacy programs, such as One Economy’s innovative “Digital Connectors” initiative, train and deploy teenagers to help teach less techno-savvy members of their own communities how to go on line and navigate the broadband environment (See <http://www.one-economy.com/what-we-do/digital-connectors>);
- Flexible price offerings and packages make broadband more affordable for all. Those users or content providers who want or need greater bandwidth or guaranteed quality of service should be able to pay for the services they need, just as lower income users should not be required to subsidize heavier bandwidth users. One size does not fit all, and so-called “non-discrimination” rules that prohibit such customized packages and service offerings actually discriminate against lower income and higher bandwidth users.
- The costs of broadband services are unnecessarily inflated by high federal, state and local telecom taxes. Ask any economist how to get more of something, and they will tell you to tax it less. Yet we continue to treat telecom like a cash cow by taxing it like a sin, much closer to tobacco, alcohol or gambling and than the average good or service. In a high deficit era, few politicians will want to surrender revenue, but they can easily make broadband more affordable if they truly want to.



- The Universal Service Program could alleviate many cost-of-service concerns, if its funds were available for broadband connectivity and based on need, rather than geography. Its \$7 billion in annual transfer payments are equivalent to the broadband portion of the American Recovery & Reinvestment Act every year. The challenge, of course, is responsibly transitioning the current POTS-focused fund into a fund that supports broadband and doing it in a timely manner;
- Network management techniques, especially on mobile broadband platforms, are essential to relieving congestion and ensuring that network usage by some does not degrade network performance for all. These techniques have successfully evolved in response to new applications, new technologies and new network conditions... and they have succeeded because operators have been free to experiment, implement and deploy new techniques, without first asking permission from the government's "department of reasonableness."
- Specialized broadband service offerings can provide solutions to some of our nation's biggest healthcare, education and energy challenges, while simultaneously providing network operators with additional incentives to expand and upgrade broadband networks that also support broadband Internet access. Such services will enable the connection of a varied array of devices (such as medical equipment, smart meters, enhanced video and voice technologies) that complement the open Internet, enhancing its speed and quality by channeling or off-loading additional traffic with special needs. Useful managed services such as smart meters and wireless health monitors could be made more widely available to those who want them without impairing or impeding the broadband experiences of those who do not. Meanwhile the "open Internet" is, and will continue to be, the medium of choice for people seeking information or content utilizing a range of devices. Specialized services will complement the existing open Internet, not supplant it.
- Much work remains on making the Internet a safer and more secure environment. The Commission has a valuable role to play here, most successfully in collaboration with industry, a situation made nearly impossible if all parties are locked in pitched regulatory battles over reclassifying broadband services to extend the regulatory reach of Washington.



## **Overcoming the Sound and Fury**

At the same time that networks have proliferated, operators have innovated and consumers have signed up in droves for ever-faster broadband offerings on multiple platforms, a highly political debate has raged over the future of the so-called “free and open Internet.” For the past five years, some have suggested that the Internet as we know it is at grave and immediate risk. We are warned that unseen “big business” forces are plotting to undermine future broadband networks to the detriment of their own consumers, and that only new and aggressive regulations can properly preserve the historically unregulated Internet.

We don’t see it.

The reality is that threats to the “free and open” Internet remain hypothetical. The very few “incidents” cited by doomsayers were each addressed and remedied within days by the “bad actors.” That’s called a marketplace that works, not one in need of new government rules and regulations. Network operators who even consider “blocking or degrading” access to web content risk consumer backlash, market approbation and diminishment of their brand.

As IIA predicted in its original comments in this proceeding last year, the near theological debate over “net neutrality” has sucked the oxygen out of the room and left little room for progress on the real issues and solutions. It has regrettably become a shrill, partisan and ideological issue, unrelated to the realities of a market in need of investment and certainty.

## **The Path Forward**

We believe the FCC has three options for moving forward.

First, the majority can muscle through a partisan vote to reclassify broadband services as telecom services, promising to refrain from using the vast new regulatory powers that for the first time would govern broadband providers. According to most analysts, such a “nuclear option”<sup>1</sup> would stifle investment, increase unemployment (or at least slow re-hiring in this vibrant sector) and extend a cloud of legal uncertainty over the broadband marketplace for years. Certainly the ensuing political battle would rob the Commission

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<sup>1</sup> Moffett, Craig. “Weekend Media Blast: Internet En-title-ment.” Bernstein Research. April 16, 2010.



of the comity and resources it will need to pursue so many other worthwhile initiatives identified in the National Broadband Plan.

Second, the FCC can defer the issue to Congress. A bipartisan majority of elected lawmakers has urged the Commission to do so. And our democratic system envisions the legislature leading and appointed policy makers implementing their vision, so this is how things should work. But it is possible the Commission may doubt Congress' ability to get anything done in the hyper-partisan environment of the past decade.

Finally, the FCC can work with industry players to define a compromise that is acceptable to most parties that (1) protects the historical freedoms of the Internet (e.g. no blocking or degrading access to content, consumers free to attach non-harmful devices, etc.) (2) enshrines consumer expectations and business norms (e.g. transparency about basic service criteria) and (3) allows for market innovations without prior government permission or subsequent bureaucratic second-guessing (e.g. network management, specialized services). Industry commitments could come in the form of amendments to their contractual terms of service or voluntary agreements with binding enforcement clauses, for example.

Of course in this era no reasonable compromise goes politically unpunished. Extreme groups such as Free Press and the Tea Party would likely complain with anything short of "total victory" for their point of view. But the last we checked, Free Press is not investing in infrastructure, and the Tea Party is not deploying next generation networks. Regardless of the slings, arrows and insults by high-strung advocacy groups that the Commission may have to suffer, the agency can best serve the public interest by seeking compromise solutions on the reforms that matter, with the support of the many entities investing in the broadband marketplace today, including spectrum reform, universal service reform, digital literacy and innovation policy.

## **ABOUT IIA**

The IIA is a broad-based coalition of businesses, non-profit organizations and trade associations that aims to ensure every American benefits from broadband Internet regardless of race, income or geography. We have long supported a comprehensive national broadband strategy to complement market efforts to achieve universal broadband availability and adoption.