

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
)	
Further Inquiry Into Two)	DA 10-1667
Under-Developed Issues in the)	
Open Internet Proceeding)	
)	

REPLY COMMENTS OF THE OPEN INTERNET COALITION

The Open Internet Coalition (“OIC”) submits the following reply comments in the above-captioned proceedings. As discussed below, the comments received in response to the September 1, 2010 Public Notice (“PN” or “Notice”)¹ point to an emerging consensus that broadband Internet access platforms that compete with each other should be subject to the same rules. The Commission should act now to adopt rules that protect and preserve an open Internet across all competing broadband platforms.

¹ *Further Inquiry Into Two Under-Developed Issues in the Open Internet Proceeding*, Public Notice, GN Docket No. 09-191, WC Docket No. 07-52, DA 10-1667 (rel. Sep. 1, 2010) (“Notice”).

I. INTRODUCTION

As this latest comment period comes to a close, the Open Internet Coalition urges the Commission to act quickly and decisively to adopt rules that will protect an open and robust Internet ecosystem. As OIC pointed out in its initial comments, there is considerable consensus among key stakeholders that the Internet should be protected through the adoption of enforceable rules. On the two issues raised by the PN, OIC believes that the docket calls for those rules to be technologically neutral and consistent across broadband platforms. And, OIC believes that it is still not clear what should be covered under a category of prioritized, specialized services. But it is clear that if the Commission were to define such a category, it should apply nondiscrimination rules to such a category to protect against anti-competitive conduct.

II. THE COMMISSION'S POLICIES SHOULD BE TECHNOLOGICALLY NEUTRAL AND CONSISTENT ACROSS BROADBAND PLATFORMS

As OIC argued in its initial comments, open Internet principles should apply to all broadband platforms, including those offering wireless broadband Internet access services.² A policy of technological neutrality is consistent with Commission policies that establish a consistent regulatory framework across platforms and that do not bias investment decisions in favor of particular technologies or business models.³ Applying

² Comments of the Open Internet Coalition at 5-9 (filed Oct. 12, 2010) ("OIC Comments").

³ *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, WT Docket No. 07-53, FCC 07-30, at 2, ¶ 2 (rel. Mar. 23, 2007) (classifying wireless broadband consistently with wireline broadband, and noting that such a classification "furthers [the Commission's] efforts to establish a consistent regulatory framework across broadband platforms by regulating like services in similar manner.").

open Internet policies across all platforms also reflects consumer expectations as consumers increasingly substitute wired and wireless connections for each other.⁴ OIC also explained that while there may be differences between wireless and wired networks that may result in different network management challenges, this is not a reason to exclude wireless broadband networks from the purview of open Internet rules. Instead, any relevant technological differences can be accounted for under the definition of “reasonable network management,” with the Commission’s case-by-case enforcement process designed to take into account the particular facts and circumstances of each case.

Prominent network operators agree with a technologically neutral approach to open Internet policies.⁵ In particular, NCTA agrees that any open Internet rules “must be applied in a competitively neutral manner to all broadband platforms, wireline and wireless,”⁶ and that “the Commission must be guided by the underlying principle of regulatory parity in order to avoid conferring a regulatory advantage upon one type of broadband provider over another.”⁷ With respect to technological differences between wireless and wired networks, NCTA notes correctly that network congestion issues faced by wireless networks are not unique and occur in the shared broadband networks

⁴ OIC Comments at 7.

⁵ Comments of the National Cable & Telecommunications Association at 11-15 (filed Oct. 12, 2010) (“NCTA Comments”); Comments of Time Warner Cable Inc. at 33-36 (filed Oct. 12, 2010) (“TWC Comments”).

⁶ NCTA Comments at 11.

⁷ *Id.* at 12. NCTA also argues that “an arbitrary exemption for one broadband technology or sector while others are made subject to these requirements would disserve consumers and skew the development of broadband services.” *Id.* at 14-15.

deployed by cable operators.⁸ As NCTA explains, “[a]ny differences between wireless and wireline broadband technologies ... are more appropriately addressed in the manner in which net neutrality rules are applied, taking into account the network management challenges faced by a provider using a particular technology, rather than by excluding wireless carriers from the rules completely.”⁹

In addition, although it opposes open Internet rules for wireless broadband networks, Verizon acknowledges the advisability of policies under which broadband platforms that compete with each other have the same rules.¹⁰ This principle of competitive neutrality is ultimately what should drive the Commission to adopt the same open Internet rules across all broadband platforms – while acknowledging that the implementation of such rules may differ depending on the particular technological characteristics of a given broadband platform.¹¹

III. IF THE COMMISSION ADOPTS A SPECIALIZED SERVICES CATEGORY, IT SHOULD CLARIFY THE SCOPE OF SUCH SERVICES AND ENSURE THAT THEY ARE NOT USED FOR ANTICOMPETITIVE PURPOSES

The continuing lack of clarity as to the scope of the specialized services category makes it difficult to determine the appropriate policy approach to such services. Should the Commission adopt a specialized services category, it should clarify the scope of

⁸ *Id.* at 11-12; TWC Comments at 33-34.

⁹ NCTA Comments at 12.

¹⁰ Comments of Verizon and Verizon Wireless at 42 (filed Oct. 12, 2010) (noting that any open Internet rules “should be limited to the 4G services that will compete most directly with wireline broadband services....”) (“Verizon Comments”).

¹¹ *See* Comments of Free Press at 19-27 (filed Oct. 12, 2010); Comments of DISH Network L.L.C. at 17-23 (filed Oct. 12, 2010); Comments of the Center for Democracy & Technology at 5-6 (filed Oct. 12, 2010); Comments of ADTRAN, Inc. at 8-10 (filed Oct. 12, 2010).

such services and maintain oversight over such services to address any anti-competitive conduct.

In its initial comments, OIC expressed its concern that there is a lack of clarity as to what services are encompassed by the specialized services designation. Neither the record in this proceeding nor the *Notice* provide much clarity as to the definition of specialized services or the types of services that fall within such a category. The initial comments in response to the *Notice* reflect this lack of clarity and confirm OIC's concerns.

For example, AT&T describes several services that it views as falling within the category of specialized services, and claims that several such services are offered today and more are imminent. Among the services AT&T describes as specialized services are IPTV services such as U-Verse;¹² however, such services are appropriately classified as Title VI services and should not be impacted by the proposed open Internet rules.¹³ AT&T also lists numerous other services that it believes falls under the specialized services category, including telemedicine applications, utility meters and smart grid devices, remote health monitors, vehicle and freight-tracking devices, VPNs, eReaders, wireless dog collars, etc.¹⁴ But some of these transmission offerings may be Title II "telecommunications services" today. And, some of these services are offered today over the best-efforts Internet, making it unclear why such services require the different

¹² Comments of AT&T Inc. at 5, 7-8, & 25 (filed Oct. 12, 2010) ("AT&T Comments").

¹³ Comments of the Open Internet Coalition at 92 (filed Jan. 14, 2010).

¹⁴ AT&T Comments at 6.

regulatory treatment that may be accorded to the ill-defined category of “specialized services.”

Assuming there is a need for a separate category of specialized services that is not subject to open Internet rules, the Commission must provide greater clarity by better defining such services. In doing so, the Commission should not, as urged by some commenters, define broadband Internet access services narrowly so as to effectively weaken the open Internet protections.¹⁵ Instead, the Commission should maintain the definition of broadband Internet access services in the rules proposed in the *Notice of Proposed Rulemaking* in this proceeding.¹⁶

Moreover, the Commission should ensure that any specialized services delivered via the same bottleneck facilities as broadband Internet access services are subject to Commission oversight, including an “unreasonable discrimination” standard. As the *Notice* observes, “broadband providers may have the ability and incentive to engage in anti-competitive conduct with respect to specialized services,” and “[s]uch discriminatory conduct could harm competition and private investment in content, application, and service providers.”¹⁷ Commission enforcement of an “unreasonable discrimination” standard on a case-by-case basis will allow specialized services to be

¹⁵ *Id.* at 4.

¹⁶ *Preserving the Open Internet; Broadband Industry Practices*, Notice of Proposed Rulemaking, GN Docket No. 09-191, WC Docket No. 07-52, at 65, Appendix A (rel. Oct. 22, 2009) (proposed rule 47 C.F.R. § 8.3 defining “broadband Internet access service”).

¹⁷ *Notice* at 3.

offered while providing a check on anti-competitive conduct on the part of owners of bottleneck facilities.

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For the foregoing reasons, we urge the Commission to adopt rules quickly and decisively to protect and preserve and open and robust Internet.

Respectfully Submitted,

OPEN INTERNET COALITION

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