Before
The Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Notice of Proposed Rulemaking
Protecting and Promoting the Open Internet
GN Docket No. 14-28

COMMENT OF
Open Media and Information Companies Initiative (Open MIC), *et al*

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1. OVERVIEW

This comment is offered by the Open Media and Information Companies Initiative (Open MIC), a non-profit organization which works with investors to foster more open and democratic media through market-based solutions; the investment firms Calvert Investments, Trillium Asset Management, Arjuna Capital/Baldwin Brothers Inc., Zevin Asset Management, First Affirmative Financial Network, Clean Yield Asset Management, Colorado Sustainable Financial Planning; and the Nathan Cummings Foundation, Park Foundation and As You Sow Foundation. Collectively, these organizations represent approximately $18.3 billion in assets under management (AUM).

The importance of open Internet and network neutrality issues to investors has been emphasized previously through a series of shareholder proposals presented in recent years to the major Internet Service Providers (ISPs). Despite strenuous opposition by the companies, these proposals have consistently gained support among shareholders. In May 2014, for example, a shareholder proposal calling on Verizon Communications Inc. to report on business risks arising from the company's opposition to open Internet and network neutrality principles won 26.4 percent of the shareholder vote, representing $30.6 billion in Verizon shares.

This comment outlines investor arguments in support of strong open Internet and network neutrality principles. It supports reclassification of broadband Internet service under Title II of the Communications Act, giving the Commission clear regulatory authority over the Internet network infrastructure that serves millions of individuals, entrepreneurs and established businesses throughout the United States.

However, we also believe that application of all Title II provisions of the Act could present a danger of overregulation of a service that has undergone rapid and generally beneficial development under the Commission's regulatory policy. Accordingly, we recommend reclassification of the Internet under Title II but would also recommend forbearance from implementing all but those regulations that are tailored narrowly to protect innovation, competition, consumer choice, and access to information.

2. ECONOMIC IMPORTANCE OF AN OPEN INTERNET

The explosive growth of the Internet over the last two decades is in many ways attributable to the *de facto* observance of network neutrality principles by all major players in the digital universe. As the Commission has noted, openness is the "highly successful status quo" on the Internet.[1]

As a result, these Open Internet proceedings are critically important not only to shareholders of individual companies (such as the ISPs) but also to diversified institutional investors. The investors offering this comment have fiduciary interests in a broad range of industries and businesses for which a healthy and robust Internet environment is an economic necessity.

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[1] https://apps.fcc.gov/edocs_public/attachmatch/FCC-10-201A1_Rcd.pdf

We believe open Internet policies help drive the economy, encourage innovation and reward investors. According to McKinsey & Company, the United States is the largest player in the global Internet supply ecosystem, capturing more than 30 percent of global Internet revenues and more than 40 percent of net income.[2]

An open Internet is essential to Internet-focused technology companies. A 2013 report by the Kauffman Foundation reported that in the previous three decades new business formation has consistently been higher among high-tech and information, communications and technology (ICT) companies than for the private sector as a whole, "with new firm formations 23 percent more likely for high-tech and 48 percent more likely for ICT."[3] The Internet's level playing field enables entrepreneurship and innovation in the form of start-up companies, particularly in the ICT sector. An Internet governance approach that permits anything less than a fully open and accessible Internet stands to limit the success of these start-ups and, in the worst case, deter innovation – and, potentially, commerce and investment – in the sector.

Traditional businesses that address critical needs such as healthcare, education and banking also increasingly rely on open Internet access. And an open Internet is critically important to small and medium-sized companies, which are often viewed as important drivers of job growth.

For the ISPs, we believe network neutrality principles help bring new products to their platforms, attracting customers and creating opportunities to share revenue with developers. As investors, we believe that the ISPs could confront serious reputational and commercial risk by failing to provide customers with evidence of open Internet policies, namely by taking business approaches that, while legally permissible under new rules, adversely affect innovation and public access to information and technology.

Open Internet principles also promote free speech, civic participation, democratic engagement and marketplace competition, as well as robust broadband adoption and participation in the Internet community by minorities and other socially and economically disadvantaged groups.

These multiple factors significantly impact the nation's economy and investment results. And they can be negatively affected by inappropriate policies and practices in one essential industry. Academic research, for example, has demonstrated how pharmaceuticals' high drug prices, while seemingly boosting income of drug makers, cause negative externalities that hurt investors. When workers cannot afford the medication that they need, both worker health and productivity decline, with a direct negative impact on company profits and investor portfolios.[4]

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[2] http://www.mckinsey.com/insights/high_tech_telecoms_internet/internet_matters

[3] http://www.kauffman.org/~/media/kauffman_org/research%20reports%20and%20covers/2013/08/bdstechstartsreport.pdf

[4] http://papers.ssrn.com/sol3/papers.cfm?abstract_id=984339

For diversified investors, therefore, it is critical that public policy be developed with an eye toward the economic health of the entire economy since a systematic governance failure in only one area can be a detriment to the investor's portfolio. The economic and investment impact of open Internet policies and practices can be profound.

Based on our experience with the major ISPs, we agree with Commissioner Mignon Clayburn when she says:

> At its core, an open Internet means that **consumers**, not a company, not the government, determine winners and losers. It is the free market at its best. All of this, however, does not nor will it ever, occur organically. Without rules governing a free and open Internet it is possible that companies – fixed and wireless broadband providers – could independently determine whether they want to discriminate or block content, pick favorites, charge higher fees or distort the market.

And we concur with Commissioner Jessica Rosenworcel:

> As we proceed, we also must keep front of mind the principles of fairness and protection from discrimination that have informed every proceeding involving the Internet that has been before this agency. These are the essential values in our communications laws. They are the ones we have honored in the past; they must guide us in the future. So going forward we must honor transparency, ban blocking, and prevent unreasonable discrimination. We cannot have a two-tiered Internet, with fast lanes that speed the traffic of the privileged and leave the rest of us lagging behind.

3. THREAT TO THE OPEN INTERNET

The marketplace reality, attested to by numerous experts and millions of Americans, is that little or no competition exists in U.S. broadband access; in most areas of the country, the local cable provider is the only path for consumer Internet access.[5] Further, notes law professor and former senior government advisor Susan Crawford, "(f)or the vast majority of businesses in 19 of the 20 largest metropolitan areas in the country, their only choice for a high-capacity wired connection will be Comcast."[6]

In the absence of a firm and consistent regulatory policy, there is little doubt that the "highly successful status quo" of the open Internet would be aggressively challenged and altered.

For example, in oral arguments before a U.S. Court of Appeals panel last September, attorneys for Verizon Communications strongly suggested that the company would like to pursue different service pricing models which could lead to paid prioritization for some Internet

[5] http://articles.latimes.com/2013/aug/23/business/la-fi-hiltzik-20130823
[6] http://www.bloombergview.com/articles/2014-02-13/comcast-s-time-warner-deal-is-bad-for-america

content. Verizon lawyer Helgi Walker told the court: "I'm authorized to state from my client today that but for these [FCC] rules we would be exploring those types of arrangements."[7]

As investors, we are troubled by the potential negative impact that such service prioritization could have on the innovative technology start-ups which drive so much economic growth. We note a May 2014 letter to the Commission from more than 100 technology companies, including industry leaders Microsoft, Google, Amazon, Netflix, Facebook, Twitter and Yahoo! They urged the Commission to continue policies which bar blocking, discrimination and paid prioritization of Internet content:

> Instead of permitting individualized bargaining and discrimination, the Commission's rules should protect users and Internet companies on both fixed and mobile platforms against blocking, discrimination, and paid prioritization, and should make the market for Internet services more transparent. The rules should provide certainty to all market participants and keep the costs of regulation low.
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> Such rules are essential for the future of the Internet. This Commission should take the necessary steps to ensure that the Internet remains an open platform for speech and commerce so that America continues to lead the world in technology markets. [8]

Additionally, a group of major venture capital firms – which traditionally provide early stage financing to Internet start-up ventures – has warned that a failure to implement network neutrality principles could threaten a vitally important cycle of business and economic development on the Internet:

> The freedom and openness of the Internet are now being threatened in unprecedented ways, because of structural changes in the way the Internet is being offered to consumers. The providers of the Internet today—the cable and telephone companies—are now motivated, like never before, to interfere with the content that passes through their pipes. They have also acquired the technology that allows them to do just that – technology that wasn't available before.
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> In a world without network neutrality rules, network providers are allowed to discriminate against applications. If a network provider blocks an application, that application will not reach its users, and the application provider will not profit. Because application discrimination threatens application providers' profits, it also reduces application providers' incentives to innovate. Finally, it reduces the incentives of investors…to invest in new technologies.[9]

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[7] http://www.washingtonpost.com/blogs/the-switch/wp/2014/01/14/d-c-circuit-court-strikes-down-net-neutrality-rules/
[8] http://engine.is/wp-content/uploads/Company-Sign-On-Letter.pdf
[9] http://www.fcc.gov/document/amicus-brief-venture-capital-no-11-1355-dc-cir

Prominent venture capitalist Fred Wilson, of Union Square Ventures, has said: “I would encourage all you business leaders working and investing in the open Internet to stand up and say that net neutrality is pro-business. Because if you don't, the FCC could lose this fight and we'll be in a much worse place.” [10]

Importantly, there seems to be little or no evidence that reclassification of broadband Internet service would harm the national economy or deter innovation. Indeed, one analysis notes that when previously operating under Title II regulation, former Bell Company revenues increased at a combined annual growth rate (CAGR) of 5 percent, compared with an annual growth rate of just 0.4 percent after Title II was removed. As for investment in network infrastructure, under Title II, Bell Company capital investments increased by 20 percent (a CAGR of 1.8 percent); after the FCC removed Title II, capital investment at these companies declined by 5 percent (a CAGR of negative 0.7 percent). Meanwhile, the number of jobs within the former Bell companies has dropped significantly. [11]

4. HOW TO PROTECT THE OPEN INTERNET

In this context, we believe that maintaining a policy of regulation of broadband Internet access under Title I of the Communications Act would be untenable. That course would provide neither the consumer protections required for a healthy Internet economy nor a regulatory environment conducive to more transparent and accountable corporate policies and practices.

As Investors, we believe classification of broadband Internet service under Title II of the Communications Act would best protect the open Internet as a platform for economic growth and innovation. We also strongly believe that these open Internet rules should be extended to wireless broadband services, which are currently largely exempt from these rules, since so much high-tech growth has become dependent on applications developed specifically for mobile smart phones, tablets and other portable devices.

It is imperative that Internet content not be subject to blocking, discrimination and paid prioritization. As has been previously highlighted in shareholder proposals to the major ISPs, greater transparency regarding Internet network management practices (without disclosure of confidential technical detail) would provide important and valuable benchmarks for investors to assess the impact of the companies’ policies on customers, communities and society.

With this notice of proposed rule-making, the Commission is addressing matters of extreme importance to our economy, with impact on both widely diversified investors as well as shareholders in individual companies. We thank the Commission for this opportunity to comment and look forward to participating in the ongoing discussion regarding these proceedings.

[10] http://avc.com/2010/05/net-neutrality-is-probusiness/
[11] http://www.freepress.net/blog/2014/05/14/fighting-zombie-lies-sorry-isps-title-ii-good-economy