

July 18, 2014

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

In the Matter of Proposed Rulemaking to Protect Open Internet

Dear Ms. Dortch,

The American Association of People with Disabilities (AAPD), submits the following comments regarding the matter above. We note that the National Council on Independent Living (NCIL) joins AAPD on this filing.

AAPD is the nation's largest cross-disability organization. We promote equal opportunity, economic power, independent living, and political participation for people with disabilities. Our members, including people with disabilities and our family, friends, and supporters, represent a powerful force for change. As an organization that advocates for the disability community, AAPD is filing this public comment to ensure that the FCC considers and includes the needs of people with disabilities in its process to protect and promote the Open Internet in order to preserve net neutrality.

The National Council on Independent Living is the longest-running national cross-disability, grassroots organization run by and for people with disabilities. Founded in 1982, NCIL represents thousands of organizations and individuals including: individuals with disabilities, Centers for Independent Living (CILs), Statewide Independent Living Councils (SILCs), and other organizations that advocate for the human and civil rights of people with disabilities throughout the United States.

The Open Internet NPRM raises a number of extraordinarily complex issues. The degree to which there is a shared understanding and appreciation of the matter at hand varies from group to group, making it difficult to achieve a consensus. Our comment is unlikely incorporate all of the views held by groups that constitute the disability community. Ultimately, we all share the common objective of ensuring that people with disabilities enjoy certain consumer protections as the Commission moves forward with its rulemaking.

I. Introduction

Over the past several decades, an Open Internet has made it possible for individuals to communicate, access information, and pursue unprecedented technological innovation. Through widespread broadband deployment, people with disabilities have benefitted from the Open Internet, which has created new opportunities for inclusion, empowerment, and independent living. Employing ever-evolving technologies, companies throughout the world continue to create products and applications that give people with disabilities the means to live on a more equitable basis within the global community.

At the same time, innovation is an organic, spontaneous, and rapid process, and in recent years technological innovation has disrupted business models and radically changed markets. While this process should be celebrated as a strong engine for economic growth, rapid innovation frequently moves so quickly that minority groups are left out of consideration.

Throughout history, people with disabilities have experienced discrimination: in the workplace, as consumers, and as citizens. While the United States government has worked to remedy some of these inequities through landmark legislation like the Americans with Disabilities Act (ADA),¹ we continue to see instances of inequity and exclusion. Too often, companies overlook the need for accessibility in their initial design of products, and in many instances need to spend an exorbitant amount of money and time re-engineering their products to make them accessible. In addition, our lawmaking institutions frequently move too slowly to ensure that the needs of the disability community are being met in our rapidly changing world.

II. Our Proposed Regulatory Structure Will Protect Consumers with Disabilities, Ensure Universal Access, and Protect an Open Internet

A. The Commission Should Assert Authority in Order to Preserve and Protect the Virtuous Cycle

In the recent *Verizon v. FCC* ruling, the U.S. Court of Appeals held that the FCC has the legal authority to craft enforceable rules to protect and promote an Open Internet.² In evaluating the options offered by this court decision, we believe that the FCC must look to the future to develop a new framework that ensures nondiscriminatory access to broadband communications, while also preserving the virtuous cycle that continues to drive innovation.

With these requirements in mind, we believe that the FCC should institute a regulatory structure emanating from its authority in Section 706, while also instituting universal access safeguards guaranteed by Section 254 of the Communications Act. In addition, we urge the Commission to explore Title II with Section 10 forbearance³ for those goals of the Act that cannot be accomplished

¹ Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2000).

² *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

³ Communications Act of 1934, 47 U.S.C. § 160 (1982 and Supp. V 1987).

under the authorities and powers of Sections 706 and 254 in order to protect consumers with disabilities. While our comments do not focus on public safety and privacy, we urge the Commission to look to Title II as a way to secure the interests of public safety, consumer protection, consumers with disabilities, and privacy.

Many in the disability community have been left out of the development of our communications infrastructure due to their lack of economic power and the unique nature of their communications needs. We believe that a new regulatory framework must balance consumer protections while continuing to encourage innovation.

i. People with Disabilities Benefit From the Virtuous Cycle of Innovation that Relies on an Open Internet

In their ruling, the Court of Appeals emphasized that an Open Internet is critical, as the development of a broadband system relies on an economic virtuous cycle of investment.⁴ This virtuous cycle economic theory demonstrates that content, services, applications, and devices developed by edge providers drive user demand for broadband. This then drives network improvements which, in turn, lead to further innovation in broadband deployment.

Internet users with disabilities benefit from this virtuous cycle of innovation. New technological innovations like video conferencing and VoiceOver IP make it possible for individuals with disabilities to be included in spaces that were previously closed off, with these new technologies developing based on strong investment in the latest broadband technology. We hold it imperative that a new regulatory framework preserves and protects the virtuous cycle that continues to drive innovation.

ii. The FCC Should Incorporate Universal Services Provisions and Consumer Protections for People with Disabilities into Its New Regulatory Structure as It Accesses the Authority Provided by Section 706

Most importantly, we believe that the FCC should make every effort to incorporate the unique needs of people with disabilities in its decision-making process. In interpreting the legal frameworks available to protect individuals with disabilities, we believe that Section 254, the universal services doctrine,⁵ is a sound starting framework to protect the needs of all individuals using “information services.” The provision ensures universal service that is reasonable, affordable, and just, and the FCC should look to Section 254 as a legally enforceable measure to guarantee equal access for people with disabilities to the Open Internet.

⁴ 740 F.3d at 628.

⁵ 47 U.S.C. § 254.

However, it is also clear that the universal access provision is not sufficient on its own. Current telecommunications laws demonstrate that the FCC is charged with implementing consumer protections that ensure accessibility for all people with disabilities.⁶ It is our belief that the Commission can extend protection under Section 255 and other disability specific consumer protections in Title II by exercising Section 10 forbearance. Provisions such as Section 255, which requires manufacturers and service providers to make their devices and services compatible through peripheral devices or specialized equipment if products are not readily accessible,⁷ constitute essential consumer protections that must be applied to the FCC's new regulatory structure to protect consumers with disabilities. The Commission must use this approach, where it finds Title II can further the goals of the Act to provide necessary protections—such as requiring the provision of services without "unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services."⁸

B. The FCC Should Take Measures to Prevent Any Threat to Openness

In addition to broadband access, an Open Internet depends on further critical factors, such as the inclusion of safeguards that prevent threats to openness. We support the FCC's proposal to retain most of the 2010 FCC Open Internet Order, including the no-blocking rule and any limitations to free speech.⁹ We recognize that broadband providers may have incentives to limit openness, which ultimately threatens to break or slow the virtuous cycle. Therefore, we also support the Commission's proposal to enhance the transparency rule.¹⁰ Not only is it essential that the public have access to the necessary information on the services they are receiving, but that they are also able to monitor activities that could threaten the Open Internet.

In the NPRM, the Commission asked for a specific comment on whether to ban paid prioritization. In evaluating how paid prioritization would affect the virtuous cycle of innovation, we believe that the Commission should consider banning this practice to preserve and protect the Open Internet. Paid prioritization has the potential to create arbitrary subdivisions in the online market. Content, apps, and services that do not have the benefit of paid prioritization may be put at a competitive disadvantage. We believe this has the potential to harm investment in edge providers who drive the virtuous cycle, and people with disabilities stand to benefit significantly from the innovations of the virtuous cycle.

⁶ See, e.g., Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Pub. L. No. 111-260, 124 Stat. 2751 (2010).

⁷ 47 U.S.C. § 255(b).

⁸ 47 U.S.C. § 202(a).

⁹ *In re Preserving the Open Internet*, 25 F.C.C.R. 17905 (2010).

¹⁰ *Id.*

III. The Disability Community Should Be a Priority as the Commission Moves Forward in Its Rulemaking

A. The Ombudsman Function Allows the Commission to Make the Disability Community a Priority in its Rulemaking Efforts

The FCC has an opportunity as it moves forward under Section 706 to improve accessibility for Americans with disabilities by building on its enforcement and reporting processes and creating a dedicated ombudsman function (*see Appendix A*). This will enable the Commission to further incorporate the communication needs of people with disabilities during this regulatory planning stage, helping to ensure that accessibility issues are being identified and addressed at the forefront.

A dedicated ombuds office will work to establish that accessible technology is addressed at the beginning of innovation and not as an afterthought. We hope that with the FCC's leadership on this issue, heightened awareness and oversight will lead to the design of accessible technologies as a priority for industry.

B. Accessible Technology Should Be a Priority in the Investment and Innovation of New Technology

Core to the disability rights movement has been the advocating for accessible technology, oftentimes after inaccessible landmark technology has been developed. Too often we have seen innovative new technology developed without an accessibility infrastructure in place, leaving the disability community unable to take advantage of the enrichments. As the Commission previously stated, "Although we are moving into the information age with increasing dependence on telecommunications tools, people with disabilities remain unable to access many products and services that are vital to full participation in our society."¹¹

V. Conclusion

We believe that, as in the past, the Commission can make the achievement of equal and reasonable access for Americans with disabilities a continuing priority in its regulatory structure. If the FCC decides to assert authority under Section 706 of the Act, we hold that the Commission should make the deployment of facilities that enhance the accessibility of networks to Americans with disabilities a distinct target of Internet policy, and that failure to achieve a standard of equal and reasonable access will trigger an obligation for the FCC to adopt policies to address this failing. In accomplishing these objectives, we believe that the FCC must explore Title II with Section 10 forbearance for those goals of the Act that cannot be accomplished under the authorities and powers of Sections 706 and 254, particularly for consumers with disabilities.

¹¹ *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (1999).

Over the past few years, Congress shifted the focus of universal service from mere availability to adoption and utilization. This shift strikes at the heart of the problem that Americans with disabilities have faced in accessing communications. While communications networks have been broadly available, they have not been accessible to or useful for many Americans with disabilities, so adoption and utilization in these communities have lagged. This important review of Open Internet policy provides an opportunity to ensure that people with disabilities have full and open access to broadband communications and enjoy the important consumer protections mentioned in our comments.

Respectfully submitted,

American Association of People with Disabilities
National Council on Independent Living

Appendix A.

An Ombudsman Office Can Monitor and Report on Access Issues Associated with Consumers with Disabilities

As the Commission moves forward and continues to build on its valuable record in disability access, it should establish an office associated with the proposed ombudsman function to monitor the access issues faced by people with disabilities when using Internet-supported technologies.

While equipment and technology other than broadband Internet are involved in the process, specific reporting criteria for this ombudsman office will allow the FCC to better determine what contributes to facilitating accessibility for consumers with disabilities and if limitations in broadband capacity contribute to an inability to achieve equal access, as put forth by the ADA. Section 717 of the Communications Act—which not only seeks to establish regulations facilitating the filing of complaints alleging violations of the Act’s disability provisions, but also promotes recordkeeping requirements and encourages the engagement of the disability community by ISPs and manufacturers—should serve as a model for the functioning of such an office. Information just as this can be used by the Commission to continue enhancing the quality of the Internet for people with disabilities.