

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
July 18, 2014

In the Matter of)
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Protecting and Promoting the Open Internet) GN Docket No. 14-28
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Comments of the BroadBand Institute of California

The *BroadBand Institute of California (BBIC)* hereby submits its comments regarding the above captioned proceeding. The *BroadBand Institute of California (BBIC)* is a law and public policy institute at the Santa Clara University School of Law engaging in research and education in the areas of technology regulation and public policy. The *BBIC* identifies, documents, addresses and publicizes the broadband and advanced network technology needs of California and the nation, and the impact of state and federal policies on these needs. The *BBIC* collaborates with traditional civil rights and disability rights organizations, urban and rural community oriented organizations, as well as foundations and businesses in the pursuit of its mission.

The *BBIC* commends the Commission for its timely institution of the above referenced proceeding and respectfully encourages the Commission to reclassify Internet Service Providers (ISPs) as telecommunications service providers.

The current collective market position of major ISPs is similar to that of the former AT&T prior to the 1984 divestiture.¹ They, like the former AT&T are centrally situated between the people of the United States and the governments, businesses and public institutions that seek to serve them. In addition, they face little real competition. Connecting each to the others, the major

¹ Margot Hornblower, AT&T Debate: 'Sleeper' Issue That Affects Almost Everyone; Telecommunications Issues Huge in Scope but Still Largely Ignored by Americans, *The Washington Post*, July 7, 1981, Pg. A1; Margot Hornblower, Who Will Control Our Information? *The Milwaukee Journal, Business News*, Tuesday July 28, 1981, <http://news.google.com/newspapers?nid=1499&dat=19810728&id=7R8qAAAAIBAJ&sjid=ByoEAAAAIBAJ&pg=4787,3864429>; and *The New New Telephone Industry*, *Business Week*, February 13, 1978, Pg. 68.

ISPs now seek to exploit their unique position of providing services in a multi-sided market by charging consumers and edge providers for the same transaction.²

Current levels of competition between ISPs is unlikely to afford consumers sufficient alternatives. An increasingly limited number of ISPs control access to and by U.S. consumers and hence the economy. In 2010 the FCC is reported to have estimated that roughly 78% of American subscribers had access to two ISPs. It has been reported that many of these duopolies engage in very little competition on price.³ A more recent study found that 30% of American subscribers have access to only one ISP and consequently, no ability to rely on competition.⁴ Absent meaningful competition based on price and service,⁵ ISPs have very little incentive to moderate price increases or provide superior service⁶ unless there is government oversight.⁷ The dangers to technological, business and cultural innovation and competition are substantial.⁸ “Because every web company has no choice but to go through these ISPs... may eventually have

² STL Partners, The 2-Sided Telecoms Market Opportunity, http://www.stlpartners.com/research_2sided.php, STL Partners, The Business Case for ‘Two-Sided’ Telecoms Business Models, http://www.telco2.net/blog/2009/10/the_business_case_for_twosided.html

³ In duopoly markets, massive phone and cable incumbents essentially stare at each other waiting for the next opportunity to raise broadband or TV prices, jack up ETFs, or impose the latest [absurd fee](#). Sure, you'll see some competition on things like channel counts, but this "competition" is usually based largely on superficial perceptions of value, not price. Karl Bode, Two ISPs in a Market Does Not Mean There's Competition, <http://www.dslreports.com/shownews/Two-ISPs-In-A-Market-Does-Not-Mean-Theres-Competition-107517>.

⁴ In the United States, many of us have no choice whatsoever in the way of broadband ISPs. Plenty of localities are more than happy to offer monopolies to mega-corps, and that means competition is effectively nonexistent in those areas. Price hikes, stagnant speeds, and other bad behaviors are free to run rampant, and there's not a damn thing you can do about it. Upwards of 30% of Americans have absolutely no choice in the matter... Grant Brunner, Woe is ISP: 30% of Americans Can't Choose Their Service Provider, <http://www.extremetech.com/internet/178465-woe-is-isp-30-of-americans-cant-choose-their-service-provider>

⁵ Heidi Moore, Price Gouging Cable Companies are Our Latter Day Robber Barons, <http://www.theguardian.com/commentisfree/2013/jun/04/price-gouging-cable-companies>

⁶ John Brodtkin, Why Comcast and other Cable ISPs aren't Selling You Gigabit Internet, <http://arstechnica.com/information-technology/2013/12/why-comcast-and-other-cable-isps-arent-selling-you-gigabit-internet/>

⁷ Paul Venezia, Challenged by Google Fiber ISPs Opt to Hasten their Downfall, <http://www.infoworld.com/d/data-center/challenged-google-fiber-isps-opt-hasten-their-downfall-216796?page=0,1>

⁸ <http://www.boston.com/business/technology/2014/05/08/mit-tech-review-proposed-net-neutrality-rules-already-hurting-innovation/vyuSh6PhNT5NEF9fvoQroM/story.html>; <http://www.scribd.com/doc/222755261/Net-Neutrality-Company-Sign-on-Letter>; Mike Masnick, Kickstarter Etsy and Dwolla All Speak Out On Net Neutrality

too much freedom to decide how much companies must pay for fast speeds.”⁹ The dangers to subscriber speech¹⁰ and privacy rights¹¹ and consumer protections in substituting contracts of adhesion drafted by unfettered corporations for statutory and constitutional protections are profound.

For these reasons, the Commission should exercise its statutory ability to reclassify basic broadband ISP service as a Title II telecommunications service, retain regulatory oversight and forbear from enforcement of those aspects of Title II regulation that are unnecessary due to the existence of bonafide competition. In the process of reclassification, the Commission should apply uniform non-discrimination, no-blocking, and transparency rules to wireline and wireless Internet access providers.¹² There is no longer a necessity to differentiate between the two platforms in applying the rules. Respectfully submitted this 18th day of July 2014,



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and Why the FCC's Plan Is Dangerous to Innovation,
<https://www.techdirt.com/articles/20140710/17450827845/kickstarter-etsy-dwolla-all-speak-out-net-neutrality-why-fccs-plan-is-dangerous-to-innovation.shtml>

⁹ Robert McMillan, What Everyone Gets Wrong in the Debate Over Net Neutrality,
http://www.wired.com/2014/06/net_neutrality_missing/

¹⁰ Adam Liptak, Verizon Blocks Messages of Abortion Rights Group,
http://www.nytimes.com/2007/09/27/us/27verizon.html?_r=2&; Pearl Jam Censored by AT&T, Calls for a Neutral 'Net,' <http://arstechnica.com/uncategorized/2007/08/pearl-jam-censored-by-att-calls-for-a-neutral-net/>; What's the Biggest Threat to free Speech In America? http://www.huffingtonpost.com/timothy-karr/whats-the-biggest-threat-b_66708.html

¹¹ Free Press, Net Neutrality and Privacy, <http://www.freepress.net/blog/2014/01/15/net-neutrality-and-privacy>.

¹² See Comments of the Internet Association, filed in the above referenced proceeding, at pp 20-21.
<http://internetassociation.org/wp-content/uploads/2014/07/Comments.pdf>