**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| Preserving the Open Internet | ) | GN Docket No. 09-191 |
| Protecting and Promoting the Open Internet | ) | GN Docket No. 14-28 |

## REPLY COMMENTS OF THE AMERICAN CONSUMER INSTITUTE

The American Consumer Institute (ACI) hereby submits its reply comments in response to the Federal Communications Commission ("Commission") regarding the above-captioned proceedings.

### Introduction

In response to the Commission's notice on protecting the Internet, the following are the reply comments of ACI. ACI is a nonprofit (501c3) educational and research organization with the mission to identify, analyze and protect the interests of consumers in selected policy and rulemaking proceedings in information technology, healthcare, retail, insurance, energy and other matters. While ACI has a member on the Commission's Consumer Advisory Committee (CAC), and participates on the CAC's Broadband, Healthcare Working Groups and IP-Transition Working Groups, the following comments are solely ACI's views and do not necessarily represent the views of the CAC or its members.

In our previous comments, we found no definitive evidence of a market failure that would justify reclassifying broadband services under Title II regulation and concluded that these regulations would reduce consumer welfare. For our reply comments, we will introduce into the public record evidence that these regulations would reduce jobs and innovation, and leave consumers worse off.

**Internet Regulations Would Lead to Job Losses**

A look at the financial data of companies in the Internet eco-system reveals that for every billion dollars in revenue, network companies ("core" companies) provide 2,329 jobs, while non-network Internet companies ("edge" companies) provide 1,199 – or about half as many.[1] Since net neutrality rules would reduce revenues and growth for core companies, and transfer benefits (revenue or growth prospects) to edge companies, net neutrality regulations would impede job creation.

Moreover, the Commission's proposals would dramatically increase market risk, lower expected growth, and suppress network investment. These and other threats to investment incentives and job creation opportunities are out of line with both the emerging national broadband policy and the growing imperative to create more good, permanent jobs.

The study's results produce a startling finding.[2] Both core and edge companies produce operating cash flows equal to about a quarter of revenues. However, the use of that cash by the two subsets of companies differs significantly. For core companies, 64% of cash flow is reinvested into the network (as capital expenditures) and 14% of it is taken as net income (as profits). In contrast, edge companies invest only 28% of cash flow generated by operations back into the economy, while retaining 49% of the cash as profits. Therefore, as net neutrality regulations work to subsidize content providers at the cost of platform providers, these regulations effectively transfer resources from core providers to edge providers by taking cash out of network investment and putting it into edge company profits. For consumers, this result is not beneficial.

In summary, core companies create more jobs and return more cash back into the economy than edge companies do. The analysis clearly indicates that rules and policies that favor edge companies and hamper the ability of network owners to earn revenues and

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[1] Larry F. Darby, Joseph P. Fuhr, Jr. and Stephen B. Pociask, "The Internet Ecosystem: Employment Impacts of National Broadband Policy, American Consumer Institute Center for Citizen Research, January 28, 2010, attached to this filing.
[2] Ibid.

generate cash flow may be expected on balance to come at a cost of a "net job loss" to the overall economy.

**Internet Regulations Would Not Spur Investment and Innovation**

The current arrangement of regulatory forbearance, incentives and opportunities have led to a notable record of innovation and investment in the network that has enabled, encouraged and increased the value at the edge for new services, applications and devices with dramatically increased functionality and adoption. In fact, many of the innovations at the edge reflect investment and business model applications of services first introduced by in the core network. There is no analysis or data in the economic literature on innovation and regulation to prove claims that the proposed net neutrality rules would on balance promote innovation in the Internet Ecosystem.[3]

In fact, the imposition of common carrier type regulations on network providers would diminish incentives and opportunities to continue innovation and investment at the core, thereby affecting the spillover of benefits to the edge. New constraints on broadband network providers would increase uncertainty and risk, reduce prospects for growth, and undermine network managers' incentives and opportunities to adapt to rapidly changing technical and economic conditions in the Internet ecosystem.

In addition, Internet regulations would undermine the ability of new rivals to enter and successfully challenge dominant edge providers that have established market power and an existing national infrastructure. Effectively, net neutrality regulations would create a barrier to entry by protecting large edge providers at the expense of would-be rivals. Thus, policies that reduce network investment would also reduce innovation in the Internet ecosystem.

[3] Larry F. Darby and Joseph P. Fuhr Jr., "Innovation and National Broadband Policies: Facts, Fiction and Unanswered Questions," American Consumer Institute Center for Citizen Research, March 3, 2010, attached to this filing.

**Regulations Would Reduce Consumer Welfare**

As we have stated in the past, the overwhelming empirical evidence indicates that net neutrality regulations would reduce consumer welfare.[4] Instead, many economists believe that competitive concerns involving the openness of the Internet are better addressed through a case-by-case adjudication and antitrust enforcement, not *ex ante* or prescriptive regulations, and that net neutrality regulation would reduce consumer welfare, innovation and investment.[5]

While virtually every empirically-based study has concluded that subsidizing content providers at the cost of the platform providers leaves consumers worse off, one article concluded that, in some circumstances, total surplus could increase with net neutrality. Yet, the authors of the article admit that "the platform and the consumers are better off without net neutrality."[6] Moreover, a mathematical simulation of this approach found that an increase in consumer surplus was, in fact, highly unlikely:

> "The losses sustained by consumers and platform operators under net neutrality outweigh any gains enjoyed by content providers as the profit ratio is adjusted to less empirically implausible levels, which leads to deadweight loss under net neutrality."[7]

With all of the empirical evidence concluding that consumers would be worse off with net neutrality, we are asking the Commission to do what is best for consumers and society, and not impose these harmful regulations, particularly onerous Title II common carrier regulations, on Internet services or Internet Service Providers.

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[4] *The Consequences of Net Neutrality Regulations on Broadband Investment and Consumer Welfare: A Collection of Essays*, American Consumer Institute Center for Citizen Research, November 19, 2009, attached to this filing.
[5] For a good review, see Gary S. Becker, Dennis W. Carlton and Hal S. Sider "Net Neutrality and Consumer Welfare," *Journal of Competition Law & Economics*, 6(3), 497–519, 2010, abstract is attached to this filing.
[6] Nicholas Economides and Joacim Tag, "Network Neutrality on the Internet: A Two-Sided Market Analysis," *Information Economic and Policy*, vol. 24, 2012, p. 97.
[7] Kevin W. Caves, "Modeling the Welfare Effects of Net Neutrality Regulation: A Comment on Economides and Tag," available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1585254.

**Summary**

In recap, net neutrality regulations, particularly onerous common carrier regulations, would impede network investment and innovation, reduce job growth and decrease consumer welfare. Competition – not old monopoly-era telephone regulation – is the best formula for enhancing consumer welfare, as well as increasing investment, innovation and job growth in the U.S. economy.