BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the matter of	)	
Protecting and Promoting the Open Internet	)	GN Docket No. 14-28

REPLY COMMENTS OF LAURENCE BRETT ("BRETT") GLASS, d/b/a LARIAT, A WIRELESS INTERNET SERVICE PROVIDER SERVING ALBANY COUNTY, WYOMING

Laurence Brett ("Brett") Glass, a sole proprietor doing business as LARIAT, a wireless Internet service provider serving Albany County, Wyoming, responds to comments filed regarding the Notice of Proposed Rule Making issued by the Commission on May 15, 2014[1] with the following reply comments.

LARIAT was among the first, if it was not the very first, of the wireless Internet service providers (WISPs) now doing business within the continental United States. LARIAT provides high quality, high speed broadband Internet service to a large and growing service area in rural Wyoming. LARIAT was originally founded as a nonprofit, 501(c)(12) rural telecommunications cooperative, and was taken private by its founder, Brett Glass, at the request of the membership in 2003. While it is now a for-profit small business, LARIAT has maintained the same consumer friendliness, transparency, and "no nonsense" practices and policies which the members instituted, by consensus, when it was still a co-op. These include sensible restrictions on network behaviors which would degrade the quality of

[1] *Protecting and Promoting the Open Internet;* Federal Communications Commission, Notice of Proposed Rule Making, GN Docket No. 14-28, FCC 14-61 (May 15, 2014) ("NPRM")

service of other customers or shift the costs of third parties to LARIAT.[2] LARIAT has never censored lawful Internet content – nor would it ever do so – and is greatly esteemed by its customers.

LARIAT's stance on regulation of the Internet remains unchanged from that stated in its comments in response to the Commission's 2009 NPRM.[3] As explained in those comments (which see),[4] the regulations proposed in the NPRM would prevent LARIAT from maintaining adequate network reliability and quality of service, especially over the limited amount of cluttered, noisy unlicensed spectrum available to it. (Due to auction policies which favor large incumbents – e.g., requiring payment in full before the spectrum can generate revenue and failing to prevent pre-emptive bids from incumbents seeking to foreclose competition – LARIAT has no access to licensed spectrum. Out-of-state corporations and speculators have purchased or leased all of the spectrum suitable for broadband delivery in LARIAT's service area. Other than a single digit percentage which is used for cellular service, this spectrum now lies fallow. The licensees do not respond to telephone inquiries, much less offer this spectrum for lease or purchase on secondary markets.)

While LARIAT is currently growing slowly without outside funding, worries that the proposed regulations would create an unsustainable regulatory burden have driven away all outside investors, leaving LARIAT unable to raise capital for more rapid expansion to areas which require its services. To impose the rules enumerated in the NPRM would permanently deter these investors and hobble competitive ISPs such as LARIAT. It would thus be contrary to the goals articulated in the National

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[2] For a detailed explanation of the ways in which peer-to-peer file sharing applications unfairly shift content providers' costs to ISPs and multiply them in the process, see *Prepared Remarks of Brett Glass, Owner and Founder of LARIAT, an ISP serving Laramie and Albany County, Wyoming*, delivered at the Commission's *en banc* hearing on network management practices, Stanford University, April 17, 2008, available at http://www.brettglass.com/FCC/remarks.html ("Stanford Testimony"); for other presentations from that hearing, see http://www.fcc.gov/broadband_network_management/hearing-ca041708.html.

[3] *Preserving the Open Internet; Broadband Industry Practices,* Federal Communications Commission, Notice of Proposed Rule Making, GN Docket No. 09-191, WC Docket No. 07-52, FCC Rcd. 13064 (2009) ("NPRM")

[4] *Comments of Laurence Brett ("Brett") Glass, d/b/a LARIAT, a Wireless Internet Service Provider Serving Albany County, Wyoming*, GN Docket No. 09-191, WC Docket No. 07-52, filed 1/14/2010, available at http://fjallfoss.fcc.gov/ecfs/document/view?id=7020378860 ("LARIAT Comments").

Broadband Plan, particularly those of increased availability and deployment and of fostering competition.[5] It would also, ironically, be contrary to the Internet Policy Statement upon which the rules in the NPRM are based, which states that consumers are entitled to competition.[6]

As one reviews the substantive comments in the docket (ignoring the "spam" produced by lobbying groups funded by Google and other Internet content providers), one can see a pattern: Those actually involved in, and expert in, the provision of broadband services are uniformly opposed to the imposition of the stringent regulations proposed in the NPRM and also to the classification of broadband Internet access as a Title II telecommunications service. The majority of those in favor are allied with or have working relationships with Internet content and application providers – especially Google, whose monopolies on Internet search, search advertising, banner advertising, and Internet video would be protected by the rules, in particular the prohibition on the purchase of prioritized packet delivery. (The proposed regulations – unlike the earlier "four principles" whose essential form they follow – are worded so as to touch neither the business practices nor the extensive worldwide fiber network of Google, even though this company and other content providers possess far more market power than any ISP.[7]) Many of the remaining proponents of the regulations are motivated not

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[5] "Competition is crucial for promoting consumer welfare and spurring innovation and investment in broadband access networks. Competition provides consumers the benefits of choice, better service and lower prices.*"* *Connecting America: The National Broadband Plan*, FCC (March 16, 2010), available at http://download.broadband.gov/plan/national-broadband-plan.pdf (Broadband Plan), at 36.

[6] *"To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet*, consumers are entitled to competition among network providers, application and service providers, and content providers." *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities,* Policy Statement, 20 FCC Rcd 14986, 14987–88 (2005), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-151A1.pdf ("Internet Policy Statement"), at ¶ 4.

[7] See Eggerton, John, *Q&A: Michael Powell*, Multichannel News, 3/29/2010: "On the Web side, we have companies that have substantially higher monopoly market dominance than these carriers do. We have companies on the Web that do stuff to bias their own businesses over other competitors' businesses much more dramatically I have ever seen and infrastructure provider do.... If I search Google I will get Google-fed video that is from their owned

by knowledge or understanding of the workings of the Internet but rather by politics – a factor which should not play a role in the decisions of an expert technical agency. The majority of commenters also display ignorance of the content of the proposed rules and likewise of the provisions of Title II (including its requirements for filed tariffs and its authorization of different charges for traffic depending upon the source, destination, sender, recipient, time of day, etc.). Finally, few commenters appear to recognize the benefits of two-sided markets, which include predictable billing (if broadband customers are to pay a fixed rate for Internet access, it makes sense for the fees they pay to content providers to cover both the content and the additional bandwidth that content requires) and the encouragement of bandwidth efficiency on the part of content providers.

For all of these reasons, rather than continuing to hunt for tenuous justifications for authority to impose the rules in the NPRM under Title I ancillary authority,[8] or – worse still – embarking upon the treacherous path of attempting to reclassify broadband services under Title II, the Commission should, at this juncture, table the present proceeding for lack of any imminent threat by ISPs to the openness of the Internet. It should then pursue, aggressively, the competition-enhancing strategies outlined in the National Broadband Plan, which will likely obviate the need for any such rules even in the eyes of the most ardent supporter of "network neutrality." The Commission should also enlist the cooperation of the FTC and DoJ in vigorously addressing anticompetitive tactics, addressing harms to consumers, and promoting transparency, as well as exercising its own authority in areas where it has clear jurisdiction, such as spectrum policy and the long-dormant proceeding addressing anticompetitive, exorbitant "special access" charges.[9] The Commission can then take pride in having protected the openness of the Internet not by imposing onerous and counterproductive rules but by

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property and not video from someone else's property. Whole companies spend time trying to make sure they get to be on that front page and not page 10, and if you are on page 10 you're dead." Full text available at http://www.multichannel.com/article/450846-Q_A_Michael_Powell_Title_II_Move_Could_Spark_War_.php

[8] See *Comcast v. FCC*, No. 08-1291, slip op. (DC Cir. April 6, 2010) ("Comcast v. FCC").

[9] WC Docket 05-25, RM-10593

fostering a degree of competition that renders such rules unnecessary. While the Commission may choose to retain the option of resuming the present proceeding, these actions should obviate any need to revisit it in the future.

Respectfully submitted,

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