

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Protecting and Promoting the Open Internet)	GN Docket No. 14-28
)	
Framework for Broadband Internet Service)	GN Docket No. 10-127
)	

REPLY COMMENTS OF VOICES FOR INTERNET FREEDOM ET AL.¹

Voices for Internet Freedom et al. (“Voices”), by their attorneys at the National Hispanic Media Coalition, and on behalf of the communities that they represent, respectfully submit these Reply Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking soliciting input on how best to protect and promote the Open Internet. Voices for Internet Freedom et al. are comprised of civil rights, human rights, and community based organizations and diverse media makers, entrepreneurs, and activists from across the country. In initial comments,² Voices urged the Commission to adopt strong and enforceable Open Internet rules that prevent blocking, discrimination, and paid prioritization online, while enhancing transparency requirements for Internet Service Providers (“ISPs”). Voices believe that strong rules should apply equally to fixed and mobile services. Voices urged the Commission to reclassify Internet access service as a telecommunications service so that Open Internet rules are grounded in the firm authority granted to the Commission in Title II of the Communications Act.

¹ A full list of signatories to these reply comments can be found at Appendix A.

² Voices for Internet Freedom, by their attorneys at the National Hispanic Media Coalition, filed initial comments as part of a broad-based coalition of civil rights and media justice organizations, and organizations led by and serving people of color, under the identifier “Internet Freedom Supporters.”

In order to fully protect the Open Internet, Voices contends that the Commission must adopt the following rules:

- (1) *No blocking*. Fixed and mobile broadband providers may not block lawful content, applications, services, or non-harmful devices;
- (2) *No unreasonable discrimination*. Fixed and mobile broadband providers may not unreasonably discriminate in transmitting lawful network traffic, and may not enter into paid prioritization agreements with edge providers or other similarly situated parties; and
- (3) *Transparency*. Fixed and mobile broadband providers must disclose the network management practices, performance characteristics, and terms and conditions of their broadband services, including any interactions or disputes with edge or transit providers that could impact the overall quality of service that customers receive or the performance of specific applications or services.

Due to the fact that a number of these rules are similar to rules that were struck down by the D.C. Circuit Court of Appeals as common carrier regulations, the Commission must classify Internet access services as Title II services in order to assert the sustainable legal authority necessary to adopt and enforce these rules.

I. THERE IS NO EVIDENCE THAT UTILIZING TITLE II AUTHORITY TO ESTABLISH STRONG OPEN INTERNET RULES WILL HARM INVESTMENT IN BROADBAND NETWORKS OR SLOW BROADBAND ADOPTION

There is no evidence that investment in broadband infrastructure, or broadband adoption by communities of color, will be negatively impacted if the Commission were to classify Internet access services as telecommunications services and base strong Open Internet rules in Title II of the Communications Act. Purveyors of this theory tend to rely on unsupported statements and hypothetical situations, and seem to ignore the fact that communications services, and some

Internet access services in particular, have been and continue to be regulated under Title II with no evidence of negative repercussions.³ Further, it is widely accepted that the FCC’s 2010 Open Internet Rules, which were later deemed by the D.C. Circuit to be tantamount to Title II common carrier regulation, are necessary to foster a virtuous cycle of innovation, consumer demand, and investment.⁴ Many parties supported those rules.⁵ It has also been suggested that this virtuous cycle, and the diverse and innovative content that it produces, enhances the value of Internet access services and could drive, rather than hamper, broadband adoption. The rules that the FCC put in place to protect this virtuous cycle in 2010 were struck down by the D.C. Circuit. In its opinion, the Court made it clear that similar rules cannot be readopted unless the Commission chooses to utilize Title II and classify Internet access service as a Title II telecommunications service.

A. Historically, Title II has not hampered investment or innovation

Title II of the Communications Act has been implemented to regulate providers of communications services as common carrier, transport services for decades. In fact, as rightly pointed out by Public Knowledge in initial comments, “Common carrier regulation is partly responsible for the growth of the commercial internet and mobile phones.”⁶ Public Knowledge noted that users “were also only permitted to use modems with their telephone connections

³ See Comments of Nat’l Minority Orgs., GN Docket Nos. 14-28, 10-127 at 8-11 (filed July 18, 2014) (“Comments of Nat’l Minority Orgs.”).

⁴ *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

⁵ See Comments of CWA and NAACP, GN Docket No. 14-28 at 7 (filed July 15, 2014); Comments of Asian Americans Advancing Justice, GN Docket No. 14-28 at 5 (filed July 15, 2014) (“Comments of Asian Americans Advancing Justice”); Comments of NAACP, National Urban League, LULAC et al., GN Docket No. 14-28 at 1 (filed July 18, 2014) (“Comments of NUL et al.”); Comments of AT&T, GN Docket Nos. 14-28, 10-127 at 1 (filed July 15, 2014); Comments of Comcast, GN Docket Nos. 14-28, 10-127 at 11 (filed July 15, 2014).

⁶ Comments of Public Knowledge et al., GN Docket Nos. 14-28, 10-127, 09-191, WC Docket No. 07-52 at 9 (filed July 15, 2014) (“Comments of Public Knowledge et al.”).

because of the Title II *Carterfone* decision in the first place” and that “[c]onsumers began to use mobile phones only because they were able to place and receive calls to and from any other wired or wireless telephone network—a guarantee afforded them by Title II.”⁷

Free Press, in initial comments, performed an extensive analysis of historical investment in communications networks and found that the “average annual investment by telecom carriers was 55 percent higher under the period of Title II's application than it has been in the years since the FCC removed broadband from Title II.”⁸ One commenter made the claim that, under Title II, “communities of color will suffer disproportionately through diminished infrastructure investment.”⁹ However, when looking at infrastructure investment in the networks themselves, Free Press found that annual average investment in new deployment or network upgrades has decreased by 250 percent in the years following the FCC’s declaration that cable modem services were not subject to Title II regulations.¹⁰ In fact, today, in the absence of Title II “only about 1 percent of cable company revenues are devoted to extending new lines or upgrading existing plant.”¹¹ The claims that the use of Title II authority would lead to decreased investment by ISPs are not supported by historical data.

B. Presently, Title II does not hamper investment or innovation

Title II is currently applied to a number of advanced communications networks without any indication of the negative consequences that some commenters claim. As Free Press points out, “Title II has been *and continues to be* applied in the CLEC, CMRS and enterprise broadband

⁷ *Id.*

⁸ Comments of Free Press, GN Docket Nos. 14-28, 10-127, 09-19 at 102 (filed July 17, 2014) (“Comments of Free Press”).

⁹ Comments of Nat’l Minority Orgs. at 10.

¹⁰ *See* Comments of Free Press at 109.

¹¹ *Id.* at 108.

sectors, without the slightest hint of negative impacts on investment or share prices.”¹² Further, more than 1,000 rural broadband providers, serving more than 2 million broadband customers in 46 states, do so under a Title II regulatory framework.¹³ One group of commenters claimed that “further analysis of what a Title II regulatory framework represents is warranted ... [because t]he current record on this issue is void and de minimis.”¹⁴ This is not so. Hundreds, if not thousands, of pages have been filed in these dockets alone on this very question with answers that draw from historical and present experience with the application of Title II to communications services. The data indicates that use of Title II over the years has not generated any of the ill effects conceived by those that oppose the use of Title II.

C. There is no evidence that strong Open Internet rules under Title II would slow broadband adoption by people of color

One commenter went so far as to say that utilization of Title II authority would “adversely impact broadband adoption” in communities of color.¹⁵ This assertion is mistaken and fails to grasp the barriers to adoption that must be overcome by communities that currently lack broadband.

Contrary to what this commenter indicates, the challenge of increasing broadband adoption among remaining non-adopters is complex and multifaceted – and has little to do with regulatory outcomes. The National Telecommunications and Information Administration (“NTIA”) has identified five barriers to adoption, through the analysis of adoption programs that

¹² *Id.* at 93.

¹³ *See Trends: A Report on Rural Telecom Technology*, National Exchange Carrier Association (July 2013), available at <http://usa.son-conference.com/files/2014/01/Rural-Telco-Trends-in-the-US.pdf>.

¹⁴ Comments of NUL et al. at 2.

¹⁵ Comments of Nat’l Minority Orgs. at 8.

it helped fund across the country.¹⁶ Those five barriers are access and availability, cost, perception, relevance, and skills.¹⁷ Ultimately, the decision to adopt broadband, to the extent that one is able, involves a complex and individualized cost and benefit analysis of the offering of the service itself.

As a majority of the Commission noted in passing its 2010 Open Internet Rules, preservation of the virtuous cycle created by an Open Internet serves to increase consumer adoption by spurring innovative products and better service offerings. The Commission noted in 2010 that its rules, which were later determined to be common carrier regulations, “will help close the digital divide by maintaining relatively low barriers to entry for underrepresented groups and allowing for the development of diverse content, applications, and services.”¹⁸ On the other hand, the Commission specifically noted that the “detrimental effects of access and prioritization charges on the virtuous circle of innovation described above ... [would lead to] less content and fewer innovative offerings [and] make the Internet less attractive for end users than would otherwise be the case.”¹⁹ The virtuous cycle, that the Commission has recognized and the D.C. Circuit has accepted, is one of the best ways to help spur broadband adoption by enhancing the value of the service and improving its perception and relevance for non-adopters. The only way that the Commission can adopt rules similar to the 2010 rules, which were determined to be essential to protecting the conditions that create the virtuous cycle, is through the use of Title II authority.

¹⁶ Nat’l Telecomm. and Info. Admin., Dep’t of Commerce, *2013 NTIA Broadband Adoption Toolkit 4* (May 2013).

¹⁷ *Id.*

¹⁸ *Preserving the Open Internet*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17914-15, para. 18 (2010), *aff’d in part, vacated and remanded in part sub nom. Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).
2010 Rules, ¶ 18, 17914-15.

¹⁹ *Id.* at 17922, para. 28.

II. THERE IS STRONG SUPPORT IN THE RECORD FOR MOBILE AND FIXED PROVIDERS TO BE SUBJECT TO THE SAME OPEN INTERNET RULES

In initial comments, Voices for Internet Freedom et al. argued that strong and enforceable rules to protect and promote the Open Internet must apply equally to both fixed and mobile networks, else risk disproportionately harming underserved communities that rely on mobile devices as the primary means to access the Internet. While accessing the Internet using a mobile device is not yet a sufficient substitute to having a home connection and a personal computer, when people have a choice and can only afford a single service, they often choose mobility. For this reason, mobile Internet access has become an important on-ramp for people of color, who frequently find themselves on the wrong side of the digital divide. Should the Commission heed our advice, and determine that rules are required to prevent harmful practices such as blocking, discrimination, and paid prioritization online, users of mobile devices should be protected from such practices to the same extent as individuals who access the Internet by way of a wired connection at home.

A number of commenters agreed with Voices that the Commission should avoid creating disparate frameworks of Open Internet protections on fixed and mobile networks.²⁰ Asian Americans Advancing Justice stated, “Because communities of color are more likely to access the [I]nternet via their mobile devices, the Commission must ensure the ability of minority communities to access, produce, and freely distribute diverse content regardless of the technology.”²¹ A filing submitted by NAACP and the National Urban League, among others, urged the Commission to “ensure that open and free Internet protections apply to both fixed and

²⁰ See e.g., Comments of the Open Technology Institute at New America Foundation et al., GN Docket Nos. 14-28, 10-127 at 27; Comments of Public Knowledge et al. at 29; Comments of Asian Americans Advancing Justice at 3; Comments of City of Los Angeles at 8.

²¹ Comments of Asian Americans Advancing Justice at 3.

mobile broadband.”²² Some ISPs even urged the Commission to adopt rules in a “technologically neutral” fashion and adopt a “single set of rules” that would apply to both fixed and mobile services.²³

Voices would not be supportive of any rules that are passed under a Section 706 legal framework, regardless of whether or not they are applied equally to mobile Internet access. Voices has been consistent in calling for strong and enforceable rules, that prohibit blocking, unreasonable discrimination, and paid prioritization utilizing Title II of the Communications Act, and apply equally to fixed and mobile services.

CONCLUSION

For the foregoing reasons, as stated in initial comments and reinforced here, Voices for Internet Freedom et al. urge the Commission to codify strong Open Internet rules that prevent blocking, unreasonable discrimination, and paid prioritization online, while also enhancing ISPs’ transparency obligations. Given the fact that diverse, low-income, and rural communities disproportionately rely on mobile services as their primary means of Internet access, and that a number of current initiatives designed to bridge the digital divide rely on mobile technology, the Commission must apply rules equally to fixed and mobile services, or risk causing great harm to these communities. Finally, the Commission must ground strong Open Internet rules in the authority granted to it by Congress in Title II of the Communications Act. To do so, the Commission must reclassify Internet access service as a telecommunications service.

²² Comments of NUL et al. at 3.

²³ See Comments of Cox Communications, Inc., GN Docket Nos. 14-28, 10-127 at 10-11 (filed July 18, 2014); Comments of Time Warner Cable Inc., GN Docket Nos. 14-28, 10-127 at 5-6, 23, 27 (filed July 15, 2014).

Respectfully Submitted,

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On behalf of Voices for Internet Freedom et
al.

APPENDIX A

Signers of Voices for Internet Freedom et al. Reply Comments

Organizations

1. Voices for Internet Freedom
2. 18MillionRising
3. Access Humboldt
4. Allied Media Projects
5. Alternate ROOTS
6. Appalshop, Inc.
7. Art in Praxis
8. Black Alliance for Just Immigration
9. Center for Media Justice
10. Center for Popular Democracy
11. ColorOfChange
12. Common Cause
13. Community Justice Network for Youth
14. Dignity and Power Now
15. Families For Freedom
16. Free Press
17. Gamechanger Networks
18. Generation Justice
19. Global Action Project
20. Iguana Films
21. Latino Rebels
22. Librotraficante Movement
23. Martinez Street Women's Center
24. Media Alliance
25. Media Literacy Project
26. Media Mobilizing Project
27. Million Hoodies Movement for Justice
28. National Association of Hispanic Journalists
29. National Association of Latino Independent Producers
30. National Economic & Social Rights Initiative
31. National Hispanic Media Coalition
32. National Institute for Latino Policy
33. News Taco
34. Post Defiance
35. Presente.org
36. Racial Justice Action Center
37. RH Reality Check
38. Rural Broadband Policy Group
39. SouthWest Organizing Project
40. The Praxis Project
41. The Women's International Perspective (The WIP)
42. Working Narratives

Individuals

1. Ruth Livier
2. David Dawes
3. rikimah glymph
4. Anayah Sangodele-Ayoka
5. Sunny Kim
6. Michele Mitchell
7. Michelle Maisto
8. Soya Jung
9. Andrea Quijada
10. Dejuan Patterson
11. norm weekes
12. Sheree Camel
13. amalia deloney
14. Nadine Bloch
15. Collin Rees
16. Maia Williams
17. Sean Taketa
18. Mia Frederick
19. Gupta
20. nicole brown
21. Kristi Brown-Wokoma
22. John Saunders
23. Katy kay
24. Jamie Feinberg
25. CJ Grimes
26. Gurukarm Khalsa
27. Shannon M. Turner
28. Keryl McCord
29. M. Kirk
30. Alden Bruce
31. Harry Britt
32. Colin Mutchler
33. Trey Hartt
34. Amber Washington
35. Gordon Mayer
36. c allan
37. Ava DuVernay