

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52

COMMENTS OF THE NATIONAL HISPANIC MEDIA COALITION (“NHMC”)

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SUMMARY

NHMC respectfully urges the Commission to affirm its tentative conclusion to codify the six principles articulated in the NPRM. These principles are necessary to ensure that all people – especially people of color, who have been traditionally under and misrepresented on mainstream media – enjoy opportunities to share their stories fairly and accurately. The Internet is one of the very few places where Latinos can respond to the vitriolic anti-Latino rhetoric that airs unopposed on some mainstream media outlets. Unlike traditional media, the Internet is a forum where individuals can disseminate content and participate in civic discourse with relatively low barriers to entry. In addition, open and neutral broadband access is necessary to survive in today’s society. If ISPs are permitted to block or degrade access to certain content, applications and services, the immense opportunities that broadband access provides will be lost. Moreover, because many Latinos and other people of color rely exclusively on wireless devices for broadband access, NHMC urges the Commission to apply the six principles across all broadband platforms at the earliest possible occasion.

Implementing these rules could only help those on the wrong side of the digital divide. Some have expressed fear that codification of open Internet principles could unintentionally stifle broadband deployment and adoption in unserved and underserved communities. As an organization focused primarily on expanding media access for Latinos and other people of color, NHMC wholeheartedly agrees that any rule that suppresses universal broadband is undesirable. At the same time, NHMC supports the proposed rules as there is concrete evidence only of their benefits, and none of their supposed burdens. Indeed, data suggests that open Internet principles are likely to spur investment in broadband deployment and can advance adoption.

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The National Hispanic Media Coalition (“NHMC”)¹ respectfully submits this comment in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”) soliciting public input on its draft rules designed to promote and preserve an open Internet.² The proposed rules are necessary to ensure that all people – especially people of color, who have been traditionally under and misrepresented on mainstream media – enjoy opportunities to share their stories fairly and accurately. Indeed, the Internet is one of the very few places where Latinos can respond to the vitriolic anti-Latino rhetoric that airs unopposed on some mainstream media outlets. Moreover, the proposed rules will guarantee that all people with broadband access can pursue educational, occupational, medical and other important prospects, allowing Latinos and other communities of color to exercise their rights to fully participate in this country’s democracy. Given that many Latinos rely exclusively on wireless devices for broadband access, NHMC urges the Commission to apply the six principles across all broadband platforms at the earliest possible occasion.

¹ NHMC is a twenty-three year old non-profit organization that aims to (1) improve the image of American Latinos as portrayed by the media; (2) increase Latino employment in all facets of the media industry; and (3) advocate for media and telecommunication policies that benefit the Latino community.

² *Preserving the Open Internet*, GN Dkt. No. 09-191; *Broadband Industry Practices*, WC Dkt. No. 07-52; Notice of Proposed Rulemaking (rel. Oct. 22, 2009) (“NPRM”).

BACKGROUND

Hispanics are the largest minority group in the United States, with 47.4 million people, comprising 15.8% of the U.S. population,³ and while many do not have regular broadband access, those that do are benefitting from the Internet in myriad ways. It is a tool for small business owners to effectively reach customers with only a computer and an Internet connection. It is a forum in which content creators can showcase their work without seeking permission from the customary content gatekeepers, such as movie studios, cable and television networks and music labels. It is a venue for journalists, who are facing greater unemployment due to media consolidation, to enhance democratic discourse and access new revenue streams through blogging and other online reporting. It is opening new doors to educational, occupational, medical and other opportunities. It is allowing laborers and vendors to discover the going-rate for their services and products, empowering them to seek just compensation and be competitive in the marketplace. It is providing English-language training to non-English speakers and enabling immigrants to learn about U.S. culture.

In this day and age, access to everything the Internet provides is not just a luxury, but rather a necessity. Those without open Internet access cannot survive and succeed because they are foreclosed from financial aid and job applications, online learning experiences, information about health and transportation, research for homework assignments, and countless other important opportunities.

³ PROJECT FOR EXCELLENCE IN JOURNALISM & PEW HISPANIC CENTER, *HISPANICS IN THE NEWS: EVENTS DRIVE THE NARRATIVE 1* (2009). The number of Hispanics is expected to double by 2050. JEFFREY S. PASEL & D'VERA COHN, *U.S. POPULATION PROJECTIONS: 2005 – 2050* (Pew Research Center 2008).

Hispanics are the youngest ethnic group in the United States, making up one-in-five schoolchildren, and one-in-four newborns,⁴ and Latino youth are accessing broadband at higher rates than their adult counterparts.⁵ By force of numbers alone, the adults these young Latinos become will help shape American society in the 21st century.”⁶ Countless studies demonstrate that the media influences how youths think and behave,⁷ and that children of surprisingly young ages understand concepts of race and racism.⁸ Yet a Pew report examining over 34,000 news stories from mainstream media outlets found that there was “little coverage directly about the lives of Hispanics and their experience in the U.S.”⁹ And much of that “little coverage” demonizes or otherwise misrepresents the Latino community.¹⁰ Although this is not entirely surprising given that Latinos have been largely shut out from mainstream media by high barriers

⁴ PEW HISPANIC CENTER, BETWEEN TWO WORLDS: HOW YOUNG LATINOS COME OF AGE IN AMERICA 1 (2009).

⁵ GRETCHEN LIVINGSTON, KIM PARKER & SUSANNAH FOX, LATINOS ONLINE, 2006 – 2008: NARROWING THE GAP iii (Pew Hispanic Center & Pew Internet & American Life Project 2009) (hereinafter *Latinos Online*).

⁶ PEW HISPANIC CENTER, BETWEEN TWO WORLDS: HOW YOUNG LATINOS COME OF AGE IN AMERICA 1 (2009).

⁷ It has long been of special concern that electronic media have a particularly strong influence on children and teenagers since they are not yet fully developed cognitively. Children’s Television Act of 1990, 47 U.S.C. §§ 303a-303b & § 394. *See also*, H.R. REP. NO. 101-385 (1989), S.REP. NO. 101-66 (1989). *See also*, Albert Bandura, *Influence of Models’ Reinforcement Contingencies on the Acquisition of Imitative Responses*, 1 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 589 (1965); *see also* Michele L. Ybarra et al., *Linkages Between Internet and Other Media Violence With Seriously Violent Behavior by Youth*, 122 PEDIATRICS 929 (2008).

⁸ DEBRA VAN AUSDALE & JOE R. FEAGIN, THE FIRST R: HOW CHILDREN LEARN RACE AND RACISM at 26 (2001); GENDER PUBLIC ADVOCACY COALITION, CHILDREN SEE PREJUDICE IN ABSENCE OF WOMEN, MINORITY PRESIDENTS (2008).

⁹ PROJECT FOR EXCELLENCE IN JOURNALISM & PEW HISPANIC CENTER, HISPANICS IN THE NEWS: EVENTS DRIVE THE NARRATIVE 7 (2009).

¹⁰ *See*, Petition for Inquiry on Hate Speech in Media, National Hispanic Media Coalition (filed Jan. 28, 2009) (un-docketed; on file with author) (citing numerous examples of anti-Latino hate speech over the mainstream media).

to entry,¹¹ it is harmful and reprehensible that mainstream news is so divorced from the realities of our evolving society.

Nonetheless, young Latinos are generally “satisfied with their lives, optimistic about their futures and place a high value on education, hard work and career success.”¹² 72% of Latino youth expect to be better off financially than their parents,¹³ and 89% believe that a college degree is important to getting ahead in life.¹⁴ Yet they are much more likely than other American youths to drop out of school, and to live in poverty.¹⁵ 75% of Latinos who cut off their education prior to college cite financial pressure to support a family as the main reason.¹⁶

In today’s world, unrestricted Internet access can play a huge role in enabling these youth to pursue their dreams through online education and vocational training, even as they face high drop-out rates and poverty. Indeed, the open Internet can be harnessed by people young and old to follow their educational, occupational and civil aspirations. As families struggle to make ends meet, the power and value of broadband Internet access is not always readily apparent, but preserving an open and neutral Internet will continue to allow for innovations that will spur adoption by those that realize how broadband can be useful in their lives. In fact, adoption is already increasing in the Latino community. Between 2006 and 2008, Internet use among Latino adults rose 10%, compared to only 4% for Caucasians,¹⁷ suggesting that more and more Latinos

¹¹ For instance, Latinos own only 2.9% of full power broadcast radio stations. S. DEREK TURNER, OFF THE DIAL: FEMALE AND MINORITY RADIO STATION OWNERSHIP IN THE UNITED STATES (Free Press 2007).

¹² PEW HISPANIC CENTER, BETWEEN TWO WORLDS: HOW YOUNG LATINOS COME OF AGE IN AMERICA 1 (2009).

¹³ *Id.* at 9.

¹⁴ *Id.* at 10.

¹⁵ *Id.* at 1.

¹⁶ *Id.* at 10.

¹⁷ *Latinos Online*, *supra* note 5, at i.

are seeing the efficacy of broadband. However, if providers of broadband Internet access service (“ISPs”) are permitted to block or degrade access to certain online content, services and applications, much of the Internet’s value will be lost for Latinos and others communities who cannot afford to pay extra for special access.

DISCUSSION

NHMC urges the FCC to codify the six proposed principles and to apply the principles to all forms of broadband distribution. These regulations will ensure that communities of color remain able to use the Internet as a platform to distribute content, innovate freely and participate in the civic dialogue.

I. The FCC Should Codify The Six Proposed Principles

In the NPRM the Commission seeks comment on whether it should adopt six principles designed to ensure that ISPs maintain an open Internet. Those principles provide that, subject to reasonable network management, ISPs

(1) cannot prevent users from sending or receiving lawful content;¹⁸

(2) cannot prevent users from running lawful applications or services;¹⁹

(3) cannot prevent users from connecting to and using lawful devices so long as they do not harm the network;²⁰

(4) cannot deprive users of competition among network providers, application providers, service providers and content providers;²¹

(5) cannot discriminate against, or in favor of, any content, application or service;²² and

(6) “must disclose such information concerning network management and other practices as is reasonably required for users and content, application and service providers to enjoy the protections specified in this part.”²³

¹⁸ NPRM at ¶92.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at ¶104.

NHMC supports adoption of the six principles for the reasons set forth below.

A. The Six Principles Ensure That People Of Color Can Continue To Access And Distribute Content And Innovate Over The Internet

The Commission seeks specific comment on the likely benefits of each of the proposed rules, whether these rules will help promote free speech, civic discourse, democratic engagement, and whether their codification will “help preserve the Internet’s status as ‘a forum for a true diversity of political discourse’ and an open platform for publication of information.”²⁴

NHMC supports codification of these principles precisely because they ensure that Latinos and other communities of color can rightfully engage in this country’s democracy. As traditional media undergo more and more consolidation, the Latino voice over broadcasting and cable – which was never very loud to begin with – is fading. Latinos are underrepresented on mainstream media, where they are often the targets of inaccurate fear-mongering and hateful rhetoric. Because by-and-large Latinos do not own the conduit for content distribution, they are generally foreclosed from telling their own stories fairly and accurately. For too long, honest and fair depictions of Latino individuals have escaped our collective culture. Yet there is hope that uninhibited access to a nondiscriminatory Internet can change that. An open Internet allows Latinos and others with limited resources to innovate and distribute creative content with low marginal costs and low barriers to entry; for small minority businesses to reach new markets and generate additional income; for independent journalists to share their stories and viewpoints; for growers and pickers to assess the value of their respective goods and services; and the list could go on-and-on.

(footnote continued)

²³ *Id.* at ¶119.

²⁴ *Id.* at ¶¶102, 114, 116.

The proposed rules would maintain the *status quo* whereby anyone with a broadband connection can create and distribute content, conduct business, become more informed, and participate in our democracy in meaningful ways. The Latina screenwriter seeking employment can place her script online to attract attention, gain notoriety and ultimately land a job. The small business owner who relies on his Facebook page to communicate with customers of his independent bakery will not have to pay double fees simply to access the Facebook web-site. The young high school drop-out who left school to provide for her family will be able to access the full range of information about GED courses, online learning opportunities and other ways to advance her career. And the low-income teen with ideas on how to improve his community can engage in online civic discourse in the same manner as a privileged teen.

The Internet turns content consumers into content creators, allowing online dialogue to be more diverse than ever seen before in the public square or on any other media platform. However, if ISPs are allowed to block or degrade access to certain content, applications and services, the democratizing power of the Internet is lost.

B. The Transparency Principle Is Vital To Securing An Open And Neutral Internet

In proposing to adopt the transparency principle the FCC notes that “access to accurate information plays a vital role in maintaining a well-functioning marketplace that encourages competition, innovation, low prices, and high-quality services.”²⁵ The Commission specifically seeks comment on what consumers need to know, stating the belief that consumers should receive “information concerning actual (as opposed to advertised) transmission rates, capacity,

²⁵ *Id.* at ¶118.

and any network management practices that affect their quality of service.”²⁶ The Commission also seeks comment on how ISPs should disclose this information to users,²⁷ and what should trigger disclosure obligations.²⁸

NHMC supports implementation of this principle. Disclosure will aid enforcement efforts and empower the public to make more informed decisions when given a chance to select an ISP. In addition, it will permit the public to monitor ISPs’ management practices and confront any anticompetitive behavior. Disclosure should be phrased in a manner that is simple enough for a regular consumer to understand, should include actual (not advertised) transmission rates, and should disclose capacity and any other network management practices that may affect a consumer’s service.²⁹ Disclosures should come in English, Spanish,³⁰ and any other threshold language that is predominately spoken in an ISP’s given community. Disclosure in people’s native tongues will likely spur broadband adoption as those who have traditionally shied away from broadband due to a lack of understanding of its relative costs and benefits will feel more comfortable subscribing once the service straightforwardly describes its parameters in users’ own languages.³¹ At a minimum, disclosures should be triggered when a user seeks to initiate service and when transmission rates and/or network management practices change. The most

²⁶ *Id.* at ¶125.

²⁷ *Id.* at ¶¶118, 126.

²⁸ *Id.* at ¶129.

²⁹ Upon request, more details should be available for researchers and other people who understand how networks operate.

³⁰ Spanish is spoken by 12% of U.S. residents, or 35 million people, and only half of these individuals speak English “very well.” U.S. CENSUS BUREAU, HISPANIC AMERICANS BY THE NUMBERS (2007).

³¹ This theory is corroborated by evidence that English literacy is a big factor in whether Latinos use the Internet; the Internet is used by 81% of Latinos who read English “very well,” 63% who read English “pretty well,” 52% who do not read English well, and only 24% who do not read English at all. *Latinos Online*, *supra* note 5, at iii.

current disclosure information should be available on the ISP's web-site and should appear on monthly bills. It should also be available by telephone to accommodate those without an existing Internet connection.

C. Codification Of The Principles Could Only Help Those On The Wrong Side Of The Digital Divide

In the NPRM the Commission seeks comment on implications the draft rules “might have on efforts to close the digital divide and encourage robust broadband adoption and participation in the Internet community by minorities.”³² The Commission recognizes that minorities may “face unique or particularly high barriers to innovation, communication and civic participation on the Internet, and may be susceptible to discrimination,” and further notes that open Internet connections may be particularly important for people of color.³³

NHMC supports the proposed rules because, first and foremost, they will ensure that people of color – many of whom do not have the resources or the option to switch away from ISPs that engage in anticompetitive practices – enjoy the same Internet experience as others in this country.

Some organizations have requested that the Commission move cautiously in this proceeding to ensure that the proposed principles do not unintentionally stifle broadband deployment.³⁴ As an organization focused primarily on expanding media access for Latinos and other people of color, NHMC wholeheartedly agrees that universal broadband is of the utmost importance. Latinos continue to lag behind Caucasians in Internet usage: 64% of adult Latinos

³² NPRM at ¶82.

³³ *Id.*

³⁴ See, e.g., John Eggerton, *BBOC Has Questions About Impact of Network Neutrality*, BROADCASTING & CABLE, Oct. 13, 2009, available at http://www.broadcastingcable.com/article/357936-BBOC_Has_Questions_About_Impact_of_Net_Neutrality.php?rssid=20065.

had used the Internet in 2008 compared to 76% of Caucasian adults.³⁵ And although Latinos saw a 10% increase in Internet use between 2006 and 2008, the percent of Latino online users that access the Internet from home went up only marginally between 2006 and 2008.³⁶ Given that broadband has evolved from a luxury to a necessity, as many employers and educational institutions require online-only applications, NHMC believes that universal broadband is essential, and intends to engage in efforts surrounding the Commission's National Broadband Plan this spring.

At the same time, NHMC supports the proposed rules because there is no evidence that they will impair broadband deployment. On the contrary, data suggest that network neutrality rules spur investment in broadband deployment. A recent report found that

At the end of 2006, AT&T, as a condition of its acquisition of BellSouth, was required by the FCC to operate a neutral network for two years. During this period, while operating under network neutrality rules, AT&T's overall gross investment increased by \$1.8 billion – *more than any other ISP's in America.*³⁷

The report also revealed that an open network “may encourage modestly higher levels of investment in network infrastructure, and even higher levels of investment in the applications and content sector, which is the *key* driver of growth in the Internet access market.”³⁸

Furthermore, the proposed principles are likely to spur adoption rates. Surveys show that “about one-third of Americans do not subscribe to broadband even though it is available to them,

³⁵ *Latinos Online*, *supra* note 5, at i.

³⁶ *Id.* at 4.

³⁷ S. DEREK TURNER, FINDING THE BOTTOM LINE: THE TRUTH ABOUT NETWORK NEUTRALITY & INVESTMENT (Free Press 2009).

³⁸ *Id.* at 3.

largely because they don't consider the content and services useful or relevant to their lives.”³⁹ This suggests that many that reside in areas where broadband is already deployed choose not to adopt because they determine that the costs of broadband access outweigh the benefits. And while many Latino adults continue to believe that the costs outweigh the benefits, many others have decided otherwise – even those with low incomes. “Internet use among Latinos residing in households with annual incomes of less than \$30,000 increased 17 percentage points between 2006 and 2008.”⁴⁰ Statistics also indicate that younger Latinos place an even greater premium on broadband access, as they are more likely to be online than their adult counterparts.⁴¹ Open, neutral pipelines and transparency ensure that the innovations that are attracting Latinos to adopt broadband access remain accessible and visible. Moreover, as the Latino community begins to catch up in broadband adoption it is imperative that they have the benefits of the online experience that others have enjoyed for over a decade.

II. The FCC Should Apply The Principles Across All Broadband Platforms

The FCC tentatively concludes that all six principles should apply to all platforms for broadband Internet access, and seeks comment on that conclusion.⁴² In applying this to mobile wireless devices, the Commission notes that “in the future” some may rely exclusively on mobile

³⁹ Kim Hart, *New TV apps will drive broadband adoption, FCC says*, THE HILL, Jan. 11, 2010, available at <http://thehill.com/blogs/hillicon-valley/technology/75157-new-tv-apps-will-drive-broadband-adoption-fcc-says>.

⁴⁰ *Latinos Online*, *supra* note 5, at i.

⁴¹ *Id.* at iii (providing that Internet is used by: 77% of Latinos between 18 and 34; 64% of Latinos between 35 and 49; 53% of Latinos between 50 and 64; and 25 of Latinos who are 65 and older).

⁴² NPRM at ¶154.

wireless devices for broadband Internet access.⁴³ Additionally, the Commission seeks comment on what time frame it should use should it decide to apply these principles to mobile wireless.

NHMC urges the Commission to apply the principles across all broadband platforms at the earliest possible occasion. As the NPRM alludes, most consumers have very few (if any) options for affordable high-speed Internet access.⁴⁴ As discussed above, this unfortunate phenomenon is exacerbated for Latinos. However, Latinos are much more likely than Caucasians to access broadband Internet using wireless technology such as cell phones.⁴⁵ Latinos have found that mobile phone upgrades are more affordable than paying for a home broadband connection and a computer,⁴⁶ and many use mobile devices as their sole Internet connection.⁴⁷ Thus, to prevent further disenfranchisement of those without the means to afford home broadband connections, the Commission should impose the six principles across all broadband platforms.

⁴³ *Id.* at ¶158.

⁴⁴ *Id.* at ¶7.

⁴⁵ *Latinos Online*, *supra* note 5, at 4 (citing 2009 Horrigan study); THE HISPANIC INSTITUTE, HISPANIC BROADBAND ACCESS: MAKING THE MOST OF THE MOBILE, CONNECTED FUTURE 1 (2009) (finding that 53% of English-speaking Latinos and 58% of African Americans use mobile broadband, compared to 33% of Caucasians).

⁴⁶ Felix Contreras, *Young Latinos, Blacks, Answer Call of Mobile Devices*, NPR (Dec. 1, 2009).

⁴⁷ *Latinos Online*, *supra* note 5, at 5.

CONCLUSION

For the foregoing reasons, NHMC urges the Commission to affirm its tentative conclusion to codify the six proposed open Internet principles and apply the principles across all broadband platforms.

Respectfully Submitted,

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