

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF
ACCESS HUMBOLDT, ALLIANCE FOR COMMUNITY MEDIA,
APPALSHOP, BENTON FOUNDATION,
CALIFORNIA CENTER FOR RURAL POLICY,
CCTV CENTER FOR MEDIA & DEMOCRACY,
CENTER FOR DIGITAL DEMOCRACY, CENTER FOR MEDIA JUSTICE,
CENTER FOR RURAL STRATEGIES, COMMON CAUSE,
COMMUNITY PAPERS OF FLORIDA,
COMMUNITY PAPERS OF OHIO AND WEST VIRGINIA,
ESPERANZA PEACE AND JUSTICE CENTER, FLORIDA PIRG,
FREE COMMUNITY PAPERS OF NEW YORK,
HOUSING ASSISTANCE COUNCIL, INSTITUTE FOR LOCAL SELF-RELIANCE,
LOCAL 782, MAIN STREET PROJECT,
MEDIA ALLIANCE, MEDIA JUSTICE LEAGUE, MEDIA LITERACY PROJECT,
MEDIA MOBILIZING PROJECT, MID-ATLANTIC COMMUNITY PAPERS
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MINNESOTA DIGITAL JUSTICE COALITION, NEW AMERICA FOUNDATION,
OPEN TECHNOLOGY INSTITUTE, PEOPLE ESCAPING POVERTY PROJECT,
PEOPLE’S PRODUCTION HOUSE, PHILLY COMMUNITY ACCESS MEDIA,
PROMETHEUS RADIO PROJECT, PUBLIC KNOWLEDGE, RECLAIM THE MEDIA,
SOUTHEASTERN ADVERTISING PUBLISHERS ASSOCIATION,
TRANSMISSION PROJECT,
UNITED CHURCH OF CHRIST OFFICE OF COMMUNICATION INC.,
U.S. PIRG, WISCONSIN COMMUNITY PAPERS

Media Access Project, on behalf of Access Humboldt , *et al.* (collectively “Public Interest Advocates”), submits these Comments in response to the Commission’s Notice of Proposed Rulemaking *In the Matter of Preserving the Open Internet, Broadband Industry Practices*. Public Interest Advocates firmly believe that they should not be constrained with what they are able to do with their Internet service, and instead would benefit from access to a more open and nondiscriminatory Internet. Public Interest Advocates also urge the Commission to require providers to disclose in a transparent and easily comprehensible manner any network management practices Internet Service Providers (“ISPs”) engage in and to extend to wireless Internet access providers any rules the Commission adopts.

I. INTRODUCTION

The Internet has played a revolutionary role in the communications and media marketplace, providing a unique opportunity for users to share, create, and access knowledge and information, providing equal opportunities for all users. Lower barriers to entry and open, unfettered access to the Internet has the potential to increase political, social, and economic participation and innovation for all communities. Public Interest Advocates applaud the Commission for initiating this rulemaking, and urge the Commission to adopt rules which ensure that Internet users are able to freely access the content, applications, services and devices of their choice. Further, Public Interest Advocates urge the Commission to adopt rules that require ISPs to clearly disclose how and when they are engaging in any network management practices, and that these rules be extended to wireless networks.

II. OPEN INTERNET PROTECTIONS ARE CRITICAL TO ENSURE EQUAL OPPORTUNITIES FOR ALL COMMUNITIES

The Commission has proposed to codify the current Internet principles and adopt rules regarding nondiscrimination and transparency of network management practices. In seeking comment on the proposed rules, the Commission also seeks comment on the effects the rules will have on speech, social welfare, and innovation.¹

A. Open Internet Protections Will Promote Speech and Lead to More Civic and Democratic Participation.

The Commission seeks “comment on whether and how codifying these principles will promote free speech, civic participation, and democratic engagement.”² The proposed rules will allow for content-neutral, viewpoint-neutral platforms for free expression, thus helping to fulfill the mandate of the First Amendment, which states that government should seek to promote the public’s right to have access to diverse and varied social, political, and artistic expression. By creating a better-informed electorate, such practices advance the operation of democratic self-governance.

In fact, the Supreme Court has unanimously embraced a robust view of the affirmative duty of government to facilitate speech, pointing to the public’s “collective right to have the [electronic media] function consistently with the ends and purposes of the First Amendment.”³ In *Red Lion*, the Court recognized that it “is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that

¹ Notice of Proposed Rulemaking, *In the Matter of Preserving the Open Internet, Broadband Industry Practices*, ¶¶82 and 102 (October 22, 2009) (“NPRM”).

²*Id.* at ¶ 102.

³*Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

market, whether it be by the Government itself or a private licensee.”⁴ It further noted that it “is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here.”⁵ This role of the First Amendment in application of the Communications Act was dramatically restated in the Supreme Court’s *Turner* cases, which held that considerations of both competition and diversity justified enactment of cable must carry rules. In *Turner I*, the majority held that “assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment.”⁶

Moreover, with respect to the Internet itself, the Supreme Court has observed that the content of the Internet is “as diverse as human thought.”⁷ The Internet is an open and interactive medium, facilitating communication by anyone to and from everyone.⁸ It is a medium that supports and enhances the free expression of citizens and serves as a vehicle for democratic governance and economic activities. There is a long and unbroken line of authority that the Commission can and must take into account regarding the structure of the Internet and its impact on the ability of the consumer to communicate and engage in economic, social, and political activities. Thus, Internet users should not feel constrained with what they are able to do with their Internet service and their devices, and instead would benefit from an Internet that is open and nondiscriminatory.

⁴*Id.*

⁵*Id.*

⁶*Turner Broadcasting System v. FCC*, 512 U.S. 622, 663 (1994), *aff’d*. *Turner Broadcasting System v. FCC*, 520 U.S. 180 (1997).

⁷*Reno v. ACLU*, 521 U.S. 844, 870 (1997).

⁸*Id.*

Rather than focus solely on the needs of corporate service providers, the Commission must embrace policies that will help ensure that communities maintain their right to freedom of expression, and must create the necessary rules to further policies. The proposed rules are rooted in fairness, equality, and freedom, and can support the creation of more politically and civic-minded communities.

B. An Open and Nondiscriminatory Internet Can Help Drive Adoption, Social Welfare, and Innovation.

In seeking comments on these proposed rules, the Commission also seeks comment on the effects the rules will have on social welfare and the future of innovation.⁹ Public Interest Advocates believe that rather than harming or inhibiting adoption and participation, an open and nondiscriminatory Internet is necessary to allow all people to fully realize the potential and benefits of the Internet. Thus, Public Interest Advocates urge the Commission to adopt the proposed rules to foster adoption and innovation.

Access to and availability of online services, applications, and content underscores the importance of the Internet. People use the Internet to find and apply for jobs, manage their finances, receive news alerts, apply to college, access public assistance, and schedule immigration appointments. Additionally, VoIP applications allow individuals to communicate with friends and family members.¹⁰ The Internet also allows people to gather health or medical information.¹¹ The Internet is also a means

⁹*NPRM* at ¶82.

¹⁰ See, e.g., Ashlee Vance, “Watching TV Together, Miles Apart,” *New York Times* (January 3, 2010) at <http://www.nytimes.com/2010/01/04/technology/internet/04couch.html>.

¹¹ See Susannah Fox, *Strategic Learning for Health Care in 2010* (Jan 6, 2010) available at <http://www.pewinternet.org/Commentary/2010/January/Strategic-Learning-for-Health-Care-in-2010.aspx> (Health is holding steady as one of the most popular activities online). Many in rural communities or workers without insurance rely on medical information available on the Internet to self diagnose their symptoms.

for people to find and share information through blogs, social media sites, or other forums not readily available through traditional media outlets. Recent research by the Pew Internet & American Life Project demonstrates that the use of online social networking sites has expanded by nearly six-fold in the last four years, creating platforms focused on communication, sharing, and creativity.¹² According to the study, Internet use itself has nearly doubled in the last decade.¹³

The Internet is also a medium that allows anyone with an idea to create, shape, and market that idea using minimal resources, and has become an extremely cost-effective way for entrepreneurs and innovators to showcase their ideas. Anyone with access to the Internet can reach millions of people, to market their ideas, despite a lack of major support or monetary resources, and, potentially, find success.

These are the types of opportunities, services, and content many people share, seek, and desire. All of the different and interesting services now possible on the Internet, with unfettered access, are critical to increase innovation, adoption, and participation. However, without the guaranteed, unfettered ability to access the Internet, people will be limited in sharing, creating, and accessing the content and services they desire. A nondiscrimination rule will ensure that the Internet remains a platform for innovation and connection, and as a result a valued space for economic, political, and social growth.

¹²See Aaron Smith, *Online Participation in the Social Media Era*, Pew Internet & American Life Project, Presentation at the 2009 Symposium on Racing and Gaming, December 10, 2009, available at www.pewinternet.org/Presentations/2009/RTIP-Social-Media.aspx.

¹³See *id.*

C. Effective Transparency Rules Are Necessary.

The Commission seeks “comment on what consumers need to know about network management practices to make informed purchasing decisions and to make informed use of the services they purchase.”¹⁴ Public Interest Advocates agree that effective, practical, and useful information is necessary for Internet users to make informed decisions and agrees with the Comments submitted by Public Interest Commenters¹⁵ with respect to they type of information that should be disclosed. For example, Public Interest Advocates believe that many consumers need information concerning actual (as opposed to advertised) transmission rates, capacity, and any network management practices that affect their quality of service. Importantly, Public Interest Advocates also ask the Commission to urge ISPs to also provide such disclosure in various different languages so that all Internet users have the ability access and understand the information provided.

III. NETWORK MANAGEMENT TECHNIQUES MUST BE LIMITED TO ENSURE AGAINST UNDUE RESTRICTIONS TO THE FLOW OF INFORMATION ON THE INTERNET

Because of the importance of nondiscriminatory Internet access to economic, political, and social activities and opportunities, it is critical that network management be restricted to those practices that ensure the functioning of the network. The Commission must ensure that a reasonable network management practice typically is one of limited or intermittent duration, designed to address legitimate congestion and traffic management issues. In these cases, management practices should only be implemented at the time when such issues arise – not a practice of unlimited duration, one that discourages expansion of capacity, or one that promotes the competitive self-interest of the ISP. For

¹⁴*NPRM* at ¶125.

¹⁵*See* Comments of Public Interest Commenters, GN Docket No. 09-191, WC Docket No. 07-52 (Jan. 14, 2010).

example, these practices should be undertaken to ensure the network's survival or to ensure the network's timely functioning.

Public Interest Advocates also believe that the most technologically and economically efficient means of managing Internet traffic is by increasing capacity.¹⁶ Thus, adding capacity must be an important public policy goal, and the Commission should adopt rules which will encourage investment in increased capacity. One way to encourage this investment is to adopt a reasonable network management test that is sufficiently tailored to discourage ISPs from maintaining scarcity in their networks or under investing in their broadband infrastructure.

IV. NONDISCRIMINATION AND TRANSPARENCY RULES MUST BE EXTENDED TO WIRELESS ACCESS

The importance of mobile Internet services for communication is not lost on consumers. However, the public can realize the full potential of wireless Internet access only if the rules and benefits applicable to wireline providers apply to wireless as well. This is especially essential for those consumers who are able to have only either wireline or wireless service (*i.e.*, because of availability or affordability of wireline service). The inability to perform the same functions and access the same content, applications, and services on a wireless device will disadvantage those who only have the ability to have a wireless device. Thus, the Commission must extend the proposed rule to wireless Internet access.

¹⁶See Steven Corbato and Ben Teitelbaum, *Internet2 and Quality of Service: Research, Experience, and Conclusions 4* (May 2006) (“practical experience...showed a far simpler and far more cost effective means for ensuring high-performance networking: simply provide an overabundance of bandwidth to end users to ensure that the odds of network congestion are minimized. This approach avoided practical deployment obstacles to implementing any effective QoS across a multiple network environment such as the Internet.”).

In fact, according to a recent survey, more people are beginning to own mobile devices that allow them to access the Internet with a wireless connection and use that connection for access. For example, 85% of the adult population owns a handheld device, and 32% of the population have used it to go online.¹⁷ Similarly, 47% own a laptop and 39% of the population has used it to go online.¹⁸ Even devices traditionally not thought of as being used for a wireless Internet connection are being used to access the Internet, though not in as large numbers as a handheld device or a laptop. For example, desktop computers, game consoles, and iPods/mp3 players are being used to access the Internet through a wireless connection.¹⁹

These numbers indicate that wireless devices are increasingly being used for Internet access. However, to fully take advantage of the opportunities afforded to them on the Internet, people should not feel constrained from taking full advantage of wireless Internet access. Thus, Public Interest Advocates expect to have access to an open and nondiscriminatory wireless Internet experience. To achieve those objectives, Public Interest Advocates agree with the Comments and Study submitted in this docket by New American Foundation, *et al.*²⁰ because it is imperative that the Commission make clear that the same principles and rules guiding wireline access are equally applicable to wireless services.

¹⁷See John Horrigan, Pew Internet & American Life Project, *Wireless Internet Use*, at 8 (July 2009).

¹⁸*See id.*

¹⁹*See id.*

²⁰See New American Foundation, *et al.*, *Comments and Submission Of Technical Report: Any Device and Any Application on Wireless Networks: a Technical Strategy for Evolution*, GN Docket No. 09-191, WC Docket No. 07-52 (Jan. 14, 2010).

V. CONCLUSION

In assessing the needs for the proposed rules, the Commission must consider the human impact of the availability of an open and nondiscriminatory Internet. That is, the Commission's review must consider the Internet's impact on speech and innovation and adopt rules that provide meaningful and affordable opportunities for access to an open and nondiscriminatory Internet.

Respectfully submitted,



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January 14, 2010