

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

In the Matter of)	
)	
Framework for Broadband Internet Service)	GN Docket No. 10-127
)	

COMMENTS OF
ESPERANZA PEACE AND JUSTICE CENTER, MAIN STREET PROJECT, MEDIA
ALLIANCE, MEDIA JUSTICE LEAGUE, MEDIA LITERACY PROJECT, MEDIA
MOBILIZING PROJECT, PEOPLES PRODUCTION HOUSE, RECLAIM THE MEDIA,
THOUSAND KITES, AND CENTER FOR RURAL STRATEGIES

Media Access Project, on behalf of Esperanza Peace and Justice Center, Main Street Project, Media Alliance, Media Justice League, Media Literacy Project, Media Mobilizing Project, Peoples Production House, Reclaim the Media, Thousand Kites, and Center for Rural Strategies (collectively, MAG-Net), submits these Comments to provide the Commission with information and insight regarding how the classification and regulatory treatment of broadband Internet connectivity service impacts the everyday Internet user in communities of color and low-income and immigrant communities.

MAG-Net firmly believes that the stakes in this debate have not been overstated: the course the Commission chooses will decide nothing less than the future of Internet access. For MAG-Net constituents, the future of Internet access means increasing broadband deployment, effectuating universal, affordable broadband services, and addressing barriers to broadband adoption and utilization – all key components of the National Broadband Plan. Further, the future of Internet access means preserving an open and nondiscriminatory Internet that has thus far empowered communities across the country and advanced freedom of expression. MAG-Net

urges the Commission to adopt Title II classification for wired and wireless Internet connectivity service, an approach that enables the Commission to maintain the status quo, light-touch regulatory framework to broadband access.

I. INTRODUCTION

Collectively, MAG-Net¹ represents low-income communities, immigrant communities, and communities-of-color, in both rural and urban neighborhoods. For MAG-Net constituents, access to the Internet has come to symbolize a path towards upward mobility; an increased ability to participate in democracy, engage in the political process, and utilize government resources; a water-well of knowledge, news, and education; a portal to find, connect with, organize, and mobilize communities of common interest; a tool to communicate – both locally and globally - with family, friends, and neighbors; and a platform to create and share meaningful and relevant content. Indeed, for MAG-Net constituents, access to the Internet has proven essential in their ability to communicate for economic, political, educational, and social purposes.

MAG-Net constituents have historically been disadvantaged and discriminated against and, thereby, have a keen understanding that access to communication services often means increased access to opportunity. Congress recognized this understanding in adopting a national Internet policy: “[t]he rapidly developing array of Internet...services available to individual Americans represent an extraordinary advance in the availability of educational and information

¹MAG-Net is a local-to-local advocacy network of grassroots community organizations working together for media change to end poverty, eliminate racism, and ensure human rights. With over 100 member groups nationwide, regional chapters, an online action network, a media justice learning community, and collaborative campaigns- MAG-Net is advancing an exciting new vision for media justice.

resources to our citizens.”² Congress further noted that access to the Internet also represents access to “a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.”³ In section 706(a) of the Act, Congress emphasized the importance of access to the Internet by charging the Commission with “encouraging the deployment on a reasonable and timely basis of advanced telecommunications capability”—broadband—“to all Americans.”⁴

Through these policies, Congress has recognized that widespread access to the Internet promotes democracy, free expression, and self-fulfillment. For MAG-Net constituents, such access to advanced communications means access to quality education, jobs, healthcare, government resources, and economic prosperity and opportunity. Access to advanced communications means access to the fullest marketplace for free expression where every idea—especially those of artists, advocacy organizations, and small businesses—has a chance to succeed and take hold by the general public.

In this classification debate, MAG-Net emphasizes that while the *Comcast* decision⁵ put in doubt the Commission’s *legal* approach to protecting the public interest in the broadband area, the decision categorically did not question the Commission’s *policies* or the Commission’s authority to support them with other legal approaches. It should follow that the legal approach taken by the Commission would be the one that best supports the Commission’s broadband policies, especially those exemplified in the National Broadband Plan. MAG-Net urges the Commission to adopt a Title II approach as it best enables the Commission to maintain the status

² 47 U.S.C. §230(a)(1).

³ 47 U.S.C. §230(a)(3).

⁴ 47 U.S.C. §157 nt. (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law. No. 104-104, 110 Stat. 56 (1996)).

⁵ *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010) (*Comcast*).

quo, light touch regulatory approach of broadband access. By applying the necessary Title II provisions solely to the transmission component of broadband Internet connectivity service, this manner of classification best enables the Commission to tailor the requirements of Title II so that they conform to the policy consensus for broadband Internet connectivity services.

II. CLASSIFICATION UNDER TITLE II BEST ENABLES THE COMMISSION TO IMPLEMENT ITS PRIORITIES.

The Commission developed the National Broadband Plan at the direction of Congress through the American Recovery and Reinvestment Act of 2009.⁶ The plan emphatically declares, “Everyone in the United States today should have access to broadband services.”⁷ The National Broadband Plan provides numerous recommendations to increase broadband deployment, effectuate universal, affordable broadband service, and address barriers to broadband adoption and utilization.⁸ Such policies are vital to the MAG-Net constituents who rely on communication services for increased economic, educational, political and social opportunity. A Title II classification approach best enables the Commission to implement the National Broadband Plan, close the digital divide, and create meaningful quality of access to those in historically marginalized communities.

In the twenty-first century, universal connectivity must mean broadband connectivity. Studies have documented the economic, educational, political and social benefits of improved access to broadband.⁹ Chairman Julius Genachowski has previously commented on the

⁶ See American Recovery and Reinvestment Act of 2009 § 6001, 47 U.S.C. § 1305(k)(2)(A), (D) (2010).

⁷ Federal Communications Commission, Connecting America: The National Broadband Plan, at 135 (National Broadband Plan).

⁸ *Id.* at Ch. 8-9.

⁹ See, e.g., John Horrigan, Pew Internet & American Life Project, “Home Broadband Adoption 2009,” at 33 (June 2009), available at <http://www.pewinternet.org/~media/Files/Reports/2009/Home-Broadband-Adoption-2009.pdf> (“Pew Broadband Adoption Report 2009”) (“Overall, 55%

economic benefits of access to broadband: “broadband can be our platform economic prosperity and opportunity for all Americans.”¹⁰ Indeed, the Internet serves as the most powerful and creativity-enabling communications advancement of the 21st Century. Access to the Internet has become essential to our daily lives in countless ways—from applying for a job to investing for retirement, from completing a homework assignment to distance learning, and from starting a healthy diet to finding medical advice. The Internet provides, especially for historically marginalized communities, access to basic services, healthcare, education, employment, and news. Further, the Internet enables participation in civic and political activities by individuals as well as the organization and mobilization of communities. In these ways and more, the Internet provides a platform for economic justice and social change.

Yet, certain communities are being left behind: 60% of low-income households do not use broadband at home, 50% of all Latinos do not, while 41% of African Americans do not.¹¹ Rural America similarly lags behind in broadband penetration, with just half of rural residents subscribing to broadband in their homes.¹² In reference to broadband on Tribal lands, the FCC has observed that, “by virtually any measure, communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population” and reports that “less than 10% of residents on Tribal lands have broadband available.”¹³

Reforming the Universal Service Fund under the National Broadband Plan recommendations would provide key support of deployment and adoption of broadband in high-

of broadband users...view a high-speed connection as being very important to the civic or economic fabric of their communities.”).

¹⁰ Prepared Remarks of Chairman Julius Genachowski, Federal Communications Commission, “Innovation in a Broadband World,” at 7 (Dec. 1, 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294942A1.pdf.

¹¹ National Broadband Plan at 167.

¹² *Id.*

¹³ *Id.* at 152, Box 8-4, “Broadband on Tribal Lands.”

cost areas and among low-income populations. Key recommendations include expanding Lifeline Assistance (Lifeline) and Link-Up America (Link-Up) to make broadband more affordable for low-income households and expanding federal support for regional broadband capacity-building aimed at improving broadband deployment and adoption.¹⁴

The policies and recommendations embodied in the National Broadband Plan serve to bring not only broadband, but also opportunity to marginalized communities. Yet, without proper classification, public policies and public investments designed to promote broadband deployment and adoption in such areas will be stymied. Marginalized communities will be deprived of the technological tools that might otherwise greatly advance their social, political, educational, and economic welfare. Such communities will be limited in sharing, creating, and accessing content and information that can enhance the lives of their members. Only classification of broadband Internet connectivity service under Title II safeguards and furthers policies for the expanded deployment of broadband and the realization of affordable, meaningful access.

III. CLASSIFICATION UNDER TITLE II BEST ENABLES THE COMMISSION TO PRESERVE AN OPEN AND NONDISCRIMINATORY INTERNET.

Classification of broadband Internet connectivity service as a Title II service best enables the Commission to maintain an open, nondiscriminatory Internet. An open and nondiscriminatory Internet creates opportunity: the opportunity for all people regardless of their digital skills, or geographic and socio-economic situation to communicate and create, access, and share information useful for their own life plans. Such an Internet allows for ideas to enter a free and open marketplace with equal opportunity to be tested, important to ensure the representation and opportunity of historically marginalized communities.

¹⁴ *Id.* at 168.

Access to an open and nondiscriminatory Internet is especially crucial in light of a history in which low-income communities, immigrant communities, and communities of color have often been disadvantaged and discriminated against. An open and nondiscriminatory Internet allows for these communities to communicate effectively and efficiently, whether it is for social, political, or economic purposes.

With its low barriers to entry, the Internet can allow these communities to speak for themselves by allowing them to create their own content, providing them the ability to speak for themselves and on behalf of their communities. It can also allow them to create their own opportunities and freely engage in activities which they could not or were previously limited. Moreover, for those who have access to the Internet, it is increasingly becoming a necessity for a variety of economical, social, and political purposes. Millions of low-income, immigrant, and minority communities rely on the Internet for a variety of activities such as applying for jobs, creating and growing their businesses, participating in civic and political activities, and accessing public and government assistance. Classification of broadband Internet connectivity service under Title II will best preserve an open and nondiscriminatory Internet that can afford opportunity to traditionally disadvantaged and historically marginalized communities.

IV. THE COMMISSION'S CLASSIFICATION OF BROADBAND INTERNET CONNECTIVITY SERVICE MUST APPLY TO WIRELESS AND WIRELINE SERVICES ALIKE.

Wireless access to the Internet increasingly plays a critical role in how historically marginalized communities connect to the Internet. Data indicate that wireless devices are increasingly being used for Internet access, especially by communities-of-color. A recent mobile

access study from Pew Internet & American Life Project¹⁵ finds that roughly half of African-Americans and Latinos go online from a mobile phone.¹⁶ The Pew 2010 Study also reports that in regards to wireless access to from a laptop, “there are no major differences when it comes to race or ethnicity – blacks and English-speaking [Latinos] are just as likely as whites to own a laptop, and to access the Internet on a laptop using a wireless connection.”¹⁷ Therefore, wireless access to the Internet plays a significant part in how MAG-Net constituents go online.

For the constituents of MAG-Net, wireless or wireline connections to the Internet represent two options to the same end. These constituents desire to maintain the seamless transfer from one to the other without a change in their experience of the Internet. Therefore, it is critical that the Commission classifies both wireless and wireline broadband Internet connectivity services as a Title II service. Imposing different classifications for wireless and wireline connectivity services risks creating different sets of rules for communities that connect to the Internet through a wireless connection, relegating mobile broadband users to second-class Internet citizenship. While technological distinctions between wireline connectivity and wireless connectivity exist, such distinctions should not serve as the basis for distinct classifications. Rather, the technological distinctions found between wireless and wireline connectivity should be merely factors to consider within a Title II classification framework. A Title II classification produces the best way to ensure the same classification for both connectivity services.

¹⁵ See Aaron Smith, Pew Internet & American Life Project, *Mobile Access 2010* at (July 2010) (“Pew 2010 Study”), available at http://www.pewinternet.org/Reports/2010/Mobile_-_Access_-_2010.aspx.

¹⁶ *Id.* at 13.

¹⁷ *Id.* at 27

V. CONCLUSION

The Commission's policies or the Commission's authority to support them with other legal approaches have not been put in doubt by the *Comcast* decision. It should follow that the legal approach taken by the Commission would be the one that best supports the Commission's policies and priorities. A Title II framework for classification best enables the Commission to tailor the requirements of Title II so that they conform precisely to the policy consensus for broadband transmission services in deploying broadband services to all Americans and preserving an open and nondiscriminatory Internet, essential to rural and urban low-income communities, immigrant communities and communities-of-color.

Respectfully Submitted,

/s/

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