

February 19, 2015

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **GN Docket No. 14-28**
Written Ex Parte Presentation

Dear Chairman Wheeler:

The undersigned fixed wireless Internet service providers (“WISPs”) write to express our serious concerns over the impact that certain Open Internet rules would have on small broadband providers, WISPs and the consumers and businesses that we serve. While full details of the Chairman’s plan are not known and remain subject to discussion, we believe it is important to make clear our concerns and to recommend exemption for small broadband providers from any new rules the Commission may choose to impose on fixed broadband providers.

WISPs, small cable operators and municipalities provide fixed broadband service in small, rural communities that would otherwise be unserved or underserved. We have been able to enter the market and provide service because, in part, the “light touch” rules the FCC adopted in 2010 did not place extraordinary regulatory burdens on us. Our costs to comply with those rules have been minimal, and we are not aware of any bad behavior that would require an increase in regulatory intrusion into our businesses, an outcome that would likely force us to raise prices, delay deployment expansion, or both. Further, because we lack market power, we have no incentive and no ability to harm edge providers.

We write to echo the call made by small broadband companies and organizations – fixed wireless, cable and municipal-owned providers – seeking exemption from any new regulations. First, outside of any discussion of the FCC’s statutory authority, we urge the Commission to exempt small businesses from any new disclosure and reporting obligations it may choose to impose. There is no factual basis for any change in the 2010 rules, and any additional regulations would increase compliance costs and heighten enforcement risk, especially (but not exclusively) under Sections 206 and 207. These are unnecessary obligations that will stifle deployment and chill investment into small broadband providers, those least likely to be able to attract investment capital.

Second, to the extent the Commission reclassifies longstanding “information service” providers as “telecommunications service” providers under Title II – despite the fact that we are not common carriers and notwithstanding serious questions about the legality of such authority – we ask that the Commission forbear from imposing Title II requirements on small broadband providers. In particular, we believe that the combination of the fundamental Title II precepts in Sections 201, 202 and 208, together with the damages and private rights of action provisions of Sections 206 and 207, would establish a federal and, potentially, state regulatory environments

that would, over time, threaten our businesses and jeopardize our continuing ability to provide fixed broadband service to those who would otherwise lack access.

We understand that the Chairman's plan does not propose to regulate the rates of broadband service providers. However, through a private right of action that could lead to damages for violations of Sections 201 and 202 standards that are untested in the broadband arena, substantial uncertainty and potential for the imposition of rate regulation is presented through the adjudicatory process. For example, we do not know what it means to offer service at unjust, unreasonable or unreasonably discriminatory rates (Section 201) or fail to provide service upon reasonable request (Section 202). But perhaps more concerning is that small businesses face the very real prospect that we will be dragged into expensive and time-consuming FCC or judicial proceedings to interpret these standards. The right of litigants, even those that have no case, to obtain damages through settlement or protracted discovery creates a powerful incentive for litigation that small providers can ill afford. And we will no doubt be the targets because we don't have armies of lawyers to fight back.

Third, at a minimum, we believe the Commission should, under any new regulatory environment, adopt enforcement proceedings for small broadband providers that require consumers or edge providers to engage in good faith negotiation for 30 days before they can file a complaint. Based on our experience, we believe we can resolve most disputes through discussion. We can identify and address problems. For example, in some cases, congestion may be the result of multiple users at a consumer's residence and not unlawful blocking or throttling. Or there may be limitations on the capability of the network due to a lack of available spectrum. In short, the Commission's complaint process and judicial relief should be venues of last resort.

We agree with statements in a recent letter signed by 43 municipalities that "[t]he economic harm will flow not from following net neutrality principles, which we do today because we think it is beneficial to all, but from the collateral effects of a change in regulatory status that will trigger consequences beyond the Commission's control and risk serious harm to our ability to fund and deploy broadband without bringing any concrete benefit for consumers or edge providers that the market is not already proving today without the aid of any additional regulation."¹ These same risks apply to privately-funded, non-subsidized WISPs and other small broadband providers that provide vital broadband service today and wish to expand deployment in the future.

The Commission cannot ignore the call for a regulatory regime that takes into account the threats that new rules and Title II will impose on small broadband providers. We urge your careful consideration of these important concerns as you and your fellow Commissioners deliberate in these final days before the scheduled vote.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-captioned proceeding.

¹ Letter from Forty-Three Municipal Broadband Internet Providers to The Honorable Thomas Wheeler, GN Docket Nos. 14-28 and 10-127 (filed Feb. 10, 2015) at 2.

Respectfully submitted,

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