Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Protecting and Promoting the Open Internet	)	GN Docket No. 14-28
	)	
	)	

I. INTRODUCTION

Consumer Watchdog, a nationally known public interest group, was heartened by the recognition given in the Notice of Proposed Rulemaking (NOPR) and in the accompanying statements from the individual Commissioners to the importance of the Internet in America's future. However, the problem is that the proposed rules will not protect and ensure a vibrant Internet as we now know it. As the NOPR stated, "the Internet has been, and remains to date, the preeminent 21st century engine for innovation and the economic and social benefits that follow." It has been successful because it is an open platform. It must continue to be open, treating all comers equally, so that "a bit is just a bit." Unfortunately, while playing lip service to that concept, the proposed rules will actually create a tiered system of haves and have-nots. There will be one high-speed Internet for those who can afford to pay a premium toll exacted by the Internet Service Providers (ISPs), while the rest of us are condemned to a barely adequate, clogged and congested Internet service.

Consumer Watchdog understands that the federal court ruled that the Commission's former Open Internet rules treated ISPs as common carriers, something it cannot do so long as ISPs are classified as offering "information services." As we explain below circumstances have

substantially changed since that classification was made and in recognition of the new realities ISPs must be classified as offering "telecommunications services." They would clearly fall under Title II of the Communications Act as they should and be subject to antidiscrimination rules requiring equal treatment to all comers. ISPs have indeed emerged as common carriers and must be treated as such, particularly because in many markets they serve they are virtual monopolies. We review key elements of the proposed rules below.

II. TRANSPARENCY IS CRITICAL

Any hope of maintaining an open Internet requires that all the network practices of broadband Internet providers should be publicly disclosed. The proposed Transparency Rule appears to meet this requirement and would enable "end users to make informed choices," "edge providers to develop, market and maintain Internet offerings" and for the Commission and members of the public to understand how ISPs comply with the rules.

A troubling provision in the proposed transparency section is language specifying that an ISP must disclose "any instances of blocking, throttling and pay-for-priority arrangements or the parameters of default or 'best effort' service as distinct from priority service." This makes clear that the new rules envision a two-tiered Internet. Why else would the rule contain such a provision? Perhaps the Commission's belief is that requiring broadband Internet access providers to disclose their network management practices will shame them into doing the right thing. Given the monopoly position most ISPs have in the markets they serve, that outcome is extremely unlikely.

III. NO BLOCKING RULE IS INSUFFICIENT

"I strongly support an open, fast and robust Internet. The agency supports an Open Internet. There is ONE Internet. Not a fast Internet, not a slow Internet; ONE Internet," writes Chairman Tom Wheeler in his statement accompanying the NOPR. Would that it were true. Saying so doesn't make it so and unfortunately the No Blocking Rule is totally insufficient to produce what Chairman Wheeler says he supports. Worse, if the proposed rules were implemented with the Commission paying mere lip service to the concept of the Open Internet, consumers might be lulled into thinking adequate protections had been put in place when in fact they would only serve the narrow interests of powerful ISPs.

A two-tiered Internet can in happen in two ways: 1.) The broadband Internet access provider can slow data from edge providers unless they pay the ISP so their content won't be slowed. 2.) Data from edge providers can be prioritized and moved faster than other data if a premium price is paid. Clearly the impact on the Internet is the same. There would be a tiered service. And, it is possible in fact to envision a situation that would combine both tactics – charging so that data wasn't slowed below a certain speed and that a premium was also charged to expedite data beyond that speed.

The Commission's proposed rule would only prohibit blocking data. It does not speak to charging for prioritized service. Apparently the Commission envisions some acceptable rate of delivery for all data that would be "commercially reasonable." ISPs would be allowed to extract a toll for prioritized data services above that speed. The inevitably creates a two-tiered system.

Deep-pocketed edge providers would gladly pay a premium for their content to be

expedited, while those with more limited financial resources would fall behind. New start-ups likely would be among those with fewer resources. Clearly the tiered Internet that the Commission's proposed rules guarantee would stifle innovation.

The only way to protect the Internet and foster competition and innovation is by adopting rules requiring no discrimination by broadband Internet access providers. All data must be treated the same way; a bit must just be a bit.

IV. FIXED AND MOBILE INTERNET ACCESS MUST BE TREATED THE SAME

When the mobile space was first developing it may have made sense to treat mobile and fixed broadband access to the Internet in different ways. That time is past. As more and more of us are accessing the Internet via smartphones, tablets and other mobile devices, it has become clear that the same Open Internet rules should apply to both means of Internet access. This is particularly true if the Commission wants to foster healthy – indeed necessary – competition between various broadband Internet access providers.

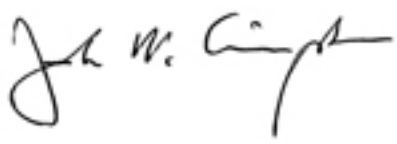
V. TITLE II PROVIDES NECESSARY AUTHORITY

The Commission's original classification of broadband access providers as offering "information services" may have made sense at time the decision was made. What was then flowing over the Internet was much more limited, often little more than email and data necessary to surf some websites. The situation has changed dramatically.

Today the amount of data transferred over the Internet has exploded exponentially. The Internet has become the indispensible link through which virtually all significant data necessary both for personal and commercial use can be shared. Just as a connection to a water system, sewer system, electric grid or telephone network became necessary for modern life in the 20th Century, broadband Internet access is essential in the 21st Century. Just as the vital networks of the 20th Century were regulated as common carrier public utilities, so too is it time to apply the same principle to the Internet. The Internet is a necessary public utility and must be regulated as a common carrier.

The Federal Communications Commission can and must reclassify broadband access providers as offering a "telecommunications service" and regulate them under Title II of the Communications Act. This would make it clear that the Commission has authority to require nondiscrimination by ISPs so that all comers are treated equally, guaranteeing a truly open Internet. Because the Communications Act was approved before the existence of the Internet, some provisions of Title II are no longer applicable. The Commission can easily "forbear" from implementing those provisions that are no longer relevant, but not reclassifying and forbidding discrimination by broadband access providers will guarantee the end of a vibrant, thriving, innovative and open Internet.

Respectfully submitted,



John M. Simpson
Privacy Project Director July 18, 2014