

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF THE GREENLINING INSTITUTE

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I. INTRODUCTION

The Greenlining Institute respectfully submits the following reply comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking (“NPRM”) in the above-captioned matter.

In its opening comments, Greenlining noted that a lack of strong net neutrality rules would result in unequal access to healthcare, digital education, and the ability to freely exchange ideas over the Internet, and this impact would particularly harm communities of color.¹ A large number of industry parties have suggested a *de minimis* framework with minimal standards and no consequences for noncompliance. This framework would not only permit providers to discriminate against low-income customers and customers from communities of color,² but would actually incentivize those providers to do so. The Commission should not create a regulatory scheme that allows the creation of second class service to communities of color and low income communities.

II. ARGUMENT

The provider parties propose rules that are insufficient to protect consumers and the open Internet. Providers’ proposals to impose previous ineffective standards, allow a nebulous “best efforts” exception, or exempt low- or no-cost programs from net neutrality requirements could create a second-class Internet for low-income consumers and communities of color. The Commission should reject these proposals and the Commission should take affirmative steps to protect consumers and ensure an open Internet by reclassifying broadband service as a telecommunications service.

¹ See Greenlining Opening Comments.

² See *Id.* at 5.

A. Providers' Proposals Are Insufficient to Protect Consumers and the Open Internet.

When addressing the Commission's questions regarding the need for rules, many of the major broadband providers argue that no rules are unnecessary. For example, when discussing the proposed "no blocking" rule, wireless broadband providers argue that there should be no such rule for mobile broadband providers,³ or that if the Commission implements a no blocking rule, that rule should be no broader in scope than the 2010 net neutrality rules.⁴

Wireline broadband providers' comments harbor similar sentiments. Although those providers are more accepting of the Commission's 2010 rules. Charter and Verizon argue that a no blocking rule is unnecessary.⁵ AT&T argues that the Commission should retain the 2010 nondiscrimination rules.⁶ Comcast, the only wireline broadband provider currently bound by the 2010 net neutrality rules, states that the Commission could properly implement requirements for a minimum level of service.⁷ Time Warner, the target of an acquisition by Comcast, appears to agree with Comcast's position.⁸

Providers' proposals do nothing to protect consumers or an open Internet. A complete absence of rules in no way protects against providers' incentives to slow or block traffic. Similarly, the weak rules suggested by some providers do nothing to obviate the potential harms to net neutrality. As noted in Greenlining's Opening Comments,⁹ the *Verizon* court noted that section 706 would require a rule that allowed providers to negotiate individual terms with

³ Verizon Opening Comments at 44; T-Mobile Opening Comments at 15-16; CTIA Opening Comments at 28; AT&T Opening Comments at 18.

⁴ CTIA Opening Comments at 28-29; Verizon Opening Comments at 44.

⁵ Charter Opening Comments at 9-13; Verizon Opening Comments at 26.

⁶ AT&T Opening Comments at 27.

⁷ Comcast at Opening Comments 18-19.

⁸ Time Warner Opening Comments at 3.

⁹ Greenlining Opening Comments at 12.

content providers.¹⁰ Providers' proposed rules, in light of the *Verizon* decision, are insufficient to achieve a truly open Internet and to protect consumers, and would constitute *de facto* deregulation of broadband services. Such deregulation would seriously harm all consumers, but would disproportionately harm low-income communities and communities of color.

B. Providers' Proposals Could Create a Second-Class Internet for Low-Income Consumers and Communities of Color.

Providers seek to further water-down open Internet protections by adding numerous loopholes and exceptions to the proposed rules. These exceptions include the Commission's allowing a nebulous "best efforts" exception to any minimum standard, severely restricting the scope of new net neutrality protections, or excusing providers from meeting net neutrality standards for low- or no-cost programs. These exceptions are unacceptable, and the Commission should reject comments which suggest them.

i. The Commission Should Not Create a "Best Efforts" Exception.

As discussed above, providers propose rules (or in some instances, no rules at all) that are insufficient to protect the open Internet. Those providers further suggest that if the FCC imposes new net neutrality rules, the Commission should water down those rules to an extent that renders the rules meaningless. For example, a number of providers argue that "[a]ny 'minimum level of service' that the Commission adopts should be interpreted as a requirement that broadband providers deliver traffic to end users on a 'best efforts' basis."¹¹ Time Warner argues proposes a similar loophole, stating that Time Warner finds a minimum level of service requirement

¹⁰ Id. at 11.

¹¹ Comcast Opening Comments at 20; *see also*, TechAmerica Opening Comments at 6; AT&T Opening Comments at 73; Verizon Opening Comments at 26.

acceptable provided that level of service is “construed in a manner that does not unduly constrain the flexibility of broadband providers.”¹²

The Commission’s permitting providers to “use their ‘best effort’ to deliver packets to their intended destinations without quality-of-service guarantees” or allowing providers to plead the need for “flexibility” would not protect net neutrality. “Best efforts” and “flexibility” are such nebulous concepts that providers would choose, as they have done in the past, to interpret these terms in whichever way they wished. Standards like a “best efforts” standard would give providers such wide latitude in providing service that quality of service requirements would be meaningless. The Commission should reject providers’ attempts to dilute net neutrality rules in this manner.

ii. The Commission Should Reject Proposals that Limit the Scope of Net Neutrality Protections.

AT&T argues that if the Commission expands the scope of net neutrality rules past the scope of the 2010 rules, any expansion of those rules should be limited to rules about paid prioritization.¹³ AT&T bases this argument on the assertion that net neutrality advocates say that paid prioritization is the “principal threat” to an open internet.¹⁴ Greenlining’s Opening Comments (as well as many of the filings by other parties to this proceeding) contradict this argument.¹⁵

Providers’ proposals do nothing but repeat those providers’ previous arguments that competition is sufficient to ensure that the Internet remains open and that providers do not discriminate against devices, applications, or content. However, as Greenlining’s Opening

¹² Time Warner Opening Comments at 3.

¹³ AT&T Opening Comments at 27.

¹⁴ AT&T Opening Comments at 27.

¹⁵ See Greenlining Opening Comments.

Comments noted, the Commission is correct in finding that broadband providers have both the incentive and the ability to limit Internet openness.¹⁶ A rule excusing providers from providing a minimum standard of service as long as a provider uses its industry-defined “best efforts” would create an environment that would be nearly impossible for the Commission to monitor. The Commission should not impose rules that allow carriers to create second class Internet for some users. Allowing carriers to determine the winners and losers of the digital world creates a very real risk of disproportionately harming communities of color.¹⁷

iii. The Commission should Reject any Proposal that Would Exempt Low-Cost Programs from Minimum Service Requirements.

Comcast’s comments indicate that it has the incentive to create a second class Internet for low-income consumers, many of whom are from communities of color. As part of its application to acquire Time-Warner, Comcast has touted its Internet Essentials program, a program intended to provide low-cost Internet services to low-income consumers.¹⁸ In Comcast’s comments in this proceeding, Comcast argues that the Commission’s no-blocking rule should “not limit or foreclose the offering of low-cost broadband Internet access services.”¹⁹ For example, IE offers a 5 Mbps speed; Comcast suggests that if the Commission set a minimum speed requirement of 10 Mbps, that requirement should not apply to IE services. Comcast further argues that if the Commission does impose minimum standards, Comcast should be allowed to offer an Internet Essentials product that does not meet those standards.²⁰ In short, Comcast is proposing a system where providers could force low-income consumers and consumers from communities of color to sit at the back of the digital bus.

¹⁶ *Id.* at p. 3.

¹⁷ *Id.*

¹⁸ See Comcast Opening Comments at 21.

¹⁹ *Id.* at 21.

²⁰ *Id.* at 22.

If the FCC creates such a rule, the result will be a two-tiered Internet, with low-income consumers and many communities of color relegated to the lower tier. As noted in Greenlining's Opening Comments, this second-class service will result in unequal access to healthcare, digital education, and the ability to freely exchange ideas over the Internet, and this impact would particularly harm communities of color. The Commission should unequivocally reject Comcast's, and any other similar, proposal.

III. Conclusion

Providers have had over a decade to propose workable net neutrality rules and demonstrate their commitment to an open Internet.²¹ In all this time, they have failed to do so. Now, those providers are suggesting that the Commission continue previous policies which allowed providers to determine what broadband policies benefit or disadvantage low-income consumers and communities of color. Despite providers' protestations, this model has failed. Greenlining respectfully submits that the Commission should take affirmative steps to protect consumers and ensure an open Internet by reclassifying broadband service as a telecommunications service.

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Respectfully submitted,

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²¹ See NRPM at ¶ 11.