

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

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In the Matter of)	GN Docket No. 14-28
)	
Protecting and Promoting the Open Internet)	FCC 14-61
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)	

REPLY COMMENTS OF NEW MEDIA RIGHTS

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I. Introduction

The initial comments of broadband providers in the FCC’s Open Internet proceeding consist of fear instilling rhetoric coupled with a lack of reliable data to support that rhetoric. Broadband providers accuse those who support meaningful Open Internet policies, including consideration of re-classification under Title II, of exaggerating the issues, yet turn to the same kind of hyperbolic language they decry to make their own points: That reclassification will be “devastating”¹ and “disastrous”² to the entire internet ecosystem, and even that it will encourage repressive (but unnamed) foreign regimes to institute harsher internet regulations.³ In their comments on the Notice of Proposed Rulemaking (“NPRM”), broadband providers such as Verizon have characterized advocates of basic rules to protect an Open Internet as “politically motivated” and “sensationalistic”.⁴ None of this helps address the substantive issues at stake in this debate, including the central question of whether there will be meaningful regulation of our primary means of communication in 21st century. Even if we could agree the Internet is not on the verge of an immediate cataclysm,⁵ that does not mean that everything is fine and threats to the future of the Open Internet through gradual chipping away at the cornerstones of an Open Internet are not real. As New Media Rights (“NMR”) stated its initial comment on this NPRM, we stand at a fork in the road:

Path 1: We can choose to protect and foster an Open Internet, and share the benefits among consumers, innovators, and broadband providers; or

Path 2: We can allow the entrenched broadband providers that provide access to the Internet to further shape the Internet into a tool for maximizing their chosen revenue streams, at the expense of all else.

Should we choose path 2, the end of the Open Internet will not arrive violently overnight, but rather through a slow, but certain, decay over many years. It is therefore essential that the Commission use its authority and expertise to implement necessary safeguards now, while there is still time to prevent this wasteful decay, because it will only become harder to curtail harmful business practices once they have been widely implemented.

This reply comment provides targeted replies to key claims made by opponents of meaningful Open Internet regulations. First, some large broadband providers (Comcast, Verizon, and AT&T) have repeatedly assured the Commission that they operate in highly competitive markets and that Section 706 gives the Commission ample authority to enact Open Internet policies, but as

¹ Comments of AT&T Services, Inc., *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, at 67 (filed July 15, 2014).

² Comments of Comcast Corporation, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, at 46 (filed July 15, 2014).

³ Comments of Verizon, *supra* note 1, at 56; Comments of AT&T, *supra* note 2, at 69.

⁴ Comments of Verizon and Verizon Wireless, *In the Matter of Open Internet Rulemaking*, GN Docket No. 14-28, at 6 (filed July 15, 2014).

⁵ Comments of Verizon, *supra* note 1, at 4-5.

discussed in NMR’s initial comment on this NPRM, neither of these claims is true. Second, broadband providers continue to press the Commission to continue to view “internet access” as a bundled service. The decision to classify the telecommunications element of broadband internet access services as an information service was grounded in a misinterpretation of the way the basic technology of the Internet works, and this Commission is in an ideal position to rectify that error rather than perpetuate it. Third, it is essential that mobile broadband and fixed broadband services be treated the same under any Open Internet policy this Commission embraces. Mobile broadband providers like Verizon have failed to provide any substantial evidence that the concerns they have cannot be successfully addressed through the reasonable network management exception already embraced by both the 2010 and 2014 Open Internet Policies.⁶

II. Empty provider assurances about competition and a lack of reliable data

Broadband providers made many assurances to the Commission in the course of their initial comments, but one claim is especially problematic. Broadband providers claim that the market for broadband internet access is competitive enough that it will protect consumers from any potential Open Internet violations.⁷ Broadband providers have provided little evidence to back up this claim and yet expect the public and this Commission to simply take their word for it. What little data that broadband providers have pointed to is unreliable and, by the Commission’s own words, is not intended to be used for the purposes of showing levels of competition. The data broadband providers rely on does not and cannot support their claims. It also reflects a larger problem: A severe lack of reliable, useful information about broadband internet access services on a consumer-by-consumer basis.

A. Broadband providers have relied on unreliable evidence

Most of the large broadband providers have claimed that if they blocked or degraded certain sources of data, consumers would merely switch to another provider and thus it is nonsensical to think that protections are needed against such conduct.⁸ However, the primary source of data that broadband providers consistently relied on when claiming robust competition currently exists is simply not intended for that purpose. AT&T, Comcast, and Verizon all cite the FCC’s report, “Internet Access Services: Status as of June 30, 2013”, as evidence of competition in the fixed broadband internet access market.⁹ Yet the Industry Analysis and Technology Division of the FCC explicitly states several times in that very report that the data regarding the number of broadband providers operating in a given census tract “does not necessarily reflect the number of

⁶ *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Notice of Proposed Rulemaking, 29 FCC Rcd 5561, at Appendix A (2014) (hereinafter “2014 NPRM”); *In the Matter of Preserving the Open Internet*, GN Docket No. 09-191, Report and Order, 25 FCC Rcd 17905, at Appendix A (2010) (hereinafter “2010 NPRM”).

⁷ Comments of Verizon, *supra* note 1, at 7; AT&T, *supra* note 2, at 18; Comments of Comcast, *supra* note 3, at 10.

⁸ *Id.*

⁹ Comments of Verizon, *supra* note 1, at Lerner Decl. pg. 10; Comments of AT&T, *supra* note 2, at 18 n. 53; Comments of Comcast, *supra* note 3, at 9.

choices available to a particular household, *and does not purport to measure competition.*¹⁰ The Division makes this statement because a provider is included in the data as a broadband provider in a census tract so long as it provides service to even one home in a census tract. It casts serious doubt on the claims of broadband providers that they operate in a competitive market when the best evidence that providers can point to is Commission reports specifically stating they are not reflective of competition.¹¹

- a) The misuse of the data in the Commission's 2013 report is not the only example of how the lack of reliable information casts doubt on broadband provider claims of a competitive market.

The National Broadband Map, also relied upon indirectly by commenters like Verizon,¹² and a key public resource regarding the availability of broadband, is rife with inconsistencies and a lack of clarity. Case example of why the National Broadband Map data is unreliable

As an illustrative example of this unreliability, using the National Broadband Map to select an address on Campus Ave. in San Diego, California¹³ yields the following results (for wired internet access providers): Cox Communications, Inc. (100 Mbps – 1 Gbps), AT&T, Inc. (10 Mbps – 25 Mbps), and Platinum Equity, LLC (10 Mbps – 25 Mbps).¹⁴ However, upon visiting Cox's webpage for an address on this stretch of Campus Ave., the fastest tier of internet access available is only 100 Mbps. Further, visiting AT&T's webpage to find service options for several addresses on this stretch of Campus Ave. yields a maximum speed of 1.5 Mbps, not the 10 Mbps- 25 Mbps listed on the National Broadband map website. Last, Platinum Equity LLC does not even provide internet access to individual consumers, but rather serves as a backbone provider and an enterprise / small-business internet access provider.¹⁵ The result is that the National Broadband Map makes Campus Ave. in San Diego appear as though it has a modestly healthy amount of high speed broadband providers (three), but quite a number of residences in this area only have one broadband provider: Cox Communications. The data on the National Broadband Map is unreliable at best, and misleading at worst. The difference between having one and three high speed broadband providers is dramatic. However, if a consumer on Campus

¹⁰ FCC, *Internet Access Services: Status as of June 30, 2013*, at 9 (June 2014), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0625/DOC-327829A1.pdf (emphasis added). See also *Id.* at 10, 54, 61, 62, 63, 64.

¹¹ Comments of Verizon, *supra* note 1, at Lerner Decl. pg. 10 (citing to *Internet Access Services: Status as of June 30, 2013*, at 9); Comments of AT&T, *supra* note 2, at 18 n. 53 (citing to FCC, *Internet Access Services: Status as of December 31, 2012*, at 9 (Dec. 2013)); Comments of Comcast, *supra* note 3, at 9 (citing to *Internet Access Services: Status as of June 30, 2013*, at 9); *But cf.* aforementioned language in *Internet Access Services: Status as of June 30, 2013*, at 9 and similar language in *Internet Access Services: Status as of December 31, 2012*, at 9. .

¹² Comments of Verizon, *supra* note 1, at Lerner Decl. pg. 9.

¹³ For this example, two residential blocks on Campus Ave. were viewed on the National Broadband Map, spanning the distance between Madison Ave. and Meade Ave.

¹⁴ *Search Results: Broadband Providers for this Area*, National Broadband Map, <http://www.broadbandmap.gov/internet-service-providers/campus-ave.-san-diego/lat=32.7572353/long=-117.1487823/wired/> (last visited August 30, 2014).

¹⁵ *MegaPath*, Platinum Equity, <http://www.platinumequity.com/Megapath> (last visited August 30, 2014).

Ave. visited the National Broadband Map, interested in their options for broadband, this is what they would see:

The screenshot shows the National Broadband Map interface. At the top, the search bar contains 'campus avenue, san diego, ca 92116, usa' and a 'FIND' button. Below the search bar, the heading reads 'Search Results: Broadband Providers for this Area'. A paragraph explains that the list shows providers for the census block at the address. A table lists providers: Cox Communications, Inc. (100 Mbps - 1 Gbps), AT&T Inc. (10 - 25 Mbps), and Platinum Equity, LLC (10 - 25 Mbps). To the right is a map showing the street layout with 'CAMPUS AVE' highlighted in red. Below the table, there are sections for 'Advertised Speeds Above 768 kbps and Below 3 Mbps', 'Most Common Speed: 10 Mbps', and a 'Share' section with social media icons. At the bottom, there is a 'Provider' section and a 'Broadband Classroom' link.

Fig. 1

Unfortunately, this problem is not limited to Campus Ave. in San Diego. In lieu of attaching additional illustrative images of addresses ranging from California to New York displaying Platinum Equity LLC as a home¹⁶ broadband provider, we direct the Commission’s attention to the Platinum Equity LLC provider summary page on the National Broadband Map website, which states that Platinum Equity LLC provides broadband services to a population of 138,929,352 out of a total of 321,324,979.¹⁷ That means over one third of the locations covered by the National Broadband Map are listing at least one superfluous broadband provider for those searching for residential broadband providers.

Even allowing for the difficulty of tracking current speed options on every street in the nation, the appearance of backbone and business-only providers in the data means that many residential locations that list two fixed broadband providers on the National Broadband Map only have one real choice for fixed home broadband internet access, and many locations listed as having three fixed broadband providers likely only have two or even just one. And yet, even given this

¹⁶ The National Broadband Map purports to show consumers what is available at their home addresses. In its help section, it clearly states “Enter your *home* address...” (*How to use National Broadband Map*, National Broadband Map, <http://www.broadbandmap.gov/help> (last visited August 30, 2014) (emphasis added)).

¹⁷ *About Provider » Nationwide*, National Broadband Map, <http://www.broadbandmap.gov/about-provider/platinum-equity-llc/nationwide/> (last visited August 30, 2014).

overestimation, the map available on the National Broadband Map website¹⁸ showing the parts of the country that have three wired broadband providers looks like this (see Fig. 2 on the next page):

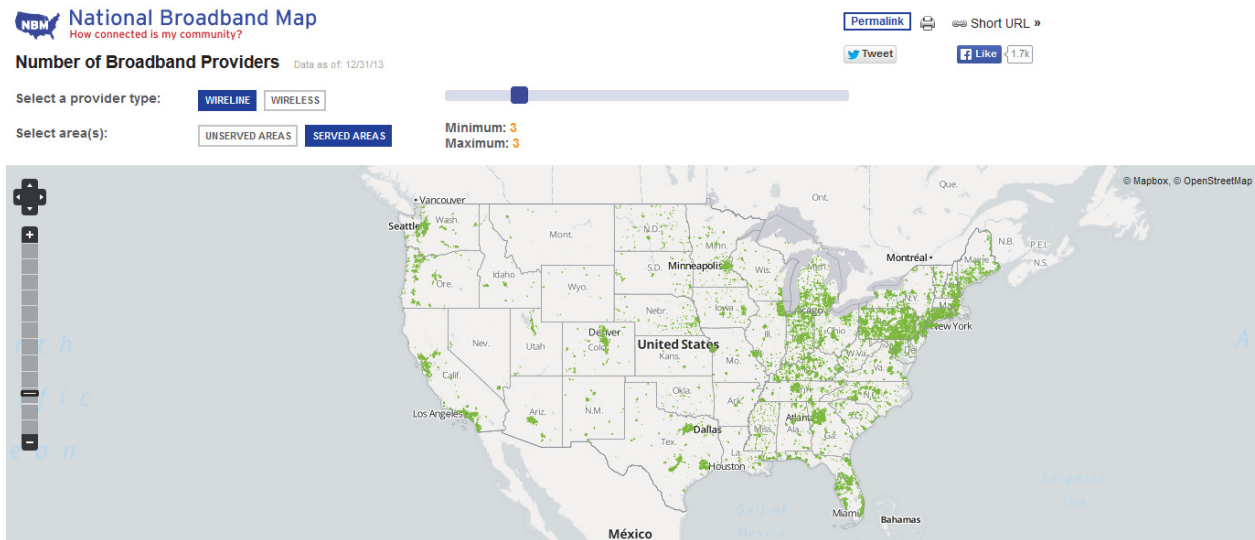


Fig. 2

For comparison, figures three and four display the areas in the nation currently served by two providers and by only one provider, respectively.¹⁹

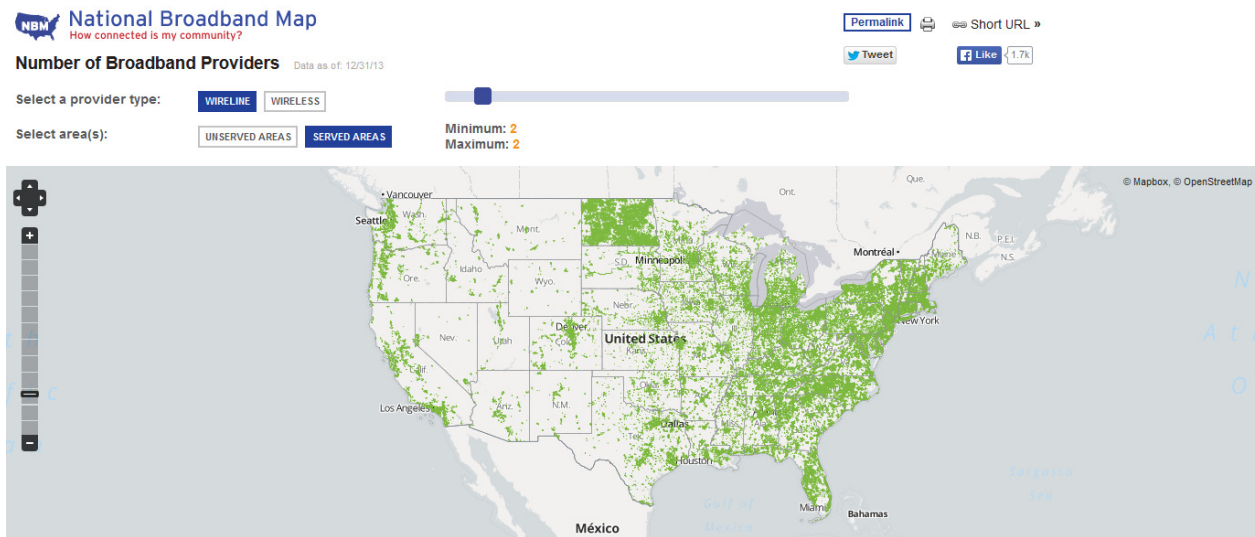


Fig. 3

¹⁸ *Number of Broadband Providers*, National Broadband Map, <http://www.broadbandmap.gov/number-of-providers> (last visited August 30, 2014).

¹⁹ *Id.*

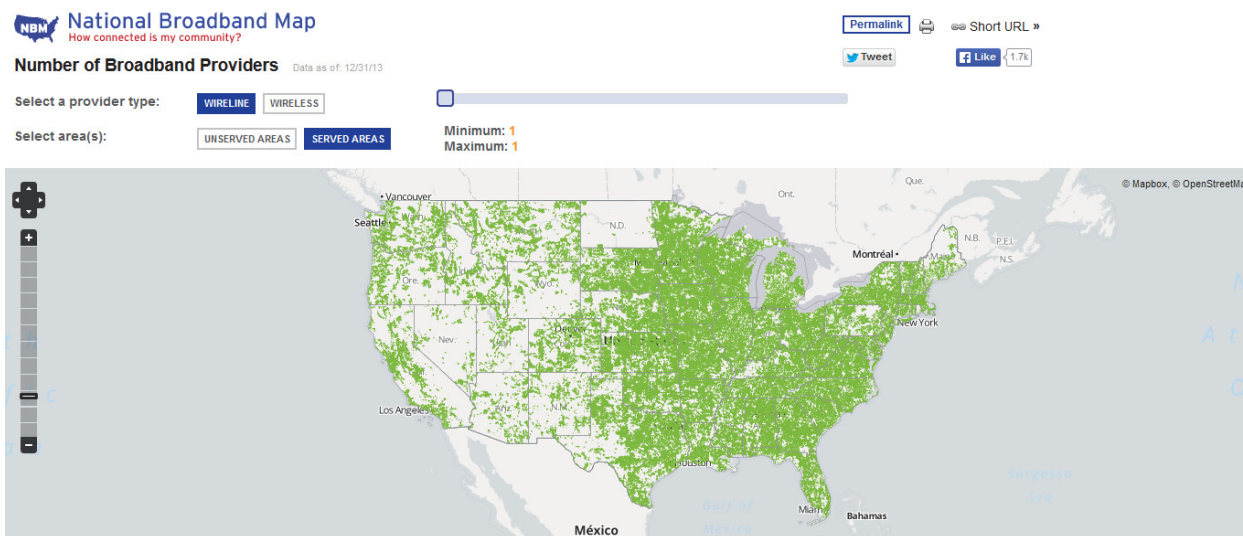


Fig. 4

Thus, a closer look at the data broadband providers rely on reveals that for the vast majority of the country, residential broadband options are often exaggerated, and there is more often than not little or no choice in fixed broadband internet access. Broadband providers do not have the data to support claims that there is sufficient competition. If reliable data regarding competition existed, this would have been the time to share it in the record. Instead, broadband providers rely on data that is flawed, and which the Commission itself has made clear is not meant to measure competition.²⁰

b) Lack of reliable data is undermining this proceeding

The fact that broadband internet access providers cannot point to a reliable source of data regarding levels of competition and the number of providers in a given region of the country not only casts serious doubt on their claims that competition will protect the Open Internet, but also shows just how little information is available to the public and to policymakers. Broadband providers want us to accept that they are in the best position to determine provider competition and availability on the kind of detailed level necessary to make fully informed policy decisions. Yet either broadband providers will not share that information with the Commission or the public, or they simply do not have it. This Commission, or any legislative body, needs more detailed and reliable information about the kind of access choices individual consumers have in order to make informed policy decisions. While the Commission may be able to draw better information from broadband providers through improved disclosure requirements in its Open Internet policy, akin to what it suggested in this NPRM,²¹ it would be prudent to also generate independent data that does not entirely rely on broadband provider disclosures. It is even more

²⁰ *Internet Access Services: Status as of June 30, 2013*, *supra* note 10, at 9.

²¹ 2014 NPRM, *supra* note 6, at ¶63.

important that the Commission make this kind of information available to the public, as NMR stressed in its initial Comments.²²

B. The Commission should be wary of broadband provider assurances that Section 706 is ample authority to protect the Open Internet

Many major broadband providers have claimed that Section 706 provides ample authority for the Commission to enact Open Internet policies.²³ At the same time, these broadband providers have condemned Title II and reclassification as radical and a danger to the entire internet ecosystem.²⁴ Given both the recent *Comcast* and *Verizon* decisions²⁵, it is not hard to see past the disastrous predictions of broadband providers and understand why they are pushing Section 706 as the path to regulatory authority: They know they can beat it. Broadband providers know that the Commission will need to severely limit any Open Internet policies enacted under Section 706 if it hopes to survive challenges to its authority the first time it takes any enforcement action.²⁶ Not only that, but if Open Internet policies are enacted under Section 706, a broadband provider will get two bites from the apple when it challenges any enforcement action. First, any enforcement action can be challenged based on the FCC's lack of authority to regulate. Next, even if a provider loses its challenge to the Commission's authority, it may still succeed in challenging the specific rule as applied. Selecting Section 706 as the legal underpinning of any Open Internet policy will lead only to years of uncertainty, continued challenges to FCC authority, and litigation that will ultimately only benefit broadband providers, as they reap the benefits of weak regulations.

It is also telling that broadband providers use a great deal of their comments to denounce the legal and economic wrongs of Title II,²⁷ but do little more than provide empty assurances that Section 706 will be "sufficient" or "ample" authority.²⁸ Meanwhile Open Internet advocates not only supplied ample reasons for reclassification under Title II,²⁹ but have also provided thorough explanations of why Section 706 is not a workable source of authority for a successful Open

²² Comments of New Media Rights, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, at 27 (filed July 15, 2014).

²³ Comments of Verizon, *supra* note 1, at 46; Comments of AT&T, *supra* note 2, at 39; Comments of Comcast, *supra* note 3, at 13.

²⁴ Comments of Verizon, *supra* note 1, at 46, Comments of AT&T, *supra* note 2, at 39; Comments of Comcast, *supra* note 3, at 42.

²⁵ See *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010); See also *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

²⁶ Providers were, of course, careful to couch their "ample authority" language in limited terms. See Comments of Comcast, *supra* note 3, at 13-14, discussing rules under Section 706 only in light of how they would support broadband investment and deployment and not consumers.

²⁷ Comments of Verizon, *supra* note 1, at 46-69; Comments of AT&T, *supra* note 2, at 39-72; Comments of Comcast, *supra* note 3, at 42-67.

²⁸ Comments of AT&T, *supra* note 2, at 1; Comments of Comcast, *supra* note 3, at 4.

²⁹ See Comments of Public Knowledge, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, at 60-79 (filed July 15, 2014); See also Comments of Free Press, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, at 26-54 (filed July 17, 2014); See also Comments of New Media Rights, *supra* note 22, at 13-24.

Internet policy.³⁰ The Commission should take a firm stance against broadband providers expectations that this Commission and those involved in this debate will simply take them at their word that there is competition and that Section 706 provides the requisite authority to enact sufficiently strong Open Internet policies.

III. The Bundle Bungle: It’s time to acknowledge that “internet access” is a telecommunications service.

Basic access to the internet is not the same as the information services and content that are provided *through* the network. It is a telecommunications service with independent and incidental information services offered alongside it.³¹ Unsurprisingly, broadband providers have done little more on this issue than fall back on the same rhetoric that they have been using for the past decade, even as the Internet has evolved and matured significantly since the original Cable Modem Ruling.³² There are two reasons why broadband providers are off the mark when it comes to their “integrated services” claims: The services they cite to as creating an integrated bundle of information services are either (A) distinctly separate and incidental information services or (B) are not actually information services at all.

A. Most “bundled” services are merely incidental information services

First, broadband providers claim again that email, web hosting, and other incidental information services are necessarily intertwined with the underlying telecommunications service offering of internet access.³³ Nothing could be farther from the truth. These services are factually separate and distinct from the underlying telecommunications offering inherent in internet access service – for example, there is nothing compelling a broadband internet access customer to use email or web hosting from his broadband provider, if all she simply wishes to use the internet for other purposes like games, research, social media, or even email or webhosting from another provider. As NMR pointed out in its initial comment, to treat these services as fully integrated with the telecommunications element of internet access completely contradicts the fact that a traditional phone company could not escape Title II regulation by packaging its telephony services with voicemail.³⁴

B. The remaining “bundled” services are not actually information services

³⁰ See Comments of New Media Rights, *supra* note 22, at 20-23; See also Comments of Public Knowledge, *supra* note 29, at 31-34; See also Comments of Free Press, *supra* note 29, at 125-148.

³¹ Comments of New Media Rights, *supra* note 22, at 18; Comments of Public Knowledge, *supra* note 29, at 68.

³² *Inquiry Concerning High-Speed Access to Internet Over Cable & Other Facilities*, Declaratory Ruling & Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) (available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-02-77A1.pdf).

³³ Comments of Verizon, *supra* note 1, at 59; Comments of AT&T, *supra* note 2, at 44-45; Comments of Comcast, *supra* note 3, at 57.

³⁴ Comments of New Media Rights, *supra* note 22, at 18.

Second, the remaining services that broadband providers have pointed to, such as domain name system (“DNS”) services, dynamic host configuration protocol (“DHCP”) functionality, and other similar examples³⁵ are not information services at all. As Public Knowledge explained in its initial comment, because these services are necessary to “route, manage, or otherwise use” the telecommunications service inherent in internet access, they must also be regulated as part of the offering of a singular telecommunications service.³⁶ This follows from the plain language of the definition of “information services”, which contains a management exception that embodies “years of Commission precedent.”³⁷ That exception clearly states that the definition of an information service “does not include any use of any such capability [to generate, acquire, store, transform, etc. information] for the management, control, or operation of a telecommunications system or the management of a telecommunications service.”³⁸

When this Commission issued the Cable Modem Ruling, it was understandable that there was some confusion about the services provided by internet access providers. After all, at the time the idea of a “walled garden” internet, similar to the model of a service like American Online, was still commonplace. However, as the internet has grown and evolved, it has become exceedingly clear that “internet access” should not be defined by its incidental information services like email, news groups, and web hosting, but rather by its core telecommunications element.³⁹ This NPRM presents a perfect opportunity for this Commission to correct this definitional error and to stop allowing broadband providers to circumvent the plain language meaning of what is considered an information service.

IV. Only one Internet: Why the current distinction between mobile and fixed internet access is problematic

Chairman Wheeler has stated that “There is only one internet.”⁴⁰ Why then would we continue to distinguish between mobile and fixed internet access providers for regulatory purposes? As NMR explained in its initial comment, this distinction is illogical both from a policy standpoint as well as a technical one.⁴¹ Public Knowledge, in its initial comment, also provided similar commentary on why this distinction is no longer tenable.⁴² Broadband providers, on the other hand, were somewhat more divided: Verizon came out strongly in favor of continuing to

³⁵ Comments of Verizon, *supra* note 1, at 59-60; Comments of Comcast, *supra* note 3, at 57.

³⁶ Comments of Public Knowledge, *supra* note 29, at 68.

³⁷ *Id.*

³⁸ Telecommunications Act, 47 U.S.C. §153(24) (2010).

³⁹ Public Knowledge provided a stark example of this in its initial comment by pointing out that broadband providers market themselves as primarily offering access to the internet and not any of their bundled information services. Comments of Public Knowledge, *supra* note 29, at 71.

⁴⁰ Jim Puzanghera, *FCC chairman gets bipartisan grilling over Net neutrality proposal*, LA Times (May 20, 2014 9:34 AM), <http://www.latimes.com/business/technology/la-fi-net-neutrality-fcc-wheeler-congress-20140520-story.html>.

⁴¹ Comments of New Media Rights, *supra* note 22, at 28-30.

⁴² Comments of Public Knowledge, *supra* note 29, at 24-31.

distinguish between the two access services,⁴³ while Comcast seemed in favor of a reexamination of the distinction, but with emphasis on making sure its planned Wi-Fi services⁴⁴ are not treated differently than mobile access services.⁴⁵ However, to best understand why Comcast and Verizon made somewhat different assertions with regard to mobile and fixed broadband, it is necessary to have a deeper understanding of the way the two access services interact.

A. Mobile and fixed broadband internet access services are complementary, not competing ways to access the same Internet

Mobile and fixed internet access services do not compete with each other the way that mobile services compete amongst themselves. This is clear from the kind of partnering going on between providers like Comcast and Verizon – something NMR addressed in its initial comment,⁴⁶ and which is only made clearer by Comcast’s webpage as it appears below in figure five. This is not the way competitors treat each other’s services.

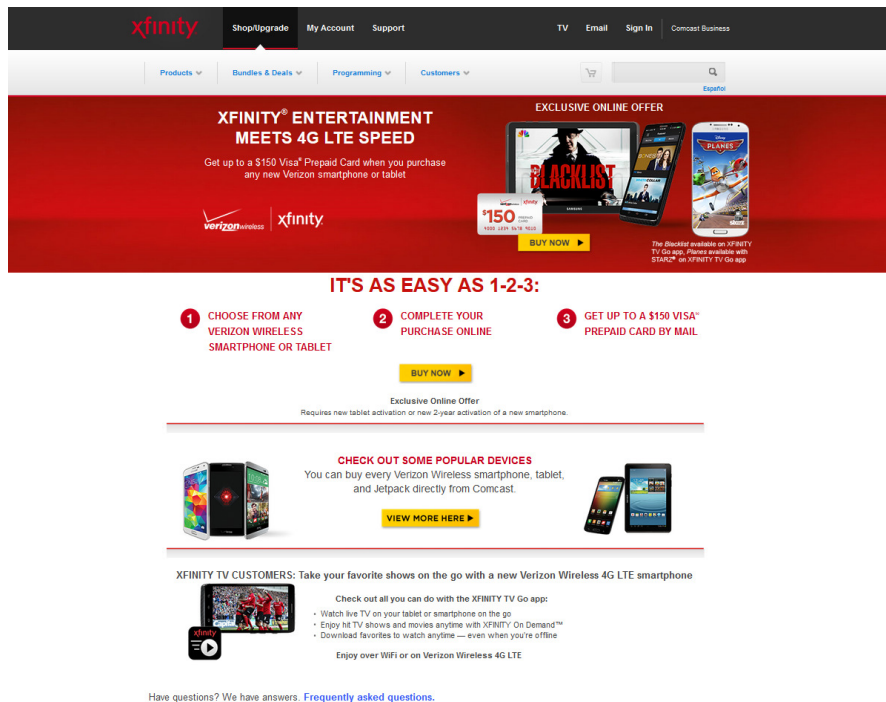


Fig. 5⁴⁷

However, while this lack of competition raises issues with regard to what services to include when attempting to measure competition in the broadband internet access market, the

⁴³ Comments of Verizon, *supra* note 1, at 38.

⁴⁴ Brian Fung, *In Wi-Fi, Comcast sees an opportunity to kneecap wireless providers*, The Washington Post (May 19, 2014), <http://www.washingtonpost.com/blogs/the-switch/wp/2014/05/19/in-wi-fi-comcast-sees-an-opportunity-to-kneecap-wireless-providers/>.

⁴⁵ Comments of Comcast, *supra* note 3, at 40-41.

⁴⁶ Comments of New Media Rights, *supra* note 22, at 10.

⁴⁷ Comcast xfinity, <http://www.comcast.com/verizon-wireless.html> (last visited August 30, 2014).

Commission should not allow broadband providers to use it as a means to maintain separate classes of internet access. Just because mobile and fixed broadband internet access services are complementary does not change the fact that they both offer access to the same, singular Internet and should thus be treated the same for regulatory purposes. As both Public Knowledge and NMR addressed in their initial comments on this proceeding, to make such a distinction would not only be technically and legally unnecessary, but would pose a serious threat to disadvantaged and underrepresented communities that currently rely on mobile broadband internet access due to a lack of fixed broadband internet access in their area or as a financial last resort.⁴⁸ Thus, in responding to Comcast’s request for reexamination of the regulatory distinction between mobile and fixed broadband internet access services, the Commission should take a firm and clear stance that, as Chairman Wheeler made clear, there is only one internet, no matter how it is accessed.⁴⁹

B. Broadband providers have failed to raise relevant concerns that cannot be addressed through the current reasonable network management exception

Verizon came out strongly in favor of continuing to distinguish between mobile and fixed broadband internet access services.⁵⁰ In support of this distinction, Verizon described the “sophisticated queuing and scheduling algorithms”,⁵¹ and other technical aspects of wireless broadband internet access services that distinguish them from fixed broadband internet access services. However, this line of reasoning fails in light of the “reasonable network management” exception already embedded in all iterations of the relevant Open Internet rules.⁵² As both NMR and Public Knowledge made clear, there is simply no technical reason to treat wireless broadband differently from fixed broadband, because any technical differences are sufficiently accounted for by the “reasonable network management” exception.⁵³ And as NMR and Public Knowledge also described, in light of the fact that the mobile broadband industry can no longer be considered to be in its fragile infancy, the policy justifications for such a distinction pale in comparison to the real dangers of mobile broadband becoming a “second class internet” for low income and minority individuals.⁵⁴

With these considerations in mind, the Commission should treat mobile and fixed broadband internet access services the same for regulatory purposes. Not only would such a decision protect underrepresented groups who are at risk of being subjected to a “second class internet”, it will also allow for Open Internet policies that make more sense from both a technical and policy-based perspective, ensuring that there truly is only one internet.

⁴⁸ Comments of New Media Rights, *supra* note 22, at 28; Comments of Public Knowledge, *supra* note 29, at 23-31.

⁴⁹ Brian Fung, *supra* note 42.

⁵⁰ Comments of Verizon, *supra* note 1, at 38.

⁵¹ *Id.* at 44.

⁵² 2014 NPRM, *supra* note 6, at Appendix A; 2010 NPRM, *supra* note 6, at Appendix A.


⁵³ Comments of New Media Rights, *supra* note 22, at 28; Comments of Public Knowledge, *supra* note 29, at 29.

⁵⁴ Comments of New Media Rights, *supra* note 22, at 28; Comments of Public Knowledge, *supra* note 29, at 23-31.

V. Conclusion

Considering the severe lack of reliable data surrounding some of the more important issues in this debate (such as competition in the broadband internet access services market), the Commission must take steps to protect consumers and the Internet from harmful business practices before it is too late. It would be folly to allow a small group of powerful broadband internet access providers to dictate the future of the Internet based on their unsubstantiated word that competition will protect the market and consumers. While those same broadband providers may lobby with threats of reduced investment and of industry collapse, it will be even more dangerous to allow them to proceed unchecked by meaningful, defensible regulation under Title II. Should the Commission proceed with meaningful regulations now, the Commission would be free to make appropriate forbearances and administrative decisions in how best to address certain business practices. But if the Commission fails to reaffirm its authority to regulate the broadband market now, it will be all the more difficult, if not impossible, to assert that authority later without severely disrupting the market. Therefore, the Commission should pursue a strong Open Internet Policy enacted under the authority of Title II now, and secure the Open Internet for American consumers, innovators, and businesses for the many years to come.

Respectfully submitted,



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