

AFL-CIO



MMTC
Minority Media &
Telecom Council



National
Urban League



December 15, 2010

Hon. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Dear Ms. Dortch:

RE: *Ex Parte* Notice: Preserving the Open Internet; Broadband Industry Practices, GH Docket No. 09-191 and WC Docket No. 07-52

On December 14, 2010, a delegation of the nation's leading civil rights, labor, and environmental organizations met with Commissioner Mignon Clyburn and her legal advisors Angela Kronenberg, David Grimaldi, and Louis Peraertz to discuss the Open Internet proceeding.

The representatives included Chanelle Hardy and Madura Wijewardena of the National Urban League, Dahida Vega of the League of United Latin American Citizens, David Honig of the Minority Media and Telecommunications Council (MMTC), Debbie Goldman of the Communications Workers of America (CWA), Cecelie Counts of the AFL-CIO, Bob Erickson of the International Brotherhood of Electrical Workers (IBEW), and Margrete Strand Rangnes of the Sierra Club.

For ease of reference, we have provided footnoted citations to the record for the points we made in the meeting.

Recognizing that Commissioner Clyburn has consistently and forcefully worked to address the needs of our constituents, the civil rights/labor/environmental delegation urged her to vote in favor of the Open Internet Order. We are grateful for the Commissioner's diligent efforts to ensure that the conversation about net neutrality meets the needs of communities of color, who are too often on the wrong side of the digital divide. We emphasized that the Chairman's framework for protecting an Open Internet represents a reasonable middle-ground compromise that will protect consumers' right to access the Internet content of their choice, while spurring the broadband investment, quality job creation, and adoption that remain critical challenges facing our nation. The Chairman's proposal as we understand it embodies key elements of

Hon. Marlene Dortch
December 15, 2010
Page 2.

net neutrality: free speech, no blocking of lawful content, applications, or services, no unreasonable discrimination, and full transparency. It would provide minority entrepreneurs the certainty they need to move forward to raise capital for broadband development.

The civil rights/environmental/labor delegation emphasized that we are at a critical moment in moving forward to implementing a positive FCC agenda to bring broadband and broadband opportunity to everyone. It is imperative that we resolve this issue in a way that protects consumers – which Chairman Genachowski’s framework does -- so we can move forward on the urgent need to implement the National Broadband Plan. We need rules to protect an Open Internet and we need regulatory certainty to incent continued investment and job creation – as we understand it, Chairman Genachowski’s framework does this. We cannot let this moment pass by.

During our meeting, we shared published statements of support for Chairman Genachowski’s proposal from the nation’s leading civil rights and labor organizations – NAACP, National Urban League, League of United Latin American Citizens, and MMTC, and CWA. We also conveyed the text of a letter sent in June of this year from leading civil rights, labor, and environmental organizations (NAACP, National Urban League, LULAC, MMTC, AFL-CIO, CWA, IBEW, and Sierra Club) urging support for Open Internet principles that are consistent with Chairman Genachowski’s framework. See Attachment 1.

Below, we provide a summary of the main points we made, which counsel in favor of adopting the Chairman’s proposal.

The Chairman’s Proposal Will Promote Investment And Job Creation.

The civil rights/labor/environmental delegation noted that a key issue for our organizations is jobs. Since private capital will largely finance the build-out and upgrading of our nation’s broadband networks, it is critical that Open Internet principles support investment and job creation. The delegation presented data that shows that the telecommunications industry has hemorrhaged 72,000 jobs since the beginning of 2009; wrong decisions in this proceeding could accelerate that downward trend. See Attachment 2.

The delegation stressed that the Internet ecosystem consists of a virtuous circle of investment, innovation, and job creation. Network expansion enables new applications and services, which drive demand for more capacity which in turn creates the incentives and revenue for additional network investment. Innovation and job creation at the edge – among Internet entrepreneurs and broadband-enabled home businesses, for example - depends on continued investment in

robust networks. Since each part of the ecosystem is dependent upon growth in the other, network neutrality rules must ensure incentives for investment in all Internet sectors.

In today's Internet ecosystem, network providers (wireline and wireless) employ about 790,000 workers, compared to 91,000 at the leading application providers. We recognize that this 91,000 number does not capture the job-creating potential of either application providers or the small businesses that have sprung up through use of the Internet. We want to see the type of regulatory flexibility that nurtures the development of these businesses and moves them beyond their infancy. We believe that this potential job growth only underscores our point that movement on the National Broadband Plan is critical: more people online means more entrepreneurship and more online customers. See Attachment 3 (not provided at the meeting but provided here at the request of Ms. Kronenberg during the meeting).

A Rule Governing Voluntary Agreements Could Increase The Price Of Broadband, Decrease Broadband Adoption, And Harm Entrepreneurs. Studies show that the price of broadband is one of the “primary barriers to acceptance and use,” particularly for non-adopting minorities.¹ If the Commission were to reject Chairman Genachowski's proposal and adopt a more stringent approach to prioritization (e.g., one that broadly prohibits content, application, and service providers from entering into voluntary arrangements for the paid provision of enhanced or prioritized services), this would remove a potential source of funding for additional network deployment and effectively shift costs onto consumers.

Many analysts agree that allowing specialized services will result in a significant decrease in the retail price of broadband for ordinary end-user consumers.² For example, one study suggests that end-users could save as much

¹ See, e.g., Jon P. Gant, *et al.*, Joint Center for Political and Economic Studies, *National Minority Broadband Adoption: Comparative Trends in Adoption, Acceptance and Use*, 28-30 (Feb. 2010) (“Joint Center Broadband Adoption Study”); see also FCC, *Connecting America: The National Broadband Plan*, at Chapters 8 & 9 (rel. March 17, 2010) (“National Broadband Plan”) (discussing the importance of affordability to closing the digital divide).

² See, e.g., *Preserving the Open Internet*, Comments of the National Organizations, GN Docket No. 09-191, WC Docket No. 07-52, at 14-17 (filed Jan. 14, 2010) (“National Organizations Net Neutrality Comments”) (collecting authorities); see also *Preserving the Open Internet*, Reply Comments of the National Organizations, GN Docket No. 09-191, WC Docket No. 07-52, at 5-6 (filed April 26, 2010)

as \$5 to \$10 per month as a result of network costs being subsidized through specialized services agreements.³ This could lead to a total savings of \$3 to \$6 billion per year, and would result in tens of millions of additional homes taking broadband service, particularly minorities and low-income groups.⁴

Moreover, as comments in the proceeding show, voluntary agreements are the vehicles that allow many start-ups and small businesses to compete on a level playing field with established competitors.⁵ As previously discussed, incumbent Internet-based companies, such as Amazon, eBay, and Google have invested substantial resources into developing private network infrastructures that allow them to effectively self-provision prioritization of their own content, applications, and services. Because of the huge capital investments they have made into content delivery networks, servers, and other infrastructure, these companies are able to deliver their products to end-users with a guaranteed level of speed, reliability, and prioritization that cannot be obtained through the best-efforts Internet. To compete effectively with these incumbents, start-ups need access to prioritization and other special services that will allow them to deliver content, applications, and services to end users at a speed and quality comparable with that of much larger companies.

Thus, an approach to net neutrality that would broadly prohibit specialized agreements could hurt consumers by increasing the price of broadband and harm start-ups and small business by preventing them from competing on equal footing with established on-line companies.

(“National Organizations Net Neutrality Reply Comments”) (same); *see also Preserving the Open Internet*, Comments of the National Organizations, GN Docket No. 09-191, WC Docket No. 07-52, at 15 (Oct. 12, 2010) (“National Organizations Under-Developed Issues Comments”).

³ *See* Hance Haney, “Network Neutrality Regulation Would Impose Consumer Welfare Losses” in *The Consequences of Net Neutrality* 49 (Nov. 19, 2009).

⁴ *Id.*; *see also* National Organizations’ Under-Developed Issues Comments at 15; National Organizations Net Neutrality Comments at 14-17; National Organizations Net Neutrality Reply Comments at 5-6.

⁵ *See, e.g.*, National Organizations Under-Developed Issues Comments at 3-15; *see also Preserving the Free and Open Internet*, Comments of the Communications Workers of America, GN Docket No. 09-191, WC Docket No. 07-52, at 16 (filed Jan. 14, 2010) (“CWA Net Neutrality Comments”).

A Flexible Approach To Wireless Would Promote Deployment And Avoid A Disproportionately Harmful Impact On Minorities. The delegation discussed Commissioner Clyburn's concerns regarding Open Internet protections for wireless consumers in light of the fact that a significant portion of minority consumers connect to the Internet primarily through their wireless device. The delegation, acknowledging our shared concern regarding disproportionate impacts of wireless regulation on the majority of people of color who access broadband through mobile devices, argued that current mobile technology does not yet substitute for computer-based broadband access. In order for our constituents to fully utilize the benefits of broadband, including education support, online job seeking, computer-based banking and the like, a cell phone is not sufficient. Therefore, we raised two important points. First, we believe that the future of wireless technology will make it possible for meaningful broadband access to occur via mobile devices. A light regulatory touch, like that we believe to be included in the Chairman's proposal, would provide an environment that could spur continued innovation in the wireless space so that this becomes possible. Second, we previewed our hopes that acceptance of the Chairman's proposal would allow us to move forward to the most pressing issue on our agenda: broadband deployment to close the digital divide. It is our hope that the Universal Service reform conversation will include a discussion of how to make not only broadband access, but also hardware, available to consumers on the underserved side of the divide.

The Chairman's Overall Net Neutrality Framework is Reasonable. During our meeting, we emphasized that the Chairman's framework represents a reasonable, middle-ground compromise that will protect consumers' right to access the Internet content, services, and applications of their choice, while spurring the broadband investment, quality job creation, and adoption that remain critical challenges facing our nation.

As the filings in this proceeding show, we should not err on the side of a less flexible approach to net neutrality. A recently released study shows that a more stringent form of net neutrality rules could result in a loss of 300,000 jobs and that broadband investment would drop by 10 percent, costing the industry \$36 billion over five years, plus an additional \$100 billion in losses to related fields.⁶

⁶ See National Organizations Under-Developed Issues Comments at 6-7 (citing T. Randolph Beard, Ph.D., George S. Ford, Ph.D., Hyeongwoo Kim, Ph.D., *Jobs, Jobs, Jobs: Communications Policy And Employment Effects In The Information Sector*, Phoenix Center Policy Bulletin No. 25 (Oct. 2010)).

We also noted that since private capital will finance the build-out and upgrading of our nation's broadband networks, it is critical that the FCC's approach to net neutrality support investment and job creation. The National Broadband Plan correctly states that "[b]roadband is the great infrastructure challenge of the early 21st century."⁷ And just like our nation's prior infrastructure challenges - including the successful completion of the transcontinental railroad, our nationwide electric grid, and the interstate highway system - this challenge can only be met with a massive infusion of private capital.⁸ A more stringent form of net neutrality could discourage these large investments of capital. Indeed, leading civil rights and progressive organizations have analyzed the relevant studies, and the evidence shows that a more stringent version of net neutrality would deter the investments and deployments that are needed to close the digital divide.⁹

* * * * *

In closing, the delegation emphasized two overarching points:

First, the transparency requirements in the Open Internet rules will allow the FCC and public to monitor Internet developments. If problems arise, the FCC can act to strengthen them in the future based on actual evidence of misconduct.

Second, we stress that it is time to move forward and implement a positive FCC agenda to bring broadband and broadband opportunity to everyone. It is imperative that we resolve this issue in a way that protects consumers - which we believe Chairman Genachowski's framework does - so we can move forward on the urgent need to implement the National Broadband Plan.

7 National Broadband Plan at xi.

8 See National Broadband Plan at 3 (recognizing that the "[p]rivate investment was pivotal in building" the transcontinental railroad, the electric grid, and the interstate highway system).

9 See, e.g., National Organizations Net Neutrality Comments at 19-23 (collecting authorities and discussing how a more stringent version of the FCC's fifth proposed rule could impede the investments and deployment that are necessary to bridge the digital divide); National Organizations Net Neutrality Reply Comments 6-7 (discussing the negative impact that a more stringent version of the FCC's proposed fifth rule could have on investment and deployment).

Hon. Marlene Dortch
December 15, 2010
Page 7.

Sincerely,

Debbie Goldman
Communications Workers of America

David Honig
Minority Media and Telecommunications Council

Bob Erickson
International Brotherhood of Electrical Workers

Chanelle Hardy
Madura Wijewardena
National Urban League

Cecelie Counts
AFL-CIO

Dahida Vega
League of United Latin American Citizens

Margrete Strand Rangnes
Sierra Club

cc: Hon. Mignon Clyburn
David Grimaldi, Esq.
Angela Kronenberg, Esq.
Louis Peraertz, Esq.