

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

In the Matter of)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52

Reply Comments of the Internet Freedom Coalition

Just two days prior to the Commission’s deadline for reply comments regarding the above Notice of Proposed Rulemakings, the U.S. Court of Appeals ruled in *Comcast v. FCC* that the Commission has no authority to enact Net Neutrality rules. The deadline for comments was extended, particularly to facilitate discussion of other methods of promulgating Net Neutrality regulations.

Beginning with comments on the National Broadband Plan filed by Public Knowledge in January, a small number of organizations have since proposed classifying the Internet as a Title II common carrier service as a way of asserting the Commission’s authority to enact Net Neutrality regulations. The Internet Freedom Coalition respectfully submits these reply comments in strong opposition to any effort to reclassify the Internet as a Title II service.

The Commission Clearly Lacks Authority to Enact Net Neutrality Regulations

The U.S. Court ruled in *Comcast v. FCC* that the Commission has no jurisdictional authority to enforce Net Neutrality rules. Given the U.S. Court’s ruling, it is worrisome that the Commission is seeking to assert its authority to pursue these rules without either statutory or factual changes.

It has long been established that the Commission has only “ancillary jurisdiction” over the Internet, as it is and always has been a Title I “information service.” Yet, as the court stated, “the Commission’s attempt to dictate the operation of an otherwise unregulated service...defies any plausible notion of ‘ancillariness.’” The Commission’s consistent pursuit of Net Neutrality regulation is, in the Court’s word, an attempt to “shatter” the limitations on its authority.

Proponents of Title II Reclassification are Attempting to Rewrite History

Despite the U.S. Court’s ruling, the most fervent Net Neutrality advocates are consistently and falsely claiming that Internet service used to be regulated under Title II and that it would be simple to switch “back” to this previous, mythical regulatory regime. This is an unconvincing attempt to rewrite history, as Internet service has never been subject to Title II regulation.

In four Declaratory Rulings for cable, wireline, powerline, and wireless broadband, the Commission has ruled that the Internet is a Title I “information service.” The U.S. Supreme Court also agreed with the Commission’s own arguments as to Title I classification in its *Brand X* decision.

Nevertheless, proponents of regulation claim that prior to the Title I classification of DSL Internet in 2005, the Internet was regulated as a Title II service. This is simply and provably false.

While DSL transport services have been regulated under Title II, the Internet service components of DSL have always been subject only to Title I regulations. This dates back to 1996 when the Telecommunications Act established separate definitions for “telecommunication” and “information” service.

Make no mistake: The Internet is and has always been a Title I information service. Any attempt to reclassify would go against years of precedent well-established both in the Commission and the Courts.

The American Public Has Grown as Skeptical as the Courts of the Commission’s Attempts to Regulate the Internet

A poll by Rasmussen Reports indicates that only 27 percent of Americans would support the Commission placing Internet service under Title II of the Communications Act. This is a massive 22 percent drop in support of heavy regulation since 2008, when 49 percent supported Commission control of the Internet – still a minority. In contrast, 53 percent oppose greater regulation.

The Internet Freedom Coalition urges the Commission to heed the Courts and public opinion, both of which are telling the Commission not to assert its dubious authority to promulgate heavy-handed Network Neutrality regulations.

Signatories

Phil Kerpen
Chairman, Internet Freedom Coalition
VP for Policy, Americans for Prosperity

Andrew Langer
President
Institute for Liberty

Grover Norquist
President
Americans for Tax Reform

Jeffrey Mazzella
President
Center for Individual Freedom

Kelly William Cobb
Executive Director
Media Freedom Project

Duane Parde
President
National Taxpayers Union