

The logo for Media Alliance, featuring the word "Media" in white on a black background and "Alliance" in black on a white background.

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**Federal Communications Commission
Washington DC 20554**

**GN Docket # 14-61
In The Matter of Promoting and Preserving An Open Internet**

July 15, 2014

Informal Comments of the Media Alliance
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Thank you for the opportunity to weigh in on this Notice of Proposed Rulemaking on the Important Task Of Promoting And Preserving An Open Internet. These comments are being submitted informally on behalf of the Media Alliance, a California not for profit corporation since 1977 which advocates for democratic communications. Media Alliance is a media resource and advocacy center for media workers, non-profit organizations, and social justice activists. Our mission is excellence, ethics, diversity, and accountability in all aspects of the media in the interests of peace, justice, and social responsibility.

As background, Media Alliance would like to state that we appreciated our recent opportunities to talk with FCC Chairman Tom Wheeler at the Oakland Town Hall event and then again on June 25 during a public interest convening in San Francisco. The complexity of the task facing the Commission is profound and the care and diligence the Commission is exhibiting is appropriate. We have faith that after due consideration of the 100,000 plus comments submitted to the Commission in this first comment cycle (with more coming in all the time) and the tremendous level of public interest in this matter, that the Commission will not shrink from its duty to protect the Internet as a service

that is equilateral, commonly carried and affordable and accessible to all. The challenge we are all facing as a society is how best to do that.

The Commission's recognition that the open architecture of the Internet has been one of the most vital economic engines of innovation is important as well as its declaration of intent to search for public policy to maintain that open architecture for the benefit of all Americans. The NPRM correctly identifies that there are short-term incentives for network providers to block or disadvantage particular providers or classes of providers, charge for prioritized access to end users, or degrade or decline the level of service provided to non-prioritized content. As the Commission notes, the central goal of the policies being debated herein is for all end users and edge providers to enjoy the use of fast, robust and dynamic Internet access. Therefore, the Commission must take seriously its own observation that the short-term interests of network providers can, at times, be antithetical to the long-term interests of end users and edge providers, and in fact, the public interest. So what the end users and the edge providers and the public interest community can and must affirmatively say is that the Commission should avail itself of the strongest possible regulatory toolkit to address these differing interests in order to preserve and promote an open Internet.

The contentions made by Comcast, Verizon et al that the Commission lacks the regulatory authority to prohibit Internet providers from engaging in discriminatory practices (as recognized by the Commission's 4 principles in 2005) are the best possible argument for the Commission to enhance its existing authority by the tools available to it. We concur with the District Court and the NPRM itself that reclassification with forbearance provides firmer ground for the FCC to regulate discriminatory practices by providers.

In specific terms, the court stated "The court struck down anti-blocking and anti-discrimination rules, explaining that the Commission had chosen an impermissible mechanism by which to implement its legitimate goals. Specifically the court held that the Commission had imposed per se common

carriage requirements on providers of Internet access services. Such treatment was impermissible because the Commission had classified fixed Internet broadband access as an information service, not a telecommunications service and had classified mobile broadband Internet access as a private mobile service rather than a commercial mobile service. The court remanded the case back to the Commission for further proceedings consistent with its opinion".

Media Alliance joins a million commentators in encouraging the Commission to choose the permissible mechanism to implement its legitimate goals. We would go further and say that Americans are praying the Commission will not hesitate to do so, because so many of us can see the direct and indirect costs to our pocketbooks, our job opportunities, our access to information and our ability to communicate from illegitimate digital discrimination.

One of the questions the NPRM poses is of specific interest to our organization and the constituency it serves. The NPRM asks "How shall we consider the potential impact on social and personal expression of an Internet whose openness was not protected? For example, would there be particular impacts on political speech, on the ability of consumers to use the Internet to express themselves or on the Internet's role as a marketplace of ideas that serves the interests of democracy in general, serving even the interests of those Americans who listen, even if they do not actively speak?

Our answer to that is unambiguous. Paid content prioritization by service providers introduces an existential threat to political and expressive speech. The low barrier to entry on the worldwide web has been the engine of the marketplace of ideas. When that is no longer the case, the ability of consumers to express themselves and thus engage in and revitalize the democratic process starts to retain the pay-to-play characteristics that have inhibited the broadcast marketplace from broad participation across the spectrum of ideas and expression. There is genuine scarcity within broadcast. There is none on the Internet. The creation of false scarcity to maximize corporate profit levels for

a small group of providers comes at an extraordinarily high cost to democratic expression and political vitality. And like any forced oligopoly mitigates the positive effects of industry competition and stifles innovation. The most direct victims of the implementation of paid prioritization? Small businesses. Independent artists. Out-of-the-mainstream political speech that is "ahead of its time". When we look at the trail of history, the exact sources of the "next great idea" that changes the course of events. But only if the next great idea can get a hearing. The deleterious role of money in the exercise of the democratic process does not need to be explained in these comments, but Media Alliance is of the opinion that the departure from the customary practice of neutral treatment for all data will have the same impact on the marketplace of ideas as campaign contributions and lobbying are commonly described as exercising in the marketplace of political decision making.

The Commission correctly recognizes that consumer options to respond with their feet to discriminatory actions by Internet providers is limited. This is the case for many reasons, but they include practical monopoly/duopoly service areas, rural restrictions, mobile contracts, and triple-play pricing maneuvers which lock consumers into lower prices and linked service packages that make changing a non-simple task. In many aspects of the marketplace, services are remarkably similar with regard to both price and service characteristics, making the practical benefit of such an action, even if a consumer is sufficiently indignant to overcome the hassle factor, of little practical import in acquiring a different service protocol. In other words, consumers may not "shop around" for a neutral network.

The NPRM asks this question: "How can we ensure that the ability of providers to engage in reasonable network management is not used to circumvent the open Internet protections implemented by our proposed rules?"

This is a key question. Media Alliance would point to one of the triggers for this entire process, which was the 2008 complaint against Comcast for illegitimate throttling of legal Bit Torrent uploads.

In this case, Comcast's actions were clearly in violation of the open internet principles the Commission wishes to uphold, as the Commission itself concluded. The Commission acted correctly to prevent the circumvention of open Internet protections and prevent illegitimate network management practices. But despite the clarity of the Commission's goals, the clear recognition of illegitimate blocking practices, and the Commission's forthright and welcome enforcement action, things didn't go well. That is why Media Alliance must express the concern that the Commission's currently proposed plan has some aspects of rearranging the deck chairs on the Titanic i.e. slightly repurposing what has already proven not to work to meet shared goals, rather than fixing the framework so the foundation is solid. Media Alliance understands that the Internet is not a telephone and that Title II is older regulatory code. But Title II is the basic expression of the Commission's commitment to public interest common carrier service when providers are the sole sources of a necessary utility. This is the case with the Internet. So to turn your back on the regulatory framework that exists to support the goal of an open Internet strikes Media Alliance as taking the hardest possible road. We would caution the Commission that doing the same things and expecting different results has a poor track record in practice and would urge the Commission that with the thoughtful use of forbearance when indicated, reclassification of the Internet as a Title 2 service will in no way bring on the apocalypse. It might even protect and preserve the open internet.

It is important to note, again, that the District Court did not state that per se common carriage regulation (with the discretionary use of forbearance) was a problematic use of the regulatory canon. It said, very specifically, that it was impossible for the Commission to assert the authority to regulate as a common carrier without placing the affected carriers under common carrier code. In other words, reclassification had to precede the assertion of increased regulatory oversight. Media Alliance asks the Commission to take the actions necessary to preserve the open internet, in the correct order. The NPRM makes this definition as endorsed by the District Court: "To serve the public indiscriminately – thus

treating them as common carriers. Yes, we wish for Internet service providers to serve the public without discrimination – indiscriminately. If the only way that can occur is to reclassify Internet service providers as common carriers, then both consumers, edge providers, and in fact the public interest as a whole, can only be served by such non-discriminatory service.

Media Alliance would also encourage the Commission to note the rapidly increasing amount of daily encounters with the Internet that occur via mobile connections (and specifically the associated demographic statistics) and give strong consideration to applying the 4 basic principals to mobile as well as fixed Internet access. Blocking is as deleterious on one sort of connection as it is on the other, to the end user there is no difference. The mobile market has not only matured, but has consolidated with only a handful of major providers. It is no longer appropriate to give dispensations to the mobile industry due to its young age or its overly competitive marketplace. Broadband access is broadband access and its material characteristics are not different from device to device. So we would ask the Commission to strive for open internet protections against blocking, paid prioritization of content and the degrading or declining of service levels for non-prioritized content for Internet visits via wireless mobile connections much as the Commission intends to do so for wireline connections.