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December 11, 2015

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20054

Via Electronic Filing

Re: GN Docket No. 14-28, *Protecting and Promoting the Open Internet*

Dear Ms. Dortch,

In its *2015 Open Internet Order*,¹ the Commission built on the transparency requirements it adopted in 2010 by instituting further requirements for the disclosure of commercial terms, performance characteristics, and network management practices of broadband Internet access service (“BIAS”) providers. Recognizing concerns raised by some smaller BIAS providers, the Commission adopted a temporary exemption from these requirements for providers with 100,000 or fewer BIAS subscribers, pending further evaluation of any compliance burden the enhanced requirements might place on these small providers.

The Consumer and Governmental Affairs Bureau sought comment on this exemption in June 2015. Several small providers continued to claim that the burden of such enhanced transparency requirements outweighed the undisputed and profound benefits of enhanced transparency for broadband Internet access users. In the absence of substantive evidence supporting small providers’ claims, the Commission should allow the exemption to expire.

Small Providers Have Failed to Establish Evidence of a Substantial Regulatory Burden.

Small providers and their lobbying associations insist the Commission drastically underestimated the burden of complying with enhanced transparency requirements outlined in the order. Yet they have largely failed to substantiate this claim, offering little more than anecdotal evidence and vague assumptions that regulation is bad for business. In its initial comments, for example, the American Cable Association (“ACA”) estimated that compliance would require an average expenditure of 16-24 hours annually.² Not only is this perhaps the only specific estimate we found in the record – it flies in the face of WISPA’s assertion that at this time “it is impossible to develop accurate estimates.”³

¹ See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, ¶¶ 172-175 (rel. Mar. 12, 2015) (“2015 Open Internet Order”).

² Comments of the American Cable Association, GN Docket No. 14-28, at 2 (filed July 20, 2015) (“ACA Comments”).

³ Comments of the Wireless Internet Service Providers Association, GN Docket No. 14-28, at 5 (filed July 20, 2015).

The Commission therefore cannot take ACA's specific estimate for granted without further inquiry. And even assuming it were accurate, a total of 16 to 24 hours per year is a relatively low figure (i.e., 2 hours or less *per month*) that is no more than 4 to 6 times the estimate developed by the Commission itself (4.5 hours per year, or less than half an hour *per month*). Like the underwhelming time estimates, many of the potential burdens small providers postulate are of questionable significance.

For example, the United States Telecom Association argues that to meet these expanded requirements providers would have to redesign promotional materials, and continue to update these materials on an ongoing basis "to ensure continuing accuracy as promotions may be changed or updated."⁴ Yet providers have always been faced with the cost of redesigning materials in response to promotional changes, regardless of the inclusion or exclusion of transparency disclosures. ACA claims its members will "incur recurring costs to respond to customers' questions and issues after a notice is received,"⁵ however these are costs that small providers must be already equipped to bear. Other providers insist that they will have to hire external counsel, engineers, network managers or other employees in order to comply with the requirements.⁶ But there is no attempt to quantify these expenses, merely a bare assertion that they would deprive companies of capital and outweigh the value of such disclosures to users.

We suspect that many of these technically savvy small providers already measure and report on many of the metrics outlined in the enhanced requirements. In those instances, the supposed burden of compliance becomes simply a matter of making such information accessible to edge providers and providing notice to customers at the various points of contact specified in the order. CTIA noted in its comments that mobile broadband providers already disclose much of the enhanced transparency information, and have promoted direct notification as a best practice in the industry.⁷ Several providers claim that their increased responsiveness to the local communities they serve makes disclosure requirements unnecessary.⁸ But these are simply indications that many providers may already make available many of the required metrics. As a result, some providers have effectively conceded that the additional burdens here are *de minimis* or even non-existent. In any event, the supposed burden of regulatory compliance does not seem significant enough to require any permanent exemptions from the enhanced transparency rules.

The Enhanced Transparency Requirements Confer Valuable Benefits on Broadband Users, Including Those in Rural and Underserved Areas.

Even if there were material costs associated with compliance, small providers fail to justify their rather bizarre claim that enhanced transparency confers no offsetting valuable benefits on broadband users. Instead, they zero in on the packet loss disclosure requirement, arguing that this particular metric will not be "meaningful or informative" to consumers.⁹ Even

⁴ Comments of United States Telecom Association, GN Docket No. 14-28, at 5 (filed Aug. 5, 2015).

⁵ ACA Comments at 7.

⁶ Comments of GVNW Consulting, Inc., GN Docket No. 14-28, at 5 (filed Aug. 5, 2015) ("GVNW Comments").

⁷ Comments of CTIA – The Wireless Association, GN Docket No. 14-28, at 21 (filed July 20, 2015).

⁸ Comments of NTCA – The Rural Broadband Association, GN Docket No. 14-28, at 10 (filed Aug. 5, 2015) ("NTCA Comments"); GVNW Comments at 4.

⁹ NTCA Comments at 8.

if it were true that packet loss data may prove of little use to the average subscriber, this would not eliminate this metric's value to sophisticated users, consumer advocates, and edge companies that serve tens of millions of customers. Nor would the providers' attack on this lone metric negate the value of all other disclosure requirements, which remains undisputed in the record.

The consumer benefits of the enhanced transparency requirements are substantial enough to outweigh vague and inconsistent claims about their potential cost. As the Commission reaffirmed in its *2015 Open Internet Order*, transparency is important to ensure that consumers are "fully informed about the Internet access they are purchasing."¹⁰ The metrics the new rules require allow users to compare broadband services across providers, make sound financial decisions, and hold broadband providers accountable. Performance data allows potential subscribers to accurately compare service packages based on their functional speeds, and to assess the affordability of each available service while cutting through the confusion created by promotional prices. In particular, these disclosure requirements enable subscribers to hold providers accountable for delivering the service they promised. By putting power into the hands of consumers, these transparency requirements serve the same accountability and performance goals as would more stringent government oversight, but with a more limited regulatory regime.

Rural subscribers deserve the benefits of transparency no less than any others, but would face disproportionate harm if this exemption were extended or made permanent. Typically, subscribers in rural areas have even more limited choice among broadband providers than do customers in metropolitan areas. Small providers insist that when faced with competition, "If the market demands such enhanced disclosure from the smaller providers...they will provide it without the need for regulation."¹¹ Conversely, it's reasonable to assume small providers will *not* provide enhanced disclosure in less competitive rural markets.

Moreover, all broadband users deserve transparency, whether or not they live in a rural area or subscribe to broadband provided by a smaller cable company. The benefits that enhanced transparency requirements provide to consumers and the public interest must be given at least equal weight as alleviating the unsubstantiated fears and unproven costs of such safeguards.

We respectfully urge the Commission to allow the enhanced transparency requirement exemption for small providers to expire and in so doing ensure that all broadband users have equal access to clear and valuable information about their critical communications services.

Respectfully submitted,

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¹⁰ See 2015 Open Internet Order, ¶¶ 172-175.

¹¹ Comments of GVNW at 4.