

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the matter of

Safeguarding and Securing  
the Open Internet

WC Docket No. 23-320

**OPPOSITION TO MOTION FOR EXTENSION OF TIME OF PUBLIC KNOWLEDGE,  
AMERICAN LIBRARY ASSOCIATION, BENTON INSTITUTE FOR BROADBAND &  
SOCIETY, CENTER FOR RURAL STRATEGIES, COMMON CAUSE,  
COMMUNICATIONS WORKERS OF AMERICA, DEMAND PROGRESS EDUCATION  
FUND, ELECTRONIC FRONTIER FOUNDATION, ELECTRONIC PRIVACY  
INFORMATION CENTER, FIGHT FOR THE FUTURE, FUTURE OF MUSIC  
COALITION, NEW AMERICA’S OPEN TECHNOLOGY INSTITUTE, AND UNITED  
CHURCH OF JESUS CHRIST MEDIA JUSTICE MINISTRY**

The above-captioned Parties write to opposed the unjustified motion<sup>1</sup> of the U.S. Chamber of Commerce (“Chamber”), the National Association of Manufacturers (“NAM”), the Information Technology Industry Council (“ITI”) (“Movants”) to delay implementation of the Commission’s long-anticipated action<sup>2</sup> to restore broadband consumer protections by recognizing that broadband Internet access service (“BIAS”) is a telecommunications service, and to reinstate Open Internet rules.

Section 1.46 of the Commission’s rules provides that “[i]t is the policy of the Commission that extensions of time are not routinely granted.”<sup>3</sup> While the Commission may grant a waiver “if special circumstances warrant a deviation from the general rule and such

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<sup>1</sup> Letter filed December 1, 2023, WC Docket No. 23-320.

<sup>2</sup> Safeguarding and Securing the Open Internet, Notice of Proposed Rulemaking, WC Docket No. 23-320, FCC-23-83..

<sup>3</sup> 47 C.F.R. § 1.46.

deviation will serve the public interest,”<sup>4</sup> Movants have not met their burden here. To the contrary, many of the reasons they cite for delay instead demonstrate why a delay should not be granted. For example, Movants are correct to note that the “COVID-19 pandemic accelerated the public’s use of internet services[.]” (Motion at 2.) If anything, this underscores the need for swift Commission action. Further delay in enacting essential consumer protections for such an essential service would be unwise.

The requested extension is especially untoward in light of the circumstances of this proceeding. The Commission departed from usual practice, in which the filing deadline is established by the date of Federal Register publication. Instead, in this instance, the Commission’s draft, released on September 28, 2023, specified that the Commission would establish a comment date of December 14, 2023.<sup>5</sup> And, indeed, that is what the Commission did. As a consequence, all interested parties had more than 10 weeks notice that the comments were to be due on December 14, 2023.

Nor should Movants feign surprise that the Commission has proposed to reclassify broadband services. They were not caught off-guard and had ample time to consider what their position would be. Bloomberg Law reported on November 18, 2020 that “The Federal Communications Commission is expected to move to restore net neutrality rules after President-elect Joe Biden takes office[.]”<sup>6</sup> The Commission informed the D.C. Circuit on April

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<sup>4</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972)).

<sup>5</sup> FCC Seeks Comment on Safeguarding and Securing the Open Internet (Sep. 28, 2023), <https://www.fcc.gov/consumer-governmental-affairs/fcc-seeks-comment-safeguarding-and-securing-open-internet>.

<sup>6</sup> Jon Reid, *Net Neutrality Tops To-Do List for FCC Democrats in Biden Era*, Bloomberg Law (Nov. 18, 2020), <https://news.bloomberglaw.com/tech-and-telecom-law/net-neutrality-tops-to-do-list-for-fcc-democrats-in-biden-era>.

7, 2021 that it intended to revisit the question of classification in light of the Petitions for Reconsideration filed by Public Knowledge, Common Cause, *et al.*, the County of Santa Clara, CA, and Incompas.<sup>7</sup> The matter was the subject of considerable debate at the confirmation hearings of Chairwoman Rosenworcel, Gigi Sohn, Anna Gomez and Geoffrey Starks. It is therefore no surprise that the FCC is acting on this long-anticipated policy priority. It likely would have acted sooner if the Chamber and its allies had not worked assiduously to prevent the FCC from having a full slate of Commissioners,<sup>8</sup> in part due to their opposition to Title II reclassification.

Indeed, Movants have to some degree *already* received an extension. The Commission did not put the Petitions for Reconsideration on Public Notice until October 19, 2023<sup>9</sup> – nearly two years after their timely filing. As a general matter, oppositions to Petitions for Reconsideration are due 15 days after public notice.<sup>10</sup> Replies to Opposition are due 10 days later.<sup>11</sup> Movants (and other interested parties) should therefore have been required to file their opposition to returning broadband to its Title II classification<sup>12</sup> and objections to expanding the

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<sup>7</sup> Respondent Federal Communications Commission’s Unopposed Motion for Abeyance, *CPUC v. FCC*, Docket No. 21-106 (filed April 7, 2021).

<sup>8</sup> *See* U.S. Chamber Letter on the Nomination of Gigi Sohn to be a Commissioner of the FCC (Feb. 13, 2023), <https://www.uschamber.com/technology/u-s-chamber-letter-on-the-nomination-of-gigi-sohn-to-be-a-commissioner-of-the-fcc-2>.

<sup>9</sup> Public Notice, “Wireline Competition Bureau Seeks Comment on Petitions Seeking Reconsideration of the RIF Remand Order,” Docket Nos. 17-108, 17-287, 11-42, 88 Fed Reg 74389 (WCB). (“Public Notice”)

<sup>10</sup> 47 C.F.R. § 1.429(f).

<sup>11</sup> *Id.*

<sup>12</sup> *See* Petition for Reconsideration of the County of Santa Clara and Santa Clara County Central Fire Protection District, Docket Nos. 17-108, 17-287, 11-42 (filed February 8, 2021) at 2 (expressly requesting the Commission vacate the Commission’s Restoring Internet Freedom Order (“RIFO”) and reinstate the 2015 Open Internet Rules.)

2015 Open Internet Rules to reflect additional experience since 2015<sup>13</sup> by November 13, 2023 at the latest. Instead, the Commission extended the deadline for oppositions to December 14, 2023 with replies due January 17, 2024. In other words, Movants have *already* received a 30-day extension for comments and a 30-day extension for replies,<sup>14</sup> in addition to an additional three weeks to file comments to the NPRM.

Moreover, it is hardly the case that Movants need time to consider what positions they might take. It borders on the unbelievable to think that movants require additional time to file their expected opposition to the Commission’s proposed action. Debates on the proper regulatory treatment and the need for net neutrality rules have been ongoing for years, and opponents of Open Internet rules like the Chamber of Commerce have well-established views. The rules the Commission proposes to enact are the same as the 2015 Rules<sup>15</sup> Movants also opposed.<sup>16</sup> The Commission’s action in 2015 was upheld in court and the Commission today would have been on solid legal footing to simply grant the Petitions for Reconsideration and restore the 2015 reclassification and rules. To the extent that there are new factual or legal developments since then that offer additional justifications for Title II reclassification, or since the Pai FCC’s 2018

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<sup>13</sup> See Petition for Reconsideration of Incompas, Docket Nos. 17-108, 17-287, 11-42 (filed February 8, 2021) at 2. (Explicitly requesting the Commission reverse the RIFO and issue an NPRM to expand jurisdiction at interconnection.)

<sup>14</sup> Opponents of the Extension note that the Movants have not filed any request for an extension to the deadline for comments on the Petitions for Reconsideration, despite the explicit invitation to file comments on the above captioned *Notice of Proposed Rulemaking* and essentially expanding the issues in the Petitions for Reconsideration to include the issues in the Notice of Proposed Rulemaking. See PN at 1. Responses to the Petitions for Reconsideration, and “comments on how the issues under consideration in WC Docket No. 23-320 bear on this proceeding,” would still be due on December 14th even if the Commission granted the requested extension.

<sup>15</sup> Preserving the Open Internet, Report & Order, Declaratory Ruling, and Order, 30 FCC Rcd. 5601 (2015).

<sup>16</sup> See, e.g., Comments of U.S. Chamber of Commerce in GN Dckt. No 14-28 (Jul. 15, 2014).

*Restoring Internet Freedom* order,<sup>17</sup> or since the October 2020 remand order, the Commission has provided sufficient time to address them.<sup>18</sup> Rules that have already been in place, and upheld in court,<sup>19</sup> do not constitute a “a novel regulatory framework” (Motion at 2) for broadband Internet access. The Commission’s request for “concrete economic data, marketplace information, and other evidence” (Motion at 5) also does not warrant delay. The Commission routinely requests such information and sophisticated parties such as Movants routinely provide it. Nor have the movants identified with any specificity any brand-new “impacted stakeholders who are likely to comment on the proceeding.” (Motion at 3.) Certainly Movants do not fit this category, as repeat players well-versed in the legal, policy, and political landscape surrounding broadband regulation.

Because Title II authority would restore the Commission's full authority to oversee broadband in the public interest, it is necessarily true that “there are various rulemakings which may intersect with the NPRM.” (Motion at 4.) But the Commission should not grant a delay in *this* proceeding because of issues in other Commission activities. Nor do Movants explain how *implementation* of existing Orders, such as the Broadband Labels Order, will impact their ability to comment in this proceeding – especially as the Movant trade associations do not exclusively represent ISPs and will not themselves be involved in implementation. Nor does the unset date of the comments in the Digital Discrimination proceeding provide a grounds to delay comments in this proceeding. To the contrary, a delay here could easily create a conflict with the deadline for comments and replies in the Digital Discrimination FNPRM, as the earliest deadline for the

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<sup>17</sup> *Restoring Internet Freedom*, Declaratory Ruling, Report & Order, and Order, 33 FCC Rcd. 311 (2018).

<sup>18</sup> Again, it is worth noting that under Rule 1.429(f) Movants should already have addressed these issues as oppositions to the Petitions for Reconsideration on December 4 but for the Commission’s decision to extend the deadline to December 14 – the date on which replies to oppositions would have been due.

<sup>19</sup> *US Telecom Association v. FCC*, 825 F. 3d 674 (2016).

Digital Discrimination FNPRM would be in January, *i.e.*, precisely when Movants want to extend the deadline for this proceeding. If the goal is to avoid overwhelming regulatory counsel by stacking proceedings, it makes more sense to maintain the current deadlines for this proceeding and thus avoid a possible overlap with the deadline for the Digital Discrimination FNPRM.

The effect of proper Commission authority over broadband on matters outside the scope of the NPRM can be discussed in those proceedings, but to suggest that the Commission should delay reclassification until it has resolved any outstanding issues in the digital discrimination proceeding, or in the Broadband Label order, or in other broadband issues (such as USF contribution reform) is simply to suggest indefinite delay. Movants may oppose the Commission's proposed action, but this is not grounds to delay it.

The Parties here opposing Movant's unwarranted gambit to delay the Commission's action are aware of "challenging time in respect to the calendar" that marks the end of the calendar year and the beginning of the next. But the yearly occurrence of the holiday season is hardly a "special circumstance" warranting the grant of an extension in this matter, especially considering that Movants are well-resourced, frequent participants in FCC proceedings. Unlike circumstances where the Commission has granted an extension when comments would otherwise be due on or before a major national holiday, or when a request for more time is made by small organizations with limited staff and resources, Movants have simply noted that the current commenting period includes December. Parties have no doubt that Movants will be able to file a "full and informed response" (Motion at 3), in the more-than-adequate time window provided, just as Parties themselves plan to.

For these reasons the above-captioned Parties request that the Commission deny the  
Movants's attempt at delay.

Respectfully submitted,

/s/ John Bergmayer

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December 8, 2023