



INTERGOVERNMENTAL ADVISORY COMMITTEE

to the

FEDERAL COMMUNICATIONS COMMISSION

ADVISORY RECOMMENDATION NUMBER 2015-4

In the Matter of: Protecting and Promoting the Open Internet, GN Docket No. 14-28.

1. The Intergovernmental Advisory Committee ("IAC") to the Federal Communications Commission ("Commission") submits this Advisory Recommendation in connection with GN Docket No. 14-28. The IAC supports the Commission's efforts to restructure the regulatory framework for Internet services and to regulate broadband in the public interest to ensure an open Internet.

Unique Position of IAC Members

2. As elected and appointed representatives of local, state and Tribal governments, we have the unique ability to approach this proceeding from three different perspectives. First, we are consumer advocates. As such, we are uniquely situated to voice the concerns of our constituent residents and businesses as a result of our local presence and because consumers frustrated with current practices, often come to us in the first instance for relief. While we cannot always help, we assist wherever we can. A regulatory framework adopted by the Commission for Internet services should allow for development and enforcement of appropriate consumer protection measures, similar to those designed to support consumers of interstate and international communications services.

3. Secondly, we are also broadband consumers and content suppliers. Our representative governments purchase broadband services. Like any consumer on a budget, we want to ensure that such services remain flexible and useful. The broadband services we purchase, as governments, not only give us access to services for our internal purposes for governmental functions, including administration, schools, and public safety, but also allow us to make substantial amounts of important content available on the Internet to our residents, businesses and other stakeholders. This content varies from informational items, to allowing constituents to do business via broadband with states, local and Tribal governments, to vital public safety information. The FCC's regulatory framework for Internet services should ensure

that broadband consumers, including those represented by the IAC, continue to have the ability to utilize broadband services in a neutral manner for the benefit of their constituents.

4. Finally, we are fierce proponents of economic development within our communities. We all seek economic growth that requires robust Internet infrastructure and open broadband services. At the same time, we support a competitive marketplace amongst Internet providers. A regulatory framework should support private and public investment, which will only occur if open, neutral broadband services are available.

Overriding Principles

5. While the FCC has received numerous comments as it considers the appropriate regulatory framework in this docket, within our unique perspective, we put forth two overriding principles important to the IAC collectively. First, the IAC is concerned that, under the current framework and practices, many consumers and communities lack access to full and transparent information about key Internet service features. Providers committing to provide “speeds up to” do not engender consumer confidence. We understand that the FCC does not receive information on broadband rates. Minimally, information important to consumers includes usage restrictions, speeds, system capacity, messaging priorities and pricing. Amidst confusion and concern arising from incomplete information, customers turn to their Tribal, state and local agencies to use our resources to provide answers and to resolve disputes. This places a burden on us, even though we have no authority over providers’ broadband services. The current regulatory scheme is as frustrating to our state, local and Tribal governmental entities as it is to consumers and does not support broadband adoption.

6. Furthermore in many communities, including rural areas, a major concern is that without accurate information regarding available broadband, such communities are without crucial tools needed to incentivize and stimulate infrastructure investments. There remain many communities, particularly rural and tribal, where broadband is simply not available. In places where competitive choices are available, the true measure of the benefits of competition can only be enjoyed where transparent information regarding each provider’s service exists. Businesses, residents, governments and not-for-profit institutions, all must be able to make well-informed choices as they strive for broadband access and to provide content without delays and in the most efficient manner available. We therefore recommend that any policies that arise from this docket authorize mechanisms to assure improved transparency regarding rates, terms and conditions of service and the status of available broadband services within communities. While it may be appropriate to forebear from regulating rates, there should be a requirement that providers accurately and honestly disclose rates and fees.

7. Moreover, the IAC is concerned that the Commission not lose sight that open Internet is only useful to consumers who have adequate access to broadband infrastructure in the first place. Many communities around the country, in rural areas, in Native American communities, and in more urbanized locations as well, continue to lack fundamental components of a robust communications infrastructure that provides the basis for 21st century health care, public safety, education and economic opportunity.¹ As the Commission moves forward, the

¹ See In the Matter of: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to

IAC urges that the steps it takes be consistent with assuring not just an open Internet, but an open and ubiquitous broadband Internet infrastructure accessible to all.

8. We would note that the Commission has on many occasions, including very recently, determined that broadband is of such importance to the public interest, that the Commission decided it would be appropriate to regulate traditional land use authority of Tribal, state and local governments to ensure that broadband deployment is not unreasonably delayed or impeded.² It would certainly be consistent with the Commission's actions and policies to support broadband deployment for the Commission to regulate broadband Internet services to ensure that it remains a vital resource in the public interest. Similarly, Congress has taken many steps to limit state and local traditional authority over taxation and land use in an effort to support broadband deployment and the growth of broadband services and competition.³

9. Despite prior actions by Congress, the Commission and other stakeholders, the United States generally and many states, Tribal areas, and local communities are lagging behind the rest of the world when it comes to the availability of broadband services. According to the Commission's recent Broadband Progress Report, 17% of all Americans, 53% of Americans in rural areas, and 63% of Americans living on Tribal lands lack broadband Internet access defined as 25 Mbps download and 3 Mbps upload speeds.⁴ Moreover, it is clear that while the marketplace has brought broadband competition to some areas, the vast majority of areas of the

Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment at paras. 5-6. (GN Docket No. 14-126), adopted February 4, 2015. <http://www.fcc.gov/document/fcc-finds-us-broadband-deployment-not-keeping-pace-0>.

² See In re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies (WT Docket Nos. 13-238); Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting (WC Docket No. 11-59); 2012 Biennial Review of Telecommunications Regulations (WT Docket 13-32), adopted October 17, 2014.

³ The Internet Tax Freedom Act (ITFA), Title XI of the Omnibus Appropriations Act of 1998, was approved as H.R. 4328 by Congress on October 20, 1998, and signed as Public Law 105-277 on October 21, 1998. ITFA prohibits Internet access taxes, multiple taxation of a single transaction by more than one taxing jurisdiction, and discriminatory taxes that do not apply to offline purchases. See Pub. L. 105-277, div. C, title XI, Oct. 21, 1998, 112 Stat. 2681-719, as amended by Pub. L. 107-75, § 2, Nov. 28, 2001, 115 Stat. 703; Pub. L. 108-435, §§ 2-6A, Dec. 3, 2004, 118 Stat. 2615-2618; Pub. L. 110-108, §§ 2-6, Oct. 31, 2007, 121 Stat. 1024-1026; Pub. L. 113-235 Stat. 128 - 2130, Dec. 16, 2014. Sec 624. Sections 1101(a) and 1104(a)(2)(A) of the Internet Tax Freedom Act (title XI of division C of Public Law 105-277 ; 47 U.S.C. 151 note) are amended by striking "November 1, 2014" and inserting "October 1, 2015".

Furthermore, Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 provides, in part, that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a), 126 Stat. 156 (2012) (codified at 47 U.S.C. § 1455(a)). See also IAC Recommendation 2014-1 regarding NPRM on "Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies (WT Docket No. 13-238), *et al.*" Recommendation.

⁴ See <http://www.fcc.gov/document/fcc-finds-us-broadband-deployment-not-keeping-pace> .

country continue to have broadband services in the hands of one or two dominant providers. According to data cited by Chairman Wheeler from the NTIA and FCC, for broadband service with speeds of 25 Mbps downstream and 3 Mbps upstream, only 2.4% of households had a choice of two or more carriers, 22.9% had a choice of two carriers and 74% of households have only one or no options for broadband service.⁵ With further consolidation in the industry, and new revenue streams that require less capital investment, including leveraging their control of access to content, it is questionable whether such providers will make substantial capital investment in new fiber and wireless infrastructure to reach territories that they are not serving unless they see a guaranteed, and relatively short and significant return on investment. Thus, the private marketplace has not and is not likely to address the failure to provide broadband to areas that do not yet have such service, nor to foster robust broadband competition to improve services and consumer choice.

Regulatory Framework for Broadband Services

10. Historically, a business was treated as appropriate for common carriage regulation if the business: a) had monopoly or market power; b) provided an essential or very important service; and c) offered services directly to the public. The US broadband industry clearly meets these three criteria.

11. Broadband network providers have significant market power. As indicated above, there is very limited choice for high speed Internet access. Cable companies, usually the fastest generally available broadband network providers, recognize this. As Comcast has stated: “We have concluded that our cable franchise rights have an indefinite useful life since there are no legal, regulatory, contractual, competitive, economic or other factors which limit the period over which these rights will contribute to our cash flows.”⁶ Comcast’s broadband market power will increase substantially with its pending acquisition of Time-Warner Cable.

12. Broadband also meets the second prong. Broadband is required for full participation in the nation’s economic, social, and political life. There is also no question that broadband providers offer services directly to the public.

Recommendations

13. The IAC submits that if broadband is such a vital service that it is appropriate to limit traditional State, Tribal and local regulations, it is also appropriate to regulate providers of the service in the public interest, particularly when the marketplace has failed to satisfy important national goals. Accordingly, we recommend the Commission categorize broadband as a common carrier telecommunications service subject to Title II. Such regulatory structure will spur broadband development by creating consumer protections, increasing consumer confidence,

⁵ See http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0904/DOC-329161A1.pdf.

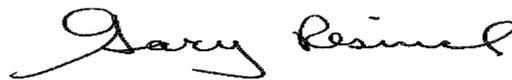
⁶ See Comcast Corp. Form 10-K for the period ending 12/31/13, pp.71-72.

allowing for increased competition and service to underserved areas potentially through interconnection, and by affording providers access to certain necessary infrastructure, including utility poles and conduits.

14. We further recommend that the Commission exercise its authority to forbear from many aspects of traditional telecommunications regulations. Full regulation is currently not justified and forbearance from certain provisions lowers the risk of unintended consequences. For example, in light of the federal moratorium on taxation of Internet services, it would not be appropriate to subject broadband service to certain state and local taxes applicable to telecommunications services.

15. In addition, this is likely the first step in an ongoing process. Public interest and technology change over time. By and large Internet access for the public did not exist thirty years ago and certainly was not always an essential service for full participation in a democratic society. We are proposing a regulatory structure going forward. The Commission will need to assess periodically whether the market and the regulatory framework are needed with respect to carriers of this essential service. We appreciate the opportunity to provide these comments to the Commission in this important proceeding.

Respectfully submitted,

A handwritten signature in black ink, reading "Gary Resnick". The signature is written in a cursive, flowing style.

Mayor Gary Resnick, Chair of the IAC

February 18, 2015