THE 6 MOST IMPORTANT THINGS TO KNOW ABOUT NET NEUTRALITY, TITLE II RECLASSIFICATION, AND COMMUNITIES OF COLOR

The advent and expansion of the Open Internet has been an incredible boon to communities of color. Entrepreneurs of color can succeed without access to traditional financial tools. Independent content producers can tell their own stories to defy stereotypes and create positive portrayals of themselves without needing buy-in from a major media conglomerate. People of color can engage in the political process, bringing their voices directly to those in power and bypassing any roadblocks designed to impede them. With an Open Internet, barriers to entry are low, lack of access to traditional capital markets is less of a problem, and the power of corporate gatekeepers is limited.

The Federal Communications Commission (FCC) is poised to enact new Open Internet rules on February 26, 2015. According to a February 4th article and fact sheet distributed by FCC Chairman Tom Wheeler, the proposed rules will largely align with a proposal put forth by President Obama in November 2014 and reclassify broadband Internet access service as a telecommunications service under Title II of the Communications Act. This would provide the FCC with the authority to treat Internet Service Providers (ISPs) as common carriers and impose rules against blocking consumer access to lawful sites and services and discriminatory practices, such as creating paid "fast lanes." These rules are critically important to communities of color and the FCC should be allowed to implement them using its existing authority.

1. CIVIL RIGHTS AND RACIAL JUSTICE GROUPS OVERWHELMINGLY SUPPORT TITLE II RECLASSIFICATION

More than 100 civil rights and racial justice groups, including the National Hispanic Media Coalition, 18MillionRising.org, LatinoJustice PRLDEF, the Media Action Grassroots Networks, ColorOfChange.org, Black Lives Matter, Presente.org, and the Hispanic Association of Colleges and Universities, have urged the FCC to assert the Title II authority granted to it by Congress to protect our online rights. For a full list, visit: http://www.nhmc.org/TitleIISupporters.pdf.

2. TITLE II WILL ACHIEVE NARROWLY-TAILORED, LIGHT-TOUCH RULES

When our communications laws were updated in 1996, Congress introduced the concept of "forbearance" – a deregulatory tool the FCC can use to refrain from applying certain parts of the statute. To do so, the FCC must find that a regulation is not necessary to protect consumers and that forbearance serves the public interest and promotes competition. Net Neutrality advocates, President Obama, and the FCC have all supported the use of forbearance. Chairman Wheeler's plan proposes to forbear from many Title II provisions that some companies have indicated could be burdensome, including rate regulation. In fact, the stock market recognized this light-touch approach and cable company shares surged after Chairman Wheeler's announcement. In short, forbearance allows the FCC to utilize its existing Title II legal authority to prevent practices that many agree would be harmful, such as blocking, paid prioritization, and unreasonable discrimination, while ensuring that investment and innovation thrive.

3. Title II Will Not Deter ISP Investment

Executives from major ISPs like Time Warner Cable, Charter and Verizon have consistently assured investors that, despite a growing groundswell towards Title II, the companies will continue investing in their enormously profitable networks to keep up with consumer demand. Competitive ISPs, like Sprint, have indicated that they do not expect a Title II regime to slow their investment. In a FCC filing, Google Fiber stated that applying certain provisions of Title II could actually "promote competition and spur more investment and deployment of Internet service." Light-touch Title II rules, similar to rules proposed by Chairman Wheeler, currently apply to mobile voice service and enterprise, business-class broadband. In fact, AT&T, which invests heavily in its Title II enterprise broadband, recently referred to a light-touch Title II approach as an "unqualified regulatory success story…represent[ing] the epicenter of the broadband investment that the Commission's national broadband policies seek to promote." Further, historical data indicates that many ISPs experienced their greatest periods of investment during the years prior to action by President George W. Bush's FCC to classify DSL and Cable Modem service outside of Title II.

4. Title II Will Not Increase Taxes Or Fees On Broadband Service

False claims that Title II will result in billions of dollars in taxes and fees on consumers' bills stem from a Progressive Policy Institute report that failed to consider the Internet Tax Freedom Act (IFTA). The recently reauthorized IFTA prevents state and local governments from imposing new taxes on Internet access. Between the law's clear definition of "Internet access" and its legislative history, it is clear that Internet access is exempted from new state and local taxes no matter the platform or the regulatory classification. It is no wonder that the Washington Post's "Fact Checker" awarded the Progressive Policy Institute's report three out of four "Pinocchios" for containing "significant factual errors and/or obvious contradictions."

5. Title II Could Catalyze Broadband Adoption

Title II could increase broadband adoption by placing the FCC on firmer footing as it modernizes the Universal Service Fund to address broadband access and adoption in poor and rural communities. A paltry 53 percent of Latinos and 64 percent of African American households have broadband at home. The dismal adoption rate is largely attributed to the prohibitive cost of service or equipment. As noted above, some improperly argue Title II will increase taxes and decrease investment, and that in turn would have a disproportionate negative impact on access and adoption rates in communities of color. The reality is IFTA prohibits new state and local taxes on broadband access and ISPs have indicated that they would continue to invest in their hugely profitable networks under Title II. Further, the FCC and DC Circuit Court agree that rules against blocking and unreasonable discrimination, like those possible under Title II, enable a "virtuous circle of innovation in which new uses of the network…lead to increased end-user demand for broadband, which drives network improvements, which in turn lead to further innovative network uses." Indeed, as the FCC rightly noted in 2010, rules against blocking and unreasonable discrimination will "help close the digital divide by maintaining relatively low barriers to entry for underrepresented groups and allowing for the development of diverse content, applications, and services."

6. To Fully Protect Communities Of Color, FCC Rules Must Extend To Mobile

Communities of color disproportionately rely on mobile broadband as their primary means for Internet access. While mobile broadband is not yet a sufficient substitute to a connection at home, it has proven to be an effective onramp that has allowed many people of color to experience the Internet for the first time. A former FCC Chairman once stated that "[e]ven though each form of Internet access has unique technological characteristics, they are all different roads to the same place" and that "the Internet itself [must] remain open, however users reach it." Wired access on a home computer and mobile access using a wireless device both provide a pathway to the same Internet and, indeed, these services are increasingly converging. All forms of Internet access must be treated equally and subject to the same, strong Open Internet rules. Anything less risks leaving entire communities behind.

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