

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Framework for Broadband Internet Service ) GN Docket No. 10-127  
 )

**COMMENTS OF  
THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS  
OFFICERS AND ADVISORS**

**I. INTRODUCTION**

The National Association of Telecommunications Officers and Advisors (“NATOA”)<sup>1</sup> respectfully submits these comments to the Federal Communications Commission (“Commission”) in response to the Commission’s Public Notice, FCC 10-114, released Jun. 17, 2010 (the “Notice”) seeking comments on alternative legal frameworks for oversight of broadband Internet service.<sup>2</sup> NATOA files these comments to support the Commission’s decision to find the most stable legal framework to move forward with their broadband plans. The Commission is about to undertake a number of ambitious and necessary broadband proposals, including Universal Service Fund (“USF”) and Open Internet reforms, and it is important that these reforms are based on the most secure legal framework possible. It is essential that all entities have certainty in the application of these reforms in order to prevent

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<sup>1</sup> NATOA is the national association that represents the communications needs and interests of local governments, and those who advise local governments. NATOA’s membership includes local government officials and staff members from across the nation whose responsibility is to advise and implement telecommunications policy for the nation’s local governments. These responsibilities range from cable franchising, rights-of-way management and government access programming to information technologies and Institutional Network (INet) planning and management.

<sup>2</sup> It is worth emphasizing that the Commission makes quite clear that it has no intention of regulating Internet content. Rather, it is investigating legal frameworks for the regulation of broadband Internet transmission.

nonstop litigation that could potentially result if these reforms are premised on a questionable framework.

## **II. THE COMMISSION’S TOP PRIORITY IN DEVELOPING A REVISED LEGAL FRAMEWORK FOR BROADBAND OVERSIGHT SHOULD BE STABILITY AND PREDICTABILITY FOR FUTURE UNDERTAKINGS.**

The Commission seeks comments on three possible legal frameworks for exercising oversight of broadband Internet connectivity service in the wake of the recent decision by the U.S. Court of Appeals for the District of Columbia in *Comcast Corp. v. FCC*.<sup>3</sup> The *Comcast* decision called into question the legal framework that the Commission had relied on for broadband oversight during the previous administration. This decision came after Congress decided to increase the Commission’s broadband role by giving it directives related to broadband Internet, most notably and recently, the National Broadband Plan.

The first legal framework discussed in the Notice is continued oversight of broadband Internet service under Title I of the Communications Act. Under this approach, broadband would remain classified as an “information service” and the Commission would rely on its ancillary authority for continued regulation.<sup>4</sup> This alternative has been recommended by many in the telecommunications industry. The second legal framework under discussion is reclassification of broadband Internet connectivity service under Title II of the Act as a “telecommunications service” and subsequently applying all provisions of that title to broadband Internet connectivity service.<sup>5</sup> The third legal framework under consideration would also reclassify broadband Internet connectivity service under Title II, but the Commission would

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<sup>3</sup> 600 F.3d 642 (D.C. Cir. 2010) (*Comcast*).

<sup>4</sup> Notice at ¶ 30.

<sup>5</sup> Notice at ¶ 52.

forbear the application of all Title II provisions except for a few “core” statutory provisions – the so-called “third way.”<sup>6</sup>

NATOA emphasizes that the overriding factor in determining the most appropriate framework is ensuring that it will provide the stability, predictability, and flexibility the Commission needs to effectively implement its broadband agenda, including efforts to reform USF, preserve an Open Internet, and provide increased consumer protection. We are skeptical that the first option, continued classification under Title I, will provide the Commission – as well as local governments, private corporations, and public interest organizations – with the necessary stability and predictability. In light of the *Comcast* decision, continued reliance on ancillary authority under Title I will likely lead to continued, endless litigation with each new regulatory or oversight action undertaken by the Commission. Any entity that opposes an action the Commission takes will simply file suit challenging the Commission’s authority to enact that specific regulation. This is not in the best interest of the public that benefits from the Commission’s ability to enact its much needed broadband agenda. The end result will be enormous litigation costs, stalled investment in new (but delayed) programs, and an uncertain marketplace for future broadband investment and innovation.

Conversely, NATOA believes that the second and third options provide more of the certainty, stability, and predictability that are necessary to move forward with the Commission’s broadband agenda.<sup>7</sup> In general, NATOA is neutral between these two options. Reclassification of broadband as a “telecommunications service” under Title II will undoubtedly lead to challenges by entities upset by the Commission’s regulatory plans. However, as compared to

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<sup>6</sup> Notice at ¶ 67.

<sup>7</sup> We believe that neither Title II reclassification nor the “Third Way” are perfect. Both present challenges that the Commission will have to overcome. Nonetheless, both provide a significantly more stable framework for the Commission’s broadband agenda than continued Title I classification.

continued Title I classification, any legal issues would necessarily be decided once and for all at the start of the process. Under the first option, entities would have an incentive to file piecemeal lawsuits against every individual regulation that was not in their best interest. Under the second and third options, any lawsuit would have to be against classifying broadband as a telecommunications service in general and would, therefore, be decided in a more efficient manner at the outset of the Commission's plans. Furthermore, we believe that reclassification under Title II would be upheld in court, providing the Commission with a clear basis for broadband oversight moving forward.

Under the third option, we encourage the Commission to study carefully which provisions should be applied and which provisions should be forborne. One of the benefits of the third option, as suggested by the Commission, is that it would maintain the status quo.<sup>8</sup> However, we believe that the decision to maintain the status quo should only be made after analyzing the impact of additional Title II provisions being applied. Even if the third option provides the Commission with the ability to undertake its current oversight plans, the Commission should view this proceeding as an opportunity to evaluate the legal framework necessary for future plans – and the level of oversight that is most in line with the public interest moving into the future. Thus, even if these provisions were to provide an adequate framework for the proposals announced in the NBP, that should be the minimum threshold of oversight, not the maximum level of oversight. A thorough analysis of the impact of the application and forbearance of each Title II provision - for which there is statutory justification for application - should be undertaken before making such forbearance decisions.

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<sup>8</sup> Notice at ¶ 69.

## V. CONCLUSION

The Commission should establish a legal framework that will provide certainty and stability to its broadband oversight agenda. NATOA believes that reclassification under Title II would provide this stability. We believe that decisions on forbearance should also be made in a way as to provide a sturdy, predictable legal framework that will allow proper oversight by the Commission.

Respectfully submitted,

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July 15, 2010