

December 1, 2023

Via Electronic Submission

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: In the Matter of Safeguarding and Securing the Open Internet (WC Docket No. 23-320)

Dear Ms. Dortch:

The U.S. Chamber of Commerce (“Chamber”), the National Association of Manufacturers (“NAM”), the Information Technology Industry Council (“ITI”), pursuant to 47 C.F.R. § 1.46, respectfully requests a 30-day extension of the existing 60-day comment deadline for the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding, for a total of 90 days.¹ Further, due to the significance of this rulemaking and the likely robust comment record, we also request an extension of the reply comment deadline so that stakeholders have at least 60 days to develop reply comments in response to the record. If granted in full, the new comment deadline would be January 17, 2024, and the reply comment deadline would be March 18, 2024.

I. Background

The NPRM proposes to reclassify broadband Internet access service (“BIAS”) under Title II of the Communications Act paired with a forbearance framework. Also, the NPRM proposes to establish a regulatory framework that includes, among other provisions, rules addressing blocking, throttling, and paid prioritization, as well as a general conduct standard. The Commission justifies reclassification as essential to promoting public safety, national security, consumer protection, competition, and broadband deployment. The NPRM provides a 60-day comment window ending on December 14, 2023, and a 30-day reply comment window ending on January 17, 2024.

II. Discussion

Although not “routinely granted,” the Commission has discretion to extend comment deadlines with “good cause”.² Good cause exists here for five reasons: (1) substantial changes

¹ *Safeguarding and Securing the Open Internet*, Notice of Proposed Rulemaking, WC Docket No. 23-320, FCC-23-83, at 136-143 (Oct. 19, 2023), <https://tinyurl.com/y6hhry6y> (“NPRM”).

² *Empowering Broadband Consumers Through Transparency*, Order, DC Docket No. CG 22-2, ¶¶ 4–5 (rel. Jan. 4, 2023); see also 47 C.F.R. § 1.46.

in the internet marketplace and the judicial landscape, (2) the extensive scope of topics and rationales contemplated by the NPRM, (3) the breadth of impacted stakeholders, (4) the relevance of ongoing rulemaking projects, and (5) the Commission's requests for supporting data.

A. Substantial Changes in the Internet Marketplace and the Judicial Landscape

The 2014 Commission recognized the significance of reclassification and provided stakeholders 90 days for the principal comment period for the *Open Internet Order*.³ As the NPRM noted, much has changed in the internet ecosystem and the judicial landscape since the *Open Internet Order*. For example, litigation in response to the *Open Internet Order* and the *Restoring Internet Freedom Order* present significant implications for how commenters are to assess the approach taken by the NPRM. Likewise, recent judicial decisions on the scope of federal agency jurisdiction also implicates the legal authority to reclassify broadband under Title II of the Communications Act.⁴

The internet landscape has also changed dramatically. The COVID-19 pandemic accelerated the public's use of internet services, new competitors entered the broadband marketplace, and novel technologies have been introduced to deliver broadband to consumers. Moreover, a panoply of new services and applications are available to consumers since the *Open Internet Order*. Changes both in the judicial landscape and the internet marketplace merit additional time to allow commenters to provide robust information to the Commission in this rapidly changing marketplace.

B. Scope and Potential Impact of Topics Contemplated by the NPRM

An NPRM as impactful to the future of the Internet, on consumers, and on the business community merits a careful and deliberate examination by the Commission. Further, the scope of the NPRM is extensive, both in terms of proposed requirements and justifications for adopting those requirements.

First, the political and economic implications of Title II reclassification are substantial considering it establishes a novel regulatory framework for a major American industry. The NPRM's proposed forbearance framework is complex and requires careful review and analysis to understand the impact of applying each Title II provision. Moreover, while the NPRM largely mirrors the *Open Internet Order*, the Commission proposes to decline forbearing from additional provisions of Title II, such as Section 214, which presents a major shift for regulated entities. Other major changes include potential requirements related to national security, data

³ *Protecting and Promoting the Open Internet*, WC Docket No. 14-28, Report and Order (2015).

⁴ Letter Outlining Concerns with the FCC's Legal Authority to Reclassify Broadband Under Title II, U.S. Chamber of Commerce (Oct. 19, 2023), https://www.uschamber.com/assets/documents/USCC_TitleII_MQD_Letter_2023-10-19-025636_wjnh.pdf.

protection, cybersecurity, public safety, and network resiliency and reliability, each of which is a complicated topic.

Second, the Commission’s justifications for the NPRM differ significantly compared to the *Open Internet Order*. The Commission outlines a series of reasons of why Title II reclassification is necessary and requests comment on the merits of their justifications and how reclassification advances that goal. These include topics as varied as national security, law enforcement considerations, cybersecurity, public safety, consumer privacy and data security, combatting robocalls and robotexts, deployment of wireline and wireless infrastructure, ensuring universal service, and digital equity.⁵ Outside of the proposed rules themselves, the justifications will require substantial time to consider, as well as to fully review and respond to other comments in the record.

C. Breadth of Stakeholders Affected and Likely Interested in the NPRM

As noted in the preceding section, the scope of the NPRM is extensive both regarding the proposed requirements and justifications. Public interest and input in the *Open Internet Order* and the *Restoring Internet Freedom Order* were high—spanning numerous public interest groups, state and local governments, a diverse range of industry groups, and the public. Nearly four million comments were filed in the *Open Internet Order* and around 24 million comments for the *Restoring Internet Freedom Order*.⁶ The historical interest in this issue underscores the importance of a robust comment period to enable full public participation.

Moreover, the NPRM’s increased focus on national security, cybersecurity, and public safety considerations expands the aperture of impacted stakeholders who are likely to comment on the proceeding. Granting additional time will enable those commenters to fully examine the proposed rules and engage with the other commenters in the reply comment period.

Finally, all commenters may have a challenging time in respect to the calendar. The current comment period includes three major holidays, Hanukkah, Veterans Day and Thanksgiving. The reply comment period falls during Christmas, New Years, and Martin Luther King Day weekend. The Commission has previously determined that holidays shorten the comment window and has deemed extensions necessary to ensure “full and informed responses.”⁷ The Commission should make this determination here to provide commenters sufficient time to effectively respond to the NPRM and comments in the record.

⁵ NPRM at 13.

⁶ Jon Brodtkin, *FCC votes for net neutrality, a ban on paid fast lanes, and Title II*, Ars Technica (Feb. 26, 2015), <https://arstechnica.com/information-technology/2015/02/fcc-votes-for-net-neutrality-a-ban-on-paid-fast-lanes-and-title-ii/>; Joel Thayer, *The Restoring Internet Freedom Order: Unpacking the FCC’s Order on Remand*, Foundation for American Innovation (Oct. 14, 2020), <https://www.thefai.org/posts/the-restoring-internet-freedom-order-unpacking-the-fccs-order-on-remand>.

⁷ *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Order, FCC 23-9 (rel. Jan. 4, 2023).

D. Relevance of Ongoing and Intersecting Commission Rulemaking Projects

Currently, there are various rulemakings which may intersect with the NPRM. Since the Commission's past rulemaking proceedings on the classification of broadband in 2015 and 2017, respectively, the Commission, at the direction of Congress, has pursued rulemakings on discrete aspects of broadband including on broadband nutrition labels and the prevention and elimination of digital discrimination. Both rulemaking projects may intersect with the NPRM. Due to the intersection of these various rulemaking projects additional time is needed to evaluate the interplay between all three efforts.

On November 14, 2022, the Commission adopted its *Broadband Label Order* to require point of sale transparency requirements to assist consumers in selecting broadband products in addition to a Further Notice of Proposed Rulemaking ("FNPRM") that considers additional requirements, which is still pending.⁸ On August 29, 2023, the Commission adopted an Order of Reconsideration clarifying aspects of the *Broadband Label Order* and with compliance dates announced shortly thereafter.⁹ The NPRM already contemplates the interplay between the proposed transparency requirement and requests input on potential modifications. Throughout the comment period, providers will be in the midst of implementing the requirements of the *Broadband Label Order*, so extending the comment period would empower providers to glean lessons from implementation to better address the pertinent questions in the NPRM.

Further, on November 15, 2023, the Commission adopted a Report and Order on the Commission's ongoing effort to prevent and eliminate digital discrimination ("Report and Order").¹⁰ The Report and Order is extensive and includes provisions to define and adopt rules on "digital discrimination of access", amend the Commission's enforcement rules, create an informal complaint process, and adopt model policies for state, local, and Tribal governments.¹¹ The rule's NPRM notes that the proceeding "complements and builds upon a robust history of Commission efforts to bridge the digital divide."¹² A wide number of stakeholders will be impacted by the Report and Order and its obligations present a significant undertaking by covered entities. Consequently, it would be beneficial allow for additional time for impacted stakeholders to understand the potential interplay between the Report and Order and NPRM and to provide the Commission with practical and concrete information. Moreover, the Report and Order is paired with a Further Notice of Proposed Rulemaking ("FNPRM") that seeks

⁸ *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86 (rel. Nov. 17, 2022)

⁹ *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Order on Reconsideration, FCC 23-68 (rel. Aug. 25, 2023).

¹⁰ *In the Matter of Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-100 (rel. Nov. 20, 2023) (Report and Order).

¹¹ *Id.* at 3-4.

¹² *In the Matter of Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Proposed Rulemaking, FCC 22-98, at 3 (rel. Dec. 22, 2022).

comment on establishing a data collection program and an internal compliance program, with comment and reply comment deadlines set for 60-days and 30-days, respectively, after Federal Register publication.¹³ This supports an extended time period for impacted stakeholders to understand how the FNPRM’s proposed internal compliance and data collection requirements interact with proposed requirements in this NPRM.

E. Commission’s Request for Supporting Data and Analyses

Including concrete economic data, marketplace information, and other evidence in the record is critical to informing the Commission of the impacts of its proposed rules. In particular, the vast scope and significant implications of Title II reclassification necessitate substantial contributions from stakeholders to build the record. The NPRM recognizes this fact. For example, NPRM requests commenters to provide evidence on the costs and benefits of Title II reclassification, impacts on the investment of small internet service providers, and economic impacts of open internet rules. Aside from economic analyses, the NPRM requests information on market conditions, technological changes, literature examining internet service provider behavior in the marketplace, and technical considerations.

The extension of the principal comment period will enable commenters to provide robust information and analysis to inform the Commission on the implications presented by the NPRM. Similarly, the extension of the reply comment window will empower commenters to examine and respond to the analyses and information provided by other commenters. In sum, this will strengthen the NPRM’s record and help facilitate an informed regulatory process.

III. Conclusion

For the foregoing reasons, we respectfully request that the Commission provide a 90-day comment cycle, with comments due on January 17, 2024, and a 60-day reply comment cycle, with reply comments due on March 18, 2024. We appreciate the consideration of our request.

Respectfully submitted:

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¹³ See Report and Order.

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