

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Restoring Internet Freedom) WC Docket No. 17-108

REPLY COMMENTS OF VOICES FOR INTERNET FREEDOM COALITION, *ET AL.*

[National Hispanic Media Coalition; Free Press; Center for Media Justice; Color of Change; 18MillionRising.org; Access Humboldt; Allied Media Projects; Alternate ROOTS; Appalshop; Arts & Democracy; Asamblea de Derechos Civiles; BYP100; Center for Rural Strategies; Center for Social Inclusion; Chinese Progressive Association; Common Cause; Common Frequency; #Cut50; DigiColor; Dignity and Power Now; Dream Corps; Equality Labs; Families for Freedom; Families Rally for Emancipation and Empowerment; Forward Together; Generation Justice; Global Action Project; Highlander Research Center; Hollaback!; Human Pictures; Ignite NC; Iguana Films, LLC; Instituto de Educacion Popular del Sur de California (IDEPSCA); Iraq Veterans Against The War; KRSM Radio; LatinoRebels.com; Line Break Media; Livier Productions, Inc.; #LoveArmy; Martinez Street Women’s Center; May First/People Link; Media Action Center; Media Alliance; Media Mobilizing Project; MPower Change; MomsRising.org; Movement Strategy Center; Native Public Media; Neighborhood Leadership and Organizing Program; New Sanctuary Coalition; Open Access Connections; OVEC - Ohio Valley Environmental Coalition; Parks and Power; People's Action; PhillyCAM; Presente.org; Progressive Technology Project; Prometheus Radio Project; Race Forward; Radio Bilingue; Rebuild the Dream; Somos Un Pueblo Unido; Stop LAPD Spying Coalition; United Church of Christ, OC Inc.; Urbana - Champaign Independent Media Center; Voices for Racial Justice; Washington Peace Center; The Whitman Institute; WFNU Frogtown Community Radio; WITNESS; Working Films; Working Narratives; #YesWeCode]

The Voices for Internet Freedom Coalition and partners (hereinafter “Voices Coalition”),¹ by their attorneys at the National Hispanic Media Coalition (“NHMC”), and on behalf of the communities of color that they represent, respectfully submit these reply comments in the above referenced proceeding. The Voices Coalition is led by people of color,

¹ For the purpose of this reply comment, Voices for Internet Freedom Coalition were brought together by Voices for Internet Freedom, a national organizing project led by the Center for Media Justice, Free Press, Color Of Change, National Hispanic Media Coalition, and 18 Million Rising (18MR).

and comprised of civil rights, human rights, racial justice, public interest and community-based organizations, and diverse media makers and entrepreneurs from across the country. The Voices Coalition reaffirms its position that the Federal Communications Commission (“FCC” or “Commission”) must preserve the 2015 *Open Internet Order* based in Title II of the Communications Act or risk creating policies that would harm all Americans and have disproportionate and discriminatory impacts on communities of color.

Given the brief window provided for reply, and the Commission’s lack of adequate and timely response to National Hispanic Media Coalition’s FOIA request and corresponding motion for extension of time² - which the Commission denied on the same day that initial comments were due - the Voices Coalition submits only this brief reply to narrowly respond to comments that address the impact that repealing Title II-based Net Neutrality rules will have on people of color and other marginalized communities. As of the date of this filing, the FCC has only partially fulfilled NHMC’s FOIA request, and has still not presented to the public all of the evidence integral to the questions posed in the NPRM.³ To comply with the Administrative Procedure Act, the Commission should release all 47,000+ net neutrality complaints, corresponding carrier responses, and all of the documents related to FCC net neutrality

² See Motion for Extension of Time, WC Docket No. 17-108 (filed July 7, 2017) (arguing that the FCC possesses the data critical to addressing a key claim raised in the NPRM but ignores this information in its sole possession and refuses to make it publicly available in time for the comment period. The FCC has documents regarding consumer interactions with the open Internet Ombudsperson and over 47,000 Open Internet Order consumer complaints received over the past two years, yet it has not released this information to the public in the above referenced docket).

³ The FCC is currently working to produce NHMC’s FOIA request on a rolling basis. As of August 30, 2017, NHMC has received three installments of documents that include consumer complaints, carrier responses, ombudsperson correspondence and Excel spreadsheets of data related to the entire universe of informal Open Internet complaints. The FCC has not confirmed the final production date.

ombudsperson activities, and provide the public sufficient time to analyze and comment on these documents.

The majority of the almost 22 million comments⁴ in this proceeding support the Net Neutrality rules grounded in Title II. Similarly, in its initial comments, the Voices Coalition urged the Commission to preserve the Net Neutrality rules established in the 2015 *Open Internet Order* (2015 Order). More specifically, the Voices Coalition stated, “[i]t is vital to the well-being of communities of color to maintain the clear, enforceable bright-line rules grounded in the classification of broadband Internet service as a telecommunications service under Title II of the Telecommunications Act.”⁵ The Voices Coalition also called on the Commission to apply the Net Neutrality rules equally to fixed and mobile broadband or risk creating second-class Internet users,⁶ and to abandon this proceeding and direct its resources to enforcing the rules on the books. The Voices Coalition agrees with the Greenlining Institute that the FCC “reject any effort to reclassify broadband because it will harm communities of color by hampering efforts to close the digital divide, widening the racial wealth gap and threatening our shared values in free speech, civic participation, and equality.”⁷

I. The FCC Must Maintain Its Title II Authority To Provide Strong and Enforceable Net Neutrality Rules to Protect Diverse Voices

⁴ *ECFS Filing Results*, https://www.fcc.gov/ecfs/search/filings?proceedings_name=17-108 (last visited Aug. 30, 2017).

⁵ Voices for Internet Freedom Coalition, et al. Comments, WC Docket 17-108, at 9 (July 19, 2017) (Voices Comments).

⁶ Voices Comments at 10.

⁷ Greenlining Institute Comments, WC Docket 17-108, at 3-4 (July 17, 2017) (Greenlining Comments).

The open Internet has been crucial to the fight for civil rights and racial equity.⁸ Greenlining Institute echoed Voices Coalition comments that the 2015 Order provides a pathway for people of color to bypass traditional media avenues replete with institutional and structural discrimination, and embrace new opportunities for political participation and self-expression.⁹ The Council on American-Islamic Relations (“CAIR”) stated, “[i]n recent decades, the Internet amplified the voices of millions of Americans who lacked an alternative mechanism to disseminate their message to vast numbers of recipients. More importantly, the democratic nature of Internet communication has made it indispensable for promoting non-majoritarian perspectives that might otherwise be censored through obscurity.”¹⁰ The Greenlining Institute also warns that repealing the current Net Neutrality rules will, “reduce the diversity of perspectives and voices available on the internet, and those voices will be from communities of color. The 2015 Order protected those communities from this inequity by mandating equal treatment for all perspectives and views on the internet, and preventing ISPs from charging more for ‘priority’ access to content.”¹¹ To protect diverse viewpoints, these groups urge the FCC to retain its Title II authority. The Voices Coalition agrees that anything

⁸ See Voices Comments at 3. See also Greenlining Comments at 2 (“To communities of color, net neutrality is not only a telecommunications issue, but a racial equity issue as well. The digital divide, price and content discrimination, and the potential violation of free speech are problems that will affect consumers across all ethnic backgrounds.”)

⁹ See e.g., Greenlining Comments at 17 (“reclassification threatens the democratizing effect of the internet as an open platform by opening the door for broadband providers to mediate the content and accessibility of internet communications through censorship or economic barriers for distributing speech.”); Writers Guild of America West, Inc. Comments, WC Docket 17-108, at 3 (July 17, 2017) (“without rules governing their business practices, ISPs will have the power to act as gatekeepers of Internet content, deciding what reaches consumers.”); Faithful Internet Comments, WC Docket 17-108, at 1 (July 17, 2017) (“The open Internet is a space where all of us -- no matter the content of our beliefs, color of our skin, size of our wallet -- have an equal voice.”).

¹⁰ The Council on American-Islamic Relations, New York, Inc. Comments, WC Docket 17-108, at 1 (May 24, 2017) (CAIR Comments). See also Greenlining Comments at 8 (“Reclassification will make it more expensive for content creators to connect with internet audiences, reducing their ability to innovate and invest in new applications and content.”)

¹¹ Greenlining Comments at 3.

less would give Internet Service Providers (“ISPs”) control of the most vital communication tool of the 21st century and result in silencing the voices of people of color.¹²

In its comments, the CWA and NAACP rightly stated, “that Commission oversight is essential to protect the openness that is critical to the Internet’s success.”¹³ They further ask the FCC to “affirm four bright-line rules to protect openness and free expression on the Internet: no blocking, no throttling, no unreasonable discrimination, and full transparency.”¹⁴ However, they incorrectly address Title II as “one approach”¹⁵ to protecting the open Internet, and endorse no blocking and anti-discrimination rules based in Section 706 of the Communications Act.¹⁶ But in an opinion piece, earlier this month, the NAACP urges the FCC, “to protect the free flow of information and not jeopardize it by removing high-speed broadband from the equalizing framework of Title II.”¹⁷ We agree that the Commission must preserve Title II to protect the open internet. The D.C. Circuit Court of Appeals made this clear in *Verizon v. FCC*¹⁸ that no such alternate legal authority exists, and that the FCC cannot enforce its non-discrimination Net Neutrality rules without using its Title II authority. *Verizon v. FCC*

¹² CAIR Comments at 1 (“We believe that affordable, uncensored, non-discriminatory, and high-quality Internet access is indispensable to the effective exercise of the First Amendment free speech rights that CAIR-NY protects. The above-referenced proposed rule-making would empower Internet service providers (“ISPs”) to discriminate against unwanted viewpoints and block Americans from engaging in our political process. This impact would be most pronounced for non-majoritarian and marginalized communities, potentially hiding their perspective.”).

¹³ Communications Workers of America and NAACP Comments, WC Docket 17-108, at 2 (July 17, 2017) (CWA and NAACP Comments).

¹⁴ CWA and NAACP Comments at 12.

¹⁵ CWA and NAACP Comments at 4.

¹⁶ CWA and NAACP Comments at 4.

¹⁷ Derrick Johnson, The FCC must enforce standards to keep the web free and open, The Hill (Aug. 16, 2017), <http://thehill.com/blogs/pundits-blog/technology/346808-the-fcc-must-enforce-standards-that-keep-the-web-remain-free>.

¹⁸ *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

did not in any way, as others suggest,¹⁹ provide a roadmap for the FCC to rely on Section 706. Instead the court explained that “[g]iven that the Commission has chosen to classify broadband providers in a manner that exempts them from treatment as common carriers, the Communications Act expressly prohibits the Commission from nonetheless regulating them as such. Because the Commission has failed to establish that the anti-discrimination and anti-blocking rules do not impose per se common carrier obligations.”²⁰ Thus, to adequately protect the open Internet, the FCC must preserve the Title II classification of broadband, and treat ISPs as common carriers.

II. The 2015 Open Internet Rules Grounded in Title II Provide Necessary Consumer Protections

The 2015 Order provides clear and enforceable consumer protections. CAIR poignantly stated in its comments, “[i]n framing Title II regulation of ISPs as ‘government control of the Internet,’ the Commission severely misstates the impact of existing regulations. Title II does not empower the government to control the Internet; quite the opposite, it gives consumers control.”²¹ The Voices Coalition could not agree more.

As it stands, the FCC’s Notice of Proposed Rulemaking (“NPRM”) ignores two years of the Commission’s role in addressing and remedying harms experienced by consumers. Voices

¹⁹ See, e.g., CWA and NAACP Comments at 4; National Multicultural Organizations Comments, WC Docket 17-108, at 13-15 (July 17, 2017) (NMO Comments); Black Women’s Roundtable Comments, WC Docket 17-108, at 4 (July 17, 2017) (Roundtable Comments).

²⁰ *Verizon v. FCC* at 628; See also Free Press Comments, WC Docket 17-108, at 40 (July 17, 2017) (“[a] prohibition on unreasonable discrimination that applies to a broadband carrier’s transmission of any and all content, and to its interactions with its actual end-user customers, is a prohibition that can only be applied to common carriers.”).

²¹ CAIR Comments at 2; see also Voices Comments at 33 (“Title II classification of broadband Internet service as a telecommunications service, is not supported by the facts presented in the NPRM. Strong, enforceable rules that prevent harmful ISP conduct are key to protecting consumers who have little to no choice in broadband providers.”).

Coalition uncovered three major gaps in the NPRM: (1) it willfully omits any mention of the more than 47,000 open Internet consumer complaints the FCC has received since June 2015;²² (2) it proposes to eliminate the ombudsperson role established to assist consumers without any analysis of the two years of communications, approximately 1,500 emails between the ombudsperson and consumers;²³ and (3) it does not mention the three Net Neutrality enforcement actions initiated by the FCC's own Enforcement Bureau.²⁴ The Commission's failure to even address compelling evidence that illustrates the need to preserve consumer protections continues to be a critical misstep in this proceeding.²⁵

As of the time of this filing, the FCC has only released a fraction of the documents that NHMC requested. To ensure proper procedure, the FCC must first release all of the documents requested and provide the public additional and sufficient time to review, analyze and comment on the documents. Of course, this information should have been made available to the public absent NHMC's FOIA request. The burden is on the Commission to release the documents for public analysis and to properly incorporate this evidence into the record. The documents are central to the analysis of key questions asked in the NPRM and, based on volume alone, show why the FCC must retain the 2015 *Open Internet Order* rules and preserve its Title II authority to empower consumers to seek redress from harms caused by ISPs.²⁶

The National Multicultural Organizations ("NMOs") support the role of the open Internet ombudsperson because "[w]ithout an accessible, affordable, and expedited way to resolve

²² See Voices Comments at 37-41.

²³ See Voices Comments at 44-46.

²⁴ See Voices Comments at 47-53.

²⁵ See *infra* Section V.

²⁶ See Voices Comments at 36.

complaints, the net neutrality rules may not adequately protect consumers, particularly those most vulnerable. Commenters agree that the Commission should not eliminate the ombudsperson.”²⁷ The Commission recently confirmed in an Order²⁸ denying NHMC’s Motion for Extension of Time that it has over 1,500 documents responsive to NHMC’s May 1, 2017 Freedom of Information Act (“FOIA”) request for communications between consumers and the ombudsperson. These interactions provide insight into the public utility of the ombudsperson role. Likewise, the FOIA request also asked for the more than 47,000 consumer open Internet complaints.²⁹ While the Commission also acknowledged the existence of these materials, it has yet to release all of these complaints for review and analysis.

Naturally, this raises several procedural and transparency concerns. These documents could further solidify the need to retain not only the ombudsperson role, but also the underlying enforceable Net Neutrality rules. As Free Press stated, “[i]t should not take a FOIA request to expose secrets and truths known only to the FCC that are germane to a rulemaking proceeding: that’s the entire purpose of established statutes governing administrative procedure that ensure transparency and public participation in agency rulemaking.”³⁰ The Commission continues to make a fatal error in moving forward with this proceeding without

²⁷ NMO Comments at 28. Additionally, they state, “Not only does the Ombudsperson provide a mechanism for initiating enforcement of the rules, the Ombudsperson serves the important role of protecting and promoting the interest of consumers, particularly individuals from more vulnerable populations, who may be new to using broadband and have less confidence in their digital literacy.” *Id.* at 28-29. *See also*, Roundtable Comments at 6 (“The Ombudsperson provides consumers with the vital initial step to report net neutrality violations and begin a resolution or enforcement process. We urge the Commission to maintain the Ombudsperson because it serves as an important role in protecting consumers and promoting an open Internet.”)

²⁸ *See* Restoring Internet Freedom, WC Docket 17-108, Order, DA 17-686A1 (WCB 2017) (*Order Denying Extension*).

²⁹ *See Order Denying Extension* at para. 4 (confirming the existence of over 47,000 open Internet consumer complaints).

³⁰ Free Press Comments at 85.

providing the public reasonable opportunity to review evidence. To adequately address the legal and procedural concerns raised by NHMC, the Commission must first release all of the documents requested and then provide additional time for NHMC and the public to comment.

Other commenters that reiterate the FCC's false statement that there is "virtually no quantifiable evidence of consumer harm"³¹ in repealing the 2015 Order, are simply ignoring the facts. Some of those same commenters make the outrageous and inaccurate claim that Title II has been harmful to consumers. For example, the Hispanic Leadership Fund states in a letter, without citing any evidence, that "[r]eclassifying the internet under Title II of the Communications Act as a public utility was the wrong approach and has already negatively impacted Hispanic consumers."³² The Hispanic Leadership Fund cites no authority for this conclusory statement, and none exists. In fact, quite the opposite is true: Title II solidified vital consumer protections.³³ Indeed, the Voices Coalition's initial comments in this docket illustrated, with the stories of over 150 people of color, including many Latinx people, that the 2015 Order has improved their lives and their access to justice, jobs, housing, healthcare and much more.

³¹ *NPRM* at 22, para. 76.

³² Hispanic Leadership Fund Comments, WC Docket 17-108, at 1 (July 17, 2017).

³³ *See, e.g.*, Comments of Free Press, WC Docket No. 17-108, at 7, 74 (filed July 17, 2017) ("[D]eserting the proper classification also would jeopardize the Commission's efforts to promote adoption and close the digital divide with the Lifeline program (and any other initiatives designed to promote broadband choice and affordability). It also would prevent the Commission from protecting broadband customers' privacy, abandoning internet users to the outcome of ongoing litigation – brought by AT&T, one of the ISPs that purports to support Net Neutrality almost as much as it values its users' privacy – over the limits of Federal Trade Commission authority. The Commission's mandate to ensure protection of broadband telecommunications customers' privacy would be yet another casualty of returning to the wrong definition of BIAS.").

LULAC asks that the FCC “question whether the existing rules are working as advertised”³⁴and believes that American consumers need a “New Deal [that] would focus on access, adoption, affordability and privacy” to “promote diversity throughout the industry and ensure that all Americans can be creators of content and benefit from the net economy.”³⁵ LULAC suggests that Congress - the same Congress that wants to take away healthcare from millions of people, the same Congress that confirmed career bigot Jeff Sessions to Attorney General, the same Congress that has failed to treat immigrants with even a shred of human dignity, the same Congress that has sat idly by as Donald Trump has attacked and made unsafe millions of immigrants, Latinx people, African Americans, Muslims, LGBTQIA people and poor people - is the right venue for this debate. It’s hard for the Voices Coalition to understand how any racial justice or civil rights organization could honestly believe that this Congress will protect us: not our bodies, not our health, and not our internet freedom.

Moreover, LULAC offers no credible explanation as to why the Net Neutrality rules enshrined in 2015 fall short of this “New Deal” vision. Those rules and the Title II authority adopted therein, laid the groundwork for the FCC’s 2016 Lifeline modernization order, which has opened up affordable and accessible broadband options for poor people. It also served as the foundation for the FCC’s 2016 privacy rules, which were later struck down through the Congressional Repeal Act shortly after the Trump Administration took office. And, they promoted diverse content creators by ensuring that all people online have equitable access to audiences, regardless of income levels or skin colors. As the Voices Coalition illustrated in its

³⁴ League of United Latin American Citizens Comments, WC Docket 17-108, at 3 (July 17, 2017) (LULAC Comments).

³⁵ LULAC Comments at 3.

initial comments, the 2015 Open Internet Order created vital protections to ensure that all consumers would have a way to redress harmful ISP conduct.³⁶ Although the ideas behind the “New Deal” are laudable, LULAC’s proposal, as is, opens the door for weaker rules and toothless consumer protections, and will not achieve its intended outcomes.

III. All Commenters Agree that the Open Internet Is Critical to Communities of Color, Yet A Select Few Invite Congressional Action at the Expense of the FCC’s Current Net Neutrality Rules

The Voices Coalition strongly believes that it is neither prudent nor necessary for Congress to legislate at the expense of the FCC’s current strong and enforceable Title II Net Neutrality rules. Further, those commenters that support the immediate repeal of the current consumer protection rules and suggest Congressional action at a later date,³⁷ are advocating for a scenario that would leave consumers without any protections for an indefinite amount of time. Simply put, this approach of repeal and later replace is disingenuous and contrary to the principles of protecting an open Internet.

Commenters such as NMOs, insist that the “debate is not over whether there should be an open internet, but how best to achieve that objective while also ensuring continued innovation and enhanced broadband access for all communities.”³⁸ They call for a “statutory solution” to protect the Internet from the “winds and whims of politics,”³⁹ and conclude that

³⁶ *See generally* Voices Comments at 33-53 (explaining how the 2015 Open Internet Order provides consumers and the FCC with legally enforceable mechanism to address and remedy harms experienced by consumers).

³⁷ NMO Comments at 7 (“The Commission should reclassify broadband as a Title I information service to ensure that the benefits of an open internet are shared by all Americans, including communities of color.”).

³⁸ NMO Comments at 2.

³⁹ NMO Comments at 6. *See also* Letter from Javier Palomarez, President and CEO, U.S. Hispanic Chamber of Commerce, Ron Busby, President/CEO, U.S. Black Chambers, INC., Susan Allen, National President and CEO, US Pan Asian American Chamber of Commerce, Chiling Tong, President and CEO, Asian & Pacific Islander American

“[t]houghtful and balanced legislation will free up the FCC to focus its energy on other critical issues for communities of color, such as efforts to address affordability challenges, deployment of broadband in unserved areas...and promoting diversity in the communications industry.”⁴⁰ NMOs would have congressional action strip the FCC, our country’s expert agency in communications, of its rightful role in protecting consumers and the most vital communications platform of the 21st century. The Voices Coalition cannot support or endorse any action that strips the FCC of its rightful authority to protect consumers. The FCC must retain its position as the expert agency in communications and work to uphold the Title II Net Neutrality regulations.

The Voices Coalition urges the Commission to protect the freedom of people of color on the Internet and preserve the critical bright-line Net Neutrality rules based in Title II of the Communications Act. Instead of devoting Commission resources to reversing the 2015 Open Internet Order the Commission should “maintain the classification of broadband Internet service as a telecommunications service and avoid abdicating its responsibility to protect consumers and police Net Neutrality violations.”⁴¹

Chamber of Commerce & Entrepreneurship (National ACE), Justin Nelson, Co-Founder & President, National Gay & Lesbian Chamber of Commerce, to Marlene Dortch, Secretary, Federal Communications Commission (July 14, 2017) (on file in WC Docket No. 17-108). (“Ultimately, if the FCC is unable to find an alternative legal footing for net neutrality rules, Congress must act to pass protections into law.”); Hispanic Technology & Telecommunications Partnership and MANA, A National Latina Organization Comments, WC Docket 17-108, at 1 (July 17, 2017) (“We believe the best path forward includes action from Congress to enact a lasting and bipartisan net neutrality law”); LGBT Technology Partnership Comments, WC Docket 17-108, at 2 (July 17, 2017) (“Congress [needs] to reach across the aisle and pass common sense legislation that works for today’s dynamic digital networks.”); LULAC Comments at 2 (“LULAC supports a statutory solution from Congress that pairs a balanced regulatory regime with specific benchmarks for increasing broadband access and adoption that will bring the United States closer to ending the digital divide.”).

⁴⁰ NMO Comments at 6.

⁴¹ Greenlining Comments at 19.

Respectfully Submitted,

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