

July 1, 2008

**ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW Washington DC 20554

**RE: Ex Parte , WC Docket No. 05-337, CC Docket No. 96-45**

Dear Ms. Dortch:

The Open Internet Coalition (“OIC”)<sup>1</sup> fully supports the goal of bringing broadband Internet to all Americans, including those living in rural areas. As the Congress and the Commission turn to the issue of reforming the universal service system, we would like to take this opportunity to set forth our views. There is no greater challenge for the Congress or this Commission than harmonizing the twin goals of universal, affordable broadband and protecting an open Internet.

As this Commission is well-aware, our universal service system is currently built to support analog infrastructure. Meanwhile, other countries are preparing the ground to switch over to an all-Internet, completely broadband network. Much like the transition to digital broadcasting, America requires bi-partisan commitment to transition to an all IP network and realize the full potential of an Internet-enabled economy. OIC believes that universal service support for broadband should be targeted to those parts of the country that would otherwise not cross the digital divide without government assistance.

The Federal-State Joint Board on Universal Service (“Joint Board”) has taken on the difficult task of reforming the high-cost universal service program to address inefficiencies and the growing cost of the program to consumers. As the Joint Board recognized, it is important to ensure that the USF program reflects the expanding needs of consumers by ensuring that all Americans have access to broadband services — and equally — the applications and services which ride on top of broadband connection.

In this regard, an open Internet is essential to achieving the goal of increasing broadband adoption in high-cost areas. Ensuring that consumers have sufficient reasons

---

<sup>1</sup> Open Internet Coalition supporters include the following organizations: eBay, Google, IAC, Amazon.com, Sling Media, TiVo, Free Press, Educause, Earthlink, American Library Association, American Association of Law Libraries, Association of Research Libraries, the Computer and Communications Industry Association, Data Foundry, Electronic Retailing Association, Internet 2, NetCoalition, Public Knowledge, Skype, TechNet, US PIRG, and the Future of Music Coalition. A more complete list and more information can be found at [www.openinternetcoalition.org](http://www.openinternetcoalition.org).

for subscribing to broadband Internet access is at least as important as targeting universal service support to the places that need it. Subsidizing a constrained, closed version of the Internet will not reverse the U.S. slide in international broadband rankings or lead to broadband subscribership numbers that Congress can be proud of. An open Internet allows consumers to benefit from the entire array of innovations occurring at the edge of the network without the network operator playing the role of gatekeeper or favoring some applications or services over others. An open Internet is a particular boon for rural broadband users, who will have full access to the same range of products and services as their urban counterparts and, as sellers of products and services, will be able to conduct business around the country and the world. Such openness furthers the existing statutory goal of giving consumers in high-cost areas access to “advanced telecommunication and information services . . . that are reasonably comparable to those services provided in urban areas . . . .”<sup>2</sup>

The Congress and the Commission have each established universal service policies to ensure that consumers understand the true cost of the services they choose and so they can make rational purchasing decisions. Since the 1996 Telecommunications Act, the Commission has pursued a laudable, bi-partisan policy of moving away from unsustainable, implicit universal support to a more durable, explicit funding mechanism. OIC believes policymakers cannot achieve universal, affordable broadband without replacing rural carrier implicit support with explicit sources of funds to support broadband infrastructure. At the same time, policymakers must ensure that rural carriers are made whole, if they are to transition to an IP network. And we should make no mistake, it is the nation’s small rural carriers – not the incumbent Bell Operating Companies and cable operators – who will deliver affordable broadband service to Americans. Indeed, OIC submits that telephone and cable industry objections to network neutrality rules are built, in part, on their desire to return to a discredited, complicated inter-company payment scheme that has held back rural America from making a complete transition to broadband. This should not be permitted.

Instead of returning to a broken system, OIC supports proposals to establish a Broadband Fund to make broadband infrastructure available to rural consumers who would otherwise lack access to the broadband Internet. As such as the proposed approximately \$300 million per year federal funding level may be an incremental first step, but it is woefully inadequate if the all rural users are to benefit from affordable broadband.<sup>3</sup> Should the FCC move forward with the Joint Board’s recommendation, OIC strongly urges the Commission to require that support from such a Fund should be conditioned on eligible telecommunications carriers (“ETCs”) operating their broadband networks in accordance with openness requirements. In this regard, OIC offers its unqualified support for NTCA position that once broadband becomes a supported service under Title II of the Act, carriers receiving such support should be subject to additional

---

<sup>2</sup> 47 U.S.C. § 254(b)(3); see also *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-22, ¶ 57 (rel. Jan. 29, 2008) (“*High-Cost Support NPRM*”).

<sup>3</sup> *High-Cost Support NPRM*, ¶ 29.

regulatory conditions,<sup>4</sup> in this case, an obligation to operate supported broadband networks consistent with openness requirements discussed below.

As OIC has argued in the past,<sup>5</sup> such openness requirements should include not only adherence to the four principles contained in the Commission's *Broadband Policy Statement* but also an enforceable nondiscrimination principle similar to the condition agreed to by AT&T during the approval of its merger with BellSouth.<sup>6</sup> By doing so, Congress will ensure that rural consumers and others in high-cost areas truly enjoy the benefits of an open Internet, including innovation and competition at both the application and network levels.<sup>7</sup> We ask that the Congress and the Commission also seriously consider other, more ambitious infrastructure proposals like those proposed by Free Press<sup>8</sup> and Educause<sup>9</sup> as a way of harmonizing the nation's interest in broadband deployment with protecting an open Internet. These more ambitious proposals, are the correct approach to reforming the nation's universal service programs.

Please do not hesitate to address any questions to the undersigned.

Respectfully submitted,

/s/Markham C. Erickson  
Markham C. Erickson, Esq.  
*Executive Director*  
OPEN INTERNET COALITION  
400 N. Capitol St., NW, Suite 585  
Washington, DC 20001

---

<sup>4</sup> Comments of National Telephone Cooperative Associations, WC 05-337, CC Docket 96-45, at Pg. 4.

<sup>5</sup> Comments of the Open Internet Coalition, WC Docket No. 07-52, at 14-15 (filed June 15, 2007).

<sup>6</sup> *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 06-74, FCC 06-189, at 154 (rel. Mar. 26, 2007). Under such a nondiscrimination condition, a network operator would be prohibited from providing or selling to Internet content, application, or service providers, including those affiliated with the network operator, any service that privileges, degrades or prioritizes any packet based on its source, ownership or destination.

<sup>7</sup> *Cf. Rural Cellular Association, Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers*, RM-\_\_\_\_\_ (filed May 20, 2008) (noting that rural wireless consumers do not enjoy the same choices with respect to wireless handsets, including smartphones that access broadband services, as do urban users).

<sup>8</sup> Cite

<sup>9</sup> See [Add link to Educause proposal]