

the objectives described in the National Plan, in particular those that address the great potential broadband has to foster civic engagement. We firmly support creating an open and transparent government, building a strong digital media ecosystem, utilizing social media for civic dialogue and modernizing the democratic process in order to keep our democracy vibrant and healthy¹.

The Notice invites interested parties to comment on the best way for the Commission to fulfill its statutory mission with respect to broadband Internet service in light of the legal and factual circumstances that exist as a result of the *Comcast* decision². Common Cause joins in and incorporates by reference the legal and technical arguments proffered by the Center for Media Justice, Consumers Union, Media Access Project and New America Foundation in their comments dated July 15, 2010 that advocate for the classification of a broadband Internet connectivity service as a telecommunications service under the Communications Act.

The following comments speak briefly and specifically to the necessity of immediate action by the Commission to protect the open Internet because of its impact on the democratic process in general, and in the context of another important court decision.

The Supreme Court of the United States handed down a decision on Jan. 21, 2010 that will enhance the ability of the deepest-pocketed special interests to influence elections and the U.S. Congress. The decision in *Citizens United v. the Federal Election Commission*³ overturned the ban on independent expenditures by corporations, paving the way for unlimited corporate and union spending in elections. The 5-4 ruling overturned decades of settled campaign finance law.

¹See a 2008 Report from the Common Cause Education Fund, "[Media and Democracy in America Today: A Reform Plan for a New Administration](#)"

² *Comcast Corp. v FCC*, 600 F.3d 642 (D.C. Cir. 2010) (*Comcast*)

³ *Citizens United v. the Federal Election Commission*, US Sup. Ct., 08-205 (1/21/2010), <http://www.supremecourt.gov/opinions/09pdf/08-205.pdf>

When it comes to independent expenditures, the Court held that there is no difference under the law between an individual citizen and a multinational corporation (or any other corporation). Corporations will now be able to pay for a barrage of multi-media advertisements that directly call for the election or defeat of political candidates, or worse. The lack of enforceable net neutrality rules could mean corporate dominance of the political discourse over the Internet, which is fast becoming the most used medium for news and information gathering.

II. An Informed Electorate is the Foundation of American Democracy.

"Whenever the people are well-informed, they can be trusted with their own government;... whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights." --Thomas Jefferson to Richard Price, 1789. ME 7:253

Civic engagement is the lifeblood of any democracy and the bedrock of its legitimacy⁴. The Internet strengthens our democracy by dramatically increasing the public's access to information and by providing new tools for Americans to engage with this information, their government and one another.

In order to be adequately informed, citizens must have access to the free and unfiltered flow of information. Manipulation, degradation or censorship of certain types of information will stifle civic dialogue, and snuff out the ability of free people to govern themselves responsibly. A "government by the people" who are ill-informed is a government that is sure to fail.

III. Freedom of Speech and Expression Creates the only True Marketplace of Ideas

⁴ *Connecting America: The National Broadband Plan*, p.299

Freedom of speech and expression, memorialized in the First Amendment to the U.S. Constitution, is recognized as a keystone of American liberty. Free speech is also a human right under Article 19 of the Universal Declaration of Human Rights, and is recognized in international human rights law in the International Covenant on Civil and Political Rights⁵. The right to receive, hold and publish opinions without interference is the bedrock of civilized society. Net neutrality rules prohibiting censorship and mandating that all Internet content be treated the same is consistent with American and international standards of freedom and decency.

The extent to which a country's citizens are able to participate in electing their government, as well as freedom of expression, freedom of association, and free media is what separates free societies from dictatorships⁶. The voice of all people and the accountability of those elected to govern are inextricably linked to the ideals of the American Republic.

Without an Internet that is open to the free flow of ideas and opinions, people making decisions about candidates and issues will be denied the true diversity of choices. Equal access to the full spectrum of ideas will uncover the truth and promote progress. An industry-bought Internet will generate only industry-bought content. An Internet that can be sold, chopped and spliced to the highest bidder absent net neutrality rules will no longer serve as the public square of all ideas, good and bad.

Most importantly, an Internet information highway with fast lanes for those with money and power, and slow lanes for ordinary Americans, coupled with elections and campaigns that now can be sold to the highest bidder thanks to the *Citizens United* case, will deny the American

⁵ http://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights

⁶ *Id.*

people the right to be truly informed when making critical decisions about the future of this great country.

IV. The Internet is How and Where People Receive Information, and is a Public Resource

Nearly two thirds of American adults have adopted broadband at home⁷, and a record-breaking 46% of Americans used the Internet, email or cell phone text messaging to get news about the 2008 election, as well as share their views and mobilize others⁸. Increased adoption of broadband is the goal of the U.S. President, the Congress, this Commission, as well as the ISP industry; therefore it's inevitable that political discourse will increase online over time.

Furthermore, the Internet was developed in the 1960's by the U.S. Defense Department with taxpayer dollars to connect government research facilities, and now connects people in 65 countries around the world. No nation, person or corporation owns or controls it. Most networks use the public right of way to string their cables and house their equipment. Most major industry providers of Internet service who oppose codifying basic net neutrality rules are recipients of mass amounts of government subsidy⁹. The American Recovery and Reinvestment Act appropriated \$7.2 billion to fund programs to promote the adoption and deployment of

⁷ *Connecting America: The National Broadband Plan*, p.23

⁸ The Internet and the 2008 Election, Pew Research Center, <http://www.pewinternet.org/Reports/2008/The-Internet-and-the-2008-Election.aspx>

⁷ <http://www.fcc.gov/>

⁹ http://www.informationweek.com/news/infrastructure/management/showArticle.jhtml?articleID=225702855&cid=RSSfeed_TechWeb

broadband. Clearly the Internet is the quintessential public resource, serves as the platform for today's democratic process, and needs vigilant protection by this Commission.

V. Corporate Control of the Internet, Coupled with Unlimited Campaign Financing Could Silence Important Public Discourse and Weaken American Government by the People

Common Cause is dedicated to restoring the core values of American democracy, reinventing an open, honest and accountable government that serves the public interest, and empowering ordinary people to make their voices heard in the political process. We have been a strong supporter of net neutrality for many years and recognized early on that the Internet is the new town hall, where people can debate issues and interact with candidates and elected officials. Even with a perfect campaign finance system, an enforceable net neutrality rule is good public policy. Now with the anticipated adverse impact the *Citizens United* case may have on elections, we strongly urge this Commission to immediately take action to shore up the democratic process. By codifying net neutrality rules and protecting the openness of the Internet this Commission will:

- Strengthen public participation and faith in our institutions of self-government;
- Ensure that government and the political process serves the common good, rather than special interests;
- Curb the excessive influence of money on government decisions and elections;
- Promote fair, honest and transparent elections;

- Hold government officials accountable for working within the rule of law and under high standards of ethical conduct;
- Promote a vigorous, independent and diverse media; and
- Protect the civil rights and civil liberties of all Americans.

CONCLUSION

It is our common cause to forge a democracy by and responsive to an engaged public, and we are committed to progress in the struggle for social, economic and environmental justice for all. To this end, and especially in light of the *Citizens United* decision and the anticipated deluge of special interest money funneled to campaigns, protecting the open Internet is crucial. Corporations and other special interests should not be given the unrestricted power to control the flow of information over the public's communication infrastructure.

For the forgoing reasons, Common Cause respectfully urges the Federal Communications Commission to classify the Internet connectivity portion of broadband Internet service as a telecommunications service in order to protect the public interest, and establish enforceable rules that will keep the Internet open and non-discriminatory.

Dated August 12, 2010

/s/ Robert Edgar

Robert Edgar, President and CEO

Common Cause

1133 19th Street, NW, 9th Floor

Washington, DC 20036