BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the matter of:	)	
	)	
Framework for Broadband Internet Service	)	GN Docket 10-127
	)	

REPLY COMMENTS OF LAURENCE BRETT GLASS, D/B/A LARIAT

Laurence Brett ("Brett") Glass, a sole proprietor doing business as LARIAT, a wireless Internet service provider serving Albany County, Wyoming, offers the following reply comments in response to comments filed in the above captioned docket.

I. INTERNET ACCESS IS NOT "COMMON CARRIER" TELECOMMUNICATIONS SERVICE AND THEREFORE IS NOT SUBJECT TO REGULATION UNDER TITLE II

Most, if not all, of the comments advocating reclassification of Internet service under Title II of the Telecommunications Act either assert or assume that Internet access service falls within the scope of this title of the statute when in fact it does not. The Internet is – and has been from its inception – a loose federation of privately operated computer networks whose owners, whether they belong to the public or private sector, have agreed to exchange packets of data with one another using agreed-upon protocols. Each network owner that participates in this federation has, *ab initio*, been entitled to set its own terms of service; manage, pass, or decline to pass any traffic as it sees fit; enforce its own acceptable use policies and choose to whom it provides access. Thus, an Internet service provider is not a common carrier.[1] This is true even though components of one or more of the federated networks comprising the Internet – for example, leased lines – may fall within the Commission's subject matter jurisdiction.[2] The fact that

---

[1] The "key factor" in common carriage "is that the operator offer indiscriminate service to whatever public its service may legally and practically be of use." NARUC v. FCC, 525 F.2d at 642).

[2] See, for example, GTE Service Corp. v. FCC, 474 F.2d 724 (2nd Cir. 1973).

Internet providers share communications services and facilities with other providers as a matter of course, and in fact cooperate to deliver traffic to and from providers with which they do not have direct business relationships, likewise removes them from the category of common carriers which are subject to the provisions of Title II.[3]

Some commenters have pointed to the order in *Brand X*[4] as an affirmation that the Commission could have succeeded in classifying Internet access services delivered via cable modem as Title II telecommunications services if it had chosen to do so many years ago. However, the Court's analysis did not actually reach the question of whether any such construction of the statute would be reasonable and comport with the facts. The decision considered only the reasonableness of the Commission's arguments in favor of classifying Internet service as an "information service." The Court held that "The Commission's conclusion that broadband cable modem companies are exempt from mandatory common-carrier regulation is a lawful construction of the Communications Act under Chevron and the Administrative Procedure Act." Not having been presented with an opposite construction by the Commission, it did not conclude – and could not have concluded – that such a construction would pass muster.

LARIAT believes that, should the Commission attempt to reclassify Internet access services as telecommunications services subject to Title II regulation, the courts will, Chevron deference notwithstanding, reject such reclassification because such a construction of the statute would not comport with the facts as presented above. LARIAT therefore urges the Commission to avoid the uncertainty that would be engendered by a lengthy court battle in which an attempt to reclassify Internet access service as a common carrier telecommunications service would ultimately be rebuffed.

---

[3] Sharing of communications services and facilities does not constitute common carriage and is not subject to Title II; AT&T v. FCC, 572 F.2d 1725 (2d Cir. 1978).

[4] National Cable & Telecommunications Association et al. v. Brand X Internet Services et al., 545 U.S. 967 (2005).

II. RECLASSIFICATION WOULD SHATTER INVESTOR CONFIDENCE

The Commission should also avoid reclassification because to do so would destroy investor confidence – both in the consistency of the Commission's regulation and in the ability of Internet service providers to remain financially sustainable in the face of potentially heavy regulation in the future. Reclassification of Internet access service, were it to be successful, would overturn more than a decade of existing policies, rules, and case law, throwing the industry into turmoil and frightening investors. (The mere prospect of reclassification and possibly onerous regulation has prevented LARIAT from being able to attract investors and hence from aggressively pursuing the deployment goals of the FCC's National Broadband Plan.) What's more, by reclassifying Internet service, the FCC would be reneging on so many earlier decisions that it would destroy any and all confidence that the Commission would hew to its promises of forbearance. Absent legislation that prohibited the application of the sections from which the Commission proposes to forbear to Internet service, investors would be forced to assume the worst: that future Commissions could, and would, apply any of the regulatory provisions of Title II, no matter how ill-fitting or detrimental, to Internet service.

III. RECLASSIFICATION WOULD HARM COMPETITION AND CONSUMER CHOICE

By placing increased – and potentially unsustainable – regulatory burdens upon small, rural, independent, and competitive ISPs, reclassification would force many of them out of business, harming consumer choice and broadband availability. It would thus not further the goals stated in the National Broadband Plan but instead actually prevent progress toward them.[5]

IV. RECLASSIFICATION WOULD SAP THE COMMISSION'S RESOURCES AT A CRITICAL MOMENT IN HISTORY

Our nation, facing a sustained economic downturn, needs to act quickly to create jobs and increase

---

[5] "Competition is crucial for promoting consumer welfare and spurring innovation and investment in broadband access networks. Competition provides consumers the benefits of choice, better service and lower prices." *Connecting America: The National Broadband Plan*, FCC (March 16, 2010), available at http://download.broadband.gov/plan/national-broadband-plan.pdf (Broadband Plan), at 36.

broadband deployment. Reclassification of Internet service would require extensive rewriting of rules and regulations, diverting the Commission's resources from activities which would help our country to achieve the goals articulated in the Broadband Plan – for example, action on the longstanding issue of "special access." If this Commission's legacy is to be one of economic growth and increased prosperity, it should not embark upon a course which would unavoidably involve unproductive court battles and paperwork.

V. CONCLUSION

LARIAT owes its existence – and its customers owe their broadband service – to the Commission's light regulatory touch to date. None of the arguments for increased regulation of the Internet are compelling, and there certainly is no crisis that warrants such drastic measures as gutting the entire policy framework under which the Internet has prospered so dramatically to date. As mentioned in LARIAT's previous filings (which see),[6] [7] the best outcome can be achieved not by reclassification of Internet service or by heavy handed regulation but by targeted action to increase competition and prevent anticompetitive tactics – allowing markets, rather than complex and onerous rules, to work for consumers. Such an approach also has the advantage of being within the scope of the Commission's current authority, requiring neither new legislation nor a risky attempt by the Commission to delegate authority to itself, absent action by Congress, as contemplated in this proceeding. LARIAT urges the Commission to consider this "fourth way" rather than the "third way" currently under consideration.

Respectfully submitted,

Laurence Brett ("Brett") Glass, d/b/a LARIAT
PO Box 383
Laramie, WY 82073-0383

---

[6] *Comments of Laurence Brett ("Brett") Glass, d/b/a LARIAT, a Wireless Internet Service Provider Serving Albany County, Wyoming*, GN Docket No. 09-191, WC Docket No. 07-52, filed 1/14/2010, available at http://fjallfoss.fcc.gov/ecfs/document/view?id=7020378860.

[7] *Reply Comments of Laurence Brett ("Brett") Glass, d/b/a LARIAT, a Wireless Internet Service Provider Serving Albany County, Wyoming*, GN Docket No. 09-191, WC Docket No. 07-52, filed 4/26/2010, available at http://fjallfoss.fcc.gov/ecfs/document/view?id=7020434849.