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August 30, 2017

Ms. Marlene Dortch  
Federal Communications Commission  
455 12<sup>th</sup> Street S.W.,  
Washington D.C. 20554

**Re: Reply Comments Supplement, In the Matter of Restoring Internet Freedom, WC  
Docket No. 17-108, FCC 17-60, Record Submission**

Dear FCC Commissioners and *Internet Freedom* Docket Staff Members:

Please accept for the record in the Internet Freedom Rulemaking Docket the attached documents which are true and correct copies of: 1) Exhibit A: My 2010 Open Internet Reply Comments;<sup>1</sup> 2) Exhibit B: My 2015 Open Internet ex parte letter<sup>2</sup> and; 3) Exhibit C: the ex parte I submitted regarding my testimony to a September 24, 2014 Congressional Forum on net neutrality hosted by Congresswoman Matsui,<sup>3</sup> and 4) Exhibit D: My article, *Disclosure, Deception, and Deep Packet Inspection, The Role of the Federal Trade Commission Act in the Net Neutrality Debate*.<sup>4</sup>

The Reply Comments I filed in the 2010 Open Internet Proceeding are relevant to the FCC's questions in the Internet Freedom Rulemaking about whether the FCC and consumers can rely on industry self-governance to protect the Open Internet.<sup>5</sup> My 2017 Internet Freedom Rulemaking Reply Comments argue on pages 33-38 that the FCC's 2015 Open Internet rules led to a shift in Internet Service Provider (ISP) contract terms as the FCC made blocking, throttling, and paid prioritization unlawful. My 2010 Open Internet Reply Comments and my article *Disclosure, Deception, and Deep Packet Inspection, The Role of the Federal Trade Commission Act in the Net Neutrality Debate* discuss in detail the contract practices of ISPs used to limit access to Internet applications, protocols, or types of uses prior to the FCC's adoption of

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<sup>1</sup> Reply Comments of Catherine J.K. Sandoval, Associate Professor of Law, Santa Clara University, Associate Director, Broadband Institute of California, Preserving the Open Internet, Broadband Industry Practices (GN Docket, No. 09-191, WC Docket No. 07-52), at 60, [hereinafter *Professor Sandoval 2010 Preserving the Open Internet Reply Comments*], <https://ecfsapi.fcc.gov/file/7020442044.pdf>).

<sup>2</sup> Framework for Broadband Internet Services, GN Docket No. 10-127, received by the FCC October 13, 2014, [hereinafter *Commissioner Sandoval ex parte letter*], <https://ecfsapi.fcc.gov/file/60000972786.pdf>.

<sup>3</sup> Written Statement of Commissioner Catherine J.K. Sandoval, Commissioner, California Public Utilities Commission, Before the Congressional Forum on Net Neutrality, Hosted by Congresswoman Doris O. Matsui, Sept 24, 2014, at 7, 44, 55, 70, 77, 92, 94, 95 [hereinafter *Commissioner Sandoval 2015 Open Internet Ex Parte Comments*], <https://ecfsapi.fcc.gov/file/60000972787.pdf>.

<sup>4</sup> 78 FORDHAM L. REV. 641, 681 (2009).

<sup>5</sup> FCC, *In the Matter of Restoring Internet Freedom*, 82 FR 25568, WC Docket No. 17-108, FCC 17-60, Notice of Proposed Rulemaking (rel. May 23, 2017) at ¶ 85 (hereinafter *Internet Freedom NPRM*).

enforceable rules in the 2015 Open Internet proceeding that prohibited blocking, throttling, and paid prioritization. My 2017 Internet Freedom reply comments point to the shift in ISP terms of service and acceptable use policies after the 2015 Open Internet decision. As discussed in my 2017 Internet Freedom Reply Comments, these documents are relevant to the analysis of the need for enforceable rules under Title II to protect the Internet's openness for users and as a mechanism to distribute and access content.

My 2015 Open Internet ex parte letter<sup>6</sup> and the ex parte I submitted regarding my testimony to a September 24, 2014 Congressional Forum on net neutrality hosted by Congresswoman Matsui contend that the open Internet is key to public safety and to critical infrastructure, and argues that allowing individualized bargaining not only imposes undue transaction costs, it undermines Internet openness, investment, and public safety.<sup>7</sup> My 2015 comments conclude that in light of *Verizon v. FCC*, 740 F.3d 623, 655-656 (D.C. Cir. 2014) only the Title II classification of ISPs, nor Title I or unenforceable principles, can be used to support FCC rules or jurisdiction to respond to complaints about Internet openness.

Thank you for the consideration of this material relevant to the issues raised in the *Internet Freedom NPRM*. Omission of discussion of other issues raised by the NPRM should not be seen as agreement, disagreement or waiver of any position related to those issues. I reserve the right to supplement my analysis through ex parte filings.

Sincerely,

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Catherine Sandoval  
Associate Professor  
Santa Clara University School of Law

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<sup>6</sup> Commissioner Sandoval ex parte letter, *supra* note 2.

<sup>7</sup> Commissioner Sandoval 2015 Open Internet Ex Parte Comments, *supra* note 3.