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September 8, 2017

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

**RE: WC Docket No. 17-108
WC Docket No. 11-42**

Dear Ms. Dortch:

On Wednesday, September 6th, Free Press's President and CEO Craig Aaron, Deputy Director and Senior Counsel Jessica González, and I, all met with Commissioner Rosenworcel, along with her staff members Travis Litman and Holly Saurer, to discuss matters in the above-captioned dockets.

Our presentation on the attempt to repeal the Commission's successful 2015 *Open Internet Order*¹ centered on analysis in our initial and reply comments in that proceeding. We reviewed our research showing that the 2015 order preceded a historic period of investment and innovation across the entire internet – by broadband internet access service providers and “edge” providers alike. The majority of publicly traded broadband providers' own financial disclosures report investment increases, and the Commission's Form 477 deployment data shows a remarkable level of new, higher capacity deployments by broadband providers across the board.

Commenters incorrectly claiming some harm to investment from Title II focus on a supposed change in aggregate total capital investment. Their manipulated totals stem from vague and unspecified tabulations for the broadband industry as a whole, and they distort the amount invested by certain providers while ignoring freely available public statements explaining individual firms' decisions. But even were these manipulated aggregate figures correct, a myopic focus on raw dollars spent ignores both the Commission's statutory mandate to promote deployment and the overwhelming evidence contradicting the claimed harms.²

We also discussed our legal analysis of the Commission's reclassification decision in the *Open Internet Order*. We reiterated the strength of its return to the proper interpretation of broadband as a telecommunications service, both on its own merits and as a foundation for any effective open internet rules. We detailed flaws in the classification arguments offered by carriers and others attempting to re-litigate theories rejected by the DC Circuit in its review of that order.³

¹ See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) (“*Open Internet Order*”).

² See Reply Comments of Free Press, WC Docket No. 17-108, at 22–24 (filed Aug. 30, 2017).

³ See, e.g., *id.* at 9–19.

Lastly with respect to Net Neutrality, but perhaps most importantly, we described the importance of these rules for protecting free expression online and access to nondiscriminatory telecommunications networks. Briefly summarizing the comprehensive comments and replies submitted in that docket by the Voices for Internet Freedom Coalition, we noted how important the open internet has been to the fight for civil rights and racial justice. We relayed stories collected by Voices' member organizations at events around the country this year, illustrating how people of color describe their need for communications services that are both open and affordable.

In terms of Lifeline and our presentation on matters in that proceeding, we briefly recapped Free Press testimony delivered to the Senate Committee on Commerce, Science, and Transportation on the same day as this *ex parte* meeting. As that testimony made clear, Lifeline's modernization for the broadband era remains crucial for poor people and people of color, who are disproportionately on the wrong side of the digital divide. Chairman Pai's attempts to undermine the program by revoking Lifeline Broadband Provider certifications are legally problematic and damaging to Lifeline recipients. But specifically with regard to the main topic of the Senate hearing, we explained that a recent GAO report (depicting problems with carriers' determinations of recipients' eligibility) was an out-of-date snapshot of a program since modernized and improved several times over – with implementation of reforms adopted in 2016 still ongoing, and poised to address the very same issues described by GAO in its report.⁴

Respectfully submitted,

Matthew F. Wood
Policy Director
Free Press

cc: Travis Litman
Holly Saurer

⁴ See Written Testimony of Jessica J. González, Deputy Director & Senior Counsel, Free Press and Free Press Action Fund, Before the U.S. Senate Committee on Commerce, Science, and Transportation, "Addressing the Risk of Waste, Fraud and Abuse in the FCC's Lifeline Program" (Sept. 6, 2017), https://www.freepress.net/sites/default/files/resources/free_press_lifeline_testimony_september_2017.pdf.