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VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW – Lobby Level
Washington, DC 20554

Re: *Restoring Internet Freedom*, WC Docket No. 17-108

Dear Ms. Dortch:

On Thursday, November 2nd, Jon Nuechterlein of Sidley Austin LLP, along with Gary Phillips, Christopher Heimann, and myself, all of AT&T, met on behalf of AT&T with Jay Schwarz, Chairman Pai's Wireline Advisor, to discuss the above-captioned proceeding.

Consistent with AT&T's comments in this proceeding, we urged the Commission to undo the radical step it took in 2015 of classifying broadband Internet access services as "telecommunications services" under Title II of the Communications Act. In so doing, the Commission would be restoring the prior "information service" classification that had always previously applied, and which the Supreme Court upheld in in 2005 in NCTA v. Brand X. The Commission has clear authority to treat broadband Internet access services as information services, and under the APA need only explain its reasons for undoing its ill-advised 2015 reclassification.

We also discussed the Commission's authority to preempt state-by-state regulation of broadband Internet services, which are "properly considered jurisdictionally interstate for regulatory purposes."[1] That authority is supported by a long line of precedent, including the Vonage Order, which preempted state regulation of nomadic VoIP services,[2] and the Eighth Circuit's subsequent affirmance of that Order.[3] Indeed, the Commission itself reiterated that

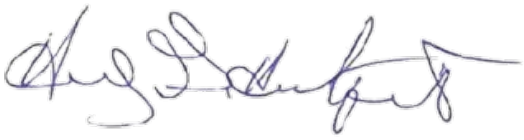
[1] *Title II Order* ¶ 431, citing *NARUC Broadband Data Order,* 25 FCC Rcd at 5054, ¶ 8 n.24 (citing *GTE Order,* 13 FCC Rcd at 22475, ¶ 16).
[2] Mem. Op. & Order, *Vonage Holdings Corp Pet. For Declaratory Ruling Concerning an Order of the Minnesota P.U.C.*, WC Docket No. 03-211, FCC No. 04-267, ¶ 21 (2004) ("[I]f DigitalVoice were to be classified as an information service, it would be subject to the Commission's long-standing national policy of nonregulation of information services, particularly regarding economic regulation, … [E]conomic regulation of information services would disserve the public interest because these services lack[] the monopoly characteristics that led to such regulation of common carrier services historically.").
[3] *Minnesota P.U.C. v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007) ("[A]ny state regulation of an information service conflicts with the federal policy of nonregulation. … Competition and deregulation are valid federal interests the FCC may protect through preemption of state regulation.").

authority in a recent amicus brief filed in opposition to state regulation of other VoIP services.[4] Moreover, the 2015 order itself predicated its broad preemption of state regulation on these general sources of authority, not on the classification of broadband Internet access service under Title II.[5]

Finally, to the extent that the Commission retains sensible disclosure requirements and does not at this time eliminate uncontroversial rules against harmful blocking and throttling, its authority to preempt state regulation would be even more unassailable.

Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,



Henry G. Hultquist

CC:
Jay Schwarz

[4] *See* Br. for the FCC as Amicus Curiae, *Charter Advanced Servs, LLC v. Lange*, No 17-2290, at 7-13 (8th Cir. filed Oct. 27, 2017).
[5] *Title II Order* ¶¶ 430-33.