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Ex Parte

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

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

Dear Ms. Dortch:

On November 6, 2017, Will Johnson, Verizon Senior Vice President–Federal Regulatory & Legal Affairs and I, along with Helgi Walker and Kian Hudson of Gibson, Dunn & Crutcher LLP, met with: Madeleine Findley, Kris Monteith, Daniel Kahn, and Melissa Kinkel, from the Wireline Competition Bureau; Jia-Ming Shang, of the Wireless Telecommunications Bureau; and Marcus Maher, Douglas Klein, Jacob Lewis, William Richardson, Scott Noveck, and Kristine Fargotstein, of the Office of General Counsel.

We expressed our continued support for the open Internet and concern that Title II regulation of broadband services is harmful to investment and innovation, consistent with our comments¹ filed in this proceeding.² In particular, we discussed the importance of the Commission ensuring that any regulatory framework that applies to broadband Internet access services recognize that these services are inherently interstate, and that federal law and policy apply a national, light-touch approach to regulation. We explained that state-specific rules relating to these services simply don't work when we are talking about services that freely cross state boundaries, where a user may be in one state, but she accesses content from a host in another state, using a provider from yet a third. We also noted that, as Commissioner O'Rielly has observed,³ states and localities seeking to reinstate increased regulation could undermine the FCC's efforts to revive its historic light-touch approach to regulating these services.

¹ See Verizon Comments, WC Docket No. 17-108 (July 17, 2017); Verizon Reply Comments, WC Docket No. 17-108 (Aug. 30, 2017).

² See *Restoring Internet Freedom*, Notice of Proposed Rulemaking, 32 FCC Rcd 4434 (2017) ("Notice").

³ See *id.*, at Statement of Commissioner Michael O'Rielly ("If the Commission decides that [broadband Internet access service] is an interstate information service, then states and localities should be foreclosed from regulating it, as some states are currently attempting to do with new broadband privacy laws, fees, approval processes, and other requirements.")

We thus encouraged the Commission, in response to the Commission's request for comment⁴ and consistent with the white paper we filed in this proceeding,⁵ to create a uniform, national framework for broadband that promotes investment and innovation, and ensures that states and localities do not undermine that framework with a patchwork of contrary state or local regulation of broadband. We observed that courts have consistently recognized the FCC has the authority to preempt state or local laws that it deems to obstruct or conflict with federal objectives, including deregulatory policies. We also explained that there are several sources of authority supporting agency preemption of state laws that threaten to frustrate the deployment of broadband, including Section 706(a) (irrespective of whether that provision independently delegates rulemaking authority), and Section 153, as well as implementing authorities described in our white paper; we further explained that Section 230(b)(2) confirms this approach.

Please contact me if you need any additional information.

Very truly yours,



Katharine R. Saunders

cc: Madeleine Findley
Kris Monteith
Daniel Kahn
Melissa Kinkel
Jia-Ming Shang
Marcus Maher
Douglas Klein
Jacob Lewis
William Richardson
Scott Noveck
Kristine Fargotstein

⁴ See Notice ¶ 67 (“We propose to respect the jurisdictional lines drawn by Congress whereby the FTC oversees Internet service providers' privacy practices ... We seek comment on this proposal.”); *id.* ¶ 101 (“If section 706 reflects a deregulatory emphasis, what authority does it give the Commission, particularly in situations in which capital expenditures by Internet service providers have slowed, as they have in the past year under Title II regulation? If we interpret section 706(a) as a grant of authority, does that mean state commissions would have coequal authority?”).

⁵ See Verizon White Paper, FCC Authority to Preempt State Broadband Laws, WC Docket No. 17-108 (Oct. 25, 2017).