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January 20, 2015

Ex Parte

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

Re: *Protecting and Promoting the Open Internet, GN Docket No. 14-28*

Dear Ms. Dortch:

On January 15, 2015, William H. Johnson, Roy E. Litland, David E. Young and I from Verizon met with Stephanie Weiner of the Office of General Counsel, Matthew DelNero of the Wireline Competition Bureau, Jim Schlichting and Michael Janson of the Wireless Telecommunications Bureau, and Chief Technology Officer Scott Jordan to discuss the proposed rules in the Open Internet NPRM. In the meeting we made the following points, consistent with our previous filings:

- **Internet Interconnection** – Netflix and its allies claim that broadband providers have incentives to use Internet interconnection points to thwart the open Internet. These arguments are misplaced. Internet interconnection has always been handled through an unregulated system of voluntary commercial agreements. These arrangements have always included a mix of paid and settlement-free arrangements. This flexible approach has been a resounding success that has encouraged investment and provided flexibility for innovative interconnection arrangements that accommodate new business models, new types of Internet traffic and changes in end users' preferences.

  Indeed, with so many differences among backbone providers, Internet content providers, Internet transit providers, CDNs, and ISPs, interconnection agreements are inherently individualized and take many forms based on a variety of factors, including traffic volume, relative traffic flows, location, capacity, price, and distance. Verizon has hundreds of agreements involving the exchange of U.S. Internet traffic. Paid, direct interconnection arrangements with CDNs and large content providers have been common for years without issue. Rather than imposing "tolls," paid, direct interconnection arrangements are a longstanding way to ensure a high quality connection and adequate capacity, particularly where traffic flows are not balanced. These arrangements ensure great service for mutual customers, and help to cover a portion of the costs associated with the content provider's traffic, including costs to establish interconnection and associated

capacity upgrades. Rather than indicating a problem, they reflect the continued success of market-based arrangements in enabling the explosive growth and evolution of the Internet.

- **Paid Prioritization** – We reiterated that Verizon has not and is not using "paid prioritization," and is on record numerous times as saying that it has no plans to undertake the hypothetical "paid prioritization" business model. To the extent the Commission adopts rules addressing paid prioritization, we suggested the Commission should define "paid prioritization" for these purposes as a practice by which a broadband provider might charge a content provider a fee to deliver its bits faster than the bits of others over the last mile broadband Internet access service. Under this definition, economic arrangements that do not affect the delivery of bits over the last mile should not qualify as "paid prioritization." In particular, any restrictions on paid prioritization should not apply to sponsored data or other similar arrangements that do not affect the delivery of traffic. Such arrangements do not raise the same concerns as paid prioritization, and offer considerable consumer benefits, including by saving consumers money.

- **Throttling** – Verizon suggested that if the Commission adopts rules prohibiting or restricting the "throttling" of Internet traffic, the focus should be on practices that intentionally slow particular Internet traffic on the basis of the traffic's source, destination, or content. Such practices should not be confused with service offerings that allow consumers to select plans that allow them to avoid overage charges by having all Internet traffic slowed after they exceed some usage threshold of their choosing. There is no reason to deny consumers the choice of such plans, and they do not constitute harmful throttling.

- **Transparency** – We explained that there is no need to modify the transparency rule because the existing transparency rule is effective. The Commission's proposal for new, tailored disclosures is unnecessary because the existing rule already requires broadband providers to disclose information sufficient for consumers to make informed choices and for content providers, device manufacturers, and other Internet companies to market their products and services. Many of the disclosures proposed in the record are unduly complex and burdensome and would impose substantial compliance costs without providing any real benefits to consumers. For example, the proposals for "real-time" notifications regarding performance and congestion are impracticable to implement and could confuse consumers if the reported information is not relevant to their individual circumstances. Moreover, consumers and other parties who are so inclined can already get real-time information about the performance of their individual broadband connections by using third-party applications and websites. If the Commission imposes new transparency requirements, it should ensure that broadband providers are only required to disclose information that relates to their last-mile networks and not networks that are controlled by other parties.

- **Specialized Services** – We reiterated that the Commission should not apply open Internet rules to specialized services or further limit that term. Parties proposing new definitions or rules for specialized services have identified only hypothetical concerns, and the restrictions they suggest would discourage the offering of innovative new services and take away choices for consumers. Rather than preempting innovation in this still-emerging area, the Commission should encourage it.

- **Legal Authority** – Verizon continues to believe that the Commission should follow the D.C. Circuit's roadmap for open Internet rules based on Section 706. As Verizon has previously explained, any attempt to "reclassify" broadband Internet access service as a Title II telecommunications service would be a radical and risky change to our Nation's long-standing, bi-partisan communications policy. Such action will cause significant, harmful consequences, and it is unlikely to withstand judicial review.[1] We also noted that the possibility of forbearance from some provisions of Title II is no panacea to address the many harms that would result from reclassification. Indeed, as the list of provisions that those proponents say *cannot* be forborne from continues to grow, their ultimate objectives become all the more clear. Their wish list involves several onerous obligations—ranging from rate regulation to mandatory unbundling—that have nothing to do with the openness of the Internet. And the forbearance for which they advocate is not forbearance at all, or would involve forbearance from only those provisions of little practical consequence. Their end game is not rules to ensure an open Internet, but regulation for regulation's sake.

- **Terminating Access Monopoly** – Finally, we noted that the supposed "terminating access monopoly" at the foundation of the case for restrictive new regulation of broadband services is absent. We described the declaration from Professor Janusz Ordover and Dr. Andres Lerner, filed by Verizon on January 15, explaining why neither the marketplace facts nor the economic theory support the existence of a terminating access monopoly for wireless broadband or for Verizon's wireline broadband services.

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[1] *See* Verizon Comments, GN Dkt. Nos. 14-28, 10-127, at 46–69 (July 15, 2014) ("Verizon Comments"); Letter from Verizon to FCC, GN Dkt. Nos. 14-28, 10-127, at 1–12 (Oct. 29, 2014) (attaching "*Title II Reclassification and Variations on that Theme: A Legal Analysis*") ("Verizon White Paper").

Pursuant to section 1.1206 of the Commission's rules, a copy of this notice is being electronically filed in the above referenced docket. Please contact me with any questions.

Sincerely,

Maggie McCready

cc: Stephanie Weiner
Matthew Del Nero
Jim Schlichting
Michael Janson
Scott Jordan