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EX PARTE

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

Re: Open Internet Remand Proceeding, GN Docket No. 14-28; Framework for Broadband Internet Service, GN Docket No. 10-127

Dear Ms. Dortch:

The record in these proceedings is clear that Title II regulation would diminish investment and innovation in the Internet ecosystem. Multiple economic analyses in the record have demonstrated empirically that the U.S. broadband marketplace is the global gold standard. These analyses prove that countries with heavier regulatory approaches to broadband policy have weaker broadband investment, higher prices, reduced speeds, lower coverage, less facilities-based competition, less deployment of next-generation broadband facilities, and depressed usage *vis-à-vis* the United States. Unlike the successful policy approach pursued through multiple administrations, the dangerous and unnecessary act of reclassifying broadband under Title II would snatch defeat from the jaws of victory.

Set forth below are some of the key points and conclusions set out in six of these papers.

1. ***Christopher Yoo (University of Pennsylvania Law School Institute for Law and Economics), U.S. vs. European Broadband Deployment: What Do the Data Say? (June 2014)***¹

¹ See Christopher Yoo, *U.S. vs. European Broadband Deployment: What Do the Data* (2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7521285448> (attached to *Ex Parte* Notice from Christopher Yoo, University of Pennsylvania, to Marlene H. Dortch, Secretary, GN Docket Nos. 14-28 et al. (filed June 10, 2014)).

- Next-generation broadband service, such as fiber and higher speed cable, was available in 73% of U.S. households at the end of 2011, compared to only 48% of European households. By the end of 2013, next-generation service was available in 82% of U.S. households but only 54% of European households.²
- At the end of 2012, next-generation service was available to 48% of U.S. rural households but only 12% of European rural households.³
- In 2012, 86% of Americans were covered by 4G LTE service, compared to only 27% of EU residents.⁴
- For every year between 2007 and 2012 (the last for which data was available), American per-household investment in the electronic communications sector vastly exceeded European investment in that sector. In 2012, American providers invested \$562 per household, compared to just \$244 per household in Europe.⁵

2. ***Everett Ehrlich (Progressive Policy Institute), The State of U.S. Broadband (2014)***⁶

- U.S. fixed broadband is the most affordable among the group of large industrial nations (including Canada, France, Germany, Italy, Japan, South Korea, and the United Kingdom).⁷
- The U.S. broadband industry has invested \$1.2 trillion in wireline, wireless, and cable infrastructure since the 1996 Act was passed. Annual expenditures have averaged \$66 billion. Verizon and AT&T alone accounted for more investment than the top five oil and gas companies combined and four times the investment of the Big Three automobile companies. Five of the 20 leading investors in 2011 were broadband providers (Verizon, AT&T, Comcast, Sprint, and Time Warner Cable).⁸
- As of December 2012, almost 97% of Americans had access to fixed and/or mobile speeds equal to or greater than 10 Mbps. Almost 92% of Americans had access to fixed

² *Id.* at 4.

³ *Id.* at 5.

⁴ *Id.* at 8.

⁵ *Id.* at 13.

⁶ Everett Ehrlich, *The State of U.S. Broadband: Is It Competitive? Are We Falling Behind?* (2014), available at http://www.progressivepolicy.org/wp-content/uploads/2014/06/2014.06-Ehrlich_The-State-US-Broadband_Is-it-competitive-are-we-falling-behind.pdf (“Ehrlich Report”).

⁷ *Id.* at 6-7.

⁸ *Id.* at 8.

broadband at those speeds and almost 90% had access to mobile broadband at those speeds.⁹

3. Roslyn Layton (Aalborg University) and Michael Horney (Mercatus Center at George Mason University), *Innovation, Investment, and Competition in Broadband and the Impact on America's Digital Economy (2014)*¹⁰

- A decade ago, the EU accounted for roughly one-third of the world's communications capex. That number today has plummeted to less than one-fifth . . . largely because of onerous utility-style regulation."¹¹
- Americans comprise 4% of the world's population but enjoy nearly one-fourth of its broadband infrastructure investment.¹²
- In 2013, per-capita U.S. investment was \$236.08, compared with \$119.31 in the EU and \$181.56 in South Korea.¹³
- In 2014, the U.S. had 13 of the top 20 Internet companies (as measured by annual revenues), compared to four in China, two in Japan, one in South Korea, and zero in the EU.¹⁴
- Average broadband speeds in the U.S. rose 25 percent between 2013 and 2014; if states were ranked individually as nations, nine states would rank among the 15 fastest nations in the world.¹⁵

4. Martin H. Thelle & Bruno Basalisco (Copenhagen Economics), *Europe Can Catch Up with the US: A Contrast of Two Contrary Broadband Models (June 2013)*¹⁶

⁹ *Id.* at 16.

¹⁰ Roslyn Layton & Michael Horney, *Innovation, Investment, and Competition in Broadband and the Impact on America's Digital Economy* (Mercatus Center at George Mason University, Working Paper No. 14-22, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7521867720> (filed Sept. 10, 2014 in GN Docket No. 14-28).

¹¹ *Id.* at 52.

¹² *Id.* at 53.

¹³ *Id.* at 54-55.

¹⁴ *Id.* at 67.

¹⁵ *Id.* at 72.

- Although “[t]he US and the EU share considerable similarities in terms of demographics, wealth, and other factors” that might affect broadband deployment, “the US generally comes out better in terms of broadband supply, quality and price as of 2013.”¹⁷
- Entry-level broadband products are available at more affordable prices in the U.S. than in European countries.¹⁸
- In Europe, regulation likely discouraged copper network providers from investing in fiber and slowed cable network upgrades. Such policy distinctions “are potentially key drivers behind the telecoms investment gap between the EU and US.”¹⁹

5. ***Erik Bohlin (Chalmers University of Technology), Kevin W. Caves (Navigant Economics), and Jeffrey A. Eisenach (Navigant Economics), Mobile Wireless Performance in the EU & the US (May 2013)***²⁰

- On average, U.S. consumers use nearly twice as much data per mobile connection (810 MB in 2013) as European consumers (415 MB in 2013).²¹
- 28% of American smartphone users use mobile video, as compared to 19% of European customers. 38% of American smartphone users stream online music, as compared to 20% of Europeans, and 85% of American smartphone users use their phone to browse the web, compared to 66% of Europeans.²²
- In 2013, wireless capex in the U.S. was 74% higher than in 2007; in Europe, 2013 wireless capex was 3% lower than in 2007.²³

¹⁶ Martin H. Thelle & Bruno Basalisco, *Copenhagen Economics, Europe Can Catch Up with the US: A Contrast of Two Contrary Broadband Models* (2013), available at <http://www.copenhageneconomics.com/Files/Filer/Publikationer/Europe%20can%20catch%20up%20with%20the%20US%20-%20A%20contrast%20of%20two%20contrary%20broadband%20models.pdf>.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 9.

²⁰ Erik Bohlin, Kevin W. Caves & Jeffrey A. Eisenach, Navigant Economics, *Mobile Wireless Performance in the EU & the US* (2013), available at <http://www.gsmamobilewirelessperformance.com/> (“Navigant Report”).

²¹ *Id.* at 7.

²² *Id.* at 15.

²³ *Id.* at 17.

6. **Richard Bennett, (American Enterprise Institute), *G7 Broadband Dynamics: How Policy Affects Broadband Value in Powerhouse Nations (2014)*.**²⁴

- The U.S. has the highest rate of smartphone adoption in the G7, with the possible exception of the United Kingdom.²⁵
- Across platforms, service at 10 Mbps or higher is more broadly available in the U.S. than in any other G7 nation except for Japan.²⁶
- Internet traffic is expected to be significantly higher in the U.S. than in any other G7 state through at least 2017 (the latest year for which projections are available).²⁷
- American fiber-to-the-home/fiber-to-the-basement takeup in 2012 was higher than in all other G7 nations except for Japan.²⁸

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Individually and collectively, the studies make a powerful case against Title II regulation and demonstrate conclusively why the Commission should not reverse course and should remain true to the bipartisan consensus that has placed the United States at the head of the broadband pack for nearly two decades.

Sincerely,



²⁴ Richard Bennett, American Enterprise Institute, *G7 Broadband Dynamics: How Policy Affects Broadband Value in Powerhouse Nations* 110 (Preliminary Draft 0.3, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7522666966> (attached to Reply Comments of Richard Bennett, GN Docket Nos. 14-28 et al. (filed Sept. 15, 2014)).

²⁵ *Id.* at 9. Bank of America reports a higher adoption rate in the U.S. than in the U.K., but Google places the U.K. in the lead. *See id.*

²⁶ *Id.* at 10.

²⁷ *Id.* at 12.

²⁸ *Id.* at 51.