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ELECTRONIC FILING

Chairman Tom Wheeler  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: GN Docket No. 09-191, GN Docket No. 14-28

Dear Chairman Wheeler, dear Commissioner Clyburn, dear Commissioner Rosenworcel, dear Commissioner Pai, dear Commissioner O’Rielly:

Please find enclosed a letter on network neutrality from 36 professors of law, economics, business, communication and political science. The letter is addressed to the FTC, but is filed concurrently with the FCC. The signatories support the adoption of Open Internet rules by the Federal Communications Commission (FCC), including a bright line ban on fees for any kind of preferential treatment (“paid prioritization”). To adopt such a ban, the FCC must reclassify broadband Internet access under Title II of the Communications Act and forebear from unnecessary regulation under that statute.

The letter represents an unprecedented display of support for a bright-line ban on edge-provider payments for any kind of preferential treatment (including zero-rating) by the nation's leading academics in a variety of fields relevant to the debate. The letter’s signatories include leading network neutrality experts Lawrence Lessig (Harvard), Barbara van Schewick (Stanford), and Tim Wu (Columbia), former FCC Chief Economist and former Director of the Bureau of Competition at the FTC Jonathan Baker (American University Washington College of Law), leading economist on network neutrality Nicholas Economides (NYU), leading first amendment experts and cyberlaw scholars Jack Balkin (Yale), Yochai Benkler (Harvard) and Pam Samuelson (UC Berkeley), leading scholars of entrepreneurship and innovation Carliss Baldwin (Harvard) and Eric von Hippel (MIT), and leading scholars of journalism, media and technology Ted Glasser (Stanford) and Fred Turner (Stanford).

The letter comes on the heels of the recent GOP bill that uses a much narrower definition of paid prioritization, banning only fees for prioritization, not for any other kind of preferential treatment. The letter explains why a ban on all forms of paid prioritization (including zero-rating) under Title II, coupled with appropriate forbearance, would promote competition and other important values such as innovation, free speech, and economic growth.

The letter explains why antitrust enforcement alone is not enough and why only the FCC can fully address the problems that edge-provider payments for preferential treatment create for competition, innovation and free speech online. In particular, antitrust enforcement cannot prevent excessive access charges by terminating monopolists and their anticompetitive incentive to degrade non-priority traffic or keep monthly bandwidth caps low. It could not fully prevent competitive harms arising from targeted exclusionary conduct. Nor could it address the harms to innovation and free speech resulting from any fees for preferential treatment.

The letter highlights the need for a bright line rule against paid prioritization. Even low fees for preferential treatment can chill speech and raise barriers to entry for start-ups, stifling the vibrant experimentation by low-cost innovators that drives innovation on the Internet. Thus, the harms from these fees are not limited to excessive fees or to discriminatory or exclusive offerings. In addition, a bright-line rule would provide clear guidance to broadband providers, entrepreneurs and their investors, reducing uncertainty that could reduce their incentives to invest, avoid the administrative costs and delay associated with case-by-case adjudication under the antitrust laws, and allow start-ups and other actors with few resources to take advantage of the rule's protections. Startups and innovators have consistently called for bright line rules, arguing that they do not have the resources to pursue long and costly case-by-case proceedings at the FCC against some of the largest companies in the world. The costs, uncertainty, and duration of such proceedings would make them a useless remedy.

The letter supports the complementary roles of the Federal Trade Commission (FTC) and Federal Communications Commission (FCC) in protecting an open Internet. Reclassification of broadband Internet access service as a telecommunications service could remove that service from FTC oversight. While Title II gives the FCC the authority necessary to effectively protect consumers of broadband Internet access service, consumers would benefit from continued FTC oversight as well. Therefore, the signatories support repeal of the provision that exempts common carrier services from the FTC's jurisdiction. However, given that the FCC will be able to effectively protect consumers under Title II even in the absence of FTC jurisdiction, any efforts to repeal the common carrier exemption should not hold up the FCC's adoption of Open Internet Rules under Title II of the Communications Act.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Barbara van Schewick

Barbara van Schewick

Professor of Law and (by courtesy) Electrical Engineering

Helen Crocker Faculty Scholar

Faculty Director, Center for Internet and Society, Stanford Law School

cc:

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