



February 2, 2015

**Via Electronic Filing**

Marlene H. Dortch  
Secretary Federal Communications Commission  
445 Twelfth Street S.W.  
Washington, D.C. 20554

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

Dear Ms. Dortch:

Given how important the Internet is to the U.S.'s vibrant startup ecosystem, startups around the country have been paying close attention to the FCC's rulemaking in the Open Internet docket. Engine—a nonprofit advocacy and research organization that promotes policies to help entrepreneurship and startup activity—has been working to make sure the startup community's interests in preserving an open Internet are heard.

To that end, Engine hereby submits an editorial published today in Re/code (attached hereto as Exhibit A) that outlines particular areas of interest that the startup community would like to see in the Open Internet rules the Commission is set to issue in February.

Startups everywhere want the FCC to enact strong net neutrality rules grounded in its Title II authority that create bright line bans on ISP gatekeeper discrimination—including bans on blocking, throttling, paid prioritization, and data sponsorship—and that give the FCC flexibility to address future forms of discrimination that have not yet emerged. In light of this strong interest in making sure ISPs cannot abuse their gatekeeper power in a manner that would harm startups seeking to compete in markets with entrenched incumbents, startups wish to see the FCC prohibit discriminatory activity anywhere it occurs, not just in the last mile. The FCC's rules should address recent actions by ISPs to discriminate against edge providers at interconnection points. To startups and consumers, it does not matter whether ISPs seek to impose access fees on the last mile or at interconnection points with backbone transit providers, as the resulting damage to innovation is the same.

Recent reports that the FCC is planning to enact open Internet rules predicated upon Title II reclassification are encouraging. It is crucial that the FCC use its authority under Title II to make sure that the net neutrality regulations it enacts are strong enough to prevent the myriad

ways ISPs may seek to extract monopoly rents from edge providers and flexible enough to react to future threats to the open Internet.

Sincerely,

A handwritten signature in black ink, appearing to read 'Evan Engstrom', with a stylized flourish at the end.

Evan Engstrom  
Policy Director, Engine

# Exhibit A

# What Startups Are Looking For in Net Neutrality Rules

 [recode.net/2015/02/02/what-startups-are-looking-for-in-net-neutrality-rules/](http://recode.net/2015/02/02/what-startups-are-looking-for-in-net-neutrality-rules/)

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## Voices

February 2, 2015, 7:00 AM PST

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- By Evan Engstrom, Policy Director, Engine

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Over the past year, what has traditionally been a wonky, inside-the-Beltway question — under what legal authority should the FCC govern the Internet? — has become a cause celebre, attracting input from more than four million people and thousands of startups who depend on an open Internet to compete.

Despite the lobbying might of the telecommunications industries, the outpouring of support from across the political spectrum for open Internet rules seems to have worked. “Title II” has become synonymous with net neutrality, and reports suggest that [next week the FCC will issue proposed rules](#) to reclassify broadband under Title II in order to enact strong net neutrality rules.

The [net neutrality debate](#) represents a high point for the Internet community’s impact on policy at the



national level. While we should celebrate the FCC's impending introduction of rules based on Title II reclassification, it will be a hollow victory if the rules themselves are not up to the task of protecting an open Internet. Title II is merely the tool that enables the FCC to craft strong net neutrality rules; the FCC must then choose to use that tool to enact meaningful, enforceable rules. While it seems unlikely that the FCC would reclassify only to put forth weak rules, the devil is in the details. Here are a few key details we'll be watching for next week:

**Mobile parity:** The last time the FCC issued net neutrality rules in 2010, it left a gaping hole by applying those rules to only wired access, not wireless. As more and more people access the Internet wirelessly, any rules preventing ISPs from prioritizing or discriminating against particular Internet traffic must apply equally to mobile and wired ISPs if they are to fully protect the Internet ecosystem.

**Interconnection:** Net neutrality is usually discussed in terms of ISP discrimination in the "last mile" — that is, the connection between an end user and her ISP. But discrimination that happens in another part of the data path — "interconnection" points — is just as problematic. To understand why interconnection matters, we have to remember that the Internet is really, as the name implies, a series of different interconnected networks (Inter-net = interconnected networks). Data originating from a content company, say Netflix, has to find its way from its network to the networks on which its customers reside.

This means that the so-called backbone networks that content providers use to transport data must come to agreements with your Internet provider to exchange large volumes of data between their networks. Because each ISP serves as a sort of gatekeeper to its customers, they can use these points of interconnection as tollbooths, holding up traffic in order to extract payment from content providers.

For example, last year, Comcast and Verizon allowed traffic coming from Cogent, a large Internet-backbone transit provider (which just happened to be a major carrier of traffic from Netflix) to become congested at the points of interconnection between their networks. Rather than trying to selectively slow down Netflix traffic once it was on their networks (an obvious net neutrality violation), these ISPs were effectively trying to throttle Netflix traffic farther up the chain in an attempt to accomplish the same goal: Getting Netflix to pay a toll to reach ISP customers.

Netflix might be able to afford these shady tolls, but thousands of startups trying to reach out to new customers simply cannot. In order to ensure the Internet remains a level playing field for competition, the FCC's net neutrality rules must address interconnection.

**Flexibility:** Technology will always develop faster than the laws meant to regulate it. Policymakers can't predict what future technologies might allow ISPs to discriminate against particular Internet traffic. For example, the last time the FCC created net neutrality rules, the problem of sponsored data (so called "zero-rating" plans) was scarcely an issue. Today, such plans — in which ISPs charge content providers to have their traffic not count against consumer data caps — are as much a threat to the open Internet as the "paid prioritization" schemes we've heard so much about.

The FCC's net neutrality rules must recognize that ISPs are likely to find new ways to exploit their gatekeeper power, and the Commission should retain flexibility to address changes that implicate core net neutrality concerns.

**Enforcement:** Rules that protect small startups are of little value if the burden of enforcing the rules falls principally on those cash-strapped startups.

Consumers and small businesses that will suffer from net neutrality violations simply cannot afford to hire attorneys and lobbyists to engage in legal battles with some of the largest companies in America. The rules the FCC enacts should err on the side of the startups and consumers by allowing for streamlined and

affordable processes to challenge discriminatory practices by ISPs, ensuring that the rules are not merely a dead letter.

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*Evan Engstrom is the policy director at [Engine](#), a nonprofit that supports the growth of technology entrepreneurship through economic research, policy analysis and advocacy on local and national issues. Reach him [@evanmengstrom](#).*

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