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February 4, 2015

VIA ECFS

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;
Framework for Broadband Internet Service, GN Docket No. 10-127***

Dear Ms. Dortch:

On February 3, 2015, on behalf of the National Cable & Telecommunications Association (“NCTA”), I spoke by phone with Matthew DelNero of the Wireline Competition Bureau and Stephanie Weiner of the Office of General Counsel in connection with the above-referenced proceedings.

During these conversations, I reiterated that, in the event of any decision to reclassify broadband Internet access service as a Title II “telecommunications service,” the Commission should ensure that such reclassification does not result in unnecessary, investment-stifling regulatory burdens on broadband Internet service providers (“ISPs”). In particular, I emphasized that, as NCTA has explained in recent submissions, the Commission should (a) grant broad forbearance from Title II’s restrictions and obligations as an integral part of any reclassification decision in order to preserve the deregulatory status quo,¹ and (b) confirm that, as an interstate service, broadband Internet access is not subject to state telecommunications regulation.²

¹ See Letter of Matthew A. Brill, Counsel for NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 14-28, 10-127, at 12-22 (filed Dec. 23, 2014) (“NCTA Dec. 23 Letter”); Letter of Matthew A. Brill, Counsel for NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 14-28, 10-127, at 2-6 (filed Jan. 14, 2015).

² See Letter of Jonathan Banks, USTelecom, Rick Chessen, NCTA, and Michael Altschul, CTIA, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 14-28, 10-127 (filed Jan. 23, 2015) (“USTA/NCTA/CTIA Jan. 23 Ex Parte”).

I further explained that preserving the existing pro-investment regulatory framework applicable to broadband Internet access services requires ensuring that state and local authorities are prohibited from imposing new franchising fees or other requirements on ISPs. I stressed that any state or local effort to require separate franchising of broadband facilities and services—*i.e.*, efforts to impose franchise fees *beyond* those that cable operators already pay under state or local franchise agreements, consistent with Title VI—would constitute impermissible regulation of an interstate service,³ and would upset the longstanding federal policy of preventing the imposition of duplicative franchise fees.⁴ In particular, the Commission indicated in the *Cable Modem Order and NPRM* that a cable operator’s provision of broadband Internet access service creates no meaningful additional burdens on public rights-of-way, and therefore tentatively concluded that “Title VI does not provide a basis for a local franchising authority to impose an additional franchise on a cable operator that provides cable modem service.”⁵

Moreover, subjecting ISPs to duplicative franchise fees would significantly increase the cost of providing broadband services, and thus would impede the deployment of advanced broadband networks and threaten to drive up retail rates for consumers. I pointed out that such an outcome would directly undermine the broadband deployment and adoption policies that the Commission is charged with implementing under Section 706.⁶

³ See USTA/NCTA/CTIA Jan. 23 Ex Parte at 2-4 (explaining that the Commission has repeatedly determined that broadband Internet access is an inherently interstate service, and that, as a result, “broadband Internet access service, and any ‘telecommunications’ component of that service, can be subject to regulation only at the federal level”).

⁴ See *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 ¶ 97 (2002) (“*Cable Modem Order and NPRM*”) (explaining, in discussing the prospect of additional local franchising of cable modem service, that the Commission “would be concerned if State and local regulations limited the Commission’s ability to achieve its national broadband policy goals to ‘promote the deployment of advanced telecommunications capability to all Americans in a reasonable and timely manner,’ ‘to promote the continued development of the Internet and other interactive computer services and other interactive media’ and ‘to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation’” (internal citations omitted)); see also *TCI Cablevision of Oakland County, Inc., Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. §§ 541, 544(e), and 253*, Memorandum Opinion and Order, 12 FCC Rcd 21396 ¶ 78 (1997) (“[A]dministration of the public rights-of-way should not be used to undermine efforts of either cable or telecommunications providers to upgrade or build new facilities to provide a broad array of new communications services.”).

⁵ *Cable Modem Order and NPRM* ¶ 102.

⁶ See 47 U.S.C. § 1302(a) (instructing the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” and to “remove barriers to infrastructure investment”).

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Accordingly, I urged the Commission to make clear, as part of any upcoming order in these proceedings, that cable operators may install, maintain, and operate broadband facilities pursuant to their existing franchises. In doing so, the Commission should reemphasize that it would be inappropriate for franchising authorities to require additional franchises, fees, or concessions for the provision of broadband Internet access service by a provider that already has a franchise, either through service regulation or claimed regulation of broadband equipment that adds no appreciable burden to the rights of way. The Commission likewise should state clearly that it will take action to preempt any state or local efforts to impose franchising requirements and fees on broadband providers that already lawfully occupy rights-of-way as cable operators or telecommunications carriers.⁷

Please contact the undersigned if you have any questions regarding these issues.

Sincerely,

/s/ Matthew A. Brill
Matthew A. Brill
*Counsel for the National Cable &
Telecommunications Association*

cc: Matthew DelNero
Stephanie Weiner

⁷ Cf. *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 ¶ 46 (2004) (announcing that the Commission “would preempt state regulation” of voice-over-Internet-protocol services offered by cable companies).