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February 11, 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 9, 2015, Rick Chessen and Steven Morris of the National Cable & Telecommunications Association (“NCTA”), along with the undersigned and Matthew Murchison of Latham & Watkins LLP, met with Nicholas Degani and Christopher Mills from the office of Commissioner Pai and with Amy Bender from the office of Commissioner O’Rielly in connection with the above-referenced proceedings.

At these meetings, we reiterated that, in the event of any decision to reclassify broadband Internet access service as a Title II “telecommunications service,” the Commission should grant broad forbearance from Title II’s restrictions and obligations as an integral part of that decision, in order to preserve the deregulatory status quo to the maximum extent possible and to ensure that such reclassification does not result in unnecessary, investment-stifling regulatory burdens on ISPs.¹ We stressed that it is particularly important to forbear from the directive in Section 201(b) that all “charges” be “just and reasonable,”² and that failing to do so would authorize the

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); 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 47 U.S.C. § 201(b).

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very sort of “rate regulation” that the Chairman,³ the President,⁴ and even the Commission’s recent “Fact Sheet” all purport to disclaim.⁵ We explained that allowing *post hoc* scrutiny of broadband rates through the filing of complaints (either before the Commission or in federal court) is “rate regulation” in the purest sense—no less so than *ex ante* requirements to file tariffs or to seek Commission approval for rate changes. We also noted that Section 201(b) is the primary source of authority for many of the Commission’s most sweeping and invasive regulations governing the rates for telecommunications services.⁶ Accordingly, we emphasized that the Commission must forbear from the provision in Section 201(b) requiring just and reasonable “charges” if it is to make good on repeated pledges to avoid broadband rate regulation and the attendant harms to broadband investment and innovation.

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: Amy Bender
Nicholas Degani
Christopher Mills

³ See Marguerite Reardon, *Net Fix: FCC Chief on Solving the Open Internet Puzzle (Q&A)*, CNET, Jan. 14, 2015, available at <http://www.cnet.com/news/net-fix-fcc-chief-on-solving-the-open-internet-puzzle-q-a/> (“I have said all along that I don’t think that rate regulation is appropriate [for broadband].”);

⁴ See White House, *Statement by the President on Net Neutrality*, Nov. 10, 2014, available at <http://www.whitehouse.gov/the-press-office/2014/11/10/statement-president-net-neutrality> (calling for forbearance from “rate regulation and other provisions less relevant to broadband services”).

⁵ See Federal Communications Commission, “Fact Sheet: Chairman Wheeler Proposes New Rules for Protecting the Open Internet,” Feb. 4, 2015, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-331869A1.pdf (asserting that the draft Order “does not include . . . rate regulation” and “makes clear that broadband providers shall not be subject” to “rate regulation”).

⁶ See Letter of Kathryn A. Zachem, Comcast Corp., GN Docket Nos. 14-28, 10-127, at 19 (filed Dec. 24, 2014) (collecting examples).