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February 12, 2015

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: *In the Matter of 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 10, 2015, Lynn Charytan, David Don, and the undersigned of Comcast met with Nicholas Degani, Legal Advisor to Commissioner Pai, to discuss the recent proposal in the above referenced proceedings.<sup>1</sup> We addressed the following issues:

*First*, applying the entirety of Section 201(b) of the Communications Act to broadband would enable the Commission or any federal court to declare broadband providers' rates to be "unjust and unreasonable."<sup>2</sup> This would be plainly inconsistent with statements by both President Obama and Chairman Wheeler that broadband providers should not and will not be subject to rate regulation.<sup>3</sup> In order to avoid this outcome, the FCC should forbear from Section 201(b)'s prohibition of unjust and unreasonable "charges." We explained that forbearance from rate regulation and other onerous parts of

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<sup>1</sup> See Fact Sheet: Chairman Wheeler Proposes New Rules for Protecting the Open Internet (Feb. 4, 2015), available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2015/db0204/DOC-331869A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0204/DOC-331869A1.pdf).

<sup>2</sup> See 47 U.S.C. § 201(b).

<sup>3</sup> 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> (urging the Commission to "forbear[] from rate regulation and other provisions less relevant to broadband services"); Remarks of Tom Wheeler, Chairman, Federal Communications Commission, at the Silicon Flatirons Center (Feb. 9, 2015) ("We will forgo sections of Title II that pose a meaningful threat to network investment. That means no rate regulation. No unbundling. No tariffs or new taxes.").

Title II should accompany reclassification, and that the Commission should ensure that its order honors this in every respect.<sup>4</sup>

*Second*, if the FCC decides to assert jurisdiction over Internet traffic exchange arrangements, it should make clear that this jurisdiction applies to *all* parties to these arrangements, not just retail broadband providers. Other parties to such arrangements, including transit providers and content delivery networks (“CDNs”), are engaged in the transmission of Internet traffic and have the ability to create congestion and performance issues that could impact consumers.<sup>5</sup>

*Third*, any new transparency requirements must not obligate broadband providers to disclose information that they do not possess. For example, while broadband providers may possess information regarding interconnection ports, they often lack information regarding whether a particular edge provider’s packets are dropped, and whether use of that edge provider’s application or service is affected, due to congestion. If the FCC wishes to collect this information, it should do so from edge providers themselves.

*Fourth*, Comcast offers its broadband Internet access service as a comprehensive offering that includes a range of functionally integrated information service capabilities.<sup>6</sup> This is just as true today as it was in 2002 when the FCC classified cable modem service as an information service. If anything, broadband providers’ services now include *more* functionally integrated enhanced capabilities than when the Commission made its classification decisions.<sup>7</sup>

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<sup>4</sup> See “Broadband Authority and the Illusion of Regulatory Certainty,” Prepared Remarks of Commissioner Mignon L. Clyburn, Media Institute Luncheon (June 3, 2010) (“[W]ithout forbearance there is no reclassification . . . . Think peanut butter and jelly. Salt and pepper. Batman and Robin.”).

<sup>5</sup> Cogent, for one, has indicated that it “takes no issue with having its interconnection practices subject to the same standards as mass market broadband Internet access providers.” Letter from Robert M. Cooper, Counsel for Cogent Communications Group, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 14-28, 10-127, at 2 (Feb. 11, 2015).

<sup>6</sup> See Comments of Comcast, GN Docket Nos. 14-28, 10-127, at 57-59 (Jul. 15, 2014); Reply Comments of Comcast, GN Docket Nos. 14-28, 10-127, at 21-23 (Sept. 15, 2014); Letter from Kathryn A. Zachem, Senior Vice President, Regulatory and State Legislative Affairs, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, at 8-9 (Dec. 24, 2014).

<sup>7</sup> See, e.g., Comments of NCTA, GN Docket Nos. 14-28, 10-127, at 34-36 (Jul. 15, 2014); Reply Comments of NCTA, GN Docket Nos. 14-28, 10-127, at 18-20 (Sept. 15, 2014); Letter from Matthew A. Brill, Counsel for NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 14-28, 10-127, at 10-11 (Dec. 23, 2014); Comments of AT&T, GN Docket Nos. 14-28, 10-127, at 48-49 (Jul. 15, 2014); Reply Comments of AT&T, GN Docket Nos. 14-28, 10-127, at 37, 39-42 (Sept. 15, 2014); Letter from Christopher Heimann, General Attorney, AT&T, to Marlene H. Dortch, Secretary, FCC, at 4-5, 6-7 (Feb. 2, 2015); Comments of Verizon, GN Docket Nos. 14-28, 10-127, at 59-61 (Jul. 15, 2014); Reply Comments of Verizon, GN Docket Nos. 14-28, 10-127, at 39-41 (Sept. 15, 2014); Verizon, “Title II Reclassification and Variations on That Theme: A Legal Analysis,” at 6-8 (Oct. 29, 2014) (*attached to*

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Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/ Kathryn A. Zachem

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cc: Nicholas Degani