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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***Open Internet Remand Proceeding*, GN Docket No. 14-28**
***Framework for Broadband Internet Service*, GN Docket No. 10-127**

Dear Ms. Dortch:

On February 18, 2015, the undersigned, on behalf of General Communication, Inc. (GCI), sent an e-mail to: Daniel Alvarez from the Office of Chairman Wheeler; Rebekah Goodheart from the Office of Commissioner Clyburn; Priscilla Argeris and Travis Litman from the Office of Commissioner Rosenworcel; Nicholas Degani from the Office of Commissioner Pai; Amy Bender from the Office of Commissioner O'Rielly; Stephanie Weiner from the Commission's Office of General Counsel; and Matthew DelNero and Claude Aiken from the Wireline Competition Bureau. The substance of that e-mail is set forth below, verbatim.

GCI encourages the Commission to clarify in the Open Internet Order currently on circulation that broadband Internet access service is not an "exchange access" service as defined in the Communications Act. "The term 'exchange access' means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153(20). Telephone exchange service and telephone toll service are also defined in the Act. *See* 47 U.S.C. § 153(54), (55).

Telephone exchanges, telephone exchange service, exchange areas, and telephone toll service are concepts derived from the structure and use of the traditional telephone network. These concepts do not make sense when applied to broadband. Based on the public statements of each of the Commissioners, we are confident none of the members of the current Commission intends to treat broadband as exchange access or a telephone exchange service.

However, the Commission took an opposite view in the *Advanced Services Remand Order* when it concluded that xDSL-based advanced services provided by incumbent LECs are

either telephone exchange service or exchange access. *Advanced Services Remand Order*, 15 FCC Rcd 385, 401-08, paras. 35-49 (1999). As you know, the Commission's classification was later vacated and remanded for relying on precedents that were based on reasoning an intervening appellate decision had found defective. *WorldCom, Inc. v. FCC*, 246 F.3d 690 (D.C. Cir., 2001). Nevertheless, particularly given this history, failing to clarify that broadband Internet access service is not an "exchange access" service risks creating confusion and uncertainty in the marketplace.

If exchange access, telephone exchange service, and similar concepts were deemed to apply to broadband, there could be numerous negative unintended consequences. For instance, if broadband arguably offers "exchange access," it would raise questions as to whether broadband providers are "interexchange carriers" (IXCs) and whether broadband is a "telephone toll service." *Cf. Advanced Services Remand Order*, 15 FCC Rcd at 404, para. 40 (suggesting that computers are "stations" within the definition of "telephone toll service"). The Commission and perhaps various states have existing rules that apply to IXCs and providers of telephone toll service that the Commission presumably does not intend to apply to broadband. For example, section 42.6 of the Commission's rules provides that carriers offering toll telephone service shall retain certain records for a period of 18 months. 47 C.F.R. § 42.6. And section 42.10 provides that nondominant IXCs shall make available to any member of the public in at least one location information concerning its current rates, terms and conditions for all of its international and interstate, domestic, interexchange services, and make such rates, terms and conditions available on-line on its Internet website. *Id.* at § 42.10.

If the Commission fails to clarify that broadband Internet access service is not offering "exchange access," and fails to forbear from all arguably applicable regulations and to preempt all arguably application state regulations, broadband providers could feel compelled to comply with the above and perhaps many other yet-unidentified federal and state regulatory requirements out of an abundance of caution, even if the Commission does not affirmatively intend to impose these types of heavy-handed Title II regulations on ISPs today.

Thank you for your consideration and please feel free to contact me with any questions.

Sincerely,

Tim Stelzig