



---

Barry J. Ohlson  
Vice President, Regulatory Affairs  
Public Policy Office

February 20, 2015

**VIA ECFS**

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

**Re: Ex Parte of Cox Communications, Inc.; 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 19, 2015, on behalf of Cox Communications, Inc., the undersigned and Jennifer Prime of Cox Enterprises, Inc. (collectively "Cox"), together with Matthew Brill of Latham & Watkins LLP, met with Daniel Alvarez and Gigi Sohn of the Office of Chairman Wheeler and Eric Feigenbaum of the Office of Media Relations regarding the above-captioned proceedings. Separately, Ms. Prime and I met with Priscilla Argeris of the Office of Commissioner Rosenworcel.

In each meeting, we discussed Cox's deep concerns about pending proposals to reclassify broadband Internet access under Title II of the Communications Act, noting the adverse impact such a ruling could have on investment decisions. We noted that Cox has been an industry leader in preparing to deliver blazing-fast, gigabit-level speeds to customers across its 18-state footprint. We explained that Cox Enterprises has a diverse array of businesses across a wide variety of industry sectors and considers the pressures of undue regulatory constraints as it decides how best to allocate its available capital resources.

In light of such concerns, we argued that any reclassification decision should be accompanied by broad and immediate forbearance from Title II obligations and restrictions. In particular, we emphasized that, to fulfill the repeated promises by the President, Chairman Wheeler, and others that any reclassification decision will not lead to rate regulation, the Commission at a minimum must forbear from its oversight of just and reasonable charges under Section 201(b) and the provisions authorizing private lawsuits and monetary damages in Sections 206 and 207. As has been previously explained, the Commission has sought comment

on invoking Title II for the sole purpose of supporting the adoption of open Internet rules; it has *not* sought comment on the potential imposition of *additional* common carrier regulatory mandates (especially rate regulation) on broadband service providers, much less proposed to extend such requirements.<sup>1</sup> Nor is there any sound policy reason to saddle broadband Internet access services with new economic regulation or other mandates under Title II, much less to expose broadband providers to a flood of new class action lawsuits. To the contrary, as the Commission has repeatedly recognized in the past, imposing Title II obligations on broadband Internet access services (other than light-touch open Internet rules) would entail unjustified burdens and would therefore deter the investments needed to fulfill the broadband deployment goals embodied in Section 706 and in the Commission's National Broadband Plan.<sup>2</sup>

We also reiterated Cox's opposition to supplanting the market-based regime governing the exchange of Internet traffic with new regulation, and we argued that the NPRM in this proceeding does not provide any notice of the prospect that such arrangements might be subject to regulation under Title II. We further argued that, in the event the Commission does decide to assert jurisdiction over Internet traffic-exchange arrangements, any new rules or complaint process should apply evenhandedly to both sides of any peering or transit relationship. Subjecting only broadband Internet access providers—and not their commercial counterparties—to regulatory oversight would introduce significant competitive distortions, arbitrage opportunities, and other harms. Indeed, for a mid-sized provider like Cox, which often exchanges traffic with far larger entities, it would be particularly unjustified to become

---

<sup>1</sup> See, e.g., Letter of Matthew A. Brill, counsel for NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 14-28 and 10-127, at 2-6 (filed Jan. 14, 2015).

<sup>2</sup> See, e.g., *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, ¶ 46 (1998) (noting that classifying information service providers as telecommunications carriers under Title II “could seriously curtail the regulatory freedom that ... [is] important to the healthy and competitive development of the enhanced-services industry”); *Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, ¶ 95 (2002) (tentatively concluding that cable modem service should be subject to blanket forbearance from Title II in the event it was classified as a telecommunications service), *aff'd sub. nom. NCTA v. Brand X*, 545 U.S. 967 (2005); Petition for a Writ of Certiorari by U.S. Dept. of Justice and FCC, *FCC v. Brand X Internet Servs.*, No. 04-281, at 24, 26 (Aug. 27, 2004) (explaining that imposing Title II on cable broadband services would threaten to undermine “one of the central objectives of federal communications policy since 1996”—“[e]ncouraging the deployment of broadband services throughout the Nation,” and warning that “[t]he effect of the increased regulatory burdens” resulting from Title II regulation “could lead cable operators to raise their prices and postpone or forego plans to deploy new broadband infrastructure, particularly in rural or other underserved areas”), *available at* <http://transition.fcc.gov/ogc/documents/filings/2004/BrandX.pet.final.pdf>. See also Federal Communications Commission, *Connecting America: The National Broadband Plan*, at xi, 5 (2010) (setting forth the Commission's goal of ensuring that “every American has access to broadband capability,” and finding that widespread broadband deployment has been “[f]ueled primarily by private sector investment and innovation” with “limited government oversight” (internal quotation marks and citations omitted)).

