

MASSACHUSETTS
40 main st, suite 301
florence, ma 01062
tel 413.585.1533
fax 413.585.8904

WASHINGTON
1025 connecticut ave. nw, suite 1110
washington, dc 20036
tel 202.265.1490
fax 202.265.1489



February 20, 2015

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20054

Via Electronic Filing

**Re: GN Docket No. 14-28, *Protecting and Promoting the Open Internet*
GN Docket No. 10-127, *Framework for Broadband Internet Service***

Dear Ms. Dortch,

On Wednesday, February 18, 2015, I met separately with Gigi B. Sohn, Chairman Wheeler's Special Counsel for External Affairs; and with Priscilla Delgado Argeris, Commissioner Rosenworcel's Senior Legal Advisor; in both cases, to discuss matters in the above-captioned dockets.

In both meetings, I expressed Free Press's concerns with what the Commission's Open Internet Fact Sheet described as a decision "to classify the service that broadband providers make available to 'edge providers'" as "a Title II telecommunications service."¹ Those concerns are described more fully in Free Press's *ex parte* filing of February 11, 2015, in these dockets,² as well as in our detailed analysis of purported edge-facing services in our letter submitted in these dockets on November 5, 2014.³

In sum, while we appreciate the distinction between now and November (as illustrated by the Fact Sheet's explanation that Commission recognition of such a service for the first time is not a so-called "hybrid" approach of the variety that our November 5 letter addressed), many of our concerns remain. There are legal obstacles to recognizing this construct as a "telecommunications service" as defined in 47 U.S.C. § 153(50) and (53). And there are policy consequences that would be undesirable, to say the least, that could emanate from the creation of such a service and relationship between edge providers and end-users' broadband Internet access service providers.

¹ "Fact Sheet: Chairman Wheeler Proposes New Rules for Protecting the Open Internet," at 1 (rel. Feb. 4, 2015).

² See Letter from Free Press to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket Nos. 14-28, 10-127 (filed Feb. 11, 2015).

³ See Letter from Free Press to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket Nos. 14-28, 10-127 (filed Nov. 5, 2014).

In both meetings I also suggested that the Commission clarify the contours of what the Fact Sheet describes as a general Open Internet conduct standard.⁴ I indicated the importance of the Commission retaining its authority under Sections 201 and 202 to consider and then address any and all types of unreasonable discrimination engaged in by broadband Internet access service providers, including technical and economic forms of discrimination enumerated in the rules on circulation, as well as other technical and economic forms of discrimination. Yet any “general conduct” rule must not extend to the practices of non-telecom carriers, nor apply solely according to the dictates of any illustrative factors set out in the order. One of the many benefits of Title II is that it restores the Commission’s flexible yet bounded authority to prevent unreasonable discrimination by carriers as their practices may mutate over time. Fulfilling that statutory mandate should be the aim and purpose of any such “general conduct” rule.

In the meeting with Ms. Argeris alone, I summarized Free Press’s views on access charges that many broadband carriers have implausibly characterized as “interconnection fees,” purportedly charged to offset the cost of terminating traffic from specific websites, applications, or transit providers. Free Press explained in our initial comments that the poor performance of broadband providers in delivering such traffic is a classic terminating access issue rather than an “interconnection” dispute,⁵ and clearly a concern to be dealt with in this proceeding.

The Commission is often confronted with claims about the necessity of such access fees, based on the suggestion that the traffic from a particular sender or type of sender is asymmetrical. Yet the principle of cost causation shows just how wrong and self-serving these claims are. In the streaming video context, it is the broadband provider’s end-user who causes the marginal cost (if any) of delivering a stream. The edge provider does not send a stream to the broadband provider unless the broadband provider’s end-user first requests it.⁶ Broadband users deserve to send and receive the content, services and applications of their choosing, at the speeds for which those end-users pay. The Commission’s rules adopted in this proceeding should clearly prevent the imposition of such access charges – even in the guise of “interconnection fees” – along with other harmful conduct at the interconnection point.

Respectfully submitted,

/s/ Matthew F. Wood
Policy Director
202-265-1490
mwood@freepress.net

cc: Gigi B. Sohn
Priscilla Delgado Argeris

⁴ Fact Sheet at 2.

⁵ See Comments of Free Press, GN Docket Nos. 14-28, 10-127, 09-191, at 144 (filed July 18, 2014).

⁶ See *id.* at 146.