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ELECTRONIC FILING

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

Re: Notice of *Ex Parte* Meeting, GN Docket No. 09-191, GN Docket No. 14-28

Dear Ms. Dortch:

On Thursday, February 19, I, Barbara van Schewick, spoke by Telephone with Priscilla Delgado Argeris, Senior Legal Advisor to Commissioner Rosenworcel.

I highlighted the policy arguments underlying the following recommendations as set out in the attached documents,¹ as well as the support for these arguments in the record, as documented in more detail in the appendices attached to this letter.²

1. Bright-line Rules. To avoid the considerable social costs associated with evaluating behavior case-by-case, behavior that is clearly harmful should be explicitly banned by bright-line rules. In particular:

¹ Barbara van Schewick, *Analysis of Proposed Network Neutrality Rules*, February 18, 2015; Barbara van Schewick, *The Case for Meaningful Network Neutrality Rules*, February 19, 2015.

² Attachments titled *The Record Demonstrates Significant Support for Strong Rules* (showing support for specific aspects of the rules, including banning zero rating, discrimination against classes of applications, ban on access fees, application agnostic network management, applying the same rules to mobile, and interconnection); *Internet Startups Need a Non-Discriminatory Internet* (Stories from startups about how they were founded and they wouldn't have been able to succeed in a world where ISPs can charge for preferential treatment); *A Diverse Range of Communities Support Net Neutrality* (Quotes from filings demonstrating support for network neutrality from different communities like Faith, Rural, Communities of Color, Disability, Educators, Artists, and others); *Small Business Across the U.S. Oppose Discriminatory Fees* (Quotes from filings from original local small businesses saying their business will be harmed if they need to pay for a fast lane); *Entities Calling for Bright Line Rules* (Quotes from filings asking for bright line rules and/or no excessively complicated or ambiguous language).

- The no-throttling rule should explicitly ban discrimination against individual applications AND classes of applications.
- The exception for reasonable network management should require network management to be as application-agnostic as possible.
- The FCC's rules should explicitly ban two types of zero-rating: (1) zero-rating in exchange for edge-provider payment and (2) zero-rating of selected applications within a class of similar applications without charging edge providers.

2. General Conduct Rule. The FCC should provide additional guidance on how it intends to evaluate practices under the proposed general conduct rule. The Open Internet Order provided an approach for how to identify a practice's impact on innovation and free speech. The FCC should adopt a similar approach in the context of the general conduct rule. In particular, to determine whether a practice is likely to reduce application innovation and free speech, the FCC should evaluate the practice based on whether it preserves the following three factors:

- User choice;
- Application-agnosticism; and
- Low costs of application innovation and free speech.

This approach would allow complainants to show that a practice is likely to reduce application innovation and free speech and should therefore be prohibited by demonstrating that it violates at least one of these three factors, without requiring them to engage in a detailed analysis of the impact of the practice on application innovation, free speech and broadband deployment.

3. Interconnection. The FCC should prohibit providers of last-mile Internet access services from charging interconnecting networks, application providers and content delivery networks fees for access to their subscribers and clarify that last-mile ISPs can't use practices related to interconnection to evade the FCC's network neutrality rules.

Pursuant to the Commission's rules, this notice is being filed in the above referenced dockets for inclusion in the public record. Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Barbara van Schewick

Barbara van Schewick

Professor of Law and (by courtesy) Electrical Engineering

Helen Crocker Faculty Scholar

Faculty Director, Center for Internet and Society, Stanford Law School

cc:

Priscilla Delgado Argeris