



Michael E. Glover
Senior Vice President and Deputy General Counsel

1320 North Court House Road,
9th Floor
Arlington, VA 22201
(703) 351-3860 (telephone)
(703) 351-3670 (facsimile)
E-mail: michael.e.glover@verizon.com

May 14, 2014

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*

Dear Ms. Dortch:

Verizon is fully committed to open Internet, and both our words and actions demonstrate that this commitment is real and meaningful. There is a simple reason for this commitment: our customers demand it, and that – not whether any rules or regulations are in place – has driven our actions for years, well before the Commission ever considered regulations in this area. Verizon has posted on our web site our openness policies and commitments to our customers concerning the open Internet.¹ We commit to our customers that “[o]n any of our Internet access services, wireline or wireless, you and other users of our service can access and use the legal content, applications, and services of your choice, regardless of their source.” To make good on that commitment and to provide the best possible experience for our customers, Verizon has invested over \$100 billion over the past six years alone in improving its broadband infrastructure, including through the rollout and upgrades of our next-generation 4G LTE wireless and all-fiber wireline broadband networks. These investments enable world class and ever-more-robust broadband services for our customers to access and use all that the Internet has to offer, both at home and on the go.

Our commitment the open Internet is further demonstrated through steps we have taken to empower and enable innovation on our next-generation broadband networks, by both iconic Silicon Valley companies and the innovator working out of her garage. Verizon has established

¹ Verizon’s Commitment to Our Broadband Internet Access Customers, *available at* <http://responsibility.verizon.com/broadband-commitment/>.

state-of-the-art LTE Innovation Centers in Waltham, MA and San Francisco, CA that provide facilities, tools and assistance to innovators of all types in developing the devices and applications of tomorrow.² Verizon does this without charge to these innovators, without claims to their intellectual property, and without a commitment that they actually use any of their developments on Verizon's networks, all in the hopes that they will develop new innovations that will benefit our consumers. Similarly, we have established the Powerful Answers Award program to encourage and reward those who develop new and promising approaches that use broadband technology to address pressing needs on education, sustainability, health care, and transportation.³ Verizon also recently became the first major communications service provider to join the Open Invention Network to promote advances in open source software. Verizon walks the talk in providing world class broadband services to our customers and in ensuring that our services and the open Internet deliver maximum benefit to our consumers and our communities now and in the future.

The Freedom to Innovate Is Essential to the Open Internet. As the Commission considers its next steps with respect to the open Internet, it is critical that it encourage innovation throughout all parts of the Internet ecosystem. For the open Internet to yield maximum benefits to consumers and to our society, innovation should not be confined to a favored sector of the Internet ecosystem, but must instead remain open to all Internet participants, including the providers who build and operate broadband networks used to serve consumers.

Broadband providers have a strong history of introducing technical innovations that benefit consumers. The rapid rollout of 4G LTE technology provides but one example. Regulatory policies encouraging innovation and investment in this technology led to its widespread availability in the United States by competing providers in a very short period of time and well ahead almost all other countries. Its advanced capabilities have made the United States a world leader in mobile broadband, thus fueling the app economy and placing us at the leading edge of device and application innovation.

Encouraging broadband providers – just like other Internet participants – to innovate and experiment with additional services likewise is essential to further expanding consumer choice and enabling broadband services and the open Internet to reach their full potential. Internet openness and open innovation are not a threat to each other – they are mutually reinforcing.

One example of the types of innovations that could benefit consumers is two-sided pricing arrangements. This allows consumers to go where they want and do what they want on the Internet, with Internet providers having the option to pay for some or all of the associated costs instead of the consumer doing so. For example, a content provider could attract consumers by picking up the tab for data usage when consumers go to its site – much like 1-800 calls in the telephone world – and in turn pay for this usage through ad support. Such a model could be available to all interested Internet providers, thus enabling providers large or small to decide whether this approach would benefit their businesses. Only through allowing experimentation would we learn whether consumers actually value such approaches and how other Internet

² Verizon's Innovation Program, *available at*: <http://innovation.verizon.com/content/vic/en.html>

³ Verizon's Power Answers Award Program, *available at* <http://www.verizon.com/powerfulanswers/award/>

providers could incorporate such options into their own innovative business models. Such innovations are consistent with Internet openness and prohibiting them would deprive consumers of choices and benefits.

Rotary Telephone-Era Utility Regulation Is Not the Answer. In contrast to an approach that encourages innovation and investment in all parts of the Internet ecosystem, some now propose that the Commission “reclassify” Internet access service and apply 1930’s utility regulation to these services. Similarly, others, including Mozilla, would conjure up new “transport” services out of Internet access services and subject this newly discovered “service” to Title II utility-style regulation, thus having the same effect. Any such approach is unnecessary to protect the openness of the Internet and would be harmful and counterproductive to the Commission’s goals.

The Internet ecosystem has been able to thrive largely because providers and their investors could rely on the Commission’s repeated insistence, through multiple administrations dating to the term of Chairman Kennard, that Internet services would not be subject to the archaic utility-style Title II regulation that was crafted for the one-wire monopoly world of the early 20th Century.⁴ It pervasively prescribes the details of what services a provider can and cannot provide and the terms on which it may do so. This has traditionally included price regulation through tariffs and restrictions on entry and exit such as requirements to obtain permission before introducing or discontinuing services.

In the case of broadband Internet services, in contrast, policymakers’ longstanding approach has relied – with stunning success – on flexibility and competition to spur innovation and investment, rather than a central-planning model of utility regulation with the opposite effects. This fundamental difference has informed how broadband Internet providers have developed their networks, services, and basic business models and has prompted hundreds of billions of dollars of investment in wireline and wireless broadband infrastructure. For just wireless infrastructure alone, the projected capital investment over the next five years will generate more than \$1 trillion in economic growth and create 1.2 million new jobs.⁵ Any proposal now to reclassify broadband Internet access or some new “transport” component of Internet access as subject to utility regulation would therefore undermine innovation, destabilize current investments and cast a cloud of regulatory uncertainty that would deter these heavy and much needed investments. The Commission itself foresaw these risks nearly a decade ago when it argued before the Supreme Court that common carriage regulation likely would “discourage investment in facilities” and spur broadband providers to “raise their prices and postpone or

⁴ See *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005); *In re United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, Memorandum Opinion and Order, 21 FCC Rcd 13281 (2006); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901 (2007).

⁵ See PCIA, *Wireless Infrastructure Investment Will Generate \$1.2 Trillion In Economic Activity And Create 1.2 Million Jobs* (Sept. 19, 2013), available at <http://www.pcia.com/pcia-press-releases/601-wireless-infrastructure-investment-will-generate-1-2-trillion-in-economic-activity-and-create-1-2-million-jobs>.

forego plans to deploy new broadband infrastructure.”⁶ And the market reaction when the Commission last suggested that it would entertain “reclassification” confirmed this conclusion, with investment dollars fleeing in other directions.

Policymakers’ light-touch approach to broadband and the Internet likewise has shaped the development of a range of Internet-based services, from thousands of innovative apps, to e-readers, to search engines and far more. If the Commission were to reverse course and go down the path of Title II, the damage would not be confined to broadband providers, but instead the resulting restrictions and uncertainty would inhibit innovation and investment throughout the Internet ecosystem. The Commission’s reclassification decision would face years of legal challenges and engender new challenges over which provisions of Title II apply to which Internet-based services.

As the Commission itself has emphasized, confining utility-style regulation to a narrow slice of the Internet would be difficult, if not impossible. The Commission long ago recognized that, if such regulation applies to Internet access service, “it would be difficult to devise a sustainable rationale under which all . . . information services did not fall into the telecommunications service category.”⁷ In other words, reclassification for broadband Internet could sweep into Title II any player in the Internet ecosystem that holds itself out as arranging for the transmission of data, including VoIP providers, search engines, and a wide range of other “over-the-top” providers. Even if the Commission decided as a matter of regulatory grace not to extend regulation to some of these services initially, or exercised its forbearance authority in some regards, legal uncertainty could “chill innovation” for years to come.⁸

In the case of broadband Internet access services, Title II would result in the ossification of Internet access services that would make them less robust and less able to meet consumers’ demands over time. Title II’s mother-may-I requirements to introduce new services and features or to withdraw experimental additional offerings are anathema to innovation and investment. Similarly, price regulation, generally through approval of tariffs, has been a central pillar of Title II regulation. But, as the Department of Justice previously told the Commission, such regulation would directly threaten the national goals aimed at encouraging investment in broadband facilities.⁹ The homogenized, one-size-fits-all approach would almost inevitably result from Title II would mean less innovative and less robust services for consumers.

Reclassification would also be disruptive – and trigger protracted litigation and uncertainty – precisely because it is such a poor fit for the dynamic and competitive broadband Internet marketplace. Applying even the most basic provisions of Title II – such as Section 201 and 202 – would create tremendous uncertainty and potentially impose burdensome new obligations on Internet services, whether by imposing new fees, rate regulations, or other obligations. These risks of long-term rate regulation, unbundling, and other regulatory uncertainties would stifle investment and innovation. Likewise, numerous other Title II

⁶ Merits Brief, U.S. Dept. of Justice and FCC, *FCC v. Brand X Internet Servs.*, No. 04-277, at 31 (Jan. 2005).

⁷ Stevens Report, 13 FCC Rcd at 11,529, ¶ 57.

⁸ *Id.* at 11,525, ¶ 47.

⁹ See Department of Justice Comments at 28, Docket No. 09-51 (Jan. 4, 2010).

regulations – such as Sections 223, 226, and 227 – cannot be applied to broadband and in fact bear no relation to Internet openness. The move to this ill-fitting regulation would introduce massive uncertainty throughout the Internet ecosystem as years of litigation and regulatory wrangling played out to determine which parts of Title II applied, how, and to which of the many services and networks that make up the Internet.

This reversal of course in favor of Internet regulation would also provide a dangerous signal to governments around the world at a time when the United States has been vigilant at fighting back threats from international bodies and sometimes repressive regimes seeking more control over the Internet. Countries that have already stunted investment in facilities-based broadband competition by over-regulating Internet access – a lesson of failure that Title II regulation would emulate – could be encouraged to extend that regulation to adversely affect Internet companies of all types. For example, some countries have already expressed interest in government-mandated terminating access charges on large Internet companies, many of which are based in the United States.

Even apart from the harms that Title II regulation would visit on American consumers, the reclassification of broadband Internet access services would be unlawful. As the D.C. Circuit’s landmark *NARUC* decisions¹⁰ emphasized, the Commission generally lacks authority to forcibly conscript private networks into a common carrier regime. In *NARUC I*, the court “reject[ed]” the contention that the FCC enjoyed “an unfettered discretion ... to confer or not confer common carrier status on a given entity, depending on the regulatory goals it seeks to achieve,” noting that “[a] particular system is a common carrier by virtue of its functions, rather than because it is declared to be so.”¹¹ *NARUC II*, in turn, specified that whether or not the provider held its service out indifferently to all would-be purchasers was “the primary *sine qua non*” of common carriage.¹² So no matter how forcefully proponents of reclassification might wish to see the Title II regime applied to broadband Internet access, this approach is simply incompatible with the framework established by Congress and the courts.

Finally, reclassification of broadband Internet access would fail to achieve the result its proponents seek. A central claim of those advocating the Title II approach is that alternative approaches (such as reliance on Section 706) would permit some disparate treatment of Internet traffic flows, whereas reclassification would not. That is wrong, and ignores the long history of common carrier services in which differential pricing and differential treatment of traffic has been expressly permitted. Section 202(a) of the Act – Title II’s principal anti-discrimination provision – prohibits only “*unjust or unreasonable* discrimination in charges, practices, classifications, regulations, facilities, or services.”¹³ Likewise, the Act expressly permits different pricing for different classes of customers, and expressly allows two-sided pricing, such as the pricing model that has existed for telephone services for decades where both customers and long distance providers contribute to the cost of providing local telephone service. Indeed,

¹⁰ *National Ass’n of Regulatory Util. Comm’rs v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1975) (“*NARUC I*”); *National Ass’n of Regulatory Util. Comm’rs v. FCC*, 533 F.2d 601 (D.C. Cir. 1976) (“*NARUC II*”).

¹¹ *NARUC I*, 525 F.2d at 644.

¹² *NARUC II*, 533 F.2d at 608.

¹³ *Id.* § 202(a) (emphasis added).

the history of common carriage is replete with examples of differentiated services and pricing. The Commission has permitted volume and term discounts under which the same exact offering is subject to different rates depending on how much of it a purchaser buys or for how long it takes service. It has allowed providers to offer differential service levels at different prices. It has permitted customer-specific “contract tariff” and even “individual case basis” tariff offerings and arrangements such as 8XX service that shift the payment obligation from one party to another. In the context of wireless telephony, it has allowed pricing based on in-store customer bargaining. In short, Title II utility regulation would not address the supposed concerns of its proponents, which calls into question whether some are using the open Internet as a Trojan horse to obtain utility regulation for regulation’s sake.

* * *

As the Commission considers facts rather than overheated rhetoric, it will see that the open Internet is not under attack. Instead consumers are benefitting from tremendous innovation and investment that gives them more and better choices every day. A light-touch approach that preserves flexibility and encourages continued innovation, experimentation, and investment throughout the Internet ecosystem will continue to serve the interests of consumers and preserve and protect the open Internet while also allowing experimentation and innovation that will provide consumers with still further options and the benefits they can deliver.

Respectfully submitted,



Michael E. Glover