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

freepress
www.freepress.net

June 11, 2014

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

***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 Monday, June 9, 2014, Craig Aaron and Matt Wood of Free Press, and Marvin Ammori on behalf of Engine Advocacy, spoke briefly by telephone with Gigi B. Sohn, Chairman Wheeler's Special Counsel for External Affairs, regarding matters in the above-captioned dockets.

Specifically, the Free Press representatives on the call described the evidence refuting unsubstantiated cable and telecom company claims that Title II would dampen industry investment. In fact, the available data on Regional Bell Operating Company ("RBOC") behavior shows that their capital expenditures ***increased*** while their broadband offerings remained under Title II, and ***decreased*** after the Commission's 2005 *Wireline Framework Order*[1] took effect in August 2006. As explained in our analysis of this data published prior to the May 15, 2014 open meeting,[2] RBOC capital investments under Title II increased by 20 percent (translating to a combined annual growth rate, or CAGR, of 1.8 percent) from 1994 through that 2006 effective date. But after the Commission classified these companies' broadband offerings as "information services," capital investment declined by 5 percent (a CAGR of negative 0.7 percent).

In sum, the removal of Title II did not spur the new investments that RBOCs promised would result from the Commission's 2005 wireline broadband classification decision. Annual RBOC capital expenditures are down $2 billion in inflation-adjusted terms from their peak in the last year of Title II's application – even as RBOC revenues have headed in the other direction. These same companies revenues have increased by $7 billion since the removal of Title II, even managing to grow during the worst part of the 2008–2009 recession (a strong indicator that communications are indeed essential services).[3]

---

[1] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, CC Docket No. 02-33, 20 FCC Rcd 14853 (2005).

[2] *See* S. Derek Turner, Free Press, "Fighting the Zombie Lies: Sorry ISPs, Title II Is Good for the Economy," May 14, 2014, http://www.freepress.net/blog/2014/05/14/fighting-zombie-lies-sorry-isps-title-ii-good-economy.

[3] *See id*.

The available evidence on cable investment tells a similar story, and similarly refutes cable industry claims that the Commission's mistaken classification decisions spurred capital expenditures. As reported in a *Harvard Business Review* online analysis published just after the May 15th open meeting, there was a "big rise in cable infrastructure spending in the 1990s."[4] This occurred chiefly after the passage of the 1996 Telecommunications Act and during a "massive binge" at the turn of the century.[5] But for the past decade or more – meaning the years after the issuance of the Commission's *Cable Modem Order* in 2002[6] and that order's affirmance in 2005[7] – cable capital investment has seen "flat spending at best . . . with some swings that seem related to the ups and downs of the overall economy."[8]

This result is unsurprising, despite the cable and telecom industries' frequent yet unproven claims to the contrary. As Free Press demonstrated in its initial comments in the 2010 Open Internet Order proceeding, Net Neutrality rules and nondiscrimination requirements simply have not been shown to lessen investment. Neither has Title II. Building communications networks is indeed a capital-intensive undertaking, but the factors that influence investment decisions are many and varied. They include expectations about demand, supply costs, competition, interest rates, corporate taxes, and general economic confidence.[9] Regulation is a factor, but just a "minor factor influencing network investment, and the history of Title II shows companies making massive increases in investment and employment while subjected to" the full panoply of Title II jurisdiction beyond just the basic provisions at issue in this docket.[10]

In fact, competition of the type spurred by the 1996 Act – before the Commission and the courts scaled back and largely abandoned implementation of that landmark legislation – seemingly drives investment and innovation more than any other factor.[11] And the RBOC data cited above suggests "that regulation, especially if designed to promote competition, can stimulate investment" in broadband infrastructure rather than dampen it.[12] Protections against nondiscrimination and blocking also protect against facilities-based Internet Service Provider incentives to ***reduce*** investment, in order to cause congestion and then extract revenues for providing fast lanes through these ISP-inflicted traffic jams.[13] The sensible and effective safeguards against such behavior that – in the wake of the D.C. Circuit's decision this January – can only be adopted under Title II have not been shown to deter cable and telecom investment in infrastructure.

---

[4] Justin Fox, "The Cable Guys Need to Come up with a Better Argument," *Harvard Business Review HBR Blog Network*, May 21, 2014, http://blogs.hbr.org/2014/05/the-cable-guys-need-to-come-up-with-a-better-argument/.

[5] *Id*.

[6] *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, GN Docket No. 00-185, 17 FCC Rcd 4798 (2002).

[7] *National Cable & Telecommunications Association v. Brand X Internet Services*, 545 U.S. 967 (2005).

[8] Fox, *supra note* 4.

[9] Turner, *supra note* 2; *see also* Comments of Free Press, GN Docket No 09-191, WC Docket No. 07-52, at 13 (filed Jan. 14, 2010) ("Free Press Open Internet Initial Comments").

[10] Comments of Free Press, GN Docket No 10-127, at 89 (filed July 15, 2010).

[11] *See id*. at 91.

[12] *Id*. at 94.

[13] *See* Free Press Open Internet Initial Comments at 4.

Free Press plans to provide additional analysis and evidence of these investment patterns in our upcoming comments in the above-captioned dockets. In the interim, we submit this notification summarizing our extensive prior filings as well as recently updated answers to these oft-repeated broadband provider assertions. Please do not hesitate to contact me with any additional questions regarding this submission.

Respectfully submitted,

/s/ Matthew F. Wood

Policy Director
Free Press
mwood@freepress.net

cc: Gigi B. Sohn