

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

Re: Open Internet Remand, GN Docket No. 14-28

Filed via ECFS

June 30, 2014

Dear Ms. Dortch:

I attended a roundtable discussion on June 25 with Chairman Tom Wheeler and other representatives of the startup community in San Francisco. The participants are listed in the ex parte letter by **Gigi Sohn, dated June 27.**¹

I am writing a separate ex parte to emphasize a few of the points we made.

First, the Chairman told us that:

- he was an entrepreneur and investor, not just a former lobbyist for the cable and wireless phone industries.
- he agreed with us that the cable and phone companies should not be allowed to create a two-tiered Internet with a fast lane and slow lane.
- he did not believe that Title II permitted him to ban paid prioritization.
- he believes it is politically more difficult to rely on Title II.
- though he believes paid prioritization arrangements are harmful, he also believes that it is politically more difficult to make rules that deem paid prioritization and other forms of discrimination unreasonable, per se.

¹ Karen Appleton of Box, Ben Autrey of Contextly, Ken Carter of CloudFlare, Denelle Dixon-Thayer of Mozilla, Brad Hunstable of Ustream, Mike Leber of Hurricane Electric, Demetrios Marantis of Square, Michael McGearry of Engine Advocacy, Matthew Prince of CloudFlare, David Rockower of Pandora, Michael Schmatz of CodeCombat, Paul Sieminski of Automatic, Ryan Singel of Contextly, Vince Sollitto of Yelp, Thomas Stocking of Gandi and Jon Zieger of Stripe met with Chairman Tom Wheeler, Sagar Doshi, the Chairman's Special Assistant, and Gigi B. Sohn, Special Counsel for External Affairs.

We think the Chairman should not focus on what's easiest to do in Washington, DC. Rather, the FCC Chairman should begin with the correct policy, which is keeping access to the Internet open and neutral as it has been historically. Before 2005, Title II regulation applied to DSL and phone networks, ensuring nondiscrimination on such platforms. Since 2005, FCC policy statements, merger conditions, enforcement actions, and other oversight have largely stopped discrimination and prevented the emergence of paid priority arrangements. We all see the vibrant, open Internet that developed as a result, and the primary goal of any FCC rulemaking should be to preserve this. The only effective way to do so is with anti-discrimination rules, which can only be adopted under Title II.

In 2010, the FCC found that pay-for-priority arrangements would be a "significant departure from historical and current practice." The FCC also recognized that what made the Internet a platform for innovation and free expression was the fact that it was a level playing field not marked by technical discrimination by ISPs favoring some sites over others. We agree that such discrimination is contrary to what has made the Internet great, and the Chairman's currently proposed rules don't do enough to prohibit them. Indeed, the FCC's proposed rules would authorize discrimination and even exclusive arrangements for priority. While that may be politically expedient, it is terrible economic and civic policy. Indeed, it would be highly disruptive to everyone who relies on neutral access to the Internet.

The FCC should do everything in its power to maintain the openness of the Internet rather than pursuing the short-term politically expedient path.

Sincerely,
Paul Sieminski