

Before the
Federal Communications Commission

In the Matter of

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Protecting and Promoting the
Open Internet

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GN Docket 14-28

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Comments of Y Combinator

July 14, 2014

Alexis Ohanian
Y Combinator
335 Pioneer Way
Mountain View, CA 94041

Federal Communications Commission
445 12th Street, SW
Washington D.C. 20554

July 14, 2014

Re: Open Internet Remand, GN Docket 14-28

Dear Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O’Rielly:

Y Combinator is Silicon Valley’s premiere early stage investor. Y Combinator has been investing in early stage startups since 2005 and now has a portfolio of over 700 companies valued at over \$20 billion and creating over 3,000 jobs at quickly growing companies, many of whom are aggressively hiring. Y Combinator was an early investor in Dropbox, Airbnb, Stripe, Scribd, Heroku, Pebble, Twitch, Loopt, WePay, Crowdfunder, Teespring, Codecademy, Hipmunk, Coinbase, Cloudkick, Wufoo, ZenPayroll, SocialCam, Parse, and reddit.

The *New York Times* called Y Combinator “Silicon Valley’s Startup Machine”; the *Times* also described Y Combinator’s demo days, where our early stage companies present their products and services to “450 of the world’s richest and most influential technology investors” as “a biannual milestone, Silicon Valley’s version of the N.F.L. Scouting Combine.” We were the subject of a book by the *Times*’s former Digital Domain columnist, *The Launch Pad*, in which Eric Ries called us “a national treasure, a Silicon Valley seed fund that is mass-producing new startups,” and Marc Andreessen declared we were the “white-hot center of the new Silicon Valley startup ecosystem.” Within Silicon Valley, receiving funding from Y Combinator often carries more credibility than a degree from Harvard or Stanford. We receive thousands of applications from companies for fewer than 60 investments -- an acceptance rate lower than any of the nation’s top universities.

I was lucky enough to be in the very first round of Y Combinator’s investments and created reddit.com with my college roommate Steve Huffman. We were two recent college graduates with no connections and \$12,000 in funding, raised from Y Combinator, building something from a pair of computers in a small rented apartment in Medford, MA. Today reddit is a top 50 website with over 110 million monthly unique visitors -- more traffic than CNN.com or NYTimes.com. We lived the American Dream thanks to the open internet and today I’m a partner at Y Combinator.

How? The world isn’t flat; but the world wide web is. It must remain that way.

We need the FCC to keep the level playing field that let me--and so many others--succeed as entrepreneurs. The reason so much innovation and wealth creation has happened in tech over the last decade is that any American with her laptop and Internet connection could build a startup and compete with incumbents (and even beat them) without a team of lawyers and without a large budget to pay for priority from ISPs.

Let me be clear: we need a bright-line, per se rule against discrimination, access fees, and paid prioritization on both mobile and fixed.

Title II of the Communications Act seems the most appropriate way to properly define broadband ISPs to be offering telecommunications. Speaking on behalf of Y Combinator, I'm urging you to adopt such a rule.

The rule you have proposed, based on Section 706 of the Telecommunications Act of 1996, would not suffice. We know Section 706 cannot support a rule against discrimination, access fees, and paid prioritization because the appellate court in *Verizon v. FCC* ruled on these matters. The Court wrote: "We think it obvious that the Commission would violate the Communications Act were it to regulate broadband providers as common carriers. Given the Commission's still-binding decision to classify broadband providers not as providers of 'telecommunications services' [under Title II] but instead as providers of 'information services,' ... such treatment would" violate the Act. The Court held that, absent reclassifying broadband providers as Title II carriers, the FCC would be treating broadband providers as common carriers unless it left open room for "substantial room for individualized bargaining and *discrimination* in terms."

Therefore, the FCC cannot impose a nondiscrimination rule--unless it classifies broadband providers under Title II. The Court also held that, without classifying broadband providers under Title II, the FCC could not ban charging fees for priority access, even though the FCC recognized such fees would be a "significant departure from historical and current practice." The FCC could not ban such fees without Title II because banning the fees would leave "no room at all" for individualized bargaining and discrimination, which is necessary under Section 706. The Court simply couldn't have been clearer: so long as the FCC refuses to classify broadband providers as "telecommunications services" under Title II, the FCC cannot ban ISPs' technical discrimination, access fees, or paid prioritization.

While the Chairman has sought to protect innovation through a "commercial reasonableness" test and a "minimum" service guarantee, unfortunately neither would provide startups any relief. No startup has the funds and lawyers and economists to take on billion-dollar ISPs in an FCC action based on the vague legal standards in the proposal. Indeed, the startup ecosystem needs a bright-line, per se rule against discrimination--rather than a multi-part, totality-of-the-circumstances standard with a case-by-case approach or even a mere presumption against discrimination. Anything less would cause considerable uncertainty for entrepreneurs and investors and provide little comfort, as startups and small businesses are resource-constrained and need to know that access to the Internet will remain neutral, as it has been in the past.

And, even with access to at least minimum service (often metaphorically referred to as a "slow lane"), startups would struggle to compete against those who were able to afford paying for a

fast lane--or an exclusive fast lane. Even the slightest discrimination or paid prioritization significantly affects startups, as microseconds matter with both webpage-loading and real-time content. That discriminatory treatment harms startups is reflected by the outpouring of dissent from startup founders and investors alike. The fate of reddit may have been very different if Comcast had discriminated against our little two-person-startup in favor of the NBC.com news portal and the sites of other news giants.

Only reclassifying broadband as Title II will protect an open and neutral Internet. In pursuing reclassification, however, the FCC should choose to forebear from regulations unneeded to promote competition and innovation. As recommended by the EFF, the FCC should “explicitly reject any telecommunications regulations beyond specific and narrow prohibitions and requirements designed to create a fair and level playing field for innovation and user choice.”¹

Over 190 companies, 100 investors, and hundreds of thousands of average individuals have already spoken up to oppose the Chairman’s plan and call for nondiscrimination and a ban on new tolls. Even before initial comments are due, several companies have called for Title II reclassification; these include Kickstarter (doing so in the Washington Post), Etsy, Codecademy, Dwolla, General Assembly, CodeCombat, Contextly, and OpenCurriculum. Leading investors in technology startups, including Union Square Ventures and, now, Y Combinator have also urged the Commission to pursue Title II.

Competition is the fuel of the free market. We demand it not only as investors looking to invest in the next multi-billion-dollar American job creator, and not only as entrepreneurs who want to start it, but also as consumers who want to see innovation continue to thrive. Our sector requires a level playing field in order to lead the world, create jobs, and tremendous value for the United States economy.

Mr. Chairman, you say you oppose a two-tier Internet and want to preserve Internet openness, so let’s reclassify broadband as the public utility we know it to be. Ensure that the Internet thrives as a platform for free commerce and speech for generations to come. May the United States of America continue to lead in innovating on the greatest free market the world has ever seen.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexis Ohanian". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alexis Ohanian
Partner, Y Combinator
Startup founder, reddit

¹ <https://www.eff.org/deeplinks/2014/07/forbearance-what-it-why-its-essential-net-neutrality-0>