Response and Comment to FCC NPRM 14-28 Regarding Net Neutrality

The open and neutral internet is the great hope of our modern age. It is more than a library that holds the testimony of our common and conflicted past. It contains within it the seeds of hope and unity that will provide a path forward, not just for us, but for the future generations who will live in the world that we create. It is more than an "information service," because it is our potential, our memory, and our common ground. It deserves better than to be held hostage by any collection of companies, no matter how wealthy or powerful.

1. The Importance of the Internet to Modern Commerce and Civic Life- Comment to Paragraph 35

The evolution of internet technology and wireless networks has placed an unrivaled amount of knowledge in the hands of the world's peoples and has become the foremost educational institution for not only children, but adults, in the areas it is accessible. In doing so it has not only unleashed the potential of countless individuals and entrepreneurs, but also blurred the lines of privilege associated with the acquisition of specific skills that were once available only after lengthy and difficult periods of apprenticeship or specialized education. In a very real way, the internet is an equalizing device for self-improvement in communities with low social and economic mobility. The internet, and in specific, an internet that is not connected to content discrimination by ISP's is instrumental to the core promise of egalitarianism and meritocracy sacred to our civic faith: democracy.

In addition, the power of the internet to unite disparate communities and promote civil rights is almost unquestionable, and is unique to the internet because it is not subject to the effects of prior restraint by broadband internet access providers. The advent of online communities, the progress on equal treatment of LGBT people, and the rise in awareness of assault and violence against women is traceable to the ability of an internet without discrimination or blocking, to promote positive changes in our culture. The anonymity and ability to congregate in safe virtual communities is instrumental to discussion of divisive social issues, and progress relies on an open internet. A system in which broadband carriers may block or unreasonably discriminate on the basis of content would have a chilling effect even if well intentioned. An example would be the preference to adopt redirection or warnings on sites with offensive or controversial material. Even without an overt economic incentive, a broadband carrier seeking to create a more harmonious or less contentious user experience could isolate these sites to reduce exposure to controversial or emotionally charged subjects. A recent social experiment involving Facebook users has indicated that such a practice could produce predictable and commercially useful results. Such content discrimination would be disruptive to the sense of community and solidarity that is unique to the virtual communities created by an internet without deference to the broadband provider. As such, even in the absence of the sort of economic incentives noted in the NPRM, there are abundant incentives for content discrimination and blocking that must be effectively combatted through imposition of anti-discrimination and anti-blocking rules.

2. The Effect of Proposed Changes on Small and Micro businesses is Substantial

The internet has facilitated the development of commerce by reducing barriers to entry for new products. Whereas previously the small business owner could rely only on the local community or the ability to expend scarce resources on advertising to increase the demand for their products, the internet has integrated the needs of geographically and demographically disparate people into aggregates which sustain vast amounts of businesses of many stripes and models. Again, this largely comes from the lack of ability to discriminate by providers, who, if given a chance, would have an option to funnel business to specific entities and thereby reduce the demand for the newer businesses relying on the aggregate demand created by a free internet.

Since most micro-businesses relying on the internet and the non-discrimination of the ISP's are engaging in business relying on both the internet for marketing and payment, it is crucial that the internet remain a level playing field because any prioritization of content or payment systems could result in crippling financial losses for small businesses. If, for example, an ISP could discriminate against content based on method of payment or redirect traffic to sites that accept certain forms of payment, it could divert resources from micro-businesses. This is especially important because large content providers and online marketers already control access to specific payment systems, and have an incentive to push customers towards certain payment models. Content providers would then be incentivized to adopt strategies geared less towards optimizing an enterprise and more towards adopting a financial model likely to work with the broadband provider's model. In addition, the trend towards decentralized modes of payment (including use of both broadband and mobile internet) which has created a generation of micro-businesses would be threatened. Moreover, small and micro-businesses would have to pay for or comply with the policies and rules for multiple broadband internet access providers or face potentially disastrous hardships. This would in effect result in the imposition of multiple sets of rules on small and micro-businesses and raise a barrier to entry that the internet promised to mitigate.

3. There is Ample Legal Authority and Justification to Treat Internet Service Providers as Common Carriers and to Impose Anti-blocking and Anti-discrimination Rules on Broadband Internet Access Providers

The FCC should rely on the provisions of Title II to classify broadband providers as common carriers because the internet provides the same services as many common carriers and has replaced those common carriers in the context of the economy and in the social context. The original reasoning for the use of section 706 of the Telecommunications Act rather than Title II was to allow the internet to develop and innovate without the concerns of direct intervention in the development of broadband services. Since the FCC made the decision to use section 706 rather than Title II in regards to classifying broadband service providers, several important changes have happened. The initial reasoning behind designation of broadband Internet access service as an information service under section 706 was "to encourage and accelerate the deployment of broadband capability to all Americans through, among other things, measures that promote competition in the local telecommunications market or remove barriers to infrastructure investment." When the FCC made such a decision, the paramount concern was attracting investment and promoting access to an important and somewhat new technology. The great

policy concern was the "virtuous circle" noted in the NPRM. This term was consistent with the stated aims of both section 706 and Title II, namely innovation, demand, and eventual deployment of broadband internet access[1]. But the policy concerns at stake in the designation of broadband internet access providers as information services rather than common carriers reflected the need to promote innovation and investment by allowing the FCC regulatory flexibility and not applying the more rigorous standards that apply to common carriers. It was a policy choice motivated by the economic interest in fostering greater investment in a technology with great potential to change our economy.

The public interest in promotion of investment in broadband internet access has changed because the role of broadband internet access providers has changed. The choice to provide regulatory flexibility by classifying broadband internet access providers was motivated by specific economic and regulatory concerns that have evolved over the years. The concerns of the FCC in fostering the "virtuous circle" must change because the role of the neutral internet has changed. Since broadband internet access has achieved the degree of saturation[2] that exceeds that of landline telephones (who are treated as common carriers)[3], and the complexity and amount of the business occurring over the internet is greater than that conducted over other "common carriers," it is anomalous to treat broadband internet service providers as mere "information services." The role of common carriers as the backbone of communications, business, and the public sphere is the justification for the regulation of those services in the public interest. Reclassification of broadband internet access providers as common carriers acknowledges two key points: first, that the policy goal of infrastructure growth through classification as "information services" was tied with the original stages of deployment of broadband internet access. Second, the role of the internet has evolved to encompass many duties performed by other common carriers and as such should not be exempted from regulation in the public interest consistent with Title II. The FCC and broadband service providers must acknowledge the vital role that a neutral internet has in civic and commercial life by working together to rebuild the neutral internet through the use of the FCC's Title II power to enforce an anti-discrimination and anti-blocking rule consistent with the Open Internet Order.

Use of Title II is not a departure from the FCC's past position. Since the FCC's policy statement[4] regarding the applicable principles of net neutrality, the FCC has consistently asserted the authority and intent to use the full brunt of regulatory authority to enforce an open and neutral internet. The use of Title II and the common carrier designation is not a departure from the regulatory path the FCC has undertaken in the past. Rather, it is entirely consistent with the objectives that the FCC has stated and defended in the past, even in the Supreme Court of the United States[5]. I urge that the FCC use the tumult created by the Verizon decision to assert that the definition of common carriers in the context of

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[1] *See* Verizon v. FCC, 740 F.3d 623 (D.C. Cir.2014).
[2] "Household Broadband Adoption Climbs to 72.4 Percent" http://www.ntia.doc.gov/blog/2013/household-broadband-adoption-climbs-724-percent
[3] "More than half of U.S. homes don't have or use landline" http://www.usatoday.com/story/tech/2012/12/27/more-than-half-homes-without-landline/1793823/
[4] *See In re* Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, 20 FCC Rcd. 14,986, 14,988 ¶ 4 (Adopted Aug. 5, 2005).
[5] *See* Nat'l Cable & Telecomm. Ass'n. v. Brand X Internet Servs., 545 U.S. 967, 1003 (2005).

broadband internet access is ambiguous and invoke Chevron deference for the classification of broadband internet access providers as common carriers.

4. The Reasons for Objection Identified by the Commissioners are Not Justified
   The dissenting Commissioners raise several objections to a rule that provides for net neutrality[6]. These justifications state that the FCC either lacks the ability to make an anti-discrimination or anti-blocking rule, or that the imposition of anti-discrimination rule or anti-blocking rule would be bad for the internet economy. As stated above, there is ample factual and legal authority for the promulgation of anti-discrimination and anti-blocking rules under Title II, and the Supreme Court only invalidated the classification of the Open Internet Order because the FCC chose to classify broadband internet access providers as information services but regulated them as if they were common carriers. The use of Title II regulatory powers is sufficient to justify the anti-discrimination and anti-blocking measures formerly contained in the Open Internet Order. As for disruptive impact on the economy, the dissenting Commissioners ignore the imposition of additional costs on both content providers, citizens, and small businesses. The other objection is that the use of Title II would result in increased charges for internet users. This argument is disingenuous on it's face because it ignores the additional charges that are likely to occur in a tiered-service model made possible by lack of anti-discrimination and anti-blocking rules. It also argues that market based charges for different levels of service are somehow legitimate but bemoans the potential for increased charges based on net neutrality.

   I ask for the following in response to the foregoing comments:

   1. A delay in adoption of any rule not incorporating anti-discrimination or anti-blocking provisions similar to the Open Internet Order
   2. A more thorough examination of the impact of proposed rules on small and micro-businesses with an emphasis on the effects of discrimination or prioritization on aggregate demand
   3. An explanation of why the provisions of Title II are not applicable to broadband internet service providers, and why the FCC will refuse to argue that those provisions are ambiguous and the agency's interpretation is entitled to Chevron deference.
   4. A rule that acknowledges the role of an open internet in democracy.

[6] See NPRM, FCC 14-61, pages 94-95, dissenting statement of Commissioner Ajit Pai