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July 18, 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*
GN Docket No. 09-191, *Preserving the Open Internet***

Dear Ms. Dortch,

On Wednesday, July 16, 2014, I met with Rebekah Goodheart, Commissioner Clyburn's Legal Advisor – Wireline, and the Commissioner's Law Clerks Laura Arcadipane, Sharon Lin, and Adrian R. Peguese. I discussed matters in the above-captioned dockets, with my presentation focused primarily on the substance of Free Press's comments since filed in this proceeding.¹

In the main, those initial comments focus on the four major themes outlined below. Despite the incontrovertible facts and the clear law on each of these points, they have proven controversial only because of the unsubstantiated claims broadband providers make about them. Our filing is intended to debunk and dispel (yet again) some of the most pernicious myths about reclassification and Net Neutrality, while describing the best path for adoption of Open Internet safeguards based on the sound legal foundation of Title II.

These are the four basic truths that should inform deliberations in this proceeding.

- (1) Title II common carriage is a highly deregulatory and flexible framework, designed to preserve core nondiscrimination principles even in competitive telecom markets. Title II and the 1996 Act do not apply solely to voice, telephony, monopolies, or utilities, but rather to all telecommunications services regardless of the facilities used to provide them.
- (2) Prior Commissions were wrong, in the Internet access classification decisions handed down over the last decade and half, to categorize broadband Internet access as an information service. Those decisions were mistaken at the time, but in any event the circumstances on which they were predicated also have changed in the intervening years. The Commission has both the ability and the obligation to re-assess these classifications.

¹ See Comments of Free Press, GN Docket Nos. 14-28, 10-127, 09-191 (filed July 18, 2014) ("Free Press Comments.")

- (3) Common carrier status had no negative impact on broadband investment when carriers were subject to Title II, nor any discernible impact on ISP stock valuations when the Commission opened the “Third Way” docket in 2010. In fact, as our comments illustrate:
- Average annual investment by telecommunications carriers was *55 percent higher* during the period of Title II’s application to such carriers’ broadband services than it has been in the years since the Commission removed broadband from Title II.
 - The cable industry’s average annual network investments were *250 percent higher* in the years before the FCC declared cable modem service not subject to Title II than it has been in the subsequent years.
- (4) Section 706 cannot serve as a basis for enforceable protections against broadband providers’ blocking, discrimination, or unreasonable terminating access fees.

During the meeting, I also briefly discussed the unacceptable disparity between the protections the *Notice of Proposed Rulemaking* proposes for wired and mobile wireless broadband connections.² I noted that this same disparity in the 2010 rules was one basis for Free Press’s objections to those rules, and discussed the disparate impact that retaining this distinction would have on individuals and communities that rely on mobile devices as their primary or sole means of accessing the Internet. Nevertheless, without minimizing the problematic nature of such unequal protection for wireless users, I explained that readopting *any* rules on the basis of Section 706 authority would render those rules ineffective and incapable of withstanding judicial review – no matter how superficially strong or weak such rules may appear on their face.

Lastly, I noted that our comments took no position on the Mozilla petition or other alternative approaches described in the *Notice*. However, in response to questions about them, I expressed our reservations about any new or incomplete classification that would entail recognizing a service offered “to entities not in privity with the broadband provider.”³

Respectfully submitted,

/s/ Matthew F. Wood

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cc: Rebekah Goodheart
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Sharon Lin
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² See *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Notice of Proposed Rulemaking, 29 FCC Rcd 5561, ¶ 62 (2014) (“*Notice of Proposed Rulemaking*” or “*Notice*”).

³ *Id.* ¶ 152.