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BY ECFS

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

Re: Protecting and Promoting the Open Internet, GN Docket No. 14-28

Dear Ms. Dortch:

On July 17, 2014, Leigh Freund, the Chief Counsel for Global Public Policy for AOL Inc. (“AOL”), Pantelis Michalopoulos, Steptoe & Johnson LLP, and the undersigned counsel met with Gigi Sohn, Special Counsel for External Affairs to the Chairman, Ambassador Philip Verveer, Senior Counsel to the Chairman, Daniel Alvarez, Legal Advisor to the Chairman, Sagar Doshi, Special Assistant to the Chairman, Matthew DelNero, Deputy Bureau Chief, Wireline Competition Bureau, David Tommey, Deputy Director, Office of Legislative Affairs, and Eric Feigenbaum, Office of Media Relations.

At that meeting, AOL discussed the issues raised in its comments, filed in the above-referenced proceeding.¹ Specifically, AOL discussed the importance of the open Internet to its business, especially its increasing complement of online video services, including HuffPost Live, and AOL On Originals. To safeguard the open Internet and ban pay-to-play arrangements, AOL discussed a structure combining reliance on Section 706 of the Telecommunications Act of 1996² and Title II of the Communications Act, with the latter to be deployed to the extent necessary.

Section 706 provides the Commission with the power and the mandate to prevent broadband Internet Service Providers from undermining the virtuous circle, recognized both by the Commission and by the Court of Appeals for the D.C. Circuit,³ between innovation by edge

¹ Comments of AOL Inc., Docket No. 14-28 (filed July 15, 2014).

² 47 U.S.C. § 1302.

³ *Verizon v. FCC*, 740 F.3d 623, 649 (D.C. Cir. 2014).

providers and broadband infrastructure deployment. To fulfill its mandate, however, AOL believes that the Commission must adopt firmer and simpler rules against pay-to-play arrangements than it has proposed, such as the following:

- no pay-to-play when a broadband access provider is affiliated with an upstream edge provider;
- no pay-to-play when a broadband access provider has market power;
- no pay-to-play when a broadband access provider is also in the business of charging end users; and
- outside of these cases, any pay-to-play proposal only subject to Commission prior-approval.

These rules are sufficiently different from common carrier rules to pass muster under *Verizon*.⁴ For example, prohibition on discrimination in Title II of the Communications Act applies to all carriers regardless of affiliation and market power. And there is nothing common-carrier-specific about a prohibition on double-charging.

AOL also noted that developing rules under Section 706 does not mean that Title II is not necessary or valuable. Combatting pay-to-play is so important to the Internet industry, and therefore to broadband infrastructure deployment, that the Commission needs its entire jurisdictional arsenal. AOL believes that Title II should thus serve as a last resort that is triggered (along with a set of appropriately firm Title II rules) if Section 706 rules prove insufficient. Specifically, AOL believes that the Commission would be justified in making the factual finding that the information-service component of broadband Internet access service can be readily separated from the transport component. But this need not entail Title II regulation. The FCC would have the authority to forbear totally from Title II rules,⁵ so long as the continued existence of effective Section 706 rules makes Title II unnecessary to protect consumers.

Sincerely

/s/

Andrew W. Guhr
Counsel to AOL Inc.

⁴ *Id.* at 651-52.

⁵ *See* 47 U.S.C. § 160.