

September 15, 2014

The Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Commissioners:

To remain competitive in a tough 21st century global economy, America is going to need a best-in-class and always-improving broadband platform, which will drive innovation and growth. High-speed broadband must be equally accessible by all American consumers and all edge service providers. But lack of real competitive choice among broadband access providers means that a few Internet Service Providers (ISPs) have unrestrained last-mile power that allows them to pursue profit schemes such as paid prioritization without having to account for the adverse impact on the overall Internet ecosystem.

Where the marketplace does not offer the public an option to exercise its choice for an open Internet, policymakers have a responsibility to act on behalf of the public interest.

So I welcome Chairman Wheeler's recent call for U.S. policymakers "to do everything in our power to ensure that the United States has the world's most dynamic and competitive broadband ecosystem with a virtuous cycle of new investment, new innovations, and new services." ("The Facts and Future of Broadband Competition", Sept. 4, 2014.) Fortunately, the Federal Communications Commission ("FCC") has the authority under Title II of the Communications Act to safeguard America's broadband future by ensuring that paid prioritization and other practices do not thwart the entry of new edge service providers and dull market incentives for continuous infrastructure improvement.

I fully support efforts to protect, encourage and create competition, including in the context of merger reviews, Internet Protocol transition, spectrum allocation, citizen-driven broadband expansion and universal service, as well as the Open Internet proceeding. Where competition can work, it should be allowed to work. However, as the FCC has clearly documented and you have lamented, no such competition currently exists in the high-speed broadband access market. And there is no indication that sufficient competition will evolve in the near-term to disincentivize providers from exploiting their last-mile power in ways that undermine the vision you have set out for America's broadband future.

So I am urging you to follow the FCC's findings about today's broadband reality and tomorrow's broadband needs to their logical legal conclusion. In order to send a clear signal to the market that the FCC stands ready and well-grounded to intervene where broadband access providers adopt practices that threaten the public interest in a vibrant 21st century broadband

ecosystem, it is necessary and imperative that you to reclassify broadband access services under Title II of the Communications Act of 1934.

As Chairman Wheeler has said, it is time for the FCC to establish clear rules of the road in order to provide guidance to all players and restrain the sort of future actions that would harm the public interest and disincentivize investment and innovation. And -- since the Federal Circuit has made clear that Section 706 of the 1996 Telecommunications Act does not provide sufficient authority for the FCC to prohibit, or even adopt a meaningful presumption against, paid prioritization -- it is time for the FCC to set its rulemaking on the firm legal foundation of Title II of the 1934 Communications Act.

Moreover, I consider it misleading that the public conversation about Title II classification is being dogged by rhetoric of the dangers of over-regulation. Classifying broadband as a Title II service would not entangle the Internet in the sort of regulatory thicket that governed telecommunications service provision in the 1970s and 1980s. Indeed, Congress acted in the 1996 Telecommunications Act to ensure that the FCC has discretion to forbear from applying all but the few Title II provisions needed to do the job. And there is broad consensus that the FCC would only need to apply a handful of Title II provisions in order to preserve an open Internet.

I look forward to continuing to work with you to keep the Internet open as a platform for innovation, communication and commerce.

Sincerely,



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Ron Wyden  
U.S. Senator