Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Protecting and Promoting the Open Internet	)	GN Docket No. 14-28
	)	
Framework for Broadband Internet Service	)	GN Docket No. 10-127

REPLY COMMENTS OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

Matthew A. Brill
Matthew T. Murchison
Jonathan Y. Ellis
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004

Rick C. Chessen
Neal M. Goldberg
Michael S. Schooler
Steven F. Morris
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION
25 Massachusetts Avenue, NW
Suite 100
Washington, DC 20001

September 15, 2014

TABLE OF CONTENTS

Page

INTRODUCTION AND SUMMARY 1

DISCUSSION 3

I. THE RECORD MAKES CLEAR THAT A TITLE II APPROACH TO OPEN INTERNET REGULATION WOULD BE UNLAWFUL, UNNECESSARY, AND PROFOUNDLY UNWISE 3

A. The Notion That a Title II Approach Would Promote Innovation and Investment Is Exactly Backwards 6

B. The Commission's Forbearance Authority Would Not Eliminate the Profound Risks Associated with Reclassification.. 13

C. The "Factual Particulars" of Broadband Internet Access Service Do Not Justify Reclassification Under Title II 16

D. The Latest Variations on Alternative Approaches Under Title II Are Similarly Flawed 21

II. THE RECORD SPECIFICALLY CONFIRMS THAT SECTION 706 AUTHORIZES THE RULES PROPOSED BY THE NPRM, INCLUDING MEASURES TO PREVENT ANTICOMPETITIVE PAID PRIORITIZATION ARRANGEMENTS 24

III. PROPOSALS TO EXTEND OPEN INTERNET RULES TO THE TRAFFIC-EXCHANGE MARKETPLACE ARE MISPLACED AND UNFOUNDED................... 30

IV. THE RECORD REFLECTS A BROAD CONSENSUS THAT PROPOSED EXPANSIONS OF DISCLOSURE OBLIGATIONS ARE UNWARRANTED.............. 37

CONCLUSION... 41

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Protecting and Promoting the Open Internet	)	GN Docket No. 14-28
	)	
Framework for Broadband Internet Service	)	GN Docket No. 10-127

REPLY COMMENTS OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

The National Cable & Telecommunications Association ("NCTA") submits these reply comments in response to the opening comments filed in the above-captioned proceedings.

INTRODUCTION AND SUMMARY

The opening round of this proceeding saw a record-setting number of comments filed, reflecting the broad interest of consumers, industry stakeholders, and advocacy groups in this latest effort by the Commission to adopt prudent and legally defensible rules to protect and promote the open Internet—rules that virtually everyone agrees should establish effective oversight while also nurturing the dynamism, innovation, and investment that have long fueled the broadband economy. Indeed, even with this unprecedented level of participation, clarity has begun to develop regarding several critical issues that should shape how the Commission ultimately responds to this challenge.

A wide array of commenters, including virtually every Internet service provider ("ISP"), leading edge providers, a diverse set of technology providers, and various public interest and advocacy groups support the Commission's proposal to rely on Section 706 in adopting new rules, and to avoid pursuing a risky and destabilizing reclassification strategy under Title II. The record powerfully refutes the various arguments advanced by proponents of a Title II approach.

In particular, the comments demonstrate that imposing common-carrier regulation would destroy the Internet's dynamism and dramatically *reduce* rather than increase broadband investment and innovation; indeed, many commenters agree that subjecting broadband services to Title II would seriously threaten the foundation undergirding the Internet's growth and development. Moreover, the record shows that today's increasingly sophisticated broadband services fall even more squarely within the definition of "information service" than ever before. The opening comments also confirm that alternative proposals for Title II regulation are fundamentally flawed and should be rejected by the Commission.

With regard to the Commission's authority under Section 706, the record also makes clear that the statute enables the Commission to adopt strong rules that require robust disclosures, prohibit blocking, and ensure that any business arrangements between broadband providers and edge providers are commercially reasonable. In particular, the opening comments demonstrate that Section 706 empowers the Commission to prevent anticompetitive paid prioritization arrangements that would create "fast lanes" and "slow lanes" on the Internet. Several parties have advanced specific proposals for such rules—including a rebuttable presumption that paid prioritization arrangements are "commercially unreasonable"—and the Commission should carefully examine these proposals in developing its new rules. The various avenues identified in the record for limiting paid prioritization under Section 706 underscore that it is entirely unnecessary for the Commission to pursue a risky and destabilizing Title II-based approach to achieve its policy objectives.

At the same time, the Commission should reaffirm that its rules will not extend to the dynamic and competitive traffic-exchange marketplace. The record provides ample support for the Commission's tentative conclusion to maintain its longstanding hands-off approach to

Internet traffic exchange, and confirms that such arrangements certainly are beyond the scope of this proceeding. While Netflix, Level 3, Cogent, and their allies all would stand to benefit from new Commission rules that would upend well-established industry practices regarding traffic exchange, numerous other parties explain that any such rules would wreak havoc on the Internet ecosystem—including by encouraging inefficiency, fostering increased congestion, and saddling broadband subscribers with higher costs.

Finally, in considering any new rules, the Commission should take into account the broad consensus among commenters that most of the enhanced disclosure obligations proposed by the NPRM not only are unnecessary but likely would be counterproductive. NCTA and its members continue to support the transparency rule adopted by the Commission in 2010 and upheld by the D.C. Circuit in *Verizon*, and remain committed to ensuring that broadband customers have access to the information they need to evaluate and make choices about the increasingly wide array of broadband Internet access services available to them. But as a diverse group of commenters agree, there is no basis to conclude that enhanced transparency rules are needed, and every reason to believe that expanding ISPs' disclosure obligations in the manner contemplated by the NPRM would do far more harm than good.

DISCUSSION

I. THE RECORD MAKES CLEAR THAT A TITLE II APPROACH TO OPEN INTERNET REGULATION WOULD BE UNLAWFUL, UNNECESSARY, AND PROFOUNDLY UNWISE

As NCTA explained in its opening comments, Title II reclassification not only is unnecessary to achieve the Commission's policy objectives, but would seriously undermine those objectives by dampening innovation and deterring the investment necessary to make faster

and more robust broadband services available to all Americans.[1] Disregarding the clear Section 706 alternative laid out by the *Verizon* court also would present significant legal risks. It would impermissibly ignore the "factual particulars" that continue to warrant classification of broadband Internet access as an "information service" and would trample on broadband providers' investment-backed reliance interests.[2]

Commenters from all corners of the Internet ecosystem agree. Broadband providers are nearly unanimous in their calls to base any rules on Section 706 rather than Title II.[3] Equipment manufacturers and technology providers—companies that have played a critical role in the industry's development and deployment of broadband facilities—also highlight the dangers a Title II-based approach would pose to those efforts.[4] Several prominent public interest groups and advocacy organizations expressly support a Section 706 approach and warn of the policy

---

[1] NCTA Comments at 17-30.

[2] *Id.* at 30-38.

[3] *See, e.g.*, AT&T Services Comments at 38 ("AT&T Comments"); Comcast Corp. Comments at 14 ("Comcast Comments"); Cox Communications Comments at 30; Time Warner Cable Comments at 8 ("TWC Comments"); Verizon and Verizon Wireless Comments at 46 ("Verizon Comments").

[4] *See, e.g.*, Consumer Electronics Association Comments at 12 ("CEA Comments") ("Title II regulation, even with forbearance from application of certain legacy rules, would hamstring the flexibility that is key to broadband innovation."); Ericcson Comments at 10, 13 (explaining that applying Title II would stifle investment and innovation and send the wrong message to the rest of the world); Alcatel-Lucent Comments at 2, 7 (noting that imposing Title II's antiquated regulatory regime on broadband would be legally suspect, would lead to considerable regulatory uncertainty, and would risk chilling investment in infrastructure); Arris Group Comments at 11-14 (explaining that a Title II-based approach would be disruptive to broadband investment and would introduce substantial uncertainty to the marketplace); Telecommunications Industry Association Comments at 19 ("TIA Comments") ("[T]he specter of Title II regulation . . . would slow the introduction of new services, hamper broadband ISPs' ability to respond quickly to customers, and potentially thwart the Commission's own goals for increasing broadband deployment and upgrade.").

harms and legal risks posed by Title II reclassification.[5] And even leading edge providers and content delivery networks ("CDNs") who favor the adoption of robust open Internet protections argue for "light-touch rules" in lieu of heavy-handed common-carrier regulation.[6] As Internet pioneer Jeff Pulver, co-founder of Vonage and Free World Dialup, has explained, "Title II regulation threatens to foreclose the experimentation necessary to maximize the public interest, consumer benefit, and enterprise value of all-IP networks."[7]

Against this backdrop of broad consensus among key participants in the Internet ecosystem, proponents of reclassification generally advance three sets of arguments. First, some proponents—including, most prominently, Free Press—tout Title II as a supposedly "deregulatory" approach to Internet governance and assert that reclassification would not harm (and would even somehow benefit) innovation and investment in broadband. Second, many reclassification proponents argue that any harm to investment could be prevented by relying on

---

[5] *See, e.g.*, Communications Workers of American and National Ass'n for the Advancement of Colored People Comments at 15 ("CWA/NAACP Comments") ("[T]he Commission correctly concludes that Section 706 provides a sound legal grounding for its Open Internet rules, rules that will continue the successful track record of the 2010 rules in protecting Internet freedom and encouraging investment by in network and edge providers."); Free Market Advocates Comments at 5 ("Instead of boosting broadband deployment, Title II would stifle core infrastructure investment. With the core less willing to invest, take risk and grow, broad ecosystem innovation that depends on the core would be inhibited, too, thus harming consumers. The 'virtuous circle' of Internet investment would come unbound, frustrating Congress's foundational deployment goals."); Free State Foundation Comments at 20 (noting that "investment, innovation, and growth in the Internet economy have occurred because broadband has not been subjected to heavy-handed Title II regulation").

[6] *See, e.g.*, Internet Association Comments at 16-18 (urging the Commission to adopt "simple, light-touch rules" and declining to endorse a Title II-based approach, on behalf of several edge providers including Google, Amazon, and Facebook); Akamai Comments at 12 n.11 (acknowledging that reclassifying broadband Internet access service under Title II would be "immensely destabilizing").

[7] Jeff Pulver, *Fear and Loathing as Telecom Policy*, HuffingtonPost: Business (Aug. 6, 2014), http://huff.to/1vcpBrH.

the Commission's authority to forbear from applying certain provisions of Title II to common carriers. And third, some of these parties—with Free Press again among the most adamant—attempt to justify Title II reclassification as a legal matter based on purported changes to the core "factual particulars" of broadband Internet access service (or based on assertions that the Commission's repeated findings in support of several classification decisions were all wrong when issued). As discussed below, each set of arguments is unavailing.

A. The Notion That a Title II Approach Would Promote Innovation and Investment Is Exactly Backwards

As part of their push for reclassification, Free Press and others claim that Title II would not stifle investment and innovation, based on their bizarre view of Title II's public-utility-style regime as a "highly deregulatory" [8] approach that would "not mean more regulation."[9] Free Press goes so far as to declare that the imposition of common-carrier regulation on broadband ISPs would somehow *promote* investment and innovation—citing historical data that it claims shows a high level of investment by companies subject to Title II "during a period of time when that law was applied across the industry."[10] Such characterizations of Title II are self-evidently false, contradicted by the Commission's prior statements, the concessions of other Title II proponents in this proceeding, and Free Press's own words. Moreover, Free Press's "empirical" claims cannot withstand close scrutiny.

Title II plainly represents the most intrusive form of regulation imposed in the communications industry (or most other segments of the economy), subjecting virtually every aspect of a service provider's operations—entry into and exit from particular geographic areas or

---

[8] Free Press Comments at 46.

[9] Netflix Comments at 24 n.42.

[10] Free Press Comments at 98-112.

lines of business, prices and other terms and conditions of service, service quality, billing and collection, facilities upgrades, network management, repair services, business arrangements with other providers, and so forth—to prescriptive mandates or Commission oversight.[11] Contrary to Free Press's claims, the Commission itself has explained that Title II reclassification would subject broadband ISPs to a host of new and crippling regulatory burdens that would apply *automatically* to broadband ISPs if they were reclassified under Title II.[12] These obligations would include "a new federal duty to furnish 'communication service upon reasonable request therefor'; to charge 'just and reasonable' rates; to refrain from engaging in 'unjust or unreasonable discrimination'; to comply with FCC requirements for filing and abiding by written tariffs; and to interconnect with other carriers" on regulated terms and conditions[13]—as well as to obligations to contribute to universal service and other funding mechanisms, and numerous other regulations devised with voice telephony in mind.[14] Accordingly, the Commission has long recognized that regulating ISPs as common carriers could "seriously curtail the regulatory

---

[11] *See, e.g.*, 47 U.S.C. § 201 (requiring that "[a]ll charges, practices, classifications, and regulations for and in connection with [tele]communication service . . . be just and reasonable"); *id.* § 203 (requiring "[e]very common carrier" to file tariffs with the Commission); *id.* §§ 204-09 (providing for the hearing of complaints about "any new or revised charge, classification, regulation, or practice" and authorizing the Commission "to determine and prescribe what will be the just and reasonable charge . . . and what classification, regulation, or practice is or will be just, fair, and reasonable"); *id.* § 211 (requiring filing of "all contracts, agreements, or arrangements with other carriers"); *id.* § 214 (requiring Commission approval for "the construction of a new line or of an extension of any line"); *id.* § 251 (requiring interconnection with all other telecommunication carriers).

[12] Petition for Writ of Certiorari, U.S. Dept. of Justice and FCC, *FCC v. Brand X Internet Servs.*, No. 04-277, at 25-26 (Aug. 27, 2004) ("FCC *Brand X* Cert Petition").

[13] *Id.* at 25 (internal citations omitted).

[14] *Id.* at 26.

freedom that . . . was important to the healthy and competitive development of the enhanced-services industry."[15]

Proponents of Title II reclassification reveal in their comments that they, too, recognize that the imposition of Title II would substantially increase regulatory burdens on ISPs. Many who call for reclassification acknowledge that imposing Title II in no way would be "highly deregulatory" when they ask the Commission to bring an end to the current "deregulated environment."[16] Indeed, Free Press's admission that it believes Title II would enable the Commission to adopt *more* invasive regulation than Section 706 belies its rhetorical claims about the supposedly deregulatory nature of Title II.[17]

Free Press's related claim that investment flourished "during a period of time" when Title II "applied across the industry" fares no better. As an initial matter, to the extent Free Press is suggesting that there was ever a time when broadband Internet access was classified as a Title II telecommunications service, it is simply wrong. As AT&T correctly points out, "retail broadband Internet access service[s] . . . have *always* been information services outside the scope of Title II," and "Title II proponents like Free Press either misunderstand or are attempting to

---

15 *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 ¶ 46 (1998) ("*1998 Report to Congress*").

16 New Media Rights Comments at 23; *see also, e.g.*, Center for Democracy and Technology Comments at 15 ("Many provisions of Title II are deeply rooted in the history of monopoly-era telephone regulation and would be a poor fit for the current Internet access marketplace. Regulating subscriber prices, or requiring regulatory approval to construct new communications facilities, or calling for detailed regulatory scrutiny into the transactions or management of broadband providers all would be antithetical to the effort to promote a dynamic and growing market for broadband Internet access service.").

17 *See* Free Press Comments at 128 (stating its view that "[a] restoration of basic common carriage is the Commission's only option to achieve the high-level goals" of the NPRM, and that "Section 706 simply fails to give the Commission the authority to do what the Chairman says the [NPRM] will do").

rewrite history" in suggesting otherwise.[18] While incumbent telephone companies provided *wholesale* DSL transmission under Title II for a time, the nation's leading broadband providers—cable operators—have *never* provided a retail *or* wholesale component of broadband Internet access on a common-carrier basis.[19]

In any event, Free Press's suggestion that telco investment flourished in the aftermath of the Telecommunications Act of 1996, while their DSL transmission service was subject to Title II and diminished when the Commission reclassified DSL as an integrated information service is based on a transparently flawed analysis. Most fundamentally, Free Press's data do not distinguish among the various services to which the telcos' investments were directed, and therefore do not reflect the fact that, even for those entities who offered legacy voice telephony services subject to Title II, the capital expenditures that Free Press touts were directed overwhelmingly to the development and deployment of facilities, such as fiber-optic lines for the Internet backbone (some of which were not even deployed in the United States) and fiber-to-the-home for broadband, that were constructed to support non-Title II services.[20] Notably, Verizon and AT&T did not launch their fiber-based FiOS and U-Verse services until *after* the Commission determined that broadband Internet access by telecommunication carriers would be

---

[18] AT&T Comments at 46-47.

[19] And as Free Press itself acknowledges, Internet access service from dial-up ISPs, like AOL or Earthlink, were never classified as telecommunication services under Title II either. *See* Free Press Comments at 71-73. Thus, despite its rhetoric to the contrary, Free Press is not advocating for a "return to Title II," *id.* at 98, but an entirely new regulatory regime.

[20] *See* Free Press Comments at 100 (including capital expenditures by backbone-transit providers Level 3 Communications and Global Crossings).

classified as a Title I information service.[21] And while Free Press points to "massive investment" by providers of Title II-regulated CMRS services in recent years, that investment has been directed almost exclusively towards the deployment of 3G and 4G *data networks* in order to meet growing consumer demand for wireless broadband service—*an information service*[22]—not the expansion of Title II voice capabilities.

Free Press also contends that cable investment flourished in the years prior to the Commission's decision to classify cable modem service as an "information service"—even though the industry "fully expected" to be regulated under Title II—and significantly declined in the years following the Commission's classification decision.[23] Neither bucket of this improbable argument holds water.

First of all, cable operators never had any reason in the years leading up to the Commission's classification decision to expect the light-touch regulatory treatment of their broadband services to change. To the contrary, Chairman Kennard repeatedly stressed the need for a "hands-off, deregulatory approach to the broadband market" during the period in the late 1990s when Free Press's statistics show a substantial increase in broadband investment[24]—consistent with the overwhelming record evidence put forward by NCTA and others that this

---

[21] See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 14853 ¶ 9 (2005) ("*Wireline Broadband Order*").

[22] *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901 (2007) ("*Wireless Broadband Order*").

[23] *See* Free Press Comments at 103-12.

[24] William E. Kennard, Chairman of the FCC, Speech to NCTA (June 15, 1999); *see also* William E. Kennard, Chairman of the FCC, Speech to Federal Communications Bar, Northern California Chapter (July 20, 1999) ("The fertile fields of innovation across the communications sector and around the country are blooming because from the get-go we have taken a deregulatory, competitive approach to our communications structure—especially the Internet.").

light-touch approach has fueled the substantial investment, innovation, and dynamism that has long characterized the broadband marketplace.[25] Despite the flurry of court activity preceding the Commission's classification decision, the Commission never gave any reason to believe that Title II regulation was at hand,[26] and the Supreme Court, of course, ultimately affirmed the Commission's decision not to impose such regulation.[27] Free Press's transparent attempt to concoct a narrative that the possible application of Title II drove up broadband investment thus is as unsupported as it is counterintuitive.

Similarly, the notion that the Commission's decision not to apply Title II regulation somehow caused cable investment to decline is as ridiculous as it sounds. It is not remotely accurate that cable operators' investments in its physical network are "70 percent lower today than they were in 1996,"[28] or that "cable is done investing."[29] Free Press can make such outlandish claims only by writing off completely broadband providers' investment in consumer premises equipment ("CPE").[30] But a substantial portion of CPE investment is in the latest generation of modems, gateways, and routers that are integral to delivering constantly improving broadband service to consumers. Free Press also ignores that fact that the cost of raw materials for infrastructure upgrades, in some cases, has decreased dramatically. The price of fiber-optic cable, for example, has plummeted from $5,000 per strand mile in 1997 to as little as $33 per strand mile in 2014. And yet, total infrastructure investment expenditures by cable companies in

---

25 *See* NCTA Comments at 6-16; *see also, e.g.*, Comcast Comments at 43-44; Verizon Comments at 47-49.

26 *See, e.g.*, Kennard, Speech to NCTA, *supra* note 24 ("I've asked my general counsel for options in light of the recent *Portland* decision.").

27 *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 1003 (2005).

28 Free Press Comments at 107.

29 *Id.* at 110.

30 *Id.* at 105-09.

2013 was down less than 15% from its high mark in 2001. The truth is that cable broadband networks will *never* be finished or completely built-out. Every 18-24 months cable broadband providers double the capacity of their broadband networks. And there is no end to that trend in sight.

Moreover, Free Press's assertions are undercut by the economic analyses cited in NCTA's opening comments documenting the profound chilling effect that common-carrier-style regulation has had on broadband investment in Europe.[31] In contrast to Free Press's back-of-the-envelope calculations and prognostications, those studies applied careful analysis to hard data and concluded that the United States' light-touch approach to broadband regulation has been "more effective in terms of driving broadband investment" than Europe's public-utility-style regulation of the type that Free Press and others prefer.[32]

Finally, Free Press's unfounded allegations that broadband providers are simply lying about their concerns with a Title II approach and that investors are not worried are specious and insulting.[33] The entire premise of the allegation about broadband providers' actual concerns is the claim that infrastructure investment increased under Title II and decreased under the Commission's "light touch" approach. As explained above, that is demonstrably false. As for investors' concerns, the only Wall Street analyst Free Press cites expressly contradicts Free Press's claim. Although Bernstein Research might believe that Title II is unlikely, it emphasizes that "investors are . . . concerned about both the likelihood of Title II reclassification and the

---

31 *See* NCTA Comments at 20-21.

32 *See* Christopher S. Yoo, *U.S. v. European Broadband Deployment: What Do the Data Say?*, at 51 (June 2014), *available at* https://www.law.upenn.edu/live/files/3352-us-vs-european-broadband-deployment.

33 *See* Free Press Comments at 92-98.

consequences on the sector if it were to occur."[34] And that view is confirmed by many other investors and analysts that Free Press ignores.[35]

Free Press and its allies simply cannot overcome the substantial record evidence of the demonstrated harms of a Title II-based approach.

B. The Commission's Forbearance Authority Would Not Eliminate the Profound Risks Associated with Reclassification

In an attempt to make such heavy-handed regulation more palatable, several proponents of Title II reclassification continue to argue that the Commission could reduce unwarranted regulatory burdens through the forbearance process.[36] To be sure, there is widespread recognition that if the Commission were to attempt to reclassify broadband Internet access service as a telecommunication service, "it [would] be necessary to forbear from certain inapplicable or unnecessarily burdensome sections of Title II."[37] But forbearance is "by no means the panacea that reclassification proponents make it out to be."[38] To the contrary, the record confirms that the theoretical availability of forbearance would not mitigate the harms associated with Title II reclassification in practice.

---

[34] *See* Paul de Sa et al., *U.S. Internet and U.S. Telecoms: Why the Current Net Neutrality Debate Does Not Matter for Investors*, Bernstein Research (July 9, 2014).

[35] *See, e.g.*, Craig Moffett, *Title II: The Message of the Markets . . . Reminiscences of the Summer of 2010*, MoffetNathanson Research (Aug. 25, 2014) ("Cable investors are naturally skittish about whether the FCC will or will not move to reclassify broadband as a Title II service.").

[36] *See* Public Knowledge, Benton Foundation, and Access Sonoma Broadband Comments at 80-83 ("Public Knowledge Comments"); CompTel Comments at 21-23; Vonage Comments at 46.

[37] New Media Rights Comments at 24.

[38] AT&T Comments at 39.

As NCTA and others have explained, forbearance would be neither simple nor certain.[39] For that reason, the Commission itself explained to the Supreme Court in 2004 that forbearance "is not in this context an effective means of removing regulatory uncertainly that in itself may discourage investment and innovation."[40] And since that time, the Commission has, if anything, only made forbearance more difficult and less assured, requiring in some contexts a fact-intensive, geographic-market-by-geographic-market, product-by-product market power analysis.[41] If the Commission were to apply the same approach to broadband Internet access service, not only would it be challenging to grant nationwide forbearance at the outset, but potentially "any new offering would have to go through an analysis of whether that offering would fall under a prior forbearance decision and whether a future Commission would agree with that analysis."[42]

The record also makes abundantly clear that whatever the Commission ultimately decides on forbearance, the decision would spur new rounds of litigation that would only exacerbate the regulatory uncertainty created by reclassification. Even among Title II proponents, there is nothing approaching consensus regarding which provisions the Commission should forbear from

---

39 *See, e.g.*, NCTA Comments at 26-27; AT&T Comments at 64-68; Charter Comments at 17-18; Information Technology & Innovation Foundation Comments at 10-12 ("ITIF Comments"); TWC Comments at 18-19.

40 FCC *Brand X* Cert Petition at 27-28.

41 *See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd 8622, ¶¶ 41-45 (2010); *see also* Remarks of FCC Commissioner Ajit Pai Before the Internet Innovation Alliance: "The IP Transition: Great Expectations or Bleak House?", Jul. 24, 2014, *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0724/DOC-328418A1.pdf (noting that, in the wake of the *Qwest-Phoenix Order*, the Commission "has actually made it *harder*, not easier, to grant forbearance from economic regulations").

42 Ericcson Comments at 12.

applying.[43] Several proponents propose that the Commission forbear from only a handful of provisions,[44] while imposing expansive duties including wholesale unbundling obligations that have never applied to cable networks.[45] And tellingly, those same parties consistently argue elsewhere that forbearance represents a very high hurdle that can be met only through detailed and highly granular evidence of effective competition and other public interest criteria—which in this case would conflict with the arguments advanced in support of open Internet regulation.[46]

Finally, even reclassification coupled with "maximum" forbearance—leaving "only" Sections 201, 202, and 208 in place for broadband providers—still would subject broadband providers to many of the most onerous burdens of Title II. The Commission has relied on these provisions to adopt a dizzying array of burdensome common-carrier obligations, including price regulation, resale obligations, and unbundling and physical interconnection requirements.[47] Given the expansive scope of those statutory provisions, limiting the Commission to *only* that authority that would do little to quell investors' fears.

---

[43] *Compare, e.g.*, AARP Comments at 42 ("Other than Sections 201, 202, and 208, the Commission should forbear from other Title II provisions."), *with* CompTel Comments at 22-23 (arguing to retain Sections 201, 202, 208, 214, 222, 229, 251, 252, and 254).

[44] *See* Public Knowledge Comments at 88-95; New Media Rights Comments at 25; Mozilla Comments at 13; National Ass'n of Regulatory Utility Commissions Comments at 14-16; Rural Broadband Policy Group Comments at 8-9.

[45] *See, e.g.*, CompTel Comments at 21-23; i2Coalition Comments at ii ("The most effective way for the Commission to protect and promote the open Internet is to implement Open Access by reclassifying the broadband transmission component as a Title II telecommunications service.").

[46] *See, e.g.*, Comments of Free Press, GN Docket No. 12-353, at 8 (filed Jan. 28, 2013) ("[W]e strongly believe the public interest is best served when the Commission considers Section 10 forbearance in specific cases for specific carriers in specific markets, with the Commission's general rulemaking procedures most appropriate for questions about the continued necessity of generally applicable rules.").

[47] *See* Comments of the National Cable & Telecommunications Association, GN Docket No. 10-127, at 49-55 (filed Jul. 15, 2010) (collecting relevant orders and cases).

C. The "Factual Particulars" of Broadband Internet Access Service Do Not Justify Reclassification Under Title II

Policy arguments aside, NCTA and many others have explained that any attempt to reclassify broadband Internet access service would face serious legal hurdles.[48] As the Supreme Court explained in *Brand X*, the proper classification of broadband Internet access service turns on whether the transmission component of broadband Internet access service is "sufficiently integrated with the finished service to . . . describe the two as a single, integrated offering,"[49] based on "the factual particulars of how Internet technology works and how it is provided."[50] In analyzing the "factual particulars" in the *Cable Modem Order*, the Commission rightly found that such service entails the use of, rather than the offering of, telecommunications because the telecommunications and information-processing elements are inextricably intertwined in the service furnished to end users.[51] That finding is no less true today than when it was first made in 2002, when the Supreme Court upheld it in 2005,[52] or when the Commission reaffirmed it in 2005,[53] 2006,[54] and 2007.[55] Against the backdrop of the $1.2 trillion invested in broadband

---

48 *See, e.g.*, NCTA Comments at 30-38; Alcatel-Lucent Comments at 11-12; CenturyLink Comments at 40-47; Comcast Comments at 54-59; Cox Communications Comments at 31-32; United States Telecom Ass'n Comments at 22-31; Verizon Comments at 57-62.

49 545 U.S. at 990.

50 *Id.* at 991.

51 *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) ("*Cable Modem Order*").

52 *See Brand X*, 545 U.S. at 1003.

53 *Wireline Broadband Order* ¶ 9.

54 *United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service, Memorandum Opinion and Order*, 21 FCC Rcd 13281 ¶ 1 (2006) ("*BPL Order*").

55 *Wireless Broadband Order* ¶ 26.

infrastructure in reliance on that finding, the Commission would face a heavy burden in attempting to reverse course now.[56]

Some proponents of reclassification nevertheless contend that the Commission is not only authorized but *compelled* by law to reclassify broadband Internet access service as a Title II telecommunications service—asserting that the information-service classification was erroneous when adopted and is even less accurate today.[57] But these arguments rest on gross mischaracterizations of applicable precedents and misconceptions (or misrepresentations) of the relevant facts.

For example, the 2002 *Cable Modem Order* did not, as Free Press contends, misunderstand the nature of broadband Internet access or misapply the Act's definition of "information service." In particular, the classification adopted in the *Cable Modem Order* did not turn on a finding that "when the consumer buys Internet access service, he purchases the ability to 'run a variety of applications,' not connectivity to the Internet."[58] To the contrary, the *Cable Modem Order* recognized that "Internet connectivity functions" of course are *vital components* of broadband Internet access service that "enable cable modem service subscribers to transmit data communications to and from the rest of the Internet."[59] And the Commission

---

[56] *See FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009) (holding that the Commission must "provide a more detailed justification than what would suffice for a new policy created on a blank slate" when "its new policy rests upon factual findings that contradict those which underlay its prior policy" or "when its prior policy has engendered serious reliance interests that must be taken into account"). Indeed, such a reversal may well pose constitutional problems as well. *See, e.g.*, CenturyLink Comments at 58-71; Verizon Comments at 67-68.

[57] *See, e.g.*, Free Press Comments at 63-83; AARP Comments at 10-12; Ad Hoc Telecommunications Users Committee Comments 2-7; Electronic Frontier Foundation Comments at 13-14; Public Knowledge Comments 60-80.

[58] Free Press Comments at 78 (internal citations omitted).

[59] *Cable Modem Order* ¶ 17.

correctly explained that these functions include not only "establishing a physical connection between the cable system and the Internet," but also information-processing functions such as "protocol conversion, IP address number assignment, domain name resolution through a domain name system (DNS), network security, and caching."[60]

The suggestion by Free Press, Public Knowledge, and others that broadband providers do nothing more than "transmit[] Internet Protocol (IP) packets between the addresses of the user's choosing" ignores these integrated information-processing functions and is simply incorrect.[61] This argument wildly oversimplifies the functionality provided by broadband providers in today's complex technological environment. Broadband providers do not simply transmit packets "between or among points specified by the user," as do providers of "telecommunications services."[62] Rather, such transmissions follow dynamically optimized routes among various remote servers and gateways at locations determined by the broadband provider, transit providers, CDNs, and edge providers. Such transmission is far more complex than the simple transmission of a phone call from point A to point B to which these reclassification proponents compare it, as it is inextricably intertwined with numerous integrated information-retrieval and processing functions—including DNS lookup, caching, botnet and malware detection, and protocol conversion—along the way.[63] Thus, as the Commission has explained, "[b]ecause broadband Internet access service inextricably combines the offering of

---

60 *Id.*

61 Free Press Comments at 68; *see, e.g.*, Public Knowledge Comments at 62; Center for Democracy and Technology Comments at 9.

62 47 U.S.C. § 153(50).

63 *See Brand X*, 545 U.S. at 998 ("the high-speed transmission used to provide cable modem service . . . transmits data only in connection with the further processing of information and is necessary to provide Internet service").

powerful computer capabilities with telecommunications," the end user "receives more than transparent transmission whenever he or she accesses the Internet."[64]

Reclassification proponents seek to brush aside all of these information-processing functions by claiming that they are nothing more than "capabilit[ies] for the management, control, or operation of a telecommunications system or the management of a telecommunications service."[65] But the Supreme Court expressly rejected that very argument in *Brand X*.[66] The Court recognized that such an assertion simply begs the question before the Commission by assuming that Internet access service is a "telecommunication system" or "service" that these functions "manage[]."[67] And the Court agreed with the Commission's finding that, in light of the functionally integrated information-processing functions described above, "'[t]he service that Internet access providers offer to members of the public is *Internet access*,' not a transparent ability (from the end user's perspective) to transmit information."[68]

Reclassification proponents also argue that the Commission's prior determinations are undermined by purported changes in the way broadband Internet access service is offered.[69] But, as AT&T explains, if anything, "ISPs' current offerings are even more appropriately classified as

---

64 *Wireline Broadband Order* ¶ 15.

65 47 U.S.C. § 153(20); *see, e.g.*, Free Press Comments 68-69; Center for Democracy and Technology Comments at 13-15; Public Knowledge Comments at 68-69, 75-78; Vonage Comments at 39.

66 *See Brand X*, 545 U.S. at 1012-13 & n.6 (Scalia, J., dissenting, asserting the same argument now advanced by Free Press).

67 *Id.* at 999 n.3 (majority opinion).

68 *Id.* at 1000 (emphasis added).

69 *See, e.g.*, Free Press Comments at 70 (stating, without explanation, that "[i]t's clear the Commission's rationale about homepages, email services, newsgroups and DNS services are all currently incorrect when applied to today's broadband access services"); Ad Hoc Telecommunications Users Committee Comments at 5; Center for Democracy and Technology Comments at 11-12; Public Knowledge Comments at 70-71.

'information services' than those the Commission has evaluated before, because the data processing and transmission components of today's broadband Internet access services are now even *more* functionally integrated."[70] The opening comments demonstrate the ways in which ISPs have expanded the functionally integrated, information-processing elements of broadband Internet access service. In addition to the "protocol conversion, IP address number assignment, domain name resolution through a domain name system (DNS), network security, and caching" functions identified in the *Cable Modem Order*,[71] ISPs today have integrated new functionalities like "spam protection, pop-up blockers, [and] parental controls,"[72] along with "reputation systems for processing potentially harmful data" and "cloud-based storage."[73] Moreover, now that IPv6 is replacing IPv4 as the preferred Internet protocol for transmitting online content, broadband Internet access service now must include the functionality necessary to "transform an IPv4 address into an IPv6 address, and vice versa"[74]—without which "data from an edge provider on the IPv4 Internet could not be transmitted to an end user on the IPv6 Internet."[75] This wide array of new features and functionalities all illustrate that today, more than ever before, "Internet access service is perceived and offered as far more than a pure 'connectivity' service."[76]

---

[70] AT&T Comments at 48.

[71] *Cable Modem Order* ¶¶ 17-18.

[72] AT&T Comments at 49.

[73] Verizon Comments at 59-61.

[74] *Id.* at 61.

[75] *Id.*

[76] AT&T Comments at 49.

Accordingly, the record decisively confirms that the Commission's longstanding information-service classification remains correct today, and that there is no sound legal or factual basis for reversing course.

D. The Latest Variations on Alternative Approaches Under Title II Are Similarly Flawed

As NCTA has explained, the proposals by Mozilla and Professors Wu and Narechania to separate out the transmission functionality available to edge providers and reclassify it as a distinct telecommunications service subject to Title II are fundamentally flawed.[77] The proposals conflict with Commission precedent holding that the broadband Internet access service the Commission has repeatedly classified as a Title I information service "provides the user with the ability *to send and receive* information at very high speed, and to access the applications and services available through the Internet."[78] They ignore the functional realities of modern broadband communications, in which nearly every operation entails numerous and often nearly simultaneous signals between the website and the end user that cannot be neatly separated for distinct regulatory treatment. They run headlong into the definitional requirement that a "telecommunications service" be offered "for a fee."[79] And they present the same policy concerns as broader reclassification proposals.

A wide array of commenters agree that these proposals are fatally flawed and "based on an interpretation of Internet services that results in an overly narrow view of the relationships

---

[77] *See, e.g.*, Comcast Comments at 60-65; Verizon Comments at 62-65; AARP Comments at 42-46; Center for Democracy and Technology Comments at 21-22; City of Los Angeles Comments at 10, 16-17; *see also* Letter of Sarah J. Morris, Open Technology Institute, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 10-127, 14-28, at 1-2 (filed Aug. 25, 2014) ("Open Tech. Inst. *Ex Parte* Letter") (calling the Mozilla approach "legally risk[y]").

[78] *Wireline Broadband Order* ¶ 39 (emphasis added).

[79] 47 U.S.C. § 153(53).

between users and producers of Internet content and services."[80] As the Center for Democracy and Technology concedes: "In a two-way Internet communication between a broadband subscriber and a remote edge provider, neither party views the 'service' it is getting from the broadband provider as limited to the ability to send bits in the outbound direction."[81] Stanford Professor Barbara van Schewick further notes that the "fee" requirement in the definition of "telecommunications service" presents a fundamental "problem[] with the proposal" advanced by Mozilla, and observes that the rules Mozilla proposes under Title II could not apply to "edge providers that do not pay a fee."[82] According to Professor van Schewick, it would likely be "arbitrary and capricious to classify the service provided to edge providers as a telecommunications service based on [a] fee, only to then use the newly gained authority under Title II to ban these fees."[83]

Mozilla attempts to salvage its proposal by straining to argue that the "fee" requirement can be satisfied by the rates broadband providers charge to *end users* (for the supposedly separate consumer-facing service) or by the "Internet content desired by the (paying) local access service subscriber" that the edge provider furnishes.[84] But the fee *consumers* pay for broadband Internet access cannot be treated as a fee for what Mozilla argues is an entirely distinct telecommunications service to *edge providers*. And Mozilla cites no authority for deeming the

---

[80] AARP Comments at 42-46; *see also, e.g.*, Comcast Comments at 60-65; Verizon Comments at 62-65; City of Los Angeles Comments at 10, 16-17.

[81] Center for Democracy and Technology Comments at 21.

[82] Letter of Prof. Barbara van Schewick to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28, at 1 (filed Aug. 6, 2014) ("van Schewick *Ex Parte* Letter").

[83] *Id.*

[84] Mozilla Comments at 11-12.

nebulous "value" associated with edge-provider traffic to be a "fee" within the meaning of the Communications Act.[85]

Similarly, there is a broad recognition that the "springing" or "backstop" Title II proposal is legally unsound, and that adopting such an approach would be arbitrary and capricious.[86] As Professor van Schewick explained, "Internet access service is either a telecommunications service or an information service; it cannot meet both definitions at the same time."[87]

Finally, the Commission should reject the radical proposals of some commenters to establish an "open access" regime that would "unbundle" the "transmission component" of an broadband provider's service and mandate that it be made "available to unaffiliated parties on just, reasonable and nondiscriminatory terms."[88] Apart from the legal, technical, and practical problems noted above with "unbundling" aspects of a functionally integrated information service, the Commission rightly rejected "open access" mandates more than a decade ago[89]—when the broadband marketplace was far less competitive than it is today—and the result has been an explosion in competition, innovation, investment, and adoption. Calls for such a destabilizing reversal of policy—particularly in the face of the *Verizon* court's clear path to protecting Internet openness—do not merit serious consideration.

---

85 *See* Black's Law Dictionary (9th ed. 2009) (defining "fee" as "a charge for labor or services").

86 *See* NCTA Comments at 43-45; Charter Communications Comments at 18-19; Cox Communications Comments at 34; T-Mobile USA Comments at 21-22; Verizon Comments at 68; Open Tech. Inst. *Ex Parte* Letter at 2; van Schewick *Ex Parte* Letter at 2;

87 van Schewick *Ex Parte* Letter at 2.

88 *See* i2Coalition Comments at 13; *see also* CompTel Comments at 15; Electronic Frontier Foundation Comments at 21-23.

89 *See Cable Modem Order* ¶¶ 42-47.

II. THE RECORD SPECIFICALLY CONFIRMS THAT SECTION 706 AUTHORIZES THE RULES PROPOSED BY THE NPRM, INCLUDING MEASURES TO PREVENT ANTICOMPETITIVE PAID PRIORITIZATION ARRANGEMENTS

As a general matter, the record provides strong support for the Commission's proposals to reinstate its no-blocking rule and to adopt a "commercial reasonableness" requirement pursuant to Section 706.[90] While leading broadband providers have all pledged that they will not block subscribers' access to lawful Internet content and services,[91] and have powerful business incentives to make good on this pledge in today's competitive environment,[92] they and virtually every other party agree with the Commission's proposal to adopt a no-blocking rule as a backstop to these commitments.[93] ISPs also generally appreciate the Commission's interest in adopting a "commercial reasonableness" rule, and support its proposal to model any such rule after the multi-factor, case-by-case standard adopted in the data roaming context and upheld by

---

90 *See, e.g.*, ADT Corp. Comments at 5, 7-8; AT&T Comments at 72, 91; CWA/NAACP Comments 6, 18; Cisco Systems Comments at 6; Cogent Communications Group Comments 13, 19; Comcast Comments at 18, 22; Information Technology Industry Council Comments at 5-7; Online Publishers Ass'n Comments at 10-11; TechAmerica Comments at 6-8; TIA Comments at 23-25; Verizon Comments at 30.

91 *See* NCTA Comments at 57 (citing pledges from multiple leading broadband providers).

92 *See id.* at 14 ("It would be irrational for broadband providers to undermine the very openness that has long buoyed their businesses for some short-term gain, or to block or degrade access to Internet content that competing providers make readily available."); *see also, e.g.*, Charter Communications Comments at 9 ("Consumers continue to demand Internet openness, creating powerful financial and reputational incentives for ISPs to offer it."); Cox Communications Comments at i ("Cox and other network operators have a powerful incentive in today's competitive broadband marketplace to ensure that their customers can access whatever online content and services they desire while enjoying the best possible experience."); Verizon Comments at 26 ("Verizon's customers demand and desire open Internet services, and value Verizon's services precisely because they afford access to all the lawful content and applications the Internet makes available. A policy of impeding access to services customers wish to access would only push those customers to other providers").

93 *See, e.g.*, Cox Communications Comments at 22; Comcast Comments at 18-19; TWC Comments at 3; AT&T Comments at 72-73.

the D.C. Circuit.[94] At the same time, the Commission should ensure that any such rules balance the desire to monitor and regulate ISPs' conduct with the policy imperative of promoting continued investment in broadband infrastructure and innovation. Accordingly, as NCTA explained in its opening comments and many commenters agree, the Commission should ensure that the no-blocking rule does not result in micromanagement of broadband service attributes, and that the commercial reasonableness rule is limited to actual or proposed business arrangements between broadband providers and edge providers.[95]

In addition to the broad consensus regarding the content and contours of these baseline requirements, many of the comments filed to date also urge the Commission to address so-called "paid prioritization" arrangements. To be sure, the need for and possible impact of regulatory restrictions targeting such arrangements remains unclear, particularly given that no ISP is engaging in such activity or has announced plans to do so,[96] and the potential benefits and/or

---

[94] *See, e.g.*, Cox Communications Comments 26-28; Comcast Comments at 22-24; TWC Comments at 3-4; AT&T Comments at 91-92.

[95] *See* NCTA Comments at 57-61, 64-66; *see also* AT&T Comments at 72-79, 91-92; Cisco Systems Comments at 17; Comcast Comments at 19-21, 25-26; CenturyLink Comments at 32-33; Microsoft Corp. Comments at 16-17; Mozilla Comments at 14-17; Verizon Comments 25-28.

[96] *See* NCTA Comments at 62-63 (collecting statements by leading broadband providers that they are not exploring paid prioritization arrangements); *see also, e.g.*, Comcast Comments at 22 ("Comcast has not entered into a single "paid prioritization" arrangement, has no plans to do so in the future, and does not even know what such an arrangement would entail as a practical matter."); TWC Comments at 25 ("To TWC's knowledge, no broadband provider has expressed any intention of prioritizing one class of Internet traffic at the expense of another."); Verizon Comments at 37 ("[N]either Verizon nor any other broadband providers of which we are aware has introduced any form of paid prioritization arrangement to date, nor expressed a public interest in doing so. Verizon has no plans for such a service, and it is unclear—particularly given the widespread use of CDNs and other innovative technical means to ensure high-quality transmission of content and the ever-improving capabilities of broadband networks—that there would be much benefit to most Internet traffic from prioritization.").

harms from paid prioritization are still only dimly understood.[97] However, if the Commission ultimately concludes that the available evidence supports mandates relating to paid prioritization, it can rely on Section 706 to impose strong restrictions on any such arrangements that would likely have anticompetitive effects—and, as the record demonstrates, could do so with broad support from the very ISPs that would be subject to any restrictions.

Indeed, some of the largest ISPs specifically propose possible approaches for dramatically limiting paid prioritization under Section 706. For instance, both Comcast and Verizon suggest that the Commission could adopt "a rebuttable presumption that 'paid prioritization' arrangements are commercially unreasonable."[98] Such a presumption would place the burden on ISPs to "show[] that the arrangement is commercially reasonable and fair to consumers and edge providers."[99] Comcast further suggests that this presumption could be framed to preclude entirely any "exclusive arrangements and arrangement that prioritize a broadband provider's own affiliated Internet content vis-à-vis unaffiliated content."[100] A presumption-based approach also finds support from public interest groups, who explain that a strong presumption against paid prioritization arrangements could "protect[] against 'fast lanes' and any corresponding degradation of other content," while leaving the door open for "business

---

[97] Moreover, it remains unclear whether prioritized delivery of Internet content over the last mile is technologically feasible, or whether any possible prioritization functionality would even be desirable for edge providers.

[98] Comcast Comments at 24; *see also* Verizon Comments at 38 ("On an appropriate record demonstrating that certain paid prioritization practices have clear anti-competitive or anti-consumer effects, the Commission even could create a rebuttable presumption that those specific practices are unreasonable—without lapsing into common carriage.").

[99] Comcast Comments at 24.

[100] *Id.*

models that sufficiently protect consumers and have the potential to benefit consumer welfare (for example, telemedicine applications)."[101]

AT&T proposes two alternative approaches. First, it suggests that the Commission could adopt a ban on all paid prioritization that is not user-directed or user-authorized, citing several public interest groups that have recognized that "user-driven prioritization may prove beneficial."[102] Second, AT&T proposes a voluntary mechanism under which ISPs would agree not to engage in paid prioritization in exchange for lighter-touch regulation, noting that for those ISPs that opt in to such a regime, "[t]here would seem to be little reason . . . to subject these providers to the additional safeguards on which the Commission seeks comment in the NPRM."[103]

Each of the approaches identified above can be implemented pursuant to the Commission's authority under Section 706. In *Verizon*, the D.C. Circuit confirmed that Section 706 provided the "requisite affirmative authority" to adopt the 2010 anti-discrimination rule—which the court understood as essentially entailing a complete *ban* on paid prioritization

---

[101] National Minority Organizations Comments at 11; *see also* CWA/NAACP Comments at 19 (proposing "a rebuttable presumption against a vertically-integrated broadband provider favoring its own applications, content, services, or devices"). A standard that provides the flexibility to allow prioritization of telemedicine or other socially beneficial applications not only would comport with the *Verizon* decision, as discussed below, but also makes good policy sense. As Nicholas Negroponte, the chairman emeritus of the MIT Media Lab and founder of One Laptop Per Child, explained in a recent interview, "the truth is all bits are not created equal," and to argue that "a few bits of your heart data" are equivalent to a few bits of streamed HD video entertainment "is crazy." Kate Cox, *Founder Of One Laptop Per Child: Maybe Net Neutrality Isn't Such A Good Idea After All*, Consumerist, Aug. 14, 2014, *available at* http://consumerist.com/2014/08/14/founder-of-one-laptop-per-child-maybe-net-neutrality-isnt-such-a-good-idea-after-all/ (quoting Negroponte).

[102] *See* AT&T Comments at 31-37.

[103] *See id.* at 37-39.

arrangements—in order to protect the open Internet.[104] Proposals that strictly limit two-sided market arrangements (to bar anticompetitive or otherwise harmful agreements) without altogether precluding procompetitive and pro-consumer arrangements would not run afoul of the Act, as they would leave *some* room for "individualized bargaining" between ISPs and edge providers and thus would not convert broadband providers into common carriers.[105] Each of the above proposals therefore merits careful consideration as the Commission decides how to address paid prioritization under any new rules.

At a minimum, it is clear that, contrary to the contentions of some commenters, there is no need to pursue a destabilizing and likely unlawful Title II approach in order to adopt strong rules limiting paid prioritization. Indeed, as NCTA and others have explained, Title II likely would not enable the Commission to adopt more stringent restrictions on paid prioritization than those set forth above, given that Sections 201 and 202 would require case-by-case analysis of challenged conduct in these circumstances.[106] Proponents of a Title II-based approach are simply wrong in suggesting that Title II would categorically prohibit paid prioritization. Free Press, for one, argues that the Commission could adopt an outright ban on paid prioritization by reclassifying broadband Internet access service as a "telecommunications service" subject to Title II, and then declaring that paid prioritization arrangements represent "*per se* unreasonable" discrimination under Section 202(a).[107] But Free Press entirely overlooks the fact that any party claiming discrimination under Section 202(a) must first demonstrate that the services being

---

104 *Verizon*, 740 F.3d at 635.

105 *Id.* at 657.

106 *See* NCTA Comments at 28-30; *see also, e.g.*, Comcast Comments at 50-54.

107 *See* Free Press Comments at 47-54.

compared are "functional[ly] equivalen[t]"[108]—a standard that likely would *never* be satisfied in Free Press's view of the world, which contemplates that any prioritized "service" would be fundamentally different from the "service" generally offered to non-prioritized edge providers.[109]

The record also reflects broad support for the proposition that, if the Commission ultimately decides to adopt restrictions on paid prioritization or other commercial arrangements involving *fixed* broadband providers, it should ensure that those restrictions apply to *mobile* broadband providers as well.[110] Numerous parties echo NCTA's observation that rapid advances by mobile wireless networks in recent years eliminate any conceivable justification for differential treatment of fixed and mobile providers under the rules.[111] Wireless providers, for their part, rely heavily on statistics showing consumers' growing reliance on mobile platforms in arguing for maintaining regulatory distinctions between fixed and mobile broadband services.[112] But the fact that consumers increasingly use fixed and mobile services interchangeably cuts in favor of *harmonizing* rules applicable to fixed and mobile providers. And as NCTA and others have explained, to the extent that mobile broadband users face any unique "operational

---

[108] *MCI Telecommc'ns Corp. v. FCC*, 917 F.2d 30, 39 (D.C. Cir. 1990).

[109] *See* Free Press Comments at 50 (suggesting that "paid-packets would be routed as if there was no congestion" under a prioritized "service," whereas "all non-priority packets would be pushed to the back of the line" under any general "service" provided to non-prioritized edge providers).

[110] By the same token, principles of technological and competitive neutrality warrant application of the same no-blocking rule to fixed and mobile providers.

[111] *See* NCTA Comments at 69-76; *see also, e.g.*, Bright House Networks Comments at 5; CenturyLink Comments at 23-24; Comcast Comments at 40-42; Cox Communications Comments at 22; Frontier Communications Comments at 8-9; ITTA Comments at 2-5; National Civil Rights Organizations Comments at 3; Sandvine Comments at 8; TWC Comments at 27-28.

[112] *See, e.g.*, CTIA—The Wireless Ass'n Comments at 10-11.

constraints,"[113] those are rightly addressed through the application of the rules—for example, in determining whether a particular network management practice is reasonable—not by creating two different sets of rules.[114] The fundamental goals of Internet openness do not and should not turn on the type of technology platform that consumers use to access online content and services—particularly when a growing number of consumers view those platforms as substitutes for one another.[115]

III. PROPOSALS TO EXTEND OPEN INTERNET RULES TO THE TRAFFIC-EXCHANGE MARKETPLACE ARE MISPLACED AND UNFOUNDED

Just as the opening comments provide broad support for the Commission's proposed open Internet rules, the record confirms that the Commission should adopt the NPRM's proposal to maintain the longstanding distinction between open Internet and traffic-exchange issues.[116] The exchange of traffic between networks presents considerations that are entirely distinct from the provision of broadband Internet access to end users. As NCTA and others have explained,[117] the dynamic and robustly competitive traffic-exchange marketplace has never been the focus of

---

[113] Letter of CTIA—The Wireless Ass'n to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 14-28, 10-127, at 1 (filed Sep. 4, 2014).

[114] *See, e.g.*, NCTA Comments at 69-76; Cox Communications Comments at 8-11; Frontier Communications Comments at 2-10; ITTA Comments 3-5; TWC Comments at 27-28.

[115] *See* NCTA Comments at 74; *see also Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2013–2018*, Feb. 5, 2014, at 16, *available at* http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/white_paper_c11-520862.pdf ("As mobile network capacity improves, and the number of multiple-device users grows, operators are more likely to offer mobile broadband packages comparable in price and speed to those of fixed broadband. This is encouraging mobile broadband substitution for fixed broadband . . . .").

[116] *See* NPRM ¶ 59 (explaining that the *2010 Open Internet Order* "noted that the rules were not intended 'to affect existing arrangements for network interconnection, including existing paid peering arrangements,'" and tentatively concluding that the Commission "should maintain this approach" in adopting any new rules) (internal citations omitted).

[117] *See* NCTA Comments at 78-82; *see also, e.g.*, Comcast Comments at 32-39; TWC Comments at 30; Verizon Comments at 70-76.

the Commission's open Internet initiatives, and should remain outside the scope of this proceeding. Traffic-exchange arrangements concern only "the efficient allocation of costs for the transmission of traffic across the Internet backbone," and thus "have no bearing on and are entirely distinct from any issues that are the subject of the Commission's open Internet rules."[118] Chairman Wheeler recently underscored this point, explaining that "peering is not a net neutrality issue,"[119] and the NPRM rightly proposes to maintain the Commission's long-held policy of excluding traffic-exchange arrangements from the scope of its open Internet initiatives.[120]

Netflix and a handful of allied parties nevertheless urge the Commission to shoehorn such arrangements into this proceeding—asserting that "any open Internet protection[s]" for end users are not "complete" unless the rules "address the points of interconnection to terminating ISPs' networks."[121] But the premise of such arguments—that marketplace interactions in the Internet backbone somehow impinge on the core *end-user* "freedoms" that have always undergirded the Commission's open Internet efforts[122]—is false. Netflix and others ignore the

---

118 Comcast Comments at 33.

119 Bryce Baschuk, *Wheeler: Peering Not a Net Neutrality Issue But FCC Spokesman Says It Will Be Watched*, Bloomberg BNA, Apr. 2, 2014, *available at* http://www.bna.com/wheeler-peering-not-n17179889335/.

120 NPRM ¶ 59.

121 Netflix Comments at 11.

122 *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, Policy Statement, 20 FCC Rcd 14986 ¶ 4 (2005)

reality that the business arrangements that govern "points of interconnection" do not address or even affect end users' ability to access particular content or the priority with which content is delivered to end users over the last mile.[123] That is of course why the *2010 Open Internet Order*—which most open Internet advocates hail as the appropriate model for this proceeding—rejected calls to include traffic-exchange arrangements within the scope of the no-blocking or anti-discrimination rules.[124]

Even if it were appropriate to consider traffic-exchange issues as part of this proceeding, the Commission should reject arguments advanced by Netflix and others for subjecting the traffic-exchange marketplace to invasive regulation. Both Netflix and Level 3 urge the Commission to adopt rules that would subject all traffic-exchange arrangements to a roving and undefined "test of reasonableness" or "anti-discrimination"[125]—a test that would include either a ban on or strong presumption against any arrangement that involves payment from one network provider to another.[126] But such an approach would result in significant harms to consumers. Traffic-exchange arrangements, including settlement-free peering, paid peering and paid transit arrangements, have always been an integral part of the fabric of the Internet—negotiated in a free-market environment that enables network providers to allocate the costs of delivering traffic

---

(articulating a set of core openness principles, including the ability "to access . . . lawful content," all of which are framed in terms of "consumer" freedoms).

[123] *See* Comcast Comments at 33-34 (explaining that "[t]raffic-exchange arrangements have nothing to do with the ability of end users to access particular content or to use particular applications or services, and nothing to do with the priority with which content might be delivered to end users over a broadband Internet access service").

[124] *See, e.g.*, *2010 Open Internet Order* ¶ 67 n.209 (declining to extend the 2010 rules to "existing arrangements for network interconnection, including existing paid peering arrangements").

[125] Level 3 Communications Comments at 14; Netflix Comments at 18.

[126] *See, e.g.*, Netflix Comments at 11 (arguing for rules limiting "pay-for-play" at "points of interconnection").

efficiently.[127] Subjecting such arrangements to a roving "reasonableness" screen—and potentially banning such arrangements when they involve payment—would upset these important economic relationships and threaten to harm service quality and increase prices for broadband service.

For instance, the longstanding practice in the Internet traffic-exchange marketplace of seeking payment when costs or traffic flows are out of balance creates a powerful incentive for content providers and their backbone partners to rely on efficient delivery methods, including the development and implementation of compression technologies, in order to avoid or reduce such payments whenever possible. But mandating settlement-free peering, irrespective of traffic imbalances, would eliminate these incentives, and thus would lead to a significant *increase* in Internet congestion in most instances. Moreover, preventing or limiting ISPs from recovering costs imposed by other network providers would inevitably cause those costs to be shifted to consumers, who would then be saddled with subsidizing the bandwidth-intensive online services that only some consumers use. These effects, in turn, would undermine the Commission's interest in increasing broadband adoption, especially among low-income consumers.

Meanwhile, assertions that paid peering or transit arrangements amount to double-dipping are deeply misleading.[128] As AT&T aptly notes, "Internet interconnection imposes substantial costs on network providers that involve far more than the simple meet-point between networks, that are unrelated to 'last mile' Internet access costs, and that are not end user

---

[127] *See* Comcast Comments at 33; *see also* Michael Kende, FCC Office of Plans and Policy, *The Digital Handshake: Connecting Internet Backbones*, at 1 (Sep. 2000), *available at* http://transition.fcc.gov/Bureaus/OPP/working_papers/oppwp32.pdf ("Kende FCC Paper") (explaining that "peering agreements are the result of commercial negotiations" and that "each backbone bases its decisions on whether, how, and where to peer by weighing the benefits and costs of entering into a particular interconnection agreement with another backbone").

[128] *See, e.g.*, CompTel Comments at 11.

specific."[129] Relatedly, while Cogent asserts that it has "offered to pay" the "cost of adding . . . ports,"[130] such an offer ignores the fact—widely recognized in the traffic-exchange marketplace—that the cost to an ISP for handling additional traffic from a particular network provider includes not only the cost of any new ports but also the far more substantial intra-network costs associated with conveying that traffic from those ports to end users.

Moreover, contrary to the assertions of Netflix and its allies, there is absolutely no evidence of the sort of market failure that would be required to justify new rules governing traffic exchange.[131] While they complain about the need to pay other network providers when dramatically increasing the net flow of traffic to those other providers, they ignore that such compensation has always been an integral part of the traffic-exchange marketplace—a marketplace that the Commission has consistently found to be highly competitive.[132] The fact that payments flow between network providers based in part on the costs those providers impose

---

[129] Letter of Robert C. Barber, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28, Attachment, at 19 (filed Jul. 30, 2014) ("AT&T Jul. 30 *Ex Parte* Letter").

[130] Cogent Communications Group Comments at 16.

[131] *See* Kende FCC Paper at 1 (observing that "in the absence of a dominant backbone, market forces encourage interconnection between backbones and thereby protect consumers from any anti-competitive behavior on the part of backbone providers," and explaining that "any calls to intervene in the Internet market would require a correspondingly high burden of proof").

[132] *See, e.g.*, *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290 ¶ 132 (2005) ("*SBC/AT&T Order*") (finding that "the Internet backbone is sufficiently competitive and will remain so post-merger," and rejecting calls to impose merger conditions relating to Internet traffic exchange, noting that "interconnection between Internet backbone providers has never been subject to direct government regulation, and settlement-free peering and degradation-free transit arrangements have thrived"); *Global Crossing Ltd. and Level 3 Communications, Inc. Applications for Consent to Transfer Control*, Memorandum Opinion and Order and Declaratory Ruling, 26 FCC Rcd 14056 ¶ 27 (2011) (rejecting arguments that a combined company would have incentive to engage in anticompetitive transit and peering practices).

on one another hardly justifies regulatory intervention in the traffic-exchange arena; to the contrary, such payments are evidence of a well-functioning marketplace that efficiently allocates the costs of delivering Internet traffic over the backbone. Indeed, cable broadband providers often must pay for transit services where the value-exchange so requires, yet proponents of regulating traffic-exchange arrangements seek to limit payment flows only when the ISP is the recipient. Such asymmetric regulation would distort a well-functioning marketplace and introduce massive inefficiencies.

Nor is there any evidence that these well-established marketplace practices are somehow leading to a foreclosure of competition. To the contrary, in the absence of any regulation of the free-market arrangements that govern the delivery of Netflix content to ISPs and end users, Netflix has experienced explosive growth in recent years and now has over 35 million U.S. subscribers—far more than any fixed broadband provider.[133] Netflix and its allies are also simply wrong when they characterize ISPs as leveraging a "terminating access monopoly" to drive up settlements.[134] As other parties have explained, edge providers have numerous routes to an ISP's network, and any commercial dispute between an ISP and a network provider does not prevent an edge provider from delivering its content through one of the various other paths available.[135]

---

133 *See* Todd Spangler, *Comcast CEO: We Have Fewer Subscribers Than Netflix, Even After Time Warner Deal*, Variety, Apr. 30, 2014, *available at* http://variety.com/2014/biz/news/comcast-ceo-roberts-we-have-fewer-video-subs-than-netflix-even-after-tw-cable-deal-1201168115/.

134 *See* Netflix Comments at 12.

135 *See* AT&T Jul. 30 *Ex Parte* Letter, Attachment, at 5 ("There is no terminating monopoly since there are multiple paths to reach [an ISP's] customers and [the ISP] cannot impose a government authorized tariff. ").

The Commission should also reject Netflix's attempt to justify new rules on the traffic-exchange marketplace by pointing to "congestion" supposedly caused by ISPs' peering practices.[136] These claims have been thoroughly debunked both by ISPs and by independent analysts. For instance, a recent report issued by researchers at MIT found that there is not a "widespread congestion problem among the U.S. providers."[137] This report also explained that the isolated instances of "congestion" often resulted from "decisions by content providers as to how to route content,"[138] and singles out Netflix as the culprit in many of these instances.[139] Indeed, claims of congested routes often reflect deliberate gamesmanship by edge providers that seek to increase their leverage in commercial negotiations with broadband providers.[140] Accordingly, there is no basis for rules addressing "congestion" in the traffic-exchange marketplace, and certainly no basis for rules that restrict *only* ISPs.

Finally, Netflix and its allies are wrong to suggest that the Commission could simply extend its bill-and-keep policy from the *Intercarrier Compensation Order*[141] to mandate settlement-free peering.[142] That order replaced an "outdated" regime of unilaterally tariffed rates

---

[136] *See* Netflix Comments at 11-12.

[137] MIT Information Policy Project, *Measuring Internet Congestion: A Preliminary Report*, at 2 (2014), *available at* https://ipp.mit.edu/sites/default/files/documents/Congestion-handout-final.pdf.

[138] *Id.*

[139] *Id.* at 1, 2.

[140] *See* Dr. Peering International, *The Peering Playbook*, http://drpeering.net/ (describing traffic-manipulation and bluffing tactics employed by edge providers and transit providers, including attempts to increase the costs of ISPs that resist settlement-free peering and efforts to create the appearance of performance problems that can only be solved by peering).

[141] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) ("*Intercarrier Compensation Order*").

[142] *See* Netflix Comments at 17.

and implicit subsidies that the Commission determined—based on its lengthy experience—was "riddled with inefficiencies."[143] The Internet traffic-exchange marketplace, where terms of interconnection are driven by private negotiation in an intensely competitive Internet backbone marketplace, is nothing like the outdated and inefficient voice telephony regime. Indeed, the Commission has previously recognized that the competitive Internet traffic-exchange marketplace provides its own "incentives to . . . increase efficiency."[144] And the plummeting costs of Internet transit services—which have fallen from roughly $1,200 per Mbps in 1998 to less than $1 per Mbps today[145]—demonstrate that such competition is delivering benefits that contrast starkly with the harms the Commission identified with the intercarrier compensation system for voice telephony. Thus, for all these reasons, the Commission should reject the transparent attempts by Netflix and others to shift legitimate business costs from their balance sheets to consumers.

IV. THE RECORD REFLECTS A BROAD CONSENSUS THAT PROPOSED EXPANSIONS OF DISCLOSURE OBLIGATIONS ARE UNWARRANTED

Finally, as NCTA explained in its opening comments, the existing transparency regime is more than sufficient to ensure that the marketplace disciplines conduct that conflicts with core values of Internet openness.[146] The record confirms that there is no need for enhanced transparency rules, and that, to the contrary, several of the contemplated expansions to the

---

143 *Intercarrier Compensation Order* ¶ 9.

144 *SBC/AT&T Order* ¶ 132.

145 *See* DrPeering International, Abstract, *Internet Transit Prices – Historical and Projected*, http://drpeering.net/white-papers/Internet-Transit-Pricing-Historical-And-Projected.php; *See also* CloudFlare, *Relative Cost of Bandwidth Around the World*, Aug. 26, 2014, *available at* http://blog.cloudflare.com/the-relative-cost-of-bandwidth-around-the-world (noting that "North America has some of the lowest transit pricing in the world").

146 NCTA Comments at 47-56.

transparency regime would impose significant, unwarranted burdens on broadband providers without meaningfully helping consumers.

ISPs of all stripes—small and large, fixed and mobile—are in unanimous agreement that the additional disclosure requirements proposed in the NPRM would be overly burdensome, unhelpful, and potentially counterproductive.[147] Competitive Carriers Association explains that "[a]ny . . . additional rules would create an unnecessary burden on providers, particularly on small and rural providers whose resources are already stretched extremely thin," diverting "scarce company resources [from] new and innovative services and to improving the experience of existing customers."[148] Comcast points out that certain of the NPRM's proposed enhancements, such as requiring collection and disclosure of "application-specific usage . . . could raise legitimate concerns regarding consumer privacy."[149] And Verizon rightly notes that accurate disclosures of "a particular service's speed, latency, jitter, and other core characteristics," as suggested by the NPRM, "would be meaningless to all but the most technically sophisticated customers."[150] Thus, as Charter explains, "[b]y requiring the costly monitoring and reporting of data that will not meaningfully help consumers understand or make good decisions about their broadband service options, some of the proposed new requirements

---

[147] *See, e.g.*, Comcast Comments at 13-18; TWC Comments at 31-34; Charter Communications Comments at 21-35; Cox Communications Comments at 18-22; Frontier Communications Comments at 5-8; American Cable Association Comments at 25-40; AT&T Comments at 79-91; Verizon Comments at 21-25; Competitive Carriers Association Comments at 2, 7; Wireless Internet Service Providers Association Comments at 13-22; Bright House Networks Comments 9-17.

[148] Competitive Carriers Association Comments at 7.

[149] Comcast Comments at 18.

[150] Verizon Comments at 23. Furthermore, because technical metrics of Internet performance are interrelated—for example, latency is influenced by distance, and has a relationship to packet loss—disclosures related to each are likely to mislead consumers rather than provide clarity.

could have the effect of suppressing investment and innovation without adding in any meaningful way to the benefits created by the requirements already in place."[151]

Technology providers and equipment manufacturers likewise urge the Commission not to expand its disclosure rules. The Consumer Electronics Association urges the Commission to "refrain from adopting additional transparency requirements," noting that further disclosure rules are "unnecessary and could excessively burden broadband providers, impeding innovation and discouraging investment."[152] Qualcomm voices similar concerns with expanded disclosure requirements, and notes that "[t]he Commission should not complicate its existing transparency rule because there is no evidence that the existing rule is insufficient or has caused any customer harm."[153] ADTRAN, "a manufacturer of telecommunications equipment used in the Internet and Internet access networks," warns that "requiring the disclosure of too much information can confuse consumers, overwhelm the Commission and edge providers, impose costs on the ISPs that exceed any potential benefit, and risk disclosing sensitive information that could be misused by people seeking to exploit malware or viruses."[154] And Cisco likewise points out that some of the proposed "enhancements" to the disclosure rules would "undercut the flexibility that broadband providers need to operate their networks amidst burgeoning usage and constantly evolving threats," and that disclosures about "innovative new network-management and security protocols . . . would provide the information not only to consumers but also to the provider's

---

[151] Charter Communications Comments at 22.

[152] CEA Comments at 7 n.14.

[153] Qualcomm Comments at 11.

[154] ADTRAN Comments at 41.

competitors—not to mention hackers, spammers, and others who might wish to unfairly exploit the network."[155]

Various think tanks and public advocacy groups likewise support retaining the 2010 rule without modification. The Information Technology & Innovation Foundation, "a non-partisan research and educational institute," observes that "[t]he transparency requirement still in place from the 2010 rules is sufficient and requires no further action from the Commission."[156] Mobile Future, "a broad-based association . . . interested in and dedicated to advocating for an environment in which innovations in wireless technology and services are enabled and encouraged," similarly explains that the existing rule "provides consumers with the information they need regarding their mobile broadband providers' network management practices."[157]

Finally, economists offer studies that provide a solid foundation for all of these shared concerns about expanding disclosure requirements. One study by economist Michael Katz observes that, "[g]iven that the proposed rules would inevitably have costs, it is important to establish that the rules would have significant benefits that would outweigh these costs."[158] And after careful analysis, the study concludes that "it is unlikely that the economic benefit of providing potentially esoteric network information to end users would outweigh the economic costs to both providers and end users."[159]

---

[155] Cisco Systems Comments at 19.

[156] ITIF Comments at 3, 21.

[157] Mobile Future Comments at 1 n.1, 8.

[158] Michael L. Katz, "Protecting and Promoting Consumer Benefits Derived from the Internet," ¶ 18, *attached to* Verizon Comments.

[159] *Id.* ¶¶ 22, 24.

Given this broad support in favor of retaining the 2010 transparency rule without alteration, the Commission should reject proposals to expand ISPs' disclosure obligations in burdensome and unnecessary ways.

CONCLUSION

For the reasons discussed above and in NCTA's opening comments, the Commission should follow the *Verizon* court's blueprint and adopt appropriately tailored open Internet rules under Section 706. The record specifically confirms that the Commission should reject calls to jettison its long-held, light-touch regulatory approach to broadband in exchange for a risky, destabilizing, and onerous Title II-based approach; should explore all possible options for addressing paid prioritization under Section 706; and should otherwise decline to expand on the content and scope of the 2010 rules in unnecessary and counterproductive ways. NCTA looks forward to continuing a dialogue with the Commission and other stakeholders on crafting rules that promote Internet openness while preserving incentives for broadband innovation and investment.

Respectfully submitted,

/s/

Rick C. Chessen
Neal M. Goldberg
Michael S. Schooler
Steven F. Morris
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION
25 Massachusetts Avenue, NW
Suite 100
Washington, DC 20001

Matthew A. Brill
Matthew T. Murchison
Jonathan Y. Ellis
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004

September 15, 2014