February 12, 2015

VIA ELECTRONIC FILING

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

Re: 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

Dear Ms. Dortch:

On February 10, 2015, Lynn Charytan, David Don, and the undersigned of Comcast met with Nicholas Degani, Legal Advisor to Commissioner Pai, to discuss the recent proposal in the above referenced proceedings.1 We addressed the following issues:

First, applying the entirety of Section 201(b) of the Communications Act to broadband would enable the Commission or any federal court to declare broadband providers’ rates to be “unjust and unreasonable.”2 This would be plainly inconsistent with statements by both President Obama and Chairman Wheeler that broadband providers should not and will not be subject to rate regulation.3 In order to avoid this outcome, the FCC should forbear from Section 201(b)’s prohibition of unjust and unreasonable “charges.” We explained that forbearance from rate regulation and other onerous parts of

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3 See White House, Statement by the President on Net Neutrality, Nov. 10, 2014, available at http://www.whitehouse.gov/the-press-office/2014/11/10/statement-president-net-neutrality (urging the Commission to “forbear[] from rate regulation and other provisions less relevant to broadband services’’); Remarks of Tom Wheeler, Chairman, Federal Communications Commission, at the Silicon Flatirons Center (Feb. 9, 2015) (“We will forgo sections of Title II that pose a meaningful threat to network investment. That means no rate regulation. No unbundling. No tariffs or new taxes.’’).
Title II should accompany reclassification, and that the Commission should ensure that its order honors this in every respect.4

Second, if the FCC decides to assert jurisdiction over Internet traffic exchange arrangements, it should make clear that this jurisdiction applies to all parties to these arrangements, not just retail broadband providers. Other parties to such arrangements, including transit providers and content delivery networks (“CDNs”), are engaged in the transmission of Internet traffic and have the ability to create congestion and performance issues that could impact consumers.5

Third, any new transparency requirements must not obligate broadband providers to disclose information that they do not possess. For example, while broadband providers may possess information regarding interconnection ports, they often lack information regarding whether a particular edge provider’s packets are dropped, and whether use of that edge provider’s application or service is affected, due to congestion. If the FCC wishes to collect this information, it should do so from edge providers themselves.

Fourth, Comcast offers its broadband Internet access service as a comprehensive offering that includes a range of functionally integrated information service capabilities.6 This is just as true today as it was in 2002 when the FCC classified cable modem service as an information service. If anything, broadband providers’ services now include more functionally integrated enhanced capabilities than when the Commission made its classification decisions.7


5 Cogent, for one, has indicated that it “takes no issue with having its interconnection practices subject to the same standards as mass market broadband Internet access providers.” Letter from Robert M. Cooper, Counsel for Cogent Communications Group, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 14-28, 10-127, at 2 (Feb. 11, 2015).


Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/ Kathryn A. Zachem

Senior Vice President,
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cc: Nicholas Degani