

February 13, 2024

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

**Re: WC Docket No. 23-320, *Safeguarding and Securing the Open Internet***

Dear Ms. Dortch:

On Friday, February 9, 2024, I spoke by telephone with Ramesh Nagarajan, Chief Legal Advisor to Chairwoman Jessica Rosenworcel. I touched briefly on three topics during the call, chiefly highlighting explanations and analyses offered in Free Press's December 2023 initial comments and January 2024 reply comments in the above-captioned docket.

First, I reiterated that Free Press analysis of internet service providers' own financial data and statements to their shareholders demonstrates conclusively that the FCC's classification of broadband has no impact on deployment or investment. No amount of misleading and outright false narratives pushed by broadband trade associations, and the commissioners who read nothing but those lobbyists' shallow talking points, can change this patently obvious fact.

We described in our initial comments in this docket how deployment of next-generation services accelerated in both rural and urban areas following the FCC's 2015 actions. And we discussed how broadband investment actually declined after the Pai FCC's 2017 repeal. Those who claim otherwise never address this reality, blithely asserting that investment increased because of the Pai FCC's abdication. While the classification decisions did not cause any such decreases or increases, AT&T – one of the largest ISPs in the US – had decreased its investments by as much as 35 percent in 2020 as compared to its investment totals in 2016.

In our filings, we documented numerous statements from ISPs to investors, revealing that the natural and cyclical changes in the pace of their deployment and the amount of their investment had absolutely nothing to do with FCC policy – either prior to the FCC's 2015 vote, after it, or after the 2017 repeal. We also noted how ISPs' investment plans have not changed following the FCC's announcement of its proposal to restore Title II and Open Internet rules now. I told Mr. Nagarajan that Free Press would continue to file in this docket to dispel further fact-free arguments made by internet service providers in the initial and reply comment rounds.

Second, I summarized Free Press’s and other commenters’ definitive explanations of the propriety of a Title II telecommunications service classification for modern broadband internet access service. As Free Press has explained in painstaking detail – in this docket, and in the Commission’s prior proceedings on this same issue in 2010, 2015 and 2017 – broadband perfectly fits the legal definition of a telecommunications service that Congress crafted in its forward-looking overhaul of the Communications Act in 1996. Broadband is a service offered to the public to carry their data between the points of their choosing without altering that data.

ISP trade associations’ arguments that FCC classification decisions pre-dating the 1996 Act should dictate otherwise are unavailing, for at least two reasons. They misstate the technological realities and legal status of dial-up internet access and precursor enhanced services, as compared to today’s high-speed broadband telecommunications services. And even if their flawed technical and legal claims about pre-1996 Act classifications had any merit, those precedents would not supersede the plain meaning of the telecommunications services definition in the Act as Congress amended it at the dawn of the internet era in 1996.

Third, I referenced reply comments filed in this docket on January 17th by Professor Barbara van Schewick, and similar initial comments and reply comments filed by other parties, stressing the need for the Commission’s final order in this proceeding to preserve the 2015 *Open Internet Order* framework. To that end, the Commission should prevent ISPs from using self-styled “specialized services” labels to circumvent or evade the ban on paid prioritization or other rules, regardless of the technology used to offer such services on fixed or mobile networks.

Respectfully submitted,

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