FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

November 21, 2014

The Honorable Anna G. Eshoo
Ranking Member
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
241 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Eshoo:

Thank you for providing me with your thoughtful views about how the Commission could potentially restore its rules to protect the Open Internet. As I have expressed since the D.C. Circuit's decision in January, I am deeply troubled that there are no rules in place to prevent a broadband provider from engaging in conduct harmful to Internet openness, and I am committed to reinstate strong, enforceable rules with dispatch in order to safeguard consumers and further promote innovation.

Your letter touches on key issues raised by the Commission in its *Notice of Proposed Rulemaking* ("*Notice*") and will be included in the record of this proceeding. In particular, your letter presents a unique approach to the legal authority upon which the Commission could rely for Open Internet rules by reclassifying retail broadband Internet access service as a "telecommunications service" under Title II but forbearing from certain portions of Title II focused on consumer protections while retaining the use of Section 202 (nondiscrimination).

I agree with you completely that any rules we adopt "must be based on solid legal ground." The Commission's *Notice* asks specific questions about how best to define the basis of the Commission's legal authority in this area, including whether the Commission should revisit its classification of broadband service as an information service, or whether we should separately identify and classify under Title II a service that "broadband providers… furnish to edge providers." For approaches involving Title II classification, the *Notice* also asks about how our forbearance authority should be used to tailor Title II obligations to achieve our public policy goals. In fact, hybrid approaches, including those involving Title II reclassification and forbearance, were discussed at the October 7, 2014, FCC roundtable discussion on *Open Internet and the Law*. In addition, as you know, the President has announced his support for reclassification of consumer broadband services under Title II, with forbearance from rate regulation and other provisions less relevant to broadband services. We are looking closely at these and other approaches, a process that reflects what I have said throughout this proceeding: all options, including Title II, remain on the table.

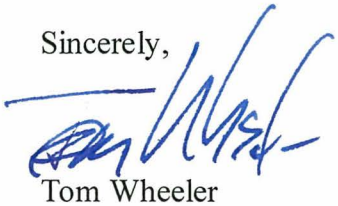
You also indicate your concerns about providers blocking or degrading lawful content and Internet traffic, as well as your opposition to paid prioritization and preferential treatment arrangements. As we have discussed on several occasions, including during my testimony last spring before the Subcommittee on Communications and Technology, I share these concerns and believe the purpose of any new rules should be to eliminate discrimination that harms consumers and competition, not to permit such discrimination. I also have consistently stated my opposition to "fast lanes" that degrade the quality of the consumer's experience or create an artificial structure that interferes with the virtuous cycle of the Internet ecosystem. With concerns like these in mind, our *Notice* expressly asks whether and how the Commission can prohibit or presume illegal paid prioritization practices, consistent with our authority.

You also urge the Commission to adopt rules on transparency and disclosure of ISPs' reasonable network management and billing practices. I agree with you that access to accurate information about provider practices encourages the competition, innovation, and high-quality services that drive consumer demand and broadband investment and deployment. As you know, in *Verizon v. FCC*, the court upheld the transparency rule in the 2010 *Open Internet Order*. The *Notice* proposes to enhance our transparency rule to provide increased and more specific information about broadband providers' practices for both edge providers and consumers. The *Notice* also asks whether broadband providers should be required to disclose specific network practices, performance characteristics (*e.g.*, effective upload and download speeds, latency, and packet loss), and/or terms and conditions of service to end users, including the use of data caps.

I also share the concerns you expressed regarding the treatment of mobile broadband. Specifically, you propose that the Commission apply Open Internet rules to mobile broadband services, noting that 77 percent of job seekers have used a smartphone app to get new jobs and that mobile phones appear to be narrowing the digital divide. Our *Notice* asks questions about whether changes in the wireless broadband marketplace should lead the Commission to revisit its 2010 conclusion to treat mobile and fixed broadband differently. Your letter echoes a common refrain in our record: Americans increasingly rely on mobile broadband as their primary – if not only – means to access the Internet. At CTIA's annual convention this year, I told the industry that I believed mobile should be covered.

From the outset of this critically important undertaking, I have been and remain committed to exercising the Commission's authority, as needed, to ensure the Internet remains free and open for decades to come. I look forward to continued engagement with you as this proceeding moves forward to a successful conclusion.

Sincerely,



Tom Wheeler