Congress of the United States
House of Representatives
Washington, D.C. 20515

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Eighteenth District
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October 22, 2014

The Honorable Tom Wheeler, Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Protecting and Promoting the Open Internet, GN Docket No. 14-28

Dear Chairman Wheeler,

As unswerving defenders of a free and open Internet, you and I share the concern that in the wake of the D.C. Circuit Court's decision in *Verizon v. FCC*, consumers and innovators have no meaningful recourse if broadband providers act as online gatekeepers. After a decade of uncertainty, it's time to protect the open Internet, the economic crown jewel of our country, once and for all.

The message from the over 3.7 million Americans who shared their views with the Commission, primarily through electronic communications, is loud and clear. To ensure the Internet remains a robustly competitive engine for economic growth, the reinstated open Internet rules must be based on solid legal ground and provide certainty for consumers and businesses alike. Simply put, the open Internet rules as proposed in May 2014 are not adequate to protect free speech, competition and the continued openness of the Internet.

As you seek to reinstate robust, enforceable open Internet rules, I urge you to heed the call of innovators, entrepreneurs and the millions of everyday Internet users around the country who have advocated for effective rules that prevent broadband providers from online blocking and discrimination. More specifically, I urge the Commission to adopt a comprehensive set of open Internet rules that apply to both fixed and mobile broadband services and ensure the following principles:

- Transparency and Disclosure of ISP's Reasonable Network Management and Billing Practices: Broadband providers must accurately disclose in clear, unambiguous terms the network management practices, performance, and commercial terms, as well as any mandatory below-the-line fees associated with their broadband Internet access services.

- No Blocking: Broadband providers may not block lawful Internet traffic, subject to reasonable network management and public safety.

- No Paid Prioritization: Broadband providers may not establish financial arrangements with content owners for the purpose of establishing fast and slow lanes on the Internet, discriminatory data caps or other terms or conditions that provide paid preferential treatment to certain online content.

- No Throttling: Broadband providers may not slow down or degrade lawful Internet traffic, subject to reasonable network management and public safety.

Open Internet Rules Must Protect Mobile Broadband Service

Today, an increasing number of Americans are using their mobile devices to access the Internet, check e-mail and use social networks. In fact, as highlighted in a new study by the National Telecommunications and Information Administration (NTIA), 77 percent of job seekers have used a smartphone app as part of their effort to secure a new job. This same study found that mobile phones appear to be helping to narrow the digital divide, particularly among low-income Americans and those with disabilities.

When it comes to consumer expectations, a recently released survey by the Internet Association found that nearly 90 percent of respondents opposed the creation of fast and slow lanes by their wireless carrier. More than two-thirds of respondents in this same survey said their wireless carrier shouldn't be able to block access to lawful websites and applications.

For these reasons, I urge you to ensure that the reinstated open Internet rules provide consumers and businesses with the same good protections, based on the same sound authority, whether they access the Internet through a smartphone or through a wired Internet connection in a home or business.

Title II Provides Open Internet Rules With a Strong Legal Basis

In light of the *Verizon* decision, it is critical that the open Internet rules you adopt be able to withstand judicial scrutiny. As the D.C. Circuit noted, Title II of the Communications Act already provides the FCC with the legal authority it needs to adopt the rules and protections described above. Reclassifying broadband providers as "telecommunications service" providers is the best and surest way to accomplish these objectives. Importantly, a 'light-touch' Title II approach, which I urge you to adopt, recognizes that the entirety of Title II's 47 sections are not necessary to ensure the FCC retains oversight of broadband for net neutrality, consumer protection and universal service goals. It is true that some of these laws do apply only to telephone services. But others are the source of timeless principles that can and do apply to all two-way telecom services, including broadband.

At a minimum, a light-touch Title II approach should include but not be limited to the use of Section 202, which explicitly states that "any unjust or unreasonable discrimination" is unlawful. Furthermore, this approach should seek comment on whether to retain the use of other consumer protection provisions contained within Title II, including the preservation of

universal service, the protection of privacy and the assurance of access for people with disabilities.

Some have painted Title II as a relic of the past, suggesting that the reclassification of broadband as a common carrier service will curtail investment and tie down the nation's communications providers in heavy-handed regulation. I do not support heavy-handed regulation and it is not called for.

The claims that Title II is heavy-handed are simply unfounded. The Commission already has the ability to tailor the law for market circumstances, deciding when and where to forbear from certain rules when those requirements are no longer necessary to protect the public. The Commission has used this forbearance authority often – removing many legal obligations from Title II services like wireless voice, for example, but never abandoning the core nondiscrimination protections that are at the heart of the Communications Act.

Furthermore, the fundamental consumer protections embodied in Title II are just as important as ever. Earlier this month, the FCC reached a $105 million settlement with AT&T on behalf of consumers that had been subjected to a fraudulent billing practice known as "cramming." Similarly, in September 2014 the FCC reached an important settlement with Verizon to uphold the privacy of customer information. Both of these actions relied in large part on Title II authority. Unless the Commission reclassifies broadband under Title II, it will not be able to take actions like these to protect consumers and businesses when it comes to their use of broadband and other modern communications services.

Thank you for your consideration of a light-touch Title II approach, and your commitment to preserving a free and open Internet for generations to come.

Most gratefully,

Anna G. Eshoo
Ranking Member
Subcommittee on Communications and Technology
Energy and Commerce Committee