Before the
Federal Communications Commission

In the Matter of	)	
	)	
Open Internet Remand	)	**GN Docket 14-28**
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	)	
Framework for Broadband	)	
Internet Service	)	**GN Docket 10-127**
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	)	

Comments of Engine Advocacy

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Julie P. Samuels
Engine Advocacy
156 Second St.
San Francisco, CA 94110
(415) 735-6869
julie@engine.is

I. Introduction

Engine Advocacy—a research and advocacy organization representing more than 500 high-growth, entrepreneurial businesses, pioneers, innovators, investors, and technologists—strongly supports the adoption of robust and comprehensive network neutrality rules for both fixed and mobile platforms. We support the Chairman's desire to adopt strong rules on disclosure, blocking and discrimination and believe they are necessary to support entrepreneurial growth. We believe, however, that Section 706 will not support these proposed safeguards and that reclassification of broadband under Title II is necessary. We therefore urge the Commission to reclassify broadband Internet service as a Title II service so it will have the authority to implement robust net neutrality rules across all platforms.

As we've said here before,[1] the FCC's conclusions in the 2010 Open Internet Order were correct: innovation depends on an open Internet. Disruptive startups—and the investors funding the billions of dollars necessary for their growth—need certainty rather than the threat of unreasonable technical and commercial discrimination and blocking. The innovation ecosystem benefits from low costs of innovation, not an environment where multiple ISPs can impose above-cost, unconstrained access fees on startups. The 2010 conclusions ring even truer today, as fixed and mobile broadband revolutionize a wider range of industries daily, ranging from media to urban transportation, food, and short-term housing. Arguments to the contrary—that startups welcome the "right" to negotiate to pay fees for access or outbid giant incumbent edge providers for special preferences—are divorced from the reality of entrepreneurship.

[1] Comments of Engine Advocacy, GN Docket 14-28, submitted April 24, 2014. available at: http://apps.fcc.gov/ecfs/document/view?id=7521099354.

Properly crafted open Internet rules solve a real problem and would encourage further investment in innovation ecosystems like Silicon Valley, New York, Washington, D.C., and all over the nation in cities like Nashville, Minneapolis, Austin, and Boise. Moreover, rules adopted by the Commission will affect the ability of American startups to access consumers and markets not only in the United States, but also abroad because foreign ISPs will seek the same powers available to U.S. ISPs to block, discriminate, and tax innovative American tech companies.

For these reasons, we support efforts to strengthen the disclosure rule, and to adopt strict no-blocking and non-discrimination rules. However, in light of the ruling in *Verizon v. FCC, it has become clear* that the Commission lacks the authority to adopt such rules based on Section 706. Instead, we strongly urge the Commission to reclassify broadband as a Title II service, and adopt these rules based on its broader Title II jurisdiction. Such a reclassification is required in order for the Commission to adopt these essential mandates in light of the Court's decision.

II. About Engine Advocacy: Voice for the Startup Economy

Many of today's technology-enabled companies seek to fundamentally alter and challenge entrenched business models, ideas, and institutions across all industries. It is these businesses that drive our economic prosperity, create jobs, and improve our lives. And it is these companies that Engine advocates for. We have worked with the White House, Congress, federal agencies, state and local governments, and also international

advocacy organizations to educate and inform them about the changing face of American high-tech entrepreneurialism.

Engine represents a community of more than 500 high-technology, growth-oriented startups across the nation through research and advocacy that supports the growth of technology entrepreneurship. Our members include Meetup, Etsy, Yelp, Uber, Lyft, and Automattic. They also include much smaller companies such as Hipiti, WellDone, MentorMe, and Bot & Dolly. Our Advisory Board includes some of the nation's most influential venture capitalists and investors, including Brad Feld, John Lilly, and Ron Conway.

III. The Startup Ecosystem Depends an Open Internet

Entrepreneurs rely on an open Internet to build their companies. Investors rely on the certainty of an open Internet to invest billions of dollars in edge providers to power the innovation ecosystem. And the FCC's open Internet, or network neutrality, orders have been essential to ensuring such entrepreneurship and investment. These rules have been so essential because these rules address a real problem (not merely a solution "searching" for one) and because the FCC's actions have global impact, both on where Americans create new companies and the foreign markets available to American companies.

A. Startups Rely on Network Neutrality

When a few bright engineers or business students have an idea, they can launch a business that can be available to billions of users all over the world, inexpensively, and without discrimination. These founders take risks, forego stable jobs, and seek

investment from friends, family, and institutional investors to face the pressure of failing or succeeding on the merits of their idea, engineering, user design, and industry knowledge. While some might fail—most startups do—the few who wildly succeed benefit millions of consumers, create thousands of jobs, create world-changing technologies, and power the innovation ecosystem that assumes a high failure rate and a few outsized successes.

This engine of innovation is only possible because today's founders—eventual failures and eventual successes alike—can take the first steps at extremely low cost. The costs are often merely the expense of hard work, low-cost cloud computing tools, and off-the-shelf laptops and mobile devices. These costs generally go down each year per unit of computing power, and competitive markets pass on those cost savings to technology companies. Startups typically pay the (falling) competitive costs of technologies rather than above-cost extraction by companies with termination monopolies.

As one investor explained in a *Wall Street Journal* op-ed, the cost of running a basic internet application fell from $150,000 a month in 2000 to $1,500 a month in 2011. That is *a 99 percent drop in price*.[2] Because of competitive markets, the cost savings in components and services have been passed onto those applications and consumers, accelerating innovation and cost savings.

Startups rely on *not* being blocked, discriminated against, or subject to fees for access and preference. If some or all ISPs blocked a startup, the startup would be unable to reach a subset of users in the market. This is a particular problem for startups

[2] Marc Andreessen, "Why Software Is Eating The World," The Wall Street Journal, Aug. 20, 2011, available at http://on.wsj.com/1gt4wRH.

whose products rely on network effects—those that become more valuable with more users—such as social networks, e-commerce platforms connecting buyer and sellers (or drivers and riders), sites for user-generated content (including reviews, photos, or micro-blogs), and payment networks. If blocked by some ISPs, these companies are less likely to win in the market, even if consumers would otherwise prefer their services.

Discrimination could have the same competitive effect. If a startup's site does not load as quickly or if its application is not as reliable, it will be harmed in several ways. Users will switch to competitors whose services receive better treatment. According to research compiled by StrangeLoop Networks, "three out of five [users] say that poor performance will make them less likely to return" and two of five said "they'd likely visit a competitor's site next."[3] Beyond moving to competitors, users will simply spend less money on e-commerce sites or view fewer pages on sites that garner advertising revenue through the number of page-views. For example, in 2007, for every 100ms increase in load time, Amazon's sales decreased 1 percent;[4] AOL found that users whose sites load faster view up to 50 percent more pages than visitors whose pages load slowly.[5] If discrimination on networks leads to users choosing competitors and using the service less, startups that would otherwise succeed will be more likely to fail.

In both cases, incumbent technology companies would understand their own incentive to partner with ISPs to block or discriminate against less well-resourced disruptive upstarts. Also, in both cases investors would quickly understand these increased risks and the need for larger minimum investments necessary for startups to

[3] Jolie O'Dell, "Why Websites Are Slow and Why Speed Really Matters," Mashable, April 5, 2011, available at: http://mashable.com/2011/04/05/site-speed/.
[4] Ryan Kelly, "How Webpage Load Time is Related to Visitor Loss," Pear Analytics, Aug. 7, 2009, available at: https://www.pearanalytics.com/blog/2009/how-webpage-load-time-related-to-visitor-loss/.
[5] Jolie O'Dell, "Why Websites Are Slow and Why Speed Really Matters," Mashable, April 5, 2011, http://mashable.com/2011/04/05/site-speed/.

overcome these risks and succeed. Some investors who would otherwise invest in a startup would therefore not invest, either because of the increase uncertainty or the inability or unwillingness to invest the larger minimum necessary. As a result, fewer startups would be funded. Entrepreneurs would understand this environment going in, be less willing to take on the tremendous personal risk of starting a company, and then there would even be fewer startups to fund.

Fees, both for access and preferences, impose a slightly different, but still significant, problem for startups. Without fees, the cost of innovation is low. Today it is inexpensive to start a technology company, and entrepreneurs generally do not need to raise an initial investment in the early stages of their venture. The costs are low: laptops, desks, cloud storage, and transit, all of which are competitively priced. Access fees will likely be priced far above cost because ISPs have terminating monopolies over users, as the FCC observed in 2010. Because an ISP might have monopolies over millions of particular users, the startup simply cannot reach those users without going through that ISP. The startups would have to pay these fees. ISPs can keep these fees high and raise them every year, unlike transit costs and cloud storage, which decrease exponentially because competition drives the prices down to cost. Moreover, because these fees are unconstrained by competition (or the price of transit[6]), startups would not pay for preferences unless necessary to compete; however, if well-resourced competitors receive preferences, then startups would be forced also to pay for them.

Because startups will be paying access fees, some unfunded early startups may not be able to afford the access fees (particularly if the product would be data-intensive)

[6] This is because transit connections are congested, as detailed by Level 3. Comments of Level 3, GN Docket No. 14-28, March 21, available at: http://apps.fcc.gov/ecfs/document/view?id=7521094640.

and will not start the company. Others will start the company but will need to raise money earlier and need to raise more of it. That makes fund-raising harder in three ways: the entrepreneur will have done less to test the market in ways that lower investors' risk, the entrepreneur would need to raise a larger round of initial financing (therefore drawing from a smaller number of larger investors or requiring the accumulation of more small investors), and the entrepreneur could only offer investors a smaller potential reward. The Commission recognized this problem in its 2010 Open Internet Order:

Fees for access or prioritization to end users could reduce the potential profit that an edge provider would expect to earn from developing new offerings, and thereby reduce edge providers' incentives to invest and innovate. In the rapidly innovating edge sector, moreover, many new entrants are new or small "garage entrepreneurs," not large and established firms. These emerging providers are particularly sensitive to barriers to innovation and entry, and may have difficulty obtaining financing if their offerings are subject to being blocked or disadvantaged by one or more of the major broadband providers.[7]

The Commission had it right. Fees for access or prioritization will chill investment and innovation across the domestic and global economy.

In these ways, blocking, discrimination, and access fees would impose new burdens that would harm entrepreneurship. Today, American startups do not expect to be blocked, except perhaps abroad, in countries like China or Turkey. They do not expect the existing, large competitors to receive better network access from

[7] Preserving the Open Internet, GN Docket No. 09-191, Broadband Industry Practices, WC Docket No. 07-52, Report and Order, FCC 10-201 (Dec. 23 2010) at 16, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-201A1.pdf.

telecommunications carriers based on payment, connections, or mere preference. They needn't hire lawyers or sales teams upfront to negotiate deals with a range of mobile, cable, and wireline telecommunications carriers to ensure "distribution" for their products or services. They needn't be Apple or Netflix in order to negotiate reliable service. They have not historically paid termination fees directly to carriers with termination access monopolies, which would essentially allow them to charge prices far above marginal cost. To our understanding, they rarely (and only recently) have paid these termination fees, not even indirectly, as the largest transit providers such as Cogent refuse to pay them. The open internet has accelerated entrepreneurship and disruptive innovation on an unprecedented scale because of low transaction costs, a level playing field, and a unified network.

B. Investment Relies on an Open Internet

Institutions, pensions, and wealthy individuals have invested billions of dollars in tech start-ups. They make these investments as individuals or through private equity and venture capital organizations, such as Andreessen Horowitz, New Enterprise Associates, Union Square Ventures, Greylock Partners, Sequoia Capital, Foundry Group, Spark Capital, and many more. These firms invest with the expectation of an open internet.

Greylock Partners raised $1 billion last September.[8] Sequoia, a fund that was an early investor in Apple, Oracle, Google, WhatsApp, OpenDNS, and others, also raised a

[8] Tomio Geron, "Facebook, LinkedIn Investor Greylock Partners Raised $1 Billion for 14th Fund," Forbes, Sept. 10, 2013, available at: http://onforb.es/1jyCunc.

$1.17 billion fund that month.[9] Earlier this year, Andreessen Horowitz announced that it closed a $1.5 billion fund for investments ranging from seed rounds to late stage funding rounds.[10] In October of 2013, Foundry Group created a new $225 million fund devoted to "late stage growth" funding for companies in their existing portfolio.[11] In January of 2014, Union Square Ventures, which invested in Twitter, Tumblr, Coinbase and others, raised $350 million for its fourth early-stage fund and its second fund backing more mature companies.[12]

These funds, and the investors in these funds, make substantial investments in startups as they scale. Every year, thousands of entrepreneurs raise hundreds of millions of dollars in their first rounds of financing; these rounds are generally below two million dollars each, and come from "angel" investors, friends, and family.[13] Depending on how you slice the data, there are between five and ten billion dollars invested annually in Series A rounds, which are the first institutional funding rounds for a startup.[14]

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[9] "Sequoia Capital Raises $1.17 Billion for New Funds," Reuters, available at: http://www.reuters.com/article/2013/08/16/us-sequoia-funds-idUSBRE97F0WW20130816.
[10] Scott Kupor, "Andreessen Horowitz Raises New Fund," Andreessen Horowitz, Mar. 27, 2014, available at: http://a16z.com/2014/03/27/andreessen-horowitz-raises-new-fund; Romain Dillet, "Andreessen Horowitz Raises Massive New $1.5 Billion Fund," TechCrunch, Mar. 27, 2014, available at: http://techcrunch.com/2014/03/27/andreessen-horowitz-raises-massive-new-1-5-billion-fund.
[11] Foundry Group, "Foundry Group Announces Its Newest Fund – Foundry Group Select," Oct. 2013, available at: http://www.foundrygroup.com/blog/2013/10/foundry-group-announces-its-newest-fund-foundry-group-select.
[12] Dan Primack, "Union Square Ventures raises new funds," Jan. 24, 2014, available at: http://finance.fortune.cnn.com/2014/01/24/union-square-ventures-raises-new-funds.
[13] Jeff Zabel, "Analyzing the Series A Crunch," DataHero, Oct. 1, 2013, available at: https://datahero.com/blog/2013/10/01/analyzing-the-series-a-crunch/; Mark Lennon, "US Angel Investing This Year Likely Won't Pass 2012 Levels," TechCrunch, Oct. 1, 2013, available at: http://techcrunch.com/2013/10/01/us-angel-investing-this-year-likely-wont-pass-2012-levels/.
[14] Jeff Zabel, "Analyzing the Series A Crunch," DataHero, Oct. 1, 2013, available at: https://datahero.com/blog/2013/10/01/analyzing-the-series-a-crunch/; Mark Lennon, "US Angel Investing This Year Likely Won't Pass 2012 Levels," TechCrunch, Oct. 1, 2013, available at: http://techcrunch.com/2013/10/01/us-angel-investing-this-year-likely-wont-pass-2012-levels/.

As these Internet companies grow larger, they need to raise more investment. At the beginning of April 2014, Lyft, an on-demand ride-sharing service, raised $250 million in its fourth round of institutional funding to expand its offerings and compete with Uber.[15] Last August, Uber raised $361.2 million in a round led by Google Ventures.[16] Automattic, the company behind the blogging platform Wordpress.com (used by 19.9 percent of all sites on the Web), has raised over $100 dollars in its last two rounds.[17] Dropbox, an online file storage platform, raised a $350 million round of funding recently after raising $250 million from investors in 2011.[18] Etsy has raised about $92 million in venture capital funding to date.[19] In April, Airbnb raised $500 million, after having already raised $326 million.[20]

These investments rely on the assumption of a level playing field and one interconnected internet. They assume that blocking, discrimination, and unconstrained access fees will not threaten their investment. These are the same investments that are crucial to today's startup economy.

[15] Ryan Lawler, "Lyft Raises $250 Million From Coatue, Alibaba, And Third Point to Expand Internationally," TechCrunch, Apr. 2, 2014, available at http://techcrunch.com/2014/04/02/lyft-250m/.
[16] Alex Wilhelm, "Google Ventures Puts $258M Into Uber, Its Largest Deal Ever," TechCrunch, Aug. 22, 2013, available at: http://techcrunch.com/2013/08/22/google-ventures-puts-258m-into-uber-its-largest-deal-ever.
[17] Evelyn M. Rusli, "Tiger Global Ups Investment in Creator of WordPress.com," The Wall Street Journal, Sept. 17, 2013, available at: http://blogs.wsj.com/digits/2013/09/17/tiger-global-ups-investment-in-creator-of-wordpress; Ryan Lawler, "WordPress.com Maker Automattic Sells $50 Million in Secondary Offering to Tiger Global," TechCrunch, May 24, 2013, available at: http://techcrunch.com/2013/05/24/wordpress-maker-automattic-sells-50-million-of-stock-in-secondary-offering-to-tiger-global.
[18] Anthony Ha, "Dropbox Has Raised $350M In New Funding at A $10B Valuation," TechCrunch, Feb. 24, 2014, available at: http://techcrunch.com/2014/02/24/dropbox-filing.
[19] Frederic Lardinois, "Etsy Raises $40M to Fuel International Expansion," TechCrunch, May 9, 2012, available at: http://techcrunch.com/2012/05/09/etsy-raises-40m-to-fuel-international-expansion.
[20] Ingrid Lunden, "Airbnb Has Closed Its $500M Round Of Funding At A $10B Valuation, Led By TPG," TechCrunch, April 18, 2014, available at: http://techcrunch.com/2014/04/18/airbnb-has-closed-its-500m-round-of-funding-at-a-10b-valuation-led-by-tpg/.

C. Technology Startups Have Created Massive Value

As a result of the certainty provided by an open internet, American companies have become the envy of the world. They have been assured a large, wealthy domestic market and access to global markets without unconstrained, above-cost expenses and discrimination. As a result, we have seen immense innovation, cost-savings, job creation, and return on investment across a range of sectors.

Relying on an open Internet, technology entrepreneurs have created massive global economic value and jobs. A recent report—commissioned by Engine—showed that "[d]uring the last three decades, the high-tech sector was 23 percent more likely and [information and communication technology] 48 percent more likely than the private sector as a whole to witness a new business formation."[21] The high-tech jobs that are created by these businesses account for 5.6 percent of the job market in the United States.[22] These jobs are not in Silicon Valley alone. They are in states, cities, and towns across the country, from Los Angeles to Kansas City, from Nashville to Washington, DC. As of 2011, Washington state had the highest concentration of tech jobs (11.4 percent of employment), followed by Massachusetts (9.4 percent), Virginia (9.3 percent), and Maryland (8.9 percent).[23]

Additionally, these tech jobs spur further job creation and stimulate the local economy even beyond the jobs created in technology, as tech workers spend money

[21] Ian Hathaway, "Tech Starts: High-Technology Business Formation and Job Creation in the United States," Kauffman Foundation, Aug. 2013, at 2 available at: http://engine.is/research/technology-starts-report-2013.
[22] Ian Hathaway, "High-Tech Employment and Wages in the United States," Bay Area Council Economic Institute, Dec. 2012 at 10, available at: http://www.bayareaeconomy.org/media/files/pdf/TechReport.pdf.
[23] *Id.* at 10.

locally, creating more jobs.[24] This impact is global, not national. According to McKinsey & Co., the Internet economy represents 3.4 percent of the global GDP.[25]

While we used to speak of a "tech sector," technology is now an input into every industry, no less than electricity. We once shopped Borders for books; we now shop Amazon and rent ebooks through Oyster. We once rented films at Blockbuster; we now watch on Netflix and YouTube. We once called on cabs for urban transportation; we now call black cars through Uber, and fellow city residents through Lyft and Sidecar. We once had the option of several hotel chains; we can now use Airbnb to rent the homes of strangers—from castles to igloos—with even more variety. We could take Michael Sandel's Justice class or Andrew Ng's Machine Learning courses only if we could get accepted into (and afford) Harvard and Stanford; now, we can now take these classes online through EdX and Coursera, without obstacles. We once relied on annual doctor visits; we can now book those visits more conveniently through ZocDoc, and keep healthy between visits with the help of "quantified self" applications and hardware, including MyFitnessPal, Fitbit, and the Nike Fuelband. Consumers used to pay one another with cash; now they can send money through Paypal, Square, Venmo, and Dwolla. They spend not only dollars but bitcoins. Our ready-to-eat meals were in grocery stores' frozen food sections; now, companies like Plated and SpoonRocket enable customers to order local meals delivered to our homes.

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[24] *Id*. at 12. ("For each job created in the local high-tech sector, approximately 4.3 jobs are created in the local non-tradable sector in the long run.")

[25] Matthieu Pélissié du Rausas, James Manyika, Eric Hazan, Jacques Bughin, Michael Chui, Rémi Said, "Internet matters: The Net's sweeping impact on growth, jobs, and prosperity," McKinsey & Company (May 2011), available at: http://www.mckinsey.com/insights/high_tech_telecoms_Internet/Internet_matters at p.11-12. (This 2009 estimate is based on a study of 13 countries: G8 countries, as well as China, India, Brazil, Sweden, and South Korea.)

Beyond the technologies consumer see, enterprise applications transform businesses. Marketo and Salesforce make sales organizations and buyers more efficient. Companies like Wal-Mart, FedEx, and United Airlines use software to manage distribution, pricing, and optimization. Oil and gas companies use networked computing and big data to guide their gas exploration.[26] Agriculture today relies on Internet connections for farmers to maximize output and minimize costs.[27]

Finally, innovation has enabled and revolutionized freedom of expression, and broadened access to information. While we used to get our news from the one newspaper in town and TV news, we can now access newspapers, news clips, and analysis from all over the world. Anyone can have a blog on WordPress or Medium, a microblog on Tumblr or Twitter, and share the writings of others easily through social media. While these tools often begin in the United States, they spread to foreign nations, where they empower activists to organize politically. Put bluntly, there would not have been an Arab Spring without Facebook and Twitter.

IV. FCC May Only Promulgate Real Net Neutrality Rules under Title II, Not Section 706

The limitations on the FCC's power under Section 706, as laid out in *Verizon v. FCC,* inherently restrain the Agency's ability to pass rules that provide clear guidance to startups and others who rely on rules embodying net neutrality, and the certainty they provide, to grow businesses, attract investment, and create jobs.

[26] Marc Andreessen, "Why Software Is Eating The World," The Wall Street Journal, Aug. 20, 2011, available at: http://on.wsj.com/1gt4wRH (subscription req'd).
[27] Mediacom Expression of Interest, WC Docket No. 10-90, (Mar. 7, 2014), available at: http://apps.fcc.gov/ecfs/document/view?id=7521089654.

The law is now clear: Section 706 cannot serve as a basis to protect the open Internet regardless of whether the Agency enacts strong rules, or less robust rules and enforces them aggressively. If the Agency passes strong and clear rules that, as written, impose common carriage regulations on broadband Internet, a reviewing court will invalidate the rules "facially"—meaning that, like the Open Internet Order's rules against blocking and non-discrimination, they will be vacated because the Court will find that the Commission lacked the authority to adopt them in the first place.

On the other hand, the Agency cannot get around the limits on its power by enacting flexible rules and then applying them in a way that effectively creates common carriage. If it does so, a reviewing court will invalidate the rules "as applied" to those particular facts. The rules will remain valid, but the FCC's ability to enforce them—and therefore their ability to deter violations—will be weakened.

Invalidation "as applied" is a very real risk. In the 2012 case *Cellco*, the D.C. Circuit upheld a 14-factor test but threatened that "even if the rule sounds different from common carriage regulation, the more permissive language could, as applied, turn out to be no more than 'smoke and mirrors.'" If the FCC applies a rule in a way that "will effectively relegate [providers] to common-carrier status," providers can challenge the rule's application to them. "In implementing the rule and resolving disputes that arise . . . , the Commission would thus do well to ensure that the discretion carved out in the rule's text remains carved out in fact."[28]

The uncertainty this risk creates will ripple throughout the system. When ISPs violate the rules, startups and other companies that might otherwise complain to the FCC will be less likely to do so, because they face the twin risks that either the FCC will

[28] *Cellco P'ship v. FCC*, 700 F.3d 534, 549 (D.C. Cir. 2012).

deny their claim in order to demonstrate that the rules do not create common carriage, or that if the FCC does find a violation, a reviewing court will invalidate the rules or the FCC's favorable decision. The more closely the FCC's rules approach common carriage, the greater the deterrent.

All of this is in addition to the fundamental uncertainty created by having "flexible" rules in the first place: when the FCC is left to apply a multi-factor test that leaves it a large amount of discretion, how are startups with small legal teams—or any company for that matter— supposed to assess their rights? Startups and small companies will simply not be a position to retain counsel to understand the scope of their rights or, even more burdensome, petition FCC when they feel they have been treated unfairly. Nor will they have the bandwidth to monitor each deal with each ISP to determine which ones violate these flexible standards. For these reasons, the proposed "commercially reasonable" standard and "minimum access levels" provide little comfort.

The result is that if the FCC chooses to regulate under section 706, its efforts will lead to burdensome and unpredictable rules that will fail to provide real protections, create harmful uncertainty, be struck down as common carriage regulations, or some combination of the above. The closer regulation under section 706 gets to providing meaningful open Internet protections, the more likely it is to be struck down again.

V. Conclusion

The FCC's actions over the past decade, starting with the issuance of the Open Internet Order, have enabled the Internet to flourish. Limitations or exceptions to strict network neutrality such as rules authorizing discrimination by ISPs and rules permitting fast and slow lanes will gravely damage the continued vitality of the Internet. Moreover,

it would have a devastating impact on startups, which have always been—and continue to be—key drivers of innovation and job creation.