Before the
Federal Communications Commission

In the Matter of	)	
	)	
Open Internet Remand	)	**GN Docket 14-28**
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	)	

Reply Comments of Engine Advocacy

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I. Intro and Executive Summary

The D.C. Circuit Court's rejection of the net neutrality rules in the FCC's Open Internet Order initiated an intense debate about the future of the Internet that has prompted commentary from virtually all corners of American society. Millions of individual citizens and thousands of companies have weighed in on the Chairman's proposal to abandon the strict anti-blocking and anti-discrimination rules in the Open Internet Order in favor of case-by-case determinations as to whether particular discriminatory activities by Internet Service Providers are "commercially reasonable" or not. The vast majority of public commenters have asked the FCC to reinstitute strong net neutrality regulations by reclassifying broadband Internet service as a telecommunications service under Title II of the 1996 Telecommunications Act.

Startup companies from around the country have similarly weighed in on the Chairman's proposal, and their response has been uniform, emphatic, and strong: the only way to ensure that the Internet remains the principal driver of economic growth in this country in the future as it has been in the past several decades is through Title II reclassification.

Though the startups that have engaged in the debate are varied, their concerns with the FCC's proposal are consistent. Because the D.C. Circuit held that any rules the Commission enacts under its Section 706 authority must allow for ISP discrimination and individualized bargaining, the only way to prevent ISPs from instituting crippling access fees on startups and other edge providers is to treat them as common carriers under the 1996 Act. Startups rightly fear that priority access arrangements that ISPs will enter into with well-funded companies will necessarily result in startups being forced into

Internet slow lanes, making it difficult or impossible for them to compete with entrenched incumbents. The Commissioner's proposal to permit only "commercially reasonable" prioritization arrangements offers startups no protection, as they simply do not have the resources to challenge discriminatory ISP practices before the FCC or in court. This vague standard generates uncertainty about the viability of new Internet businesses, discouraging inventors and investors from taking the entrepreneurial risks that drive our economy.

Engine Advocacy—a research and advocacy organization representing more than 500 high-growth, entrepreneurial businesses, pioneers, innovators, investors, and technologists—agrees with the startup community's strong consensus: the future of the Internet as a platform for economic and cultural growth depends on the FCC reclassifying broadband as a telecommunications service under Title II and reinstating the meaningful net neutrality protections that have allowed the Internet to thrive.

II. About Engine

Engine is a non-profit advocacy and research organization that represents a community of more than 500 high-technology startups. The startups we represent are among the most innovative and fastest growing companies in the country, fundamentally altering and challenging entrenched business models, ideas, and institutions across all industries. These are the businesses that drive our economic prosperity, create jobs, and improve our lives. We have worked with the White House, Congress, federal agencies, state and local governments, and international advocacy organizations to educate and inform them of the changing face of American high-tech entrepreneurship.

Our network includes Meetup, Etsy, Yelp, and Automattic. It also includes smaller startups such as Code Combat, WellDone, MentorMe, and Imgur. 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 Community Uniformly Supports Net Neutrality

The basic idea behind net neutrality—that ISPs must treat all traffic the same and not be permitted to charge tolls for Internet companies to access ISP users—has been one of the governing principles of the Internet for virtually all of its existence. The permissionless innovation enabled by an open Internet is responsible for most of the job growth in the United States over the past several decades. Not surprisingly, the startup community that has fueled most of this job growth reacted strongly to the prospect that the FCC would abandon the net neutrality rules that helped the Internet grow so rapidly. Since the Commission issued its NPRM proposing to enact vague rules prohibiting undefined "commercially unreasonable" discriminatory behavior, startups have vocally and consistently urged the FCC to reclassify broadband as a Title II common carrier service. Startups recognize that reclassification is the only way to preserve real net neutrality principles.

A. The Growth of the Internet Is a Direct Product of Net Neutrality

From its earliest days, the Internet has operated under de facto net neutrality rules, first as a matter of technical operation, and later due to the FCC's actions in preventing discrimination among Internet traffic. This openness allowed the Internet to become the dominant platform for economic growth over the past three decades. Under net neutrality, the costs of starting a technology company have been incredibly low,

allowing anyone with a little technical know-how and a good idea to compete with multinational corporations.

This has led directly to the success of companies large and small, not to mention some of the most successful businesses of our time, like Facebook and Google. And this broad freedom to innovate is, of course, the economic promise of the Internet. The failure to guarantee real net neutrality under Title II of the Telecommunications Act is the failure to uphold the end of the bargain promised to everyone with a good idea and a solid plan: namely that one day, as President Obama said, your business can be the next Facebook and the next Google.

It is no wonder, then, that the startup community, made up of the dreamers and builders that represent America's future, has clearly made its voice heard: there is no plan for an open Internet that does not include at least the promise of reclassification under Title II.

B. The D.C. Circuit Court's Decision in *Verizon v. FCC* Removed the Only Barrier to ISP Discrimination

Under the 2010 Open Internet Order, startup activity thrived. That activity occurred all over the country, creating jobs and benefiting geographically diverse communities. In fact, our 2013 research shows that new and young firms, not small businesses in general, are the key drivers of net job creation. It also shows that recent growth in high-tech startups is not simply limited to areas historically known as "tech centers" (e.g., San Francisco and New York City).[1] These trends rely on an open Internet.

[1] Available http://engine.is/research/technology-starts-report-2013

Since the DC Circuit's decision in *Verizon v. FCC*[2] dismantled the anti-discrimination and anti-blocking rules in the Open Internet Order, ISPs have no legal or regulatory impediment to imposing access fees on edge providers, threatening the underlying openness that has allowed startups to thrive. Such paid prioritization schemes, once implemented, will result in Internet fast lanes for well-heeled incumbents, relegating startups and the economic growth they create to the slow lane. Likewise, with terminating access monopolies over Internet customers, ISPs have the incentives and the power to segregate traffic into fast lanes and slow lanes to the detriment of startups, consumers, and the economy. Indeed, Verizon itself admitted that it would have already entered into such arrangements if not for the net neutrality rules in the Open Internet Order.[3]

C. After the *Verizon* Decision, Startups Mobilized in Support of Net Neutrality and Title II

Once the *Verizon* decision came down, the startup community quickly began to recognize the significance of the ruling. Public interest groups like ours began educating startups[4]—most of whom were busy with the work of growing their business—that the status quo had been dangerously threatened. As a group who represents the startup community, we wanted to understand just how important this issue was to our network—would our startups really care about net neutrality? Was this an issue that really impacted their bottom line? The answer was a resounding "yes." As the rest of the country was soon to learn, startup companies all over the nation that will be responsible

[2] *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014)
[3] Timothy Karr, *Verizon's Plan to Break the Internet*, The Huffington Post, (Sept. 18, 2013), http://www.huffingtonpost.com/timothy-karr/verizons-plan-to-break-th_b_3946907.html.
[4] Available at http://engine.is/issues/what-we-can-do-to-protect-net-neutrality/2222

for this country's net new job growth deeply care about real net neutrality and are not willing to accept the risk that comes with reliance on ad hoc rules under Section 706.

On May 7, before the issuance of the Commission's NPRM, with its proposal of a "commercially reasonable" standard for paid prioritization deals, dozens of the country's most prominent companies and, primarily, startups submitted a letter to the FCC supporting a free and open Internet.[5]

In that letter, these companies expressed disapproval of any rules that would permit technical and financial discrimination against edge providers, urging the FCC to take steps necessary to prevent ISP "blocking, discrimination, and paid prioritization." Any "net neutrality" rules that "permitt[ed] individualized bargaining and discrimination" are not "net neutrality" rules at all, the letter said.

The next day, a group of more than 100 of the country's most prominent venture capital and angel investors submitted a similar letter to the FCC, echoing the sentiments in the companies' letter, further noting that FCC rules permitting access fees will make investors less likely to fund technology startups, hurting entrepreneurship and economic growth.[6]

Despite having limited resources to spend on analyzing proposed administrative rulemaking, hundreds of startups from around the country found the time to get deeply involved in the NPRM process, filing comments with the FCC in support of Title II reclassification and meeting with FCC staff in person to make the case for strong net neutrality rules. On May 6, for example, representatives from Meetup, Kickstarter, Tumblr, the NY Tech Meetup, and Engine met with FCC staff to argue that the

[5] Available at http://engine.is/wp-content/uploads/Company-Sign-On-Letter.pdf
[6] Available at https://docs.google.com/document/d/1v34_bFesbfyF_MbQgtZtUQNfSByAgUKTICEB9pjH3jk/pub

Commissioner's proposed "commercially reasonable" standard for evaluating discriminatory ISP conduct was unacceptable and that reclassifying broadband as a common carrier service is the only available means to protect an open Internet.[7]

Over the summer, unrest continued to brew in the startup community surrounding the very real threat facing net neutrality. That unrest culminated in the events of September 10, when Engine, along with other public interest groups, organized an online day of action—the "Internet Slowdown"—in support of reclassification. More than 40,000 websites participated, many running banners on their websites simulating what the Internet would look like under the rules proposed in the NPRM. Sites including Tumblr, Vimeo, Netflix, and Etsy ran images of the "spinning wheel" icon symbolizing slow-loading content, directing users to contact policymakers in support of Title II reclassification. These companies, and many of the tens of thousands of participating websites, used this day to publicly voice what many already knew—the startup community loudly and firmly supports reclassification under Title II. It was no wonder, then, that the response to the day of action was massive: on September 10 alone, Internet users made 303,099 calls to Congress urging members to make sure the FCC took the necessary steps to establish bright line rules against ISP discrimination and blocking.

IV. Startups Recognize That Title II Reclassification Is The Only Way To Preserve Net Neutrality Rules

The message from the startup community has been clear all along: allowing ISPs to engage in individualized negotiations with edge providers for priority access will

[7] Available at http://engine.is/wp-content/uploads/Ex_Parte_NYTech.pdf

severely damage startups and the Internet economy. And, given the DC Circuit's unequivocal rejection of the Commission's reliance on Section 706 of the 1996 Telecommunications Act for authority to institute common-carrier-like rules against ISP discrimination and blocking, the startup community recognizes that Title II reclassification is the only way to prevent ISPs from bifurcating the Internet into fast and slow lanes.

In comments filed with the FCC, startups of all sizes, in all industries, and from all parts of the country have uniformly expressed support for net neutrality and Title II reclassification. Virtually all of the startups that have submitted comments have recognized that net neutrality principles were critical to the founding and success of their companies. For instance, Tumblr, a New York-based microblogging and social networking platform hosting over 200 million blogs, noted in its comments that "[d]e facto net neutrality has been a fundamental pillar of the innovation and economic growth spurred by and because of the internet, and Tumblr's existence would not have been possible without it."[8]

Though the proposal in the NPRM purports to protect an open Internet, startups recognize that their companies would likely not exist had the Commissioner's proposed rules been in place at the time they were founded. According to Etsy, an online marketplace where users can connect to buy and sell unique, often handmade goods, its "business model would not have worked under the Chairman's proposal, which would have allowed more established e-commerce companies to negotiate

[8] Comments of Tumblr, Inc., GN Docket No. 14-28, at p. 6 (filed September 9, 2014) ("Tumblr Comments"); *see also* Reply Comments of Imgur, Inc. GN Docket No. 14-28, at p. 5 (filed August 12, 2014)("Imgur Comments") ("Net neutrality was a key factor in allowing Imgur to emerge as the platform it is today").

individualized, differentiated arrangements and pay for priority access to consumers."[9] Similarly, reddit, an online news and social networking site with 114.5 million unique monthly visitors, commented that "[i]f the Chairman's proposal had been law in 2005, reddit might not have gotten off the ground."[10] Smaller startups, like General Assembly, an online educational institution that teaches courses in technology, business and design, shared similar opinions about the impossibility of launching their company under the Chairman's proposal: "General Assembly would not have been founded if the FCC's proposed rules were in effect three years ago."[11]

A. The Chairman's Proposal Permits Unacceptable ISP Discrimination

Among the many problems startups recognize with the Chairman's proposal (or indeed any rules that don't include bright-line prohibitions on discrimination and blocking), of most concern are the proposed rules that would permit ISPs to grant priority speeds to companies wealthy enough to afford them, leaving all other companies at a competitive disadvantage. Indeed, as the *Verizon* court made clear, if the Commission intends to use authority under Section 706 to enact rules regulating broadband access, it *must* permit discrimination. *See Verizon*, 740 F.3d at 657 ("If the Commission will likely bar broadband providers from charging edge providers for using their service, thus forcing them to sell this service to all who ask at a price of $0, we see no room at all for 'individualized bargaining.'")

i. Any Form of ISP Discrimination Will Harm Startups and the Economy

[9] Comments of Etsy, Inc., GN Docket No. 14-28, at p. 5 (filed July 8, 2014) ("Etsy Comments")
[10] Comments of reddit, Inc., GN Docket No. 14-28, at p. 9 (filed July 15, 2014) ("reddit Comments")
[11] Comments of General Assembly, GN Docket No. 14-28, at p. 4 (filed July 1, 2014) ("General Assembly Comments"); *see also* Reply Comments of LendUp, GN Docket No. 14-28, at p. 5 (filed August 5, 2014) ("LendUp Comments")("Competition within this industry is fierce and, if we were founded under the rules laid down in the Chairman's proposal, our initial cost projections could have proven prohibitive.")

While the NRPM claims to mitigate the problems associated with such discrimination by permitting only "commercially reasonable" discrimination, startups are rightly concerned that any amount of discrimination will necessarily put startups at an insurmountable disadvantage. Insofar as the proposed rules allow for individualized bargaining between ISPs and large edge providers for priority access, they necessarily permit the creation of fast and slow lanes. As Tumblr noted in its comments, even if the disparity between these fast and slow access lanes is "small"—on the order of milliseconds—such differences in speed can have a huge, deleterious effect on startups left in the slow lane: "From a paid prioritization standpoint, even if a 'slow' lane remains reasonably fast, marginal differences in upload and streaming speeds moving forward would deter people from using slower services, and severely punish companies that cannot pay for prime access."[12] Reddit shared similar concerns:

> Even if the slow lane is, absolutely speaking, pretty fast, so long as it is *slower* than the fast lane, people will be deterred from using reddit. It's well-documented that seemingly inconsequential differences in loading times deter users; users visit a website less often if it loads 250 milliseconds slower than a competitor's. In the Internet permitted by the Chairman's proposal, users will be used to the fast lane, and reddit will look like dial-up compared to Google's DSL.[13]

It is not sufficient to say that allowing ISPs to create fast lanes for the highest bidders will have a negligible effect on startups, so long as a minimum standard of service is met. Simply put, packet switching is a zero-sum game. As Peter Schmidt, the President and COO of Linear Air, a Bedford, MA-based air taxi startup, noted, "I can state definitively that the only way to create a 'fast lane' on the Internet is to slow

[12] Tumblr Comments at p. 6
[13] reddit Comments at p. 7

everything else down."[14] Any priority service offered to paying edge providers necessarily comes at the expense of smaller edge providers that can't afford the tolls. These small companies will be at a distinct competitive disadvantage, making it less likely that they will be able to attract investors and customers. Kickstarter, a Brooklyn-based crowdfunding platform that has received over $1 billion in pledges to support creative projects all over the world, explained in its comments why any fast lane/slow lane dichotomy will have a significant impact on startups' ability to compete:

> Once a fast lane exists, it will become the de facto standard on the web. Sites unwilling to pay up will be buffered to death: unloadable, unwatchable, and left out in the cold. Sites like ours will succeed or fail not on the basis of our passion or service, but based on whether we have the resources and desire to pay the ISPs.[15]

Smaller companies for whom the threat of being forced into a slow lane is even more real and unavoidable voiced the same concerns. In its comments, Distinc.tt, a social lifestyle network for the LGBT community, said:

> Like all of the startups I've talked with, if there were a fast lane, our survival would have depended on us being in it from the beginning. As I noted earlier, this would not have been possible. Even if the "slow lane" were "pretty fast," it wouldn't matter because we would still need to be as effective at serving our users as our competitors. Users turn away from websites which are even 250 milliseconds slower than their competitors.[16]

Even if the fast lanes that would arise under the FCC's proposal were accessible to startups, the cost of negotiating individualized arrangements with ISPs would be prohibitive for startups. As Kickstarter noted in its comments, "[F]or smaller or newer companies, this situation would be even worse. Adding

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[14] Reply Comments of Linear Air, GN Docket No. 14-28 at p. 5 (filed August 5, 2014) ("Linear Air Comments")
[15] Comments of Kickstarter, Inc., GN Docket No. 14-28 at p. 2 (filed July 10, 2014) ("Kickstarter Comments")
[16] Comments of Distinc.tt, GN Docket No. 14-28 at pp. 5-6 (filed August 5, 2014) ("Distinc.tt Comments")

the burden of negotiating with ISPs to small businesses would clearly tilt the balance toward big companies with resources to spend on legal fees and lobbying."[17]

Given the massive negative impact even a minor decrease in website speed can have on a startup's operations, any disparity in performance between the fast lanes and slow lanes that will inevitably occur under the Chairman's proposal is unacceptable to the startup community.[18]

ii. Allowing ISP Discrimination Will Disincentivize Investment in Both ISP Networks and in Startups

To assuage concerns that paid prioritization schemes would result in appreciable differences in performance between prioritized and non-prioritized traffic, ISPs have claimed that allowing them to discriminate against certain edge provider traffic will encourage them to invest more in building out and upgrading their networks, while a ban on paid prioritization will result in decreased investment and slower speeds overall. Such claims are not based in sound logic or fact. In reality, the economics of paid prioritization imply that ISPs would have less incentive to invest in their networks if they are permitted to create additional profit from fast lanes. That is, because the value of fast lanes is by definition relative to the speed of the slow lanes, ISPs have an incentive to degrade the speed of traffic in the slow lanes so as to boost the value of their fast lanes. With minimal competition in local broadband markets and high costs of switching services for consumers dissatisfied with their broadband service, ISPs are unlikely to lose revenue by refusing to invest in their networks.

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[17] Kickstarter Comments at p. 3

[18] "[A]ny level of access that is below negotiated paid prioritization deals would disadvantage small companies and hinder innovation." Etsy Comments at p. 8.

Free Press, a pro-consumer non-profit technology advocacy organization, wrote at length in its opening comments about ISP investment incentives under Title II and the NPRM: "We can say with extreme confidence that a return to Title II would not harm investment because we lived through a period of time when that law was applied across the industry; as it so happens, that same period of time that saw the greatest level of investment in the telecom industry that this country has ever seen, with most of that investment coming from the companies subjected to the full force of the law."[19]

Quite the opposite of what large ISPs suggest, abandoning the net neutrality principles that have governed the Internet for most of its existence would result in the most harm to investment incentives, as the additional costs imposed on edge providers as a result of paid prioritization schemes would greatly diminish investor interest in funding new startups. As Brad Burnham, a founding partner of Union Square Ventures, a New York-based venture capital firm with over $900,000,000 under management, wrote in an ex parte letter to the FCC, under the proposal in the NPRM, "investors like us will decide not to risk our partners' capital at all to back an applications layer startup, because an incumbent could easily copy the basic elements of a new service and beat them in the market by paying for a faster connection to consumers. We will also be very reluctant to fund companies building services that compete with current or future offerings of the cable or telecommunications companies that can directly impact a consumer's experience of a new service."[20]

The FCC's decision on how to protect the Open Internet will likely have a great impact on the investment incentives across the Internet landscape. Without bright-line

[19] Comments of Free Press, GN Docket No. 14-28, at 98 (filed July 17, 2014)
[20] Available at http://engine.is/wp-content/uploads/Brad-Burnham-ex-parte.pdf

rules prohibiting paid prioritization arrangements, ISPs will have strong incentives to create artificially slow speeds for non-priority broadband service in order to drive traffic to their fast lane offerings, and both startups and their funders will be less inclined to enter the market for fear of being priced out by ISP demands for priority access.

B. The Proposed "Commercially Reasonable" Standard for Evaluating Paid Prioritization Will Harm Startups and the Economy

The NPRM halfheartedly attempts to counterbalance negative ISP incentives to decrease speeds in slow lanes by establishing a standard barring ISPs from engaging in "commercially unreasonable" practices. Startups adamantly oppose this standard, as it is unclear exactly what this standard would mean in practice and what types of discriminatory practices it permits. Even if the FCC has a clear understanding of the ISP activities it would prohibit under this standard, it is unlikely that the small companies impacted by discriminatory ISP practices would ever have the opportunity to challenge "commercial unreasonably" activities. Considering the average startup raises approximately $80,000 in initial funding, the cost of filing a lawsuit to challenge discriminatory ISP practices would be an insurmountable hurdle.[21] Small startups have spoken emphatically about the impossibility of bringing any legal challenge to even obviously unreasonable practices. General Assembly wrote:

> Having the right to sue large, highly-lawyered ISPs at the FCC under extremely vague standards that allow them to discriminate provides cold comfort. As the only in-house attorney at General Assembly, I cover almost every aspect of law and policy, and have little time to be tied up analyzing vague standards, talking to FCC Ombudsmen, or negotiating with multiple ISPs. Under the FCC's proposed rules, we anticipate having to negotiate such problematic deals and considering legal options at home as well as abroad.[22]

[21] *See* http://www.fundable.com/infographics/startup-funding
[22] General Assembly Comments at p. 8.

Similarly, Distinc.tt wrote:

> We don't know what that standard implies for us, and we wouldn't know until after many years of adjudication. Meanwhile, many of the other companies who would need to bring such cases, startups like us, don't have the resources to bring them. So the commercial reasonableness standard might remain undefined—effectively toothless. We fear that ISPs could be practically immune in all but the most egregious abuses of their power.[23]

Larger startups also recognized their inability to challenge the FCC's rules—even via the ombudsperson proposed in the NPRM—as Kickstarter noted: "Using our small legal team or hiring outside counsel to prove that an offered deal was 'commercially unreasonable,' as proposed in your rules, would take far too long and cost far too much to be a feasible option. Even working with the ombudsperson you propose would be too onerous."[24] Etsy's response was even more direct: "I can say with confidence that even if we believed we were being unfairly discriminated against, there is almost no chance we would risk the capital and time required to bring a successful complaint before the FCC."[25] Startups simply do not have the resources to challenge ISPs under the FCC's proposed rules.

And, even assuming that startups had the resources to participate in an FCC challenge of ISP practices, the proposed standard is so vague and ambiguous that venture funds and other investors would be disinclined to invest in startups that would be subject to potentially unreasonable discrimination. If a startup's success is dependent upon being able to negotiate an agreement with an ISP for fast lane access, it adds an extra element of risk to a startup's business model that will be unattractive to potential investors. The startups that have submitted comments regarding the NPRM

[23] Distinc.tt Comments at pp. 7-8.
[24] Kickstarter Comments at p. 2.
[25] Etsy Comments at pp. 7-8; *see also* Imgur Comments at p. 6 (""[T]he Imgur team does not have the legal expertise to exercise these rights to challenge discrimination on the part of ISPs."

have all expressed confusion about what ISP practices would be forbidden under the proposed rules. As Etsy noted in its comments: "The Commission claims that the 'commercial reasonableness' standard will prevent the negative consequences that we fear. However, this standard creates an unacceptable level of uncertainty for small companies and will be too costly to enforce."[26]

C. Title II Reclassification is the Only Way to Prevent ISP Discrimination

In light of the problems with the Chairman's proposal (including the unreasonable costs associated with being stuck in an ISP's slow lane and the lack of a realistic mechanism with which to challenge ISP practices under the FCC's unclear and unworkable "commercial unreasonability" standard), startups from around the country are unified in their demand that the FCC reclassify broadband as a Title II service in order to reinstate the anti-blocking and anti-discrimination rules that worked so effectively under the Open Internet Order.

Imgur:

> Imgur can only operate with confidence in the presence of a bright-line rule. We would support rules that clearly prohibit blocking, application-specific discrimination, and access fees. To do so, we believe that the FCC should classify ISPs under Title II of the Communications Act as common carriers.[27]

Kickstarter:

> Title II reclassification would give the Commission the proper tools to enforce net neutrality, whereas other paths would not. As the courts recently held, the Commission simply cannot exercise these tools under Section 706. Crucially, reclassifying ISPs under Title II would allow the Commission to prohibit unreasonable discrimination, and to clearly define

[26] Etsy Comments at p. 7.
[27] Imgur Comments at p. 7.

> that standard in its implementing regulations as banning paid prioritization, application- specific technical discrimination, and access fees.[28]

Etsy:

> Reclassification under Title II of the Communications Act would give the FCC authority to protect an open Internet once and for all. We recommend that the FCC mandate transparency and ban blocking, unreasonable discrimination, paid prioritization, and discriminatory exemptions to bandwidth caps. We believe the rule should apply to both fixed and mobile, and should govern interconnection to the last-mile ISPs with terminating monopolies primarily to ensure that ISPs do not end run around these rules through interconnection abuse.[29]

Tumblr:

> [T]he FCC cannot implement a bright line prohibition against discrimination without Title II reclassification, nor can it ban access fees and paid prioritization, as the Court ruled that such a ban leaves "no room at all" for discrimination.[30]

If the FCC hopes to preserve an open Internet, it cannot do so through its 706 authority; the *Verizon* court made abundantly clear that a rule against discrimination is invalid unless broadband is defined as a common carrier service.[31] As such, the startup community recognizes that reclassification under Title II is the only way for the FCC to implement rules to preserve the Internet as we know it.

V. Conclusion

Despite their limited budgets and strained schedules, startups across the country have made a considerable effort to ensure that their voices are heard in the debate

[28] Kickstarter Comments at p. 3.
[29] Etsy Comments at p. 9.
[30] Tumblr Comments at p. 9.
[31] *See, e.g.,* reddit Comments at p. 8 ("We doubt that Section 706 of the Communications Act will permit the FCC to enact these rules. If the FCC does not invoke Title II of the Communications Act, it cannot treat broadband providers as common carriers.")

regarding of the future of net neutrality. The startup community recognizes the grave danger they will face under the rules outlined in the NPRM and recognizes that the only way for the FCC to preserve an Internet that is open for the new innovations that will drive our economy in the future is by reclassifying broadband Internet service under Title II.