Before the
Federal Communications Commission

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In the Matter of	)	**WC Docket No. 17-108**
	)	
Restoring Internet Freedom	)	
	)	
	)	

Reply Comments of Engine

August 30, 2017

Evan Engstrom
Executive Director
ENGINE
44 Tehama St.
San Francisco, CA 94105

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1. Introduction and Executive Summary

Engine is a non-profit technology policy, research, and advocacy organization that bridges the gap between policymakers and startups. Engine works with government and a community of thousands of high-technology, growth-oriented startups across the nation to support the development of technology entrepreneurship. Engine creates an environment where technological innovation and entrepreneurship thrive by providing knowledge about the startup economy and helping to construct smarter public policy. To that end, Engine conducts research, organizes events, and spearheads campaigns to educate elected officials, the entrepreneur community, and the general public on issues vital to fostering technological innovation.

The U.S. startup ecosystem relies on bright-line net neutrality protections, like those enshrined in the 2015 Open Internet Order. Without those upfront protections, proactively enforced by the FCC, startups' access to their users—and therefore their value to consumers, investors, and the economy—would depend on the whims of Internet Service Providers ("ISPs"). The new and small businesses that make up the startup ecosystem don't have the resources to pay ISPs for better access to users or engage in a protracted review process to challenge anticompetitive ISP practices. And without fair access to consumers, startups won't be able to get investment, grow, and be the job creation and economy boosting companies they are today.

As expected, the ISP commenters in this docket support the present NPRM's proposal to unwind the existing net neutrality protections and effectively allow ISPs to fully monetize their gatekeeper power over end users to the detriment of startup competition. To support their arguments, these ISP commenters present patently false arguments about the nature of U.S. broadband competition, the need for a rule banning paid prioritization, the viability of FTC enforcement of net neutrality principles, and the 2015 Open Internet Order's impact on investment. Contrary to these self-serving claims, it is well-established that ISPs have the capacity and interest in distorting competition through discrimination against specific sources of traffic in a manner that will severely curtail edge provider investment. In the absence of the strong, *ex ante* net neutrality rules that have been in place during the Internet's recent rapid expansion, the startups that have historically driven the growth of the Internet and the nation's job market will be put at an insurmountable disadvantage to wealthy incumbents. FCC should keep in place the current net neutrality protections under the 2015 Open Internet Order, protecting the level playing field that has let the startup ecosystem in this country thrive.

2. Upfront Prophylactic Rules Are Necessary to Support a Functioning Internet Ecosystem

Like the NPRM, ISP commenters question the need for any net neutrality rules at all, arguing that "[m]arket forces and BIAS providers' deeply engrained commitment to Internet freedom will ensure continued adherence to consensus principles of openness."[1] Quite the opposite, the U.S. broadband market lacks the competition, transparency, and low switching costs that could

[1] Comments of NCTA - The Internet & Television Association WC Docket No. 17-108 at p. 51 (Filed July 10, 2017) ("NCTA Comments").

even theoretically dissuade ISPs from engaging in the types of discriminatory policies that they have every incentive to deploy. U.S. providers have a history of abusing their gatekeeper power in a manner that provides them with financial benefits to the detriment of consumers, competition, and innovation. As a result, as the FCC correctly surmised in both 2010 and 2015, bright-line *ex ante* rules are necessary to prevent ISPs from distorting open competition on the Internet. Contrary to ISPs' obviously flawed arguments about "market forces" keeping their worst impulses in check, strong upfront rules are the only way to preserve an open Internet.

a. Nonexistent Market Competition Will Not Deter ISPs from Engaging in Discriminatory Behavior

ISP commenters repeatedly make the false claim that the U.S. broadband market is full of different providers competing for the same customers, rendering net neutrality rules unnecessary. Under this view, ISPs would never think of charging edge providers for access to end users and blocking those that do not or cannot pay, because angry consumers would simply choose another ISP. In reality, of course, there is no meaningful broadband competition in the U.S. Contrary to ISP claims, the majority of U.S. broadband users have no choice of provider for broadband access service. According to the FCC's 2016 Internet Access Services report, 76 percent of U.S. census tracts have access to zero or one provider of broadband service.[2] And, since an ISP that provides service in a particular census tract will not necessarily serve every household in that area, this figure likely overstates the amount of broadband competition in the U.S.[3]

[2] FCC, "Internet Access Services: Status as of December 31, 2015," (Nov. 2016), at p. 6, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-342358A1.pdf.
[3] FCC, "2016 Broadband Progress Report," (Jan. 29, 2016), at FN 234, available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-6A1.pdf ("Our analysis may overstate the deployment of services throughout an area. Providers of fixed broadband services identify, by census block, whether they provide services somewhere within the census block.").

In light of this lack of competition, claims from industry groups like NCTA that "it is far more rational for ISPs to expand capacity (and thereby retain satisfied customers) than to engage in harmful conduct (and thereby drive customers away)" ring hollow. If ISPs engage in harmful conduct, the vast majority of Americans will have to decide between having limited broadband service or no broadband service at all. There is simply no way for customers to pressure ISPs that violate net neutrality rules by threatening to switch to competitors that do follow open Internet principles. In short, there is no competitive pressure in the broadband market in most places in the U.S. and certainly not the type of competitive pressures that would force ISPs to adopt open Internet policies.

Even if every household in the U.S. had multiple broadband access provider options, the lack of transparency and high cost of switching services would make it unlikely that market forces alone would deter ISPs from abusing their gatekeeper power to harm edge provider competition on the Internet. In the few places in the U.S. where there are multiple ISPs providing broadband Internet service, the cost of switching providers can be high enough to deter customers from changing ISPs, even if they are dissatisfied with their service. And, because every broadband subscriber will likely only subscribe to one provider at a given time, even with competitive options, a given subscriber's chosen ISP has an effective monopoly on Internet access for that user. Any edge provider that wishes to communicate or do business with a particular Internet user has only one pathway to that user: the user's ISP.

b. ISPs Have Not and Will Not Voluntarily Abide by Net Neutrality Principles

IPS also argue in their opening comments that net neutrality rules are unnecessary because they have a "deeply engrained commitment to Internet freedom" and will follow net neutrality principles whether or not they are legally required to do so.[4] These claims ignore ISPs' previous net neutrality violations despite the existence of bright-line rules and ISPs' repeated claims that they wish to engage in practices that violate current net neutrality rules. The fact remains that in the absence of strong *ex ante* rules preventing ISPs from discriminating against certain sources of traffic, ISPs will almost certainly abuse their gatekeeper power to disrupt the Internet ecosystem.

As many commenters have documented, ISP claims of voluntary adherence to net neutrality principles are belied by the record. ISPs have a long history of blocking competing services and otherwise using their terminating access monopoly power to disadvantage particular companies or technologies.[5] Even after the 2015 Open Internet Order established a case-by-case adjudication standard for so-called "zero-rating" programs[6] that would look at, among other things, whether the policy at issue would "distort competition and unreasonably disadvantage certain edge providers,"[7] or "disadvantage the operation of third-party Internet-based services that compete with the providers' own services,"[8] ISPs launched zero-rating programs that exempted their own vertically-integrated content offerings while subjecting competitors to user

[4] NCTA comments at 51.
[5] *See, e.g.*, Timothy Karr, "Net Neutrality Violations: A Brief History," *Free Press Blog* (Apr. 25, 2017), available at https://www.freepress.net/blog/2017/04/25/net-neutrality-violations-brief-history.
[6] Report and Order on Remand, Declaratory Ruling and Order, "Open Internet Order," FCC 15-24 (2015) at ¶ 152 ("2015 Open Internet Order").
[7] *Id.* at ¶ 144
[8] *Id.* at ¶ 140

data caps.[9] Although such zero-rating programs clearly distort competition and disadvantage third-party services, these carriers nevertheless used their control over the network to give a competitive advantage to their own services. Somehow, neither existing law nor ISPs' "deeply engrained commitment to Internet freedom" were sufficient to ensure that they followed net neutrality principles. There is little reason to believe they will be more inclined to abide by net neutrality principles if the current strong rules are eliminated as the NPRM proposes.

Indeed, self-serving comments in this docket aside, ISPs have been surprisingly candid about their interest in using their gatekeeper power to distort competition in their favor. While Verizon's opening comments in this proceeding claim that they "support rules that prevent providers from blocking lawful Internet content, applications or services from consumers,"[10] Verizon's counsel previously stated in court that Verizon wants the power to charge edge providers for access to end users and to block those that do not pay.[11] As the FCC has previously determined on multiple occasions, ISPs have the incentive and capability to undermine the open Internet; ISPs' own comments and behavior demonstrate that this remains true today.

[9] *See, e.g.* Aaron Pressman, "FCC Again Blasts Verizon and AT&T Over Net Neutrality," *Fortune*, January 11, 2017, http://fortune.com/2017/01/11/fcc-verizon-att-net-neutrality-2/ ("AT&T and Verizon are hurting competition and mostlikely violating net neutrality rules by giving special treatment to streaming video services they own, top federal telecommunications regulators warned.")
[10] Comments of Verizon, WC Docket No. 17-108 at p. 19 (Filed July 10, 2017) ("Verizon Comments")
[11] Oral Argument, *Verizon v. FCC*, at 1:54:48. Available at: https://www.c-span.org/video/?314904-1/verizon-v-federal-communications-commission-oral-argument.

3. A Ban on Paid Prioritization Will Protect, Not Stifle Competition.

Though ISP commenters (disingenuously) exclaim support for bans on throttling and blocking, they uniformly oppose restrictions on paid prioritization like the bright line ban in the 2015 Open Internet Order. Comcast's comments argue against a ban on paid prioritization arrangements by asserting that paid prioritization can somehow enhance competition: "There is simply no sound rationale for a blanket prohibition on all paid prioritization arrangements, particularly when certain forms of prioritization (especially at the direction of end users, or for public safety communications) can be pro-competitive and otherwise beneficial, as is evident in numerous other commercial contexts."[12] On the contrary, an *ex ante* ban on paid prioritization is the optimal way to promote edge provider competition.

Arguments against an upfront ban on paid prioritization proceed from the notion that because *some* forms of prioritization can be beneficial to consumers, policymakers should presumptively allow *all* forms of prioritization and only retroactively ban those that later prove to be anticompetitive. This formulation ignores both the infrequency of pro-consumer prioritization schemes and the relative costs of case-by-case adjudication. While ISPs are fond of noting that telemedicine and autonomous vehicle services are far more latency-sensitive than email traffic,[13] these types of unique services are likely to represent a tiny fraction of the prioritization deals ISPs will seek to cut if the existing ban on paid prioritization is removed. It is far more likely that

[12] Comments of Comcast Corporation, WC Docket No. 17-108 at p. 62 (Filed July 10, 2017) ("Comcast Comments").
[13] Comments of AT&T Services, Inc., WC Docket No. 17-108 at p. 5 (Filed July 10, 2017) ("AT&T Comments").

ISPs will simply offer priority speeds to well-capitalized incumbents that wish to "differentiate their edge services to attract customers."[14]

Critically, the 2015 Open Internet Order does not irrevocably ban prioritization schemes that are important for unique applications like real-time health services. In fact, it explicitly creates a waiver system intended to allow for prioritization schemes for latency-sensitive applications like telemedicine offerings, so long as the party that wishes to offer the prioritization scheme (i.e. the ISP) can show that it does not degrade consumer choice, competition, or expression.[15] This system blocks anti-competitive plans before they can harm the startups that are responsible for the vast majority of net job growth in this country, while allowing well-financed ISPs to advocate for whatever specific pro-competition prioritization they may wish to deploy. Converting the Open Internet Order's *ex ante* ban on paid prioritization to a system in which such plans were presumptively allowed subject to *ex post* review if a disadvantaged startup complains would render the *ex post* process ultimately useless, because startups lack the resources or time to challenge anticompetitive ISP practices before an administrative agency or in court.

Since anticompetitive paid prioritization schemes are likely to be more common than pro-competition prioritization schemes and because ISPs are in a far better position to advocate for pro-competition prioritization than startups are to challenge anticompetitive prioritization, an *ex ante* ban on paid prioritization with a limited *ex post* waiver process for pro-consumer

[14] Comcast Comments at p. 44.
[15] 2015 Open Internet Order at ¶¶ 129-132.

prioritization remains the optimal way to ensure that ISP do not use their ability to advantage particular sources of Internet traffic in a way that disrupts the competitive Internet ecosystem.

4. FTC Jurisdiction is Insufficient to Protect the Open Internet

Several commenters in this proceeding have suggested that reclassifying broadband access as a Title I service will not foreclose the possibility of net neutrality protections because the FTC has the authority and capacity to preserve an open Internet.[16] According to these commenters, even though the FTC cannot craft and enforce bright-line *ex ante* rules against throttling, blocking, and paid prioritization, antitrust law and the FTC's "authority to enforce industry commitments" on an *ex post* basis are somehow adequate to protect the interests of the startups and consumers that will be harmed if ISPs are permitted to engage in discriminatory behavior.[17]

These arguments ignore the legal and economic realities of FTC enforcement. Unlike the bright-line net neutrality rules established in the 2015 Open Internet Order, shifting responsibility for policing net neutrality violations to the FTC would impose impossible costs on the startups that will be most harmed by anticompetitive activities. Under an FTC enforcement regime, the agency can only address anticompetitive ISP practices after the damage to innovation and startup investment has already occurred. Startups operate on incredibly short runways and thin margins. By the time the FTC or DOJ Antitrust Division can initiate an action to remedy abusive ISP practices, those abusive practices will have already put affected startups out of business. Considering how lengthy and expensive antitrust cases can be, it is impossible to

[16] Comcast Comments at p. 63; NCTA Comments at p. 54.
[17] NCTA Comments at 55.

imagine any startup having the resources to survive long enough for an FTC proceeding to end, much less initiating and winning an antitrust action. Even net neutrality opponents concede that "antitrust litigation imposes significant costs on private litigants, and it does not provide timely relief."[18] Any net neutrality rules that either require a startup to initiate an action to challenge abusive ISP conduct or depend on the FTC reacting to marketplace harms after they have occurred are functionally useless for the startups and innovators that depend on the existing net neutrality regime.

Beyond the obvious logistical problems with FTC enforcement, it's not even clear that the FTC has the substantive capacity to meaningfully address threats to the open Internet. Former Republican FTC Commissioner J. Thomas Rosch recognized the limitations of the FTC's capacity to address open Internet issues, saying in 2008 "as an antitrust litigator, I doubt that antitrust can address many, if any, of the problems cited by network neutrality proponents."[19] As Commissioner Rosch noted, antitrust law generally does not apply to single firm conduct.[20] And as net neutrality opponents have noted, antitrust law is principally designed to address direct and immediate competition or consumer harms and generally cannot rectify problems associated with

[18] Hal Singer, "Paid Prioritization and Zero Rating: Why Antitrust Cannot Reach the Part of Net Neutrality Everyone Is Concerned About," *The Antitrust Approach*, (Aug. 2017) at p. 1, available at https://www.americanbar.org/content/dam/aba/publishing/antitrust_source/aug17_singer_8_2f.authcheckdam.pdf.

[19] J. Thomas Rosch, "Broadband Access Policy: The Role of Antitrust," Remarks Presented at the Broadband Policy Summit IV: Navigating the Digital Revolution (Jun. 13, 2008), http://www.ftc.gov/speeches/rosch/080613broadbandaccess.pdf.

[20] *Id.*

lost innovation, even though this decrease in innovation will ultimately result in less competition and in turn less consumer welfare down the road.[21]

Perhaps recognizing that antitrust law is inadequate to address net neutrality harms, ISP commenters argue that the FTC could enforce net neutrality rules by hoping that ISPs "develop codes of conduct to ensure that their members are committed to adhering to open Internet principles" and taking action under its authority to police "unfair and deceptive acts or practices" if and when ISPs break those voluntary commitments.[22] Of course, because such personal commitments or industry agreements are by definition voluntary and can be disavowed at any time, this proposal is akin to having no rules at all. ISPs will only enter into such commitments if they want to, just as they can choose to abide by net neutrality principles in the absence of bright line rules. There is no way for the FTC to force ISPs to make such commitments, nor is there any way to require ISPs to maintain those commitments over time. If an ISP wants to violate in net neutrality principles, it simply has to rescind its voluntary commitments, and the FTC would be unable to intercede.

Commenters' claims about the FTC's rulemaking authority similarly overstate its capacity to address net neutrality violations in any meaningful way. Verizon alleges that the FTC can protect

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[21] Singer, *supra* note 18. ("[P]rivate litigants who are denied the paid arrangement are unlikely to pursue antitrust cases where the only potential harm to competition is an innovation loss (in the form of less investment/innovation by edge providers in future periods). The anticompetitive effects here are assumed not to take the form of price or output effects, at least not in the short run. When an ISP favors one content provider, the primary effect is to shift views (or clicks) towards the favored website and away from the disfavored website.")

[22] Verizon Comments at p. 65; *see also* Comments of Cox Communications, Inc., WC Docket No. 17-108 at p. 23 (Filed July 10, 2017).

against threats to the open Internet by "using a rulemaking proceeding" to target prevalent unfair practices.[23] In reality, however, the FTC's rulemaking authority is incredibly constrained and incapable of addressing net neutrality harms. By statute, the FTC can only initiate a rulemaking proceeding addressing unfair practices if such practices are "prevalent," meaning it must first find that the unfair practice is "widespread" and it must have already "issued cease and desist orders regarding such acts or practices."[24]

Even assuming the types of practices currently barred under the 2015 Open Internet Order would fall within the FTC's ability to police "unfair" practices, by the time the FTC could even begin a rulemaking proceeding to address such activities, the damage to startup growth and innovation will already have been done. As numerous scholars have pointed out, the FTC exercises its rulemaking authority infrequently and when it does so, it proceeds at a glacial pace. According to one study of FTC rulemaking, it takes on average more than five years for the FTC to pass a rule.[25] For a startup facing a competitive disadvantage from discriminatory ISP practices, the long time horizon of FTC rulemaking renders FTC involvement useless.

Given the practical timeline of FTC rulemaking and the FTC's limited authority to promulgate rules, the FTC is ill-suited to address threats to the open Internet that will evolve as the underlying technology evolves. When ISPs develop new ways to leverage their gatekeeper power to their own economic advantage in a manner that disrupts open competition on the

[23] Verizon Comments at p. 17.
[24] 15 U.S.C. § 57a(b)(3).
[25] Thomas O. McGarity, "Some Thoughts on 'Deossifying' the Rulemaking Process," 41 DUKE L.J. 1385, 1389-1390 (1992).

Internet, the FTC will be unable to respond until the competitive harms are already inflicted, if it has the authority to respond at all.

5. Bright Line Net Neutrality Rules Are Critical For Promoting Investment In Edge Providers

Throughout their filings in the initial comment period, ISPs argued that broadband investment saw a marked decrease in the aftermath of the 2015 Open Internet Order. The studies regarding ISP investment that they cite are inconsistent with their statements to investors and to the FCC. ISP executives have repeatedly said that the Open Internet Order "didn't really hurt us" and that their opposition to the FCC's 2015 rulemaking stemmed from "the fear of what Title II could have meant, more than what it actually did mean."[26] Because the FCC forebore from the aspects of the Title II regime that ISPs had argued would curtail network investment (e.g. unbundling and rate regulation),[27] the Open Internet Order should have no plausible impact on ISP network investment, as their executives are quick to point out to Wall Street analysts.

Questions of accuracy aside, discussions of ISP investment are only one aspect of the investment necessary to drive the Internet ecosystem. Under the net neutrality protections in place in various forms since 2010, venture capitalists have invested billions of dollars in Internet-enabled startups. The confidence to invest capital in inherently risky new and small companies comes, in

[26] Jon Brodkin, "Title II Hasn't Hurt Network Investment According to the ISPs Themselves," *Ars Technica*, May 16, 2017, at https://arstechnica.com/information-technology/2017/05/title-ii-hasnt-hurt-network-investment-according-to-the-isps-themselves/

[27] Comments of Engine, WC Docket No. 17-108 at p. 13 (Filed July 10, 2017).

large part, from knowing that edge provider access to their users won't be subject to the whims of ISPs. Without the bright-line net neutrality rules in place, investors will have to consider whether a startup can afford to pay ISPs upfront for fair access to users and whether ISPs will disadvantage a startup's access to its users because it either owns a competitor or works with a competitor who can afford to pay more. Being put at such a competitive disadvantage to incumbents will drive down the value of early stage companies and disrupt the investments venture capital and angel investors have made.

The harm that will derive from upsetting these settled expectations is massive. According to a letter submitted by a subset of the leading venture capitalists over the past decade, investors in some of the fastest growing startups made their investment decisions in reliance "on the certainty of a level playing field and assurances against discrimination and access fees from Internet access providers, including through the rules established in the FCC's 2015 Open Internet Order and the Commission's long-standing actions undertaken to protect the open Internet."[28] The investors on this letter have invested more than $24 billion in over 3,000 startups since the FCC issued bright-line net neutrality rules in its 2010 Open Internet Order. According to the signatories, removing the strong *ex ante* protections against ISP discrimination will curb investment at the edge. Given the central importance of startup innovation to the growth of the Internet ecosystem as a whole, the FCC needs to take these investment figures—and the regulatory environment that allowed for them—into account when considering the impact of net neutrality rules on the Internet economy.

[28] *See* Exhibit A attached hereto.

The investments identified in the VC letter represent only a portion of the investments in the startup economy that will be negatively impacted if the existing Title II-based protections are eliminated. Given the inherent uncertainty around startup success, it's virtually impossible to fully quantify the negative impact rolling back the current net neutrality protections would have on future investment in the potential startup economy. According to some estimates, venture capital investment has increased steadily from $31 billion in 2010[29] to nearly $70 billion in 2016.[30] That rate of growth is neither linear nor predictable, and changing the current regulatory regime to make investing startups more costly and risky would do untold damage to startup investment. As the venture capital investors explain in their letter, removing bright-line rules will stifle investment throughout the startup ecosystem, putting all of this venture investment at risk.

6. Conclusion

The proposals outlined in comments from the ISPs are not adequate substitutes for the current upfront, bright-line rules enforced by the FCC. The current protections, building off of net neutrality rules in place since 2010, have played a key role in fostering the thriving startup ecosystem in this country today. Eliminating those protections would make it impossible for startups to compete on a level playing field, driving down investment in the Internet ecosystem,

[29] PitchBook & NVCA, "Venture Monitor Q3 2016," (2016) at p. 4, available at https://files.pitchbook.com/pdf/PitchBook-NVCA_3Q_2016_Venture_Monitor.pdf.
[30] PitchBook & NVCA, "After Peaking in 2015, Venture Investment Activity Normalizes in 2016, According to PitchBook-NVCA Venture Monitor," (Jan. 11, 2017), available at https://nvca.org/pressreleases/peaking-2015-venture-investment-activity-normalizes-2016-according-pitchbook-nvca-venture-monitor/.

diminishing the positive impact startups have on the economy and job creation, and denying consumers the innovative products and services startups have to offer.

Exhibit A

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th Street, SW
Washington D.C. 20554

August 30, 2017

Dear Chairman Pai:

We write to express our support for a free and open Internet, and share our concerns regarding your plan to roll-back the existing, strong net neutrality rules under Title II of the Communications Act.

We invest in entrepreneurs, risking our own funds and those of our investors (who are individuals, pension funds, endowments, and financial institutions). Collectively, we have invested more than $24 billion in the startup economy over the last seven years.

We often invest at the earliest stages, when companies consist of just a handful of founders with largely unproven ideas. But, without the need for lawyers, large teams or major revenues, these small startups have had the opportunity to experiment, adapt, and grow, thanks to equal access to the global market. As a result, some of the startups we have invested in have managed to become among the most admired, successful, and influential companies in the world.

We have made our investment decisions based on the certainty of a level playing field and assurances against discrimination and access fees from Internet access providers, including through the rules established in the FCC's 2015 Open Internet Order and the Commission's long-standing actions undertaken to protect the open Internet. Indeed, our investment decisions in Internet companies are dependent upon the certainty of an equal-opportunity marketplace, and the low barriers to entry that have existed on the Internet.

Based on news reports and your own statements, we are worried that your proposed rules will not provide the necessary certainty that we need to make investment decisions and that these rules will stifle innovation in the Internet sector.

If established companies are able to pay for better access speeds or lower latency, the Internet will no longer be a level playing field. Start-ups with applications that are advantaged by speed (such as games, video, or payment systems) will be unlikely to overcome that deficit no matter how innovative their service. Entrepreneurs will need to raise money to buy fast lane services before they have proven that consumers want their product. Investors will extract more equity from entrepreneurs to compensate for the risk. Internet applications will not be able to afford to create a relationship with millions of consumers by making their service freely available, and then build a business over time as they better understand the value consumers find in their service (which is what Facebook, Twitter, Tumblr, Pinterest, Reddit, Dropbox and virtually every other consumer Internet service did to achieve scale).

Instead, creators will have to ask permission of an investor or corporate hierarchy before they can launch. Ideas will be vetted by committees and quirky passion projects will not get a chance. An individual in a dorm room or a design studio will not be able to experiment out loud on the Internet. The result will be greater conformity, fewer delightful surprises, and less innovation.

Further, investors like us will be wary of investing in anything that access providers might consider part of their future product plans for fear they will use the same technical infrastructure to advantage their own services or use network management as an excuse to disadvantage competitive offerings. Policing this under the proposed rules and Title I of the Communications Act will be almost impossible, and access providers do not need to successfully disadvantage their competition; they just need to create a credible threat so that investors like us will be less inclined to back those companies.

We need simple, strong, enforceable rules against discrimination and access fees, not merely against blocking.

We encourage the Commission to sustain the existing, strong net neutrality rules under Title II of the Communications Act and ensure a free and open Internet that rewards, not disadvantages, investment and entrepreneurship.

Sincerely,

Phin Barnes, First Round
John Battelle, NewCo
Reilly Brennan, Trucks Venture Capital
Evan Burfield, 1776
Jeff Bussgang, Flybridge Capital Partners
Shawn Carolan, Menlo Ventures
Tony Conrad, True Ventures
Roger Ehrenberg, IA Ventures
Brad Feld, Foundry Group
Ryan Floyd, Storm Ventures
Christie George, New Media Ventures
Aziz Gilani, Mercury Fund
Chris Girgenti, Pritzker Group Venture Capital
Robert Go, NextView Ventures
Matt Golden, Golden Venture Partners
Jared Kopf
James Joaquin, Obvious Ventures
Howard Lindzon, GP Social Leverage
Om Malik, True Ventures
Josh Mendelsohn, Hangar
Jason Mendelson, Foundry Group
Kevin Murphy
David Namdar, Galaxy Digital
Jerry Nuemann, NeuVC
David Pakman, Venrock
Eric Paley, Founder Collective
Satya Patel, Homebrew
John Ruffolo, OMERS Ventures
Chris Sacca, Lowercase Capital
Andrew Schoen, NEA
Hunter Walk, Homebrew
Albert Wenger, Union Square Ventures
Boris Wertz, Version One Ventures
Sam Yagan, Corazon Capital