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December 11, 2017

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

RE: WC Docket No. 17-108

Dear Ms. Dortch:

On Thursday, December 7th, five internet service providers alleged to Chairman Pai that the current legal framework for Open Internet rules had curtailed their investment and harmed their operations. That same day, the Commission released the December 14th Meeting Agenda (“Sunshine notice”).¹ The providers timely filed their *ex parte* summaries on December 8th.²

This *ex parte* response is likewise timely filed. Summaries of *ex parte* presentations made on the day the Sunshine notice is released (in this case, December 7th) must be filed the day following release of the Sunshine notice (here, December 8th); and “[w]ritten replies” such as this submission “shall be filed no later than two business days following the [initial] presentation.” 47 C.F.R. § 1.1206(b)(2)(iv); *see also id.* § 1.1203(c).

The providers in question made several claims regarding the supposed impact of restoring the rightful Title II telecommunications services classification for broadband internet access. They made a number of speculative, unverified, and untestable claims, saying they “would be investing more in [] networks if the Title II rules are repealed”³; that “[t]he Title II decision has had a chilling effect on [] ability to innovate and invest”⁴; and that today’s rules “add administrative burden and expense,” leaving “less money to invest in broadband infrastructure.”⁵

One provider even made the patently false claim that the current Open Internet rules “give the FCC . . . the authority to determine what . . . prices are best for rural consumers.”⁶ Needless to say, this last claim cites no provision in the 2015 *Open Internet Order* and no section in the Commission’s rules, because there simply is no basis in fact for the outlandish suggestion that the current rules see the FCC determining prices for broadband service.

¹ *See* Commission Meeting Agenda, DOC-348134 (rel. Dec. 7, 2017).

² *See* Letter to Marlene H. Dortch from Dave Giles, InvisiMax; Mike Whelan, AirLink Internet Services; and Mark Radabaugh, Amplex Electric, WC Docket No. 17-108 (filed Dec. 8, 2017) (“WISP Letter”); Letter to Marlene H. Dortch from Richard Sjoberg, Sjoberg’s, Inc. WC Docket No. 17-108 (filed Dec. 8, 2017) (“Sjoberg Letter”); Letter to Marlene H. Dortch from Jason B. Williams, Blackfoot, WC Docket No. 17-108 (filed Dec. 8, 2017) (“Blackfoot Letter”).

³ *See* WISP Letter at 1.

⁴ *See* Sjoberg Letter at 1.

⁵ *See* Blackfoot Letter at 1.

⁶ *See id.*

While the presentations are rife with such vague statements and outright errors, there is one thing notably absent from all of them: dollar signs, deployment data, and any other quantifiable metric demonstrating the supposed impact of Title II. None of the five providers that spoke with the Chairman last Thursday reported a single figure measuring the amount by which their investments or deployments had declined. One might have supposed they'd be eager to offer such data, especially to a Chairman who so often congratulates himself on his alleged fondness for rigorous cost-benefit analysis, and on his rumored demand for real economic proof. But the filings are silent on the subject.

Perhaps this is because there is no quantifiable harm from Title II, only the anecdotes that these carriers provide when called upon by the Chairman. In fact, it is telling that while the Commission's permit-but-disclose rules require parties to list "all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made," 47 C.F.R. § 1.1206(b)(1), the only staff mentioned in any of these summaries are the Director of the Office of Media Relations, Brian Hart; and the Chairman's Press Secretary, Tina Pelkey.⁷ A rational observer might even assume that these meetings occurred for the sake of managing public appearances rather than obtaining meaningful record evidence. The Chairman's press release,⁸ not coincidentally released the very same day that these five providers' summaries were filed and available long before they even appeared in the docket, only serves to reinforce that perception.

Free Press, throughout the course of this proceeding, has answered several times over these kinds of skewed, factually inaccurate, and hypothetical claims made by Chairman Pai and by the internet service providers that seem his sole source of information and talking points. Unfortunately for him and for them, the providers' own numbers belie the ideological pronouncements and evidence-free opinions they spout to the Commission on the topic of investment and deployment. That is true in the case of these five providers, just as it was in the case of the exhaustive investment and deployment summaries Free Press compiled (using broadband providers' own financial reports and disclosures) and filed in this docket in our initial comments and reply comments.⁹

As we did in those comments, we rely on the Commission's own Form 477 data to compare providers' coverage before and after the February 2015 adoption of the *Open Internet Order*. We examine carriers' self-reported deployment data from December 31, 2014 (the last reporting date prior to the adoption of the current rules and the Title II reclassification) and compare that to 477 data for June 2016 (the most recent available revised data for the time period following that order's adoption). The numbers paint a picture of these five providers that stands in stark contrast to the hazy and gloomy portrait in last week's filings in this docket. In fact, these providers' deployment filings show them either greatly expanding their service territory, expanding it somewhat more modestly, or deploying new technologies and faster speeds.

⁷ See WISP Letter at 1.

⁸ See "Chairman Pai Hears from Small Providers That Have Been Hurt by Title II," Press Release, DOC-348151 (rel. Dec. 8, 2017).

⁹ See *generally* Comments of Free Press, WC Docket No. 17-108, at 86–294 (filed July 17, 2017); Reply Comments of Free Press, WC Docket No. 17-108, at 20–39 (filed Aug. 30, 2017).

For example, wireless ISP (or “WISP”) provider AirLink Internet Services more than doubled the number of Rural Census Blocks in which it offered service after the adoption of the 2015 decision it criticizes. As of year-end 2014, AirLink reported service in 1,482 rural blocks, but by mid-year 2016 it had increased that figure to 3,020 rural blocks – nearly a 104 percent increase. Its coverage in Urban Census Blocks went from 4,251 such blocks to 7,108 – an increase of more than 67 percent. AirLink’s population reach increased commensurately, jumping by almost 64 percent in rural blocks and by more than 59 percent in urban blocks.

The other providers saw somewhat less spectacular growth in terms of geographic and population coverage, but three of them grew in size nonetheless. WISP InvisiMax expanded its coverage by 42 percent in terms of the number of rural blocks reported, and by more than 15 percent in urban blocks. Its population coverage expanded by 23.4 percent and 22.5 percent in rural and urban blocks, respectively. Wireline providers Sjoberg and Blackfoot saw somewhat smaller gains in terms of the number of blocks served and population covered, though Blackfoot did report a sizable net increase (76.5 percent) in terms of its relatively small total universe of urban blocks served. (We note too that Blackfoot’s 477 data in these two time periods is somewhat difficult to parse, as a significant number of the individual blocks in which it reported coverage changed during this time, although its total number of blocks increased.)

The only one of these five providers that spoke to Chairman Pai last week and that did not report an increase in terms of its geographic service territory, population coverage, or both, is WISP Amplex Electric. While not growing its size, Amplex certainly increased its speed – thanks to new investment in gigabit-speed fiber-to-the-home technology. At year-end 2014, Amplex reported no such deployments, but by mid-2016 the company’s 477 data reported fiber-to-the-home service availability in at least 18 census blocks. On its publicly available website, Amplex boasts of its symmetrical gigabit service offer for \$79.95 a month.¹⁰ The company’s Form 477 data suggests that this service became available only after the restoration of Title II and the adoption of the 2015 *Open Internet Order*. Likewise, cable operator Sjoberg reported no fiber-to-the-home deployments before December 2014, but apparently had deployed fiber in 109 of its 1881 total census blocks by mid-2016.

In sum, as we have explained on numerous occasions when analyzing investment and deployment data, facts trump theory and ideology. And in the case of the five providers that spoke to Chairman Pai last week, their own numbers tell a very different story than the tailor-made reports they served up to fit Chairman Pai’s preferred narrative.

Respectfully submitted,

Matthew F. Wood
Policy Director
Free Press

¹⁰ See Amplex Interner, “Residential Fiber,” <http://www.amplex.net/residential-fiber/>.