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Via ECFS

March 13, 2017

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**Re: GN Docket No. 14-28; WC Docket No. 16-106; MB Docket No. 16-42;  
CS Docket No. 97-80. *Protecting and Promoting the Open Internet;  
Protecting the Privacy of Customers of Broadband and Other  
Telecommunications Services; Expanding Consumers' Video  
Navigation Choices; Implementation of Section 304 of the  
Telecommunications Act of 1996: Commercial Availability of  
Navigation Devices.***

Dear Ms. Dortch:

Earlier today, the undersigned sent the attached letter to Chairman Ajit Pai. Pursuant to Section 1.1206 of the Commission's rules,<sup>1</sup> this letter is being electronically filed with your office. Please let the undersigned know if you have any questions regarding this filing.

Sincerely,

/s/ Kenneth Glueck  
Kenneth Glueck  
Senior Vice President  
Office of CEO

Enclosure: Letter from Kenneth Glueck, Senior Vice President, Office of CEO, Oracle Corporation, to Ajit Pai, Chairman, Federal Communications Commission (March 13, 2017).

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<sup>1</sup> 47 C.F.R. § 1.1206.

March 13, 2017

The Honorable Ajit Pai  
Chairman  
Federal Communications Commission  
445 12th St. SW  
Washington, DC 20554

Dear Chairman Pai:

Congratulations on your appointment as Chairman of the FCC. As you know, we are living in a dynamic technological age, which will require a regulatory approach different than the ones pursued by many of your predecessors. As you have also recognized, it is critical that the FCC enable the free and open market to ensure more innovation and investment, better products and services, lower prices, more job creation, and faster economic growth. Policy-makers also must recognize that once-distinct services offered by distinct entities (*e.g.*, device manufacturers, network operators, last-mile connectivity providers, and content providers) are now converging and consolidating rapidly: Consumers today may access virtually the same content through several different devices, and can connect to the network through different methods, via a range of companies competing in various adjacent market channels. This ecosystem is also shifting from network-centric to a far more user-centric approach. Given this convergence and industry evolution, the only factors differentiating many services and ecosystem participants are how they are regulated, and by whom. As a result, we are left with a landscape defined by a nonsensical, seemingly random taxonomy of regulated and non-regulated technologies.

In this context, we urge you to firmly repudiate one consistent theme in the policies enacted by your most recent predecessor – the favoring of one technology sub-sector over all others. Put simply, the FCC under Chairman Wheeler routinely picked winners and losers in the complex and converging network ecosystem. The Commission now has an opportunity to establish a more level playing field. The prior Commission orchestrated a shift of network control from those that invest in the network to those that do not, and a shift in welfare from those that were regulated to those that were not. We urge you to return the FCC to technology- and competitor-neutral policymaking. Some potential first steps include the following:

- **Reconsider the broadband privacy rules to ensure a consistent and fair approach to online privacy and the digital advertising market.** The FCC in 2016 adopted special privacy rules for ISPs, despite substantial record evidence regarding certain non-ISPs' unsurpassed online and location tracking capabilities.<sup>1</sup> The Wheeler FCC's characterization of ISPs as gatekeepers was entirely outdated, especially when more than two-thirds of global computing power is mobile today, and the marketplace for

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<sup>1</sup> See *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Report and Order, 31 FCC Rcd 13911 (2016); Petition for Reconsideration of Oracle, WC Docket No. 16-106 (filed Dec. 21, 2016).

mobile broadband services remains highly competitive. Moreover, the record evidence showed that online content providers enjoy more pervasive access to customer data than ISPs. Yet those content providers were excluded from the Commission’s expansive rules. As a result, to the extent the rules remain in place, the FCC will have handicapped ISPs in any effort to gain market share in the lucrative digital advertising market. The FCC and FTC should work together to enact a set of policies that treat everyone equally. We are encouraged by the interim stay of the new ISP-specific data security rule as a laudable first step.<sup>2</sup>

- **Reclassify broadband Internet access as an information service to eliminate unnecessary burdens on, and competitive imbalances for, ISPs while still preserving the free and open Internet.** The Wheeler FCC took the extraordinary step of subjecting a flourishing 21<sup>st</sup> century network technology to a sprawling regulatory framework designed for the old telephone monopoly – all in service of imposing a maximalist version of “net neutrality.” ISPs are now subject to dozens of burdensome rules and at least one new filing. Meanwhile, others in the online ecosystem (who often compete with ISPs) benefit from this FCC “thumb on the scale,” operating free from such regulatory red-tape. The Commission should return to its successful, light-touch approach to a free and open internet, allowing competition to promote consumer interests unimpeded by utility-style regulation. Oracle believes that the principle of “regulatory neutrality” should prevail unless and until there is a showing of actual, not speculative, consumer harm that cannot be addressed via other regulatory tools (*e.g.*, *ex post* antitrust laws).
- **Close the set top box proceeding to put to bed the FCC’s ill-advised interventionist instinct and instead rely on the intense innovation and competition in the marketplace.** Adopting a technology mandate to force “competitive” set-top boxes in 2017 feels a lot like mandating automakers to install 8-track cassette players in 2017. This policy is exposed as an anachronism as soon as one looks at the millions of MVPD apps downloaded on mobile devices every year. The Wheeler FCC pushed an item that would have fundamentally altered MVPD market dynamics and seemingly handed one company the keys to the MVPD kingdom, including incredibly valuable data regarding MVPD customers. Further, rather than eliminate a so-called MVPD “gatekeeper,” the FCC’s proposal would merely have created a new gatekeeper by replacing regional distributors, constrained by significant regulations and competition, with a global, data-hungry, market-dominant Google, sitting outside the FCC’s regulatory authority.<sup>3</sup>

Lastly, we encourage you to work closely with your counterparts at the FTC as you think through the challenges posed by the evolving marketplace. Markets converge rapidly, but regulatory agencies are slow to change. Here, it is critical that the FCC and the FTC work closely and in concert to ensure a level competitive playing field governed first and foremost by the free market. Consumers do not benefit from over-regulating previously dominant firms and under-

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<sup>2</sup> See *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, FCC 17-19 (rel. Mar. 1, 2017).

<sup>3</sup> See Letter from Kenneth Glueck, Senior Vice President, Office of the CEO, Oracle Corporation, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-42, CS Docket No. 97-80 (Nov. 21, 2016).

regulating those that are newly dominant. In fact, this is the fastest and surest way to entrench the newly dominant firms and allow them to take actions that harm consumers.

It is time for government technology policy to fully account for the converged and complex Internet ecosystem. And it is time for government technology policy to ensure regulatory parity for all players. The FCC should no longer adopt policies that merely serve certain companies' business interests, either through handing over new business lines and markets to those companies or inhibiting would-be competitors in adjacent markets from offering new competition.

We are optimistic that the FCC under your leadership will take a different approach and are encouraged by the actions you have already taken to date. We look forward to working with you to reset America's technology policy in a new pro-growth, pro-jobs, and pro-American leadership direction.

Sincerely,

/s/ Kenneth Glueck  
Kenneth Glueck  
Senior Vice President  
Office of CEO

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cc: Commissioner Mignon Clyburn  
Commissioner Michael O'Rielly