November 13, 2017

VIA ELECTRONIC FILING

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

Re: Ex Parte Presentation, *Restoring Internet Freedom,* WC Docket No. 17-108.

Dear Ms. Dortch:

On Wednesday, November 8, 2017, Scott Bergmann and Matthew Gerst of CTIA and Adam Krinsky and Russell Hanser of Wilkinson Barker Knauer, LLP met with General Counsel Tom Johnson and the following members of his staff to discuss the above-captioned matter: James Carr, Kristine Fargotstein, Douglas Klein (by telephone), Jacob Lewis, Marcus Maher, Scott Noveck, and Bill Richardson. During the meeting, CTIA argued that, if the Commission were to reclassify broadband Internet access as an integrated information service, it also should hold that state or local broadband-specific regulation is incompatible with, and thus preempted by, the federal policy established by Congress favoring nonregulation of such offerings.

As CTIA previously explained, broadband Internet access is an interstate offering properly classified as an information service.[1] Interstate services are, of course, within the sole jurisdiction of the FCC, and Congress has advanced a national policy of nonregulation for information services. These two well-established principles represent two interrelated but distinct bases for preemption, which the courts have upheld and the Office of General Counsel recently reaffirmed in a brief to the United States Court of Appeals for the Eighth Circuit.[2]

[1] *See, e.g.*, Comments of CTIA, WC Docket No. 17-108, at 28-45 (July 17, 2017).

[2] Brief of the Federal Communications Commission as Amicus Curiae in Support of Plaintiffs-Appellees, United States Court of Appeals for the Eighth Circuit, Case No. 17-2290 (filed Oct. 27, 2017) ("*FCC Amicus Brief*").

During the meeting, CTIA explained that, in addition to other legal rationales favoring preemption, the Commission is empowered to interpret the Communications Act of 1934, as amended (the "Act") as preempting state and local broadband-specific regulation, just as it has previously interpreted the Act to bar communications-specific state and local regulation in connection with voice over Internet protocol ("VoIP"). Preemption is even more appropriate here, because there is no basis on which the Commission could find broadband to be anything other than exclusively interstate. Moreover, the states enjoy no historical jurisdiction over broadband (as opposed to voice), and the federal policy framework for broadband is far more deregulatory than the historic framework applied to voice service. And the case for preemption in the context of *mobile* broadband is even stronger, because mobility introduces the impracticable specter of applying multiple states' requirements to the very same browsing session as users cross state boundaries or communicate in border areas with antennas in adjacent states.

I. Scope of Preemption

As in most every proceeding, the Commission's core task here is to apply its expertise and experience to effectuate the policy goals established by Congress. Several points are clear. First, Congress intended for the federal government to exercise exclusive jurisdiction over interstate traffic. In these circumstances, whatever determinations the Commission reaches here should apply uniformly across the nation, rather than subjecting broadband to a "patchwork quilt" of competing state regulatory obligations that impairs Congressional policy or imposes requirements that directly contravene federal objectives. In the *Title II Order*, the previous Commission correctly reaffirmed its "longstanding conclusion that broadband Internet access service is jurisdictionally interstate for regulatory purposes,"[3] and made clear its "firm intention to exercise [its] preemption authority to preclude states from imposing obligations on broadband service that are inconsistent with the carefully tailored regulatory scheme" it had adopted.[4] Second, Congress set forth a national policy of nonregulation for information services, "unfettered by Federal or State regulation."[5] Nonetheless, the prospect of broadband reclassification here raises serious concerns that state governments will move to adopt new broadband-specific regulations of their own.

---

[3] *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5803 ¶ 431 (2015) ("*Title II Order*").

[4] *Id.* at 5804 ¶ 433.

[5] 47 U.S.C. § 230(b)(2).

Indeed, some state and local policymakers have signaled their intentions to consider upending the framework proposed by the Notice by enacting new regulatory mandates of their own.[6] Earlier this year, legislators in various states attempted to countermand Congressional action on broadband privacy regulations.[7] When states and localities are provided a wide berth to test the boundaries of what is or is not consistent with Congressional objectives, the Commission and the courts are forced to evaluate regulations case-by-case, with broadband providers subject to a patchwork of mandates at issue during the review. Even when such efforts are unsuccessful, or are reversed by subsequent preemption findings, they require providers to divert resources toward political and legal battles.

The Commission therefore should preempt any state or local broadband-specific regulation, irrespective of whether the state or locality claims that its regulation promotes or supplements federal goals. Thus, for example, state "network neutrality" regulations addressing the treatment of traffic on the network would be preempted, as would state broadband-specific privacy requirements. Under this framework, however, states and their subdivisions would maintain their authority to act under generally applicable laws, such as state consumer protection and unfair-business-practices statutes (sometimes called "Little FTC Acts"). Just as in the *Vonage Preemption Order*, the Commission can and should preempt "public utility-type regulation" (and any other broadband-specific regulation) while leaving in place "generally applicable commercial consumer protection statutes, or similar generally applicable state laws."[8]

II. The FCC's Legal Authority

As CTIA explained during the meeting, the Commission may exercise its interpretive authority with respect to the Act to reiterate that Congress has articulated a

---

[6] For instance, the City of Portland, Oregon has advised the Commission that it has adopted its own policies affecting the delivery of broadband, and the New York State Attorney General has underscored the role of the states when it comes to protecting consumers and competition on the Internet. *See* Verizon, *FCC Authority to Preempt State Broadband Laws* at 3, attached to Letter from William H. Johnson, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 17-108 (filed Oct. 25, 2017).

[7] *Id*.

[8] *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22417 ¶ 21 n.78 (2004) ("*Vonage Preemption Order*").

federal policy of nonregulation with regard to information services and that this policy entails preemption of state or local broadband-specific regulation.

A. The FCC May Effectuate Preemption through Statutory Interpretation to Advance Congress's Deregulatory Goals.

Preemption is principally a question of Congressional intent, and Congress can express its preemptive intent either explicitly or implicitly. As the Supreme Court has stated on multiple occasions and in multiple ways, "[t]he critical question in any pre-emption analysis is always whether Congress intended that federal regulation supersede state law."[9] Congressional intent to preempt can be made explicit in the statutory text – as in provisions that expressly preempt state or local law[10] – or can be implicit in the statutory text or structure. Either way, its effect is the same. "Because what must be implied is of no less force than that which is expressed, federal law may preempt state law even if the conflict between the two is not facially apparent."[11] In fact, the Supreme Court observed in 2000 that Congress's "failure to provide for preemption expressly may reflect nothing more than the settled character of implied preemption doctrine that courts will dependably apply, and in any event, the existence of conflict cognizable under the Supremacy Clause does not depend on express congressional recognition that federal and state law may conflict."[12] By definition, the task of identifying implicit preemption falls to the entities charged with interpreting statutes – *i.e.*, chiefly to courts and administrative agencies.

Congress has accorded the Commission authority to interpret the Communications Act – including with respect to that Act's preemptive effects. The Supreme Court has found that administrative agencies "have a unique understanding of the statutes they administer and an attendant ability to make informed determinations

---

[9] *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) ("*Louisiana PSC*"); *see also, e.g.*, *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485-86 (1996), *quoting Retail Clerks Int'l Ass'n, Local 1625, AFL-CIO v. Schermerhorn*, 375 U.S. 96, 103 (1963) ("'[T]he purpose of Congress is the ultimate touch-stone' in every preemption case"); *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 705 (1995) ("[P]re-emption claims turn on Congress's intent.").

[10] *See, e.g.*, 47 U.S.C. § 253(d) (expressly preempting state requirements that violate Sections 253(a) or (b)).

[11] *Comm'ns Imp. Exp. S.A. v. Republic of the Congo*, 757 F.3d 321, 326 (D.C. Cir. 2014) (internal quotations and citations omitted).

[12] *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 387-388 (2000).

about how state requirements may pose an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," and are thus entitled to interpret federal law to preempt such requirements.[13] Of course, the Commission is the expert agency charged with interpreting the Act.[14]

Federal policies of nonregulation are entitled to as much preemptive effect as regulatory policies. Importantly, a federal framework designed to impose only light-touch regulation or nonregulation is just as preemptive as a regime that is heavily regulatory. As the Supreme Court has observed, "a federal decision to forgo regulation in a given area may imply an authoritative federal determination that the area is best left *un*regulated, and in that event would have as much pre-emptive force as a decision *to* regulate."[15] As the Eighth Circuit put it in upholding the *Vonage Preemption Order*, "[c]ompetition and deregulation are valid federal interests the FCC may protect through preemption of state regulation."[16] To that end, in 2000 the Supreme Court found that a Department of Transportation framework allowing the phase-in of airbags and other "passive restraints" implicitly preempted state tort law to the extent that law effectively required use of airbags.[17] Likewise, in 2010, the Third Circuit found that this Commission's flexible framework regarding RF emissions "str[uck] a balance between competing statutory objectives," and implicitly preempted a state-law ruling that would have "impose[d] a different standard" and thus "permit[ted] a re-balancing of those considerations."[18] When the federal policy favors nonregulation or flexibility over proscribed regulation, state requirements that disrupt such flexibility "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of

---

[13] *Wyeth v. Levine*, 555 U.S. 555, 577 (2009) (internal quotation marks and citations omitted).

[14] *See, e.g., Midwest Video Corp. v. FCC*, 571 F.2d 1025, 1036-37 (8th Cir. 1978); *North County Communs. Corp. v. Cal. Catalog & Tech.*, 594 F.3d1149, 1155 (9th Cir. 2010).

[15] *Ark. Elec. Co-op. Corp. v. Arkansas Pub. Serv. Comm'n*, 461 U.S. 375, 384 (1983); *see also Computer & Communications Industry Assoc. v. FCC*, 693 F.2d 198, 217 (D.C. Cir. 1982), quoting *New York State Comm'n on Cable Television v. FCC*, 669 F.2d 58 (2d Cir. 1982) ("Federal regulation need not be heavy-handed in order to preempt state regulation.").

[16] *Minn. PUC v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007).

[17] *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

[18] *Farina v. Nokia*, 625 F.3d 97, 123 (3d Cir. 2010).

Congress."[19] As discussed below, state and local broadband-specific regulation would inevitably disturb the federal preference for nonregulation with regard to broadband Internet access, and is thus preempted.

An agency need not issue affirmative rules at all in order to regulate – it need only act within its lawful authority to interpret its implementing statutes. As the Supreme Court has held, "'[a] federal agency acting within the scope of its congressionally delegated authority may pre-empt state regulation' and hence render unenforceable state or local laws that are otherwise not inconsistent with federal law."[20] That "authority" is not limited to rulemaking powers – as the Court explained in a recent case involving the Commission, "Congress has unambiguously vested the FCC with general authority to administer the Communications Act through rulemaking *and adjudication*," and the Commission's interpretation of the Act is an "exercise of that authority."[21]

There is nothing new or novel about the proposition that an agency may interpret statutory provisions to preempt state and local law. The Commission has in the past preempted state and local mandates based on the clear intent of Congress, without referencing or issuing conflicting federal rules. In the *Vonage Preemption Order*, for example, it preempted certain state regulation of VoIP without engaging in rulemaking, or suggesting that the state's regime violated a specific FCC requirement. Nor did it refer to any implementing authority in its decision to preempt. Rather, it found (and the Eighth Circuit agreed on review) that Minnesota's regulation violated the broad federal policy favoring nonregulation of information services, as reflected by various underlying legal provisions (especially Sections 230 and 706 of the Act).[22] The recent amicus brief to the Eighth Circuit, of course, advanced the same theory.

---

[19] *Id.* at 134, quoting *Hillsborough Cnty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985).

[20] *New York v. FCC*, 486 U.S. 57, 63-64 (1988), quoting *Louisiana PSC*, 476 U.S. at 369.

[21] *City of Arlington, Tex. v. FCC*, 569 U.S. 290, 307 (2013) (emphasis added).

[22] *See Vonage Preemption Order*, 19 FCC Rcd at 22416-17 ¶ 21; *see also Minn. PUC*, 483 F.3d at 580. The Commission had previously acted to preempt state requirements that conflicted with provisions of the Act. *See, e.g., Public Utility Commission of Texas et al.*, 13 FCC Rcd 3460, 3486 ¶ 52 (1997) ("[A] state may not impose any requirement that is contrary to the terms of sections 251 through 261 or that stands as an obstacle to the accomplishment and execution of the full objectives of Congress.") (internal quotations omitted).

This approach is only common sense. It would be bizarre to suggest that a federal agency, in furtherance of a national policy of nonregulation, may preempt state requirements only if the agency has promulgated regulatory mandates, or been empowered to do so by Congress. Where, as here, Congress has expressed its strong preference for a deregulatory approach, in part by expressly limiting the relevant federal agency's jurisdiction to adopt rules, that limitation on agency authority confirms Congress's preference for limited regulation. And where Congress has expressly cautioned against excessive federal *or state* regulation (as it has here), its refusal to endow the federal agency with broad rulemaking authority cannot be understood to frustrate the agency's authority to discern Congress's preemptive intent.

B. Broadband-Specific State and Local Regulation Conflicts With Congressional Policy Favoring Nonregulation of Information Services and Is Therefore Properly Preempted Here.

The principles above support a Commission decision interpreting the Act as a valid vehicle for preempting state and local broadband-specific requirements. As detailed below, such preemption is appropriate here on the merits.

The Act affords the federal government exclusive jurisdiction over interstate communications, including broadband Internet access traffic. Section 152 of the Act vests the federal government with exclusive jurisdiction over "all interstate and foreign communication" and "all persons engaged … in such communication,"[23] and reserves state authority only with regard to "intrastate communication service."[24] Furthermore, Section 151 of the Act states that Congress created the FCC to ensure that, by "centralizing authority," it could "more effective[ly] execut[e]" federal policy goals for "interstate and foreign commerce in communication[s] by wire and radio."[25] On this point in particular, the FCC's recent amicus brief to the Eighth Circuit is clear: "With respect to interstate communications, *federal law broadly preempts all state communications regulation*."[26]

---

[23] 47 U.S.C. § 152(a).

[24] *Id.* § 152(b); *see also Vonage Preemption Order*, 19 FCC Rcd at 22412 ¶ 16; *FCC Amicus Brief* at 7.

[25] 47 U.S.C. § 151.

[26] *FCC Amicus Brief* at 7 (emphasis added); *see also id.* ("[F]or interstate communications, Congress has 'occup[ied] the field' of communications regulation to the exclusion of state law.").

As the Commission and the courts have repeatedly found, moreover, broadband Internet access is an interstate service, given the end-to-end test for jurisdictionalizing traffic and the fact that users often have no knowledge of where Internet traffic streams originate or terminate.[27] If anything, broadband Internet access is even more clearly interstate than the VoIP traffic at issue in the *Vonage Preemption Order*; whereas there are calls that originate and terminate in the same state, the same is not true of an Internet access session. Users routinely migrate from site to site, likely drawing content from multiple states and nations. They often have multiple windows open at the same time, either on the very same device (e.g., a laptop or desktop) or on multiple devices (e.g., a computer, a tablet, *and* a smartphone), again involving numerous connections, few or none of which will be intrastate. And even within a single window, the principal content the user is accessing may come from one location while each advertisement being presented alongside that content comes from its own unique location. In short, broadband Internet access traffic is not "mixed" – it is *exclusively* interstate. The Commission should eliminate any doubt and state as much.[28]

---

[27] *See, e.g., Title II Order*, 30 FCC Rcd at 5803 ¶ 431 (reaffirming "the Commission's longstanding conclusion that broadband Internet access service is jurisdictionally interstate for regulatory purposes"); *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, 5911 ¶ 28 (2007) (concluding that wireless broadband Internet access service is jurisdictionally interstate); *GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148*, Memorandum Opinion and Order, 13 FCC Rcd 22466, 22476 ¶ 19 (1998) (concluding that xDSL offerings are interstate in nature because the communications "do not terminate at the ISP's local server … but continue to the ultimate destination or destinations, very often at a distant Internet website accessed by the end user"); *Comcast Corp. v. FCC*, 600 F.3d 642, 646-47 (D.C. Cir. 2010), quoting 47 U.S.C. § 152(a); *see also Vonage Preemption Order*, 19 FCC Rcd at 22413 ¶ 17 (discussing end-to-end analysis).

[28] Even if broadband Internet access were, like VoIP, jurisdictionally mixed, it would (as in the case of VoIP) be impossible to apply state regulation to the intrastate traffic without affecting interstate traffic and thereby interfering with federal aims. "Where separating a service into interstate and intrastate communications is impossible or impractical, the Supreme Court has recognized the Commission's authority to preempt state regulation that would thwart or impede the lawful exercise of federal authority over the interstate component of the communications." *Vonage Preemption Order*, 19 FCC Rcd at 22414 ¶ 19 (*citing Louisiana PSC*, 476 U.S. at 368-69); *see also Minn. PUC*, 483 F.3d at 578–81 (upholding *Vonage Preemption Order*); *Pub. Serv. Comm'n of Md. v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990); *FCC Amicus Brief* at 9 ("When it is impossible or impracticable to divide some aspect of a communication into separate interstate and intrastate

State and local regulation of broadband would be incompatible with the federal policy favoring nonregulation of information services. Apart from the clear prohibition on state regulation of interstate services, the Commission has long articulated a federal policy favoring nonregulation of information services. In the *2004 Pulver.com Order*, the Commission observed that it "has, on prior occasions, determined that certain state regulations of information services would conflict with the national policy of nonregulation."[29] It cited, among other things, the *Computer Inquiry* decisions as antecedents for this policy, and noted that courts had also recognized Congress's preference that states be barred from regulating such offerings.[30] The *Vonage Preemption Order* likewise discussed "the Commission's long-standing national policy of nonregulation of information services," finding that application of state rate and entry regulation to VoIP would violate this policy and was thus preempted.[31] These conclusions were grounded in several various provisions of the Act, which, in turn, demonstrate Congress's intent that the federal government, not the states or their political subdivisions, should be responsible for the regulatory treatment of broadband Internet communications.

The first provision is Section 153's statement that a communications service provider "shall be treated as a common carrier under [this Act] only to the extent that it is engaged in providing telecommunications services."[32] As the Commission observed in its brief to the Eighth Circuit last month, this provision "expressly forbids federal or state common-carriage regulation of information services."[33]

The second provision is Section 230(b)(2)'s statement of the federal policy "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services," including "any information service,"

---

components, the FCC may preempt state regulation under a doctrine known as the 'impossibility exception' to state jurisdiction.").

[29] *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, 19 FCC Rcd 3307, 3317 ¶ 17 (2004) ("*Pulver.com Order*").

[30] *Id. at 3317-3318* ¶ 17.

[31] *Vonage Order* ¶¶ 21-22.

[32] 47 U.S.C. § 153(51).

[33] *FCC Amicus Brief* at 11.

"unfettered by Federal or State regulation."[34] This provision makes clear that "federal authority [is] preeminent in the area of information services" and that information services "should remain free of regulation."[35]

The third provision is Section 706's directive that the FCC "encourage the deployment ... of advanced telecommunications capability" through "measures that promote competition in the local telecommunications market," including by "remov[ing] barriers to infrastructure investment."[36] As the Commission has noted, "precluding multiple disparate attempts to impose economic regulations" on an offering "will advance the goals and objectives" of section 706.[37]

The Commission recently confirmed that the federal policy of nonregulation remains in place. In its brief to the Eighth Circuit, it stated: "Under the longstanding federal policy of nonregulation for information services, states are independently prohibited from subjecting information services to any form of state economic regulation."[38] This policy warrants preemption of *any* state or local broadband-specific regulation. It is Congress's objectives, not the will of the states or their political subdivisions, that should determine what requirements, if any, apply to broadband Internet access. State regulation that addresses broadband providers – with respect to network neutrality, privacy, or other matters – would contravene the federal policies reflected in the statutory provisions discussed above, undercutting deployment and harming consumers. Because it is impossible for the states to effectuate their mandates without affecting interstate traffic, the FCC should declare such requirements preempted.

Here, if the Commission were to reclassify broadband Internet access as an information service, the federal policy of nonregulation of information services would

---

[34] 47 U.S.C. § 230(b)(2).

[35] *Pulver.com Order*, 19 FCC Rcd at 3316 ¶ 16; *see also Vonage Preemption Order*, 19 FCC Rcd at 22425-26 ¶¶ 34-35; *Title II Order*, 30 FCC Rcd at 5951 (Dissenting Statement of Commissioner Ajit Pai) (stating that "Congress itself called on the Commission to treat Internet access service as an unregulated, information service" under Section 230 of the Act).

[36] 47 U.S.C. § 1302(a).

[37] *Vonage Preemption Order*, 19 FCC Rcd at 22427 ¶ 36; *see also Pulver.com Order*, 19 FCC Rcd at 3318-20 ¶¶ 18-19 & n.69; *FCC Amicus Brief* at 12.

[38] *FCC Amicus Brief* at 10.

preempt all state and local broadband-specific regulation. Under well-worn preemption principles, conflict preemption occurs "when … state [or local] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[39] That is the case with respect to state regulation of information services, as the Commission has recognized for many years. To take just one example, the Commission should make clear that states are prohibited from imposing broadband-specific contribution obligations in connection with state universal service funds or similar support mechanisms. In the *Title II Order*, the Commission took a "wait and see" approach to this issue, preempting the states "at least until the Commission rules on whether to provide for such contributions."[40] As Chairman Pai correctly observed at the time, contribution obligations would "deter broadband adoption, especially among the low-income Americans for whom broadband (especially mobile broadband) is increasingly important for professional success, education, and more."[41] In re-reclassifying broadband Internet access as an information service and reaffirming the inherently interstate nature of the service, the Commission also should clarify that federal law precludes state universal service contribution requirements.[42]

As noted above, the preemption CTIA proposes here tracks the *Vonage Preemption Order*'s distinction between preempted communications-specific (here, broadband-specific) regulation, on the one hand, and permissible laws of general applicability, on the other. As the Commission recently explained, that order distinguished "public utility-type regulation," on the one hand, from "generally applicable commercial consumer protection statutes, or similar generally applicable state laws."[43] This is the distinction CTIA draws here.

But even if the preemption here were broader than in the VoIP context, that would be appropriate for various reasons. Whereas there clearly is some intrastate VoIP

---

[39] *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982), *quoting Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

[40] *Title II Order*, 30 FCC Rcd at 5803-04 ¶ 432.

[41] *Id.* at 5927 (Dissenting Statement of Commissioner Ajit Pai).

[42] This action would be bolstered by Section 254(f) of the Act, which prohibits states from adopting regulations that are "inconsistent with the Commission's rules to preserve and advance universal service." 47 U.S.C. § 254(f).

[43] *FCC Amicus Brief* at 10 n.1, *quoting Vonage Preemption* Order, 19 FCC Rcd at 22417 n.78.

traffic, broadband Internet access is exclusively interstate. In addition, whereas states have historically enjoyed significant jurisdiction over telephony, the same is not true for broadband Internet access. Here, Congress clearly did not intend to endow states with authority to impose sector-specific regulation on inherently interstate broadband traffic. Likewise, the federal regime for telephony has been far more expansive than that for broadband Internet access – even the *Title II Order* took pains to emphasize that its framework was less burdensome than the regulatory framework applied to voice services.[44] These factors all justify the conclusion that Congress intended preemption to sweep more broadly with regard to broadband than with respect to VoIP. Finally, in the case of mobile broadband, the case for preemption is even stronger, because mobility renders the application of competing state requirements even less practicable than it would be otherwise. To take one example, a passenger riding on Amtrak between Washington D.C. and New York City travels through five different jurisdictions during the course of a 3.5-hour trip. If each of these jurisdictions were permitted to enforce its own rules regarding (for example) traffic prioritization, the rider's mobile broadband usage during the trip would be subject to five different legal regimes, even if the rider spent the entire trip watching a single movie. This would be impracticable, and only underscores the risks inherent in a patchwork quilt of broadband regulation.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being electronically submitted into the record of this proceeding. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Scott K. Bergmann
Scott K. Bergmann
Vice President, Regulatory Affairs

cc: Tom Johnson
James Carr
Kristine Fargotstein

---

[44] *See, e.g.*, *Title II Order*, 30 FCC Rcd at 5603 ¶ 5 ("This is a Title II tailored for the 21st century, and consistent with the 'light-touch' regulatory framework that has facilitated the tremendous investment and innovation on the Internet. We expressly eschew the future use of prescriptive, industry-wide rate regulation.").

Douglas Klein
Jacob Lewis
Marcus Maher
Scott Noveck
Bill Richardson