



April 17, 2024

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, DC 20554

Re: Letter Regarding Draft Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, WC 23-320, Safeguarding and Securing the Open Internet

Dear Secretary Dortch:

The Computer & Communications Industry Association (“CCIA”),¹ pursuant to Rule 1.1206(b), 47 C.F.R. § 1.1206(b), files this *ex parte* presentation in the above-named docket² regarding one aspect of the draft Declaratory Ruling, Order, Report and Order, and Order on Reconsideration that was released April 4, 2024, and is on the Agenda for the Commission’s next Open Meeting (the “Draft Order”). More specifically, CCIA respectfully requests that the Commission remove from the Draft Order any statement indicating that it will forbear pursuant to Section 10, 47 U.S.C. § 160, from applying any provision of Section 254(d), 47 U.S.C. § 254(d), to Broadband Internet Access Service (“BIAS”), as well as and any proposed grounds or rationale for such forbearance.

In support of this request, CCIA presents the following:

1. The FCC need not take the affirmative step to forbear from Section 254(d) as to BIAS, because that statutory mandate is not self-effectuating. A rulemaking would be required. Thus, it is not the case that omitting 254(d) forbearance from the Order would require BIAS providers to pay into the Universal Service Fund (“USF”) immediately upon the Order’s effective date. *See* 47 U.S.C. 254(a)(2); *2015 Open Internet Order* ¶ 489 (noting that the FCC was seeking comment in WC Docket No. 06-122 & GN Docket No. 09-51 on USF contributions).³ At a minimum, a process for amending Forms 499-Q and 499-A would be required.
2. At a time when the sustainability of USF is a concern and the demand for funding is higher than ever, the question whether the FCC should expressly exempt BIAS, either via Section 10

¹ CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion annually in research and development, and contribute trillions of dollars in productivity to the global economy. For more information, please go to www.ccianet.org.

² CCIA timely filed Comments in this docket as well as a letter dated January 24, 2024, and several notices of *ex parte* communication.

³ WC Docket No. 14-28, *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, 30 FCC Rcd. 5601 (2015), *aff’d*, *U.S. Telecom Ass’n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016), *reh’g denied*, 855 F.3d 381 (D.C. Cir. 2017).



forbearance or some other authority granted by Congress, from 254(d) warrants a bespoke rulemaking. This Open Internet proceeding does not include a robust record on this question. In fact, the draft Order recognizes that “USF contribution reform is an immensely complex and delicate undertaking with far-reaching consequences” that requires “a full record and ... robust input from all interested parties, rather than in this proceeding.” Draft Order ¶ 361. Just as the affirmative decision to apply 254(d) to BIAS warrants its own rulemaking, so too does the decision to expressly forbear from the same.

3. The FCC’s decision in the *2015 Open Internet Order* to expressly forbear as to 254(d) is not an apposite situation to the forthcoming Order. There, the Commission “pointed to other parallel proceedings, both before the Commission and before other bodies,” on the issue of, *inter alia*, applying 254(d) to BIAS and did not want its decision to reclassify BIAS as a Title II service to in any way prejudice those “parallel proceedings.” *2015 Open Internet Order* ¶ 489. Today, there are no such proceedings underway; though stakeholder discussions regarding USF sustainability have taken place with a few interested lawmakers, this activity does not qualify as a “proceeding” that would warrant the Commission’s abstention. Indeed, to undertake forbearance now is to in large part foreclose the USF discussion entirely. Moreover, in the *2015 Open Internet Order*, the Commission stated that its decision to forbear on 254(d) would not prohibit the Commission from “requir[ing] such contributions in a rulemaking in the future,” *id.* ¶ 490, but no such statement appears in the Draft Order. For these reasons, a decision by the Commission to forbear from 254(d) in the forthcoming order would be a more final and far-reaching action than was the decision in the *2015 Open Internet Order*.

CCIA thanks the Commission for its work in this proceeding. Please contact the undersigned if any further information would be helpful to the Commission’s deliberations.

Sincerely,

Stephanie A. Joyce
Chief of Staff and Senior Vice President
Computer & Communications Industry Association

Cc: Chairwoman Jessica Rosenworcel
Commissioner Brendan Carr
Commissioner Geoffrey Starks
Commissioner Nathan Simington
Commissioner Anna M. Gomez
Ramesh Nagarajan, Chief Legal Advisor to Chairwoman Rosenworcel
Lauren Garry, Legal Advisor to Commissioner Carr
Justin Faulb, Legal Advisor and Chief of Staff for Commissioner Starks
Marco Peraza, Legal Advisor to Commissioner Simington
Hayley Steffen, Legal Advisor to Commissioner Gomez
Trent Harkrader, Chief, Wireline Competition Bureau
Adam Copeland, Deputy Chief, Wireline Competition Bureau

(Via E-Mail)