Before the
Federal Communications Commission

In the Matter of	**)**	
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Open Internet Remand	**)**	**GN Docket 14-28**
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Framework for Broadband	**)**	
Internet Service	**)**	**GN Docket 10-127**
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Comments of Etsy, Inc.

July 8, 2014

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Executive Summary

Etsy is an online marketplace where you can buy handmade and vintage goods directly from artists, designers, and collectors around the world. There are more than one million active sellers on Etsy, who together grossed over $1.35 billion in sales in 2013. Our members sell everything from food to furniture, and they depend on Etsy income to pay their bills and support their families. Etsy is headquartered in Brooklyn, NY and employs over 500 people worldwide.

We strongly encourage the FCC to protect a free and open Internet, and establish rules that allow companies to succeed or fail based on the merits of their products, not the depths of their pockets. An open Internet promotes innovation by giving every company the same opportunity to succeed, regardless of its size, and allows new ideas to spread, regardless of their source.

Unfortunately, the Chairman's proposal would undermine Internet openness by allowing broadband providers to negotiate priority agreements with some companies and discriminate against others. The proposed "commercially reasonable" standard and "minimum access levels" give us no comfort. If the proposed rules were in place when Etsy was founded, we would never have achieved the success we have today. Etsy and other startups will suffer if the FCC allows some companies to negotiate priority or exclusive access to consumers.

Ultimately, the Chairman's proposal would harm Etsy sellers most of all. Fully 88% of US-based Etsy sellers are women, most with low- and moderate-incomes. They represent a new wave of micro-businesses and an encouraging response to difficult economic circumstances. The Internet has democratized access to entrepreneurship for a whole new cohort of Americans, and the Chairman's proposal threatens to undermine this progress by creating a pay-to-play environment that gives even greater advantage to entrenched incumbents.

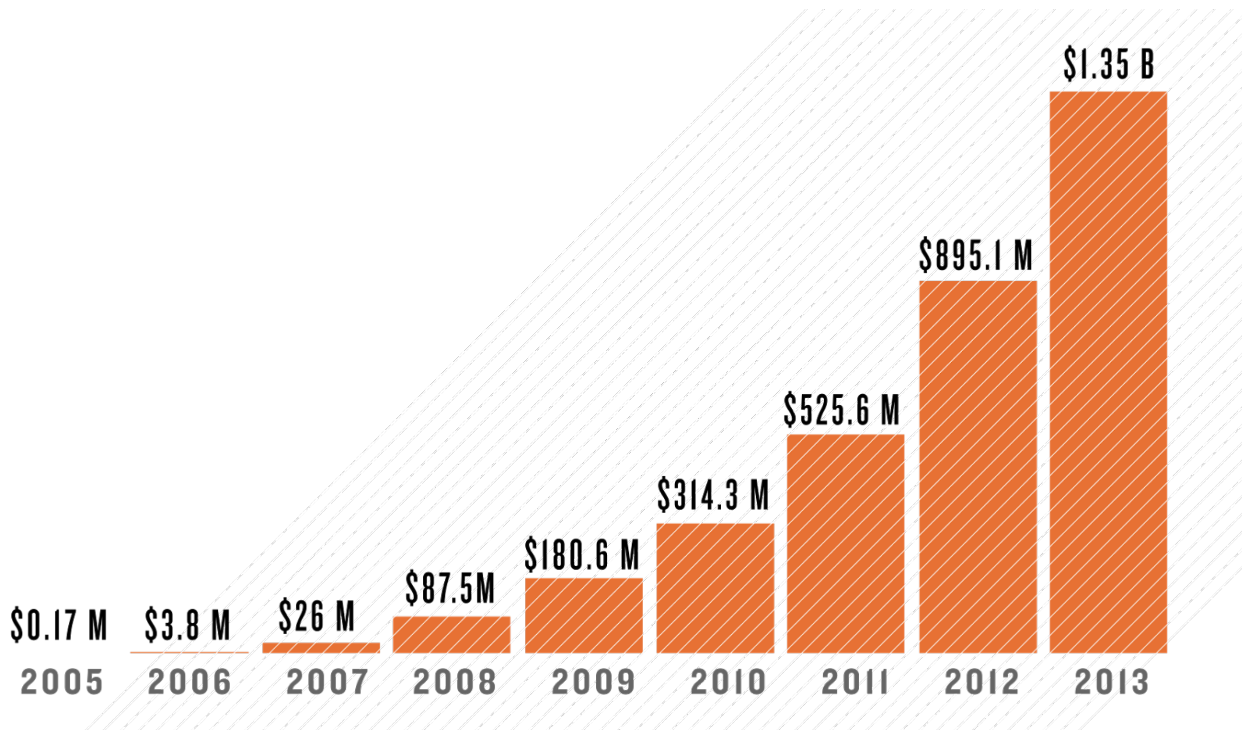
We encourage the FCC to pass strong rules that ban all discrimination and blocking *per se*. We believe reclassifying broadband providers as telecommunications services under Title II of the Communications Act, with adequate limitations to ensure minimal regulation, would give the Commission legal authority to regulate broadband like the utility it is and to maintain nondiscriminatory access to the Internet.

An Open Internet Allowed Etsy to Grow and Prosper

Etsy is an online marketplace where you can buy handmade and vintage goods directly from artists, designers, and collectors around the world. We were founded in 2005 by Rob Kalin, a furniture maker who was frustrated by the lack of opportunities to sell his goods online. Along with his cofounders, Rob built Etsy in the course of just a few months out of his Brooklyn apartment.

Today, there are more than one million active sellers on Etsy, who together grossed over $1.35 billion in sales in 2013. There are over 25 million items listed for sale on Etsy, and the site hosts over 40 million members worldwide, with buyers and sellers in almost every country and offices in Brooklyn, Hudson, San Francisco, Berlin, London, Dublin, and Toronto. We have been profitable since 2009, and have raised over $91 million in venture capital from several sources including some of the top investors in the world — Accel Partners, Hubert Burda, Index Ventures, and Union Square Ventures.

FIGURE 1: ETSY GROSS MERCHADISE SALES



Etsy's impact extends far beyond the company itself. Our sellers — 88% of whom are women — depend on their Etsy income to pay their bills and support themselves and their families. Most Etsy sellers are sole-proprietors working out of their homes, with average household income of $44,900, 10% below the national average. Roughly one quarter earn under $25,000 per year.

Etsy provides our sellers access to a dynamic market, educational resources and online tools to help them succeed. By reducing barriers to entry, Etsy creates new entrepreneurs who may not have brought their products to market previously — 42% of sellers sold their goods for the first time on Etsy. These internet-enabled entrepreneurs are building businesses on their own terms, prioritizing flexibility and independence over rapid growth, and using Etsy income to build resilience in the face of declining job security.

Just this year, Etsy was honored to be listed as #3 on CNBC's Disruptor 50 list. According to CNBC, "All of these companies entered traditional sectors and turned them upside down. It's not about one product or delivery method. It's the power of a company to displace the established incumbents in its own industry, prompting a ripple effect throughout its economic ecosystem. A true disruptor's power is seen in its effects on multiple industries—and its ability to disrupt the public giants."[1]

A free and open Internet is the necessary foundation for the innovation that CNBC describes. By creating a low-cost product and demonstrating early success in the open market, our founders were able to build market share and attract the initial investment that helped them succeed. Etsy achieved such incredible success *because* of a free and open Internet. We think every company should have that same opportunity. If the FCC moves forward with the current proposal, it's hard to imagine the next Etsy getting enough of a toehold to take on established incumbents.

Etsy Would Not Have Succeeded Under Chairman Wheeler's Proposal

Etsy is a low margin business. We keep barriers to entry as low as possible and have made a conscious, values-based choice to take only 3.5% of each sale, and charge just 20 cents to list an item. We made that decision to ensure that the widest range of sellers and buyers would

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[1] http://www.cnbc.com/id/101734617#.
[2] http://glinden.blogspot.com/2006/11/marissa-mayer-at-web-20.html.

have access to the marketplace. Other e-commerce platforms may take several times that percentage.

Our business model depends not on extracting as much value as possible from the marketplace, but on leveraging the network effects that emerge once the marketplace reaches a certain size. In other words, more sellers attract more buyers, and more buyers attract more sellers. Growth begets growth, and Etsy succeeds by taking a very small percentage of many more transactions.

Etsy's business model would not have worked under the Chairman's proposal, which would have allowed more established e-commerce companies to negotiate individualized, differentiated arrangements and pay for priority access to consumers. Though our low fees would have helped us build an initial group of sellers, our low margins would have prevented us from paying for access to buyers, disrupting the virtuous cycle of growth that underpins Etsy's success. If Etsy were forced to pay for priority access to consumers in our early years, we would have likely set our initial fees much higher or limited our outreach to fewer markets. In either case, it is unlikely that we could have reached the critical mass necessary to succeed.

Additionally, Etsy would not have been able to attract the early capital investment that allowed us to scale our operations. Our founding team built a product and demonstrated its viability in the open marketplace, which gave investors the confidence to invest in its growth and development. Had we entered a marketplace where entrenched companies negotiated priority access to consumers, we might have had to spend much more money up front, just to prove ourselves. This is because, as an early Amazon executive noted, milliseconds matter: "In A/B tests, we tried delaying the page in increments of 100 milliseconds and found that even very small delays would result in substantial and costly drops in revenue."[2]

Etsy's early investors also had confidence that we could build market share *because* the rules prohibited discrimination or paid prioritization. In the absence of that guarantee, they would likely have made very different decisions.

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[2] http://glinden.blogspot.com/2006/11/marissa-mayer-at-web-20.html.

Chairman Wheeler's Proposal Would Harm Etsy and Sellers who Depend on Our Platform

Etsy's continued growth and success depends on an equal access to consumers. Any rule that allows broadband providers to negotiate paid prioritization agreements with some companies or discriminate against another company's traffic would undermine our sellers' ability to compete.

With over 25 million products available on Etsy, we spend considerable resources ensuring that the large, high-resolution photos load quickly and efficiently to convert online shoppers into buyers. We have also seriously considered offering our sellers the ability to create and share videos on Etsy. Video would allow our sellers to connect with buyers by introducing the real person behind the product, and demonstrating the unique process they use to make their handcrafted goods. This is the value that Etsy sellers bring to the market — their personal stories and handcrafted processes make their goods more unique and meaningful, putting humanity back into commerce.

Yet our low margins would not allow us to pay for priority access to ensure our site loaded as quickly as rival sites. If a consumer were to click on an Etsy shop and perceive delays in images loading or videos buffering, they would likely click away to another site, and our seller would lose that sale. We can safely assume that with time, the bandwidth of data being transmitted over the Internet will increase, as new audio and video technologies emerge. We can't predict the future of e-commerce or product innovations, but we want to ensure that our sellers can reach buyers with the same technologies as any other online retailer.

We fear that under the current proposal, Etsy will remain in a slow lane without the ability to provide sellers up-to-date technologies, effectively relegating them to the Internet of 2014. If ISPs are allowed to negotiate priority deals with some companies, they will have incentives to cater to their paying customers in the fast lane rather than everyone else in the slow lane. They will also have an incentive to ensure that those of us in the slow lane are unable to compete effectively without access to the fast lane.

Alternatively, if Etsy were to negotiate with broadband providers for priority access, we would likely have to raise our fees. Instead of keeping 96.5% of every transaction, our sellers would pay more, transferring wealth from micro-businesses across the country to a few broadband providers' bottom lines. Our sellers are already paying these companies for access to the

Internet to run their businesses out of their homes. Why should they also pay them to access consumers on the other end?

Raising Etsy's fees would also increase the barriers to entrepreneurship that we have worked so hard to reduce, decreasing the number of sellers who would otherwise have access to the platform. The Internet has made it easier for anyone to start a business and reach a global market of consumers. By increasing the costs to reach consumers online, Chairman Wheeler's proposal not only threatens Internet startups, it threatens Main Street businesses across the country.

The Remedies Proposed by the Commission are Inadequate

The Commission claims that the "commercial reasonableness" standard will prevent the negative consequences that we fear. However, this standard creates an unacceptable level of uncertainty for small companies and will be too costly to enforce.

Under the Chairman's proposal, Etsy would have to monitor the delivery speed of its content with every broadband provider, comparing it to speeds negotiated by our competitors, and bring a suit before the FCC if we believe any of the current deals — which the FCC explicitly authorizes — are commercially unreasonable. The telecom companies have already indicated that they would negotiate discriminatory deals with some companies. It would fall to Etsy to determine which of these fail to meet the legal definition of "commercially reasonable".

We have a small legal team of just four attorneys, none of whom are experts in telecommunications law. To bring a case, we would have to spend considerable money on outside counsel to advise us on the merits of our complaint and marshal expert witnesses. The factors the Commission proposes to prove commercial reasonableness are far too vague, and would provide little certainty as to whether bringing a case would be worthwhile. Meanwhile, if we chose to proceed, we would be up against the broadband providers' expert lawyers and unfathomably deep pockets.

I can say with confidence that even if we believed we were being unfairly discriminated against, there is almost no chance we would risk the capital and time required to bring a successful complaint before the FCC. Indeed, under the proposed rules, we cannot even complain when we are discriminated against—that would be legal. We could only complain when somehow that discrimination was not “commercially reasonable.” As the CEO of a rapidly growing startup, I would much rather allocate our limited resources to building our marketplace and giving Etsy sellers the tools they need to start and grow their businesses, not negotiating with ISPs and paying outside lawyers to bring complaints we have little chance of winning. The FCC’s dangerous proposal would force us to reorient our resources away from building a better marketplace and towards paying telecom and cable companies.

The commercial reasonableness standard offers even less comfort to newer startups than it could offer us. Few companies have even one lawyer on staff or the funds to hire outside counsel to bring a complaint to the FCC. For early-stage startups, the proposed Ombudsman could offer little help, as the Ombudsman must consider the same vague and unhelpful standards that actually authorize discrimination and paid prioritization. As a result, many new startups that would have been founded will die in their infancy or never be created. How do you account for all the innovations that would never come to market because of these new rules? Who will bring their complaints to the FCC?

The Commission also proposes establishing a minimum level of access to ensure that the slow lanes provide an adequate level of service, rightly pointing out the challenges of defining a minimum threshold that is sufficiently flexible to accommodate changes in technology while specific enough to be effective and enforceable. We cannot support any of the alternatives suggested by the Commission, as any level of access that is below negotiated paid prioritization deals would disadvantage small companies and hinder innovation.

Perhaps the Commission could set the minimum level of access sufficiently high to render the fast lanes irrelevant, but doing so would likely invite a challenge that the Commission had acted outside its authority under Section 706 by effectively banning discrimination. Doing so would likely not leave “substantial room for individualized bargaining and discrimination in terms,” as required by Section 706. The Chairman claims to oppose fast and slow lanes, yet establishing a rule based on Section 706 requires exactly that, stifling startup innovation and harming those who would make a living online.

We Call on the FCC to Establish Strong Net Neutrality Rules Under Title II

At the outset of the Notice of Proposed Rulemaking, the Commission outlines a strong justification for protecting a free and open Internet. We agree with the sentiment, but believe the Chairman's proposal falls far short of the goal.

The DC Circuit court made it clear that the FCC has ample justification to establish strong net neutrality rules based on the ISPs' terminating monopoly and the manifold benefits of an open Internet, but held that the FCC lacks the authority under Section 706 of the Telecommunications Act to ban discrimination and access fees. However, the Court clearly indicated that Title II was available. The Court wrote that, "Given the Commission's still-binding decision to classify broadband providers not as providers of 'telecommunications services' but instead as providers of 'information services,'" the FCC could not require the ISPs to serve all comers without discrimination and individualized dealings. The FCC has the authority to reverse its 2002 and 2005 decisions and reclassify broadband Internet access as a telecommunications service. The FCC could then properly define "unreasonable discrimination" to forbid application-specific technical discrimination and paid prioritization and other paid preferences. Moreover, the FCC can determine appropriate forbearance to ensure light-touch regulation, certainty, and investment in both networks and applications.

Reclassification under Title II of the Communications Act would give the FCC authority to protect an open Internet once and for all. We recommend that the FCC mandate transparency and ban blocking, unreasonable discrimination, paid prioritization, and discriminatory exemptions to bandwidth caps. We believe the rule should apply to both fixed and mobile, and should govern interconnection to the last-mile ISPs with terminating monopolies primarily to ensure that ISPs do not end run around these rules through interconnection abuse.

A simple rule that bans unreasonable discrimination would protect the innovation economy now, and in the future.

Sincerely,
Chad Dickerson
CEO
Etsy, Inc.