

Congress of the United States
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1094

December 14, 2017

Mr. Ajit Pai
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Restoring Internet Freedom Notice of Proposed Rulemaking, WC Docket No. 17-108

Dear Chairman Pai,

As a Member of the United States House of Representatives, serving California's 43rd District of California, I write to convey my very serious concerns regarding the Federal Communications Commission's (FCC) so-called "Proposal to Restore Internet Freedom." Contrary to what the title implies, the proposal is a complete repeal of the FCC's open-internet rules—commonly known as net neutrality. These rules were the subject of intense public comment and congressional debate, and sustained legal challenges and delays before final adoption in 2015. Net neutrality is essential in order to ensure the internet remains a vibrant and dynamic platform in which no large internet service provider (ISP) can control the content accessed by consumers. My constituents have expressed their overwhelming opposition to any repeal of net neutrality, and I urge the Commissioners to vote against the Chairman's proposal.

I have long championed the merits of net neutrality, which requires that all consumers be given access to the same internet content, on an equal basis, without discrimination. My work to advance net neutrality began in 2010, when I wrote to the FCC to urge the adoption of net neutrality rules that applied equally to wireline and wireless broadband providers. The FCC's first attempts at creating net neutrality rules exempted wireless broadband, a loophole which disproportionately harmed minority communities. At that time, the Pew Research Center found that African Americans and Latinos were 6 times more likely than Caucasian Americans to use their cell phone as their sole point of internet access.¹ Even today, according to the Pew Research Center, "12% of African Americans and 13% of Latinos" are dependent on smart phones for internet access,

¹ Gretchen Livingston. *Latinos and Digital Technology*, 2010, February 9, 2011. Pew Research Center. Found at <http://www.pewhispanic.org/2011/02/09/latinos-and-digital-technology-2010>.

“compared with 4% of whites.”² Under those initial 2010 net neutrality rules, people of color would have had less governmental protection than Americans able to afford both wireline and wireless connections.

In 2011, as the Department of Justice (DOJ) and FCC considered whether to approve a pending merger between NBC Universal and Comcast, I raised concerns about the implications of such a massive merger on our nation’s media landscape. I was particularly concerned that the rapid concentration of the media industry into the control of a mere handful of corporations might constrain opportunities for minority ownership of media licenses and promote certain types of content at the expense of minority owned and produced programming. The FCC and DOJ ultimately approved the merger, with limited conditions to protect net neutrality. At the time, I raised concerns that such conditions did not go far enough.³

As you are well aware, the FCC’s attempts to enforce net neutrality would go on to face fierce opposition from corporate ISPs, over many years. In 2010, the United States Court of Appeals for the District of Columbia Circuit held, in *Comcast v. FCC*, that the FCC did not have the authority, under Title I of the Communications Act of 1934, to sanction Comcast for slowing down certain customer’s internet speeds.⁴ Similarly in 2014, the U.S. Court of Appeals for the D.C. Circuit held, in *Verizon Communications Inc. v. FCC*, that the FCC’s attempts to impose net neutrality regulations on Verizon were not permissible unless the agency designated such companies as “common carriers” under Title II of the Communications Act.⁵ These rulings forced the FCC to reexamine how best to craft its net neutrality regulations.

In 2015, when the FCC debated whether to reclassify ISPs like Verizon and Comcast under Title II, I urged the FCC to commit to reclassification, and thereby extend net neutrality protections to wireless internet via mobile devices. Following years of litigation and regulatory setback, in 2015, the Commission approved its updated open internet rules, which successfully reclassified wireless and wireline providers under Title II of the Communications Act. That move was necessitated by the previous *Comcast v. FCC* and *Verizon v. FCC* court decisions.

In the face of the new 2015 open-internet rules, ISPs continued to recycle many of the same anti-net neutrality arguments, including that the FCC had no statutory authority to promulgate net neutrality rules and that such regulations violated ISP’s free speech rights under the Constitution.⁶ Despite those arguments, the United States Court of Appeals for the District of Columbia⁷ upheld the FCC’s open internet rules in 2016, concluding that

² Smith, Aaron. *U.S. Smartphone Use in 2015*. April 1, 2015, Pew Research Center. Found at <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015>.

³ Congresswoman Maxine Waters, *Congresswoman Waters Statement on Comcast-NBC Merger Approval* [Press Release]. January 25, 2011. Found at <https://waters.house.gov/media-center/press-releases/congresswoman-waters-statement-comcast-nbc-merger-approval>.

⁴ *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).

⁵ *Verizon Communications Inc. v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

⁶ *Verizon Communications Inc. v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

⁷ *U.S. Telecom Ass’n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016).

the agency had the authority under Title II to prevent ISPs from blocking, throttling, and creating paid prioritization of internet traffic.⁸ Corporate internet service providers (ISPs) tried to have the case reheard, but in 2017 the same Court denied their request, marking yet another victory for net neutrality.⁹

For almost a decade, my position has not wavered. Given my lengthy history advocating on behalf of net neutrality, I am extremely disappointed that after years of congressional debate, legal disputes, and public comments, the FCC appears poised to repeal the rule, not because of the harm to the public or consumers, but to appease and acquiesce to corporate pressure.

The Commission's efforts to eliminate the 2015 open-internet rules, demonstrates an utter disregard for the years of vetting and refining the rule underwent before ultimately being approved by both the Judicial and Executive branches. If those rules are repealed, corporate ISPs, like Comcast and Verizon, will have the unfettered ability to favor some content over others, prioritize internet traffic for those willing to pay more, block content with which they do not agree, engage in price gouging whenever they determine a small business or individual consumer will have no choice but to capitulate to their demands, and generally act as gatekeepers to the internet. Despite some ISPs' claims that they will not do this, it should be noted that this is the exact behavior they engaged in before net neutrality rules were in place. In 2005, Comcast began secretly blocking peer-to-peer technologies that customers used over its network.¹¹ From 2007-2009, AT&T forced Apple to block Skype services on the iPhone in an attempt to prevent iPhone users from using any application that allowed them to make calls without using AT&T's cellular network.¹² In 2011, MetroPCS, one of the five biggest U.S. wireless carriers at the time, announced it would block all streaming video over its network from every source except YouTube.¹³ In 2012, the FCC caught Verizon blocking people from using tethering applications, which allow someone to share a mobile device's internet connection with other wirelessly connected computers, on Google Android phones.¹⁴ Many more examples exist of ISPs violating net neutrality rules.

Only seven months have passed since Chairman Pai first proposed repealing net neutrality. In that short time the Chairman has rushed repeal of a vital regulation, written with input from millions of Americans, all three branches of government, and the private sector over the course of almost a decade. Further, the Chairman is moving forward

⁸ *U.S. Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016).

⁹ *U.S. Telecom Ass'n v. FCC*, 855 F.3d 381 (D.C. Cir. 2017).

¹¹ Associated Press, *Comcast Blocks Some Internet Traffic*, October 19, 2007. As reported in the Washington Post. Found at: <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/19/AR2007101900842.html>

¹² Fortune, *Group asks FCC to probe iPhone Skype restrictions*, April 3, 2009. Found at: <http://fortune.com/2009/04/03/group-asks-fcc-to-probe-iphone-skype-restrictions>.

¹³ Wired, *Accused of Violating Net Neutrality, MetroPCS Sues FCC*, January 25, 2011. Found at: <https://www.wired.com/2011/01/metropcs-net-neutrality-challenge/>

¹⁴ Washington Post, *FCC fines Verizon \$1.25M for blocking tethering apps*, July 31, 2012. Found at: https://www.washingtonpost.com/blogs/post-tech/post/fcc-fines-verizon-125m-for-blocking-tethering-apps/2012/07/31/gJQAXjRLNX_blog.html?utm_term=.73c2cfe0e40f

without investigating the discovery that an estimated 1 million Americans had their identities stolen and used to submit fake comments to the FCC, many of them in opposition to net neutrality.¹⁵ The Chairman's careless dismantling of net neutrality is yet another example of this administration's reckless repeal of policy without considering the consequences.

I strongly urge the FCC Commissioners to vote against the "Proposal to Restore Internet Freedom," and maintain net neutrality. If you have any further questions concerning this matter, you may contact Mr. Patrick Fergusson of my staff at 202-225-2201.

Sincerely,



Maxine Waters
Member of Congress

¹⁵ Washington Post, *FCC commissioner, New York attorney general call for delay of net neutrality vote over fake comments*, December 4, 2017. Found at: https://www.washingtonpost.com/news/the-switch/wp/2017/12/04/fcc-commissioner-new-york-attorney-general-call-for-delay-of-net-neutrality-vote-over-fake-comments/?utm_term=.a10640e953dd



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

May 24, 2018

The Honorable Maxine Waters
U.S. House of Representatives
2221 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Waters:

Thank you for your letter regarding the *Restoring Internet Freedom Order*, which reestablished the authority of the Federal Trade Commission to oversee the network management practices of Internet service providers while returning to the light-touch legal framework that governed such practices for almost twenty years.

At the dawn of the commercial Internet in 1996, President Clinton and a Republican Congress agreed that it would be the policy of the United States “to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation.” This bipartisan policy worked. Encouraged by light-touch regulation, the private sector invested over \$1.5 trillion to build fixed and mobile networks throughout the United States. Innovators and entrepreneurs grew startups into global giants. America’s Internet economy became the envy of the world.

Then, in early 2015, the FCC jettisoned this successful, bipartisan approach to the Internet and decided to subject the Internet to utility-style regulation designed in the 1930s to govern Ma Bell. This decision was a mistake. For one thing, there was no problem to solve. The Internet wasn’t broken in 2015. We weren’t living in a digital dystopia. To the contrary, the Internet had been a stunning success.

Not only was there no problem, this “solution” hasn’t worked. The main complaint consumers have about the Internet is not and has never been that their Internet service provider is blocking access to content. It’s that they don’t have access at all or enough competition between providers. The 2015 regulations have taken us in the opposite direction from these consumer preferences. Under Title II, annual investment in high-speed networks declined by billions of dollars—the first time that such investment has gone down outside of a recession in the Internet era. And our recent Broadband Deployment Report shows that the pace of both fixed and mobile broadband deployment declined dramatically in the two years following the *Title II Order*.

Returning to the legal framework that governed the Internet from President Clinton’s pronouncement in 1996 until 2015 is not going to destroy the Internet. It is not going to end the Internet as we know it. It is not going to undermine the free exchange of ideas or the fundamental truth that the Internet is the greatest free market success story of our lifetimes.

By returning to the light-touch Title I framework, we are helping consumers and promoting competition. Broadband providers will have stronger incentives to build networks, especially in unserved areas, and to upgrade networks to gigabit speeds and 5G. This means there will be more competition among broadband providers. It also means more ways that companies of all kinds and sizes can deliver applications and content to more users. In short, it's a freer and more open Internet.

The *Restoring Internet Freedom Order* also promotes more robust transparency among ISPs than existed three years ago. It requires ISPs to disclose a variety of business practices, and the failure to do so subjects them to enforcement action. This transparency rule will ensure that consumers know what they're buying and that startups get information they need as they develop new products and services.

Moreover, we reestablish the Federal Trade Commission's authority to ensure that consumers and competition are protected. Two years ago, the *Title II Order* stripped the FTC of its jurisdiction over broadband providers by deeming them all Title II "common carriers." But now we are putting our nation's premier consumer protection cop back on the beat.

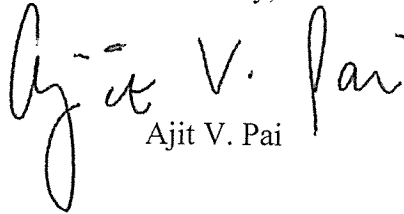
Despite any suggestion that the public comment process was somehow "flawed" or "tampered with" by the alleged submission of comments under false names, any such activity did not affect the Commission's actual decision-making—that is, the agency's ability to review the record, respond to comments that raised significant issues, and make a reasoned judgment. I am not aware of any evidence to the contrary. Indeed, any reasonable review of the *Order* would demonstrate precisely the opposite—that the Commission painstakingly engaged with the voluminous public record in this proceeding (namely, the many substantive comments that meaningfully grappled with the policy issues raised in the Notice of Proposed Rulemaking) in reaching its conclusions. To the extent you are concerned with non-substantive comments submitted under multiple different names that stated simply that the commenter supported or was opposed to the Title II classification without substantive explanation, as you can see in the *Order*, the agency did not rely on or cite any such comments.

The Commission is staunchly committed to transparency and integrity in rulemaking proceedings, including in connection with the *Restoring Internet Freedom* proceeding. To that end, when individuals contacted the Commission to complain that a comment was falsely filed in their name, the Commission responded by inviting them to file a statement to that effect in the public record. In addition, as noted above, members of the public had an opportunity to comment on the substance of the public draft released three weeks prior to the scheduled vote, pursuant to my transparency initiative.

In sum, Americans will still be able to access the websites they want to visit. They will still be able to enjoy the services they want to enjoy. There will still be regulation and regulators guarding a free and open Internet. This is the way things were prior to 2015, and this is the way they will be in the future.

I appreciate your interest in this matter. Your views are important and will be entered into the record of the proceeding. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink that reads "Ajit V. Pai". The signature is written in a cursive style with a large, looping initial "A".

Ajit V. Pai