



In her dissent, FCC Commissioner Clyburn wrote, “There is much sound and fury about applying a Depression-Era Communications Act to modern communications services, but none about applying the Revolution-Era First Amendment to speech on the Internet.”<sup>3</sup> The Title II Order makes it possible for people to compete in the marketplace of ideas based solely on the quality of their presentation. Overturning the Title II Order would force many low-budget but important news outlets to pay more to reach their audience, thereby reducing the money they have for investigative journalism that threatens to expose political corruption and malfeasance in government and private enterprise.

“Restoring Internet freedom”, as proposed by WC Docket No. 17-108, would, we believe, ensure that “there is no referee on the field for broadband,” in the words of Commissioner Clyburn.<sup>4</sup>

Clyburn in her dissent also observed that, “technology-neutral definitions [like the First Amendment] do not become obsolete by advances in technology.”<sup>5</sup>

We believe that the First Amendment is the most important issue involved in this question of “Restoring Internet freedom: The *Title II Order* levels the playing field in the marketplace of ideas: For the modest price of Internet access, people all over the world can reach a huge audience based solely on the quality of their presentation. Restoring the freedom of telecom giants to censor Internet usage would make it harder for people all over the world to get the information they need to effectively challenge political corruption.

#### ***a. Comcast vs. The Postal Service Act of 1792***

The revolutionaries who adopted the First Amendment also passed the U.S. Postal Service Act of 1792. Those revolutionaries felt that their new form of government required an informed electorate to survive.

Part of their concern came from bitter memories of King George III’s postal service censoring their mail.<sup>6</sup> This is not unlike the modern day battle over whether Comcast and other major telecommunications providers have the right to censor their customers’ Internet usage. As noted in FCC 17-60, para. 13, “In 2004, then-FCC Chairman Michael Powell announced ... four “Internet freedoms” [which] include the freedom to access lawful content, the freedom to use applications, the freedom to attach personal devices to the network, and the freedom to obtain service plan information.<sup>7</sup> The first of these “four Internet freedoms” is clearly a direct application of the First Amendment.

---

3 Mignon L. Clyburn “Dissenting Statement,” FCC 17-60, p. 69, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-60A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-60A1.pdf) (last visited June 24, 2017).

4 Mignon L. Clyburn “Dissenting Statement,” FCC 17-60, p. 69, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-60A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-60A1.pdf) (last visited June 24, 2017).

5 Mignon L. Clyburn “Dissenting Statement,” FCC 17-60, p. 69, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-60A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-60A1.pdf) (last visited June 24, 2017).

6 Wikipedia, “Postal Service Act”, [https://en.wikipedia.org/wiki/Postal\\_Service\\_Act](https://en.wikipedia.org/wiki/Postal_Service_Act) (last visited June 24, 2017).

7 Michael K. Powell, Chairman, Federal Communications Commission, Preserving Internet Freedom: Guiding Principles for the Industry. Remarks at the Silicon Flatirons Symposium (Feb. 8, 2004), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-243556A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-243556A1.pdf), p. 5 (last visited June 24, 2017).

In 2007 Internet experts documented how Comcast was blocking certain uses of the Internet.<sup>8</sup> Comcast was clearly violating the first two of Powell's four Internet freedoms, reminiscent of the behavior of King George III's postal service in the 1760s and 1770s.

To try to force Comcast to stop censoring their users' Internet usage, the FCC issued the 2008 *Comcast-BitTorrent Order*.<sup>9</sup> Comcast sued. In *Comcast Corp. v. FCC*, 600 F.3d 642 in 2010, the U.S. Court of Appeals for D.C. ruled that the FCC did not have the authority to force an "information service" to stop censoring their customers' Internet usage. The FCC responded by adopting the 2010 *Open Internet Order*, which was again vacated by the D.C. Circuit, because the FCC was trying to regulate "information services" as "common carriers," without designating them as such.

Finally, in 2015, the FCC adopted the *Title II Order*, which reclassified the major telecoms as "telecommunication services." In *United States Telecom Ass'n v. FCC* (2016), the D.C. Circuit sided with the FCC, contrary to the predictions of then-Commissioner Pia.<sup>10</sup>

The primary point of recounting this history here is to note that the courts twice told the FCC that they could not force an "information service" to stop censoring its customers' Internet usage. In 2016, the court affirmed that the FCC could, however, reclassify the major telecoms as "telecommunications services" and regulate them under their 2015 Title II Order. (Given this history, we think it odd that NPRM 17-60, WC Docket No. 17-108, para. 23, would claim that "the Commission abruptly departed from its prior posture" with this Title II Order: It was hardly *abrupt*: The FCC had tried since 2008 to stop Comcast from censoring people's Internet usage and seemed to have exhausted lesser remedies.)

### ***b. Media and political economy***

But there is more to the U.S. Postal Service Act of 1792 than was mentioned above. Perhaps most important for present purposes was its provision of citizen-directed subsidies for media: Under this act, newspapers were delivered up to 100 miles for a penny and beyond for 1.5 cents, while first class postage was between 6 and 25 cents depending on distance.<sup>11</sup> These

---

<sup>8</sup> Ernesto, "Comcast Throttles BitTorrent Traffic, Seeding Impossible", *TF*, Aug. 17, 2007, <https://torrentfreak.com/comcast-throttles-bittorrent-traffic-seeding-impossible/>. See also Wikipedia, "Net neutrality in the United States", esp. the section on "FCC attempts at enforcing Net Neutrality, 2005 - 2010", [https://en.wikipedia.org/wiki/Net\\_neutrality\\_in\\_the\\_United\\_States#FCC\\_attempts\\_at\\_enforcing\\_Net\\_Neutrality.2C\\_2005\\_-\\_2010](https://en.wikipedia.org/wiki/Net_neutrality_in_the_United_States#FCC_attempts_at_enforcing_Net_Neutrality.2C_2005_-_2010) (last visited June 24, 2017).

<sup>9</sup> *FCC 17-60*, para. 18.

<sup>10</sup> *Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order*, 30 FCC Rcd 5601, 5921 (2015) (Dissenting Statement of Commissioner Ajit Pai) (*Pai 2015 OI Order Dissent*), cited from Commissioner Clyburn's dissent in WC Docket No. 17-108, p. 65.

<sup>11</sup> McChesney, Robert W.; Nichols, John (2016), *People get ready: The fight against a jobless economy and a citizenless democracy*, Nation Books, ISBN 9781568585215, p. 167: "If the United States government subsidized journalism in the second decade of the twenty-first century as a percentage of GDP to the same extent that it did in the first half of the nineteenth century, it would spend in the area of \$35 billion annually." The US population in 2017 has been estimated at 325 million; \$35 billion divided by 325 million is \$108 per person. The US GDP for 2016 was reported to be \$18.6 trillion; \$35 billion divided by \$18.6 trillion is \$1.9 per thousand, which we round to 0.2 percent.

citizen-directed subsidies for newspapers amounted to roughly 0.2 percent of Gross Domestic Product, according to McChesney and Nichols.<sup>12</sup>

This helped encourage literacy and limit political corruption, both of which seem to have contributed substantially to the dominant position of the U.S. in the world today.<sup>13</sup> The claim that better media limit corruption is supported by recent econometric research that has found that countries with greater press freedom tend to have less corruption.<sup>14</sup> Greater political accountability and lower corruption were more likely where newspaper consumption was higher in data from roughly 100 countries and from different states in the US.<sup>15</sup> A "poor fit between newspaper markets and political districts reduces press coverage of politics. ... Congressmen who are less covered by the local press work less for their constituencies: they are less likely to stand witness before congressional hearings ... Federal spending is lower in areas where there is less press coverage of the local members of congress."<sup>16</sup> This was supported by an analysis of the consequences of the closure of the Cincinnati Post in 2007. The following year, "fewer candidates ran for municipal office in the Kentucky suburbs most reliant on the Post, incumbents became more likely to win reelection, and voter turnout and campaign spending fell."<sup>17</sup>

An extreme example of media and corruption followed the closure around 1999 of the local newspaper in Bell, CA, a city of roughly 35,000 near Los Angeles. The city manager, Robert Rizzo, decided, in essence, that the watchdog was dead, and it was time to party. He convinced other city leaders to join him. When the problems were documented in 2010, Rizzo was the highest paid public employee in the U.S., as far as anyone knew, with compensation over \$1 million per year, and the city was near bankruptcy.<sup>18</sup>

How does this relate to WC Docket No. 17-108? The *de facto* mission of any media organization is to sell changes in the behaviours of its audience to its funders. A media

---

12 McChesney, Robert W.; Nichols, John (2016), *People get ready: The fight against a jobless economy and a citizenless democracy*, Nation Books, ISBN 9781568585215, p. 167: "If the United States government subsidized journalism in the second decade of the twenty-first century as a percentage of GDP to the same extent that it did in the first half of the nineteenth century, it would spend in the area of \$35 billion annually." The US population in 2017 has been estimated at 325 million; \$35 billion divided by 325 million is \$108 per person. The US GDP for 2016 was reported to be \$18.6 trillion; \$35 billion divided by \$18.6 trillion is \$1.9 per thousand, which we round to 0.2 percent.

13 Wikipedia, "Postal Service Act". See also multiple references to "education" in the Wikiversity article on "Winning the War on Terror" and the section on "Media and corruption", [https://en.wikiversity.org/wiki/User:DavidMCEddy/Winning\\_the\\_War\\_on\\_Terror](https://en.wikiversity.org/wiki/User:DavidMCEddy/Winning_the_War_on_Terror) (last visited June 24, 2017).

14 Brunetti, Aymo; Weder, Beatrice (2003), "A free press is bad news for corruption", *Journal of Public Economics* (Elsevier) 87, [https://campus.fsu.edu/bbcswebdav/orgs/econ\\_office\\_org/Institutions\\_Reading\\_List/17\\_Corruption\\_and\\_Economic\\_Performance/Brunetti,\\_A.\\_and\\_B.\\_Weber-\\_A\\_Free\\_Press\\_is\\_Bad\\_News\\_for\\_Corruption](https://campus.fsu.edu/bbcswebdav/orgs/econ_office_org/Institutions_Reading_List/17_Corruption_and_Economic_Performance/Brunetti,_A._and_B._Weber-_A_Free_Press_is_Bad_News_for_Corruption) (last visited 2017-06-24).

15 Adserà, Alicia; Boix, Carles; Payne, Mark (2000), *Are You Being Served?: Political Accountability and Quality of Government*, Inter-American Development Bank Research Department, and Adserà, Alicia; Boix, Carles; Payne, Mark (2003), "Are You Being Served? Political Accountability and Quality of Government", *Journal of Law, Economics, & Organization* (Oxford U. Pr.) 19, <http://www.princeton.edu/~cboix/JLEO-paper.pdf> (last visited 2017-06-24).

16 Snyder, James M.; Strömberg, David (2008), *Press Coverage and Political Accountability*, National Bureau of Economic Research, <http://www.nber.org/papers/w13878> (last visited 2017-06-24).

17 Schulhofer-Wohl, Sam; Garrido, Miguel (2009), *Do newspapers matter? Short-run and long-run evidence from the closure of the Cincinnati Post*, National Bureau of Economic Research, <http://www.nber.org/papers/w14817> (last visited 2017-06-24).

18 Wikipedia, "City of Bell scandal", [https://en.wikipedia.org/wiki/City\\_of\\_Bell\\_scandal](https://en.wikipedia.org/wiki/City_of_Bell_scandal) (last visited June 24, 2017).

organization without an audience won't have funding for long. If the audience fails to change behaviors to please the funders -- or, worse, changes behaviours in ways that displease funders -- the media organization will lose funding: How many organizations prosper by biting the hands that feed them?<sup>19</sup>

WC Docket No. 17-108 would raise the cost of reaching a wider audience, at least with high quality video. And media organizations that require large funding must of necessity flinch before disseminating information that might offend its funders or others with substantive control over content. WC Docket No. 17-108 would help protect the existing elites against the legitimate grievances of the bottom 99 percent.

At the risk of belaboring this point excessively, we will list here a few research questions.

First, we note that the number of words in U.S. tax code and regulations grew from 1.4 million words in 1955 to almost 10.1 million words in 1995, averaging 150,000 additional words per year, according to data compiled by the Tax Foundation.<sup>20</sup>

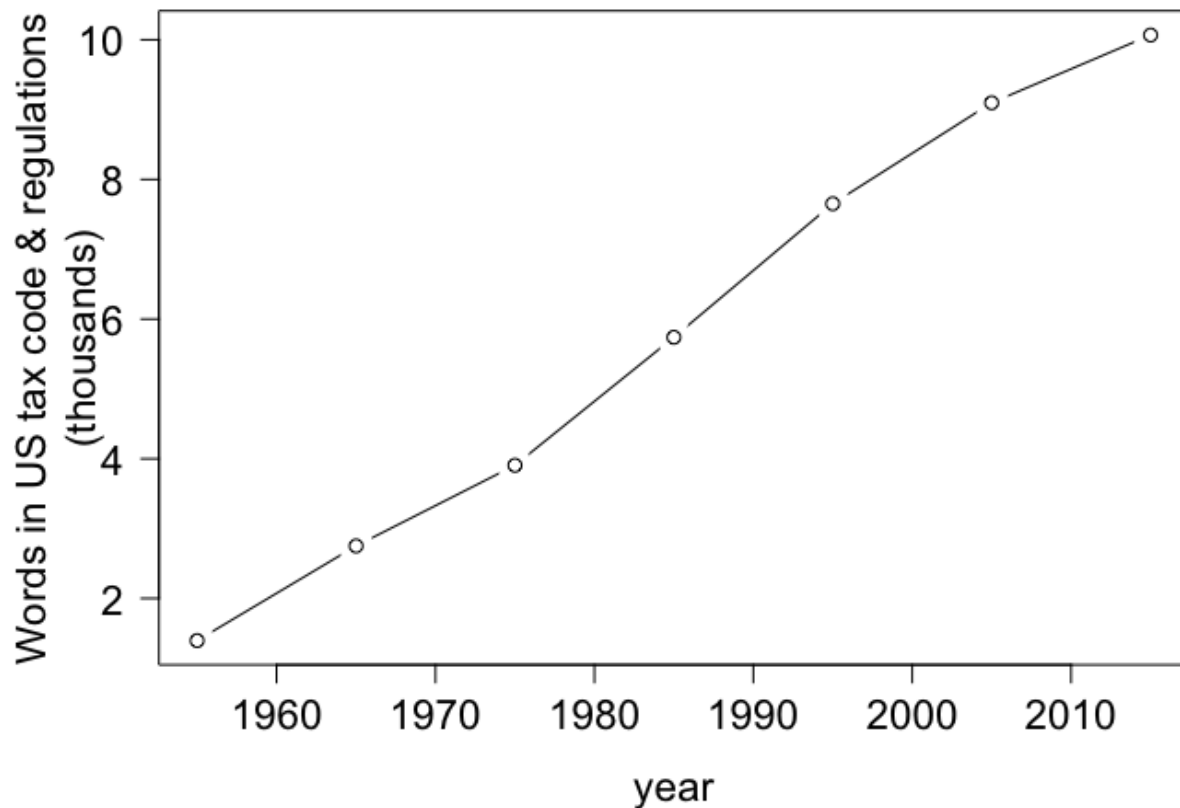
- To what extent does the ever increasing complexity of the U.S. tax code and regulations benefit major advertisers at the expense of small businesses and individual citizens?
- To what extent do small business subsidize the large?
- To what extent do large business compete on control of the media and the political process and only secondarily on price and quality?

WC Docket No. 17-108 would make it harder for new web-based news sites to compete with the established giants in the marketplace of ideas. This could have a substantive impact on the evolution of the structure of the U.S. economy.

---

<sup>19</sup> unless the funders have no better way to reach a prized audience. See Wikiversity, "Winning the War on Terror", [https://en.wikiversity.org/wiki/User:DavidMCEddy/Winning\\_the\\_War\\_on\\_Terror](https://en.wikiversity.org/wiki/User:DavidMCEddy/Winning_the_War_on_Terror) (last visited June 25, 2017).

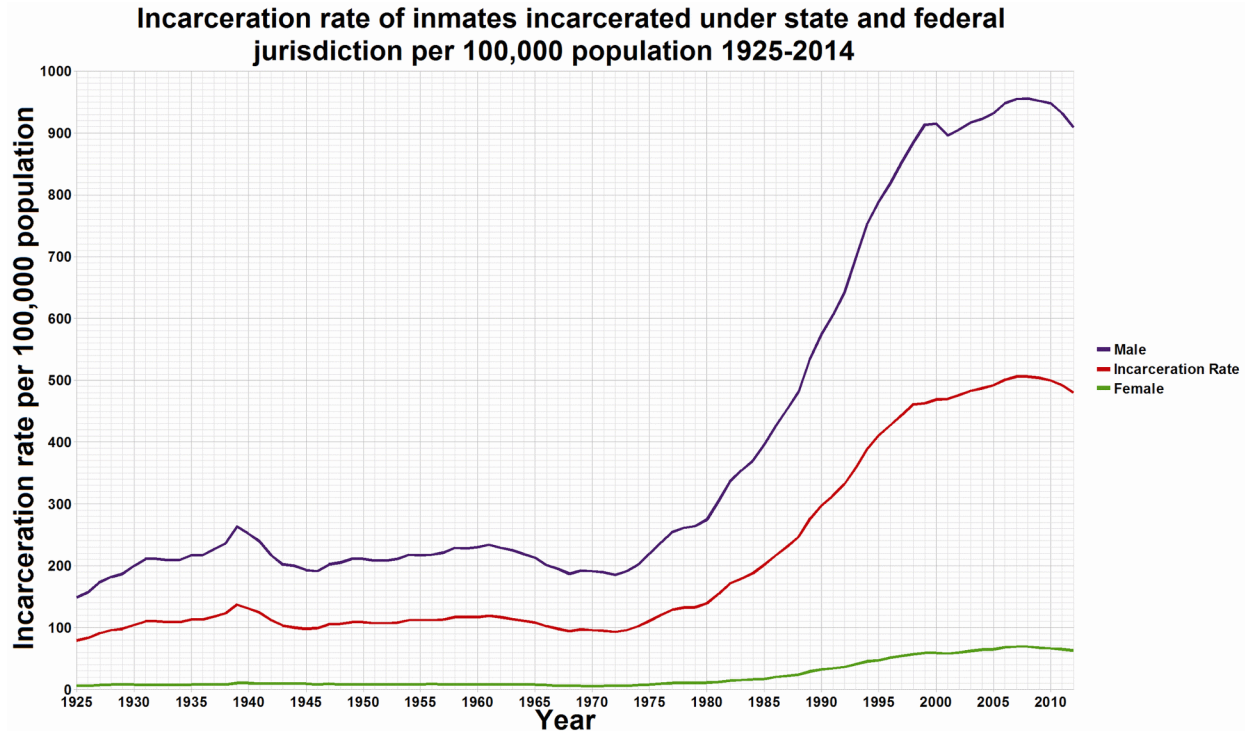
<sup>20</sup> Adjusted R-squared exceeds 99 percent with a slope of 151.6 thousand words per year with a standard error of 5.5. Data from the Tax Foundation: Number of Words in Internal Revenue Code and Federal Tax Regulations, 1955-2005 and Scott Greenberg, "Federal Tax Laws and Regulations are Now Over 10 Million Words Long", October 08, 2015. <https://taxfoundation.org/number-words-internal-revenue-code-and-federal-tax-regulations-1955-2005>, and <https://taxfoundation.org/federal-tax-laws-and-regulations-are-now-over-10-million-words-long>. See also Wikiversity, "Media and taxes", [https://en.wikiversity.org/wiki/Media\\_and\\_taxes](https://en.wikiversity.org/wiki/Media_and_taxes) (last visited June 25, 2017).



Second, it is widely known that the US leads the world in incarcerations, currently at roughly 0.5 percent of the U.S. population. Less well known is that for the middle half of the twentieth century, the incarceration rate was relatively stable at roughly 0.1 percent of the population. The explanation for this change that we have found most persuasive is changes in the editorial policies of the mainstream commercial broadcasters to focus on the police blotter and cut air time and funding for investigative journalism beginning around 1975. The electorate got the impression that crime was out of control, when there had been no substantive change in the crime rate. Politicians responded by “getting tough on crime”. The mainstream commercial broadcasters made money, because they seem to have retained their audiences while reducing problems with offending major advertisers.<sup>21</sup> Might the U.S. have criminal justice policies more consistent with those prior to 1975 with more citizen control over media editorial policies? Answers to this question could help inform the need for WC Docket No. 17-108.

<sup>21</sup> e.g., Sacco, Vincent F (2005) *When Crime Waves*. Sage. ISBN 0761927832. and Youngblood, Steven (2017). *Peace Journalism Principles and Practices*. Routledge. pp. 115-131. ISBN 978-1-138-12467-7 and similar literature cited in the Wikipedia article on “United States incarceration rate”, [https://en.wikipedia.org/wiki/United\\_States\\_incarceration\\_rate](https://en.wikipedia.org/wiki/United_States_incarceration_rate) (last visited June 25, 2017).





Third, we consider two national defense concerns:

Official U.S. government documents declassified in July 2016 report that members of the Saudi royal family and employees of the Saudi embassy and consulates in the U.S. helped some of the suicide mass murderers of Sept. 11, 2001, get training in the U.S. to do what they did on that fateful day.<sup>22</sup> The extent of high-level Saudi involvement was known to the G. W. Bush administration at least before they led the “Coalition of the Willing” into Iraq in 2003 and perhaps before they invaded Afghanistan. Sept. 11 was a Saudi operation, and therefore we invaded Afghanistan -- and Saudi Arabia did not appear on any of Trump’s Muslim bans. If the mainstream media in the U.S. did not rely on advertising from big oil companies and other big money interests with good business relations with the Saudis, might more people in the U.S. be more aware of the extent of Saudi involvement in the September 11 attacks? These are an important national security questions impacting on whether the U.S. should adopt WC Docket No. 17-108.

Terrorism is miniscule as a cause of death: You're several times more likely to die from a fire (0.55%) than terrorism. Or from accidental poisoning (0.61%). Or drown (0.67%). Or die from a fall (0.69%, using World Health Organization data from 2002).<sup>23</sup> Why is the West paying so much more attention to terrorism than would seem to be warranted by the magnitude of the

<sup>22</sup> "Declassified version of 28 pages". United States House of Representatives Permanent Select Committee on Intelligence. December 2002,

<https://intelligence.house.gov/sites/intelligence.house.gov/files/documents/declasspart4.pdf>. See also Wikipedia, "The 28 Pages", [https://en.wikipedia.org/wiki/The\\_28\\_Pages](https://en.wikipedia.org/wiki/The_28_Pages) (last visited June 25, 2017).

<sup>23</sup> Wikipedia, "List of causes of death by rate",

[https://en.wikipedia.org/wiki/List\\_of\\_causes\\_of\\_death\\_by\\_rate](https://en.wikipedia.org/wiki/List_of_causes_of_death_by_rate) (last visited June 25, 2017).

problem? If we had more citizen involvement in editorial decisions, might we also have more balance in media coverage? These are important questions that impact both national security and public health that should be researched before adopting WC Docket No. 17-108.

These and other issues are discussed in the Wikiversity article on “Winning the War on Terror”.<sup>24</sup>

The FCC is not the proper instrument for eliminating media biases generated by the reluctance of media organizations to bite the hands that feed them. But neither should the FCC erect artificial barriers to entry into the marketplace of ideas, especially when their *Title II Order* has so far been accepted by the courts *and* the empirical evidence the FCC majority cited for overturning it is contradicted by evidence from other sources, summarized in the next section.

### III. NEED ECONOMIC ANALYSIS

In his dissent from the 2015 *Title II Order*, then-Commissioner Pia wrote, “We should ask ten distinguished economists from across the country to study the impact of our proposed regulations and alternative approaches to the Internet ecosystem.”<sup>25</sup> We support that advice, except for its restriction to “the country”: In particular, this is a sufficiently important issue that we should seek input from the acknowledged international leader in developing empirically based theory of optimal regulation of imperfect markets, including those with monopolistic and oligopolistic actors, such as what confronts virtually every consumer for Internet service in the U.S. today. The leading acknowledge international leader in that field is Prof. Jean Tirole, whose Nobel award summary says that, “No other scholar has done more to enhance our understanding of [Industrial Organization (IO)] in general, and of optimal policy interventions in particular.”<sup>26</sup> He should be given reasonable time, money and organizational assistance in compiling and analyzing the data he feels appropriate to answer all the questions raised by WC Docket No. 17-108 and any other questions he feels are relevant to this important public policy question.

Another leader in this field is Eli M. Noam, an Israeli-American professor of economics at Columbia. His many publications include (2009) *Media Ownership and Concentration in America*<sup>27</sup> and (2016) *Who Owns the World's Media?: Media Concentration and Ownership around the World*,<sup>28</sup> which seem particularly relevant to WC Docket No. 17-108 and the Title II Order.

---

<sup>24</sup> Wikiversity, “Winning the War on Terror”,

[https://en.wikiversity.org/wiki/User:DavidMCEddy/Winning\\_the\\_War\\_on\\_Terror](https://en.wikiversity.org/wiki/User:DavidMCEddy/Winning_the_War_on_Terror) (last visited June 25, 2017).

<sup>25</sup> Pai *OI NPRM Dissent*, 29 FCC Rcd at 5656, cited from Commissioner Clyburn’s dissent in WC Docket No. 17-108, p. 64.

<sup>26</sup> Economic Sciences Prize Committee of the Royal Swedish Academy of Sciences, “Jean Tirole: market power and regulation”, Scientific Background on the Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel 2014, [http://idei.fr/sites/default/files/medias/doc/by/tirole/scientific\\_background\\_economics\\_nobel\\_2014.pdf](http://idei.fr/sites/default/files/medias/doc/by/tirole/scientific_background_economics_nobel_2014.pdf) (last visited June 25, 2017).

<sup>27</sup> Eli M. Noam (2009) *Media ownership and concentration in America* (Oxford).

<sup>28</sup> Eli M. Noam and the International Media Collaboration (2016) *Who Owns the World's Media?: Media Concentration and Ownership around the World* (Oxford).



Neither Tirole nor Noam are mentioned in WC Docket No. 17-108. This supports Commissioner Clyburn’s dissent, where she says, “this proposal is frightening in its disregard for the actual experience of consumers. ... The proposal to eliminate the general conduct rule is precisely in line with an end-game of ensuring there is not referee on the field for broadband.”<sup>29</sup>

This analysis should include a discussion of the impact of other government actions such as authorizing mergers and acquisitions as well as, e.g., state laws inhibiting municipalities from entering the broadband market, as suggested by Crawford.<sup>30</sup> In 2013, before the *Title II Order*, Crawford wrote that in 2000 “the United States had led the world in adoption of Internet access. By [2010], America had fallen behind most other industrialized nations”.<sup>31</sup>

In the First Amendment section above, we suggested that big businesses compete in large part on control of the media and the political process. Crawford suggested that Comcast has achieved its current market dominance largely through more effective lobbying accompanied by enough control of the media that any public outcry against their 2010 power grab (and probably earlier ones as well) was muffled and ineffective. Crawford and others cite three reasons for slower Internet adoption in the U.S. vs. other advanced countries:

1. The U.S. federal government approved mergers and acquisitions that have created the current telecom giants.
2. Federal agencies and local governments have further granted local monopoly rights to these telecom giants. Over 20 state governments have restricted the ability of municipalities to offer broadband to their residents, attributed to effective lobbying by major telecoms.<sup>32</sup> In most markets the major telecoms have no competition, and where they do have competition, that competition is limited to the detriment of consumers. This increases the need for oversight like the Title II Order.
3. The federal government allowed Comcast and other telecom giants to bundle high speed Internet with “key sports and other content that many Americans prized”. This meant that “[a]ny new high-speed Internet access provider in Comcast territory would have to enter the market for content at the same time it incurred the heavy up-front costs needed to provide wired Internet access. ... [By 2009] Verizon, the only nationwide company installing globally competitive high-speed access across fiber-optic lines in American, had already signaled it was planning to stop doing so.”<sup>33</sup> (This is an example of phenomenon mentioned by the Economic Sciences Prize committee in its 2014 award to Tirole: “Tirole has convincingly analyzed public policies regarding vertical contractual relationships. Vertical relationships only require regulation if they impose costs on

---

29 Mignon L. Clyburn “Dissenting Statement,” *FCC 17-60*, p. 72,

[https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-60A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-60A1.pdf) (last visited June 24, 2017).

30 Susan Crawford (2013) *Captive audience: The telecom industry and monopoly power in the new gilded age* (Yale).

31 Susan Crawford (2013) *Captive Audience: The telecom industry and monopoly power in the new gilded age* (Yale, p. 2).

32 Jason Koebler, “The 21 Laws States Use to Crush Broadband Competition”, *Motherboard*, Jan. 14, 2015, [https://motherboard.vice.com/en\\_us/article/the-21-laws-states-use-to-crush-broadband-competition](https://motherboard.vice.com/en_us/article/the-21-laws-states-use-to-crush-broadband-competition) (last visited June 18, 2017).

33 Crawford (2013, pp. 2-3). Peter Svensson, “Verizon winds down expensive FiOS expansion,” *ABC Eyewitness News*, March 26, 2010, <http://abc7.com/archive/7352672/> (last visited June 18, 2017).

outsiders that are greater than the benefits to insiders”<sup>34</sup> -- such as those mentioned by Crawford.)

We argue that federal and state actions in these areas have violated the spirit and intent, if not the letter, of “the Telecommunications Act of 1996, which established 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.’”<sup>35</sup> Research is needed to evaluate the impact of these mergers, acquisitions and grants of monopoly and oligopolistic privileges on the freedom of speech and of the press, and the impact of the *Title II order* in limiting this threat to the freedom of speech and of the press.

Table 1 summarizes a few of the econometric studies we’ve found that seem most relevant to WC Doc 17-108. We found two sets of data: Those produced by USTelecom, whose primary members are telecommunications giants that would likely gain billions of US dollars if the Title II Order is overturned, and their employees or contractors like Singer. The second is an analysis by S. Derek Turner, writing for the citizen advocacy group Freepress. The latter does not have billions of US dollars at stake in this analysis. The former uses data for which there are no consequences for making false and misleading claims. The latter relies primarily on official corporate filings with the Securities and Exchange Commission (SEC), where misleading claims can be punished severely, and U.S. Census Bureau data.

The former includes a claim published in 2014 that the Title II Order, then under discussion, would cost consumers an additional \$15 billion dollars, roughly a 19% increase in their cost. That forecast seems not to have been realized. These predictions and similar predictions by then-Commissioner Pai,<sup>36</sup> seem to have so far been contradicted by subsequent events.

source	what	Claimed Impact of Title II Order			Interpretation
		billions of USD	percent	n yrs	
<b>Claims of WC Docket No. 17-108 and supporters</b>					

<sup>34</sup> Economic Sciences Prize Committee of the Royal Swedish Academy of Sciences, “Jean Tirole: market power and regulation”, Scientific Background on the Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel 2014, p. 3,

[http://idei.fr/sites/default/files/medias/doc/by/tirole/scientific\\_background\\_economics\\_nobel\\_2014.pdf](http://idei.fr/sites/default/files/medias/doc/by/tirole/scientific_background_economics_nobel_2014.pdf) (last visited June 25, 2017).

<sup>35</sup> 47 U.S.C. § 230(b)(2), cited from WC Docket No. 17-108, p. 2.

<sup>36</sup> Mignon L. Clyburn “Dissenting Statement,” *FCC 17-60*, p. 69,

[https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-60A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-60A1.pdf) (last visited June 24, 2017).

USTelecom <sup>37</sup>	U.S. Broadband Provider Capital Expenditures, 1996-2015	< \$1B USD	< (-1.3%)	1	WC Docket No. 17-108: Decline from 2014 to 2015 due to Title II Order
				1	WC Docket No. 17-108: Commissioner Clyburn: Same logic suggests a loss of \$15B from 2002-3 due to classifying as an <i>information service</i> .
				1	Not statistically significant as it's the lower quartile of the absolute annual changes 1996-2016 (below)
Singer <sup>38</sup>	2016 Broadband Capex Survey: Tracking Investment in the Title II Era	-\$3.6	-5.6%	1/2	Increases (reductions) in broadband Capex in adjusted figures from 12 leading US domestic broadband providers, 2014 to 2016
Litan & Singer <sup>39</sup>	Outdated Regulations Will Make Consumers Pay More for Broadband	-\$15.0	-19.0%	1	2014 predictions by Singer of the impact of the Title II Order
<b>Claims of Title II Supporters</b>					

<sup>37</sup> USTelecom, Broadband Investment, Historical Broadband Provider Capex (2017) (data through 2015), <https://www.ustelecom.org/broadband-industry/broadband-industry-stats/investment> (last visited June 17, 2017).

<sup>38</sup> Hal Singer, 2016 Broadband Capex Survey: Tracking Investment in the Title II Era (Mar. 1, 2016) <https://halsinger.wordpress.com/2017/03/01/2016-broadband-capex-survey-tracking-investment-in-the-title-ii-era> (last visited July 16, 2017). Footnotes 113 and 239 in FCC WC Docket No. 17-108 and footnote 4 in Chairman Pai's supporting statement thereto.

<sup>39</sup> Hal Singer & Robert Litan, Outdated Regulations Will Make Consumers Pay More for Broadband, Progressive Policy Institute (Dec. 1, 2014) [http://www.progressivepolicy.org/wp-content/uploads/2014/12/2014.12-Litan-Singer\\_Outdated-Regulations-Will-Make-Consumers-Pay-More-for-Broadband.pdf](http://www.progressivepolicy.org/wp-content/uploads/2014/12/2014.12-Litan-Singer_Outdated-Regulations-Will-Make-Consumers-Pay-More-for-Broadband.pdf) (last visited July 16, 2017).

Turner <sup>40</sup>	Fig. 1: Capital expenditures by publicly traded broadband providers (2013-2016)	\$7.2	5.3%	2	2105-6 increase over 2013-4 per 24 company SEC filings
“	Fig. 2: Capital expenditures by all U.S. telecommunications firms (U.S. census bureau annual capital expenditures survey, 2008-2015)	\$2.7	5.5%	1	2015 increase in wired telecom over 2014 per U.S. Census Bureau
“	“	-\$2.3	-6.5%	1	2015 increase in wireless (except satellite) telecom over 2014 per U.S. Census Bureau
“	Fig. 3: Cable ISP network investment, publicly reported and estimated totals (2013-2016)	\$5.0	48.4%	2	2015-6 increase over 2013-4 per company SEC filings, 6 companies + “other”
“	Fig. 4: Total revenues at publicly traded broadband providers (2013-2016)	\$93.40	10.50%	2	2015-6 increase over 2013-4 per company SEC filings, 24 companies
“	Fig. 5: Residential high-speed Internet access revenues at publicly traded broadband providers (2013-2016)	\$17.20	25.30%	2	2015-6 increase over 2013-4 per company SEC filings, 18 companies

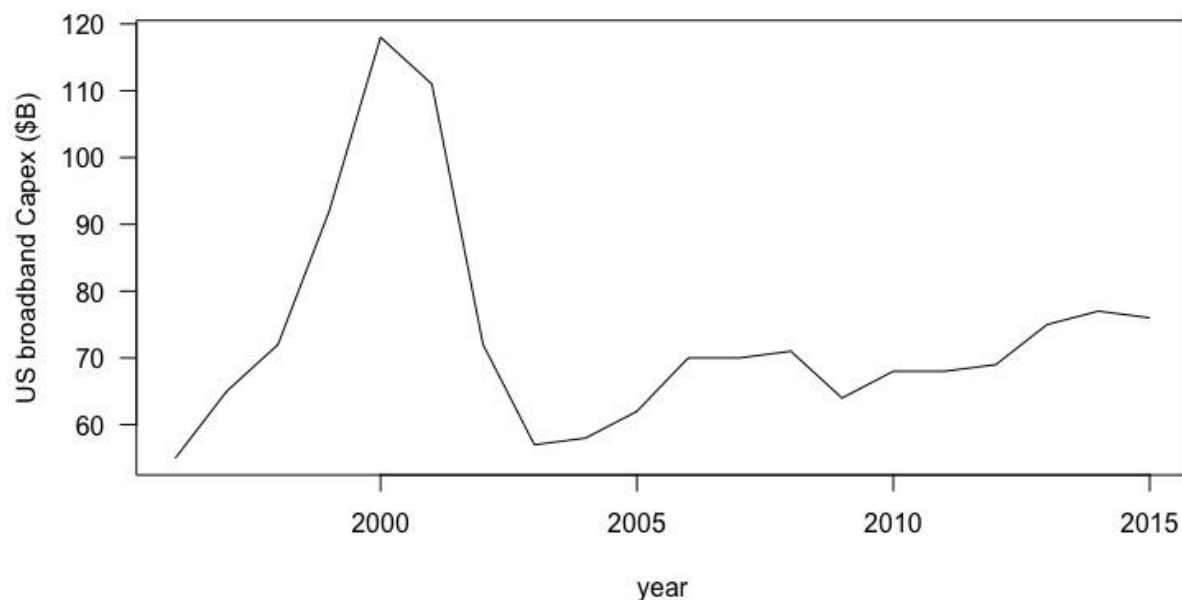
*Table 1. Summary of selected data analyses relevant to WC Docket No. 17-108.*

<sup>40</sup> S. Derek Turner, “It’s Working: How the Internet access and online video markets are thriving in the Title II era”, Freepress, May 2017, <https://www.freepress.net/sites/default/files/resources/internet-access-and-online-video-markets-are-thriving-in-title-ii-era.pdf> (last visited July 16, 2017).

The bottom line from Table 1 is to raise questions about the repeated claim in WC Docket No. 17-108 that investments have declined as a result of the Title II Order. That claim is contradicted by the SEC filings of leading telecommunications companies, which make no claims that the Title II Order caused them to reduce investments. This suggests that the claims that the Title II Order reduced investments may be propaganda and politics designed to sell a policy with little or no factual basis to benefit the telecom giants at the expense of most of the rest of the US.

At minimum, the changes recorded in Table 1 have not been subject to a statistical test, apart from the first number of a decline of less than \$1 billion, and that was clearly not statistically significant. All the changes in data we've seen, including 21 tables in Turner's "It's Working" report beyond the 6 listed in Table 1, could reasonably be attributed to things other than the Title II Order. We also did a statistical analysis of Turner's Fig. 1 and found no statistically significant change that could be attributed to the Title II Order, positive or negative.

The following is a brief analysis of USTelecom data on capital expenditures, the first entry in Table 1; this supports the interpretation in Table 1. Commissioner Clyburn noted in her dissent that, "the only econometric analysis that the majority [Chairman Pai and Commissioner O'Rielly] cites for support clearly stated that it is 'inappropriate [to] use ... investment as a policy objective.'"<sup>41</sup> See the accompanying plot and table.



<sup>41</sup> See George S. Ford, *Net Neutrality, Reclassification and Investment: A Counterfactual Analysis*, Phoenix Center for Advanced Legal & Economic Public Policy Studies, Perspectives 17-02, at 2, <http://www.phoenix-center.org/perspectives/Perspective17-02Final.pdf>, cited from Mignon L. Clyburn "Dissenting Statement," FCC 17-60, p. 67.

year	U.S. Broadband Provider Capital Expenditures, 1996-2015 (\$ billions) <sup>42</sup>
1996	55
1997	65
1998	72
1999	92
2000	118
2001	111
2002	72
2003	57
2004	58
2005	62
2006	70
2007	70
2008	71
2009	64
2010	68
2011	68
2012	69
2013	75
2014	77
2015	76
total	1,470

*Table 2. USTelecom data U.S. Broadband Provider Capital Expenditures, 1996-2015*

USTelecom reported that, “Broadband provider network capital expenditures declined nearly \$1 billion in 2015 to \$76 billion, according to USTelecom’s annual broadband investment research report released” Dec. 14, 2016.<sup>43</sup> Roughly three quarters of the annual changes recorded in Table 2 were less than that.

Commissioner Clyburn wrote, “Using the same logic that the NPRM uses, one could suggest that the FCC’s classification of cable modem service as an information service in 2002 resulted in an even more precipitous drop in provider broadband investment.”<sup>44</sup> This comparison is summarized in Table 3. In her footnote, Clyburn continued, “One could argue that the information service classification spree in 2002-2008 resulted in essentially flat investment ever

<sup>42</sup> USTelecom, Broadband Investment, Historical Broadband Provider Capex (2017) (data through 2015), <https://www.ustelecom.org/broadband-industry/broadband-industry-stats/investment> (last visited June 17, 2017).

<sup>43</sup> USTelecom, “Broadband Investment Remains Large, but Ticked Down in 2015”, Dec. 14, 2016, <https://www.ustelecom.org/news/press-release/broadband-investment-remains-large-ticked-down-2015> (last visited June 26, 2017).

<sup>44</sup> USTelecom, Historical Broadband Provider Capex (comparing \$72 billion of broadband investment in 2002 to \$57 billion in 2003). One could argue that the information service classification spree in 2002-2008 resulted in essentially flat investment ever since. Cited from WC Docket No. 17-108, p. 68.



since.” We agree with Clyburn: These data are not adequate to claim either a \$15 billion drop due to classifying cable modem as an information service, nor are they adequate to claim a \$1 billion drop after the *Title II* telecom service classification.

Years	Reclassification	Capex drop
2002-3	Information service	\$15B
2014-5	Telecom service	<\$1B

*Table 3. Investment drop due to information vs. telecom service classifications*

#### IV. CONCLUSION

The Restoring Internet Freedom NPRM<sup>45</sup> should not be adopted. The available data contradict the official justification, suggesting if anything that the Title II Order has had an overall positive impact on the US economy, though this conclusion is still very tentative: The results are generally not statistically significant and highly subject to the choice of data -- what numbers we consider and how we interpret them.

Moreover there are substantial opportunities for improving the prospects for democracy, world peace and broadly shared economic development from maintaining the current Title II Order. These opportunities have yet to become part of the standard daily lives of substantive portions of the US and world's populations, but that could change. These beneficial changes are less likely if the Title II Order is overturned.

---

<sup>45</sup> WC Docket No. 17-108.