To Mr. Ajit Pai and the FCC,

I would like to submit a comment concerning the upcoming decision on the FCC’s classification of the internet infrastructure as a Title II utility. The rule allows the FCC to ensure that the broadband providers do not throttle or otherwise slow down traffic that is not part of a paid agreement to the company. The internet is a realm of free speech and none of it, besides illegal content obviously, should be, in effect, censored so that broadband companies may make more money. It is a consumer protection regulation that is critical for the freedom of the internet.

Classifying the internet as a utility is only common sense. Before the internet, communication was done by phones. Before that, it was done by mail. All of these have been regulated by the government. The internet is no different. It is a communication tool that sends information across the United States and the world. It is most certainly a public utility that must be protected from corporations that have a bottom line as their only goal.

In regards to the negative effects of the regulation, I submit this well-cited article:

<https://arstechnica.com/information-technology/2017/05/title-ii-hasnt-hurt-network-investment-according-to-the-isps-themselves/>

In this article from Ars Technica, the writer, Jon Brodkin, discusses the fact that the cable companies have NOT in fact been hurt by net neutrality, and that is from their own executives. The infrastructure investment slowdown that Ajit Pai said was occurring is, in fact, not occurring. The writer points out that some companies, such as AT&T, had already scheduled their infrastructure investments well in advance of net neutrality and had planned to reduce spending as part of their business model. Other companies such as Comcast have, in fact, spent more on infrastructure in the past two years than any time in history. The money is there, and it is being used. I would also submit that if regulation is indeed a burden, it is a necessary one. It is what protects customers. No one complains about the safety regulations enforced on car manufacturers, despite the fact that these regulations drive up the cost of research, production, and the cost of the cars by thousands of dollars per unit. The regulations must be in place for the protection of the public.

I would also like to address the concept of ‘paid fast lanes’ that critics of net neutrality say will help speed up the internet. This is already occurring. I, as a small time consumer, have an internet allocation of around 30 megabytes per second. I pay less for this than a large company that has a business subscription that has an allocation of 200 megabytes per second and a cost that is substantially higher. The faster and more connection you need, the more you pay. In conjunction with this, technology is advancing at a rapid pace. Fiber is being installed everywhere and speeds are always increasing. There has been no massive slow down due to net neutrality, traffic is moving just fine across the internet super highways.

The comment that regulation should be moved over to Congress is a risky proposal at best, a catastrophic mistake at worst. There is some movement in Congress to put in place regulations, but the only proposals I have heard of are to eliminate the FCC’s regulation of net neutrality. This has been proposed by the Republican Congress. The current administration is also much in favor of deregulation and giving more freedoms to corporations. There is no scenario in which this is a positive for consumers. Consumers do, in fact, require protection in order to prevent activities such as the Netflix slowdown that occurred just prior to 2015.

The slowdown of Netflix occurred when Verizon and Comcast reduced the speed of the Netflix traffic. I submit the following article:

<https://consumerist.com/2014/02/23/netflix-agrees-to-pay-comcast-to-end-slowdown/>

written by Chris Moran of the online publication Consumerist, it details how the traffic for Netflix slowed significantly into January of 2014. Moran shows that the companies had to come to a “mutually beneficial” agreement. It was announced without any disclosed financial terms, but that doesn’t mean that there weren’t any or that there will never be financial requirements for maintaining broadcast speeds. The idea that a free market and the needs of the consumers will prevent this from happening is not a guarantee. I performed a quick search for ISP’s in my area and found the following:

* Century Link DSL providing only 10 MBPS at $45.00
* Xfinity, a subsidiary of Comcast, offering the same service for $29.99, around 33% cheaper
* Dish network offering DSL at an undisclosed price with a maximum speed of 1.5 MBPS, a ridiculously slow speed for the modern day internet.
* Century Link fiber providing 40 MBPS at $55.00. A very reasonable speed, but it is only available in 1.9% of the area. Almost zero availability.
* Several other providers that in no way match the price, speed, and availability of Comcast

Source: <http://broadbandnow.com/Colorado/Westminster>

In effect, Comcast is the dominant provider, by far, in the area. Many residents have no choice but to use Comcast. With this in mind, it is easy to see how even if consumers complain about access, providers do not have to listen as they dominate their local markets. The regulation of the FCC would prevent scenarios like this one from happening.

Finally, I submit that the FCC should be regulating the internet and that if Mr. Pai thinks the regulation is too heavy handed, then he should work with the agency to draft better policy. It is in the FCC’s ability to come to an agreement with providers that is both a protection for consumers and not a burden for providers. The concept of free content has been discussed and in fact was being considered before the new administration. Giving the providers the ability to offer some content free is not a bad idea, as long as it is under strict terms that prevent the providers from slowing down other traffic to allow this. Scrapping the entire regulation because Mr. Pai believes it has some problems seems a rash decision. Coming to an agreement on better regulation would be a diplomatic and responsible move.

Thank you for taking the time to read this.

Stephen Bailey

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**Appendix A**

**Transcripts of cited articles**

**Title II Hasn’t Hurt Network Investment According to the ISP’s Themselves**

**Jon Brodkin, Ars Technica**

The Federal Communications Commission's primary justification for eliminating Title II net neutrality rules is that broadband network investment has tanked since the rules were implemented two years ago.

FCC Chairman Ajit Pai has [cited](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0426/DOC-344590A1.pdf) a few research reports describing declines in capital expenditures, and industry lobbyists have repeatedly argued that investment was harmed by the FCC classifying ISPs as common carriers under Title II of the Communications Act. But when ISPs talk to their investors, the story is completely different.

"We found that not a single publicly traded US ISP ever told its investors (or the SEC) that Title II negatively impacted its own investments specifically," pro-net neutrality advocacy group Free Press said in a [report issued yesterday](https://www.freepress.net/sites/default/files/resources/internet-access-and-online-video-markets-are-thriving-in-title-II-era.pdf).

The Free Press report also disputes the investment numbers cited by Pai, saying that its own analysis shows an increase in network investment spending since the 2015 Title II net neutrality order. It isn't surprising that people on opposite sides of the issue would come to different conclusions on investment data. What can't be disputed is the fact that ISPs have given a rosy picture to investors, and the Free Press report provides examples of ISPs affirming that Title II hasn't hurt them:

* In December 2015, [AT&T’s CEO told investors](https://seekingalpha.com/article/3741746-ts-t-ceo-randall-stephenson-presents-ubs-global-media-communications-brokers-conference?part=single) that the company would “deploy more fiber” in 2016 than it did in 2015 and that Title II would not impede its future business plans.
* In December 2016, Comcast’s chief financial officer [admitted](https://consumermediallc.files.wordpress.com/2016/12/comcasttranscript.pdf) to investors that any concerns it had about reclassification were based only on “the fear of what Title II could have meant, more than what it actually meant.”
* That same month, Charter’s CEO told investors, “Title II, it didn’t really hurt us; it hasn’t hurt us.”
* Just a few days after the election, Cablevision and Suddenlink’s parent company Altice reaffirmed its plan to deploy FTTH [fiber-to-the-home] service to all of its customers and told investors that it remained “focused on upgrading our broadband networks to drive increases in broadband speeds and better customer experience.”

Despite increasing its own capital investment [by 10.2 percent](http://www.cmcsa.com/releasedetail.cfm?ReleaseID=1023210) in Q1 2017, Comcast claimed in a [blog post last month](http://corporate.comcast.com/comcast-voices/comcast-supports-net-neutrality-and-reversal-of-title-ii-classification-title-ii-is-not-net-neutrality) that the FCC's treatment of broadband providers "harms investment and innovation."

Investment continues

Publicly traded companies are [required](https://www.sec.gov/answers/about-lawsshtml.html) to give investors accurate financial information, including a [description of risk factors](https://www.law.cornell.edu/cfr/text/17/229.503) involved in investing in the company. If Title II imposed significant financial burdens on publicly traded Internet providers, the companies should have informed investors. Instead, ISPs either haven't mentioned Title II in calls with investors or have said the FCC policy hasn't affected their investment, according to the Free Press report.

And ISPs have continued investing in order to expand network capacity. Free Press provided many examples that you can read in the [full report](https://www.freepress.net/sites/default/files/resources/internet-access-and-online-video-markets-are-thriving-in-title-II-era.pdf). Here are a few regarding some of the biggest ISPs:

* Comcast spent $7.6 billion on its cable segment capital expenditures during 2016, the most the company has ever invested in a single year.
* Charter Communications is yet another example of an ISP that dramatically increased its network investments during the two years following the FCC’s Open Internet Order vote... From 2015–2016 Charter’s pro forma capital investments [including newly acquired Time Warner Cable and Bright House Networks] topped $14.5 billion, a 15 percent increase which came despite hundreds of millions of dollars (or more) in synergies that Charter claimed following the May 2016 closing of the deal.
* Verizon’s capital investment total increased during the year following the FCC’s adoption of the Open Internet Order (just as the company said it would a month before the February 2015 vote). And Verizon’s total two-year post-vote capital expenditures were 3.1 percent higher than they were in the two years preceding the vote, even as the company divested its Florida, Texas, and California systems to Frontier Communications.

There has also been an "explosion" in online video competition since the imposition of net neutrality rules that prevents ISPs from trying to restrict access to sites that compete against their cable TV offerings, Free Press wrote.

AT&T CEO Randall Stephenson [said](https://seekingalpha.com/article/4039537-ts-t-ceo-randall-stephenson-q4-2016-results-earnings-call-transcript?part=single) in a January 2017 earnings call that Title II regulation is "suppressive to investment," but appeared to be talking about the industry in general rather than AT&T specifically. He did not attribute any investment decline at AT&T to Title II. In December 2015, Stephenson [said](https://seekingalpha.com/article/3741746-ts-t-ceo-randall-stephenson-presents-ubs-global-media-communications-brokers-conference?part=single) the Title II rules were not an impediment to AT&T and that "Everything that we’re planning on doing fits within those rules."

Pai vs. Free Press

Pai publicly expressed his disdain for Free Press in the [speech](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0426/DOC-344590A1.pdf) in which he announced his plan to dismantle net neutrality rules, calling it "a spectacularly misnamed Beltway lobbying group" that demands government control over the Internet.

Investment data cited by Pai comes from the [USTelecom broadband industry lobby group](https://www.ustelecom.org/blog/broadband-investment-heads-wrong-direction), the [conservative Free State Foundation](http://freestatefoundation.blogspot.com/2017/03/investment-impact-of-title-ii-public.html), and [economist Hal Singer](https://haljsinger.wordpress.com/2017/03/01/2016-broadband-capex-survey-tracking-investment-in-the-title-ii-era/), who found a 5.6 percent decline in capital expenditures by 12 big ISPs.

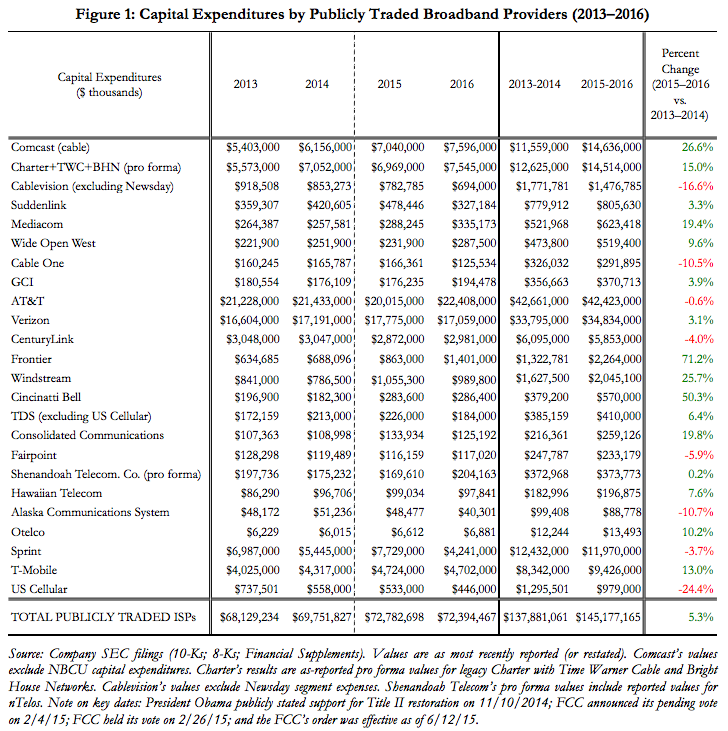
Free Press notes that USTelecom and Singer excluded the money Sprint used on a "new strategy of purchasing smartphones and then leasing them to its customers," even though "purchasing equipment to lease is a real capital expense, recognized under Generally Accepted Accounting Principles ('GAAP')."

"Sprint risked billions of dollars to purchase and then lease handsets. That is a key part of its broadband business strategy, and no different than a cable ISP’s purchasing and leasing of modems," Free Press wrote.

Singer [argues](https://haljsinger.wordpress.com/2017/03/01/2016-broadband-capex-survey-tracking-investment-in-the-title-ii-era/) that "it is important to ignore Sprint’s capitalization of handsets, an accounting change that occurred in the middle of the experiment," and notes that Sprint itself "breaks out these 'investments' separately from network investment." Singer [also argues](https://haljsinger.wordpress.com/2017/02/10/tracing-atts-capital-expenditure-over-time/) that AT&T's investment numbers have declined by an unexpected amount, especially when you exclude the company's investments in DirecTV and some Mexican cellular properties.

But AT&T predicted its own spending decline years before the FCC considered the use of Title II to enforce net neutrality rules. In November 2012, [AT&T said](https://www.att.com/gen/press-room?pid=23506&cdvn=news&newsarticleid=35661) it would increase capital expenditures in wireless and wireline for three years and return to the previous, lower investment levels starting in 2015. By February 2015, AT&T told investors that it had "[substantially completed](https://www.att.com/Investor/ATT_Annual/2014/letter_to_investors.html)" the project.

"Because AT&T alone accounts for nearly a third of the total ISP industry’s investments, any cyclical shift at AT&T can impact the aggregate in a manner that swamps the overall actual trend," Free Press wrote. But even including AT&T, Free Press said it found a 5 percent increase in ISP investment during the two-year period after the net neutrality vote and capital increases at 16 of 24 publicly traded ISPs:



[***Free Press***](https://www.freepress.net/sites/default/files/resources/internet-access-and-online-video-markets-are-thriving-in-title-II-era.pdf)

"These increases are due primarily to continued core network expansion as well as investments in capital equipment needed to expand lines of business that utilize the same network (e.g., customer-premise equipment such as modems or IP-based video set-top boxes)," Free Press wrote.

Like the AT&T decline, "any increases or decreases in capital spending at each individual firm were clearly explained by each company before, during and after the FCC’s Open Internet vote. None of the firms that saw declines attributed them to any FCC action," Free Press said. Even those ISPs that did spend less "continue[d] to increase broadband-network capacity." AT&T, for example, has been providing gigabit speeds over fiber to [millions](https://arstechnica.com/information-technology/2017/02/att-fiber-available-to-four-million-customers-in-51-metro-areas/) of new customer locations, though it has also failed to upgrade old copper networks in many [less profitable areas](https://arstechnica.com/information-technology/2017/04/att-brings-fiber-to-rich-areas-while-the-rest-are-stuck-on-dsl-study-finds/).

FCC votes on Thursday

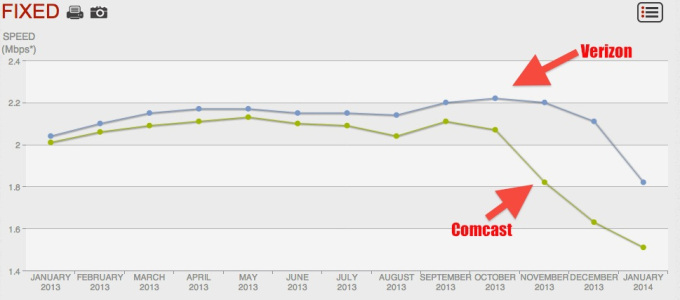
On [Thursday this week](https://www.fcc.gov/news-events/events/2017/05/may-2017-open-commission-meeting), Pai's Republican majority is expected to approve a Notice of Proposed Rulemaking that would eliminate the Title II classification and eliminate or replace the net neutrality rules. (A final vote, after public comment, would occur in the second half of this year.) Pai claims that this action will reverse a decline in broadband spending and encourage ISPs to bring Internet access to more people.

Don't believe him, Free Press says. "Chairman Pai’s only supposed justification for dismantling the FCC’s Title II-based Open Internet framework is the utterly false claim that it dampens ISP investments," the group wrote. "He has nothing but phony and nonspecific evidence to support his irrational belief, which runs contrary to the stunning number of verifiable counterfactuals."

*Disclosure: The Advance/Newhouse Partnership, which owns about 13 percent of Charter, is part of Advance Publications. Advance Publications owns Condé Nast, which owns Ars Technica.*

**Netflix Agrees to Pay Comcast to End Slowdown**

**Chris Moran, Consumerist**

[[](https://consumermediallc.files.wordpress.com/2014/02/comcastfiosa.jpg)](https://consumermediallc.files.wordpress.com/2014/02/comcastfiosa.jpg)

Data released by Netflix shows the steep drop in connection speeds for both Comcast and Verizon in recent months.

For the last several months, Comcast Internet customers have complained about a drop in quality of the Netflix streams being delivered to their homes, and Netflix’s own data showed a massive decline in connection speeds starting in October. But today, the two companies announced they have reached a “mutually beneficial” agreement that will hopefully turn that trend around.

Much like Netflix’s ongoing standoff with Verizon FiOS, the drop in speeds wasn’t an issue of the ISP throttling or blocking service to Netflix. Rather, the ISPs were allowing for Netflix traffic to bottleneck at what’s known as “peering ports,” the connection between Netflix’s bandwidth provider and the ISPs.

Until recently, if peering ports became congested with downstream traffic, it was common practice for an ISP to temporarily open up new ports to maintain the flow of data. This was not a business arrangement; just something that had been done as a courtesy. ISPs would expect the bandwidth companies to do the same if there was a spike in upstream traffic. However, there is virtually no upstream traffic with Netflix, so the Comcasts and Verizons of the world claimed they were being taken advantage of.

Today’s announcement, which doesn’t specify any financial terms, says that Netflix and Comcast have “established a more direct connection between Netflix and Comcast.”

The [Wall Street Journal reports](http://online.wsj.com/news/articles/SB10001424052702304834704579401071892041790?mod=WSJ_hp_RightTopStories) that Netflix wanted to put servers inside of Comcast data centers, but the Kabletown folks balked at the idea. In the end, Comcast will connect to the streaming servers at data centers operated by third parties.

Comcast claims that the arrangement will not just alleviate the current Netflix logjam but will allow the streaming video company to continue growing. That’s a major concern with ultra-HD 4K TVs gradually making their way into U.S. homes. As these become more common, and 4K owners demand more streaming content, Netflix will need reliable, higher-speed connections to subscribers’ homes.

**A LINE IN THE SAND**  
The question is what sort of precedent this Netflix/Comcast deal sets for the rest of the marketplace. By making this deal with the nation’s largest cable company (which is trying to become even larger with its plan to purchase Time Warner Cable), Netflix will likely need to reach a similar paid-peering arrangement with Verizon, TWC, and others.

If a company wants to get into the streaming video business, paid-peering would now have to be considered part of the price for entry into the marketplace. Which is another reason one should be concerned about the proposed Comcast/TWC merger. By combining the country’s two largest ISPs, you’d create a single entity that could effectively set all the standards and rates for paid-peering arrangements; if a company wants to reach the home audience, Comcast would determine how much it will cost.

**NET NEUTRALITY?**  
As [we’ve pointed out before](https://consumerist.com/2014/02/19/why-even-a-net-neutrality-rewrite-wouldnt-alleviate-slow-netflix-service/), the issue of peering was not covered by the recently gutted net neutrality rules. Those guidelines only dealt with whether an ISP deliberately blocked/throttled or unfairly prioritized traffic to a website. The congestion at peering ports occurs further upstream and is a matter of capacity.

To use a foodservice analogy. Imagine a restaurant has an incredibly popular dish that everyone wants to order. The kitchen has no problem meeting that demand, but orders aren’t getting to diners’ tables in time.

If that slowdown is because the waiters decide customers shouldn’t get that particular menu item, or that there are other menu items that should be delivered in a more timely manner — that’s a net neutrality issue.

But if that awesome food is slow to the table because there simply aren’t enough waiters and no off-work waiters are willing to come in for a few hours to help out because it’s their night off — that’s a peering issue.

Even with the recent appeals court ruling that neutered net neutrality, Comcast is still required to abide by those guidelines through 2018 as part of the terms of its recent merger with NBC Universal.