**Before the**

**Federal Communications Commission**

**Washington, D.C. 20554**

Coalition of 65 Submit Comments

In the Matter of )

)

Restoring Internet Freedom )                       WC Docket No. 17-108

)

Respectfully,

Katherine McAuliffe

Executive Director

Digital Liberty

202-785-0266

[kmcauliffe@atr.org](mailto:kmcauliffe@atr.org)

722 12th Street NW

Fourth Floor

Washington, D.C.

20005

**Before the**

**Federal Communications Commission**

**Washington, D.C. 20554**

July 17, 2017

**RE: WC Docket No. 17-108 In the Matter of Restoring Internet Freedom**

Dear Chairman Pai, Commissioner O’Rielly, and Commissioner Clyburn:

We, the undersigned organizations, represent millions of Americans concerned about the overreach of the Federal government. **We write to voice our support for returning the Internet to the light touch regulatory approach that allowed the Internet to take off.**

There was a bipartisan “Hands off the Net!” consensus championed by both former President Bill Clinton and former Speaker of the House Newt Gingrich, and by other leading members of both parties — until the FCC made two sweeping claims of power over the Internet in the name of protecting “net neutrality”:

1. **2010**: The FCC claimed the power to do anything, over any form of communications (not just broadband) that might somehow (however tenuously) promote broadband under **Section 706**.
2. **2015**: The FCC declared that broadband was a common carrier service subject to **Title II** of the Communications Act of 1934 — a regulatory regime designed for the old Ma Bell telephone monopoly and rotary dial phones connected by actual operators.

No government agency should be trusted with such vast powers — but especially not the FCC, an agency so prone to politicization and regulatory capture.[[1]](#footnote-2) Congress simply could not have intended to give the FCC a blank check to regulate the Internet back in 1996. In fact, the 1996 Telecom Act could hardly have been more clear, declaring that “It is the policy of the United States… to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”[[2]](#footnote-3) In 1998, Democratic Senators John Kerry and Ron Wyden urged the FCC not to apply Title II to Internet access services, warning that doing so “seriously would chill the growth and development of advanced services.”[[3]](#footnote-4)

The Internet should be policed just like every other sector of the economy — through consumer protection and competition laws that apply equally to broadband providers, web companies, and nearly every other business in America. But the Internet should *not* be regulated as a utility. No one thinks of government-run utilities — electricity, water, or sewage — as cutting-edge or innovative. Everyone, though, recognizes the boundless potential of the Internet — and the impossibility of predicting how it will evolve. The “Hands off the Net” approach — the deliberate decision *not* to impose detailed, rigid rules on the Internet — is precisely what allowed it to evolve to meet the changing needs of families, websites, content creators, innovators and businesses across America.

**Imposing Title II regulations on ISPs means the Internet experience will no longer be shaped by consumers — but instead by government**. Rather than being able to respond to what American households want and need in terms of content, advances in technology, information access, and delivery methods, the Internet experience would be determined by regulators who would have control over rates, types of services, and service footprints. Title II also opens the door to new meddling by state and local governments. Congress created the “information service” classification in Title I precisely to avoid this outcome.

**Broadband investment is key to economic growth**, but Title II has already reduced network investment. Some cite to publicly available data showing an increase in infrastructure investment, but those estimates include foreign ISP infrastructure investment in Mexico. Title II caused $3.3 billion in capital flight in the six largest ISPs alone — costing 20 American jobs for every million dollars in capital flight — or 66,000 jobs total.[[4]](#footnote-5) Other estimates project that nearly 174,000 additional broadband related jobs could be lost by 2020 as a result of the decline in investment caused by Title II.[[5]](#footnote-6)

Using a difference-in-differences methodology (the best measure of lost investment), one study found that telecommunications investment dropped 20-30% between 2011-2015 as a result of uncertainty caused by the imposition of Title II, costing roughly $160-200 billion in total investment over five years.[[6]](#footnote-7) A second study, using a slightly modified data sample based on responses to the first, found a $150 billion reduction in investment.[[7]](#footnote-8) While it is always difficult to estimate such alternative worlds, it *is* clear that if Title II had never been imposed, we would have seen more American jobs and more investment on the Internet.

**Innovation and investment require that government’s role be clear, consistent and limited.** The “general conduct standard” invented by the Title II order is hopelessly vague. When asked what this standard meant, Former FCC Chairman Tom Wheeler simply said: “we don't really know." This is really no standard at all, because it leaves the regulator with unchecked discretion. No business can plan its investments under such uncertainty or threat of arbitrary enforcement.

**Low barriers to entry increase competition and thereby promote reliable Internet access.** Far from “clamping down on big guys,” looming legal uncertainty about how the FCC will regulate the Internet hurts small Internet providers most — those that connect people in unserved and underserved areas. The coming next few years will see the deployment of 5G wireless technology, which avoids the huge expenses of wiring the “last mile.” This could fundamentally change the competitive dynamics of the broadband market, erasing the line between wireless and wireline services, and driving an unprecedented level of competition, at least in most markets. Discouraging such new entry would only harm consumers.

**We urge the FCC to return to the demonstrated success of the light touch regulatory model.** The Internet thrived nearly twenty years under a “Hands off the Net!” bipartisan consensus against Internet regulation. We urge the FCC to return to that approach. Ultimately, it is Congress alone that should decide how to update communications law.

Regards,

Grover G. Norquist

President

Americans for Tax Reform

Leigh Hixon

Senior Director of Policy Relations

Alabama Policy Institute

Phil Kerpen

President

American Commitment

Daniel Schneider

Executive Director

American Conservative Union

Steve Pociask

President

American Consumer Institute

Center for Citizen Research

Governor Paul LePage

Maine

Lisa Nelson

CEO

American Legislative Exchange Council

Christine Harbin

Vice President External Affairs

Americans for Prosperity

Robert Alt

President & CEO

The Buckeye Institute

Jeffrey Mazzella

President

Center for Individual Freedom

Grant Maloy

Chairman

Center Right Coalition of Orlando

Chuck Muth

President

Citizen Outreach

Michael J. Bowen

CEO

Coalition for a Strong America

Matthew Kandrach

President

Consumer Action for a Strong Economy

Col. Francis X. De Luca USMR (Ret)

President

Civitas Institute

Katie McAuliffe

Executive Director

Digital Liberty

Hance Haney

Senior Fellow

Discovery Institute

Adam Brandon

President

FreedomWorks Foundation

Annette Meeks

CEO

Freedom Foundation of Minnesota

Richard Watson

Chairman

Florida Center/Right Coalition

David Barnes

Director of Policy Engagement

Generation Opportunity

Ray Chadwick

Chairman

Granite State Taxpayers

Joseph Bast

CEO

The Heartland Institute

Mike Krause

Director, Public Affairs

Director, Local Colorado Project

Independence Institute

Andrew Langer

President

Institute for Liberty

Tom Giovanetti

President

Institute for Policy Innovation

Seton Motley

President

Less Government

Daniel Garza

President

The LIBRE Initiative

Bartlett Cleland

Managing Principal

Madery Bridge

Dee Hodges

President

Maryland Taxpayers Association, Inc

Mike Wendy

President

MediaFreedom

Henry Kriegel

President

Montanans for Tax Reform

Brent Mead

CEO

Montana Policy Institute

Scott Cleland

Chairman

NetCompetition

Lorenzo Montanari

Executive Director

Property Rights Alliance

Don Racheter, Ph.D.

President

Public Interest Institute

Mike Stenhouse

CEO

Rhode Island Center for

Freedom & Prosperity

Paul Gessing

President

Rio Grande Foundation

Tom Struble

Tech Policy Manager

R Street Institute

Karen Kerrigan

President & CEO

Small Business & Entrepreneurship Council

James L. Martin

Founder & Chairman

60 Plus Association

David Williams

President

Taxpayers Protection Alliance

Berin Szoka

President

TechFreedom

Gerrye Johnston

Founder/CEO

Women for Democracy in America, Inc.

Maine:

Mary Adams

Chair

Maine Center-Right Coalition

Jim Goff

Chair

Bangor Savings Bank Foundation\*

Penny Morrell

State Director

Concerned Women for America of Maine\*

Susan Hamill

President

JFLLC\*

Victoria Bucklin

Co-Chair

Mid-Coast Chapter Informed Women’s Network, Writers Group\*

Susan Dench

Author and Organizer

Informed Women’s Network\*

Bryan Dench Esq

Maine attorney\*

Pem Schaeffer

Maine blogger\*

Robert Stone

Board Member

Maine Turnpike Authority\*[[8]](#footnote-9)\*

Tom Davis

Waterville business owner\*

New Hampshire:

The Honorable William O'Brien

Former Speaker, NH House of Representatives

Co-chair, New Hampshire Center Right Coalition

The Honorable Stephen Stepanek

Former Chairman, NH House Ways & Means Committee

Co-chair, New Hampshire Center Right Coalition

The Honorable Norman Tregenza

Former State Representative

Carroll County (NH) District 2

The Honorable Paul Mirski

Former State Representative

Grafton County (NH)

Representative Peter Hansen

Hillsborough County (NH) District 22

Representative David Murotake

Hillsborough County (NH) District 32

Representative Jorden Ulery

Hillsborough County (NH) District 37

Representative Greg Hill

Merrimack County (NH) District 3

Representative Carol McGuire

Merrimack County (NH) District 29

Representative James Spillane

Rockingham County (NH) District 2

Co-chair, NH House Republican Alliance\*

Representative Chris True

Rockingham County (NH) District 4

Representative Dan Itse

Rockingham County (NH) District 10

The Honorable Joe Duarte

Former State Representative

Rockingham County (NH)

Representative Joe Pitre

Strafford County (NH) District 2

Representative Kurt Wuelper

Strafford County (NH) District 3

1. http://www.newsweek.com/lessig-its-time-demolish-fcc-83409 [↑](#footnote-ref-2)
2. 47 U.S.C. § 230(b)(2). [↑](#footnote-ref-3)
3. Letter from Senators John Ashcroft, Wendell Ford, John Kerry, Spencer Abraham, and Ron Wyden to the Honorable William E. Kennard, Chairman, FCC (Received Mar. 23, 1998), <http://apps.fcc.gov/ecfs/document/view?id=2038710001> (emphasis added) [↑](#footnote-ref-4)
4. Hal Singer, "Does The Tumble In Broadband Investment Spell Doom For The FCC's Open Internet Order?," Forbes, September 08, 2015, , accessed June 23, 2017, https://www.forbes.com/sites/halsinger/2015/08/25/does-the-tumble-in-broadband-investment-spell-doom-for-the-fccs-open-internet-order/#692029281ef5. [↑](#footnote-ref-5)
5. Will Rinehart, "Title II Reclassification Negatively Impacts Jobs and Investment," American Action Forum, January 14, 2015, , accessed June 23, 2017, https://www.americanactionforum.org/research/error-174233-jobs-not-found-under-title-ii/. [↑](#footnote-ref-6)
6. G.S. Ford, Net Neutrality, Reclassification and Investment: A Counterfactual Analysis, PHOENIX CENTER POLICY PERSPECTIVE No.

   17-02 (April 25, 2017) (available at: http://phoenix-center.org/perspectives/Perspective17-02Final.pdf). [↑](#footnote-ref-7)
7. George Ford, “Net Neutrality, Reclassification and Investment: A Further Analysis,” Phoenix Center, May 16, 2017, accessed June 23, 2017, http://www.phoenix-center.org/perspectives/Perspective17-03Final.pdf. [↑](#footnote-ref-8)
8. \* \* Indicates that organization is listed for affiliation only, signing on behalf of self [↑](#footnote-ref-9)