

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Coalition of 65 Submit Comments

In the Matter of

Restoring Internet Freedom

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WC Docket No. 17-108

Respectfully,

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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 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 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

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

¹ <http://www.newsweek.com/lessig-its-time-demolish-fcc-83409>

² 47 U.S.C. § 230(b)(2).

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)

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 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

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 A second study, using a slightly modified data sample based on responses to the first, found a \$150 billion reduction in investment.⁷ 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.

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>.

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/>.

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>).

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>.

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,

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