

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Restoring Internet Freedom	)	WC Docket No. 17-108

**Reply Comments of the American Consumer Institute**

The American Consumer Institute Center for Citizen Research (ACI) is a nonprofit (501c3) educational and research institute with the mission to identify, analyze and project the interests of consumers in selected legislative and rulemaking proceedings in information technology, health care, insurance, energy and other matters. Recognizing that consumers' interests can be variously defined and measured, and that numerous parties purport to speak on behalf of consumers, the goal of ACI is to bring to bear the tools of economic and consumer welfare analyses as rigorous as available data will allow, while taking care to assure that the analyses reflect relevant and significant costs and benefits of alternative courses of government action.

In this proceeding, the Federal Communications Commission (Commission) considers preserving a free and open Internet by reducing government regulatory controls, while restoring market-based policies to encourage investment, deployment and access, as well as to improve aggregate consumer welfare. The Commission has indicated its intent to focus on facts and reasoned analyses to determine whether retaining, eliminating or modifying Internet regulations would produce more benefits to society than costs. In these reply comments, ACI will address a few specific statements made by others during the comment period.

**No Economic Basis for Regulating Broadband Providers and Services**

As our comments concluded and based on our review of market structure, conduct and performance, there is no obvious market failure that would justify Title II regulations.<sup>1</sup> Even if there were some evidence of market failure, that finding is not a sufficient condition to warrant regulations, since government regulations can produce worse outcomes than imperfect markets. Imperfect markets must merely outperform regulatory imperfections. Government

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<sup>1</sup> American Consumer Institute Center for Citizen Research, [Comments](#), FCC WC Docket No. 17-108, July 17, 2017.

failures can lead to lengthy and costly proceedings, invite rent-seeking, create inefficiencies in pricing and product differentiation, misallocate resources, and raise the industry's cost of capital. That, in turn, will lead to higher costs and prices, as well as a reduction in investment, jobs, innovation and consumer welfare. We concluded that the cost of regulations far outperformed any potential benefits. We encourage the Commission to complete a thorough analysis of the social welfare consequences from these regulations.

## **States Should Not Regulate Broadband Services**

NARUC's calls for state regulatory authority over broadband services, covering various aspects services, including "service quality, fraud, issues of public health and safety/reliability, and universal service."<sup>2</sup> Such recommendations highlight the risk of costly regulation and the self-serving nature of regulatory creep. Subjecting broadband services to open-ended and lengthy regulatory processes in the states would severely impede market investment and technical change; and it would affect innovation for advanced applications and equipment throughout the Internet ecosystem. Simply put, it would enable a patchwork of overbearing Title II-style regulations across all 50 states and the District of Columbia. More regulation is not needed and not justified.

## **Internet Regulations Create Uncertainty and Reduce Investment**

Some comments have suggested that removing broadband regulations would create uncertainty.<sup>3</sup> The exact opposite is true.

Common carrier and onerous net neutrality regulations may negatively affect the ability of network providers to differentiate their services among rivals; they may restrict the ability of broadband operators to manage networks in ways that are privately beneficial without being publicly detrimental; they may require infrastructure providers to subsidize would-be rivals through below cost wholesale rates irrespective of the relationship between expected costs, revenues and cash flows; and they may impose onerous common carrier regulations without first demonstrating a market failure.

Because broadband investors supply the scarce capital to achieve high rates of capital formation needed for competitive and ubiquitous state-of-the-art broadband networks, the imposition of common carrier regulations on network providers will diminish incentives and opportunities to continue network innovation and infrastructure investment, thereby affecting the spillover of benefits to edge providers.

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<sup>2</sup> National Association of Regulatory Utility Commissioners, [Comments](#), FCC WC Docket No. 17-108, July 17, 2017.

<sup>3</sup> For example see, the Internet Association, [Comments](#), FCC WC Docket No. 17-108, July 19, 2017, which states "Now is not the time to create uncertainty in the most robust segment of the economy."

Regulatory constraints on network providers increase uncertainty and risk, reduce prospects for growth, and undermine network managers' incentives and opportunities to adapt to rapidly changing market conditions in the Internet ecosystem. Thus, regulations that reduce network investment also reduce innovation in the Internet ecosystem and undermine effective competition, potentially increasing market concentration.<sup>4</sup>

Market choices on "how much" to invest and "where" to invest have been a staple of economic and financial textbook for a long time. It is indisputable that firms invest to maximize shareholder value, and that decision to invest is affected by uncertainty, which is influenced by regulatory changes that cannot reasonably be forecasted or estimated today.

The risks of common carrier and onerous net neutrality regulations are obvious. Because capital expenditures on plant and equipment have long lives, their value rests entirely on the present value of future cash flows. These cash flows are dependent and influenced by future regulatory changes, which can add, delay or create ambiguity, take away opportunities of value, lack transparency, lead to rent-seeking and gaming by competitors, and others risks. It is easy to find each of these sources of risk in regulations under review in this proceeding.

### **Broadband Regulations Lead to Reduced Consumer Welfare**

Our earlier comments provided numerous citations of empirical studies that demonstrated the consumer welfare losses resulting from onerous broadband regulations. These empirical findings are supported by the well-established and widely recognized general linkages between regulation, lost investment and consumer welfare.

Considering the glacial pace of regulatory decision-making in the context of the rapid pace of technological innovation, it is not uncommon for a single regulatory decision can span several generations of wireless handsets. Administrative procedure requirements dictate long pleading cycles, which contributes to delays in review and analysis, as well as added costs. Higher costs will mean less investment, reduced output and higher consumer prices, thereby resulting in consumer welfare losses.

Moreover, regulatory decision lags can have significant adverse consequences on consumer welfare. A review of regulatory history teaches us that the greater the economic stakes and the greater the financial or political strength of stakeholders, the slower the regulatory process will be, and the less definitive will be any regulatory outcome. In other words, these regulations would increase market uncertainties, not reduce them.

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<sup>4</sup> Steve Pociask and Joseph Fuhr, "Concentration by Regulation: How the FCC's Imposition of Asymmetric Regulations Are Hindering Wireline Broadband Competition in America," The American Consumer Institute, January 2016.

One example of how broadband regulations can reduce consumer welfare is the scrutiny that took place over zero-rated services, something that one commenter referred to as a “disservice to consumers.”<sup>5</sup> Since these services can make some consumers better off without making other consumers worse off, these are, by definition, a “*Pareto improvement*,” meaning that they unquestionably lead to an increase in total consumer welfare. These zero-rated plans serve as a form of product differentiation and competition. Thus, blocking these plans would adversely affect consumer welfare, wireless competition, innovation, and it will curb investment.

Furthermore, the consequences of regulations have real effects on investment, job creation and consumer welfare. Broadband providers invest twice as much per dollar of cashflow into the economy compared to larger “edge” providers, and they create twice as many jobs per dollar of revenue – all while earning substantially lower rates of returns.<sup>6</sup> Large edge providers are not only more profitable, but more concentrated.<sup>7</sup>

Higher regulatory costs and risks will mean that broadband network providers will invest less, and that consumers will pay more for less. While broadband network providers are worse off by these regulations, so are consumers.

## Summary

Capital budgeters, investment managers and financial market investors will regard all this regulatory uncertainty as undermining efforts to forecast costs and revenues, thereby increasing investment risk and raising capital costs. The economic literature shows us that, as production cost increases, the quantity (and quality) produced decreases. This means that consumer prices increase, as consumer welfare decreases. This consideration of social welfare should be of paramount importance to the Commission and serve as the basis for ridding broadband services and industry of these onerous and costly regulations.

In conclusion, we disagree with several commenters and find that there is no economic basis for regulating broadband services and providers, or giving authority to the states to regulate. Instead, we find that Internet regulations create uncertainty and reduce investments. This, in turn, leads to restricted output, higher prices and reduced consumer welfare. We believe that any perceived benefits from current regulations are substantially offset by higher

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<sup>5</sup> Joint Internet Engineers, Pioneers, and Technologists, [Comments](#), FCC WC Docket No. 17-108, July 17, 2017.

<sup>6</sup> See Steve Pociask and Joseph P. Fuhr, “Establishing a New Policy Paradigm That Encourages Broadband Deployment and Job Creation, American Consumer Institute, Center for Citizen Research, December 2016, at <http://www.theamericanconsumer.org/wp-content/uploads/2016/12/ACI-Internet-Regulations-Final-Study.pdf>; and Larry F. Darby, Joseph P. Fuhr and Steve Pociask, “The Internet Ecosystem: Employment Impacts of National Broadband Policy,” American Consumer Institute, Center for Citizen Research, January 28, 2010; and

<sup>7</sup> Scott Cleland, “Debunking Edge Competition: Myth Predicate in FCC Title II Broadband Order,” FCC Comments, August 9, 2017 at <http://precursorblog.com/?q=content/how-internet-cartel-won-internet-and-internet-competition-myth>.

costs. Therefore, the Commission should end these regulations and consider future remedies, if needed, on an *ex-post* basis.