TO: FCC
RE: Comments for 17-108 from FCC-CIRC1705-05
DATED: 2017-Aug-30
FROM: Erin DeSpain
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To whom it may concern,

The document FCC-CIRC1705-05, herein referred to as the "Notice of Proposed Rulemaking" or (NPRM) is riddled with factual inaccuracies and falsely premised interpretations of events and information that seriously undermine the proposal rule to eliminate Title II. This author has identified several such inaccuracies which they feel duty-bound to bring to the committee and the public in opposition to any such rule-making which would undermine Title II.

The chairman of the committee has made some false or weakly supported claims that severely undermine the rationale for the changes proposed and should be fully understood by the committee in a serious fashion before any rulemaking is legally codified:

* Paragraph 4 *

MISLEADING CLAIM:
"The Commission's Title II Order has put at risk online investment and innovation, threatening the very open Internet it purported to preserve."

EVIDENCE AND COMMENTARY:
The evidence does not clearly show a cause-effect decrease in investment when write-downs, capitalization, and cash requirements after major acquisitions are factored in.

Exhibit A) https://www.usatoday.com/story/tech/news/2017/05/05/did-net-neutrality-keep-broadband-out-low-income-neighborhoods/100979808/

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

No direct linkage is shown between the rollout of Title II and reduced investment in networks that provide Internet access to consumers. Instead, the data shows that businesses used accounting practices to change the appearance of investment data—not an actual decrease in investment activities. Furthermore, the variations in investment amounts referenced by the Chairman do not appear to be outside of the regular variation of capital investment by the overall industry. In this way it appears the proponents for NPRM have 'cherry-picked' facts to suit their interpretation of events—and further discounted countervailing facts which might oppose their interpretation of events.
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* Paragraph 27 *

MISLEADING CLAIM:
"We believe that Internet service providers offer the 'capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.'"

EVIDENCE AND COMMENTARY:

The justification that telecom companies, whose primary purpose is to 'transmit data', should be reclassified on the basis that they somehow "generate, acquire, store, transform, process,… information" is laughably unfounded. As a person who specializes in network engineering and support I find this claim entirely outrageous. First, because over the last several years ISPs are almost universally selling off assets that act in any way as data-processing. http://www.reuters.com/article/us-centurylink-m-a-datacenters-idUSKCN11E32Q Secondly, because the services which consumers purchase from ISPs have absolutely nothing to do with the services the Chairman claims are provided. They are entirely different services and cannot be conflated into the same service category merely by association. The services the Chairman claims ISPs provide are actually sold by separate business units within the ISPs and are NOT provided with telecom Internet services at all. Let me repeat that: these ancillary data services are NOT bundled with ordinary Internet services—at all—ever. The provision of a data center is NOT in any way to be equated as a provision of telecom Internet services.

Because ISPs provide no significant data-processing services apart from shuffling information packets from one location to another services provided by ISPs are in no way special or different from ordinary telecom services. An operator switching signals from one line to another is essentially the same as routing service equipment provided by ISPs that moves information packets from one line to another—the principal difference being speed of switching due to computerization. None of the information of "posting social media," or "reading a newspaper," or "browsing the results of a search engine" is provided as part of an ISP's Internet service. This kind of talk is purely manipulative and misleading.
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* Paragraph 29 *

MISLEADING CLAIM:
"In contrast, Internet service providers do not appear to offer 'telecommunications,' i.e., 'the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received," to their users. For one , broadband Internet users do not typically specify the 'points' between and among which information is sent online. Instead, routing decisions are based on the architecture of the network, not on consumers' instructions."

EVIDENCE AND COMMENTARY:
The "points" specified by users are not the points of the "route" but instead the points of "destination". The Chairman has misinterpreted this definition favorably towards a particular view; however, it was clear that the original intent of the interpretation was meant to support the idea that the user chose the destination, not the route—otherwise users of telecom services would have needed to determine the exact channels, lines, and even poles over which a telecom signal would travel in order to apply. This was not the case. Surely the Chairman is using an absurd interpretation.

Furthermore there is no material "change in form" of the information, as would have been originally interpreted. The original meaning was that the information input to the telecom system was the same as the information output from the telecom system. Previously telecoms under Title II transformed audio signals to electrical signals and then back to audio signals that were materially the same audio signals coming out as were going in. Title II applied to these signals. The Chairman is disingenuously arguing that transforming a signal from analog to digital is somehow a "further" transformation that would qualify telecoms from protection from Title II when in fact the signal sent is exactly the same as the signal received—rendering no appreciable difference between telecom and Internet Service

Provided—this is evidenced by the fact that this message, sent by the Internet is received in exactly the same manner, with the same arrangement of words, as was sent.

* Paragraph 31 *

MISLEADING CLAIM:
The Chairman attempts to argue that ISPs are an “Information Service” because services provided over the Internet are interactive.

EVIDENCE AND COMMENTARY:
The Chairman presents no evidence that the ISPs actually provide the services referenced in section 203—or in the claim. The services referenced are in fact *other* services NOT provided by the ISPs themselves, but instead by third-parties unaffiliated with the ISPs.

* Paragraph 32 *

MISLEADING CLAIM:
“Section 231... expressly states that ‘Internet access service’ ‘does not include telecommunications services.’”

EVIDENCE AND COMMENTARY:
Below is what Section 231 says; however, at the time this was written Internet services DID NOT include traditional “voice over Internet protocol” (VOIP)--where telecom services were essentially bundled with Internet services. At that time these services were separate and not combined. AOL was still the number one provider of Internet services for the US—and it provided them over computer modem. Since then all telecom services are essentially transformed and now ALL telecom is provided “over” the Internet. They are no longer separate. As evidence, I even attempted to obtain a “copper-wire” telecom phone connection recently for a client and the local telecom Internet provider said it was no longer available. The rationale that these two services are somehow separate is patently absurd. Internet service providers are telecom providers and the neutral carrier restrictions that applied to telecom are now equally applicable to ISPs.

“The term ‘Internet access service’ means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.”

* Paragraph 79, 82, 84 *

COMMENTARY:
For what purpose does the FCC question the need for a no-blocking rule? The rule was imposed after overwhelming public comment that made it clear that the public has little/no interest in selective delivery of information (where the carrier of that information might maintain a bias or competing interest). The No-Blocking rule is EXACTLY what I want in an information carrier.

I believe I’ve been personally impacted when Verizon attempted to throttled my video streaming service to Netflix so it could promote its own competing video streaming services. Given past

experience, I'm highly skeptical that ISPs will do the right thing when it comes to delivering content when they have competing self-interests to do otherwise. This rule should remain.
Furthermore the no-throttling rule and the no-prioiritzation rules should likewise remain—as there is no justification for their removal—given their overwhelming public support. The chairman cannot show a significant need to remove these rules, therefore they should remain in place until there is substantial public support for their removal.

In totality I hope the committee will consider the above-mentioned claims as evidence that the premises on which the FCC has determined to undertake the NPRM are founded on weak soil—furthermore that the specific actions the FCC Chairman requests find little support except from industry insiders.

Furthermore, given that the Chairman has been a former employee of the firm now regulated by this same body, and the proposals put forth by the said Chairman I deeply question the integrity of the Chairman as a fair arbiter of a public good. I suggest that the Chairman in fact may still hold interest with the firms now regulated by the body and is morally compromised by these same interests—to the effect that certain actions undertaken by the Chairman may represent a failure to act in good faith on behalf of the general public. Namely, the loss of public comments regarding this matter which have been auspiciously abbreviated from public record—and thereafter refused any further inquiry into the matter of their disappearance.

If such behavior were to prove an act of bad faith, I submit that the entirety of NPRM, largely a product of the work of his office, should be removed in its entirety—and that a new Chairman be appointed in place of the existing Chairman.

Most Sincerely,

--Erin DeSpain