

Before the
Federal Communications Commission

In the Matter of
Restoring Internet Freedom
Proceeding 17-108

Comment-Response of Andrew Norton,
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Table Of Contents

| | |
|--|-----------|
| Table Of Contents | 2 |
| Personal Background | 3 |
| Response to Comments of Debbie Latham et al. (more than 818,866 copies filed) | 4 |
| Response to Comments of Peyton Owens et al (more than 83,000 copies filed) | 9 |
| Response to comments by Taxpayers Protection Alliance | 11 |
| TPA's Initial Comment | 11 |
| TPA's Reply to Comments | 17 |
| TPA's Form comment (more than 380,000 copies filed) | 19 |
| Summary of TPA comments | 21 |
| Summation | 22 |

Personal Background

I am Andrew “K`Tetch” Norton and I have been working in the digital field for over 30 years. I have been the lead researcher for Torrentfreak.com - a Netherlands-based news site which focuses on p2p and streaming news - since April 2007. This has resulted in me consulting with lawyers working on ‘copyright troll’ cases nationwide, and acting as an expert in the networking and p2p field, including as an expert witness in court. Prior to this, I have worked in numerous technical fields, including as a technical/safety advisor and inspector on the Comedy Central show “BattleBots” for 3 seasons (as well as the initial genesis for what became Mythbusters) and between 2001 and 2015 I worked in my spare time on the Muon1 Distributed Particle Accelerator Design (Muon1 DPAD) project based out of the Rutherford Appleton Laboratory (RAL) just outside Oxford in the UK, working on design, testing, and some infrastructure tweaking of a Muon-based particle accelerator.

Finally, between 2011 and 2015 I worked on the Electronic Frontiers Forums lecture series, both as a moderator and speaker, and as the technical producer. This covered a number of technical and law topics, including a number specifically dedicated to the topic of Net Neutrality.

Needless to say, I’ve had a wide range of experiences in the technological field, especially when it comes to the subject of net neutrality. Indeed I made one of the first contributions to this current ‘fight’ ten years ago. Thus follows my comments on the subject of proceeding 17-108 “Restoring Internet Freedom”.

I also enjoy drinking from oversized mugs, although being civilized, I prefer tea to uncouth coffee.



Response to Comments of Debbie Latham¹ et al. (more than 818,866 copies filed)

This comment is not specific to any one submitter, and the name listed was just the first name shown when searching for the full comment text in the FCC system. It's originating text is from the Center for Individual Freedom, and shall hereafter be referred to as the "CFIF comment"

The comment is by far the single most common response submitted, although this is due not to public interest, or the quality of the submission, but because of an automated script, submitting it with often falsified details (and thus not representing the views of the named submitter) and thus all such comments should be considered in a negative light from the onset. A significant number of people have, during this comment period, contacted the FCC and asked that the comments fraudulently submitted in their name be removed from the record, although I'm unaware of any having been removed) and so this should also weigh negatively in any consideration given to the comment.

The text is also taken from "The Center for Individual Freedom" and is repeated verbatim². While that should not disqualify the comments on the face of it, the context of its origin - a lobby group that strongly espouses conservative values, and opposes transparency in contributions for political campaigns is hardly going to be the most unbiased and 'accurate' disseminator of knowledge.

The text of the comment at issue is as follows

"The unprecedented regulatory power the Obama Administration imposed on the internet is smothering innovation, damaging the American economy and obstructing job creation. I urge the Federal Communications Commission to end the bureaucratic regulatory overreach of the internet known as Title II and restore the bipartisan light-touch regulatory consensus that enabled the internet to flourish for more than 20 years. The plan currently under consideration at the FCC to repeal Obama's Title II power grab is a positive step forward and will help to promote a truly free and open internet for everyone."

I will address each sentence separately.

¹ <https://www.fcc.gov/ecfs/filing/107182976306769> Comment of Debbie Latham

²

<http://cfif.org/v/index.php/commentary/62-technology-and-telecom/3596-center-for-individual-freedom-mobilizes-americans-opposed-to-the-obama-administrations-title-ii-internet-power-grab-> - Center for Individual Freedom

“The unprecedented regulatory power the Obama Administration imposed on the internet is smothering innovation, damaging the American economy and obstructing job creation.”

The Regulatory power - reclassification to Title II - is hardly unprecedented. In 2005 the FCC reclassified DSL and dial-up based systems from Title II to Title I ³ following the brand X decision. Thus telecom-based internet connections were reclassified to match a 2002 declaratory ruling by the FCC⁴ that CATV [cable] -based internet connections were an information service. Thus it is hardly unprecedented regulatory power, when that same power was used for the same purpose just 15 years ago.

Secondly, the claim of smothering innovation, damaging the economy and obstructing job creation is totally without merit or evidence. In 05-151 the arguments made for classification to Title I from II were these exact same phrases. Yet these promises were never checked, never challenged, and never carried through on. Indeed, it may well be argued that the reclassification to Title I had the opposite effect intended, and did exactly what the CFIF comment claims fixing that error will do.

Internet connection speeds in the US were world-leaders in the pre-2005 years, especially the segment under Title II control. Now not only does the US get further behind each year, but infrastructure rollout has been asymmetrically weighted more and more to high density, high profit markets. Chairman Pai has been undergoing a rural broadband tour while this comment period is open, addressing the digital-divide, and pledging to fix it. Yet he's pursuing this policy which is one of the drivers of the problem he wants to solve.

Investigations into network spending over the last few years have shown no negative impacts from net neutrality or Title II reclassification. Indeed, it seems to have actually spurred investment as ISP's will no longer be able to rely on questionable 'network management techniques' to prioritise certain products or types of traffic, and instead will have to make it a better product.

In addition, filings with the SEC have shown that ISPs see no negative impacts in their infrastructure. These filings (which unlike FCC comments, are legally required to be honest) show no negative impact as a result. Indeed, as with most businesses, the main negative cost comes from chairman Pai's decision to undergo another reclassification, causing uncertainty for ISPs.

³ FCC Docket 05-151

⁴ FCC docket 02-77

In addition, industry lobby group The Internet & Television Association (formerly and hereafter “NCTA”) boasted that “internet speeds have continued to soar”⁵ after the Akamai Q1 2017 “State of the Internet Report”⁶ showed significant growth AFTER the Title II reclassification.

There is no evidence to backup the comments claims, and significant evidence from ISPs themselves in legal filings, and corroborated by outside research, that investment may actually be assisted by the reclassification to Title II.

“I urge the Federal Communications Commission to end the bureaucratic regulatory overreach of the internet known as Title II”...

This fragment again relies on people not knowing the history of ISPs and the Titles. As previously noted, most internet technologies were previously under Title II, and thus this word-salad is thrown in without factual basis.

In addition, in United States Telecom Association et al v FCC the US Court of Appeals for the DC circuit ruled on June 14 2016⁷ that it was in no way an overreach by the FCC, bureaucratic, regulatory, or otherwise.

As such this section is nothing more than fiction drenched in hyperbole.

...” and restore the bipartisan light-touch regulatory consensus that enabled the internet to flourish for more than 20 years.”

At present, the internet as commonly thought of is a bit over 30 years old. However, most people only think of the internet as the period following the development of the World Wide Web to greater public interest, around 1996, In 1997 the DOCSIS (Data Over Cable Service Interface Specification) standard was developed, enabling cable companies to start rolling out internet connections in a cost-effective manner to customers. Various proprietary (expensive) cable internet protocols had been tested since roughly 1993, but none reached mainstream penetration in markets, and most were rapidly converted to DOCSIS-based systems.

However, it wasn’t until 2002 that the FCC issued an opinion (noted above) that stated cable internet was under Title I and not title II as everyone had assumed. It wasn’t until 2005 that telecom-based (dialup/DSL) internet connections were also moved to Title I from Title II.

⁵ <https://www.ncta.com/platform/broadband-internet/americas-internet-speeds-continue-to-soar/>

⁶

<https://www.akamai.com/us/en/multimedia/documents/state-of-the-internet/q1-2017-state-of-the-internet-connectivity-report.pdf>

⁷

[https://www.cadc.uscourts.gov/internet/opinions.nsf/3F95E49183E6F8AF85257FD200505A3A/\\$file/15-1063-1619173.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/3F95E49183E6F8AF85257FD200505A3A/$file/15-1063-1619173.pdf) - USTA et al V FCC ruling.

At this point there were major build outs, and access in a majority of the US. In effect the establishment of the US broadband infrastructure was conducted under Title II.

If we take a start date of 1993 for both telecom-based and cable based internet systems, we'll find that in the last 24 years, cable internet has spent 11 years under both assumed (before 2002) and explicit (post 2015) Title II regulations. telecom-based services have spent 14 years under Title II. Any period before 93 would be exclusively telecom-based, and further underscore that the 'light-touch bipartisan regulations that enabled the internet to flourish" were indeed those of Title II.

Indeed, chairman Pai should be well aware of the wide ranging success and 'flourishment' of internet connections under Title II, as between February 2001 and April 2003 his job at Verizon inc. included "counseling of business units on broadband initiatives". This is a period when Verizon's connections would have been under Title II.

In addition, the period 2005-2015 was a period of relative stagnation in the US broadband market. Under Title I, broadband rollout faltered. State subsidised projects were never completed to contract (or at all⁸).

In 2005 I had DSL service with Bellsouth in the city of Shady Dale, Ga. at 6/0.5Mbit. In 2007 plans were afoot to run U-verse fiber. I was told by multiple technicians that the fiber was in the local offices awaiting installation (due to my research into Comcast's usage of Sandvine for TorrentFreak - which is the root cause of the long chain of regulatory actions leading to Title II reclassification - a reliable connection was essential and the faster the better). In 2014, when I left that property, precisely zero upgrades had been made. During that 8 year period, repairs grew ever-more delayed, as if legacy DSL connections were a low priority nuisance.

In fact that is the case. Following Storm Sandy, Verizon and other telcos in the area did all they could to avoid repairing (let alone upgrading) copper-based installations⁹, preferring instead to try and push people to "VoiceLink" a cellular-based system that has reduced reliability (requires consumer battery units for power), compatibility (not suitable for use with home alarm systems), and utility (no dial up capability or fax capabilities)¹⁰, but does have vastly increased profitability.

This is not 'flourishing' by a long way. That these practices and the greater net neutrality violations described in other comments only started occurring after the blanket reclassification to Title I in 2005 should be telling.

8

<https://www.techdirt.com/articles/20140424/06185027014/verizon-knows-youre-sucker-takes-taxpayer-subsidies-broadband-doesnt-deliver-lobbies-to-drop-requirements.shtml>

⁹ <https://muninetworks.org/content/verizon-plans-abandon-copper-wires-islands-damaged-sandy>

¹⁰ <https://www.verizon.com/support/consumer/phone/voice-link>

“The plan currently under consideration at the FCC to repeal Obama’s Title II power grab is a positive step forward and will help to promote a truly free and open internet for everyone.”

The reality is that this statement, like all other, is completely void of factual basis. “Obama’s Title II power grab” ignores that the reclassification came at the ‘hinting’ of the courts in Verizon v FCC (2014), came following a significant comment period, and two previous attempts to enforce long-standing bipartisan policy (developed under the Bush-43 administration) had been objected to as the regulatory basis was too weak. It was far from ‘Obama’s power grab’. It was the 3rd attempt using a gradually expanding system to implement rules. Significant public support and all available data supported the decision.

The idea that reclassifying back to title I will be a positive step forward is ridiculous and a source of laughter not just for most people, but other primates as well, such as Naruto, the selfie-taking Celebes crested Macaque pictured below.



The cause of the reclassification to Title II stems from violations of the Open Internet Order by Comcast, and attempts by the FCC to enforce it. As I have noted in my comment¹¹ there have been numerous violations by various ISPs. To claim there’s no harm is to ignore reality.

Those actions by ISPs were directly contrary to the idea of a ‘truly free and open internet for everyone’ espoused by the CFIF.

Title II reclassification was necessary to deal with ISPs that acted contrary to the ideals the FCC had placed on internet connectivity more than a decade ago.

¹¹ <https://www.fcc.gov/ecfs/filing/10718674924132> - Comment of Andrew “K`Tetch” Norton, 17 July 2017

Response to Comments of Peyton Owens et al (more than 83,000 copies filed)

This comment is also not specific to any one person, but over 80,000 copies of it appear to have been submitted. I've chosen a specific instance¹² of this comment that I know the named person did not submit at all. It is a fraudulent comment, especially as ALL instances of this comment that were submitted, were sent between May 26 and May 30 2017, according to the FCC ECFS system¹³. As a result, the credibility of this tsunami of identical comments, submitted at an average rate of one every 3 seconds, is absurdly low to begin with, but analysis of the contents shows it to be mostly nonsensical claims that hit political target points while being wrong in every possible sense.

The text of the comment is as follows.

The free-market Internet was an incredible engine of economic growth, innovation, and job creation since the 1990s and has already been substantially slowed by the 2015 Net Neutrality rules. The slowdown in investment is destroying jobs and risks a big future tax hike to make up for lost private investment. Save American jobs by repealing Net Neutrality.

I can find no direct origin for this comment text, which means it's not a public text repurposed. It is a deliberate private mass submission, likely by or at the behest of, the text's author. As above I shall break down the comment to make it easier to respond to.

The free-market Internet was an incredible engine of economic growth, innovation, and job creation since the 1990s

Indeed it was. As noted earlier, cable internet connections were assumed to be under Title II regulations until 2002, while telecom-based connections were under it until 2005. The large economic growth alluded to then was under Title II, and thus directly contradicts the commenter's claims.

and has already been substantially slowed by the 2015 Net Neutrality rules.

As noted above with sources, this is substantially not true. Since 2015 infrastructure has grown faster. Innovation continues apace regardless since the internet is a global system, US regulations have little impact on innovation, as it would just continue in another country if

¹² <https://www.fcc.gov/ecfs/filing/10603184748403>

¹³ A search was made for the first sentence, then sorted by date received, ascending and descending.

impeded by regulation in the US. What job reductions have happened have taken place not because of Net Neutrality or title II regulations, but because of mergers leading to elimination of duplicate or otherwise unnecessary personnel, or outsourcing to maximise profits. Legal filings by the ISPs flat-out contradict this assertion.

The slowdown in investment is destroying jobs

Again, as already noted, investment is growing, jobs are being 'destroyed' through outsourcing to boost short-term profitability. As an example, following approval from the FCC and FTC in 2015, AT&T bought and took over DirecTV. AT&T then terminated over 1,000 US-based technical support and call center staff from DirecTV (mostly working under contract at Asurion), outsourcing those overseas. If employment is the goal, the issue is consolidation, not Net Neutrality, or Title II.

and risks a big future tax hike to make up for lost private investment.

Not quite sure how the tax hike would come about. The US Broadband infrastructure is already heavily subsidised by the US taxpayer. Over \$200B had been paid to the various US ISP's so that by 2006 86 million households would have access to 45 Mbit symmetrical connections¹⁴. In 2010 the FCC released the National Broadband plan, which set the goal of 100/50Mbit connections available to 100 million households by 2020. More than double the timeframe of the initial plans, a slight performance increase, and a 16% increase in raw reach. However, there were only 114M households in 2006, whereas there will be around 130M in 2020. That means the aim of 75.5% penetration in 2006 is now 77% by 2020. In essence 14 more years to reach the same goal.

Many already find the cost far too high¹⁵ as it is, and yet upgrades and taxpayer funded installations are not being carried out, often after charging taxpayers for years. Verizon, for instance, struck a 2008 deal with NYC for 100% FiOS deployment by 2014. So by mid-2015, you'd expect it to be done? Well, no, it was actually at between 45-55%, focused more on the affluent areas. NYC was not happy¹⁶.

In 2014 Verizon also used fake comments submitted to the New Jersey Board of Public Utilities to finagle out of a 1993 deal to wire the state with fiber by 2010, claiming the slower, less reliable, more expensive and capped LTE wireless service would suffice.

¹⁴

<http://muniwireless.com/2006/01/31/the-200-billion-broadband-scandal-aka-wheres-the-45mb-s-i-already-paid-for/>

¹⁵ <http://www.pewinternet.org/2015/12/21/home-broadband-2015/> Pew Home Broadband survey 2015

¹⁶

<http://www1.nyc.gov/office-of-the-mayor/news/415-15/de-blasio-administration-releases-audit-report-verizon-s-citywide-fios-implementation>

Save American jobs by repealing Net Neutrality.

The idea that Net Neutrality costs jobs is a concept that is difficult to get one's head around. The idea that content from any provider should be treated equally to content from another does not lead itself to a cost in jobs. On the contrary, abandoning net neutrality would cost jobs, as ISPs can pick winners and losers in content providers and services, and essentially make or break companies. Verizon, Comcast and AT&T could destroy netflix (which celebrated its 20th birthday today) through throttling, sandvine-like man-in-the-middle RST spoofing, or zero-rating other services and placing arbitrary usage caps on connections, which would cost 3,500 jobs.

Net Neutrality enables any new company to use the infrastructure on an equal footing with anyone else, much as the road network has for more than a century. It means any business with an idea and a product can use the internet to compete on the basis of product quality and price, and not which ISPs you can pay off/bribe to give you a leg-up on competitors like highwaymen of yore, demanding a toll to have their stagecoaches (or data packets in this case) pass unmolested.

Response to comments by Taxpayers Protection Alliance

TPA's Initial Comment¹⁷

As a new (established 2011) lobby group that claims to be non-partisan, it's notable that most of its leadership are extremely conservative. This is apparent in the way both the comment and the reply to comment by the Taxpayers Protection Alliance (TPA) throw conservative buzzwords around like confetti at a wedding, building a delicate structure wrapped in layers of puffery, like a glass at the end of a Greek wedding. It is left to me to step on the glass and shatter it, separating the piffle offered as comment from the cold hard reality of facts, as the glass itself separates the wedding ceremony from the reception.

Laughable comments include

"In 2015, the Commission's previous leadership bowed to an unprecedented level of political pressure and elected to impose Title II, monopoly-era telephone regulations on the digital engine of the 21st century. "

That is the opening of the second paragraph, after the first opens

¹⁷ <https://www.fcc.gov/ecfs/filing/10717217526592>

“The Taxpayers Protection Alliance (TPA) respectfully submits this letter in support of the Federal Communications Commission’s (FCC) proposal to reverse the harmful effects of the Title II Order and return the classification of broadband internet access to a Title I information service”

Just so it’s clear, Title II is bad because it’s an old law, so you should use a different section of the same old law. Make sense? No, nor to me.

Paragraph 1 continues expounding on the wonders of title I, saying:

“Adopting the proposal would undoubtedly spur greater investment in broadband networks and return to a permissionless innovation regulatory model that will benefit both consumers and businesses in the dynamic internet economy. “

Undoubtedly it says. So again, a shame that not only is it doubted, it’s probably not true. As noted above, infrastructure spending is up post title II, much as it lagged following the Title I reclassification in the middle of the last decade.

“Permissionless innovation regulatory model” sounds good, but it’s (as with most of this comment submission) backwards. Sans net neutrality, we end up with a permission-based innovation regulatory model, where ISPs can act as gatekeepers for innovation, requiring new services to ask permission.

Returning to the second paragraph:

“In 2015, the Commission’s previous leadership bowed to an unprecedented level of political pressure and elected to impose Title II, monopoly-era telephone regulations on the digital engine of the 21st century. They did this despite a lack of evidence of actual harm to consumers that would justify a move to Title II. The FCC’s Title II, a regulatory regime better suited for railroads than hyper-competitive broadband companies, empowered the FCC to adopt rules giving the federal government the power to micromanage the decisions of internet service providers and even the power to regulate their rates.”

There’s more droning about how old the communications act is, while oblivious that the issue concerns sections within the act.

There’s also an interesting claim of ‘lack of evidence of actual harm’. As noted extensively, ten years ago Comcast was caught¹⁸ using man-in-the-middle attacks against consumers, and lying about it to decide what consumers could do with their connection. This led to an FCC

¹⁸ By myself, and exposed in TorrentFreak

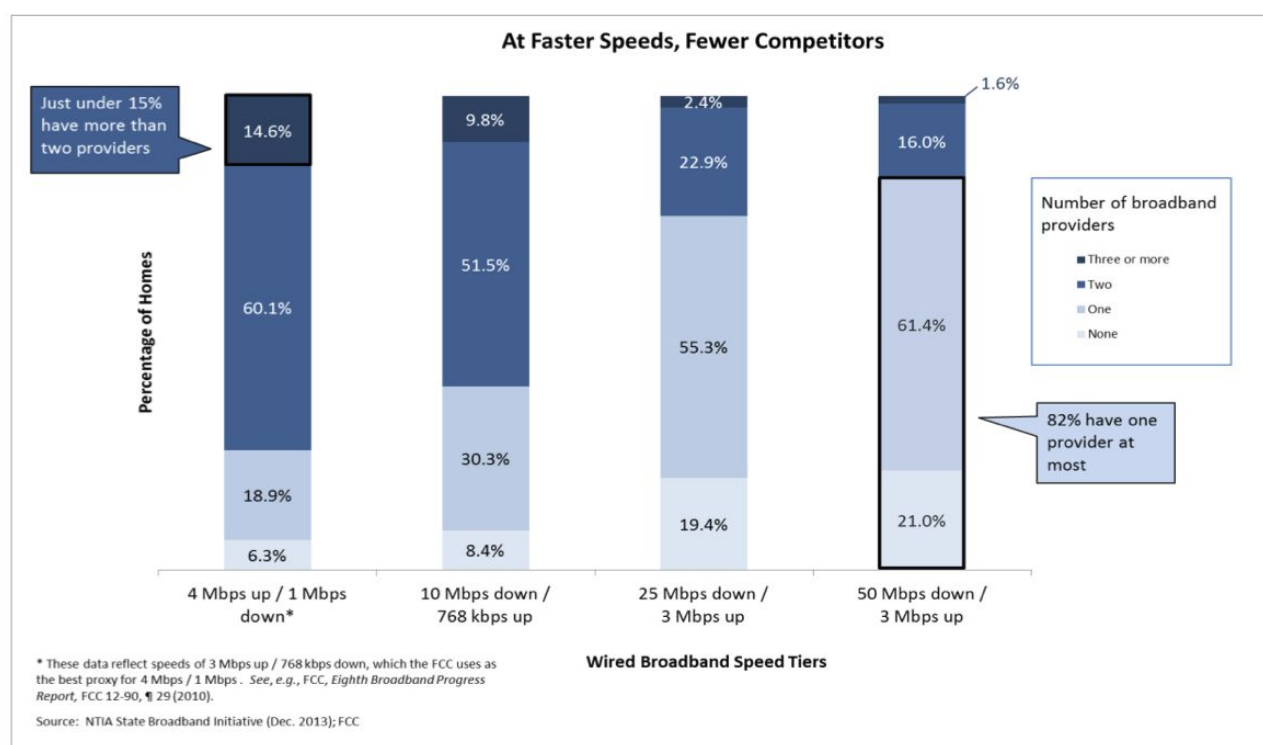
<http://torrentfreak.com/comcast-throttles-bittorrent-traffic-seeding-impossible/> 17 August 2007

investigation, and an order, which the courts knocked down, which led to another order, which again the courts ruled against, which led to Title II reclassification. This reclassification is in direct response to actual harms, proven by myself, then substantiated by the Electronic Frontier Foundation and Associated Press in their own independent tests.

In addition, there have been over a dozen different incidents that had been reported in the past 10 years, from interfering with VOIP competitors to attempt to drive customers to their own offerings, to throttling video streams to disadvantage customers. There is also one formal complaint, and 47,000+ ‘informal’ complaints filed with the FCC¹⁹ of net neutrality violations since the June 2015 reclassification. It would seem that there is ample evidence of harm to justify a move to Title II.

Jumping to the end with concerns on rates, it would seem that in his attention-seeking zeal, TPA President David Williams missed the forbearance in the 2015 decision, that meant the whole ‘rate setting’ bit didn’t apply. It’s one of those details that isn’t so much a detail as a major structural aspect.

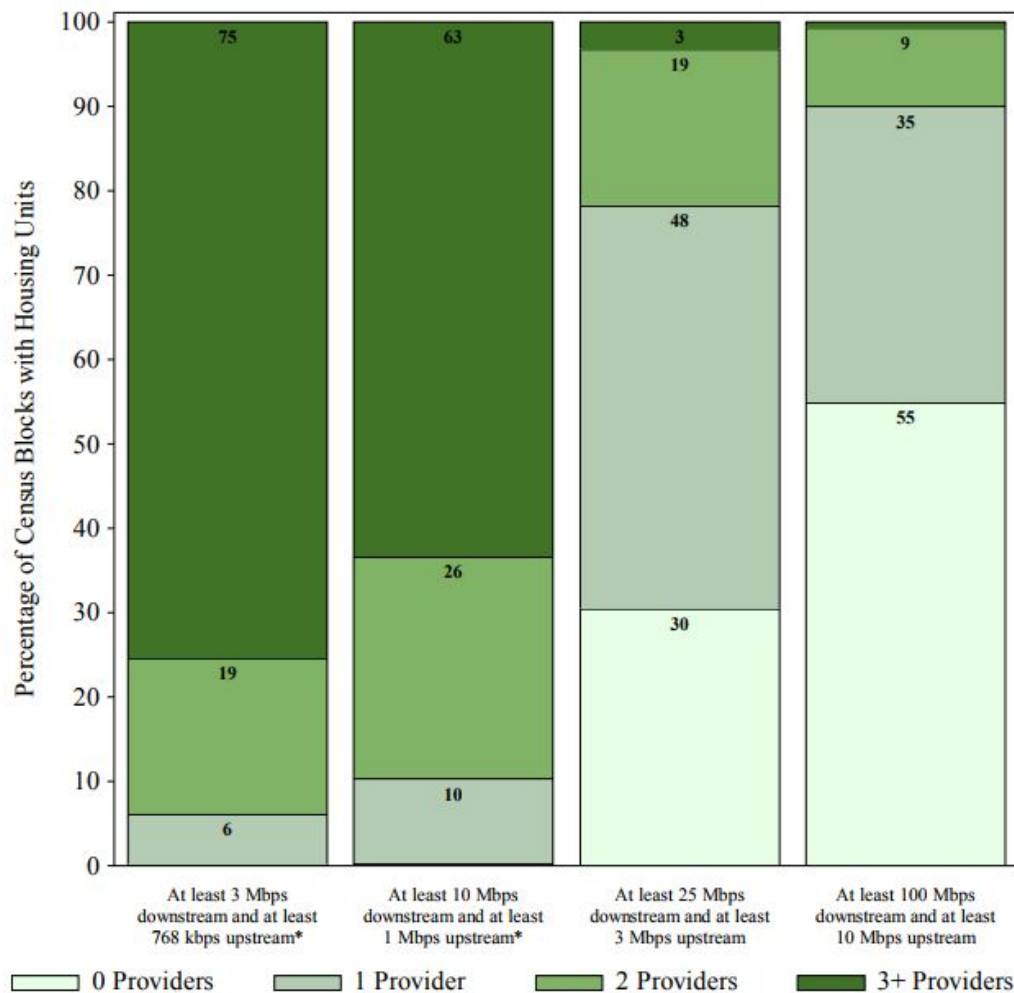
And no-one who has any understanding of the US broadband market would call it ‘hypercompetitive’. In 2014, then FCC Chair Wheeler said “At 25Mbps, there is simply no competitive choice for most Americans. Stop and let that sink in... three-quarters of American homes have no competitive choice for the essential infrastructure for 21st century economics and democracy. Included in that is almost 20 percent who have no service at all! “



Source: NTIA, State Broadband Initiative Data (Dec. 2013); FCC

The 2016 report²⁰, with data from June 2015 (at the time of the title II reclassification) showed that there'd been little growth in access to what the FCC officially defines as broadband speed, which is 25/3 Mbit (up/down). The 2013 data showed 19% with no broadband provider, and 55% with only one, for 75% with no broadband competition. The 2015 data shows 30% with no provider and 48% with only one provider for an increase of 3% uncompetitiveness.

Figure 5
Percentages of Developed Census Blocks in which Providers Reported the Deployment of Residential Fixed Broadband as of June 30, 2015



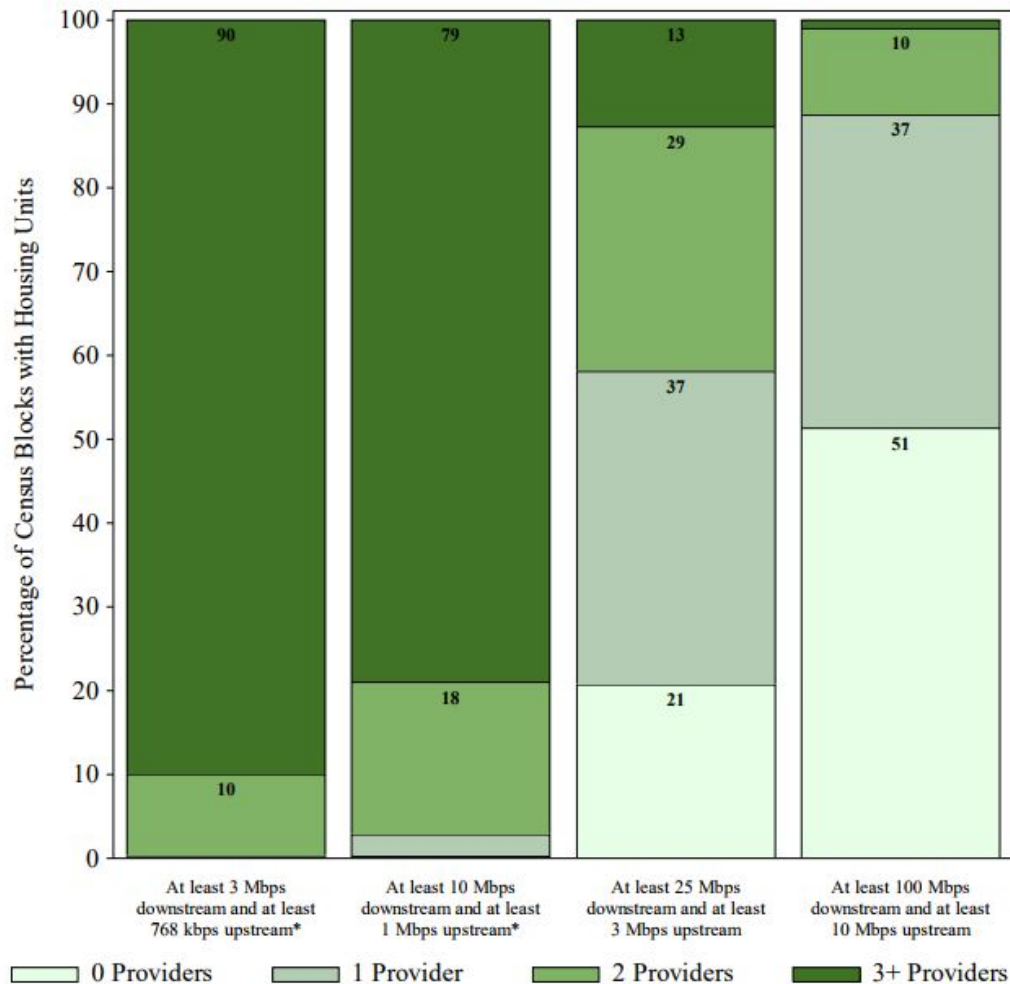
* Satellite service providers report offering Internet access at bandwidths of at least 10 Mbps downstream and 1 Mbps upstream in 99.1% of developed census blocks

Column figures may not sum to 100% due to rounding. Developed census blocks are those with housing units based on the 2010 census.

²⁰ https://apps.fcc.gov/edocs_public/attachmatch/DOC-340664A1.pdf 2016 report

The latest report from June 2016²¹ showed a marked improvement a year on under Title II

Figure 4
Percentages of Developed Census Blocks in which Providers Reported the Deployment of Residential Fixed Broadband as of June 30, 2016



* Satellite service providers report offering Internet access at bandwidths of at least 10 Mbps downstream and 1 Mbps upstream in 99.1% of developed census blocks

Column figures may not sum to 100% due to rounding. Developed census blocks are those with housing units based on the 2010 census.

The numbers not served by broadband connections has dropped to 21%, still slightly higher than 2013, while those served by only one provider dropped to 37% from 48%, meaning uncompetitiveness has dropped from 78% of census blocks to 58%.

One year of Title II gives a 20% increase in census-block level broadband competitiveness. That would see to comprehensively bust the claims that Title II harms investment.

²¹ https://apps.fcc.gov/edocs_public/attachmatch/DOC-344499A1.pdf 2017 report

However, the lack of broadband competition is so bad, that the FCC itself has proposed redefining 'competition' to potentially call areas with zero providers 'competitive' if nearby has just one provider. Again we're talking census block, and counties, and not actual households or populations. Under the new proposals, to go alongside the reclassification, and which will raise prices, counties will be deemed competitive if "if 50 percent of the locations with BDS demand in that county are within a half mile of a location served by a competitive provider."

This has significant problems, especially in the more rural areas. Take, for example, Jasper county Georgia. It's most famous for its use in the 1991 oscar-winning courtroom drama "My Cousin Vinny". Jasper county is roughly 370 square miles, but almost all businesses are located in the county seat of monticello, a town spanning just 3 square miles. Just half a dozen spread locations inside the town serving a single location would leave most of the city within half a mile of one of those points. As that would also encompass more than 50% of the locations with Business Data Services in the county, it would thus make the whole county of 10,000 people be 'competitive', and thus have zero rate caps.

It's this sort of trying to redefine 'competitive' to suit major industry infrastructure that is the real impediment, and is indicative of political pressure and intense lobbying, not the reclassification to Title II in response to real harms.

Ensuring that consumers have access to a free and open internet is an important policy objective that TPA strongly supports. As with most issues, that objective can be achieved – and was being achieved prior to 2015 – through market forces with a regulatory backstop providing limited government authority to address demonstrated harms

This statement shows an incredible lack of knowledge on the subject being commented on. The entire reason for the title II reclassification is that it was the only way, according to the courts to achieve this very objective that the TPA is in support of. In essence, with this comment, TPA actually endorses title II reclassification

While some have incorrectly suggested that net neutrality is only possible if broadband internet access is regulated as a Title II utility service, the past twenty years of bipartisan agreement on net neutrality suggests otherwise.

Apparently, those that 'incorrectly suggest' include the DC Circuit Court of Appeals. Then again, we're talking about an organisation that has submitted a comment (and then a reply-comment, AND a form letter) without actually doing any research on the topic, and having done precisely zero investigations into the legal and factual background of this 10 year saga. As pointed out on page 7, of the last 20 years, telecom-based connections have been under Title 1 for 10 years, while cable-based have been under title I for 14. It's also interesting to note that no violations of net neutrality was recorded prior to the Title I reclassifications last decade.

The desire to “remove regulatory barriers to infrastructure investment” that has driven the Commission in other dockets is an admirable goal. This Restoring Internet Freedom proceeding should be viewed in that context. As Chairman Pai has wisely noted, in the infrastructure context “every dollar that the FCC forces companies to spend [in regulatory costs]... is a dollar that cannot be spent” on deployment.

Again, there’s no barrier imposed. The TPA has provided zero evidence, but made grandiose statements based on what seems to be a half-heard news report recap, and is blatantly at odds with all the data, including the FCC’s own.

And to cap it off, there’s an elementary fallacy pushed as a moralistic point. Mr Williams’ lack of business experience is apparent if he thinks that a dollar saved on regulatory compliance gets spent on deployment, as if it was a fixed separate account that can only be used for those two things. In the grown up’s world, regulatory costs are the costs imposed in order to abide by standards and deal fairly and properly with your customers and employees. Regulations exist because there’s a need. Agencies like the FCC can not make regulatory decisions that are arbitrary or capricious, but they must be based on facts, evidence and the law. If they’re not, they can be challenged directly in court (as has happened to the two predecessors to the title II reclassification. If they’re bad/unneeded regulations, it shouldn’t be hard to use the system to have them removed on that basis. To cut regulations for the sake of cutting regulations, as championed here (and best demonstrated with Executive Order 13771²²) is bad all around.

The rest of the comment is a repetition of points previously made in the letter, although that does not make them any more factually accurate through repetition.

TPA’s Reply to Comments

The contents of this response²³ refer heavily to their initial comment and reiterate the points in it. As the previous 6 pages have shown these proclamations to be so much marsh gas, I will not dwell further on them.

Until the regulatory uncertainty of the 2015 Title II Order is mitigated, dollars that companies are forced to spend on regulatory costs are dollars that cannot be spent on deployment of new broadband infrastructure.

It is VITAL to reiterate that this current ‘regulatory uncertainty’ is entirely the doing of Chairman Pai. As noted earlier, the FCC’s own data shows no perceived uncertainty, or barriers to deployment of infrastructure. The FCC has been firm in its unwavering support for Net Neutrality

²² EO 13771 - Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs signed 30 January 2017

²³ <https://www.fcc.gov/ecfs/filing/108211720427702>

since its publication of the 4 principles for the Open Internet in 2005. This was the basis of the Comcast sandvine investigation. In that, there has been support from the last 5 FCC Chairs, from Kevin Martin to Tom Wheeler, until Pai, who seems to hide behind the term 'light touch regulation' - a phrase that means absolutely nothing - rather than give a clear statement of intent and purpose.

Removing the regulations would also boost private-sector investment, which lessens the call for taxpayer and ratepayer-funded broadband networks

A significant portion of ISP buildout during the Title 1 period was taxpayer funded. As previously noted, it was rarely completed either on time, or to specification. Further the FCC data shows that only once Title II came into force was investment made, and before that US ISPs were wallowing in monopolistic ecstasy.

Finally, in shifting back to a light touch regulatory approach, it is important to reaffirm the importance of a national policy framework for the internet. Former FCC Chairman Bill Kennard noted in a 1999 speech²⁴ that "it is in the national interest that we have a national broadband policy."

Perhaps the more pertinent quote from that speech is this one

These people are being seduced by monopoly -- and they must resist. Small businesses, entrepreneurs, and consumers of all kinds will be best served when there is true competition in all our communications services from local phone competition to broadband. They will not be served by a gutting of the Telecom Act.

This statement, of all, underscores why Pai's plan is bad. Title I has shown it doesn't promote competition in the physical space, but more importantly it would actively inhibit competition in the digital realm of edge providers.

Chairman Pai would do well to listen to chairman Kennard, and not be seduced by monopoly ISPs, and their desires to increase profits at the expense of consumers.

²⁴ <https://transition.fcc.gov/Speeches/Kennard/spwek924.html>

TPA's Form comment (more than 380,000 copies filed)

The TPA has also a form response set up. It's linked through their blog²⁵ as well as on its own domain²⁶ where a short completely fixed message requires people to fill in personal information before sending. There are some 380,000 copies of this exact message submitted²⁷.

In 2015, Chairman Tom Wheeler's Federal Communications Commission (FCC) imposed restrictive Title II, utility-style regulations under the guise of an "open internet." Not only have these regulations inhibited innovation in the internet ecosystem, they hurt taxpayers and consumers by expanding the regulatory reach of the FCC and limiting investment in internet infrastructure. We cannot allow this revolutionary tool to be bogged down with excessive government interference.

It is past time for the FCC, an agency that is funded by American taxpayers, to free the internet of burdensome regulations. By rolling back the misguided 2015 regulations we can restore an unrestricted and truly open internet. I thank the Commissioners for considering these comments during the reply period.

As with the rest of the TPA submissions, the form comment is devoid of factual content, knowledge of the topic, or even a brief understanding of the issue at hand. It relies on buzzwords, misleading statements, and counterfactual declarations.

In brief, the reclassification was not 'imposed', it was made after extensive public comment (which was overwhelmingly in favor) and the approval of the court system. There's no evidence of any innovation inhibition (in fact evidence indicates Title I encouraged stagnation). Meanwhile regulatory reach is perfectly adequate and fit for purpose (which is preventing and punishing ISPs that act in an uncompetitive, illegal or unethical way to their customers or competitors)

And while it is time for the FCC which is indeed funded by taxpayers (as is every agency, unless there's a secret 'agency for hire' I'm unaware of) the title II classification is not that. Regulations which do need changing to promote competition and deployment include those on 'one-touch make ready', and local municipal broadband authorisations.

And while there is an appropriate use of 'misguided' to be had, it is not in reference to the regulations, but in reference to the person that wrote this.

²⁵ <https://www.protectingtaxpayers.org/take-action/>

²⁶ <http://www.tpaaction.org/>

²⁷ <https://www.fcc.gov/ecfs/filing/1060325469086> - example TPA form comment submission

Summary of TPA comments

Overall, these comments by David Williams were incredibly poorly informed, almost laughable. If that is the standard of work produced by MLM Consulting LLC. (*the operating entity responsible for the activities of TPA*) then I can only assume that David Williams is actually a poorly



disguised trolling venture by the zany British comedian, David Walliams in one of his Little Britain characters, probably Carol Beer, because these submissions, like Walliam's Little Britain work, rely on catchphrases ('light touch', 'regulations bad', etc.).

Beer's character is poorly informed, abrasive and unwilling to say or do anything outside a narrow focus, and her orders are given to her from above. This role's catchphrase of "computer says No" while randomly bashing on the keyboard²⁸ is the perfect metaphor for TPA's individual and form comments.

²⁸ <https://www.youtube.com/watch?v=qNDS4kVwA68> excerpt from Little Britain USA

Summation

This is a non-exhaustive response to just some of the comments that have been submitted, certainly some of the larger ones. All told the comments responded to account for approximately 1,238,000 comments submitted to the FCCC on this topic. I deliberately chose 3 mass produced comments, as well as the individual comments of one group behind them.

What's clear is that whoever wrote the texts of these initial comments, had absolutely no interest in researching the situation, reading up on the history, or understanding the basics (let alone the details) of this whole debate. Instead of reasoned, useful comments, there's over a million comments that have as much utility as a toddlers scream. In addition, with so many of the comments provenance under question, and known cases of identities being fraudulently used to submit comments by automated [spamming] systems, it's hard to take any of them seriously.

Title II and Net Neutrality are measured, appropriate and proven solutions to the very real issues that ISPs looking to boost their profit margins, have caused, and I urge the FCC to continue not just with Title II and Net Neutrality, but to work on related issues for the good of the consumer (as the agency's mandate requires) by working to eliminate needless caps, market-rigging zero-rating, and facilitating the rollout of municipal broadband where desired.

Yours,

Andrew "K'Tetch" Norton