

Congress of the United States
Washington, DC 20515

November 19, 2015

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

During the Open Internet proceeding, the FCC heard from small businesses regarding the impact of the FCC's enhanced transparency requirements.¹ In its Order, the Commission rightly recognized that small businesses are uniquely situated and granted small businesses a temporary exemption from the requirements.² We applaud the Commission's action in granting this temporary exemption and urge you to make it permanent.

Small businesses serve as the backbone of the United States economy. In fact, small businesses represent 99.7 percent of all employers in the United States,³ create 63 percent of net new private-sector jobs,⁴ and create more than half of private, non-farm gross domestic product.⁵ These companies are the true "job creators," consistently responsible for 60% to 80% of net new jobs in each of the past 10 years.⁶

As the Chief Counsel for Advocacy at the Small Business Administration (SBA) has pointed out, "[s]mall business participation in the service of broadband is vitally important for achieving the goal of greater consumer access and choice."⁷ As the Commission learned from the record leading up to its issuance of the Open Internet Order, the enhanced transparency requirements jeopardize the ability of small Internet Service Providers (ISPs) to offer broadband services to our constituents, and to deploy faster and more sophisticated broadband networks.⁸ Smaller ISPs, particularly in rural areas, provide service to fellow small businesses. It is

¹ *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, ¶ 172 (2015) (Open Internet Order) ("[t]he record reflects the concerns of some commenters that enhanced transparency requirements will be particularly burdensome for small providers.").

² *Id.* ¶ 173.

³ UNITED STATES SMALL BUSINESS ADMINISTRATION, *Frequently Asked Questions*, available at https://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf (last visited Nov. 2, 2015).

⁴ *Id.*

⁵ <http://www.nfib.com/advocacy/economy/> (last visited Nov 2, 2015).

⁶ *Id.*

⁷ Letter from Winslow Sargeant, Chief Counsel for Advocacy, and Jamie Saloom, Assistant Chief Counsel for Telecommunications, U.S. Small Business Administration to Marlene Dortch, Secretary, FCC, GN Docket No. 14-28 at 3 (filed Sept. 25, 2014).

⁸ 2015 Open Internet Order at para. 172.

critically important to these rural communities that the ability of ISPs to offer state-of-the-art broadband services not be diminished.

Given the stakes for America's small businesses, the FCC was right to exercise caution and grant the temporary exemption. Now is the time to recognize the disproportionate impact that the requirements would have on these ISPs and their customers and make the exemption permanent. Additionally, the Commission should grant the exemption to all small businesses that meet the definitions previously set by the SBA.

In the Open Internet Order, the FCC temporarily exempted small ISPs with 100,000 or fewer subscribers from the enhanced transparency requirements; however, the Order indicated that the Commission would continue to consider the appropriate threshold for the exemption. The interim standard adopted in the Order deviates from the definitions set by the SBA for small telecommunications carriers (1,500 employees) and other small business definitions adopted by the FCC and approved by the SBA. We urge the Commission to extend this to ISPs that meet the SBA's definition of small telecommunications carrier, or the FCC's SBA-approved definition of a small wireless carrier (500,000 or fewer subscribers).

Small ISPs do not have the resources necessary for compliance with the enhanced transparency requirements, and the FCC should provide a permanent exemption from such requirements for any ISP that comports with the SBA definition of small telecommunications carrier or utilize the definition of a small carrier adopted by the FCC and approved by the SBA.

Thank you for your consideration of our views on this important issue. We look forward to your response.

Sincerely,



Fred Upton
Chairman
Committee on Energy and Commerce



Steve Chabot
Chairman
Committee on Small Business



Greg Walden
Chairman
Subcommittee on Communications
and Technology



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