

**Date:** July 18, 2014  
**To:** Federal Communications Commission  
**From:** Meredith Hochhalter J.D Candidate 2015, University of Arizona, James E. Rogers College of Law.  
**Re:** Notice of proposed Rulemaking. In the Matter of Protecting and Promoting the Open Internet. Number 14-61.

### **Response to Dissenting Statement of AJIT PAI**

Dear Mr. Pai:

Because I appreciate your candor, reasonableness and sense of reality, I am writing to ask you for help. I agree that there is something disconcerting about five unelected officials deciding the fate of the internet. I further believe that Congress is cowardly for not addressing the issue, and that the FCC has been put in an impossibly unfair position. However, the level of public participation this proceeding has drawn, mitigates the problem of democratic accountability to a degree. More than 200,000 comments have been submitted as I write this, and nearly all of them are asking for the FCC's help. It would seem that America has given up on Congress, and put its faith in you.

The FCC is tasked with regulating an area of great economic and political concern, but Congress has failed to act, and moreover the court in *Verizon* held that that power had been delegated to the FCC.<sup>1</sup> You acknowledge bipartisan agreement that the internet should remain open, and a bipartisan consensus on anything is hard to come by in today's world. I agree that the FCC is rushing into

---

<sup>1</sup> *Verizon v. F.C.C.*, 740 F.3d 623, 639 (D.C. Cir. 2014)

this regulation, but regrets will get us nowhere.

You are correct that only yellow lines and dead armadillos are found in the middle of the road, which is why I ask you to support net neutrality under Title II. It is what the American people want, and it is what the edge providers want. Bending to a handful of internet providers is neither just nor right. However, in the event that Commissioner Wheeler has succumbed so fully to agency capture that no case for net neutrality can be made, I ask you to fight for paid prioritization under Title II.

Though many people are suggesting that common carriage is synonymous with net neutrality, it is not.<sup>2</sup> As you point out, Title II only allows the FCC to quash unreasonable discrimination. The FCC has great latitude in determining what is unreasonable.<sup>3</sup> Title II is broad enough to allow for paid prioritization or to require true net neutrality, but when the internet providers overstep (and they will), Title II regulation will allow the FCC to end paid prioritization much more efficiently than 706 regulation.<sup>4</sup>

Mr. Pai, Congress has failed us, and the burden has fallen on you to protect internet openness. I ask you to be the voice of reason on behalf of the American people, and advocate for net neutrality, or at least some form of Title II regulation.

---

<sup>2</sup> Hochhalter, Comment on Proceeding 14-28, posted July 15, 2014, ECFS 2014714507605 p. 26-28

<sup>3</sup> *Id.* at 5-9.

<sup>4</sup> *Id.* at 28-30.