

The Honorable Thomas Wheeler
Chairman, Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Fred Upton
Chairman, Committee on Energy and Commerce
2183 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jay Rockefeller
Chairman, Committee on
Commerce, Science, & Transportation
531 Hart Senate Office Building
Washington, DC 20510

The Honorable John Thune
Ranking Member, Committee on
Commerce, Science, & Transportation
511 Dirksen Senate Office Building
Washington, DC 20510

May 15, 2014

Dear Messrs:

The discussion on Net Neutrality has moved away from what consumers actually want and need almost entirely into the political realm. What we need in our Internet infrastructure is not necessarily what some call a fast lane or a slow lane, but an efficient allocation of resources, so that all applications appear seamlessly to the end user. Absent convincing evidence of a market failure or demonstrable consumer harm, network management should remain a free-market contract negotiation of sorts, and not end up looking like government controlled phone service infrastructure or of broadcast/cable content regulation.

For the past decade, activists with a political agenda have pushed the increasingly outlandish conspiracy theory that in the absence of immediate and pervasive federal regulation broadband Internet will be destroyed by the companies supplying it. Unfortunately, the FCC appears to be bending to such pressure to rush through yet another iteration of complex, unnecessary and legally questionable net neutrality rule making. **We therefore respectfully call on Congress to assert its authority concerning the FCC's role, and ask the FCC to await further action from Congress.**

In *Verizon* the D.C. Circuit Court interpreted Section 706 of the 1996 Communications Act so as to give the agency authority to adopt new net neutrality rules, as long as these rules do not impose common carrier obligations on ISPs. The court's ruling may even provide the FCC with new powers to regulate Internet services beyond broadband infrastructure, such as "edge providers." The only real limit is that the FCC can't overtly treat Internet services as common carriers. But this limit may mean little.

Importantly, section 706 was not intended by Congress to constitute an independent grant of affirmative regulatory authority. This was the Commission's own understanding of Section 706 as well until the agency switched its view after its first foray into net neutrality regulation met with defeat in *Comcast Corp. v. FCC*.

Additionally, the court merely held the no-blocking and no-discrimination net neutrality rules unlawful; the court did not purport to define the boundaries of the Commission's Section 706 authority or adjudicate any particular exercises of such authority. The court did not require the agency to adopt any new regulations. Under all the circumstances – and especially the circumstance that there is no evidence of a present market failure or consumer harm resulting from Internet provider practices – there is no reason for the Commission to move forward at this time to adopt new net neutrality or net neutrality-like rules.

While some call for the FCC to use the “nuclear option” of Title II, we again urge Congress to clarify its intent with regards to the FCC’s regulatory authority and for the FCC to wait for that direction from Congress.

The primary problem with Title II regulation of the competitive broadband industry is that it would abruptly decelerate the speed of Internet innovation to the speed of government – a regulatory regime that is as slow as the slowest part of the FCC’s filing and public comment process.

Title II of the Communications Act is meant to deal with government-granted, government-regulated monopolies. The old bargain for what were once thought to be “natural monopolies” was that in order to encourage large, capital-intensive investments in utilities such as water, electric, or old-fashioned telephone infrastructure, government would grant a monopoly to a single provider who agreed to build very expensive infrastructure. Once built, these government-protected, government-regulated monopolies would be granted a guaranteed “rate of return” on their investments, but be forbidden from charging their customers monopoly prices.

The FCC definitively moved the Internet away from Title II regulations in 1998, when Clinton-appointed FCC Chairman William Kennard rejected the same Title II arguments being made today in that year’s report to Congress:

“Classifying Internet access services as telecommunications services could have significant consequences for the global development of the Internet. We recognize the unique qualities of the Internet, and do not presume that legacy regulatory frameworks are appropriately applied to it.”

While the expansion of 706 authority would likely affect edge providers, Title II reclassification would likely apply to all aspects of transmission via Internet. Any business providing over-the-top services, including search, voice, video and email, would likely come under Title II regulation - a dramatic expansion of restrictive regulation. We do not believe the FCC’s “forbearance” authority would be efficient for determining the applicability of provisions of Title II to all of these services. This uncertainty would embroil

the industry and the FCC in a slew of legal battles, and volatile market uncertainty that would dramatically harm infrastructure investment and capital expenditures.

In consideration of the vibrant Internet market of both service providers and over-the-top services, we submit that no market failure or real harm to consumers has been adequately demonstrated to support any expansion of FCC authority over the Internet. **We urge Congress to act expeditiously in expressing its understanding of the proper role of the FCC in regard to regulating the Internet, and urge the FCC to wait for Congressional direction.**

Regards,

Americans for Tax Reform
American Commitment
American Conservative Union
Americans for Prosperity
Competitive Enterprise Institute
Center for Individual Freedom
Digital Liberty
FreedomWorks
Institute for Liberty
Institute for Policy Innovation
Less Government
MediaFreedom
National Taxpayers Union
NetCompetition
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