

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington DC

In the Matter of  
Restoring Internet Freedom

WC Docket No. 17-108

Comments of  
Thomas A. Giovanetti  
President  
Institute for Policy Innovation (IPI)  
Supporting the Rulemaking

July 17, 2017

On behalf of the Institute for Policy Innovation (IPI), a free-market public policy research organization that closely follows communications and Internet policy, I write to express our support for the Restoring Internet Freedom rulemaking; specifically for reversing the FCC's 2015 mistake of reclassifying broadband as a Title II common carrier communications service.

As we have previously asserted<sup>1</sup>, part of the FCC's agenda under Chairman Ajit Pai should be to undo the errors and mistakes of the previous regime under former Chairman Tom Wheeler. Under Chairman Wheeler, the FCC made a distinct departure from sound policy analysis, disregarded empirical evidence, showed contempt for input from Congress and from other federal agencies, neglected cost-benefit and other economic analysis, and stubbornly pursued a narrow ideological agenda. Without question, the most unfortunate and unnecessary error of the Wheeler FCC was the decision to reverse decades of FCC policy and reclassify broadband networks as communications services under Title II of the Communications Act.

Please consider our thoughts as organized below:

1. **The FCC is not a democracy.** The FCC is an expert technical agency, and implements legislation and advises Congress based on its technical expertise. While required to take public and stakeholder input into account, the FCC is specifically insulated from the democratic process, and *does not (or at least should not) make policy decision based on the volume of comments received*. Therefore, we urge the FCC to ignore efforts to flood the Commission with millions of identical or similar comments ginned up by interest groups, and to focus on the strength of the economic and legal arguments submitted in good faith to the Commission.

---

<sup>1</sup> [http://www.ipi.org/ipi\\_issues/detail/comments-to-the-fcc-re-protecting-the-privacy-of-customers-of-broadband-and-other-telecommunications-services](http://www.ipi.org/ipi_issues/detail/comments-to-the-fcc-re-protecting-the-privacy-of-customers-of-broadband-and-other-telecommunications-services)

2. **The FCC is not a policy-making body.** The FCC is supposed to implement and enforce major policies enacted by the legislature, not make major policies on own. The sheer number of comments being submitted, and the efforts to which interest groups are going to manufacture a high number of comments, suggests *something has gone very wrong at the FCC*. The reason people are treating the FCC as if it were part of the democratic process, and attempting to “vote” with their comments, is that the FCC is asserting near-legislative power over communications policy.

The fact that Americans are petitioning the FCC rather than their elected representatives is an indication that the FCC wields more power over the communications marketplace than is appropriate in a representative democracy. In our system, important policy decisions that affect millions of Americans should be made through the legislative process rather than through the regulatory process. We therefore ask that the FCC adopt much more forbearance that has been the case in recent years, and cooperate with any efforts on the part of Congress to limit the power of the FCC through communications policy reform.

3. **Title II is not Net Neutrality.** Over the course of more than a decade, the definition of net neutrality has changed many times.<sup>2</sup> Net neutrality has been an ever-changing set of principles, rules, fears and delusions, but it never included the stifling amount of regulatory potential made possible through reclassification under Title II. Only the most radical proponents of government control over the Internet dared propose reclassification, and only sheer political willpower was able to impose it as a means of rallying President Obama’s base after another disappointing election, in a narrative that is well-known.<sup>3</sup>

Today, even many previous opponents of net neutrality have committed to some if not all commonly asserted net neutrality provisions, so something near consensus already exists on the basic principles of net neutrality. The fact that industry and other stakeholders assert support for net neutrality but strongly oppose Title II regulation underscores the fact that Title II represents government control of the internet far in excess of the principles of net neutrality.

4. **ISPs are not unique.** The consumer’s main interface with the Internet is with so-called “edge” providers rather than with ISPs. Regardless of whether consumers obtain internet access through cable, wireless, or traditional telco providers, they are spending time with Facebook, Netflix, amazon.com, Twitter, Instagram, Spotify and the like—not with AT&T, Comcast or T-Mobile. ISPs might wish they had a monopoly over the consumer internet, but if the ISPs ever had a nefarious plan to do so, they failed miserably.

That’s why it is beyond rationality that the Wheeler FCC chose an approach that was limited to placing severe regulatory burdens on ISPs and wireless carriers while ignoring where consumers invest most of their internet efforts.

---

<sup>2</sup> [http://www.ipi.org/ipi\\_issues/detail/whatever-net-neutrality-should-be-title-ii-aint-it](http://www.ipi.org/ipi_issues/detail/whatever-net-neutrality-should-be-title-ii-aint-it)

<sup>3</sup> <https://www.fcc.gov/document/chairman-pai-speech-future-internet-regulation>

Prejudicial heavy regulation of ISPs while retaining an almost non-existent regulatory regime for edge providers is not only inequitable, but it also fails to take a holistic view of the internet ecosystem.

Because consumers spend most of their time interacting with the “edge” rather than the transport layer of the internet, they supply far more personal information to edge providers. And edge providers have more potential to block content than do ISPs, whether it be Twitter blocking links to AT&T’s policy blog,<sup>4</sup> or Amazon deleting unfavorable reviews of books.<sup>5</sup>

Further, while most consumers have a choice of ISPs, they have no realistic alternative to platforms like Facebook or Twitter. I mention these companies not to argue for regulation of edge companies, but to point out that any broad policies governing conduct by internet companies should start with edge providers, rather than omit them.

We find that the Wheeler FCC’s justification for singling out ISPs because ISPs are a terminating monopoly with high switching costs for consumers to be a bit of a stretch. In my personal life, in the last twelve years we have switched from DISH to residential wireless to Verizon FiOS to TimeWarner Cable and then back to (now) Frontier FiOS. With each move we reduced our costs, so we found switching to be a boon, not an economic burden.

5. **Reclassification under Title II was a mistake.** The FCC’s own comment record is clear that it received significant warning that reclassification under Title II would be a mistake, yet the Commission proceeded anyway. Just 18 months later, the evidence of harm is already becoming clear.
  - a. **Title II reclassification was a reversal of a wildly successful policy.** In 1997, the Clinton administration published its Framework for Global Electronic Commerce.<sup>6</sup> The five principles contained therein became the guiding framework for the internet, and in the 20 years since the incredible and unexpected growth of the internet has validated those policies.

The first principle stated that “The Internet should develop as a market driven arena not a regulated industry.” “Even where collective action is necessary, governments should encourage industry self-regulation and private sector leadership where possible.”

The second principle stated that “governments should avoid undue restrictions on electronic commerce” and that “parties should be able to enter into legitimate agreements to buy and sell products and services across the Internet with minimal government involvement or intervention.” And as if that weren’t good enough, it stated that “government should refrain from imposing new and unnecessary

---

<sup>4</sup> <https://twitter.com/telecomsense/status/884872771628658688>

<sup>5</sup> <http://www.dailymail.co.uk/news/article-3808907/Amazon-accused-fixing-critical-reviews-Hillary-Clinton-s-book.html>

<sup>6</sup> <https://clintonwhitehouse4.archives.gov/WH/New/Commerce/>

regulations, bureaucratic procedures or new taxes and tariffs on commercial activities that take place via the Internet.”

The Wheeler FCC’s reclassification of broadband networks under Title II was a blunt repudiation and reversal of these policies that have been clearly proven successful. It should not be necessary in these comments to document the successful explosion of information, products and services made available by the growth and innovation of the internet economy, nor of the economic and social benefits that have been delivered to people all over the world.

- b. **Investment has predictably lagged since Title II reclassification.** Compelling analysis by Hal Singer,<sup>7</sup> George Ford,<sup>8</sup> Anna-Maria Kovacs<sup>9</sup> and others demonstrates that investment by wireline and wireless ISPs has declined significantly in the 18 months since the Title II reclassification. This and other economic analysis has been effectively summarized by Doug Brake<sup>10</sup> and by Broadband for America.<sup>11</sup>

This decline in investment was predictable, and it is ominous. It was predictable because regulatory uncertainty raises risks to investment.<sup>12</sup> It is ominous because three of the ten largest “investment heroes” in the U.S. economy are ISPs, with AT&T and Verizon holding the #1 and #2 spots.<sup>13</sup> A policy that raises risks for the top two investors in the U.S. economy is going to reduce investment by a significant amount, which is no doubt why economist Christian Dippon has found that Title II reclassification has resulted in a \$35 billion drop in annual investment, and up to 700,000 lost jobs.<sup>14</sup>

Bad policy such as the Wheeler FCC’s reclassification under Title II has real, painful costs to American families. Such a significant drop investment and job losses harms families with all of the personal inconvenience and pain that accompanies job loss and reduced economic prospects. It’s not just about ISPs.

- c. **Cost-benefit analysis must be a part of major regulatory undertakings.** All regulations impose costs on the regulated industry, and thus upon the economy as a whole. That’s why it’s important to always conduct cost-benefit analysis for major regulatory undertakings, to determine whether a given regulation causes

---

<sup>7</sup> <https://haljsinger.wordpress.com/2017/03/01/2016-broadband-capex-survey-tracking-investment-in-the-title-ii-era/>

<sup>8</sup> <http://www.phoenix-center.org/perspectives/Perspective17-03Final.pdf>

<sup>9</sup> <https://www.wirelessweek.com/article/2017/06/has-title-ii-regulation-stifled-wireless-investment-heres-what-number-say>

<sup>10</sup> <https://itif.org/publications/2017/06/02/broadband-myth-series-part-1-what-financial-data-shows-about-impact-title-ii>

<sup>11</sup> <http://www.broadbandforamerica.com/wp-content/uploads/2017/05/TitleIIandInvestmentTheFactsD1.pdf>

<sup>12</sup> <https://academic.oup.com/jleo/article-abstract/29/4/765/832844/The-Effect-of-Regulatory-Uncertainty-on-Investment?redirectedFrom=fulltext>

<sup>13</sup> <http://www.progressivepolicy.org/issues/economy/u-s-investment-heroes-of-2015-why-innovation-drives-investment/>

<sup>14</sup> Broadband for America press release dated July 14, 2017

more harm than good, especially with regard to economic regulation (rather than health and safety regulation).

There is no evidence that the Wheeler FCC conducted any serious cost-benefit analysis of their Title II reclassification before proceeding. That is reason enough to reverse the reclassification, and we commend Chairman Pai for his commitment to including cost-benefit analysis in any future regulatory rulemaking.

In conclusion, we believe there is compelling evidence that the Title II reclassification was based on faulty or non-existent economic and industry analysis; that it was imposed through an illegitimate rulemaking process; that it represented a 180 degree reversal of FCC policies proven effective over time, and that it should be reversed at the Commission's earliest opportunity as a major step in undoing the many mistakes and overreaches of the Commission under its previous Chairman.

We would be happy to answer any further questions the Commission might have on this matter, and would pledge to work constructively with the Commission toward a robust broadband communications market that works to the benefit of all stakeholders, both present and future.

Sincerely,

A handwritten signature in blue ink that reads "Tom Giovanetti". The signature is written in a cursive, flowing style.

Tom Giovanetti  
President