

April 20, 2020

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C.

In the matter of  
Wireline Competition Bureau Seeks To Refresh Record in Restoring Internet Freedom and Lifeline  
Proceedings in Light of D.C. Circuit *Mozilla* Decision

WC Docket Nos. 17-108, 17-287, 11-42

Ms. Marlene Dortch  
Secretary, Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Dear Ms. Dortch,

On behalf of the Institute for Policy Innovation (IPI), I submit this letter in response to the FCC’s Public Notice seeking comment on the issues remanded by the D.C. Circuit in its *Mozilla* decision.<sup>[1]</sup> IPI is a free-market public policy research organization that closely follows communications and Internet policy. The following comments may be attributed to Tom Giovanetti, president of the Institute for Policy Innovation.

The FCC’s *Restoring Internet Freedom Order* (“*RIF Order*”) ended the brief yet calamitous era of Title II Internet regulation. Chairman Pai restored the light-touch regulatory framework that had enabled the Internet to thrive for decades. Under the *RIF Order*, the Internet is thriving once again. In 2018, broadband investment grew by \$3 billion—a welcome reversal from the staggering \$5 billion in investment that seemed to evaporate under Title II. Today, more Americans are connected than ever before. Since 2016, the number of Americans without access to at least 25/3 Mbps fixed terrestrial broadband service has fallen from 26.1 million to 18.3 million, and the number of Americans without access to at least 250/25 Mbps fixed terrestrial

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<sup>[1]</sup> <https://docs.fcc.gov/public/attachments/DA-20-168A1.pdf>.

broadband service has plummeted by 74%.<sup>[2]</sup> These numbers offer undeniable evidence for what IPI has long vocalized: markets are smarter and more efficient than the government at broadband deployment.

The FCC now seeks comment on the three issues remanded by the D.C. Circuit in its *Mozilla* decision: public safety, pole attachments, and the FCC's Lifeline Program. We ask the FCC to consider our thoughts on each of these issues:.

### **Public Safety**

**1. The *RIF Order*'s light-touch framework enables ISPs to respond to public safety demands.** Today, ISPs are undergoing an unprecedented stress test given the COVID-19 pandemic. Under the *RIF Order*'s market-driven approach, ISPs have not only been quick to answer the FCC's call to action by pledging to keep Americans connected,<sup>[3]</sup> they have done so while handling the surge in Internet traffic.<sup>[4]</sup> Indeed, despite the alarm bells raised by Title II advocates, there is no basis to conclude that the *RIF Order* encumbers public safety communications. ISPs have every incentive to ensure a high quality Internet experience, especially for public safety customers. The *RIF Order*'s market-driven principles have cultivated an investment friendly environment that has enabled ISPs to build robust networks, which benefit public safety users as well as all other broadband users. This environment also has enabled ISPs to respond efficiently to unprecedented levels of demand and ensure the quality and reliability of public safety communications without being burdened by regulatory red tape and the overhang and uncertainty of Title II utility-style regulation. Indeed, ISPs' increased investment in their networks since 2017 is paying incredibly valuable dividends today.

### **Pole Attachments**

**2. The *RIF Order* and the reinstatement of the information-classification of broadband has not substantially impeded access to poles.** Broadband deployment necessarily depends on pole access. If the *RIF Order* had, in fact, created a substantial barrier to pole access, investments would have shrunk. Instead, the broadband market is thriving and investment is up. A light-touch regulatory approach will continue to enable the market to effectively identify and eliminate obstacles to deployment as they are discovered, whereas any more heavy-handed regulations will only obscure the picture. Moreover, given the significant and well-documented harms associated with Title II, retreating from the FCC's light-touch regime would not be justified even if there were evidence that some broadband-only ISPs have encountered challenges in obtaining access to poles.

### **Lifeline Program**

**3. The *RIF Order* advances the underlying policy objectives of the Lifeline Program.** Restoring the classification of broadband as a Title I information service has accelerated the buildout of broadband networks, helping close the digital divide and furthering the goals of the Lifeline Program. And the harms that heavy-handed utility-style regulation pose to broadband deployment and investment far outweigh any benefits that

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<sup>[2]</sup> <https://docs.fcc.gov/public/attachments/DOC-362583A1.pdf>.

<sup>[3]</sup> <https://www.fcc.gov/keep-americans-connected>.

<sup>[4]</sup> See, e.g., <https://www.wired.com/story/stream-all-want-internet-fine-now/>.

could arguably be gained from reimposing Title II regulation to somehow bolster the Lifeline Program. Moreover, if Congress deems it necessary, it could reform the Lifeline Program to clear up any doubt about the FCC's ability to provide Lifeline support for broadband.

In conclusion, IPI applauds the *RIF Order*'s reinstatement of the information-service classification of broadband. The light-touch regulatory framework has fostered a market-friendly environment that has attracted substantial investment, fostering growth and innovation in the broadband market. We encourage the FCC to continue to forge policies consistent with this approach, and we would be delighted to work with the Commission toward that end.

Sincerely,

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

Tom Giovanetti  
President