

December 14, 2023

By Electronic Filing

Marlene H. Dortch, Secretary  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

Re: Safeguarding and Securing the Open Internet, Notice of Proposed Rulemaking – WC  
Docket No: 23-320

Dear Ms. Dortch:

As a non-profit advocacy organization, FreedomWorks seeks to promote the values of limited government, social tolerance, and individual liberty within today’s political discourse. With the objective of restoring common sense and competence to public policy and American political life, FreedomWorks envisions a future where growth and prosperity results in opportunity for all Americans.

As the Commission reconsiders rules to re-establish agency oversight over broadband providers under Title II of the Communications Act of 1934, thereby reinstating so-called “Net Neutrality” rules, the Commission is disrupting the path to boosting prosperity and growth by steering away from effective light-touch regulation. The proposal advanced by Chairwoman Jessica Rosenworcel demonstrates the divide between the FCC’s actions and the interests of the American people.

Enacting Title II regulations over broadband providers threaten consumer market benefits by chilling providers’ investments and limiting innovation, while attempting to solve a problem that does not exist. FreedomWorks has recently articulated numerous realities of the proposed Net Neutrality rules as follows<sup>1</sup>:

“Recognizing the differences between Net Neutrality principles and Title II regulation is key to understanding the gravity of the Commission’s intention. Commissioner Brendan Carr articulated this by stating, “Title II imposes a host of sweeping, utility-style controls on the Internet that have nothing to do with net neutrality rules like no blocking or throttling.”<sup>2</sup>

Contrary to the faulty assumptions at the root of Chairwoman’s declarations, greater market freedom has allowed the broadband industry to flourish in the years

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<sup>1</sup> “Advancing Utility-Style Regulation of Broadband Would Be a Mistake,” FreedomWorks, October 18, 2023, <https://www.freedomworks.org/advancing-utility-style-regulation-of-broadband-would-be-a-mistake/>

<sup>2</sup> “Fact-Checking President Biden’s Myth-Filled Plan for Government Control of the Internet,” Office of Commissioner Brendan Carr, October 11, 2023, <https://docs.fcc.gov/public/attachments/DOC-397587A1.pdf>

following Chairman Ajit Pai's leadership on the Restoring Internet Freedom Order.<sup>3</sup> This phenomenon was particularly evident during the COVID-19 pandemic as nationwide networks withstood significant stress tests.

During this time, in which communities were forced to rely on broadband for access to work, education, healthcare, and more, U.S. networks far outperformed their European counterparts. While services in Europe resorted to throttling, as they were faced with worries about their networks' capacities, American networks remained reliable.<sup>4</sup>

So why, despite the mountain of evidence of success in the U.S., is the agency looking to adopt a regulatory framework that could diminish network performance? If the FCC moves to adopt Title II regulations, it will not create any discernable benefit to competitiveness, while stifling an advancing industry.<sup>5</sup>

Further, in the U.S., other industries regulated as utilities—including electricity, water and gas—have witnessed price increases and deteriorating performance.<sup>6</sup> Title II regulations would force the broadband industry down the same path.

Reinstatement of Net Neutrality rules also takes the FCC beyond the scope of its legal authority. This was acutely noted by two former Obama-era solicitors general, who have surmised that no existing statute gives the Commission the authority to enact Title II regulations over broadband, meaning the agency is inappropriately broadening its own responsibility.<sup>7</sup> At its core, this is a case of unnecessary government overreach.”

Further, the many years of the Title II regulation debate have heavily featured Silicon Valley tech corporations advocating for Net Neutrality for the purpose of prohibiting broadband companies from limiting content. Yet, in the absence of such regulation, the most significant content blocking and discriminatory conduct has been the habitual practices of the many gatekeepers of the internet,<sup>8</sup> and such practices would endure unimpeded by the Commission's proposed rules that only narrowly focus on the broadband providing entities.

Additionally, it remains problematic that fervent support of this onerous regulatory regime has consistently neglected tolerance, civil discourse, and logical reasoning. The intolerable behavior has been underscored by instances of violent threats to the family of former Commission Chairman Ajit Pai over the regulator's effort in 2017 to repeal net neutrality rules.<sup>9</sup> The

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<sup>3</sup> “2021 Broadband Capex Report,” USTelecom, July 18, 2022, <https://www.ustelecom.org/research/2021-broadband-capex-report/>

<sup>4</sup> “Netflix and YouTube are slowing down in Europe to keep the internet from breaking,” CNN Business, March 20, 2020, <https://www.cnn.com/2020/03/19/tech/netflix-internet-overload-eu/index.html>

<sup>5</sup> “RECLASSIFYING BROADBAND UNDER TITLE II WILL NOT INCREASE COMPETITION,” Technology Policy Institute, October 2023, <https://techpolicyinstitute.org/publications/broadband/net-neutrality/reclassifying-broadband-under-title-ii-will-not-increase-competition/>

<sup>6</sup> Don't drink the water: Why FCC treating broadband like a utility could make service worse,” Competitive Enterprise Institute, October 12, 2023, <https://cei.org/blog/dont-drink-the-water-why-fcc-treating-broadband-like-a-utility-could-make-service-worse/>

<sup>7</sup> “Title II “Net Neutrality” Broadband Rules Would Breach Major Questions Doctrine,” Donald B. Verrilli, Jr. and Ian Heath Gershengorn, September 20, 2023, <https://aboutblaw.com/bazq>

<sup>8</sup> “New Net Neutrality Rules Could Threaten Popular Services,” Reason, October 3, 2023, <https://reason.com/2023/10/03/new-net-neutrality-rules-could-threaten-popular-services/>

<sup>9</sup> “Net neutrality supporter sentenced for death threats to FCC Chairman Pai,” *Reuters*, May 17, 2019, <https://www.reuters.com/article/us-usa-internet-pai/net-neutrality-supporter-sentenced-for-death-threats-to-fcc-chairman-pai-idINKCN1SN2AN/>

hyperbolic irrationality was further adopted by the highest levels of the U.S. Government and American media. In fact, the 2017 order prompted Senate Democrats to declare that “you’ll get the internet one word at a time,”<sup>10</sup> while CNN warned that Americans would suddenly be facing the “end of the Internet as we know it.”<sup>11</sup>

The unequivocal forecasts for the state of the Internet have ultimately proven false to an equally unequivocal degree. Steadily since 2015, prices for both the most popular and fastest tiers of broadband service nationally, when accounting for inflation, are down by 55 percent, while download speeds for the most popular service offerings got significantly faster, accelerating by more than 140 percent.<sup>12</sup>

Put simply, this attempt to bring back Title II regulation is the blind pursuit of an ideological agenda at a time when Americans are exhausted by the hyperpartisanship that dominates each branch of government, including the regulatory agendas of federal agencies such as the FCC. The FCC is also creating regulatory uncertainty where it is completely unnecessary. Because of the aforementioned blind pursuit of this ideological agenda to reinstate Title II, consumers will be the most impacted by this regulatory uncertainty, and we’ll undoubtedly see yet another rollback of Title II at some point in the future, potentially as soon as 2025. Consumers will be the ones who are most impacted by this regulatory tit-for-tat.

Finally, we will also note the economic consequences of Title II regulation. A recent study explained, “Empirical analysis also finds that the Title II regulatory approach reduced investment by \$8.1 billion annually (10%), on average, between 2011 and 2020, or \$81.5 billion over ten years, reducing employment in the information sector by about 81,500 jobs and total employment by about 195,600 jobs (many of them union jobs), reducing labor compensation by \$18.5 billion annually. Gross Domestic Product (“GDP”) has been reduced by \$145 billion annually, or \$1.45 trillion over ten years. This evidence suggests that the looming threat of Title II regulation that hangs over the industry, during both the regulatory and deregulatory episodes, is a chronic obstacle to infrastructure investment as periods of lighter regulation are perceived as temporary.”<sup>13</sup>

To say that we are experiencing a moment of economic uncertainty would be an understatement. The reasons for that economic uncertainty are many. However, the FCC’s blind pursuit of an ideological agenda will necessarily harm the economy, reduce wages and employment, and reduce short-term and medium-term GDP.

For the reasons outlined herein, the Commission should reject the regressive pursuit of Title II classification of broadband services, and thereby encourage Congress to make it a priority to develop bipartisan, open internet legislation, such that the rules are codified in law, and not subject to the inconsistent and unpredictable inclinations the regulatory agency.

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<sup>10</sup> “If we don’t save net neutrality, you’ll get the internet one word at a time.” Via @SenateDems, February 27, 2018, <https://twitter.com/SenateDems/status/968525820410122240>

<sup>11</sup> “CNN headline declares “end of the Internet as we know it” after net neutrality vote,” *The Hill*, December 14, 2017, <https://thehill.com/homenews/media/364959-cnn-headline-declares-end-of-the-internet-as-we-know-it-after-net-neutrality/>

<sup>12</sup> “2023 Broadband Pricing Index (BPI),” USTelecom, October 11, 2023, <https://www.ustelecom.org/research/2023-bpi/>

<sup>13</sup> George S. Ford, “Investment in the Virtuous Circle: Theory and Empirics,” Phoenix Center for Advanced Legal and Economic Public Policy Studies, December 2023, <https://phoenix-center.org/pcpp/PCPP62Final.pdf>.

Thank you for your consideration of these views.

Sincerely,

Adam Brandon, President

Jason Pye, Policy Adviser