THE AMERICAN CONSERVATIVE UNION

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July 7, 2017

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Restoring Internet Freedom	)	WC Docket No. 17-108
	)	

COMMENTS BY THE AMERICAN CONSERVATIVE UNION
RELATED TO THE NOTICE OF PROPOSED RULEMAKING

Chairman Pai, Commissioners Mingon and O'Rielly:

The American Conservative Union's mission includes advancing our nation's founding principles of political liberty and limited government. Because we know that Americans across all income levels and neighborhoods do better under a free enterprise system, ACU defends it from the overreach of the regulatory state as part of our mission. Free enterprise is the only economic system that offers the promise of widespread prosperity and the protection of individual rights.

The growth of the modern internet over the past generation is a living case study in the power of free enterprise to drive technological progress, create wealth, and expand opportunity. It is the most demanding and liberating institution in a generation. The digital revolution has remade our nation's economic and cultural landscape over the past two decades. The meteoric growth of our nation's network infrastructure – as snail-slow dial-up services gave way to gigabit broadband – has been matched by the meteoric rise of the search, social media, e-commerce, and streaming entertainment companies that now rank as the world's most valuable. Most importantly, these advances have improved the lives of every American.

These technological advances and economic success stories weren't dictated by bureaucrats sitting in a central planning office; they are the result of entrepreneurs whose vision, grit, and willingness to take risks were encouraged and nurtured by a vibrant free market.

But instead of recognizing and embracing this entrepreneurial spirit, the FCC decided in 2015 to turn its back on the two-decade bipartisan consensus for light-touch regulation of the internet. Instead, the falsely named "Open Internet Order" turned its back on the progress achieved by consumers and chose the opposite course: to shackle the internet and hinder investment and innovation with outdated, unnecessary, and poorly fitting public utility rules that were designed for the unipolar telephone system of the 1930's, not the dynamic and competitive internet of today.

The impact of this bureaucratic assault on the internet has been entirely predictable: Experts report that annual investment in broadband networks has dropped $4 billion since the Obama administration's 2015 rules took effect. It should surprise no one that private capital is being driven away from a sector where returns are now threatened by the regulatory overhang of Title II. In Europe, where utility rules have been in place for years, broadband investment on a per-household basis is half what we enjoyed in the U.S. prior to Title II.

This decline in broadband capital investment means that fewer Americans are being hired to lay cable and hang wires; fewer consumers in rural and underserved areas are being reached each year by new buildouts; and fewer businesses are enjoying the benefits that would come with accelerated upgrades of faster, higher capacity networks. Even liberal voices like the NAACP and the Communications Workers of America union have argued that Title II is a major threat to jobs and digital opportunity.

Even more concerning is the impact that the rules are having on innovation. Under Title II, every network innovation and technological advancement is at risk of being second-guessed by self-appointed "referees" at the FCC, under an incomprehensibly vague "conduct standard" that puts regulators' ideology ahead of consumers' welfare. Already, some advocates have urged the FCC to use this alarming power to discourage pro-consumer innovations like free data and tiered pricing.

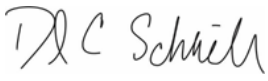
Network providers weighing investment decisions with decades-long time horizons must grapple with the uncertainty of intentionally unclear rules whose interpretation may change with every new Administration. That's no way to run federal broadband policy; instead, it's a recipe for slamming the brakes on the unprecedented period of innovation that has powered the American economy for the past generation. As Mark Cuban has said, "The internet can't innovate living under the rules of a 1970s telephone company."

Those who have been advocating in defense of the overreaching Title II regulations suggest that these utility rules are the only legal footing for net neutrality protections. Setting aside whether federal rules are even needed to enforce a principle that private sector broadband providers have already embraced as a marketplace reality, the Title II zealots' claim is simply false. The strongest legal footing for net neutrality rules isn't Title II; it's Congressional action.

If net neutrality rules are needed to protect the internet (and this question deserves scrutiny, since the FCC failed to identify any systemic problem), they should be debated by Congress as the Founders intended – not by a rogue agency looking to expand its turf in order to "save" the internet. It's simply not reasonable to suggest that the current setup – public utility rules shoehorned onto a technology for which they were clearly not designed nor intended – is preferable to Congressional action. The only thing from which the internet needs "saving" is the destructive, investment-killing interference of federal bureaucrats.

Imposing Title II utility regulations was a historic mistake and an entirely unjustified overreach of government authority. We urge the FCC to correct this error and restore freedom to the internet for generations to come.

Sincerely,



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