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Congress of the United States
House of Representatives

July 12, 2017

VICE CHAIR AND PARLIAMENTARIAN
STEERING AND POLICY

PARLIAMENTARIAN OF THE WHIP

COMMITTEE ON
EDUCATION AND THE WORKFORCE

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ELEMENTARY, AND SECONDARY EDUCATION

HIGHER EDUCATION AND
WORKFORCE DEVELOPMENT

VICE RANKING MEMBER
COMMITTEE ON RULES

COMMITTEE ON ETHICS

Mr. Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, Southwest
Washington, DC 20554

Dear Chairman Pai:

As a former entrepreneur and founder of several Internet startup companies, and now representing the one of the fastest growing entrepreneurial districts in the nation, I personally know the importance of a free and open internet to a vital, innovative internet community that drives the economy of the 21st Century. That is why I believe the current legal framework classifying broadband under Title II is absolutely essential. It provides the FCC the ability to make rules ensuring that internet providers cannot take advantage of their powerful positions as “gatekeepers” of the Internet to profit at the expense of free information flow. A federal appeals court ruled in 2014 that Title I does not grant FCC the authority needed to enforce strong Open Internet rules. Thus, changing the legal classification for broadband back to Title I would essentially leave internet consumers at the mercy of the consciences and good will of the broadband providers who control access.

The legal foundation that the FCC wants to revert back to never worked for Open Internet rules in the first place, but the “light touch” framework for the FCC’s regulation of broadband telecommunications is unchanged by the return to Title II. Prior to the enactment of the 2015 Open Internet Order, there were many examples of Internet providers throttling speeds and blocking access to applications and sites that were in competition with their own applications. This type of activity suppresses innovation and curtails consumer choice all in the name of profit. The proper return to Title II permits the agency to prohibit this kind of unreasonable discrimination, but does not impose burdensome regulations that some have suggested.

I believe there are many gaps in the logic behind the arguments laid out in the current Notice of Proposed Rulemaking (NPRM) and therefore I am opposed to proposed reclassification of internet providers under Title I.

First, the NPRM takes issue with defining broadband cable providers as “telecommunications.” The definition of “telecommunications” in the act is “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” This is the crux of what consumers are demanding from their Internet providers: unimpeded access to information of their choosing. The NPRM argues that Internet Service Providers (ISPs) do not fit this definition; consumers would argue that they do, and must.


Among the arguments offered in the NPRM in support of the reclassification is Commission precedent from the 1990s. But this argument obscures the reality that the Internet access service has changed remarkably in that time. In the dial-up era, Internet access providers like AOL were nothing more than users of the phone network. Consumers quite literally placed a call to AOL to get online. But today's ISP's own the telecom networks that connect us all to one another and to the Internet, not just the online gateways once we have dialed in.

The NPRM erroneously states that reversing Title II classification is necessary to "reverse the decline in infrastructure investment, innovation and options..." But over and over again, broadband providers have reported to their shareholders that Title II is having no impact on their investment strategies. The total capital investment by publicly traded ISPs was five percent higher during the two years after the 2015 Open Internet Order than the two preceding years. Firms that saw declines did so due to earlier completion of cyclical upgrades or larger projects. The Internet Association has assembled a white paper entitled "Principles To Preserve and Protect an Open Internet", which cites extensive data and analysis that demonstrate how markets have thrived since the Title II reclassification took effect. The white paper can be found at <https://internetassociation.org/reports/principles-to-preserve-protect-an-open-internet/#TheFCC's2015RulesAreWorkingandtheEntireBroadbandInternetEcosystemisThriving>, should you desire to consider its contents.

As of today, there are almost five million comments in this docket. My office has been inundated with calls and emails from concerned constituents who wonder what the future of the Internet will be without these protections. Colorado's Second Congressional District is home to numerous IT startups, almost 70 of which have signed onto a letter calling on you to protect net neutrality as a central driver of economic growth and opportunity, job creation, education, free expression and civic organizing; the letter can be found at <http://www.engine.is/startups-for-net-neutrality>, should you wish to review it. I invite you to join me in my district and we will give you the opportunity to hear their perspective.

Thank you for your consideration. Please contact my office to schedule a time to visit a district that supports the Title II legal construct before the FCC votes on this critical decision.

Sincerely,



Jared Polis
Member of Congress