

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Restoring Internet Freedom	)	WC Docket No. 17-108
	)	
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**COMMENT OF CENTER FOR INDIVIDUAL FREEDOM IN SUPPORT OF  
PROCEEDING RESTORING INTERNET FREEDOM**

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July 17, 2017

**I. Introduction**

The Center for Individual Freedom (hereinafter "CFIF") is a non-profit, non-partisan organization with over 250,000 grassroots supporters and activists across the United States. It was established in 1998 for the purpose of safeguarding and advancing Constitutional rights, as well as ensuring continued American

innovation, prosperity, leadership, entrepreneurship and worldwide technological preeminence.

As a central part of that mission, CFIF advocates public policies that advance internet, technological and broadband development most freely, effectively and efficiently. On that basis, CFIF respectfully submits the following Comment, urging the Federal Communications Commission ("FCC") to restore internet freedom by rescinding its flawed and overreaching decision to classify broadband internet access service as a "telecommunications service" under Title II of the Federal Communications Act.

## **II. Discussion**

In the first two decades following passage of the Telecommunications Act of 1996, under bipartisan leadership and across very different administrations and FCC chairs, the internet grew and flourished through a pro-growth, light-touch regulatory strategy that encouraged private investment and innovation by treating broadband internet access service as an "information service" under Title I of the Federal Communications Act.

Enormous and entirely new industries developed in the shadow of that wise and restrained regulatory decision. The internet went mobile, and it became a hub of social, cultural and economic activity far beyond what anyone could have predicted during its early days. Streaming music and video services have fundamentally changed how Americans find and enjoy entertainment. Education, employment and government services have all moved online.

Yet the prior administration's decision to clamp stifling "Title II" utility regulation on the internet puts that legacy of technological revolution and innovation at risk.

Classifying the internet as a Title II "telecommunications service" opens the door for intrusive and inefficient government regulation of pricing, service and virtually all aspects of network operations - transferring responsibility from the internet away from the private-sector engineers and operators that built it into the marvel we enjoy today, instead placing it in bureaucrats' hands.

That constitutes an enormous step backwards by every measure. The great software, website and device companies of Silicon Valley do not operate under that kind of regulatory straitjacket. Rather, they famously enjoy "permissionless innovation" - the freedom to bring new products and services to market and innovate at will. And the result has been a consumer bounty unlike any other in the history of mankind. Broadband providers should have that same freedom and incentive to innovate and improve their products and services, and should not be smothered beneath the heavy wet blanket of government micromanagement. A level playing field is vital for competition to work online. And it is particularly critical for consumers, who expect all companies that touch the internet to operate and innovate at nimble, digital speed - not the sluggish pace dictated by the 1930s-era Title II utility law.

The FCC's brief experiment with Title II has already suppressed investment and dampened the vibrancy of the internet ecosystem. One recent study found that

it reduced investment below the level it otherwise would have reached by 20% to 30% annually, or \$30 billion to \$40 billion lost per year.<sup>1</sup> A survey of utility regulation in Europe similarly predicts that the comparable Title II approach could depress broadband investment in the United States by as much as 50%, or \$44 billion per year.<sup>2</sup>

Those are funds that should instead be going to lay new fiber, connect new communities, close the digital divide, innovate new products and upgrade and enhance service for everyone online. Instead, those dollars are laying fallow, as broadband companies navigate the strictures and regulatory overhang of Title II. We need more investment, more innovation, more high-paying network jobs, and cannot afford to have the private sector investment that has fueled the growth and success of the internet for the past twenty years constricted or cut off.

As the FCC knows, this is not a question of net neutrality, which protects consumers online and ensures the free flow of information and ideas on the World Wide Web.

Title II is not the same as net neutrality, and our call to undo the costly and destructive Title II classification should not be taken as opposition to neutrality principles, or the need for a free and open internet.

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<sup>1</sup> "Net Neutrality, Reclassification and Investment: A Further Analysis," Dr. George S. Ford, Phoenix Center for Advanced Legal & Economic Policy Studies, May 16, 2017.

<sup>2</sup> "Utility Regulation and Network Broadband Investment: The EU and US Divide," Patrick Brogan, Vice President of Industry Analysis, US Telecom, the Broadband Association, April 25, 2017, <https://www.ustelecom.org/sites/default/files/documents/Utility%20Regulation%20and%20Broadband%20Investment.pdf>

The previous administration's decision to use Title II as a source of legal authority to pass its net neutrality rules, however, was a grave mistake. Net neutrality should be protected on its own, without the damaging overhang of Title II.

The simplest way to accomplish that is for Congress to pass a straightforward net neutrality statute that would protect the open internet and return certainty and stability to the internet sector after years of needless debate and regulatory back-and-forth uncertainty. Congress possesses clear authority to pass such a law without the jurisdictional contortions that led the FCC to invoke Title II, and a Congressional statute would be permanent and secure from both future administrative uncertainty and court challenge.

In the interim, the FCC can and should restore internet freedom by rescinding its flawed and overreaching decision to classify broadband internet access service as a "telecommunications service" under Title II of the Federal Communications Act.

### **III. Conclusion**

The internet constitutes an irreplaceable and vital cultural, economic and civic resource, which requires clear and practical rules to ensure its continued success and growth.

For that reason, CFIF and its 250,000 activists and supporters urge the FCC to eliminate the flawed Title II utility classification, while supporting efforts in Congress to pass a permanent net neutrality statute.

Respectfully submitted,

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