WASHINGTON
LEGISLATIVE OFFICE


July 14, 2017

Marlene H. Dortch
Secretary, Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

**RE: Restoring Internet Freedom, WC Docket No. 17-108**
**Comments of the American Civil Liberties Union**

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Dear Secretary Dortch:

The American Civil Liberties Union ("ACLU") writes in response to the Federal Communications Commission ("Commission" or "FCC") Notice of Proposed Rulemaking (hereinafter "NPRM") in the above referenced matter.[1] We oppose the current proposal to overturn the Open Internet Order of 2015 because it would eliminate net neutrality protections critical to protecting each individual's right to access an uncensored internet. This is a First Amendment issue for the ages – a government-facilitated initiative to cede to a few large corporations the authority to control who gets access to the largest and most democratic public forum in the history of the world. We urge the Commission to reject final adoption of the proposal.

The ACLU's interest in this proposal flows not just from our longstanding commitment to principles of free speech and equality, but also because rights protected under the Order directly bear on the rights of our members and supporters. The ACLU's mission is to secure and advance the rights and liberties assured to individuals under the U. S. Constitution and the laws and policies of the nation and its political subdivisions. Millions of members and activists support the ACLU in the pursuit of its mission through their actions, donations, and words – both online and otherwise. The FCC's rulemaking proposal to gut the agency's decision classifying

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[1] *In re Restoring Internet Freedom*, FCC WC Docket No. 17-108 (NPRM adopted May 18, 2017).

broadband internet service as a telecommunications service subject regulation under Title II of the Federal Communications Act would directly and negatively threaten online organizing and activism writ large, and the ability of the ACLU's supporters to engage in online political and social activism without fear of secret censorship. Rather than allow ISPs to serve as gatekeepers to the pre-eminent mode of modern communication, the FCC should use its authority to *maximize* user access to this newly dominant forum for speech and assembly, particularly given the government's role in facilitating the creation and growth of the Internet.

## I. Introduction

The ACLU has been at the forefront of defending and advancing digital free speech rights since the dawn of the Internet. Twenty years ago, in *Reno v. ACLU*, a challenge to the Communications Decency Act, the Supreme Court held that the government cannot engage in blanket censorship of speech in cyberspace.[2] In *Ashcroft v. ACLU*, the Supreme Court upheld a preliminary injunction of the Child Online Protection Act, which imposed unconstitutionally overbroad restrictions on adult access to protected online speech.[3] The ACLU also participated as amicus curiae in *Ashcroft v. Free Speech Coalition*, in which the Court struck down restrictions intended to block so-called "virtual child pornography" online, but which in fact restricted a substantial amount of lawful speech.[4]

The ACLU has also been a consistent voice favoring the adoption of enforceable net neutrality principles.[5] Most recently, we offered comments in the 2014-15 proceedings leading to the adoption of the Open Internet Order, and participated as amicus with the Electronic Frontier Foundation in the court proceedings that eventually upheld that Order.[6] ACLU also offered support for the 2010 Open Internet rulemaking.[7]

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[2] 521 U.S. 844 (1997).

[3] 542 U.S. 656 (2004).

[4] 535 U.S. 234 (2002). The ACLU's amicus brief is available at 2001 WL 740913 (June 28, 2001).

[5] ACLU's comments are drawn in part from its submissions in other proceedings referenced herein.

[6] *See* Comment of the ACLU (Jul. 15, 2014) (Protecting and Promoting the Open Internet, WC Docket No. 14-28); U. S. Telecom Ass'n v. FCC, Case #15-1063 (DC Cir. 2015) (Brief of Amici Curiae EFF, ACLU and ACLU of the Nation's Capital in Support of the Respondents, Sep. 21, 2015).

In 2008, the ACLU testified before Congress to call for the adoption of enforceable net neutrality principles and offered commentary in support of a third-party petition to the FCC seeking application of non-discrimination rules.[8] In 2005, the ACLU participated as amicus in the *Brand X* litigation, in which the Court held that cable companies providing broadband Internet access in the regulatory environment of that time were "information service providers" for purposes of regulation by the FCC under the Communications Act.[9] That decision began the FCC on a circuitous search for ways in which to assure net neutrality protections for individual online consumers of Internet-based services and edge providers, which search led ultimately to the FCC's adoption of the Open Internet Order in 2015.

Unfortunately it also led to the current proposal to reverse the FCC's long-established policy favoring a free and open Internet. The 2015 Open Internet Order finally achieved a lasting and enforceable net neutrality framework. Millions of individual online users favor it—and nothing has occurred to diminish that popular support. Federal courts upheld the FCC's Order in the face of a challenge brought by ISPs. No serious evidence exists to suggest it burdens ISPs in any appreciable respect. The only possible basis to justify the current regulatory proposal would be to provide commercial favor to a single subset of a single industry – large corporate internet service providers (ISPs) – without any benefit whatsoever to Internet users or providers of online

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[7] *See* Comments of the ACLU and the Technology and Liberty Project of the ACLU (Jan. 14, 2010) (Preserving the Open Internet, GN Docket No. 09-191) (Broadband Industry Practices, WC Docket No. 07-52). ACLU had concerns about the FCC authority relied upon in the 2010 proceeding, as well as disappointment that net neutrality principles were not extended to wireless services to the same extent as wired, though the formal comment focused on the advantages promoted by the rule as proposed.

[8] Testimony of Caroline Fredrickson, Dir. Washington Legis. Office, ACLU Before the House Committee on the Judiciary, Task Force on Competition Policy and Antitrust Laws (Mar. 11, 2008); Comment of ACLU (Mar. 14, 2008) (WT Docket No. 08-7); Reply Comment of ACLU (Apr. 14, 2008) (WT Docket No. 08-7).

[9] *See National Cable & Telecomm. Ass'n v. Brand X Internet Serv.*, 545 U.S. 967 (2005). The ACLU's amicus brief is available at 2005 WL 470933 (Feb. 22, 2005). The ACLU also, among other initiatives, offered comments in the Open Internet Order proceedings in both 2010 and 2015. *See* Jay Stanley, *Network Neutrality 101* (ACLU, Oct. 2010) (Docket No. 09-191) (submitted for ACLU by Christopher Calabrese on Oct. 22, 2010) *available at* https://ecfsapi.fcc.gov/file/7020918437.pdf; ACLU Comment on Protecting and Promoting the Open Internet, July 15, 2014 (Docket No. 14-28) *available at* https://ecfsapi.fcc.gov/file/7521700180.pdf.

content and services. We stand wholeheartedly in opposition to the proposal and urge the Commission to terminate the current proceeding and refrain from issuing a final rule.

## II. Freedom of Speech on the Internet

### A. The Internet is Today's Dominant Marketplace of Ideas

In just the past month, the Supreme Court has affirmed that the Internet is the world's most important place for the exchange of viewpoints.[10] "It enables people to communicate with one another with unprecedented speed and efficiency and has revolutionized how people share and receive information."[11] It also provides "a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[12] The Internet is today's leading marketplace of ideas.[13] As such, any action tending to limit the freedom of online communication should be viewed with skepticism.

The Internet's marketplace enhances speech through its decentralized, neutral, non-discriminatory pathway, which carries data from origin to destination without interference. Neutrality promotes open discourse. Consumers decide which sites to access (among millions) and "pull" information from sites rather than having information chosen by others "pushed" out to them, as with television and other media in which the content is chosen by the broadcaster. The Internet's structure facilitates individual choice, free speech, innovation, commercial activity, and competition on a global scale. Accessibility to a mass audience at little or no cost makes the Internet a particularly valuable and, indeed, unique forum for speech – providing the "most powerful

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[10] *Packingham v. North Carolina*, 582 U. S. ____ (slip op. at 4-5) (No. 15-1194) (June 19, 2017).

[11] *Blumenthal v. Drudge*, 992 F. Supp. 44, 48 (D.D.C. 1998).

[12] 47 U.S.C. § 230(a)(3).

[13] The "marketplace of ideas" is grounded in the belief that speech must be protected as a fundamental right for the discovery of truth. *See* JOHN STUART MILL, ON LIBERTY 76 (1859). Justice Oliver Wendell Holmes eloquently invoked the metaphor by observing, "when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the basic test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes can be carried out." *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., joined by Brandeis, J., dissenting). The marketplace of ideas metaphor aptly applies to an Internet free of corporate or government censors of lawful content. *See generally Reno v. ACLU*, 521 U.S. at 885 (rejecting government censorship of content in "the new marketplace of ideas," the Internet).

mechanisms available to a private citizen to make his or her voice heard."[14] "The Internet presents low entry barriers to anyone who wishes to provide or distribute information. Unlike television, cable, radio, newspapers, magazines, or books, the Internet provides an opportunity for those with access to it to communicate with a worldwide audience at little cost."[15] "Any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox."[16]

Furthermore, the Internet differs from other forms of mass communication because it "is really more idea than entity. It is an agreement we have made to hook our computers together and communicate by way of binary impulses and digitized signals."[17] No one "owns" the Internet, even though the government facilitated its creation. Instead, the Internet belongs to everyone who uses it – which is as it should be for a government-created resource. The combination of these distinctive attributes allows the Internet to provide "a vast platform from which to address and hear from a worldwide audience of millions."[18]

"It is 'no exaggeration to conclude that the content on the Internet is as diverse as human thought.'"[19] The Internet is now the dominant 21st century marketplace of ideas precisely because net neutrality protocols and their inherent commitment to non-discrimination have guaranteed that this forum would be open to everyone. Absent such protections, ISPs would have the ability to act as gatekeepers to the world of digital speech—and choose which speech their users can engage in or listen to. "Such broad

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[14] *Packingham v. North Carolina*, 582 U. S. ____ (slip op. at 8).

[15] *American Library Ass'n v. United States*, 201 F. Supp.2d 401, 416 (E.D. Pa. 2002), *rev'd on other grounds*, 539 U.S. 194 (2003).

[16] *Reno v. ACLU*, 521 U.S. at 870 (at the time dial up connections were a more significant part of the commercial landscape).

[17] *Blumenthal*, 992 F. Supp. at 48 n.7 (quoting Bruce W. Sanford & Michael J. Lorenger, *Teaching An Old Dog New Tricks; The First Amendment In An Online World*, 28 CONN. L. REV. 1137, 1139-43 (1996)).

[18] *Reno v. ACLU*, 521 U.S. at 853; *see also Blumenthal*, 992 F. Supp. at 48 n.7 (quoting Sanford & Lorenger, *supra* note 17).

[19] *Reno v. ACLU*, 521 U.S. at 852 (quoting *ACLU v. Reno*, 929 F. Supp. 824, 842 (E.D. Pa. 1996)).

access to the public carries with it the potential to influence thought and opinion on a grand scale."[20]

**B. Courts and Congress Recognize Internet Speech Requires Protection**

The unique nature of the cyber revolution has posed some challenges in protecting the Internet.[21] Courts have confronted those challenges head on by observing, "Each medium of expression … may present its own problems."[22] Nevertheless, our "profound national commitment to the free exchange of ideas" requires that we meet those challenges to preserve Internet freedom.[23] No censor should be able to stifle those freedoms, regardless of whether it is the government or a handful of network providers that have benefitted from the government ceding control over the medium it helped create. In many communities, local governments have granted network providers full or partial monopolies to provide paying consumers with Internet access. A history of violations by ISPs highlights the ongoing need for Internet protections in the form of enforceable net neutrality rules.[24]

The United States Supreme Court has repeatedly concluded that speech on the Internet is entitled to the highest level of protection under the First Amendment. Any attempt to censor its content or silence its speakers is viewed with extreme disfavor.[25] In addition, courts recognize that the public has a First Amendment interest in receiving the speech and expression of others. "[T]he right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences" is one of the purposes served by the First Amendment.[26] Online, more people than ever before have the opportunity to "speak and listen, and then, after reflection, speak and listen once more."[27]

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[20] *Oja v. United States Army Corps of Eng'rs*, 440 F.3d 1122, 1129 (9th Cir. 2006).

[21] *See Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 433 (2d Cir. 2001).

[22] *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557 (1975).

[23] *Harte-Hanks Comm., Inc. v. Connaughton*, 491 U.S. 657, 686 (1989).

[24] *See infra* at p. 13-16.

[25] *See, e.g., Ashcroft v. ACLU*, 542 U.S. at 656 (upholding a preliminary injunction of the Child Online Protection Act); *Reno v. ACLU*, 521 U.S. at 844 (striking down certain provisions of the Communications Decency Act).

[26] *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 390 (1969).

[27] *Packingham v. North Carolina*, 582 U. S. ____ (slip op. at 4).

Indeed, the "widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[28] The Internet has become the principle source for the public to access this diversity of ideas.[29]

Courts also understand that "the Internet represents a brave new world of free speech."[30] Specifically, the Internet provides unique opportunities for speech and discourse. Unlike other media, "the Internet has no 'gatekeepers' – no publishers or editors controlling the distribution of information."[31] As a result, the Internet does not suffer from many of the limitations of alternative markets for the free exchange of ideas.[32] Therefore, courts have vigorously protected the public's right to uncensored Internet access on First Amendment grounds.

In a similar vein, Congress has enacted legislation endorsing the protection and promotion of free speech on the Internet. In the 1996 Telecommunications Act, Congress found that "[t]he rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens."[33] Congress further declared that it is the policy of the United States "to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet."[34] Congress therefore immunized

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[28] *Metro Broad. Inc. v. FCC*, 497 U.S. 547, 566-67 (1990) (quoting *Associated Press v. United States*, 326 U.S. 1, 20 (1945)).

[29] Billions of people have used the Internet, including 90 percent of all Americans. Seven in ten American adults use at least one Internet social networking service and Facebook alone has 1.79 billion users. *See* http://www.internetworldstats.com/stats.htm (visited Oct. 4, 2006); Internet Users (Per 100 People), World Bank, http://data.worldbank.org/indicator/IT.NET.USER.P2 (visited Sept. 17, 2015); *see also Packingham v. North Carolina*, 582 U. S. ____, (slip op. at 5) (No. 15-1194) (June 19, 2017).

[30] *Blumenthal*, 992 F. Supp. at 48 n.7 (quoting Sanford & Lorenger, *supra* note 17).

[31] *Id*. While we agree that the Internet should have no such editors, that is precisely the battle joined by the current regulatory proposal.

[32] For example, under net neutrality, the Internet does not suffer from a criticism that Professor Laurence Tribe and other First Amendment scholars frequently have leveled at traditional marketplaces: "Especially when the wealthy have more access to the most potent media of communication than the poor, how sure can we be that 'free trade in ideas' is likely to generate truth?" Laurence H. Tribe, AMERICAN CONSTITUTIONAL LAW 786 (2d ed. 1988).

[33] 47 U.S.C. § 230(a)(1).

[34] 47 U.S.C. § 230(b)(3).

Internet providers and users from any liability for publishing "any information provided by another information content provider."[35] Conversely, there is no congressional endorsement of any sort for the proposition that large ISPs should have the power to determine who gets to view what online content in what manner any more than there is such an endorsement for telephone companies to decide what calls customers may take or make and in what manner.

The FCC's current proposal suggests that ISPs should be able to impose limits – to decide who gets access to what information and, indeed, who gets to offer what information. Such a proposal is a direct challenge to the spirit, if not the letter of congressional and judicial pronouncements on the importance of a free and unfettered Internet. Such a proposal limits the freedom of users and edge providers. It empowers large corporate ISPs at the expense of smaller entities and individuals and wipes out years of efforts by the FCC to finally establish enforceable protections against abusive corporate practices. Those who favor individual rights to hear and be heard and those who favor maximizing individual control over the tools of daily life should be aghast at this vast giveaway to a select group of large corporate telecommunications barons.

## III. Net Neutrality Principles Have Protected Content Providers and Users for Most of the Internet's History

### A. The Internet Was Founded on the Core Concepts of Net Neutrality

The Internet would not have come into existence were it not for the protection of net neutrality principles.[36] In its earliest days of mass use, most users accessed the Internet through dial-up connections over telephone lines. There were lots of ISP choices and if a user didn't like his or her service, a highly competitive dial-up market offered many alternatives.[37]

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[35] 47 U.S.C. § 230(c)(1).

[36] Tim Berners-Lee, *In Defense of Net Neutrality* (WALL ST. J., Jun. 22, 2017) *available at* https://www.wsj.com/articles/indefenseofnetneutrality1498171158.

[37] Aleks Yankelevich and Kendall Koning, *An Abridged History of Open Internet Regulation and Its Policy Implications* (Quello Center, June 17, 2016) *available at* http://quello.msu.edu/an-abridged-history-of-open-internet-regulation-and-its-policy-implications-w-kendall-koning/; *see also* Jason Oxman, *The FCC and the Unregulation of the Internet* 17 (FCC Office of Plans and Policy, Working Paper No. 31, July 1999), *available at* https://www.fcc.gov/Bureaus/OPP/working_papers/oppwp31.doc at 15 ("Over

Net neutrality principles in the earliest days of the Internet were not assured through government mandate – though certainly the mandates associate with common carriage laws applicable to telecommunications services helped create the environment wherein early ISP providers competed to provide restriction-free access to the Internet. Principles similar to today's core net neutrality principles laid the ground work:

- AT&T was compelled to allow the use of cordless phones manufactured by third parties.[38]
- MCI was permitted to purchase local telephone service from AT&T to complete the last leg of long distance telephone calls.[39]
- Telephone companies had to offer "data services" through separate affiliates because they would have had both the ability and the incentive to use their control of the telephone network to discriminate against unaffiliated, competing data services.[40]

In short, the early Internet was a wide open frontier of communications and those providing access realized that turning it into something else – a restricted environment subject to the whims of corporate profit-takers – put the ISP daring to do so in grave danger of losing its customer base.

Only the intense competition assured Internet users – both consumers and content and service providers on the edge – the freedom of network neutrality. And it is possible that if such competition existed in the market today, there would not be the same need for government to take active steps. Indeed, common sense dictates that net neutrality principles can govern the marketplace in two circumstances: when competition compels ISPs to provide it or when government requires it in the absence of a competitive marketplace. In the early days of the Internet, the competition alternative was sufficient

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6,000 Internet service providers (ISPs) today offer dial-up service to the Internet, and over 95% of Americans have access to at least four local ISPs.")..

[38] *See* Yankelevich and Koning, *supra* note 37; *Proposals for New or Revised Classes of Interstate and Foreign Message Tolls Telephone Service (MTS) and Wide Area Telephone Service (WATS)*, 56 F.C.C.2d 593 (1975).

[39] *Id*.

[40] Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 F.C.C.2d 384 (1980).

to carry the day. With the passing of dial-up competition, however, a more centralized broadband access now dominates the industry. The majority of Internet users now face a distorted and near-monopolistic market where a single ISP can dictate terms of service and where users have no real choice but to accept those terms or go without access to the Internet.[41] Accordingly, the only prospect for a continuation of net neutrality principles rests with regulators, legislators, or the courts.

### B. Longtime FCC Policy Favoring Net Neutrality Protections Will Be Unenforceable If the Current Proposal Is Adopted

The modern Internet regulatory environment began to change rapidly following a 2005 Supreme Court decision, when the FCC began to examine the best way to assure a free and open Internet. The current FCC proposal makes the misleading assertion that an open Internet is a function of its classification under the law.[42] In fact, the principles of net neutrality have little to do with Title I or Title II of the Communications Act; rather they simply must exist in some enforceable form in order for the public to reap the benefit of those protections. The past 12 years reflect the FCC's ongoing search to find the right regulatory framework. Not only has the right framework now been found and ratified by a federal appellate court, but other possible frameworks have been deemed judicially insufficient. To reverse the FCC's classification now will lead to a legal environment in which net neutrality principles are largely unenforceable and to a renewal of discriminatory abuses by large corporate ISPs aimed at consumers and edge providers.

Shortly after the *Brand X* decision, the FCC began its effort to find the right regulatory framework for enforceable net neutrality principles.[43] At the heart of those principles is a non-discrimination notion that an Internet user's right to engage in speech

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[41] *See* James J. Heaney, *Why Free Marketeers Want to Regulate the Internet*, DE CIVITATE (Sept. 15, 2014) available at http://www.jamesjheaney.com/2014/09/15/why-free-marketeers-want-to-regulate-the-internet/; Yankelevich and Koning, *supra* note 37.

[42] *See, e.g.*, NPRM at para. 1 (*Restoring Internet Freedom*, WC Docket No. 17-108). Tying the open Internet to the misleading phrase "light touch regulatory approach" is a repeated theme throughout the agency's NPRM.

[43] *See National Cable & Telecomm. Ass'n v. Brand X Internet Serv.*, 545 U.S. 967 (2005). The following discussion of the key landmarks in the effort to ensure net neutrality is drawn largely from Angele A. Gilroy, *Access to Broadband Networks: The Net Neutrality Debate*, CONG. RESEARCH SVC., Apr. 7, 2016 (hereinafter "CRS Report").

and to send and receive information free of censorship or other material restriction should not be impinged by network gatekeepers. In October 2004, before the *Brand X* decision, then-Chairman Powell of the FCC acknowledged these principles by describing them as "Internet Consumer Freedoms."[44] Shortly after the court decision, the Commission under Chairman Martin adopted an Internet Policy Statement – stopping well short of codifying these principles, but committing to making them part of the agency's policymaking practices, such as in negotiating agreements with entities doing business with the FCC.[45] For example, a handful of providers were bound by temporary non-discrimination restrictions included in merger agreements: SBC/AT&T and Verizon/MCI, until 2007[46] and AT&T/BellSouth until December 2008.[47] In other cases, such as the July 2006 acquisition of Adelphia by Comcast and Time-Warner, the FCC declined to impose non-discrimination requirements altogether.[48]

Comcast effectively challenged that policy adoption of net neutrality principles after the FCC found the company in violation in 2008 for blocking certain peer to peer connections. On appeal, the agency argued that it could enforce the principles under its ancillary authority – unstated authority emanating from its general statutory powers. The court disagreed, saying no such ancillary authority existed, and the FCC ruling was formally vacated in early 2010. During the pendency of the litigation, Comcast agreed to modify the practices to which the agency had objected.[49]

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[44] The Chairman referred to net neutrality as part of his "Four Freedoms" of web access and use. These net neutrality freedoms promised access to all lawful content, the ability to run applications of one's choice, to be able to connect one's choice of device, competition among providers of access, applications, services, and content, require that consumers be provided with sufficient information about service plans to make informed choices.

[45] CRS Report at 2.

[46] FCC Approves SBC/AT&T and Verizon/MCI Mergers, Oct. 31, 2005, *SBC/AT&T*, Docket No. 05-65, *Verizon/MCI*, Docket No. 05-75, at 2-3.

[47] *See* Alan Sipress & Sara Kehaulani Goo, *AT&T Completes BellSouth Takeover*, WASH. POST, Dec. 30, 2006, at A1.

[48] *See Communications Law Bulletin – July 2006*, MONDAQ BUS. BRIEFING, Aug. 10, 2006, *available at* 2006 WLNR 13834962.

[49] CRS Report at 3-4.

Starting shortly before the conclusion of that court case, the FCC began a rulemaking to adopt formally most of net neutrality principles then at issue, a process that led to the first Open Internet Order in late 2010. Instead of ancillary authority, the agency asserted authority to enforce the principles under Title 1 and specifically section 706 of the governing statute, which encourages deployment of advanced telecommunications capability to all Americans. That action was immediately challenged by Verizon as a violation of its corporate free speech rights.[50]

In early 2014, the federal court upheld the transparency provisions of the 2010 Order, but struck down the remainder, saying that because the agency had classified Internet service as an information service, it could not impose the net neutrality protections. The court, however, provided a roadmap for eventual adoption by saying that if the agency reclassified broadband Internet service as a telecommunications service, the FCC would have the authority to do that which it had been trying to do since at least 2005.[51]

The FCC then began the process of formulating its most recent Open Internet Order, proposing to reclassify the service as the court had suggested and adopting the same essential core of net neutrality protections. That process concluded with the Order's adoption in 2015. While the major telecommunications providers again challenged the Order, this time the Court upheld the validity of the agency's action. Significantly, in adopting its Order, the FCC limited the mandate on ISPs to a narrow band of obligations focused strictly on the net neutrality provisions to assure universal access and non-discrimination, while forbearing from application of fully 30 statutory provisions and over 700 codified rules.[52]

Despite the very narrow exercise of Title II authority, in its current proposal the FCC characterizes rescission of enforceable net neutrality principles as the only framework worthy of the label "light touch regulation". Such an assertion is plainly misleading as to the black letter of the existing Order. It is also misleading in that the absence of protection that would result from adoption of the current proposal is more akin

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[50] *Id*. at 4-6.

[51] *Id*. at 6.

[52] *Id*. at 7-9.

to "zero touch regulation" – the large ISPs will have carte blanche to resume their abusive practices in service of ever-expanding corporate profits.

In truth, net neutrality principles have governed the Internet service regulatory environment for much of the past 12 years. The 2005 adoption of the principles allowed the FCC to apply the protections at certain moments when the agency had leverage into ISP operations - at least until the court ruled otherwise at the conclusion of the Comcast suit in 2010. Then, the agency acted quickly to re-adopt the principles in its Order of 2010 – which again governed the regulatory environment through the conclusion of the Verizon suit in 2014. And at that point, the agency again acted promptly to re-establish the principles under the only remaining legal avenue open to it by adopting the 2015 Order and exercising its authority under Title II. So a more accurate representation than set forth in the NPRM is that net neutrality principles have guided FCC actions continuously since they were adopted in 2005 following the *Brand X* decision, with the possible exception of several months between the Comcast decision and the 2010 Order and between the Verizon decision and the 2015 Order.[53] To suggest, as the agency now does in its NPRM, that only "light touch regulation" defined the agency's approach prior to 2015 is simply inaccurate unless you also view the current narrow exercise of regulatory authority in the same light. Net neutrality has been the goal for years and the only question has been which regulatory framework would allow the agency to enforce it.

The most misleading aspect of the FCC's presentation of its proposal, however, is in its suggestion that a simple rollback of the 2015 Order will return the Internet to a state of 'light touch regulation'. Nothing could be further from the truth, as the rollback will result in a completely deregulated corporate environment. Even if the agency continues to endorse net neutrality principles, in a post-rollback world the agency would be severely restricted by judicial precedent from taking any steps to enforce those principles. It has no ancillary authority pursuant to the Comcast case.[54] It has no authority under

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[53] It may be fair to say that the agency's pursuit of the principles prior to the 2010 Order was less comprehensive and offered more opportunities for abuse by the ISPs.

[54] *Comcast Corp. v. F.C.C.*, (D.C. Cir., Apr. 6, 2010) *available at* http://pacer.cadc.uscourts.gov/common/opinions/201004/08-1291-1238302.pdf.

Title I and section 706 pursuant to the Verizon case.[55] And it would have voluntarily given up its authority to enforce net neutrality under Title II by adopting the current proposal. The ISPs would at long last have won the right to exercise arbitrary control over who has access to the Internet and content thereon, in what manner and degree they can access content, and at what cost. Those without the means to pay or otherwise obtain the favor of the ISP gatekeepers would be left on the outside looking in – an inherently discriminatory impact - and there would be little in the way of market competition to allow consumers and edge providers to seek alternatives. In seeking to revoke the Open Internet Order, the FCC is thus acting contrary to its assigned mission to act in the best interests of the American public.[56]

## IV. In the Absence of Enforceable Net Neutrality Principles, Large ISPs Have Used Market Power In Violation of Those Principles

### A. Content and Use Restrictions

Absent net neutrality rules, ISPs have the power to censor political speech, to prevent competitors from reaching their customers over the Internet, and to reshape the Internet so that paid commercial content crowds out education, research, and news. The risks of allowing ISP discrimination are illustrated by incidents abroad, where neutrality norms have been less robust historically. ISPs discriminate against particular speakers and technologies even in jurisdictions with strong transparency requirements and significantly more competition than in the United States. Such discrimination affects over 75% of subscribers in the United Kingdom[57] and at least one in five subscribers in the European Union.[58] They include restrictions on online phone services, file transfer

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[55] *Verizon Communications v. F.C.C.*, Case No. 11-1355 (D.C. Cir., Jan. 14, 2014).

[56] The laws governing the FCC contain multiple references directing the Commission to act in the interest of the people of the United States. *See, e.g.*, 47 U.S.C.A. s. 151 ("make available, so far as possible, to all the people of the United States, without discrimination . . . .").

[57] Alissa Cooper, *How Regulation and Competition Influence Discrimination in Broadband Traffic Management: A Comparative Study of Net Neutrality in the United States and the United Kingdom* (Sept. 2013) (Published Ph.D. dissertation, Univ. of Oxford) *available at* https://www.alissacooper.com/files/Chapter6-final.pdf.

[58] Body of European Regulators for Electronic Communication, *A View of Traffic Management and Other Practices Resulting in Restrictions to the Open Internet in Europe* (May 29, 2012), *available at* http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Traffic%20Management%20Investigation%20BEREC_2.pdf.

technologies, and gaming, streaming, email, and messaging applications.[59] One Canadian ISP even blocked access to the speech of its political opponents.[60]

ISPs have engaged in similar practices in the United States – even during times when net neutrality enforcement mechanisms were ostensibly in place. Several have overlaid third-party website content with their own advertisements, sometimes blocking the original content.[61] ISPs as large as AT&T[62] and as small as Madison River[63] have tried to block their subscribers from communicating with competitors. Comcast interfered with lawful peer-to-peer file transfer technologies without judicial process.[64] Verizon refused to allow smartphone owners to use their phones as wireless access points (ultimately reaching a $1.25 million settlement with the FCC).[65] And at least two large companies have censored political speech carried on their *other* platforms not subject to

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[59] *Id*.

[60] CBC News, *Telus Cuts Subscriber Access to Pro-union Website*, July 24, 2005, *available at* http://www.cbc.ca/news/canada/telus-cuts-subscriber-access-to-pro-union-website-1.531166.

[61] Jonathan Mayer, *AT&T Hotspots: Now with Advertising Injection*, WEB POLICY BLOG (Aug. 25, 2015), http://webpolicy.org/2015/08/25/att-hotspots-now-with-advertising-injection/; Zachary Henkel, ISP Advertisment Injection: CMA Communications, (Mar. 29, 2013), http://zmhenkel.blogspot.com/2013/03/isp-advertisement-injection-cma.html; Karl Bode, Mediacom Not Talking about Javascript Ad Injection: Users Still Waiting on an Explanation, (Mar. 3, 2011), https://www.dslreports.com/shownews/Mediacom-Not-Talking-About-Javascript-Ad-Injection-113007.

[62] *See* David Kravets, *AT&T Holding FaceTime Hostage is No Net-Neutrality Breach*, WIRED.COM (Aug. 22, 2012) *available at* http://www.wired.com/2012/08/facetime-net-neutrality-flap/.

[63] *Madison River Commc'ns, LLC and affiliated companies*, File No. EB-05-IH-0110; Acct. No.; FRN: 0004334082, Consent Decree, 20 FCC Rcd 4295 (EB 2005).

[64] FCC, *Commission Orders Comcast to End Discriminatory Network Management Practices*, Aug. 1, 2008, https://apps.fcc.gov/edocs_public/attachmatch/DOC-284286A1.pdf

[65] *See In re Complaint of Free Press Against Cellco Partnership d/b/a Verizon Wireless for Violating Conditions Imposed on C Block of Upper 700 Mhz Spectrum* (June 6, 2011), available at http://www.freepress.net/sites/default/files/fp-legacy/FreePress_CBlock_Complaint.pdf and FCC, *News Release: Verizon Wireless to Pay $1.25 Million to Settle Investigation into Blocking of Consumers' Access to Certain Mobile Broadband Applications* (July 31, 2012) http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0731/DOC-315501A1.pdf.

net neutrality rules: Verizon blocked pro-choice text messages[66] and AT&T censored criticism of George W. Bush during a concert webcast.[67]

Broadband providers have also demonstrated interest in creating artificial scarcity by segmenting bandwidth into multiple markets rather than investing in neutral, general-purpose upgrades.[68] Such artificial scarcity threatens innovation. For example, the coercive power of ISPs is evident in Comcast's decision to degrade Netflix's ability to deliver information to subscribers over Comcast's network, which rendered the service practically unusable.[69] When Netflix paid the toll Comcast demanded, quality was rapidly restored.[70] The company Etsy, Inc., now a major e-commerce website with hundreds of millions of dollars per year in revenue, would likely have failed if it had to pay for similar priority access to consumers.[71] Other small businesses and their investors have echoed these concerns.[72] While Netflix might be able to afford to pay for priority access for streaming video – a price ultimately paid by their customers, new innovators attempting to enter the market almost certainly cannot.

Non-commercial Internet applications are also likely to be relegated to the slow lane, or disappear altogether if they require broadband speeds to function. Across the

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[66] Adam Liptak, *Verizon Blocks Messages of Abortion Rights Group*, N.Y. TIMES, Sept. 27, 2007, http://www.nytimes.com/2007/09/27/us/27verizon.html.

[67] Reuters, *AT&T Calls Censorship of Pearl Jam Lyrics an Error*, Aug. 9, 2007, http://www.reuters.com/article/technologyNews/idUSN091821320070809.

[68] Zachary M. Seaward, *The Inside Story of How Netflix Came to Pay Comcast for Internet Traffic*, QUARTZ, Aug. 27, 2014, http://qz.com/256586/the-inside-story-of-how-netflix-came-to-pay-comcast-for-internet-traffic/.

[69] *Id*.

[70] *Id*.

[71] Comments of Etsy, Inc., *In the Matter of Promoting the Open Internet*, GN Docket No. 14-28 at 5, (July 8, 2014), https://blog.etsy.com/news/files/2014/07/Etsy-Open-Internet-Comments-7.8.14.pdf

[72] *See, e.g.* Mike Masnick, *Kickstarter, Etsy and Dwolla All Speak Out On Net Neutrality and Why the FCC's Plan is Dangerous to Innovation*, TECHDIRT, July 11, 2014, https://www.techdirt.com/articles/20140710/17450827845/kickstarter-etsy-dwolla-all-speak-out-net-neutrality-why-fccs-plan-is-dangerous-to-innovation.shtml; *In the Matter of Promoting the Open Internet*, GN Docket No. 14-28, Comment of Open Media and Information Companies Initiative (OpenMIC), et al. (July 14, 2014), http://openmic.org/files/Open%20MIC%20et%20al_GN%20Docket%20No.%2014-28_Comment.pdf; Letter from Open Engine and The Open Tech. Inst. at The New Am. Found. to FCC (May 7, 2014) http://engine.is/wp-content/uploads/Company-Sign-On-Letter.pdf.

country, people depend on high-speed Internet to access a variety of public and nonprofit services. Hospitals, libraries, firefighters, churches, schools, and social service organizations need fast Internet, but such entities are unlikely to negotiate with quasi-monopolies for access to the "fast lane."[73]

In light of these and other incidents and proven risks, the FCC and the Federal Circuit Court of Appeals for the D. C. Circuit have identified several serious issues facing the open Internet.

- Broadband Internet access providers "have incentives to interfere with the operation of third-party Internet-based services that compete with the providers' revenue generating telephone and/or pay-telephone services";[74]
- "[B]roadband providers' position in the market gives them the economic power to restrict edge[content]-provider traffic and charge for the services they furnish edge providers . . . the provider functions as a 'terminating monopolist' . . . [and has] this ability to act as a 'gatekeeper'";[75]
- "[E]nd users are unlikely to [switch to a competing broadband provider]" as "end users may not know" that their broadband provider is behaving in non-neutral ways and "even if they do have this information [consumers] may find it costly to switch."[76]
- "[B]roadband providers' potential disruption of edge-provider traffic [is] itself the sort of 'barrier' that has 'the potential to stifle overall investment in Internet infrastructure'";[77]
- In light of recent history, "the threat that broadband providers would utilize their gatekeeper ability to restrict edge-provider traffic is not . . .

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[73] *See, e.g.*, Andrea Peterson, *Why the Death of Net Neutrality Would be a Disaster for Libraries*, WASH. POST, May 16, 2014, http://www.washingtonpost.com/blogs/the-switch/wp/2014/05/16/why-the-death-of-net-neutrality-would-be-a-disaster-for-libraries/.

[74] *Verizon v. F.C.C.*, 740 F.3d 623, 645-46, (D.C. Cir. 2014) (citing *In the Matter of Preserving the Open Internet*, FCC Rcd. 17905, 17969 (2010) at ¶¶22-24 ("*2010 Open Internet Order*")).

[75] *Id*. at 646, (citing *2010 Open Internet Order* ¶24).

[76] *Id*. at 646-47, (citing *2010 Open Internet Order* ¶27).

[77] *Id*. at 642-43, (citing *2010 Open Internet Order* ¶120).

'merely theoretical.'"[78]

ISPs have a proven record of interfering with speech to serve their financial interests and censor critics. There is every reason to believe such practices will expand in a post-net neutrality regulatory environment.

**B. Restrictive Impact of Quasi-Monopolistic, Government-Enabled Market**

ISPs have been able to impose these practices on the market in part because each holds a unique position of centralized power over those requiring access to the Internet. In order to reach any endpoint on the Internet (such as a website), the customer needs to go through an ISP's network. The ISP has the power to downgrade or sever that link, so that its subscriber cannot reach a particular endpoint, cannot access its content, or cannot use a particular hardware device or software app to do so.[79]

The ISP market was born and remains anchored on top of existing common carrier networks subsidized and provided by government. Incumbent ISPs have benefited from government assistance to defray prohibitive costs of local infrastructure construction. Federal law requires phone companies to give the cable industry access to telephone poles at preferential rates set by FCC.[80] Wireless Internet providers have benefited from physical and regulatory groundwork laid by the radio industry,[81] in which "existing broadcasters . . . attained their present position because of their initial government selection in competition with others before new technological advances opened new opportunities for further uses."[82] Today's Internet access market is

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[78] *Id.* at 648, (citing *2010 Open Internet Order* ¶35).

[79] *See* James J. Heaney, *Why Free Marketeers Want to Regulate the Internet*, DE CIVITATE (Sept. 15, 2014) (nearly 2/3 of users in near monopolistic market) *available at* http://www.jamesjheaney.com/2014/09/15/why-free-marketeers-want-to-regulate-the-internet/.

[80] Susan Crawford, CAPTIVE AUDIENCE: THE TELECOM INDUSTRY AND MONOPOLY POWER IN THE NEW GILDED AGE at 40 (2013) ("The law gave cable a subsidy—in the form of a preferential rate on access to telephone poles—that is still in place today.").

[81] *See, e.g.*, AT&T, *1946: First Mobile Telephone Call*, http://www.corp.att.com/attlabs/reputation/timeline/46mobile.html (discussing Bell Lab engineer D.H. Ring's invention of the cell phone utilizing radio transmitters and technology); *see also* D.H. Ring, *Mobile Telephony – Wide Area Coverage* (Dec. 11, 1947), http://www.corp.att.com/attlabs/reputation/timeline/46mobile.html.

[82] *Red Lion Broad. Co. v. F.C.C.*, 395 U.S. 367, 400 (1969).

inseparable from the government policies that enabled, and continue to enable, its existence.

As a result of such reliance on existing cable and radio infrastructure, the market for broadband service has developed as invariably local, guarded by significant barriers to entry,[83] and resembles a monopoly or, at least, oligopoly.[84] New competitors can offer Internet services only by building new networks from scratch. Incumbent communications companies have used this first-to-market, government-enabled advantage to establish a captive customer base for Internet services.[85] Additionally, switching costs are high and consumers are unlikely to be able to determine whether lag, jitter or other service issues are due to providers unduly interfering with their data.[86]

The result is that only 37% of Americans have a choice between two or more broadband providers (those providing a download speed of 25Mbps or better[87]), and only 9% can choose among three or more.[88] This means that the majority of Americans must contract with the sole provider in their area, or else settle for a subpar connection.

Accordingly, as recognized by the federal appellate court in *Verizon*, broadband providers have the ability and incentive to collect fees from content providers to either

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[83] U.S. Dep't of Justice, Ex Parte Submission, *In re Economic Issues in Broadband Competition, A National Broadband Plan for our Future*, FCC GN Docket No. 09-51, at 7 (Jan. 4, 2010), http://www.justice.gov/atr/public/comments/253393.htm.

[84] See *In re Economic Issues* at 7 ( "[T]he Department does not expect to see a large number of suppliers."); 11 ("large economies of scale…preclude having many small suppliers and thus often lead to oligopolistic market structures").

[85] *See* Tom Wheeler, *The Facts and Future of Broadband Competition*, https://www.fcc.gov/document/chairman-remarks-facts-and-future-broadband-competition, Sept. 4, 2014, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-329161A1.pdf ("Once consumers choose a broadband provider, they face high switching costs that include early-termination fees, and equipment rental fees. And, if those disincentives to competition weren't enough, the media is full of stories of consumers' struggles to get ISPs to allow them to drop service.").

[86] *Verizon v. Fed. Commc'ns Comm.*, 740 F.3d 623, 646-47 (D.C. Cir. 2014).

[87] The FCC defines broadband as 25mbps download speed. NTIA, State Broadband Initiative Data, *FCC Chairman Tom Wheeler: More Competition Needed in High-Speed Broadband Marketplace*, FCC (Dec. 2013), https://apps.fcc.gov/edocs_public/attachmatch/DOC-329160A1.pdf.

[88] David N. Beede, Competition Among U.S. Broadband Service Providers, U.S. Dep't. of Commerce, (Dec. 2014), http://www.esa.doc.gov/sites/default/files/competition-among-us-broadband-service-providers.pdf.

disadvantage a competitor or provide prioritized access to the network's customers.[89] And because consumers have little choice among ISPs—should they even be able to discern such content discrimination—this ability to interfere with third party services, applications, and content remains artificially, and dysfunctionally, insulated from market forces.

The ISPs controlling access to the Internet should not be able to use their documented predisposition and their unchecked market control to restrict access, use, and content on a government-created resource like the Internet. Yet the current proposal will open the door to just such a future.

## V. Non-discrimination Rules Do Not Violate the First Amendment Rights of ISPs

The Commission asks in its NPRM whether the ISPs have speech rights that are constrained by the present regulatory framework.[90] Yes, ISPs have speech rights, but in their role as gatekeepers to the Internet, they serve as mere conduits for the speech of individual users. Because the present regulatory framework only requires ISPs to conduct themselves as common carriers, there is no violation of the ISPs' speech rights. The courts conclusively disposed of that issue in comprehensive fashion in ruling against the challenge to the 2015 Order and neither the agency nor, indeed, any interested party is in a position to overrule that decision.[91] The legality and enforceability of the current framework is a strong reason to keep it in place and not subject the agency or the affected parties to another round of lengthy litigation and time of uncertainty.

## VI. Agency Rollback of A Recently Adopted Rule Having Overwhelming Support and Justification in the Absence of Changed Circumstances, Mistake, or Other Material Grounds Would Be Arbitrary

The 2015 Order was adopted with overwhelming popular support. It reflected the agency's logical next step in its decade-long search to find the appropriate legal

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[89] *Verizon*, 740 F.3d at 645-46 (finding Commission's "speculation" about paid prioritization and other anticompetitive incentives "based firmly in common sense and economic reality").

[90] NPRM at para. 103.

[91] *U. S. Telecom v. F.C.C.*, Case No. 15-1063 at 108-15 (D.C. Cir. Jun. 24, 2016) available at https://www.cadc.uscourts.gov/internet/opinions.nsf/3F95F49183E6F8AF85257FD200505A3A/$file/15-1063-1619173.pdf.

framework to enforce net neutrality principles endorsed by the FCC across multiple administrations. The Order reflected a narrow exercise of agency authority designed to protect the rights of all those in the United States who wished to share in the revolutionary benefits afforded by the Internet.

There has been no material change of circumstance since the adoption of the Order that would justify a complete reversal of agency policy. The Internet has continued to thrive, investments remain strong, and there are more people than ever taking advantage of tis capabilities.[92] Indeed, even the ISPs who would benefit from the current rollback proposal have continued on a streak of significant economic success.[93] The courts upheld the Order as a valid exercise of FCC's authority.

No one's interests are served by rolling back the Open Internet Order of 2015 – except, that is, for the economic interests of the large ISPs. Yet, the cost of reversing field would be enormous to the millions of Internet users – both consumers and the online providers of content and services. The FCC's NPRM offers only to revisit – simply decide differently – based on the same essential facts as existed during the original rulemaking. The 2015 Order is a model of reasoned decision-making, drawing conclusions based on an in-depth review of evidence and a long history of attempting to achieve enforceable net neutrality protections by alternate means. Nothing has happened in the two years since adoption of the Order to justify a complete reversal.

Indeed, millions have already offered comments in opposition to the proposal. They are joined by over a thousand small start-up companies, hundreds of non-profit advocacy organizations, and even a sizable group of smaller ISPs who agree that

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[92] S. Derek Turner, *It's Working: How the Internet Access and Online Video Markets Are Thriving in the Title II Era*, (FREE PRESS, May 2017) *available at* https://www.freepress.net/sites/default/files/resources/internet-access-and-online-video-markets-are-thriving-in-title-II-era.pdf.

[93] Comcast reported strong earnings in its cable division, driven by double digit increases in its high-speed Internet and business services revenue. *See* Comcast Investor Relations, Earnings *available at* http://www.cmcsa.com/earnings.cfm. Verizon reported a 3.3 percent increase in its Fios Internet customer rolls to 5.7 million customers with overall Fios revenues growing to $2.9 billion. *See* Bob Varettoni, *Verizon 1Q Results Highlighted by Strong Wireless Customer Loyalty*, VERIZON (Apr. 20, 2017) *available at* http://www.verizon.com/about/news/verizon-1q-results-highlighted-strong-wireless-customer-loyalty-network-investment-and-growth.

retaining the present regulatory framework is best for them and for the country.[94] Because the most likely impact of a rollback will be the imposition of new fees and pricing models, those affected will tend to be those who can least afford to pay more for their Internet usage – an inherently discriminatory impact.

That the current FCC Chairman is a known and outspoken opponent of net neutrality protections renders the speed and vigor of the proposal suspect. He has been a zealous defender of large corporate ISPs and in fact had a long paid relationship with at least one of the major corporate players in the sphere.[95] Chairman Pai also voted against the 2015 Order, as did his current colleague Commissioner O'Rielly. While great deference is due to the agency, such a stark reversal in the absence of material changed circumstances, mistake, or some other compelling justification should be looked at askance.

## VII. Conclusion

In 2015, following an arduous series of attempts to create enforceable net neutrality protections for millions of Internet users, the FCC at last adopted a narrowly drafted Open Internet Order that treated the gatekeepers to the Internet like what they are – the minders of the infrastructure that others use. The agency created a set of very basic rights for those who use this publicly created tool intended to be used by all who are so inclined. After a mere two years, without justification or appreciable evidentiary support, those Commissioners who opposed the original adoption now wish to simply change the agency's official mind. They do so even though the benefits will accrue largely to a select few large corporate Internet service providers and the detriments will be borne by the millions who depend on the Internet for their livelihood or, at a minimum, as an

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[94] Letter from Advocacy Organizations to Chairman Pai (March 7, 2017) (nearly 200 signers) *available at* https://www.aclu.org/letter/coalition-letter-support-net-neutrality; Letter from Startups to Chairman Pai (Apr. 26, 2017) (over 1000 signers) *available at* http://www.engine.is/startups-for-net-neutrality; Letter from Small ISPs to Chairman Pai (Jun. 27, 2017) (40 ISPs signed on to the letter) *available at* https://www.eff.org/files/2017/06/27/isp_letter_to_fcc_on_nn_privacy_title_ii.pdf; Sara Kamal, *Small but Powerful: Depite Objections, Small ISPs Need Net Neutrality Too* (Public Knowledge, May 17, 2017) *available at* https://www.publicknowledge.org/news-blog/blogs/small-but-powerful-despite-objections-small-isps-need-net-neutrality-too.

[95] Financial disclosure forms show that Chairman Pai continues to have substantial assets invested in 401k accounts associated with his former employer, Verizon Communications. *See* Russ Kick, *FCC Chairman Ajit Pai's Financial Disclosures*, (ALTGOV2, May 18, 2017) *available at* http://altgov2.org/pai-disclosures/.

adjunct to their quality of life. The proposed action smacks of the worst kind of corporate giveaway without a material justification that passes a straight-face test. The end result will be a diminished Internet, a loss of rights for all who use it except for those who can afford to pay the ISPs their toll, and another reason to lose faith in those who are supposed to serve the interests of the American public. We urge the Commission to withdraw the proposed rollback and allow the current regulatory framework to continue to succeed.

Date: July 14, 2017

Respectfully submitted,

Faiz Shakir
National Political Director

/MWMB