

January 20, 2015

Senator John Thune
Chairman, Senate Commerce Committee
Russell Senate Office Building, Room 254
Washington, DC 20002

Congressman Fred Upton
Chairman, House Energy & Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Senator Bill Nelson
Ranking Member, Senate Commerce Committee
Dirksen Senate Office Building, Room 560
Washington, DC 20002

Congressman Frank Pallone
Ranking Member, House Energy & Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Dear Msrs. Chairmen and Ranking Members:

Congress, not three unelected officials, should decide the future of the Internet.

The Federal Communications Commission (FCC) has twice tried to regulate the Internet in the name of "Net Neutrality" — and twice failed in court. Lawmakers of both parties have proposed legislation that would avoid the need for the FCC to try again — yet FCC Chairman Tom Wheeler seems intent on issuing new rules. Worse, he plans to break with two decades of bipartisan consensus that the Internet should not be subject to 1930s public utility regulation.

We worry about the unintended consequences of *any* form of regulation — but also recognize that legislation appears to be the only way to stop the FCC from trying to impose Title II of the Communications Act on the Internet and thus prevent years of ensuing litigation. To prevent a slippery slope towards broader regulation of the Internet, any legislative compromise must tightly constrain the FCC's authority and discretion. At a minimum, that means three things:

1. Congress must bar the FCC from imposing Title II on the Internet. Title II was developed for the telephone monopoly of the 1930s; it is utterly inappropriate for the dynamic Internet ecosystem. Invoking Title II threatens both to impose billions of dollars of taxes and fees on consumers, undermine broadband investment, and drag "edge" companies into a regulatory morass.
2. Congress must clarify that it did not intend the 1996 Telecom Act to give the FCC a blank check to regulate the Internet. In its *Verizon* decision, the D.C. Circuit mistakenly upheld the FCC's 2010 re-interpretation of Section 706 of that Act as allowing it to regulate any form of "communications" in any way the agency claims would promote broadband deployment or adoption — not just broadband companies or net neutrality.
3. If Congress gives the FCC clear rules and the power to enforce them, the Commission will not need the power to write additional rules. Congress, not the FCC, should decide whether additional rules become necessary. (Case-by-case enforcement is how the FCC's 2010 Open Internet Order and its 2014 proposed rules would have worked anyway.)

We urge you to proceed with dispatch, but also with the utmost caution and through regular order in the normal legislative process. Only Congress can craft a solution that is appropriately narrow, avoids endless legal challenges, and puts this divisive issue behind us. Only then can we move on to many long-overdue reforms — such as opening up more spectrum for mobile broadband, clearing actual regulatory barriers to broadband deployment and competition, and updating the Communications Act for the Digital Age.

Sincerely,

ORGANIZATIONS

- **TechFreedom**
- **Americans for Tax Reform**
- **Americans for Prosperity**
- **Center for Individual Freedom**
- **Competitive Enterprise Institute**
- **Council for Citizens Against Government Waste**
- **Information Technology and Innovation Foundation**
- **Institute for Liberty**
- **Institute for Policy Innovation**
- **International Center for Law & Economics**
- **Lincoln Labs**
- **Taxpayers Protection Alliance**

INDIVIDUALS (*Organizations listed here are for identification only*)

- **Daniel Berninger**, founder, VCXC
- **Fred Campbell**, Executive Director, Center for Boundless Innovation in Technology
- **Bartlett D Cleland**, Madery Bridge
- **Scott Cleland**, Chairman NetCompetition
- **Alton E. Drew**, Managing Director, Alton Drew Consulting LLC
- **Hance Haney**, Program Director, Technology and Democracy Project
- **Gene Hoffman**, Co-founder, eMusic & Vindicia
- **J. Bradley Jansen**, Director, Center for Financial Privacy & Human Rights
- **Roslyn Layton**, Visiting Fellow, American Enterprise Institute
- **Stan Liebowitz**, Ashbel Smith Professor of Economics, University of Texas, Dallas
- **Katie McAuliffe**, Executive Director, Digital Liberty
- **Seton Motley**, President, Less Government
- **Glen O. Robinson**, Former FCC Commissioner (1974-76) and David and Mary Harrison Distinguished Professor of Law Emeritus, University of Virginia
- **Paul H. Rubin**, Dobbs Professor of Economics, Emory University
- **Mike Wendy**, President, MediaFreedom.org