



Comments of the Regulatory Action Center

Re: Restoring Internet Freedom

Docket ID: FCC-2020-0089-0001

April 29, 2020

The Regulatory Action Center at FreedomWorks Foundation is dedicated to educating Americans about the impact of government regulations on economic prosperity and individual liberty. FreedomWorks Foundation is committed to lowering the barrier between millions of FreedomWorks citizen activists and the rule-making process of government bureaus to which they are entitled to contribute.

On behalf of over 5.7 million activists nationwide, FreedomWorks Foundation appreciates the opportunity to offer these comments regarding the notice and request for comments regarding the issues remanded to the Federal Communications Commission by the U.S. Court of Appeals for the D.C. Circuit decision in *Mozilla Corp. v. FCC*. This docket seeks to address the questions remanded to the Commission by the court in that case and make any changes necessary to mitigate any outstanding legal questions.

The Restoring Internet Freedom Order has been a target of almost all political activists since the Commission took aim at repealing the Open Internet Order in 2017. It is important to clarify that this docket seeks to address legal questions, but should in no way be construed as to justify the repeal of the Restoring Internet Freedom Order itself. The fact that the courts determined to remand but not vacate the order demonstrates this. We are aware of a concerted public comment campaign to accomplish such an objective. FreedomWorks Foundation would like to point out the self-serving nature of these comments, that they are in line with years of partisan action, and do not address the issues at hand.

Although opponents of the Order couldn't repeal the rule through Congress, attempts at repeal through the judiciary continued. The courts condensed the relevant litigation to *Mozilla Corp. v. FCC* and sent the challenge to the U.S. Circuit Court of Appeals for the District of Columbia. There, the court upheld all of the classifications of the order -- classifying Broadband Internet Access Services (BIAS) as information services subject to Title I and mobile broadband service as a private mobile service -- as well as the vast majority of the rest of the order, including its stringent transparency requirements. Despite this, the court determined to remand the Order to the FCC for reconsideration on the grounds that the order presented constitutional issues surrounding the preemption of state and local regulations regarding the internet. In effect, the court told the FCC to go back and rewrite the rule to ensure that states and localities can institute their own rules with regards to data discrimination.



Importantly, the court did not vacate the Restoring Internet Freedom Order. As such, it remains in effect even as the FCC has reopened the docket to public comment and consideration by the Commission. Currently, the FCC is addressing three questions remanded to them by the D.C. Circuit. First, they are examining the implications of the order with regards to public safety. Second, they are examining the implications of reclassification on the regulation of pole attachments. Finally, they are examining the effects of deregulation on the FCC's lifeline program that is designed to provide subsidies to provide broadband access in low income areas.

FreedomWorks Foundation's Regulatory Action Center would like to target its comments toward the first prong of this proposed re-assessment: the assessment of public safety impacts.

The Court has asked the Commission to more thoroughly address the impact of the Restoring Internet Freedom Order on public safety. This seems unnecessary, and FreedomWorks Foundation would like to echo and affirm the comments submitted previously by Patrick Hedger and the Competitive Enterprise Institute (CEI). In said comments, CEI correctly noted that public safety was an "afterthought" for the Commission under the leadership of then-Chairman Wheeler when it was considering the Open Internet Order. It is also worth noting that neither order touches FirstNet, the dedicated broadband network for first responders.

With that being said, the Commission should have no issue justifying the Restoring Internet Freedom Order on public safety grounds, given the immense benefits it has had for our economy in the short time it has been on the books. This does go hand in hand with public safety. Investment and performance are both intrinsically linked to public safety in that a more fully functioning internet allows our public more resources to combat disease, stay connected to loved ones, research potential health issues, and engage in activities that safeguard their mental health. This is a point on which right and left tend to agree.

Two years after the formal repeal of Title II, we can start to reasonably assess the impact it has had on our economy and on the internet in general. As laid out above, it goes without saying that the predictions of doom were off-base. Not only were they wrong, but the opposite has come to fruition. Internet speeds have increased, investment has gone up, and tech companies are handing out bonuses to workers because of the added regulatory certainty they now have.

Prior to the repeal of Title II, the United States ranked a respectable twelfth place globally in terms of internet speed. In just the first year since Restoring Internet Freedom, internet speeds jumped 40 percent year-over-year. This massive improvement leapfrogged the U.S. from twelfth to seventh place globally. A study by Ookla found that in 2019 broadband



download speeds increased by 36 percent while broadband upload speeds increased by 22 percent.

This improvement should not come as a surprise to any observer, as they largely reflect the figures from 2011 to 2014, in the pre-Title II era. Internet companies, on average, outpaced their own expectations for upload speeds. Only 10 percent of Americans lacked access to the highest benchmark download/upload speeds of 25mbps/3mbps. Download speeds often rose by upwards of 60 percent year-over-year during that time. It's no miracle that we are returning to those numbers once again.

According to a 2013 study conducted by the Information Technology and Innovation Foundation (ITIF), the U.S. stood as a global leader in deploying high-band fiber for expanded internet access. Not to mention that the U.S. ranked sixth in fiber availability without the massive subsidies provided by some of the higher countries.

This trend picked back up with the return of light touch regulations. In 2018, more fiber was deployed in the U.S. than any year previously on record. Research also shows that fiber development and deployment is being driven by small-scale ISPs. They can afford to do so because they are not being priced out of the market by rigid government regulations that would force them to host Netflix the same way they would smaller sites. They could not manage that kind of bandwidth. With the flexibility of light-touch regulations they can handle the traffic, and can grow out their infrastructure to accommodate bigger sites. This is not possible under Title II.

Almost immediately after the Restoring Internet Freedom Order took effect, companies announced they were offering thousand dollar bonuses to their employees. It shortly became clear why they could afford to do so. Investment in broadband rose for the first time since Title II had been enacted during the Obama years. More money was finally coming into our tech infrastructure again now that there were at least four years of assurance the government would not strangle the tech industry in red tape.

In short, we are just beginning to see what our tech sector can accomplish in this modern era absent the heavy hand of government regulation. Imagine the capabilities we have now and the untapped potential we had years ago. If our internet continues to grow at that rate from where we are now, the U.S. is well on its way to winning the race to deployment of fifth generation (5G) technology across the globe, which will provide an economic boom at a time where we may sorely need one.

Recognizing these metrics as indicators for both the health of our internet and public safety, the Commission can safely say the Restoring Internet Freedom Order has improved both.



Answering the Court's inquiries depends very much on the clear linkage of the former with the latter. Given the aforementioned consensus on this question, it should not be a difficult case to make. Perhaps the biggest threat to public safety the Commission could initiate would be to entertain the notions of repealing the Restoring Internet Freedom Order. Our internet has thrived under light-touch regulation for years and is doing so once again under the Restoring Internet Freedom Order's framework.

Respectfully submitted,

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