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July 17, 2017

The Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Commissioners:

It is critical to economic and social fabric of the United States that the Federal Communications Commission (FCC) not only maintain the categorization of broadband providers under Title II, but also that you vigorously enforce the 2015 Open Internet Order.

Just three years ago, the Federal Communications Commission heard from millions of Americans advocating for strong net neutrality protections grounded on Title II. In 2014, I submitted a comment defending strong net neutrality rules: "[I]t is plain old common sense to any Internet user that broadband access providers — *all* broadband access providers — are providing telecommunications services covered by Title II."[1] The substance of that comment, from July 2014, applies today, and I include it as an appendix. The purpose of this comment is to specifically refute the Chairman's willfully ignorant mischaracterization of a letter I signed in 1998, which this NPRM improperly claims as justification for classifying broadband service providers as an information service in 2017.

In the late 90's, I led the charge against government over-regulation of the *content* of the internet, including by authoring Section 230 of the Communications Decency Act, a law which maintains free speech on the internet. Similarly, I wrote the Internet Tax Freedom Act, which prohibits internet access taxes and disallows discrimination between digital goods and services and their physical counterparts. My priorities from 1998 to 2017 have not changed. Then, as today, I fought for telecommunications policies deeply rooted in a philosophy of openness, transparency, nondiscrimination, competition, and freedom online. In 1998, that meant working to make sure third-party Internet Service Providers (ISPs) continued to grow from "walled-garden" services to the services we have today. In 2017, that means protecting the internet from the balkanization — from sponsored content and zero rating to paid prioritization and blocking — that will arise from removing the protection of the 2015 Title II Order.

The internet and internet access service today both are wildly different than they were in 1998. Back then, large numbers of consumers were starting to take advantage of the whole internet, rather than just a walled-garden service. The key difference, however, was that in 1998 consumers largely accessed the internet through third-party ISPs like AOL, or Prodigy, and those consumers used the infrastructure of the common carrier telephone system to connect to that third-party ISP.

Today, those third-party ISPs are few and far between, and the same company that provides the customer with internet service owns the broadband telecommunications infrastructure used to transmit online content. While the Internet Service Providers referenced in the 1998 letter provided what was an information service "over the top" of common carrier facilities, today's ISPs offer a transmission service to their broadband internet access customers.

This key difference means that without the strong protections of common carrier regulations, the broadband providers of 2017 have both the means and motivation to discriminate and profit from playing the internet gatekeeper, for example by turning off content from certain sources or competitors. If we lived in a world where effective broadband competition existed, and a functioning market worked to balance these incentives, that might impact the analysis if – and only if – internet users once again had dozens or even hundreds of ISPs from which to choose. Unfortunately, far too many Oregonians only have access to a single broadband provider for their home. Broadband providers that control their customers' pathway to the entire internet cannot be permitted to interfere unreasonably with the transmission of content that those customers send and receive.

I hope you closely consider this comment and refrain from continuing disingenuous rhetoric intended to deceive Americans about the net neutrality debate. As previous Commissions have demonstrated, the only way to achieve strong net neutrality protections is under Title II. I urge you to reject the proposed rule changes contemplated by the NPRM, and to fully enforce the current law of the 2015 Title II-based Order.

Sincerely,

Ron Wyden
United States Senator

[1] Senator Wyden comments to the FCC, July 14, 2014: https://www.wyden.senate.gov/download/?id=13BC5FF0-9F78-4129-9E6C-19C3C0609268&download=1