

September 18, 2018

House of Representatives  
Washington, D.C. 20515

Dear Representative,

Thank you for supporting Internet Freedom and the FCC's effort to roll back the harmful, growth-quashing government regulations imposed by the 2015 "Open Internet" order. With repeal of these stifling regulations, American innovation and entrepreneurship will flourish and will, once again, make the United States a global leader in broadband and all the economic, civic and social activity it enables.

Unfortunately, not everyone in Congress shares your vision to reach that goal.

Under the Congressional Review Act (CRA), the Senate recently passed a resolution to reverse the FCC's 2017 "Restoring Internet Freedom" (RIF) order. A similar resolution is now pending in the House, but it should not pass. Under Chairman Ajit Pai's leadership, the FCC liberated the broadband marketplace from the heavy-handed framework of Title II and from needless behavioral restrictions, which both reduced infrastructure investment and prohibited potential innovative service offerings for consumers.

Proponents of the CRA fail to understand how harmful the 2015 order was, and how returning to it now will halt progress towards practical legislation that is suited to the evolving digital landscape. For example, the CRA would slash broadband investment dollars and undermine ongoing deployment efforts to rural and low-income communities. For the United States to be a global leader in broadband deployment and modern information and communications technologies, the CRA must be stopped.

Not only would the CRA be economically destructive, it would also weaken existing consumer protections online. Chairman Pai's RIF order returned oversight and enforcement of all competition and consumer protections online to the Federal Trade Commission (FTC), the cop that had been "on the beat" until its jurisdiction was stripped away by the FCC in 2015. And, contrary to the claims of CRA proponents, the FTC's historic track record as arbiter of all things online shows that it is perfectly capable of protecting consumers from any harmful practices in which broadband providers might engage.

The recent throttling incident between Verizon and the Santa Clara Fire Department illustrates this point and the wisdom of the RIF order. The 2015 order explicitly allowed broadband providers to offer tiered service plans that throttle users' speeds after certain data caps were met. So, Verizon's conduct would not have violated the 2015 order, except perhaps under an expansive reading of the vaguely worded general-conduct standard. However, Verizon's conduct was clearly covered by Section 5 of the FTC Act.

Indeed, after AT&T recently throttled users on its "unlimited" data plans, it was the FTC — not the FCC — who successfully prosecuted the case, alleging both "unfair" and "deceptive" practices on the part of AT&T. If Verizon's actions were similarly unfair or deceptive, the FTC is perfectly able to prosecute Verizon, obtain redress for their aggrieved consumers and establish a precedent that any similar conduct in the future will not be tolerated. This example clearly shows how complaints about the sky falling without a "strong Net Neutrality under Title II" are truly unfounded.

Before 2015, there was bipartisan agreement that FTC enforcement combined with limited regulatory oversight from the FCC was the best way to foster investment, competition and innovation online. For the Internet ecosystem to flourish, we need legislative certainty from Congress, not emotionally charged and politically driven reactions like the CRA.

Thus, rather than to undo Chairman Pai's good work and return to an outdated regulatory framework, we encourage members to craft bipartisan legislation that resolves this debate once and for all. Americans need leadership from the legislative branch, not unelected and unaccountable bureaucrats. If members can put politics aside and agree to a reasonable compromise, Congress can provide market certainty, stimulate investment, promote inclusion of disenfranchised rural and impoverished communities, and keep the Internet open to users and entrepreneurs alike.

We respectfully urge you to reject the CRA, and we look forward to working with you to develop new legislation to address competition and consumer protection issues in the modern information and communications marketplaces.

Sincerely,

R Street Institute

Lincoln Network

Freedom Partners