



SUBMITTED STATEMENT OF
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POLICY COUNCIL, TECHNOLOGY & INNOVATION
R STREET INSTITUTE

BEFORE
COMMISSIONER ANNA M. GOMEZ
FEDERAL COMMUNICATIONS COMMISSION

ROUNDTABLE PROCEEDING ON
“SAFEGUARDING AND SECURING AN OPEN INTERNET”

APRIL 12, 2024

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Good afternoon, Commissioner Gomez. My name is Jonathan Cannon and I am Policy Counsel for the Tech and Innovation team at the R Street Institute. I am also an Alumnus of the FCC and served in the Wireline Bureau, Office of Legislative Affairs, and as Acting Legal Advisor for Wireline for Commissioner Simington.

The R Street Institute is a non-partisan think tank dedicated to free markets and limited, effective government. In our work at R Street, we look for solutions to address several broadband challenges and to lower barriers to help Americans seize the opportunity of the digital economy. We appreciate the opportunity to discuss the proposed rule in the matter of “Safeguarding and Securing the Open internet.”¹ Despite having already considered the issue three times, the FCC is once again examining whether broadband internet access services (BIAS) should be classified under Title II of the Telecommunications Act.² By definition, a network buried in regulation is anything but a free and open one.

The FCC has worked in the public interest in a bipartisan effort across multiple administrations to ensure customers can access and afford to be part of the modern digital economy. The administration has set a laudable goal to close as much of the digital divide as possible.³ This is spurred by massive investments in both access and adoption of broadband internet access services.⁴ Instead of pursuing objectives to enhance connectivity and support the increasingly competitive broadband marketplace, the FCC is moving to actively undermine these efforts.

The proposed rule will deter investment, weaken competition, and reduce incentives to develop innovative solutions to connect Americans.⁵ Between this order, Digital Discrimination, and other recent actions by the FCC, the FCC is undermining this goal.⁶ These actions will deter providers from participating in these critical programs, harming communities’ ability to reap the benefits of high-speed, low-cost, competitive broadband services.

Simply declaring that broadband is an essential service to everyday life is not a sufficient foundation for intrusive regulations. Utilities, unlike broadband, lack competitive incentives to provide cutting-edge products that innovate and give customers the latest and greatest offerings. Turning broadband into a utility would moot these incentives, thereby harming both customers and innovation. This burden will be felt the most by smaller providers, further reducing competition and driving up prices.

¹ Safeguarding and Securing the Open Internet, GN Docket 23-320 (Nov. 3, 2023)

² 47 U.S.C. §151 et seq

³ See *Closing the Digital Divide for the Millions of Americans Without Broadband*, Government Accountability Office (Feb. 1, 2023) <https://www.gao.gov/blog/closing-digital-divide-millions-americans-without-broadband#:~:text=The%20federal%20government%20has%20recognized,accelerate%20efforts%20to%20expand%20access.>

⁴ Broadband Equity Access and Deployment Program, BroadbandUSA, <https://broadbandusa.ntia.doc.gov/funding-programs/broadband-equity-access-and-deployment-bead-program>

⁵ Safeguarding and Securing the Open Internet, GN Docket 23-320 (Nov. 3, 2023)

⁶ Jonathan Cannon, BEAD: Broadband or Boondoggle, R Street Institute (July 10, 2023), <https://www.rstreet.org/commentary/bead-broadband-or-boondoggle/>

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In the aftermath of the Restoring internet Freedom Order in 2017, the internet did not start loading one word at a time, and there is no evidence that providers blocked or throttled lawful content.⁷ The internet is more competitive than ever before, mobile speeds are becoming comparable with at-home networks, and new technologies including Low Earth Orbit (LEO) and fixed wireless internet are connecting us in ways we never thought possible.⁸ Just this week, Chairwoman Rosenworcel was in California to continue the false narrative about the Santa Clara incident, which, while unfortunate, was wholly unrelated to Title II or lack thereof.⁹

Since 2015, R Street has consistently argued that reclassifying BIAS as a Title II service will have a dramatic downstream impact on the internet marketplace.¹⁰ We can look to the failed experiment of the Open Internet Order to see the chilling effect the order had on broadband investment.¹¹ As multiple studies have shown, Capital Expenditure for ISPs decreased 10-29% in the year following the order.¹² Additionally, there was \$150-200 billion less capital investment in broadband than would have been expected absent reclassification. Further, Title II reduced investment by \$8.1 billion annually, and reduced employment in the information sector by 81,500 jobs and total employment by 195,600 jobs.¹³ It also reduced GDP by \$145 billion annually.¹⁴

Despite these costs and the lack of evidence that the Open internet Order was successful in accomplishing any of its goals, we are discussing the issue yet again. The FCC is attempting to do the same thing while expecting different results. Instead of repeating the failed policies of the past, we should build a broadband ecosystem for the future.

One of the stated goals of the newest order is to set a uniform national standard.¹⁵ However, the proposed rule elects not to preempt California’s net neutrality law, perpetuating the very patchwork that it claims to address. Why seek a national standard if states are empowered to create or set their net neutrality frameworks?

The internet is a dynamic ecosystem that crosses state lines and should be addressed at the federal level. This adds yet further burdens to providers that operate in California and other states

⁷ See E.g., @senateDems, “If we don’t save net neutrality, you’ll get the internet one word at a time.” (Feb 27, 2018), <https://twitter.com/SenateDems/status/968525820410122240?s=20>

⁸ See Speedtest Global Index, Speedtest (Last Accessed Apr. 15, 24), <https://www.speedtest.net/global-index/united-states#mobile>

⁹ Office of Chairwoman Jessica Rosenworcel, FCC Chairwoman Hosts Public Safety Roundtable on Net Neutrality, Federal Communications Commission (Apr. 9, 2024), <https://www.fcc.gov/document/fcc-chairwoman-hosts-public-safety-roundtable-net-neutrality> See also, Daniel Lyons, One More Time the Verizon Santa Clara Fire Dispute Has Nothing to do With Net Neutrality, American Enterprise Institute (Apr. 5, 2023), <https://www.aei.org/technology-and-innovation/one-more-time-the-verizon-santa-clara-fire-dispute-has-nothing-to-do-with-net-neutrality/>

¹⁰ See R Street Comments, see also, R Street Reply Comments

¹¹ Promoting and Protecting the Open Internet, GN Docket No. 14-28, FCC Rcd, Report and Order on Remand, Declaratory Ruling and Order.

¹² George S. Ford, PHD, Investment in the Virtuous Circle: Theory and Empirics, Phoenix Center Policy Paper Series (dec. 2023), <https://www.fcc.gov/ecfs/document/1214841324432/2>

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Safeguarding and Securing the Open Internet, WC Docket 23-320; WC Docket No. 17-108 (Apr. 4, 2024)

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that follow its lead. If state laws like California’s have prevented net neutrality violations, as Chair Rosenworcel explained in the order’s announcement, then why is there an urgent need to pass a federal standard?¹⁶

R Street supports the idea of bright-line consumer protections on the internet, and as we highlighted in our comments, utility-style Title II regulations are not necessary to ensure net neutrality principles are protected.¹⁷ Absent Title II classification, the Federal Trade Commission under its unfair and deceptive practices guidelines can address consumer harms caused by bad actors including BIAS providers.¹⁸ Yet, between 2017 and today, the FTC has not brought a case against any providers for alleged net neutrality violations.

This proposed order will almost certainly be subject to legal challenge shortly after publication in the federal register. Additionally, should the administration flip, it is almost certain that a Republican-led FCC would repeal these rules and restore the 2017 Restoring internet Freedom approach that sustained the internet ecosystem during some of its greatest challenges, including the COVID-19 pandemic.¹⁹

The record is a robust discussion of the impact upcoming court decisions could have on a proposed order. I see no need to repeat those now, but I do want to emphasize that this order is a further act of futility. We urge the FCC to abandon this pursuit which will only exacerbate the never-ending regulatory ping-pong. Instead, the FCC must work with Congress to develop a long-term, forward-looking approach to maintaining an open and competitive internet landscape.

As technology evolves, regulations are unable to keep pace with these innovations. A perfect example of this is network slicing.²⁰ Network slicing enables providers to tailor network performance to specific metrics to meet consumers' needs including speed, latency, reliability, service quality, security, and density.²¹ This will be useful for any number of real-life applications including telehealth, education, smart grids, self-driving vehicles, and more by utilizing slices that are optimized to meet the individual needs of specific applications. While the FCC declined to explicitly state that network slicing is prohibited, the proposed order stated that “we “should not allow network slicing to be used to evade [the] Open Internet rules,” condemning the technology to regulatory purgatory at the expense of innovation.²²

¹⁶ Office of Chairwoman Jessica Rosenworcel, Remarks of Chairwoman Jessica Rosenworcel, Federal Communications Commission (Sept. 26, 2023), <https://docs.fcc.gov/public/attachments/DOC-397257A1.pdf>

¹⁷ Jonathan Cannon and Canyon Brimhall, The Revival of Net Neutrality Relitigates a Solution in Search of a Problem, The Hill (Oct. 11, 2023), <https://thehill.com/opinion/congress-blog/4250658-the-revival-of-net-neutrality-relitigates-a-solution-in-search-of-a-problem/>

¹⁸ See R Street Comments

¹⁹ Mike Robuck, Report: U.S. networks out perform Europe’s during COVID-19 Pandemic, Fierce Network (Jun 22, 2020), <https://www.fierce-network.com/telecom/report-u-s-networks-out-perform-europe-s-during-covid-19-pandemic>

²⁰ See R Street Comments

²¹ T-Mobile comments at 5

²² Safeguarding and Securing the Open Internet, Proposed Rule, WC Docket 23-320; WC Docket No. 17-108 (Apr. 4, 2024)

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As we emphasized in the record, this proposed rule is an improper course both as a matter of law and as a matter of policy, with no evidence to support the need for this undertaking, and ample evidence to support the negative impact the rule would have. We urge the Commission to work in a bipartisan fashion to promote the increasingly competitive broadband marketplace and continue its valiant efforts to close the digital divide.

An open internet is best secured by the light-touch regulatory framework enshrined in the Restoring Internet Freedom (RIF) Order.²³ Congress can and should address potential consumer harms or grant the FCC authority to promulgate rules as it sees fit. Absent a clear directive from Congress, the FCC cannot and should not act alone to wreak havoc on the internet ecosystem that has become an essential part of our society.

Thank you again for the opportunity to speak with you on this important subject, and for consideration of my perspective. I’m happy to answer any questions you may have.

²³ In the Matter of Restoring Internet Freedom, Declaratory Ruling, Report and Order, and Order, WC Docket 17-108 (Jan 4, 2018).