

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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In the Matter of	)	WC Docket No. 17-108
	)	
Restoring Internet Freedom	)	FCC 17-60
	)	
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**COMMENTS OF NEW MEDIA RIGHTS**

Art Neill, Kyle Reynolds, Cat Mineo  
New Media Rights  
1855 1<sup>st</sup> Ave, Suite 102  
San Diego, CA 92101  
art@newmediarights.org  
619-591-8870

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## I. Introduction

Americans cherish a free and open internet. That is why, when the Federal Communications Commission sought public comment three years ago on whether it should enact a set of rules that would enshrine the foundational principles of an open internet, the response in favor of such rules was overwhelming. The rules were a result of the careful study of comments of a variety of stakeholders. Now, armed with a pre-assumed conclusion, some baseless assertions, and a bit of condescending rhetoric, this Commission has made a complete about-face. The Commission now seeks to tear down those very same protections under the laughably ironic guise “restoring internet freedom,” which could not be further from reality. The Commission has managed to make a mockery of the policymaking process along with a bold faced abandonment of the principles that made the internet an engine for innovation, creativity, and competition. Indeed, we believe Commissioner Clyburn coined a better moniker for the Commission’s Notice of Proposed Rulemaking (“NPRM”): *Destroying Internet Freedom*.<sup>1</sup>

By way of background, New Media Rights (“NMR”) is a non-profit program that is part of California Western School of Law. We provide free and low-cost legal assistance to independent creators, internet users, and start-up entrepreneurs (such as musicians, artists, filmmakers, mobile app developers, and more). We are reminded daily of the innumerable benefits the internet can provide to American innovators, content creators, and consumers. These benefits flow from the open architecture of the internet and its low barriers to entry. This openness has been challenged by fixed and mobile broadband internet access providers repeatedly over the last decade. The Commission took great strides in 2015 to curb this behavior with its open internet rules, making a clear statement that the federal agency responsible for communications would indeed have some role in helping to ensure the usefulness of the twenty-first century’s most ubiquitous communications tool: the internet.

However, rather than continue protection of the nation’s premiere means of communication, this Commission is now poised to bury its head in the sand. This is particularly detrimental given the number of lawsuits and investigations regarding broadband internet access providers that the

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<sup>1</sup> See Dissenting Statement of Commissioner Mignon L. Clyburn, *In Re Restoring Internet Freedom*, WC Docket No. 17-108.

FCC has been involved in within the past two decades. Whatever the reason for this conscious disregard of the history of how we reached the 2015 Open Internet Rule, the Commission is setting dangerous and disruptive precedents, both in pre-assuming a policy outcome and in abandoning the principles of the open internet. Making this issue into another political tug-of-war will only harm American consumers and businesses. Both freedom of speech and competition advocates found common ground in the 2015 Open Internet Rule, and such thoughtful policymaking deserves to be stewarded and built upon, not lightly discarded. In fact, the Open Internet Rule was about fostering competition and American competitiveness of ideas, products, and services.

For the reasons discussed below, NMR strongly opposes any attempt by this Commission to forsake its Title II authority and roll back any of the rules enshrined in the Open Internet Order.

## **II. Broadband Internet Access Service Can and Should be Considered a Telecommunications Service**

Broadband internet access service (“BIAS”) is properly treated as a telecommunications service under the current regulatory scheme. The Commission has set forth a number of reasons as to why it believes that BIAS is an information service and not a telecommunications service.<sup>2</sup> None of the reasons proposed by the Commission justify a departure from the current regulatory scheme. This comment will address the Commission’s misguided attempts at justifying this brazen departure from reasonable open internet protections.

First, the arguments raised by the Commission regarding the provision of additional services, such as Domain Name Service (“DNS”), Dynamic Host Configuration Protocol (“DHCP”), e-mail, and other services by BIAS providers fail to support the conclusion that BIAS is an information service. Second, the definitions of “internet access service” in Sections 230 and 231 of the Telecommunications Act do not in any way indicate that BIAS can never be a telecommunications service as the Commission suggests. Third, the Commission’s broad reading of “capability” in the definition of “information service” is misguided and incorrect. And last,

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<sup>2</sup> See *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking, 31 FCC Rcd. 4441-4453 (2017) (hereinafter “NPRM”).

contrary to the Commission's claims, public policy *favors* classification of BIAS as a telecommunications service and not an information service.

*A. Internet Access is Different Than Services and Content Provided Over That Internet Access*

Just think about a road versus a delivery company. Are those two things different? We think they are. The road provides access to homes and businesses, while the delivery company uses the road to provide services to its customer. Also note that while it is hard to provide more than one road, a consumer can choose from a variety of delivery companies. As NMR stressed in its Reply Comment in the previous Net Neutrality proceedings, basic access to the internet is not the same as the information services and content that are provided through the network.<sup>3</sup> The FCC rightfully concluded as much in the 2015 Open Internet Order when it stated that “[t]o the extent that broadband internet access service is offered along with some capabilities that would otherwise fall within the information service definition, they do not turn broadband Internet access service into a functionally integrated information service.”<sup>4</sup> This is because these services, such as e-mail, web-hosting, and others are distinctly separate and incidental information services. This is consistent with Commission precedent. As NMR pointed out in its Comment three years ago, the FCC noted in 1998 that an incumbent local exchange carrier (“ILEC”) could not “escape Title II regulation” by packaging its telephone service with voicemail.<sup>5</sup> Similarly, broadband internet access providers cannot escape Title II regulation of the telecommunication services they provide simply by packaging those services with incidental services like e-mail.

Additionally, services like DNS, DHCP, caching, and others are properly considered network management tools and therefore do nothing to change the classification of BIAS as a telecommunications service. As we discussed in the last proceeding, because these services are necessary to route, manage, or otherwise use BIAS, they fall under the management exception

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<sup>3</sup> See Reply Comments of New Media Rights, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28 at 9 (filed Sept. 11, 2014). <https://goo.gl/RNf5nq>

<sup>4</sup> Report and Order on Remand, Declaratory Ruling, and Order, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28 at 165 (March 12, 2015) (hereinafter “2015 Open Internet Order”).

<sup>5</sup> See Comments of New Media Rights, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28 at 18 (filed July 15, 2014) <https://goo.gl/QeZ8q7>

embodied in the definition of an information service.<sup>6</sup> The Commission’s vague implications to the contrary appear to be based on only a few extremely selective quotations of an almost twenty-year-old FCC opinion.<sup>7</sup> Considering the clear language of the Telecommunications Act in this instance, this is not a sufficient reason to change course. Consider the words of the late Justice Scalia in the *BrandX* decision.

The relevant question is whether the individual components in a package being offered still possess sufficient identity to be described as separate objects of the offer, or whether they have been so changed by their combination with the other components that it is no longer reasonable to describe them in that way.

...[I]t would be odd to say that a car dealer is in the business of selling steel or carpets because the cars he sells include both steel frames and carpeting. Nor does the water company sell hydrogen, nor the pet store water (though dogs and cats are largely water at the molecular level).<sup>8</sup>

Justice Scalia then offers us pizza-based guidance that is as delicious as it is compelling.

There are instances in which it is ridiculous to deny that one part of a joint offering is being offered merely because it is not offered on a ‘stand-alone’ basis...

If, for example, I call up a pizzeria and ask whether they offer delivery, both common sense and common “usage,” [...] would prevent them from answering: “No, we do not offer delivery—but if you order a pizza from us, we’ll bake it for you and then bring it to your house.” The logical response to this would be something on the order of, “so, you do offer delivery.” But our pizza-man may continue to deny the obvious and explain, paraphrasing the FCC and the Court: “No, even though we bring the pizza to your house, we are not actually ‘offering’ you delivery, because the delivery that we provide to our end users is ‘part and parcel’ of our pizzeria-pizza-at-home service and is ‘integral to its other capabilities.’”<sup>9</sup>

We therefore urge the Commission, based on the Telecommunications Act, pizza-based analogies of Justice Scalia, and common sense to continue properly treating these services as network management tools that do not transform BIAS into an information service.

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<sup>6</sup> Reply Comments of New Media Rights, *supra* note 3, at 10 (citing Comments of Public Knowledge, *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, at 68 (filed July 15, 2014); Telecommunications Act, 47 U.S.C. §153(24) (2010)).

<sup>7</sup> See NPRM, *supra* note 2, at 13.

<sup>8</sup> *NCTA v. BrandX*, 545 U.S. 967, 1006-1007 (2005) (Scalia, J., dissenting).

<sup>9</sup> *Id.* at 1007.

*B. Why the Definitions in Sections 230 and 231 of the Telecommunications Act Do Not Support the Treatment of Broadband Internet Access Service as an Information Service*

The definition of “interactive computer service” in Section 230 of the Telecommunications Act and the definition of “Internet access service” in Section 231 do not support the conclusion that BIAS is an information service. Section 230 states that an “interactive computer service” is “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.”<sup>10</sup> Section 231 defines “internet access service” as “a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.”<sup>11</sup> Section 230 protects a variety of entities from legal claims based on the behavior and illegal acts of third parties online and has nothing to do with rules governing the behavior of broadband internet access providers. There is nothing incompatible with the 2015 Open Internet Rule and the definition of “interactive computer service” in Section 230, and the Commission knows it. Attempting to rely on Section 230 exposes how specious the Commission’s basis is for abandoning the rules. Further, Section 231 addresses those engaged in commercial communications *over* the “World Wide Web” and does not deal directly with the behavior of broadband internet access providers in providing internet access. Neither definition should have any effect on the classification of BIAS as a telecommunications service.

*C. Statutory Analysis contradicts the Commission’s errant reliance on the word “capability”*

This Commission’s attempt to place emphasis on the word “capability” in the definition of an information service is misguided. The Telecommunications Act defines an information service as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management,

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<sup>10</sup> 47 U.S.C. §230(f)(2).

<sup>11</sup> 47 U.S.C. §231(e)(4).

control, or operation of a telecommunications system or the management of a telecommunications service.”<sup>12</sup> The Commission suggests that BIAS offers users the “capability” to generate, acquire, store, transform, process, retrieve, utilize, or make available information because they might use the internet to do such things as post on social media, read a website, or access a grocery list.<sup>13</sup> This expansive reading of the definition is not only utterly absurd, but as Commissioner Clyburn points out, would completely read “via telecommunications” out of the definition.<sup>14</sup> To put it simply, each of the examples presented in the NPRM as a “capability” offered by BIAS involves the use of a wholly separable information service, often provided by a third party edge provider and not the BIAS provider. Facebook offers users the capability of making information available *via telecommunications*. Google search offers users the capability to acquire and retrieve information *via telecommunications*. BIAS, on the other hand, offers none of these capabilities on its own, but rather is the means through which users are able to access information services that can. Further, we already know, based on our previous discussion of Commission precedent regarding voicemail, that even if such separable information services are packaged with BIAS, it cannot change its status as a telecommunications service.<sup>15</sup> Therefore, the exceedingly broad reading of the word “capability” in the definition of information service fails to support the notion that BIAS is an information service.

*D. What the Cable Companies Don’t Want You to Know: Public Policy Supports  
Classification as a Telecommunications Service*

The public policy benefits of treating BIAS as a telecommunications service, regulated under Title II, are significant. We pointed out some of them in our comment three years ago.<sup>16</sup> Regulatory clarity and certainty; Court-tested and Court-approved regulatory authority; the requisite authority to effectively check the increasingly consolidated BIAS market; it seems absurd to claim that these are not public policy benefits. And yet this Commission has proceeded to do so, making specious claims about decreased investment, opposition by small internet service providers (“ISPs”), regulatory uncertainty, and a lack of consumer benefits due to there

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<sup>12</sup> 47 U.S.C. §153(24).

<sup>13</sup> See NPRM, *supra* note 2, at 9.

<sup>14</sup> Dissenting Statement of Commissioner Mignon L. Clyburn, *supra* note 1, at 9.

<sup>15</sup> See discussion *supra* pp. 3-4.

<sup>16</sup> See Comments of New Media Rights, *supra* note 3, at 13-24.



being only “hypothetical” harms as a result of ISP behavior. We strongly disagree with the Commission’s analysis for the reasons below.

The Commission’s argument that classifying BIAS as a telecommunications service has led to depressed investment is problematic for two reasons. First, the Commission’s data is questionable. The Commission cites to few sources beyond a couple blog posts, industry-sponsored studies, and a single, abbreviated study that covers only the years leading up to reclassification.<sup>17</sup> Relying on materials that are either biased, severely limited in scope, or both, hardly makes a persuasive argument that reclassification has harmed investment, nor is it becoming of a Federal agency seeking to engage in a well-reasoned dialogue to seek policy rooted in reason.<sup>18</sup> Second, the Commission states that ISPs “stated that the increased regulatory burdens of Title II classification would lead to depressed investment.”<sup>19</sup> However, ISPs also gladly told their investors that the prospect of regulatory action would not impede investment or long-term profitability.<sup>20</sup> We therefore urge the Commission to reconsider its reliance on such shoddy information. The Commission should assume its role as an expert agency, not compile unsupported information to confirm the Commission’s pre-assumed conclusion. The current rules have hardly been in place for more than a year and to so hastily conclude that they have caused a significant detriment is a display of exceedingly questionable judgment. Indeed, if something is working adequately well, leave it alone. Translation: If it ain’t broke, don’t fix it.

The Commission also claims that small ISPs have been harmed by the new rules. Another problematic assertion. We believe Commissioner Clyburn’s example regarding Wisper, a wireless ISP that filed for a stay of the 2015 Open Internet Order but a month later expanded its network through the purchase of another provider, provides a perfect example of why the Commission’s anecdotes of harmed ISPs are questionable.<sup>21</sup> Apparently, after only a month,

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<sup>17</sup> See NPRM, *supra* note 2, at 15-16.

<sup>18</sup> We note with great concern the general hypocrisy exhibited in particular by the Chairman, who lambasted the Commission during the Open Internet proceedings for not conducting as thorough an economic analysis as he would have liked, yet who now champions an NPRM that relies on little more than blog posts and industry-sponsored studies.

<sup>19</sup> NPRM, *supra* note 2, at 15.

<sup>20</sup> 2015 Open Internet Order, *supra* note 4, at 13; *see also* Edward Wyatt, *Verizon Says Investment Will Be Unaffected by Net Neutrality Policy*, The New York Times (Dec. 11, 2014 12:18 PM) <https://bits.blogs.nytimes.com/2014/12/11/verizon-says-investment-will-be-unaffected-by-net-neutrality-policy/>.

<sup>21</sup> See Dissenting Statement of Commissioner Mignon L. Clyburn, *supra* note 1, at 6.

Wisper realized that Title II was not all that bad. Indeed, Wisper purchased yet another provider not long after that.<sup>22</sup> How many other small ISPs quickly realized they could continue operating and even expanding after reclassification under Title II? Many, it seems, as more than 40 ISPs around the country have already informed Chairman Pai that they wholeheartedly support the current regulatory scheme.<sup>23</sup> Concerns regarding harm to small ISPs are not supported by legitimate evidence.

The 2015 Open Internet Order created regulatory *clarity*, not uncertainty. Although the Commission references regulatory uncertainty as a cause of purported woes suffered as a result of the current rules, it has hardly provided any explanation let alone evidence of this uncertainty.<sup>24</sup> There is simply no logical reason to believe that the enactment of Court-approved bright line rules, based on long-standing principles familiar to all actors in the BIAS market, could lead to such uncertainty. In fact, the regulatory landscape prior to the 2015 Open Internet Rules was vastly more uncertain. We argued as much in our comment three years ago, pointing out that reclassification actually creates more legal certainty by clarifying the distinction between telecommunications services like BIAS and information services provided by edge providers, avoiding protracted litigation over FCC authority to regulate ISPs, and providing a well-understood, pre-existing legal framework under which the FCC could regulate broadband internet access providers.<sup>25</sup> Indeed, if there is currently any regulatory uncertainty regarding BIAS, it is of this Commission's own making, through its hasty, groundless attempt to tear down regulations that were years in the making. If the Commission seeks regulatory certainty, it need only stop itself from mucking up a legally sound regulatory scheme through its disruptive and irresponsible actions.

Finally, we would like to take the time to remind the Commission, and particularly Chairman Pai, of the years of direct attacks on fundamental open internet principles by broadband internet access providers prior to the enactment of the 2015 Open Internet Order, as it appears such

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<sup>22</sup> *Id.*

<sup>23</sup> See Letter to Chairman Pai, *available at* [https://www.eff.org/files/2017/06/27/isp\\_letter\\_to\\_fcc\\_on\\_nn\\_privacy\\_title\\_ii.pdf](https://www.eff.org/files/2017/06/27/isp_letter_to_fcc_on_nn_privacy_title_ii.pdf) (last visited July 13, 2017).

<sup>24</sup> See NPRM, *supra* note 2, at 15, 18.

<sup>25</sup> See Comments of New Media Rights, *supra* note 3, at 16.

events have been *inexplicably forgotten* in the Commission's haste to claim that there were no harms to consumers prior to reclassification.<sup>26</sup> In 2007, the Commission was alerted to Comcast degrading data from peer-to-peer file sharing applications passing through their networks.<sup>27</sup> The practices only ceased after Free Press and Public Knowledge filed a formal complaint against Comcast;<sup>28</sup> however, the ensuing D.C. Circuit decision made it clear that the FCC was essentially powerless to stop such anti-consumer activities due to its classification of BIAS as a Title I service.<sup>29</sup> That was not "hypothetical." Also in 2007, AT&T blocked Pearl Jam lyrics containing anti-Bush sentiments during a live concert stream, further raising concerns surrounding the stifling of free speech and discrimination against otherwise lawful content by service providers.<sup>30</sup> Again, that was not "hypothetical."

In 2009, after an inquiry by the FCC, it was revealed that AT&T and Apple had an agreement in place that Apple would not help users with Voice of Internet Protocol ("VoIP") apps like Google Voice and Skype, that competed with AT&T's mobile phone voice plans.<sup>31</sup> That was not "hypothetical." Near the end of 2010, Google launched its mobile-based payments service Google Wallet, but Verizon, AT&T, and T-Mobile created a competing company called Isis.<sup>32</sup> While the apps could have co-existed, Verizon initially blocked Google's mobile payments app claiming technological issues with Google's app, conveniently allowing them to reduce competition. That was not "hypothetical". Not long before the Open Internet proceedings, Netflix capitulated to demands from Comcast to enter a paid peering arrangement after extended periods of Netflix customers experiencing poor quality of service over Comcast's network.<sup>33</sup>

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<sup>26</sup> We note that almost all of these examples were discussed at length in NMR's Comment during the Open Internet proceeding three years ago. See Comments of New Media Rights, *supra* note 3, at 5-9.

<sup>27</sup> See *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).

<sup>28</sup> Formal Complaint of Free Press and Public Knowledge Against Comcast Corp. For Secretly Degrading Peer-to-Peer Applications, available at [https://www.publicknowledge.org/pdf/fp\\_pk\\_comcast\\_complaint.pdf](https://www.publicknowledge.org/pdf/fp_pk_comcast_complaint.pdf).

<sup>29</sup> See *Comcast*, 600 F.3d 642.

<sup>30</sup> Marguerite Reardon, *AT&T calls censorship of Pearl Jam lyrics a mistake*, CNET (August 9, 2007 4:08PM), <https://www.cnet.com/news/at-t-calls-censorship-of-pearl-jam-lyrics-a-mistake/>

<sup>31</sup> Ryan Singel, *Google Voice App Rejection: AT&T Blames, Apple Denies, Google Hides*, Wired (August 21, 2009 5:39 PM), <http://www.wired.com/2009/08/apple-att-and-google-respond-to-feds-on-google-voice-rejection/>.

<sup>32</sup> David Goldman, *Verizon blocks Google Wallet*, CNN Money (December 6, 2011 2:26PM) [http://money.cnn.com/2011/12/06/technology/verizon\\_blocks\\_google\\_wallet/index.htm](http://money.cnn.com/2011/12/06/technology/verizon_blocks_google_wallet/index.htm)

<sup>33</sup> Jon Brodtkin, *Netflix is paying Comcast for direct connection to network*, Ars Technica (Feb. 23, 2014), <http://arstechnica.com/business/2014/02/netflix-is-paying-comcast-for-direct-connection-to-network-wsj-reports/>.

That was not “hypothetical.” More recently, the Commission fined Verizon \$1.35 million for violations of the transparency provisions of the current rules as a result of Verizon secretly tracking customer usage with invasive “supercookies.”<sup>34</sup> Definitely not “hypothetical.” These are just a few of the numerous issues that arose in the last decade or so. The harms suffered by consumers due to this sort of blocking, throttling, and lack of transparency are far from “hypothetical,” and the Commission’s claims to the contrary are, quite frankly, deeply disturbing. The successful fine levied against Verizon under the current rules certainly illustrates that consumers are benefitting from the 2015 Open Internet Order, as providers engaged in harmful behavior are being held accountable. Further, the primary benefits enjoyed by consumers due to reclassification, are the *prevention* of anti-consumer and anti-competitive activity that ISPs were engaging in before the current rules were passed.

Contrary to the Commission’s claims, there are many reasons to continue to treat BIAS as a telecommunications service and to preserve the current regulatory framework. The Commission has done little to suggest otherwise. As such, NMR strongly opposes any attempt by the Commission to reclassify BIAS as an information service. Such action would be completely unjustified, beneath the history of the Commission’s role as an expert agency, and would harm American consumers and businesses.

### **III. There is Only One Internet: The Commission Should Not Return to Treating Mobile Broadband as a Private Mobile Service**

NMR strongly opposes any attempt by this Commission to create two separate internet classifications, one fixed and one mobile. As we discussed in our comment during the Open Internet proceedings, such a distinction is illogical both from a policy standpoint as well as a technical one.<sup>35</sup> Mobile broadband service providers are just as willing and able to act as gatekeepers and engage in behavior that stifles competition and consumer choice as fixed broadband service providers and should not be treated differently.<sup>36</sup> This is especially important

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<sup>34</sup> William Turton, *FCC fines Verizon \$1.35 million for net-neutrality-violating ‘supercookies’*, The Daily Dot (Mar. 7, 2016 10:46 AM), <https://www.dailydot.com/layer8/verizon-wireless-fcc-supercookies-fine-net-neutrality/>.

<sup>35</sup> Comments of New Media Rights, *supra* note 3, at 28-30.

<sup>36</sup> See Comments of New Media Rights, *supra* note 3, at 6-7 (discussing behavior by AT&T and T-Mobile that violates the principles of Net Neutrality).

as reliance on mobile internet has increased since 2013.<sup>37</sup> Therefore, NMR urges the Commission not to classify mobile broadband internet access as a private mobile service, and instead continue to regulate it as a common carrier, subject to the current regulatory scheme.

#### **IV. The Internet Conduct Standard and the Four Tenets of Net Neutrality Must be Preserved Under Title II Authority**

Each and every one of the existing rules - that is, no blocking, no throttling, no paid prioritization, and transparency - along with the internet conduct standard, are necessary to help protect and preserve the free and open internet as we know it. To suggest otherwise is to blatantly ignore the events of the last decade and the realities of the broadband internet access market. Which is why it comes as a surprise that this Commission has done just that. While paying lip service to some of the principles behind the no blocking and no throttling rules, this Commission has made it clear that it has no interest in maintaining enforceable rules by its insistence on abandoning Title II authority. There is no room for half-measures here. No room for voluntary “suggestions” rather than enforceable rules. As discussed throughout this Comment, the actions of broadband internet access providers, both fixed and mobile, have made it clear over the past decade or more that they will continue to push boundaries, to deceive consumers, to block and throttle competing services, and to challenge any attempt to prevent or punish this harmful behavior. In fact, as the Commission is well aware, the *Verizon v. FCC* decision in 2014 made Title II reclassification a necessity by saying the agency was toothless without it.<sup>38</sup> This Federal *Communications* Commission is on the precipice of abandoning authority over the very communications system it is responsible to protect. That the Commission would eschew its only reliable source of authority over the primary means of communications in the twenty-first century is a tragedy for the future of communications in this country, as well as America’s ability to compete in a global, digital economy.

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<sup>37</sup> See *Internet/Broadband Fact Sheet*, Pew Research Center (Jan. 12, 2017), <http://www.pewinternet.org/fact-sheet/internet-broadband/>; see also Darrell Etherington, *Mobile internet use passes desktop for the first time, study finds*, TechCrunch (Nov. 1, 2016), <https://techcrunch.com/2016/11/01/mobile-internet-use-passes-desktop-for-the-first-time-study-finds/>.

<sup>38</sup> *Verizon v. FCC*, 740 F.3d 623, at 630-632 (D.C. Cir. 2014)

We urge the Commission to maintain the internet conduct standard as well as the no blocking, no throttling, no paid prioritization, and transparency rules under its current Title II authority.

## **V. Conclusion**

Three years ago, the FCC took reasonable and necessary steps to protect and secure the Open Internet from real, tangible threats. There was nothing “hypothetical” about the anti-competitive and anti-consumer behavior of broadband internet access providers in the years leading up to the 2015 Open Internet Order. By turning a blind eye to the realities of the current broadband internet access market, this Commission threatens to tear down protections that not only received overwhelming bipartisan support from American citizens and businesses, but also Federal Court approval. This Commission’s abrupt, baseless actions only pave the way for years of uncertainty and harmful behavior by broadband internet access providers, unfettered by any meaningful regulations. Without a doubt, future Commissions will be forced to revisit and grapple with these very same issues, resulting in an immense waste of time and resources at the expense of American consumers and businesses. As such, we urge the Commission to abandon its disastrous course and leave its Title II authority and the current Open Internet rules intact.