

March 16, 2018

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20515

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, D.C. 20515

The Honorable Paul Ryan
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Leader McConnell, Leader Schumer, Speaker Ryan, and Leader Pelosi:

The undersigned individuals support an Internet that is open and free, and a regulatory environment that encourages investment and innovation while ensuring consumer protection is paramount. All of these objectives were met with the adoption of the *Restoring Internet Freedom Order (RIF Order)*. We do not support applying 20th century utility regulation, designed for the landline telephones of the 1930s, to the most dynamic communications platform the world has ever seen. Nor did leaders and FCC Chairmen of both political parties for the entire existence of the internet until 2015 when the FCC adopted the *Title II Order*. Thus, calls for a return to that historic anomaly, which would be the result of a Congressional Review Act (CRA) resolution of disapproval of the *RIF Order*, should be rejected.

Using the CRA to roll back the *RIF Order* would mean a return to Title II utility regulation governing the Internet, a decision that created tremendous regulatory uncertainty, resulting in the delay of innovative new services for consumers and a noticeable decrease in investment over the past two years. Equally important to preventing the damage caused by regulating the internet as a utility is the fact that the Internet will remain free and open when the *RIF Order* goes into effect, just as it was for the previous twenty years under a restrained regulatory approach that produced the vibrant and competitive internet market as we know it. The bipartisan decision to keep the government's hands off the Internet allowed the Internet to flourish, driving the creation of innovative services and products, and motivating businesses to invest in faster, more resilient networks. Between 1996 and 2016, the telecommunications industry made investments totaling \$1.6 trillion, making the U.S. the unquestioned leader of the global internet economy. Moreover, the *RIF Order* restores the Federal Trade Commission's role as the cop on the beat for consumer protection and privacy while ensuring that internet service providers, edge providers, and other actors in the internet ecosystem operate under the same set of rules.

To suggest that Title II, passed in 1934 and modeled on 19th century railroad regulations, is necessary for an open Internet is a fallacy. Title II is only necessary if America wants its government deciding what the Internet looks like, whether or not consumers can get free services, and how their traffic is routed. Title II is a path to more big government and a loss of American leadership.

March 16, 2018

Page 2

Congress told the FCC in 1996 to “preserve the vibrant and competitive free market that presently exists for the Internet ... unfettered by Federal or State regulation.” The Obama FCC strayed from its Congressional mandate in 2015. But the *RIF Order* – and its re-reclassification of broadband as a Title I service – represents a return to the framework intended by Congress and that has been so successful for the past two decades.

We support a free and open Internet. We oppose utility regulation of the Internet. Adoption of a CRA resolution to overturn the *RIF Order* would be a dramatic and damaging reversal that would lock in place big government regulation of the Internet. That would be a colossal mistake.

Sincerely,

David M. McIntosh
President
Club for Growth

Thomas C. Arthur
L.Q.C. Lamar Professor
Emory University School of Law

James P. Beckwith, Jr.
Professor of Law
North Carolina Central University

Lackland H. Bloom, Jr.
Professor of Law
Larry and Jane Harlan Senior Research Fellow
Dedman School of Law
Southern Methodist University

Steven G. Calabresi

Michelle Connolly
Professor of the Practice
Department of Economics
Duke University

Christian C. Day
Professor
Syracuse University College of Law

Richard A. Epstein
Laurence A. Tisch Professor of Law
Director, Classical Liberal Institute
New York University School of Law
James Parker Hall Distinguished Service
Professor Emeritus of Law
Senior Lecturer
University of Chicago Law School
Peter and Kirsten Bedford Senior Fellow
Hoover Institution

Theodore H. Frank
Competitive Enterprise Institute

I. Trotter Hardy
Professor of Law, Emeritus
William and Mary School of Law

Justin (Gus) Hurwitz
Assistant Professor of Law
Co-Director, Space, Cyber, & Telecom Law
University of Nebraska College of Law

Mark A. Jamison
Director and Gunter Professor
Public Utility Research Center
University of Florida
Visiting Scholar, American Enterprise Institute

March 16, 2018

Page 3

Thomas A. Lambert
Wall Family Chair in Corporate Law and
Governance
Professor of Law
University of Missouri School of Law

Roslyn Layton
Center for Communication, Media and
Information Technologies
Aalborg University

Stan Liebowitz
Ashbel Smith Professor of Economics
University of Texas at Dallas

John E. Lopatka
A. Robert Noll Distinguished Professor
Penn State Law
Pennsylvania State University

Daniel Lyons
Associate Professor
Boston College Law School

Gary Myers
Earl F. Nelson Professor of Law & Director
Center for Intellectual Property &
Entrepreneurship
University of Missouri School of Law

Christopher Newman
Associate Professor of Law
Antonin Scalia Law School
George Mason University

Harold See
Professor of Law
Belmont University College of Law
Justice (retired) Supreme Court of Alabama

Joshua D. Wright
University Professor
Antonin Scalia Law School
George Mason University