



April 20, 2020

To: Federal Communications Commission, Wireline Competition Bureau

Re: WC Docket Nos. 17-108, 17-287, 11-42

From: National Taxpayers Union

On behalf of the National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, I write to submit the following comments to refresh the record regarding the Restoring Internet Freedom Order in light of the 2019 *FCC V. Mozilla* decision by the D.C. Circuit Court.

NTU has long been concerned about the federal government taking action beyond the scope of its authority, particularly in its attempt to impose new rules on the internet. Prior to 2015, regulators employed a light-touch approach that enabled the internet to develop, flourish and connect billions of consumers around the world. However, under the Obama administration in 2015, the Federal Communications Commission tossed aside this long-standing playbook and subjected Internet Service Providers (ISPs) to the same regulatory standards used to regulate telephone monopolies originally implemented in the 1930s.

As a result of heavy-handed and burdensome regulations, broadband investment, expansion, and innovation all slowed to a crawl, which expanded the digital divide. This chilling effect also had profound impacts on our economy. According to a [study by the New York Law School](#), continuing to regulate the internet under Title II of the Communications Act of 1934 would cost up to 700,000 jobs and lower U.S. GDP by \$80 billion over the next decade.

NTU fully supports an internet that is open to the free exchange of information, open to consumer choice, open to new forms of competition, and open to unforeseen and unforeseeable innovations that spur economic growth. At the same time, we are equally concerned by the negative impact that increased government involvement and control of the internet has on taxpayers. Expanded government interference in the internet - or any sector of the economy for that matter - costs Americans more of their hard-earned tax dollars at the expense of diminishing the value of the services being offered.

Thankfully, to the benefit of taxpayers and consumers, the FCC under leadership appointed by President Trump enacted the Restoring Internet Freedom Order (RIFO) to overturn the Obama-era net neutrality rules. The order restored the traditional classification of broadband as an "information service" under Title I of the Communications Act, reversing the FCC's 2015 decision to classify it instead as "telecommunications service" under Title II. This restored the light-touch regulatory framework that historically governed most internet providers instead of trying to fit broadband into the more heavily regulated common carriage regime originally designed to discipline the old Bell Telephone monopoly. Additionally, the RIFO repealed the 2015 prohibitions on network management and paid prioritization.

Opponents of the RIFO immediately began making absurd charges that it would be the end of the internet and lead to “damaging consequences” for small businesses and consumers. More than two years later, the internet isn’t only still around but in many ways is much better for U.S. consumers. Average fixed broadband speeds have increased to 132.55 Mbps for downloads and 49.69 Mbps for uploads, [according to Ookla](#). Importantly, more than 90 percent of Americans had access to services offering download speeds of at least 100 Mbps, [according to BroadbandNow Research](#).

Returning to the sensible light-touch regulatory regime that had been in place for two decades under the leadership of both parties is good for American taxpayers and consumers, and for the businesses that invest in the high-speed fixed and mobile broadband networks that power the economy. Private investment continued to grow in 2018, with U.S. broadband providers invested about \$75 billion, an increase from about \$72 billion compared to 2017. [According to U.S. Telecom](#), which represents providers impacted by Title II regulations, private investment “expanded on the momentum shift we saw in 2017 when the FCC initially signaled its intention to restore a forward-looking regulatory framework for broadband.”

Within two months of the RIFO being in effect, a coalition of advocacy groups filed a legal challenge in federal court asserting that the FCC did not have the statutory authority to reclassify broadband internet service from a Title II “telecommunications service” to a Title I “information service.” The case may have delayed the outright implementation of the RIFO, but in a significant win for taxpayers, consumers, and businesses, the U.S. Court of Appeals for the District of Columbia Circuit ruled in *Mozilla Corp. v. FCC*, that the agency was within its authority to end net neutrality protections.

However, the court did overturn a widespread pre-emption order from the FCC that was intended to preserve universal rules across the United States. This could spell trouble, as California, New York, and other states have attempted to impose burdensome European-style regulations that have harmed technological innovation on the other side of the Atlantic and caused major companies to consider reducing or relocating their operations.

Additionally, the court also remanded three discrete issues for further consideration by the FCC—impact on public safety, pole attachment regulations, and the Lifeline Program—but none of these issues detract from the overall justification of the RIFO. As the FCC looks to address these concerns, it should continue to prioritize free market principles just as it did during the drafting and implementation of the RIFO.

Despite the changes requested by the Court, almost the entirety of the RIFO has been upheld and will continue to spur investment in broadband and 5G. Overturning Title II regulation is yet another example that has shown how the private sector can meet the needs of the general public so long as the government gets out of the way. The FCC has been a leader in deregulation and pro-market reforms that move America forward. Thanks specifically to the RIFO, and many other reforms from the FCC, American businesses are able to spend more time growing, innovating, and hiring—and less time worrying about new burdens from unelected officials in Washington.

Ultimately, while the FCC’s efforts with this rulemaking process are critical, the ideal solution to this ongoing problem must come from Congress. Democrat and Republican-led FCC’s will endlessly go back and forth on the preferred method of regulation of the internet. Lawmakers in Congress can stop

this swinging pendulum by codifying into law an internet free of outdated regulations. In any case, this is a timely endeavor, since Congress last fundamentally updated telecommunications policy in 1996. To say much has changed in the decades following is quite an understatement. This effort is all the more important as the longer interpretation of this outdated law is left in the hands of unelected officials who are not accountable directly to the affected taxpayers.

For these reasons, we urge the FCC to move swiftly on the Court remand but do so by following free-market, limited government principles that have guided the FCC under the leadership of Chairman Ajit Pai.

Sincerely,

Thomas Aiello, Policy and Government Affairs Manager
National Taxpayers Union