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March 30, 2020

VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

**RE: Refreshing of Record in Restoring Internet Freedom Proceeding (WC
Docket Nos. 17-108, 17-287, 11-42)**

Dear Ms. Dortch:

The U.S. Chamber of Commerce (“the Chamber”) respectfully submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) request to refresh the record in the Restoring Internet Freedom (“RIF”) Order.¹

The Chamber continues to support net neutrality principles and maintains the position that Congress should enact legislation that permanently codifies bright-line protections for consumers while adopting a regulatory framework that enables them to enjoy the benefits of the digital economy. The imposition of an archaic regulatory structure like Title II of the 1934 Communications Act (“Communications Act”) on Digital Age technologies like broadband has been shown to stunt investment which could be used to connect Americans.

I. THE ROAD TO RESTORING INTERNET FREEDOM

In 2015, the Commission, led at the time by Chairman Tom Wheeler, adopted bright-line net neutrality rules banning the blocking, throttling and paid prioritization of content by broadband providers in addition to a broad general conduct rule.² In order to justify its legal authority to impose these regulations, the Commission subjected broadband service to backward-looking, public-utility regulatory treatment by designating broadband service as a “telecommunications service” under Title II of the Communications Act,³ reversing the longstanding bipartisan light-touch regulatory approach that had prevailed for more than a

¹ See Public Notice, “Wireline Competition Bureau Seeks to Refresh Record in Restoring Internet Freedom and Lifeline Proceedings in Light of the D.C. Circuit’s *Mozilla* Decision,” (Feb. 19, 2020) available at <https://ecfsapi.fcc.gov/file/0219046559245/DA-20-168A1.pdf>.

² 80 Fed. Reg. 19738 (Apr. 13, 2015).

³ *Id.*

decade and led to massive broadband investment and related infrastructure growth. In the two years following implementation of common carrier regulation, broadband investment declined—the first time such a decrease happened outside the context of a recession or the bursting of the “dot-com” bubble.⁴

In 2018, the Commission, now led by Chairman Ajit Pai, returned to the Commission’s previous longstanding approach by adopting the RIF Order that re-designated broadband service as an “information service”, imposed transparency requirements on providers, repealed the bright-line rules and general conduct standard, and preempted states from imposing net neutrality regulations.⁵ One year later, in 2019, the U.S. Court of Appeals for the D.C. Circuit upheld the Commission’s “information service” designation, but concluded it had not adequately addressed the implications of that designation on three narrow issues (public safety, pole attachments, and the Commission’s Lifeline Program) and therefore directed the Commission to further consider those issues on remand.⁶

The Chamber’s comments focus on the general economic effects of the RIF Order and removal of the Title II classification of broadband because it is the view of the business community that public safety, communications infrastructure improvements, and low-income Americans benefit from robust investment. The Restoring Internet Freedom Order has had a positive effect on broadband investment, which will enable the deployment of rural broadband and 5G technologies that benefit the entire economy and will help close the digital divide.

II. THE ECONOMIC BENEFITS OF THE RESTORING INTERNET FREEDOM ORDER

According to multiple sources, broadband investment began to increase in 2017 as many analysts expected that the Commission would repeal Title II regulation of broadband.⁷ The Commission first officially proposed ending Title II regulation in mid-2017.⁸ Among the thirteen largest broadband providers, capital expenditures sharply increased to \$68.8 billion in 2017 from \$60.4 billion in 2016.⁹

The investment growth continued beyond 2017 and the “growth in 2018 built on the momentum begun the year before when industry reversed a two-year decline in annual capital

⁴ See Mark Jamison, “Title II’s real-world impact on broadband investment,” American Enterprise Institute (Sept. 1, 2015) available at <https://www.aei.org/technology-and-innovation/telecommunications/title-iis-real-world-impact-broadband-investment/>.

⁵ 83 Fed. Reg. 7852 (Feb. 22, 2018).

⁶ *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019).

⁷ See Anna-Maria Kovacs, “The Impact of Title II Regulation of ISPs on Investment by Edge Companies,” (Nov. 2019) available at <https://www.dropbox.com/s/zr6eu5yjs72umpg/The%20Impact%20of%20Title%20II%20Regulation%20of%20ISPs%20on%20Investment%20by%20Edge%20Companies.pdf?dl=0>.

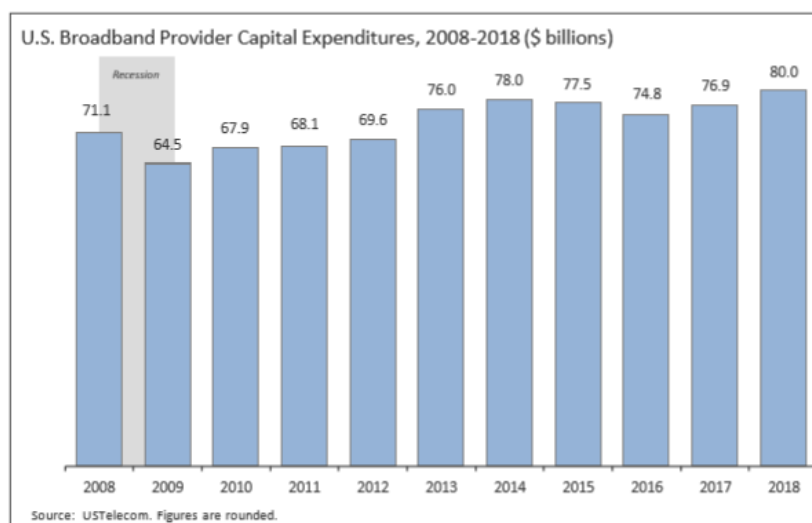
⁸ 82 Fed. Reg. 26668 (June 2, 2017).

⁹ See “Broadband Capital Investment Increased Significantly from 2016 to 2017,” Free State Foundation (May 15, 2018) available at <http://freestatefoundation.blogspot.com/2018/05/broadband-capital-investment-increased-15.html>.

spending levels. The decline started in 2015 when capital spending fell, for the first time since the 2008-2009 recession...¹⁰ According to an analysis by Patrick Brogan, “U.S. broadband providers [in 2018] invested approximately \$80 billion in network infrastructure; up more than \$3.1 billion from \$76.9 billion [in 2017]...Broadband provider capital spending has now surpassed the recent peak of \$78 billion reported in 2014 by \$2.0 billion.”¹¹ Included in this investment increase were improvements to public safety communications.¹²

In particular, the wireless communications sector has also contributed significantly to network investment post Title II regulation. According to CTIA in June 2019, wireless investment “increased \$1.8 billion to a total of \$27.4 billion.”¹³

Figure 1¹⁴



Overall access to broadband expanded during this time frame in addition to increased investment. According to the *2019 Broadband Deployment Report* released by the Commission, “95.3% [of the U.S. population at the end of 2017] had access to fixed broadband services meeting download/upload benchmark speeds of 25 MBps/3MBps—up from 91.9% in 2016, and 83.6% in 2013.”¹⁵ Access to LTE wireless broadband also increased over this timeframe. For

¹⁰ See Patrick Brogan, “U.S. Broadband Investment Continued Upswing in 2018,” US Telecom | The Broadband Association at 1 (July 31, 2019) available at <https://www.ustelecom.org/wp-content/uploads/2019/07/USTelecom-Research-Brief-Capex-2018-7-31-19.pdf>.

¹¹ *Id.*

¹² See Hal Singer, “The Last Thing That Stands in the Way of Net Neutrality Legislation” (Feb. 11, 2019) available at <https://haljsinger.wordpress.com/2019/02/11/the-last-thing-that-stands-in-the-way-of-net-neutrality-legislation/>.

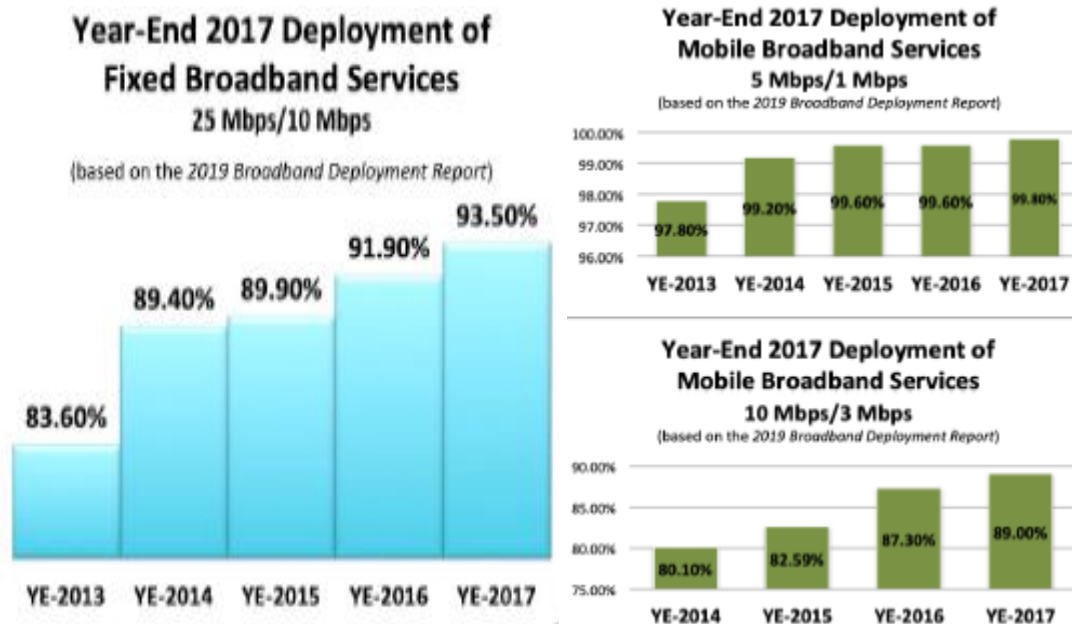
¹³ See “2019 Annual Survey Highlights,” CTIA |The Wireless Association at 5 (June 20, 2019) available at <https://api.ctia.org/wp-content/uploads/2019/06/2019-Annual-Survey-Highlights-FINAL.pdf>.

¹⁴ Brogan *Supra* note. 10.

¹⁵ See Seth Cooper, “Resurgence in Broadband Deployment Vindicates FCC’s Pro-Investment Policies” Free State Foundation at 2 (Sept. 19, 2019) available at <https://freestatefoundation.org/wp->

example, the number of Americans with access to LTE mobile broadband increased.¹⁶ In fact, the number of rural Americans with access to mobile broadband also increased from the end of 2016 to the end of 2017.¹⁷ According to the Fiber Broadband Associations and RVA, the number of homes with fiber broadband access increased by nearly 15 million over the previous year.¹⁸

Figure 2¹⁹



III. CONCLUSION

Expanding access to broadband will be critical to national economic growth as more Americans become reliant on the digital economy and work from home. According to a U.S. Chamber study, if rural small businesses fully adopted digital tools they could contribute \$41.3 billion annually to GDP and 316,605 jobs nationally.²⁰ Expanded access would also enable unserved communities to bridge the “homework gap” in which students need to travel to businesses with Wi-Fi locations to complete assignments. The potential of American businesses to thrive in the 21st Century Economy is reliant on broadband investment. Public safety networks, communications infrastructure, and low-income Americans will reap the benefits of a

[content/uploads/2019/09/Resurgence-in-Broadband-Deployment-Vindicates-FCCs-Pro-Investment-Policies-091919.pdf](#).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 2.

²⁰ See “Unlocking the Digital Potential of Rural America,” at 5 (Mar. 2019) available at <https://americaninnovators.com/wp-content/uploads/2019/03/Unlocking-the-Digital-Potential-of-Rural-America.pdf>.

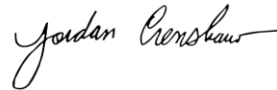
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healthy private broadband sector encouraged to make the level of capital investments necessary to deliver a communications infrastructure built for the 21st century.

The decision by the FCC led by Chairman by to return to Title I treatment of the Internet has encouraged those investment levels. It is for this reason that the Chamber supports the continued regulation of broadband as an “information service” but also requests that Congress pass permanent net neutrality legislation that protect consumers with bright-line rules and provide the business community with predictability and certainty necessary for a broadband-enabled economy.

Thank you for the opportunity to participate in this proceeding and if you have any follow up questions, I may be reached at (202) 463-5632 or by e-mail at jcrenshaw@uschamber.com.

Sincerely,

A handwritten signature in black ink that reads "Jordan Crenshaw". The signature is written in a cursive, flowing style.

Jordan Crenshaw
Executive Director & Policy Counsel
Chamber Technology Engagement Center