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**The FCC Should Reaffirm Its Successful Internet Freedom Policy:
Broadband Consumers Are Better Off Now Than Three Years Ago**

by

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At its public meeting on October 27, the FCC will be voting on its proposed *Restoring Internet Freedom Remand Order (RIF Remand Order)*. The proposed order maintains the free market-oriented policy for broadband Internet services established by the Commission in January 2018. When it comes to broadband services, consumers clearly are better off than they were three years ago. The Commission should stick with this successful policy.

Since 2018, due at least in part to adoption of the *Restoring Internet Freedom Order*, broadband network investment has increased, Internet access and speeds have increased, and per-megabit prices have decreased. U.S. broadband networks have successfully accommodated lockdown-induced spikes in data traffic and outperformed networks in Europe and elsewhere. Meanwhile, repeal of public utility regulation never led to the Halloween-like scenes of horror that the regulation's avid supporters conjured up to try to spook the public. Holding fast to the policy of Internet freedom will more speedily connect more Americans through 5G, 10G, and other next-generation network technologies.

In its 2018 *Restoring Internet Freedom Order (RIF Order)*, the Commission reclassified broadband Internet access services as lightly-regulated "information services" under Title I.

Onerous Title II rules were repealed. As the Commission found in the *RIF Order*, there were no instances of actual or likely harm to consumers that would justify Title II-based restrictions. The Commission also found that its short-lived experiment in imposing stringent "net neutrality" regulation on broadband services had the effect of reducing network investment in 2015 and 2016. The *RIF Order* adopted FCC transparency requirements that, combined with Federal Trade Commission (FTC) and Department of Justice (DOJ) oversight and enforcement activities, are better suited to protecting consumers and promoting investment in today's dynamic marketplace.

In *Mozilla v. FCC* (2019), the D.C. Circuit upheld most of the *RIF Order*, including the Commission's predictive judgment that reclassification of broadband as a lightly-regulated Title I information service was "likely to increase ISP investment and output." However, the D.C. Circuit remanded the *RIF Order* to the Commission for purposes of addressing the implications of Title I reclassification for public safety, pole attachments, and the Lifeline Program. In its proposed *RIF Remand Order*, the Commission duly addresses each of those issues and – rightly – finds no reason to alter the free market-oriented policy it established in 2018.

Indeed, the record of the last three years affirms the Commission's prediction that repeal of Title II regulation was "likely to increase ISP investment and output." According to CTIA, wireless industry investment for 2019 grew to \$29.1 billion, up from \$27.4 billion in 2018 and \$25.6 billion in 2017. About 46,000 new cell sites were activated in 2019 – more than in the prior three years combined – upping the U.S. total for active cell sites to almost 396,000. Furthermore, a research brief by USTelecom indicates "fixed wireline broadband ISPs invested approximately \$80.0 billion in network infrastructure in 2018, up more than \$3.1 billion from \$76.9 billion in 2017." And total investment almost surely increased in 2019 for wireline ISPs like it did for wireless ISPs. Figures cited in the FCC's 2020 *Broadband Deployment Report* indicate that fiber broadband networks reached an additional 6.5 million homes in 2019, a 16% increase over the prior year and the largest single-year increase ever.

Additionally, more Americans have access to broadband Internet access services, and at higher speeds. According to an April 2020 report by USTelecom, for example, gigabit Internet service is available to at least 85% of U.S. homes, compared to only 6% of U.S. homes three-and-a-half years ago. In his October 5 blog post announcing the proposed *RIF Remand Order*, FCC Chairman Ajit Pai observed that "average download speeds for fixed broadband in the United States have doubled, increasing by over 99%" since the *RIF Order* was adopted. Ookla Speed tests similarly show significant gains in mobile wireless speeds, climbing to 47.13/10.15 Mbps in September 2020 compared to 27.33/8.63 Mbps in the first half of 2018.

Although no commercial deployments of 5G wireless services had been made prior to the *RIF Order*, three major wireless providers now offer 5G services nationwide. Hybrid virtual mobile network operator Xfinity Mobile announced its expansion of 5G nationwide on October 14. And many other smaller wireless providers are initiating and expanding 5G offerings. This rapid deployment is significant because 5G networks can be optimized for speeds up to 10 times faster than 4G and peak speeds up to 100 times faster. Not yet deployed

but on the horizon is the cable broadband "10G" platform, which promises speeds of up to 10 Gbps downstream, with symmetric speeds, lower latency, improved security, and greater reliability using existing cable infrastructure.

This strong investment and growth in output by ISPs since adoption of the *RIF Order* has improved the value of broadband services for consumers. A September 2020 study released by USTelecom found that: "[t]he combination of declining prices and rising speeds deliver greater value to consumers – as shown by a declining cost per megabit of connection speed (Mbps) of 37.9 percent for the most popular service and 56.1 percent for the highest speed service."

COVID-related lockdowns in 2020 bring into sharper focus the benefits to consumers from strong U.S. investment in broadband networks. As the proposed *RIF Remand Order* states: "The record demonstrates that, even with unprecedented increases in traffic during the COVID-19 pandemic, broadband networks have been able to handle the increase in traffic and shift in usage patterns." The proposed order cites a study showing that "out of the ten countries with the highest populations in the world, the United States was the only country to not experience any download speed degradation in April 2020." And the proposed order observes that "unlike the European Union, which takes a utility-style approach to broadband regulation and has had to request that bandwidth intensive services such as Netflix reduce video quality in order to ease stress on its network infrastructure, the United States has not had to take similar steps, despite similar surges in Internet traffic."

Moreover, an October 8, 2020, article published by Bloomberg titled "Pandemic Exposes Europe's Creaking Internet for All to See," calls attention to connectivity issues and lack of industry investment in European networks. According to the article's authors: "The problem is, telecom companies aren't ready to step up. Beset by low profitability and an exodus of investors, they're struggling to fund even current rates of network investment, allowing southeast Asian nations and the U.S. to pull ahead in the broadband speed race."

Importantly, none of the scare stories about repealing "net neutrality" regulation ever materialized. Wild but much-repeated claims – that removal of Title II rules would lead to "the end of the Internet as we know it" and that broadband subscribers would be shuffled into Internet "slow lanes" – have amounted to nothing. This is hardly surprising for at least two major reasons. First, the *RIF Order* never gave broadband ISPs new powers to block or throttle their subscribers' access to content or to prioritize Internet traffic. The now-repealed Title II rules actually permitted ISPs to block, throttle, and prioritize traffic so long as they provided up-front notice to subscribers that they were offering "edited" services.

Second, as the draft *RIF Remand Order* recognizes, "all major ISPs have made written commitments not to engage in practices considered to violate open Internet principles, including blocking and throttling." The FTC has authority to hold ISPs accountable for their promises to customers to refrain from those activities. That authority regarding broadband ISP practices had actually been removed by the Obama Administration FCC – but the *RIF Order* restored FTC enforcement.

Next-generation network technologies such as 5G and 10G will bring even greater benefits to American consumers in the years ahead – but only so long as massive private sector market investment continues. To best promote high investment and quickly realize the benefits, the FCC must – as the draft *RIF Remand Order* proposes to do – stay the course on its free market-oriented, light-touch policy for broadband Internet services.

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Further Reading

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Randolph J. May, "[Don't Regulate the Internet as a Public Utility – Part II](#)," *Perspectives from FSF Scholars*, Vol. 15, Vol. 31 (June 11, 2020).

Randolph J. May, "[Don't Regulate the Internet as a Public Utility!](#)" *Perspectives from FSF Scholars*, Vol. 15, Vol. 29 (June 3, 2020).

[Comments of the Free State Foundation](#), Restoring Internet Freedom, WC Docket No. 17-108 *et al.* (April 17, 2020).

Randolph J. May, "[A Comment on 'Sticky Regulations' and the Net Neutrality Saga](#)," *Perspectives from FSF Scholars*, Vol. 15, No. 13 (March 24, 2020).

Theodore R. Bolema, "[There's Nothing 'Anemic' About the FTC's Consumer Protection Capabilities](#)," *Perspectives from FSF Scholars*, Vol. 15, No. 2 (January 7, 2020).

Seth L. Cooper, "[FCC's 'Final Agency Action' to Restore Internet Freedom Preempts State Net Neutrality Laws](#)," *Perspectives from FSF Scholars*, Vol. 14, No. 44 (December 19, 2020).

Tim Brennan, "[Are There Harms the Net Neutrality Order Would Have Prevented? A Look at Public Knowledge's Recent Claims](#)," *Perspectives from FSF Scholars*, Vol. 14, No. 43 (December 18, 2019).

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[Comments of the Free State Foundation](#), Restoring Internet Freedom, WC Docket No. 17-108 (July 17, 2017).