Comment Letter Opposing the FCC's Broadband Regulatory Takeover VIA ELECTRONIC FILING

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

RE: In the Matter of Safeguarding and Securing the Open Internet (WC Docket No. 23-320); Restoring Internet Freedom (WC Docket No. 17-108); Bridging the Digital Divide for Low Income Consumers (WC Docket No. 17-287); Lifeline and Link Up Reform and Modernization (WC Docket No. 11-42).

Dear Ms. Dortch:

The undersigned chambers of commerce representing business communities across the United States respectfully submit these reply comments to the Federal Communications Commission's ("Commission" or "FCC") above-titled Notice of Proposed Rulemaking ("NPRM"). The NPRM proposes to classify broadband under Title II of the Communications Act and impose a burdensome regulatory framework on the broadband marketplace. We express strong concern with the Commission's proposed Title II classification given the adverse impact on enhancing broadband access for our businesses and communities and because Title II classification is unlawful.

I. Access to Reliable, High-Speed Broadband Internet is Critical for Businesses and Communities Across the United States

Broadband internet access is crucial for enabling e-commerce, remote work, online education, American global competitiveness, and other important societal and economic objectives. While the private sector and governments have made significant strides to connect all Americans, some communities remain unserved. The business community strongly supports efforts to expand access to broadband including through reducing barriers to private sector investments and targeted government broadband investments, when appropriate, in unserved communities. The Commission's choice of regulatory framework for broadband is consequently critical to enable, or hinder, this objective.

II. The Record Underscores that Title II Classification is Unlawful

Title II classification of broadband is unlawful for several reasons, echoed by numerous commenters. One, the statutory text of the Communications Act, previous Commission actions, and U.S. Supreme Court precedent indicate that broadband should be considered an "information service" rather than a "telecommunications service" and thus remain under a Title I regulatory framework instead of Title II, Second, the Major Questions Doctrine prevents the Commission from classifying broadband under Title II because such a determination would have significant political and economic impacts and Congress has not clearly authorized utility-style regulation of broadband. Instead of pursing an unlawful rulemaking, the Commission should focus on reducing barriers to broadband access.

III. The Record Emphasizes the Restoring Internet Freedom Order's Approach Enabled Increased Competition, Significant Investment, and Lower Prices for Consumers

In 2017, the Commission adopted the Restoring Internet Freedom Order ("RIF Order") which returned to a targeted, innovation-friendly approach for regulating the broadband marketplace. As the U.S. Chamber of Commerce and other commenters note, the targeted approach taken by RIF Order unlocked significant private sector broadband investment, increased competition between providers, and lowered prices, all benefiting consumers and businesses.[6] These trends also demonstrate that the broadband marketplace is healthy, and that burdensome regulation is unnecessary. Private sector broadband investment increased after the adoption of the RIF Order, reaching $102.4 billion in capital expenditures in 2022.

January 25, 2024

This occurred for both wireless and fiber infrastructure investments. As a result, Americans have more choices than ever before at faster speeds. Moreover, these choices are not just between providers but also between different types of broadband technologies, including cable, fiber, mobile wireless, fixed wireless, and satellite. Increased innovation and substantial private investments are paired with lower prices even in an era of persistent inflation. Broadband prices have decreased by 12% since 2017 across plans offering different internet speeds and across broadband technologies. In sum, consumers and the American public clearly benefit from the present regulatory framework.

IV. The Record Demonstrates that Title II Classification Would Hinder Investment and the Economy

Despite the evident success of the present regulatory framework, the NPRM would take the broadband industry in the opposite direction. The Commission's previous attempt in 2015 to impose a Title II framework slowed broadband deployment and access through decreased private sector capital expenditures and an increased regulatory burden on broadband providers. A recent study by the Phoenix Center underscores the concrete consequences of Title II classification, finding a $81 billion investment decline, a 2.9% decrease in information sector employment, and a $145 billion annual reduction in Gross Domestic Product. We are particularly concerned that Title II reclassification would negatively affect the broadband access objectives outlined by the Infrastructure Investment and Jobs Act's primary broadband initiative, the Broadband Equity, Access, and Deployment ("BEAD") program. Every eligible state and territory is collaborating with the Department of Commerce on the BEAD program with the Department making significant progress to date. Considering private sector investment is key to ensuring the success of the program, the Commission should not promulgate regulations that risk limiting broadband investment. These quantifiable costs arising from the 2015 attempt to impose Title II classification on broadband demonstrates that the NPRM requires a robust cost-benefit analysis to understand the impacts on investment and the economy.

V. Conclusion

Access to high-speed broadband internet is essential for American business and the communities we serve. We urge the Commission to reverse course and maintain the present regulatory framework for broadband.

Sincerely,
U.S. Chamber of Commerce