



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

April 12, 2018

The Honorable Michael E. Capuano
U.S. House of Representatives
1414 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Capuano:

Thank you for your letter regarding the *Restoring Internet Freedom Declaratory Ruling, Report and Order, and Order (Order)*, in which you requested that the Federal Communications Commission delay the December 14, 2017 vote. I respectfully did not take that course of action for the reasons discussed below.

The vote on the *Restoring Internet Freedom Order* marked the culmination of an unprecedented level of public participation and transparency. After the Commission issued its Notice of Proposed Rulemaking in May 2017, it received millions of public comments related to the proposal. The *Order* amply addressed this rulemaking record over nearly 200 pages containing well over one thousand footnotes. In addition, pursuant to my transparency initiative, the agency released the draft over three weeks before the Commission voted. This gave the public an opportunity to review the draft and submit further feedback before the scheduled vote took place.

The Commission is grateful to all commenters who engaged the legal and public policy questions presented in this rulemaking. These comments ensured that the Commission considered all important aspects of its proposal to reclassify broadband Internet access service as an “information service” and restore the “light-touch” regulatory framework that fostered a free and open Internet in the United States prior to 2015.

To be sure, this proceeding carried the potential for advocates on either side to abuse the process to create an appearance of numerical advantage. But the Commission does not make policy decisions merely by tallying the comments on either side of a proposal; were it otherwise, agency decisions would require not Commissioners exercising reasoned judgment but calculators performing a simple count. Nor does the Commission attribute greater weight to comments based on the submitter’s identity. Accordingly, the Commission has never burdened commenters with providing identity verification or expended the massive amount of resources necessary to verify commenters’ identities. Rather than dwell on how well automated or form submissions reflect actual popular support, the Commission has instead focused on encouraging robust participation in its proceedings and ensuring that it has considered how the substance of submitted comments bear on the legal and public policy consequences of its actions.

Despite any suggestion that the public comment process was somehow “flawed” or “tampered with” by the alleged submission of comments under false names, any such activity did

not affect the Commission’s actual decision-making—that is, the agency’s ability to review the record, respond to comments that raised significant issues, and make a reasoned judgment. I am not aware of any evidence to the contrary. Indeed, any reasonable review of the *Order* would demonstrate precisely the opposite—that the Commission painstakingly engaged with the voluminous public record in this proceeding (namely, the many substantive comments that meaningfully grappled with the policy issues raised in the Notice of Proposed Rulemaking) in reaching its conclusions. To the extent you are concerned with non-substantive comments submitted under multiple different names that stated simply that the commenter supported or was opposed to the Title II classification without substantive explanation, as you can see in the *Order*, the agency did not rely on or cite any such comments.

As noted above, the Commission is staunchly committed to transparency and integrity in rulemaking proceedings, including in connection with the *Restoring Internet Freedom* proceeding. To that end, when individuals contacted the Commission to complain that a comment was falsely filed in their name, the Commission responded by inviting them to file a statement to that effect in the public record. In addition, as noted above, members of the public had an opportunity to comment on the substance of the public draft released three weeks prior to the scheduled vote, pursuant to my transparency initiative.

In sum, in this proceeding, the Commission followed the well-established notice-and-comment process prescribed in the Administrative Procedure Act. That process resulted in an order consistent with both the Communications Act and the public interest.

I appreciate your interest in this matter. Your views are important and will be entered into the record of the proceeding. Please let me know if I can be of any further assistance.

Sincerely,



Ajit V. Pai