FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

May 24, 2018

The Honorable Heidi Heitkamp
United States Senate
110 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Heitkamp:

Thank you for your letter regarding the *Restoring Internet Freedom Order*, which reestablished the authority of the Federal Trade Commission to oversee the network management practices of Internet service providers while returning to the light-touch legal framework that governed such practices for almost twenty years.

At the dawn of the commercial Internet in 1996, President Clinton and a Republican Congress agreed that it would be the policy of the United States "to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation." This bipartisan policy worked. Encouraged by light-touch regulation, the private sector invested over $1.5 trillion to build fixed and mobile networks throughout the United States. Innovators and entrepreneurs grew startups into global giants. America's Internet economy became the envy of the world.

Then, in early 2015, the FCC jettisoned this successful, bipartisan approach to the Internet and decided to subject the Internet to utility-style regulation designed in the 1930s to govern Ma Bell. This decision was a mistake. For one thing, there was no problem to solve. The Internet wasn't broken in 2015. We weren't living in a digital dystopia. To the contrary, the Internet had been a stunning success.

Not only was there no problem, this "solution" hasn't worked. The main complaint consumers have about the Internet is not and has never been that their Internet service provider is blocking access to content. It's that they don't have access at all or enough competition between providers. The 2015 regulations have taken us in the opposite direction from these consumer preferences. Under Title II, annual investment in high-speed networks declined by billions of dollars—the first time that such investment has gone down outside of a recession in the Internet era. And our recent Broadband Deployment Report shows that the pace of both fixed and mobile broadband deployment declined dramatically in the two years following the *Title II Order*.

Returning to the legal framework that governed the Internet from President Clinton's pronouncement in 1996 until 2015 is not going to destroy the Internet. It is not going to end the Internet as we know it. It is not going to undermine the free exchange of ideas or the fundamental truth that the Internet is the greatest free market success story of our lifetimes.

You note that "[f]or many of our rural and underserved students, school may be the only place they can access a reliable, high-speed internet connection." I agree—which is why our top priority must be closing the digital divide and empowering the millions of rural Americans who were left behind by the prior Administration. By returning to the light-touch Title I framework, we are helping consumers and promoting competition. Broadband providers will have stronger incentives to build networks, especially in unserved areas, and to upgrade networks to gigabit speeds and 5G. This means there will be more competition among broadband providers. It also means more ways that companies of all kinds and sizes can deliver applications and content to more users. In short, it's a freer and more open Internet.

The *Restoring Internet Freedom Order* also promotes more robust transparency among ISPs than existed three years ago. It requires ISPs to disclose a variety of business practices, and the failure to do so subjects them to enforcement action. This transparency rule will ensure that consumers know what they're buying and that startups get information they need as they develop new products and services.

Moreover, we reestablish the Federal Trade Commission's authority to ensure that consumers and competition are protected. Two years ago, the *Title II Order* stripped the FTC of its jurisdiction over broadband providers by deeming them all Title II "common carriers." But now we are putting our nation's premier consumer protection cop back on the beat.

You note the importance of public participation in the comment process, and the Commission is grateful to all commenters who engaged the legal and public policy questions presented in this rulemaking. As contemplated by the Administrative Procedure Act, 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.

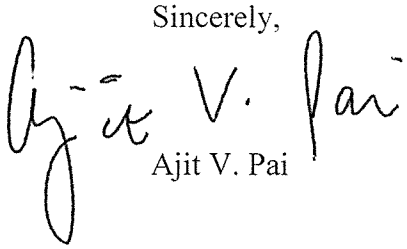
The Commission is staunchly committed to transparency and integrity in rulemaking proceedings, including in connection with the *Restoring Internet Freedom* proceeding. To that end, when individuals contacted the Commission to complain that a comment was falsely filed in their name, the Commission responded 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.

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.

In sum, Americans will still be able to access the websites they want to visit. They will still be able to enjoy the services they want to enjoy. There will still be regulation and regulators guarding a free and open Internet. This is the way things were prior to 2015, and this is the way they will be in the future.

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