

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2207**

October 6, 2023

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The Honorable Jessica Rosenworcel  
Chairwoman  
Federal Communications Commission  
45 L Street N.E.  
Washington, DC 20554

Dear Chairwoman Rosenworcel:

I am writing to express concerns that you misled the public and were not truthful in your Congressional testimony. Specifically, your plan for increasing government control of the Internet by regulating broadband under Title II of the Communications Act, which you released last week, directly contradicts your previous testimony. In particular, you testified that you do not support rate regulation, but in your plan, you expressly include and in fact, propose that policy. This raises serious questions.

On March 31, 2022, you testified before the House Committee on Energy and Commerce that you do not support rate regulation. As you know, rate regulation at the Federal Communications Commission (FCC) can take two main forms: *ex ante* and *ex post*. Under *ex ante*, the FCC can engage in rate regulation by setting rates ahead of time through tariffs or similar methods. Under *ex post*, the FCC can use its section 201 and section 202 authority to determine whether certain rates are “just and reasonable.”

During your testimony, you were asked by Chair Cathy McMorris Rodgers if you support rate regulation, and you were later asked directly by me whether that includes both *ex ante* and *ex post* rate regulation. Here is our exchange in which you specifically disavowed both forms:

\*Mr. Walberg: ... Chairwoman Rosenworcel, my final question is I want to follow up on an answer you gave to Leader Rodgers’s question earlier about rate regulation. I just want to make sure that there aren’t any hidden asterisks in your statement when you say, “no rate regulation.” Are you including within that a commitment not to apply section 201 and 202’s just and reasonable provisions to broadband rates, either before or after the fact?

\*Ms. Rosenworcel: There is no asterisks.

\*Mr. Walberg: No asterisks. I am glad to hear that.<sup>1</sup>

<sup>1</sup> <https://docs.house.gov/meetings/IF/IF16/20220331/114545/HHRG-117-IF16-Transcript-20220331.pdf>

On September 26, 2023, your office released a “Fact Sheet” that purported to describe your plan. Your document states, under a section titled “Facts,” the following:

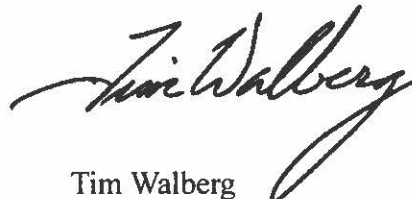
“policies like rate regulation . . . would be strictly prohibited.”<sup>2</sup>

In this context, we were surprised to see the details of your *Notice of Proposed Rulemaking* on September 28, 2023, which expressly proposes *ex post* rate regulation. This runs directly contrary to your testimony. Your plan states:

“We believe that Commission *ex ante* rate regulation is unnecessary because . . . we will be able to rely on sections 201 and 202 to address issues on an *ex post* basis. While we do not propose to forbear from sections 201 and 202 of the Act, we ‘do not and cannot envision adopting new *ex ante* rate regulation’ of BIAS, and we therefore propose to forbear from applying sections 201 and 202 to BIAS insofar as they would support adoption of *ex ante* rate regulations for BIAS. We seek comment on this proposal.”<sup>3</sup>

The future of the Internet in the United States should be focused on freedom, openness, and innovation, not more government control. Given the material nature of your statements to Congress, I request that you address this misrepresentation before the FCC votes on your plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Walberg", with a stylized flourish at the end.

Tim Walberg  
Member of Congress

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<sup>2</sup> <https://docs.fcc.gov/public/attachments/DOC-397235A1.pdf>

<sup>3</sup> <https://docs.fcc.gov/public/attachments/DOC-397309A1.pdf>