

January 30, 2024

**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 comments to the Federal Communications Commission’s (“Commission” or “FCC”) above-titled Notice of Proposed Rulemaking (“NPRM”).<sup>1</sup> 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**

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<sup>1</sup> Safeguarding and Securing the Open Internet, Notice of Proposed Rulemaking, WC Docket No. 23-320, FCC-23-83 (Oct. 19, 2023), <https://tinyurl.com/y6hhry6y> (“NPRM”).

Title II classification of broadband is unlawful for several reasons, echoed by numerous commenters.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> Instead of pursuing 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> This occurred for both wireless and fiber infrastructure investments.<sup>8</sup> As a result, Americans have more choices than ever before at faster speeds.<sup>9</sup> 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.<sup>10</sup> Broadband prices have decreased by 12% since 2017 across plans offering different internet speeds and across broadband technologies.<sup>11</sup>

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<sup>2</sup> NCTA Comments at 10-46; USTelecom Comments at 9-35; CTIA Comments at 46-78.

<sup>3</sup> Chamber Comments at 40-48.

<sup>4</sup> Chamber Comments at 49-61.

<sup>5</sup> Restoring Internet Freedom, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (2018), <http://tinyurl.com/mt3a7bpj> (“RIF Order”).

<sup>6</sup> See Comments of the U.S. Chamber of Commerce, WC Docket No. 23-320, at 6 (filed Dec. 14, 2023) (“Chamber Comments”); Comments of NCTA – The Internet & Television Association, WC Docket Nos. 23-320, 17-108, 17-287, at 86-87 (filed Dec. 14, 2023) (“NCTA Comments”); Comments of CTIA, WC Docket No. 23-320, at 13-14 (filed Dec. 14, 2023); Comments of USTelecom, WC Docket Nos. 23,320, 17-108, 17-287, 11-42, at 1-2 (filed Dec. 14, 2023) (“USTelecom Comments”).

<sup>7</sup> 2022 Broadband Capex Report, USTelecom (Sept. 8, 2019), <http://tinyurl.com/3cxdjhf9>; Michael Mandel & Jordan Shapiro, Investment Heroes 2023, Progressive Policy Institute, at P7 (Oct. 2023), <http://tinyurl.com/6jp6f9f8>.

<sup>8</sup> Chamber Comments at 8-9.

<sup>9</sup> NCTA Comments at 89-90; Chamber Comments at 11.

<sup>10</sup> NCTA Comments at 91; USTelecom Comments at 38-39.

<sup>11</sup> Chamber Comments at 12.

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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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,

National

U.S. Chamber of Commerce

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<sup>12</sup> Chamber Comments at 16-18.

<sup>13</sup> George S. Ford, Investment in the Virtuous Circle: Theory and Empirics, Phoenix Center for Advanced Legal & Economic Public Policy Studies, at 22 (December 2023), <http://tinyurl.com/yeuzsh8w>.

<sup>14</sup> BEAD Initial Proposal Progress Dashboard, National Telecommunications and Information Administration, Department of Commerce (accessed Jan. 8, 2024), <https://www.internetforall.gov/bead-initial-proposal-progress-dashboard>.

Alabama

The Business Council of Alabama  
Mobile Chamber  
Prattville Area Chamber of Commerce  
South Baldwin Chamber of Commerce

Arizona

Chandler Chamber of Commerce

Arkansas

Camden Regional Chamber of Commerce

Florida

Daytona Regional Chamber of Commerce  
Greater Boca Raton Chamber of Commerce  
Greater Miami Chamber of Commerce  
Tampa Bay Chamber

Georgia

Georgia Chamber of Commerce  
Metro Atlanta Chamber

Iowa

Iowa Association of Business and Industry  
Fort Madison Partners  
Mason City Chamber of Commerce  
Sioux Center Chamber of Commerce

Kentucky

Kentucky Chamber of Commerce  
Union County KY Chamber of Commerce

Maine

Barry County Chamber and Economic Development Alliance

Michigan

Michigan Chamber of Commerce  
Detroit Regional Chamber  
Grand Rapids Chamber  
Michigan West Coast Chamber of Commerce  
Oscoda-AuSable Chamber of Commerce  
Shakopee Chamber & Visitors Bureau  
Southern Wayne County Regional Chamber

#### Minnesota

Brainerd Lakes Chamber of Commerce  
Cannon Falls Area Chamber of Commerce  
Delano Area Chamber of Commerce  
Greater Mankato Growth  
Lonsdale Area Chamber of Commerce  
Marshall Area Chamber of Commerce  
Minneapolis Regional Chamber  
Winona Area Chamber of Commerce

#### Mississippi

Mississippi Economic Council - the State Chamber  
Area Development Partnership - Greater Hattiesburg, MS

#### Missouri

Missouri Chamber of Commerce and Industry  
Kennett Chamber of Commerce  
St. Charles Regional Chamber

#### Nebraska

Kearney Area Chamber of Commerce  
Seward County Chamber & Development Partnership

#### North Dakota

Greater North Dakota Chamber  
The Chamber Grand Forks / East Grand Forks  
FMWF Chamber of Commerce

#### Ohio

Chillicothe Ross Chamber of Commerce  
Ottawa Area Chamber of Commerce  
Toledo Regional Chamber of Commerce

South Dakota

Greater Sioux Falls Chamber of Commerce

Tennessee

Kingsport Chamber

Texas

Fort Bend Chamber  
Grapevine Chamber of Commerce  
Longview TX Chamber of Commerce  
North Texas Commission  
Rockport-Fulton Chamber of Commerce  
West Columbia Chamber of Commerce

Wisconsin

Marinette Menominee Area Chamber of Commerce