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On

PROTECTING THE INTERNET AND CONSUMERS THROUGH CONGRESSIONAL ACTION

before the

Committee on Energy & Commerce

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Good afternoon, Mr. Chairman and Members of the Committee. My name is Michael Powell and I am the President and Chief Executive Officer of the National Cable & Telecommunications Association. NCTA is the principal trade association for the U.S. cable industry. Our members include the nation's largest broadband providers of high-speed Internet access, as well as cable program networks, who provide high quality broadband content. Thank you for inviting me today to offer our thoughts on "Protecting the Internet and Consumers Through Congressional Action" and the proposed draft legislation.

It Is Time To End The Debate Over The FCC's Ability To Regulate The Internet

I am pleased to be here today to discuss a legislative solution that can finally put an end to the controversy over the FCC's attempts to establish a regulatory framework that protects and preserves an open Internet. Whether or not Section 706 can serve as a source of FCC authority for sufficiently effective Internet regulation (and we believe it can), and whether or not the FCC can reclassify broadband as a Title II service (and we believe it cannot), it has become increasingly clear that regardless of which conclusion the FCC reaches, *any* FCC decision will result in this issue being brought back to court for the third time. And while the legal challenge proceeds, the broadband industry will be left with years more of regulatory uncertainty, with their most highly advanced service potentially subject to decades-old laws designed for monopoly telephone companies in the meantime. And no one can fairly predict what will be the outcome of the litigation.

The Committee's proposal to enact bipartisan legislation is a much-needed alternative to this harsh result. Instead of leaving the FCC to find statutory authority in existing provisions of law, we must work together to craft new legislation that establishes unambiguous rules of the

road for ISPs while also clearly defining the parameters of the FCC's authority. The legislative proposal under consideration today represents a new path forward that meets these policy goals.

NCTA Supports The Draft Legislation

I firmly believe that the proposed legislation under review today achieves the aims of every stakeholder in the Internet ecosystem. First, the proposal clearly identifies the foundational principles of the open Internet: no blocking, no throttling, no paid prioritization, and transparency. The cable industry has always supported these basic principles – from the Four Freedoms first annunciated in 2005 to the Open Internet Order that was approved in 2010. Cable companies did not appeal the 2010 order and still voluntarily abide by the rules it imposed.

Second, the proposal makes appropriate narrow exceptions to these requirements for specialized services, reasonable network management needs, and actions taken to implement customer choices. These exemptions are essential provisions that allow ISPs to innovate and experiment with alternative service offerings and uses for their broadband networks, as well as ensure that their customers are receiving maximum value from their broadband Internet connections.

Third, the proposal eliminates the threat of prolonged uncertainty over what rules govern the provision of broadband service by unambiguously establishing the FCC's authority to enforce the core open Internet principles, while simultaneously limiting the FCC's authority to regulate the Internet beyond this fundamental purpose.

In the absence of a clear Congressional directive, the FCC will continue its attempts to force the round peg of open Internet policy into the square hole of existing statutory frameworks. We have already wasted years on protracted court battles, repeatedly failing to come up with a sound legal foundation to support the FCC's authority to adopt open Internet regulations. And if,

as it increasingly appears will be the case, the FCC attempts to impose the outdated and heavy-handed common carrier obligations of Title II on broadband Internet access services, it is guaranteed that we will waste several more years. There is nothing to be gained by prolonged uncertainty, especially when a simpler solution is before us. Even FCC Chairman Wheeler has suggested that if Congress were to intervene legislatively, it would "make the whole lawsuit question moot."

Congressional Action Is Needed To Prevent The Harm To Broadband Service That Would Follow Title II Reclassification

While the cable industry remains fully committed to giving Americans the open Internet experience they expect and deserve, we will continue to reiterate our unwavering opposition to any proposal that attempts to reclassify broadband services under the heavy-handed regulatory yoke of Title II. Our opposition to Title II does not stem from some nefarious desire to exercise control over consumers' Internet habits, but rather is spurred by our knowledge of the very real harms that will follow if broadband services are subject to Title II's outdated regulations.

Even if the Commission forbears from the majority of Title II's provisions, Title II could lead to any number of sweeping and intrusive regulatory burdens. FCC Chairman Wheeler has made clear that, whatever other forbearance decisions the FCC makes, broadband ISPs will be subject to Sections 201 and 202. These two provisions alone have given rise to many of the most invasive regulations ever imposed by the FCC, including detailed pricing mandates, forced unbundling and structural separation, resale obligations, and collocation requirements. Subjecting broadband providers to the risk of such a regulatory overhang would constitute a grave threat to their ability and incentive to make the enormous investments necessary to achieve the Commission's broadband performance and adoption objectives.

If the FCC opts not to forbear from other egregiously burdensome common carrier provisions, things could be even worse. Under Title II's Section 214, ISPs would have to get FCC permission every time they want to create a new service offering. Just imagine the profound impact that this process would have on a dynamic industry that has been characterized by fast-paced innovation and technological development. Rather than testing and rolling out new services on a regular basis, companies would be forced to play the guessing game of whether their latest idea will meet with regulatory approval. This would place the government – and not consumers – in the position of picking marketplace winners and losers.

On a more fundamental level, classifying broadband as a Title II service would inevitably lead to a constant battle over the appropriate extent of regulatory oversight over ISPs' business practices. It would involve costly regulatory proceedings and complaints over every disagreement in policy. The FCC would feel empowered to second-guess even the simplest business decisions that ISPs make every day, increasing transaction costs and decreasing incentives to respond to competition by offering innovative new services. The end result would be less risk taking and innovation, slower technological evolution, and depressed investment.

Moreover, we could expect state regulators to follow suit and attempt to impose additional regulatory requirements on broadband providers, creating a patchwork of inconsistent regulation. The immediate, investment-chilling implications of this outcome would be fundamentally incompatible with the pro-investment, pro-innovation broadband policy goals the Commission has consistently championed on a bipartisan basis.

Title II proponents initially acknowledged that many Title II provisions may not be appropriate for broadband service, and argued that the FCC should not concern itself with this result because the Commission can make the bad parts disappear by simply waving a wand and

chanting the magic word – forbearance! But increasingly, as the FCC has indicated a greater inclination to reclassify broadband as a Title II service, those same proponents have begun advancing arguments that the FCC should have further new power to regulate broadband, including over universal service, privacy, and private backbone contracts. It is clear now that many advocates of regulation are pushing the FCC not to forbear from a myriad of other Title II provisions, and arguing that the FCC cannot forbear from applying any Title II provision to broadband service unless it conducts an exhaustive analysis on a provision-by-provision basis – and they are clearly prepared to fight any FCC attempt to free broadband from the minutia of common carrier law.

Light Touch Regulation Spurs Innovation and Investment

As an alternative to Title II, the proposed legislation provides exactly the kind of "light-touch" regulatory model that has yielded overwhelming benefits for American consumers. With competition and deregulation as the touchstones of our national broadband policy, the American broadband ecosystem has evolved rapidly, fueled primarily by private sector investment and innovation, with limited government oversight.

The light-touch regulatory approach has spurred unprecedented levels of investment in our nation's broadband infrastructure. Broadband providers have invested $1.3 trillion in private capital since 1996 – an average of $70 billion a year – to develop and deploy advanced broadband networks. And this investment is only accelerating. Since 2012, U.S. broadband providers have laid more high-speed fiber cables than in any similar period since 2000, which has led to an astounding leap forward in broadband speeds. Broadband providers around the country, including Cox, Bright House, Suddenlink, Midcontinent, Comcast, General Communication Inc. (GCI), AT&T, and Google Fiber, have either begun to offer or have

announced plans to offer speeds of up to 1 gigabit per second. Such capabilities, once unthinkable in the era of 14.4 or 28.8 kbps modems, are now or will soon be a reality in many parts of the country.

Thanks to increased investment, higher speeds are becoming available to an ever-growing number of Americans. Today, 99 percent of Americans have access to wired or wireless broadband networks, including some of the most advanced networks in the world. In fact, 85 percent of homes in the U.S. can now access networks with connections capable of 100 Mbps or more.

The Internet is a feat of human ingenuity that has thrived in an environment of light-touch regulation, fueling America's economic growth, facilitating civic participation, and enabling a dizzying array of communications, entertainment, and educational options. America is home to the world's top web companies, and exciting startups are born every day. In short, broadband providers' massive investment of private risk capital has spurred the development of an Internet ecosystem that now occupies a central place in our lives.

As we have repeatedly and consistently said, cable broadband providers are unequivocally committed to building and maintaining an open Internet experience. Maintaining an open Internet is not only the right thing to do, it is vital to our ability to attract and retain customers. But keeping America's broadband momentum moving forward requires a continued light regulatory touch, and preserving and protecting the open Internet need not and should not come at the expense of future investment and innovation. The goal of everyone sitting in this room today is the same – to develop a sound public policy that preserves and facilitates the "virtuous circle" of innovation, demand for Internet services, and deployment of broadband

infrastructure. The right path forward is one that will continue to fuel private network investment that is essential to the continued growth and health of the Internet.

NCTA wholeheartedly supports the legislative proposal before us today, which is well tailored to meet the policy goals articulated by the FCC and this Committee. Additionally, we are entirely open to changes that would bring the two sides fully together. We deeply appreciate your continued efforts to support a vibrant and innovative Internet ecosystem. We look forward to working further with all members of the Committee on this important issue.

Thank you again for the opportunity to appear today.