

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Restoring Internet Freedom*, WC Docket No. 17-108.

This is a great day for consumers, for innovation, and for freedom. We are reversing the Obama-era FCC's unprecedented decision to apply Title II regulations to the Internet. I am proud to help end this two-year experiment with heavy-handed regulation—this massive regulatory overreach.

Prior to the FCC's 2015 decision, consumers and innovators alike benefited from a free and open Internet. This was not because the government imposed utility-style regulation. It didn't. This was not because the FCC had a rule regulating "Internet conduct." It had none.

Instead, through Republican and Democratic administrations alike—including through the first six years of the Obama Administration—the FCC abided by a 20-year, bipartisan consensus that the government should not control or heavily regulate Internet access.

The Internet flourished under this framework. The private sector invested over \$1.5 trillion in broadband networks. Consumers were protected and enjoyed the freedom to access the websites and content of their choosing. Every part of the Internet economy benefited—from innovators on the edge to startups and businesses of every size. Title II did not build that. Title II did not create the open Internet. And Title II is not the way to maintain it. The FCC's light regulatory touch—coupled with the robust consumer protections we restore today—supported our country's extraordinary Internet success story.

After a two-year detour—one that has seen investment decline, broadband deployments put on hold, and innovative new offerings shelved—it is great to see the FCC returning to this proven regulatory approach.

Now, there is no doubt that the debate over Internet regulation has generated significant public attention, as it should. Americans cherish the free and open Internet. But when it comes to this proceeding, far too many are simply fanning the false flames of fear. The apocalyptic rhetoric is quite something—even by Washington standards. No, the FCC is not ending the Internet. Or, as President Obama's first Federal Trade Commission Chairman recently put it, "the sky isn't falling. Consumers will remain protected, and the internet will flourish."¹

What we're doing with today's vote is reversing a two-year old decision and returning to a tried-and-true regulatory framework—one that we know from our own experience works for consumers and for innovators.

Many of the myths that are out there go to what I call "the Great Title II head fake"—which is attributing to Title II things that it does not do.

Some claim, for instance, that Title II is preventing ISPs from selling bundled or curated plans that offer access to only a portion of the Internet. Not true. The FCC expressly stated that Title II allows providers to do just that.²

¹ Jon Leibowitz, *Everybody Calm Down About Net Neutrality*, THE WALL STREET JOURNAL (Dec. 12, 2017), <https://www.wsj.com/articles/everybody-calm-down-about-net-neutrality-1513124905>.

² See Brief for Respondents at 145, n.53, *United States Telecom Ass'n v. FCC*, No. 15-1063 (D.C. Cir. Sept. 14, 2015) (The 2015 *Title II Order* "would not apply to a . . . company that advertised 'filtered' Internet access catering to a particular audience or that offered access only to curated content."), <https://go.usa.gov/xnnYb>; see also Opposition of Respondents to Petitions for Panel Rehearing and Rehearing En Banc at 28, *United States Telecom Ass'n v. FCC*, No. 15-1063 (D.C. Cir. Oct. 3, 2016) ("Of course, as the panel acknowledged, a broadband provider could 'choose to exercise editorial discretion—for instance, by picking a limited set of websites to carry and offering

Some claim that Title II is preventing ISPs from increasing their prices for broadband. But the FCC emphasized that its Title II decision involves “no rate regulation.”³

And some claim that Title II is preventing ISPs from blocking, throttling, or engaging in paid prioritization. Also, not true. The D.C. Circuit said that Title II allows ISPs to “block[] websites,” to “throttl[e] . . . applications chosen by the ISP,” and to “filter[. . .] content into fast (and slow) lanes based on the ISP’s commercial interests” provided that they disclose those practices.⁴

In other words, Title II is not the thin line between where we are now and some *Mad Max* version of the Internet. There are reasons that consumers enjoyed a free and open Internet long before Title II. There are reasons why consumers are free to access any website or online content of their choosing. And those reasons will continue to hold true long after our Title II experiment ends.

What are they? Well, the D.C. Circuit has offered its view. When it observed that Title II allows ISPs to offer filtered Internet access, it also said that none were doing so because of fear of subscriber losses.⁵ In other words, market forces, not the Title II rules, are regulating this conduct.

Now, there are some that will never accept market forces as a solution, either in the broadband marketplace or otherwise.

But for them, today’s Order has some more good news. We are not relying on market forces alone. We are not giving ISPs free reign to dictate your online experience. Our decision today includes powerful legal checks.

First, Americans will enjoy robust online protections. When the FCC classified broadband as a Title II service in 2015, it divested the Federal Trade Commission of 100% of its consumer protection authority over ISPs, including its ability to police ISPs that engage in unfair or deceptive practices. Repealing Title II will restore those important protections for Internet openness.

Second, consumers will regain strong online privacy protections. Before the FCC stripped it of jurisdiction, the FTC—the nation’s most experienced privacy enforcement agency—brought over 500 privacy enforcement actions, including against ISPs. By reversing Title II, consumers get those privacy protections back.

Third, federal antitrust law will protect against discriminatory conduct by ISPs. Section 1 of the Sherman Act renders anticompetitive agreements illegal. So, if ISPs reached agreements to act in a non-neutral manner by unfairly blocking, throttling, or discriminating against traffic, those agreements would be per se unlawful. Moreover, Section 2 of the Sherman Act makes it illegal for a vertically integrated ISP to anti-competitively favor its content or services over that of an unaffiliated business. As a former Obama Administration FTC Chairman recently said, this is a “formidable hammer against anyone who would harmfully block, throttle or prioritize traffic.”⁶

that service as a curated internet experience’ Any such provider, however, would be exempt from the [2015 Title II] open internet rules.”), <https://go.usa.gov/xnnY5>.

³ See, e.g., *Protecting and Promoting the Open Internet*, WC Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd. 5601, 5612, para. 37 (2015), <https://go.usa.gov/xnnYU>.

⁴ *United States Telecom Ass’n v. FCC*, 855 F.3d 381, 389-390 (D.C. Cir. 2017) (Srinivasan, J., and Tatel, J., concurring in the denial of rehearing *en banc*).

⁵ *Id.* at 390 (“No party disputes that an ISP could do so if it wished, and no ISP has suggested an interest in doing so in this court. That may be for an understandable reason: a broadband provider representing that it will filter its customers’ access to web content based on its own priorities might have serious concerns about its ability to attract subscribers.”).

⁶ Leibowitz, *supra* note 1.

Fourth, state consumer protection laws will apply and state attorneys general can bring actions against ISPs. These authorities will provide another strong set of legal protections against unfair business practices by ISPs.

In short, this is no free for all. This is no Thunderdome. The FCC is not killing the Internet.

While I have focused in this statement on the policy debate surrounding Title II, there is also a threshold legal question that the Commission must answer. Does Internet access service qualify as a Title I information service or a Title II telecommunications service? Thankfully, I do not need to go beyond what the Order itself says on this point. After all, in 2005, the Supreme Court expressly found that the FCC has authority to classify Internet access service as a Title I service.⁷ This remains the only classification blessed by the Supreme Court. So our decision today rests on sound legal footing.

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In closing, I want to look back to 2015 one more time. In October of that year, long before I became a Commissioner, I gave a speech where I talked about the FCC's Title II decision. I ended it by saying this:

I am optimistic that the U.S. will return to the successful, light-touch approach to the Internet that spurred massive investments in our broadband infrastructure. Efforts are underway in both the courts and Congress to reverse the FCC's decision. And following next year's presidential election, the composition of the FCC could be substantially different than it is today.

Now, two years ago, I certainly did not imagine that I would be part of the FCC's new composition. But I am very grateful for the opportunity to serve. And I am grateful that my optimism back then has proven to be well-founded. I am glad to cast my vote today in favor of Internet freedom.

⁷ *Nat'l Cable & Telecomms. Ass'n. v. Brand X Servs.* 545 U.S. 967 (2005).