



Thomas A. Schatz  
*President*

May 8, 2017

Chairman Ajit Pai  
Commissioner Mignon Clyburn  
Commissioner Michael O'Rielly  
Commission Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554

RE: Restoring Internet Freedom (WC Docket No. 17-108)

Dear Chairman Pai, Commissioner Clyburn, and Commissioner O'Rielly:

On behalf of the more than one million members and supporters of Citizens Against Government Waste, I submit the attached public comments to the Federal Communications Commission in reference to the proposed Notice of Proposal Rulemaking in the Matter of Restoring Internet Freedom (WC Docket No. 17-108).

If you have any questions or concerns, please contact either myself or Deborah Collier at (202) 467-5300. Thank you for your consideration of our remarks.

Sincerely,

A handwritten signature in black ink that reads "Thomas Schatz". The signature is written in a cursive, slightly slanted style.

President  
Citizens Against Government Waste

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	
	)	
Restoring Internet Freedom	)	WC Docket No. 17-108
	)	

Comments of  
Thomas A. Schatz  
President  
Citizens Against Government Waste

May 8, 2017

Citizens Against Government Waste (CAGW) is a private, nonprofit, nonpartisan organization dedicated to educating the American public about waste, mismanagement, and inefficiency in government. On behalf of the more than one million members and supporters of CAGW, I offer the following comments in support of restoring internet freedom to the countless Americans who use this vital service.

On February 26, 2015, the Federal Communications Commission (FCC) voted in favor of the Open Internet Order (OIO) on a 3-2 party-line vote to reclassify the internet as a telecommunications/telephone service under Title II of the Communications Act of 1934.<sup>1</sup> This utility-style big brother approach to regulating the internet was a problem in search of a solution, and a massive overreach of authority by the agency. The reclassification harmed the internet ecosystem and created uncertainty regarding the application of several provisions of Title II to internet service providers (ISPs) (renamed in the OIO as “broadband internet access service [BIAS] providers”).

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<sup>1</sup> In the Matter of Protecting and Promoting the Open Internet (GN Docket No. 14-28), Federal Communications Commission, FCC 15-24, February 26, 2015, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-24A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf).

CAGW fully supports reinstating the classification of ISP/BIAS services as information services under Title I of the Communications Act of 1934. On February 8, 1996, when President Bill Clinton signed the Telecommunications Act of 1996, which was the first major overhaul of the Communications Act in more than 60 years, he stated that the law would “help connect every classroom in America to the information superhighway by the end of the decade. It will protect consumers by regulating the remaining monopolies for a time and by providing a roadmap for deregulation in the future.”<sup>2</sup> The 1996 Act classified the internet as an information service, subject to a light-touch regulatory regime, which allowed the internet and the economy to grow and flourish.

One consequence of reclassifying the internet as a Title II public utility was the removal of the jurisdiction of the Federal Trade Commission (FTC) over privacy enforcement for ISPs. Consumer information privacy for data held by ISPs became subject to the provisions of Title II, Section 222 of the Communications Act of 1934, which states in section (c)(1), “Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.”<sup>3</sup> Section (c)(2) states, “A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.”<sup>4</sup>

This means that an ISP must receive a customer’s consent before it can sell, or otherwise disseminate any personal information. The NPRM, if adopted, would restore privacy enforcement on the internet to the FTC.

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<sup>2</sup> William J. Clinton: "Statement on Signing the Telecommunications Act of 1996," February 8, 1996. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=52289>.

<sup>3</sup> U.S. Code, Title 47, Chapter 5, Subchapter II, Part I, U.S. Code § 222 – Privacy of Customer Information, Legal Information Institute, Cornell University Law School, viewed May 4, 2017, <https://www.law.cornell.edu/uscode/text/47/222>.

<sup>4</sup> Ibid.

FCC Chairman Ajit Pai and Acting FTC Chairman Maureen Ohlhausen issued a joint statement on March 1, 2017, that noted they would work together to bring a consistent approach to regulating internet privacy.<sup>5</sup> They said that jurisdiction over privacy and data security related to broadband providers should go back to the FTC, and that every actor “in the online space should be subject to the same rules, enforced by the same agency.” They added, “The federal government shouldn’t favor one set of companies over another ... we will work together to establish a technology-neutral privacy framework for the online world. Such a uniform approach is in the best interests of consumers and has a long track record of success.”

CAGW also supports Section IV, Part C of the NPRM, which proposes to conduct a cost-benefit analysis (CBA). On April 5, 2017, Chairman Pai announced that he would be creating a new Office of Economics and Data.<sup>6</sup> Economic analysis is critical to determine the impact of rules on broadband deployment and the economy. CAGW encourages the FCC to perform a CBA on each provision of the NPRM, as well as the overall cost of the entire NPRM.

Prior to the OIO, the internet operated under principles based on the FCC’s Policy Statement of August 5, 2005, which provided guidance for ISPs.<sup>7</sup> The principles were (1) to encourage broadband deployment and preserve and promote the open and interconnected nature of the public internet, consumers are entitled to access the lawful content of their choice; (2) To encourage broadband deployment and preserve and promote the open and interconnected nature of the public internet, consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement; (3) To encourage broadband deployment and preserve and promote the open and interconnected nature of the public internet, consumers are entitled to connect their choice of legal devices that do not harm the network; and, (4) To encourage

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<sup>5</sup> “Joint Statement of Acting FTC Chairman Maureen K. Ohlhausen and FCC Chairman Ajit Pai on Protecting Americans’ Online Privacy,” Federal Trade Commission, March 1, 2017, <https://www.ftc.gov/news-events/press-releases/2017/03/joint-statement-acting-ftc-chairman-maureen-k-ohlhausen-fcc>.

<sup>6</sup> FCC Chairman Ajit Pai, “The Importance of Economic Analysis at the FCC,” Speech before the Hudson Institute, Federal Communications Commission, April 5, 2017, [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-344248A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-344248A1.pdf).

<sup>7</sup> “In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities (CC Docket No. 02-33); Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services (CC Docket No. 01-337); Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements (CC Docket Nos. 95-20, 98-10); Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities (GN Docket No. 00-185); Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to Internet Over Cable Facilities (CS Docket No. 02-52), Federal Communications Commission, FCC 05-151, August 5, 2005, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-05-151A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-05-151A1.pdf).

broadband deployment and preserve and promote the open and interconnected nature of the public internet, consumers are entitled to competition among network providers, application and service providers, and content providers. These bright-line rules served consumers well in bringing broadband to more homes and businesses, and encouraging the vibrant internet ecosystem enjoyed today.

CAGW supports the FCC's reconsideration of the OIO. Upon the approval of the final rules on Restoring Internet Freedom (WC Docket No. 17-108), a free and open internet will be reinstated, while economic growth will flourish through such a light-touch regulatory approach to internet governance.