



Consumer Federation of America

February 25, 2015

Chairman Walden and Ranking Member Eshoo
Communications and Technology Subcommittee
Committee on Energy and Commerce,
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Re: The Future of the Internet

Dear Chairman Walden and Ranking Member Eshoo,

The Consumer Federation of America (CFA) applauds the Committee for holding hearings on the vitally important issue of the Future of the Internet. As the Consumer Federation of America (CFA) argued in recent comments in the Open Internet rulemaking, in order to understand the future of the Internet, policymakers must understand the foundation of its past success. To that end, CFA is submitting a series of analyses prepared over the past decade that examine and explain the key building blocks of the remarkable growth of the Internet.

Twenty five years ago, CFA was the first public interest group to recognize that the Internet would be a remarkably consumer-friendly and citizen friendly place for commerce and speech.¹ In that seminal analysis, we also concluded that the cornerstone of the value, importance and success of the Internet was the strong principle of nondiscriminatory access to the data network that two FCC decisions – Carterphone and the Computer Inquiries – guaranteed to the users and applications developers at the edge of the network. The “Virtuous Cycle” of innovation and investment that these decisions facilitated has long been recognized in the academic literature as the vital engine of economic progress of the Internet. The FCC relied on

¹ Cooper, Mark, *Expanding the Information Age for the 1990s: A Pragmatic Consumer View* (Washington: American Association of Retired Persons and Consumer Federation of America, January 11, 1990). This was the first in a series of reports that analyzed the effects of decentralized, open networks, prior to the dramatic commercial success of the Internet (see Cooper, Mark, *Developing the Information Age in the 1990s: A Pragmatic Consumer View* [Washington: Consumer Federation of America, June 8, 1992], "Delivering the Information Age Now," *Telecom Infrastructure: 1993*, Telecommunications Reports, 1993; *The Meaning of the Word Infrastructure* [Washington: Consumer Federation of America, June 30, 1994].

this important characteristic of the Internet in the National Broadband Plan and its Open Internet rules. The D.C. Court of Appeals recognized this important process in upholding the FCC's authority to take actions to ensure reasonable and timely deployment of broadband.

Over the past quarter century our analyses has shown that the single greatest threat to the future of the Internet has been the effort of the network owners (network ISPs),² like the cable telephone companies, to gut the principle nondiscriminatory access to communications for users. Simply put, the network ISPs despise the principle of nondiscriminatory access to decentralized communications – in fact, resisted it from the very beginning – because it threatens their economic interest. Their interest lies in exercising central control, slowing innovation to preserve their power and taxing the innovation at the edge to increase their profits.

While much of the commercial activity on the Internet has its origins in U.S. companies, the core communications protocols – TCP/IP and WiFi – have always been managed as open protocols by a global, multi-stakeholder process in which government, academia, business and public interest groups have all played a part. If the Internet is to continue its march toward becoming a fully global engine of economic development and free speech, the successful model of cooperative, multi-stakeholder participatory governance must be perfected and extended to all aspects of the Internet management.

When the FCC classified broadband as an information service, it claimed that it had adequate authority to preserve nondiscrimination and it recognized that there were important goals of the Communications Act that were placed in jeopardy by that decision. The goal of universal service is the first goal mentioned in the Communications Act, but it was given little weight in the classification decision. In contrast, in amendments enacted in 2008 and 2009, Congress recognized the increasing importance of the adoption and utilization of broadband as indispensable to the economic development, social participation and political engagement of all people of the United States.

Looking back, it is possible that the approach taken by the FCC could have worked, if the network ISPs had accepted the authority it asserted and behaved well. Over the course of the past decade, they did neither and repeatedly litigated against the authority of the FCC to pursue the goals of the Act. It is time for the FCC to not only act decisively to ensure the principle of nondiscrimination, but also to put the other public interest goals back at the center of FCC policy.

² CFA was also among the first public interest groups to call on the FCC to ensure that the principles of nondiscrimination that had played such an important role in setting the conditions for Internet success would apply to broadband. Reply Comments of Center for Media Education, et al., Inquiry Concerning the Deployment of Advanced Telecommunications Capability to America Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Federal Communications Commission, CC Docket No. 98-146, October 10, 1998; Petition to Deny Consumers Union, et al., Joint Application of AT&T Corporation and Tele-Communications Inc. for Approval of Transfer of Control of Commission Licenses and Authorizations, Federal Communications Commission, CS Docket No. 98-178, October 28, 1998.

The descriptions of the Open Internet Order that is pending before the FCC suggests to us that it is exactly what is needed to ensure that the principle of open access on which its success has rested is preserved in the future.

- It relies primarily on the section 706 authority recently upheld by the D.C. and 10th circuit appeals courts.
- It invokes Title II authority only where the record shows that the power it has under Section 706 is inadequate to address network ISP practices that pose a mortal threat to the virtuous cycle of innovation and investment.
- It puts key policy issues back on the table – like universal service, consumer protection and competition – that were never addressed when broadband was misclassified as an information service.

To ensure that the Committee has a full understanding of the foundation of the Internet success in crafting policies to ensure its future success, we submit excerpts from ten recent analyses we have presented in academic conferences and publications or filed at the Commission. The excerpts are selected to focus on a range of important issues that are being considered by policymakers at present,

The resulting document entitled “The Future of the Internet as a Dominant Means of Communications and Commerce: Building Blocks of Past Success, Principles and Policies for the 21st Century, underscores the important role the FCC played in creating the conditions for the virtuous cycle. By retaining clear authority to pursue a flexible, light handed approach by the same public service principles that defined the birth and adolescence of the Internet, not just as a communication sector, but as the central engine of growth in the digital mode of production, not just nondiscrimination, but the full range of social and economic issues addressed by the Communications Act, we believe that the second quarter of a century of the Internet Age will be even more citizen and consumer friendly than the first.

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Enclosure: The Future of the Internet