FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 14, 2016

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2322 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Pallone:

I understand that the House Energy and Commerce Committee is about to markup H.R. 2666, the No Rate Regulation of Broadband Internet Access Act. There have been suggestions that the approach in this legislation is consistent with comments I made before the Senate Appropriations Committee last year. I want to state, respectfully, that it is not.

In the Open Internet Order, the Commission "expressly eschew[ed] the future use of prescriptive, industry-wide rate regulation." That is the law of the land. We achieved that goal by forbearing from the elements of the Communications Act that require prescriptive, industry-wide rate regulation—sections 203, 204, and 205. To the extent sections 201 and 202 could be read to allow the Commission to implement *ex ante* rate regulation, we forbore from those provisions too. This is the light-touch regulatory framework that worked for mobile voice. The same approach will work for broadband.

This broad forbearance in the Open Internet Order was the basis of my comments to the Senate Appropriations Committee. Senator Boozman asked if I objected to Congress prohibiting the Commission from rate regulation. I responded that if Congress wanted to ensure that a future Commission would be unable to unforbear, I would have no difficulty with it. What I said then remains true today. If Congress in its wisdom decides to make doubly sure that the forbearance in the Open Internet Order is the law of the land, that is Congress's prerogative.

But this bill does more than that. It would introduce significant uncertainty into the Commission's ability to enforce the three bright line rules that bar blocking, throttling, and paid prioritization rules, as well as our general conduct rule that would be applied to issues such as data caps and zero rating. It would also cast doubt on the ability of the Commission to ensure that broadband providers receiving universal service subsidies do not overcharge their consumers. Finally, it would hamstring aspects of the Commission's merger review process.

I am committed to ensuring that forbearance today is forbearance tomorrow. But I write to make plain that this bill is not consistent with the views I expressed last year.

Sincerely,

Tom Wheeler