



Federal Communications Commission
Washington, D.C. 20554

January 11, 2016

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Steve Chabot
Chairman
Committee on Small Business
2361 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications and
Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Bob Latta
Vice Chairman
Subcommittee on Communications and
Technology
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairmen,

Thank you for your November 19, 2015 letter to Chairman Wheeler of the Federal Communications Commission (FCC) regarding the temporary small business exemption from the Net Neutrality Order's "enhanced transparency requirements". As you know, we dissented from last year's Net Neutrality decision, arguing that it was unlawful and would impose unnecessary and unjustified burdens on providers. To provide at least a modicum of relief for some providers, however, we believe that the FCC should at least make the small business exemption permanent. Unfortunately, on December 15, 2015, the FCC's Consumer and Governmental Affairs Bureau issued a Report and Order that declined to do so. We write to draw your attention to this flawed ruling and seek your further input.

Specifically, despite the near unanimous concerns of commenters in the record about applying new burdens to small businesses, the item merely extends the temporary exemption until December 15, 2016. Additionally, the item declined to change the threshold for the exemption during this period to align it with the definition set by the Small Business Administration for small telecommunications carriers, or even the FCC's SBA-approved definition of a small wireless carrier.

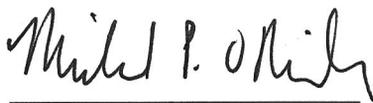
The record in the FCC proceeding made clear that small providers have fewer resources to devote to enhanced transparency requirements. Therefore, as you note in your letter, the rules

would have a disproportionate impact on small businesses if they ultimately go into effect. In fact, as you described, these requirements could even jeopardize the ability of small ISPs to deploy and offer broadband service in their communities, to the detriment of consumers that could benefit from new or improved service. By failing to make the exemption permanent, the FCC missed an opportunity to remedy these concerns and take this issue off the table. Instead, providers face prolonged uncertainty and the looming threat of future regulation. Therefore, they are forced to continue diverting limited resources to challenge the rules while at the same time planning how to come into compliance if their challenges are ultimately unsuccessful.

To justify this outcome, the item uses the Paperwork Reduction Act (PRA) process as an excuse for delaying a final decision on the small business exemption. It asserts that the PRA process will help the FCC estimate the burden of complying with the new requirements. That type of approach – where an agency adopts rules and “right-sizes” them afterwards – is completely backwards. An agency is supposed to seek comment on proposed rules and the associated costs and benefits *during* the rulemaking proceeding so that the final rules and the estimated burdens submitted to the Office of Management and Budget (OMB) for review reflect a reasoned cost-benefit analysis. Addressing the impact of rules after the fact effectively sets up a second proceeding before OMB to challenge burden estimates that the FCC concedes have not been substantiated. That is not how the process is designed to work, and creates further uncertainty as the Commission may have to modify its rules if its baseless burden estimates turn out to be inaccurate. Moreover, this admission that the FCC has not yet fully assessed the impact of the rules on small business is inconsistent with the FCC’s representations under the Regulatory Flexibility Act that it completed the required economic analysis. We welcome your viewpoints on this as well.

We appreciate the attention you have given to this proceeding and we would be pleased to assist you and your Committees in any way.

Sincerely,



Michael O’Rielly
Commissioner
Federal Communications Commission



Ajit Pai
Commissioner
Federal Communications Commission

cc: The Honorable Steve Scalise
The Honorable Steve King
The Honorable Marsha Blackburn
The Honorable Leonard Lance
The Honorable Renee Ellmers

The Honorable Joe Pitts
The Honorable Bill Johnson
The Honorable Pete Olson
The Honorable Mike Bost
The Honorable John Shimkus
The Honorable Gus Bilirakis
The Honorable Brett Guthrie
The Honorable Markwayne Mullin
The Honorable Michael Burgess
The Honorable Richard Hudson
The Honorable Trent Kelly
The Honorable Joe Barton
The Honorable David Brat
The Honorable Tim Huelskamp
The Honorable Carlos Curbelo
The Honorable Mike Pompeo
The Honorable Adam Kinzinger
The Honorable Chris Collins
The Honorable Blaine Luetkemeyer
The Honorable Cresent Hardy
The Honorable Billy Long
The Honorable Steve Knight
The Honorable Richard Hanna
The Honorable Kevin Cramer
The Honorable Christopher Gibson
The Honorable Aumua Amata