



MEMORANDUM

March 22, 2019

To: Subcommittee on Communications and Technology Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Subcommittee Markup of H.R. 1644, the “Save the Internet Act of 2019”

On **Tuesday, March 26, 2019, at 10 a.m. in the John D. Dingell Room, 2123 of the Rayburn House Office Building**, the Subcommittee on Communications and Technology will hold a markup of H.R. 1644, the “Save the Internet Act of 2019”.

I. BACKGROUND

A. The 2015 Open Internet Order

In 2015, the Federal Communications Commission (FCC) adopted protections to ensure consumers’ access to lawful internet content, applications, services and non-harmful devices (2015 Order).¹ The 2015 Order clarified the FCC’s consumer protection authority over broadband internet service and buttressed support for rural broadband deployment and the Lifeline program.

The 2015 Order included three bright-line rules, applicable to wireline and wireless broadband internet service: (1) no blocking of lawful content, applications, services, and non-harmful devices; (2) no throttling of lawful content, applications, services, and non-harmful devices; and (3) no paid prioritization. In addition, the 2015 Order adopted consumer protections to prevent internet service providers (ISPs) from unreasonably interfering with, or unreasonably disadvantaging, consumers’ access to the content of their choice (*i.e.*, the “general conduct rule”). The FCC also enhanced network disclosure requirements and included a complaint process for resolving interconnection disputes.

As part of the 2015 Order, the FCC applied certain longstanding Commission authority to broadband internet service, including Sections 201 and 202 of the Communications Act, giving the FCC authority to prevent future unjust, unreasonable, and discriminatory network practices. The FCC maintained provisions to ensure access for services by people with disabilities. Similarly, the FCC maintained provisions to ensure universal service—provisions that the FCC

¹ Federal Communications Commission, *Protecting and Promoting the Open Internet*, Report and Order, GN Docket No. 14-28, FCC 15-24 (rel. Mar. 12, 2015) (2015 Order).

used to support and fund better broadband access for low-income Americans and those living in rural areas.

Beyond those specific, identified protections, the FCC opted for a light-touch regulatory regime by forbearing from applying the majority of common carrier provisions in the Communications Act and over 700 applicable regulations, including provisions relating to rate-setting and mandatory last-mile unbundling.²

Opponents of these network neutrality protections challenged the 2015 Order in court. In June 2016, the U.S. Court of Appeals for the D.C. Circuit upheld the 2015 Order in its entirety.³ Last November, the Supreme Court declined a petition to review the case, which effectively affirmed the Circuit Court's opinion.⁴

B. The Repeal of the 2015 Open Internet Order

With new leadership in place, the FCC proposed in May 2017, to roll back the 2015 Order's protections.⁵ The commission received millions of public comments on the proposed repeal and reclassification, which included comments and letters from members of Congress.⁶ Almost 99 percent of the unique comments filed opposed the commission's repeal.⁷ The FCC finalized a new order in December 2017, which took effect in May 2018 (RIF Order).⁸ In the RIF Order, the FCC repealed its net neutrality protections and, in the process, disclaimed certain key features of its own authority, which have been central to supporting broadband access and adoption.⁹

² See *id.* at ¶ 5.

³ *U.S. Appeals Court Upholds Net Neutrality Rules in Full*, NPR (June 14, 2016).

⁴ *Supreme Court Won't Hear Net Neutrality Challenges*, New York Times (Nov. 5, 2018).

⁵ Federal Communications Commission, *Restoring Internet Freedom*, Notice of Proposed Rulemaking, WC Docket No. 17-108, FCC 17-60 (rel. May 23, 2017).

⁶ See Federal Communications Commission, *Restoring Internet Freedom*, Total Filings, Electronic Comment Filing System, WC Docket No. 17-108 (available at https://www.fcc.gov/ecfs/search/filings?proceedings_name=17-108&sort=date_disseminated,DESC) (accessed Feb. 4, 2019).

⁷ *98.5% of Unique Net Neutrality Comments Oppose Ajit Pai's Anti-Title II Plan*, ARS Technica (Aug. 30, 2019) (arstechnica.com/tech-policy/2017/08/isp-funded-study-finds-huge-support-for-keeping-current-net-neutrality-rules/).

⁸ Federal Communications Commission, *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, WC Docket No. 17-108, FCC 17-166 (rel. Jan. 4, 2018) (RIF Order); Federal Communications Commission, *Chairman Pai Statement on Restoring Internet Freedom Order Taking Effect*, Press Release (May 10, 2018).

⁹ RIF Order at ¶ 20.

C. Implications of Repeal for Consumers

The repeal of the 2015 Order has had broad implications for consumers and small businesses accessing the internet. Under the 2015 Order, the FCC was obligated to enforce explicit prohibitions on blocking, throttling, and pay-for-priority arrangements. The FCC also retained its authority to address future discriminatory, unreasonable, or unjust network practices.¹⁰ The repeal removed protections for people with disabilities that previously ensured their access to broadband service.¹¹ The repeal also did away with provisions that ensured fair access to utility poles, ducts, conduits, and rights-of-way.¹² Finally, by relinquishing the FCC's authority to accelerate deployment of broadband, the repeal undermined the FCC's authority to fund rural broadband access and adoption efforts for low-income individuals.¹³

II. LEGISLATION: H.R. 1644, THE SAVE THE INTERNET ACT OF 2019

On March 8, 2019, Rep. Mike Doyle (D-PA) introduced H.R. 1644, the “Save the Internet Act of 2019”, with 132 original co-sponsors. Specifically, H.R. 1644 would repeal the RIF Order that was adopted by the Commission in December 2017 and reinstate and codify the FCC's 2015 Order. The legislation would also restore and place into effect as of January 19, 2017, the Report and Order on Remand, Declaratory Ruling, and Order adopted by the FCC in February 2015. It would also restore as in effect on January 19, 2017, Part 8 of title 47, Code of Federal Regulations. Finally, it would restore as in effect on January 19, 2017, any other rule that the RIF Order modified or repealed.

¹⁰ 2015 Order at ¶ 15-24.

¹¹ Compare 2015 Order at ¶ 468 with RIF Order at ¶ 21.

¹² Compare 2015 Order at ¶ 478 with RIF Order at ¶ 21.

¹³ RIF Order at ¶ 268.