Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Restoring Internet Freedom	)	Docket WC No. 17-108
	)	
Bridging the Digital Divide for Low-Income Consumers	)	Docket WC No. 17-287
	)	
Lifeline and Link Up Reform and Modernization	)	Docket WC No. 11-42

Comments of the American Consumer Institute

The American Consumer Institute Center for Citizen Research (ACI) is a nonprofit (501c3) educational and research institute with the mission to identify, analyze and project the interests of consumers in selected legislative and rulemaking proceedings in information technology, health care, insurance, energy, and other matters.

ACI submits these comments in response to the Public Notice ("Public Notice") released by the Wireline Competition Bureau ("Bureau") of the Federal Communications Commission ("Commission") in the above-referenced dockets.[1] Through the Public Notice, the Bureau solicits input to refresh the record in its so-called "Restoring Internet Freedom" docket. This action is necessitated by the remand of the Commission's 2017 decision in this docket by the United States Court of Appeals for the District of Columbia Circuit in Mozilla Corp. v. FCC, 940 F.3d 1

[1] Wireline Competition Bureau Seeks to Refresh Record in Restoring Internet Freedom and Lifeline Proceedings In Light of the D.C. Circuit's Mozilla Decision, DA 20-168 ("February 19 Public Notice").

(D.C. Cir, 2019). In that case, the Court reversed and remanded, but did not vacate, three elements of the Commission's decision on review. The Court denied petitions for rehearing on February 6, 2020 and issued its mandate on February 18, 2020. We commend the Commission's efforts to eliminate superfluous burdensome regulations and maintain an open Internet.

I. Public Safety and Prioritization

First, the Bureau seeks to refresh the record on how the changes adopted in the Restoring Internet Freedom Order (RIFO) might affect public safety.[2] More specifically, could the network improvements made possible by prioritization arrangements benefit public safety applications—for example, by enabling the more rapid, reliable transmission of public safety-related communications during emergencies?

While it may seem self-evident, first responder traffic is critical to public safety, and as such, it should receive priority treatment on broadband networks. This comes in contradiction with the net neutrality claim that broadband providers should treat all traffic the same without distinguishing on the basis of sender or content.

The network is not neutral and never has been,[3] and priority treatment of some traffic can provide tangible consumer benefits. As the current COVID-19 context reveals, the connectivity needs of hospitals and healthcare providers should receive priority treatment.

The federal government has already spent billions of dollars on prioritizing public safety communications, and created FirstNet to equip first responders with wireless broadband for their communication and information needs. Furthermore, millions of Americans already rely on technologies that prioritize voice and emergency services (e.g. VoIP) on broadband networks.

---

[2] Mozilla, 940 F.3d at 59-63; see also Restoring Internet Freedom, WC Docket No. 17-108, Notice of Proposed Rulemaking, 32 FCC Rcd 4434, 4457-58, 4460-62, paras. 69, 77, 83, 86 (2017) (Restoring Internet Freedom NPRM).

[3] Greg Piper, "Internet Architect Suggests 'Futures Market' to Avoid Policy Disputes," Communications Daily, February 5, 2009.

Under RIFO, one-size-fits-all traffic management practices are inconsistent with an increasingly heterogeneous society. As such, public safety traffic should receive protection from network congestion.

II. Pole Attachments

Second, the Bureau seeks to refresh the record on how the changes adopted in the RIFO might affect the regulation of pole attachments in states subject to federal regulation.

To be noted is that the Communications Act specifically permits any state to opt out of the federal pole attachment rules and to adopt its own regulations governing "rates, terms, and conditions" for pole attachments.[4] Yet, as noted in a recent analysis by the Phoenix Center for Advanced Legal and Economic Public Policy Studies, legal uncertainties regarding the appropriate jurisdictional roles of the states and the federal government over the internet, such as the Commission's inability to preempt state regulatory efforts, do nothing to increase broadband deployment and do not benefit the American consumer.[5]

In what follows, we want to highlight the significant negative repercussions of heavy-handed regulations which are exemplified in scholarly research. Specifically, state and local regulations that levy excessive fees for permits and applications, impose rights-of-way and pole attachment restrictions, not only enact discriminatory zoning rules and delay government approvals, but also slow down broadband investments.

The pre-2018 approach to pole attachments was creating too many backlogs and discouraging competitive providers from making the investments necessary.[6] To remedy this, the Commission has made concrete efforts to streamline the process.[7] We commend such efforts that seek to address the problems in an efficient manner; specifically, streamlining the approval

---

[4] 47 U.S.C. § 224(c).
[5] Lawrence J. Spiwak, "The Preemption Predicament Over Broadband Internet Access Services," 21 Federalist Society Review 32 (2020). Available at https://fedsoc.org/commentary/publications/the-preemption-predicament-over-broadband-internet-access-services.
[6] Brent Skorup, "Who Cares about Utility Poles? Broadband Users Should," Tech Liberation Front, July 27, 2018, Available at https://www.mercatus.org/commentary/who-cares-about-utility-poles-broadband-users-should
[7] Ibid.

processes, providing easier access to utility poles for attaching telecommunications facilities, and simplifying requirements for utility pole replacements.

Pole access also is particularly essential in the 5G race, since mobile and fixed wireless providers are increasingly deploying innovative small cells on poles and these wireless services depend on wireline backhaul. Now, more than ever, access to a vital infrastructure must be swift, predictable, and affordable, so that broadband providers can continue to enter new markets and provide Americans with better and faster Internet services.

Spurring broadband investment remains critical to modernizing our nation's network infrastructure, expanding economic growth and job creation, and closing the broadband gaps that exist in rural areas. Given the need to expand networks further into currently unserved areas, it is necessary to maintain a policy environment that encourages investment.

Heavy-handed regulations generally depress investment in broadband infrastructure, as demonstrated by empirical evidence that firms are not passive recipients of regulation. Extensive research shows that capital investment by broadband providers (ISPs) decreased during the Title II years (e.g. 2015 -2016), and grew in 2017 - 2018, when the shadow of Title II was lifted.

Specifically, U.S. broadband providers invested approximately $80.0 billion in network infrastructure in 2018, up more than $3.1 billion from $76.9 billion in 2017.[8] The industry's investments also increased $1.8 billion to a total of $27.4 billion in 2019.[9] Further evidence regarding the progress of broadband deployment in 2017 and 2018 also shows that the Commission's renewed attention to promoting investment as well as adoption and its elimination of unnecessary and harmful regulation is paying off.

On the other hand and contrary to arguments hailed by Title II advocates, that imposing common carrier regulation on the Internet did not deter investments, empirical evidence shows

---

[8] Patrick Brogan, "U.S.BROADBAND INVESTMENT CONTINUED UPSWING IN 2018," USTelecom Research Brief, July 31, 2019, Available at https://www.ustelecom.org/wp-content/uploads/2019/07/USTelecom-Research-Brief-Capex-2018-7-31-19.pdf.

[9] CTIA, "2019 Annual Survey Highlights," Report, June 20, 2019, Available at https://www.ctia.org/news/2019-annual-survey-highlights.

that there was a negative and statistically significant effect on investments from the imposition of Title II regulation in 2015 of about 50%.[10]

The data cited here, as well as projections for continued progress in broadband deployment vindicate the Commission's policy reorientation from fiat-oriented regulatory approach over broadband networks to market-oriented policies that encourage investment and broadband deployment and adoption.

To be noted is that even in times under stress, as during the COVID-19 pandemic, ISPs were able to handle the additional broadband load amid the increase in traffic[11] and change in usage patterns towards teleworking, telehealth, teleconferencing and more.[12] This happened partially thanks to a market-based regulatory framework that has promoted infrastructure investment and deployment.

As the Commission contemplates on how the changes adopted in the RIFO might affect regulations, it needs to consider the impact that such regulations have had on the Internet ecosystem in the past. And the evidence suggests that both broadband access providers and edge providers have thrived under light-touch Title I regulation.

II. Lifeline

Third, the Bureau seeks to refresh the record on how the changes adopted in RIFO might affect the Lifeline program, specifically with regards to the Commission's authority to direct Lifeline support to eligible telecommunications carriers (ETCs) providing broadband service to qualifying low-income consumers.

---

[10] Ford, George S. "A Review of the Internet Association's Empirical Study on Network Neutrality and Investment." Perspectives Phoenix Center Perspectives 17-09 (2017).

[11] Estimates show that network usage was up by about a third for fixed networks and 10%-20% for cellular networks. See Michael Cooney, "UPDATE 4-10: How enterprise networking is changing with a work-at-home workforce," Network World, April 10, 2020. Available at: https://www.networkworld.com/article/3534037/update-4-10-how-enterprise-networking-is-changing-with-a-work-at-home-workforce.html.

[12] John Eggerton, "Pai's Network Poll: ISPs Holding Up 'Very Well'," Multichannel News, April 2, 2020, available at https://www.multichannel.com/news/pais-network-poll-isps-holding-up-very-well.

ACI supports the Commission's efforts to improve access to voice and broadband services for low income consumers. Yet, we caution that traditional broadband subsidies,[13] however well-intentioned, are ineffective and unsustainable.

Under the 2016 Order Lifeline households did not have the option to choose what plans fit their families' needs and budget. Research shows that Lifeline households have diverse needs (e.g. subsidized data plan, voice plan), but what they lack is the purchasing power compared to the average consumers.[14] The program should strive to narrow that purchasing power gap and allow low-income consumers to participate in the marketplace, without limiting their choices.

The Commission should focus on reconsidering how to best meet the needs of the Lifeline population by empowering the choices of low-income consumers.

We commend the Commission's efforts to support light-touch regulations, and thus preserve an open Internet that promotes consumer choice and benefits consumers. We urge the Commission to give the evidence and recommendations discussed above serious reflection while revisiting how RIFO impacts issues such as public safety, universal service, and pole attachments. We appreciate the opportunity to comment on this Notice.

Respectfully,

Dr. Krisztina Pusok

Director of Policy and Research
American Consumer Institute
Center for Citizen Research
1701 Pennsylvania Avenue NW, Suite 200
Washington, DC 20006

[13] For example, the surcharge on the Universal Service Fund, just one component of the many federal broadband subsidy programs, has risen from 3 percent in 1998 to 24.4 percent today, this burdens mostly the poorest. *See* Daniel Lyons, "Universal Service Fund Budget Cap Promotes Efficiency, Sustainability," AEIdeas, August 19, 2019,https://www.aei.org/technology-and-innovation/telecommunications/universal-service-fund-budget-cap-promotes-efficiency-sustainability/.

[14] Ibid.