INNOVATION ECONOMY INSTITUTE

20 April 2020

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: In the Matter of Restoring Internet Freedom Order, WC Docket No. 17-108, 17-287, 11-42

Dear Ms. Dortch:

As is well known far beyond the halls of the FCC, in the *Restoring Internet Freedom Order* the Commission returned the regulations of the internet to a standard of a "light-touch" framework, a framework that had proven wildly successful for two decades. The standards needed to be reinstated because of a, thankfully, relatively brief flight of fancy into utility style regulation as was, and is, preferred by those who believe that government should choose how U.S. citizens enjoy their internet usage. By mid- February of this year, the internet had again been freed from five years of attempts at heavy-handed government interference.

The goal of more broadband, more places, more often, and for more people is again being met. The light touch regulatory model powered by a free market is the grounding for that success. No other model conceived even comes close to seeing the level of consumer freedom flourish alongside consumer choice. The same forces that from 1996 until 2015 routinely brought new, exciting internet and other communications innovations forward appealing not only to "netizens" and the online ecosystem but also to those who have not yet been taking part are again unleashed. Investments, from capital expenditures to research and development to hiring to creation and innovation, are free again to take place at an astonishing rate.

The result of avoiding heavy regulations is obvious, less regulations has historically and demonstrably led to more broadband which has provided greater consumer choice from across the ecosystem, the demand which will then drive the need for more supply, provided via greater investment, leading to even greater consumer choice. There is an innovation ecosystem and one thing does beget the next.

Poll Attachments

Broadband deployment has been a clear priority promoted by localities, states and the federal government. One critical way that broadband is delivered to more people, particularly those people in harder to reach places, is through the use of poll attachments. To meet the ever-increasing demand for new technology and faster speeds, broadband companies must constantly invest to increase capacity for their existing lines and add new lines which require pole attachments to poles. Attaching to a pole is

really the only practical way to expand service in many areas as the costs for burying lines underground are largely prohibitive. Thankfully nothing in the *RIF Order* has made the challenge greater.

Previously, in identifying barriers to broadband deployment, the Federal Communications Commission recognized that the lack of reliable, timely and affordable access to physical infrastructure – particularly utility poles – was often a significant barrier to greater build out and that "utilities by virtue of their size and exclusive control over access to pole lines are unquestionably in a position to extract monopoly rents…in the form of unreasonably high pole attachment rates." While there are other challenges, there is no evidence to suggest that the *RIF Order* has caused a decrease in poll attachments.

Under the guarantee of section 224, most broadband providers do provide additional cable or telecommunications services in addition to broadband. That is to say, that the same cable and same poll attachments deliver even more than simple broadband access. To not do so would be to ignore the additional streams of revenue, an unlikely occurrence. But in those cases, those providers have not shown any evidence of prevention for beginning services or being able to compete once the services were available. Broadband deployment has been a clear priority promoted by localities, states and the federal government.

In fact, given that access to poles is a necessary part of the continued build out of broadband to not be able to have ample access to poles would run counter to the national interest of more broadband. Similarly, to suggest that providers would not avail themselves to being able to deliver broadband to more places is erroneous. Knowing that build out thrived during the times that broadband was classified as an information service and the accompanying light touch regulation, arguing that the Title I classification somehow created an insurmountable barrier to broadband deployment seems baseless. This is not to say that there are still not hurdles in the current pole attachment policies.

Section 224 applies only to poles owned or controlled by investor-owned utilities. Municipal utilities or co-ops are still free to charge prohibitive rates or engage in other practices that effectively deny access to poles as a means of protecting their own attempts to provide broadband. As this challenge is beyond the scope of current regulation, legislation would be required.

Some might be concerned about such potential legislation, arguing that markets should be left to operate without government involvement. But this is not an issue of markets or of market failure, because there is no free market for attaching to electric poles. In fact, not being able to attach communications equipment to these poles at a reasonable rate is a significant impediment to the market operating, especially in rural areas. Policymakers must ensure that owners of utility poles – especially now that they may be participating in the broadband business – are not able to exclude competitors whether explicitly or by excessive rates.

In identifying barriers to broadband deployment, the FCC has recognized that the lack of reliable, timely and affordable access to physical infrastructure – particularly utility poles – is often a significant barrier, that "utilities by virtue of their size and exclusive control over access to pole lines are unquestionably in a position to extract monopoly rents…in the form of unreasonably high pole attachment rates." Such

fees can amount to twenty percent of the total cost of broadband deployment, as explained in the FCC's National Broadband Plan. That plan provides that pole access should be reliable and timely, and rental rates as low and close to uniform as possible.

Slowing the broadband rollout, with artificial exorbitant costs or otherwise, stands in stark opposition to greater broadband deployment across the country. Requests to affix a new antenna to an existing pole should be welcomed, even encouraged, with rates that are reasonable and designed to encourage greater broadband roll out.

Safeguards on what a pole monopoly can charge and demand for rates, terms and conditions are necessary. With the pole attachment fees often not based on real costs, these charges essentially function as a broadband tax, slowing broadband deployment and availability exactly in those areas that need it most.

Public Safety

More broadband, more places for more people is not an end in itself. In part, that goal is to increase public safety. This goal is certainly at the forefront of everyone these days.

Networks have held up during the crisis despite some early beliefs by some that the demand of work and school from home during Corona virus "lock downs" would lead to system failure. This is a perfect demonstration of the power of the marketplace with networks performing, even while government on various levels and in different ways has struggled to respond. Those competing in the market must build systems so as to guarantee what they have sold to consumers. Those hiding from market forces face no such governance.

The *RIF Order* explained, "…reinstating the information service classification for [broadband] is more likely to encourage broadband investment and innovation…" More likely, that is, than a common-carrier, or Title II classification. Just as one might expect, restoring the internet space to the light touch regulatory regime has again led to increased investment, leading to greater innovation that has improved the broadband experience for all, including enhanced speeds for public safety agencies. In turn, such improved broadband has, and will continue, to beget yet more and greater innovations.

Title II has nothing inherent to it, that is to say, heavy handed government regulations have nothing inherent that could lead one to conclude there is some greater provision for the protection of public safety. In fact, quite to the contrary, public safety users are better under the *RIF Order*. Market forces being what they are, service providers have no incentive to disadvantage public safety communications. In fact, market pressure is exactly the opposite, exerting pressure for them to facilitate and promote public safety messages. Not doing so would bring market repercussions from not only consumers but also policy makers.

Further, in the light touch regulatory environment if service provider needed to take action to protect public safety communications, it would be able to do so quickly. This environment allows for faster action because providers can act without fear of lawsuits seeking to get lucky pursuing an unfounded

theory, or being subjected to enforcement penalties grounded in restrictive regulations rather than the freedom to meet challenges. With a broadband marketplace as robust and competitive as it is, service providers have great incentive to make sure they are meeting and exceeding consumer demand for openness.

The decisions made now continue to move the U.S. back to dreaming of the future, embracing innovation, and safeguarding the free and open internet for consumers so that innovation, investment, opportunity and creativity can once again flourish.

The bi-partisan, light-touch regulatory approach is the environment in which the internet ecosystem flourished. Started by Congress in the 1990's the approach allowed the internet to deliver great value and innovation after innovation to every citizen. The amount of investment in broadband infrastructure during the time was unmatched, which drove not just jobs but careers. Economic growth was obvious. There is no evidence that such opportunities are played out. The same approach should continue to guide the FCC in all decisions, both in this docket and the future.

Sincerely,

Bartlett D. Cleland
Executive Director