

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Restoring Internet Freedom	)	WC Docket No. 17-108
	)	
Bridging the Digital Divide for Low-Income Customers	)	WC Docket No. 17-287
	)	
In the Matter of Federal-State Joint Board on Universal Service Lifeline and Link Up Lifeline And Link Up Reform and Modernization	)	WC Docket No. 11-42

**COMMENTS OF  
THE TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Telecommunications Industry Association (“TIA”) respectfully submits these comments in the above-referenced proceedings.<sup>1</sup>

**I. Introduction**

As both an advocacy organization and a standard-setting body, TIA represents hundreds of global manufacturers and vendors of information and communications technology (“ICT”) equipment and services that are supplied to infrastructure owners and operators, enabling network operations across all segments of the economy.<sup>2</sup> While TIA’s membership is not

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<sup>1</sup> *Restoring Internet Freedom*, WC Docket 17-108 ; *Bridging the Digital Divide for Low-Income Customers*, WC Docket No. 17-287 ; *In the Matter of Federal-State Joint Board on Universal Service Lifeline and Link Up Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Public Notice FCC Rcd 1446 (Feb. 19, 2020) (“Public Notice”)

<sup>2</sup> TIA is the leading trade association for the ICT industry, representing companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of policy issues affecting the ICT industry and forges consensus on voluntary, industry-based standards.

directly subject to the Federal Communications Commission's ("Commission's") series of orders in this docket, our constituent companies, which are responsible for providing the equipment that comprises the U.S.'s networks, have nevertheless been affected by the Commission's decisions regulating the Internet. Our members' goals align perfectly with the Commission's in this regard: We seek to maximize deployment of broadband infrastructure nationwide. As the Commission knows well, its decisions on Internet openness have a direct and significant effect on such deployment.

As a result, TIA has been an active advocate for sensible regulation of the Internet for over two decades, both in comments before the Commission,<sup>3</sup> as well as before the United States Court of Appeals for the District of Columbia Circuit in *Mozilla Corp. v FCC*,<sup>4</sup> where TIA submitted an amicus brief in support of the FCC's *RIF Order*.<sup>5</sup> Earlier this year, the *Mozilla* court upheld the majority of the *RIF Order*, though it struck down the provision claiming a blanket federal preemption of any state Internet regulation while upholding conflict preemption of any state laws that largely diverged from the Commission's approach.<sup>6</sup> Additionally, the *Mozilla* decision questioned how the *RIF Order* has impacted public safety, the regulation of pole attachments, and the FCC's Lifeline program.<sup>7</sup> On February 19, the FCC issued a Public

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<sup>3</sup> Comments of the Telecommunications Industry Association, WC Docket Non. 17-108 (filed July 17, 2017), Reply Comments of TIA, WC Docket No. 17-108 (Filed August 30, 2017); Comments of TIA, WC Docket No. 14-28 (filed July 15, 2014); Reply Comments of TIA, WC Docket No. 14-28 (filed Sept. 15, 2014); Comments of TIA, GN Docket No. 10-127 (filed July 15, 2010); Reply Comments of TIA, GN Docket No. 10-127 (filed Aug. 12, 2010).

<sup>4</sup> *Mozilla Corp. v FCC*, 940 F. 3d 1 (D.C. Cir. 2019) ("*Mozilla*").

<sup>5</sup> *Brief Amici Curiae of the National Association of Manufacturers, the Chamber of Commerce, the Business Roundtable, and the Telecommunications Industry Association in Support of Respondents*, USCA Case #18-1051 (filed Oct. 18, 2018).

<sup>6</sup> See generally *Mozilla* at 121-145.

<sup>7</sup> *Id.* at 93-113.

Notice seeking to refresh the record in light of the Mozilla decision, specifically asking commenters to discuss the *RIF Order*'s impact on the three areas highlighted by the Court.<sup>8</sup>

The *RIF Order* permits the sort of flexible network management that will allow U.S. broadband providers to develop and support innovative applications that serve the public interest. However, in order to meet these demands and foster innovation, ICT manufacturers and service providers, as well as potential investors in broadband networks, need regulatory certainty regarding the rules that will apply to broadband deployment. In order to ensure that investment and innovation in U.S. networks continue to expand, thereby allowing networks to provide better service to underserved Americans, the ICT industry requires the regulatory certainty that can only come from legislation codifying common-sense Internet openness principles.

## **II. Investment in broadband infrastructure is at historically high levels and has increased since the adoption of the *RIF Order*.**

As the FCC considered the rules ultimately adopted in the *RIF Order*, many commenters were concerned that ending utility-style regulation of the Internet in favor of a light-touch framework would deter investment in U.S. broadband networks.<sup>9</sup> Experience in the years since the *RIF Order*'s release has dispelled such concerns, as investment in broadband infrastructure actually witnessed a marked, multi-year increase.

The data reveals that broadband investment since the Commission announced its intention to rescind the *Title II Order*<sup>10</sup> in April of 2017 has increased significantly. In 2017, investment in broadband infrastructure reversed what had been a multi-year decline, rising from

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<sup>8</sup> Public Notice at 1446-7.

<sup>9</sup> See eg. Comments of the Internet Association, WC Docket No. 17-108 (filed Jul. 17, 2017) (arguing that the RIF Order puts investment that had occurred since the Title II Order at risk).

<sup>10</sup> *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, 29 FCC Rcd 5561 (released on May 15, 2014) ("*Title II Order*").

\$74.8 billion in 2016 to \$76.9 billion in 2017.<sup>11</sup> Investment increased at an even more rapid pace following the release of the *RIF Order* in January 2018. That year, U.S. broadband providers further accelerated spending to improve broadband infrastructure and invested \$80.0 billion, a \$3.1 billion increase from the previous year.<sup>12</sup> In 2018, broadband providers deployed more fiber to more new homes in the United States than in any year in history.<sup>13</sup> On the mobile side, investments by wireless providers increased in 2017, reversing historic declines in investment, and in 2018, small cell deployment more than quadrupled.<sup>14</sup> At the same time, prices for consumers fell by 11% according to common benchmarks for industry pricing.<sup>15</sup>

This increased investment in broadband infrastructure since the *RIF Order* was proposed and then subsequently adopted stands in contrast to the years following the *Title II Order*. The year after the release of the *Open Internet Order*, investment decreased markedly from \$77.5 billion in 2015 to \$74.8 billion in 2016.<sup>16</sup> Independent statistical evaluations of this investment trend show a negative and statistically significant effect on annual investment from the imposition of Title II regulation in 2015 of about 50%.<sup>17</sup> To support continued investment in broadband infrastructure, the Commission should maintain the light-touch framework embodied

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<sup>11</sup> Patrick Brogan, VP, Industry Analysis, USTelecom, U.S. Broadband Investment Continued Upswing in 2018 (available at <https://www.ustelecom.org/research/u-s-broadband-investment-continued-upswing-in-2018/>) (“USTelecom Research Brief”).

<sup>12</sup> *Id.*

<sup>13</sup> *Statement of Chairman Pai on Increased Broadband Investment for Second Year in a Row* (released June 10, 2019) (available at <https://docs.fcc.gov/public/attachments/DOC-357892A1.pdf>).

<sup>14</sup> *Id.*

<sup>15</sup> Communications Market Place Report et al., Report, 33 FCC Rcd 12558 at 12735, 12735 (2018) (Statement of Chairman Ajit Pai) (available at [https://docs.fcc.gov/public/attachments/FCC-18-181A1\\_Rcd.pdf](https://docs.fcc.gov/public/attachments/FCC-18-181A1_Rcd.pdf)).

<sup>16</sup> USTelecom Research Brief; Communications Market Place Report at 12667.

<sup>17</sup> *After Correcting Errors in New Study Claiming to Show no Investment Effect, Phoenix Center Finds Large Reductions in Investment from Title II Regulation*, Phoenix Center, Press Release (released Oct. 15, 2019) (available at <https://www.phoenix-center.org/perspectives/Perspective19-06PressReleaseFinal.pdf>).

in the *RIF Order* instead of risking a return to past policies that contributed to multi-year declines in broadband-related capital expenditures.

**III. To sustain investment in the nation’s broadband infrastructure, ICT investors need certainty, which must be provided via a legislative solution.**

The Public Notice makes it clear that the Commission’s mission in connection with this remand is narrow. The *Mozilla* Court asked the Commission to update the record to account for the *RIF Order*’s impact on public safety, pole attachments, and the Lifeline program.<sup>18</sup>

However, as the Commission considers these discrete issues, it should remain mindful of a key overarching principle: In order to promote continued investment in the nation’s broadband networks, policymakers must provide certainty as to what rules will regulate the Internet over the long-term.

The decision in the *Mozilla* case, unfortunately, added uncertainty as to what rules will ultimately govern the Internet. The Court upheld the majority of the RIF Order and found that conflict preemption still applied in cases where states enacted regulation that diverges from the FCC’s federal approach, even though the decision did not uphold the Commission’s claim of a blanket federal preemption.<sup>19</sup> As a result, multiple states have enacted state legislation that differs from the Commission’s approach, such as California and Colorado, seemingly in contrast with the *Mozilla* decision on conflict preemption. Some of these laws have already been challenged in court, however this further uncertainty could be solved by enacting federal legislation containing common-sense Internet openness principles.

Further adding uncertainty to the regulation of the Internet is the politicization of this issue. All market participants understand that if a new Democratic administration takes office, it

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<sup>18</sup> *Mozilla* at 93-113, *Public Notice* at 14467.

<sup>19</sup> *Mozilla* at 135.

will return to the Title II approach, only to be reversed again if a Republican administration follows, *ad infinitum*. The drop in broadband investment after the 2015 *Title II Order* and the extensive comments in this record underscore industry's concern that a future Commission could again revise the way that the Internet is regulated in a manner that harms innovation and consumers. This oscillation is unsustainable in the long term. In light of the above, the need for a dispositive solution that will stick has never been more apparent. The ICT industry has been debating the issue of net neutrality for 15 years or more, and within the past 5 years, the Commission has adopted two very different approaches to how the Internet should be regulated. In order to provide certainty and ensure that the ICT industry's investments in broadband deployment are not undercut by future regulatory changes, the Commission should encourage Congress to enact a statutory resolution.

#### **IV. Conclusion**

For the foregoing reasons, TIA continues to call on the Commission to reaffirm its current approach to broadband regulation, and to advocate for legislation that will end the long debate over Internet openness, ensuring that ICT investment and innovation can continue as new networks and technologies are deployed throughout the U.S.

Respectfully submitted,

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April 20, 2020