Comments for the Record

Comments regarding "Responding to Potential Concerns Regarding the Restoring Internet Freedom Order"

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I appreciate the opportunity to provide comments regarding the questions remanded by the court to the Federal Communications Commission (FCC) concerning the Restoring Internet Freedom Order following the D.C. Circuit Court ruling in *Mozilla v. FCC*. This comment does not represent the views of any particular party or special interest group but is intended to assist the FCC in considering how to respond to the questions for further consideration.

Many of the initial concerns about what the loss of "Net Neutrality" might mean for the internet have proven to be unfounded. The court largely upheld the validity of the Restoring Internet Freedom Order in its decision in *Mozilla v. FCC* but it did remand three issues to the FCC for further comments and consideration. In this context, this comment seeks to address two of the issues:

1. The Restoring Internet Freedom Order does not undermine public safety interests;
2. The Lifeline program may continue to support broadband service following the Restoring Internet Freedom Order.

Public Safety and the Restoring Internet Freedom Order

Critics of the Restoring Internet Freedom Order have alleged that a dispute between the Santa Clara Fire Prevention District and Verizon exemplified the potential of removing Net Neutrality requirements to undermine public safety by throttling the service of first responders.[1] While it is unfortunate this dispute occurred, it was not caused by the reclassification of broadband service in the Restoring Internet Freedom Order. It is important that communications technology continue in times of emergency, particularly for first responders; however, the reclassification of broadband service from Title II to Title I does not impact such situations, because there were no additional protections for public safety communications available under Title II.

As TechFreedom discussed at length at the time, there were three key factors that led to the conflict and issues with the Santa Clara Fire District's service during the incident:

1. The fire prevention district had selected an insufficient data plan.
2. Confusion occurred in having the speed restriction dropped during the wildfire emergency.
3. The customer service rep was not appropriately prepared to handle the issue and was unaware of the corporate policy regarding dropping the speed restriction.[2]

None of these issues were related to changes to classifications and the same issues could just as easily arisen under Title II classification given the way the FCC had enforced "Net Neutrality."[3] While there may be concerns about companies calling plans "unlimited" without adequately disclosing that data may be limited in some situations, the FCC and Federal Trade Commission (FTC) have each fined companies for such behavior; however, the FCC never enforced the "general conduct" aspect of Title II regarding such practices.[4] As a result, the most familiar example regarding the potential impact of the changed classification on public safety is the result of practices unrelated to the policy changes under the Restoring Internet Freedom Order.

In fact, the removal of burdensome Title II obligations could benefit public safety in emergency incidents. Since the Restoring Internet Freedom order, there is some evidence of increased investments that are improving service and coverage and at least a lack of evidence of decreased investment.[5] Such investment benefits all users, but it will also help improve the connectivity of public safety entities and first responders. But the reclassification has more potential for improving connectivity for first responders in a public safety emergency. For example, removing the Title II classification also gives providers the leeway to prioritize more urgent traffic such as first responders or other public safety needs.[6]

The concerns about public safety services having adequate connectivity and speed are well-intentioned, however, the perceived problems are not related to the reclassification associated with the Restoring Internet Freedom Order.

Lifeline and the Restoring Internet Freedom Order

Bridging the digital divide to ensure that all Americans have access to the plethora of opportunities available online is an important public policy goal. For some Americans this includes having connectivity through the Lifeline program. The changes in classification under the Restoring Internet Freedom Order do not limit the FCC's authority regarding the administration of Universal Service Fund (USF) nor its ability to include broadband service in Lifeline.

Prior court rulings and the FCC's own interpretations have held that the authority to provide USF funds to broadband providers for Lifeline support is not dependent on their classification.[7] As a result, changing the classification of such providers under the Restoring Internet Freedom Order does not impact the ability of the FCC to provide funds to eligible providers under the Lifeline program.

While the Restoring Internet Freedom Order does not change the ability of the FCC to provide funds under this program, it is worth noting that the current system of providing USF funds is costly and inefficient.[8] In this regard there are opportunities beyond the current Restoring Internet Freedom Order to consider possible reforms including the use of vouchers.[9]

The return to Title I classification does not change the ability to provide USF funds to a variety of service providers under the Lifeline program. In its continuing efforts to bridge the digital divide, the FCC and Congress should consider if there are more efficient and cost-effective ways to improve service provision to

those who currently lack it.[10]

Conclusion

The Restoring Internet Freedom Order has encouraged further investment in important infrastructure. The expressed concerns regarding public safety and the Lifeline program are not tied to the reclassification change or the end of "Net Neutrality," but do illustrate other potential areas for broader policy reform. The FCC should continue to work with stakeholders in these areas to improve connectivity and ensure service, but many of these concerns lie beyond the question of classification or other policy changes in the Restoring Internet Freedom Order.

[1] Jon Brodkin, *Verizon Throttled Fire Department's "Unlimited" Data During Calif. Wildfire*, Ars Technica, Aug. 21, 2018, https://arstechnica.com/tech-policy/2018/08/verizon-throttled-fire-departments-unlimited-data-during-calif-wildfire/.

[2] Berin Szoka, *False Alarm: Verizon's Fire Department Customer Service Fail Has Nothing to Do with Net Neutrality*, Aug. 28, 2018, https://medium.com/@BerinSzoka/false-alarm-verizons-fire-department-customer-service-fail-has-nothing-to-do-with-net-neutrality-3b9a2d770e5b

[3] *Id*.

[4] *Id*.

[5] Liam Sigaud, *Despite Doomsday Predictions, Broadband Investment is Up after the End of Net Neutrality*, Inside Sources, Aug. 31, 2018, https://www.insidesources.com/despite-doomsday-predictions-broadband-investment-is-up-after-end-of-net-neutrality/; Deborah D'Souza, *Does Net Neutrality Stifle Investment and Innovation?*, Invetopedia, Jun. 25, 2019, https://www.investopedia.com/insights/does-net-neutrality-stifle-investment-and-innovation/.

[6] *See* Mike Dano, *AT & T CFO: FirstNet's Prioritized Service for Public Safety 'a Challenge' to Net Neutrality*, Fierce Wireless, Aug. 8, 2017, https://www.fiercewireless.com/wireless/at-t-cfo-firstnet-s-prioritized-service-for-public-safety-a-challenge-to-net-neutrality.

[7] *See Bridging the Digital Divide for Low-Income Consumers et al.*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd. 10475 ¶ 77 (2017) ; *In re FCC 11-161*, 753 F.3d 1015, 1046-48 (10th Cir. 2014).

[8] Brian Fung, *This low-cost phone and Internet program wastes millions in federal funding, auditors say*, Washington Post, June 29, 2017, https://www.washingtonpost.com/news/the-switch/wp/2017/06/29/critics-say-this-low-cost-phone-and-internet-program-is-riddled-with-waste-and-abuse-theyre-right/; Will Rinehart, *Is The Lifeline Subsidy An Effective Program?*, American Action Forum, https://www.americanactionforum.org/insight/lifeline-subsidy-effective-program/.

[9] Brent Skorup, *Assessing Broadband Subsidies and Lifeline Reform*, Tech Liberation Front, Mar. 16, 2016, https://techliberation.com/2016/03/16/assessing-broadband-subsidies-and-lifeline-reform/

[10] *See* Rinehart, *supra* note 8; Will Rinehart, *A Look at Rural Broadband Economics*, American Action Forum, Aug. 14, 2018, https://www.americanactionforum.org/research/a-look-at-rural-broadband-economics/