



## **FCC's Proposed Restoring Internet Freedom Order is Widely Supported by Small ISPs** ***The 2015 Open Internet Order Caused Significant Harm to Small Operators***

Small ISPs incurred significant costs as a result of the uncertainty created by the FCC's 2015 Open Internet Order, and fear of future rate regulation led many to delay or defer investments and innovations. The FCC's decision to overturn its 2015 mistake by adopting the proposed Restoring Internet Freedom Order will jump-start investment without sacrificing consumers' access to a free and open Internet. For these reasons, it is widely supported by small ISPs. Throughout the FCC's proceeding to restore Internet freedom, small ISPs have submitted evidence on the record demonstrating the negative impact of the 2015 Order, either in Declarations attached to [comments](#) filed by the American Cable Association (ACA), or in [separate letters](#). In the statements below, small ISPs describe their experiences in their own words.

### **Title II greatly interfered with small ISPs' ability to secure financing at favorable terms.**

- “The Title II decision also harmed our ability to finance our business by increasing our costs of capital. ... A national bank with which we had previously done business had initially approved a loan for a fiber network acquisition we wanted to make, and then suddenly backed off. The timing of their decision coincided with the consideration of the Title II decision. (Jim Hickle, Velocity Telephone Inc./Gigabit Minnesota. Declaration, ¶ 8. Velocity and Gigabit Minnesota together serve roughly 2,500 residential broadband customers in the Minneapolis-St. Paul metropolitan area.)
- “I cannot emphasize strongly enough the burden of incurring the additional cost of borrowing and the additional paperwork and ‘due diligence’ that was required by our bankers because of their concern over Title II. For financing, we deal with a local bank and a large national bank. We found our borrowing costs increased at both banks following the Title II reclassification.” (Richard Sjoberg, Sjoberg's Inc. Declaration, ¶ 9. Sjoberg's Inc. is a family-owned company serving 6,800 broadband subscribers in northwest Minnesota.)

### **Uncertainty about their obligations and the specter of enforcement action (despite good faith on their parts) imposed significant costs on small operators, who were forced to reserve funds to deal with potential legal challenges.**

- “Defending against [an FCC] complaint is a costly proposition. We had to set aside additional reserves to take account of the added risks resulting from the change in our regulatory status.” (Chris Kyle, Shentel. Declaration, ¶ 12. Shentel serves roughly 51,000 cable broadband Internet subscribers and roughly 11,500 DSL Internet subscribers throughout Virginia, West Virginia, and western Maryland.)
- “Just the risk of [] enforcement action required us to increase the amount of time and money we spent on legal services and recordkeeping and, going forward, requires us to ensure funds are always available to defend ourselves against enforcement action.” (Brian Lynch, Schurz Communications Inc. and Antietam Cable Television Inc. Declaration, ¶ 8. Antietam Cable serves roughly 32,000 broadband Internet subscribers in Washington County, Maryland.)

### **Fear of future rate regulation made small operators hesitant to invest in their networks.**

- “The level of regulatory uncertainty facing Wyandotte grew tremendously with this decision, depressing the level of investment we were comfortable making, given the prospect of rate regulation hanging over our heads. We took no comfort from statements that the Commission would refrain from rate regulation. ... We had no faith the government would adhere to that position over time.”

***For more information, contact your local small cable operator, or  
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(Steve Timcoe, Wyandotte Cable. Declaration, ¶ 9. Wyandotte Cable is a municipally-owned broadband provider serving approximately 5,400 broadband customers in the suburban area near Detroit, Michigan)

- “We saw the harmful effects of cable rate regulation on investment following the FCC’s implementation of the 1992 Cable Act. There was a rate freeze, which stopped industry investment in its tracks.” (Sjoberg Declaration, ¶ 15)

**All of these factors led many small ISPs to delay or defer planned upgrades, expansions, and acquisitions.**

- “Although we had originally intended to improve portions of our fiber system in the Rosemount area during the summer of 2015, we delayed upgrades of our network and expansions of our service until after we assessed the impact of the Title II decision.” (Hickle Declaration, ¶ 15)
- “We had previously been looking at a fiber-to-the-home (FTTH) buildout within our existing cable hybrid fiber-coax (HFC) footprint- an augmentation of the current system- and although we went ahead with a portion of the project, we cut back on its scope due to the overhang of Title II regulation and the potential for regulation of our rates.” (Lynch Declaration, ¶ 4)

**Many have also altered their business practices out of fear that innovations designed to improve the customer experience might be deemed violations of the vague Internet General Conduct Standard.**

- “[W]e analyze peak node usage to determine when we need to add capacity and usually add capacity if a neighborhood node is at about 80% utilization. Because adding capacity takes time, in the interim we utilize network management tools at the node level to maintain a quality Internet experience for all users. We feared that if we employed those tools, our customers would think we were discriminating and we were concerned it would give Internet edge providers leverage to bring complaints.” (Kyle Declaration, ¶ 9)
- “[A]t one point we looked at hosting a general caching appliance or a Netflix caching device to lower our cost of transport. Our concern was that these would retroactively be determined to violate some portion of Title II and we would be in trouble.” (Sjoberg Declaration, ¶ 9)

**Overturning the FCC’s ill-advised decision to reclassify broadband Internet access service will jump-start stalled investment.**

- “The uncertainty created by Title II reclassification and the Internet General Conduct Standard negatively affected our plans to invest by buying other properties. ... Without a doubt, Title II factored into the investment climate and our decision-making.” (Hickle Declaration, ¶ 18)
- “An FCC decision to revoke the Title II classification will relieve us of the fear of moving forward with our plans to continue the major FTTH Gigabit upgrade of our system and the offering of new services by taking carrier rate regulation off the table.” (Lynch Declaration, ¶ 7)

**Even in the absence of open Internet rules, however, small ISPs are committed to ensuring a free and open Internet.**

- “We are some of the nation’s smallest wireline Internet service providers (“ISPs”), each providing vital Internet connectivity to roughly 1000 or fewer residential subscribers. We support an open Internet, our customers expect it and would depart if we degraded their Internet experience.” (Letter from 22 Small ISPs to Chairman Pai, April 25, 2017)
- “We have always said we would adhere to any such principles adopted by the Commission, as we have been doing since the Commission first articulated its Internet Policy principles in 2005, and reiterate that pledge once again.” (Letter from Municipal ISPs to Chairman Pai, November 21, 2017)