



1300 Pennsylvania Avenue NW, Suite 190-322, Washington, DC 20004

April 16, 2015

The Honorable John Thune
Chairman
Senate Committee on Commerce, Science, and Transportation
Russell Senate Office Building 254
Washington, D.C. 20510

The Honorable Bill Nelson
Ranking Member
Senate Committee on Commerce, Science, and Transportation
Dirksen Senate Office Building 560
Washington, D.C. 20510

The Honorable Roger Wicker
Chairman
Subcommittee on Communications, Technology and the Internet
Senate Committee on Commerce, Science, and Transportation
Russell Senate Office Building 254
Washington, D.C. 20510

The Honorable Brian Schatz
Ranking Member
Subcommittee on Communications, Technology and the Internet
Senate Committee on Commerce, Science, and Transportation
Dirksen Senate Office Building 560
Washington, D.C. 20510

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, D.C. 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications and Technology
Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Thune, Ranking Member Nelson, Subcommittee Chairman Wicker,
Subcommittee Ranking Member Schatz, Chairman Upton, Ranking Member Pallone,
Subcommittee Chairman Walden, and Subcommittee Ranking Member Eshoo:

The 20th anniversary of decommissioning of the NSFNET backbone and the birth of the commercial Internet arrives this month on April 30, 2015. The light touch approach to regulation of Internet and broadband service has been embraced on a bipartisan basis and has fostered unprecedented levels of investment and innovation. The House and Senate Commerce Committees can help recognize the remarkable success of the policy decisions creating the commercial Internet – and encourage a continued policy approach that will further that success – by designating April 30th as “Internet Independence Day”.

Under the longstanding light touch approach, the communicating public has enjoyed the benefits of a thousand fold improvement from the 56Kbps dial-up modems that the 15 million early Internet adopters relied on in 1995. The successes include expanding the reach of the Internet to 3 billion people and a proliferation of services pushing communication options far beyond the \$0.45 per minute long distance phone call or the 45Mbps capacity of the Internet backbone links in 1995. A routine 10Mbps connection available as a non-regulated information service prior to the Open Internet Order would have cost \$10,000 per month as a Title II data service in 1995. This approach has also led to a thriving and open Internet that enables consumers to go where they want and do what they want online, and that provides a robust platform for innovation.

Recently, the Federal Communications Commission made an abrupt shift away from this longstanding and successful approach. While seeking to protect the things that are great about the open Internet the FCC went down the dangerous and uncertain legal path of reverting to traditional, utility-style regulation under Title II of the Communications Act of 1934. Our concern is that this shift will put in jeopardy the gains of the last decades. The domains under the type of industrial policy regime associated with Title II authority suffer stagnation without exception.

The Open Internet Order ends the “permissionless innovation” it purports to protect by inviting the Commission to regulate the Internet via the means created for the 1934 monopoly voice telephone network. The insertion of fiat regulatory powers will prove fatal to the entrepreneurial energies that built what Chairman Wheeler calls “the most powerful network in the history of mankind.” History demonstrates that asserting artificial market distinctions for purposes of regulation always invites arbitrage and unintended consequences.

If Congress does not act, the communicating public will face unnecessary risk for a prolonged period of time as counterproductive regulatory battles take place in court and at the FCC. Moreover, litigation challenging the expansion of Commission jurisdiction to computer networks and policy decision resulting from Open Internet Order will wreak havoc on the Internet ecosystem.

Recognizing “Internet Independence Day” provides an opportunity to initiate bi-partisan legislation that protects the open Internet while also preserving the private sector framework responsible for these accomplishments. In particular, by re-establishing a bright line between the legacy services subject to Title II and Internet services – a Rubicon that the FCC’s order expressly crossed – Congress could provide a stable framework that will encourage investment and innovation by all players in the Internet space.

The preference for a legislative solution addressing current conditions over an 80 year old regulatory framework should not be controversial, and Congress is well positioned to protect the open Internet, restore the successful light-touch framework, and establish stable policies that will continue to make the Internet a great place for investment and innovation.

A group of “tech elders” convened to help assemble a pro-deployment agenda for the gigabit age. This group of leaders and entrepreneurs includes John Perry Barlow, lyricist; Marc Cuban, Founder, AXS TV; Tim Draper, founder, Draper Fisher Jurvetson; Tom Evslin, founder & former, CEO ITXC; Dave Farber, Professor Emeritus, CMU; Charlie Giancarlo, Sr Advisor, Silver Lake; George Gilder, author; John Gilmore, activist; Brian Martin, Chairman and CTO, 8x8; Bob Metcalfe, Professor, University of Texas; Ray Ozzie, founder, Talk; Jeff Pulver, co-founder, Vonage and Zula; Michael Robertson, CEO, MP3.com; and Les Vadasz, former EVP, Intel.

This group welcomes this opportunity, starting with Internet Independence Day, to encourage the House and Senate Committees of jurisdiction to preserve the bi-partisan private sector framework that will enable the continued success of the commercial Internet.

Sincerely,

/s/ Daniel Berninger
Daniel Berninger, founder, VCXC