



Texas Public Policy Foundation

December 14, 2023

The Honorable Jessica Rosenworcel
Chairwoman
Federal Communications Commission
45 L Street N.E.
Washington, D.C. 20554

RE: WC Docket No. 23-320 – Safeguarding and Securing the Open Internet

Dear Chairwoman Rosenworcel,

The Texas Public Policy Foundation (Foundation) writes today in disapproval of the Federal Communications Commission’s (FCC) recent *Notice of Proposed Rulemaking*, WC Docket No. 23-320 – Safeguarding and Securing the Open Internet (SSOI). The Foundation urges the Commission to vote against re-classifying Internet Service Providers (ISPs) as common carriers under Title II of the 1934 Telecommunications Act.

From the beginning of the internet, it was understood that access would be open and neutral. The earliest internet-related rulemaking actions of the FCC were oriented around the notion that access to the internet must be ubiquitous, its framework consistent, and that ISPs “exist in a minimal regulatory environment that promotes investment and innovation.”¹

By moving forward with the SSOI Order, the FCC would return to a regulatory regime that is in direct conflict with the stated goal of the Biden administration to “connect everyone in America to reliable, affordable high-speed internet by the end of the decade.”²

Before the Open Internet Order of 2015, it was posited that if the FCC did not reclassify ISPs, thus subjecting them to more invasive regulation, free and fair use of the internet would cease to be a reality. One vocal champion of net neutrality, Sen. Chuck Schumer (D-NY), advocated for the passage of the “Save the Internet Act,” a name which suggests that internet services were in great danger after the regulatory reversal of the Trump-era FCC. Sen. Schumer harkened back to the rhetoric of 2015 by saying:

We must keep the internet free and open to everyone: from the students writing their theses to the consumers purchasing their holiday gifts to the grandparents talking to

¹ Federal Communications Commission. (2002, February 14). *FCC launches proceeding to promote widespread deployment of high-speed broadband internet access services*. https://transition.fcc.gov/Bureaus/Common_Carrier/News_Releases/2002/nrcc0202.html

² The White House. (2023, June 26). *Fact Sheet: Biden-Harris administration announces over \$40 billion to connect everyone in America to affordable, reliable, high-speed internet*. <https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/26/fact-sheet-biden-harris-administration-announces-over-40-billion-to-connect-everyone-in-america-to-affordable-reliable-high-speed-internet/>

their family over skype [sic] all the way to the startup company operating out of its founder's basement.³

Or take for example the Senate Democrats' claim that "[i]f we don't save net neutrality, you'll get the internet one word at a time."⁴

The facts simply do not fit the narrative. Contrary to these political talking points which typify the pro-net neutrality rationale, the internet did not cease to exist. Instead, costs have decreased, and consumer satisfaction has increased in the absence of net neutrality regulation.

First, according to a study⁵ undertaken by BroadbandNOW, innovation, burgeoning economies of scale, and market competition amongst service providers have driven the cost of broadband internet plans down consistently from 2016 through 2022.⁶ The study found that:

- For internet plans with download speeds ranging from 25 to 99 megabits per second (Mbps), the average price decreased by \$8.80 or 14%.
- For internet plans with download speeds ranging from 100 to 199 Mbps, the average price decreased by \$32.35 or 35%.
- For internet plans with download speeds ranging from 200 to 499 Mbps, the average price decreased by \$34.39 or 35%.
- For internet plans with download speeds equal to or greater than 500 Mbps, the average price decreased by \$59.22 or 42%.

Another consideration is customer satisfaction with ISPs. It is important to note that customer satisfaction with ISPs over time—relative to other sectors tracked by organizations like the American Customer Satisfaction Index (ACSI)—has remained at the lower end of such indexes, irrespective of policy changes at the state and national level.⁷ However, as is illustrated in Figure 1, customer satisfaction levels over time have remained relatively stagnant, with a slight upward trend and minimal shifts surrounding federal net neutrality policy changes. Perhaps most importantly, however, the FCC's call to reintroduce net neutrality policies coincides with the highest ISP customer satisfaction in the history of ACSI's index, following the industry operating in a six-year period with no net neutrality framework in place.

³ Office of Senate Majority Leader Chuck Schumer. (2017, December 15). *FCC vote to end net neutrality*. [Press release]. <https://www.schumer.senate.gov/newsroom/press-releases/schumer-fcc-vote-to-end-net-neutrality-allowing-access-to-the-web-to-be-blocked-or-slowed-for-millions-of-americans---simply-cannot-stand-repeal-of-net-neutrality-will-turn-internet-into-a-toll-road-where-only-the-highest-paying-customers-will-rule-senator-pushes-plan-to-overturn-decision-with-a-majority-vote-by-congress>

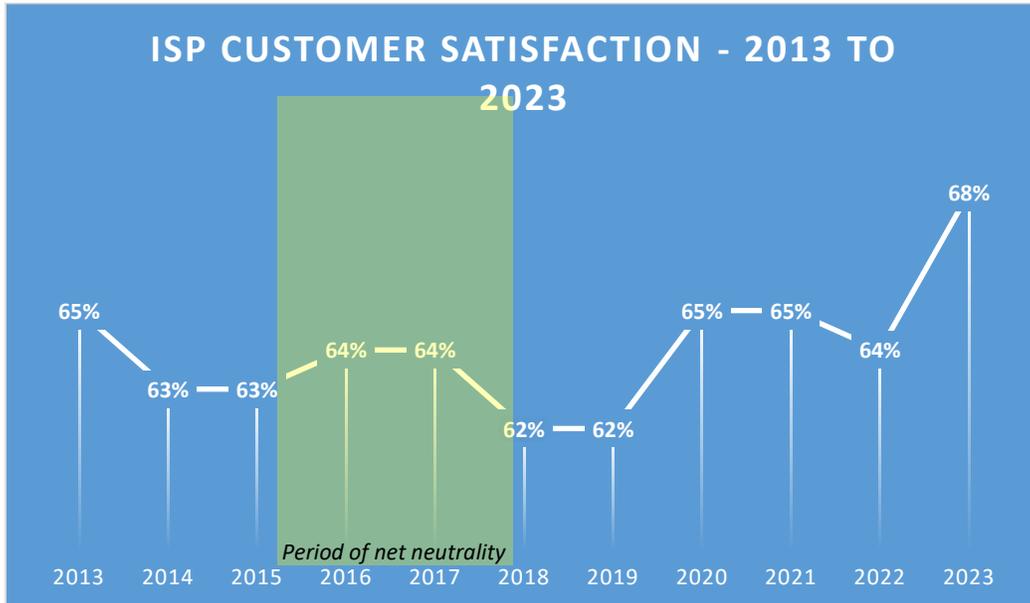
⁴ Senate Democrats. (2018, February 27). <https://twitter.com/SenateDems/status/968525820410122240>

⁵ Shevik, J. (2023, May 5). *Broadband pricing changes: 2016 to 2022*. BroadbandNow. <https://broadbandnow.com/internet/broadband-pricing-changes>

⁶ Of note, this study evaluates the cost of broadband just prior to the reversal of net neutrality through a period where ISPs were not regulated as common carriers.

⁷ Paul, T. (2023, June 9). *Survey shows customers dissatisfied with ISPs, but some are better than others*. CNET. <https://www.cnet.com/home/internet/survey-shows-customers-dissatisfied-with-isps-but-some-are-better-than-others/>

Figure 1⁸
Customer satisfaction with ISPs from 2013 to 2023



Finally, Europe provides an insightful case study. While the U.S. has vacillated between common carrier regulation of ISPs and basic transparency provisions, the European Union has had a net neutrality law in effect since 2015, coined the Open Internet Regulation (REGULATION (EU) 2015/2120; 2015). Noting the absence of comprehensive research and quantitative analysis on the financial and innovation effects of net neutrality on service providers, European researchers published a thorough quantitative review of net neutrality in a 2022 study in the *European Journal of Law and Economics*.⁹ Using an Organisation for Economic Co-operation and Development (OECD) panel data set for 32 countries to provide the first estimation results on the causal impact of net neutrality on new high-speed infrastructure investment by service providers, researchers found:

Despite substantial direct and indirect costs related to network neutrality regimes, there is no supportive evidence so far for the central claims of net neutrality proponents. In this paper, we focus on a specific effect that net neutrality may have on ISPs’ incentives to invest in high-speed broadband networks. More specifically, we provide first results on the causal impact of network neutrality regulations on fiber-based network investment by ISPs. Our empirical analysis finds that network neutrality regulations exert a significantly negative and substantial impact on fiber investments.¹⁰

⁸ Note. Data from American Customer Satisfaction Index. (n.d.). *Access competitive benchmarking for the largest ISPs*. <https://www.theacsi.org/industries/telecommunications-and-information/internet-service-providers/> and from authors’ calculations.

⁹ Briglauer, W., et al. (2022, October 23). Net neutrality and high-speed broadband networks: evidence from OECD countries. *European Journal of Law and Economics*, 55, 533 – 571. <https://doi.org/10.1007/s10657-022-09754-5>

¹⁰ *Id.* at p. 552.



Further, the researchers ultimately concluded “that net neutrality regulations seriously impact the deployment of general-purpose broadband infrastructures which generate considerable externalities across a wide range of sectors of the economy.”¹¹ As stressed by the authors, these findings stem from the most comprehensive quantitative analysis of existing data to date. Of the 32 OECD countries, 30 have implemented net neutrality regulations during the analyzed period from 2000 to 2021.

In conclusion, innovation and advancements in the internet services market continue to make the internet more accessible, affordable, and non-discriminatory. While net neutrality proponents claim the U.S. needs regulation to work toward this goal, existing bodies of literature indicate the market is far better equipped to guide us down this path rather than onerous regulations that introduce distortions to the marketplace. The Foundation submits these concerns about the SSOI Order with an earnest desire to continue to see expanded broadband access and lower costs for consumers. The objectives of the SSOI order are laudable, but our research has demonstrated that any net neutrality-based regulatory scheme will fail to deliver much-needed change.

The Foundation thanks the Commission for the opportunity to comment and looks forward to engaging the Commission and stakeholders to meet these shared goals for access to reliable high-speed internet for all Americans.

Sincerely,

Zach Whiting, Policy Director and Senior Fellow
David Dunmoyer, Campaign Director
Greyson Gee, Policy Scholar

¹¹ *Id.* at p. 535.