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December 11, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th St NW
Washington, D.C. 20554

Dear Chairman Pai,

I write to express my strong concern regarding your recent proposal to significantly alter the current net neutrality rules. Not only will this rule, the Restoring Internet Freedom Order, hurt consumers, small businesses and rural America, the regulatory process used to reach this rule appears fundamentally compromised with potentially millions of comments fraudulently submitted. I am requesting that you brief my office on this proposal and how the special needs of small businesses, consumers and rural America will be protected if it is implemented. I also request that you immediately launch an investigation to ascertain the causes of the fraud in the notice and comment process, develop solutions, and share with Congress the results of your findings.

In the 2015 Open Internet Order – commonly known as the net neutrality rule – the standard rules in practice were codified into clear rules preventing Internet Service Providers (ISP) from blocking content, throttling speeds and access to content over the internet, or creating paid fast lanes that prioritize some content over others. Codifying these basic internet principles has protected consumers and allowed the internet economy to continue to thrive.

However, the Restoring Internet Freedom Order will remove these consumer protections and simply require ISPs to "be transparent about their practices so that consumers can buy the service plan that's best for them." While transparency for consumers is important, transparency alone is not enough to protect consumers from an erosion of the net neutrality principles. Prior to 2015, some of largest ISPs had previously experimented with business practices that violated one of the basic principles of net neutrality. The most high profile of these was when Netflix was forced to make a deal with Comcast to keep its streaming content at a high resolution, something that Netflix customers expect from the service. I believe it is short-sighted to deregulate ISPs from any sort of future business practices that violate the net neutrality principles that Americans have come to expect, and I fear that small businesses and rural Americans will be among those especially impacted.

Small businesses and startup companies have been able to take advantage of an internet connection to reach more customers and grow their brand, thus employing more Americans and growing the economy. Net neutrality ensures a level playing field between large and small companies in the digital era, preventing larger companies from tipping the digital scales in their favor and squeezing out growing businesses. Startup companies within North Dakota have reached out to me detailing their concerns that they might soon see an unfair digital playing field and be asked to pay higher costs to provide their services over the internet.

Rural internet users also stand to lose out if the Federal Communications Commission (FCC) reverses net neutrality. As you know, rural America is the hardest place to provide internet services

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and oftentimes rural consumers only have one option for their ISP. If the degradation of net neutrality principles became the norm for the larger and mid-size ISPs, I fear that smaller rural providers would have little choice but to follow suit and consider new business models. Thus, rural consumers could be forced to accept these net neutrality violations or forgo internet service altogether.

Altering the internet landscape could also have severe impacts on our rural schools and institutions of higher education. North Dakota's schools are rapidly expanding their use of technology in the classroom to enhance educational opportunities and quality for our students. For example, some of our rural schools are utilizing their internet connections to offer STEM courses through video conferencing that would be otherwise unavailable. For many of our rural and underserved students, school may be the only place they can access a reliable, high-speed internet connection. Should the proposal be adopted, video lectures and online learning resources that are essential to the growth of our schools and institutions of higher education may become unavailable or cost prohibitive.

Furthermore, the apparent fraudulent nature of many of the comments submitted during the public comment period for this rulemaking is quite concerning and requires significant follow-up to ascertain the causes of the fraud and develop solutions. It is imperative that the American people have a meaningful voice during the promulgation of regulations that impact their daily lives. To ensure this standard, the Administrative Procedures Act enshrined a public comment period in the rulemaking process. However, the process implemented by the FCC was maliciously undermined, resulting in a docket that cannot be trusted to represent the true feelings of the American public and its business community.

In research done by the Pew Research Center, they found that 57 percent of the almost 22 million comments were submitted using temporary or duplicate email addresses. Furthermore, New York Attorney General Eric Schneiderman estimates that at least one million Americans had comments submitted in their names without their knowledge or consent. With trust in government already at historic lows, these revelations do nothing but continue that erosion. If members of Congress cannot trust that the comments agencies receive regarding proposed rules are legitimate, we will be unable to tell our constituents that federal agencies are making decisions only after the consideration of their thoughts and opinions. I urge you to conduct a vigorous investigation to determine how the comment system for this rulemaking was so corrupted, by whom, and the steps forward to rework the comment portal prevent this from happening again. I also urge you to cooperate with ongoing investigations into this matter such as those being led by the FCC Inspector General's office and the New York State Attorney General.

I appreciate you taking into account my concerns and conducting a full investigation into the comment system abuse. I also look forward to receiving a briefing from you on this proposal and the steps the Commission took to protect the needs of small businesses and rural America.

Sincerely,

Heidi Heitkamp
United States Senator

Cc:
Federal Communications Commissioner Michael O'Rielly
Federal Communications Commissioner Mignon Clyburn
Federal Communications Commissioner Jessica Rosenworcel
Federal Communications Commissioner Brendan Carr