COMMITTEE TO UNLEASH PROSPERITY

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Keep the Government's Hands Off the Internet:

Deregulation Is a Digital Economy Success Story

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Executive Summary

In the internet industry, the regulatory pendulum keeps swinging back and forth. One of the wise decisions by Congress in the mid-1990s during the infancy years of the internet was to keep the internet relatively regulation-free and lawsuit-free. This hands-off policy helped spawn a multi-trillion dollar digital industry that American technology companies quickly came to dominate.

Even as the internet emerged as a powerful force in the commercial realm in the early years of this century, the Federal Communications Commission (FCC) regulated it and other "information services" less vigorously than public utilities.

That changed when President Obama's FCC reclassified the internet as a public utility, opening the door for new and significant restrictions on what commercial contracts would be permitted.[1] One was a set of business-to-business price regulations euphemistically described as "net neutrality." Another regulation essentially prohibited wired and wireless internet service providers (ISPs) from using, sharing, or selling information about consumers' browsing history, app usage, or location information.

The Trump Administration removed the Obama requirements, returning to the "information service" approach to internet regulation. The privacy rules were repealed in March 2017 by President Trump and Congress. Net neutrality rules were repealed later that year.

Rolling back Obama-era telecommunications regulation was thought by many to be a blow to consumers. It would be "*the end of the internet as we know it*" promised Senators Bernie Sanders and Jon Tester in 2017.[2] The *New York Times* opined that ending the Obama-FCC's public-utility regime would "*hasten the death of [our] internet*" as it would increasingly resemble the Chinese model of information control.[3] NBC News predicted that it would "*destroy everything that makes the internet great*," stifling innovation and sticking internet users with extra fees.

In reality these regulatory rollbacks caused a boom in commercial internet activity and much wider access. The internet became democratized and affordable in part through deregulation. The price regulations and the prohibition of low-price market segments that came with the public-utility approach were not saviors for households or businesses. Regulations undermined competition, business investment, and product quality.[4] Repealing them would do the opposite.

1 The reclassification was proposed in 2010 and finalized in 2015.

2 See https://twitter.com/SenSanders/status/941383879939837953 and https://twitter.com/SenatorTester/status/941436495587659778

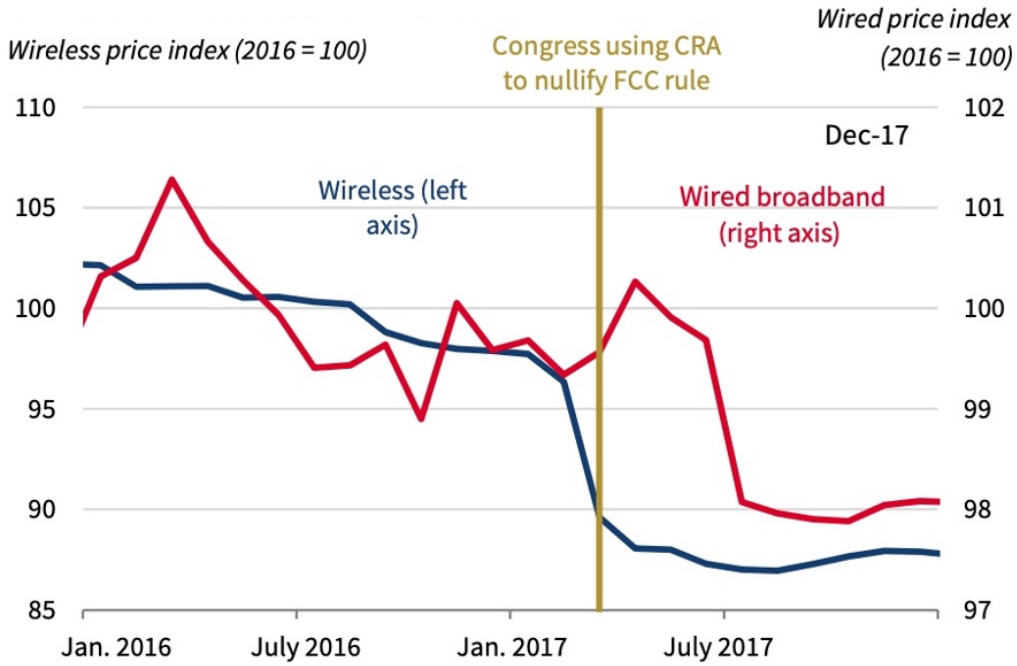
3 See https://www.nytimes.com/2017/11/29/technology/internet-dying-repeal-net-neutrality.html

4 Net neutrality includes the internet version of community rating in health insurance regulation. Namely, internet service providers are prohibited from charging different prices to providers delivering different types of internet content. Such prohibitions are price controls on business-to-business transactions.

The End of Inflation as We Knew It

Sometimes one industry's regulation moves the national aggregates by itself. In early 2017, Janet Yellen's Federal Reserve was a bit puzzled how the economy was growing at the same time that something was dragging down inflation. Yellen, now the Biden Treasury Secretary, plowed through the data and discovered "a large decline in telecommunication service prices," which she dismissed as an "idiosyncratic shift" (Yellen 2017). Actually, it was the 115th Congress and President Trump who used the Congressional Review Act to overturn a regulation by the Federal Communications Commission that was encouraging both wireless and wired internet service providers to charge high subscriber fees. Immediately prices fell about $40 per subscriber (Council of Economic Advisers 2020), which can exceed $100 in households with a couple of members with smartphones. Figure 1 shows the price series from the *2020 Economic Report of the President*.[5]

Figure 1. Wireless and Wired Internet Service Provider Price Cuts Close to Congressional Review Act Nullification of Federal Communications Commission Rule, 2016–17



Source: The 2020 Economic Report of the President

5 The same source notes that, before internet was classified as a public utility, consumers nonetheless had the option to purchase internet services with greater consumer privacy "protections." The enhanced-privacy plans badly failed the market test because consumers overwhelming preferred cheaper plans that permitted providers to partially finance the service by using, sharing, or selling certain kinds of consumer information.

Even after the sharp drops shown in Figure 1, internet service continued to get more affordable as internet regulation continued under the lighter regulatory approach associated with information services.

Table 1 shows real internet-service prices for consumers for the six years following the proposed public-utility classification and the subsequent six years that began with Trump-administration actions to return regulation to the lighter information-service approach (Figure 1). Although comparisons over several years are challenging due to quality change, the table suggests that internet-service prices fell more after the Trump deregulations than they had previously.

Table 1. Inflation-adjusted price changes for internet service

Time period	Wired	Wireless
Six years of public-utility regime: 2010-2016	-9%	-22%
Six years of information-service regime: 2016-2022	-15%	-28%

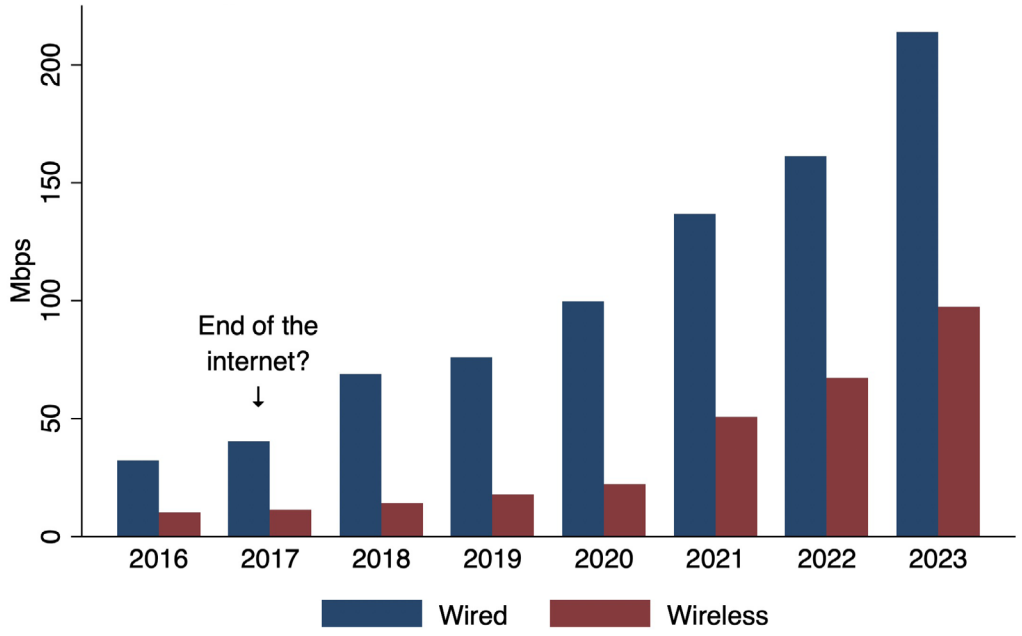
Notes: For congruence with Figure 2, CPIs are measured in September of each year.
The information-service regime includes the price changes shown in Figure 1.
BLS quality-adjustment methods changed in 2018.
Source: BLS CPI series CUUR0000SEEE03, CUUR0000SEED03, CUUR0000SA0.

Competition is likely an important factor helping to reduce internet service prices while increasing their quality. FCC commissioner Carr explains how "The percentage of Americans with access to two or more high-speed, fixed ISPs has increased by about 30% since 2017—up from 229 million in 2017 to approximately 295 million in 2022, according to FCC measures." He adds that "new fixed wireless services represent additional competition as well. The number of Americans that can now choose fixed, high-speed or 5G for home broadband as an alternative to fiber or other wired connections has grown exponentially" (Federal Communications Commission 2023a).

A Faster, Cheaper and Better Internet - AFTER Public Utility Regulation Ended

Figure 2 displays median internet speeds as measured at speedtest.net and in the FCC panel of residential consumers (see our appendix for details). Although 2017 was supposed to be the end of the internet as we know it, wired internet speeds increased by a factor of 5.8 between 2017 and 2023. Wireless internet speeds increased by a factor of 8.7.

Figure 2. Median Internet Download Speeds



Sources: Ookla (speedtest) and FCC

Download speeds would have increased to some degree even if public-utility regulation had continued. From that perspective, it is worth noting that when the public-utility regulation ended in 2017, the speedtest.net data showed U.S. ranked 45th in the world in terms of average mobile-internet download speeds.[6] By 2022, which is the most recent year that average speeds are reported, the U.S. had climbed to 16th. Between 2022 and 2023, the U.S. gained another 7 ranks (from 22nd to 15th) on the median speed metric. All of these improvements occurred while the U.S. had its internet classified as an information service.

6 Ookla Research (2023). Philippon (2019) also compares U.S. before 2017 unfavorably with France and other parts of Europe in terms of mobility internet service prices.

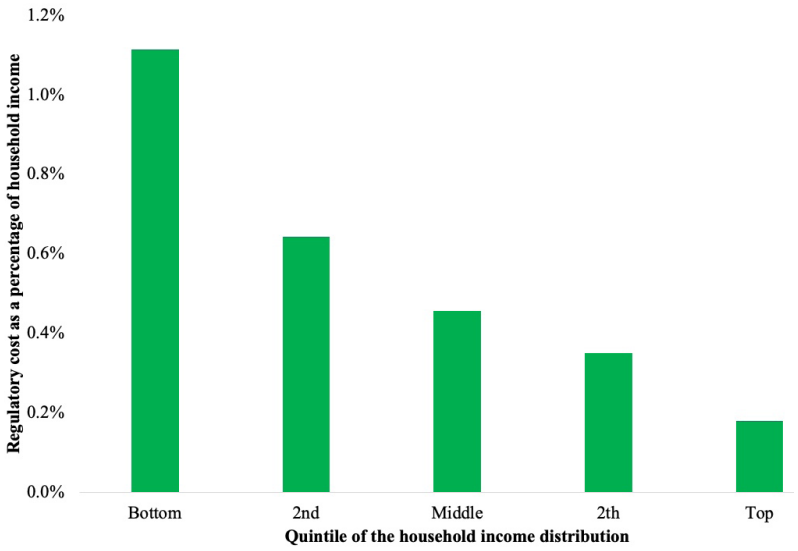
The speedtest.net data show the U.S. consistently ranked among the top countries of the world in terms of fixed broadband speeds. During the pandemic, U.S. residential internet service especially showed its world class status, and its freedom from price controls. As FCC Commissioner Carr explains "when online traffic spiked during COVID-19, EU officials asked Netflix and other streamers to ration their service to keep the continent's slow, fragile networks from breaking. The U.S. had no need to ration service—our network speeds exceeded theirs by 83%" (Federal Communications Commission 2023a).

Internet Regulation is a Tax on the Poor

New federal regulations disproportionately reduce the incomes of households whose incomes are already low, especially because a number of the rules "indulge[] the preferences of the wealthy" (Thomas 2019). Telecommunications regulations are no exception.

Dividing American households into five income groups from lowest to highest, we estimated each group's internet-regulatory costs and expressed them as a percentage of its average income.[7] Figure 3 shows the results for a scenario in which regulation adds 15 percent to internet access prices. The costs to the bottom quintile would be 1.1 percent of their total income. Increasing regulation would impose costs on the top quintile too, but in an amount that would only consume an additional 0.2 percent of their income. While 1.1 percent might seem small by itself, recall that the FCC is only one of dozens of agencies that have been known to require low-income households to have champagne habits on a beer budget.

Figure 3. Who Would Pay for Additional Internet Regulation?



Sources: 2022 Consumer Expenditure Survey (baseline) and a hypothetical 15 percent increase in internet-service prices.

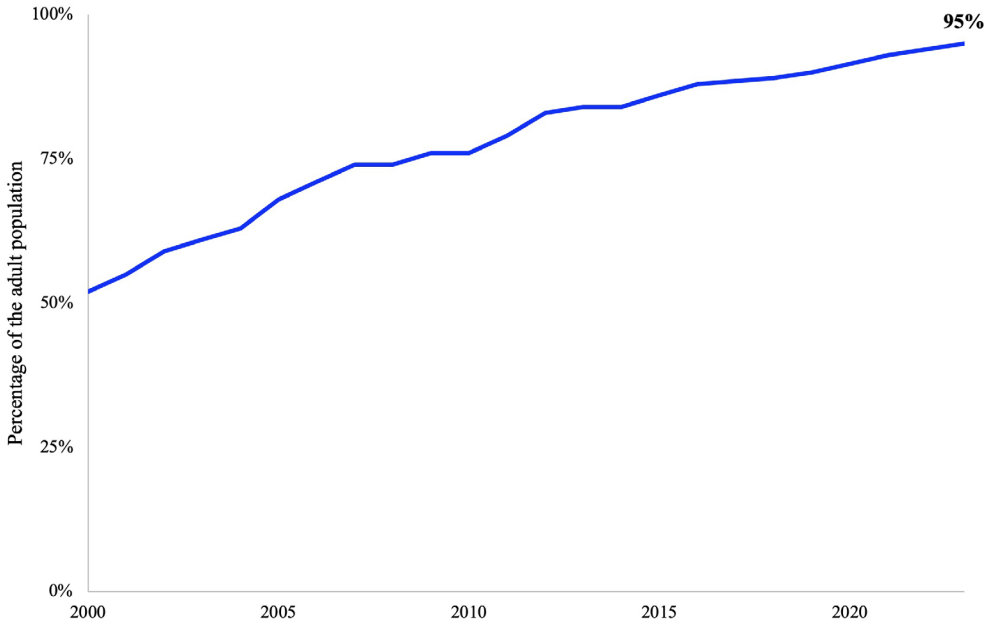
7 See also Box 2-1 of the *2020 Economic Report of the President*.

The Mythical Digital Divide in Internet Access

Every technology from the automobile, to radios, to cell phones begins with wealthy individuals first having access. This adoption curve is based on not disparate impact" discrimination but on the fundamental economics of innovation and diffusion of new technologies. Over time technologies get cheaper and access becomes democratized. Private sector innovation and the free enterprise system make technologies that were only the playthings of the super-rich a generation ago are now available and affordable to almost all Americans.

That is precisely what has happened with internet access. Back in 2000, only half of Americans had internet access. Now it's up to 95%.

Figure 4. Internet Usage, 2000-2023



Note: Polls from 2000-2021 were conducted via phone. In 2023, the poll was conducted via web and mail.
Source: Pew Research Center.

This is not synonymous with *broadband* adoption, which the FCC defines based on minimum speeds that have been periodically revised upwards. But it shows a pattern that belies the idea that discrimination has been a meaningful barrier to internet access.

The FCC itself found that "there is little or no evidence… indicating that intentional discrimination by industry participants based on the listed characteristics substantially contributes to disparities in access to broadband internet service across the Nation." (Federal Communications Commission 2024) Yet the commission adopted a discrimination standard in which any facially neutral business practice could be subject to a complaint based on an alleged disparate impact on a protected group, with the potential for rate regulation as a remedy.

The FCC's "disparate impact" standard means if they can find a minority neighborhood somewhere that lacks the same internet connection rate to broadband services as a high-income area, they can slap ISPs with a lawsuit.

Plaintiffs don't even have to prove any intent to discriminate on the basis of race or ethnicity. These threats of lawsuits will inhibit — not spread — internet access. If a ISP offers a new service, but not enough members of a protected group sign up, the FCC could impose a multimillion-dollar fine and require the company to fix the inequities. This is a backdoor way of creating internet access racial quotas.

The digital discrimination rule will harm low-income customers by eliminating low-cost Internet service plans. An analysis by Phoenix Center economist George Ford found: "The Commission's Draft Order interprets the statute as requiring 'pricing consistency' among protected classes. Thus, the Commission's rules ban the low-income pricing plans now offered by many, if not most, broadband providers as such discounted plans are explicitly discriminatory. In conflict with the goal of increased broadband adoption, the Commission's rules will increase the prices paid by low-income consumers, though doing so ensures the end of discriminatory treatment among protected classes." (Ford 2023)

ISPs may decide it's not worth the threat of lawsuits and opt to pull out of internet services. If that happens, the regulators may make it harder for low-income households to get broadband access – precisely the opposite of what the regulations intend to accomplish.

Biden's Re-Regulation of the Internet Will Mean Less Investment and Less Access

The evidence shows that deregulation did not result in any of the predicted negative consequences, but rather lower prices, faster speeds and particularly large savings for low-income households. In the face of this deregulatory success story, the Biden FCC nonetheless proposes to once again reclassify broadband Internet service as a regulated public utility under Title II of the Communications Act of 1934. It also asserts that the privacy rules that were overturned by Congress and are barred from being reimposed under the Congressional Review Act can nonetheless be enforced.

The FCC's latest proposed net neutrality rule waves off concerns about investment disincentives by quoting from the 2015 order: "to the extent that our decision might in some cases reduce providers' investment incentives, we believe any such effects are far outweighed by positive effects on innovation and investment in other areas of the ecosystem that our core broadband policies will promote." (Federal Communications Commission 2023) This ignores all of the post-repeal evidence.

The FCC also asserts that investment disincentives from regulations are more than offset by $65 billion in broadband subsidies included in the Infrastructure Investment and Jobs Act (IIJA): "We also believe that many ISP investment decisions over the next several years will be significantly influenced by the influx of federal and state funding allocated to ISPs to support infrastructure deployment and broadband connectivity." (Federal

Communications Commission 2023) This is a red herring that, at best, reveals confused thinking at the FCC. Even if we accept that IIJA increases investment by itself, returning to Title II regulation would reverse the gains that the subsidies would otherwise provide. The cable industry has made it clear that significant areas of the country will not receive investment under Title II, despite contemporaneous IIJA subsidies. (Powell 2023)

Moreover, the prospect of regulating away private investment and competition and replacing it with government subsidy raises serious questions not just of economic inefficiency but of politicization and corruption. For instance, subsidy schemes have historically favored government-owned networks that have been poorly run. (Kampis and Westling 2023) The FCC recently disqualified SpaceX's Starlink service from a subsidy program in favor of a more expensive alternative. (Carr 2024)

The FCC has also, under the Infrastructure Investment and Jobs Act, imposed digital discrimination regulations on ISPs based on a "disparate impact" standard, notwithstanding its own findings that there is no intentional discrimination. The effective date of this new regime is March 22, 2024, with enforcement suspended for the first six months.

The combination of the new digital discrimination rules and the pending return of Title II regulation will – if sustained by the courts – more than reverse the Trump-era deregulation – suggesting that no deregulatory success, no matter how obvious, discourages a Biden administration agency from re-regulating.

Appendix: Measuring Internet Download Speeds

Our primary sources are four annual time series for wired internet and two for wireless. All of them are measured in megabits per second (Mbps) in September or October of the corresponding year. Two sources are from the FCC's "[t]housands of volunteer panelists … drawn from the [residential] subscriber bases of ISPs" (Federal Communications Commission 2023b). Each refers to advertised download speeds for fixed internet, and differ according to whether AT&T subscribers were included in the averages. For each wired and wireless, the other two sources are from Ookla, which is the company that runs speedtest.net. Each of the two Ookla sources summarize the massive Ookla database of consumer speed tests. The two differ according to whether speed data are summarized as a mean or a median.

None of the four time series span the full timeframe 2016-23.[8] We therefore used regression analysis to combine the four wired sources into a single wired index and the two wireless sources into a single wireless index.[9] The regression was the log of the speed on indicator variables for source and indicator variables for year. The reference source is median download speeds from Ookla, which is consistently the slowest speed of the four sources. The fitted values for the reference source, transformed to Mbps using the inverse logarithm, defines the index shown in our Figure 2.

An important property of a regression that includes indicators for source is that the entry of a new source and the exit of another cannot change the final index, even though the two sources offer different speed estimates for the same year. The final index changes from year to year only to the degree that at least one consistent source shows a change between those years.

8 Furthermore, none of the sources permit intertemporal comparisons prior to 2016.

9 In the case of just two sources, the regression analysis is equivalent to proportionally splicing the two series using the overlapping year-pair.

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