**Restoring Internet Freedom Backgrounder**

***Overview***

At the dawn of the commercial Internet, President Clinton and a Republican Congress made it our national policy to preserve a free market for the Internet “unfettered by Federal or State regulation.” The FCC followed that light-touch, market-based approach to Internet freedom during the Clinton Administration, the Bush Administration, and the first six years of the Obama Administration. Then, following public pressure from President Obama, the FCC reversed course. It imposed upon the Internet heavy-handed government regulations under Title II, a utility-style framework dating all the way back to 1934 and designed to micromanage the Ma Bell telephone monopoly. Chairman Pai’s *Restoring Internet Freedom Order* would return to the successful, market-based framework under which the Internet developed and flourished and would preserve Internet freedom for all Americans.

***Key components***

**Reclassify Broadband Internet Access Service as an Information Service**

Chairman Pai’s *Restoring Internet Freedom Order* would classify broadband Internet access service as a Title I information service rather than a Title II telecommunications service. This decision would reverse the Commission’s abrupt shift two years ago when it classified broadband Internet access service as a telecommunications service and thus subjected it to heavy-handed utility-style regulation under Title II.

The *Order* would find that classifying broadband as an information service best comports with the text and structure of the Communications Act, Commission precedent, and public policy. Indeed, the U.S. Supreme Court expressly approved this classification in its 2005 *Brand X* decision. The *Order* finds that returning to a light-touch framework would promote broadband deployment in rural America and infrastructure investment throughout the nation.

Additionally, the *Order* would classify mobile broadband Internet access service as a private mobile service rather than a commercial mobile radio service or its functional equivalent. This decision would restore a light-touch regulatory framework to mobile broadband.

**Require Transparency**

Chairman Pai’s *Restoring Internet Freedom Order* would return, with minor adjustments, to the transparency rule adopted in the 2010 *Open Internet Order*. That rule gives consumers, entrepreneurs, and the Commission important information while minimizing the burdens imposed on Internet service providers. The burdensome reporting obligations that the FCC added in the *Title II Order* would be eliminated since they have yielded few if any benefits.

Going forward, ISPs would be required to disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access service. This disclosure must be sufficient to enable consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain Internet offerings. Among other things, ISPs will be required to disclose blocking, throttling, affiliated prioritization, paid prioritization, congestion management practices, application-specific behavior, and device attachment rules, if any.

**Restores Authority to the FTC to Protect Consumers**

Chairman Pai’s *Restoring Internet Freedom Order* would restore the Federal Trade Commission’s authority to protect consumers from “unfair or deceptive acts or practices” committed by ISPs. It would also restore the Federal Trade Commission’s power to regulate broadband privacy and data security. The FTC is the nation’s premier consumer protection agency, and until the FCC stripped it of jurisdiction over ISPs in 2015, the FTC was responsible for policing digital privacy and consumer protection across the entire online ecosystem.

**Eliminate Conduct Rules**

Chairman Pai’s *Restoring Internet Freedom Order* would eliminate the conduct rules adopted by the prior FCC in 2015. It would conclude that these rules are unnecessary because the transparency requirement, coupled with consumer protection and antitrust laws, will effectively protect Internet freedom. The *Order* also would find that the FCC lacks the legal authority to adopt conduct rules comprehensively governing ISPs and that cost-benefit analysis demonstrates that the costs of these rules to innovation and investment outweigh any benefits they may produce.

**Preempt Inconsistent State and Local Laws and Regulations**

Chairman Pai’s *Restoring Internet Freedom Order* would conclude that because broadband Internet access service is an interstate information service, it should be governed principally by a uniform set of federal regulations rather than by a patchwork of separate state and local requirements. As a result, state and local laws and regulations that conflict with the federal deregulatory policy towards broadband Internet access service would be preempted.