

October 16, 2023

Chairman Mark Warner  
Senate Select Committee on Intelligence  
211 Hart Senate Office Building  
Washington, DC 20510

Vice Chair Marco Rubio  
Senate Select Committee on Intelligence  
211 Hart Senate Office Building  
Washington, DC 20510

Chairman Mike Turner  
House Permanent Select Committee on  
Intelligence  
Capitol Visitor Center HVC-304  
Washington, DC 20515

Ranking Member Jim Himes  
House Permanent Select Committee on  
Intelligence  
Capitol Visitor Center HVC-304  
Washington, DC 20515

Dear Chairman Warner, Vice Chair Rubio, Chairman Turner and Ranking Member Himes,

The Federal Communications Commission recently announced plans to reclassify broadband as a telecommunications service under Title II of the Communications Act. While this is not the first time the Commission has pursued Title II regulation purportedly to address net neutrality, it is the first time the FCC has reached beyond the no blocking, degrading or prioritizing principles to which broadband providers already adhere. The FCC is veering into the complex realm of cybersecurity and national security via top-down regulation rather than collaborative partnership, a choice many experts view with skepticism. As leaders of the Senate and House Senate and House Intelligence Committees, we ask you to pay special attention to the FCC's mission creep into the cybersecurity space as it will lead to confusion and conflicts over which committee and agency has jurisdiction in specific cyber-related matters. This will create legal and regulatory uncertainty, hampering effective national security oversight and cooperation. It could also lead to redundancy and fragmentation of efforts, making it harder to coordinate and implement a cohesive security strategy and respond quickly to emerging threats.

To begin with, there is nothing in the Communications Act or any other statute that gives the FCC general authority to impose prescriptive cybersecurity regulations on ISPs. Where Congress has seen a role for the agency to impose specific compliance-based cyber regulations on ISPs, it has done so – for instance, in the Secure Networks Act and Secure Equipment Act, which among other things directs the FCC to maintain a “Covered List” of equipment and services that pose an unacceptable national security risk – “based exclusively” and “based solely” on the determinations by other parts of government with subject matter expertise.

Cybersecurity is successfully governed by a maturing regime of collaborative accountability across expert agencies, built on decades of real-world operational experience with the intelligence community and U.S. military. The federal government already has multiple agencies responsible for cybersecurity, many of which your committees oversee. Cybersecurity is a complex and rapidly evolving field that requires specialized knowledge and expertise. Federal

agencies with substantial cybersecurity expertise, such as CISA and NIST, rely heavily on industry collaboration. And the communications industry has been at the forefront of the cybersecurity public-private partnership, building on our long history of collaborating with the U.S. government on crucial security matters since the 1960s.

Even more crucially, however, Title II regulation would not improve our national security posture. Instead, it would have far-reaching negative consequences. The FCC's proposed regulatory approach could jeopardize longstanding partnerships, harming U.S. leadership in cyber strategies and operations. It is essential that expert agencies and industry be able to discuss cybersecurity matters openly and transparently, as true partners. The FCC is an independent agency that focuses on a single sector. While it has a role to play in broader government efforts, it should not take a unilateral regulatory path on cybersecurity policies narrowly focused on the traditional communications sector when the rest of government is seeking cross-sector, harmonized, and multi-agency solutions. In addition, cyber threats often transcend national borders, and international collaboration is crucial to addressing them effectively. The FCC's limited reach in international affairs in comparison to other federal agencies may undermine our collective ability to engage in global cybersecurity initiatives and partnerships, potentially isolating the United States in the fight against cyber threats.

The broadband industry is concerned that regulatory actions in the national security domain can have unintended consequences, such as stifling security innovation and locking in place outdated security practices, concepts, and strategies. Put simply, what makes sense today in the cybersecurity arena may not make sense tomorrow. Responding to cyberattacks requires dynamic, flexible action, and collaboration between and among the government and industry, not top-down regulation aimed at one sector in the entire cybersecurity landscape.

Congress has not told the FCC to regulate broadband cybersecurity. To the contrary, Congress has enacted a broader set of statutes that govern the collaboration that is necessary for secure broadband. The 1930s utility-style laws that the agency proposes to use simply do not fit the modern broadband marketplace. The vast impacts of the FCC's contemplated cybersecurity oversight illustrate why its proposal to regulate broadband as a Title II telecommunications service is a "major question" that needs clear authorization from Congress.

The digital age presents complex challenges that require specialized attention. While the FCC plays a crucial role in shaping communications policy, entrusting it with a central regulatory role in national security would be an unnecessary and unhelpful step in the wrong direction. We need informed, expert-driven, consensus-based cyber strategies, not utility regulation, in order to continue safeguarding our national security and digital infrastructure.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Spalter". The signature is written in a cursive style with a horizontal line extending to the right.

Jonathan Spalter

cc:

Senator Maria Cantwell, Chair, Senate Committee on Commerce, Science & Transportation

Ranking Member Ted Cruz, Senate Committee on Commerce, Science & Transportation

Chairman Cathy McMorris Rodgers, House Energy and Commerce Committee

Ranking Member Frank Pallone, House Energy and Commerce Committee