Dear Chairman Pai,

We write to express our strong opposition to the Restoring Internet Freedom Draft Order (“Proposal”) to eliminate critical consumer and economic protections adopted in the 2015 Open Internet Order. A free and open Internet forms the backbone of the 21st Century economy, and as leaders of local communities we are acutely aware of the threat to education, innovation, and economic growth posed by the Proposal. We are also deeply disturbed by your efforts to preempt our ability to protect consumers and businesses in our communities. We strongly oppose this proposal, and urge you to reconsider.

As community leaders, we recognize the direct and substantial impact that broadband connectivity and access to a free and open Internet have in our communities. Our economies, educational institutions, government agencies, and communities, in general, increasingly rely on broadband connectivity and the transformative power of the Internet to drive economic growth, individual and community development, and better government for all our citizens. Critical to our communities’ reliance on the Internet is the confidence that our use of the Internet is not subject to the whims, discretion, or economic incentives of gatekeeper service providers to control or manipulate the experience of Internet users. The 2015 Open Internet Order ensconced the principles of Net Neutrality, which protect and preserve this confidence, in enforceable rules grounded in the strongest legal authority, Title II. As more than 60 Mayors wrote in July, “full repeal would have a particularly negative impact on middle and working-class families, while simultaneously restricting access to certain types of online content and services to those who cannot afford to pay more.”¹ Your proposal appears to contemplate and accept just such a result.

Your proposal abandons not only the legal foundation for net neutrality rules, but eliminates the rules themselves. We are certain that your proposals will not protect the Internet in practice, and should be abandoned. Despite your stated support for the principles of net neutrality, your proposal: enables abusive gatekeeper behavior by dominant broadband providers; allows conduit providers to extract value from our local economies through paid prioritization schemes, and threatens businesses and consumers by permitting blocking, throttling, and other interference with access to the Internet. And, because broadband affordability in low-income communities is already a significant challenge faced by communities nationwide, your proposal is certain to have a disproportionate effect on the most vulnerable.

We object to your reliance on voluntary commitments from service providers. Your rules appear to contemplate a marketplace in which service providers, which face limited or no competition in most communities nationwide, will be subject to oversight only to the extent that their conduct deviates from whatever commitments they make up-front. The preference for Federal Trade Commission enforcement appears to contemplate a world in which harm to the Internet ecosystem arising from provider conduct must occur, as the FTC can only act after such harm has occurred. Furthermore, the voluntary commitments whose disclosure would be required under your heavily curtailed transparency rule could be changed at any time by service providers, rendering them meaningful only to the extent providers choose not to amend their promises to permit future harmful conduct. Further, your Proposal inadequately addresses a scenario in which an area is served by a single provider that blocks, throttles, or otherwise

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renders top-tier broadband service outside the grasp of low-income populations; without an alternative provider, our citizens must simply accept these practices in order to participate in our connected world. The Transparency rules described in the Proposal are a tacit admission that consumers care about—and do not want—provider practices that impinge their ability to access the Internet. We are not confident the Federal Trade Commission can or will intervene in such an instance, and the outcome will leave communities without choices and without the advanced wireless services needed to prosper in today’s economy.

We are also troubled by the cloud of uncertainty your actions cast over the connected future in our cities. As the Commission knows, the United States is far progressed in developing highly-connected communities, an effort which will accelerate even further as the regulatory and technological landscape surrounding the internet of things and autonomous vehicles develops. Even as your actions cast great uncertainty on the health of the Internet ecosystem and its availability to communities often deprived of competitive choice, however, you repeatedly cite your concern about uncertainty for dominant service providers. Your singular focus on this particular industry’s welfare is harmful to the entirety of the Internet ecosystem.

Despite receiving no mention whatsoever in your Notice of Proposed Rulemaking earlier this year, your proposal seeks to compound its prioritization of the broadband industry above all others, and above local communities, by broadly preempting state and local government ability to respond to the unique challenges faced in our communities. Given the breadth of this Proposal, and the requirements of the Administrative Procedures Act, stakeholders should have been given the chance to explore and respond to new rules that appear to eliminate state and local authority to regulate nearly every important aspect of broadband service provision, likely including privacy-related rules. This is not in the public interest. Each city, town, village, county, and state in this nation is unique, and faces its own challenges in embracing the digital future. Your proposal prohibits local leaders such as ourselves from protecting our constituents, businesses, and economies from abusive service provider practices. While your proposal appears content to let harms occur and trust the FTC to remedy those harms after the fact, some of our communities prefer local solutions to challenges facing our communities. Your effort to preempt here, even aside from its serious legal deficiencies, represents a stark, inexplicable, and unwarranted attack on “the constitutional principles that lie at the heart of our system of government.”

In sum, we strongly oppose your proposal. It offers carte blanche to powerful service providers but little more than promises to consumers. Your approach puts those few companies ahead of millions of Americans, tens of thousands of businesses which depend on a free and open Internet, and local communities solving everyday problems Americans face. We urge you to recognize, as most Americans do, your duty to protect, preserve, and enforce the strong net neutrality protections already in place under the 2015 Open Internet Order and its Title II regulatory framework. Anything less threatens to undermine the investment, innovation, and freedom Americans enjoy and expect online.

Sincerely,

<MAYORS>

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2 Id. at 13.