

Congress of the United States
Washington, DC 20515

1050

December 7, 2017

The Honorable Ajit Pai, Chairman
Federal Communications Commission
445 12th St. S.W.
Washington, DC 20554

Dear Chairman Pai,

As Members of Congress who represent Northern California, home to the innovation capital of the world, we write to strongly oppose the "Restoring Internet Freedom Order" WC Docket 17-108. Having reviewed the proposal you circulated on November 21st we believe it will irreversibly smother the free and open internet and create a closed gatekeeper regime that will stifle innovation, harm consumers, and suppress free speech. We urge you to remove it from the agenda for the Federal Communications Commission's (FCC) December Open Meeting, and to abandon your ongoing attempts to repeal the judicially approved 2015 Open Internet rules.

The 2015 Open Internet rules were a light-touch, court-approved approach to broadband oversight. It was modeled on long-held principles of nondiscrimination and openness that for decades were supported by both Republican and Democratic FCCs. The codification of these rules in 2015 and affirmation by the court have provided certainty for consumers, investors, innovators, and providers for more than two years, and the virtuous circle has continued to flourish.

By contrast, your proposal, if passed, unravels that certainty and prolific growth. It ensures that broadband providers can block and throttle at a whim. It also threatens innovation at the edge by allowing broadband providers to charge tolls for access to their customers or provide preferential treatment to their own affiliated content, while slowing that of competitors. This is even more concerning in an increasingly consolidated media marketplace. Ever larger vertically integrated providers have even more incentive and ability to leverage their control over consumers and emerging platforms who rely on this essential communication access to grow and access information.

Congress established the FCC to protect consumers, ensure the public interest, and provide rules of the road on our nation's essential communications networks. It is the entity specifically and best designed to accomplish that job. Your proposal eliminates the FCC's authority to act as the cop on the beat to protect consumers in a proactive, flexible manner and entrusts the Federal Trade Commission (FTC) with this responsibility. We believe this is an ill-suited place for communications policymaking as a general matter. The FCC is the expert agency with flexible rulemaking authority in the communications sector which is replete with unusually complex and highly technical challenges. Expertise is essential to ensure appropriate rulemaking and oversight are applied when it is necessary to protect consumers and the public interest.

The FTC, by contrast, has no particular expertise and is an enforcement agency. It therefore cannot provide the full slate of protections needed to protect consumers and others in the internet ecosystem from anticompetitive practices by companies before they happen. It addresses the harm only after the harm has occurred. Net neutrality is designed to keep the gates open to everyone in a forward-looking manner. The FTC can act if a harm has occurred, but without preventive protections to keep barriers to entry low, we will never know who was kept out of the virtuous cycle. By removing the prophylactic rules under FCC authority, your proposal effectively permits and blesses gatekeepers to inhibit competition in the online marketplace.

We are also concerned that your proposal preempts states and localities from adopting their own related consumer protections. This is an ill-advised and potentially illegal action. It undermines the ability for states and localities to respond proactively to the unique problems they face in their communities. The overly broad language also casts doubt on the ability of states and localities to enforce any existing rules and laws to the extent they may implicate broadband.

Finally, we are perplexed by your insistence on moving full speed ahead on this plan when organizations from A to Z continue to oppose it and support the current rules in droves. That list includes over 1,200 start-ups¹, 200 online companies², over a dozen state Attorneys General³, sixty Mayors across the country⁴, 52 civil and human rights organizations⁵, 120,000 libraries⁶, 41 small internet service providers⁷, more than 900 online video creators⁸, and the tens of millions of Americans who continue to weigh in every day. There appear to be only four entities who are actually pleased by your proposal – incumbent ISPs AT&T, Comcast, Verizon, and Charter who stand to gain from a policy that will allow them to police themselves.

By almost any metric, be it the court of public opinion, good public policy, or sound legal analysis your proposal is an unnecessary assault on the open internet as we know it. The 2015 rules in place today have been successful in providing certainty and protection online for those

¹ Open Letter from Start-Ups for Net Neutrality to Chairman Pai (originally dated April 26, 2017) (<http://www.engine.is/startups-for-net-neutrality/>).

² Jacob Kastrenakes, "Reddit, Twitter, and 200 others say ending net neutrality would ruin Cyber Monday," The Verge (Nov. 27, 2017).

³ Comments of Attorneys General of the State of Illinois, California, Connecticut, Hawaii, Iowa, Maine, Maryland, Massachusetts, Mississippi, Oregon, Vermont, Washington, and the District of Columbia on the May 18, 2017 Notice of Proposed Rulemaking, In the Matter of Restoring Internet Freedom, WC Docket 17-108 (filed July 17, 2017).

⁴ Letter from 60 Mayors, In the Matter of Restoring Internet Freedom, WC Docket 17-108 (filed July 17, 2017).

⁵ Comments of Voices for Internet Freedom, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108 (filed July 19, 2017).

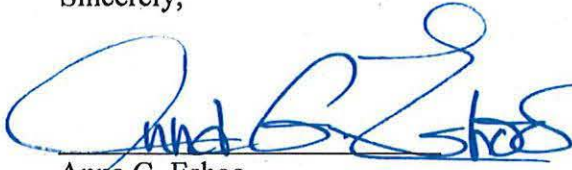
⁶ Comments of American Association of Libraries, American Library Association, and Chief Officers of State Library Agencies, In the Matter of Restoring Internet Freedom, GN Docket 17-108 (filed July 17, 2017).

⁷ Letter from 41 Internet Service Providers to Chairman Pai (June 27, 2017) (https://www.eff.org/files/2017/06/27/isp_letter_to_fcc_on_nn_privacy_title_ii.pdf).

⁸ Open Letter from Creators for Net Neutrality to Chairman Pai and Members of Congress (<https://internetcreatorsguild.com/net-neutrality>).

who most need it, while providing flexibility for new business models and innovations that continue to enter the marketplace. We once again urge you to remove your order from the December agenda as soon as possible and strongly reconsider any other attempts to reverse net neutrality protections.

Sincerely,



Anna G. Eshoo
Member of Congress



John Garamendi
Member of Congress



Jared Huffman
Member of Congress



Ro Khanna
Member of Congress



Jackie Speier
Member of Congress



Mike Thompson
Member of Congress