

United States Senate
WASHINGTON, DC 20510

May 9, 2014

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

We are writing today to express serious concern over reports that the Federal Communications Commission (FCC) has plans to reverse its earlier commitment to preserving a free and open Internet for all Americans.

It is our understanding that the Commission may soon vote on a Notice of Proposed Rulemaking (NPRM) for new Open Internet rules. This vote comes in the wake of the United States Court of Appeals for the District of Columbia's recent decision vacating the Commission's 2010 Open Internet Order. This NPRM is a necessary step forward. As the potential to profit from monopolistic, anti-competitive, anti-innovation, and anti-consumer practices has grown, the need for explicit, enforceable rules has become more urgent. However, it will only be a positive step if you and your staff can craft meaningful rules.

You must act promptly to prevent blocking – both intentional and incidental – ban discrimination, and promote increased transparency in the Internet marketplace. The Commission clearly recognizes the benefits of an open Internet, and the need for reasonable market rules that will preserve Americans' access to the services and sites of their choosing. The court's decision did nothing change the need for such rules. It merely overturned the FCC's legal theory regarding its authority for the 2010 order.

Unfortunately, we fear that specific provisions of the NPRM may be insufficient to accomplish the task. The current Internet is a free market of products and ideas unparalleled in human history, and the FCC must preserve the type of Internet access that allows that marketplace to thrive. Unfortunately, reports on your current proposal suggest it may have unintended, deleterious effects. While several posts and statements from the Chairman's office offer assurances about your goals, we worry that the NPRM language would permit broadband providers to collect new tolls from innovators, entrepreneurs and all manner of speakers on the Internet.

Particularly concerning are reports that the NPRM will allow "paid prioritization arrangements" as long as they are "commercially reasonable," as determined by a complicated series of tests that the Commission has yet to develop. Changing the rules – to let broadband Internet Service Providers (ISPs) demand payment from websites and app developers – would eradicate Net Neutrality, not preserve it. Any time one group of packets is favored on an IP network the rest of the traffic is, by definition, discriminated against. Given the current state of congestion the ISPs have allowed to

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develop at their interconnections with the Internet, any discrimination results in a degradation or blocking of services to the consumer – services the consumer has paid for.

The genius of the Internet is that it allows innovation without permission, not innovation only after cutting a deal with the ISP and receiving the FCC's blessing for it.

Sanctioning paid prioritization would allow discrimination and irrevocably change the Internet as we know it. Small businesses, content creators and Internet users must not be held hostage by an increasingly consolidated broadband industry. Start-ups should not find themselves unable to get a foot in the door, deterred from making the kind of investments that make the Internet the engine for creativity and economic growth we know today. Consumers should not be faced with fewer choices at ever higher prices while ISPs monetize their data and dictate who succeeds and who fails online.

The D.C. Circuit decision is clear. The Commission has to allow substantial discrimination if it chooses to base its Open Internet policies on Section 706 of the Telecom Act. The court said that the FCC cannot, under Section 706, adopt rules that resemble "common carrier" requirements to serve everyone. Yet that is exactly what Net Neutrality means: keeping the Internet open to all, and making sure that Internet access is free from the threat of blocking, discrimination, and pay-to-play schemes.

Fortunately, the Commission still has the time and ability to rectify this problem. We ask you to ensure that the NPRM includes specific questions about Title II and the more robust rules that you could base on this authority. The item should facilitate discussion of the best option for protecting the Open Internet – not merely accept that the Commission has no choice but to permit toll lanes and other kinds of unreasonable discrimination. Consumers and innovators cannot afford to wander through this regulatory murk any longer. The time has come for the FCC to adopt Net Neutrality rules that provide clear, strong protections for the Open Internet and all Americans, once and for all.

Sincerely,


Ron Wyden


Charles E. Schumer


Elizabeth Warren


Bernard Sanders


Al Franken


Kirsten E. Gillibrand

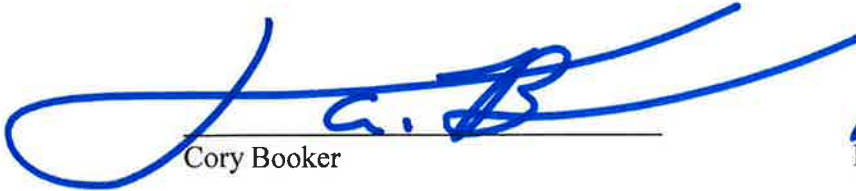
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