

Mayors For Meaningful Net Neutrality Protections

Federal Communications Commission
445 12th Street SW,
Washington, DC 20554

Re: ***Restoring Internet Freedom Draft Order*** (WC Docket No. 17-108)

Dear Chairman Pai and Commissioners Clyburn, O’Rielly, Carr and Rosenworcel:

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 the Commission’s efforts to preempt our ability to protect consumers and businesses in our communities. We strongly oppose this proposal, and urge the Commission to reconsider.

As community leaders, we recognize the direct and substantial benefits 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 improve government service and accountability 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 enshrined 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 The Commission’s proposal appears to accept just such a result.

The Commission’s proposal both abandons the legal foundation for Net Neutrality rules and eliminates the rules themselves. We are certain that the Commission’s proposals will fail to protect the Internet, and should be abandoned. Despite the Commission’s stated support for the principles of Net Neutrality, the Commission’s proposal: enables abusive gatekeeper behavior by dominant broadband providers; allowing broadband providers to engage in paid prioritization schemes which rob value from local communities and stifle innovation; 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, the Commission’s proposal is certain to have a disproportionate effect on the most vulnerable.

¹ *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, *Ex Parte Letter from the Mayors of Boston, New York, and other US Cities* (Jul. 12, 2017).

We object to the Commission's reliance on voluntary commitments from service providers and enforcement of those commitments by the Federal Trade Commission (FTC). The FCC's rules appear to contemplate a marketplace in which service providers, faced with limited or no competition, will be subject to oversight only to the extent that their conduct deviates from whatever commitments they make up-front. Moreover, the disclosure of voluntary commitments required under the Commission's new 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. Lastly, the Commission's Proposal inadequately addresses a scenario in which an area is served by a single provider that blocks, throttles, or otherwise renders top-tier broadband service too expensive for low-income families; 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.

The Commission's preference for Federal Trade Commission (FTC) enforcement means harm to the Internet and consumers must occur before the FTC can act, and then only after an elaborate and prolonged FTC proceeding. We are also not confident that the FTC can or will intervene in a timely manner so as to avoid leaving our communities without choices and without the advanced wireless services needed to prosper in today's economy. Broadband connectivity is too central to our economy, education, healthcare, and culture to allow abusive practices to distort access to information as a predicate for government action.

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

Despite receiving no mention whatsoever in the Commission's Notice of Proposed Rulemaking earlier this year, the Commission's 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. The Commission's proposal prohibits local leaders such as ourselves from protecting our constituents, businesses, and economies from abusive service provider practices. While the Commission's 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. The Commission's 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.”²

In sum, we strongly oppose the Commission’s proposal. It offers carte blanche to powerful service providers but little more than promises to consumers. The Commission’s 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 the Commission to recognize, as most Americans do, the Commission’s 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,

Kathy Sheehan, Mayor, City of Albany, New York

Allison Silberberg, Mayor, City of Alexandria, Virginia

Steve Adler, Mayor, City of Austin, Texas

Catherine E. Pugh, Mayor, City of Baltimore, Maryland

Jesse Arreguin, Mayor, City of Berkeley, California

Martin J. Walsh, Mayor, City of Boston, Massachusetts

Melvin Kleckner, Town Administrator, Town of Brookline, Massachusetts

Miro Weinberger, Mayor, City of Burlington, Vermont

E. Denise Simmons, Mayor, City of Cambridge, Massachusetts

Deborah Frank Feinen, Mayor, City of Champaign, Illinois

Andy Berke, Mayor, City of Chattanooga, Tennessee

Rahm Emanuel, Mayor, City of Chicago, Illinois

Mary Casillas Salas, Mayor, City of Chula Vista, California

Robb Davis, Mayor, City of Davis, California

Board of Supervisors, DeSoto County, Mississippi

Lucy K. Vinis, Mayor, City of Eugene, Oregon

Lionel Jordan, Mayor, City of Fayetteville, Arkansas

Gil Ziffer, Commissioner, City of Tallahassee, Florida, President, Florida League of Cities

Jud Ashman, Mayor, City of Gaithersburg, Maryland

² *Id.* at 13.

Patrick Taylor, Mayor, Town of Highlands, North Carolina

William McLeod, Mayor, Village of Hoffman Estates, Illinois

Archibald L. Gillies, Chairman, Islesboro Board of Selectmen, Town of Islesboro, Maine

Derek Dobies, Mayor, City of Jackson, Michigan

David Baker, Mayor, City of Kenmore, Washington

Peter d'Errico, Chair of Select Board, Town of Leverett, Massachusetts

Chris Beutler, Mayor, City of Lincoln, Nebraska

Eric Garcetti, Mayor, City of Los Angeles, California

Paul Soglin, Mayor, City of Madison, Wisconsin

Kathrin Sears, Chair, Marin Telecommunications Agency JPA Supervisor, Board of Supervisors, Marin County, California

James E. Darling, Mayor, City of McAllen, Texas

Megan Barry, Mayor, Metropolitan Nashville & Davidson County, Tennessee

Jon Mitchell, Mayor, City of New Bedford, Massachusetts

Bill de Blasio, Mayor, City of New York, New York

David J. Narkewicz, Mayor, City of Northampton, Massachusetts

Libby Schaaf, Mayor, City of Oakland, California

William Peduto, Mayor, City of Pittsburgh, Pennsylvania

Ted Wheeler, Mayor, City of Portland, Oregon

Anthony P. Falzarano, Mayor, Town of Putnam, Connecticut

Tom Butt, Mayor, City of Richmond, California

Byron Randolph Foley, Mayor, City of Salem, Virginia

Edwin M. Lee, Mayor, City and County of San Francisco, California

Sam Liccardo, Mayor, City of San Jose, California and Member, Federal Communications Commission Broadband Deployment Advisory Committee

Pauline Russo Cutter, Mayor, City of San Leandro, California

Zach Friend, Vice Chair, Santa Cruz County Board of Supervisors, Santa Cruz County, California

Ted Winterer, Mayor, City of Santa Monica, California

Joanne D. Yepsen, Mayor, City of Saratoga Springs, NY and the City Council, City of Saratoga Springs, New York

Gary R. McCarthy, Mayor, City of Schenectady, New York

Jenny A. Durkan, Mayor, City of Seattle, Washington
Patricia Smith, Mayor, City of South Portland, Maine
Domenic J. Sarno, Mayor, City of Springfield, Massachusetts
Christine Lundberg, Mayor, City of Springfield, Oregon
David R. Martin, Mayor, City of Stamford, Connecticut
Stephanie Miner, Mayor, City of Syracuse, New York
Marilyn Strickland, Mayor, City of Tacoma, Washington
Andrew D. Gillum, Mayor, City of Tallahassee, Florida
Diane Wolfe Marlin, Mayor, City of Urbana, Illinois
William D. Sessoms, Mayor, City of Virginia Beach, Virginia
John Heilman, Mayor, City of West Hollywood, California
Gary Resnick, Mayor, City of Wilton Manors, Florida