



THE COUNCIL OF THE
CITY OF NEW YORK

July 17, 2017

Ajit Pai, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Comment by Members of the New York City Council on the
Notice of Proposed Rulemaking In the Matter of
“Restoring Internet Freedom,” WC Docket No. 17-108

Dear Chairman and Commissioners,

We write once again on behalf of the 8.5 million residents of New York City to **protect and promote the Open Internet and net neutrality**.

New York City, through its City Council and its Mayor, is committed to universal broadband in order to bridge the digital divide. Yet the divide between those who can access reasonable broadband service and those who cannot will remain unbridgeable unless the Commission uses its mandate to expand access to broadband to protect and promote the Open Internet and net neutrality. There are 6.4 million people in New York State who have yet to adopt broadband, whose access to necessary and useful information and applications must be protected and promoted. Whether you use legal authority deriving from Telecommunications Act of 1996, Section 706 –the mandate to promote broadband deployment – or reclassify broadband under Title II of the Communications Act, the Federal Communications Commission (FCC) must protect the Free and Open Internet.

Without net neutrality, cable companies would have the power to censor, block or otherwise discriminate against the digital tools necessary to thrive in the modern world.

A City of Immigrants

The Statue of Liberty stands as a beacon of hope welcoming “your tired, your poor, your huddled masses yearning to breathe free.” Immigrants flock to the United States from across the world’s vast oceans to pursue opportunity, particularly in New York. 3 million New Yorkers were not born in the United States, 37% of New York City’s population is foreign-born and a full 50 percent of New Yorkers speak a language other than English at home. Prior generations of immigrants left for America, never seeing their families or homes ever again. Today, many of these immigrants subscribe to broadband for the applications that allow them to speak to families through Voice-over-IP (VoIP), see loved ones over video chat, and keep up with current events



by watching news and independent coverage from their nations of origin. Council Members representing Russian- and Ukrainian-speaking communities saw this firsthand a few years ago when the conflict in Ukraine erupted. New York City residents called over VoIP and video chats with friends and family as well as followed broadcasts from local news and protesters. Without the Open Internet, these New Yorkers could see their access to such crucial services priced out of affordability, limited to the point of non-functionality, hampered by an inability to compete with major corporations, or outright blocked if content providers from their nation of origin could not afford to pay to reach America. In our increasingly globalized city, the ability to connect with loved ones is as vital as a utility. As such, it must be protected as part of a net neutral Open Internet.

The Right to Free Speech

Freedom of speech is a fundamental right, guaranteed by the First Amendment, and necessary to a free democratic society. The Open Internet has acted as a great equalizer so that those engaged in political speech are able to communicate directly with their constituencies. Millions of Americans now get updates on the state of our nation directly from the President of the United States. On his official White House accounts, President Donald Trump has 24,384,870 views on YouTube, 33.8 million followers on twitter, and 1,830,038 likes on Facebook. These social media tools are an important means of communicating directly with Americans. If net neutrality regulations are rolled back and the President does not pay for faster access, his words would likely reach the public more slowly than those who can. In countries less free than ours the Internet is censored based on politics. In America, the Internet must not be censored based on dollars.

Indeed, an Internet without net neutrality leaves the public open to broadband provider abuse and makes it more difficult to detect. Were the President or any other politician to take a position where broadband providers had a vested interest, those broadband providers could censor, block, or limit access to the carriers of such a message while improving and expanding service to providers who agree. In such a scenario, Internet broadband providers could censor the President and any news agencies editorially aligned with the position by blocking or limiting bandwidth from WhiteHouse.gov and news sites — ostensibly based on their ability to pay.

Jobs

The Open Internet is a key tool in fighting unemployment. 4.5% of unemployed Americans and 4.3% of unemployed New Yorkers need an Open Internet to find job postings, apply for jobs, and learn the skills necessary to advance in their careers. Without an Open Internet, we could see censorship, including blocking or limiting of access to job posting websites because of a broadband provider's ownership, affiliation, or fees received from a competitor. Similarly, without an Open Internet, New Yorkers in dire need of job training on free sites may find themselves attempting to use blocked, limited, or slowed services—or services edged out by competition.



Innovation

Vibrant tech sectors have grown in cities beyond Silicon Valley as a result of the Open Internet. New York City has more than 262,000 workers in the tech sector, contributing almost \$30 billion annually in wages to the local economy. Developments such as incubators and common spaces have served as pillars upholding this burgeoning infrastructure. WeWork, Dev Bootcamp, Dumbo Startup Lab, Made in NY Media Center are merely a few examples in the Brooklyn Tech Triangle—not to mention General Assembly, Fueled Collective, Projective Space, and New York City and Hive @ 55. A community of civically engaged software developers have emerged from this startup community that call themselves “civic hackers.” Organized through a Code for America Brigade called “BetaNYC,” they rely on an Open Internet to build tools for civic engagement. The ability of the technology sector to create innovation, fuel urban economies and foster the next generation of civic leaders will be disrupted without a robust Open Internet.

We stand again at a defining moment for the Internet. The balance of an Open Internet which facilitates constant market disruption and has led to widespread use of technology to improve everyday life is, without strong net neutrality rules, again in danger of becoming an Internet with moneyed interests stifling that same creativity and innovation. The move to a tiered Internet would simply empower major corporations and lead to the same lack of progress that has cost the larger American economy so greatly, as other nations are able to out-innovate and out-compete us.

An end to net neutrality would harm immigrant communities, innovation, investment, and every community hoping to achieve the dream of universal broadband. It would also damage New York City’s status as the city of opportunity, and America’s status as the land of opportunity.

BACKGROUND

The “Open Internet” is the Internet as we have known it, though it has always been subject to threats and, in recent years, constant change. It has been open because it uses free, publicly available standards that anyone can use, and it treats all information that flows across the network in a similar way. As a result, consumers have been free to choose what applications and services they use as well as what content they access, create, or share. Anyone, anywhere has been able to easily launch and invest in innovative applications and services, revolutionizing the way people communicate, participate, create, and do business. In order to keep the Internet a platform for innovation and job creation, empowering consumers and entrepreneurs, protecting free expression, promoting competition, and bridging the digital divide, it must remain open.

In 2007, then Council Member Gale Brewer introduced resolution 712 calling on the U.S. Congress to pass H.R. 3458 and the Commission to formalize strong net neutrality principles. In addition to this comment, we have introduced in the New York City Council Resolution 573 in support of rulemaking to protect and promote the Open Internet and net neutrality.



In 2010, the Commission released the Open Internet Order, which established high-level rules requiring transparency and prohibiting blocking and unreasonable discrimination. In January of 2014, *Verizon v. FCC* the United States Court of Appeals for the District of Columbia Circuit affirmed the Commission's authority to regulate broadband Internet access service, upheld that Internet openness encourages broadband investment and that its absence could inhibit broadband deployment, and upheld the transparency rule, but vacated the no-blocking and no unreasonable-discrimination.

While the decision vacated the no-blocking and no unreasonable-discrimination rules, the court laid out a blueprint that the Commission can and must follow to use its authority to promote broadband deployment under Section 706 of the Telecommunications Act of 1996.

To the extent that Commission can contemporaneously classify broadband providers as telecommunications under Title II of the Communications Act, in order to regulate them like the public utilities that they are, the Commission should also promulgate additional, overlapping, rules under this authority. The Commission should use Title II, which explicitly prevents utilities from making “any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services.”

RECOMMENDATIONS

All providers of broadband, through cable, fiber, wireless, cellular or other services, must be required to abide by transparency, free speech and net neutrality. They should be held accountable to the following:

Net neutrality: Broadband users must have equal access to a neutral, robust, reliable service to access the content, services and applications they desire. Innovators and edge providers must have access to end-users so they can offer new products and services. Priority service offered exclusively by a broadband provider should be considered illegal until proven otherwise. In order to satisfy the courts, a rigorous “screen” must be created that will use the strongest protections afforded by “commercial reasonableness” to preserve net neutrality that will analyze whether any conduct hurts consumers, competition, and free expression and civic engagement.

Users do not adopt broadband for its own sake: They do so to achieve goals and to pursue happiness. They use email to correspond with loved ones, video chat to see familiar faces across the globe, read foreign news to maintain connection to their culture and search job sites to find fulfilling work. Without the FCC using its authority to expand broadband use to preserve net neutrality, the digital divide will only be deepened and barriers to equality for every working family heightened.



Transparency: Broadband providers must disclose transparently, online, in human and computer readable format, in as close to real time as possible to anyone using the internet service provided at either end of the communication, all relevant policies that govern their network. Additionally, wherever the flow of information is being manipulated in any way, users must be entitled to see the real-time results of how the information they are sending and receiving is being manipulated. When a user seeks additional information, the Commission must provide rules and an ombudsman to facilitate and enforce those disclosures to that user and the world at large.

Free Speech: Broadband providers may not censor or block any legal content or limit the connection to legal content to any degree that effectively makes the content inaccessible. For example, Netflix saw a precipitous decline in speed of 30% before agreeing to pay Comcast for broadband service directly. Similar limits in bandwidth must not be applied in any way to limit, censor or block legal speech of any kind.

Protection: The Commission must be able to hold companies accountable and protect consumers, innovators, and startups through new rules and effective enforcement. Effective enforcement would include affirmative enforcement as well as enforcement in response to complaints. Affirmative enforcement powers are essential so that the Commission can proactively address problems before they cause irreparable damage. Consumers, innovators and startups must be able to resolve problems with broadband providers simply and quickly by filing a complaint, anonymous or otherwise, that is investigated, prosecuted, and resolved by the Commission, in much the same way as is used to protect human rights, such as those against discrimination.

CONCLUSION

In conclusion, we as representatives of America's largest city recommend maintaining strong net neutrality regulations to preserve what remains of an Open Internet with freely transmitted ideas. We recommend transparent information, preservation of the Internet free speech that has revolutionized our communications and necessary protections, and enforcement from the FCC.

New York City has enormous diversity and we cannot risk leaving these diverse communities behind as corporations gain yet more power to manipulate the free flow of information and ideas. In order for New York City to remain a hub for innovative start-ups and individuals striving for their piece of the American dream, a Free, Open Internet is a necessity.

As we strive for a world in which more Americans, particularly those in marginalized communities adopt and use broadband, the FCC can use its broadband-expansion authority to protect an Open Internet. Universal broadband and Open Internet can and must go hand-in-hand. As an alternate or parallel route, the FCC can classify information as a utility rather than an information service, as it is fundamental to the needs of New Yorkers and Americans. Ultimately, the FCC has legal options to enforce net neutrality, and it must use them.



THE COUNCIL OF THE
CITY OF NEW YORK

While it is our honor to represent the people of the City of New York, we also call upon them to join our voices in unity by providing their own public comment at fcc.gov/comments.

Sincerely,

Ben Kallos

Corey Johnson

Stephen T. Levin

Mark Levine

Carlos Menchaca

Antonio Reynoso

Donovan Richards

Ydanis Rodriguez

Deborah Rose

Helen Rosenthal

Ritchie Torres