

Congress of the United States
Washington, DC 20515

January 22, 2015

67

Thomas E. Wheeler
Chairman
Federal Communications Commission
445 12th St, S.W.
Washington, D.C. 20554

Dear Chairman Wheeler:

You have indicated in public statements that you intend to introduce the net neutrality rules for a vote at the February Open Meeting. Given the significance of the matter and the strong public participation in the Commission's proceeding to date, we believe the public and industry stakeholders alike should have the opportunity to review the text of any proposed order or rules prior to Commission action. Accordingly, we urge you to publicly release the draft text of the Open Internet Order when you circulate it to your fellow Commissioners.

Improving agency process and transparency are matters of great concern to our Committees. The legislative branch publicly posts proposed legislation in advance of Committee or chamber consideration, and we believe the Federal Communications Commission (FCC) would benefit from similar practices. This model allows both Members and the public to review proposed policy changes and provide informed feedback which ultimately produces better public policy.

Improving FCC process is a mission we know you share: one of your first actions as Chairman was to appoint a special counsel to solicit public input and formulate recommendations for improvement of existing Commission process. Under FCC rule §19.735-203, the Commission has the ability to authorize exactly this sort of public release of agenda items. If ever there was an instance where such action would be appropriate, this should qualify. As you have pointed out, a record number of comments, nearly four million, were submitted in this proceeding, indicating a high level of public interest in net neutrality and any rules adopted by the Commission.

Moreover, your recent public statements indicate that you plan to undertake the complex task of reclassifying broadband Internet access service as a Title II telecommunications service. As you have noted, this path will involve a great deal of detailed legal and policy analysis, including "policy issues that run the gamut from privacy to universal service to the ability of federal agencies to protect consumers, as well as legal issues ranging from the ability of Title II to cover mobile services to the concept of applying forbearance on services under Title II." Additionally, as former Chairman Michael Powell recently testified before Congress, the complexity of the forbearance process alone warrants significant public input.

Transparency in this matter is particularly vital as so many of the public participants who have expressed an interest in net neutrality have no meaningful access to the proceeding at the Commission. Currently, the general public, as well as Congress, is entirely reliant on press reports and generic, high-level statements regarding the status of the proceeding and the content of the rules. Releasing the text allows the public to, at the very least, have an informed opinion and ideally, the opportunity to provide feedback on the proposal the FCC will vote on just over one month from today. Limited access to information is beneficial to no one – not to the consumers directly affected by Commission action, not to the industries regulated by the rules, and not to the Commissioners seeking to make informed decisions taking public feedback into consideration.

We believe publicly releasing the draft text of the full Open Internet item in advance of the Commission vote next month is in the public interest, and we call on you to use your authority to do so.

Sincerely,



Fred Upton
Chairman
House Committee on Energy and
Commerce



John Thune
Chairman
Senate Committee on Commerce, Science, and
Transportation



Greg Walden
Chairman
Subcommittee on Communications and Technology
House Committee on Energy and Commerce



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

February 2, 2015

The Honorable John Thune
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairmen Thune, Upton, and Walden:

Thank you for your letter regarding the Commission's Open Internet proceeding. I recognize and appreciate that your Committees are fully engaged on Open Internet issues, which are of great importance to Congress and the American people. It is critical to preserve an open Internet.

The Commission's process for considering items like the Open Internet rule is designed to give stakeholders and members of the public ample opportunity to engage in a transparent and vigorous discussion. It is also designed to give Commissioners a three-week period to discuss in confidence the substance of an item before final decisions are released. This is commonplace for administrative agencies and closely resembles the way that appellate courts - including the Supreme Court - hear public argument, confer privately, share their views and review drafts confidentially, and then issue their public decision.

What you have suggested in terms of releasing the preliminary discussion draft of the Order runs contrary to Commission procedure followed over the years by both Democratic and Republican Chairs. If decades of precedent are to be changed, then there must be an opportunity for thoughtful review in the lead up to any change.

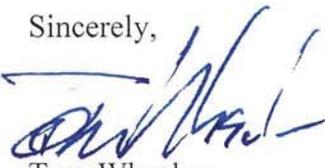
I intend to ask the Commission to adopt an Open Internet Order at our next open meeting, on February 26, 2015. As is long-standing and established FCC procedure, I will circulate a

draft Order for consideration by my fellow commissioners three weeks prior to the date of that meeting (on February 5, 2015). We will continue to hear from interested parties in the run-up to the open meeting, will engage in the normal confidential process of sharing and considering changes to that Order and, of course, will consider and discuss the matter in public at the open meeting.

The Commission's Open Internet proceeding has been one of the most transparent and inclusive proceedings in recent memory. Indeed, we have received more than four million comments – a record for any Commission proceeding – on the Notice of Proposed Rulemaking released last spring. We have been urged to act, and act swiftly, to protect Internet openness. We have also had continuous engagement with stakeholders, including in the form of six separate roundtables. These roundtables, which were open to the public, addressed Open Internet issues, including mobile broadband, effective enforcement, and technological considerations, and also sought the best economic and legal thinking on Open Internet topics. The information gathered from these roundtables, public comments, and other engagement with stakeholders has informed our deliberations in the Open Internet proceeding. The almost 600 Ex Parte filings in this proceeding are another indication of the extensive dialogue the Commission and stakeholders have conducted in recent months.

Our decisionmaking process has also been informed by regular and detailed, bipartisan engagement with Congress, including you and other Members and staff of your Committees.

Again, I am pleased that we share the goal of ensuring a free and open Internet, and I am committed to continuing to work with you toward that end and on other matters of interest to your Committees. Please do not hesitate to be in touch with me if I may be of further assistance in this matter.

Sincerely,

Tom Wheeler

cc: The Honorable Bill Nelson, Ranking Member
Committee on Commerce, Science and Transportation
United States Senate

The Honorable Roger Wicker, Chairman
Subcommittee on Communications and Technology
Committee on Commerce, Science and Transportation
United States Senate

The Honorable Brian Schatz, Ranking Member
Subcommittee on Communications and Technology
Committee on Commerce, Science and Transportation
United States Senate

The Honorable Frank Pallone, Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives

The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives