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MAY 19 2014

FCC Mail Room



Congress of the United States

House of Representatives

Washington, DC 20515

JERROLD NADLER

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May 15, 2014

515

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

Dear Chairman Wheeler,

I urge you to lead the Federal Communications Commission (FCC) efforts to maintain net neutrality by reclassifying broadband providers as common carriers. Unfortunately, the proposed rule that passed the FCC today will undermine the principles of net neutrality and the open internet.

We must not allow for a pay-to-play internet where one company can refuse to allow fast access to another company unless they pay a premium. This type of online discrimination is unacceptable, will lead to anti-competitive behavior, and will stifle innovation. What if Verizon decided to block access to YouTube? What if a cable company decided to throttle a competing service that attempted to provide video services over the internet? What if a smaller competitor with a great idea cannot afford to pay an additional fee for access to the internet's fast lane? Again, innovation would suffer and ultimately consumers would be harmed. Everyone deserves equal access at equal speeds – no blocking and no discrimination ought to be tolerated.

You have said that you do not want to allow the creation of fast and slow lanes on the internet, but I am afraid your proposal will do just that. As you know, the January court ruling made clear that the FCC could reverse its 2002 decision and move to reclassify broadband providers as common carriers. This would allow the FCC to enforce stronger rules to ensure an open and free internet that would best serve the needs of consumers.

Again, I urge you to lead the FCC in reclassifying broadband providers as common carriers without delay in order to ensure that everyone has equal access to the internet. Thank you.

Sincerely,


Jerrold Nadler
Member of Congress

CC: Mignon Clyburn, Commissioner, Federal Communications Commission
Jessica Rosenworcel, Commissioner, Federal Communications Commission
Ajit Pai, Commissioner, Federal Communications Commission
Michael O'Reilly, Commissioner, Federal Communications Commission



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 17, 2014

The Honorable Jerrold Nadler
U.S. House of Representatives
2110 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Nadler:

Thank you for writing to express your concerns regarding the need to reinstate rules to preserve an open Internet for all Americans. I share your sense of urgency on this matter. For this reason, I moved with dispatch to initiate a proceeding to consider new open Internet rules to replace those that were vacated by the D.C. Circuit Court of Appeals in the *Verizon* case. As you know, the *Notice of Proposed Rulemaking* (“*Notice*”) adopted by the Commission in May 2014 begins that process. Therein, we ask a number of questions about the rules we need to adopt, as well as the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and I will ensure that it is included in the record of the proceeding and considered as part of the Commission’s review.

The Commission has struggled for over a decade with how best to protect and promote an open Internet. While there has been bipartisan consensus, starting under the Bush Administration with Chairman Powell, on the importance of an open Internet to economic growth, investment, and innovation, we find ourselves today faced with the worst case scenario: we have no Open Internet rules in place to stop broadband providers from limiting Internet openness. The *status quo* is unacceptable. The Commission has already found, and the court has agreed, that broadband providers have economic incentives and technological tools to engage in behavior that can limit Internet openness and harm consumers and competition. As such, the Commission must craft meaningful rules to protect the open Internet, and it must do so promptly. I can assure you that I will utilize the best tools available to me to ensure the Commission adopts effective and resilient open Internet rules. Unless and until the Commission adopts new rules, broadband providers will be free to block, degrade, or otherwise disadvantage innovative services on the Internet without threat of sanction by the FCC.

With respect to the legal foundation of the rules, I believe that the Section 706 framework set forth by the court provides us with the tools we need to adopt and implement robust and enforceable Open Internet rules. Nevertheless, as you specifically urge in your letter, the Commission is also seriously considering moving forward to adopt rules using Title II of the Communications Act as the foundation for our legal authority. The *Notice* asks specific questions about Title II, including whether the Commission should 1) revisit its classification of Broadband Internet Access as an information service; or 2) separately identify and classify as a telecommunications service a service that “broadband providers . . . furnish to edge providers,” as proposed by Mozilla in a May 5 Petition filed with the agency. The *Notice* seeks comment on

the benefits of both Section 706 and Title II, including the benefits of one approach over the other, to ensure the Internet remains an open platform for innovation and expression.

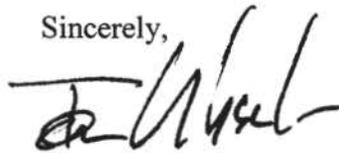
With respect to the substance of the rules, the proposals and questions in the *Notice* are designed to elicit a record that will give us a foundation to adopt strong, enforceable rules to protect the open Internet and prevent broadband providers from harming consumers or competition. I am especially sensitive to your concerns about pay-to-play, or paid prioritization arrangements, and the potential such arrangements have for creating an Internet that is fast for a few, and slow for everyone else. Let me be crystal clear: there must only be one Internet. It must be fast, robust and open for everyone. The *Notice* addresses this issue head-on, even asking if paid prioritization should be banned outright. It also proposes clear rules of the road and aggressive enforcement to prevent unfair treatment of consumers, edge providers and innovators. Small companies and startups must be able to reach consumers with their innovative products and services, and they must be protected against harmful conduct by broadband providers.

The *Notice* includes a number of proposals designed to empower consumers and small businesses who may find themselves subject to harmful behavior by a broadband provider. For example, the Court of Appeals did uphold our existing transparency rule, and the *Notice* proposes to strengthen that rule to require that networks disclose *any* practices that could change a consumer's or a content provider's relationship with the network. The *Notice* proposes the creation of an ombudsperson to serve as a watchdog and advocate for start-ups, small businesses and consumers. And the *Notice* seeks comment on how to ensure that all parties, and especially small businesses and start-ups, have effective access to the Commission's dispute resolution and enforcement processes.

This *Notice* is the first step in the process, and I look forward to comments from all interested stakeholders, including members of the general public, as we develop a fulsome record on the many questions raised in the *Notice*. To that end, in an effort to maximize public participation in this proceeding, we have established an Open Internet email address – openinternet@fcc.gov – to ensure that Americans who may not otherwise have the opportunity to participate in an FCC proceeding can make their voices heard. In addition, to ensure sufficient opportunity for broad public comment, we have provided a lengthy comment and reply period through September 10, 2014, that will allow everyone an opportunity to participate.

Again, I appreciate your deep interest in this matter and look forward to continued engagement with you as the proceeding moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Wheeler", written over a horizontal line.

Tom Wheeler