



United States Senate
WASHINGTON, DC 20510-0905

BILL NELSON
FLORIDA

431

April 30, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: GN Docket No. 14-28 – Open Internet Notice of Proposed Rulemaking

Dear Chairman Wheeler:

I write today to express my concern over recent reports that you may be stepping back from an earlier commitment to implement rules and policies that ensure an open and free Internet for all Americans.

It is my understanding that the Federal Communications Commission (FCC) will consider a Notice of Proposed Rulemaking (NPRM) in the Open Internet proceeding at the May Agenda Meeting. In an April 24 blog post, you stated that this item will contain certain basic elements of the 2010 Open Internet Order that was struck down by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) earlier this year. Specifically, you stated that the NPRM will prohibit providers from blocking lawful content or engaging in “unreasonable discrimination” among users. These are critical component of any framework to ensure an open and free Internet, and I am very pleased to hear reports that they are included in the NPRM.

I am very concerned about reports that the NPRM will presumptively allow “paid prioritization arrangements” as long as they are “commercially reasonable.” These agreements are often referred to by providers as “network management arrangements.” However, I believe the presumptive acceptance of such agreements in the regular course of business could upset the basic concept of an open Internet and would be very difficult to remedy at a later time.

Rather than serve as a “fast lane” for certain providers, they may ultimately serve the reverse purpose of forcing those content providers who can afford it to pay for “prioritization” in order to maintain a basic level of service. This, in turn, can only harm the further development of innovative new content and services that has characterized the Internet since its inception.

The Honorable Tom Wheeler

April 30, 2014

Page 2

As you move forward on the NPRM, I urge you to reconsider your initial conclusion that paid prioritization arrangements are generally “commercially reasonable.” While I am cognizant of the need to meet the parameters detailed by the D.C. Circuit, I believe the Commission can, and should, draw a brighter line on paid prioritization agreements. As part of that analysis, I also urge the Commission to carefully consider whether section 706 provides the best pathway for these rules or whether Title II, with appropriate forbearance, provides a more sound approach.

Thank you in advance for your consideration of my views on this critical matter. Working together, I am confident that we can maintain a free, open Internet.

Sincerely,

A handwritten signature in blue ink that reads "Bill Nelson". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 27, 2014

The Honorable Bill Nelson
United States Senate
716 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Nelson:

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, 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* 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.

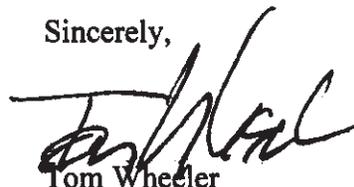
With respect to the substance of the rules, the proposals and questions in the *Notice* are designed to elicit a record that will give us a foundation to adopt strong, enforceable rules to protect the open Internet and prevent broadband providers from harming consumers or competition. I am especially sensitive to your concerns about paid prioritization arrangements, and the potential such arrangements have for creating an Internet “haves” and “have nots.” 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* also 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,



Tom Wheeler