

United States Senate
WASHINGTON, DC 20510

COMMITTEES:
BANKING
DEMOCRATIC POLICY & COMMUNICATIONS
FINANCE
JUDICIARY
RULES

June 5, 2014

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The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Wheeler:

As you know, I joined ten of my colleagues in writing to you before the issuance of the Notice of Proposed Rulemaking (NPRM) on net neutrality. In that letter we urged you to preserve a free and open internet and to keep all options on the table for doing so. I was encouraged to see that the final NPRM did solicit comments on multiple avenues for the Commission to promulgate rules consistent with the principles of an open internet, and I thank you for taking those concerns seriously.

Since the FCC's comment period on the NPRM opened last month, I understand you have received nearly 50,000 comments from concerned citizens who share my belief that it is the Commission's responsibility to protect and preserve an open internet. While the Commission is accustomed to hearing from businesses who are concerned with proposed changes to telecommunications law, I cannot recall a time when ordinary Americans have been so engaged in a regulatory issue.

The overwhelming response from the public, many of whom are my constituents in New York, should underscore for the Commission how important this question is to Americans in their everyday lives. I therefore urge you to give significant weight to the public input in your rulemaking process. While they may not be the businesses from whom you are accustomed to hearing, the fact that ordinary citizens would take time out of their days to weigh in on a complicated regulatory issue is a clear indicator of its significance. These citizens believe firmly that the Commission must craft meaningful rules that will prevent blocking, ban discrimination, and promote increased transparency in the Internet marketplace.

As you proceed forward in the rulemaking process, I hope and trust that you will heed the will of my constituents and use the full power of your authority to protect internet freedom and accessibility. I firmly believe that keeping access to the internet affordable and readily available to all Americans is critical to preserving our country's future as a free and fair twenty-first century society.

Sincerely,

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

Senator Charles Schumer



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Charles Schumer
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Schumer:

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 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,



Tom Wheeler