

# United States Senate

WASHINGTON, DC 20510

February 10, 2014

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

Dear Chairman Wheeler,

We are writing to urge you to move quickly to protect Internet users and the open Internet in light of the recent decision by the United States Court of Appeals District of Columbia on net neutrality. The Court's ruling threatens the freedom of innovators to compete on an open, neutral platform. Without rules to preserve fair competition – rules to bar Internet networks operators from discriminating against one content provider over another – deep-pocketed incumbents will have the ability to enter into arrangements with Internet Service Providers that disfavor the delivery of their competition.

We urge you to quickly adopt enforceable rules to prevent the blocking and discrimination of Internet traffic. These rules must stand on strong legal footing to withstand judicial scrutiny. Without such rules in place, Internet Service Providers are prone to act as gatekeepers of the Internet, controlling access by blocking or throttling certain content and thereby limiting the opportunities for innovation, speech, and commerce.

The Court expressed no opinion on the merits of the FCC's Open Internet Order, focusing its attention instead on the question of legal authority. Notably, the Court deferred to the FCC's substantive judgments, including that Internet openness encourages innovation and broadband deployment; that broadband providers have incentives to discriminate against edge providers; and that the Open Internet rules would not harm investment in infrastructure.

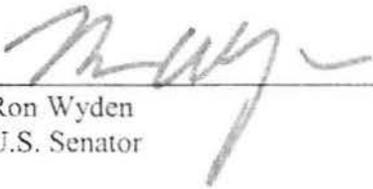
In reaching its decision, the Court rightly pointed out that when Congress enacted the Telecommunications Act of 1996, the FCC had already been subjecting Internet providers to common carrier obligations. The January 14, 2014 decision states that, "one might have thought, as the Commission originally concluded, that Congress clearly contemplated that the Commission would continue regulating Internet providers in the manner it had previously."

We respect your desire to take a careful approach. The Commission must hear from all stakeholders as it weighs how to correct the issues raised by the Court. While it would be premature to reject any particular path forward, we urge you to act with expediency. Consumers,

Letter to FCC on Net Neutrality  
February 10, 2014

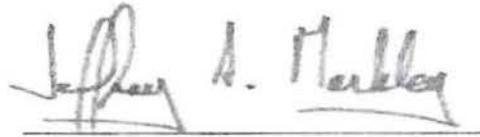
entrepreneurs and innovators deserve to know their right to view or use the content and services of their choice online will be protected.

Sincerely,



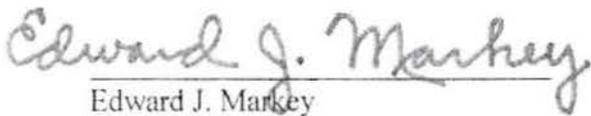
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Ron Wyden  
U.S. Senator



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Jeff Merkley  
U.S. Senator



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Edward J. Markey  
U.S. Senator



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Al Franken  
U.S. Senator



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Richard Blumenthal  
U.S. Senator

Item 4

# United States Senate

WASHINGTON, DC 20510-2309

April 29, 2014

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

Dear Chairman Wheeler,

I am deeply disappointed that you are considering rules that would allow deep-pocketed companies to pay for preferential access to Internet Service Providers (ISPs). Pay-to-play deals are an affront to net neutrality and have no place in an online marketplace that values competition and openness. This proposal would create an online “fast lane” for the highest bidder—shutting out small businesses and increasing costs for consumers. I strongly urge you to reconsider this misguided approach and recommit to protecting the Open Internet for all Americans.

After the D.C. Circuit Court of Appeals remanded the FCC’s Open Internet Order last January, I wrote you urging the Commission to “take any and all appropriate actions necessary to preserve net neutrality.” Instead, you appear to be taking the opposite approach. Sanctioning pay-to-play arrangements would not preserve the Open Internet – it would destroy it.

Your proposal would grant Verizon, Comcast, and other ISPs the power to pick winners and losers on the Internet, which violates core net neutrality principles that you have publicly supported in the past. Although you claim that this proposal is not a “turnaround,” it is difficult to understand how it does not flatly contradict your own Commission’s Open Internet Order, which stated:

“[I]f broadband providers can profitably charge edge providers for prioritized access to end users, they will have an incentive to degrade or decline to increase the quality of the service they provide to non-prioritized traffic. This would increase the gap in quality (such as latency in transmission) between prioritized access and non-prioritized access, induce more edge providers to pay for prioritized access, and allow broadband providers to charge higher prices for prioritized access. Even more damaging, broadband providers might withhold or decline to expand capacity in order to ‘squeeze’ non-prioritized traffic, a strategy that would increase the likelihood of network congestion and confront edge providers with a choice between accepting low-quality transmission or paying fees for prioritized access to end users.”

In this Order, the Commission correctly identified pay-to-play deals as an anticompetitive threat to the Internet and to consumers. But rather than continue to fight this threat, your new proposal appears to embrace it. By creating a “commercial reasonableness” rule, the Commission would be formally sanctioning the very deals it sought to combat less than three years ago.

Struggling to craft a “commercially reasonable” standard misses the point: Pay-to-play arrangements are inherently discriminatory and anticompetitive, and therefore should be prohibited as a matter of public policy. They increase costs for consumers and give ISPs a disincentive to improve their broadband networks—undermining the FCC’s mission to protect the public interest and strengthen the nation’s broadband infrastructure.

The Commission wisely recognized the fundamental problems with pay-to-play arrangements three years ago, and the D.C. Circuit Court of Appeals deferred to your Commission’s substantive judgment on this issue, as well. I urge you to recommit to this judgment. The Internet was developed at taxpayers’ expense to benefit the public interest. It belongs to all of us. The FCC should be working to sustain competition and consumer benefits, not creating unnecessary tolls for businesses and consumers.

Thank you for your attention to this urgent matter. I look forward to continuing to work with you on this vitally important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Al Franken". The signature is fluid and cursive, with a long horizontal stroke at the end.

Al Franken  
United States Senator

Item 5

# United States Senate

WASHINGTON, DC 20510

May 9, 2014

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

Dear Chairman Wheeler:

We are writing today to express serious concern over reports that the Federal Communications Commission (FCC) has plans to reverse its earlier commitment to preserving a free and open Internet for all Americans.

It is our understanding that the Commission may soon vote on a Notice of Proposed Rulemaking (NPRM) for new Open Internet rules. This vote comes in the wake of the United States Court of Appeals for the District of Columbia's recent decision vacating the Commission's 2010 Open Internet Order. This NPRM is a necessary step forward. As the potential to profit from monopolistic, anti-competitive, anti-innovation, and anti-consumer practices has grown, the need for explicit, enforceable rules has become more urgent. However, it will only be a positive step if you and your staff can craft meaningful rules.

You must act promptly to prevent blocking – both intentional and incidental – ban discrimination, and promote increased transparency in the Internet marketplace. The Commission clearly recognizes the benefits of an open Internet, and the need for reasonable market rules that will preserve Americans' access to the services and sites of their choosing. The court's decision did nothing change the need for such rules. It merely overturned the FCC's legal theory regarding its authority for the 2010 order.

Unfortunately, we fear that specific provisions of the NPRM may be insufficient to accomplish the task. The current Internet is a free market of products and ideas unparalleled in human history, and the FCC must preserve the type of Internet access that allows that marketplace to thrive. Unfortunately, reports on your current proposal suggest it may have unintended, deleterious effects. While several posts and statements from the Chairman's office offer assurances about your goals, we worry that the NPRM language would permit broadband providers to collect new tolls from innovators, entrepreneurs and all manner of speakers on the Internet.

Particularly concerning are reports that the NPRM will allow "paid prioritization arrangements" as long as they are "commercially reasonable," as determined by a complicated series of tests that the Commission has yet to develop. Changing the rules – to let broadband Internet Service Providers (ISPs) demand payment from websites and app developers – would eradicate Net Neutrality, not preserve it. Any time one group of packets is favored on an IP network the rest of the traffic is, by definition, discriminated against. Given the current state of congestion the ISPs have allowed to

Letter to Wheeler on NPRM  
May 9, 2014

develop at their interconnections with the Internet, any discrimination results in a degradation or blocking of services to the consumer – services the consumer has paid for.

The genius of the Internet is that it allows innovation without permission, not innovation only after cutting a deal with the ISP and receiving the FCC's blessing for it.

Sanctioning paid prioritization would allow discrimination and irrevocably change the Internet as we know it. Small businesses, content creators and Internet users must not be held hostage by an increasingly consolidated broadband industry. Start-ups should not find themselves unable to get a foot in the door, deterred from making the kind of investments that make the Internet the engine for creativity and economic growth we know today. Consumers should not be faced with fewer choices at ever higher prices while ISPs monetize their data and dictate who succeeds and who fails online.

The D.C. Circuit decision is clear. The Commission has to allow substantial discrimination if it chooses to base its Open Internet policies on Section 706 of the Telecom Act. The court said that the FCC cannot, under Section 706, adopt rules that resemble "common carrier" requirements to serve everyone. Yet that is exactly what Net Neutrality means: keeping the Internet open to all, and making sure that Internet access is free from the threat of blocking, discrimination, and pay-to-play schemes.

Fortunately, the Commission still has the time and ability to rectify this problem. We ask you to ensure that the NPRM includes specific questions about Title II and the more robust rules that you could base on this authority. The item should facilitate discussion of the best option for protecting the Open Internet – not merely accept that the Commission has no choice but to permit toll lanes and other kinds of unreasonable discrimination. Consumers and innovators cannot afford to wander through this regulatory murk any longer. The time has come for the FCC to adopt Net Neutrality rules that provide clear, strong protections for the Open Internet and all Americans, once and for all.

Sincerely,



Ron Wyden



Charles E. Schumer



Elizabeth Warren



Bernard Sanders



Al Franken



Kirsten E Gillibrand