



Testimony of Joshua Stager
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Respectfully submitted to the

Commonwealth of Pennsylvania
Joint Senate and House Democratic Policy Committee

Regarding

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Introduction

My name is Joshua Stager, and I am the senior counsel at the Open Technology Institute, or OTI. Since 2009, OTI has studied the broadband market, helped lawmakers develop internet policy, and worked to close the digital divide. Through this work, we have reached an inescapable conclusion: we need a law that protects net neutrality. The Federal Communications Commission (FCC) understood this as far back as 2005, when it began its first proceeding on the issue. After a decade of debate, the FCC decided in 2015 to create federal rules. Those rules were strong, consensus-driven, and upheld in federal court. OTI was deeply involved in the yearslong effort to craft those rules, and we continue to support that regime.

However, in 2017 the new FCC leadership appointed by President Trump decided to repeal those rules and, in a radical move, entirely abdicated the agency's authority to oversee internet service providers (ISPs). Thus, after more than a decade of back-and-forth debate about how to protect net neutrality, the current FCC has decided that it should no longer protect net neutrality at all. This approach is nonsensical, and it is why we need states like Pennsylvania to step in.

My remarks will first discuss why we need to restore net neutrality. Second, I will explain how Pennsylvania is at risk. Lastly, I will examine the three bills that have been introduced.

I. Net neutrality should be codified in law

At a high level, net neutrality is the basic principle of nondiscrimination that we find throughout common carriage law. It applies to many networked industries, from telephones to airlines. Net neutrality is also a protection against *gatekeeper power*—the threat that the ISPs that we all rely on to access the internet could control online content, or determine which online businesses succeed or fail. ISPs should be neutral. This neutrality has been part of the internet since its inception, and it helps explain why the internet developed into a platform for innovation and free speech.

In the early days of the internet, neutrality was respected as an almost unspoken norm. Today, that norm is breaking down. What changed? First, ISPs now have the technical ability

to discriminate traffic on their networks. This capability did not exist in the early days of the internet. Second, the market has consolidated. 20 years ago, Americans had many options for internet providers. Today, thanks to a wave of mergers, just four companies now dominate the market. These four companies have enough market power to act as gatekeepers of the internet—if the law allows it.

This combination of factors means the norm of neutrality is no longer guaranteed and, indeed, has been violated many times. In 2007, Comcast throttled a file-sharing service. In 2012, AT&T blocked FaceTime. In 2014, all of the big ISPs quietly degraded their own networks to extort fees from Netflix and other companies. This persistent creep of net neutrality abuses is what motivated the FCC to act in 2015, and it is why we still need rules today.

II. The federal repeal of net neutrality puts Pennsylvania at risk

The FCC's repeal means that there is no federal cop on the beat policing the broadband market. This puts Pennsylvania at risk, and the stakes are high.

First, the economy. Net neutrality is a vital tool for the Pennsylvania economy. It ensures that small businesses get a chance to compete on a level playing field. Without net neutrality, ISPs can favor certain companies or block competitors—or worse, prevent new companies from getting off the ground in the first place.

Net neutrality also ensures that the internet is a level playing field for marginalized Americans. Content creators, political activists, even Etsy retailers are all using the open internet to amplify voices that are often shut out of traditional platforms. The internet can be a democratizing force, but only if we protect it. Without net neutrality, ISPs are free to divide the internet into fast lanes for those who can afford it, and slow lanes for everyone else.

There are also many parts of Pennsylvania that still lack access to the internet. We need to be doing everything we can to get ISPs to expand their networks to these unserved communities. But the repeal of net neutrality has done the opposite—instead of investing in their networks, ISPs are now incentivized to extract new revenues from their existing customers.

Lastly, the repeal of net neutrality is a threat to public safety in Pennsylvania and across the country. Case in point: in 2018, just two months after the FCC repealed net neutrality, firefighters battling the largest wildfire in California’s history realized that Verizon was throttling their communications equipment. In the past, the FCC might have adjudicated this dispute—but the agency had just revoked its authority, so it did nothing. We need the states to step in to fill this void, because when disaster strikes, firefighters should be battling flames, not their ISP.

III. SB 392, SB 393, and HB 544 are positive steps toward restoring net neutrality, but they need to be strengthened

Given these harms, it is commendable that the General Assembly is considering three bills to restore net neutrality. They include prohibitions on blocking, throttling, and paid prioritization—all of which OTI considers necessary for any net neutrality law. We also support giving enforcement powers to the Public Utility Commission. These bills are a step in the right direction, but they should be strengthened to close loopholes.

First, we learned at the federal level that any net neutrality regime must include a “general conduct rule” that is enforced by an expert agency. This is because ISPs are continually changing their tactics. 10 years ago blocking was a big concern; now it’s zero-rating. We don’t know what it will be 10 years from now, so we need an expert agency that is empowered to police new harms as they emerge.

Second, the bills should prohibit zero-rating. This practice is stealthy, in which ISPs claim to offer “free data” for favored content that won’t count against your limit. Zero-rating creates precisely the kind of fast and slow lanes that we want to prevent. The real problem here are the data caps themselves—they are artificially low, designed to create scarcity where none exists, and should be investigated.

Third, the bills should prohibit access fees related to interconnection. Interconnection is a vital chokepoint in the internet’s architecture that ISPs have exploited. For example, as I mentioned earlier, in 2014, ISPs degraded these chokepoints for months, slowing the connections of millions of Americans. It was all an effort to pressure companies into paying access fees, and consumers were just collateral damage. In 2018, California prohibited this kind

of access fee, and so should Pennsylvania. None of the bills currently do this, and it is a major loophole.

Lastly, the Assembly should consider defining “reasonable network management” and adding exceptions for public safety and copyright enforcement. Adding legislative findings and a severability clause might also strengthen the bills for judicial review.

With these changes, Pennsylvania could enact a strong law that restores net neutrality.

Conclusion

This issue is overwhelmingly popular. Millions of Americans wrote, emailed, and called the FCC to demand that they save net neutrality. So did thousands of online businesses, from small startups to large tech companies, and even many smaller ISPs and community networks that don’t want to exploit their customers. The Trump FCC ignored all of this.

So if Pennsylvania passes a strong net neutrality law, you won’t just be standing up for the internet; you’ll be standing up for your constituents, for small businesses, for marginalized voices, for the economy, and for our democracy. We need the states to step in where the federal government has failed.