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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 deputy director for broadband and competition policy at New America's Open Technology Institute (OTI). At OTI, we study the broadband market, develop internet policy, and advocate for closing 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, which is why it spent 10 years, from 2005 to 2015, developing federal rules. Those rules were strong, consensus-driven, and upheld in federal court twice.

Unfortunately, in 2017, President Trump installed new FCC appointees who decided to repeal those rules. After a decade of bipartisan efforts to protect net neutrality, the Trump FCC decided to throw it all out and offer zero protections. This decision was radical and nonsensical. We are paying the price for it today as many suffer through the pandemic with internet service that is overpriced, unreliable, or doesn't exist because their home is unserved.

My remarks today will discuss (1) what net neutrality is, (2) why it needs to be restored, (3) how Pennsylvanians are at risk without it, and (4) the elements of a strong state law.

1. What is net neutrality?

First, at a high level, net neutrality is a basic principle of nondiscrimination. We find this principle throughout many networked industries, from telephones to airlines. Think of it as the "rules of the road" for the internet that prohibit discriminatory conduct like blocking and throttling.

Net neutrality also protects us from *gatekeeper power*—the threat that the companies 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 became such a powerful platform for innovation and free speech.

2. Why do we need to restore net neutrality?

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. Second, the market has consolidated. 20 years ago, there were many internet providers across the country. Today, thanks to mergers, just four companies now dominate the market. These four companies have enough market power to act as gatekeepers.

All of this means that net neutrality is no longer guaranteed as a norm. Indeed, this norm 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 new fees. 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.

3. How Pennsylvanians are at risk without net neutrality

Repealing net neutrality stripped the federal government of its ability to protect the open internet—and to make sure consumers are getting what they paid for. Without net neutrality, ISPs can divide the internet into fast lanes for those who can afford it, and slow lanes for everyone else. This puts Pennsylvanians at risk, and the stakes are high.

First is the risk to public health. The repeal of net neutrality has severely undermined our pandemic response. Many of us are relying on the internet to get through the pandemic—to work, learn, socially distance, get vaccinated, and to participate in hearings like this. But if we have problems with our service, we're left to the whims of our internet provider, who might offer unreliable speeds or might not be transparent.

Repealing net neutrality also hurt job creators. It cannot be said enough: net neutrality is good for the economy. It ensures that small businesses can compete on a level playing field. Without it, ISPs can stifle innovation, block competitors, or even prevent new companies from getting off the ground in the first place.

Net neutrality also makes the internet a level playing field for marginalized voices. Content creators, political activists, even Etsy retailers have all used the open internet to amplify voices that are often shut out of traditional avenues. The internet can be a democratizing force, but only if we protect it.

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 buildout, ISPs are now incentivized to extract new revenues from their existing customers. We will never close the digital divide with those incentives.

Lastly, we need net neutrality for public safety. For example, in 2018—just two months after the FCC repealed net neutrality—firefighters in California discovered that Verizon was throttling their service, cutting them off from each other as they were battling the largest wildfire in that state's history. In the past, the FCC could have enforced its rules to help—but the agency had just revoked them, so it did nothing. Net neutrality would have allowed these first responders to focus on fighting fires, instead of fighting with Verizon.

4. The elements of a strong state net neutrality law

Given these risks, it is commendable that this committee is exploring ways to help. Passing a law that codifies net neutrality would be an important step. Our experience with the federal regime taught us that any net neutrality law should contain, at a minimum, the following elements.

- The law should have bright-line rules against blocking, throttling, and paid prioritization.

- The law should include a "general conduct" rule that empowers an expert agency, such as the Public Utility Commission, to address new harms as they emerge. This is important 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 prevent new harms before they emerge.

- The law should carefully define "reasonable network management." This is important to avoid loopholes, but could include exceptions for public safety.

- The law should prohibit zero-rating. This practice is stealthy and misleading, as ISPs claim to offer "free data" for favored content that won't count against your limit. In reality, zero-rating creates precisely the kind of fast and slow lanes that we want to prevent. The real problem here are the data limits—they are artificially low, designed to create scarcity where none exists, and should be investigated.

- The law should prohibit access fees related to interconnection. Interconnection is a vital chokepoint in the internet's architecture that ISPs have a history of exploiting. For example, in 2014, ISPs degraded these chokepoints for months, slowing the connections of millions of people. It was all an effort to pressure companies into paying access fees, and consumers were just the collateral damage. In 2018, California prohibited this conduct, and so should a Pennsylvania law.

- Legislative findings and a severability clause can help if there is judicial review.

With these elements, the General Assembly could enact a strong law that restores net neutrality for Pennsylvanians.

Conclusion

Let's be clear: the public wants this. Millions of Americans wrote, emailed, and called the FCC demanding that they save net neutrality. So did thousands of businesses, large and small, including many smaller, local ISPs. The Trump FCC ignored all of this, leaving us with a lot of damage to fix today.

After the past year, it is clear that we live in an ever-changing world where connectivity matters. It is undeniable that the internet is no longer a nice-to-have; it is a must-have. The internet is a utility, and the law should treat it that way. And that is what net neutrality is all about.