



February 7, 2019

The Honorable Michael Doyle
Chairman, Subcommittee on
Communications and Technology
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Robert Latta
Ranking Member, Subcommittee on
Communications and Technology
House Energy and Commerce Committee
2322 Rayburn House Office Building
Washington, D.C. 20515

Re: February 7, 2019 “Preserving an Open Internet for Consumers, Small Businesses, and Free Speech” Subcommittee on Communications and Technology Hearing (House Energy and Commerce Committee)

Dear Chairman Doyle and Ranking Member Latta:

Consumer Reports¹ appreciates the Subcommittee’s consideration of how policies can and should preserve an open internet, and we look forward to the hearing on February 7, 2019. In advance of that hearing, we urge you to consider the impact of the Federal Communications Commission’s recent repeal of its own net neutrality rules (embodied in the *2015 Open Internet Order*) has had or will have upon consumers. The current absence of simple, common sense regulations that govern what internet service providers (ISPs) can and cannot do when providing internet access service creates a significant risk of a less open internet and higher prices for consumers. The Subcommittee has an opportunity to assess these dangers and explore what remedies can be pursued to restore strong, enforceable net neutrality rules that guard against harmful ISP interference.

Right this very day, an ISP could decide to block, throttle (that is, specifically slow down or speed up internet traffic per user or website), devise a pay-to-play business model (also known as paid prioritization) or refuse or degrade an interconnection port to its network—and all of this behavior would be perfectly legal in the wake of the FCC’s repeal of net neutrality. Of course, to

¹ Consumer Reports is an expert, independent, nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. As the world’s largest independent product-testing organization, it conducts its policy and mobilization work in the areas of privacy, telecommunications, financial services, food and product safety, and other areas. Using its dozens of labs, auto test center, and survey research department, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has more than 6 million members and publishes its magazine, website, and other publications.

ensure the legality of these anti-consumer practices, an ISP would have to disclose them in compliance with the one net neutrality rule left standing, the transparency rule (which basically requires an ISPs to spell out its network management practices, which could include blocking, throttling, and paid prioritization among other things).

This untenable situation where ISPs can now engage in content blocking, for example, so long as consumers are told about it in advance, was made all too clear last week when the FCC's general counsel confirmed as much in federal court during the oral argument of *Mozilla vs. FCC* (a case challenging the FCC's repeal of most net neutrality rules). Therefore, if such anti-open internet practices are properly disclosed—even if an ISP openly told consumers that “access to certain content may be slowed down or eliminated” for instance—there is very little if anything the FCC or the Federal Trade Commission could do about it. Consumers are stuck, and the many claims that “competition” or “antitrust law” will discipline ISP behavior ring hollow when a bit more than 70 percent of Americans only have two or fewer choices of a broadband internet service provider.²

Consumer Reports published an article last year that examined the many ways access to the internet may change and cost more without net neutrality rules to discipline ISP behavior.³ For example, nothing would prohibit ISPs from creating new tiers of internet access service, and one could easily imagine a more expensive tier may be required to stream video in the future. Should data caps become the norm in the fixed broadband market, zero-rating plans that favor an ISP's streaming video service will become much more attractive than competing services that count against a data cap, and using those services might become more expensive for consumers. As stated earlier, ISPs are now free to block sites and applications provided the practice is transparent; though overt blocking could happen, the more likely result of this renewed freedom would be a scenario where ISPs deny access to their networks to content providers (e.g., a website, streaming service, or app) unless an agreement is made to pay for such access—economic blocking, but blocking all the same. All this and potentially more is now possible in an internet ecosystem stripped of net neutrality rules.

² FCC Report 18-181, *Communications Marketplace Report*, Federal Communications Commission (December 26, 2018) at <https://www.fcc.gov/document/fcc-adopts-first-consolidated-communications-marketplace-report-0> (see ¶ 186, Fig. D-1)

³ James K. Wilcox, *How You'll Know Net Neutrality Is Really Gone*, Consumer Reports (June 11, 2018) at <https://www.consumerreports.org/net-neutrality/end-of-net-neutrality-what-to-watch-for/>

Consumer Reports thanks the Subcommittee for holding today's hearing reviewing the preservation of an open internet, and we hope that the views of consumers are taken into account moving forward. Consumers suffered a real loss when the current FCC stepped back from net neutrality a little more than a year ago. The Legislative Branch can and should restore those lost rules, but any bill considered by the 116th Congress must begin with the FCC's *2015 Open Internet Order* as a foundation and starting point for a future net neutrality law. We stand ready to work with you, your fellow Members on the Communications and Technology Subcommittee, and other stakeholders to restore robust net neutrality rules that favor consumer choice over corporate business models.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JS' followed by a stylized flourish.

Jonathan Schwantes
Senior Policy Counsel

cc. Members of the U.S. House Subcommittee on Communications and Technology, Committee on Energy and Commerce