



September 17, 2020

The Honorable Michael F. Doyle
Chairman, House Subcommittee
on Communications & Technology
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Robert E. Latta
Ranking Member, House Subcommittee
on Communications & Technology
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Doyle and Ranking Member Latta:

New America's Open Technology Institute (OTI) appreciates the opportunity to submit a statement for the record for the Subcommittee on Communications and Technology's hearing entitled, "Trump FCC: Four Years of Lost Opportunities." OTI works at the intersection of technology and policy to ensure that every community has equitable access to digital technologies that are open and secure, and we work extensively with the Federal Communications Commission.

Today's hearing comes at a critical juncture for the United States, our communications networks, and the people who rely on them. The pandemic has laid bare what OTI has told this committee and the FCC for years: internet service is an essential utility akin to electricity and water. Full participation in society, from work to education to commerce to democracy, requires reliable, secure, and affordable access to the internet. For nearly four years, the FCC has failed to grasp this reality, and the American people, public health, and the economy are all paying the price for this failed leadership.

The following discussion is merely a sample of the failures and lost opportunities of the past four years at the FCC; it is by no means an exhaustive list.

PAI IS ASLEEP AT THE WHEEL DURING COVID-19.

Millions of people are suffering through the COVID-19 pandemic without access to the internet, but Chairman Pai has failed to act in a meaningful or timely manner to combat this connectivity crisis. Without internet access, students can't attend remote classes, sick people can't use telehealth services, employees can't work remotely, and people struggle to adhere to stay-at-home orders and public health guidance. And yet, Chairman Pai has ignored requests to

expand the Lifeline program, rubber-stamped mergers that will increase costs for consumers, and tied his agency's hands by revoking its legal authority to protect consumers from ISP abuses. As a result, the only weapon left in Pai's arsenal appears to be the issuance of press releases that praise ISPs for a voluntary "Keep Americans Connected" pledge. The FCC has done nothing to enforce this pledge, nothing to hold ISPs accountable if they defraud consumers, and nothing to meaningfully promote the pledge beyond Beltway insiders. As a result, many low-income families don't even know that the pledge exists or that they are eligible for ISP discounts.

PAI ABANDONED STUDENTS DURING THE PANDEMIC.

Chairman Pai's inaction during the pandemic has been particularly painful for students. The E-Rate program could be used to connect more students at home during the pandemic. In fact, the FCC has been sitting on an emergency petition since March that would allow schools to use E-Rate funds for precisely this purpose. But Chairman Pai has suggested that the FCC lacks the legal authority to grant this request because he interprets the word "classroom" to mean "within the physical walls of a school." OTI disagrees with this interpretation, and believes that the FCC has the necessary authority and should have acted on the petition immediately in March. But even if Pai's interpretation was correct, it's a relatively simple fix for Congress; it could've been fixed in the CARES Act, for example. Chairman Pai should have proactively and loudly asked Congress for this fix as soon as schools began closing in March. It should have been a top priority. But it's not, and millions of students are now beginning another school year left behind and left out. We believe Chairman Pai is shirking his duty to the nation's students.

PAI IGNORES PUBLIC SAFETY AND FIREFIGHTERS.

It's been nearly a year since the D.C. Circuit Court of Appeals remanded parts of Chairman Pai's 2017 net neutrality order because he ignored public safety. Specifically, the court admonished the FCC for ignoring the concerns of first responder agencies who said they rely on net neutrality rules to do their jobs. In April, these same first responders asked the FCC for more time to submit comments about their concerns, since they were overwhelmed with the pandemic. Inexplicably—particularly in light of the court's earlier admonishment—Pai denied the first responders' request.

It's also been two years since Verizon throttled a fire department's internet service during what was, at the time, the biggest wildfire in California's history (unfortunately, that record has been broken multiple times in recent weeks). But Chairman Pai said nothing and *did* nothing to help these firefighters. Without net neutrality rules in place, Pai claimed that he lacked legal authority to deal with companies that don't deliver the services our first responders pay for.

We are now in the midst of another brutal wildfire season, and Chairman Pai's silence has been deafening. After nearly four years at the helm, he seems content to never do anything to help firefighters or protect the communications equipment they rely on. He has legally tied the FCC's hands and continues to ignore his public safety obligations. Firefighters should be fighting flames, not fighting with their telecom provider—or the FCC.

PAI DISRESPECTS TRIBAL NEEDS.

The FCC has an obligation to consult Tribes and close the Tribal digital divide, yet Chairman Pai has kept them at arm's length, at best. For example, earlier this year, the FCC opened a proceeding to allow Tribes to apply for use of the spectrum over their lands. It was a once-in-a-generation opportunity to improve internet connectivity. But Tribal groups repeatedly told Pai that they needed more time to navigate the FCC's opaque application process. It was a reasonable request, but the FCC ignored it for months. Eventually, Tribal groups had to lobby Congress and organize a Day of Action in July. Finally, in August, mere hours before the deadline, Pai granted a paltry 30-day extension. Tribes asked for at least 90 days, and they asked for it months ago. Tribes deserve better than this. They shouldn't have to organize a Day of Action—in the middle of pandemic, no less—simply to get the FCC to act on an extension request. Congress should pass a law to extend this Tribal Priority Window and give Tribes the respect they deserve.

PAI KEEPS CONSUMERS IN THE DARK ON INTERNET AFFORDABILITY.

This committee has done laudable work over the past year to fix the FCC's flawed broadband coverage maps. But the FCC's data problems extend beyond mapping. The government has flawed maps of *where* broadband is available, but it has no data on how much it costs. According to OTI's recent *Cost of Connectivity* report, the United States is experiencing an internet affordability crisis, and this is a primary driver of the digital divide. And yet, no government agency collects data on the price of internet service. We cannot comprehensively improve internet access in this country if we do not know how much the service costs. In July, the House passed a bill (H.R. 2) that would require the FCC to collect pricing data for the first time. OTI strongly supports this bill and commends the House for passing it. But Chairman Pai doesn't need an Act of Congress to collect pricing data; he can do it today, through the agency's existing data collection program. The FCC should act immediately to collect internet pricing data and help consumers understand what they are paying for.

PAI ISN'T TRANSPARENT WITH THE AMERICAN PEOPLE.

Earlier this year, members of this committee asked if the FCC had received any consumer complaints about the Keep Americans Connected pledge. In response, Chairman Pai belatedly revealed that his agency had, in fact, received 2,200 complaints from consumers in less than two months. He asserted that every complaint had been "resolved" without explanation or publication. This fits a troubling pattern in his tenure as FCC chair. Three years ago, a nonprofit organization had to use the Freedom of Information Act to compel Pai to divulge that the FCC had received 54,000 consumer complaints about net neutrality—and he similarly asserted they were all resolved without explanation.

It shouldn't take Congressional pressure, or a FOIA request, for Chairman Pai to disclose what the American people are telling him about their telecom provider. Consumer complaints are how we hold companies accountable—but accountability requires transparency. The FCC shouldn't keep consumer complaints in a black box. Chairman Pai must commit to publicly post all consumer complaints about their internet and phone service—and to do so proactively, without pressure from Congress or a FOIA request. Congress should also codify this transparency into law.

PAI INDULGES PRESIDENT TRUMP'S DANGEROUS AGENDA ON SECTION 230.

On August 3, Chairman Pai invited the public to comment on the petition for rulemaking filed by the National Telecommunications and Information Administration (NTIA). NTIA's petition followed President Trump's troubling Executive Order on "Preventing Online Censorship" that called on NTIA to file a petition with the FCC to "clarify" the scope of Section 230 of the Communications Decency Act—based on an unproven claim of conservative bias. Chairman Pai's decision to entertain the unconstitutional effort by the President has contributed to the Trump Administration's efforts to bully platforms into moderating content in a method that is politically acceptable to those in the administration.

In comments filed with the FCC, OTI and our affiliate program Ranking Digital Rights urged the FCC to reject any further consideration of the petition. The NTIA's petition is illegitimate on so many grounds, from the unsubstantiated claims regarding the Commission's rulemaking authority in this area to the petition's unconstitutional proposal for the government to dictate how private companies moderate the content on their platforms. Committee members should seek clarity from Commissioners about whether the FCC has the authority to promulgate regulations over social media companies and how they would justify moving forward with a petition that would clearly undermine the free expression of underserved communities online.

We applaud this committee for conducting today's oversight hearing and look forward to working with you on ways to correct the past four years of lost opportunities at the FCC.

Sincerely,

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Attachments: OTI's *Cost of Connectivity 2020* Report, July 2020
OTI's FCC Comments on NTIA's Section 230 Petition, August 2020