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# Committee Report

**CONSENT CALENDAR**

**March 7, 2019**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Science, Technology and Energy to  
which was referred HB 132-FN,**

**AN ACT relative to net neutrality. Having considered  
the same, report the same with the following resolution:**

**RESOLVED, that it is INEXPEDIENT TO LEGISLATE.**

**Rep. Lee Oxenham**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	Science, Technology and Energy
Bill Number:	HB 132-FN
Title:	relative to net neutrality.
Date:	March 7, 2019
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

### STATEMENT OF INTENT

The size of the fiscal note, combined with the threat of legal action against the state by the national telecommunications companies, convinced the committee to unanimously recommend that the bill not pass.

Vote 16-0.

Rep. Lee Oxenham  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

Science, Technology and Energy

**HB 132-FN**, relative to net neutrality. **INEXPEDIENT TO LEGISLATE.**

Rep. Lee Oxenham for Science, Technology and Energy. The size of the fiscal note, combined with the threat of legal action against the state by the national telecommunications companies, convinced the committee to unanimously recommend that the bill not pass. **Vote 16-0.**

Original: House Clerk

Cc: Committee Bill File

## Stapler, Carol

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**From:** Backus, Bob  
**Sent:** Thursday, January 31, 2019 10:40 AM  
**To:** Lee Oxenham  
**Cc:** Stapler, Carol  
**Subject:** Re: Fwd: Committee Report on HB 132

This looks fine.

On Jan 31, 2019 9:30 AM, leexenham <[leexenham@comcast.net](mailto:leexenham@comcast.net)> wrote:

I spoke to Carol, and she said you have the committee report on this. Here is a second version.

Lee

Sent from my Galaxy Tab® S2

----- Original message -----

**From:** leexenham <[leexenham@comcast.net](mailto:leexenham@comcast.net)>  
**Date:** 1/31/19 6:22 AM (GMT-05:00)  
**To:** "Stapler, Carol" <[Carol.Stapler@leg.state.nh.us](mailto:Carol.Stapler@leg.state.nh.us)>  
**Subject:** Committee Report on HB 132

[ The size of the fiscal note, combined with the threat of legal action against the state by the national telccoms, convinced the committee to unanimously recommend TIL. ]

Dear Carol,



I hope your doctor's appointment went well and that you are feeling much better!

Lee

Sent from my Galaxy Tab® S2

COMMITTEE REPORT

COMMITTEE: STE

BILL NUMBER: HB 132

TITLE: Net Neutrality

DATE: 1/30/19 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No. _____
------------------------

STATEMENT OF INTENT:

Despite the fact that the Bill was carefully drafted to limit its reach to state procurement contracts, the LBA attached an ~~excessive~~ generous fiscal note. ~~which~~ In combination with the threat of legal action against the state by the national telecom industry, the committee unanimously decided to recommend FTL.

COMMITTEE VOTE: Unanimous 16 - 0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. *[Signature]*  
For the Committee

# Voting Sheets

HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY AND ENERGY

EXECUTIVE SESSION on HB 132-FN

**BILL TITLE:** relative to net neutrality.

**DATE:** January 30, 2019

**LOB ROOM:** 304

**MOTIONS:** INEXPEDIENT TO LEGISLATE

Moved by Rep. Oxenham

Seconded by Rep. Cali-Pitts

Vote: 16-0

**CONSENT CALENDAR: YES**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Lee Oxenham, Clerk



HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY AND ENERGY

EXECUTIVE SESSION on HB 132-FN

10:03 am

BILL TITLE: relative to net neutrality.

DATE: 1-30-19

LOB ROOM: 304

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1<sup>st</sup> year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. Oxenham Seconded by Rep. Calli-Pitts Vote: 16-0

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1<sup>st</sup> year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1<sup>st</sup> year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1<sup>st</sup> year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

CONSENT CALENDAR:  YES  NO

Minority Report?  Yes  No If yes, author, Rep: \_\_\_\_\_ Motion \_\_\_\_\_

Respectfully submitted: Lee Oxenham  
Rep Lee Oxenham, Clerk



2019 SESSION

Science, Technology and Energy

Bill #: HB 132-PN Motion: ITL AM #: \_\_\_\_\_ Exec Session Date: 1-30-19

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
	<del>*</del>		
Backus, Robert A. Chairman	X		
Moffett, Howard M. Vice Chairman	X		
Cali-Pitts, Jacqueline A.	X		
Mann, John E.	X		
Oxenham, Lee Walker Clerk	X		
Somssich, Peter F.			X
Vincent, Kenneth S.			X
Balch, Chris			X
McGhee, Kat	X		
McWilliams, Rebecca J.			X
Saunderson, George L.	X		
Wells, Kenneth D.	X		
Harrington, Michael D.	X		
Notter, Jeanine M.	X		
Aldrich, Glen C.	X		
Thomas, Douglas W.	X		
Merner, Troy E.	X		
Ober, Russell T.	X		
Webb, James C.	X		
Plett, Fred R.	X		
<b>TOTAL VOTE:</b>			

16

0

[4]

# Hearing Minutes

HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY AND ENERGY

PUBLIC HEARING ON HB 132-FN

**BILL TITLE:** relative to net neutrality.

**DATE:** January 22, 2019

**LOB ROOM:** 304 **Time Public Hearing Called to Order:** 1:31 pm

**Time Adjourned:** 1:55 pm

**Committee Members:** Reps. Backus, Moffett, Oxenham, Cali-Pitts, Mann, Somssich, Vincent, Balch, McGhee, McWilliams, Saunderson, Wells, Harrington, Notter, Aldrich, D. Thomas, Merner, R. Ober, Webb and Plett

**Bill Sponsors:**

Rep. Oxenham

Rep. Abramson

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Lee Oxenham, prime sponsor** - In August 2018 the members of this committee received an email from William Lyons, a high school senior in Woodstock, NH. William participated in the YMCA Youth and Government program, in which students from all over our state meet in our legislative chambers, hold a mock state legislature, and draft bills on issues of concern. William, who is currently pursuing a political science degree at Rensselaer Polytechnic Institute, proposed a bill dealing with net neutrality. I replied to William's email, talked to him about his bill and forwarded it to OLS, asking them to take his very broad and sweeping bill – suitable for action at the federal level - and come up with a more narrow, state specific bill; one that would pass muster and not run afoul of the dormant commerce clause. OLS transformed it into a fairly narrow, state procurement bill – limiting the state to contracting only with those entities that could demonstrate compliance with the principles of net neutrality. As you can see the bill has been hit with a damning Fiscal Note - on the basis of the contention that such compliance would demand substantial additional state staffing. The bill has also run afoul of the telecom companies who have raised the issue of a potential lawsuit against the state of NH should this bill be enacted. In late December the telecoms offered a compromise which would have required transforming the bill into a Resolution directed to our Congressional delegation, but that effort fell afoul of a series of legislative deadlines. A final effort to bring it before the Rules Committee also failed. All in all, between the absurdly large Fiscal Note, and the threat of legal action against the state, I do not believe this bill has any chance of passing this committee or the legislature as a whole. (From Rep. Oxenham's notes.)

**Q: Rep. Kat McGhee** - Would an amendment be viable?

**A:** Yes.

**Q: Rep. Doug Thomas** - Is this bill similar to laws in Vermont & California?

**A:** I believe so.

**Q:** Both states had those statutes overturned by courts?

**A:** Yes, I believe so.

**Kath Mullholand, PUC** - Informational testimony only.

**\*Jeanne Hruska, ACLU-NH** - Supports. See written testimony. Ms. Hruska supported the Bill, but not the recommendation to ITL. She stated that ACLU's lawyers had vetted the Bill and considered it a very creative way to support net neutrality at the state level. Ms. Hruska suggested that if the sponsor wanted to work with the ACLU that she believed an amendment could be developed.

Rep. Oxenham stated that the effort was unlikely to be useful, as the Bill would still carry the crippling Fiscal Note. But she added that if such an amendment were to be produced, she could support a recommendation of OTPA.

**\*Tim Wilkerson, New England Cable & Telecommunications Assn.** -

Opposes; see written testimony. Mr. Wilkerson supported the sponsor's recommendation of ITL. He argued that this issue is inextricably bound up with interstate commerce, and thus should only be dealt with at the federal level. He said that it would be impossible to deal with a national, really a global, entity like the Internet with a patchwork of 50 sets of rules. As it is the FCC, FTC, the Justice department and the individual states' AGs provide all the protections consumers need.

**Gerry Keegan, CTIA (trade association for wireless communications industry)** - Opposes.; see written testimony. Mr. Keegan advanced similar arguments to those of Mr. Wilkerson.

By clerk, Rep. Doug Thomas:

Rep. Lee Oxenham, prime sponsor - Explains history of the bill. Notes large fiscal note, very hefty. Notes potential lawsuit from ISP. Needs more time to revise, perhaps by next year. Therefore, recommends ITL at this time.

Respectfully Submitted:



Doug Thomas, Acting Clerk & Lee Oxenham, Clerk



1/22/19

STE

HB132-FN

PH

S - 1:31 pm

F - 1:55 pm

Rep Openham - intro bill.

Explains history of bill. Notes large fiscal note, very hefty. Notes potential lawsuit from ISP.

Needs more time to revise, perhaps by next year.

Therefore, recommends ITR at this time.

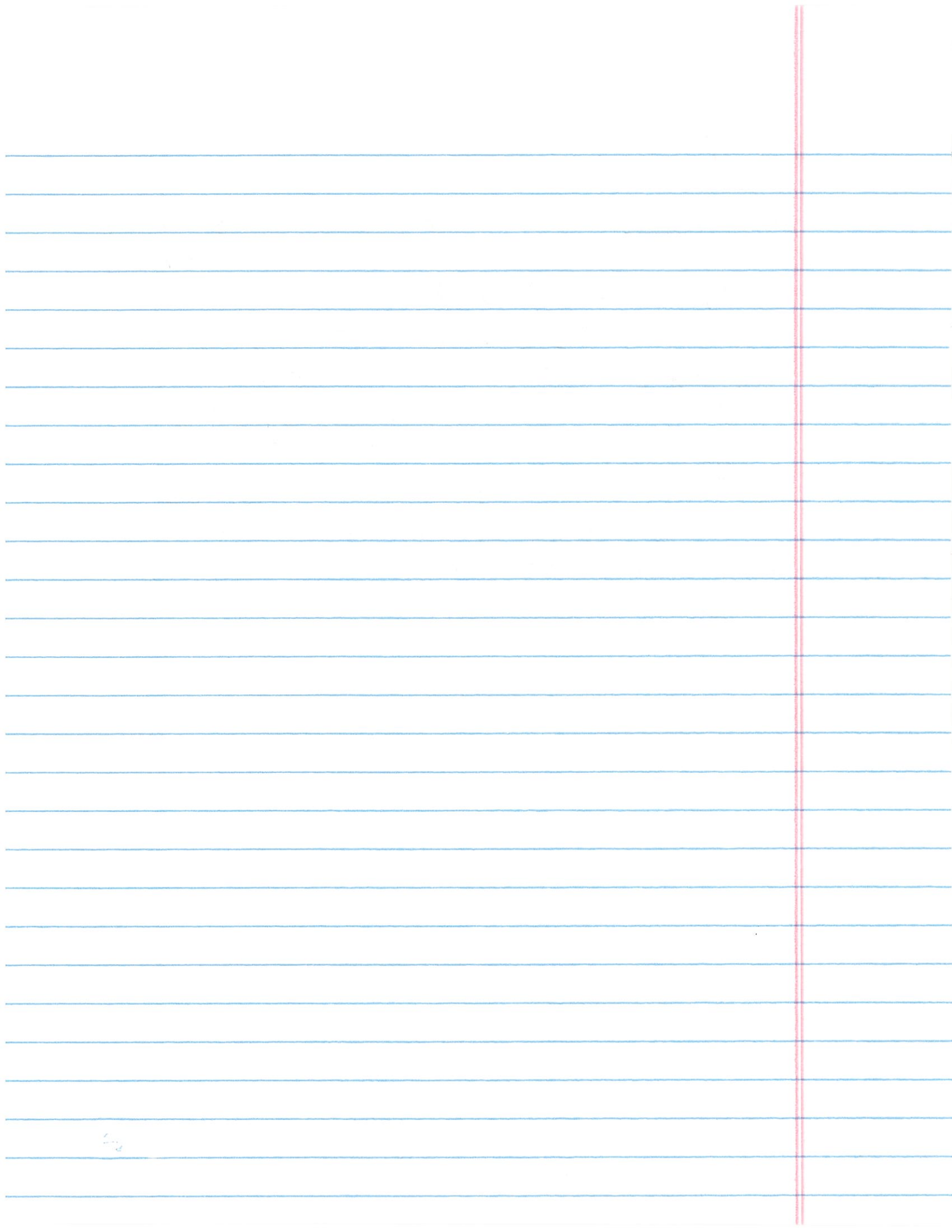
Q - <sup>Mcbee</sup> would amendment be viable? - A, yes

Q - DT. is bill similar to VT and CA? A - believe

so F - both states had bills overturned by courts?

A. yes.





Public Hearing on HB 132 – January 22, 2019

Prime sponsor – Rep. Lee Oxenham - written testimony submitted

The Bill was originally proposed by William Lyons, a high school senior from Woodstock, NH, who had participated in the 2018 YMCA Youth and Government program. Rep Oxenham forwarded the Bill to OLS, with the request for a narrow, state specific bill, that would not run afoul of the dormant commerce clause. OLS drafted a fairly narrow, state procurement Bill – limiting the state to contracting only with those entities that could demonstrate compliance with the principles of net neutrality.

However, the Bill was hit with a damning Fiscal Note, based on a purported need for substantial additional state staffing. The Bill has also run afoul of the telecom companies who raised the issue of a potential lawsuit against the state should the Bill be enacted. An effort to transform the Bill into a Resolution directed to our Congressional delegation fell afoul of a series of legislative deadlines, and a final effort to bring it before the Rules Committee also failed. In summary, the sponsor stated that between the absurdly large Fiscal Note, and the threat of legal action against the state, she did not believe the Bill had any chance of passing the committee or the legislature as a whole.

The chair asked the prime sponsor for a Recommendation for committee action.

Rep. Oxenham– Of necessity, I recommend ITL.

**1 - Jeanne Hruska –ACLU of NH – written testimony submitted**

Ms. Hruska supported the Bill, but not the recommendation to ITL

She stated that ACLU’s lawyers had vetted the Bill and considered it a very creative way to support net neutrality at the state level. Ms. Hruska suggested that if the sponsor wanted to work with the ACLU that she believed an amendment could be developed.

Rep. Oxenham stated that the effort was unlikely to be useful, as the Bill would still carry the crippling Fiscal Note. But she added that if such an amendment were to be produced , she could support a recommendation of OTPA.

**2 - Tim Wilkerson – New England Cable and Telecom Association - written testimony submitted**

Mr. Wilkerson supported the sponsor’s recommendation of ITL. He argued that this issue is inextricably bound up with interstate commerce, and thus should only be dealt with at the federal level. He said that it would be impossible to deal with a national, really a global, entity like the Internet with a patchwork of 50 sets of rules. As it is the FCC, FTC, the Justice department and the individual states’ AGs provided all the protections consumers needed.

**3 Gerald Keegan, VP State Legislative Affairs, CTIA, the trade association for the wireless telecommunications industry – written testimony supplied**

Mr. Keegan advanced similar arguments to those of Mr. Wilkerson.

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# Testimony

## Written Testimony on HB 132

Submitted by the primary sponsor – Rep. Lee Oxenham

In August 2018 the members of this committee received an email from William Lyons, a high school senior in Woodstock, NH. William participated in the YMCA Youth and Government program, in which students from all over our state meet in our legislative chambers, hold a mock state legislature, and draft bills on issues of concern. William, who is currently pursuing a political science degree at Rensselaer Polytechnic Institute, proposed a Bill dealing with net neutrality.

I replied to William's email, talked to him about his Bill and forwarded it to OLS, asking them to take his very broad and sweeping bill – suitable for action at the federal level - and come up with a more narrow, state specific bill; one that would pass muster and not run afoul of the dormant commerce clause. OLS transformed it into a fairly narrow, state procurement Bill – limiting the state to contracting only with those entities that could demonstrate compliance with the principles of net neutrality.

As you can see the Bill has been hit with a damning Fiscal Note –on the basis of the contention that such compliance would demand substantial additional state staffing.

The Bill has also run afoul of the telecom companies who have raised the issue of a potential lawsuit against the state of NH should this Bill be enacted. In late December the telecoms offered a compromise which would have required transforming the Bill into a Resolution directed to our Congressional delegation, but that effort fell afoul of a series of legislative deadlines. A final effort to bring it before the Rules Committee also failed.

All in all, between the absurdly large Fiscal Note, and the threat of legal action against the state, I do not believe this Bill has any chance of passing this committee or the legislature as a whole.

**HB 132, Net Neutrality**

**From:** Curt Howland <Howland@priss.com> (Acolytes of the Goddess Priss)  
**To:** [HouseScienceTechnologyandEnergy@leg.state.nh.us](mailto:HouseScienceTechnologyandEnergy@leg.state.nh.us)  
**Date:** 2019-01-20 10:51

**Not enough information to check signature validity.**[Show Details](#)

To: The New Hampshire House Science and Technology Committee.

Re: HB 132, Net Neutrality

Mr. Chairman, Committee Members,

My name is Curtis Howland. I have worked as a computer network engineer in Massachusetts for General Electric Plastics, at NASA Ames Research Center in California, and for Internet service provider startups and private companies in California and Tokyo. I started using dial-up modems in 1983 with Compuserve, then Delphi, Genie, and other private, and then Internet, services.

At this time, I work in Bedford, NH, for Single Digits, which provides customer Internet and network support services for hotels, conference centers, and commercial venues across Canada, the US, Mexico, and the Caribbean.

I would like to say a few words on the issue of Net Neutrality.

Internet traffic is not free for anyone. Both the user, and the owner of the service the user is accessing, pay for that traffic. Each pays their own service provider, and each service provider pays for the connections between service providers. The result is every user can reach every server, everywhere.

Service providers compete with each other to provide the fastest, least expensive access for their customers to those "connections between service providers" and so to everyone else's customers. Service providers big and small, like AT&T, Comcast, Sprint, British Telecom, Level 3, Google, and all the rest, understand that it is in their best interest to ensure their own customers can reach everyone else's customers as quickly as possible.

This is because if either of the two-sides of every Internet session doesn't work, or is perceived by the user as "slow", it is treated as a network failure. This generates service calls. Service calls cost money for technical support. And if the customer, whoever that customer may be, is not happy, they will take their business elsewhere.

Would you buy telephone service from a company that couldn't call your brother in Texas? Of course not!

Network Neutrality legislation is trying to fix a problem that does not exist. Slowing connections to other service providers has been tried. I've seen it in my own experience as a network engineer. The firms that tried it are gone, bankrupt, because no one would use a service where there are servers and customers that could not be reached quickly, whatever the reason.

I urge the committee to reject any legislation that tries to solve

this non-existent problem, because any such regulation would restrict the efforts of engineers, like myself, in finding ways to provide the best service to my customers.

Some providers try to make extra money by overselling their service, and then blame the slow network connection on YouTube or Netflix, as if YouTube and Netflix are somehow "abusing" the network. It's a bald faced lie. The providers are overselling and trying to blame everyone else for the problem they created. "Net Neutrality" was started as a Red Herring to try to distract people from the real problem, the monopoly grants which last-mile service providers like Fairpoint, Comcast, and many cableTV companies enjoy, which create a captive customer base which they can oversell without competition.

As noted in Statement of Findings part VI of HB 132, these monopolies prevent customers from easily choosing between different service providers. These monopolies allow the existing providers to play games with what services are available and at what speeds without concern their customers could easily choose another provider.

The best way the New Hampshire legislature could help the people of New Hampshire get the best possible Internet service would be to repeal any and all grants of monopoly currently enjoyed by such firms as Comcast, Fairpoint, and the other telephone and cableTV providers.

What is needed in New Hampshire is more competition between service providers, not state regulation. It is competition through which customers find the best service for their needs, and which forces service providers to give people what they really want.

Thank you for your time and attention.

Curtis Howland  
373 South Willow St. #239  
Manchester, NH 03103  
603.512.3414

**End of signed message**





January 22, 2019

Honorable Robert Backus  
New Hampshire House of Representatives  
Chair, House Science, Technology & Energy Committee  
107 North Main Street  
Concord, NH 03301

Dear Chair Backus:

On behalf of CTIA, the trade association for the wireless communications industry, I write to oppose House Bill 132. CTIA and its member companies support a free and open internet. To further that goal, we support a federal legislative solution to enshrine open internet principles. CTIA, however, respectfully opposes piecemeal state regulation of mobile wireless broadband, a truly interstate service, like HB132.

The mobile wireless broadband marketplace is competitive and an engine of innovation, attracting billions of dollars in network investment each year. From the beginning of the Internet Age in the 1990s through the start of the 21<sup>st</sup> century, the Federal Communications Commission (FCC) applied a regulatory framework to internet service that allowed providers to invest, experiment, and innovate. In that time, an entire internet-based economy grew. But in 2015, the FCC dramatically changed course, applying for the first time 80-year-old common-carrier mandates meant for traditional monopoly public utilities, such as landline phone service, to broadband internet access.

In 2017, the FCC's *Restoring Internet Freedom* Order reversed that 2015 decision, finding that application of 1930s utility-style rules to the internet services of today actually harmed American consumers. The FCC cited extensive evidence showing a decline in broadband infrastructure investment – an unprecedented occurrence during an era of economic expansion. In the mobile broadband market alone, annual capital expenditures fell from \$32.1 billion in 2014 to \$26.4 billion in 2016. This slowdown affected mobile providers of all sizes and serving all markets. For example, small rural wireless providers noted that the 2015 decision burdened them with unnecessary and costly obligations and inhibited their ability to build and operate networks in rural America.

With its action in 2017, the FCC restored the same national regulatory framework that applied before 2015, which is credited with facilitating the internet-based economy we have today. Under that national regulatory framework, mobile wireless broadband providers have every incentive to invest in and deliver the internet services that consumers demand.



Further, consumers continue to have legal protections that complement the competitive forces in play. First, the FCC's current regulations include a "transparency" rule, which requires broadband providers to publicly disclose extensive information about their performance, commercial terms of service, and network management practices to consumers and internet entrepreneurs. Second, the Federal Trade Commission (FTC) has authority to police broadband offerings in applicable cases. This extends to any unfair and deceptive practices, including but not limited to, any violation of the transparency rules and ISP public commitments.

Third, the Department of Justice enforces federal antitrust laws, which preclude anticompetitive network management practices. Finally, the FCC made clear in its 2017 Order that generally applicable state laws relating to fraud and general commercial dealings apply to broadband providers just as they would to any other entity doing business in a state, so long as such laws do not regulate broadband providers in a way that conflicts with the national regulatory framework to broadband internet access services. Thus, New Hampshire remains empowered to act under its UDAP statute.

In short, New Hampshire consumers are well protected against anti-competitive or anti-consumer practices. They enjoy protections provided by the FCC, the FTC, federal antitrust law, and – importantly – existing New Hampshire state law.

The internet, however, is not something that stops at state boundaries. Consumers regularly access content from across the country and around the world. In its 2017 Order, the FCC explained that broadband internet access is inherently interstate and global and found broadband-specific state laws are unlawful and preempted by federal law. The FCC recognized that state or local laws imposing net neutrality mandates, or that interfere with the federal preference for national regulation of broadband internet access, are impermissible. This is nothing new: even in its 2015 Order, the FCC had concluded that contrary state laws governing broadband internet access are preempted.

Several states have nonetheless adopted net neutrality laws and regulations, but the futility of doing so is becoming clear. California enacted a net neutrality law that was immediately challenged in court by the Justice Department, the FCC, and a group representing broadband providers, including CTIA. Before even a preliminary hearing in the case, the California Attorney General stipulated to non-enforcement of the law pending judicial review of the 2017 Order.

Likewise, when a net neutrality bill was proposed in the Vermont legislature, that state's own Public Service Department issued a memo in which it "strongly caution[ed]" that the legislation "would likely run afoul of" the FCC's rules and warned that "a federal court is likely to be highly skeptical [of] and disinclined to uphold any law that directly or indirectly seeks to legislate or regulate net-neutrality." The law was nevertheless enacted,



and is now facing its own court challenge, based in part on the analysis of the state's own Public Service Department.

In closing, it is unnecessary to pass state legislation on this issue due to the strong consumer protections currently in place. Additionally, state-by-state rules would be especially burdensome, difficult to comply with, costly, and subject net neutrality requirements to differing state interpretations and enforcement – creating further business uncertainty. Accordingly, I urge this committee recommend HB 132 as inexpedient to legislate.

Sincerely,

Gerard Keegan  
Vice President  
State Legislative Affairs

**HB 132, Net Neutrality**

**From:** Curt Howland <Howland@priss.com> (Acolytes of the Goddess Priss)  
**To:** [HouseScienceTechnologyandEnergy@leg.state.nh.us](mailto:HouseScienceTechnologyandEnergy@leg.state.nh.us)  
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**Not enough information to check signature validity.**[Show Details](#)

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Mr. Chairman, Committee Members,

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At this time, I work in Bedford, NH, for Single Digits, which provides customer Internet and network support services for hotels, conference centers, and commercial venues across Canada, the US, Mexico, and the Caribbean.

I would like to say a few words on the issue of Net Neutrality.

Internet traffic is not free for anyone. Both the user, and the owner of the service the user is accessing, pay for that traffic. Each pays their own service provider, and each service provider pays for the connections between service providers. The result is every user can reach every server, everywhere.

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As noted in Statement of Findings part VI of HB 132, these monopolies prevent customers from easily choosing between different service providers. These monopolies allow the existing providers to play games with what services are available and at what speeds without concern their customers could easily choose another provider.

The best way the New Hampshire legislature could help the people of New Hampshire get the best possible Internet service would be to repeal any and all grants of monopoly currently enjoyed by such firms as Comcast, Fairpoint, and the other telephone and cableTV providers.

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Thank you for your time and attention.

Curtis Howland  
373 South Willow St. #239  
Manchester, NH 03103  
603.512.3414

**End of signed message**



**New England Cable & Telecommunications Association, Inc.**  
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New England Cable & Telecommunications Association, Inc.

## **NECTA Testimony in Opposition to HB 132 – Relative to Net Neutrality**

**January 22, 2019**

Good afternoon Chairman Backus and esteemed Members of the House Science, Energy and Technology Committee. My name is Tim Wilkerson, and I am Vice President and General Counsel for the New England Cable and Telecommunications Association (“NECTA”).

### **I. Introduction**

NECTA is a five-state regional trade association representing substantially all private cable telecommunications companies in New Hampshire, Connecticut, Massachusetts, Rhode Island, and Vermont. In New Hampshire, NECTA represents Atlantic Broadband, Charter, and Comcast. Together, NECTA members invest over \$400 million annually in the state and collectively we employ more than 3200 New Hampshire residents.

I appreciate the invitation to discuss with this Committee and your fellow legislators about Internet service providers (“ISPs”) longstanding commitment to the “net neutrality” principles ensuring an open Internet and to call on Congressional action to codify these protections under a clear, modern, and enduring law.

### **II. NECTA Members Ongoing Commitment to Net Neutrality Principles**

NECTA members do not block, throttle, or otherwise interfere with the lawful online activity of our customers and have consistently agreed to these commitments since the Federal Communications Commission (“FCC”) first issued them in the Transparency Rule as part of the 2010 *Open Internet Order*. It is important to underscore that these commitments are more than a mere pledge. They have been a part of our companies’ operating DNA for nearly a decade.

With the FCC memorializing the Transparency Rule in its *Restoring Internet Freedom Order* (“*RIF Order*”), Internet Service Providers (“ISPs”) network management practices and performance and commercial terms of service are now legally enforceable by state and federal agencies. (See Exhibit A) These mandatory disclosures are robust, clear commitments to their customers to uphold an open Internet. (See Exhibit B)

### **III. Overview of Existing State and Federal Oversight and Enforcement**

Today the State Attorneys General, the Federal Trade Commission (“FTC”), FCC, and the United States Justice Department (“DOJ”) have well established authority to protect consumers

and preserve the open Internet. At the state level, Attorneys General can sue ISPs who engage in unfair or deceptive trade practices under existing state consumer protection laws.

To ensure an open Internet, the FTC is once again the principle agency with regulatory oversight over ISPs. The FCC's 2017 *Restoring Internet Freedom Order* ("*RIF Order*") returns online consumer protection authority to the FTC, the "top federal cop on the beat" for the past twenty years. Importantly, last year the Court of Appeals for the Ninth Circuit reaffirmed that the FTC may investigate and bring actions against Internet companies for illegal activity. Therefore, the FTC will continue to vigorously pursue investigations and enforcement actions against any ISP for unfair, deceptive and anticompetitive practices including violations in their public disclosure notices, marketing, advertising and promotional materials.

Additionally, the FCC, in coordination with the FTC, continues to require ISPs to publicly disclose information about their practices to consumers. Finally, the DOJ can enforce antitrust laws if ISPs act in an anticompetitive manner or illegally reach agreements that unfairly interfere with the lawful online content or conduct of consumers or companies.

#### **IV. Federal Law Preempts State Attempts to Impose Net Neutrality Requirements Through Conditions on State Procurement of Contracts or Similar Measures**

For more than twenty years, the FCC has recognized that broadband access is intrinsically interstate for regulatory purposes. Given its inherently interstate nature, the FCC has repeatedly determined that broadband must be governed by a comprehensive, national regulatory framework and consistently exercised its preemption authority to preclude states from imposing obligations that are inconsistent with federal regulatory frameworks. Federal Courts have also affirmed the centralized authority of the FCC to govern ISPs.

Following policy originated under President Clinton and in place for six out of the eight years of the Obama Administration, the *RIF Order* reestablishes that federal regulation of the Internet ecosystem should be based on the pro-competitive, deregulatory goals of the 1996 Telecommunications Act. The *RIF Order* reaffirms that broadband service should be governed by a uniform set of federal requirements rather than a disjointed patchwork of state and local regulations. In the *RIF Order*, the FCC expressly preempted states and localities from imposing conditions or obligations on ISPs. On February 6, 2018, Boston College Law School Associate Professor Daniel Lyons testified before the Massachusetts Senate Special Committee on Net Neutrality and Consumer Protection and cited the *RIF Order's* strong preemption language as expressly preventing state net neutrality efforts. (See Exhibit C) Furthermore, in the *RIF Order* the FCC stated that permitting state and local governments to adopt separate, and more burdensome, requirements for ISPs, could significantly disrupt the oversight balance established by federal law. Such state and local conditions could impair the Internet ecosystem by requiring ISPs to comply with a patchwork of likely conflicting requirements across different jurisdictions.

Federal Courts have found that states may not directly or indirectly circumvent preemption by using their spending powers to regulate broadband service. The Supreme Court has clearly ruled that a state may not use its spending power as a means to regulate indirectly what it is preempted

to regulate directly. (See Exhibit C Prof. Lyon’s discussion on the unconstitutionality of a Massachusetts law regulating business activity with the nation of Burma. That case illustrates the power of federal preemption.) Under the market participant doctrine, the Supreme Court has found that a state may not purchase products and services for its own use where such action is, for practical purposes, equivalent to state regulation. Furthermore, this doctrine does not permit a state to “boycott” an ISP on the basis of net neutrality. The Supreme Court has found that where a private purchaser may refuse to deal with a supplier on the basis of a policy concern rather than a profit motive, such action, if engaged in by a state, would trigger preemption.

## **V. Net Neutrality Litigation**

The *2017 Restoring Internet Freedom Order* was challenged in the D.C. Circuit Court of Appeals by multiple state attorneys general, consumer groups, and other interests. Oral arguments are scheduled for February 1, 2019. Over the course of 2018, four states passed net neutrality legislation (California, Oregon, Vermont, Washington) and six governors issued executive orders instituting net neutrality requirements in state procurement (Hawaii, Montana, New Jersey, New York, Rhode Island, Vermont).

There is now litigation in two states over these state-enacted laws – California and Vermont. Within hours of California Governor Jerry Brown signing SB822, the United States Department of Justice sued to block the law, arguing that it is invalid under both conflicting federal law and the United States Constitution. A broad set of industry participants filed amicus briefs in the case as well. Industry has also filed a suit to stop Vermont from enforcing its net neutrality law and executive order, and that process is ongoing.

Not long after the California suit was filed, California Attorney General Xavier Becerra entered into an agreement to suspend any enforcement of California’s net neutrality law and to not litigate the US DOJ suit, acknowledging that until the DC Circuit Court (and likely then the United States Supreme Court) decided whether the FCC had the authority to preempt states from passing separate and conflicting laws, the State of California had no legal ability to defend its law.

This is because California, as well as any other state with a law under challenge, must acknowledge the Hobbs Act, a federal law which, as applied to the net neutrality context, requires courts to treat the FCC’s preemption analysis in the RIF Order as binding on the states. Because of the abovementioned multi-state challenge, the Restoring Internet Freedom Order is currently before the D.C. Circuit, and therefore only the D.C. Circuit can review whether the FCC had the authority to preempt the states from adopting their own net neutrality rules. Until the D.C. Circuit rules on that question, any courts reviewing challenges to state net neutrality laws must treat the FCC’s preemption as valid and rule in favor of federal preemption.

The articles in exhibits E and F further explain these dynamics and the difficulty states will have in enforcing any net neutrality laws they may try to pass.



## **VI. NECTA Supports Bipartisan Congressional Action to Establish Enduring Consumer Protections by Codifying the Net Neutrality Principles to Ensure an Open Internet**

A wide variety of ISPs, including wired, wireless and satellite providers, support Congressional action to enact bipartisan legislation that preserves the principles of no blocking, throttling, or unfair discrimination of lawful material or conduct. ISPs supported the FCC's repeal of the 2015 *Title II Order* to end the ongoing regulatory ping pong of federal oversight between Democratic and Republican controlled FCCs. The two-year-old *Title II Order* reversed two decades of proven federal oversight of ISPs and in its place, imposed an archaic, legacy regulatory scheme that was originally established in the 1930s to regulate telephone companies.

Without Congressional action, Internet consumer protection rules will continue to be a political football that diverts time and resources away from innovation and job creation. By permanently rejecting outdated, 1930s style Title II regulations and adopting a modern law, Congress would achieve the right policy balance of government oversight of ISPs while fostering private investment and market competition.

## **VII. Overview of New Hampshire's Vibrant and Competitive Internet Ecosystem and the Disruptive Risks and Unintended Consequences of State Regulation of ISPs**

Historically, New Hampshire has adopted a modern, light-touch regulatory regime over the telecommunication marketplace that spurred industry competition leading to a convergence of residential and business consumer video, broadband, voice, and wireless offerings from new service providers at lower costs. As a result of this approach to the state's telecommunications law, the network quality and diversity of products offered by the companies in the state is virtually unparalleled.

Over the past decade, NECTA members' maximum Internet speeds have increased dramatically. Residential Internet speeds, delivered through approximately thousands of miles of fiber networks, reach speeds of up to two Gigabits. For business services, NECTA members provide top Internet speeds that any retailer, university research and development facility, financial services company, or hospital could demand. Importantly, New Hampshire cable providers have actively deployed what is known as DOCSIS 3.1 technology to provide even faster, more reliable data speeds and features (DOCSIS 3.1 can deliver 1 to 10 gigabit speed levels). This investment is reflected in New Hampshire's impressive broadband performance, in Ookla's recent *2018 Speedtest Fixed U.S. Broadband Performance Report* the state's mean download speed was 99.81 Mbps in excess of the national average. Additionally, these services are widely available with the most recent FCC deployment data showing broadband speeds available to more than 94% of New Hampshire and fully 99.7% of the population has access to wired broadband or 4G LTE. Because of the predictable regulatory environment and ISPs multi-billion dollar investments in the state's broadband infrastructure, New Hampshire's overall innovation ecosystem— life sciences, aerospace, advanced precision manufacturing, and beyond— is world class.

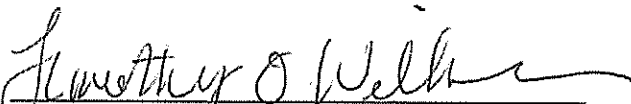
Today NECTA members' advanced networks and operating systems have the capacity to not only meet but exceed consumer demand. Our members' network superiority is highlighted by the most recent *Netflix ISP Speed Index* ranking Comcast as one of the top two ISPs for prime-time Netflix performance in the world. (See Exhibit G) As ISPs product offerings evolve to increasingly include mobile services, Internet of Things ("IoT") products, telehealth options, and other transformative business lines, the consumer experience is becoming hyper personal. These innovations have been powered by the delivery of broadband services under predictable and national and state regulatory schemes. By enacting legislation (like HB 132) the New Hampshire legislature will disrupt two decades of regulatory certainty and contribute to the creation of a disjointed patchwork of inconsistent state Internet laws. Policing the Internet on a state-by-state basis is fraught with risk, costly to both state governments and the private sector.

### **VIII. Conclusion**

NECTA members strongly support and adhere to the principles of net neutrality, including no blocking, throttling, discriminating or otherwise interfering with the lawful online activity of our customers. We believe the best way to achieve lasting consumer protections and an open Internet is through a national policy framework that is established through bipartisan federal legislation. Codifying these protections under a clear, modern, and enduring law along with existing state and federal enforcement authority, will prevent unnecessary disruptions and the unintended consequences that would ensue from a patchwork of state regulation of the Internet.

Respectfully,

Dated: January 22, 2019

  
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Timothy O. Wilkerson  
Vice President & General Counsel



## Consumer Guide

### Open Internet Transparency Rule

The FCC is focused on ensuring that every American has access to robust high-speed Internet service – better known as broadband – to harness the benefits of broadband-enabled technology and improve lives. That access includes the right to accurate information so consumers can choose, monitor and receive the broadband Internet services they have been promised.

The FCC's Open Internet Transparency Rule empowers consumers to make informed choices about broadband services. The Rule requires that what providers tell you about their broadband service is sufficient for you to make informed choices – including choices about speed and price. The Rule also requires that providers' information about their broadband service must be accurate and truthful.

The rule covers disclosures about "network management practices, performance, and commercial terms of service." The rule applies to service descriptions, including, for example, expected and actual broadband speed and latency. The rule also applies to pricing, including monthly prices, usage-based fees, and any other additional fees that consumers may be charged. Additionally, it covers providers' network management practices, such as congestion management practices and the types of traffic subject to those practices.

The FCC monitors how well providers disclose the broadband speed they give consumers, and at what price, and is concerned about providers who make false, misleading, or deceptive statements to consumers about the services they provide.

For a report on service providers' broadband performance, see the FCC's Measuring Broadband America report: [www.fcc.gov/measuring-broadband-america](http://www.fcc.gov/measuring-broadband-america).

#### Test your mobile broadband speed

The FCC encourages you to test your broadband speeds using any number of free, online tests, and notify the FCC if your service doesn't measure up to your provider's advertised speed.

To test mobile broadband performance on iPhone and Android devices, use the FCC's Mobile Broadband Speed Test App. Learn more: [www.fcc.gov/measuring-broadband-america/mobile](http://www.fcc.gov/measuring-broadband-america/mobile).

#### Notify the FCC about open Internet transparency issues

Providers that violate the transparency rule harm consumers and may be subject to enforcement action, which potentially includes monetary penalties prescribed under the Communications Act. Please notify the FCC about your concerns of possible violations of the Open Internet Transparency Rule.

#### Filing a complaint

You have multiple options for filing a complaint with the FCC:

- File a complaint online at <https://consumercomplaints.fcc.gov>
- By phone: 1-888-CALL-FCC (1-888-225-5322); TTY: 1-888-TELL-FCC (1-888-835-5322); ASL: 1-844-432-2275



- By mail (please include your name, address, contact information and as much detail about your complaint as possible):

Federal Communications Commission  
Consumer and Governmental Affairs Bureau  
Consumer Inquiries and Complaints Division  
445 12th Street, S.W.  
Washington, DC 20554

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Last Reviewed: 1/17/17





## EXHIBIT B

# Reconfirming Comcast's Commitment to an Open Internet and Net Neutrality

By David L. Cohen, Senior Executive Vice President and Chief Diversity Officer

As the FCC prepares to vote [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/04/01/DOC-347868A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/04/01/DOC-347868A1.pdf) on new Open Internet rules <http://www.fcc.gov/document/proposal-restore-internet-freedom> that will open the door for increased investment and digital innovation, there is a lot of misinformation that this is the "end of the world as we know it" for the Internet. It's important to take a moment, step back, and make clear what is happening here – and what is not happening – and to alleviate any concerns and address how consumers and the Internet will remain fully protected.

**This is not the end of net neutrality.** Despite repeated distortions and biased information, as well as misguided, inaccurate attacks from detractors, our Internet service is not going to change. Comcast customers will continue to enjoy all of the benefits of an open Internet today, tomorrow, and in the future. Period.

**Consumers will remain fully protected.** We have repeatedly <http://corporate.comcast.com/comcast-voices/comcast-open-internet-commitment> stated <http://corporate.comcast.com/comcast-voices/comcast-voices/customer-will-enjoy-strong-net-neutrality-protected-today-and-in-the-future>, and reiterate today, that we do not and will not block, throttle, or discriminate against lawful content. These fundamental tenets of net neutrality are also key components of our core network and business practices <http://corporate.comcast.com/voice-services/comcast-statement-supporting-a-free-and-open-internet> – they govern how we run our Internet business.

Will Comcast broadband customers still be able to visit any lawful site they want to? Yes.

Will Comcast block or throttle access to Internet sites? No.

Is Comcast creating Internet fast lanes? No, we've said consistently <https://www.net.net/news/comcast-denies-plans-to-offer-our-own-fast-lanes/> we've not entered into paid prioritization agreements and have no plans to do so.

Will Comcast still clearly post policies on network management? Absolutely, you can find them here. <https://www.fast.comcast.com/>

**Light touch regulation allows for more competition in the marketplace and increased investment and innovation.** There's no question that an open Internet is important. There is also no doubt that investment is essential to fostering technological growth. Since its creation, the Internet has opened the door for tremendous digital advances and innovations. It has changed how we communicate and how we interact on a day to day basis. The politically guided and motivated decision by the Wheeler FCC in 2015 to revert to Title II regulation <http://www.phases.comcast.com/perspectives/perspective-17-021914.pdf> the pace of advancement and limited choices in the marketplace. For example, it was that misguided thinking that scuttled the rollout <http://corporate.comcast.com/voice-services/comcast-statement-supporting-a-free-and-open-internet-comcast-17-021914.pdf> of Comcast's Stream TV, an in-home, IP-based cable service, which was stalled from a broad consumer rollout because of an unnecessary protracted FCC investigation.

**The FCC's order means what its title promises: restoring Internet freedom.** Consumers deserve choice and a thriving, innovative competitive marketplace under light touch regulation. The [contemplated ruling](http://www.fcc.gov/document/proposal-restore-internet-freedom) <http://www.fcc.gov/document/proposal-restore-internet-freedom> removes the overhang created by Title II and rightfully reclassifies broadband Internet access as an interstate information service. Additionally, the order returns authority to the FTC to regulate data privacy and security for the entire Internet ecosystem under a uniform federal technology-neutral framework. It also requires all Internet providers to disclose their net neutrality practices, and will hold ISPs accountable to these practices. The [inter-agency agreement](http://www.fcc.gov/document/notice-of-conditions-online-consumer-protection) announced yesterday <http://www.fcc.gov/document/notice-of-conditions-online-consumer-protection> <http://www.fcc.gov/document/notice-of-conditions-online-consumer-protection> between the FCC and the FTC should put to rest the fear that there is any confusion about the relative enforcement jurisdictions of the two agencies in the net neutrality context.

**Protecting the Internet is critical for the future.** We should all agree that the Internet deserves a bright future, regardless of the political party in power. This is not a time for political grandstanding or heated, false rhetoric. Inaccurate cries of Armageddon have done nothing but stoke a partisan political fire that distracts from actually allowing policymakers to come together to develop sensible, transparent, and durable Open Internet regulations that protect the consumer, encourage

investment, and strengthen the American economy. With the expected FCC action tomorrow, it's time to set aside partisan threats of litigation or legislation. The best interests of consumers, Internet companies, and ISPs are now best served by bipartisan discussions and problem solving. You'll hear more from me on this subject tomorrow.

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# It's Time for Congress to Act and Permanently Preserve the Open Internet

By David L. Cohen, Senior Executive Vice President and Chief Diversity Officer

Today's vote <https://www.fcc.gov/document/fcc-takes-action-restore-internet-freedom> by the FCC to restore Internet freedom and reverse the burdensome threat of Title II regulation is a positive step toward ensuring that the Internet is governed via sensible, transparent, light-touch regulatory policies and procedures. Despite some of the continued hand wringing, the vote does *not* represent the end of the Internet.

As I wrote yesterday <http://corporate.comcast.com/comcast-voices/fcc-to-act-to-restore-internet-freedom-and-innovation>, reiterating a consistent public commitment from Comcast, we will not block, throttle, or discriminate against lawful content on the Internet; we will be fully transparent with respect to our practices; and we have not entered into any paid prioritization arrangements, and we have no plans to do so. Under the FCC's order, these commitments are now legally enforceable <https://www.ftc.gov/document/ftc-issues-order-protect-consumers> by the Federal Trade Commission – so they aren't "voluntary" commitments, they aren't aspirational, and they aren't hollow. They are binding commitments that we expect to be enforced by regulatory authorities.

Today's FCC action should represent an inflection point in a decade plus debate over net neutrality. We are at a unique moment in time – where the ISP community, edge providers, and consumer groups have reached a general consensus as to the scope of appropriate net neutrality protections (no blocking, no throttling, prohibiting discriminatory treatment of lawful content, and transparency for consumers). That doesn't mean all the wording has been agreed to by all parties, but there is a broad directional agreement.

It's now time for all of us to take advantage of this moment in time and end the cycle of regulatory ping pong we've been trapped in for over a decade and put this issue to rest once and for all. And there's a simple way to do this -- we really must have bipartisan congressional legislation to permanently preserve and solidify net neutrality protections for consumers and to provide ongoing certainty to ISPs and edge providers alike.

The Internet is at the core of America's digital innovation and technological advancement. It is too valuable to be trapped in the middle of a never ending game of politics and regulatory arbitrage depending on the party in power. We should stop the litigation and legislative threats by the party not in control of the FCC. We need bipartisan congressional legislation to protect the Internet and consumers. Now is the time for both sides of the aisle to come to the table, have a civil discussion, and produce a legislative product that enshrines durable and enforceable net neutrality rules.

Our call for legislative action isn't new. Since at least 2010, Comcast has called for legislation to cement and protect an open Internet. Here are just a few examples:

## Comcast Blog Posts

December 1, 2010 <https://corporate.comcast.com/comcast-voices/fcc-proposes-rules-to-preserve-an-open-internet> : "For many months, we have been working very hard with Chairman Genachowski's office, **the Congress**, and a broad array of stakeholders to try to find a fair and appropriate balance that would enable the FCC to codify a light regulatory approach that would protect the openness of the Internet but that would also protect the continued investment and innovation that has made the Internet the vibrant and dynamic place that it is today."

February 26, 2015 <http://corporate.comcast.com/comcast-voices/fcc-voice-for-new-open-internet-rules> : "After today, the only 'certainty' in the Open Internet space is that we all face inevitable litigation and years of regulatory uncertainty challenging an Order that puts in place rules that most of us agree with. We believe that the best way to avoid this would be for Congress to act. We are confident this can be done in a bi-partisan manner with a consensus approach that accomplishes the common goals of stakeholders on all sides of the open Internet debate without the unnecessary focus on legal jurisdiction and the unnecessary regulatory overhang from 80 year-old language and provisions that were never intended to be applied to the Internet."

April 26, 2017 <<https://corporate.comcast.com/comcast-voices/comcast-supports-net-neutrality-and-reversal-of-fcc-in-classification-internet-is-not-net-neutrality>> : "In our view, there is no better way to put in place an enduring set of enforceable Open Internet protections than for Congress to act. As telecommunications policy leaders in both the House and the Senate said today, 'It's now time for Republicans and Democrats, internet service providers, edge providers and the internet community as a whole to come together and work toward a legislative solution, <<https://energycommerce.house.gov/news-center/press-releases/bicamerat-leaders-commit-early-to-internet-regulations-announcement>>' – we wholeheartedly agree. Bipartisan legislation, as was envisioned back in 2010 by then Congressman Henry Waxman and Cliff Stearns, would solve both the authority issue and end the gamesmanship on the substance of net neutrality rules."

August 30, 2017 <<http://corporate.comcast.com/comcast-voices/comcast-fcc-icrc-really-comments-to-protect-an-open-internet>> : "While the record strongly supports that the FCC can and should classify broadband as an information service and preserve incentives for innovation, investment, and an open Internet, there is also significant and growing consensus that bipartisan legislation can and should provide a permanent resolution to the unhelpful game of regulatory ping pong and the endless Title II loop that have plagued all stakeholders since at least 2010... We stand ready to work with policymakers, legislators, and stakeholders to end this regulatory back-and-forth and craft an effective and enduring solution for consumers and the U.S. economy. Ping pong should be for players, not policy."

Many others agree with this approach. Congressional leaders, Democrats and Republicans alike, recognize that legislation is the right solution – and have similarly called for congressional action:

**Senator John Thune** said this week at <https://www.commerce.senate.gov/public/index.cfm/speeches?id=319AE9B6-A71E-41A8-B3EF-792F8A06FF73> : "As I have stated repeatedly, and I will say again today, Congressional action is the only way to solve the endless back and forth on net neutrality rules that we've seen over the past several years... True supporters of an open Internet should be demanding such legislative protections today – not posturing while waiting for years during legal proceedings or waiting for the political winds to turn."

Sen. Thune also noted bipartisan support for this approach "We're in good discussions with **Senator [Brian] Schatz**... We're hoping there will be other Democrats that will join him and come to the table in an effort to try and codify some open internet principles, the kind of consumer protections that people want but in a way that puts some sort of guardrails against runaway government regulation."

And today, Sen. Thune reiterated "Congress must take the lead in setting a clear path forward through bipartisan legislation to avoid the risk of regulatory back and forth . . . I call on Democrats and Republicans who want to preserve a free and open internet to work together on permanent consumer protections."

**Senator Bill Nelson** affirmed <<https://www.congress.gov/congressional-record/2017/11/27/senate-section/articles/7317-1/1-36>> : "At the end of the day, sometime in the future, there may be an opportunity for a legislative solution, but it has to be a balanced solution that protects the right of the public to a free and open internet." He reaffirmed <<https://www.commerce.senate.gov/public/index.cfm/press-releases?id=319AE9B6-A71E-41A8-B3EF-792F8A06FF73>> his support for a legislative solution today.

Another Democrat, **Senator Claire McCaskill**, agreed <<https://www.mccaskill.senate.gov/records-center/news-releases/highlighting-icrc-recommendations-to-protect-consumers-and-providers-opposes-changes-to-net-neutrality-rules>> : "I have long said that Congress should settle the issue of net neutrality once and for all with legislation to provide certainty for consumers and providers alike."

**Majority Leader Mitch McConnell** expressed support <<https://www.mitchmcconnell.senate.gov/public/index.cfm/press-releases?id=AC199B09-19F9-471A-97C2-CC668D537776>> ahead of the FCC's vote, looking forward "to Congress' actions in the future to keep the Internet open for consumers in a lasting way."

**More than 100 House Republicans** signed a letter <<https://energycommerce.house.gov/press-releases/rep-leaders-republican-letter-to-congress-to-act-on-net-neutrality>> urging bipartisan Congressional action: "After broadband is restored to its rightful regulatory home, under the light-touch approach that guided federal oversight of the Internet and nurtured its expansive growth for decades, the stage will be set for Congress to determine how to best enact permanent protections for the bipartisan net neutrality principles on which we will agree."

**Telecommunications Subcommittee Chair Marsha Blackburn** has reiterated <<http://ics.house.gov/recordings/0E9F1670117025F0631271818D1154F15-MSState-R0012A3-0017070b.pdf>> "Let me be clear, Republicans have always supported a free and open Internet. We must move past the partisan rhetoric. Ranking Member Pallone said in 2010 that this is a job for Congress. I agree."



**House Energy and Commerce Committee Chairman Greg Walden** has continued to call [https://energycommerce.house.gov/news/press\\_release/walden-comments-internet-day-action/](https://energycommerce.house.gov/news/press_release/walden-comments-internet-day-action/) for bipartisan legislation: "I again call on my Democratic colleagues, edge providers and ISPs, and all those who make up the diverse internet ecosystem that has flourished under light-touch regulation to come to the table and work with us on bipartisan legislation that preserves an open internet while not discouraging the investments necessary to fully connect all Americans. Too much is at stake to have this issue ping-pong between different FCC commissions and various courts over the next decade."

And, both **Blackburn and Walden** emphasized the need for legislation today after [https://energycommerce.house.gov/news/press\\_release/walden-blackburn-to-restore-an-internet-freedom-act/](https://energycommerce.house.gov/news/press_release/walden-blackburn-to-restore-an-internet-freedom-act/) the FCC vote: "Now, the table is set for Congress to provide clear, permanent rules through a bipartisan legislative solution. We hope that all stakeholders, and our Democratic colleagues, will finally engage in serious negotiations soon."

We've previously noted <http://corporate.comcast.com/comcast-voices/fcc-begins-rulemaking-process-to-protect-an-open-internet/> multiple other parties – from all sides of the political spectrum, from both politics and industry – who have also previously called for legislation.

Unfortunately, there are others who want to continue engaging in a never ending game of back and forth, creating unnecessary anxiety and contributing to an unneeded level of hysteria. Some will undoubtedly continue threatening litigation that does nothing to protect consumers or freedom of the Internet. Others will say the FCC is shirking its responsibilities, when the real authority truly lies within Congress.

Given the broad agreement as to the content of appropriate net neutrality rules, and a developing consensus that the best road forward is bipartisan congressional legislation, it is hard to make the case that it is not worth a serious attempt by Congress to try to craft a permanent legislative solution. And we should all be a constructive part of such an effort.

As I said yesterday <http://corporate.comcast.com/comcast-voices/fcc-to-vote-to-restore-internet-freedom-and-innovation/>, our Internet practices will remain the same; Comcast customers will continue to enjoy the benefits of an open Internet today, tomorrow, and in the future. Our customers are our priority. That is why we want to suggest a moratorium on charged political rhetoric and ask Congress to enact bipartisan legislation to protect consumers and the open Internet in the years to come, regardless of the outcome of any future elections. We look forward to continuing to work with policymakers to develop forward thinking, bipartisan legislation to end this back and forth once and for all.

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December 14, 2017

Charter Communications

### **Why We Will Continue to Support an Open Internet**

During this important debate on the future of internet regulations, Charter has been consistent and clear: we support a vibrant and open internet that enables our customers to access the lawful content of their choice when and where they want it. We commend the FCC Chairman and Commissioners for their action today that re-establishes the light touch regulatory framework that had been in place for decades when the Internet took root and grew into an important tool for daily life and a major engine of economic growth.

Charter supports an open internet because we believe delivering superior broadband to our customers is an essential ingredient to growing our business. Without an open internet, that isn't possible. We don't slow down, block, or discriminate against lawful content. Simply put, we don't interfere with the lawful online practices of our customers and we have no plans to change our practices.

We are constantly improving our network to keep pace with new, data-hungry apps, streaming video and other bandwidth intensive services. We're proud to offer the industry's fastest entry level broadband speeds of 100Mbps across virtually our entire 41 state footprint. Importantly, Charter doesn't impose data caps or engage in usage-based billing, meaning our customers can engage with the content they want as much as they want. These policies are part of our business objective of providing our customers with a high value broadband experience.

The FCC's action today will help Charter serve our customers even better. Rather than applying Title II regulations designed for 1930's telephone companies, we need a regulatory framework built for the 21st century. Our objection to Title II has never been about not wanting to provide our customers with an Open Internet. Rather we have been concerned about its overly broad and vague prohibitions as well as the potential for rate regulation. By bringing its approach into the 21st century, the FCC is helping provide regulatory predictability so companies like Charter can be confident in making even greater investments in our broadband networks.

These infrastructure investments are critical to our ability to innovate and improve our broadband service and deploy it to parts of the country that are harder and more expensive to serve, like rural communities. Since 2014, we've invested \$21 billion in our infrastructure and technology. Earlier this year we said that given the appropriate regulatory environment, a big part of which is removing Title II, we would invest an additional \$25 billion in technology and infrastructure in the next few years.

This is why Charter also supports Congress pursuing bipartisan legislation that enshrines an open internet into law and spurs broadband deployment and investment. Such legislation would provide permanent regulatory assurance and create an environment that allows for more long-term planning that will help us continue to provide even better broadband across our country.

Charter recognizes this debate has stirred passions. But in the days and weeks ahead, we hope our customers remember two things: 1) we will continue to provide them with a superior broadband service that includes an open internet; and 2) by bringing internet regulations into the 21st century, we can ensure more future innovation, improvement and availability of our broadband.

March 31, 2017

Charter Communications

### **Charter's Commitment to Consumer Privacy Has Not Changed**

Protecting the privacy of our consumers is one of our most important responsibilities as a broadband provider. Recent activity by Congress does not change, or weaken, Charter's commitment to the protection of our customers' online privacy, or our rigorous privacy practices and policies. To be clear it also does not change the way in which Charter collects, uses or shares customer information.

Our privacy policies and practices are consistent with the Federal Trade Commission's privacy framework, which has been well-respected and effective for more than 20 years, and we adhere to additional privacy protections required by federal and state privacy laws.

In May 2016, Charter combined with Time Warner Cable Inc. ("TWC") and Bright House Networks LLC ("BHN"), and is in the process of carefully integrating the companies' legacy practices. As part of that process, Charter is reviewing the practices of the three companies to ensure we are providing our customers with uniform, transparent and easy-to-understand information.

While we are completing that process, we want to highlight a few key points about how we collect and use our customer data, which applies to all of our customers.

We do not sell or otherwise share our Internet customers' web browsing histories to third parties. We also do not sell or share our Internet customers' information for personalized third-party marketing or advertising.

In the event that we change these business practices, we would provide customers with notice and choice before utilizing such data for marketing or advertising purposes.

Customers can learn more about our privacy practices by visiting <https://buy.charter.com/browse/content/residentprivacy>. Former Time Warner Cable customers can visit [http://help.twcable.com/twc\\_privacy\\_notice.html](http://help.twcable.com/twc_privacy_notice.html) and former Bright House Networks customers can visit <http://brighthouse.com/policies/customer-privacy.html>. They may also select their privacy and marketing preferences via phone with a customer service representative, or via an electronic form located online.

[Newsroom](#) | [About Us](#) | [Cox Communications](#)

## Cox Remains Committed to Net Neutrality Rules

ATLANTA - December 14, 2017 - The following statement can be attributed to Cox Communications:

"Today's vote by the FCC to remove the Title II section of the Net Neutrality rules does not impact our commitment to Net Neutrality. We do not block, throttle or otherwise interfere with consumers' desire to go where they want on the Internet. Cox has always been committed to providing an open Internet experience for our customers, and reversing the classification of Internet services does not change our commitment. We applaud FCC Chairman Ajit Pai for his leadership that has overturned the previous Commission's decision to enact Title II, the 1930s-era utility telephone regulations. Reestablishing 'light-touch' regulation returns a level of certainty for consumer protections and future investment and innovation that spur the growth of the Internet."

### About Cox Communications

Cox Communications is a broadband communications and entertainment company, providing advanced digital video, Internet, telephone and home security and automation services over its own nationwide IP network. The third-largest U.S. cable company, Cox serves approximately 6 million residences and businesses. Cox Business is a facilities-based provider of voice, video and data solutions for commercial customers, and Cox Media is a full-service provider of national and local cable spot and digital media advertising. Cox is known for its pioneering efforts in broadband, voice and commercial services, industry-leading customer care and its outstanding workplaces. For nine years, Cox has been recognized as the top operator for women by Women in Cable Telecommunications; Cox has ranked among DiversityInc's Top 50 Companies for Diversity 12 times. More information about Cox Communications, a wholly owned subsidiary of Cox Enterprises, is available at [www.cox.com](http://www.cox.com) and [www.coxmedia.com](http://www.coxmedia.com)

<http://newsroom.cox.com/cox-remains-committed-to-net-neutrality>

### **Atlantic Broadband is Committed to an Open Internet**

Atlantic Broadband is committed to preserving an open Internet, as it is vital to the success of the economy and our business. We believe that consumers should be able to access any content they want on whatever device they choose. We do not block, throttle or discriminate against lawful content or interfere with our customers' lawful use of the Internet. Further, Atlantic Broadband does not impose data caps or engage in usage-based billing.

We are continually investing in our network to increase broadband speeds for our customers. These infrastructure investments are essential to fostering technological growth and ensuring that more rural areas, like those served by Atlantic Broadband, have access to the same Internet content and speeds as urban areas.

Atlantic Broadband supports the light-touch regulatory approach endorsed by the FCC. This approach will not change our commitment to providing an open Internet experience for our customers. We believe that it will restore certainty for consumer protections that will encourage investment and innovation.

We do not believe state-based net neutrality laws will operate to promote or protect an open Internet. Rather, attempts to regulate the Internet at the state level open the door to the creation of a patchwork of state regulations that will stymie innovation, as well as have the potential to undermine the backbone of the Internet economy.

## EXHIBIT C

**Testimony of Associate Professor Daniel Lyons, Boston College Law School**  
Senate Special Committee on Net Neutrality and Consumer Protection  
February 6, 2018

I'd like to thank the committee for inviting me to testify today. My name is Daniel Lyons, and I am an associate professor with tenure at Boston College Law School, where I teach and write in the areas of telecommunications, Internet law, and federalism.

I want to address two points today. First, it is unlikely that Massachusetts can act on net neutrality in light of the Federal Communications Commission's recent order, and second, there are good reasons why it might not want to do so even if it could.

First, the Commission has expressly preempted state net neutrality efforts. Like the 2015 Open Internet order that it replaced, the recent Restoring Internet Freedom order expressly preempts "any state or local measures that would effectively impose rules or requirements" that the order repealed or rules that would otherwise be "inconsistent with the federal deregulatory approach" taken in the order. The purpose of the Commission's order was to repeal the agency's earlier net neutrality provisions and restore the classification of broadband internet access service as an information service under the Communications Act. For over twenty years, the Commission has consistently said that information services should be not just unregulated but affirmatively deregulated, and this approach has support in the statute.

If challenged, courts are likely to uphold this preemption provision. We saw a similar battle in 2007, when Minnesota sought to regulate voice-over-internet-protocol services like Vonage under state telephone laws. The FCC preempted Minnesota's law, among other reasons, because the state's efforts could interfere with the agency's long-standing national policy of nonregulation of information services. The court upheld that decision and struck down the state law, finding that "deregulation [is a] valid interest[] the FCC may protect through preemption of state regulation." Importantly, the recent order relies on the same finding --broadband is an information service that should be deregulated --so the same result is likely.

Nor, I think, can the state avoid preemption by substituting the power of the purse for the power of regulation. Several states, starting with Montana, recently enacted executive orders refusing to enter contracts with broadband providers unless they guarantee net neutral practices for consumers in the state. But Massachusetts has previously learned the limits on using procurement to skirt federal policies with which it disagreed. In the late 1990s, Massachusetts felt that the federal government was not going far enough to sanction human rights abuses in Burma. So to put additional pressure on the regime, the state refused to contact with companies that did business in Burma. Like the recent Montana order, the goal was to pressure companies to adopt voluntary practices that federal law refused to impose directly. But the Supreme Court ruled unanimously that because the state's action interfered with the federal government's policy toward Burma, and so struck down the law.

There are also questions whether orders like Montana's violate the dormant commerce clause, which limits states' ability to act in ways that burden interstate commerce (a category that includes broadband access). The market participant doctrine gives states more leeway when acting as a purchaser than as a regulator, which is likely the exception upon which Montana and other states are relying. But the Supreme Court has narrowed this exception when states have tried to use their purchasing power to affect other contracts with third parties, rather than just securing terms in their own contracts. And that, of course, is what Montana is trying to do—use its purchasing power to influence other contracts between broadband providers and individual consumers. It's worth noting that the court's dormant commerce clause jurisprudence is murky and turns in part on the factual question of just how much an in-state ban would affect interstate traffic. But at a minimum, I would suggest that it's not clear to me that actions like Montana's will survive such a challenge.

Second, and briefly, even if Massachusetts could enact state net neutrality requirements, it's not clear that it should do so. Unless it's carefully crafted, a prohibition on contracting with networks that prioritize traffic might jeopardize, for instance, Massachusetts's ability to participate in FirstNet, AT&T's public safety network that prioritizes first-responder traffic over all others.

And that raises a larger concern, which is whether it's wise to ban all paid prioritization. Net neutrality proponents are correct that prioritization can be misused for anticompetitive purposes. But the reality is that there are good and bad reasons why a network might prioritize some traffic over others. For example, some applications, like streaming video and teleconferencing, are more susceptible to congestion. So if congestion occurs, a network might want to prioritize those applications ahead of web or email traffic, where a slight delay in delivery would be imperceptible to consumers. This type of engineering would be a net gain for consumers, but net neutrality rules prohibit this, out of fear that companies might abuse the privilege.

Ultimately, the FCC's recent order simply restored the law in place until 2015, under which the Internet flourished. My sense is that antitrust law already protects consumers from the harms that net neutrality advocates fear most, just as it protects consumers from anticompetitive harm everywhere else in American society.

Thank you.

Appendix A

# Net Neutrality Timeline

Internet thrives for more than 20 years before Title II without persistent competitive or consumer protection problems

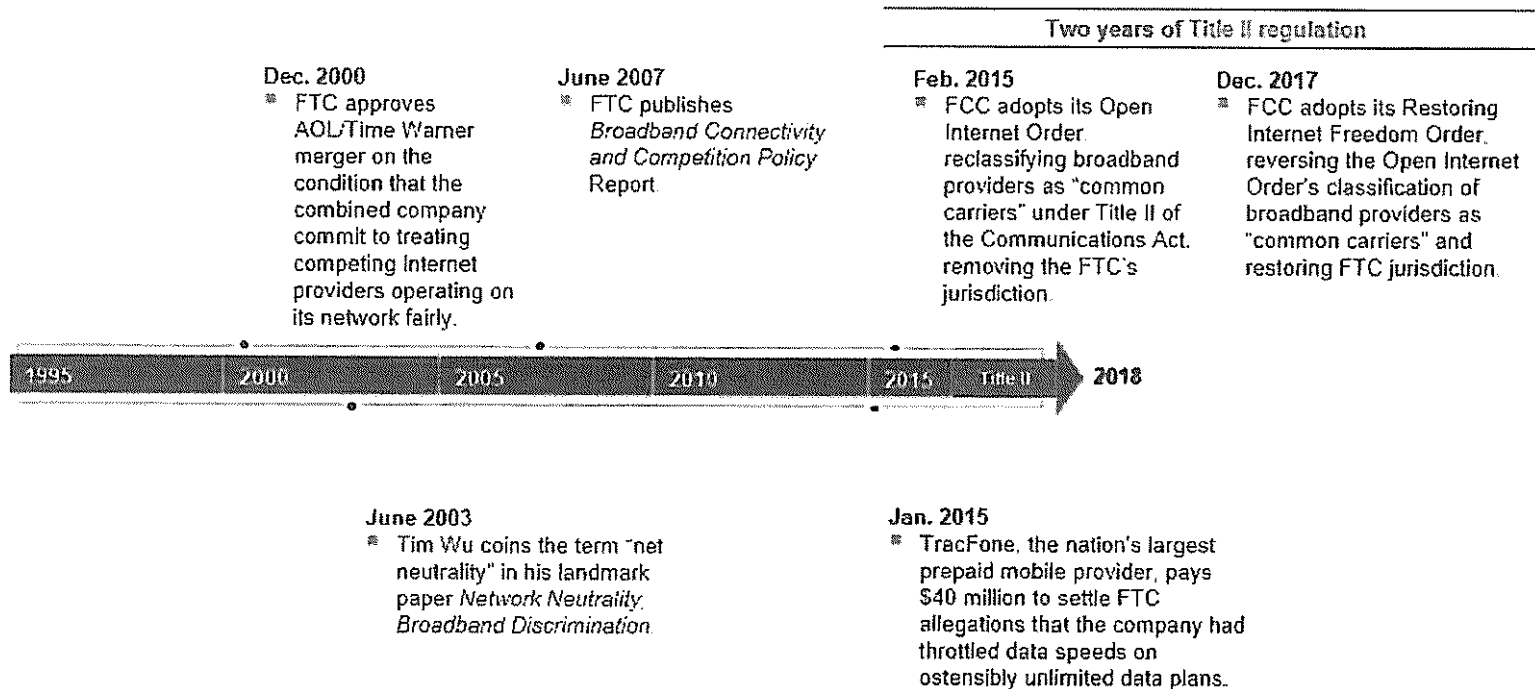


EXHIBIT D



## EXHIBIT E

4,213 views | Oct 29, 2018, 07:00am

# California's Net Neutrality Publicity Stunt Comes To An End

**Larry Downes** Contributor ⓘ

Cybersecurity

*Best-selling author on technology, strategy and policy*

Sacramento does it again (Source: Getty)

Well that was fast.

With only minutes to spare, California Gov. Jerry Brown decided late on a Sunday night in September to sign into law SB 822, California's state-level net neutrality law. Before the hour was up, however, the Department of Justice sued to block the law, arguing that it clearly invalid under both conflicting federal law and the U.S. Constitution.

California's attorney general, Xavier Becerra, promised to fight the lawsuit. In a Tweet the next day, the attorney general, up for election this year, wrote that "The Trump administration just sued California to block a new law preserving #NetNeutrality. I'm doing everything in my power to fight back and defend free and open internet access in our state."

Behind the scenes, however, Becerra was ready to acknowledge what everyone, including the legislators who sponsored the bill, knew full well when SB 822 was still being debated. California's net neutrality law, as I reported back in May, was dead on arrival.

On Friday, facing a slam-dunk motion from the DoJ asking for a preliminary injunction stopping the law from going into effect, Becerra quickly caved, agreeing not to enforce the law or to litigate the case.

### California Admits the Reality of Federal Preemption

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That is, at least not until a D.C. federal appellate court decides, likely near the end of next year, whether the FCC has the authority to stop states from passing separate and incompatible laws regulating Internet access, including net neutrality. (More on that case in a moment.)

If the appellate court rules in favor of the FCC, Becerra acknowledges in Friday's agreement, then California has no basis to defend SB 822. That will be the end of it.

The joint filing between Becerra and the DoJ is based on the Hobbs Act, a 1946 law that gives the federal court of appeals in D.C. exclusive authority to determine the validity of FCC orders.

Under Friday's agreement, which the parties filed in the federal district court in California hearing the DoJ's SB 822 challenge, Becerra admitted that "the Hobbs Act precludes the district court in these related actions from determining the validity of the FCC's decision to preempt state and local net neutrality requirements, including but not limited to Senate Bill 822."

He also stipulated that if the D.C. appellate court finds that the FCC's "decision to preempt state and local net neutrality requirements" was valid, California will be forever barred from raising any defense in the SB 822 suit "to the extent such defense is based on a challenge to the validity of a final FCC order."

And that is the only defense California has. So if the FCC wins in D.C., SB 822 is, as Becerra now agrees, a dead letter.

(The office of California's Attorney General did not respond to a request for comment for this article.)

The FCC included state preemption in a 2017 order known as the "Restoring Internet Freedom Order," or RIFO. Among other things--and the source of California's ire--RIFO rolls back an earlier FCC decision from 2015 that "reclassified" broadband ISPs as public utilities, which the agency said at the time was necessary to enforce net neutrality rules that had twice been struck down by courts for lack of authority.

The 2015 rules, which the agency had tried to pass in various forms since 2010, prohibit ISPs from blocking or throttling lawful content requested by users, or from allowing content providers to pay the ISPs for priority last-mile delivery of their traffic—a service that the ISPs have never actually offered.

(Most ISPs long ago pledged to follow the basic net neutrality rules—it is the authority of the FCC rather than the Federal Trade Commission to enforce them that has been the source of earlier litigation.)

In returning ISPs to the lightly-regulated "information service" status they had held since broadband Internet was first offered, RIFO deleted most of the 2015 net neutrality rules, with the exception of a rule requiring access providers to explain

clearly their network management processes. That rule was enhanced in the 2017 decision.

### How Preemption Will Save the Internet...Again

RIFO was expected from the moment Republicans won the 2016 election. President Trump quickly appointed Ajit Pai, a Republican Commissioner already at the agency, as the new Chairman. Pai dissented from the reclassification decision, and had promised to undo it.

To undo the longstanding policy of the agency, however, the 2015 order argued that the FCC could change its mind without much if any justification. That meant Pai's predecessor had left him all the authority he needed to go back to the original classification.

The 2015 Order had been a Hail Mary pass, premised on an expectation that Democrats would retain control of the FCC and leave the order in place.

When that gamble failed, pro-utility agitators immediately relocated their lobbying efforts to state capitols, where they hoped to find a more receptive audience.

Knowing that activists were already targeting malleable state legislators, the RIFO order included a proactive ban on efforts like SB 822, exercising authority Congress had given the FCC to preempt contradictory state laws.

"We...preempt any state or local measures," the Commission ruled, "that would effectively impose rules or requirements that we have repealed or decided to refrain from imposing in this order or that would impose more stringent requirements for any aspect of broadband service that we address in this order."

In other words, no state-level net neutrality rules to replace or supplement the shared FCC-FTC enforcement regime that RIFO restored.

The California law is obviously covered by that prohibition, as Gov. Brown and legislators in Sacramento knew full well in passing it months later. The DoJ's lawsuit was no surprise to anyone.

But even if the FCC hadn't banned state net neutrality laws explicitly, the U.S. Constitution provides a second and independent ban. Under the Commerce Clause and case law interpreting it that goes back a good 200 years, states cannot regulate commercial activities that are or have significant impact on national trade.

As law professor Daniel Lyons recently explained in a blog post for the American Enterprise Institute, whether or not the federal government decides to regulate a form of interstate commerce or, as here, regulates it less heavily than some states may wish, states cannot contradict or ignore that decision.

U.S. Attorney General Jeff Sessions put it even more succinctly in suing to block SB 822 permanently: "States do not regulate interstate commerce — the federal government does."

Internet traffic management and transit is as clearly an interstate (indeed, global) form of commerce as anything imaginable, as the U.S. Supreme Court has already held on multiple occasions. California can no more impose state-level requirements on Internet traffic than it can make its own foreign policy or set its own federal income tax rates.

The policy reasons for both the FCC and Constitutional limits on state governments are obvious, or at least should have been to California lawmakers.

Under SB 822, for example, every packet entering into or leaving California—even those merely in transit to other states and countries—would have had to be opened, inspected, and subjected to different—indeed, non-neutral—treatment by ISPs operating in California.

And California is not the only state that has or is considering defying the FCC's ruling. None of the various bills and executive orders written so far have been the same. ISPs, businesses, and consumers worldwide are increasingly being subjected to a crazy quilt of rules regarding what access provider can, must, and cannot do in managing both wired and wireless networks--networks that are evolving on a daily basis.

No one--including consumers here in the state that birthed Silicon Valley—would benefit from that.

## The RIFO Challenge

So it's fortunate that, based on one form of preemption or the other, SB 822 had zero chance of ever taking effect. California Attorney General Becerra acknowledged as much on Friday, admitting that he could not legally challenge "the validity of a final FCC Order" while the D.C. appellate court weighs that order in the earlier-filed case. Neither, he agreed, can he challenge it after the case is decided, assuming the FCC wins.

The chances are good that that is exactly what will happen. For one thing, the U.S. Supreme Court has held since 2005 that the FCC has the discretion to classify broadband as an information service.

And the same D.C. appellate court, in upholding the 2015 order, acknowledged that the agency can change its mind on classification, even when doing so upended twenty years of settled agency policy.

On the question of state preemption, the U.S. Supreme Court has repeatedly upheld the FCC's authority to preempt state law, including with regard to broadband Internet.

If, however, the appeals court finds against RIFO in part or in whole, then the 2015 net neutrality rules in effect from June of 2015 until July of this year may return. In which case, again, the CA law will be pointless. And still preempted.

The appellate case, brought by supporters of the FCC's 2015 public utility order, is only just now being briefed. Oral arguments will not take place until sometime next year, with a decision unlikely until later in 2019 at the earliest.

For his part, Chairman Pai, who cautioned California lawmakers against passing SB 822, praised Becerra for accepting the reality of his situation. "This substantial concession reflects the strength of the case made by the United States earlier this month," Pai said in a statement.

"It also demonstrates, contrary to the claims of the law's supporters, that there is no urgent problem that these regulations are needed to address," Pai said.

## But Wait, There's More

Beyond its conflict with federal law and the likelihood that SB822 and its counterparts in other states would throw Internet traffic management into chaos, there was much more to fear from the poorly-written California law.

The bill's sponsors assured fellow lawmakers during deliberations that the bill did no more than "capture" net neutrality provisions that RIFO repealed (SB 822 "does not go beyond the 2015 Order," sponsoring State Senator Scott Wiener repeatedly told his colleagues).

Once the bill was passed, however, they admitted what critics had pointed out all along: The bill went much farther, and dangerously so.

One provision of SB 822 that appears nowhere in the FCC's 2015 order, for starters, bans free data programs, including T-Mobile's Binge On plan, which allows customers who not on unlimited plans to use music and video services without the usage counting toward pre-paid data allotments.

The 2015 FCC Order considered rules restricting such services and rightly rejected them. A later Commission investigation of four plans available at the time was never completed, but an early report found that at least two of them did not violate even the broadest possible reading of the 2015 rules.

Worse, SB 822 banned all forms of paid interconnection and transit, features of the commercial Internet from the beginning. These essential traffic management tools include paid peering, co-located servers, and content delivery networks (CDNs) that replicate high-demand video content throughout an ISP's network.

In some cases, ISPs charge minimal facilities fees to offset the costs of supporting third-party hardware on-site or to compensate for wildly unbalanced traffic patterns.

Again, the 2015 FCC Order considered regulating prices for some of these services, but explicitly declined to do so, noting that the order "does not apply the open Internet rules to interconnection." The 2015 Democratic majority likewise rejected advocates calls for them "to draw policy conclusions concerning new paid Internet

traffic-exchange arrangements between broadband Internet access service providers and edge providers, CDNs, or backbone services.”

Here too, SB 822 strayed dangerously far from its claimed fidelity to the 2015 order. It categorically prohibits any compensation for these fundamental features of Internet traffic management.

### California Consumers to Sacramento: Thanks for Nothing

Regardless of the underlying merits of net neutrality itself, the FCC was right to preempt conflicting and contradictory state efforts to regulate broadband traffic management. The DoJ was right to put a stop to it immediately.

And California's attorney general was right to agree to acknowledge the indefensibility of SB 822 and set the law aside, for now if not permanently.

By holding off on litigating the inevitable, Becerra has at least saved us weary California taxpayers the millions he'd otherwise spend on outside lawyers to defend a losing case.

But we won't get our money back on the time the state legislature wasted on what was never more than an act of political theater, performed not for California consumers but for the sole benefit of its sponsors.

Meanwhile, Democrats in Congress continue hold up progress on any of several bills proposed that would make the basic net neutrality rules a matter of statutory law in all fifty states and, finally, give the FCC the authority it's never had to enforce them.

It's almost as if that's not what net neutrality advocates really want. Almost.





**Larry Downes** Contributor

Project Director, Georgetown Center for Business and Public Policy. My new book, "Big Bang Disruption," co-authored with Paul F. Nunes, is now a bestseller. My earlier books include the New York Times bestseller, "Unleashing the Killer App" and "The Laws of Disruption."

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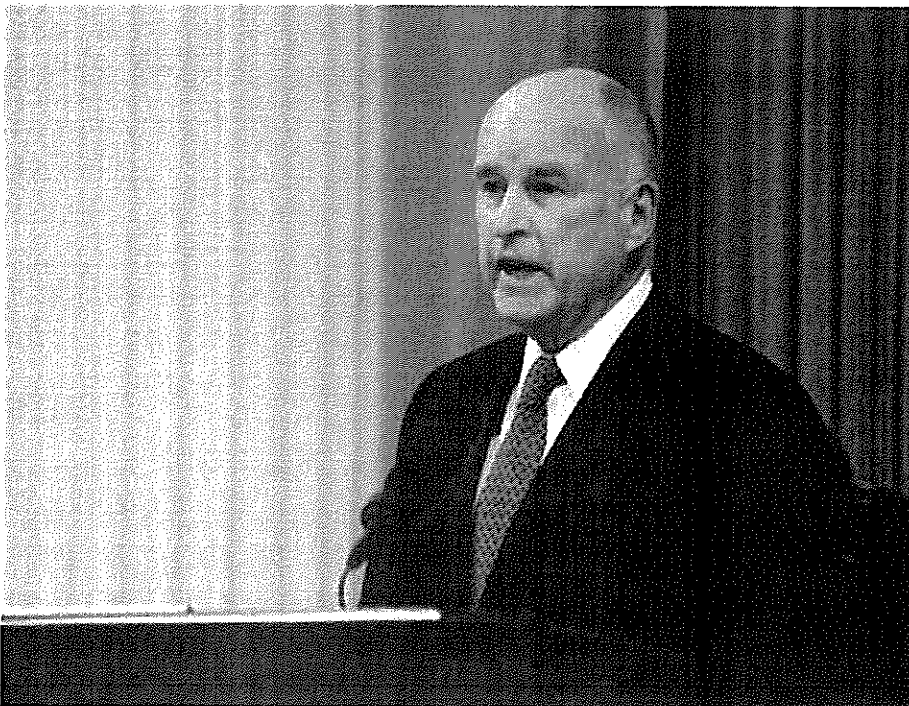
## EXHIBIT F

# California's net neutrality law: Will it survive judicial review?

Daniel Lyons

October 5, 2018 6:00 am | *AEIdeas*

On Sunday California Governor Jerry Brown [signed](https://www.nbcnews.com/tech/internet/gov-jerry-brown-signs-bill-restore-net-neutrality-california-n915221) (<https://www.nbcnews.com/tech/internet/gov-jerry-brown-signs-bill-restore-net-neutrality-california-n915221>) Senate Bill 822 ([https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB822](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB822)), the state's stringent new net neutrality law. The California Internet Consumer Protection and Net Neutrality Act of 2018 has been described as restoring the Federal Communications Commission's (FCC) 2015 Open Internet Order, though in some ways California's law reaches further than the FCC did. Unsurprisingly, the US Justice Department promptly sued to block the state law, arguing it was preempted by the FCC's new deregulatory approach to broadband regulation. This post will analyze the California law and the preemption argument that will determine whether it takes effect.



California Governor Jerry Brown in Sacramento, California,  
January 25, 2018 – via REUTERS

### California's stringent net neutrality rules

The FCC's 2017 Restoring Internet Freedom Order prompted a flurry of activity designed to restore at the state level what had been repealed at the federal level. Net neutrality supporters described California's SB-822 as the "gold standard" (<https://www.cnet.com/news/california-lawmakers-give-thumbs-up-to-gold-standard-net-neutrality-bill/>) because of the tough stance it took on broadband providers. Like many other state efforts, SB-822 duplicates the 2015 Open Internet Order's familiar prohibitions on blocking, throttling, and paid prioritization. It also resurrects the FCC's vague and awkwardly worded restriction on unreasonably interfering with or disadvantaging the ability of consumers and internet content providers to reach one another. But in other ways the act goes further than the now-defunct FCC rules. For example, SB-822 imposes more significant restrictions on zero-rating and interconnection than the FCC did, and regulates other services (such as video or voice service) that a broadband provider offers over the same network.

### The Justice Department's challenge

Even before the ink dried on Governor Brown's signature, the Justice Department challenged SB-822 in federal court (<https://www.justice.gov/opa/pr/justice-department-files-net-neutrality-lawsuit-against-state-california-0>). The Restoring Internet Freedom Order contains a robust preemption clause designed to prevent precisely what California has done:

We therefore preempt any state or local measures that would effectively impose rules or requirements that we have repealed or decided to refrain from imposing in this order or that would impose more stringent requirements for any aspect of broadband service that we address in this order.

Given the ways in which SB-822 tracks the language of the Open Internet Order and the ways that it exceeds it, California can hardly deny that the bill "would effectively impose rules or requirements" that the FCC "repealed or decided to refrain from imposing." California's primary defense is that the FCC order's preemption provision is invalid.

But as the Justice Department notes (<https://www.justice.gov/opa/press-release/file/1097301/download>), the Hobbs Act prohibits California from making this argument in this proceeding. The Hobbs Act vests exclusive jurisdiction in the circuit courts of appeal to "enjoin, set aside, suspend (in whole or in part), or to determine the validity of" FCC orders. Ninth Circuit case law makes clear that the district court lacks jurisdiction to declare the preemption provision invalid — even if, as here, California makes the argument defensively. Because the court must presume the preemption clause is valid, it seeks an injunction declaring that SB-822 is preempted and preventing California from bringing the statute into effect.

## The broader preemption question

The Justice Department is likely to win its motion, though that will not answer the ultimate question: Is the preemption provision valid? That question is likely to be answered by the DC Circuit Court of Appeals in the primary appeal of the Restoring Internet Freedom Order (in which California is one of many petitioners). As I discussed in an [earlier blog post](http://www.aei.org/publication/states-join-the-net-neutrality-resistance-will-it-make-a-difference/) (<http://www.aei.org/publication/states-join-the-net-neutrality-resistance-will-it-make-a-difference/>), the Voice Over Internet Protocol (VOIP) cases suggest the answer is yes. In the mid-2000s, Minnesota sought to regulate VOIP under state telephone laws. The FCC preempted that decision, suggesting that state regulation would interfere with the agency's "long-standing national policy of nonregulation of information services." The court upheld the preemption, holding that "[c]ompetition and deregulation are valid federal interests the FCC may protect through preemption of state regulation."

Proponents of SB-822 have highlighted one wrinkle in this preemption analysis. They argue that by repealing Title II, the FCC has disclaimed any authority to regulate broadband network management practices. By doing so, the agency has opened a regulatory void that California and other states are free to fill. In other words, they argue, the Restoring Internet Freedom Order provides no basis for the FCC to assert an affirmative policy of deregulation, so there is no valid federal interest that conflicts with California's regulation.

This is an interesting argument that does complicate the preemption analysis. But ultimately I think it misunderstands that import of the Restoring Internet Freedom Order. Under the Supreme Court's Brand X decision, the FCC is free to classify broadband service as a Title II telecommunications service or a Title I information service. It also has authority to regulate information services under its ancillary authority or to forebear from applying particular provisions of Title II. Legally, it has a wide range of regulatory options for broadband service, from nonregulation to complete common carriage treatment. Along that spectrum, it made a policy choice to classify broadband as an information service and subject it to extensive transparency requirements, but it decided not to impose more intrusive common carrier-like obligations, because it determined that more intrusive regulations would have adverse effects on consumers and innovation.

SB-822 upsets this carefully calibrated federal regulatory scheme. It imposes the very restrictions on broadband providers that the FCC chose, for good reason, to avoid. The case is similar to [Geier v. American Honda Motor Company](https://supreme.justia.com/cases/federal/us/529/861/) (<https://supreme.justia.com/cases/federal/us/529/861/>), which involved the conflict between a federal regulation that required automakers to install airbags in some (but not all) cars, and a lawsuit claiming state law required airbags in all cars. The Supreme Court indicated that the state rule would conflict with the objectives of the carefully balanced federal rule and therefore was preempted by the rule. Similarly, SB-822 conflicts with the Restoring Internet Freedom Order's balanced approach of promoting broadband service through transparency and antitrust oversight rather than common carriage and other more stringent regulations.

SB-822 also raises other issues regarding the limits of California's authority to regulate interstate communications under the Communications Act and the Dormant Commerce Clause, some of which have been raised in an [industry suit against SB-822](https://www.nbcnews.com/tech/internet/internet-provider-groups-sue-over-california-net-neutrality-rules-n916281) (<https://www.nbcnews.com/tech/internet/internet-provider-groups-sue-over-california-net-neutrality-rules-n916281>). If SB-822 is struck down, California will continue to play a role in regulating broadband providers by enforcing general consumer protection laws alongside the Federal Trade Commission, just as it does for many other industries. But preemption would prevent one state from unilaterally imposing regulations in direct conflict with the policy of the FCC, the nation's primary communications regulator.

**Learn more:** [Interconnection: The next battle to regulate the internet?](http://www.aei.org/publication/interconnection-the-next-battle-to-regulate-the-internet/)

(<http://www.aei.org/publication/interconnection-the-next-battle-to-regulate-the-internet/>) |

[Paid prioritization: Debunking the myth of fast and slow lanes](http://www.aei.org/publication/paid-prioritization-debunking-the-myth-of-fast-and-slow-lanes/)

(<http://www.aei.org/publication/paid-prioritization-debunking-the-myth-of-fast-and-slow-lanes/>)

This article was found online at:

<http://www.aei.org/publication/californias-net-neutrality-law-will-it-survive-judicial-review/>

EXHIBIT G

UNITED STATES

The Netflix ISP Speed Index is a measure of prime time Netflix performance on particular ISPs (internet service providers) around the globe, and not a measure of overall performance for other services/data that may travel across the specific ISP network.

ISP LEADERBOARD - DECEMBER 2018

SHOW SMALLER ISPS (?SMALL=TRUE)

RANK	ISP	SPEED Mbps	PREVIOUS Mbps	RANK CHANGE	TYPE				
					Fiber	Cable	DSL	Satellite	Wireless
1	Verizon - FIOS	4.51	4.34	+2	<input type="checkbox"/>				
					Fiber				
2	Comcast	4.51	4.35	-1	<input type="checkbox"/>				
					Cable				
3	Cox	4.51	4.34	-1	<input type="checkbox"/>				
					Cable				
4	Spectrum	4.48	4.32		<input type="checkbox"/>				
					Cable				
5	Optimum	4.45	4.29		<input type="checkbox"/>				
					Cable				
6	Mediacom	4.35	4.17	+1	<input type="checkbox"/>				
					Cable				
7	SuddenLink	4.30	4.14	+1	<input type="checkbox"/>				
					Cable				
8	AT&T - U-verse	4.30	4.23	-2	<input type="checkbox"/>				
					Fiber				
9	Frontier	3.83	3.69		<input type="checkbox"/>	<input type="checkbox"/>			
					Fiber	DSL			
10	Verizon - DSL	3.77	3.61	+2	<input type="checkbox"/>				
					DSL				
11	Windstream	3.74	3.63		<input type="checkbox"/>				
					DSL				
12	CenturyLink	3.72	3.63	-2	<input type="checkbox"/>	<input type="checkbox"/>			
					Fiber	DSL			

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# **Fiscal Note**

HB 132-FN- FISCAL NOTE  
AS INTRODUCED

AN ACT relative to net neutrality.

FISCAL IMPACT:  State  County  Local  None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$735,958	\$683,645	\$709,645	\$718,645
<i>Funding Source:</i>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input checked="" type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other

METHODOLOGY:

This bill establishes principles for net neutrality and provides a framework for Internet service providers (ISPs) that opt to secure a certificate of net neutrality compliance. The legislation requires that each contract for broadband Internet access entered into by a state agency on or after April 1, 2020 include a provision requiring such certification. State agencies are defined to include any department, commission, board, institution, bureau, office or other entity, and legislative and judicial branches. The Chief Information Officer of the Department of Information Technology (DoIT), the Attorney General (AG) and Commissioner of Administrative Services are required to develop a process by which an ISP may certify that it is in compliance with specified consumer protection and net neutrality standards. The Attorney General (AG) shall review the network management practices of ISPs in New Hampshire and make a determination as to whether the ISP's broadband Internet access service complies with the 2015 net neutrality rules from the Federal Communication Commission.

The DoIT interprets the bill as requiring ISPs to operate under net neutrality principles to do business in the state and also to be eligible to be awarded contracts by the state. DoIT would work with ISPs to certify, monitor, and in collaboration with the Attorney General's Office, enforce the net neutrality principles specified in the bill. DoIT would take on a completely new regulatory role which would require a new bureau to be funded differently than the rest of DoIT. The operational impacts would be administrative overhead during implementation and longer term lost opportunity costs for some senior management staff within DoIT. These lost opportunity costs, estimated to be \$27,000 in FY 2020, and roughly \$14,000 in each year thereafter. Allocation of senior management expenses attributable to this function would be a general fund cost but will be matched by a decreased cost either in general or other fund



expenses, yielding no overall cost increase. Cost estimates include staff, associated space and workspace considerations, technology implementation and maintenance. These operational and financial estimates do not take into account costs that may accrue to the AG's office in support of their part of the mission.

The DoIT would implement case management software to assist in certification monitoring and enforcement activities. This software would facilitate business process discipline and provide exceptional accountability for all involved. AG's office staffers supporting this function would need a license for case management software (\$1,500 per user per year).

New DoIT staff positions include the following:

New DoIT Staff Position	Salary and Benefits			
	FY 2020	FY 2021	FY 2022	FY 2023
Administrative Assistant II (LG 19, Step 1)	\$67,000	\$70,000	\$73,000	\$77,000
Utility Analyst IV (LG 30, Step 3)	\$102,000	\$107,000	\$112,000	\$113,000
Utility Analyst IV (LG 30, Step 3)	\$102,000	\$107,000	\$112,000	\$113,000
Attorney III (LG30, Step 5)	\$110,000	\$111,000	\$117,000	\$118,000
Unclassified Director (GG, Step 3)	\$123,000	\$129,000	\$135,000	\$136,000
<b>TOTAL</b>	<b>\$504,000</b>	<b>\$524,000</b>	<b>\$549,000</b>	<b>\$557,000</b>

Total costs for DoIT are accounted for as follows:

DoIT All New Costs	FY 2020	FY 2021	FY 2022	FY 2023
(5) New Positions	\$504,000	\$524,000	\$549,000	\$557,000
Office Space & Technology	\$80,458	\$23,145	\$23,145	\$23,145
Case Management Software	\$27,500	\$7,500	\$7,500	\$7,500
<b>TOTAL</b>	<b>\$611,958</b>	<b>\$554,645</b>	<b>\$579,645</b>	<b>\$587,645</b>

The Department of Justice states it would need to hire a full time attorney with the requisite experience to handle the review to certify compliance and networking management practices of ISPs. The combined salary and benefits for this position are as follows: \$124,000 for FY 2020; \$129,000 for FY 2021; \$130,000 for FY 2022; and \$131,000 for FY 2023.

The Department of Administrative Services (DAS) indicates contracts entered into by the state will include the necessary net neutrality requirements in the bid solicitation materials. Such RFPs or contracts will be determined and drafted by the Department of Justice, and DAS will notify potential bidders and contractors of the certification requirement and reject bids without such certification as part of the existing bidding and contracting process. DAS estimates there will be no additional expenses or revenues in the Division of Procurement and Support Services

due to this change but there is a potential unknown fiscal impact for integration with the current enterprise resources planning system and sub systems within the Financial Data Management Division. The DAS also does not currently administer contracts for the legislative or judicial branches or numerous other agencies pursuant to RSA 21-I:18 and assumes this will continue.

The Judicial Branch states unless the branch has to hire a third party to certify that their ISP is in compliance with the legislation, there would be no fiscal impact in excess of \$10,000.

The Legislative Branch states there is no fiscal impact to the branch but it is unknown if certified ISPs would charge more for their services.

**AGENCIES CONTACTED:**

Departments of Information Technology, Administrative Services and Justice, Judicial and Legislative Branches

Bill as  
Introduced

HB 132-FN - AS INTRODUCED

2019 SESSION

19-0047  
05/10

HOUSE BILL            **132-FN**

AN ACT                relative to net neutrality.

SPONSORS:            Rep. Oxenham, Sull. 1; Rep. Abramson, Rock. 20

COMMITTEE:          Science, Technology and Energy

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ANALYSIS

This bill:

I. Requires the department of information technology to develop a process for Internet service providers to certify compliance with consumer protection and net neutrality standards.

II. Requires such certification for an Internet service provider to be eligible to enter into a service contract with a state agency on or after April 15, 2020.

III. Directs the attorney general to review network management practices of ISPs in New Hampshire and assess compliance with the 2015 FCC net neutrality rules.

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Explanation:          Matter added to current law appears in *bold italics*.  
Matter removed from current law appears [~~in brackets and struck through.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nineteen*

AN ACT                   relative to net neutrality.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 Statement of Findings. The general court finds and declares that:

2           I. Our state has a compelling interest in preserving and promoting an open Internet in New  
3 Hampshire.

4           II. As New Hampshire is a rural state with many geographically remote locations,  
5 broadband Internet access service is essential for supporting economic and educational  
6 opportunities, strengthening health and public safety networks, and reinforcing freedom of  
7 expression and democratic, social, and civic engagement.

8           III. The accessibility and quality of communications networks in New Hampshire,  
9 specifically broadband Internet access service, will critically impact our state's future.

10          IV. Net neutrality is an important topic for many New Hampshire residents and  
11 transparency with respect to the network management practices of Internet service providers (ISPs)  
12 doing business in New Hampshire will continue to be of great interest to many people living and  
13 working in the state.

14          V. In 1996, Congress recognized that "[t]he Internet and other interactive computer  
15 services offer a forum for a true diversity of political discourse, unique opportunities for cultural  
16 development, and myriad avenues for intellectual activity" and "[i]ncreasingly Americans are  
17 relying on interactive media for a variety of political, educational, cultural, and entertainment  
18 services." 47 U.S.C. section 230(a)(3) and (5).

19          VI. Many renters do not have the ability to choose easily between ISPs. This lack of a  
20 thriving competitive market, particularly in isolated locations, disadvantages the ability of  
21 consumers and businesses to protect their interests sufficiently.

22          VII. Without net neutrality, "ISPs will have the power to decide which websites you can  
23 access and at what speed each will load. In other words, they'll be able to decide which companies  
24 succeed online, which voices are heard - and which are silenced." Tim Berners-Lee, founder of the  
25 World Wide Web and Director of the World Wide Web Consortium (W3C), December 13, 2017.

26          VIII. The Federal Communications Commission's (FCC's) recent repeal of the federal net  
27 neutrality rules pursuant to its Restoring Internet Freedom Order manifests a fundamental shift in  
28 policy.

29          IX. The FCC anticipates that a "light-touch" regulatory approach under Title I of the  
30 Communications Act of 1934, rather than "utility-style" regulation under Title II, will further  
31 advance the Congressional goals of promoting broadband deployment and infrastructure

1 investment.

2 X. The FCC's regulatory approach is unlikely to achieve the intended results in New  
3 Hampshire. The policy does little, if anything, to overcome the financial challenges of bringing  
4 broadband service to hard-to-reach locations with low population density. However, it may result in  
5 degraded Internet quality or service. The state has a compelling interest in preserving and  
6 protecting consumer access to high quality Internet service.

7 XI. The economic theory advanced in the FCC in 2010 known as the "virtuous circle of  
8 innovation" seems more relevant to the market conditions in New Hampshire. See *In re Preserving*  
9 *the Open Internet*, 25 F.C.C.R. 17905, 17910-11 (2010).

10 XII. As explained in the FCC's 2010 order, "The Internet's openness...enables a virtuous  
11 circle of innovation in which new uses of the network - including new content, applications,  
12 services, and devices - lead to increased end-user demand for broadband, which drives network  
13 improvements, which in turn lead to further innovative network uses. Novel, improved, or lower-  
14 cost offerings introduced by content, application, service, and device providers spur end-user  
15 demand and encourage broadband providers to expand their networks and invest in new broadband  
16 technologies." 25 FCC Rcd. at 17910-11, upheld by *Verizon v. FCC*, 740 F.3d 623, 644-45 (D.C.  
17 Circuit 2014).

18 XIII. As affirmed by the FCC 5 years later, "the key insight of the virtuous cycle is that  
19 broadband providers have both the incentive and the ability to act as gatekeepers standing between  
20 edge providers and consumers. As gatekeepers, they can block access altogether; they can target  
21 competitors, including competitors in their own video services; and they can extract unfair tolls."  
22 *Open Internet Order*, 30 FCC Rcd at para. 20.

23 XIV. The state may exercise its traditional role in protecting consumers from potentially  
24 unfair and anticompetitive business practices. Doing so will provide critical protections for New  
25 Hampshire individuals, entrepreneurs, and small businesses that do not have the financial clout to  
26 negotiate effectively with commercial providers, some of whom may provide services and content  
27 that directly compete with New Hampshire companies or companies with whom New Hampshire  
28 residents do business.

29 XV. The FCC's most recent order expressly contemplates a state's exercise of its traditional  
30 police powers on behalf of consumers: "we do not disturb or displace the states' traditional role in  
31 generally policing such matters as fraud, taxation, and general commercial dealings, so long as the  
32 administration of such general state laws does not interfere with federal regulatory objectives."  
33 *Restoring Internet Freedom Order*, WC Docket No. 17-108, FCC 17-166, para. 196.

34 XVI. The benefits of state measures designed to protect the ability of people in this state to  
35 have unfettered access to the Internet far outweigh the benefits of allowing ISPs to manipulate  
36 Internet traffic for pecuniary gain.

37 XVII. The most recent order of the FCC contemplates federal and local enforcement  
38 agencies preventing harm to consumers: "In the unlikely event that ISPs engage in conduct that

1 harms Internet openness...we find that utility-style regulation is unnecessary to address such  
2 conduct. Other legal regimes - particularly antitrust law and the FTC's authority under Section 5  
3 of the FTC Act to prohibit unfair and deceptive practices - provide protections to consumers." para.  
4 140. The attorney general enforces antitrust violations or violations of the Consumer Protection Act  
5 in New Hampshire.

6 XVIII. The state has a compelling interest in knowing with certainty what services it  
7 receives pursuant to state contracts.

8 XIX. Procurement laws are for the benefit of the state. When acting as a market  
9 participant, the government enjoys unrestricted power to contract with whomever it deems  
10 appropriate and purchase only those goods or services it desires.

11 XX. The disclosures required by this act are a reasonable exercise of the state's traditional  
12 police powers and will support the state's efforts to monitor consumer protection and economic  
13 factors in New Hampshire particularly with regard to competition, business practices, and  
14 consumer choice, and will also enable consumers to stay apprised of the network management  
15 practices of ISPs offering service in New Hampshire.

16 XXI. The state is in the best position to balance the needs of its constituencies with policies  
17 that best serve the public interest. The state has a compelling interest in promoting Internet  
18 consumer protection and net neutrality standards. Any incidental burden on interstate commerce  
19 resulting from the requirements of this act is far outweighed by the compelling interests the state  
20 advances.

21 2 New Subdivision; Department of Information Technology; Internet Service Providers; Net  
22 Neutrality Compliance. Amend RSA 21-R by inserting after section 15 the following new  
23 subdivision:

24 Internet Service Providers; Net Neutrality Compliance

25 21-R:16 Definitions. The terms and definitions of this subdivision shall be interpreted broadly  
26 and any exceptions interpreted narrowly, using relevant Federal Communications Commission  
27 orders, advisory opinions, rulings, and regulations as persuasive guidance. In this subdivision:

28 I. "Broadband Internet access service" means a mass-market retail service by wire or radio  
29 in New Hampshire that provides the capability to transmit data to and receive data from all or  
30 substantially all Internet endpoints, including any capabilities that are incidental to and enable the  
31 operation of the communications service, but excluding dial-up Internet access service. The term  
32 also encompasses any service in New Hampshire that the chief information officer finds to be  
33 providing a functional equivalent of the service described in this subdivision or that is used to evade  
34 the protections established in this subdivision.

35 II. "Edge provider" means any person in this state that provides any content, application, or  
36 service over the Internet and any person in this state that provides a device used for accessing any  
37 content, application, or service over the Internet.

38 III. "Internet service provider" or "provider" means a business that provides broadband

1 Internet access service to any person in this state.

2 IV. "Paid prioritization" means the management of an Internet service provider's network  
3 to favor directly or indirectly some traffic over other traffic, including through the use of techniques  
4 such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic  
5 management, either in exchange for consideration, monetary or otherwise, from a third party or to  
6 benefit an affiliated entity or both.

7 V. "Reasonable network management" means a practice that has a primarily technical  
8 network management justification but does not include other business practices and that is  
9 primarily used for and tailored to achieving a legitimate network management purpose, taking into  
10 account the particular network architecture and technology of the broadband Internet access  
11 service.

12 21-R:17 Internet Service Providers; Net Neutrality Compliance.

13 I. The chief information officer, in consultation with the attorney general and commissioner  
14 of administrative services, shall develop a process by which an Internet service provider may certify  
15 that it is in compliance with the consumer protection and net neutrality standards established in  
16 paragraph II.

17 II. A certificate of net neutrality compliance shall be granted to an Internet service provider  
18 that demonstrates and the chief information officer finds that the Internet service provider, insofar  
19 as the provider is engaged in the provision of broadband Internet access service:

20 (a) Does not engage in any of the following practices in New Hampshire:

21 (1) Blocking lawful content, applications, services, or nonharmful devices, subject to  
22 reasonable network management.

23 (2) Impairing or degrading lawful Internet traffic on the basis of Internet content,  
24 application, or service or the use of a nonharmful device, subject to reasonable network  
25 management.

26 (3) Engaging in paid prioritization, unless this prohibition is waived pursuant to  
27 paragraph III.

28 (4) Unreasonably interfering with or unreasonably disadvantaging either a  
29 customer's ability to select, access, and use broadband Internet access service or lawful Internet  
30 content, applications, services, or devices of the customer's choice or an edge provider's ability to  
31 make lawful content, applications, services, or devices available to a customer. Reasonable network  
32 management shall not be considered a violation of this prohibition.

33 (5) Engaging in deceptive or misleading marketing practices that misrepresent the  
34 treatment of Internet traffic or content to its customers.

35 (b) Publicly discloses to consumers accurate information regarding the network  
36 management practices, performance, and commercial terms of its broadband Internet access  
37 services sufficient for consumers to make informed choices regarding use of such services and for  
38 content application, service, and device providers to develop, market, and maintain Internet



1 offerings.

2 III. The chief information officer may waive the ban on paid prioritization under  
3 subparagraph II(a)(3) only if the Internet service provider demonstrates and the chief information  
4 officer finds that the practice would provide some significant public interest benefit and would not  
5 harm the open nature of the Internet in New Hampshire.

6 21-R:18 State Contracting; Internet Service.

7 I. Each contract for broadband Internet access service entered into by a state agency on or  
8 after April 1, 2020, shall include a provision requiring that the Internet service provider certify that  
9 it is in compliance with the consumer protection and net neutrality standards established in RSA  
10 21-R:17.

11 II. For purposes of this section, "state agency" means any department, commission, board,  
12 institution, bureau, office, or other entity, by whatever name called, including the legislative and  
13 judicial branches of state government, established in the state constitution, statutes, session laws or  
14 executive orders.

15 3 Attorney General Review and Disclosure.

16 I. The attorney general shall review the network management practices of Internet service  
17 providers in New Hampshire and, to the extent possible, make a determination as to whether the  
18 provider's broadband Internet access service complies with the open Internet rules contained in the  
19 Federal Communications Commission's 2015 Open Internet Order, "Protecting and Promoting the  
20 Open Internet," WC Docket No. 14-28, Report and Order on Remand, Declaratory Ruling and  
21 Order, 30 FCC Rcd 5601.

22 II. The attorney general shall make a report of its findings and review available to the  
23 public on the department of justice's website.

24 4 Effective Date. This act shall take effect 60 days after its passage.