

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Protecting and Promoting the)	GN Docket No. 14-28
Open Internet)	
)	
Framework for Broadband)	GN Docket No. 10-127
Internet Service)	

**COMMENTS OF THE
CONGRESSIONAL PROGRESSIVE CAUCUS [CO-CHAIRS]**

The Congressional Progressive Caucus [co-chairs Representative Raúl Grijalva and Representative Keith Ellison] submits these comments in response to the Commission’s May 15th *Notice of Proposed Rulemaking* on Protecting and Promoting the Open Internet.¹

More than three dozen Members of our Caucus and Members of Congress wrote to Chairman Wheeler before the release of that *Notice*, voicing support for “strong and enforceable open Internet rules that proactively protect Internet users from unfair practices, including the blockage of lawful traffic or discrimination among content providers by Internet Service Providers (ISPs).”² We appreciate the Chairman’s response to our letter, in which he agreed that “the Commission must craft meaningful rules to protect the Open Internet” and assured us he would “utilize the best tools available . . . to ensure the Commission adopts effective and resilient open Internet rules.”³ Unfortunately, the Commission’s tentative proposal in the *Notice* does not live up to those assurances.

¹ Protecting and Promoting the Open Internet, *Notice of Proposed Rulemaking* GN Docket No. 14-28 (May 15, 2014) (the “*Notice*”).

² Letter to Hon. Thomas Wheeler, Chairman, Federal Communications Commission (May 14, 2014) (“CPC Letter”), <http://cpc.grijalva.house.gov/uploads/5-14-14%20CPC%20Net%20Neutrality%20Letter.pdf>.

³ Letter to Hon. Raúl Grijalva, from Tom Wheeler (June 30, 2014) (“Wheeler Letter”).

The proposed rules simply would not be effective to prevent blocking and unreasonable discrimination by broadband ISPs. Weakening these rules beyond repair by basing them on discredited assumptions of the Commission's legal authority would pose a grave threat to the open Internet and all of the benefits it brings to our constituents and our country.

Protecting American Ingenuity for All

The Internet provides a platform not just for the powerful and privileged, but for individuals and groups whose voices have traditionally been ignored. It currently provides an accessible and democratic outlet for all types of opinions, no matter where they fall on the political or social spectrum. It increases civic participation, involvement in the electoral process, and access to government services. It enhances educational opportunities, creates jobs, and bridges distances and divides – both in geography and opportunity. It lets us tell our own stories, making room for the voices of women, people of color, LGBT individuals, low-wealth households, members of all religious groups and ethnic populations, and residents of rural and urban areas alike. The Internet as we know it has spawned a new era of American innovation that benefited consumers and enterprises alike. It allows individuals, small businesses and start-ups to freely pursue the American dream and to compete against multinational corporations and conglomerates on the basis of ideas and technology.

All of that would change if the Commission takes the wrong path in this proceeding. While Broadband ISPs provide some of the infrastructure to reach the Internet, there is no reason to abandon longstanding Net Neutrality principles and give a handful of companies disproportionate control over the choices Americans have once they get online. Four companies currently control broadband Internet access to 75% of the country. Any proposal that allows for content prioritization to be made on the basis of “payola” rather than efficiency of data delivery

will allow a small cadre of corporations to have undue influence over innovation and speech. If the Chairman's proposed changes to our Internet were in place years ago, truly democratic and deeply impactful innovations like YouTube, Etsy, or Kickstarter may have never flourished.

There is no evidence to support the notion that a choice must be made between openness and affordability. Access to a slow lane and a second-class Internet is not good enough, and it's not a bargain anyone should be asked or compelled to accept.

The Commission Cannot Protect the Open Internet While Allowing Discrimination

As we noted in our letter, without strong protections against ISP interference, "the Internet could devolve into a closed platform in which those who pay the most can overwhelm other views and ideas."⁴ Chairman Wheeler's response discussed ISPs' obvious incentives to exert this kind of control in order to boost their own bottom lines, at the expense of free expression and economic opportunities for others. As the Chairman wrote, "[t]he Commission has already found, and the court has agreed, that broadband providers have economic incentives and technological tools to engage in behavior that can limit Internet openness and harm consumers and competition."⁵

The court in question is the D.C. Circuit Court of Appeals, which struck down several of the Commission's Open Internet rules earlier this year. It did so not because not because of the merits of those rules, or any flaw in the policies they promote, but the legal theory the put forward to support them. The Commission proposes in the *Notice* to adopt new rules replacing those just overturned – yet proposes using the same legal theory that the court just rejected.

⁴ CPC Letter at 1.

⁵ Wheeler Letter at 1.

In his response to our letter, Chairman Wheeler suggested that he shared our concerns “about arrangements that would prioritize certain traffic and allow ISPs to discriminate against other traffic.”⁶ He said that “there must only be one Internet. It must be fast, robust and open for everyone.”⁷ We could not agree more.

That is why we were disappointed to find in the Commission’s *Notice* proposed rules that “would allow broadband providers sufficient flexibility to negotiate terms of service individually with edge providers . . . without having to hold themselves out to serve all comers indiscriminately on the same or standardized terms.”⁸ Similarly problematic, and equally disappointing, are the Commission’s tentative conclusions to “permit broadband providers to engage in individualized practices”⁹ and “carry traffic on an individually negotiated basis.”¹⁰

Granting broadband providers such “flexibility” could mean an end to the Internet as we know it. The Commission simply cannot claim that it will simultaneously prevent discrimination online while explicitly letting ISPs decide when and where to discriminate and provide preferential treatment to individual websites.

Congress Has Already Given the Commission the Authority to Prevent Discrimination

The Commission should use its clear authority under Title II of the Communications Act to prevent unjust ISP practices and unreasonable discrimination. Reclassifying broadband Internet access as a telecommunications service would provide all the authority needed for strong open Internet rules. Reclassification also would complement the Commission’s efforts to

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Notice* ¶ 97 (internal quotation marks omitted).

⁹ *Id.* ¶ 111.

¹⁰ *Id.* ¶ 116.

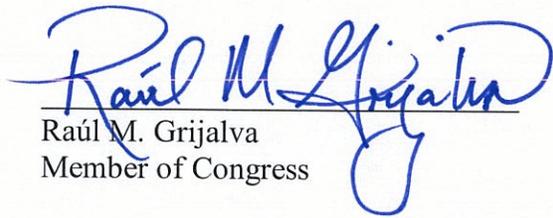
promote innovation, competition and investment in universally available, reliable and affordable broadband infrastructure.

Recognizing our nation's communications providers as common carriers is common sense, and the only way for the Commission to accomplish its stated goals for this proceeding

Respectfully Submitted,



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Member of Congress



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