



New England Cable & Telecommunications Association, Inc.

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**New England Cable and Telecommunications Association Testimony to the
Energy and Technology Committee's Informational Forum on "Net Neutrality"**

February 13, 2018

Good afternoon, Chairpersons Reed, Winfield, and Formica and Vice Chairpersons Doyle, Hwang, and Slap and esteemed Members of the 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 Connecticut, Massachusetts, New Hampshire, Rhode Island, and Vermont, as well as, some associate member content providers like A&E, AMC, Bloomberg TV, and NESN. For more than four decades, NECTA has represented the interests of the cable telecommunications industry before state and federal regulatory agencies, in the courts, the legislatures and before the United States Congress. All NECTA cable members have a physical presence in Connecticut, including two Fortune® 100 companies, Charter Communications, which is headquartered in Stamford, and Comcast with a Regional New England headquarters in Berlin and a subsidiary, NBC Sports, headquartered in Stamford, as well as, privately held Cox Communications and Atlantic Broadband. NECTA's cable members have collectively invested \$2 billion over the past seven years developing state of the art networks in Connecticut and employing thousands of Connecticut residents.

We appreciate the invitation to start a conversation with this Committee and your fellow legislators about NECTA cable members longstanding commitment to the "Net Neutrality" principles to:

- 1- Ensure consumer protections remain paramount in our business operations,*
- 2- Call on Congressional action to codify these protections under a clear, modern, and enduring law, and*
- 3- Highlight the definite disruptions and the unpredictable and unintended consequences that would ensue from state regulation of the Internet.*

Our companies support and adhere to the principles of Net Neutrality every day, and we believe the most effective way to achieve lasting consumer protections while spurring innovation and investment is through bipartisan federal legislation that establishes a national standard.

II. NECTA Members Support Bipartisan Congressional Action to Establish Enduring Consumer Protections by Codifying the Net Neutrality Principles

A wide variety of ISPs, including wired, wireless and satellite providers, support Congressional action to enact bipartisan legislation that enshrines the Net Neutrality principles of no blocking of lawful material, throttling, or unfair discrimination to ensure permanent and uniform consumer protections. The reason why ISPs supported the Federal Communications Commission's ("FCC") recent decision to repeal the 2015 *Title II Order* and restore the light touch framework is clear— 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.

Federal legislation would provide permanent regulatory assurances and create an environment that allows NECTA members to engage in more predictable, long-term business planning. Without a clear federal law, Internet consumer protection rules become a political football that diverts time and resources from innovation and job creation. By permanently rejecting outdated, 1930s style Title II regulations and passing a modern law protecting consumers and permitting growth in the innovation economy, Congress would achieve the right policy balance of government oversight of ISPs while fostering enhanced private investment and market competition.

Conversely, if states enact their own legislation to regulate the Internet, it will create a 50-state multi-jurisdictional patchwork of inconsistent state laws. The effect of such disjointed policymaking would confuse consumers, undermine competition, and impede innovation. The better approach would be for Congress to codify the light touch regulatory policies spearheaded by the Clinton Administration that have a proven record of fostering competition and protecting consumers.

III. NECTA Members Ongoing Commitment to Net Neutrality Principles

NECTA members do not block, throttle, or otherwise interfere with the lawful online content of our customers and have consistently agreed to these commitments since the 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 are a part of our companies' operating DNA.

With the FCC memorializing the Transparency Rule in the Restoring Internet Freedom Order (“*RIF Order*”), ISPs’ network management practices and performance and commercial terms of service are now legally enforceable by state and federal oversight agencies. (See Exhibit A) These mandatory disclosures are robust and clear statements of NECTA members continued commitment to their customers and to fundamental Net Neutrality tenets. (See Exhibit B)

IV. Overview of Existing State and Federal Oversight and Enforcement

Currently, state and federal consumer protection and antitrust laws make throttling, blocking, and discrimination against competitors illegal.

At the state level, State Attorneys General can sue ISPs who engage in unfair or deceptive trade practices under existing state consumer protection laws. Specifically, under Chapter 735a, the *Connecticut Unfair Trade Practices Act*, Attorney General Jepsen may investigate and bring legal actions against any ISP who violates their network management practices and performance and commercial terms of service commitments as unfair and deceptive trade practices.

On the federal side, the *RIF Order* returns online consumer protection authority to the FTC, the “top federal cop on the beat” for the past twenty years. The FTC is a non-partisan agency with a proven track record of bringing enforcement actions against Internet companies engaged in conduct harmful to consumers. Due to this successful track record, the Obama Administration proposed that the FTC be designated the sole federal privacy enforcement agency in its much heralded 2012 Privacy Bill of Rights.

Pursuant to the *RIF Order*, the FTC will once again pursue rigorous 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. The FTC specifically requires the disclosure of material information that, if not disclosed, would mislead the consumer. Therefore, if an ISP failed to disclose blocking, throttling or similar illegal practices to a consumer, the FTC’s enforcement authority would apply.

Importantly, both the FCC and FTC have committed to regularly coordinate potential investigations against ISPs that could arise under each agency’s jurisdiction. The FCC continues to require ISPs to publicly disclose information about their practices to consumers, entrepreneurs, and the agency.

Finally, the U.S. Department of Justice (“DOJ”) is a third federal office who has jurisdiction over illegal activities by ISPs. The DOJ can enforce antitrust laws if ISPs act in an anticompetitive manner or illegally reach agreements that unfairly block, throttle, or otherwise interfere with the lawful online content of our customers conduct or applications.

V. Connecticut as an Innovation Leader and ISPs Role as the Backbone to that Success

As a result of the leadership of Connecticut's policymakers today the state's innovation ecosystem— advanced precision manufacturing, aerospace, bioscience, and beyond— is world class. This success is evidenced by:

- *U.S News and World Report's 2017 Best States rankings named Connecticut third in Internet Access (See Exhibit C)*
- *Fortune naming Hartford the 4th best metro-area for technology jobs,*
- *State Technology and Science Index ranking Connecticut 6th in 2016,*
- *WalletHub's 2017 State Innovation Index placing Connecticut 9th, Information Technology,*
- *Innovation Fund's 2017 State New Economy Index naming Connecticut 10th, and*
- *Information and Technology Innovation Foundation's 2017 State New Economy Index grading Connecticut 10th.*

Driving this excellence in innovation is Connecticut's Internet success story. The state enjoys premier high-speed broadband access and speed levels that are powering its economy. As noted above, in McKinsey & Company's ("McKinsey") analysis for the *U.S News and World Report's 2017 Best States rankings*, the state ranked third in the Internet Access category within the overall Infrastructure Rankings. Connecticut's high grade is a result of McKinsey finding that Connecticut residents have the third highest online download speeds and the sixth most households with Internet access. These Internet Access rankings are even more impressive when compared to McKinsey's finding for Connecticut's other infrastructure criteria rankings: 47th in transportation (highlighted by 50th in road quality) and 44nd in energy (highlighted by 49th in energy prices).

Connecticut's high-speed broadband success story, as detailed by McKinsey, illustrates the strong commitment wired, wireless and satellite providers have made to compete in the state's marketplace. This competitive market is a consequence of Connecticut's policymakers ongoing efforts to preserve the state's balanced telecommunications regulatory environment.

VI. Connecticut's Competitive, Highly Successful ISP Market is the Direct Result of Modern, Uniform State Telecommunication Regulation

In 2007, Connecticut debated the merits of continuing its oversight of cable and traditional phone service through legacy franchise agreements and state regulations or following the trend, at the time, of adopting a centralized, light-touch statewide regulatory structure for these service providers. Ultimately, the state chose to adopt a modern, light-touch regulatory regime, which spurred tremendous telecommunications competition and ultimately a convergence of residential

and business consumer video, broadband, voice, and wireless offerings from new service providers at lower costs for consumers.

In the past decade, consumers have seen an explosion of telecommunications and video products and services that have fundamentally altered the way Connecticut residents work, play, and live. Those new innovations are powered by the delivery of broadband services by ISPs. Connecticut lawmakers' decision to enact a modern set of regulatory rules removed antiquated barriers that encouraged today's private sector competition and advanced broadband offerings. This resulting success from the state's policy decision is instructive for today's debate between outdated Title II Net Neutrality rules vs. a modern, light touch regulatory approach to ISPs.

As a result of these reforms to the state's telecommunications law, the network quality and diversity of products offered by the companies in Connecticut is virtually unparalleled. Within the past decade, NECTA members maximum Internet speeds have increased dramatically. Their residential Internet speeds, delivered through approximately 8,000 miles of fiber networks, reach speeds of up to two Gigabits. For business services, NECTA members currently provide the top Internet speeds that any retail store, university research and development center, financial services company, or hospital could demand. Importantly, Connecticut cable providers are actively deploying 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).

Today, NECTA members networks and operating systems are diverse, robust, and flexible enough to not only meet but exceed consumer demand. 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. In this rapidly changing and competitive marketplace, customer satisfaction is the principal priority for our companies. That is why NECTA members are committed to the Net Neutrality principles as they help form the foundation of the subscriber-company relationship.

NECTA members operating in Connecticut are uniquely committed to this state with their substantial in-state workforces. Our industry's commitment is best illustrated by Charter Communications 2012 decision to relocate their executive corporate operations to Stamford and their October 2017 announcement to partner with the state to construct a new headquarter facility in the city. Their proposed 500,000 square foot, 15-story complex at Stamford's Gateway Harbor Point site will create an additional 1,100 Charter jobs and will include approximately \$100 million in planned capital expenditures over the next several years.

VII. The Definite Disruptions and Unintended Consequences of State Regulations on ISPs and the Internet

Despite existing state and federal regulatory oversight, flourishing innovation, and the record of success described above, state policymakers are considering imposing unnecessary regulations on ISPs. By enacting such legislation, Connecticut and other states would create a patchwork of inconsistent state Internet laws. Due to its inherent status as interstate commerce, policing the

Internet on a state-by-state basis is fraught with risk and nearly impossible to enforce. These disparate regulatory schemes would confuse consumers, harm competition, and impeded innovation.

A patchwork of state regulation would also hamper investment and limit new product offerings as complying with these unique rules would require the reengineering of ISP networks to meet a host of state issued rules, diverting resources that would otherwise be directed toward upgrades and deployment of new technology.

VIII. State-Level Net Neutrality Measures Would Be Unwise and Unlawful

The *RIF Order* expressly preempts any state or local action—including legislation, regulation, an executive order, or litigation—that would subject ISPs to net neutrality obligations.

NECTA members believe that the FCC’s *RIF Order* prohibits state and local governments from imposing their own net neutrality mandates. As the *RIF Order* makes clear, “it is well-settled that Internet access is a jurisdictionally interstate service,” that “should be governed by a uniform set of federal regulations, rather than a patchwork that includes separate state and local requirements.” This is because, as the FCC has explained, “both interstate and intrastate communications can travel over the same Internet connection (and indeed may do so in response to a single query from a consumer)”—making it “impossible or impracticable for ISPs to distinguish between intrastate and interstate communications over the Internet or to apply different rules in each circumstance.” Thus, the very nature of Internet service—which transcends state and even national boundaries—defies efforts to impose different, and potentially conflicting, standards on ISPs in each state where they operate.

IX. Conclusion

NECTA members strongly support and adhere to the principles of Net Neutrality and we believe the best way to achieve lasting consumer protections while spurring innovation and investment 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 ISP regulation.

Respectfully,

Dated: February 13, 2017

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