



**Statement of AT&T Inc.**  
**Regarding Senate Committee Bill No. 6**  
***AN ACT CONCERNING NET NEUTRALITY PRINCIPLES AND INTERNET PRIVACY***  
**Before the Committee on Energy & Technology**  
**February 19, 2019**

**Proposal:**

Section One of Senate Committee Bill No. 6 seeks to impose state regulation of broadband providers and broadband service including the imposition of so-called net neutrality rules as delineated in the proposed legislation. Section Two would impose state-specific privacy rules on Internet Service Providers (ISPs).

**Comments:**

AT&T appreciates the opportunity to provide comment on the Committee Bill. While the Company strongly supports the adoption of federal legislation enshrining core net neutrality principles restricting blocking, throttling and unreasonable discrimination as well as comprehensive federal privacy legislation, it respectfully opposes the Committee Bill because the legislation is unnecessary, addresses issues more appropriate for action by the U.S. Congress, is preempted by federal law, and would hurt Connecticut's business climate.

**Section One:**

***AT&T is Committed to an Open Internet***

For more than a decade, AT&T has publicly supported the adoption of federal rules to maintain an Open Internet. We operate our network in an open and transparent way and we will always do so. Subject to reasonable network management practices:

- We will not block websites;
- We will not censor online content;
- We will not throttle or degrade internet traffic based on content;
- We will not unfairly discriminate in our transmission of internet traffic. Period.

These are the principles we believe in and instill in our network operations. They are legally enforceable commitments, they are published on our website, and they are readily available for consumer review.

So, while recent action by the Federal Communications Commission (FCC), in its *Restoring Internet Freedom Order*, restored its two decades old, bipartisan-supported classification of broadband Internet access as an information service and overturned the previous FCC's radical departure from past precedent by relying on Title II of the Communications Act as its authority for adopting net neutrality rules, the core open Internet protections which consumers expect have not gone away. That's because ISPs, like AT&T, have publicly

committed to continue abiding by them and can be held to those commitments by the FTC as well as state Attorneys General. Jon Leibowitz, the former Chairman of the Federal Trade Commission under President Barack Obama and a longtime net neutrality proponent, testified last year before this Committee that consumers continue to be protected by the FTC even after the FCC's Restoring Internet Freedom Order.

***AT&T Believes the U.S. Congress Should Act and Has Repeatedly urged it to do so***

Given the national, and for that matter global, nature of the internet, the appropriate venue to adopt net neutrality legislation is the U.S. Congress. Only a new federal law can provide consumers with durable and meaningful protections that match the borderless nature of the service as well provide regulatory certainty to the broader internet industry. It is this important combination that will stimulate investment and grow our economy. Just last year, AT&T ran a series of full page advertisements across the country calling on Congress to establish comprehensive consumer protections for the Internet that apply across all internet companies and guarantee basic transparency, openness, non-discrimination and privacy protection for all internet users.

***States are Preempted from Imposing their Own Net Neutrality Rules***

In both its 2015 net neutrality order and its December 2017 order, the FCC expressly preempted state attempts to impose net neutrality obligations.

“Finally, we announce our firm intention to exercise our preemption authority to preclude states from imposing obligations on broadband service that are inconsistent with the carefully tailored regulatory scheme we adopt in this Order.”

*2015 Open Internet Order, FCC 15-24, ¶ 433.*

“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.”

*2017 Restoring Internet Freedom Order, FCC 17-166, ¶ 195.*

The FCC has held since at least 2002 that Broadband Internet Access Services are jurisdictionally interstate services and that there is no such thing as an “intrastate” Broadband Internet Access Service.

*2017 Restoring Internet Freedom Order, FCC 17-166, ¶¶ 199-200.*

In its December 2017 order, the FCC found that state regulation of Broadband Internet Access Services that re-imposes obligations that the FCC has held should not exist “would interfere with the balanced federal regulatory regime” the FCC adopted in that order.

*2017 Restoring Internet Freedom Order, FCC 17-166, ¶ 201.*

States are preempted from regulating jurisdictionally interstate services where doing so would interfere with federal policy. That is a basic principle of conflict preemption enshrined in the Supremacy Clause of the Constitution.

Of equal importance, the FCC's December 2017 order also restored the "information services" classification of Broadband Internet Access Services. States are prohibited from adopting or applying common-carrier, public utility type rules to information services. And the courts have repeatedly held that net neutrality rules are common-carrier rules that cannot be imposed on information services providers. State mandated net neutrality rules are preempted for that reason as well.

States cannot avoid the preemptive effect of the FCC's decision by regulating through their purchasing power. The United State Supreme Court and lower courts repeatedly reject state efforts to use its purchasing power to regulate in a preempted area. In particular, a state cannot use its purchasing power to control the manner in which providers offer services to customers other than the state itself. In determining whether a state is regulating or acting solely as a market participant, courts typically apply the following test:

... when a state or municipality acts as a participant in the market and does so in a narrow and focused manner consistent with the behavior of other market participants, such action does not constitute regulation subject to preemption. When, however, a state attempts to use its spending power in a manner "tantamount to regulation," such behavior is still subject to preemption.

*Cardinal Towing & Auto Repair, Inc. v. City of Bedford*, 180 F.3d 686, 692 (5th Cir. 1999).

A state law that would require a provider entering a contract with the state to comply with net neutrality mandates in its service offerings to customers other than the state plainly falls on the impermissible side of the regulatory line.

## **Section Two:**

### ***AT&T is Committed to Protecting Privacy***

AT&T's Privacy Policy and Code of Business Conduct reflect transparency, respect for customer choices and the importance of securing data.

- Our privacy commitments are available on our Web site, in plain language at: [att.com/privacy](http://att.com/privacy).
- We work hard to protect the privacy of our customers and to keep their information safe through the use of encryption and other security safeguards.
- We provide customers choices about how the company uses their information for marketing purposes.
- We provide notice of material changes to our privacy policy, in advance. No surprises.

***Consumers should be protected by a Uniform Set of Privacy Protections***

Today online data flows seamlessly across the internet ecosystem among various companies through devices, operating systems, browsers, ISPs, apps, online services, and advertising networks, among others. In seeking to apply rules only to ISPs, the Committee Bill would establish asymmetrical regulation on only a small part of the internet ecosystem. That is fundamentally unfair and, more importantly, confusing to the consumers it intends to protect. Given these significant inequities and concerns, AT&T believes that it is Congress that should establish uniform privacy rules which are consistent for all internet companies and across all websites, content, devices and applications. Doing so will offer consumers a greater sense of security and enhance consumer confidence.

***State Level Action Isn't the Answer***

Because data flows freely among many types of companies every time a user connects to the internet, any new state level regulation could have far-reaching unintended consequences which could disrupt the operation of the internet that consumers have come to expect. For example, a requirement that consumers provide written opt-in consent before any transfer of personal information may take place, could impede ISPs from connecting consumers to the Web sites that they are trying to reach, from exchanging information with their vendors, and from sharing information in order to prevent fraud and cybercrime. The Committee bill would create rules unlike those in place in any other state.

***Consumer Privacy Protections on the Internet Should be Uniform across the Nation.***

Robust protection of consumer privacy on the internet requires uniform policies across the nation. Comprehensive federal legislation will also help avoid a patchwork of state privacy regulations that can make it difficult for new internet services and applications to be deployed to consumers. Federal legislation should create a unified regulatory regime for privacy, data security, and breach notification, consistent with the standards developed and enforced by the Federal Trade Commission (FTC) over the past 20 years. AT&T has been an outspoken advocate for action by the Congress, and we are encouraged by Senator Blumenthal's efforts to build bipartisan consensus around the foundation for a federal law. With his leadership, we anticipate that federal legislation will be passed soon.

**Conclusion:**

AT&T strongly supports an open internet and privacy protections for its customers. The right venue for a more permanent solution, however, is the U.S. Congress, not states. The General Assembly should not seek to impose rules where it is prohibited from doing so as in the case of net neutrality, or where action will have unintended and potentially harmful outcomes, as would result from the imposition of asymmetrical privacy rules on ISPs. Such action will serve to hurt our State's fragile business climate and undermine an economy which is still struggling to regain its footing from the recession of 2008.