



The Energy and Technology Committee
Public Hearing, February 19, 2019
Office of Consumer Counsel
Elin Swanson Katz, Consumer Counsel
Testimony of Elin Swanson Katz

S.B. No. 6

An Act Concerning Net Neutrality Principles and Internet Privacy.

As Consumer Counsel and head of the Office of Consumer Counsel (OCC), which includes the State Broadband Office, I have reviewed Senate Bill No. 6, An Act Concerning Net Neutrality Principles and Internet Privacy. OCC supports the Bill.

Introduced by the Energy and Technology Committee, SB 6 will restore some of the vital net neutrality protections overturned by the FCC, by providing the following reasonable and invaluable open access protections:

- Internet service providers will be required to register and pay registration fees;
- The Public Utilities Regulatory Authority will apply net neutrality principles to Internet service providers and enforce such principles with civil penalties, and
- Internet service providers will be prohibited from taking certain actions with respect to a consumer's personally identifying information.

As the state Consumer Counsel, I am always guided by the needs of consumers. As I stated in testimony before this committee last legislative session when this subject last arose in Connecticut, consumers around the country overwhelmingly support net neutrality because they want reassurances that the internet will remain fair, open, and equally accessible to all. In a time when individual dependence on internet access, a service of such profound impact on the lives of all citizens that it is now considered a utility, demanding that open access to the internet is a right. It is abundantly clear that

consumers refuse to accept a regimen that allows internet service providers the right to pick winners and losers by blocking or throttling access to particular websites.

In reviewing this proposal, as I have done in the past, I pose a few simple questions:

- Who determines how you use the Internet?
- Who decides what content you can view and when?
- Should there be a single Internet, or fast lanes and slow lanes?
- Should Internet service providers be left free to slow down or throttle certain applications or content as they see fit?
- Should your access to the Internet on your mobile device have the same protections as your fixed device at home?

This is the essence of the Open Internet debate: in short, I support network neutrality. Today, we are faced with the question of how to ensure that all consumers have the tools they need shape their own user internet experience. The consumer alone should be the one who makes these decisions.

Connecticut can lead in this area. After the Federal Communications Commission's (FCC) [Restoring Internet Freedom Order](#) and transparency rule amendments became [effective](#) June 11, 2018, overturning far more balanced net neutrality requirements imposed in 2015 on internet service providers (ISPs), state legislators across the United States responded by introducing net neutrality legislation at the state level. The current debate surrounding net neutrality is principally about how ISPs should be regulated and what role government should play in overseeing their network management practices. It is entirely appropriate for the Connecticut General Assembly to put minimum protections into place while the legality of the FCC's order runs through the federal administrative appeals process.

States enacting protections against the worst overreaching of the FCC order will help to make it more likely that the FCC and telecommunications companies come to the table with the states and other stakeholders to work together to find a more balanced compromise. Attorneys general from 22 states [filed a protective petition for](#)

[review against the FCC](#) in the District of Columbia U.S. Court of Appeals, including the Connecticut Attorney General's office.

[As of two weeks ago](#), 34 states and the District of Columbia introduced 120 bills and resolutions regarding net neutrality in last year's legislative session, although only four (California, Oregon, Vermont, and Washington) have passed laws. Several governors have also issued executive orders related to net neutrality, while legislators have introduced measures that would [restrict ISPs' use of customer information and adopt privacy protections](#). For example, [two states, Nevada and Minnesota](#) prohibit disclosure of personally identifying information, but Minnesota also requires ISPs to get permission from subscribers before disclosing information about the subscribers' online surfing habits and internet sites visited.

S.B. 6 puts forth a detailed yet limited set of provisions that, at the least, will serve to protect consumers from the worst of the fallout from this fallacious legal battle raging largely in the federal arena. S.B. 6, sponsored by Sen. Bob Duff (D., District 25), will protect consumers by simply requiring internet service providers operating in the state to balance consumer equities and fairness by pledging to obey basic net neutrality principles. The bill also expressly prohibits relevant telecommunications companies from collecting personal information from customers without their express written consent, a fundamental tenet of fairness and equal protection. Further, S.B. 6 will require ISPs operating in the state to register with the Public Utilities Regulatory Authority and pay an annual registration fee. PURA is also authorized by this proposed statute to ensure that ISPs followed net neutrality principles and would subject them to civil penalties if they fail to do.

Finally, the bill will prohibit telecommunications companies, certified telecommunications providers, certified competitive video service providers, and ISPs that have entered into franchise agreements, agreements involving the use of the public right-of-way, or any other contract with the state or a state agency "from collecting personal information from a customer resulting from the use of such company or provider without express written consent from such customer and refusing to provide services based on lack of such express written consent."

Consumers expect full and equal access for all searches as well: they will not tolerate that the FCC or any other “regulator” has allowed the ISPs to boost their profits by requiring website owners to pay higher fees to achieve “paid prioritization,” thereby allowing premium payers to ‘cut to the front of the line’ while stifling access to all sites on an equal and competitive basis.

The Federal Communication Commission’s Open Internet Rules passed in 2015 provided safeguards for the consumer protection principles of net neutrality by preventing internet service providers from abusing their gatekeeper role to block or interfere with the ability of users to access the content of their choosing. In the simplest of terms: the FCC rules mean no fast and slow lanes on the internet, no blocking of content, and no provider throttling of consumer’s ability to stream video. Unfortunately, these rules have been repealed over the last two years, so it falls on the shoulders of state lawmakers such as yourselves to protect consumers.

Small, entrepreneurial startup companies without the luxury of national markets and unlimited funds will find themselves unable to compete with the long-established incumbent global telecommunications behemoths that will have the ability to impose market hurdles and rope in customers, effectively tying up the internet access market to themselves. Folks that have created high-tech black box companies supporting our robust aeronautic, genomic and other healthcare research facilities, and the insurance industry, are caught in an economic bind: they need ultra-high-speed internet access to support their business, but as startups they aren’t large enough to pay the high prices charged for custom services from the existing internet service providers.

ISPs claim that customers will vote with their dollars and feet by moving their business to “a provider that does not engage in those practices,” failing to acknowledge that, as noted above, over 43 percent of the United States has access to only one broadband provider, or to none at all, and 58 percent of rural census blocks do not have access to any fixed broadband. There is little or generally no competition for ISP services in this country and thus no competitive pressure on market behavior at all in light of the total abrogation of authority to act by the FCC through the 2017 Order.

While it is argued by industry that if a consumer complains that an ISP has stated it will obey net neutrality principles but fails to do so, the consumer can file a complaint with the Federal Trade Commission. This is clearly a far more onerous path, including the shift of the burden of proof from the ISP to consumers, than having an expert agency like the FCC set a federal regulation prohibiting such behavior on the entire industry. In the absence of federal regulation, however, we need to rely on our states more than ever to ensure fair and equitable access to the internet.

Conclusion

While we can hope that the ISPs won't violate net neutrality principles, nonetheless they have the legal authority to do so now that the FCC has repealed its 2015 Order, a regimen that the OCC fully endorsed. I am not comfortable relying on the good faith of the ISP industry players in the face of huge potential profits to be earned from consumers and with the blessing of the FCC 2017 Order.

I am delighted that Connecticut is once again going to be a leader in defending net neutrality and restoring the net neutrality principles that the Federal Communications Commission has repealed. I look forward to working for the passage of S.B. 6 during this legislative session.