The Energy and Technology Committee

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Office of Consumer Counsel

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Testimony of Richard E. Sobolewski

S.B. No. 4

An Act Concerning Data Privacy, Net Neutrality, Cyber Security and Fairness in Data Usage in the New Age of a Digital Workforce.

As Acting Consumer Counsel and head of the Office of Consumer Counsel (OCC), which includes the Office of State Broadband, I have reviewed Senate Bill No. 4, *An Act Concerning Data Privacy, Net Neutrality, Cyber Security and Fairness in Data Usage in the New Age of a Digital Workforce*. OCC **strongly supports** the Bill.

Introduced by the Energy and Technology Committee, S.B. 4 will ensure vital net neutrality protections 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's Acting Consumer Counsel, I am always guided by the needs of consumers. As stated in OCC's testimony before this Committee in prior legislative sessions when this same issue has been debated, 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 should now be considered a utility, demanding 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. This is principle has proved ever more imperative in the past year, where the social distancing requirements necessitated by the Covid-19 pandemic required workers, students, and businesses to utilize the Internet and much greater levels than before.

In reviewing this proposal, as OCC has done in the past, my office poses 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 FCC's 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 for the benefit of

Connecticut consumers. With the recent change in administration in Washington, D.C., there remains hope that the FCC may revisit the net neutrality issue in a way that benefits consumers. Until such time, however, Connecticut would do well to ensure that its Internet consumers remain protected regardless of how the political winds in Washington blow on the net neutrality issue.

In the time that has elapsed since the last legislative session, the state of the law governing net neutrality has substantially changed. On October 1, 2019, the United States Court of Appeals for the D.C. Circuit concluded that the FCC's current order does not preempt the individual states from enacting their own net neutrality protections, such as those already enacted in California, Oregon, Vermont, and Washington. *See* *Mozilla Corporation v. Federal Communications Commission*, 940 F.3d 1 (D.C. Cir. 2019). California had enacted a state level net neutrality law in 2018, following the FCC's repeal of net neutrality at the federal level. The providers are challenging that law in federal court, but their request for a preliminary injunction was denied last month, which means that the court determined that the providers were not likely to prevail on the merits and there was no imminent harm to the law being enforced during the pendency of the litigation.

S.B. 4 puts forth a detailed yet limited set of provisions that, at the least, will serve to ensure that Connecticut consumers receive the benefits of net neutrality. S.B. 4 will protect consumers by simply requiring ISPs 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. 4 will require ISPs operating in the state to register with the Public Utilities Regulatory Authority (PURA) and pay an annual registration fee. PURA is also authorized by this proposed legislation to ensure that ISPs follow net neutrality principles and would subject them to civil penalties if they fail to do.

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 FCC’s 2015 Open Internet Rules previously provided safeguards for the consumer protection principles of net neutrality by preventing ISPs 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, the FCC has repealed these rules under the previous administration, 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. Those 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 are not 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 in light of the total abrogation of authority to act by the FCC through the 2017 Order.

Industry argues 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 state and its regulators more than ever to ensure fair and equitable access to the Internet.

Conclusion

While we can hope that the ISPs will not violate net neutrality principles, nonetheless they have the legal authority to do so now that the FCC has repealed its 2015 Order. 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. In the event that the current FCC re-establishes net neutrality, the possibility exists that a future FCC will once again repeal it, absent congressional legislation. We recommend that the bill be modified slightly to reflect that it will be enforceable only if there is no federal net neutrality law. [BC1]

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 FCC has repealed. I look forward to working for the passage of S.B. 4 during this legislative session.