



**Testimony of
Gerard Keegan
CTIA
In Opposition to Alaska House Bill 277**

Before the Alaska House of Representatives Committee on Labor & Commerce

February 9, 2018

Chair Kito, Vice-Chair Wool, and members of the committee, on behalf of CTIA, the trade association for the wireless communications industry, I submit this testimony in opposition to Alaska House Bill 277. CTIA and its member companies support a free and open internet. To further that goal, we believe that a national regulatory framework with generally applicable competition and consumer protections at the federal and state levels is a proven path for ensuring a free and open internet while enabling innovation and investment throughout the internet ecosystem.

The mobile wireless broadband marketplace is competitive and continuously changing. It is an engine of innovation, attracting billions of dollars in network investment each year, and generating intense competition to the benefit of consumers. From the beginning of the Internet Age in the 1990s, the Federal Communications Commission (FCC) applied a regulatory framework to internet service that allowed providers to invest, experiment, and innovate. In that time, an entire internet-based economy grew. But in 2015, the FCC took a much different approach, applying 80-year-old common-carrier mandates meant for traditional public utilities and reign in the then unchecked practices of huge monopolies, despite the fact that internet services are nothing like public utility offerings such as water or electricity or even landline telephone service.



In 2017, the FCC's *Restoring Internet Freedom Order* reversed that 2015 decision, finding that application of those 1930s utility-style rules to the internet services of today actually harms American consumers. The FCC cited extensive evidence showing a decline in broadband infrastructure investment – an unprecedented occurrence during an era of economic expansion. In the mobile broadband market alone, annual capital expenditures fell from \$32.1 billion in 2014 to \$26.4 billion in 2016. This slowdown affected mobile providers of all sizes and serving all markets. For example, small rural wireless providers noted that the 2015 decision burdened them with unnecessary and costly obligations and inhibited their ability to build and operate networks in rural America.

The FCC's overbroad prohibitions on broadband providers harmed consumers in other ways, too—particularly with respect to innovation. After the 2015 Order, the FCC launched a yearlong investigation of wireless providers' free data offerings, which allow subscribers to consume more data from certain services and content without incurring additional costs. The risk of FCC enforcement cast a dark shadow on mobile carriers' ability to innovate, compete and deliver the services that consumers demanded. In addition, the inflexible ban on paid prioritization precluded broadband providers from offering one level of service quality to highly sensitive real-time medical applications and a differentiated quality of service to email messages. The FCC's 2017 *Restoring Internet Freedom Order* takes a different path – one that will benefit consumers and enable new offerings that support untold varieties of technological innovations in health care, commerce, education, and entertainment.



Based on the way some people have talked about the *Restoring Internet Freedom Order*, you might think that the FCC eliminated federal rules that had always applied to internet services and that the federal government has left consumers without any protections. But that is just not the case. The internet was not broken before 2015, and it will not break because of the FCC's most recent decision.

The FCC has simply restored the same national regulatory framework that applied before 2015, which is credited with facilitating the internet-based economy we have today. Under that national regulatory framework, mobile wireless broadband providers have every incentive to invest in and deliver the internet services that consumers demand. In fact, there have been virtually no instances in which U.S. mobile broadband providers blocked traffic or prevented consumers from going where they wanted to on the internet. The truth is that, in a competitive market like wireless, mobile broadband providers have no incentive to block access to internet services, for if they did, their customers would simply switch providers.

Further, the FCC's *Restoring Internet Freedom* clearly provides consumers with legal protections that complement the competitive forces in play. First, the FCC retained the "transparency" rule that was adopted under President Obama's first FCC Chairman in 2010 and maintained in the 2015 decision, which requires broadband providers to publicly disclose extensive information about their network management practices to consumers and internet entrepreneurs. If a broadband provider fails to make the required disclosures, or does not live up to its commitments, it will be subject to enforcement by the FCC.



Second, by restoring to the FCC's pre-2015 view that broadband internet access is an information service and not a utility-style common carrier service like landline telephone service, the FCC restored the Federal Trade Commission's jurisdiction over broadband offerings. The FTC is the nation's lead consumer protection agency, but the 2015 decision had stripped away its authority over broadband providers. The FTC has broad authority to take action against any business whose actions are deceptive or unfair. This authority extends beyond broadband providers and includes authority over so-called edge providers. The nation's leading broadband providers have told consumers that they will not block or throttle traffic in an anticompetitive manner, and the FTC will be there to make sure they live up to those promises.

Third, the Department of Justice and FTC enforce federal antitrust laws, which, as the *Restoring Internet Freedom Order* emphasizes, preclude anticompetitive network management practices. For example, a broadband provider may not anticompetitively favor its own online content or services over the content or services of third parties, or enter into an agreement with other broadband providers to unfairly block, throttle, or discriminate against specific internet content.

Finally, the FCC made clear in the 2017 *Restoring Internet Freedom Order* that generally applicable state laws relating to fraud, taxation, and general commercial dealings apply to broadband providers just as they would to any other entity doing business in a state, so long as such laws do not regulate broadband providers in a way that conflicts with the national regulatory framework to broadband internet access services. This ruling reaffirmed the FCC's 2015 decision that states and localities may not



impose requirements that conflict with federal law or policy, but may otherwise enforce generally applicable laws. Thus, Alaska remains empowered to act under its UDAP statute.

In short, Alaska consumers are well protected against anti-competitive or anti-consumer practices. They enjoy protections provided by the FCC, the FTC, federal antitrust law, and – importantly – existing Alaska state law. On the other hand, state-specific net neutrality rules imposed on broadband providers would harm consumers, and would – along with other state and local mandates – create a complex “patchwork quilt” of requirements that would be unlawful.

The FCC’s 2017 *Restoring Internet Freedom Order* explains that broadband internet access is an inherently interstate and global offering. Internet communications delivered through broadband services almost invariably cross state lines, and users pull content from around the country and around the world – often from multiple jurisdictions in one internet session. Any attempt to apply multiple states’ requirements would therefore be harmful to consumers for the same reasons the FCC’s 2015 rules were harmful, in addition to the fact that those requirements will be at best different and at worst contradictory.

These problems multiply in the case of mobile broadband: questions will arise over whether a mobile wireless broadband transmission is subject to the laws of the state where users purchased service, where they are presently located, or even where the antenna transmitting the signal is located. State-by-state regulation even raises the prospect that different laws will apply as the user moves between states. For example, a



mobile broadband user could travel through multiple states during a long train ride, even the morning commute, subjecting that rider's service to multiple different legal regimes even if the rider spent that trip watching a single movie. Such a patchwork quilt of disparate regulation is untenable for the future success of the internet economy.

Moreover, the FCC found broadband-specific state laws would be unlawful. The *Restoring Internet Freedom Order* exercised the agency's preemption powers under the U.S. Constitution and federal law. It held that state or local laws that impose net neutrality mandates, or that interfere with the federal preference for national regulation of broadband internet access, are impermissible.

Ultimately, Congress may decide to modify the existing federal regulatory framework for broadband internet access, and some members of Congress have already introduced legislation addressing these matters. CTIA stands ready to work with Congress should it choose to adopt rules for the internet ecosystem that promote a free and open internet while enabling the innovation and investment we need for tomorrow. Nevertheless, today, state-by-state regulation of broadband internet access services would harm consumers and conflict with federal law.

In closing, it would be unnecessary to pass HB 277 due to the strong consumer protections currently in place and national wireless providers agreeing not to block or throttle lawful content. It would also be premature in light of the recent state Attorneys General legal action on this issue. For these reasons, we respectfully ask that you not move HB 277. Thank you for the opportunity to submit testimony.



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*Director, Alaska
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February 8, 2017

Honorable Sam Kito
Chair, Labor and Commerce
Alaska State Capitol
Room 403
Juneau, AK 99801

Honorable Adam Wool
Vice Chair, Labor and Commerce
Alaska State Capitol
Room 412
Juneau, AK 99801

RE: Opposition House Bill 277 – Broadband Internet: Neutrality/Regulation

Committee Chair Kito and Vice-Chair Wool:

On behalf of AT&T, please accept this letter of opposition regarding House Bill 277 – Broadband Internet: Neutrality/Regulation -- a bill that proposes to regulate internet service providers at the state level to ensure a free and open internet. While history has shown that the internet will remain free and open even without regulation, AT&T supports appropriately tailored federal legislation to ensure internet openness and to end the uncertainty from over a decade of FCC rule changes. The nature of the internet is inherently interstate, a web of interconnected networks that spans across state, and even national borders. Accordingly, any such legislation must be adopted by Congress to ensure a consistent approach across all states. Alaska should urge its congressional delegation to craft federal open internet legislation.

For more than a decade, under both Republican and Democratic administrations, AT&T has consistently made clear that we provide broadband service in an open and transparent way.

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

These are legally enforceable commitments that are published on our website and readily available for consumers to review.



In addition to making these longstanding enforceable commitments, AT&T has long supported and continues to support a legislative solution in Congress that would make these core consumer protections permanent, while preserving incentives to invest and innovate. Congressional action ensures uniformity of the rules that regulate the internet. Attempts by individual states to pass disparate legislation can result in a patchwork of possibly inconsistent state laws that would be virtually impossible to implement. Instead, we need strong and permanent rules across the internet ecosystem to help create a stable regulatory environment that encourages investment in next generation technologies and the delivery of innovative services.

I have included an open letter from AT&T Chairman and CEO Randall Stephenson published recently in the New York Times, the Los Angeles Times, USA Today, and the Wall Street Journal. As expressed in Mr. Stephenson's letter, AT&T is calling on Congress to end the debate once and for all by writing new laws that govern the internet and protect consumers across all states.

The internet has thrived, and Alaskans have benefitted from all of the great innovations and technological advancements that were made under balanced framework first established by the Clinton Administrations and that remained in place for all but two years over the last two decades. AT&T fully supports Congress adopting basic rules of the road to permanently ensure that the internet remains an open and flourishing platform for all users. That action needs to be taken by Congress, so that consumers can expect and rely on rules that will stand up to the changes of political winds and elections of new administrations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Shawn Uschmann", with a long, sweeping horizontal line extending to the right.

Shawn Uschmann
Director, Alaska
External Affairs

Enclosures

Consumers Need an Internet Bill of Rights

Government rules for the internet have been debated for nearly as long as the internet has existed, even before a professor coined the term "net neutrality" 15 years ago.

The internet has changed our lives and grown beyond what anyone could have imagined. And it's done so, for the most part, with very few—but often changing—rules. Regulators under four different presidents have taken four different approaches. Courts have overturned regulatory decisions. Regulators have reversed their predecessors. And because the internet is so critical to everyone, it's understandably confusing and a bit concerning when you hear the rules have recently changed, yet again.

It is time for Congress to end the debate once and for all, by writing new laws that govern the internet and protect consumers.

Until they do, I want to make clear what you can expect from AT&T.

AT&T is committed to an open internet. We don't block websites. We don't censor online content. And we don't throttle, discriminate, or degrade network performance based on content. Period.

We have publicly committed to these principles for over 10 years. And we will continue to abide by them in providing our customers the open internet experience they have come to expect.

But the commitment of one company is not enough. Congressional action is needed to establish an "Internet Bill of Rights" that applies to all internet companies and guarantees neutrality, transparency, openness, non-discrimination and privacy protection for all internet users.

Legislation would not only ensure consumers' rights are protected, but it would provide consistent rules of the road for all internet companies across all websites, content, devices and applications. In the very near future, technological advances like self-driving cars, remote surgery and augmented reality will demand even greater performance from the internet. Without predictable rules for how the internet works, it will be difficult to meet the demands of these new technology advances.

That's why we intend to work with Congress, other internet companies and consumer groups in the coming months to push for an "Internet Bill of Rights" that permanently protects the open internet for all users and encourages continued investment for the next generation of internet innovation.



Randall Stephenson
AT&T Chairman and CEO



Alaska Telecom Association

Dave Goggins
President

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Christine O'Connor
Executive Director

February 8, 2018

The Honorable Sam Kito
Chair, House Labor & Commerce Committee
State Capitol, Barnes 124
Juneau, AK 99801

RE: HB277 Broadband Internet: Neutrality/Regulation

Dear Chair Kito and Members of the Committee,

We are writing to express our commitment to the principles of net neutrality, provide more details regarding the issues surrounding net neutrality, and express our support for action by the United States Congress, which can impose rules of net neutrality on *all* participants in the internet landscape.

Consumer Protection

ATA member companies, which include Alaska's internet Service Providers (ISPs) and wireless companies, support an open internet. We have not and do not block websites, throttle or degrade traffic based on content, or unfairly discriminate in our transmission of internet traffic.

Strong protections remain in place to protect the core net neutrality principles. The Restoring Internet Freedom Order retains the requirement, first adopted in 2010, that providers clearly and publicly disclose their network management practices to consumers. The FCC retains authority to police compliance with its own rules by bringing enforcement actions and imposing significant penalties if a provider's blocking, throttling or other practices were inconsistent with the provider's disclosures. The repeal of the FCC's 2015 Order actually strengthens consumer protections by placing one watchdog, the Federal Trade Commission (FTC), over the entire internet. The FTC, the top agency in charge of protecting consumers from unlawful business practices, has a proven, two-decade track record of carrying out this responsibility. Further, antitrust laws protect competition in all sectors of the economy.

Benefits of Light-Touch Regulation

ATA member companies support light-touch regulation which encourages investment in broadband networks and does not burden small companies with excessive regulatory requirements.

Former Congressman Rick Boucher, (D) Virginia, recently wrote, "The FCC's order reinstated bipartisan policy started under President Clinton and continued until 2015, holding that the broadband internet is not a monopoly and should be regulated under Title I of the Communications Act as an information service, rather than being regulated under Title II with heavy-handed common carrier rules. For two decades prior to 2015, broadband investment soared under Title I light-touch regulation, making America's communications network the envy of the world. The FCC

has now sensibly returned the regulatory status of broadband to that of the golden era for investment.”¹

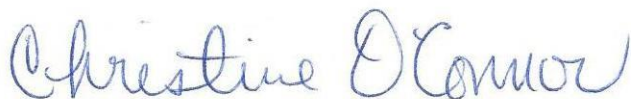
Congressional Action Needed

ATA members encourage Congress to take action to resolve lingering uncertainty over net neutrality. We respectfully ask the Alaska Legislature to defer to Congressional action which can impose rules for ALL participants in the Internet landscape.

The best place for the uncertainty over net neutrality to be resolved is in Congress. It alone has the power to adopt clear internet rules. Clear rules from Congress will give certainty to providers, critical for investment in broadband networks.

ATA members companies will continue our commitment to provide access to the internet according to the principles of net neutrality. We are engaged with Alaska’s Congressional Delegation on this issue and are working with our national trade associations to support Congressional action to adopt legislation to permanently ensure net neutrality.

Respectfully submitted,



Christine O'Connor
Executive Director

¹ See “Congress Shouldn’t Repeat the FCC’s Title II Mistake,” published in Tech & Telecom in Bloomberg Law, January 30, 2018.

Alaska Telecom Association

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Net Neutrality FAQ

What is Net Neutrality?

- In simplest terms it means that internet customers get to choose what content they access on the internet without interference or influence from their provider. There is broad agreement that Net Neutrality is a good thing. The disagreement is over how much regulation is necessary to achieve it.

Why is Net Neutrality all over the news and social media?

- The Federal Communications Commission (FCC) voted on December 14th, 2017 to restore the light touch regulation of internet service. This action reversed the so-called “Title II” utility-style regulations adopted in 2015 during President Obama’s administration and restored the power of internet oversight to the Federal Trade Commission (FTC), where it was for the prior 20 years.

What does the FCC’s 2017 reversal of its 2015 Net Neutrality rules mean?

- The FCC returned the internet to the lighter touch regulation that applied during the Clinton and Bush years — a period when the internet thrived and gave way to game changing innovations we consider commonplace today like Google, Facebook, Amazon, Netflix, Twitter, Ebay, Craigslist, etc.

How can I be confident that my internet experience is still protected by the Federal Government?

- This change hasn’t ended the open internet. The FCC and FTC have agreed to cooperate in regulating the internet. The FCC’s rules require that ISPs transparently disclose their network management practices. The FTC is the original internet cop and is empowered to enforce ISPs’ public commitments to preserve net neutrality and to police anticompetitive behavior. Congress also is actively considering permanent net neutrality legislation.

What are state Resolutions HJR31 and SJR 12 asking Congress to do?

- These resolutions ask Congress to overturn the 2017 FCC order that repealed the FCC’s “Title II” style regulations. If the FCC order was overturned and the FCC’s Title II regulations were re-established, it would strip the FTC’s authority to regulate the internet and force internet service providers back into a very heavy handed and murky set of 1930’s style utility regulations that ultimately don’t work for an industry as dynamic and adaptive as the internet.

What do HB277 and SB160 propose to do?

- These bills propose to reimpose the heavy-handed FCC Net Neutrality rules adopted in 2015 on a state level. Alaska providers have publicly committed that they do not and will not impair their customers’ access to internet services or content, regardless of what happens in Washington, D.C. This type of regulation is unnecessary – Alaskans are already getting the desired result of the legislation.
- Federal law preempts state and local Net Neutrality regulation.



February 7, 2018

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In addition to making these commitments, Alaska Communications supports a legislative solution in Congress that would make these core consumer protections permanent, while preserving incentives to invest and innovate. Congressional action ensures uniformity of the rules that regulate the internet. Attempts by individual states to pass disparate legislation can result in a patchwork of possibly inconsistent state laws. Instead, we need strong and permanent rules across the internet ecosystem to help create a stable regulatory environment that encourages investment in next generation technologies and the delivery of innovative services.



Alaska Communications fully supports Congress adopting basic rules to permanently ensure that the internet remains an open and flourishing platform for all users. That action needs to be taken by Congress, so that consumers can expect and rely on rules that will stand up to the changes of political winds and elections of new administrations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Leonard Steinberg', written over the printed name and title.

Leonard Steinberg

Senior Vice President, Legal, Regulatory and Government Affairs
Alaska Communications