



Testimony of VPIRG Communications and Engagement Director Zachary Tomanelli concerning H.680 -- Net Neutrality

Testimony before the House Energy and Technology Committee
February 20, 2018

Introduction

Good afternoon, Chairman Carr and members of the Committee. My name is Zach Tomanelli and I am the Communications and Engagement Director for VPIRG, the Vermont Public Interest Research Group. For over 45 years, VPIRG has advocated for the public interest in policy debates concerning the environment, health care, consumer protection, and democracy -- so I appreciate the opportunity to share our thoughts on H.680.

VPIRG has more than 50,000 members and supporters located throughout the state. I'm here today, on behalf of not just them -- but every Vermonter -- because it is our position that every Vermonter deserves access to affordable, high-speed Internet that operates fairly and openly.

We believe that the FCC's repeal of Net Neutrality protections -- the so-called Restoring Internet Freedom Order -- moves us away from achieving that goal. We believe this order represents a major blow to consumers, who will likely be forced to pay more for a fragmented and less accessible internet. It is also a major blow to our democracy by tilting the playing field of speech and information toward those with the resources to afford it.

H.680 would help to rectify this by promoting Net Neutrality in Vermont, providing a boost to internet service providers (ISPs) that value a fair and open internet and protecting Vermont consumers from ISPs that would seek to block, throttle or otherwise impede lawful internet content.

Because of this, VPIRG wholeheartedly supports H.680 in its entirety.

I'd like to take just a few moments to explain our support for the specific provisions of the bill and to address some of the arguments against this legislation raised by the telecom industry:

Section 1 -- Findings:

We agree with the findings in this bill -- in particular that the FCC's order puts Vermont consumers at risk and that Vermont has the responsibility and authority to enact this legislation in order to protect those consumers.

The legislation notes the language in the FCC's order pre-empting states from enacting local net neutrality rules. As others have testified and the legislation itself states -- the FCC's authority to do so is unclear at best. What is clear is Vermont's responsibility to do whatever it can to maintain a fair and open internet for its residents.

The telecom industry has opposed this legislation because they claim it would create uncertainty and therefore limit investment. We would urge the committee to consider two points in response to that.

First -- the industry had certainty. The Net Neutrality rules established in 2015 created a very clear and very certain regulatory regime. The industry didn't like that certainty so they spent millions of dollars opposing it and advocating for a different kind of certainty -- the 2017 FCC order. Any uncertainty they now face is entirely of their own making.

Second -- arguments that net neutrality regulations limit investments are unproven at best. Comcast, the nation's largest internet provider, actually increased capital expenditures for cable communications by 13 percent in 2015, and by another 8.6 percent in 2016. AT&T, meanwhile, had announced in 2012 that its spending would drop in 2015 -- at the conclusion of a three-year project -- meaning AT&T's drop in spending was planned well before the 2015 net neutrality order even went into effect.¹

Regardless -- these regulations or lack thereof have not seemed to have any measurable impact on the buildout of these large providers in Vermont -- something also contained in the findings.

On the other hand -- many smaller providers have supported Net Neutrality regulations on the grounds that they actually level the playing field and address the anti-competitive practices of larger providers.²

To that end, we believe this legislation would protect Vermont consumers and provide a boost to local ISPs who prioritize fair and open internet practices.

Section 2 -- Certificate of Net Neutrality

This legislation requires ISPs to obtain a certificate of net neutrality to provide internet service to Vermonters and establishes the criteria for obtaining such a certificate. VPIRG strongly supports the proposed process and proposed criteria for this certificate.

The prohibitions on blocking, throttling, impairing or degrading lawful content and paid prioritization are, of course, critical to ensuring Net Neutrality continues in Vermont.

The large providers have argued that such prohibitions are unnecessary because they've never engaged in these practices and have no intention to do so in the future. The circular logic of this statement aside (i.e. why would they oppose prohibitions on behaviors they claim they have no desire to engage in?) it's also untrue.

Others who have already testified have given a number of examples of non-Net Neutral behavior by these companies over the years. I won't re-list all of those here, except to say that there is no shortage of examples.³ As for whether these companies will engage in these behaviors once the Net Neutrality

¹ <https://www.wired.com/story/the-fcc-says-net-neutrality-cripples-investment-thats-not-true/>

² https://www.eff.org/files/2017/06/27/isp_letter_to_fcc_on_nn_privacy_title_ii.pdf

³ <https://www.freepress.net/blog/2017/04/25/net-neutrality-violations-brief-history>

repeal is official – we need only look to Comcast’s conspicuous removal of promises not to engage in paid prioritization from their public communications to understand their future plans.⁴

Furthermore – the giant telecoms’ very opposition to this legislation should give us a clue to their future intentions. We heard testimony from a local ISP – ECFiber – who says they’ve always adhered to Net Neutrality principles and intend to do so going forward. They testified in support of this legislation. The large providers made similar claims, yet they opposed the legislation. One can make an educated guess as to who actually plans to adhere to these principles and who does not.

This means that the threats to Vermont consumers if we do not act are not at all hypothetical. They are very real. For that reason, we support this bill.

Sections 3 – 7: Pole attachments, line extensions, rights of way and certificates of public good

The legislation makes Net Neutrality a condition of broadband pole attachments and line extensions. It makes net neutrality a condition of using state land, highways, right-of-ways etc. It makes net neutrality a condition to receive a certificate of public good for telecommunications facilities under Section 248a.

VPIRG supports all of these requirements. Again, we want broadband access brought to every Vermonter. We want Vermonters to have access to more than one ISP. We need to be doing this more quickly and more boldly than we currently are. But as we do that, we must ensure that we are not giving Vermonters access to substandard internet. We must make sure we protect them from internet companies that would engage in unfair or deceptive practices.

Making adherence to Net Neutrality principles a requirement for access to things like pole attachments and line extensions makes sense.

Sections 8 - 9: Access to Universal Service Fund and Government Contracts

Similarly, we support the provisions in this legislation that would only allow funds to support broadband access and government contracts to go to Net Neutral ISPs.

As a matter of principle, Vermont taxpayer dollars should not go to companies that engage in unfair or deceptive practices – practices that could directly harm Vermont consumers. To that end it makes sense to prohibit these funds from going to non-net neutral providers.

Further – this allows the Vermont government to exercise its power of the purse – furthering its commitment to Net Neutrality and boosting Net Neutral ISPs in the process.

We must note, however, that the governor’s recent executive order on this topic fails to ensure that Vermont taxpayer dollars do not go to internet service providers who do not adhere to net neutrality principles.

The governor’s order contains a waiver provision loophole that would allow non-Net Neutral ISPs to continue contracting with the state.

⁴ <https://arstechnica.com/tech-policy/2017/11/comcast-quietly-drops-promise-not-to-charge-tolls-for-internet-fast-lanes/>

VPIRG believes the language contained in this legislation is much stronger than the governor's order and we urge the Committee to advance it.

Conclusion

In summary, VPIRG appreciates the Committee's time and attention to this matter. A fair and open internet is critically important to our economy, our democracy and, frankly, our society as a whole. VPIRG strongly supports the passage of H.680.