



TESTIMONY OF CHAD A. MARLOW

Chairperson Cummings and Members of the Senate Finance Committee, my name is Chad Marlow and I am an Advocacy and Policy Counsel at the American Civil Liberties Union. Thank you for the opportunity to testify before your committee today.

Information and communication are the life blood of democracy. When they are permitted to flow freely, our democracy grows and strengthens; when they are blocked or inhibited, our democracy slowly dies. The FCC's December 2017 decision to grant Internet service providers, or ISPs, the ability to decide what content is permitted to operate on the information superhighway's HOV lanes, what information is relegated to the slow lane, and what information is prohibited from even accessing the on-ramp presents a significant threat to the freedom of all Americans and certainly to the people of Vermont. Arguments by the FCC that the end of net neutrality will foster greater Internet freedoms and innovation are not only patently false, they are absurd.

The threats posed by the end of net neutrality are not hypothetical. In the absence of net neutrality in the United States and elsewhere, we have seen content slowed and blocked based upon the political views and business interests of ISP companies. For example:

- AT&T censored a live Pearl Jam concert stream in response to criticisms of President George W. Bush by the band's lead singer, Eddie Vedder;
- Verizon blocked text messages from the pro-choice advocacy group NARAL because Verizon deemed them to be "controversial";
- Telus, a Canadian Telecom company, blocked the website of a union with which it was engaged in a labor dispute;
- AT&T limited its customers' use of FaceTime to coerce them into buying more expensive data plans; and
- AT&T, Sprint, T-Mobile, and Verizon all blocked mobile wallet applications, like Google Wallet, that competed with their own mobile wallet application.

The Internet provides methods of discovering and communicating information that were inconceivable a few generations ago, but today are central and indispensable

to how Vermonters learn about their world and communicate their ideas with family, friends, and even strangers. The idea that ISP companies are now empowered to decide what information and ideas on the Internet receive preferential or disfavored treatment has outraged Americans from coast to coast. Should the Vermont legislature take action to protect net neutrality, it would join at least 25 other states that have already either introduced or are on the verge of introducing net neutrality bills. In addition, the governors of Montana and New York have already issued executive orders to preserve net neutrality. While the approaches taken may vary, the common theme of these bills and orders is a loud pronouncement from states that the FCC's elimination of net neutrality is unacceptable.

As many of you know, the Vermont House of Representatives has already introduced net neutrality legislation. The approach that bill, H. 680, takes to protecting net neutrality is particularly laudable. When an action of the federal government places the freedoms of Vermonters at risk, the state should respond in any and every way that it can, and H. 680 certainly does that. It makes net neutrality a condition of complying with Vermont consumer protection laws. It makes net neutrality a condition of broadband pole attachments and line extensions. It makes net neutrality a condition of using wireless communications facilities on state-owned buildings, structures, land, highways, and rights-of-way. It makes net neutrality a condition of receiving a certificate of public good from the Public Utility Commission. And it makes net neutrality a condition of ISPs procuring state contracts for broadband Internet access. For that reason, the ACLU strongly supports the adoption of H. 680.

Although the FCC is asserting that states are now preempted from acting to preserve net neutrality, the truth is there is no consensus among attorneys on that point. The fact that nearly half the states are pursuing efforts to save net neutrality certainly speaks to that. Preemption is simply a matter the courts will have to decide on an approach-by-approach basis.

Such uncertainty should not preclude this state from adopting net neutrality legislation. To the contrary, the only way to find out if the State of Vermont has the ability to protect net neutrality for its citizens, residents, and visitors is to adopt a net neutrality law. Of equal importance, by adopting a net neutrality law, regardless of the ultimate judicial outcome, Vermont will join a national chorus of states that are loudly and clearly announcing that they find the rollback of net neutrality to be unacceptable, that net neutrality should be restored by the FCC,

and that if it is not, states like Vermont will not sit idly by to the detriment of their people.

By adopting a net neutrality law, this state will take up the fight to protect Internet freedom within its borders and, in so doing, will pose a very direct question to the FCC, Congress, and Internet service providers like AT&T, Comcast and, yes, Verizon, when it comes to Vermont's unequivocal support for net neutrality: "Can you hear me now?"

Thank you for this opportunity to testify. I would be happy to answer any questions the committee may have.