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POLICY & ACTION FROM CONSUMER REPORTS

October 31, 2017

The Honorable Tom Marino, Chairman
The Honorable David Cicilline, Ranking Member
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Marino and Congressman Cicilline:

As strong supporters of both net neutrality and the antitrust laws, Consumers Union, the policy and mobilization division of Consumer Reports, appreciates the Subcommittee's holding a hearing to bring further attention to the issue of how best to advance the goal of net neutrality.

With the internet becoming ever-more central to American life, it is essential that we not devolve into a two-tiered society where some get special preference over others. Consumers Union has long been a champion of strong net neutrality rules to ensure non-discriminatory treatment of internet traffic, and to prevent throttling or paid prioritization of web content. We supported the adoption of the FCC's 2015 Open Internet Order, and we have publicly stated our concern that the Commission's new proceeding¹ could weaken or abolish the net neutrality rules contained in the Order.

Evidence indicates that the majority of American consumers support keeping the current net neutrality rules. In partnership with our publication, Consumer Reports, in late July of this year we surveyed a representative sample of more than a thousand consumers about the role of the internet in their everyday lives, and whether they supported net neutrality.² The survey results confirm that 57 percent of Americans support the FCC's current net neutrality rules. Only 16 percent said they either strongly opposed or somewhat opposed the rules. Nor is net neutrality a partisan issue, with 61 percent of consumers identifying themselves as Democrats supporting the rules, and 48 percent of Republicans also responding in support, compared to only 13 percent of Democrats and 21 percent of Republicans opposed.

While supporting strong and effective net neutrality rules at the FCC, we have also supported thorough antitrust review of proposed mergers and other arrangements in this sector, to ensure they do not harm competitive access to the internet—including the proposed

¹ *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking (May 23, 2017) (*NPRM*).

² Reply Comments of Consumers Union, *Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking (May 23, 2017) (filed August 30, 2017; see Appendix for CR Survey Report).

Comcast/ Time Warner Cable and AT&T/ Time Warner mergers, and Netflix's agreement to pay Comcast extra for more reliable streaming of Netflix content.

As the Subcommittee considers the role the antitrust laws can play in advancing the goals of net neutrality, we hope you will bear in mind that the antitrust laws address specific kinds of harmful marketplace conduct—agreements in restraint of trade, monopolization and attempts to monopolize, and mergers that may substantially lessen competition. However, there are other kinds of harmful marketplace conduct that the antitrust laws do not reach.

Net neutrality is one area where the antitrust laws cannot be counted on to provide the complete solution. An internet service provider raising prices on targeted content providers or on targeted consumers may or may not be violating the antitrust laws. But even if that conduct is not violating the antitrust laws, it is harming consumers, and it needs to be prohibited. That is why we support the FCC's vigorous use of its broader public interest authority in this area.

The principle of net neutrality reflects an overriding policy judgment that the benefits of the internet, for consumers and for the overall economy, are best achieved if the internet is available to everyone on equal, nondiscriminatory terms. We need a regulatory framework that can effectively achieve that goal. The antitrust laws are not inconsistent with that goal, and can also help promote it, but they are not by themselves sufficient to fully achieve it.

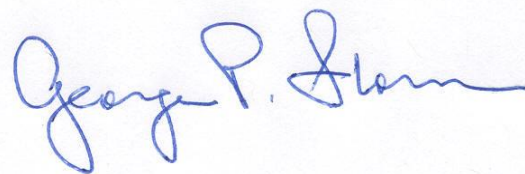
The 2015 Open Internet Order's net neutrality rules, and the Title II reclassification upon which they stand, were twice upheld in federal court, and they are serving consumers well. Because of those rules, consumers have the right of access to an open internet that is a level playing field free of blocking, throttling, and paid prioritization—core protections that preserve the benefits of a dynamic internet full of competition, new services, and innovation.

We strongly support the antitrust laws, but they are not a substitute for those rules.

Sincerely,



Jonathan Schwantes
Senior Policy Counsel



George P. Slover
Senior Policy Counsel

cc: Members, House Judiciary Committee