



March 25, 2019

The Honorable Michael Doyle
Chairman, Subcommittee on
Communications and Technology
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Robert Latta
Ranking Member, Subcommittee on
Communications and Technology
House Energy and Commerce Committee
2322 Rayburn House Office Building
Washington, D.C. 20515

Re: March 26, 2019 Subcommittee on Communications and Technology (House Energy and Commerce Committee) Markup of H.R. 1644, Save the Internet Act

Dear Chairman Doyle and Ranking Member Latta:

Consumer Reports¹ appreciates the Subcommittee's further consideration of H.R. 1644, the "Save the Internet Act of 2019" and we look forward to the markup of this legislation on March 26, 2019. We urge you to pass H.R. 1644, and reject any amendments that would diminish the intent of the Save the Internet Act to fully restore the Federal Communications Commission's *2015 Open Internet Order*.

We strongly opposed the rollback of the net neutrality rules contained in the *2015 Order*. We submitted comments and reply comments during the 2017 rulemaking that led to the *Restoring Internet Freedom Order*, which essentially repealed net neutrality. Revisiting our filings from two years ago helps counter many of the today's arguments against H.R. 1644.

First, as we stated then and repeat now, net neutrality rules rooted in Title II of the Communications Act did not lead to less investment in broadband infrastructure.² We remind the Subcommittee that during the middle of the repeal proceeding, the USTelecom Association, which represents the nation's largest internet service providers (ISPs), issued a report citing increased investment—a full two years after the *2015 Open Internet Order* had taken effect.³

¹ Our advocacy work officially moved under the Consumer Reports (CR) banner starting last November. We were

² Comments of Consumers Union, Restoring Internet Freedom, WC Docket No. 17-108, Notice of Proposed Rulemaking (May 23, 2017) (filed July 17, 2017) (CU Comments) *See* pp. 7-10.

³ Patrick Brogan, *U.S. Broadband Availability Mid-2016, USTelecom Research Brief* (August 25, 2017) available at <https://www.ustelecom.org/sites/default/files/BB%20Availability%202016%201H%20RB%20Final%207.pdf>.

Second, any net neutrality legislation passed by Congress must include protections akin to the “general conduct rule” (or “internet conduct standard”) contained in the *2015 Open Internet Order*. The Save the Internet Act accomplishes this goal by simply restoring the *2015 Order*. Competing net neutrality bills introduced in this Congress do not contain this important protection, and critics cited the case-by-case enforcement of the rule as one of the main reasons it was decried and unliked by industry.⁴ As we stated in our 2017 comments, the rule:

“is a forward-looking rule designed to allow the Commission jurisdiction to at least examine future business practices of ISPs—like the zero rating practices explained above—that may not directly violate the bright line rules, but could harm consumers all the same. Like all FCC actions, any misuse or abuse of its discretion to apply the rule is and would be subject to review.”⁵

As for zero-rating offers, whereby ISPs designate certain content as not counting against a data cap, we remain concerned such schemes can anti-competitively discriminate against other video providers and ultimately restrict consumer choice. The general conduct rule also empowers the FCC to prevent disruptive interconnection practices that have slowed internet access in the past.⁶ By affording the Commission a tool to at least consider business practices that may flout net neutrality rules in the future, consumers will be safeguarded.

Finally, recent polls and our polling in 2017 confirm that a large majority of consumers support net neutrality.⁷ An important finding from our 2017 survey bears mentioning again before the markup. While opponents criticize the Title II classification contained within the *2015 Open Internet Order* as “utility-style” regulation,⁸ a majority of 61 percent of Americans equate internet access as important as water or electricity service.⁹ Though we disagree with the characterization of net neutrality rules and their legal basis in Title II classification as “utility-style regulation,” the FCC and Congress cannot ignore that many Americans already view internet service as a daily essential, much like a utility. When internet access is that vital and becoming more so (79 percent of consumers responded to our survey that they rely on the internet five or more days a week and

⁴ *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking (May 23, 2017) (*NPRM*) at ¶ 74.

⁵ CU Comments at 13.

⁶ Open Technology Institute, New America, *Beyond Frustrated: The Sweeping Consumer Harms as a Result of ISP Disputes*, (November 14, 2014), available at <https://www.newamerica.org/oti/policy-papers/beyond-frustrated-the-sweeping-consumer-harms-as-a-result-of-isp-disputes/>.

⁷ Reply Comments of Consumers Union, *Restoring Internet Freedom*, WC Docket No. 17-108, Notice of Proposed Rulemaking (May 23, 2017) (filed August 30, 2017) (Reply Comments) See Appendix. See also Emily Birnbaum, *4 in 5 Americans Say They Support Net Neutrality: Poll*, The Hill (March 20, 2019) available at <https://thehill.com/policy/technology/435009-4-in-5-americans-say-they-support-net-neutrality-poll>

⁸ *NPRM* at ¶ 3.

⁹ Reply Comments at p. 5.

more than two-thirds need access to the internet every day),¹⁰ Congress must act to ensure this important resource is not left to ISPs to exclusively control.

The current absence of simple, common sense regulations that govern what internet service providers (ISPs) can and cannot do when providing internet access service creates a significant risk of a less open internet and higher prices for consumers. The Subcommittee has an opportunity to assess these dangers and explore what remedies can be pursued to restore strong, enforceable net neutrality rules that guard against harmful ISP interference. Consumer Reports endorses swift passage of H.R. 1664 and stands ready to work with you, your fellow Members on the Communications and Technology Subcommittee, and other stakeholders to restore robust net neutrality rules that favor consumer choice over corporate business models. Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'JS' followed by a stylized flourish.

Jonathan Schwantes
Senior Policy Counsel

cc. Members of the U.S. House Subcommittee on Communications and Technology, Committee on Energy and Commerce

¹⁰ *Id.* at p. 6.