

LGBT Technology Partnership

July 17, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai,

The LGBT Technology Partnership (“LGBT Tech”) respectfully submits these initial comments addressing the Federal Communications Commission’s (“FCC”) Notice of Proposed Rulemaking In the Matter of Restoring Internet Freedom.¹

I. INTRODUCTION

Over the past two decades, the Internet has transformed the economy and daily life for millions of Americans. For the LGBT community in particular, the ability to connect to the Internet has been critical, offering connection and communication as well as access to education, health care information, and other vital resources. In a recent study, we found that over 50% of LGBT individuals use the Internet, including resource and social apps, to meet new people and find others they can relate to. But it is not just about meeting new people; it is also about health and safety, especially for LGBT youth. Surveys have shown that 81% of youth who identify as LGBT have used their connection to the Internet to search for health information compared to 46% of non-LGBT youth. For LGBT individuals in remote or rural areas, a broadband connection is even more important as it provides an immediate connection to a large, welcoming, global community. Further, for homeless LGBT youth or for those in crisis, that connection can also be a lifeline, leading to safety, increased mental and physical health, and the opportunity for a brighter future. This is no different when it comes to wireless technology and, based on our research, mobile phones are sometimes more important than connecting over wired options. In fact, over 55% of LGBT individuals prefer to use a mobile device over a laptop or desktop. With connectivity playing such a central role in the lives of LGBT individuals, it is vital that our technology and our policies around the deployment of broadband remain aggressive and open to as many people as possible.

To this end, twenty years ago, the Clinton Administration decided to let the Internet evolve with minimal government intervention and embraced the Internet as a tool for the release

¹ See *In the Matter of Restoring Internet Freedom*, Notice of Proposed Rulemaking, FCC 17-60, WC Docket No. 17-108 (Released May 23, 2017).

of government information. Under Bush, the E-Government Act of 2002 established a federal office of electronic government to manage and promote electronic government and the use of Internet-based information technology to improve citizen access to government information and services. Today's vibrant broadband and technology ecosystem is a sign this approach has worked well. It has encouraged innovation, competition, and investment that brought us today's modern communications infrastructure – both wired and wireless.

II. THE ONLY WAY TO ENSURE A FAIR BROADBAND PLAYING FIELD IS THROUGH CONGRESSIONAL STATUTORY ACTION

LGBT Tech has consistently believed, and continues to believe that the only way to ensure long-term legal consistency and prevent policy and rule changes based on which way the political pendulum is currently swinging at the FCC is for Congress to reach across the aisle and pass common sense legislation that works for today's dynamic digital networks. The need for these rules should be very clear for legislators across both sides of the aisle given the head-spinning flurry of activity that has taken place recently at the FCC. It wasn't very long ago that Democrats were applauding the actions of then Chairman Wheeler on this issue while now fretting about what Chairman Pai's appointment means for net neutrality. Clearly the only way to ensure that net neutrality is resolved in a bi-partisan manner once and for all is the codification of rules that reflect the compromise of members across both sides of the aisle. Sen. Bill Nelson (D-Fla.) himself has stated that "Consumers need to know that we have their back and they deserve certainty and finality when it comes to their essential right to a truly free and open Internet protected by clear, enforceable net neutrality rules."² Clear bipartisan rules would have the benefit of providing certainty and stability for the further development of the open Internet. Furthermore, the broadband rules would no longer be subject to the varying political priorities inherent in the frequent changing of political appointees. The fact remains that Congressional legislation has always been the best solution to provide the FCC with a roadmap to ensure an open and free Internet.

LGBT Tech believes that any rules that Congress promulgates should empower the FTC to continue to regulate ISPs in the same manner as other online data collectors -- either by reclassifying ISPs as information service providers, or by Congress making clear that the FTC has sole jurisdiction to apply consistent, technology-neutral regulations to the privacy practices of all online entities including ISPs. At the very least, we encourage the FCC to revise its broadband privacy rules so they are truly consistent with the FTC's time-tested and successful privacy framework that protects data for all consumers and treats all companies equally, thereby avoiding consumer confusion. The fact that the FTC is already working in this area should give the FCC pause in adding confusion to a system that already protects consumers. The FTC has shown an ability to go after and get results from some of the biggest players in the

² See Sen. Nelson: Bipartisan Net Neutrality Bill Appears 'Impossible' *available at* <http://www.broadcastingcable.com/news/washington/sen-nelson-bipartisan-net-neutrality-bill-appears-impossible/165497>.

online ecospace and Congress should codify the FTC's jurisdiction to continue its enforcement activities without interference.³

III. THE RULES THAT THE COMMISSION ADOPTS MUST CONTINUE TO PRESERVE THE FREE INTERNET

The FCC set forth clear principles meant to provide greater clarity and certainty regarding the continued freedom and openness of the Internet in its 2010 Open Internet Order.⁴ To wit, in any action that the FCC takes to protect net neutrality, the FCC should codify three (3) basic rules:

- i. Transparency. Fixed and mobile broadband providers must disclose the network management practices, performance characteristics, and terms and conditions of their broadband services;
- ii. No blocking. Fixed broadband providers may not block lawful content, applications, services, or non-harmful devices; mobile broadband providers may not block lawful websites, or block applications that compete with their voice or video telephony services; and
- iii. No unreasonable discrimination. Fixed broadband providers may not unreasonably discriminate in transmitting lawful network traffic.

These rules must be a basic part of any FCC framework for the protection of a free Internet.

IV. THE FCC SHOULD ENSURE INTERNET NEUTRALITY BY CLASSIFYING BROADBAND AS A TITLE I INFORMATION SERVICE

LGBT Tech has always supported and continues to support an Internet policy that ensures full and equal access for LGBT consumers and remains concerned that applying different standards to different participants in the Internet ecosystem will harm consumers. To this end, the FCC should reclassify ISPs under Title I where they can be regulated in the same manner as all other players in the Internet ecosystem including edge providers, thereby ensuring consistency and uniformity across the Internet ecosystem. Imposing a Title II classification on ISPs is not the solution to protect net neutrality. Strapping an 80-year-old law to our current digital network is just putting a band-aid on the larger problem. Congress and the FCC should focus, rather, on creating rules and policies that are responsive to the current Internet environment and that have been crafted specifically to address the modern problems we are facing.

³ See Google Will Pay \$22.5 Million to Settle FTC Charges it Misrepresented Privacy Assurances to Users of Apple's Safari Internet Browser, available at <https://www.ftc.gov/news-events/press-releases/2012/08/google-will-pay-225-million-settle-ftc-charges-it-misrepresented>; UC-Berkeley students sue Google, alleging their emails were illegally scanned, available at <https://www.washingtonpost.com/news/grade-point/wp/2016/02/01/uc-berkeley-students-sue-google-alleging-their-emails-were-illegally-scanned/>

⁴ See *In the Matter of Preserving the Open Internet*, Report and Order, FCC 10-201, GN Docket No. 09-191 (Released December 23, 2010).

We also concur with the FCC's assertion that users generally use the Internet to generate, acquire, store, transform, process, retrieve, utilize, and make available information. Indeed, as we state above, the Internet has become an indispensable tool for members of the LGBT community offering connections and communication, and also access to education, health care information, and other vital resources. Over 50% of LGBT individuals use the Internet to meet new people and find others they can relate to. Further, surveys have shown that 81% of youth who identify as LGBT have used their connection to the Internet to search for health information compared to 46% of non-LGBT youth. The Internet is one of the main, if not the main, source of information on topics of interest to the LGBT community including access to vital but sensitive information around health care, community and education. This is even more so in rural and unserved and underserved communities where the Internet may be the only lifeline an LGBT person has to get relevant information. The LGBT community is a diverse one, but we all rely on the Internet for work, education, and play to a greater extent even than other communities.

V. CONCLUSION

Expanding access to broadband is crucial for our community and for many others, so we support smart policies that continue the approach that has worked so well for so long. Today more than ever, it's crucial that the government enacts policies that strike the proper balance between encouraging the investment and competition that leads to expanded access to next-generation services and technologies and the privacy and access policies that ensure that communities like ours continue to enjoy the fruits of the broadband revolution. A comprehensive broadband bipartisan Congressional solution is essential to codifying and providing a stable environment where investment and innovation can thrive while safeguarding the open Internet policies needed to protect consumers. In the meantime, the FCC should reclassify ISPs under Title I where they can be regulated in the same manner as all other players in the Internet ecosystem including edge providers, thereby ensuring consistency and uniformity across the Internet ecosystem while ensuring that the bedrock principles of transparency, no blocking and no unreasonable discrimination are part of any FCC Internet policy.

Respectfully submitted,

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