

# *Principles To Preserve & Protect An Open Internet*





Net neutrality has been the most discussed technology policy issue of the last 15 years. The FCC's light touch rules adopted in 2015 seemed to settle the issue. However, net neutrality is back as a policy battle following FCC Chairman Pai's decision to proceed with a Notice of Proposed Rulemaking that would reexamine the existing rules. While this may be good news for those in Washington who like a good policy battle, it is bad news for consumers, companies, and innovators around the country who simply want assurances in the form of clear baseline rules allowing internet users to continue to enjoy the unfettered ability to access the lawful content of their choice.

As the net neutrality debate unfolds over the coming months, it is important to recognize the broad consensus in favor of a free and open internet that affords consumers unfettered access to the lawful content and applications of their choice, on the device of their choice. Consider these statements in which opponents of the FCC's 2015 rules endorse net neutrality:

*“Net neutrality is the basic principle of a free and open internet. It means an online world in which consumers can access the lawful content of their choice, and that there aren't any gatekeepers deciding what points of the internet they can or can't access. ... I believe strongly in a free and open internet, not just as a regulator but as a consumer. And if you look at how the internet has developed over the last 20 years, I think part of the reason why we have the digital economy that's the envy of the world ... it's precisely because we've had a free and open internet that's benefited everybody in the internet ecosystem.” — FCC Chairman Ajit Pai<sup>1</sup>*

*“[W]e . . . strongly support a free and open internet and the preservation of modern, strong, and legally enforceable net neutrality protections. We don't block, throttle, or discriminate against lawful content delivered over the internet, and we are committed to continuing to manage our business and network with the goal of providing the best possible consumer experience.” — Brian Roberts, Chairman and CEO, Comcast Corp.<sup>2</sup>*

*“Verizon supports net neutrality. We've long said that our customers should be able to access internet content and services of their choice. That's been our belief for many years and nothing has changed. Most importantly, it is what our customers want, and it is vital to the success of our business.” — Kathy Grillo, Senior Vice President and Deputy General Counsel, Verizon<sup>3</sup>*

*“The core of net neutrality has never really been controversial. ... No one wants broadband providers blocking or throttling traffic.” — Berin Szóka, President, TechFreedom, and longtime critic of net neutrality rules<sup>4</sup>*

<sup>1</sup> Alina Selyukh & David Greene, *FCC Chief Makes Case for Tackling Net Neutrality Violations 'After The Fact'*, May 5, 2017, at <http://www.npr.org/sections/alltechconsidered/2017/05/05/526916610/fcc-chief-net-neutrality-rules-treating-internet-as-utility-stifle-growth>.

<sup>2</sup> *Comcast Statement Supporting a Free and Open Internet*, Apr. 26, 2017, at <http://corporate.comcast.com/comcast-voices/comcast-statement-supporting-a-free-and-open-internet>

<sup>3</sup> *Verizon Supports FCC Proposal to Remove Outdated Utility Regulation of Broadband*, Apr. 26, 2017, at <http://www.verizon.com/about/news/verizon-supports-fcc-proposal-remove-outdated-utility-regulation-broadband>.

<sup>4</sup> *Berin Szóka, Only Congress, Not the FCC, Can Fix Net Neutrality*, May 17, 2017, at <https://www.wired.com/2017/05/congress-not-fcc-can-fix-net-neutrality/>.



ISPs thus have publicly supported “strong, legally enforceable” rules, including rules that prohibit blocking, throttling, and discrimination — including limits on paid prioritization — in addition to transparency requirements.<sup>5</sup> As far as high profile policy battles go, this is a remarkable level of consensus among parties typically seen as being on opposite sides of the net neutrality debate.

To be sure, some disagreements remain. Tellingly, the most significant one has to do with the source of legal authority for the FCC’s rules rather than the substance of the rules themselves. Internet Association has consistently held the view that what matters to consumers and the ecosystem of internet innovation is not legal theories or jurisdiction, but clear net neutrality rules that enable consumers to continue enjoying the unfettered ability to access the lawful content of their choice, and that these rules are enforced effectively if broadband providers violate them.

This paper shows that contrary to arguments by net neutrality opponents, the 2015 net neutrality rules have been working well — providing assurances to consumers and innovators, with no significant harm to broadband providers with respect to negative impact of investment, capacity, or demand. This paper also explains, from a first principles perspective, the net neutrality rules required to protect consumers and preserve the virtuous circle of innovation. Finally, this paper discusses the need for effective enforcement of net neutrality rules, including the need for the FCC to retain oversight over enforcement of net neutrality rules.



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## Section 1

# Net Neutrality Rules Preserve The Success Of The Internet In Driving Economic Growth, Spurring Innovation, And Advancing Individual Expression And Democratic Discourse

The open, best-efforts internet is the undisputed engine for the global information economy, as well as one of the most significant outlets of our time for political engagement and other free expression. Over the last two decades, the internet has gone from something used by hobbyists on dial-up connections to an indispensable part of our daily lives with seemingly every device in the home being “always on.” Today, a majority of the top 10 global companies by market capitalization owe much of their success to the growth of the internet. Of course, the internet enables hundreds of thousands of small businesses too, whether they are startups building the latest app or local restaurants or stores marketing themselves and selling to the local community and beyond. In recent years, cloud-based services have touched almost every part of our lives — whether it is listening to music, storing files and photos, or managing personal finances — and changed the way

<sup>5</sup> David Kaut, *Comcast, AT&T Officials Back Certain Net Neutrality Rules; Paid Prioritization Stickier*, *Communications Daily*, June 1, 2017 (citing statements from representatives from Comcast and AT&T at a conference hosted by Free State Foundation).

businesses operate by moving backend business operations and communications systems to the cloud, leading to fewer and more predictable capital costs.

The success of the internet is not just about market caps and IPOs, however. Digital communications and social media have proven to be a revolutionizing force, from the Arab Spring to political campaigns around the world today. Social media apps allow individuals to stay in touch with friends and family worldwide, and share their thoughts, pictures, and videos with anyone around the world. Internet apps and services also allow individuals to advertise and sell their arts, crafts, used clothes, and homewares to a wide audience of potential buyers, or raise money for charities or other causes via crowdfunding. Aspiring musicians and filmmakers can now easily and inexpensively establish their own online channels to distribute their music and videos.

All of this success and transformation stems from a free and open internet, one that enables consumers to access any website or app, buy any product, and use any service they choose. Net neutrality rules enable an ecosystem of “innovation without permission” in which anyone with a good idea can launch an app without having to strike a deal with an ISP or worry about whether an ISP will block, throttle, or otherwise discriminate against a service. As the FCC has explained, net neutrality rules enable a “virtuous [cycle] of innovation in which new uses of

the network—including new content, applications, services, and devices—lead to increased end-user demand for broadband, which drives network improvements, which in turn lead to further innovative network uses.”<sup>6</sup> The D.C. Circuit Court of Appeals affirmed the FCC’s “virtuous cycle” rationale as justifying net neutrality rules on two separate occasions including one as recently as last year.<sup>7</sup> A free and open internet benefits the entire ecosystem — ISPs who benefit from greater demand for their services from consumers, edge providers and startups who innovate knowing that their services will reach their customers without interference from gatekeepers, and most of all consumers and small businesses who benefit from the wide range of innovative services available through the broadband ecosystem.

IA’s member companies depend on this virtuous circle to continue to offer consumers the benefits of increased innovation and competition. And while opponents of net neutrality like to frame the issue as nothing more than a business dispute between large corporations, the reality is that a free and open internet most benefits end users as well as smaller edge

providers and content producers who are able to offer consumers greater choice and, relatedly, the benefits of competition. Recently, more than 1,000 startups, innovators, entrepreneurs, and entrepreneurial support organizations from around the nation joined Engine, Y Combinator, and Techstars in sending a letter to FCC Chairman Pai asking him to protect net neutrality and ensure that America’s innovators don’t get left behind. The letter makes clear that innovators and entrepreneurs “depend on an open internet—including enforceable net neutrality rules” and



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<sup>6</sup> *Protecting and Promoting the Open Internet, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, 30 FCC Rcd 5601, 5627, para. 77 (2015) (citing Preserving the Open Internet, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, FCC 10-201, 25 FCC Rcd 17905, 17910-11, para. 14 (2010)).*

<sup>7</sup> *United States Telecom Ass’n v. FCC, 825 F.3d 674, 694, 734 (D.C. Cir. 2016); Verizon v. FCC, 740 F.3d 623, 634, 644 (D.C. Cir. 2014).*



that “[w]ithout net neutrality, the incumbents who provide access to the internet would be able to pick winners or losers in the market.”<sup>8</sup> Without net neutrality rules in place, ISPs could take “actions [that] directly impede an entrepreneur’s ability to start a business, immediately reach a worldwide customer base, and disrupt an entire industry.”<sup>9</sup> On the other hand, net neutrality rules allow innovators and entrepreneurs “to compete with incumbents on the quality of [their] products and services, not [their] capacity to pay tolls to internet access providers.”<sup>10</sup>

Consider the following testimonial from IA member company TransferWise’s CEO and co-founder, Taavet Hinrikus:

*When we launched TransferWise in 2011, we set out to change how people send money across borders. In doing so, we brought competition and consumer choice to the banking sector, and we continue to do so today. We charge customers a fraction of what banks charge them, but our customers get the benefit of secure and frictionless money transfers the world over. Our customers reap the rewards of competition and around the world, they save more than \$1 million dollars every day compared to using banks and other providers.*

Net neutrality truly is a pocketbook issue for consumers.

As the testimonials from Etsy, TransferWise, and Vimeo elsewhere in this paper demonstrate, net neutrality rules are needed to ensure a level playing field for new entrants competing with larger, established companies. As Michael Cheah, General Counsel of Vimeo, says, “the absence of [net neutrality] rules would create real risk and harm for Vimeo and others who are bringing competition and consumer choice to the online marketplace.” He also notes that any rollback of the current net neutrality rules that would permit paid prioritization by ISPs “will create a two-tiered internet — fast lanes for those who can afford to pay a hefty toll and slow lanes for everyone else — and will ultimately harm innovation and creative expression online.”

Taavet Hinrikus, co-founder of TransferWise, similarly emphasizes that “[i]n order for [TransferWise] to bring the benefits of competition to our customers, we needed to know that we were on a level playing field and were not going to be disfavored by an ISP that decided it wanted to build its own money transfer and charge us for a fast lane, or throttle our data.”<sup>11</sup> Finally, Etsy CEO Josh Silverman makes clear that an open internet is needed for Etsy’s community of entrepreneurs to thrive:

*Our sellers’ success depends on strong net neutrality protections. As microbusinesses, “internet fast lanes” are more likely to be unaffordable, undermining their ability to compete with bigger, more established brands. We know that delays of just milliseconds negatively impact sales. The internet is built on the principle of openness. For the price of an internet connection, anyone can spread new ideas or*

<sup>8</sup> Letter from Engine et al. to FCC Chairman Ajit Pai, April 26, 2017, available at <http://www.engine.is/startups-for-net-neutrality>.

<sup>9</sup> *Id.* (internal quotation marks omitted).

<sup>10</sup> *Id.*

<sup>11</sup> For anyone who believes that ISPs would not favor their own or affiliated apps, recall that Verizon, AT&T, and T-Mobile blocked Google Wallet in favor of their own joint venture payment app. See *Google Wallet Has Tough Time Getting Over Mobile Hump*, Dec. 9, 2011, at <https://www.forbes.com/sites/greatspeculations/2011/12/09/google-wallet-has-tough-time-getting-over-mobile-hump/>.



*start a business—even spark a new industry. It’s this democratic access that makes the internet so revolutionary and what allows Etsy sellers to compete in the global marketplace. It’s what allowed Etsy to grow from a tiny company in a Brooklyn apartment to a global business. We believe that strong net neutrality protections should be safeguarded, and we encourage policymakers to adopt clear rules that allow any business—even a business of one—to compete on an even playing field online.*

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## Section 2

# The FCC’s 2015 Rules Are Working And The Entire Broadband Internet Ecosystem Is Thriving

After years of arguing that net neutrality rules were unnecessary, opponents of the 2015 rules now say that the rules themselves are largely acceptable but the classification of broadband internet access service (“BIAS”) as a common carrier service has kept ISPs from investing in their networks. Leading up to and even since the 2015 FCC Order, IA has remained agnostic as to the legal classification of BIAS, focusing instead on the outcome of the rules and whether they have a strong legal basis that can withstand the test of time and be enforced effectively.<sup>12</sup> In the two-plus years since the rules were adopted, the benefits of an open internet to the entire ecosystem have been clear. Cloud-based service providers and startups have continued to thrive; ISPs have benefitted as demand for broadband has continued to grow; and consumers have reaped the benefits. Moreover, the claimed economic harms to ISPs simply have not materialized.

Comprehensive economic research by IA has found that ISP investment is up over time, and shows no decline as a result of the FCC’s 2015 Order promulgating net neutrality rules and classifying BIAS as a common carrier service under Title II of the Communications Act. Multiple, independent metrics — from actual capital expenditure numbers, to patents, to prices — demonstrate that ISP claims of depressed investment don’t mesh with reality.<sup>13</sup>

Specifically, IA’s research found that that:

- There has been no negative impact on broadband infrastructure investment, including no slowdown in investment in the U.S. compared to other OECD countries and no causal impact overall from the FCC policies on investment.
- Investment by publicly-traded ISPs increased by over 5 percent in the two-year period from 2013-14 to 2015-2016 (i.e., before and after the 2015 adoption of the FCC’s net neutrality rules).
- Investment by network operators has continued to rise every year since 2009, before the

<sup>12</sup> Letter from Michael Beckerman, President & CEO, Internet Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-28, at 1 (Apr. 11, 2017) (“Consumers want and need their internet experience preserved and protected, regardless of the legal or regulatory mechanism. While IA continues its work to protect consumers by maintaining existing FCC rules, its primary focus is on the end result — meaningful net neutrality rules that withstand the test of time.”).

<sup>13</sup> Christopher Hooton, Preliminary Net Neutrality Investment Findings, May 2017, available at <https://cdn1.internetassociation.org/wp-content/uploads/2017/06/InternetAssociation-NetNeutrality-Facts.pdf>



FCC first adopted net neutrality rules in 2010, and has not been affected by the change in regulatory classification of BIAS in 2015.

- Broadband penetration continues to grow post-2015, just as it did prior to the FCC's 2015 Open Internet Order, with fixed broadband subscriptions up over 3.5 percent from June 2015 to June 2016 and wireless broadband subscriptions up 10 percent in the same period. Meanwhile, cable broadband speeds have doubled from 2015 to 2016, the first full year following the adoption of the current net neutrality rules and reclassification of BIAS.
- There is no evidence of network operator industry harm, with aggregate corporate net income and equity for ISPs increasing steadily over the years, including after 2015.

A recent comprehensive study by Free Press found similar results, including the following factual findings:

- Total capital investments by publicly traded ISPs were up 5 percent during the two-year period following the FCC's 2015 Order compared to the two-year period prior to the Order;
- Capital investments were up at 16 of the 24 publicly traded ISPs following the 2015 FCC Order;
- Cable ISPs' core network investments in 2016 saw their highest single-year increase in more than 15 years;
- Large- and medium-sized ISPs accelerated or completed next-generation network upgrades since 2015; and
- All national wireless carriers have increased capacity sufficient to offer unlimited data plans following the 2015 FCC Order.<sup>14</sup>

Free Press also cites numerous public statements by ISPs and ISP executives made to investors and the SEC in which they deny that regulatory classification of broadband had any impact on their investment or business decisions.

IA research and Free Press study confirm what common sense tells us — that investment in broadband networks is driven by growing demand for broadband access services rather than speculative concerns about possible future implications of common-sense rules or the regulatory classifications used to support them. The economic data following the FCC's 2015 Order and net neutrality rules demonstrate that the FCC's analysis in its 2010 and 2015 Orders regarding maintenance of the virtuous circle of innovation and growth have remained true — clear rules of the road have given edge-based apps and services the certainty needed to attract investment and growth without concerns about ISPs acting as gatekeepers, and the growth of these services has driven demand among consumers for faster and better broadband access leading to continued growth in ISP investment and broadband subscriptions.



*In the two-plus years since the rules were adopted, the benefits of an open internet to the entire ecosystem have been clear.*

<sup>14</sup> S. Derek Turner, *It's Working: How the Internet Access and Online Video Markets are Thriving in a Title II World*, May 2017, available at <https://www.freepress.net/sites/default/files/resources/internet-access-and-online-video-markets-are-thriving-in-title-ii-era.pdf>

The net neutrality debate is not just about investment by ISPs, but also investment by providers of edge-based apps and services. Total capital expenditures in the “data processing, hosting, and related services” sector increased by 26 percent in the year following the 2015 adoption of the FCC’s net neutrality rules.<sup>15</sup> Perhaps no area has seen greater growth than online video, with subscription streaming video providers like Netflix, Amazon, and Hulu all expanding rapidly since the FCC’s 2015 vote, including significant investments in both original and acquired programming. Many over-the-top multichannel video programming distributors — so-called “skinny bundle” offerings — have launched since the 2015 FCC vote including SlingTV, DirecTV Now, PlayStation Vue, Hulu With Live TV, YouTube TV, as well as several online offerings from individual networks. In addition, there are signs that Comcast and Verizon are considering offering Over The Top pay-TV services outside of their existing network footprint.<sup>16</sup> Consumers now have an unprecedented number of choices of pay-TV services, allowing them to either cut or shave the cord, or subscribe to pay-TV for the first time at a wide variety of price points and channel offerings. The viability of all of these new online video services depends on continued guarantees of an open and nondiscriminatory path to customers free of interference from ISPs offering competing video services.

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### Section 3

## Ex Ante Rules Remain Necessary To Preserve And Protect An Open Internet

Clear and generally predictable ex ante rules are necessary to ensure the internet’s virtuous circle of innovation and growth continues. The FCC in 2015 discussed in detail the incentives and ability of ISPs to block, throttle, or otherwise discriminate against Over The Top apps and services — an explanation later endorsed by the D.C. Circuit.<sup>17</sup> In the two short years since 2015, these incentives and the ability of ISPs to act on them remain unchanged. If anything, the incentives have been strengthened with the advent of several streaming “replacement TV” video services.

Indeed, ISPs themselves agree that net neutrality protections are required (even if there is disagreement as to the extent of protections needed and the need for the FCC’s 2015 reclassification of BIAS). In order to ensure the virtuous circle continues, startups and other edge providers need assurances that their apps and services will not be blocked or discriminated against (and that there will be avenues for legal recourse if they are) before they invest in developing and rolling out new products.

For example, the years since the 2015 FCC Order have seen a proliferation of online streaming TV options from both traditional Multichannel Video Program Distributors and edge providers,

<sup>15</sup> *Id.* at 45.

<sup>16</sup> Gerry Smith, *Comcast Said to Gain Rights to Offer Online TV Nationwide*, *Bloomberg* (Mar. 23, 2017), available at <https://www.bloomberg.com/news/articles/2017-03-23/comcast-said-to-gain-rights-to-offer-web-tv-service-nationwide>; Lucas Shaw, Scott Moritz, and Gerry Smith, *Verizon Said to Plan Online TV Package for Summer Launch*, *Bloomberg* (Mar. 30, 2017), available at <https://www.bloomberg.com/news/articles/2017-03-30/verizon-said-to-be-planning-online-tv-package-for-summer-launch>.

<sup>17</sup> *Verizon*, 740 F.3d at 645-47 (endorsing the FCC’s detailed findings regarding ISPs’ incentives and ability to discriminate against and among edge providers).



as well as a growing number of more specialized streaming video apps from cable networks, sports leagues, and others. These services involve significant investments in original and acquired programming, technology (infrastructure and software development), marketing, etc. — all for services that compete directly with network operators’ core video offerings.<sup>18</sup> Without clear ex ante rules preventing ISPs from blocking, throttling, or otherwise discriminating against such streaming video apps, these new competitors will find themselves at the mercy of their competitors and will be deterred from making such investments in the future. Ultimately, consumers will lose if these new entrants are kept from growing into meaningful, competitive choices.



*Consumers will lose if these new entrants are kept from growing into meaningful competitive choices.*

Ex ante rules also give ISPs, edge providers of apps and services, and consumers greater certainty and the resulting ability to structure their activities in the market. Consumers can make the choice, for example, to cut the cord and subscribe to one of the new online TV offerings, knowing that such services will not be blocked, throttled, or otherwise discriminated against by their ISP. Online video and other service providers will know that they can expect a baseline level of nondiscriminatory treatment by all ISPs nationwide and can therefore market and offer their services nationwide regardless of a potential customer’s choice of ISP. And ISPs, including small ISPs and new entrants, will know that their success will depend on the services offered to consumers rather than their ability to compete with large ISPs who can extract rents from edge providers for interconnection and/or delivering traffic to consumers.

Some opponents of net neutrality rules have argued that ex ante rules are not needed, and that discriminatory behavior can be handled on a case-by-case basis after the fact. But such ex post enforcement, based on unclear legal authority and standards (or under general antitrust law), will create significant uncertainty in the market and upset the careful balance that has led to the current virtuous circle of innovation in the broadband ecosystem. Moreover, such ex post enforcement is likely to be a slow and more expensive process out of the reach of startups and other smaller edge providers of apps, devices, and services who do not have the resources to go up against large network operators in disputes lasting many years without the involvement of the expert agency with respect to communications networks.

In fact, prior to the FCC first adopting net neutrality rules in 2010, the FCC had a regime of case-by-case enforcement of the 2005 Internet Policy Statement. It did not end well. After Comcast throttled peer-to-peer traffic from several sites in 2007 and falsely denied doing so, the FCC conducted a lengthy investigation and ruled against Comcast<sup>19</sup> — only for the D.C. Circuit to vacate that FCC Order for lack of legal authority.<sup>20</sup> In contrast to having clear, light touch rules based on a solid legal footing, case-by-case enforcement of vague principles would cause far more uncertainty — not to mention costs and delay — for all parties involved.

<sup>18</sup> *USTA v. FCC*, 825 F.3d at 694 (citing *Verizon*, 740 F.3d at 645) (“[B]roadband providers like AT&T and Time Warner have acknowledged that online video aggregators such as Netflix and Hulu compete directly with their own core video subscription service ...”).

<sup>19</sup> *Formal Complaint of Free Press and Public Knowledge Against Comcast Corp. for Secretly Degrading Peer-to-Peer Applications*, FCC 08-183, 23 FCC Rcd 13028 (2008).

<sup>20</sup> *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).



## Section 4

# Specific Net Neutrality Rules Needed To Preserve An Open Internet

As discussed above, the main policy disagreements following the FCC’s 2015 Order have been related to the classification of BIAS as a Title II service rather than the substantive rules themselves, which were considered and upheld by the D.C. Circuit. IA believes that the current light touch rules establish the correct level of baseline net neutrality protections while preserving the ability of ISPs to address technical issues and ensure the quality of their service by engaging in reasonable network management.

Specifically, IA supports the following net neutrality rules that are currently in place:

- **No Blocking:** BIAS providers should be prohibited from blocking lawful content, applications, services, or non-harmful devices. This is a central communications policy dating back to seminal FCC decisions such as *Carterfone* and was part of the FCC’s 2005 Internet Policy Statement.
- **No Throttling:** BIAS providers should not be able to throttle lawful traffic, which would give them the ability to slow down or otherwise impair third-party services, including streaming video and other services that compete with services offered by BIAS providers.
- **No Paid Prioritization:** BIAS providers should be prohibited from charging content, application, or service providers for enhanced or prioritized access to the subscribers of the BIAS provider. Internet users and edge providers use and develop products designed to work on the open, best-efforts internet. Allowing for paid prioritization will introduce artificial barriers to entry, distort the market, and discourage investment in more capable networks (scarcity, even if artificial, is necessary to make prioritization valuable). Instead, consumers should receive the download speeds for which they have paid, regardless of whether a content provider pays a terminating access fee to deliver traffic to the ISP’s network.<sup>21</sup>

Allowing paid prioritization would enable BIAS providers to discriminate against edge providers that offer competing services (e.g., any of the new online TV services or streaming subscription video providers like Netflix, Amazon, and YouTube), and, if the prioritization services were used, would also destroy the level playing field that allows new or smaller streaming video providers to compete with larger or better-funded edge providers. As Vimeo General Counsel Michael Cheah notes in his testimonial, allowing paid prioritization “will create a two-tiered internet — fast lanes for those who can afford to pay a hefty toll and slow lanes for everyone else — and will ultimately harm innovation and creative expression online.”



*Allowing for paid prioritization will introduce artificial barriers to entry, distort the market, and discourage investment in more capable networks.*

<sup>21</sup> *Interconnection should not be used as a chokepoint to artificially slow traffic or otherwise undermine the openness guarantees for end user access.*



- **No unreasonable interference/disadvantage:** The FCC should examine and if necessary prohibit, on a case-by-case basis, practices that unreasonably interfere with or unreasonably disadvantage the ability of consumers to reach the internet content, services, and applications of their choosing or the ability of edge providers to access consumers using the internet. While the FCC’s 2015 explication of this rule has been criticized for seemingly being too open-ended, what the FCC provided in the 2015 Order is not a complicated or novel rule but rather a detailed guide on how it expected to analyze claims of unreasonable conduct on the part of BIAS providers.
- **Transparency and Disclosure:** Internet Association supports robust transparency rules that would require broadband internet access providers to disclose network management practices so that content providers and consumers understand their internet experience. Transparency requirements will mitigate against the incentives of BIAS providers to keep their network management practices opaque and to create the illusion of network scarcity. In addition, robust transparency requirements will provide better information to all participants in the broadband ecosystem and will help further investment and innovation.

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## Section 5

# Open Internet Protections Should Apply To Broadband Internet Access Providers On A Platform-Neutral Basis

To protect today’s internet and all its users in the U.S., net neutrality protections must continue to apply equally to all BIAS providers, both fixed and mobile (including wired, terrestrial wireless, and satellite). Mobile broadband networks are as essential to the broadband ecosystem as wired broadband networks — maybe even more so as mobile apps and services continue to grow at breakneck speed. Americans rely on mobile wireless connectivity either to “multiscreen” their interaction with internet content or services or because, especially in the case of lower-income users, they are wholly reliant on mobile wireless for internet access. In recent years, fast-growing social media, messaging, and ride-sharing apps have become ubiquitous despite existing almost entirely on mobile broadband networks. Given the way consumers today rely heavily on both wired and wireless broadband subscriptions, the FCC should maintain its current platform-neutral approach and keep in place a stable, consistent, and universally applicable set of open internet protections.

Mobile parity in net neutrality rules enhances competition and consumer choice among both edge providers and broadband providers. If a consumer knows that she can access the same content and services on mobile wireless devices as she can over wired broadband connections, she will be more likely to view wireless broadband providers as genuine alternatives to wired broadband providers. Allowing a consumer to access the applications and services of her choice over any wireless connection also will ensure that pay-



*Mobile broadband networks are as essential to the broadband ecosystem as wired broadband networks — maybe even more so.*

to-play agreements with mobile broadband providers do not determine winners and losers in the internet marketplace.

Mobile parity maintains a stable environment for all participants in the internet’s virtuous circle of investment and innovation. Net neutrality rules should not depend on the particular device or network a consumer uses to access it. Such disparities and double standards would create consumer confusion and uncertainty for edge providers and would be inconsistent with how today’s consumers experience the broadband ecosystem.

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## Section 6

# Strong And Effective Enforcement Of Net Neutrality Rules Is Critical To Ensuring That The Benefits Of The Rules Are Realized

As discussed above, clear ex ante rules are needed to preserve the virtuous circle of innovation for consumers, edge providers of apps and services, and ISPs. ISPs maintain the incentive and ability to discriminate against third party or unaffiliated content, apps, and services, and also maintain the incentive and ability to harm edge providers by using their gatekeeper status to extract concessions via paid prioritization or other interconnection arrangements, thereby harming the virtuous circle of innovation in the broadband ecosystem. Of course, any set of rules is only useful in preserving the virtuous circle if the rules are enforced in a strong and predictable manner.

Absent legislation that fundamentally changes allocations of relevant federal agencies’ authority, net neutrality rules should be enforced by the expert agency in the field, namely the FCC. The FCC is the expert agency with jurisdiction over ISP networks; BIAS falls squarely within the FCC’s jurisdiction over “interstate and foreign communication by wire or radio” as set forth in the Communications Act.<sup>22</sup> The FCC is in the best position to make decisions regarding the economic and technical issues raised in examining potential violations of net neutrality rules. For example, today only the FCC is staffed to adequately analyze whether a particular ISP’s actions amounted to “reasonable network management” — an analysis that involves expertise in cable, wireline, fixed and mobile wireless, and satellite networks, as well as the economics of operating such networks. Moreover, the FCC is also best positioned to use its established procedures to solicit public input while deciding matters that may have industry-wide application.<sup>23</sup>



*Any set of rules is only useful in preserving the virtuous circle if the rules are enforced in a strong and predictable manner.*

<sup>22</sup> *Comcast, 600 F.3d at 646-47 (“Comcast concedes that . . . the company’s internet service qualifies as ‘interstate or foreign communication by wire’ within the meaning of Title I of the Communications Act[.] 47 U.S.C. § 152(a).”).*

<sup>23</sup> *Preserving the Open Internet, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, FCC 10-201, 25 FCC Rcd 17905, 17986-89, paras. 151-60 (2010); Protecting and Promoting the Open Internet, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, 30 FCC Rcd 5601, 5704-20, paras. 225-72 (2015).*



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## Section 7

# Conclusion

A free and open internet remains vital to preserving and protecting the virtuous circle of broadband innovation that benefits edge-based innovators and entrepreneurs, businesses, ISPs, and, above all, consumers. The existing FCC rules are working and have not resulted in harms to ISPs, who continue to experience growth in investment, network capacity, and demand for BIAS services. Undoing the existing light touch rules will create uncertainty among edge providers, innovators, and consumers, and would threaten to unravel the most dynamic segment of our economy. Instead, policymakers should seek to preserve the current rules and ensure that they remain on a firm legal footing.

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## Section 8

# Appendix

## *In Their Own Words: Internet Companies On Net Neutrality*



### *Etsy - Josh Silverman, CEO*

Etsy is a global creative commerce platform that builds markets, services, and economic opportunities for creative entrepreneurs. Our platform hosts over 1.8 million active Etsy sellers in nearly every country around the world. In the US, 87% of our sellers are women and most are sole proprietors working from home. Individually they may be small, but together they sold \$2.8B in goods last year alone.

Platforms like Etsy create opportunities for anyone with a good idea to start a business online and access a global market of consumers. There are Etsy sellers in every state, and 28% of Etsy sellers live in rural areas, compared to 17% of U.S. non-farm business owners. For 32% of our sellers, their creative business is their sole occupation.

Our sellers' success depends on strong net neutrality protections. As microbusinesses, "internet fast lanes" are more likely to be unaffordable, undermining their ability to compete with bigger, more established brands. We know that delays of just milliseconds negatively impact sales. That's why our community applauded the FCC's 2015 Open Internet Order, which put clear, bright line net neutrality rules into place.

The internet is built on the principle of openness. For the price of an internet connection, anyone can spread new ideas or start a business—even spark a new industry. It's this democratic access that makes the internet so revolutionary and what allows Etsy sellers to compete in the global marketplace. It's what allowed Etsy to grow from a tiny company in a Brooklyn apartment to a global business.



We believe that strong net neutrality protections should be safeguarded, and we encourage policymakers to adopt clear rules that allow any business - even a business of one - to compete on an even playing field online. To date, the industries opposing the 2015 Open Internet Order represent very large business interests who stand to profit if these essential protections are rolled back. If successful, they will grow their profits at the expense of Etsy sellers and the millions of microbusinesses who depend on a free and open internet to start and grow online. As the FCC considers this issue in the coming months, we urge commissioners to consider the needs of these entrepreneurs, whose livelihoods depend on strong net neutrality protections.



***Vimeo - Michael Cheah, General Counsel***

In 2004, Vimeo was founded by a group of filmmakers who wanted to share their creative work and personal moments from their lives. As time went on, like-minded people discovered Vimeo and helped build a supportive community of individuals with a wide range of passions. Today, millions of people from all around the world enjoy Vimeo, and we're growing bigger every day. As we have grown, we have created a low entry barrier for amateur and professional filmmakers to bring their ideas online, which in turn has spurred competition and consumer choice. Differently stated, our platform enables speech, creativity, and commerce - all at the same time.

The current FCC net neutrality proposal would allow broadband providers to charge online companies like Vimeo to deliver traffic (like video uploads and plays) to their customers in a timely manner. We think this will create a two-tiered Internet — fast lanes for those who can afford to pay a hefty toll and slow lanes for everyone else — and will ultimately harm innovation and creative expression online. While the FCC is very focused on the impact that existing light touch net neutrality rules have on broadband providers, the absence of these rules would create real risk and harm for Vimeo and others who are bringing competition and consumer choice to the online marketplace. Losing this competition and innovation should be of greater concern to the FCC than the burden of having broadband gatekeepers comply with the existing light touch net neutrality rules.

Vimeo pushed for strong net neutrality rules in 2014 and we got them in 2015 when the FCC recognized that we need strong rules to prevent gatekeepers from deciding who gets to have high-quality internet service and who doesn't. These rules of the road are working and do not need to be rolled back.



***TransferWise - Taavet Hinrikus, CEO and Co-Founder***

When we launched TransferWise in 2011 we set out to change how people send money across borders. In doing so, we brought competition and consumer choice to the banking sector and we continue to do so today. We charge customers a fraction of what banks charge them, but our customers get the benefit of secure and frictionless money transfers the world over. Our customers reap the rewards of competition and around the world they save more than \$1 million dollars every day compared to using banks and other providers.



We could not have built our business successfully without the open internet that treats all data equally. In order for us to bring the benefits of competition to our customers, we needed to know that we were on a level playing field and were not going to be disfavored by an ISP that decided it wanted to build its own money transfer app and charge us for a fast lane, or throttle our data. By treating all data equally, the open and best efforts internet guarantees a level playing field for entrepreneurs like us.

TransferWise is a successful startup. We have a proven business model and have demonstrated our impact on our customers' lives and on the sector. For newer startups, absent clear and enforceable net neutrality rules of the road, the future will not be as bright.



[Internet Association](#)'s mission is to foster innovation, promote economic growth, and empower people through the free and open internet. The internet creates unprecedented benefits for society, and as the voice of the world's leading internet companies, Internet Association ensures stakeholders understand these benefits.