

February 26, 2018

Dear Members of Congress,

We, the undersigned public interest and consumer advocacy organizations, write in strong support of the Congressional Review Act (CRA) resolution to overturn Federal Communications Commission (FCC) Chairman Ajit Pai's December 14, 2017 order that effectively repeals the FCC's *2015 Open Internet Order* and restore robust net neutrality protections.

Net neutrality is the principle that all data on the internet should be treated equally and that internet service providers (ISPs) must not discriminate against or provide preference to any legal data regardless of its source, content, or destination. Net neutrality ensures that all companies – from small startups to large, established companies – can fairly compete in a free market for customers online. It makes it possible for new companies and new technologies to emerge, because it prevents ISPs from erecting artificial barriers to entry.

Net neutrality is also an important safeguard for democracy. It ensures that ISPs are not arbiters of speech and expression online and that access to websites and content is based on individuals' preferences. An open internet is also essential for participation in today's society – we access health care services, educational resources, and employment opportunities online. Net neutrality ensures that individuals' choices are not limited to those offered by companies that can afford to pay the ISPs more to prioritize their content, but rather that companies compete based on the merits of their offerings.

Without net neutrality, ISPs will be able to slow content to particular websites in order to incentivize edge providers to pay for internet "fast lanes" or priority access to their websites. ISPs will be able to redirect traffic from a disfavored business's website to a favored competitor's site. And, they will be able to block customers' access to legal content – even to content that customers purchase internet access expressly to reach. Perhaps most problematically, Chairman Pai's order also eliminates the FCC's enforcement authority over ISPs altogether. As a result, for the first time in the history of the internet, there will be no agency proactively protecting consumers when ISPs engage in these and other anti-competitive or harmful behaviors, like price-gouging, fraudulent billing, or redlining.¹ ISPs have already begun

¹ While the FTC may have some ability to protect consumers on the internet, that ability is limited to the FTC's Section 5 authority, which limits the FTC to policing "unfair" and "deceptive" practices. A practice is not "deceptive" if the ISP has clearly and prominently disclosed that it engages in the practice, and the threshold for "unfairness" is high: to find conduct "unfair," the FTC must find that (a) it causes, or will likely cause "substantial harm" to consumers; (b) that the harm cannot reasonably be avoided by consumers; and (c) that the harm is not outweighed by countervailing benefits to consumers or competition. See Harold Feld, *Can the FTC Really Handle Net Neutrality? Let's Check Against the 4 Most Famous Violations*, WETMACHINE, Dec. 11, 2017, <http://www.wetmachine.com/tales-of-the-sausage-factory/can-the-ftc-really-handle-net-neutrality-lets-check-against-the-4-most-famous-violations/>. Additionally, *FTC vs. AT&T Mobility*, a case pending before an *en banc* panel of the Ninth Circuit, may strip the FTC of any authority over broadband internet providers. See Jessica Rich, *The False Promise Behind the FCC's Net Neutrality Repeal Plan*, WASH. Po., Dec. 12, 2017,

changing their public commitments to protecting an open internet, and ISPs have financial incentives to engage in anti-competitive and harmful behaviors. Without clear rules, nothing prevents ISPs from changing their policies in the future.

Restoring net neutrality is crucial to ensuring that the internet remains a central driver of economic opportunity, job creation, education, free expression, and civic organizing. A CRA resolution is the fastest way to restore the net neutrality protections consumers have come to expect and rely on. We urge you to co-sponsor and vote for the CRA resolution to restore net neutrality.

Sincerely,
Center for Democracy & Technology
Consumer Federation of America
Consumers Union
Public Knowledge
Open Technology Institute

https://www.washingtonpost.com/opinions/the-false-promise-behind-the-fccs-net-neutrality-repeal-plan/2017/12/12/06471386-dec9-11e7-89e8-edec16379010_story.html.