

United States Senate

April 1, 2020

Chairman Ajit Pai
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054

Dear Chairman Pai:

While we were deeply disappointed with the portion of the recent D.C. Circuit Court of Appeals decision that upheld the Federal Communication Commission’s (FCC) repeal of net neutrality rules, the Court correctly ruled that the FCC failed to adequately consider public safety, the Lifeline program, and competitive broadband providers’ access to poles needed to deploy their networks. The Court also described the FCC’s action as “unhinged from the realities of modern broadband service,” and we agree. We urge the Commission to heed the call of the Court and finally do the hard work of considering how a decision to repeal the Open Internet Order could negatively impact public safety, universal access, and broadband competition – since the Commission’s decision gave away the tools it needs to fulfill each of these statutory obligations.

When the FCC acted in 2017 to undo net neutrality, it eviscerated the three net neutrality “bright-line” rules – no blocking, no throttling and no paid prioritization – and relinquished the FCC’s authority to prohibit unjust, unreasonable and discriminatory practices by broadband providers. Yet beyond repealing these net neutrality rules, the FCC abandoned its authority to promote public safety, universal service, and broadband competition, particularly for rural communities and low-income Americans. American consumers and broadband users suffered as a result.

Challenged in the D.C. Circuit Court of Appeals by a wide range of states, companies, and public interest organizations, the FCC unfortunately convinced the three-judge panel to give the FCC deference over its decision to repeal the Open Internet Order. However, the Court also explicitly instructed the FCC to seek comment on how the repeal impacted public safety, the Lifeline program, and pole attachments. The agency must follow the Court’s guidance thoroughly and fairly.

Regarding the topic of public safety, we already know that carriers have throttled fire departments’ communications in emergencies, including during the 2018 California wildfire season. Since the agency has relinquished its regulatory control and role overseeing broadband access, it must consider how it would address similar situations in the future. The same can be said of the Lifeline program, which provides telephony and broadband access to those who need it most to connect to the modern economy; and pole attachment rules, which ensure providers have access to necessary infrastructure to build out and operate competitive networks that provide more affordable, reliable service to Americans. Without solid authority over these vital areas, the Commission has called into question its ability to carry out core Congressional

mandates: namely “promoting safety of life and property”¹ and the “preservation and advancement of universal service.”²

Net neutrality rules that protect the free flow of ideas and commerce, along with the FCC’s power to ensure public safety and promote broadband access for communities throughout the country, are more important than ever. We demand the FCC live up to its statutory obligations and put the American consumer and broadband user first.

Due to the closure of many Senate offices during the coronavirus outbreak, physical signatures are unavailable. The listed senators have asked to be signatories to this letter.

Sincerely,

Edward J. Markey
United States Senator

Charles E. Schumer
United States Senator

Maria Cantwell
United States Senator

Brian Schatz
United States Senator

Richard Blumenthal
United States Senator

Kirsten Gillibrand
United States Senator

Richard J. Durbin
United States Senator

Tammy Baldwin
United States Senator

Jeffrey A. Merkley
United States Senator

Martin Heinrich
United States Senator

Sherrod Brown
United States Senator

Tom Udall
United States Senator

Jack Reed
United States Senator

Patty Murray
United States Senator

Mazie Hirono
United States Senator

Patrick Leahy
United States Senator

¹ 47 U.S.C. § 151 (Section 1 of the Communications Act of 1934).

² 47 U.S.C. § 254 (Section 254 of the Communications Act of 1934).

Bernard Sanders
United States Senator

Benjamin L. Cardin
United States Senator

Elizabeth Warren
United States Senator

Kamala D. Harris
United States Senator

Ron Wyden
United States Senator

Amy Klobuchar
United States Senator

Cory A. Booker
United States Senator

Tammy Duckworth
United States Senator

Chris Van Hollen
United States Senator

Margaret Wood Hassan
United States Senator

Dianne Feinstein
United States Senator

Thomas R. Carper
United States Senator

CC: The Honorable Michael O’Rielly, Commissioner
The Honorable Brendan Carr, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
The Honorable Geoffrey Starks, Commissioner