

**Written Testimony of Yosef Getachew,
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Respectfully submitted to the House Economic Matters Committee

In support of

House Bill 957 – Maryland Net Neutrality Act of 2020

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Introduction and Summary

Chair Davis, Vice Chair Dumais, and Members of the House Economic Matters Committee, my name is Yosef Getachew and I am the Director of the Media and Democracy Program at Common Cause. Thank you for the opportunity to testify before your committee today.

Common Cause supports Delegate Reznik’s House Bill (HB) 957, the Maryland Net Neutrality Act of 2020. Common Cause is a nonpartisan grassroots organization dedicated to upholding the core values of American democracy. We work to create an open, honest, and accountable government that serves the public interest, promotes equal rights, opportunity, and representation for all.

Net neutrality is the principle of open access to the internet. It enables users to access the services they want without interferences from their broadband service provider. Common Cause has been one of the leading public interest organizations in support of strong net neutrality rules at the Federal Communications (FCC). In 2015, the FCC adopted a comprehensive net neutrality framework that prohibited broadband service providers from intentionally blocking, slowing down, or charging money to allow access to specific websites and online content.¹ The 2015 framework also gave the FCC adequate authority to investigate unjust and unreasonable behavior by broadband service providers.²

Unfortunately, in December of 2017, the FCC under the Trump administration repealed its 2015 net neutrality framework leaving people nationwide – including Maryland residents – without any protections.³ Under the new standard, broadband service providers can position their own content at an advantage over competitors, block websites, deliberately speed up or slow down traffic from specific websites, or charge customers special fees for improved access. Just as important, the FCC abdicated its authority to oversee the broadband industry, leaving consumers without a cop on the beat to police an uncompetitive marketplace. Without any protections, broadband service providers can now make access to information and critical online services available to the highest bidder.

¹ See *Protecting and Promoting an Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015).

² *Id.*

³ See *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (2017).

The FCC repealed its 2015 net neutrality framework despite support from most Americans. According to a University of Maryland poll, 86% of Americans opposed the FCC's repeal of net neutrality, including 82% of Republicans, 90% of Democrats, and 85% of independents.⁴ The overwhelming support for net neutrality comes from the fact that broadband has become the essential communications platform of the 21st century. Americans rely on the internet for access to news and information, education, employment, healthcare, and a host of other services. This is why maintaining an open internet – or network neutrality – is critical to our democracy.

Last fall, the U.S. Court of Appeals for the District of Columbia Circuit upheld the Trump FCC's repeal of net neutrality.⁵ Despite this outcome, the Court made clear that states are free to pass net neutrality legislation to provide protections for their own residents.⁶ The Court's decision increases the role states must now play to fill the gap in protections caused by the FCC's net neutrality repeal.

Without rules at the federal level, Maryland's HB 957 is critical to prevent broadband providers from impairing Marylanders' ability to access news and information, organize, create, and communicate.

Net Neutrality is Critical to an Open Internet and a 21st Century Democracy

The free flow of information and the exchange of ideas and information are vital for a functioning democracy. Net neutrality ensures key values of our democracy that Americans expect when going online. Outlined below, these values include free expression, civic engagement, entrepreneurship, and consumer choice.

Free Expression

The open internet is a platform for free expression where Americans can engage in political discourse, exchange cultural experiences, and share their authentic stories. Years of consolidation and gatekeeper power exerted by traditional media companies has often prevented many communities, particularly people of color, from making their voices heard or controlling the narratives of their own stories. The open internet has led to an explosion of online creators⁷ providing new opportunities for communities to tell unique and diverse stories. Without net neutrality, broadband service providers can erect barriers to entry stifling free expression and silencing diverse voices.

Civic Engagement

The open internet has provided a powerful tool for civic engagement, particularly for marginalized communities who have historically faced discrimination that often goes unnoticed on mainstream media. Activism around social movements such as #BlackLivesMatter, #OscarSoWhite, #NoBanNoWall, and #WaterIsLife are just a few examples of how an open internet has provided communities with a way

⁴ *Overwhelming Bipartisan Public Opposition to Repealing Net Neutrality Persists*, University of Maryland (April 18, 2018), <https://www.publicconsultation.org/united-states/overwhelming-bipartisan-public-opposition-to-repealing-net-neutrality-persists/>

⁵ *Mozilla Corp. v. FCC*, 940 F.3d (D.C. Cir. 2019).

⁶ *Id.* at 121.

⁷ See Kayla Kumari Upadhyaya, *How Web Series Have Widened TV's Talent Pool*, *Vice* (Dec. 13, 2016), https://www.vice.com/en_us/article/wnd435/how-comedy-central-led-the-charge-in-developing-web-series-for-television.

to draw attention to systemic discrimination. Without net neutrality, an ISP could block any speech or curtail any form of online activism it did not like.

Entrepreneurship

The internet has grown into what it is today because broadband service providers are required to treat all web traffic equally without picking winners or losers. This has lowered barriers to entry for small startups and entrepreneurs to create online businesses. Without an open internet, broadband service providers could favor their own content or enter into pay-to-play agreements with websites to create fast lanes and slow lanes. This would create a two-tiered system on the internet where startups, small businesses, and other entrepreneurs are at a competitive disadvantage to reach consumers online.

Consumer Choice

An open internet ultimately promises consumer choice. It allows consumers to choose where they want to go, what they want to see, and how they want to interact online without interference from their broadband service provider. Consumer choice on the internet is critical now more than ever with so many essential services now online.

Consumers Face Significant Threats Without Adequate Net Neutrality Oversight

When the FCC repealed net neutrality protections in 2017, the agency also completely abdicated its authority to oversee the broadband industry. Without adequate oversight, broadband service providers are operating in a wild west at the expense of consumers. In the two years without protections, broadband service providers have engaged in some very troubling and dangerous activities. For example, in August 2018, Verizon throttled the Santa Clara Fire Department during its response to one of the worst wildfires in state history.⁸ In another public safety incident, Verizon customers in North Carolina devastated by Hurricane Florence reported experiencing throttled internet access.⁹ Later that year, an academic study revealed that the largest telecom companies – Verizon, AT&T, and T-Mobile – were throttling popular video applications like YouTube and Netflix.¹⁰ Another study found that Sprint has been throttling internet traffic to Microsoft's Skype service, which competes with Sprint's own calling service.¹¹

These activities are a clear sign of broadband service providers abusing their power at a time when there is no oversight to investigate their anti-competitive and anti-consumer practices and take appropriate action. Furthermore, this is just a small sample of the public interest harms that can result without a strong framework in place. Indeed, it is important to remember the long history of net neutrality

⁸ Jon Brodtkin, *Verizon throttled fire department's "unlimited" data during Calif. wildfire*, Ars Technica (August 21, 2018), <https://arstechnica.com/tech-policy/2018/08/verizon-throttled-fire-departments-unlimited-data-during-calif-wildfire/>.

⁹ Cory Doctorow, *North Carolina Verizon customers, trapped by Hurricane Florence, say they're being throttled*, BoingBoing (Sept. 17, 2018).

¹⁰ Olga Kharif, *Wireless Carrier Throttling of Online Video is Pervasive*, Bloomberg (Aug. 19, 2019), <https://www.bloomberg.com/news/articles/2019-08-19/wireless-carrier-throttling-of-online-video-is-pervasive-study>.

¹¹ Olga Kharif, *Sprint is Throttling Microsoft's Skype Service, Study Finds*, Bloomberg (Nov. 8 2018), <https://www.bloomberg.com/news/articles/2018-11-08/sprint-is-throttling-microsoft-s-skype-service-study-finds>.

violations that dictated the need for strong rules in the first place.¹² Whether it is Comcast blocking peer-to-peer file sharing services, AT&T blocking FaceTime, or Sprint blocking Google Wallet, broadband service providers have the economic power and incentive to degrade internet traffic, often times to favor their own services. Without any oversight and a strong framework in place, broadband service providers will gradually make subtle changes that will ultimately degrade individual users' internet experience.

HB 957 Enshrines Protections from the FCC's 2015 Net Neutrality Framework

HB 957 establishes strong net neutrality protections in Maryland by prohibiting broadband service providers from blocking, throttling, or charging a fee to provide some websites with a fast lane and others with a slow lane. In addition, the bill enshrines the protections found in the FCC's 2015 net neutrality framework. This means the bill prohibits anti-competitive zero-rating programs where broadband service providers exempt certain online services but not others from data caps. HB 957 also prohibits broadband service providers from discriminating against internet traffic at the point where data enters their networks. These protections ensure that broadband service providers cannot exploit any loopholes to control where we go, what we see, and how we interact online.

Conclusion

The internet belongs to everyone and is vital to a functioning democracy. It is crucial that Maryland take steps to restore net neutrality and provide the protections in HB 957 to the millions of people in this state who rely on a fair and open internet.

Thank you for your time, and I look forward to answering any questions you have.

¹² Timothy Karr, *Net Neutrality Violations: A Brief History*, Free Press (Jan 24, 2018), <https://www.freepress.net/our-response/expert-analysis/explainers/net-neutrality-violations-brief-history>.