



**Testimony of  
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CTIA**

**In Opposition to Maryland House Bill 957**

**Before the  
Maryland House Economic Matters Committee**

**February 26, 2020**

Chair, Vice-Chair, and members of the committee, on behalf of CTIA<sup>®</sup>, the trade association for the wireless communications industry, I am here in opposition to House Bill 957. CTIA and its member companies support an open internet. To further that goal, we support a bipartisan federal legislative solution to enshrine open internet principles to resolve this issue once and for all and provide certainty for U.S. consumers and broadband providers. CTIA, however, respectfully opposes piecemeal state regulation of the borderless internet and mobile wireless broadband - a truly interstate service - like this legislation. The October 2019 DC Circuit court ruling does not undermine the arguments against this legislation and for preemption that are included in this testimony.

The mobile wireless broadband marketplace is highly competitive and has been an engine of continual innovation, attracting billions of dollars in network investment each year. From the beginning of the Internet Age in the 1990s through the start of the 21<sup>st</sup> century, the Federal Communications Commission (FCC), acting on a bipartisan basis, carefully and purposefully applied a national regulatory framework to internet service that allowed providers to invest, experiment, and innovate while maintaining an open internet. In that time, an entire internet-based economy grew at unprecedented levels. But in 2015, the FCC dramatically changed course, applying for the first time ill-fitting and misplaced 80-year-old common-carrier mandates meant for traditional monopoly public



utilities, such as landline phone service, to broadband internet access.

In 2018, the FCC restored the same national regulatory framework that applied before 2015, which is credited with facilitating the internet-based economy we have today. Under that framework, mobile wireless broadband providers have every incentive to invest in and deliver the open internet services that consumers demand.

The FCC's *Restoring Internet Freedom* Order reversed its 2015 decision, finding that application of 1930s utility-style rules to the internet services of today actually harmed American consumers. The FCC cited extensive evidence showing a decline in broadband infrastructure investment – an unprecedented occurrence during an era of economic expansion. In the mobile broadband market alone, annual capital expenditures fell from \$32.1 billion in 2014 to \$26.4 billion in 2016. This slowdown affected mobile providers of all sizes and serving all markets. For example, small rural wireless providers noted that the 2015 decision burdened them with unnecessary and costly obligations and inhibited their ability to build and operate networks in rural America.

Under the 2018 Order, consumers continue to have legal protections that complement the competitive forces in play. First, the FCC's current regulations include rigorous "transparency" rules that were adopted under President Obama's first FCC Chairman in 2010 and maintained in the 2018 decision, which require broadband providers to publicly disclose extensive information to consumers and internet entrepreneurs about their service performance, commercial terms of service, and network management practices. Second, consistent with the FCC's pre-2015 framework, and unlike with the 2015 decision, the Federal Trade Commission (FTC) once again has ample authority to police broadband offerings and has publicly committed to engage in active enforcement. This extends to any



unfair and deceptive practices, including but not limited to, any violation of the transparency rules and ISP public commitments. The FTC also has authority to act against anticompetitive ISP practices. The FCC's 2015 Order actually removed the FTC from its longstanding enforcement role. Moreover, the U.S. Department of Justice enforces federal antitrust laws, which preclude anticompetitive network management practices.

Finally, the FCC made clear in its 2018 Order that generally applicable state laws relating to fraud, taxation, and general commercial dealings apply to broadband providers just as they would to any other entity doing business in a state, so long as such laws do not regulate broadband providers in a way that conflicts with the national regulatory framework for broadband internet access services.

Any attempt to apply multiple states' requirements would be harmful to consumers for the same reasons the FCC's 2015 rules were harmful, in addition to the fact that those requirements will be at best different and at worst contradictory. Problems multiply in the case of mobile broadband: questions will arise over whether a mobile wireless broadband transmission is subject to the laws of the state where users purchased service, where they are presently located, or even where the antenna transmitting the signal is located. State-by-state regulation even raises the prospect that different laws will apply as the user moves between states. For example, a mobile broadband user could travel through multiple states during a long train ride, even the morning commute, subjecting that rider's service to multiple different legal regimes even if the rider spent that trip watching a single movie. Such a patchwork quilt of disparate regulation is untenable for the future success of the internet economy. In the mobile environment, state-by-state rules would be especially burdensome, difficult to comply with,



costly, and subject providers to differing state interpretations and enforcement of facially similar net neutrality requirements – creating further business uncertainty.

The internet does not stop at state boundaries. Consumers regularly access content from across the country and around the world making virtually all internet traffic interstate and making it impossible to make distinctions between that interstate traffic and the limited amount of internet traffic that begins and ends in a single state. Therefore, in its 2018 Order, the FCC explained that broadband internet access is inherently interstate and global and found broadband-specific state open internet laws are unlawful and preempted by federal law. Specifically, the FCC recognized that state or local laws imposing net neutrality mandates, or that interfere with the federal preference for national regulation of broadband internet access, are impermissible. This is nothing new: even in its 2015 Order, the FCC had concluded that contrary state laws governing broadband internet access are preempted.

The FCC's 2018 order barring common carrier regulation of broadband internet access service, including mobile broadband service, was affirmed in October 2019 by the federal Court of Appeals for the D.C. Circuit. And, although it rejected the FCC's blanket express preemption of all state laws affecting intrastate broadband internet access, the court expressly affirmed the FCC's authority to preempt on a case-by-case basis any state law that "undermines the 2018 Order," as well as the availability of conflict preemption in the courts.

Accordingly, this legislation will likely suffer the same fate as other state net neutrality laws and regulations currently being challenged in federal court. The Vermont net neutrality law, similar to this bill, is being challenged by associations representing broadband providers, including CTIA. When the Vermont bill was proposed the state's own Public Service Department issued a memo in which it



“strongly caution[ed]” that the legislation “would likely run afoul of” the FCC’s rules and warned that “a federal court is likely to be highly skeptical [of] and disinclined to uphold any law that directly or indirectly seeks to legislate or regulate net-neutrality.” The Vermont Attorney General has stipulated to non-enforcement of its net neutrality law as judicial review of the 2018 Order continues. In addition to the Vermont litigation, California enacted a net neutrality law last year that was immediately challenged in court by the U.S. Department of Justice and a group representing broadband providers, including CTIA. The California Attorney General has also stipulated to non-enforcement of the law pending ongoing review of the 2018 Order.

The internet is inherently interstate – and even international. State-by-state legislation is both unworkable and could harm the vibrant ecosystem existing today. We must work together to ensure investment continues while protecting the flow of information consumers expect. Thus, we support federal legislation to ensure there is a uniform national framework to protect net neutrality. We would welcome Maryland calling on Congress to resolve this issue at the federal level but must oppose state-by-state legislation. Accordingly, I respectfully urge you not to move this legislation.