

Thank you Chair Williamson, Vice Chair McLane, Vice Chair Rayfield, and members of the Committee.

My name is Ernesto Falcon and I am the Legislative Counsel for the Electronic Frontier.

EFF was founded in 1990 and focus on strengthening user privacy, and free expression.

With over 41,000 dues-paying members and well over 1 million followers on social networks, our mission is focused on promoting policies that benefit both the creators and users of technology.

We appreciate the Committee taking a closer look at the issue of network neutrality.

EFF believes the FCC decision to abandon federal oversight over ISPs in competition

policy, network neutrality, and privacy despite high levels of concentration will go down as the biggest mistake in internet policy history.

Even the Trump Administration's Department of Justice, which is currently suing AT&T to block its merger with Time Warner, believes large ISPs have the incentive to harm online competition.

More than 2,000 small businesses and startups and millions of Americans opposed the FCC decision.

The Federal Trade Commission does not have rule making power over ISPs and is under active litigation with AT&T in the 9<sup>th</sup> Circuit as to whether it has authority over telephone companies that sell broadband.

Under the new legal regime, nothing prevents ISPs from simply disclosing

harmful practices and changing them at will when it suits them.

Look no further than Comcast, which in 2017 deleted all of its public pledges to not engage in paid prioritization.

Or the efforts by the publication the Consumerist, which reached out to 18 cable companies and asked them to commit in binding contract that they will follow network neutrality and all refused to do so.

Let's be very clear up front who network neutrality protects.

Undoubtedly at the end of the day, Google, Facebook, and Netflix can survive a world where the ISPs demand new rents for access to customers. These new charges will come on top of what subscribers already paid, which is already too high.

But how does any new entrant in the market place with no leverage, no customer base, and a tight budget even break into the Internet market?

The short answer is they can't. Not in the same way the Internet giants that exist today did when they depended on the neutrality of network to have a fair shot and ability to scale quickly if they became popular.

That in essence is the beauty of having a non-discriminatory network. Without it, EFF believes that we are unlikely to see new disruptive players enter the market to take the place of the current established incumbents.

But the major, vertically integrated ISPs want to decide who wins on the Internet because it is extraordinarily valuable.

That is why they lobbied so hard to dismantle the federal protections and oppose state efforts to fill the void, the large ISPs hope policymakers will abandon what has made the Internet so special to the public.

Contrary to arguments made by the ISPs regarding preemption, the states have long held a traditional role in regulating within the state companies that transmit by wire and radio. It is in fact, explicitly written in the federal law under Section 152(b).

Lastly, I want to encourage the committee to continue to explore the issue of broadband user privacy, which was also fully eliminated by the FCC in its December decision.

Government studies show that as users lose confidence in control over their personal information, they will not make full use of broadband access.

With half the country's information now compromised by one company, Equifax. It is worth noting that with the elimination of the FCC's privacy authority over ISPs, the telecom industry is subject to the same lax enforcement as Equifax is today.

And as industry acknowledged to Congress, the entry of state actors in data breach efforts makes it impossible to assume companies will not be compromised.

So we must ask ourselves, what laws did we pass to constrain the appetite of the industry to monitor, store, and monetize every single thing we do online for a profit before the next Equifax breach occurs.

Thank you. And I look forward to your questions.