



February 20, 2018

The Honorable Jennifer Williamson
Chair, Oregon House Committee on Rules
900 Court St. NE, H-295
Salem, Oregon 97301

Re: Opposition to House Bill 4155

Dear Chair Williamson:

On behalf of CTIA, the trade association for the wireless communications industry, I write in opposition to Oregon House Bill 4155. CTIA and its member companies support a free and open internet. To further that goal, we believe that a national regulatory framework with generally applicable competition and consumer protections at the federal and state levels is a proven path for ensuring a free and open internet while enabling innovation and investment throughout the internet ecosystem. CTIA, however, opposes state net neutrality legislation.

From the beginning of the Internet Age in the 1990s, the Federal Communications Commission (FCC) applied a regulatory framework to internet service that allowed providers to invest, experiment and innovate. In that time, an entire internet-based economy grew. But in 2015, the FCC took a much different approach, applying 80-year-old common-carrier mandates meant for traditional public utilities and reign in the then unchecked practices of huge monopolies, despite the fact that internet services are nothing like public utility offerings such as water or electricity or even landline telephone service.

In 2017, the FCC's Restoring Internet Freedom Order reversed that 2015 decision, finding that application of those 1930s utility-style rules to the internet services of today actually harms 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.



In 2017, the FCC simply restored the same national regulatory framework that applied before 2015, which is credited with facilitating the internet-based economy we have today. Under that national regulatory framework, mobile wireless broadband providers have every incentive to invest in and deliver the internet services that consumers demand. In fact, there have been virtually no instances in which U.S. mobile broadband providers blocked traffic or prevented consumers from going where they wanted to on the internet.

Further, the FCC's Restoring Internet Freedom clearly provides consumers with legal protections that complement the competitive forces in play. First, the FCC retained the "transparency" rule, which requires broadband providers to publicly disclose extensive information about their performance, service offerings, and network management practices to consumers and internet entrepreneurs. If a broadband provider fails to make the required disclosures it will be subject to enforcement by the FCC.

Second, by restoring to the FCC's pre-2015 view that broadband internet access is an information service and not a utility-style common carrier service like landline telephone service, the FCC restored the Federal Trade Commission's jurisdiction over broadband offerings. The FTC is the nation's lead consumer protection agency, but the 2015 decision had stripped away its authority over broadband providers. The FTC has broad authority to take action against any business whose actions are deceptive or unfair. This authority extends beyond broadband providers and includes authority over so-called edge providers. The nation's leading broadband providers have told consumers that they will not block or throttle traffic in an anticompetitive manner, and the FTC will be there to make sure they live up to those promises. In addition, the U.S. Department of Justice will enforce federal antitrust laws against any provider it alleges violates such laws.

Finally, the FCC made clear in the 2017 Restoring Internet Freedom 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 to broadband internet access services. This ruling reaffirmed the FCC's 2015 decision that states and localities may not impose requirements that conflict with federal law or policy, but may otherwise enforce generally applicable laws. Thus, Oregon remains empowered to act under its UDAP statute.



In short, Oregon consumers are well protected against anti-competitive or anti-consumer practices. They enjoy protections provided by the FCC, the FTC, federal antitrust law, and – importantly – existing Oregon state law. On the other hand, state-specific net neutrality rules imposed on broadband providers would harm consumers, and would – along with other state and local mandates – create a complex “patchwork quilt” of requirements that would be unlawful.

The FCC’s 2017 Restoring Internet Freedom Order explains that broadband internet access is an inherently interstate and global offering. State-by-state regulation 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 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. Moreover, the FCC found broadband-specific state laws would be unlawful. The Restoring Internet Freedom Order held that state or local laws that impose net neutrality mandates, or that interfere with the federal preference for national regulation of broadband internet access, are impermissible.

Ultimately, Congress may decide to modify the existing federal regulatory framework for broadband internet access, and some members of Congress have already introduced legislation addressing these matters. CTIA has called on Congress to pass bipartisan legislation to enshrine open internet principles.

In closing, it would be unnecessary to pass HB 4155 due to the strong consumer protections already in place and national wireless providers agreeing not to block or throttle lawful content. For these reasons, we respectfully ask that you not move this bill. Thank you for your consideration.

Sincerely,

Gerard Keegan
Assistant Vice President
State Legislative Affairs