



**Testimony of Joshua Stager**  
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*Respectfully submitted to the*

**Commonwealth of Pennsylvania**  
**Joint Senate and House Democratic Policy Committee**

*Regarding*

**Policy Hearing on Net Neutrality**

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## **Introduction**

My name is Joshua Stager, and I am the deputy director for broadband and competition policy at the Open Technology Institute (OTI). For more than a decade, OTI has studied the broadband market, developed internet policy, and advocated for closing the digital divide. Through this work, we have reached an inescapable conclusion: we need a law that protects net neutrality. The Federal Communications Commission (FCC) understood this as far back as 2005, when it began its first proceeding on the issue. After years of work, the FCC created federal rules in 2015. Those rules were strong, consensus-driven, and upheld in federal court.

However, in 2017, President Trump installed new FCC appointees who decided to repeal those rules and, in a radical move, entirely abdicated the agency's authority to oversee internet service providers (ISPs). After a decade of back-and-forth debate about the *best* way to protect net neutrality, the Trump FCC decided that it should no longer protect net neutrality *at all*. This decision was nonsensical, and we are paying the price for it today as many Pennsylvanians suffer through the pandemic with internet service that is overpriced, unreliable, or, worst of all, doesn't exist because their home is unserved.

My remarks today will examine why we need to restore net neutrality. Second, I will explain how Pennsylvanians are at risk without net neutrality. Lastly, I will discuss what a strong state law might look like.

### **I. Net neutrality needs to be restored**

At a high level, net neutrality is the basic principle of nondiscrimination that we find throughout common carriage law. It applies to many networked industries, from telephones to airlines. Net neutrality is also a protection against *gatekeeper power*—the threat that the ISPs we all rely on to access the internet could control online content, or determine which online businesses succeed or fail. ISPs should be neutral. This neutrality has been part of the internet since its inception, and it helps explain why the internet developed into a platform for innovation and free speech.

In the early days of the internet, neutrality was respected as an almost unspoken norm. Today, that norm is breaking down. What changed? First, ISPs now have the technical ability to discriminate traffic on their networks. This capability did not exist in the early days of the internet. Second, the market has consolidated. 20 years ago, there were many internet providers across the country. Today, thanks to a wave of mergers, just four companies now dominate the market. These four companies have enough market power to act as gatekeepers of the internet—if the law allows it.

This combination of factors means that neutrality is no longer guaranteed and, indeed, has been violated many times. In 2007, Comcast throttled a file-sharing service. In 2012, AT&T blocked FaceTime. In 2014, all of the big ISPs quietly degraded their own networks to extort fees from Netflix and other companies. This persistent creep of net neutrality abuses is what motivated the FCC to act in 2015, and it is why we still need rules today.

## **II. Repealing net neutrality put Pennsylvanians at risk**

The repeal of net neutrality stripped the federal government of its authority to protect the open internet and to ensure consumers are getting the internet service they paid for. This puts Pennsylvanians at risk, and the stakes are high.

First and foremost is the risk to public health. The repeal of net neutrality has severely undermined our pandemic response. Millions of people are relying on the internet to get through the pandemic—to work, learn, socially distance, and, now, to get vaccinated. But if any of us have problems with our service, we are left to the whims of our internet provider, who might offer unreliable speeds or might not be transparent with customers. There used to be rules in place to prevent this conduct, but now there is nothing.

Repealing net neutrality also hurt job creators and innovation. It cannot be said enough: net neutrality is good for the economy. It ensures that small businesses can compete on a level playing field. Without it, big ISPs can stifle innovation and block competitors—or worse, prevent new companies from getting off the ground in the first place.

Net neutrality also ensures that the internet is a level playing field for marginalized people. Content creators, political activists, even Etsy retailers have all used the open internet to

amplify voices that are often shut out of traditional avenues. The internet can be a democratizing force, but only if we protect it. Without net neutrality, ISPs are free to divide the internet into fast lanes for those who can afford it, and slow lanes for everyone else.

There are also many parts of Pennsylvania that still lack access to the internet. We need to be doing everything we can to get ISPs to expand their networks to these unserved communities. But the repeal of net neutrality has done the opposite—instead of investing in buildout, ISPs are now incentivized to extract new revenues from their existing customers. We will never close the digital divide with those incentives.

Lastly, repealing net neutrality was a threat to public safety. For example, in 2018—just two months after the FCC repealed net neutrality—firefighters in California discovered that Verizon was throttling their service, which cut them off from each other as they were battling the largest wildfire in that state’s history. In the past, the FCC could have enforced its rules to help—but the agency had just revoked them, so it did nothing. Net neutrality would have allowed these first responders to focus on fighting fires, instead of fighting with Verizon.

### **III. The elements of a strong state net neutrality law**

Given these risks, it is commendable that the General Assembly is exploring ways to help. Passing a law that codifies net neutrality would be an important step. Our experience with the federal regime taught us that any net neutrality law should contain, at a minimum, the following elements.

- The law should have bright-line rules against blocking, throttling, and paid prioritization.
- The law should include a “general conduct” rule that empowers an expert agency, such as the Public Utility Commission, to address new harms as they emerge. This is important because ISPs are continually changing their tactics. 10 years ago blocking was a big concern; now it’s zero-rating. We don’t know what it will be 10 years from now, so we need an expert agency that is empowered to prevent new harms before they emerge.

- The law should carefully define “reasonable network management.” This is important to avoid loopholes, but could include exceptions for public safety.
- The law should prohibit zero-rating. This practice is stealthy and misleading, as ISPs claim to offer “free data” for favored content that won’t count against your limit. In reality, zero-rating creates precisely the kind of fast and slow lanes that we want to prevent. The real problem here are the data limits—they are artificially low, designed to create scarcity where none exists, and should be investigated.
- The law should prohibit access fees related to interconnection. Interconnection is a vital chokepoint in the internet’s architecture that ISPs have a history of exploiting. For example, in 2014, ISPs degraded these chokepoints for months, slowing the connections of millions of people. It was all an effort to pressure companies into paying access fees, and consumers were just the collateral damage. In 2018, California prohibited this conduct, and so should a Pennsylvania law.
- Legislative findings and a severability clause can help if there is judicial review.

With these elements, the General Assembly could enact a strong law that restores net neutrality for Pennsylvanians.

## **Conclusion**

Let’s be clear: this issue is overwhelmingly popular. In 2017, millions of Americans wrote, emailed, and called the FCC to demand that they save net neutrality. So did thousands of businesses, large and small, and many smaller ISPs and community networks that do not want to exploit their customers. The Trump FCC ignored all of this, leaving us with a lot of damage to fix today.

After the past year, it is clear that we live in an ever-changing world where connectivity matters. It is undeniable that the internet is no longer a nice-to-have; it is a must-have. The internet is a utility, and the law should treat it as the essential service that it so obviously is. That is what net neutrality is all about.