



United States Senate
WASHINGTON, DC 20510-0905

BILL NELSON
FLORIDA

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April 30, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: GN Docket No. 14-28 – Open Internet Notice of Proposed Rulemaking

Dear Chairman Wheeler:

I write today to express my concern over recent reports that you may be stepping back from an earlier commitment to implement rules and policies that ensure an open and free Internet for all Americans.

It is my understanding that the Federal Communications Commission (FCC) will consider a Notice of Proposed Rulemaking (NPRM) in the Open Internet proceeding at the May Agenda Meeting. In an April 24 blog post, you stated that this item will contain certain basic elements of the 2010 Open Internet Order that was struck down by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) earlier this year. Specifically, you stated that the NPRM will prohibit providers from blocking lawful content or engaging in “unreasonable discrimination” among users. These are critical component of any framework to ensure an open and free Internet, and I am very pleased to hear reports that they are included in the NPRM.

I am very concerned about reports that the NPRM will presumptively allow “paid prioritization arrangements” as long as they are “commercially reasonable.” These agreements are often referred to by providers as “network management arrangements.” However, I believe the presumptive acceptance of such agreements in the regular course of business could upset the basic concept of an open Internet and would be very difficult to remedy at a later time.

Rather than serve as a “fast lane” for certain providers, they may ultimately serve the reverse purpose of forcing those content providers who can afford it to pay for “prioritization” in order to maintain a basic level of service. This, in turn, can only harm the further development of innovative new content and services that has characterized the Internet since its inception.

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As you move forward on the NPRM, I urge you to reconsider your initial conclusion that paid prioritization arrangements are generally “commercially reasonable.” While I am cognizant of the need to meet the parameters detailed by the D.C. Circuit, I believe the Commission can, and should, draw a brighter line on paid prioritization agreements. As part of that analysis, I also urge the Commission to carefully consider whether section 706 provides the best pathway for these rules or whether Title II, with appropriate forbearance, provides a more sound approach.

Thank you in advance for your consideration of my views on this critical matter. Working together, I am confident that we can maintain a free, open Internet.

Sincerely,

A handwritten signature in blue ink that reads "Bill Nelson". The signature is written in a cursive style with a long, sweeping tail on the "N".