



Carolyn McIntyre
President

1001 K STREET, 2ND FLOOR
SACRAMENTO, CA 95814

916/446-7732
FAX 916/446-1605

March 20, 2018

The Honorable Scott Wiener
California State Senate
State Capitol, Room 5064
Sacramento, CA 95814

RE: Senate Bill 822 (Wiener) – OPPOSE

Dear Senator Wiener:

The California Cable & Telecommunications Association (CCTA) is opposed to Senate Bill 822, which attempts to adopt and enforce California specific Internet neutrality obligations on Internet service providers (ISPs) in California. While the members of CCTA are committed to providing an open Internet, we must oppose this proposal, which is inconsistent with the federal regulatory framework governing ISPs and would provide no benefit to the average broadband consumer.

Restoring Internet Freedom

On December 14, 2017, the Federal Communications Commission (FCC) adopted the “Restoring Internet Freedom” (RIF) Order, which restored a longstanding light-touch regulatory framework consistent with the policies of the 1996 Telecommunications Act. Despite repeated distortions and mischaracterizations to the contrary, the FCC’s recent Order to regulate broadband as an information service – returning to how the Internet had been treated for nearly two decades – has not ended the open Internet and will not undermine the enforceable principles of net neutrality. The Internet neutrality principles address the fear of anti-competitive, discriminatory, and deceptive business practices that are already illegal under state and federal law. CCTA members have publicly committed to complying with the principles of net neutrality and can be held legally accountable both on the federal and state level.

What are the Real Consumer Benefits?

The bill would unlawfully extend the jurisdiction and authority of the California Public Utilities Commission (CPUC) over Internet Broadband Access Services by virtue of a broadband provider’s state video franchise, by directing the CPUC to: (1) monitor and set minimum quality standards for basic Internet Service consistent with Internet neutrality principles defined in this bill, and (2) prohibiting the Commission from issuing a state video service franchise unless the applicant certifies compliance with the state’s net neutrality law. This extension of the CPUC’s jurisdiction to interstate information services is discriminatory and contrary to federal law.

With CPUC oversight of the quality of Internet service and with the potential of a cadre of government attorneys and private class action lawsuits enforcing compliance, SB 822 would actually harm consumers by stifling innovation and investment. The increased burdens of compliance would inevitably result in

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increased cost for the delivery of broadband service, making it financially untenable to deploy broadband in rural areas of the State.

Importantly, SB 822 would not provide any significant benefit for the average broadband consumer but would instead guarantee **unfettered** and **free access** to huge corporate bandwidth users that typically negotiate business-to-business Internet traffic agreements. ISPs built the Internet to what it is today with billions of private investment dollars, increasing broadband speeds to levels never imagined before. As consumers demand more and more bandwidth, ISPs continue to upgrade and expand their networks, while negotiating with businesses requiring excessive broadband capacity, and by managing networks to ensure smooth Internet traffic flow. Sadly, SB 822 would not provide ISPs any incentives to continue to do so in California. The real winners with SB 822 would be any business today that, left unconstrained by network costs and obligations, sends huge amounts of Internet traffic that could potentially congest broadband networks.

SB 822's Inappropriate and Unlawful Regulatory Framework

SB 822's proposal to establish a California specific Internet neutrality law is bad policy and contrary to federal law. When the FCC adopted the "Restoring Internet Freedom" Order, it included clear federal preemption language to prohibit states from regulating the Internet inconsistent with the federal regulatory objectives. In fact, the majority of the provisions the bill proposes would be equally preempted by the 2015 Open Internet Order (until it is superseded by the RIF Order), as it, too, recognized that state-level regulation of the Internet is unworkable.

Allowing state or local regulation of broadband Internet access service could impair the provision of such service by requiring each ISP to comply with a patchwork of potentially conflicting requirements across all of the different jurisdictions in which it operates. Further, by linking the CPUC authority to state video franchises, the legislation unlawfully discriminates against video service providers who also offer broadband services in favor of those video providers who do not offer broadband services. Moreover, the bill violates the Interstate Commerce Clause by proposing to impose state specific restrictions on an inherently interstate service. If adopted, SB 822 would most likely result in unnecessary and costly litigation.

Summary

Cable ISPs unequivocally support an open Internet. However, SB 822 is unlawful, discriminatory and unnecessary. It would increase costs to ISPs and broadband customers, and would stifle or delay investments for Internet development and innovation.

As previously stated, state-level policies regulating the Internet are pre-empted by federal regulations and are inappropriate for an inherently interstate service. It would most likely result in unnecessary and costly litigation.

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For these reasons, CCTA strongly opposes SB 822.

Respectfully,

Carolyn McIntyre

CAROLYN MCINTYRE

President

cc: The Honorable Ben Hueso, Chair, Senate Energy, Utilities, and Communications Committee
Members, Senate Energy, Utilities, and Communications Committee
Nidia Bautista, Consultant
Kerry Yoshida, Consultant