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May 22, 2018

The Honorable Ricardo Lara  
Chair, Senate Appropriations Committee  
State Capitol, Room 5050  
Sacramento, CA 95814

Re: Strong Support for SB 822 - the California Net Neutrality Act

Dear Chairperson Lara,

The Western Center on Law and Poverty represents California's poorest residents in policy and budget discussions affecting housing, health and public benefits. We are writing, in strong support of SB 822 (Wiener), the California Net Neutrality Act. SB 822 enshrines net neutrality protections at the state level.

Net neutrality means that all websites and other online content should be equally available to consumers at the internet speed provided for in their agreement with an Internet Service Provider (ISP). Among other protections, net neutrality protects against ISPs charging "access fees" or tiered packages to certain parts of the Internet for users or charging for fast and slow lanes for Internet users. Without the protections contained in SB 822, low-income Californians would see even further disparities in their access to the Internet. This would disproportionately harm rural communities and communities of color. We are focusing our letter on the following two topics that are of particular concern.

### **Discriminatory Zero-Rating**

Zero-rating means that certain content is exempt from a user's data cap. It is important to note that SB 822 does not prohibit all forms of zero-rating. SB 822 specifically allows zero-rating that benefits consumers, such as allowing for exempt data within a certain time period (such as at night) so a user can backup their data. It would also exempt charging for any app of a certain type (such as all map/GPS applications). The bill bars discriminatory zero-rating that allows an ISP to pick between websites or applications of the same type, giving preference to those co-owned with the ISP or that pay the ISP a fee.

Net neutrality is fundamentally about respecting a consumer's decisions about which websites/apps to use, and not allowing ISPs to manipulate those decisions. Low-income consumers deserve the same respect, especially because they are particularly vulnerable to zero-rating practices given their frequent dependence on mobile phones as their sole source of Internet access. Unlike what ISPs claim, discriminatory zero-rating is not a feature they offer to customers as a "perk." Instead, discriminatory zero-rating is a mechanism that harms lower-income Internet users the most. It does this by allowing the ISP to favor the content based on what increases ISP profits most regardless of whether it ultimately costs the consumer more. Depending on which company the ISP makes a deal with, it is plausible that a customer can be steered toward more expensive services and away from less costly

alternatives. For example, an ISP partners with a bank that charges a higher interest rate and so ISP customers are steered in that direction because their data usage is exempted. This can be the same for any predatory partnership that an ISP may choose to engage in.

Permitting zero-rating also incentivizes ISPs to cap customers' data usage in order to create a market for zero-rating fees. In fact, in countries that have banned zero-rating, ISPs have increased customer data caps. This is because zero-rating plans give ISPs profit incentives to keep their data caps low. Similarly, data caps need to be sufficiently low to motivate websites and services who can afford it to pay to have their content exempted from people's data caps.

The problem of suppressed data caps for profit is especially important to low-income populations. This population more frequently relies on their mobile devices for their entire Internet experience and, thus, is much more likely to reach their maximum amount of data allowed per month and suffer from monthly bills that are much higher than expected due to these suppressed data caps.

### **The Digital Divide**

Net neutrality prohibits ISPs from charging arbitrary fees to consumers to be able to access specific websites and applications. These types of fees are already being charged in other countries that haven't had net neutrality protections. Individuals who cannot afford it will be priced out of their ability to access certain parts of the Internet for essential parts of life, such as obtaining government benefits, conducting job searches, and furthering their education. Because over 80% of Californians have a choice of only one or two ISPs, they will not be able to escape the price hikes that ISPs will be able to charge without the protections in SB 822.

We have heard the argument that putting more restrictions on ISPs will worsen the digital divide in this state by forcing ISPs to charge their consumers more. In fact, ISPs are currently complying with federal net neutrality requirement through June 11. Under these requirements, which SB 822 mirrors, Comcast has about 25 million customers and made \$8.6 billion in profits for 2016. At the same time, AT&T and Verizon each collected around \$13 billion in profits for 2016. If net neutrality is not reinstated in California, it is not ISPs that will be hurt, it is consumers. Chief among those harmed will be people in low-income communities.

Given the federal repeal of net neutrality, low-income Californians need to have their equal access to the Internet protected. We urge the State Legislature to not abdicate their duty to protect low-income Californians. We believe that the State Legislature, and not ISPs, have low-income Californians best interest at heart; therefore, we implore you to take action. We urge you to pass the strongest form of SB 822 possible. As always, thank you for your consideration.

Sincerely,

  
Jessica Bartholow  
Policy Advocate

CC: Senator Scott Wiener, California State Senate (Author)

