

# MEDIA ALLIANCE

## VIA EMAIL

June 3, 2018

The Honorable Miguel Santiago  
Chair, CA State Assembly Communications and Conveyance Committee  
State Capitol, Room 6027  
Sacramento, CA 95814

Members: Hon. Miguel Santiago, Chair, Hon. Jay Olbernote, Vice-Chair, Hon. Rob Bonta, Hon. Sabrina Cervantes, Hon. Eduardo Garcia, Hon. Chris Holden, Hon. Sydney Kamlager-Dove, Hon. Evan Low, Hon. Brian Maienschein, Hon. Devon Mathis, Hon. Jim Patterson, Hon. Sharon Quirk-Silva, Hon. Freddie Rodriguez

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## Re: Senate Bill 460 {SUPPORT}

Dear Senator Santiago and Members of the Communications and Conveyance Committee,

I am writing today to express Media Alliance's strong support for Network Neutrality in California, and to thank you for your leadership in helping California to fight back against the FCC's regrettable anti-consumer actions.

Media Alliance is a Bay Area democratic communications advocate. Our members include professional and citizen journalists and community-based media and communications professionals who work with the media and on various digital platforms powered by the Internet. The free flow of information is integral to all of their and our work, as it is in one way or another to virtually every resident of the State of California.

An equal playing field on the Internet absent arbitrary blocking and throttling and with common carriage not subject to the financial imperatives of private corporations, is not just a matter of protecting consumers and making sure they get what they pay for. Although that is extremely important.

It is also a civil rights issue that determines the viability of free expression and the possibility of dissent which is the basic engine of democracy. Our ability as Californians to utilize digital platforms on an equilateral basis to pursue our business enterprises, express ourselves, seek out and convey news and information from any source we please, and engage in online organizing, is fundamentally premised on an open Internet. A non-neutral Internet can and eventually will, restrict our ability to connect to an amount equal to the resources we control, which for most California residents, will never be as extensive as those of mega-corporations. A second-tier Internet slow lane reserved for the poor and middle class, will greatly impoverish our democracy and exacerbate an already worrying digital divide, while driving Internet traffic largely into the hands of large megacorporations that can pay for prioritization of their content. For the citizen journalists, community organizers and non profit organizations that we represent, that would be an unmitigated disaster.<sup>1</sup>

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<sup>1</sup> <https://www.nbcnews.com/think/video/malkia-cyril-on-why-net-neutrality-is-a-civil-rights-issue-1112468547817>

The digital divide refers to the gap between fully connected populations and partially or inadequately connected populations, who for economic reasons have to make due with limited Internet access via work or school, mobile-only connections or other constraints. The economic pain caused by the inability to reliably pursue job and business opportunities often initiated online, or to pursue education easily, is significant. For seniors, young people and limited English fluency populations, unreliable Internet access can also bring isolation and the inability to fully participate in a society that is increasingly plugged in at all times.<sup>2</sup>

It is distressing to watch the Federal Communications Commission and telecom lobbyists across the country put forward the straw man argument that open Internet protections like those contained in Senate Bill 460 or in the revoked Open Internet Order would worsen the digital divide,<sup>3</sup> when the spectre of paid prioritization is the single biggest threat to ubiquitous, affordable and reliable Internet service for all. We should not mistake a second class Internet ghetto for a desirable outcome. Separate but equal was not equality. Equity on the Internet cannot occur with a pay-to-play model.

Network Neutrality is also a public health and safety issue with so many vital government and utility services now delivered via electronic means. We believe strongly that the State of California has a central and defensible interest in using the police power of the state to ensure that services Californian's rely on continue to be delivered equilaterally and without potentially being subjected to financially-based prioritization.<sup>4</sup>

To address some specific concerns we have heard:

#### **Regarding The Legal Viability Of The Bill**

As you know, more than half the states in the union have initiated some sort of statewide effort to reinstate open Internet protections.<sup>5</sup> Washington and Oregon have already completed that process. The breadth of the counter-rebellion to the FCC's repeal is extraordinarily wide. It has even reached the United States Senate where a CRA repeal secured 52 votes in a Republican Senate.<sup>6</sup>

Polls show net neutrality is not a partisan issue.<sup>7</sup> There is support from a majority of Republican and Independent voters. In California, the home of the Internet, I would venture to guess that support is even stronger than the national average. While the current FCC can probably be depended on to challenge statewide laws, California is, and would be, far from alone in standing up to the Trump administration. As the nation's largest state, our leadership in this effort is crucial and very much supported by the state's residents. We should not let federal overreach go unchallenged, as we have not in immigration enforcement with the passage of Senate Bill 54.

#### **Regarding Increased Costs To The State**

Some legislative analysis<sup>8</sup> has previously pointed to possible costs to the State if the lowest cost available provider for Internet services is not in compliance with Net Neutrality regulations. That is always the case when the State creates a limitation on contracting. The intent of any contracting limitation is to provide an economic incentive for the desired behavior. The value statement contained is that the State of California does not wish to profit from the throttling and blocking of Californian's Internet usage, or from the degrading of Internet service based on extra fees.

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<sup>2</sup> [https://obamawhitehouse.archives.gov/.../20160308\\_broadband\\_cea\\_issue\\_brief.pdf](https://obamawhitehouse.archives.gov/.../20160308_broadband_cea_issue_brief.pdf)

<sup>3</sup> <https://arstechnica.com/tech-policy/2018/03/ajit-pai-says-net-neutrality-was-the-top-threat-to-broadband-deployment/>

<sup>4</sup> <https://www.mercurynews.com/2017/12/12/opinion-net-neutrality-safeguards-democracy-the-economy-and-national-security/>

<sup>5</sup> <http://www.govtech.com/civic/Map-As-Net-Neutrality-Officially-Ends-States-Rush-to-Pass-Workarounds.html>

<sup>6</sup> <https://www.dailydot.com/layer8/net-neutrality-senate-cra-passes/>

<sup>7</sup> <https://blog.mozilla.org/blog/2018/04/23/new-mozilla-poll-support-for-net-neutrality-grows-as-trust-in-isps-dips/>

<sup>8</sup> [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201720180SB822](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB822)

On a practical level, the costs of such widespread behavior by Internet Service providers can be estimated to have enormous costs on the productivity of Californians. Such costs would likely offset or exceed any minimal difference between using neutral and non-neutral providers for state offices.

### **Regarding The Two Network Neutrality Bills**

It is important to reiterate the high level of support for Network Neutrality. One recent poll in February of 2018 (after the FCC's repeal) reported these numbers: <sup>9</sup>

- ◆ 91% of Americans believe consumers should be able to freely and quickly access their preferred content on the internet.
- ◆ 78% of Americans believe equal access to the internet is a right
- ◆ 76% of Americans believe internet service providers (ISPs) should treat all consumer data the same, and not speed up or slow down specific content
- ◆ 63% of Americans do not think that ISPs will voluntarily look out for consumers' best interests.

Numerous other polls could be cited, but the numbers hold through all of them. On May 16, every single Democratic United States Senator with no exceptions voted to restore Open Internet protections, joined by a few Republicans. 22 states have filed lawsuits against the Federal Communications Commission, including California. <sup>10</sup> And the mayors of over 100 cities have signed on to an Open Internet pledge including the mayors of San Francisco, San Jose, Santa Cruz, San Leandro, Stockton, Los Altos, Alameda, Richmond, West Hollywood, Moreno Valley, Milpitas, Long Beach, Santa Monica, Berkeley and Manhattan Beach. <sup>11</sup>

Americans who support Open Internet Protections have proven over the course of many years their commitment, through countless online actions and coast to coast demonstrations. For many, protecting the Internet is a fundamental litmus test for whether their elected officials are representing their interests or answer only to corporate paymasters. They, and by they I mean the majority of the population of the State of California, want a strong statewide Net Neutrality bill for California, and sooner rather than later.

Therefore it should be incumbent upon the Legislature, especially in an election year when voter eyes will be watching what their representatives are doing, to avoid an ugly and divisive process of pitting two different bills against each other and projecting an image of machinations, rather than one of looking after the interests and desires of the people of the state. We heartily encourage the sponsors of both Senate Bill 460 and Senate Bill 822 to find common ground and unity.

We ask the Communications and Conveyance Committee to:

- a) Attempt to move ahead one strong and comprehensive statewide Net Neutrality bill for California
- b) Avoid the perception of using Senate Bill 460 as a wedge to weaken Senate Bill 822, which has strong support.

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<sup>9</sup> <https://blog.mozilla.org/blog/2018/04/23/new-mozilla-poll-support-for-net-neutrality-grows-as-trust-in-isps-dips/>

<sup>10</sup> <https://techcrunch.com/2018/01/16/lawsuit-filed-by-22-state-attorneys-general-seeks-to-block-net-neutrality-repeal/>

<sup>11</sup> <https://actionnetwork.org/letters/sign-to-email-your-mayor-set-net-neutrality-protections-in-my-city?source=MayorsNNPIedgeSWFP&referrer=group-free-press-action-fund>

We believe that such a perception would not only dishearten vast numbers of voters and induce cynicism that the Legislature is beholden only to corporations, but would have a destructive effect on the entire national net neutrality struggle, one which both of California's senators and the California district attorney have fully committed themselves too.

Some of the differences between the two bills involve the strength of interconnection protections and a prohibition on zero-rating. Below is some discussion of why a strong statewide Net Neutrality bill benefits from the inclusion of both.

### **Regarding Interconnection and Edge Providers**

Some opponents of interconnection provisions have objected on the basis that prioritization for edge providers is an economic necessity.

As the long and anguished history of Netflix can inform us, (Netflix is a long-time supporter of net neutrality rules<sup>12</sup>), innovative edge providers often find it next to impossible to launch their enterprises when subjected to expensive carrier costs. In an economy like California's that thrives on start-up digital enterprises, a neutral Internet is an economic engine for the next generation of digital services. A non-neutral Internet can be a barrier to new services that can be of great value to California's population – if they can ever get off the ground. That is why so many digital entrepreneurs strongly support Net Neutrality and open Internet regulations.<sup>13</sup> Interconnection protections are good for start-ups and good for technological innovation in our State.

### **Regarding Zero-Rating**

Zero-rating is a term for data cap exceptions that allow some content, by virtue of a private arrangement, to not be subject to the usual restrictions applied to everyone else. It is a form of paid prioritization. Zero-rating is often applied to intra-company content that is owned by the ISP in question (something that will increasingly be the case as more mergers between service providers and content providers take place). Zero-rating also happens between unaffiliated companies that sign agreements.

Zero-rating, although a form of prioritization, can be superficially popular with consumers, because who doesn't like getting something for nothing? But beyond that quick look, it proves to be deeply pernicious. What is most valuable about the Internet is the ability to access any posted content that we desire to view, listen to or engage with. This includes "alternative content" like newer music and art, complementary news sources including online-only publications and community-based media, and smaller businesses offering unique kinds of products. Although imperfect, search engines like Google still at least partially direct us to websites that are most relevant to what we are searching for, not just those that are large.

All of us have had those moments of discovery on the Internet when a search effort has led us to a business, creation or source of information that we found delightful and helpful, and we otherwise would never have known of its existence. What zero-rating does is largely cut off and greatly reduce those opportunities for poorer Internet users who cannot pay their way out of data caps. Those consumers would be increasingly tracked to a service provider contracted content and that content only, in the kind of profit-motivated gatekeeping that degrades freedom of information. And does so for particular communities that lack the economic capacity to avoid zero-rating schemes. In other words, zero-rating is another thruway to a second-class Internet for some.

What we want to achieve is a comprehensive net neutrality protocol for California that is legally grounded and covers many of the ways Californians' Internet service could be restricted, limited or degraded by their Internet providers after the Net Neutrality repeal takes effect later this month.

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<sup>12</sup> <https://deadline.com/2018/01/netflix-joins-effort-to-preserve-net-neutrality-1202236469/>

<sup>13</sup> <https://heavy.com/tech/2017/07/net-neutrality-day-of-action-full-list-of-companies-websites-who-participating/>

While the outcome of both the CRA on Capitol Hill, and the legal cases in the DC Circuit, remain to be seen, it is important for California to express our State's values.

Now is the time to take steps to allow our startup culture to thrive and our residents to have access to a full and unfettered Internet.

The cost of not doing so will be too high.

Sincerely,

*Tracy Rosenberg*

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