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ONE HUNDRED SEVENTEENTH CONGRESS

# Congress of the United States

## House of Representatives

### COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

April 16, 2021

The Honorable Jessica Rosenworcel  
Acting Chairwoman  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

Dear Acting Chairwoman Rosenworcel:

The COVID-19 pandemic has reinforced the importance of being able to access the Internet anywhere, anytime. The Internet is a vital resource, and Americans rely on it daily to work, learn, receive health care, and stay connected to family and friends. Our nation's broadband providers responded to this pandemic by improving their networks and offering free or reduced priced services for consumers, and we urge you not to impose stringent net neutrality regulations that may result in Americans losing their internet services.

Prior to the pandemic, our nation's light-touch regulatory environment encouraged broadband providers to invest in their networks and develop innovative technologies to bring Americans great service. In contrast to the immediate period following the 2015 Title II Order, which saw a significant decline in broadband investment,<sup>1</sup> capital investment in American broadband networks soared following the FCC's restoration of a light-touch regulatory approach in 2017.<sup>2</sup> The benefits of this regulatory environment were highlighted during the pandemic as we saw our networks outperform those of our European counterparts, largely in part due to their heavy-handed regulations.<sup>3</sup> In fact, more than 800 companies and associations signed the Keep Americans Connected Pledge and voluntarily committed not to terminate service to customers for their inability to pay, waived late fees incurred, and opened Wi-Fi hotspots during the coronavirus pandemic.

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<sup>1</sup> See, <https://itif.org/publications/2017/06/02/what-financial-data-shows-about-impact-title-ii>

<sup>2</sup> See, <https://www.ustelecom.org/wp-content/uploads/2019/07/USTelecom-Research-Brief-Capex-2018-7-31-19.pdf>; and, <https://www.ncta.com/industry-data/290b-dollars-invested>

<sup>3</sup> See, <https://georgetown.app.box.com/s/8e76udzd1ic0pyg42fqsc96r1yzkz1jf>

Unfortunately, we are beginning to see the negative effects that burdensome utility-style regulations would have on American consumers. Recently, the Department of Justice formally dismissed its lawsuit filed against California in 2018 for passing strict net neutrality regulations.<sup>4</sup> You applauded the move stating, “[w]hen the FCC, over my objection, rolled back its net neutrality policies, states like California sought to fill the void with their own laws.”<sup>5</sup> There was no void to fill, as oversight by the FTC, DOJ, and state attorneys general ensured that ISPs would fulfill their promises not to block or throttle traffic or otherwise engage in anticompetitive conduct. Yet instead of leaving strong consumer protections on the books, early results suggest that California has bungled its attempt to “fill the void.”

Almost immediately after California enforced this law, two Internet providers reportedly told the Department of Veterans Affairs (VA) that the law could force them to end arrangements with U.S. wireless carriers that enable veterans to access a free, mobile telehealth app called VA Video Connect.<sup>6</sup> In particular, the CA law declares unlawful the zero-rating of Internet applications under certain circumstances.<sup>7</sup> What those circumstances are, however, is far from clear under the law – which nonetheless threatens violators with state AG enforcement, private rights of action and potential fines.

The VA Video Connect app allows veterans to meet with VA health care providers through live video on any connected device.<sup>8</sup> Under these arrangements with wireless carriers, veterans can access this app on their mobile devices without such access counting against their mobile data plans. This is a public benefit that is particularly important to veterans who experience financial hardship, and many of whom endure chronic service-related disabilities throughout their lives and are especially vulnerable to mental health issues caused by isolation exacerbated by the pandemic. Likewise, we are also seeing service providers begin to drop pro-consumer policies, like zero ratings, that provide free data to their customers for certain applications.<sup>9</sup>

We cannot risk losing lifesaving programs like VA Video Connect by imposing heavy handed regulations under Title II of the Communications Act. This is why we continue to support pro-consumer, light-touch neutrality protections that preserve a highly competitive market, encourage investment and innovation, and limit the unintended consequences we now see as a result of California’s law. All mobile service offerings that permit Americans to receive

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<sup>4</sup> See,

<https://www.bloomberglaw.com/public/desktop/document/UnitedStatesofAmericavStateofCaliforniaetalDocketNo218cv02660EDCa/3?1617042956>

<sup>5</sup> Statement of Hon. Jessica Rosenworcel, Acting Chairwoman, Federal Communications Commission. Feb. 8, 2021. Available at: <https://www.fcc.gov/document/rosenworcel-statement-doj-withdrawal-net-neutrality-lawsuit>

<sup>6</sup> See, <https://www.politico.com/states/california/story/2021/03/24/va-asking-california-if-net-neutrality-law-will-sna-g-veterans-health-app-1369440>

<sup>7</sup> The CA law declares unlawful certain practices, including zero-rating “some internet content, applications, services, or devices in a category of internet content, applications, services, or devices, **but not the entire category.**” Category” is undefined, leaving us to guess at its meaning.

<sup>8</sup> See, <https://mobile.va.gov/app/va-video-connect>

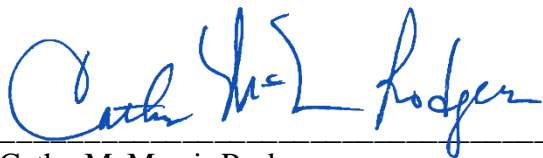
<sup>9</sup> See, <https://www.attpublicpolicy.com/congress/impact-of-california-net-neutrality-law-on-free-data-services/>

free or subsidized access to applications and content provide clear consumers benefits, especially during a period in which consumers are struggling to pay their bills.

We can all agree that harmful practices such as blocking, throttling, and anticompetitive behavior should not be permitted. But we can achieve this without heavy-handed overregulation. We must avoid state-by-state regulation as well, which would increase burdens and introduce inconsistencies that ultimately would jeopardize further investment and innovation, and in turn harm consumers. Our current regulatory environment was proven successful as our broadband networks excelled under unprecedented pressure during the COVID-19 pandemic.

We urge you to avoid the same mistakes made by California and the 2015 Commission. If the Commission chooses to amend the strong consumer protections already in place, we believe that the heavy hand of overregulation will have far reaching and adverse consequences for consumer access, consumer prices, and competition.

Sincerely,



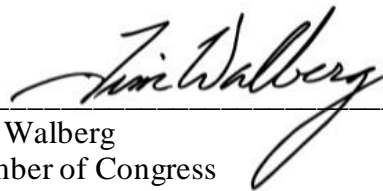
Cathy McMorris Rodgers  
Republican Leader  
Committee on Energy and Commerce



Bob Latta  
Republican Leader  
Subcommittee on Communications and  
Technology



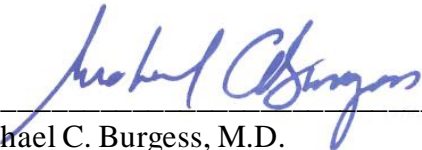
Billy Long  
Member of Congress



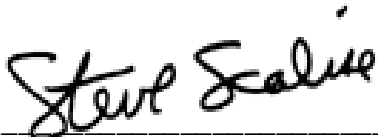
Tim Walberg  
Member of Congress



Fred Upton  
Republican Leader



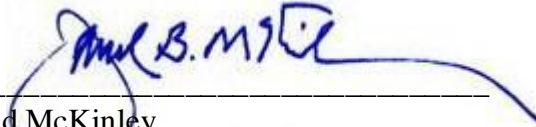
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Member of Congress



Steve Scalise  
Member of Congress



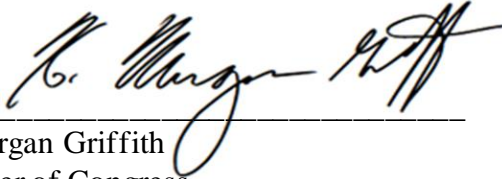
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Member of Congress



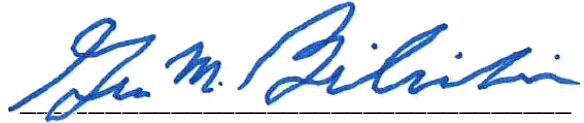
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Member of Congress



Bill Johnson  
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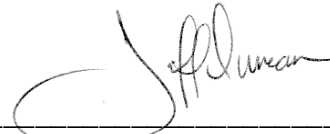
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Earl L. "Buddy" Carter  
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Gary Palmer  
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Neal Dunn  
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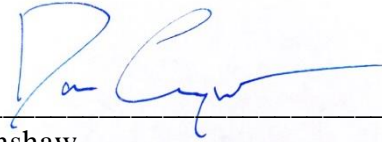


Debbie Lesko  
Member of Congress



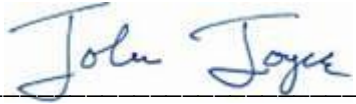
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Greg Pence  
Member of Congress



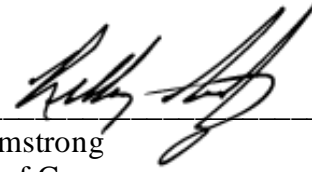
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Kelly Armstrong  
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