



Testimony of
Gaurav Laroia
Policy Counsel, Free Press and Free Press Action Fund

Before the
Council of the District of Columbia
Committee on Government Operations
Public Roundtable

Regarding
Sense of the Council Opposing the Repeal of Net Neutrality Rules Resolution of 2017
Wednesday, January 24, 2018

Councilman Todd, and esteemed members of the City Council, thank you for holding this roundtable on the Sense of the Council Opposing the Repeal of Net Neutrality Rules and inviting me to participate.

I'm here on behalf of Free Press, a nationwide nonprofit with over a million members fighting to protect people's rights to connect and communicate freely. And I've been a DC resident myself since 2001.

Last month, on December 14th, the FCC voted along party lines to approve its deceptively named "Restoring Internet Freedom Order," repealing the Net Neutrality rules set in place in 2015 during the Obama

administration. The FCC's repeal abdicates the agency's congressional mandate to prevent harmful practices of internet service providers.

The vote cleared the way for blocking, throttling and discrimination by the nation's largest phone and cable companies. This means that the ability of the residents of the District of Columbia to participate in the civic and economic life of the country is at risk. Net Neutrality is important for small businesses and commerce, but it is also vital to free speech and democracy. These protections are particularly important for communities of color to communicate, letting people bypass traditional media gatekeepers to make their own stories heard.

The Net Neutrality rules help put the people of DC closer to the ideal of having their ideas heard based on their merits, rather than their access to the halls of power or their financial backing.

Despite the FCC's repeal last month, the fight to restore these protections is far from over. States, cities, and the people of the District of Columbia are right to be outraged, and they are organizing to reinstate those rules.

We have already taken the agency to court for this decision, beginning the process for an appeal that will challenge both the FCC's legal reasoning and its choice to cast aside all of the rules.

We're also calling on Congress to restore the rules with a Resolution of Disapproval under the Congressional Review Act.

And today we're glad to support the DC City Council's proposed resolution opposing the FCC repeal, which took away people's rights to a free and open internet.

Other organizations and individuals testifying here today will eloquently make the case for the importance of the internet, so I will offer just a few

more words on the legal underpinnings for Net Neutrality rules -- and why last month's FCC repeal decision was so harmful.

At its core, Net Neutrality is a basic and vital nondiscrimination law for internet access. It has evolved over time, but it's been with us as long as we've had networks. Just as the phone company can't tell you who to talk to or what to say on the phone, your internet access provider shouldn't be able to dictate or influence what you see or say online.

Until the FCC's drastic action last month, few questioned the wisdom of FCC rules safeguarding these rights. The question, if any, concerned only the proper legal foundation for such rules.

The law that establishes the FCC's mandates is the Communications Act. It divides communications services into different classifications, including "information services" – websites, apps or other kinds of content you access online – and "telecommunications services," which transmit that information to you. Telecom services are governed by what's called Title II of the Communications Act.

Beginning in the Bush administration, in a misguided attempt to more or less completely deregulate broadband, the FCC started to tinker with those classifications by deciding broadband wasn't a telecom service

Yet even having done that, the Bush FCC and the first FCC Chairman in the Obama administration still tried to retain Net Neutrality principles for internet access service.

That approach didn't stand up in court. The FCC twice tried to argue that it could prevent blocking, throttling, prioritization, and discrimination by broadband providers without treating those companies as telecom service providers, or what the law also calls "common carriers" under Title II. It lost in court both times.

On the third time though in 2015, with Obama's second FCC chair Tom Wheeler in place, the Commission finally got it right. With millions of people calling on it to do so, the FCC put rules into place that prevented blocking and discrimination by ISPs. And it put those rules on solid legal footing by restoring the Title II legal classification for broadband.

That decision was upheld in court, as the FCC defended the rules and legal framework with help from Free Press and dozens of our allies including several here today like Consumers Union, Mozilla, and Public Knowledge.

And so we arrive back at current FCC Chairman Ajit Pai's decision on December 14th, 2017. Based on false claims that Net Neutrality rules harm innovation, investment, and freedom for cable and phone companies, Pai and his fellow Republicans at the current FCC voted the wrong way.

They decided not only to change the classification for broadband back to the wrong one, but also to throw out all of the Net Neutrality rules preventing ISP discrimination.

This FCC also voted to preempt states' ability to step in and fill the void, and it ignored the serious procedural problems, fake comments and incomplete record it had in making this decision.

That is why all of our efforts are aimed at correcting the FCC's repeal of these rules and restoring these fundamental rights. And that is why we are also grateful for the Council's consideration of this resolution.

Thank you.