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United States Senate

WASHINGTON, DC 20510–2309

April 29, 2014

The Honorable Tom Wheeler, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler,

I am deeply disappointed that you are considering rules that would allow deep-pocketed companies to pay for preferential access to Internet Service Providers (ISPs). Pay-to-play deals are an affront to net neutrality and have no place in an online marketplace that values competition and openness. This proposal would create an online "fast lane" for the highest bidder—shutting out small businesses and increasing costs for consumers. I strongly urge you to reconsider this misguided approach and recommit to protecting the Open Internet for all Americans.

After the D.C. Circuit Court of Appeals remanded the FCC's Open Internet Order last January, I wrote you urging the Commission to "take any and all appropriate actions necessary to preserve net neutrality." Instead, you appear to be taking the opposite approach. Sanctioning pay-to-play arrangements would not preserve the Open Internet – it would destroy it.

Your proposal would grant Verizon, Comcast, and other ISPs the power to pick winners and losers on the Internet, which violates core net neutrality principles that you have publicly supported in the past. Although you claim that this proposal is not a "turnaround," it is difficult to understand how it does not flatly contradict your own Commission's Open Internet Order, which stated:

> "[I]f broadband providers can profitably charge edge providers for prioritized access to end users, they will have an incentive to degrade or decline to increase the quality of the service they provide to non-prioritized traffic. This would increase the gap in quality (such as latency in transmission) between prioritized access and non-prioritized access, induce more edge providers to pay for prioritized access, and allow broadband providers to charge higher prices for prioritized access. Even more damaging, broadband providers might withhold or decline to expand capacity in order to 'squeeze' non-prioritized traffic, a strategy that would increase the likelihood of network congestion and confront edge providers with a choice between accepting low-quality transmission or paying fees for prioritized access to end users."

In this Order, the Commission correctly identified pay-to-play deals as an anticompetitive threat to the Internet and to consumers. But rather than continue to fight this threat, your new proposal appears to embrace it. By creating a "commercial reasonableness" rule, the Commission would be formally sanctioning the very deals it sought to combat less than three years ago.

Struggling to craft a "commercially reasonable" standard misses the point: Pay-to-play arrangements are inherently discriminatory and anticompetitive, and therefore should be prohibited as a matter of public policy. They increase costs for consumers and give ISPs a disincentive to improve their broadband networks—undermining the FCC's mission to protect the public interest and strengthen the nation's broadband infrastructure.

The Commission wisely recognized the fundamental problems with pay-to-play arrangements three years ago, and the D.C. Circuit Court of Appeals deferred to your Commission's substantive judgment on this issue, as well. I urge you to recommit to this judgment. The Internet was developed at taxpayers' expense to benefit the public interest. It belongs to all of us. The FCC should be working to sustain competition and consumer benefits, not creating unnecessary tolls for businesses and consumers.

Thank you for your attention to this urgent matter. I look forward to continuing to work with you on this vitally important issue.

Sincerely,

Al Franken
United States Senator