



Internet Association

By ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

4/11/2017

Re: Notice of Ex Parte Presentation, GN Docket No. 14-28, WC Docket No. 16-106; CG Docket No. 02-278

Dear Ms. Dortch:

Michael Beckerman, President and CEO, and Abigail Slater, General Counsel, of the Internet Association (IA) met with Chairman Pai, Matthew Berry, Rachael Bender, and Jay Schwarz from the Chairman's office on April 11th to discuss the Chairman's agenda with respect to the 2015 Open Internet Order, the FCC's recently nullified broadband consumer privacy rules, and the FCC's rules implementing the Telephone Consumer Protection Act (TCPA). Although not all issues were subject to the FCC's ex parte rules, IA wishes to file in order to facilitate transparency.

At the meeting, IA representatives made the following points with respect to the FCC's 2015 Open Internet Order ("the OI Order"):

- IA continues its vigorous support of the FCC's OI Order, which is a vital component of the free and open internet. The internet industry is uniform in its belief that net neutrality preserves the consumer experience, competition, and innovation online. In other words, existing net neutrality rules should be enforced and kept intact.
- The OI Order is working well and has been upheld by a DC Circuit panel. Further, IA preliminary economic research suggests that the OI Order did not have a negative impact on broadband internet access service (BIAS) investment.
- IA focuses its net neutrality advocacy on real world outcomes for consumers and internet companies. Consumers want and need their internet experience preserved and protected, regardless of the legal or regulatory mechanism. While IA continues its work to protect consumers by maintaining existing FCC rules, its primary focus is on the end result - meaningful net neutrality rules that withstand the test of time.
- From a first principles standpoint:
 - IA supports light-touch rules that protect the open internet. The rules should be ex-ante and enforced by the expert agency, namely the FCC.



- The rules must prohibit BIAS providers from charging for prioritized access.
- The rules should apply regardless of whether a user accesses the internet from a wireline, fixed wireless, or mobile broadband provider.
- Interconnection should not be used as a choke point to artificially slow traffic or extract unreasonable tolls from over-the-top providers.
- Finally, IA also emphasized that the details of any net neutrality framework are important to our members.

With respect to the recently nullified FCC broadband privacy rules:

- Although IA member companies were not subject to the broadband privacy rulemaking (and are not in an enforcement gap post-CRA) IA members nonetheless viewed this as an important issue for the internet ecosystem.
- IA filed several comments with the Commission throughout the broadband privacy proceeding.
- In those filings:
 - IA agreed with the agency's position that edge providers were not subject to the proposed rules since edge companies were and remain subject to Federal Trade Commission ("FTC") jurisdiction with respect to privacy and data security.
 - IA outlined why any continued departure from the FTC's framework should be grounded exclusively in the regulatory, policy, and economic factors that actually distinguish ISP and edge provider markets.
 - The relevant factors include higher financial, legal, and technical market entry barriers as well as high customer switching costs when compared to edge provider markets.
 - IA further noted that "edge providers have more limited visibility into online practices and consumer information" than BIAS providers, a conclusion the FTC agreed with in 2012, explaining that BIAS providers are "in a position to develop highly detailed and comprehensive profiles of their customers – and to do so in a manner that may be completely invisible."¹

IA representatives made the following points with respect to the TCPA:

- IA fully supports the original Congressional intent behind the TCPA, namely stopping unwanted and unwarranted calls into consumers' homes.
- However, IA members increasingly are subject to TCPA class action lawsuits in contexts where companies are sending wanted communications to consumers.

¹ Federal Trade Commission, Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers, at 56 (2012).



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- The FCC's 2015 TCPA Order presented an opportunity for the Commission to provide clarity and legal certainty on key TCPA provisions e.g. reassigned numbers.
- Unfortunately, the FCC denied a number of petitions aimed at reforming TCPA and the FCC's order was appealed to the DC Circuit. IA filed an amicus brief in support of this appeal.

If and when the DC Circuit remands the appeal to the FCC, IA will seek to engage with the FCC on this important issue for our members.

Respectfully submitted,

Michael Beckerman
President & CEO
Internet Association

