

United States Senate

WASHINGTON, DC 20510

December 12, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street Southwest
Washington, DC 20554

Dear Chairman Pai:

We write today regarding your draft order—the *Restoring Internet Freedom Order* (“the Draft Order”)—and its potential impacts on students, schools, institutions of higher education, and public libraries. By overturning the Commission’s current rules that preserve net neutrality and prevent internet service providers (ISPs) from blocking, throttling, or otherwise privileging lawful content, we fear that the Draft Order could harm our nation’s students and schools—especially those in rural and low-income communities. We urge you to delay this monumental decision to dismantle net neutrality until you have fully examined the Draft Order’s impact on our nation’s students and their ability to learn.

In the past four years, P-12 schools have made enormous strides in improving access to high-speed connectivity for all students. In 2013, 40 million students were in schools not meeting the 100 kbps per student threshold. By 2017, only 6.5 million students were in schools not meeting this goal—narrowing this gap by 84 percent.¹ From early childhood education through higher education and workforce training, students need access to high-speed internet in order to learn and make the most of their educational experience.

The Draft Order runs counter to our national goal of affordable, high-speed internet for all students. By rolling back the FCC’s current prohibitions against blocking, throttling, and paid prioritization, the Draft Order could lead to a tiered and compartmentalized internet, and whose characteristic openness is limited to those students, schools, and institutions who can afford it. Beyond that, the Draft Order threatens to impede innovation that has taken place within the educational sphere, including when it comes to access to high-quality online coursework.

Our nation’s P-12 education system increasingly relies on an open internet to improve equity and access to high-quality content and instruction. Teachers depend on the internet to collaborate with colleagues and to access educational materials from around the globe. Entrepreneurs and educators alike have been able to develop high-quality educational technologies that support state standards and equip schools and teachers to personalize instruction. These technologies, which include educational apps and online coursework, help students learn valuable research and internet safety skills, and expand access to a high-quality education for students with disabilities and English learners. By allowing ISPs to limit access and increase costs, the Draft Order could threaten educational equity and exacerbate the digital divide.

Rural schools could be particularly harmed by the potential effects of the Draft Order. One recent analysis shows that the 77 percent of the schools that lack high-speed fiber connections are in rural

¹ "2017 State of the States." September 2017. https://s3-us-west-1.amazonaws.com/esh-sots-pdfs/educationsuperhighway_2017_state_of_the_states.pdf, 3.

communities.² Despite the Draft Order's claim that the Commission's current rules have stifled investment in internet infrastructure and rural communities, independent studies have found that such investments by ISPs have largely remained stable³ and in some cases have increased in underserved areas.⁴ The Draft Order would neither protect fiscally-strapped schools and school districts from aggressive ISP pricing practices, nor would it guarantee any additional investment in underserved areas.

Institutions of higher education rely on an open internet to carry out both their educational and research missions. For instance, online coursework has grown significantly over the past decade: as of the fall of 2015, more than 6 million students enrolled in at least one online course, representing about 30 percent of enrollments, compared to less than 10 percent in the fall of 2002.⁵ Should the Draft Order be adopted, video lectures and online learning resources that are essential to institutions of higher education may be rendered unavailable by ISPs that decide to block them or otherwise privilege a competing resource. Additionally, basic research, which today more than ever relies upon frequent exchange of massive data sets online, could be severely impacted by a tiered and tolled internet. The Association of Research Libraries has stated that "if our institutions had to pay a fee in order to access these connections or download these digital files, it wouldn't happen."⁶ Resource-constrained public institutions of higher education, the biggest users of online coursework, which remain funded nearly \$9 billion below their per-student levels before the Great Recession, would particularly feel these constraints.⁷

The Draft Order may also disproportionately impact students whose only adequate connection to the internet is the one inside their classroom. Even in 2017, far too many students lack access to a reliable, high-speed internet connection outside their classrooms—at home or off-campus. According to a 2015 Pew Research Center analysis, approximately 5 million households with school-age children did not have high-speed internet at home.⁸ This analysis found that households with annual incomes under \$50,000 were more than three times as likely to lack a high-speed connection than those with incomes over \$50,000; nearly 40 percent of households with annual incomes under \$25,000—165 percent of full-time federal minimum wage⁹—did not have a high-speed connection.¹⁰ Coupled with the Commission's recent modifications to the Lifeline program and proposed changes to the critical Universal Service Fund's Schools and Libraries Program ("E-Rate") program, implementation of the Draft Order could further deepen the "digital divide," effectively limiting or outright denying internet access to the students who need it most.

² Ibid, 19.

³ "Capital Expenditures by Publicly Traded Broadband Providers (2013-2016)." April 26, 2017.

https://www.freepress.net/sites/default/files/resources/capital_expenditures_by_publicly_traded ISPs.pdf.

⁴ "It's Working: How the Internet Access and Online Video Markets Are Thriving in the Title II Era." May 2017.

<https://www.freepress.net/sites/default/files/resources/internet-access-and-online-video-markets-are-thriving-in-title-II-era.pdf>, 79.

⁵ Allen, I. Elaine, Ph.D., and Jeff Seaman, Ph.D. "Distance Education Enrollment Report 2017." May 2017.

<https://onlinelearningsurvey.com/reports/digitallearningcompassenrollment2017.pdf>, 4.

⁶ Leonor, Mel. "Educators see schools losing out in net neutrality rollback." December 04, 2017.

<https://www.politicopro.com/education/article/2017/12/educators-see-schools-losing-out-in-net-neutrality-rollback-198729>

⁷ Allen, I. Elaine, Ph.D., and Jeff Seaman, Ph.D. "Distance Education Enrollment Report 2017." May 2017.

<https://onlinelearningsurvey.com/reports/digitallearningcompassenrollment2017.pdf>, 4. Mitchell, Michael, Michael

Leachman, and Kathleen Masterson. "A Lost Decade in Higher Education Funding." August 23, 2017.

https://www.cbpp.org/sites/default/files/atoms/files/2017_higher_ed_8-22-17_final.pdf, 2.

⁸ Horrigan, John B. "The numbers behind the broadband 'homework gap.'" April 20, 2015. <http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/>.

⁹ What are the annual earnings for a full-time minimum wage worker. August 30, 2016. <https://poverty.ucdavis.edu/faq/what-are-annual-earnings-full-time-minimum-wage-worker>.

¹⁰ Horrigan, John B. "The numbers behind the broadband 'homework gap.'" April 20, 2015. <http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/>.

In summary, we are deeply concerned about the Draft Order's impact on our nation's education system. Subsequently, we ask that you delay your planned vote to roll back net neutrality and forever change the landscape of the internet until you can satisfactorily answer the following questions:

- The Draft Order fails to make a single mention of 'student' or 'students' in its 210 pages; to what extent did the Commission contemplate the Draft Order's impact on students and the programs, schools, and institutions of higher education that they attend?
- To what extent did the Commission contemplate the Draft Order's impact on public libraries and the communities they serve?
- What tangible and enforceable guarantees does the Draft Order provide for schools, institutions of higher education, and public libraries in rural areas, which face substantial barriers to accessing a high-speed internet connection?
 - What evidence does the Commission have that the Draft Order will provide superior connectivity over the regulatory regime currently in place?
- How will the Draft Order affect the E-Rate program, including the progress made in such program since the 2014 modernization order?
- Paragraph 256 of the Draft Order "reject[s] the contrary argument ISPs will engage in 'virtual redlining' because, as discussed, paid prioritization is likely to lead to increased network investment and lower costs to end users, particularly benefitting those on the wrong side of the digital divide."¹¹
 - What steps will the Commission take to ensure that ISPs do not engage in such behavior and that issues associated with the "digital divide" and the "homework gap" are not being actively exacerbated by the regulatory framework envisioned by the Draft Order?

We thank you for your consideration of these pressing issues. We look forward to your swift and detailed response.

Sincerely,



PATTY MURRAY
United States Senator



MARIA CANTWELL
United States Senator

¹¹ Federal Communications Commission, "In the Matter of Restoring Internet Freedom: WC Docket No. 17-108." November 22, 2017. http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1122/DOC-347927A1.pdf, 147

Richard Blumenthal *Kirsten Gillibrand*

RICHARD BLUMENTHAL
United States Senator

KIRSTEN GILLIBRAND
United States Senator

Amy Klobuchar *Edward J. Markey*

AMY KLOBUCHAR
United States Senator

EDWARD J. MARKEY
United States Senator

Sherrod Brown

SHERROD BROWN
United States Senator

Jack Reed

JACK REED
United States Senator

Patrick Leahy

PATRICK J. LEAHY
United States Senator

Ron Wyden

RON WYDEN
United States Senator

Al Franken

AL FRANKEN
United States Senator

Tammy Baldwin

TAMMY BALDWIN
United States Senator

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MAZIE K. HIRONO
United States Senator

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TIM KAINE
United States Senator

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BERNARD SANDERS
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CATHERINE CORTEZ MASTO
United States Senator



JEANNE SHAHEEN
United States Senator