



**Statement of Denelle Dixon, Chief Operating Officer
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**House Committee on Energy and Commerce
Subcommittee on Communications and Technology
“Preserving an Open Internet for Consumers, Small Businesses, and Free Speech”
February 7, 2019**

Chairman Doyle, Ranking Member Latta, and Members of the Subcommittee,

Thank you for the opportunity to testify on behalf of the Mozilla Corporation. We appreciate the interest of the Subcommittee in preserving the free and open internet, and applaud the Subcommittee for holding this hearing today.

Today we are here to talk about the fundamental rules of the road governing how internet users and businesses engage online, and the role of the Federal Communications Commission (FCC) as the independent agency designated by Congress with primary authority over American communications systems. In short - we are here to talk about net neutrality. For many years, tech companies of all sizes have recognized net neutrality as a centerpiece of the internet as we know it; the American public, on a nonpartisan basis, has come to recognize it as well.

I speak to this issue from substantial personal and institutional experience. In 2009, Mozilla Chairwoman Mitchell Baker and then-CEO John Lilly penned an op-ed in the *Wall Street Journal* in support of the FCC’s proposal to adopt net neutrality rules.¹ Since then we have engaged throughout the FCC’s extensive process leading up to the 2015 net neutrality order, during which period I served as Mozilla’s general counsel and chief legal and policy officer. And we are the lead plaintiff in challenging the repeal order adopted by the FCC.

We are at a pivotal moment in the evolution of the internet. We need net neutrality protections today more than ever before. The “honeymoon” is over: We now can see the privacy, security, openness, and trust problems that surround us online. And net neutrality is the foundation upon which we can start to build a better internet future, creating room for new businesses and new ideas to emerge and flourish, and ensuring internet users can choose freely those companies, products, and services that put their interests first.

From this vantage point in 2019, failing to protect net neutrality will have serious consequences. If we don’t restore net neutrality protections, the skewed playing field we see on the internet today will only grow more uneven. Without net neutrality protections, it will be even harder for

¹ Mitchell Baker and John Lilly, “Net Neutrality: Spur to Entrepreneurship,” *Wall Street Journal* (Oct. 29, 2009), at <https://www.wsj.com/articles/SB10001424052748703573604574490441027049518>.

new businesses and new ideas to break into the market. And, if we don't restore net neutrality protections, internet users will suffer the most, because they'll be captive to the caprice of large companies, from both telecom and tech.

Net Neutrality Matters to Mozilla

Net neutrality matters to Mozilla because, as a mission-driven company, our primary objective is to build a better, healthier internet - an internet that puts users first. We build software and take public policy positions in order to serve our mission and to protect user privacy and agency.

We supported the FCC's 2015 net neutrality rules, and believe restoring them is the clearest path forward to provide clear protections for users and clear guidance for businesses. That's why we sued the FCC last year to challenge the agency's repeal order, in *Mozilla v. FCC*, which was argued before the D.C. Circuit last week. We are always happy to engage with Congress as well, both in its oversight of the FCC and in its legislative capacity, to the extent that you consider any legislation that would codify clear FCC authority and strong protections for internet users and businesses. And we are glad to speak to you today from this perspective.

One of the core principles of Mozilla's mission is the precept that "[i]ndividuals must have the ability to shape the internet and their own experiences on it." That is the heart of net neutrality. We need all internet users, especially those with diverse and minority views, to make their internet experience into what they want - not be marginalized, commodified, and served a pre-baked content package for consumption.

Net Neutrality Matters to the Internet

Openness is the secret to the internet's success. The incredible investment, growth, and social and economic value we have seen over the past (very!) few decades was only possible through a climate of permissionless innovation and aggressive competition, without walled gardens or gatekeepers.

We need an internet where small businesses can flourish by delivering what users want, finding the gaps and opportunities not being served by the market today - we need businesses like Mozilla. I am certain that we would not be here today without net neutrality. We saw an opportunity at a time when Microsoft's Windows and Internet Explorer were dominating the internet experience and leaving Web users dissatisfied - but more importantly without choice. Without net neutrality, we might never have been able to take advantage of that opportunity. We would have been competing with built-in prioritization for the incumbent technology, and possibly even blocked outright. If you look around the tech industry, you can see this same story, time and time again.

Don't get me wrong - there are many problems with the internet today. Privacy and data security are critical threats to trust online, and we are working every day to lead by example and champion public policy to promote better practices. Centralization and concentrated corporate control threaten user choice, small business competitiveness, and independent innovation and tinkering. And we see online abuse and misinformation polluting the marketplace of ideas.

But if we don't restore net neutrality protections, we will undermine the foundation on which we strive to build solutions to these problems, and lose the core of how the internet was built.

Net Neutrality Matters Even More Today

You will hear today that competition among internet service providers (ISPs) is sufficient, that if users can choose their ISPs, that will keep ISPs from misbehaving. These are baseless arguments. First, some of the concerning practices in a world without net neutrality are subtle, making them harder to detect and use as leverage for market forces - for example, throttling and prioritization might be hard to detect in individual instances, but in aggregate have tremendous market impact. And second, and maybe more importantly, competition among ISPs is, today, an illusion - roughly half of the country has at most one option for true high speed access.²

The FCC claims that the repeal of net neutrality will somehow increase internet access, citing to flawed studies that claimed that 2015 rules spurred a decline in infrastructure investment by ISPs. This argument conflicts with public statements of ISP executives,³ as well as rising investment figures released by ISPs themselves when the 2015 rules were in effect.⁴ In fact, recent data released by major ISPs shows that infrastructure investment has declined since the repeal.

In the real world of internet access today, where users do not have meaningful choices, net neutrality can ultimately encourage greater long-term investment across the network stack, from the infrastructure layer (forcing ISPs to invest in reaching new customers and offering faster service) to the application layer (forcing competition by delivering more value and trust to the end user, not buying fast lanes over the same potholed roads).

² See, e.g., Jon Brodtkin, "50 million US homes have only one 25Mbps Internet provider or none at all," *Ars Technica* (June 30, 2017), at <https://arstechnica.com/information-technology/2017/06/50-million-us-homes-have-only-one-25mbps-inter-net-provider-or-none-at-all/>.

³ See, e.g., Devin Coldewey, "These are the arguments against net neutrality and why they're wrong," *TechCrunch* (May 19, 2017), at <https://techcrunch.com/2017/05/19/these-are-the-arguments-against-net-neutrality-and-why-theyre-wrong/> ("Executives of telecoms are on the record saying that net neutrality and Title II won't be affecting their investments much if at all.").

⁴ See, e.g., Klint Finley, "The FCC says net neutrality cripples investment. That's not true", *Wired* (Dec. 8, 2017), at <https://www.wired.com/story/the-fcc-says-net-neutrality-cripples-investment-thats-not-true/>.

This is a critical moment for the future of the internet. And that's why we need to preserve and protect net neutrality.

The Role of the Courts, Congress and Potential Legislation

The clearest pathway to protect net neutrality today is to restore the protections of the 2015 order through litigation. We are optimistic about our court case. We strongly support the 2015 FCC order that was upheld the last time net neutrality was before the D.C. Circuit Court of Appeals, and we believe restoring that order and the FCC's authority is the clearest path forward to provide clear protections for users and clear guidance for businesses, both ISPs and tech companies.

Long term, we understand the value of a legislative solution to provide lasting protections. We published a policy framework in November of 2017 offering our thoughts on what would be needed to protect net neutrality effectively,⁵ building on the views we laid out three years earlier in November 2014 prior to the 2015 order.⁶ We welcome efforts from both Republicans and Democrats to codify strong net neutrality into law. But any efforts must offer strong net neutrality protections and adequate, flexible authority for the FCC to enforce it.

Bipartisan agreement on net neutrality is rare inside Washington, but outside the Beltway, public surveys consistently show broad bipartisan support. In our own polling, 76% of all respondents supported net neutrality.⁷ Few - if any - other issues debated in this hearing room have that level of public endorsement. This shouldn't be a partisan issue - but unfortunately this is where we are today.

Consequences of Failure

We are at a pivotal moment in the development of the internet. The internet today is viewed by many as broken. It seems like every day the news presents us with a new story of some abuse of our trust online by a major tech company. Yet these very same big companies are the best positioned to buy fast lanes in a future non-neutral internet. The entrepreneurs, small businesses, and independent voices will be the ones left behind.

⁵ Heather West, "What does it take to get net neutrality?" Mozilla Open Policy & Advocacy (Nov. 29, 2017), at <https://blog.mozilla.org/netpolicy/2017/11/29/take-get-net-neutrality/>.

⁶ Denelle Dixon, "What we need to do to save the internet as we know it," Mozilla Open Policy & Advocacy (Nov. 10, 2014), at <https://blog.mozilla.org/netpolicy/2014/11/10/what-we-need-to-do-to-save-the-internet-as-we-know-it/>.

⁷ Heather West, "Mozilla poll shows Americans agree: Protect the internet, net neutrality," Mozilla Open Policy & Advocacy (June 6, 2017), at <https://blog.mozilla.org/netpolicy/2017/06/06/mozilla-poll-shows-americans-agree-protect-internet-net-neutrality/>.

If we don't restore net neutrality, it will be even harder for new businesses and new ideas to break into the market. Without these protections, ISPs can channel traffic to preferred applications and limit access to non-favored content and services.⁸ This does more than lock in the position of dominant players. It also stifles the market of ideas, puts innovation behind a barrier of permission and negotiation, and places roadblocks in front of diverse viewpoints and approaches.

If we don't restore net neutrality, internet users will suffer the most. The options for internet content, applications, and services they are dissatisfied with today, and increasingly distrust, will be even more baked into their internet experience. Internet users will face less investment in, and less competition over, the quality of their increasingly ossified access service.

At Mozilla, we believe that net neutrality protections are fundamental user rights. These safeguards are essential to facilitate communication, spread new ideas, and foster innovation. We look forward to further discussions with Congress, and we thank the Subcommittee for holding a hearing on this important issue.

⁸ Ferras Vinh, "Rules of the Road: Net Neutrality's Bright Line Protections," Center for Democracy & Technology (May 11, 2017), at <https://cdt.org/blog/rules-of-the-road-net-neutralities-bright-line-protections/>.