



Broadband Institute of California
Professor Allen S. Hammond, IV, Director
Associate Professor Catherine J.K. Sandoval, Co-Director
Santa Clara University School of Law
500 El Camino Real, Santa Clara, CA 95053

December 13, 2017

The Honorable Roger Wicker,

Chair, Senate Commerce Subcommittee on Communications, Technology, Innovation, and the Internet

The Honorable Brian Schatz,

Ranking Member, Senate Commerce Subcommittee on Communications, Technology, Innovation, and the Internet

The Honorable Marsha Blackburn,

Chair, House Energy Subcommittee on Communications and Technology

The Honorable Michael F. Doyle,

Ranking Member, House Energy Subcommittee on Communications and Technology

Senator Wicker, Senator Schatz, Representative Blackburn, Representative Doyle:

As scholars who have taught Internet and communications law for decades and served in government positions developing communications policy, (Professor Hammond as a former Communications Policy Advisor in the Carter Whitehouse and the National Telecommunications and Information Administration, and Professor Sandoval as a former Commissioner of the California Public Utilities Commission and the Director of the Federal Communications Commission (FCC) Office of Communications Business Opportunities), in addition to private sector roles prior to becoming law professors, we write to express our concern about the arbitrary and capricious conduct of the FCC's Restoring Internet Freedom proceeding, (WC Docket No. 17-108). Allegations of criminal identity theft and other irregularities in the FCC *Internet Freedom* rulemaking must be investigated regardless of the outcome of the FCC's vote.

New York Attorney General Schneiderman's letters report that the FCC has failed to cooperate with his Office's investigation into criminal impersonation and identity theft which may have afflicted hundreds of thousands of Americans in the FCC's *Internet Freedom* proceeding. Several members of Congress, Professor Sandoval's August 30 comments to the FCC,¹ and identity theft victims whose names and addresses appear on comments submitted to the FCC in the *Internet Freedom* proceeding without their authorization, asked the FCC to

¹ Catherine Sandoval, Reply Comments, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108, Aug. 30, 2017, available at her Santa Clara University Faculty webpage:

<http://1x937u16qcra1vnejt2hj4jl.wpengine.netdna-cdn.com/wp-content/uploads/Professor-Sandoval-Reply-Comments-Internet-Freedom-August-2017.pdf>; Exhibits to Reply Comments of Professor Sandoval, Aug. 30, 2017, <http://1x937u16qcra1vnejt2hj4jl.wpengine.netdna-cdn.com/wp-content/uploads/Professor-Sandoval-Reply-Comments-Exhibits-A-B-C.pdf>.

investigate the filing of allegedly false comments. Submitting comments without the authorization of the person named in the filing appears to constitute false filings under federal law, 18 U.S.C. 1001, as well as identity theft under federal law, 18 U.S.C.1028(a)(7), and state law identity theft, see *e.g.* California Penal Code 530.5. Use of names and addresses derived from computer breaches would raise Computer Fraud and Abuse Act claims, 18 U.S.C. § 1030(a)(2). The FCC's apparent tolerance of allegedly criminal behavior in its comment process falls far below the required standard of reasoned decision-making under the Administrative Procedures Act, 5 USC 551, *et. seq.*

Identifying whether the responsible party holds an FCC or state license or was acting on behalf of a licensee is important to the *Internet Freedom* decision and appeal, and to fitness to hold a government license. Authorities must determine whether the perpetrator is a foreign or U.S.-based person or entity. The attempt to hijack the tools of democratic decision-making by submitting hundreds of thousands of allegedly false comments raises legal and national security alarm bells in light of Congressional findings of foreign interference in U.S. elections.

Professor Sandoval's Op Ed, *Net Neutrality Protects Democracy, the Economy, and National Security*, published in the SAN JOSE MERCURY NEWS on December 12, 2017,² details concerns about the FCC's proposal to authorize Internet Service Providers (ISPs) to collect tolls to distribute Internet content. The FCC's draft order imposes no limits on who—foreign or domestic—could buy priority Internet access. The FCC proposes no safeguards for other Internet users from paid priority deals that accelerate some Internet messages while others face delay or fail. Neither must priority deals be offered to all on the same terms. No disclosure of the parties to or terms of priority payment deals would be necessary, only paid priority practice descriptions.

The Internet has become intertwined into the U.S. economy and American democracy. The Internet is an engine for innovation in business, jobs, energy, education, democratic debate leading to voting, and in almost every sector of American society. The FCC's *Internet Freedom* draft order is legally deficient in its failure to consider important issues such as the impact of ISP priority deals on free speech, democracy, and national security. The poor process the FCC has overseen in this proceeding will be litigated on appeal. Identity theft victims stand at risk as their names and addresses remain exposed on the FCC website. Congress needs to take action to protect the open Internet, bar ISP paid priority deals, blocking, or throttling, and protect Internet users from degradation due to ISP paid priority and network management practices as the appeal proceeds. The FCC's *Internet Freedom* proposal should be withdrawn and the identity theft allegations investigated to protect Americans, American democracy, and our national security.

Sincerely,

//s//

Allen S. Hammond, IV, Director, Broadband Institute of California, Professor, Santa Clara University School of Law, Ahammond@scu.edu

Catherine J.K. Sandoval, Co-Director, Broadband Institute of California, Associate Professor, Santa Clara University School of Law, Csandoval@scu.edu

² Catherine Sandoval, *Net Neutrality Protects Democracy, the Economy, and National Security*, THE SAN JOSE MERCURY NEWS, December 12, 2017, <http://www.mercurynews.com/2017/12/12/opinion-net-neutrality-safe-guards-democracy-the-economy-and-national-security/>.

Cc: Members of the Senate Commerce Subcommittee on Communications, Technology, Innovation, and the Internet

Members of the House Energy Subcommittee on Communications and Technology

Senator Dianne Feinstein

Senator Kamala Harris

Congress Member Zoe Lofgren

Congress Member Ro Khanna

Congress Member Adam Schiff

Congress Member Linda Sanchez

Congress Member Tony Cardenas

California Attorney General Xavier Becerra

New York Attorney General Eric T. Schneiderman

Oregon Attorney General Ellen Rosenblum