



**Statement of Benjamin Wiseman
Assistant Attorney General, Office of Consumer Protection
Office of the Attorney General for the District of Columbia**

Before the

**The Committee on Government Operations
The Honorable Brandon Todd, Chairman**

Public Oversight Roundtable

on

Net Neutrality

and

**PR22-0691 - Sense of the Council Opposing the Repeal of Net Neutrality Rules
Resolution of 2017**

**Wednesday, January 24, 2018
11:00 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Greetings Chairman Todd, Councilmembers, staff, and residents. My name is Ben Wiseman, Assistant Attorney General in the Office of Consumer Protection within the Office of the Attorney General for the District of Columbia. I am here with Phil Ziperman, the Director of the Office of Consumer Protection. We are pleased to appear on behalf of Attorney General Karl Racine to testify at this public oversight roundtable on the impacts of net neutrality and the Federal Communications Commission's (FCC) vote to repeal the 2015 net neutrality protections, also known as the Open Internet Rules.

Attorney General Racine has been an outspoken critic of the FCC's decision to repeal net neutrality protections. Last July, Attorney General Racine, along with 12 other attorneys general, asked the FCC not to weaken existing rules concerning net neutrality. The FCC's action last month to repeal the 2015 net neutrality rules is a direct attack on the free exchange of ideas and equal access to the Internet. This is bad for District consumers, for small businesses that call our city home, and for the innovation that has been the essence of the Internet since its inception. The FCC's new ruling would potentially allow Internet Service Providers, commonly referred to as ISPs, to block websites, slow down Internet speeds, give some websites priority over others, and charge fees to content providers to use an Internet "fast lane." Consumers may be treated differently based on how much they are willing to pay to access sites like Facebook and Twitter. Small businesses and tech startups may be required to pay more to have their content load at the same speeds as larger companies. Simply put, the FCC's decision threatens the core principle that we all deserve an open and transparent Internet.

The Office of the Attorney General believes it our responsibility to ensure that the Internet is free and open for everyone, and OAG is actively researching and pursuing concrete steps in response to the FCC's decision.

First, Attorney General Racine has joined a coalition of 22 attorneys general in filing a multistate lawsuit to block the FCC's order repealing net neutrality. OAG is active in prosecuting federal agency action when there has been a betrayal of the public trust and an agency decision made without fully engaging in a public deliberative process. That is precisely what OAG alleges the FCC has done here. Under the *Administrative Procedure Act*, the FCC cannot make "arbitrary and capricious" changes to existing policies, such as net neutrality. The FCC's repeal order fails to justify its decision to depart from a long-standing policy and practice of defending net neutrality, and it disregards critical record evidence on industry practices and harm to consumers. Moreover, the rule wrongly reclassifies broadband internet as a Title I information service, rather than a Title II telecommunications service, based on an erroneous and unreasonable interpretation of the *Telecommunications Act*.

In addition, the public comment process relied on by the FCC in reaching its decision was seriously flawed. An investigation led by the New York Attorney General has shown that millions of comments submitted to the FCC regarding net neutrality were fake, and that they were made using the stolen identities of real Americans, including District residents. Attorney General Racine, and 18 of his counterparts, asked the FCC in December to delay its vote on net neutrality in order to make sure that these fake comments did not impair the agency's rulemaking process (letter attached). The FCC ignored that warning; its choice to proceed with a vote to repeal net neutrality raises serious questions regarding the integrity of FCC's decision and may have violated the law.

Second, OAG is looking at potential legislation and other remedies to ensure that service providers operating in the District follow the principles of net neutrality. For example, Internet Service Providers should be required to disclose accurate information regarding the services they

provide to consumers, including whether they have begun slowing internet speeds or blocking websites. In addition, we should explore the possibility of service providers that enter into contracts with the District adhere to the principles of net neutrality. Several other states, including New York, California, and Washington State, have introduced bills addressing these issues. These bills work in part by ensuring that when a state is involved in the purchase or funding of Internet services – whether for use by government employees, at schools and libraries, for a public Wi-Fi network, or even funding for Internet infrastructure - the procurement process requires that Internet services comply with net neutrality principles. The FCC’s repeal order likely will not go into effect for several months. During this time, we intend to explore all possible avenues to preserve an open and free Internet for District residents and we plan to submit legislation for the Council’s review in the near future. The FCC’s repeal order does not prevent the District from carrying out its traditional role of protecting consumers from fraud and deceptive practices under its local laws. Accordingly, OAG’s Office of Consumer Protection will look to bring enforcement actions under the District’s consumer protection laws when appropriate.

In conclusion, Attorney General Racine is committed to making sure the public interest is protected regarding internet access, and OAG looks forward to working with the Council and the Executive on these efforts. On behalf of Attorney General Racine, thank you for hosting today’s roundtable and offering us the opportunity to speak on these important issues. We are happy to answer any questions.