

Statement of Jonathan Banks
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Before the Maryland House of Delegates Economic Matters Committee on House Bill 1654
and House Bill 1655

Wednesday, March 7, 2018

Chair Davis, Vice-Chair Jameson and Members of the House Economic Matters Committee, thank you for the opportunity to testify before you today. My name is Jon Banks and I am pleased to provide remarks on behalf of USTelecom. I would like to address both the privacy and open internet provisions of the Bills.

USTelecom is an association of broadband providers that shared a heritage of providing voice telephone service, but are now investing billions of dollars a year to deliver broadband service to connect businesses and consumers to the internet. Our members range from very large providers like Verizon, to companies like Blackfoot Telephone, a co-operative serving rural Montana. Our members provide voice and broadband service throughout Maryland. And, many of our members are small businesses that provide service to just a few thousand subscribers.

Net Neutrality

The often passionate debate we have been having for the last several years over the internet is not one about goals. All of our members support an open internet or net neutrality; the principle that consumers should be able to access all legal content and applications, regardless of the source, using their broadband internet access services. Our members, large and small, that have been helping build the Internet have been delivering that open experience to their customers for years and expect to continue doing so.

The current debate over the internet is, again, not over goals or openness, but over what is the best legal framework for achieving those goals and keeping the internet open. From the communications industry perspective, the basic legal framework that was put into place by the Communications Act of 1934 for voice telephone service has never been the right framework. Fortunately, under the leadership of Bill Clinton and Al Gore, Congress passed an update in 1996. The internet was in its infancy then, but there was a strong bi-partisan consensus that it should not be regulated under the existing 1934 public utility framework. Congress declared that “it is the policy of the United States ... to preserve the vibrant and competitive free market that presently exists for the Internet ... unfettered by State or Federal regulations.” 47 U.S.C. §230(b)(2).

A wise Federal Communications Commission chairman noted that “the best decision government ever made with respect to the internet was ... not to impose regulation on it.” That Chairman was Bill Kennard, appointed by President Clinton. Kennard’s future-focused and pro-consumer philosophy became the lodestar for internet policy, allowing the internet to grow up outside of a rigid set of rules under a single federal framework.

This light-touch internet policy—the belief it should be allowed to grow and innovate outside of a rigid framework -- was a bi-partisan success for two decades. Broadband providers invested over 1.5 trillion dollars in building broadband networks, innovation thrived and new internet content, applications and business models became part of our daily lives. Consumers accessed the content they wished – as they wanted to. And entrepreneurs built internet companies from tiny start-ups to giant economic forces that all of us use.

In 2015, the FCC undertook a major change of course. Breaking with years of successful experience, and the forward looking, pro-innovation lighter touch policy approach supported by President Obama and his FCC Chair for the first 6 years of his Administration, and put in place under Bill Clinton, the FCC put broadband under the restrictions of the 1934 Act.

Our concern was that this would inevitably reduce investment and innovation and it appears to have done so, with investment in broadband infrastructure declining by about \$2 billion dollars from its recent peak in 2014 of roughly \$78 billion. (USTelecom analysis available at: <https://www.ustelecom.org/broadband-industry-stats/investment/historical-broadband-provider-capex>). See Figure 1. It increased the long-term risks to further development and growth of the internet and internet economy. And, the reclassification greatly increased uncertainty as companies tried to develop new customer-friendly options like free or sponsored data.

That is why we support the recent action by the FCC. Without high and rising levels of broadband investment and innovation, we will never be able to connect all of rural America to the internet, and we will not be able to reduce the barriers to adopting and using the internet that keep too many people from reaping the benefits of connecting to the internet. Similarly, without rising investment and innovation, broadband networks will not be able to meet the skyrocketing demand from already connected consumers for more and faster access to higher quality content and services delivered 24/7. See Figure 2.

Although Maryland is one of the best connected states in the country, with about 98% of the population having access to the internet at 10 Mbps or faster, but that still leaves too many people without access. We believe the best focus for Maryland public policy and action is to encourage investment in building and maintaining new connections for the rest of the state, and continuously upgrading the networks that exist to carry more and more traffic.

The FCC's recent action restores a framework that supports more investment and innovation, which will be necessary to meet the growing needs of consumers and small businesses, while putting in place a strong consumer protection framework. The FCC requires providers to be transparent with their customers about the services they provide and how they run their networks. If they are not, the FCC has pledged to take action. Further, the FCC's recent decision puts the Federal Trade Commission firmly back in the driver's seat when it comes to consumers and their expectations about their broadband service.

The two agencies have signed an agreement to work together in this area creating a unified federal framework. The FTC is the nation's leading consumer protection agency – committed to preventing unfair and deceptive acts and practices -- and shares authority with the Department of Justice over preventing anti-competitive actions that threaten harm to consumers or competition. The FTC's vast experience with enforcing consumer protections, coupled with strong coordination with the FCC puts two agencies on the consumer protection beat.

Privacy

Our members have made strong commitments to protecting the privacy of their customers and have long operated carefully under the Federal Trade Commission's framework of privacy protections. That framework was built on careful analysis that balanced consumer privacy interests with consumer

interests in an innovative internet that delivers free services, makes tailored recommendations and provides customized services. Customer information is essential to delivering these services that consumers expect to have. The FTC framework has been successful precisely because it balances these consumer desires and does so by requiring opt-in consent only for sensitive information such as health and financial records, social security numbers and information about children. The bills under consideration would treat a vast swath of consumer information beyond sensitive information as subject to use as if it were sensitive, needing the protections of opt-in consent, but only if the user is providing internet service. Doing so is likely to harm consumers and may give them a false sense that those same protections apply across the internet as they visit, for example websites that would not be subject to the same rules.

The bills do not appear to undertake any analysis of whether the economic and consumer welfare costs of the constraints on beneficial uses of data outweigh the benefits, if any, associated with such restrictions. The bills' treatment of Web browsing and app usage data as if they were "sensitive" information departs from FTC practice and will interfere with the ability of consumers to receive customized services and capabilities they enjoy and information about new products and discount offers. It also will hinder the ability of internet providers to innovate by developing and furnishing new customized offerings and to provide much-needed competition in the highly concentrated online advertising market. These costs to consumers and competition will be incurred with little, if any, corresponding benefit to consumer privacy, since the same broadband consumer data that internet providers will be constrained from using will continue to be used by all other internet ecosystem entities subject only to the FTC's more flexible and more pro-consumer regulatory approach.

House Bills 1654 and 1655

To the extent that House Bills 1654 and 1655 would attempt to impose state rules on the operation of internet access service, they are unwise. The internet is an inherently interstate or international service, and has always been viewed as such by the FCC and the courts. A single webpage may load on a computer in Maryland bringing with it bits and pieces of content from dozens of computers located in different states and possibly different countries. A patchwork of state laws attempting to regulate how content and services flow over the internet would simply be unworkable.

In addition to being unwise, state efforts to regulate the internet that are inconsistent with federal policies would also be preempted by federal law. As detailed above, the FCC has put into place a carefully calibrated framework to both protect consumers and competition on the internet and to encourage the investment and innovation we need to broaden the reach of our networks and increase their capacity. These federal policies cannot be overridden, whether directly or indirectly, for example, through franchising agreements or state purchasing.

To the extent the bills would change the FTC's longstanding approach to protecting consumer expectations for privacy and the delivery of a constant stream of new and improved internet services, the bills are more likely to harm consumer expectations and then meet them.

Federal Legislation

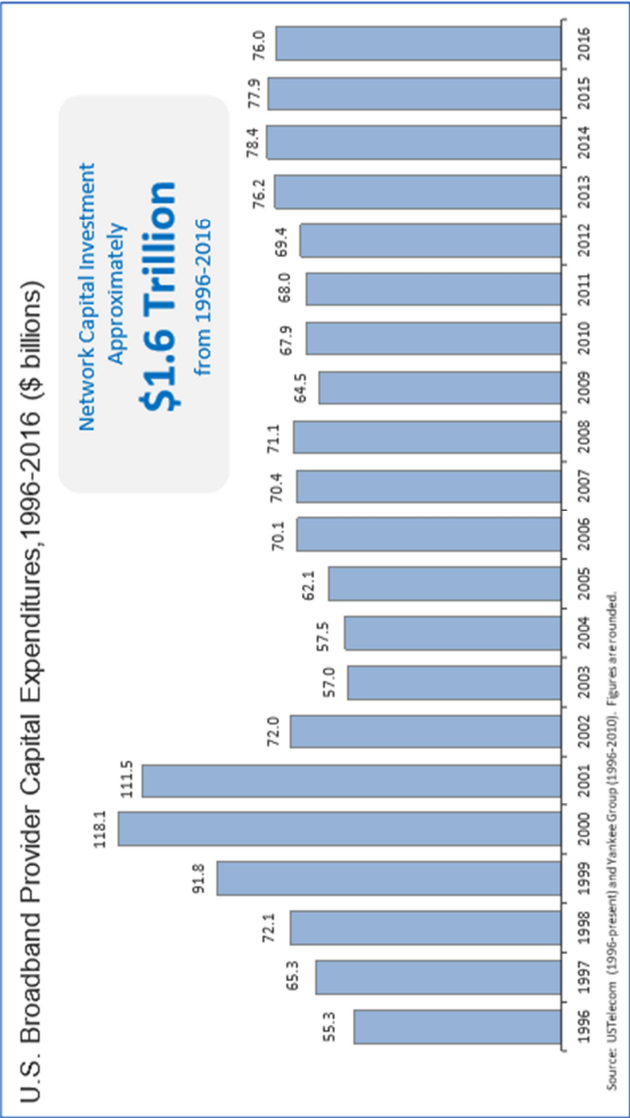
USTelecom members and other broadband providers have invested \$1.5 trillion dollars over the last twenty years building the best – as measured by usage -- internet networks in the world. Figure 3. To

help maintain our lead, we support Congress putting into place permanent, enforceable net neutrality and privacy rules that reflect a modern pro-consumer approach to broadband and the internet. These rules should guarantee consumers a clear, single set of protections that will be in force as they use the internet wherever they are. A permanent federal legislative framework will provide consumers with protections as they use the internet and broadband providers with the clarity they need to keep investing billions to deliver internet service across the country.

Thank you for the opportunity to present our views.

Figure 1

Competing Broadband Providers Have Invested \$1.6 Trillion in Capital since 1996



Data includes wireline, wireless, and cable providers.

Figure 2

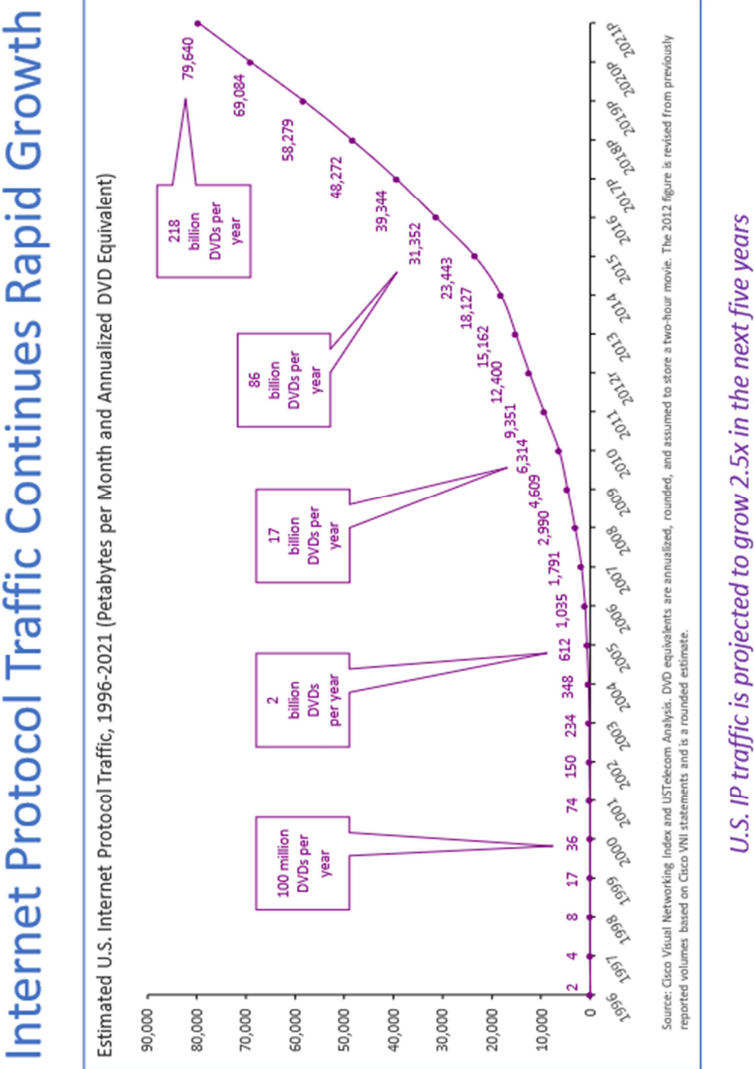


Figure 3

