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## 2019 – 2020 Legislative Memorandum

**Subject: Net Neutrality  
S.2263 (Hoylman) / A.3642 (Vanel)**

**Position: SUPPORT**

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An open internet is essential to our ability to speak freely and participate fully in public life. Since the earliest days of the internet, the Federal Communications Commission (FCC) has stepped in to preserve an open internet when ISPs have tried to undermine it,<sup>1</sup> and in 2015 the FCC made its open internet policies into a formal rule.<sup>2</sup> Unfortunately, following turnover on the Commission, the FCC repealed its net neutrality protections in December 2017 over the objections of 86 percent of voters who support a level playing field online.<sup>3</sup> It is now incumbent on the states to ensure that the internet remains vibrant and equally accessible to their residents.

Fortunately, there is a comprehensive bill that would preserve net neutrality in New York State. S.2263 (Hoylman)/A.3642 (Vanel) would codify the FCC’s 2015 net neutrality protections into state law, guaranteeing that New Yorkers retain access to the open, robust internet we have come to rely on. The NYCLU supports S.2263/A.3642 and urges its immediate passage.

Net neutrality is the principle that the companies connecting us to the internet do not get to control what we see and do there – just like telephone companies do not get to control who we call. It prevents internet service providers (ISPs) like Xfinity or Verizon from playing favorites by blocking or slowing down (“throttling”) particular websites, services, types of content, or points of view. It also keeps ISPs from

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<sup>1</sup> Tim Wu, *How the FCC’s Net Neutrality Plan Breaks with 50 Years of History*, WIRED, Dec. 6, 2017, <https://www.wired.com/story/how-the-fccs-net-neutrality-plan-breaks-with-50-years-of-history/>.

<sup>2</sup> Open Internet Order, 47 C.F.R. §§ 1, 8, and 20 (2015).

<sup>3</sup> *Overwhelming Bipartisan Public Opposition to Repealing Net Neutrality Persists*, PROGRAM FOR PUBLIC CONSULTATION, SCH. OF PUBL. POL’Y, U. OF MD., Apr. 18, 2018, <http://www.publicconsultation.org/united-states/overwhelming-bipartisan-public-opposition-to-repealing-net-neutrality-persists/>. See also Colin Lecher, *Stanford study says almost every unique FCC comment was pro-net neutrality*, THE VERGE, Oct. 16, 2018, <https://www.theverge.com/2018/10/16/17984228/stanford-study-fcc-comments-net-neutrality>.

engaging in paid prioritization, providing faster access to their own content or to content from deep-pocketed third parties that can pay for an express lane. Without net neutrality protections, it may be more difficult for smaller, minority, controversial, and economically disadvantaged voices to reach an audience online.

The FCC's repeal of its net neutrality protections threatens many of our core values:

- **Freedom of Expression:** If ISPs can block or throttle websites at will, they have the power silence certain voices based on viewpoint. ISPs might choose to block websites they do not agree with politically<sup>4</sup> or that pose a competitive threat to their own business interests. They can censor online users who express unpopular views or re-direct users from one unpopular website to a competing or more mainstream website. And, through paid prioritization, ISPs can choose to provide a greater platform to those who are able to pay for it. Independent news outlets and non-mainstream voices stand to lose.
- **Racial and Gender Justice:** Over the past decade, use of the internet has been integral to Black Lives Matter, Standing Rock, #MeToo, and other racial and social justice organizing, mobilization, communications, and community-building. Without protections, these movements can be easily targeted and censored.<sup>5</sup> Heightened levels of online discrimination and censorship will likely disproportionately affect women and people of color.<sup>6</sup>
- **Disability Rights:** Some individuals with disabilities rely on the internet to access services, communicate with others, and provide for their basic human needs. Without net neutrality protections, ISPs can pick winners and losers online and can block, throttle, or deny access to particular websites and services individuals with disabilities have come to rely on simply based on whether those sites can pay for prioritization.

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<sup>4</sup> This is not conjecture. In 2007, Verizon blocked NARAL's text message program, *see* Adam Liptak, *Verizon Blocks Messages of Abortion Rights Groups*, NYTIMES, Sept. 27, 2007, <https://www.nytimes.com/2007/09/27/us/27verizon.html>; also in 2007, AT&T censored a Pearl Jam webcast due to the band's anti-Bush lyrics, *see* Nate Anderson, *Pearl Jam censored by AT&T, calls for a neutral Net*, ARS TECHNICA, Aug. 9, 2007, <https://arstechnica.com/tech-policy/2007/08/pearl-jam-censored-by-att-calls-for-a-neutral-net/>. For more information on net neutrality violations prior to the FCC's 2015 net neutrality rules, *see generally* Timothy Karr, *Net Neutrality Violations: A Brief History*, FREE PRESS, Jan. 24, 2018, <https://www.freepress.net/our-response/expert-analysis/explainers/net-neutrality-violations-brief-history>.

<sup>5</sup> *See* Letter from Center for Media Justice et al. to Reps. Cedric Richmond, Lujan Grisham, Judy Chu, & Betty McCollum (May 18, 2018) ([https://www.internetvoices.org/sites/default/files/resources/voices\\_letter\\_to\\_tri-caucus\\_members\\_net\\_neutrality\\_cra.pdf](https://www.internetvoices.org/sites/default/files/resources/voices_letter_to_tri-caucus_members_net_neutrality_cra.pdf)).

<sup>6</sup> *Id.*

S.2263/A.3642 would stem the damage from the FCC's net neutrality repeal in New York State. The bill would prohibit ISPs from blocking, throttling, or extorting fees to speed up content. In addition, it would close the backdoor to paid prioritization by regulating zero-rating and ensuring that when it occurs in New York, it is done fairly and not merely to benefit ISPs and their affiliates at the expense of competitors.

As the FCC closes its eyes to net neutrality violations in New York and nationwide, S.2263/A.3642 would empower two statewide watchdogs, the Public Service Commission and the Attorney General, to protect a free and open internet in New York.

The bill would also ensure that New York State and its municipalities only contract with ISPs that obey net neutrality rules and that any government-funded broadband buildout project includes net neutrality protections from day one. Finally, it will help broadband buildout to the rural areas, communities of color, and low-income communities in New York that are least likely to have reliable internet by regulating interconnection to make sure that the smaller ISPs that are most likely to deploy internet to underserved communities can connect their subscribers to the global internet without paying exorbitant, discriminatory, or unfair rates to the large ISPs.<sup>7</sup>

Net neutrality is foundational to many of the rights and values New Yorkers hold dear, including freedom of expression, racial and gender justice, disability rights, and equal access and opportunity. The NYCLU urges the swift passage of S.2263/A.3642 to right the federal government's wrong and ensure that New Yorkers can continue to rely on a vibrant, equally accessible, and open internet.

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<sup>7</sup> For an explanation of interconnection, see Rudolph Van Der Berg, *How the 'Net works: an introduction to peering and transit*, ARS TECHNICA, Sept. 2, 2008, <https://arstechnica.com/features/2008/09/peering-and-transit/>.