



June 21, 2018

To: The Honorable Ed Chau
Chair, Assembly Privacy and Consumer Protection Committee

Cc: The Honorable Scott Wiener
Members of the Assembly Privacy and Consumer Protection Committee
Ronak Daylami, Chief Consultant, Assembly Privacy and Consumer Protection Committee
Jared Yoshiki, Consultant, Assembly Republican Caucus

RE: SB 822 (Wiener) as amended in Communications and Conveyance Committee - Oppose

One of the fallacies at the heart of SB 822 is the false presumption that one side of the net neutrality debate actually opposes an open Internet. The above named organizations want to express our continued support for an open Internet where companies do not block, throttle, or otherwise interfere with customers' ability to go where they wish on the Internet. But rather than furthering that policy, SB 822 would create regulations that will disrupt the Internet, make network management untenable, and ultimately harm consumers.

Our reasons for opposition include:

- SB 822 is preempted by federal law. Similarly, former FCC Chairman Tom Wheeler stressed the need for state preemption in his 2015 Open Internet Order. Nevertheless SB 822 eliminates the regulatory model that has been the catalyst of development and innovation in California's Internet economy in favor of heavy-handed mandates and oversight by the Attorney General. Moreover, it creates private rights of action by individuals that will add further delay to the deployment of 21st century communications infrastructure.

- SB 822 will not promote or protect an open Internet. Instead, it opens the door to a patchwork of unworkable state regulations that will stymie innovation, and potentially undermine the backbone of California's Internet economy. Despite virtually no showing of harms or violations of any rules, and regardless of strong federal and state regulatory and enforcement safeguards currently in place, SB 822 goes beyond the previous 2015 Net Neutrality Rules, including the creation of untenable procurement requirements and enforcement by multiple forums.
- SB 822 empowers state agencies to, each at its sole discretion, fashion their own unique interpretations of the law. These entities will not have the underlying knowledge of wireless or wireline networks, including network management constraints, evolving technologies, and the potential impact on consumers, to comprehensively evaluate an ISP's compliance with the law. In turn, differing decisions by these entities could create a balkanized and confusing regime of requirements for ISPs.
- The resulting uncertainty of the bill's various mandates would stifle innovation and the development of new and attractive services for consumers.

Our commitment to preserve an open Internet has not changed, as it is vital to the success of California's economy and ensuring consumers can access any legal content they want on whatever device they choose. However, this legislation threatens the many benefits an open Internet provides. The bill is based on speculative risk of harm, and yet the only certainty, is the harm the bill itself will bring upon California consumers and innovators.