



August 13, 2018

The Honorable Scott Wiener
California State Senate
State Capitol, Room 5100
Sacramento, CA 95814

RE: SB 822 (Wiener) as amended on August 7, 2018 – OPPOSE

Dear Senator Wiener:

We support an open Internet where companies do not block, throttle, or otherwise interfere with customers' ability to go where they wish on the Internet. Despite characterizations that SB 822 is intended to align with the FCC's 2015 Open Internet Order, this legislation still establishes requirements that go well beyond the Order's net neutrality principles. The amended bill continues to create policies that will have negative impacts on both investment and consumers.

SB 822 threatens free data services enjoyed today by millions of Californians.

Zero-rating (free data) offerings have been broadly and enthusiastically received as innovative and consumer-friendly. These programs make products and services more accessible and affordable for all Californians, and allow consumers access to more content overall because data/speed allowances last longer. However, contrary to the 2015 FCC Order, SB 822 undercuts ISPs' flexibility to offer innovative, well-disclosed zero-rating options for customers, with sweeping prohibitions and only limited exceptions for those practices.

SB 822 will negatively impact the availability and quality of ISP services.

SB 822's restrictions on the interconnection of networks would force ISPs to abandon tried-and-true frameworks that have governed traffic exchange since the Internet's inception. In contrast, the 2015 FCC Order did not prohibit any interconnection practice or payments for interconnection. The FCC recognized interconnection agreements are an effective way to address imbalances in the flow of Internet traffic and improve the customer experience.

SB 822 is preempted by federal law.

Even former FCC Chairman Tom Wheeler stressed the need for state preemption in his 2015 Open Internet Order. Paragraph 433 states: "The Commission has used preemption to protect federal interests when a state regulation conflicts with federal rules or policies, and we intend to exercise this authority to preempt any state regulations which conflict with this comprehensive regulatory scheme or other federal law." The way to express disagreement with FCC's legal and policy judgments – consistent with the rule of law – is to challenge those judgments in court.

The uncertainty, conflicts, and confusion caused by SB 822 would harm consumers and stifle innovation in California's broadband infrastructure. In addition, such unpredictability raises the cost of compliance for all ISPs, regardless of size, and will likely have a negative affect on consumers, including public agencies.

Our commitment to preserve an open Internet has not changed, as it is vital for the success of California's economy, and for ensuring ALL consumers can access any legal content they want on whatever device they choose. SB 822 threatens to undermine the many benefits an open Internet provides.