January 22, 2019

Honorable Robert Backus
New Hampshire House of Representatives
Chair, House Science, Technology & Energy Committee
107 North Main Street
Concord, NH 03301

Dear Chair Backus:

On behalf of CTIA, the trade association for the wireless communications industry, I write to oppose House Bill 132. CTIA and its member companies support a free and open internet. To further that goal, we support a federal legislative solution to enshrine open internet principles. CTIA, however, respectfully opposes piecemeal state regulation of mobile wireless broadband, a truly interstate service, like HB132.

The mobile wireless broadband marketplace is competitive and an engine of innovation, attracting billions of dollars in network investment each year. From the beginning of the Internet Age in the 1990s through the start of the 21st century, the Federal Communications Commission (FCC) applied a regulatory framework to internet service that allowed providers to invest, experiment, and innovate. In that time, an entire internet-based economy grew. But in 2015, the FCC dramatically changed course, applying for the first time 80-year-old common-carrier mandates meant for traditional monopoly public utilities, such as landline phone service, to broadband internet access.

In 2017, the FCC's *Restoring Internet Freedom* Order reversed that 2015 decision, finding that application of 1930s utility-style rules to the internet services of today actually harmed American consumers. The FCC cited extensive evidence showing a decline in broadband infrastructure investment – an unprecedented occurrence during an era of economic expansion. In the mobile broadband market alone, annual capital expenditures fell from $32.1 billion in 2014 to $26.4 billion in 2016. This slowdown affected mobile providers of all sizes and serving all markets. For example, small rural wireless providers noted that the 2015 decision burdened them with unnecessary and costly obligations and inhibited their ability to build and operate networks in rural America.

With its action in 2017, the FCC restored the same national regulatory framework that applied before 2015, which is credited with facilitating the internet-based economy we have today. Under that national regulatory framework, mobile wireless broadband providers have every incentive to invest in and deliver the internet services that consumers demand.

Further, consumers continue to have legal protections that complement the competitive forces in play. First, the FCC's current regulations include a "transparency" rule, which requires broadband providers to publicly disclose extensive information about their performance, commercial terms of service, and network management practices to consumers and internet entrepreneurs. Second, the Federal Trade Commission (FTC) has authority to police broadband offerings in applicable cases. This extends to any unfair and deceptive practices, including but not limited to, any violation of the transparency rules and ISP public commitments.

Third, the Department of Justice enforces federal antitrust laws, which preclude anticompetitive network management practices. Finally, the FCC made clear in its 2017 Order that generally applicable state laws relating to fraud and general commercial dealings apply to broadband providers just as they would to any other entity doing business in a state, so long as such laws do not regulate broadband providers in a way that conflicts with the national regulatory framework to broadband internet access services. Thus, New Hampshire remains empowered to act under its UDAP statute.

In short, New Hampshire consumers are well protected against anti-competitive or anti-consumer practices. They enjoy protections provided by the FCC, the FTC, federal antitrust law, and – importantly – existing New Hampshire state law.

The internet, however, is not something that stops at state boundaries. Consumers regularly access content from across the country and around the world. In its 2017 Order, the FCC explained that broadband internet access is inherently interstate and global and found broadband-specific state laws are unlawful and preempted by federal law. The FCC recognized that state or local laws imposing net neutrality mandates, or that interfere with the federal preference for national regulation of broadband internet access, are impermissible. This is nothing new: even in its 2015 Order, the FCC had concluded that contrary state laws governing broadband internet access are preempted.

Several states have nonetheless adopted net neutrality laws and regulations, but the futility of doing so is becoming clear. California enacted a net neutrality law that was immediately challenged in court by the Justice Department, the FCC, and a group representing broadband providers, including CTIA. Before even a preliminary hearing in the case, the California Attorney General stipulated to non-enforcement of the law pending judicial review of the 2017 Order.

Likewise, when a net neutrality bill was proposed in the Vermont legislature, that state's own Public Service Department issued a memo in which it "strongly caution[ed]" that the legislation "would likely run afoul of" the FCC's rules and warned that "a federal court is likely to be highly skeptical [of] and disinclined to uphold any law that directly or indirectly seeks to legislate or regulate net-neutrality." The law was nevertheless enacted,

and is now facing its own court challenge, based in part on the analysis of the state's own Public Service Department.

In closing, it is unnecessary to pass state legislation on this issue due to the strong consumer protections currently in place. Additionally, state-by-state rules would be especially burdensome, difficult to comply with, costly, and subject net neutrality requirements to differing state interpretations and enforcement – creating further business uncertainty. Accordingly, I urge this committee recommend HB 132 as inexpedient to legislate.

Sincerely,

Gerard Keegan
Vice President
State Legislative Affairs