**Testimony of**
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**In Opposition to Minnesota House File No. 136**

**Before the Minnesota House of Representatives Commerce Committee**

**February 13, 2019**

Chair, Vice Chair, and members of the committee, on behalf of CTIA, the trade association for the wireless communications industry, I submit this testimony in opposition to House File No. 136. CTIA and its member companies support a free and open internet. We support a federal legislative solution to enshrine open internet principles. To further that goal, we believe that a national regulatory framework with uniform and generally applicable competition and consumer protections is a proven path for ensuring a free and open internet while enabling innovation and investment throughout the internet ecosystem. In addition, the Federal Trade Commission (FTC) has reasserted its well-established oversight and enforcement authority over internet service provider (ISP) consumer privacy practices making state ISP privacy wholly unnecessary.

The mobile wireless broadband marketplace is competitive and continuously changing. It is an engine of innovation, attracting billions of dollars in network investment each year, and generating intense competition to the benefit of consumers. From the beginning of the Internet Age in the 1990s, 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 took a much different approach, applying 80-year-old common-carrier mandates meant for traditional monopoly public utilities, despite the fact that internet services are nothing like public utility offerings such as water or electricity or even landline telephone service.

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.

The FCC's overbroad prohibitions on broadband providers harmed consumers in other ways, too—particularly with respect to innovation. For example, after the 2015 Order, the FCC launched a yearlong investigation of wireless providers' free data offerings, which allow subscribers to consume more data without incurring additional costs. The risk of FCC enforcement cast a shadow on mobile carriers' ability to innovate, compete and deliver the services that consumers demanded. In addition, the inflexible ban on paid prioritization precluded broadband providers from offering one level of service quality to highly sensitive real-time medical applications and a differentiated quality of service to email messages. The FCC's 2017 Restoring Internet Freedom Order

took a different path – one that benefits consumers and enables new offerings that support untold varieties of technological innovations in health care, commerce, education, and entertainment.

Based on the way some people have talked about the Restoring Internet Freedom Order, you might think the FCC eliminated federal rules that had always applied to internet services and that the federal government left consumers without any protections. But that is just not the case. The internet was not broken before 2015, and the internet as we knew it did not end because of the FCC's 2017 decision.

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. The truth is that, in a competitive market like wireless, mobile broadband providers have no incentive to block access to lawful internet services, and if they did, their customers would simply switch providers.

Under the current – and pre-2015 – regulatory landscape, consumers continue to have legal protections that complement the rigorous competitive forces in play in the internet marketplace. First, the FCC's current regulations include a "transparency" rule that was adopted under President Obama's first FCC Chairman in 2010 and maintained in the 2017 decision, 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, consistent

with the FCC's pre-2015 framework, the FTC once again has ample authority to police broadband offerings in applicable cases and has publicly committed to engage in active enforcement. This extends to any unfair and deceptive practices, including but not limited to, any violation of the transparency rules and ISP public commitments. The FCC's 2015 Order actually removed the FTC from its longstanding enforcement role.

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, taxation, 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 for broadband internet access services. The 2017 Order reaffirmed the FCC's 2015 decision that states and localities may not impose requirements that conflict with federal law or policy, but may otherwise enforce generally applicable laws. Thus, Minnesota remains empowered to act under the Unfair or Deceptive Trade Practices section of its Consumer Protection Act.

In short, Minnesota 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 Minnesota state law. On the other hand, state-specific net neutrality rules imposed on broadband providers would harm consumers, and would – along with other state and local mandates – create a complex "patchwork quilt" of requirements that would be unlawful.

In its 2017 Restoring Internet Freedom Order, the FCC explained that broadband internet access is an inherently interstate and global offering. Internet communications delivered through broadband services almost invariably cross state lines, and users pull content from around the country and around the world – often from multiple jurisdictions in one internet session. Any attempt to apply multiple states' requirements would therefore be harmful to consumers for the same reasons the FCC's 2015 rules were harmful, in addition to the fact that those requirements will be at best different and at worst contradictory.

These problems multiply in the case of mobile broadband: questions will arise over whether a mobile wireless broadband transmission is subject to the laws of the state where users purchased service, where they are presently located, or even where the antenna transmitting the signal is located. State-by-state regulation even raises the prospect that different laws will apply as the user moves between states. For example, a mobile broadband user could travel through multiple states during a long train ride, even the morning commute, subjecting that rider's service to multiple different legal regimes even if the rider spent that trip watching a single movie. Such a patchwork quilt of disparate regulation is untenable for the future success of the internet economy. In the mobile environment, 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.

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 that impose 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 challenged in court by the U.S. Department of Justice and a group representing broadband providers, including CTIA. 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.

Ultimately, Congress may decide to modify the existing federal regulatory framework for broadband internet access. CTIA has called on Congress to enact legislation for the internet ecosystem that promotes a free and open internet while also enabling the consumer-friendly innovation and investment we need for tomorrow. Nevertheless, today, state-by-state efforts to regulate broadband internet access harm consumers and conflict with federal law.

Finally, it is worth noting that this is the second time that the FCC has issued a de-regulatory classification of broadband. When the first such order reached the Supreme Court, the Court expressly upheld the FCC's authority in this regard in the Brand X case. According to the Supreme Court:

> "The questions the Commission resolved in the order under review involve a 'subject matter [that] is technical, complex, and dynamic.' . . . The Commission is in a far better position to address these questions than we are. Nothing in the Communications Act or the Administrative Procedure Act makes unlawful the Commission's use of its expert policy judgment to resolve these difficult questions."

In recognition that the internet is not defined by state lines, the recent FCC Order includes preemption language to avoid a patchwork of state laws regulating internet service. The FCC has recognized that "broadband Internet access service should be governed by a uniform set of federal regulations, rather than by a patchwork of separate state and local requirements." Conflicting state rules could hamper the provision of broadband service, lead to increase compliance costs, and inhibit providing new and innovative products and services – all to the detriment of consumers.

In closing, it is unnecessary to pass state net neutrality legislation due to the strong consumer protections currently in place and because states are preempted in this area. Additionally, state-by-state rules would be especially burdensome, difficult to comply with, costly, and subject broadband providers to differing state interpretations and enforcement – creating further business uncertainty. Accordingly, we respectfully ask that you not move HF 136.