



Legislative Testimony
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**Written Testimony Supporting Senate Bill 5, An Act Concerning
Internet Service Providers and Net Neutrality Principles**

Senator Needleman, Representative Arconti, Ranking Members Formica and Ferraro, and distinguished members of the Energy and Technology Committee:

My name is Kelly McConney Moore, and I am the policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am testifying in support of Senate Bill 5, An Act Concerning Internet Service Providers and Net Neutrality Principles, which would establish net neutrality principles and set data privacy standards for internet service providers. We address each of the bill's concepts in turn below.

Net Neutrality

The ACLU-CT believes in defending free speech and protecting First Amendment rights. The free flow of information and the ability to communicate freely are key to America's democracy. The internet is central to how Connecticut residents and Americans everywhere express their opinions, share their knowledge, and learn from one another. It is also how many people learn about and debate important policies, organize themselves around issues, and evaluate candidates for office. Equal access to information is imperative for everyone to participate in our democracy.

Network neutrality, very simply, is the idea that broadband internet service providers (ISPs), which provide internet access to 92% of Americans,¹ cannot (1) prioritize which websites or apps users access, (2) slow down – or “throttle” – traffic to websites or apps, or (3) entirely restrict access to websites or apps. Without net

¹ Federal Communications Commission, 2018 Broadband Deployment Report (Feb. 2, 2018), *available at* <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2018-broadband-deployment-report>.

neutrality, broadband ISPs can determine which content we can see, how quickly we can access it, and if we have to pay extra for certain content.

Unfortunately, although net neutrality was formerly required of broadband ISPs,² the Federal Communications Commission (FCC) under the Trump administration repealed net neutrality.³ In the absence of net neutrality protections, broadband ISPs have repeatedly throttled and prohibited access to content in periods when there were no net neutrality protections. For example, an ISP throttled the Santa Clara County Fire Department's service during recent California wildfires. The fire department's full speed was restored only after it purchased a new, more expensive plan.⁴ In November 2018, Sprint was caught throttling Skype by pushing those video calls into the slow lane of the Internet.⁵ Broadband ISPs have repeatedly prioritized certain content based on their financial interests, like when AT&T, Sprint, and Verizon all blocked access to Google Wallet because it competed with their proprietary wallet product.⁶ Even more troublingly, broadband ISPs also have a history of blocking access to information based on message. For example, Verizon blocked text messages from NARAL, a reproductive rights advocacy organization, because the company determined the texts were "controversial."⁷ Canadian Telecom company Telus blocked a union website because it was in a labor dispute with the union.⁸

State regulation of net neutrality is clearly permissible following a recent decision from the United States District Court for the District of Columbia invalidating the portion of the FCC's net neutrality repeal that prohibited state

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⁶ Adi Robertson, "Here's how companies have flouted net neutrality before and what made them stop." *The Verge* (Jun. 11, 2018), available at <https://www.theverge.com/2018/6/11/17438638/net-neutrality-violation-history-restoring-internet-freedom-order>.

⁷ Adam Liptak, "Verizon Blocks Messages of Abortions Rights Group." *New York Times* (Sept. 27, 2007), available at <https://www.nytimes.com/2007/09/27/us/27verizon.html>.

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action.⁹ In 2019, Maine implemented statewide net neutrality;¹⁰ other states in New England are attempting to follow suit right now.¹¹ Passing net neutrality legislation in Connecticut would send a strong message that broadband ISPs in this state may not interfere with customers' free and equal access to information.

ISP Privacy Protections

While ISPs claim that they have privacy policies in place to protect consumers, these same companies have a history of tracking all of our data and monetizing it. Just a few years ago, Verizon and AT&T tracked the internet activity of more than 100,000,000 customers with "supercookies" – small packets of data that allowed the companies to catalogue the website those people visited. Those supercookies could not be erased or evaded by using "incognito" modes for web browsers.¹² The data they collect is used to sell targeted advertising, ads that follow you after you have visited a particular website. All the while, the ISP profits. Information collected by ISPs and sold to the highest bidder can be used to swing elections, alter individual lives, manipulate public discourse, and even populate FBI databases.

People do not want to be monitored and monetized. A Pew Research Institute study found that 74% of respondents think being in control of who can get information about them online is very important, and that 90% of U.S. adults think it is important to control what information is collected about them.¹³ Despite that, there are currently significant limitations to internet consumers' privacy.

Connecticut consumers are at the mercy of their ISPs' privacy policies, since no ISP is a clear leader in consumer privacy and since most consumers lack a meaningful selection between ISPs.¹⁴ The market has failed to provide a solution to

⁹ *Mozilla Corp. v. Fed. Comm'n's Comm'n.*, 2019 WL 4777860 (D.C. Cir. Oct. 1, 2019), available at [https://www.cadc.uscourts.gov/internet/opinions.nsf/FA43C305E2B9A35485258486004F6D0F/\\$file/18-1051-1808766.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/FA43C305E2B9A35485258486004F6D0F/$file/18-1051-1808766.pdf).

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protecting internet privacy. Current federal law is similarly inadequate. In 2017, Congress overturned then-existing FCC consumer privacy regulations in such a way that bars the FCC from ever instituting substantially similar regulations.¹⁵

It is up to Connecticut, then, to protect consumers' privacy in the state. The key privacy elements that we support in Senate Bill 5 include: (1) appropriately expansive definitions of customer personal information; (2) a ban on the sale or transfer of customer personal information absent express consumer permission; (3) a ban on targeted advertising based on the consumer's browsing history absent express consumer permission; (4) a prohibition on ISPs discriminating against consumers who refuse to waive privacy protections; (5) a method for complaint, investigation, and penalties when an ISP violates privacy protections.

Unregulated, your ISP will know you better than you know yourself and will be able to sell that knowledge to other companies or the government, which will be able to use your data in ways you never intended. Indeed, as artificial intelligence systems become more intelligent and complex, enabling new forms of surveillance, tracking, and data analytics, the stakes for establishing commonsense internet consumer privacy could not be higher. If state legislatures fail to protect privacy, people in Connecticut will not be able to use the internet without subjecting themselves to increasingly dangerous levels of unregulated corporate and government surveillance. The provisions in this bill, though, will curb the worst abuses and hold ISPs to a minimum standard of stewardship with our data. Connecticut should take action to limit excessive collection and sale of our data while it still can.

Conclusion

The ACLU of Connecticut strongly supports the net neutrality and consumer privacy protections included in Senate Bill 5, An Act Concerning Internet Service Providers and Net Neutrality Principles. We urge this Committee to pass this bill.

¹⁵ See Status of Internet Privacy Legislation by State, ACLU, available at <https://www.aclu.org/issues/privacy-technology/internet-privacy/status-internet-privacy-legislation-state>.



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