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May 24, 2018

The Honorable Scott Wiener
State Capitol
Room 5100
Sacramento, CA 95814-4900

Re: SB 822—Net Neutrality Policy Must Include Interconnection

Dear Senator Wiener:

INCOMPAS, the internet and competitive networks association, is the leading trade association advocating for competition policy across all networks. INCOMPAS represents internet, streaming, communications and technology companies, both large and small, advocating for laws and policies that promote competition, innovation and economic development.

INCOMPAS supports strong net neutrality protections. INCOMPAS believes that net neutrality ultimately must be addressed at the federal level and does not take a position on SB 822 or other state net neutrality initiatives. While INCOMPAS does not have a position on SB 822, we appreciate the intent of SB 822: to protect consumers' access to an open internet. To that end, INCOMPAS takes this opportunity to explain the importance of ensuring that broadband internet access service providers do not circumvent net neutrality protections by engaging in blocking and throttling of internet content where the broadband internet access service provider interconnects its network with the internet.

Meaningful net neutrality protections must include interconnection. When a broadband internet access service provider's customer requests content from an online source, the requested content will reach the customer only if the broadband internet access service provider allocates sufficient capacity at its interconnection points. When it does not do so, the customer's experience will be degraded, leading to frustrating interruptions in accessing content such as an online video. Without interconnection oversight, broadband internet access service providers can use (and have used) their gatekeeper power to demand access tolls from online content providers. If online content providers do not capitulate and pay these tolls, customers' access to online content will be blocked or throttled. A ban on access fees provides an important backstop against anticompetitive traffic manipulation by broadband internet access service providers.

Interconnection oversight and bans on access fees do not prohibit business-to-business interconnection arrangements. To make the internet work, broadband internet access service providers must interconnect with the other networks, applications and services that make up the rest of the internet. Globally, the vast majority of interconnection agreements are done without any access tolls. But some large broadband internet access service providers have sought to impose anti-competitive access tolls on edge providers directly or by charging third-party services that smaller online services use to reach consumers. Interconnection oversight and bans on access fees prevent broadband providers from exerting gatekeeper power, but they don't prevent businesses from entering into private agreements to directly interconnect with broadband internet access service providers.

In sum, interconnection protections are a critical element to meaningful net neutrality policy. Such protections ensure that the broadband internet access service providers cannot use their gatekeeper power to block, throttle, or charge unfair access tolls.

Sincerely,

/s/Angie Kronenberg

Angie Kronenberg
Chief Advocate & General Counsel