

## COLORADO BROADBAND POLICY SHOULD FOCUS ON COMPETITION AND DEPLOYMENT

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Good afternoon. My name is Brent Skorup and I am a senior research fellow at the Mercatus Center at George Mason University. I also serve on the Broadband Deployment Advisory Committee of the Federal Communications Commission (FCC).

It is commendable that state legislatures, governors, and cities around the country, including in Colorado, are prioritizing broadband deployment. The focus should remain on the pressing broadband issues of competition and deployment. The political battles in Washington, DC, about net neutrality, which I have observed over the past decade, have alarmingly spread to statehouses in recent months, and they will distract from far more important issues.

Lawmakers should enter the debate with their eyes wide open about the stakes and the unintended effects of internet regulation. By imposing network management rules on certain providers, SB 19-078 conflicts with federal policy, codified in the Telecommunications Act, that internet access should be “unfettered by Federal or State regulation.”<sup>1</sup>

First, net neutrality laws and regulations do not accomplish what they purportedly accomplish. As the FCC revealed when it defended its net neutrality regulations in federal court in 2016, any no-blocking rule is mostly unenforceable.<sup>2</sup> As a tech journalist put it, internet service providers (ISPs) can “exempt [themselves] from the net neutrality rules”—the rules are “essentially voluntary.”<sup>3</sup> The same problem arises with state net neutrality laws.

Second, state internet regulations are unlikely to survive judicial review. Internet access is inherently interstate: simply streaming a YouTube video or sending an email often transmits data across state

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<sup>1</sup> Telecommunications Act of 1996, 47 U.S.C. § 230(b) (2018).

<sup>2</sup> Net neutrality advocate organizations such as the Electronic Frontier Foundation and the American Civil Liberties Union acknowledge in FCC filings that internet service providers (ISPs) are permitted to block content they dislike online. See In the Matter of Restoring Internet Freedom, before the Federal Communications Commission WC Docket No. 17-108 (2017) (Joint Reply Comments of the American Civil Liberties Union and the Electronic Frontier Foundation on Notice of Proposed Rulemaking). The comments state that ISPs “that go beyond this role of neutral conduit are not subject to Title II classification, precisely because they curate expressively and clearly communicate their curatorial practice to their customers.”

<sup>3</sup> Devin Coldewey, “Kavanaugh’s Brutal Education in Net Neutrality,” *TechCrunch*, July 11, 2018.

lines. State attempts to regulate treatment of internet access therefore likely violate federal law, which vests authority to regulate interstate communications with the FCC.<sup>4</sup>

Third, the bill penalizes small, rural carriers.<sup>5</sup> There's a saying in politics: "If you're not at the table, you're on the menu." It appears that Colorado's rural broadband providers are "on the menu." The bill applies internet regulations only to companies receiving state support (13 companies, each one serving rural areas).<sup>6</sup> With the exception of CenturyLink, these are very small telecommunications companies, and the smallest had 64 customers. It is a puzzle why the state would add regulations and compliance costs to rural ISPs at a time when the FCC and most states are doing everything possible to help deploy broadband in rural areas.

This is not a plea to "do nothing" in Colorado regarding broadband. The FCC's Broadband Deployment Advisory Committee has several recommendations for states and localities to improve broadband deployment.<sup>7</sup>

Further, the FCC and some states are considering making it easier for private property owners to install wireless antennas without local regulation and fees, much like how satellite dishes are installed.<sup>8</sup>

Finally, the legislature could also urge flexibility from the FCC regarding the federal high-cost fund, which disburses about \$60 million annually to carriers in Colorado.<sup>9</sup> My preliminary estimates using FCC data suggest that, under a new voucher program, *every* rural household in Colorado could receive \$15 to \$20 per month to reduce their monthly broadband bill.<sup>10</sup>

Thank you for the invitation to testify. I look forward to answering any questions.

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<sup>4</sup> Communications Act of 1934, 47 U.S.C. § 151 (2018).

<sup>5</sup> S.B. 19-078, 72nd Gen. Assemb., 1st Reg. Sess. (Colo. 2019).

<sup>6</sup> Colorado Public Utilities Commission, *2018 Annual Report of the Colorado High Cost Support Mechanism*, December 1, 2018.

<sup>7</sup> Federal Communications Commission, "Broadband Deployment Advisory Committee," accessed March 25, 2019, <https://www.fcc.gov/broadband-deployment-advisory-committee>.

<sup>8</sup> *FCC Fact Sheet: Updating the Commission's Rule for Over-the-Air-Reception Devices* (Washington, DC: Federal Communications Commission, 2019).

<sup>9</sup> *Universal Service Monitoring Report* (Washington, DC: Federal Communications Commission, 2017). This report details rural subsidies per state in 2016.

<sup>10</sup> Brent Skorup, "Tech Vouchers": Putting Consumers in Control of the FCC's \$4.5 Billion Rural Telecom Fund," *Technology Liberation Front*, August 27, 2018. This post contains a link to a spreadsheet with voucher estimates per household per state using FCC data and US Census data.