

**Testimony of Francella Ochillo
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**Before the Subcommittee on Communications and Technology
of the Committee on Energy and Commerce**

“Legislating to Safeguard the Free and Open Internet”

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Good morning, Chairman Doyle, Vice Chair Clarke, Ranking Member Latta, and members of the committee. My name is Francella Ochillo. I am the Vice President of Policy and General Counsel at the National Hispanic Media Coalition (“NHMC”).

For years, NHMC has advocated for a free and open internet. In our presentations, comments, and filings, we continue to lift up stories of how universal access can create new opportunities for communities of color and other marginalized populations. We help policymakers and lawmakers understand what is at stake for Americans who do not have the capacity or resources to engage in the policy debates of Washington, DC. We also work to hold the Federal Communications Commission (“FCC” or “Commission”) accountable for its Congressional mandate to connect the disconnected. Today, my comments are intended to reflect those voices--including families, students, creators, and activists--who support a free and open internet, but do not have the good fortune of being able to join us in this room.

The net neutrality consumer protections that we have fought so tirelessly to restore were always intended to safeguard the internet that we envision for tomorrow. I have

never met a net neutrality supporter who wanted to slow down broadband deployment. I have never gone to a coalition meeting and brainstormed ways to reduce a company's profit margins. To the contrary, net neutrality supporters welcome innovation and strive to find ways to connect people to digital opportunities.

Digital Rights Are Civil Rights. Access to the internet has revolutionized the way that we think, work, and interact. It has changed how we communicate and learn, challenged the way that we see each other, and tested our willingness to grow. It is a place where a young Latina can start a YouTube channel to teach other children how to make slime and reinvent the way that an industry markets glue and where a first generation Indian American boy from Texas could launch dreams of being a spelling bee champion with his coach online. It is also the birthplace of funding platforms that breathe new life into women-own businesses that were overlooked in Silicon Valley and the reason why countless members of Congress embarked on their unlikely journeys to Capitol Hill.

In all of its wonder, the internet has also been one of the most important tools to remedy a long history of discrimination that still plagues our country. Taking messages online was the only way that activists were able to get the nation to stop and listen to the cries of Native Americans protecting sacred lands in North Dakota and how disenfranchised voices were able to put a spotlight on unarmed African-American men being shot by police. Online social justice movements forced people to ask hard questions about contaminated water in Flint and why families seeking asylum were being irreconcilably separated at the border.

When there is a premium for access, the dangerous underbelly of the internet poses a risk to people both online and offline. Creating a digital caste system of who can afford to pay more for premium access feeds the dark chambers of the internet where division, hate speech, and discrimination thrive. Sunlight, open access, may be the best remedy because the internet connects us in a way that, historically, we have been unable to do so as a nation. It serves as the digital encyclopedia where students can go to find out why the Japanese should never have been in internment camps or the many reasons why Jim Crow was wrong. Being able to discover those unpleasant truths about who we are as a nation and how we can grow together requires that all Americans have access to the same information. That is the only way for us to remedy scars of injustice and address systemic inequality.

Current Regulatory Framework Increases the Digital Divide. Since the turn of the century, the FCC has grappled with striking a balance between protecting consumers and promoting investment.¹ However, in December 2017, when the FCC repealed the *2015 Open Internet Order*,² the pendulum swung far in favor of corporate interest, leaving consumers to fend for themselves. Even though the Commission was the only federal agency with the authority and expertise to regulate the internet, it ignored the will of the American people and ceded power to Internet Service Providers (“ISPs”).

¹ Marguerite Reardon, *Net Neutrality: How We Got From There to Here*, CNET (Feb. 24, 2015), <https://www.cnet.com/news/net-neutrality-from-there-to-here/>.

² Protecting and Promoting the Open Internet, *Report and Order On Remand, Declaratory Ruling*, GN Docket No. 14-28, 30 FCC Rcd 5601, 5627, para. 77, FCC 15-24 (Mar. 12, 2015).

The D.C. Circuit Court of Appeals will decide on the merits of that decision. But, it is important to note that millions of Americans weighed-in on the docket and urged the FCC to protect an open and free internet. Advocates sounded the alarm and continuously explained the far-reaching consequences of the repeal, especially for those who struggle with access.

Under the regulatory current framework, ISPs have no obligation to transmit messages as is. There are no rules that prevent them from blocking content online, slowing down certain websites, or giving preferential treatment to those who can afford to pay more. They need only disclose management practices, performance characteristics, and commercial terms to cure what would have otherwise violated general conduct rules. In effect, ISPs currently have the power to decide what consumers see and whose voices are heard online. They are legally permitted to decide which messages will be prioritized and which messages will be silenced. This is a dangerous experiment at the expense of the American people which should give all of us pause.

Setting aside which regulatory framework you support, we should ask whether the current rules lay the groundwork for a 22nd century superhighway where a sixth grader in New Mexico has access to the same information as one in New York. Are we building a digital platform where out of work coal miners in West Virginia can learn how to code and contribute in real time to smart-city projects in Pittsburgh? Have we created or eliminated opportunities for people living on the margins to participate in a digital economy?

Need to Remove Barriers to Broadband Adoption. Access to a free and open internet has a direct impact on broadband adoption. The United States regularly ranks as one of the most expensive places for internet in the world as affordability remains the main barrier to adoption. Considering that the digital divide disproportionately impacts the low-income, people of color, and rural communities, we should scrutinize any decision that gives ISPs permission or new incentives to charge more for access.

According to the FCC, Americans rely on access to the internet for nearly every aspect of daily life, yet and still, approximately 24 million people do not have access to broadband of any kind.³ Over 30% of African-American and Latino households lack access at home.⁴ That number that climbs even higher in homes below the poverty line and explains why children in black and brown communities nationwide have no other choice but to search for free access in public spaces, such as libraries and coffee shops, to complete homework assignments. For families that are able to subscribe to broadband services, every month they have to reckon with the bill shock, especially when discounts expire, and decide between paying for other necessities and continuing with broadband services.⁵ Notably, over 60% of Americans on rural and Tribal lands still

³ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, *2018 Broadband Deployment Report*, 33 FCC Rcd 1660, para. 50 (2018) (“Broadband Report”).

⁴ See Andrew Perrin, Pew Research Center, *Smartphones Help Blacks, Hispanics Bridge Some – But Not All – Digital Gaps with Whites* (Aug. 31, 2017), <http://www.pewresearch.org/fact-tank/2017/08/31/smartphones-help-blacks-hispanics-bridge-some-but-not-all-digital-gaps-with-whites/>.

⁵ See S. Derek Turner, Free Press, *Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption* 104 (Dec. 2016), https://www.freepress.net/sites/default/files/resources/digital_denied_free_press_report_december_2016.pdf.

lack access to reliable broadband⁶ and share the same fate. They are limited in their ability to apply for jobs online, register to vote, or obtain disaster relief in times of crisis. These Americans, all on the wrong side of the digital divide, regularly find that their opportunities for socioeconomic growth, ability to participate in our democracy, and overall mobility are limited by their level of access to broadband.

Creating A Digital Society of Have and Have Nots. The internet was started with public funds and always intended for public good. In a digital society, access has become a prerequisite for full participation and digital rights has increasingly become one of the most important civil rights of our time. We must ensure that the internet remains an open platform without gatekeepers standing in the way. We have a responsibility to understand the insurmountable costs and consequences for the disconnected. If they are locked out of opportunities and unable to participate in the digital revolution, they may shoulder the individual burden, but we all share in the collective cost.

Finally, supporting the Save the Internet Act of 2019 should not be a partisan issue.⁷

Americans who are on the wrong side of the digital divide in my home state of Louisiana and in your districts do not care about whether a Democrat or Republican drafted this Bill. They care whether we stood up for them when we had the chance. They are

⁶ Broadband Report, Dissenting Statement of Commissioner Clyburn at 82.

⁷ Admin., Program for Public Consultation, School of Public Policy, University of Maryland, *Overwhelming Bipartisan Public Opposition to Repealing Net Neutrality Persists* (April 18, 2018), <http://www.publicconsultation.org/united-states/overwhelming-bipartisan-public-opposition-to-repealing-net-neutrality-persists/> (A poll conducted by the University of Maryland found that 86 percent of voters opposed the FCC's net neutrality repeal of net neutrality, including huge majorities of Republicans, Independents and Democrats.).

depending on members of Congress to help increase their communities' access to a universal platform where they can all compete for jobs, find new educational opportunities, or build businesses online. We need to be vigilant about maintaining an internet where all Americans are able to get online without unnecessary tolls.

We built railroads, invented electricity, and have found ways to cure disease together. This is our opportunity to build the digital infrastructure required to ensure that all Americans experience the enumerable benefits that accompany online access.