



*Congress of the United States
House of Representatives
Washington, D.C. 20515*

*Anna G. Eshoo
Eighteenth District
California*

October 21, 2020

The Honorable Ajit V. Pai, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Pai,

California is experiencing the most horrific wildfire season in history, and I'm deeply concerned that the FCC is ignoring its mandate to protect public safety as required by statute and by a federal court. That's why I urge you to pull the "Restoring Internet Freedom Order on Remand" proposal from the FCC's October Open Meeting agenda.

The FCC's repeal of net neutrality led to public safety issues in my Congressional District. On January 4, 2018, the FCC repealed net neutrality rules.¹ A few months later, "Verizon throttled Santa Clara County firefighters in the midst of their efforts to fight the then-largest fire in California history—despite repeated requests to remove the throttling and allow the firefighters to perform their duties," as the Santa Clara County Executive told me.² This was despite the fact that Santa Clara County paid for an unlimited plan. In the 2018 repeal, the FCC abdicated its ability to respond such incidents, putting lives at risk. This led Santa Clara County and its Central Fire Protection District to sue the FCC.³

A federal court agreed with Santa Clara County that the FCC ignored public safety in its repeal of net neutrality. On October 1, 2019, the D.C. Circuit Court remanded the FCC's 2018 repeal for three reasons, including its "fail[ure] to examine the implications of its decisions for public safety."⁴ The public safety aspects of the decision specifically cite the arguments of Santa Clara County. The court called the FCC's counterarguments related to public safety "too little, too late," "facially inadequate," and "arbitrary and capricious," ultimately finding that the FCC showed a "disregard of its duty to analyze the impact of the 2018 Order on public safety."⁵

The FCC's process to revisit its net neutrality repeal ignored reasonable requests from public safety agencies. On February 19, 2020, the FCC issued a public notice seeking comment on the issues the Court remanded to the FCC for reconsideration.⁶

On April 16, 2020, Santa Clara County, Santa Clara County Central Fire Protection District, and others asked the FCC for a 60-day deadline extension to submit comments because municipal governments and local first responders were on the front line of our country's response to the coronavirus pandemic.⁷ On April 20, 2020, the FCC denied this request.⁸ As I said at the time, this decision was "shameful, offensive, and dangerous."⁹

As the Chairwoman of the House Health Subcommittee, I'm intimately aware of the strain that local governments and first responders are facing in large part due to the Administration's repeated and severe failures to adequately respond to the coronavirus pandemic. That you were unable or unwilling to recognize the unique situation of local governments and first responders during this once-in-a-century pandemic is of major concern to me.

The FCC's most recent proposal continues to ignore public safety, ignoring a statute and a federal court's decision. On October 6, 2020, you published a proposal for the Commission to consider on October 27, 2020, that essentially says the FCC's 2018 repeal didn't actually miss anything with respect to public safety.¹⁰ This proposal ignores what the D.C. Circuit highlighted as serious shortcomings of the 2018 repeal and what is required of the FCC by statute. Section 1 of the Communications Act of 1934 established the FCC "for the purpose of promoting safety of life and property through the use of wire and radio communication."¹¹

A recent incident shows that the FCC's abdication of responsibility to monitor for public safety issues is highly problematic. The FCC's October 6, 2020 proposal claims its repeal of net neutrality is "not likely to adversely affect public safety communications over broadband Internet access service." On October 15, 2020, just nine days after the FCC published its order, Verizon was forced into agreeing to discontinue advertisements that included two slogans it had been using – "5G Built Right for Firefighters" and "5G Built Right for First Responders" – because they appear to be untrue.¹² According to a press report, "At the same time that Verizon was claiming its 5G lets firefighters stream video from inside fire-engulfed structures, Verizon 5G in reality was 'primarily restricted to outdoor locations in certain neighborhoods.'¹³ The same press report states that "there's no reason to think [Verizon's lower-band 5G speeds] will give firefighters or anyone else a big advantage over Verizon's 4G LTE service any time soon."¹⁴ Yet the FCC has been shamefully silent on this issue.

Furthermore, your decision comes in the midst of a horrific wildfire season for California and much of the Western U.S. While this wildfire season is far from over, nearly 8,600 fires have burned over 4.1 million acres of California this year, causing over 30 fatalities and destroying over 9,200 structures.¹⁵ Five of the six largest fires in state history have happened this year.¹⁶ In my Congressional District, the CZU Lightning Complex Fire burned 86,509 acres, making it the eleventh most destructive fire in California history. Seventy-seven thousand of my constituents were evacuated, and nearly a thousand homes were lost. Californians and all Americans deserve an

active 'cop on the beat' that is able to ensure that broadband providers are not negatively impacting public safety communications.

For these reasons, I urge you to pull the "Restoring Internet Freedom Order on Remand" proposal from the FCC's October Open Meeting agenda.

Sincerely,



Anna G. Eshoo
Member of Congress

cc: The Honorable Michael O'Rielly, Commissioner
The Honorable Brendan Carr, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
The Honorable Geoffrey Starks, Commissioner

¹ "Restoring Internet Freedom Order" (FCC, January 4, 2018), <https://www.fcc.gov/document/fcc-releases-restoring-internet-freedom-order> ("2018 repeal" or "2018 net neutrality repeal").

² Representative Eshoo on H.R. 1644, 116th Cong., 1st sess., *Congressional Record* 165 (April 9, 2019): H 3171 – H 3173, <https://www.congress.gov/116/crec/2019/04/09/CREC-2019-04-09-pt1-PgH3169-3.pdf>.

³ *Mozilla Corp. v. FCC*, No. 18–1051 (D.C. Cir. 2019) (*Mozilla v. FCC*).

⁴ *Id.* at 13.

⁵ *Id.* at 97, 98, and 100.

⁶ "WCB Seeks Comment on Discrete Issues Arising from Mozilla Decision" (FCC, February 19, 2020), <https://www.fcc.gov/document/wcb-seeks-comment-discrete-issues-arising-mozilla-decision>.

⁷ Letter from New York City, City of Los Angeles, and County of Santa Clara to FCC (April 16, 2020), https://newamericadotorg.s3.amazonaws.com/documents/Refresh_of_Record_in_Restoring_Internet_Freedom_and_Lifeline_Proceedings_FINAL.pdf.

⁸ "WCB Denies Further Delay in Restoring Internet Freedom Proceeding" (FCC, April 20, 2020), <https://www.fcc.gov/document/wcb-denies-further-delay-restoring-internet-freedom-proceeding>.

⁹ Jon Brodtkin, "FCC Blasted for 'Shameful' Ruling against Cities and Fire Department," *ArS Technica*, April 21, 2020, <https://arstechnica.com/tech-policy/2020/04/fcc-blasted-for-shameful-ruling-against-cities-and-fire-department/>.

¹⁰ "Restoring Internet Freedom Order on Remand – WC Docket Nos. 17-108, 17-287, 11-42" (FCC, October 6, 2020), <https://docs.fcc.gov/public/attachments/DOC-367357A1.pdf>.

¹¹ Communications Act of 1934, § 1 (47 U.S.C. § 151).

¹² "NAD Finds Certain Verizon 5G Speed Claims Supported" (National Advertising Division, October 15, 2020), <https://bbbprograms.org/programs/all-programs/nad/nad-press-releases/verizon-5g-speed-claims>.

¹³ Jon Brodtkin, "Verizon Forced to Pull Ad That Claimed Firefighters Need Verizon 5G," *Ars Technica*, October 15, 2020, <https://arstechnica.com/tech-policy/2020/10/verizon-forced-to-pull-ad-that-claimed-firefighters-need-verizon-5g/>.

¹⁴ *Ibid.*

¹⁵ "California Statewide Fire Summary October 9, 2020" (Cal Fire, October 9, 2020), <https://www.fire.ca.gov/daily-wildfire-report/>.

¹⁶ "Top 20 Largest California Wildfires" (Cal Fire), accessed: October 20, 2020, https://www.fire.ca.gov/media/11416/top20_acres.pdf.