


# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: August 6, 2018

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso   
Chief Legislative Analyst

Council File No: 18-0002-S83  
Assignment No: 18-06-0616

SUBJECT: Resolution (Huizar – Rodriguez) to support net neutrality legislation

CLA RECOMMENDATION: Adopt Resolution (Huizar – Rodriguez) to include in the City’s 2017-2018 Federal and State Legislative Programs SUPPORT for state and federal legislation that truly aims to protect net neutrality as it was intended in State Senate Bills 822 (Wiener) and 460 (De León).

## SUMMARY

On June 22, 2018, the Resolution (Huizar – Rodriguez) was introduced to support legislation that aims to protect net neutrality as originally intended in SB 822 and SB 460. The Resolution states that the Federal Communications Commission (FCC) voted to repeal net neutrality on December 2017 despite overwhelming support from Americans who view net neutrality as a right and good faith service that should remain available to all. The State of California was poised to rebuke this unpopular and unfair federal action setting its own comprehensive net neutrality standards, in part through SB 822 and SB 460. Those efforts were stymied at a State of California Assembly committee meeting recently when the state’s proposed net neutrality law was amended and watered down to the point of being ineffective through a vote that was conducted before the public was afforded the opportunity to speak on the proposed legislation.

The Resolution, therefore, seeks support of state and federal legislation that would reinstate net neutrality protections in California and require service providers that enter into contracts with the state to comply with net neutrality rules.

## BACKGROUND

The Federal Communications Commission (FCC) regulates interstate and international communications by radio, television, wire, satellite and cable in the United States. Under the 2015 Open Internet Order, the FCC adopted net neutrality rules to protect internet openness and combat practices by Internet Service Providers (ISPs) that may interfere with an open internet. The 2015 Open Internet Order established three “bright-line” rules, including:

- No Blocking: ISPs could not block access to legal content, applications, services, or non-harmful devices;

- No Throttling: ISPs could not impair or degrade lawful internet traffic on the basis of content, applications, services, or non-harmful devices; and
- No Paid Prioritization: ISPs could not favor some lawful internet traffic over other lawful traffic in exchange for consideration of any kind.

On December 14, 2017, the FCC voted to repeal the 2015 Open Internet Order, which effectively moved federal rules back to their pre-2015 status. As part of this repeal, oversight of internet protection shifted from the FCC to the Federal Trade Commission (FTC). Unlike the FCC which may enact primary preventive measures through formal rule-making, the FTC primarily reacts in response to past actions. As a result, the FTC has limited tools for preventing blocking, throttling, and paid prioritization by ISPs.

There are two proposed net neutrality bills in California, SB 822 and SB 460. These bills will be unified through a process known as contingent enactment. Under contingent enactment, both bills must pass, or neither will become law. Together, these bills would reinstate net neutrality protections in California and prevent ISPs from engaging in practices that are inconsistent with a free and fair internet.

SB 822 includes provisions that would grant basic protections associated with net neutrality. This includes a ban on ISPs speeding up, slowing down or blocking particular websites or applications. The proposed law would also ban ISPs from engaging in third-party paid prioritization and make it unlawful to engage in zero-rating internet content, applications, services, or devices in a category.


SB 460 would make it unlawful for an ISPs that provides broadband internet access service (BIAS) to advertise or sell BIAS service without prominently disclosing with specificity all aspects of the service advertised, offered for sale, or sold. SB 460 specifies that a violation shall be subject to the remedies and procedures established under the California Consumer Legal Remedies Act (CLRA). The CLRA protects consumers from false advertising and other unfair business practices allowing consumers to bring individual or California class action lawsuits to recover damages and stop the prohibited practices. Furthermore, SB 460 would prohibit state agencies from contracting with an ISP unless the ISP certifies under penalty of perjury that they are abiding to net neutrality rules.

#### BILL STATUS – SB 460

02/16/17	Introduced.
03/02/17	Referred to the Committee on Energy, Utilities and Communications
01/11/18	Passed and re-referred to Committee on Appropriations (Ayes 7. Noes 0.)
01/12/18	Amended and re-referred to Committee on Appropriations
01/22/18	Re-Referred to Committee on Judiciary
01/29/18	Passed in Senate. Ordered to Assembly (Ayes 21. Noes 12.)
05/31/18	Referred to Committee on Communications and Conveyance and Committee on Privacy and Consumer Protection

BILL STATUS – SB 822

01/03/18 Introduced.  
01/16/18 Referred to Committee on Rules  
03/21/18 Re-referred to Committee on Energy, Utilities and Communications and  
Committee on Judiciary.  
04/18/18 Amended and re-referred to Committee on Judiciary (Ayes 8. Noes 3)  
04/30/18 Amended and re-referred to Committee on Appropriations (Ayes 5. Noes 2.)  
05/30/18 Passed in Senate. Ordered to Assembly (Ayes 23. Noes 12.)  
06/07/18 Referred to Committee on Communications and Conveyance and Committee on  
Privacy and Consumer Protection  
06/27/18 Passes and re-referred to Committee on Appropriation (Ayes 8. Noes 2.)

  
Xochitl Ramirez  
Analyst

SMT:xr

Attachment: Resolution (Huizar – Rodriguez)