

## Press Release

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### **35 LEADING SCHOLARS TO FEDERAL TRADE COMMISSION: ONLY THE FEDERAL COMMUNICATIONS COMMISSION CAN PROTECT THE OPEN INTERNET**

**Thursday, January 29, 2015** – Today, 35 leading scholars published a letter stating that the only way to protect network neutrality is for the Federal Communications Commission (FCC) to adopt Open Internet rules under Title II of the Communications Act. The letter represents an unprecedented display of support for a bright-line ban on fees for any kind of preferential treatment (“paid prioritization”) by the nation's leading academics. It explains why a ban on all forms of paid prioritization (including zero-rating) is necessary to protect competition, innovation and free speech online and why antitrust enforcement alone cannot successfully address the problem. The letter also supports repealing the provision in the FTC Act that exempts Internet service providers from FTC oversight but explains that any efforts to do so should not hold up the adoption of open Internet rules next month. The letter is addressed to the Federal Trade Commission and filed concurrently with the FCC a week before FCC Chairman Wheeler is expected to share a draft of his network neutrality order with the other four FCC commissioners.

“Some argue that antitrust law already protects the open Internet,” said Barbara van Schewick, Stanford Law professor and director of the Stanford Center for Internet and Society. “But antitrust enforcement is not enough. Antitrust law protects only against certain harms to competition. The FCC’s authority is a lot broader. Only the FCC can fully protect competition, innovation, and free speech online.”

The letter’s signatories include leading network neutrality experts Lawrence Lessig (Harvard), Barbara van Schewick (Stanford), and Tim Wu (Columbia), former FCC Chief Economist and former Director of the Bureau of Economics at the FTC Jonathan Baker (American University Washington College of Law), leading first amendment experts and cyberlaw scholars Jack Balkin (Yale), Yochai Benkler (Harvard) and Pam Samuelson (UC Berkeley), leading scholars of entrepreneurship and innovation Carliss Baldwin (Harvard) and Eric von Hippel (MIT), and leading scholars of journalism, media and technology Ted Glasser (Stanford) and Fred Turner (Stanford).

Key take-aways include:

- This is the first letter by leading scholars that unequivocally supports a bright-line ban on all forms of paid prioritization (including zero-rating). The letter comes on the heels of

the [recent GOP bill that uses a much narrower definition of paid prioritization](#), banning only fees for prioritization, not for any other kind of preferential treatment.

- The letter explains why the FCC is the right agency to adopt network neutrality rules that fully protect competition, innovation, and free speech online. In order to do so, the FCC must reclassify Internet access as a common carrier service under Title II of the Communications Act and forbear from unnecessary regulation under that statute.
- Some (including Republican FTC Commissioners Maureen Ohlhausen and Joshua Wright) argue that there is no need for network neutrality rules, because antitrust law addresses the problem of paid prioritization. The letter shows why antitrust enforcement alone is not enough.
- The letter supports the complementary roles of the FCC and the FTC in protecting competition, promoting innovation, and safeguarding consumer interests online. Reclassifying broadband Internet access under Title II of the Communications Act could remove Internet service providers from FTC oversight. The letter supports repeal of the provision that exempts common carriers from FTC jurisdiction, so that the FTC can continue to protect Internet service providers' consumers against unfair and deceptive practices and enforce the antitrust laws. However, given that the FCC will be able to effectively protect consumers under Title II even in the absence of FTC jurisdiction, efforts to repeal the common carrier exemption should not hold up the adoption of Open Internet rules under Title II next month.

The full text of the letter is available from the Stanford Center for Internet and Society [here](#) and the Internet Governance Project of the Program on Information Justice and Intellectual Property, American University Washington College of Law [here](#).

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