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Department of Administration  
Division of Legal Services  
One Capitol Hill, 4th Fl.  
Providence, RI 02908

ATTN: Daniel W. Majcher  
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Dear Mr. Majcher:

We are writing today to express our concerns with the proposed amendments to the procurement regulations in response to Executive Order 18-02.

Earlier this year, we explained in testimony to the Rhode Island House and Senate that efforts to override the current federal open internet framework will only serve to harm consumers, businesses and U.S. competitiveness by reducing investment and innovation in providing the modern broadband networks that we need. Necessary investment in the new fiber optics and internet enabled equipment needed to upgrade broadband connectivity declined under the 2015 FCC approach and has only recently started increasing [again](#) – yet Rhode Island Executive Order 18-02 appears to attempt to resurrect those now-rejected 2015 requirements.

In addition to being unwise, state efforts to regulate the internet that are inconsistent with federal policies will also be preempted by federal law. The FCC has put into place a carefully calibrated framework to both protect consumers and competition on the internet and to encourage the investment and innovation we need to broaden the reach of our networks and increase their capacity. This federal policy cannot be overridden by state laws or regulations, whether directly or indirectly, for example, through restrictions on state purchasing.

The Department's proposed regulations are of particular concern, because a number of them appear to go beyond the scope of Executive Order 18-02. In these areas, the proposed regulations should be modified to match the language of the Executive Order. The following four areas are of the greatest concern:

1. Paragraph 2(c) of the Executive Order says that adherence to net neutrality principles means a provider shall not "Engage in paid prioritization unless the State waives the ban ...." Proposed section 1.9(B)(3) of the regulations appears to go further by adding the language in bold: "Engage in paid prioritization **or require that end users pay different or higher rates to access specific types of content or applications** unless the State ...." That language does not appear in the definition of paid prioritization contained in paragraph 5 of the Executive Order; it is vague, potentially anti-consumer and should be stricken.

2. The proposed regulations would add a level of bureaucracy to the waiver process. The Executive Order says that the Director can grant a waiver “only upon receipt of a written justification from a State Agency ...” However, proposed Section 1.9(G)(1) of the regulations would also require that the PUC, the Emergency Management Agency and the Division of Information Technology evaluate all waiver requests and make recommendations to the Director. To the extent the waiver process is workable, the additional layers of review and delay do not match to the speed and nature of developments in the internet and may render the waiver process a dead letter.
3. The proposed regulations would apply a different substantive standard to a waiver request. The Executive Order at paragraph 9 says a waiver may be granted if the Director finds that it “would serve a legitimate and significant interest of the State.” In contrast, proposed Section 1.9(G)(2) adds the following language in bold that proposes that the Director shall determine if the waiver “is in the State’s best interest **and serves a legitimate and significant public interest,**” thereby imposing two different standards that presumably must be met. This additional language should be stricken.
4. The proposed definition of broadband internet access service (BIAS) in section 1.9(D) of the rule also varies from the language in the Executive Order and is arguably broader than the definition in the Executive Order. Paragraph 3 of the Executive Order provides that BIAS “also encompasses” any service that the FCC finds is functionally equivalent to the defined service. The proposed regulation provides that BIAS “includes, but is not limited to” such equivalent services, leaving open the possibility that the Department or others may sweep additional internet or data services into the definition of BIAS, improperly broadening the scope of the Executive Order. The definition of BIAS in the regulations should be conformed to that in the Executive Order.

USTelecom is an association of broadband providers that are investing billions of dollars a year to deliver broadband service to connect businesses and consumers to the internet. Our members range from very large providers to small rural companies and co-operatives serving more remote areas. We appreciate the opportunity to share our concerns and are happy to answer any questions you might have.

Sincerely,



Jonathan Banks  
Senior Vice President  
Law & Policy