



June 25, 2019

The Honorable Ben Hueso
Chair
Senate Standing Committee on Energy,
Utilities and Communications
State Capitol, Room 4035
Sacramento, CA 95814

The Honorable John Moorlach
Vice Chair
Senate Standing Committee on Energy,
Utilities and Communications
State Capitol, Room 4035
Sacramento, CA 95814

Re: AB 1699 - Support

Dear Chair Hueso and Vice Chair Moorlach:

The Electronic Frontier Foundation (EFF) is the leading nonprofit organization defending civil liberties in the digital world. Founded in 1990, EFF champions user privacy, free expression, and innovation through impact litigation, policy analysis, grassroots activism, and technology development. With over 31,000 dues-paying members and well over 1 million followers on social networks, we focus on promoting policies that benefit both creators and users of technology.

EFF had the opportunity to testify to the Santa Clara County Board during their investigation into the events that took place. In essence, Verizon's throttling of public safety had nothing to do with engineering or any justification that would come close to resembling reasonable network management. Rather, what befell public safety entities was a business practice of arbitrarily establishing a data cap that renders a service useless after a certain amount of usage in order to incentivize a paying customer to purchase a more expensive plan. However, Santa Clara stated to the D.C. Circuit in its affidavit that it was represented to them that Verizon was selling them a fully unlimited plan without restraints. In the aftermath, Verizon has issued an apology and admitted fully to the error but has suffered no penalty now they are federally deregulated.

The events of Santa Clara where fire fighters had their wireless data plans throttled to essentially being unusable in the middle of a state emergency should never be repeated. The conduct of Verizon, were the 2015 Open Internet Order still in effect, likely violated the federal ban on unjust and unreasonable conduct, and in the absence AB 1699, no laws in effect squarely address the situation. While the passage of SB 822 gave the Attorney General some related authorities to investigate, AB 1699 would directly resolve the problem by prohibiting the throttling of data plans during an emergency. Indeed, the FCC's 2015 Open Internet Order contained the express provisions that promoted the *prioritization* of public safety entities during emergencies.

Sincerely,

Ernesto Falcon
Legislative Counsel