



United States Senate
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545 WCB
Innovation
Open Internet

May 20, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

Thank you for including a provision in the recently approved *Open Internet* (net neutrality) order that states that net neutrality does not protect unlawful content – such as content that infringes copyright or is child pornography – or material that endangers public safety or threatens national security.

Unfortunately, it has recently come to my attention that some broadband providers are suggesting, including through discussions with my staff on the Senate Select Committee on Intelligence, that the FCC order may prevent them from blocking the posting of information that inspires and aids terrorist activity such as *Inspire* magazine, an online publication produced by al-Qa'ida in the Arabian Peninsula (AQAP).

I write today to urge the Commission to clarify that the *Open Internet* order does not protect content like *Inspire* magazine, which seeks to encourage and assist individuals in carrying out acts of terrorism.

Inspire was initially developed by AQAP members Anwar al-Aulaqi and Samir Khan to communicate a violent, Islamist message to Western audiences. It has been of great concern to the U.S. Intelligence Community and law enforcement agencies for many years and is only getting more harmful. For example, the Winter 2014 issue of *Inspire* includes an extensive section on a non-metallic “Hidden Bomb” that provides information on:

- how to make a non-metallic bomb from “kitchen” items, with step-by-step photographs (pages 68-99);

- how to breach airport security barriers by “using non-metallic materials in designing the bomb.” (page 70).
- how to securely store bomb making ingredients (page 105);
- where a terrorist should sit on an airplane for a concealed bomb to have the greatest destructive effect (page 109); and
- how to seal the explosive so a bomb-sniffing dog can’t detect it (pages 70 and 95-97).

The Winter 2014 issue also mentions specific airlines to target, including American, French, and British companies (pages 108-109).

There is no reason to publish this information for reasons other than to assist readers in carrying out terrorist attacks.

These threats are not hypothetical. AQAP has already made four attempts to get a non-metallic bomb onto an airplane heading into the United States. The group is widely known to have bomb-making expertise and a broad following among potential recruits and lone wolves in the United States and elsewhere.

In addition, according to the recent trial testimony of an FBI agent, one of the Boston Marathon bombers, Dzhokhar Tsarnaev, had the first issue of *Inspire* on his computer. That issue had an article entitled, “Make a Bomb in the Kitchen of your Mom,” and a later version of the magazine said a pressure cooker “should be placed in crowded areas and left to blow up.” The magazine also advised, “More than one of these could be planted to explode at the same time,” just as was done near the finish line of the Boston Marathon.

Furthermore, two women arrested in New York last week planned to use improvised explosive devices on behalf of ISIL described their repeated references to online bomb-making guides like the Anarchist Cookbook and *Inspire* magazine. According to court documents, one was “obsessed with pressure cookers since the Boston Marathon attacks” and together they “studied the instructions for building a car bomb contained in *Inspire* magazine.” The Justice Department stated that they “possessed propane gas tanks together with instructions from an online jihadist publication [*Inspire* magazine] for transforming propane tanks into explosive devices.”

The FCC’s *Open Internet* order does not appear to prevent a broadband provider or other type of company from taking reasonable steps to block such

material for at least two reasons. First, in many cases, distribution of *Inspire* would violate federal criminal laws, such as Section 842(p) of Title 18 of the United States Code, or laws criminalizing material support to terrorists or terrorist organizations. Thus, companies can take reasonable steps to combat the distribution of such content.

Moreover, the *Open Internet* order clearly states that it does not alter a provider's rights or obligations with respect to "safety and security considerations" or the needs of public safety and national security authorities. Therefore, a broadband provider clearly is permitted to take public safety or national security into account by taking action against such content.

Nonetheless, there is apparently confusion among at least some broadband providers on whether they may take such actions in order to promote national security and law enforcement purposes. I therefore ask that you promptly confirm that they may do so, consistent with your *Open Internet* order and any other applicable FCC order. I look forward to your response and appreciate very much your attention to this important issue.

Sincerely,



Dianne Feinstein
United States Senator