PROTECTING THE INTERNET AND CONSUMERS THROUGH CONGRESSIONAL ACTION

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

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[1] The attachments to Ms. Turner-Lee's testimony are available at *http://docs.house.gov/meetings/if/if16/20150121/102832/hhrg-114-if16-wstate-turner-leen-20150121-u2.pdf*.

[2] The attachments to Ms. Baker's testimony are available at *http://docs.house.gov/meetings/if/if16/20150121/102832/hhrg-114-if16-wstate-bakerm-20150121-u1.pdf*.

[3] The information is available at *http://docs.house.gov/meetings/if/if16/20150121/102832/hhrg-114-if16-20150121-sd009.pdf*.

PROTECTING THE INTERNET AND CONSUMERS THROUGH CONGRESSIONAL ACTION

WEDNESDAY, JANUARY 21, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2123, Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Present: Representatives Walden, Latta, Barton, Shimkus, Blackburn, Lance, Guthrie, Olson, Pompeo, Kinszinger, Bilirakis, Johnson, Long, Ellmers, Collins, Cramer, Upton (ex oficio), Eshoo, Doyle, Welch, Yarmuth, Clarke, Loebsack, Rush, DeGette, Butterfield, Matsui, McNerney, Lujan, and Pallone (ex officio).

Staff Present: Gary Andres, Staff Director; Ray Baum, Senior Policy Advisor/Director of Coalitions; Sean Bonyun, Communications Director; Leighton Brown, Press Assistant; Rebecca Card, Staff Assistant; Karen Christian, General Counsel; Andy Duberstein, Deputy Press Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselmann, Counsel, Telecom; Grace Koh, Counsel, Telecom; Tim Pataki, Professional Staff Member; David Redl, Counsel, Telecom; Charlotte Savercool, Legislative Clerk; Macey Sevcik, Press Assistant; David Goldman, Minority Chief Counsel for Communications and Technology Subcommittee; Margaret McCarthy, Minority Professional Staff Member; and Ryan Skukowski, Minority Legislative Assistant.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. I will call to order the subcommittee on Communications and Technology.

Good morning and welcome to our subcommittee's first hearing for the 114th Congress. I can think of no issue within our jurisdiction that is more important to consider at this time than the future of the Internet and our responsibility as legislators to set Internet policy for the country. That is why we put forward draft legislation to provide consumers the protections they deserve while not choking off investment and innovation.

We have shared this draft with my colleagues on both sides of the aisle. We have made it available publicly and we have invited

our witnesses today to give us their views on this draft proposal, and I thank all of our witnesses for their participation.

We have a very important choice to make between letting three very smart and capable, but unelected people at the FCC, a majority of the commission, use a statute written for another era to cobble together a regulatory scheme and undoubtedly will end up in court for years in litigation, providing no protections but much uncertainty. Or, we can do our job and craft a new law for this century through the open and transparent legislative process that we are beginning today.

We have come together before in this subcommittee and full committee to craft communications legislation that, frankly, is now pretty good law, and we must do it again. It is the only way to bring clarity and certainty to Internet governance.

Now, a little less than 4 years ago the FCC was in court defending its first attempt to regulate the network management practices of an ISP. Since then, the commissionhas gone to court twice in defense of net neutrality and twice the courts have rejected the FCC's rules. While the court seems to have given FCC lawyers a third time is the charm roadmap for how to craft rules under the current act, the commission is preparing to invoke net neutrality's nuclear option: Reclassification under the set of aging and inept rules developed for 19th century railroads and then adapted for the age of the monopoly, telephone.

We don't have to settle for that. We have a duty to those who use the Internet, those who manage the Internet, and those who build the Internet to provide legal certainty, consumer protection, and clarity for investment. What we are offering today is a solution that will bring to an end the loop of litigation and legal gymnastics that has flowed from FCC attempts to shoehorn the policy it wants to fit the authority that it has.

Our discussion draft is largely based on the 2010 Open Internet Order, adopted by former FCC chairman Julius Genachowski, and it draws from the legislative proposal put forward by former Energy and Commerce Committee Chairman Henry Waxman.

Now, some pundits have raised concerns that the draft bill curtails the newfound authority that the courts have read into Section 706 of the Telecommunications Act. 706 was added in 1996, and it instructs the FCC to promote the deployment of broadband networks. Until recently, it was understood that Section 706 meant that the FCC should use its existing authority to promote broadband deployment, and it worked.

However, last year the courts for the first time interpreted Section 706 to permit the FCC to take nearly any, and I underscore any, action to promote broadband so long as it is not inconsistent with the rest of the act. Did you catch that? It gives them nearly any authority at the FCC. This is a broad expansion of what was intended under 706.

Now, while some take comfort that it is a limited majority at the FCC will do what they want, I just pose the question: What happens when an FCC not to their liking grabs the regulatory throttle?

Let me put a finer point on this. That means that Amazon, Etsy, and every other Internet-based company should be prepared to meet its new regulator. If you would like an idea of what you are

in for, just look no further than your fellow witnesses, Mr. Powell and Ms. Baker, former regulators who currently represent the regulated. It is time to update this law. It is time for a fresh approach from we who are elected to write the law and to set the Nation's communications policy.

My priority is to protect consumers and the Internet we all rely upon. My priority is to encourage its expansion to the hills and valleys of our vast Nation that lack connectivity and to various segments of our population that are underserved and are too often ignored. Together we have taken on complicated communications challenges and produced good legislative solutions. We have stood up to powerful special interests and stood with the American people, and we must do so again.

The draft legislative proposal represents our good-faith effort to end the net neutrality debate before it goes to court again. Our committee will not ignore our responsibility. As some of my colleagues know, we have been working on the principles and draft legislation literally for months. We have listened to supporters, opponents, and neutral parties too. We will take the advice and counsel from our witnesses today into full consideration, and then we won't let the old Washington gridlock stand in the way of us doing our job, for the voters demand it and they deserve it.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

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We have a very important choice to make between letting three very smart and capable, but unelected people at the FCC use a statute written for another era to cobble together a regulatory scheme that undoubtedly will end up in years of costly litigation, providing no protections but much uncertainty, or we can do our job and craft a new law for this century through the open and transparent legislative process that we are beginning today.

We have come together before in this committee to craft communications legislation that is now good law, and we must do so again. It is the only way to bring clarity and certainty to Internet governance.

A little less than four years ago, the FCC was in court defending its first attempt to regulate the network management practices of an ISP. Since then, the commission has gone to court twice in defense of net neutrality. And twice, the courts have rejected the FCC's rules. While the court seems to have given FCC lawyers a "third time's the charm" roadmap for how to craft rules under the current act, the commission is preparing to invoke net neutrality's "nuclear option"—reclassification under the set of aging and inapt rules developed for 19th century railroads and adapted for the age of the monopoly telephone. We don't have to settle for that.

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It's time to update this law. It's time for a fresh approach from we who are elected to write the law and set the nation's policy. My priority is to protect consumers and the Internet we all rely on. My priority is to encourage its expansion to the hills and valleys of our vast nation that lack connectivity, and to various segments of our population that are underserved and too often ignored.

Together, we have taken on complicated communications challenges and produced good legislative solutions. We've stood up to powerful special interests and stood with the American people. We must do so again.

This draft legislative proposal represents our good faith effort to end the net neutrality debate before it goes to court again. Our committee will not ignore our responsibility. As some of my colleagues know, we've been working on the principles and draft legislation for months. We have listened to supporters, opponents and neutral parties, too. We will take the advice and counsel of our witnesses today into full consideration. And then we won't let the old Washington gridlock stand in the way of us doing the job our voters demand and deserve.

Mr. WALDEN. And with that I recognize the gentlelady from California, the ranking member of the subcommittee, Ms. Eshoo, for her opening statement.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman.

Today's hearing renews a critical discussion in the new Congress about the Internet. Should it be truly open and equal? Should consumers, competition, and choice drive our deliberations? Should privacy and the disabled be protected? Should every region, city, town, and reservation, be they rural or urban, have equal access to broadband speeds capable of leveraging innovative online content and services?

I have reviewed the majority's proposal very carefully, and I commend you for finally acknowledging that we do in fact have problems with online blocking, throttling and paid prioritization. We agree that bright-line rules should apply to both fixed and mobile broadband services.

What is abundantly clear in the majority's proposal is to purposely tie the hands of the FCC by prohibiting them from reclassifying broadband under Title II. The proposal creates a huge loophole called specialized services. On the one hand, the proposal says it will prohibit fast lanes, but under specialized services, a loosely defined term, broadband providers can give themselves prioritized service and the FCC will have no power to define this.

If our goal is to have a system that guarantees equal access of an open Internet to everyone, and it should, who is going to carry out and oversee this?

This proposal carries an enormous bias against enforcement, which in turn doesn't give consumers a leg to stand on.

The proposal does harm to the efforts made to bring broadband to rural areas. It could unintentionally harm the 911 system, limit the FCC's authority to promote access by the disabled to communication services, and it could restrict access by competitors to utility poles.

The proposal also attempts to address specific forms of discrimination, but who today knows with any certainty what tomorrow's forms of discrimination will be. The proposal takes away the authority of the FCC to address them. I don't think your constituents or mine are clamoring for a bill of rights for various companies. They want the guarantee of an open accessible Internet. Four million people spoke out to the FCC, and I think our goal should match theirs. We should protect ordinary consumers, promote innovation, create real competition, and advance start-ups, and when we do, our constituents should be 100 percent confident that these things are going to be carried out, that there is going to be a cop on the beat.

An open Internet is not only critical to America's future, it is essential for every American to learn, to educate, to conduct commerce, to build businesses and create jobs, to innovate, to expand our economy, and to promote democracy. It will strengthen the middle class and it will bring more into it.

What paths we take will determine much of our future. In an attempt to eliminate bad practices, we should not be tempted to establish rules that will create new bad practices. I think that this would be a march to folly.

Mr. WALDEN. The gentlelady yield back the balance of her time?

Ms. ESHOO. The balance of my time I yield to Mr. Doyle. I am sorry.

Mr. WALDEN. Mr. Doyle is recognized.

Mr. DOYLE. Thank you, Mr. Chairman for holding this hearing.

This draft legislation represents a step forward by my colleagues. That being said, the bill still falls short. It permanently revokes and severely weakens the Commission's ability to address serious issues in promoting broadband competition, encouraging broadband deployment, and protecting consumers and their privacy.

Mr. Chairman, technology policy needs to be flexible, not proscriptive. It needs to be adaptive and able to change to meet our future needs.

The principles included in the draft bill are very similar to what the FCC proposed in its 2010 rules, but since then we have seen battles between Netflix and ISPs over interconnection, renewed efforts by cities to build out their own broadband infrastructure and create jobs, and a continuing need for strong consumer protection.

The last 5 years have been a lifetime in the technology world, and we need rules that can adapt to the pace of innovation and the new challenges that it brings.

I yield back.

Mr. WALDEN. Gentleman yields back the balance of the time.

And we will now go to the chairman of the full committee, the gentleman from Michigan, Mr. Upton.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman.

You know, this committee is known for working together to tackle the tough issues; a tradition of getting the job done where each side gives a little bit in order to make things better for the American public.

But one issue that has divided us for too long is how best to ensure an open Internet rooted in bedrock principles of freedom and access for consumers and innovators alike.

While I certainly believe that free markets address these issues, the FCC seems to believe regulatory action is necessary, and one of the only tools at its disposal is to apply rules from the Roosevelt era to shape the Internet of the 21st Century.

Given the choice between enacting prudent legislation or leaving the FCC to tackle this with tools unfit for the task, we choose to take action.

Last week Chairman Walden, Thune and I put forward draft legislation that would codify FCC's authority to enforce the bright-line rules of the Internet road. Legislation protects consumers and innovators, ensuring America remains the preeminent global leader of the Internet era. Our proposal prohibits Internet service providers from blocking content, selectively changing the quality of traffic based on where it came from or what it is or prioritizing certain traffic based on payment.

It requires providers to be open and transparent with consumers, allowing them to make the most informed choice about their service.

We have also included safeguards to close potential loopholes and prevent mischief. This should all sound very familiar to my Democratic colleagues because they are the rules many of you and the President have been calling for for some time.

The FCC has spent years trying to craft rules that achieve those same goals. In fact, much of this bill's language is taken from past FCC attempts, but limits on the commission's authority have resulted in years, many years, of litigation and certainly uncertainty.

Consumers and industry deserve better. Consumers deserve certainty to know that they are protected by clear rules. Providers need certainty so that they can move forward with their business models, because without that certainty, innovation and investment suffer and consumers lose.

Our thoughtful solution provides a path forward that doesn't involve the endless threat of litigation or the baggage of laws created for a monopoly era telephone service. Only Congress can give the commission the tools that it needs to protect consumers and innovation in the Internet era and beyond.

This draft legislation provides a sustainable, responsible path to appropriately and effectively address the concerns from the left and the right. It puts to bed one of the most contentious issues that we face and allows us to move forward in our goal of modernizing the Nation's communication laws.

Our Comm Act update process can bring bipartisan change, direct communication laws, but we first have to come together and resolve this near-decade-long debate over the future of the Internet.

Yield the balance of my time to Mr. Barton.
[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

This committee is known for working together to tackle the tough issues. A tradition of getting the job done, where each side gives a little in order to make things better for the American public. But one issue that has divided us for too long is how best to ensure an open Internet rooted in bedrock principles of freedom and access for consumers and innovators alike.

While I believe free markets address these issues, the FCC seems to believe regulatory action is necessary, and one of the only tools at its disposal is to apply rules from the Roosevelt era to shape the Internet of the 21st century. Given the choice between enacting prudent legislation or leaving the FCC to tackle this with tools unfit for the task, we choose to take action.

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Our thoughtful solution provides a path forward that doesn't involve the endless threat of litigation or the baggage of laws created for monopoly-era telephone service. Only Congress can give the commission the tools it needs to protect consumers and innovation in the Internet era and beyond.

The draft legislation provides a sustainable, responsible path to appropriately and effectively address the concerns from left and right. It puts to bed one of the more contentious issues we face and allows us to move forward in our goal of modernizing the nation's communications laws. Our CommActUpdate process can bring about bipartisan change to our communications laws, but we must first come together and resolve this near decade-long debate over the future of the Internet.

I thank our witnesses for their testimony today and look forward to advancing this legislation.

Mr. UPTON. Yield the balance of my time to Mr. Barton.

Mr. BARTON. Thank you. I thank the chairman.

I was heartened by some of the comments that Mr. Doyle made in his remarks.

Last night after the President's State of the Union, I came back to my office and did a little video that we put on my FaceBook page, we put on YouTube. I believe we put it on Twitter. I have a 9-year-old son that has an iPad, an iPod, an Xbox, a PlayStation 4, his own cell phone, knows how to use the Internet better than I do. He is spoiled. Well, that is his mother. That is his mother. She has bought him all these things, actually.

No. That is not true, but, anyway, my point is, to paraphrase President Reagan, in his first campaign in 1980, he asked the American people: Are you better off today than you were 4 years ago? When you look at the Internet, I think you could ask the consumers: Are you better off today than you were 4 years ago? And the answer would be: Yes. They are. I see advertisements every

day. There is one playing down in Texas right now. Give me your bill, we will cut it in half. You know? I am not going to name who is offering that, but you all would know it if I said it.

The Internet is not a monopoly like the telephone companies were or the utilities were in the 1930s. It is one of the most vibrant markets in the world. The chairman's draft is an attempt to keep it that vibrant marketplace. Some of the people that are at this table helped develop the policies that make that possible. We should support the chairman, work with the minority and try to come up with a bill that keeps it a vibrant market.

And I don't have any time, but I am supposed to yield to Mr. Latta. So if the chairman would give him at least a minute, I would ask unanimous consent that Mr. Latta has a minute.

Mr. WALDEN. Is there any objection? If not, we will recognize Mr. Latta for a minute out of courtesy.

Mr. LATTA. Well, thank you, very much.

And thank you, Mr. Barton, and thank you, Mr. Chairman. I appreciate that, and thanks to our witnesses for being here today.

The FCC has indicated it intends to soon move forward with an order to reclassify broadband Internet services under Title II of the Communications Act. I firmly believe that this course of action will bring legal uncertainty, slow innovation and investment, and ultimately negatively affect the American consumers.

Even those who support reclassification recognize these challenges, but would attempt to circumvent these limits by forbearing sections of the law, a plan that would only seem to magnify legal uncertainty and further postpone innovation.

It is evident that upending the longstanding precedent of a light-touch regulatory framework that governs the Internet would add unnecessary regulation on broadband providers and would restrict their ability to continue investing in faster networks that consumers demand. That is why I support the discussion draft put forward by the chairman and Chairman Thune in the Senate.

And with that, Mr. Chairman, I appreciate the unanimous consent.

Mr. WALDEN. And the gentleman returns the balance of his time.

Before I proceed to Mr. Pallone, who I believe this is your first hearing in Energy and Commerce as the ranking member of the full committee. So we welcome you for that.

We will add, with unanimous consent, an extra minute to your side of the aisle, and I have been told too that apparently during the open statements the mics literally on this side were—they could hear it streaming on the Internet. Apparently not on your side. So I think we have got that corrected now. It was an attempt to throttle Mr. Doyle. It was not supposed to catch Anna along the way, but, anyway, I think we are operating on that.

Mr. DOYLE. I think this has something to do with the deflated footballs, Mr. Chairman.

Mr. WALDEN. That Ohio State—no. I am not going there. It has been painful enough. I appreciate the green room.

All right. With that, we will get serious again, and I recognize the gentleman from New Jersey for 6 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman.

Let me start by stressing the importance of network neutrality. It is the surprisingly simple concept that consumers, not big corporate interests, should control what they access when they go online, and it represents the idea that small businesses should be able to compete on a level playing field.

Internet access has become a critical part of all of our lives. It is how we apply for a job. It is how we help our kids with our homework. It is how we grow our businesses. And that is why 4 million Americans reached out to the FCC demanding strong net neutrality protections, and those 4 million people expect that we here in Washington will pay attention.

So I am heartened that my Republican colleagues now agree that we all benefit from clear rules of the road enforced by the FCC, and I welcome their interest in bipartisan legislation so long as it is truly bipartisan from the start.

Mr. Chairman, I don't want to undermine the FCC's authority, as I think you suggested, and I certainly don't think that that will serve to protect consumers. The FCC must continue to serve an important role in the broadband age. It must remain the vigilant cop on the beat standing ready to act, whether it is to protect consumer privacy, to encourage accessibility for American's with disabilities, or to promote broadband deployment to rural areas. And just as important, it must maintain the flexibility to keep up with new technology.

So while we in Congress continue our work, I do expect the FCC to continue its work. These are complicated issues with complex answers. It has taken the FCC nearly 13 months to craft new rules that respond to the needs of the American public, and Congress cannot be expected to work it all out in 13 days.

So I urge the FCC to continue to move forward as we begin this legislative effort. It has been over a year since the court wiped out the core net neutrality rules. So it has been over a year since consumers and innovators last had strong network neutrality protections, and that is simply too long. The time for the FCC to act is certainly now.

I look forward to working with my colleagues and with the commission to ensure that the Internet remains an open platform for commerce, innovation, and self-expression for generations to come.

Now I would like to yield—I know I got an extra minute—so I would like to yield 2 minutes to Ms. Matsui, and then the rest of the time, which is almost 2 minutes, to Mr. Rush.

Ms. MATSUI. Thank you.

I thank the ranking member for yielding me time, the chair for holding this hearing, and the witnesses for being here today.

The American people have spoken clearly on how important the Internet is to daily lives and our economy, and I have personally heard from hundreds of my constituents who write, call, or come up to me to share their thoughts, and I heard the message loud and clear when I hosted a field hearing in Sacramento last September on net neutrality.

I must say, it is remarkable how the debate has shifted on net neutrality. I am really glad that my Republican colleagues now agree that there are real threats to Internet openness, but I am concerned about the unintended consequences of the current draft bill. In particular, it could undermine the FCC's efforts to transition USF to broadband, putting at risk broadband deployment and adoption advances in urban and rural areas.

That said, I do believe that there is a role for Congress, and that is why I introduced a bill with Senator Leahy to instruct the FCC to write rules that ban pay prioritization or so-called Internet fast lanes. The bill has two components. It bans paid prioritization agreements, and it does not take away from the commission's authority.

By contrast, the Republican bill attempts to ban paid prioritization agreements. I am very concerned that the overly broad definition of specialized services in the bill could serve as a loophole for paid prioritization schemes and create a two-tiered Internet system.

The Internet is dynamic. We don't know what tomorrow will bring us. The FCC needs flexibility to tailor rules to adapt to changes in the marketplace.

As Congress considers legislation, it is important that the FCC does not slow down or delay its vote.

I look forward to continuing to work with my colleagues in a truly bipartisan fashion to reinstate strong net neutrality rules.

And I yield to Congressman Rush.

Mr. RUSH. I want to thank the gentlelady for yielding.

I want to thank the ranking member for yielding also.

For two decades now, the beltway battle over how to best ensure a free and open Internet has been fought and persisted without a clear victor or a clear verdict. All of this uncertainty harms America's broadband consumers, chronically and disproportionately disconnected segments of our society and our local and State and Federal Governments, and even our Nation's economy. Certainly it also affects broadband network and edge providers as well, but make no mistake about it. It is the consumers who stand to be the biggest losers of all.

Many consumers weighed in with Congress for the strongest pro-consumer rules possible. These broadband consumers and users have said that they love and depend greatly on their broadband services, and that they want for their services to be provided on a competitive level, competitive rates, and competitive terms. But they also said to Washington, to us here in Washington, with passion and with fervor that they do not trust that their broadband providers will honor those terms due to selfish and anti-competitive motives.

This, Mr. Chairman, should serve as a powerful reminder to us that the issues arising out of this controversy are propelled by bipartisan concerns and are amenable to bipartisan resolution and compromise. These issues greatly concern all broadband consumers and citizens in our society regardless of political affiliation or leaning.

We have all seen and heard, however, that this matter is too important for this committee and for Congress to stand by or for it

to consider and mark up only a majority Republican draft. Accordingly, Mr. Chairman, it is my intention to introduce open Internet legislation in the not-too-distant future.

I would hope to work with my colleagues on both sides of the aisle with aspiration that whatever legislation is hammered out, that it will be clearly surely nothing but bipartisan.

Mr. Chairman and Ranking Member Pallone, I yield back.

Mr. WALDEN. Gentleman yields backs the balance of the time, and that takes care of our colleagues for opening statements.

We now go to our distinguished panel of witnesses.

And we are going to start out with Michael Powell, president and CEO, National Cable & Telecommunications Association and former chairman of the Federal Communications Commission, and, Mr. Powell, we are delighted to have you back before our subcommittee, and we look forward to your testimony.

Please go ahead.

STATEMENTS OF MICHAEL POWELL, PRESIDENT AND CEO, NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION; CHAD DICKERSON, CEO, ETSY; PAUL MISENER, VICE PRESIDENT OF GLOBAL PUBLIC POLICY, AMAZON.COM; JESSICA GONZALEZ, EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL, NATIONAL HISPANIC MEDIA COALITION; NICOL TURNER-LEE, VICE PRESIDENT AND CHIEF RESEARCH AND POLICY OFFICER, MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL; AND MEREDITH ATTWELL BAKER, PRESIDENT AND CEO, CTIA—THE WIRELESS ASSOCIATION

STATEMENT OF MICHAEL POWELL

Mr. POWELL. Particular welcome to the new members of the committee. Nothing like starting with something easy.

It is a fundamental constitutional principle that Congress establishes the law and federal agencies implement it. The net neutrality debate raises critical institutional policy and practical problems that only Congress can fully address.

The open Internet struggle has been long and tortuous precisely because Congress has not established a clear foundation for the FCC to act. The commission has turned itself in knots for over 10 years trying to adopt a simple set of Internet regulations. Twice, the courts have rebuked the commission for exceeding its Congressional tether, even where it found merit in the rules themselves.

If Congressional authority is the problem, then surely Congressional action is the solution. In the absence of such action, the commission is poised to earnestly try again with another approach, prompting a third round of litigation with an uncertain outcome.

Congress has the power and the responsibility to end this roller coaster, which is damaging to everyone other than lawyers and advocates.

It should further concern this institution that the Title II approach being pursued is establishing an FCC role and regulatory framework over the Internet that Congress has yet to fully consider and consciously adopt itself.

Congress adopted Title II 80 years ago to address the parameters of telephone regulation. The technologies were radically different.

The prevailing philosophy favored monopoly rather than competition. Consumers were passive recipients of service rather than active publishers and creators. The telephone era did not have giant Internet companies using and influencing services and network demand and consumer applications. Networks were specialized for a single purpose, unlike the convergence of today.

Has Congress, or, for that matter, anyone, fully thought through whether this antiquated analog framework should govern our digital future? We have no doubt that Congress soon will seek to advance legislation to rewrite our telecom laws, but we stand now at the precipice of having that decision made for Congress rather than by Congress in the name of net neutrality, with potentially far-reaching unintended consequences. Five unelected regulators should not have the final word on these serious questions. The institution that represents 320 million Americans should decide them.

By changing the status quo and invoking Title II to govern Internet affairs, the commission would affect a major and dramatic shift in national broadband policy, with sweeping domestic and international consequences. Countries like Russia, China, and Iran have consistently sought to subject Internet access to telephone regulation and give the state greater authority over infrastructure. They will cheer the news the U.S. abandoned its leadership and moral authority as a bulwark against government-controlled over the Internet.

The bevy of legal and practical problems with Title II counsel for Congressional intervention. For one, the strong desire to ban prioritization is precarious under Title II, which bans unjust and unreasonable practices. Under decades of Title II precedent, carriers have been able to charge for providing service without violating this requirement, and while the FCC surely will attempt to declare all priority charges unreasonable, it will face serious headwinds from well-established precedent. Only statutorily banned prioritization rules will avoid this risk.

Other unintended problems are also sure to follow. One agency's actions will narrow the jurisdiction of another. For example, if the FCC declares broadband is telecom service, the Federal Trade Commission's authority over such actions will be diminished.

Another unintended problem is the reclassification can result in new fees on Internet service, raising broadband bills for consumers and hurting our national efforts at adoption.

America has an ambitious national broadband goal. There is a strong national desire to reach more Americans in more places. It will take nearly $350 billion by the FCC's own estimate to reach all of Americans with 100 megabits per second, and now we dream of gigabit speeds. No one can consciously claim that Title II will advance the flow of private capital necessary to meet these ambitions.

For some, Title II's sharp edges can be smoothed by forbearance, cutting away the dated and choking weeds of onerous regulation and leaving the fruit needed to protect consumers, but one person's weeds are another person's fruit, and the continuous and vigorous battle over this, should it be included—and excluded, is itself a massive regulatory undertaking fraught with uncertainty and litigation risk.

Uniquely, Congress has the power to eliminate all of this legal uncertainty, and working together in good faith and consensus, we believe a cooperative effort will yield positive results. We support legislation—we support bipartisan legislation and are open to working with all members of the committee to reach a satisfactory resolution.

Thank you, Mr. Chairman.

Mr. WALDEN. Thank the gentleman for his testimony.

[The prepared statement of Mr. Powell follows:]

TESTIMONY OF MICHAEL K. POWELL

PRESIDENT AND CEO

NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

On

PROTECTING THE INTERNET AND CONSUMERS THROUGH CONGRESSIONAL ACTION

before the

Committee on Energy & Commerce

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

January 21, 2015

Good afternoon, Mr. Chairman and Members of the Committee. My name is Michael Powell and I am the President and Chief Executive Officer of the National Cable & Telecommunications Association. NCTA is the principal trade association for the U.S. cable industry. Our members include the nation's largest broadband providers of high-speed Internet access, as well as cable program networks, who provide high quality broadband content. Thank you for inviting me today to offer our thoughts on "Protecting the Internet and Consumers Through Congressional Action" and the proposed draft legislation.

It Is Time To End The Debate Over The FCC's Ability To Regulate The Internet

I am pleased to be here today to discuss a legislative solution that can finally put an end to the controversy over the FCC's attempts to establish a regulatory framework that protects and preserves an open Internet. Whether or not Section 706 can serve as a source of FCC authority for sufficiently effective Internet regulation (and we believe it can), and whether or not the FCC can reclassify broadband as a Title II service (and we believe it cannot), it has become increasingly clear that regardless of which conclusion the FCC reaches, *any* FCC decision will result in this issue being brought back to court for the third time. And while the legal challenge proceeds, the broadband industry will be left with years more of regulatory uncertainty, with their most highly advanced service potentially subject to decades-old laws designed for monopoly telephone companies in the meantime. And no one can fairly predict what will be the outcome of the litigation.

The Committee's proposal to enact bipartisan legislation is a much-needed alternative to this harsh result. Instead of leaving the FCC to find statutory authority in existing provisions of law, we must work together to craft new legislation that establishes unambiguous rules of the

road for ISPs while also clearly defining the parameters of the FCC's authority. The legislative proposal under consideration today represents a new path forward that meets these policy goals.

NCTA Supports The Draft Legislation

I firmly believe that the proposed legislation under review today achieves the aims of every stakeholder in the Internet ecosystem. First, the proposal clearly identifies the foundational principles of the open Internet: no blocking, no throttling, no paid prioritization, and transparency. The cable industry has always supported these basic principles – from the Four Freedoms first annunciated in 2005 to the Open Internet Order that was approved in 2010. Cable companies did not appeal the 2010 order and still voluntarily abide by the rules it imposed.

Second, the proposal makes appropriate narrow exceptions to these requirements for specialized services, reasonable network management needs, and actions taken to implement customer choices. These exemptions are essential provisions that allow ISPs to innovate and experiment with alternative service offerings and uses for their broadband networks, as well as ensure that their customers are receiving maximum value from their broadband Internet connections.

Third, the proposal eliminates the threat of prolonged uncertainty over what rules govern the provision of broadband service by unambiguously establishing the FCC's authority to enforce the core open Internet principles, while simultaneously limiting the FCC's authority to regulate the Internet beyond this fundamental purpose.

In the absence of a clear Congressional directive, the FCC will continue its attempts to force the round peg of open Internet policy into the square hole of existing statutory frameworks. We have already wasted years on protracted court battles, repeatedly failing to come up with a sound legal foundation to support the FCC's authority to adopt open Internet regulations. And if,

as it increasingly appears will be the case, the FCC attempts to impose the outdated and heavy-handed common carrier obligations of Title II on broadband Internet access services, it is guaranteed that we will waste several more years. There is nothing to be gained by prolonged uncertainty, especially when a simpler solution is before us. Even FCC Chairman Wheeler has suggested that if Congress were to intervene legislatively, it would "make the whole lawsuit question moot."

Congressional Action Is Needed To Prevent The Harm To Broadband Service That Would Follow Title II Reclassification

While the cable industry remains fully committed to giving Americans the open Internet experience they expect and deserve, we will continue to reiterate our unwavering opposition to any proposal that attempts to reclassify broadband services under the heavy-handed regulatory yoke of Title II. Our opposition to Title II does not stem from some nefarious desire to exercise control over consumers' Internet habits, but rather is spurred by our knowledge of the very real harms that will follow if broadband services are subject to Title II's outdated regulations.

Even if the Commission forbears from the majority of Title II's provisions, Title II could lead to any number of sweeping and intrusive regulatory burdens. FCC Chairman Wheeler has made clear that, whatever other forbearance decisions the FCC makes, broadband ISPs will be subject to Sections 201 and 202. These two provisions alone have given rise to many of the most invasive regulations ever imposed by the FCC, including detailed pricing mandates, forced unbundling and structural separation, resale obligations, and collocation requirements. Subjecting broadband providers to the risk of such a regulatory overhang would constitute a grave threat to their ability and incentive to make the enormous investments necessary to achieve the Commission's broadband performance and adoption objectives.

If the FCC opts not to forbear from other egregiously burdensome common carrier provisions, things could be even worse. Under Title II's Section 214, ISPs would have to get FCC permission every time they want to create a new service offering. Just imagine the profound impact that this process would have on a dynamic industry that has been characterized by fast-paced innovation and technological development. Rather than testing and rolling out new services on a regular basis, companies would be forced to play the guessing game of whether their latest idea will meet with regulatory approval. This would place the government – and not consumers – in the position of picking marketplace winners and losers.

On a more fundamental level, classifying broadband as a Title II service would inevitably lead to a constant battle over the appropriate extent of regulatory oversight over ISPs' business practices. It would involve costly regulatory proceedings and complaints over every disagreement in policy. The FCC would feel empowered to second-guess even the simplest business decisions that ISPs make every day, increasing transaction costs and decreasing incentives to respond to competition by offering innovative new services. The end result would be less risk taking and innovation, slower technological evolution, and depressed investment.

Moreover, we could expect state regulators to follow suit and attempt to impose additional regulatory requirements on broadband providers, creating a patchwork of inconsistent regulation. The immediate, investment-chilling implications of this outcome would be fundamentally incompatible with the pro-investment, pro-innovation broadband policy goals the Commission has consistently championed on a bipartisan basis.

Title II proponents initially acknowledged that many Title II provisions may not be appropriate for broadband service, and argued that the FCC should not concern itself with this result because the Commission can make the bad parts disappear by simply waving a wand and

chanting the magic word – forbearance! But increasingly, as the FCC has indicated a greater inclination to reclassify broadband as a Title II service, those same proponents have begun advancing arguments that the FCC should have further new power to regulate broadband, including over universal service, privacy, and private backbone contracts. It is clear now that many advocates of regulation are pushing the FCC not to forbear from a myriad of other Title II provisions, and arguing that the FCC cannot forbear from applying any Title II provision to broadband service unless it conducts an exhaustive analysis on a provision-by-provision basis – and they are clearly prepared to fight any FCC attempt to free broadband from the minutia of common carrier law.

Light Touch Regulation Spurs Innovation and Investment

As an alternative to Title II, the proposed legislation provides exactly the kind of "light-touch" regulatory model that has yielded overwhelming benefits for American consumers. With competition and deregulation as the touchstones of our national broadband policy, the American broadband ecosystem has evolved rapidly, fueled primarily by private sector investment and innovation, with limited government oversight.

The light-touch regulatory approach has spurred unprecedented levels of investment in our nation's broadband infrastructure. Broadband providers have invested $1.3 trillion in private capital since 1996 – an average of $70 billion a year – to develop and deploy advanced broadband networks. And this investment is only accelerating. Since 2012, U.S. broadband providers have laid more high-speed fiber cables than in any similar period since 2000, which has led to an astounding leap forward in broadband speeds. Broadband providers around the country, including Cox, Bright House, Suddenlink, Midcontinent, Comcast, General Communication Inc. (GCI), AT&T, and Google Fiber, have either begun to offer or have

announced plans to offer speeds of up to 1 gigabit per second. Such capabilities, once unthinkable in the era of 14.4 or 28.8 kbps modems, are now or will soon be a reality in many parts of the country.

Thanks to increased investment, higher speeds are becoming available to an ever-growing number of Americans. Today, 99 percent of Americans have access to wired or wireless broadband networks, including some of the most advanced networks in the world. In fact, 85 percent of homes in the U.S. can now access networks with connections capable of 100 Mbps or more.

The Internet is a feat of human ingenuity that has thrived in an environment of light-touch regulation, fueling America's economic growth, facilitating civic participation, and enabling a dizzying array of communications, entertainment, and educational options. America is home to the world's top web companies, and exciting startups are born every day. In short, broadband providers' massive investment of private risk capital has spurred the development of an Internet ecosystem that now occupies a central place in our lives.

As we have repeatedly and consistently said, cable broadband providers are unequivocally committed to building and maintaining an open Internet experience. Maintaining an open Internet is not only the right thing to do, it is vital to our ability to attract and retain customers. But keeping America's broadband momentum moving forward requires a continued light regulatory touch, and preserving and protecting the open Internet need not and should not come at the expense of future investment and innovation. The goal of everyone sitting in this room today is the same – to develop a sound public policy that preserves and facilitates the "virtuous circle" of innovation, demand for Internet services, and deployment of broadband

infrastructure. The right path forward is one that will continue to fuel private network investment that is essential to the continued growth and health of the Internet.

NCTA wholeheartedly supports the legislative proposal before us today, which is well tailored to meet the policy goals articulated by the FCC and this Committee. Additionally, we are entirely open to changes that would bring the two sides fully together. We deeply appreciate your continued efforts to support a vibrant and innovative Internet ecosystem. We look forward to working further with all members of the Committee on this important issue.

Thank you again for the opportunity to appear today.

Mr. WALDEN. We are now going to go to Mr. Chad Dickerson, the CEO of Etsy.

Mr. Dickerson, we are delighted to have you before the committee. Please make sure your microphoneis on, and we look forward to your testimony, sir.

STATEMENT OF CHAD DICKERSON

Mr. DICKERSON. Great. Thank you.

Thank you, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee for the opportunity to testify on this important issue.

As the CEO of a rapidly growing Internet company—technology company, I am here today because the Internet, along with the millions of businesses who depend on it, is under threat.

Etsy is an online marketplace where you can buy handmade and vintage goods from artists, designers, and collectors around the world. We have democratized access to entrepreneurship for over 1.2 million sellers, 88 percent of whom are women who collectively sold $1.35 billion worth of goods in 2013. Most are sole proprietors who work from home, they live in all 50 states, and they depend on Etsy income to pay their bills and support their families. Eighteen percent of those sellers support themselves full time on Etsy.

To build and run the global platform that supports these Internet micro businesses, Etsy has raised more than $91 million in capital, and we employ over 600 people worldwide. Without the incredible power of the free and open Internet, we would not be where we are today.

Like many start-ups, we had humble beginnings. We started out of a Brooklyn apartment; went from idea to launching in just a few months. No one had to ask permission to launch Etsy or pay for the privilege of reaching consumers through Etsy at the same speeds as other companies. We proved ourselves on the open market, and this is the entrepreneurial environment that we hope to preserve, like you.

Without clear bright-line rules that preserve a level playing field online, millions of start-ups will suffer. Etsy is a low-margin business. We charge just 20 cents to list an item, and take only 3 ½ percent of every transaction. We couldn't afford to pay for priority access to consumers, yet we know that delays of even milliseconds have a direct and long-term impact on revenue. So this isn't just about high bandwidth services like video, it is about every company that depends on the Internet to reach consumers.

Without strong rules to prevent discrimination online, we would be either forced to raise our fees to have the same quality of services our competitors or accept the revenue loss that comes with delayed load times. This would hurt the micro businesses who depend on our platform the most.

Etsy's users understand what is at stake. That is why 30,000 of them join millions of Internet users to urge Congress and the FCC to protect the open Internet.

In her comments to the FCC, Tina, an Etsy seller from Spring Valley, Illinois, captured the sentiments of many micro businesses when she wrote, "We rely on all my sales to make ends meet. Any

change in those and it is the difference between balanced meals for my children and cereal for dinner."

We applaud Congress for recognizing that strong net neutrality rules are essential for innovation online. The discussion draft for legislation addresses many of our concerns, and we are encouraged to see bipartisan agreement on many points. In particular, we support the outright ban on paid prioritization, blocking, and throttling. We agree that transparency must underpin strong rules, and we are encouraged to see that the rules would apply to mobile. Given that the majority of Etsy's traffic now comes from mobile sources, it is essential that the same rules apply whether you use your phone or your laptop to access the Internet.

At the same time, we are concerned that the proposal does not ban all types of discrimination online, leaving loopholes that could be easily exploited. For example, under this bill, broadband companies could prioritize their own services over others. Even more concerning, the legislation would remove the FCC's authority to address new unanticipated types of discrimination. I have worked in this industry my whole adult life, and I know who quickly technologies change. So how can we be sure that this bill anticipates every possible form of discrimination?

We also have serious concerns that by revoking the FCC's authority under Section 706, the bill would undermine the agency's ability to promote rapid broadband deployment across the country, particularly in rural areas where the Internet allows entrepreneurs to reach a global marketplace. For example, Linda, an Etsy seller from Buchanan, Michigan, said, "A free Internet is so important to me because as someone who moved to a rural area from an urban center, I rely on fair and open access to the Internet to grow my small Web-based business."

Finally, while we understand that this legislation is narrowly focused on the last mile connection, the door to that last mile is just as important. This bill doesn't prevent broadband companies from creating choke points at the entrance to the last mile, nor does it grant the FCC the authority to regulate this issue, often referred to as interconnection, leaving a loophole that would allow broadband companies to circumvent this legislation, despite its good intentions.

Our position today is the same as it has been all along. We encourage the government to establish clear bright-line rules that ban paid prioritization, application-specific discrimination, access fees, and blocking online, and to apply those rules equally to fixed and mobile broadband, and at the point of interconnection with last-mile providers.

We believe the FCC has all the authority it needs to implement such rules, and that Congress has an important role to play as well, particularly in helping to address the litigation risks that will inevitably follow FCC action.

We welcome the opportunity to work with you to protect the open Internet once and for all.

Thank you.

Mr. WALDEN. Mr. Dickerson, thank you very much for your testimony.

[The prepared statement of Mr. Dickerson follows:]

Etsy

TESTIMONY OF CHAD DICKERSON
CEO, ETSY, INC.

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
HEARING ON "PROTECTING THE INTERNET AND CONSUMERS THROUGH CONGRESSIONAL ACTION"

JANUARY 21, 2015

Thank you, Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee for the opportunity to testify on this important issue. As the CEO of a rapidly growing technology company, I'm here today because the Internet, along with the millions of businesses who depend on it, is under threat.

Etsy is an online marketplace where you can buy handmade and vintage goods from artists, designers, and collectors around the world. We were founded in 2005, and now host over one million sellers, who collectively sold $1.35 billion worth of goods in 2013. Fully 88% are women. Most are sole proprietors who work from home, and they depend on Etsy income to pay their bills and support their families.[1]

Etsy has raised more than $91 million in capital, and we employ over 600 people worldwide. Last year, we were listed as number three on CNBC's Disruptor 50 list. While I'm proud of our success, I can't take all the credit. Without the incredible power of the free and open Internet, we would not be where we are today.

We, like many startups, had humble beginnings. Our founder, Rob Kalin, was a furniture maker. Frustrated by the lack of opportunities to sell his goods online, he built the first version of Etsy out of his Brooklyn apartment in just a few months. Rob didn't have to ask for permission to launch Etsy, or pay for the privilege of reaching consumers at the same speeds as bigger companies. Instead, he demonstrated the value of the product on the open market, and used

[1] www.etsy.me/economicimpact

that success to attract investment and grow the company. This is the entrepreneurial environment that we, like you, hope to preserve.

Without clear, bright line rules that preserve a level playing field online, millions of startups will suffer. Etsy is a low margin business. We charge just twenty cents to list an item, and take just 3.5% of every transaction. We could not afford to pay for priority access to consumers, yet we know that speed matters. Research from Google and others demonstrates that delays of milliseconds have a direct and long-term impact on revenue.[2] This is not just about high-bandwidth services like video. This is about every company that depends on the Internet to reach consumers.

Without strong rules to prevent discrimination online, we would be forced to either raise our fees to have the same quality of service as our competitors, or accept the revenue loss that comes with delayed load times. And though this would hurt our company, it would hurt the micro-businesses who depend on our platform even more. Etsy has democratized access to entrepreneurship for over one million women who sell goods through our platform. 18% of our sellers support themselves full-time on Etsy, and they live in all 50 states.

Our members understand what's at stake. That's why 30,000 of them, along with fellow members of the Internet Freedom Business Alliance and millions of Internet users, contacted Congress and the FCC on a single day, urging them to protect the open Internet. Some of our sellers even made crafted comments to the FCC, embroidering pillows and engraving spoons that called for real net neutrality. In her comments to the FCC, Tina, an Etsy seller from Spring Valley, Illinois, captured the sentiments of many micro-businesses when she wrote, "We rely on all my sales to make ends meet. Any change in those and it's the difference between balanced meals for my children and cereal for dinner."[3]

We applaud Congress for recognizing that strong net neutrality rules are essential for innovation online. The discussion draft for legislation addresses many of our concerns, and we are encouraged to see bipartisan agreement on many points. In particular, we support the outright ban on paid prioritization, blocking and throttling. We agree that transparency must underpin strong rules, and were encouraged to see that the rules would apply to mobile. Given that the majority of Etsy's traffic now comes from mobile sources, it is essential that the same rules apply, whether you use your phone or your laptop to access the Internet.

At the same time, we are concerned that the proposal does not ban all types of discrimination online, leaving loopholes that could easily be exploited. For

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[2] http://radar.oreilly.com/2009/07/velocity-making-your-site-fast.html

[3] http://apps.fcc.gov/ecfs/comment/view?id=6017996360

example, under this bill, Internet companies could prioritize their own or affiliated content and services over others. Even more concerning, the legislation would remove the FCC's authority to address new, as-of-yet-unanticipated types of discrimination. Having worked in this industry for most of my adult life, I know how quickly technologies change. How can we be sure we've anticipated every possible type of discrimination today?

We also have serious concerns that by revoking the FCC's authority under Section 706, the bill would undermine the agency's ability to promote rapid broadband deployment across the country, particularly in rural areas, where the Internet allows entrepreneurs to reach a global marketplace. For example, Linda, an Etsy seller from Buchanan, Michigan, said, "A free internet is so important to me because, as someone who moved to a rural area from an urban center, I rely on fair and open access to the internet to grow my small web-based business. Living in economically depressed Michigan has limited my job opportunities."[4] Revoking the FCC's ability to promote broadband deployment would be harmful to the burgeoning innovation economy in rural areas.

Finally, while we understand that this legislation is narrowly focused on the last mile connection, the door to that last mile is just as important. This bill doesn't prevent broadband companies from creating choke points at the entrance to the last mile, nor does it grant the FCC the authority to regulate this issue, often referred to as interconnection, leaving a loophole that would allow broadband companies to circumvent this legislation, despite its good intentions.

Our position today is the same as it has been all along. We encourage the government to establish clear, bright line rules that ban paid prioritization, application-specific discrimination, access fees, and blocking online, and to apply those rules equally to fixed and mobile broadband, and at the point of interconnection with last mile providers.

We believe the FCC has all the authority it needs to implement such rules, and that Congress has an important role to play as well, particularly in helping to address the litigation risk that will inevitably follow FCC action. We welcome the opportunity to work with you to protect the open Internet once and for all.

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[4] http://apps.fcc.gov/ecfs/comment/view?id=6017997175

Mr. WALDEN. We will now go to Paul Misener, who is vice president of Global Public Policy for Amazon.com, a slightly larger platform for sales.

Mr. Misener, please go ahead.

It is good to have you back before the subcommittee.

STATEMENT OF PAUL MISENER

Mr. MISENER. Thank you very much, Mr. Chairman. It is good to be back.

Thank you, Ranking Member Eshoo, for your attention to this very important issue, for holding this hearing, and for inviting me back.

Amazon has long supported maintaining the fundamental openness of the Internet which has been so beneficial to consumers and for innovation. Now there is widespread acceptance of the need for government action to ensure that Internet openness. Now policymakers need only decide how to ensure that the Internet openness of net neutrality is maintained and effective.

At Amazon, our consistent business practice is to start with customers and work backwards. That is, we begin projects by determining what customers want and how we can innovate for them. Here, in the context of net neutrality public policy, we have done the same. We take our position from our customers', that is consumers', point of view. Consumers want to keep the fundamental openness of the Internet and the choice it provides. Consumers will recognize if their net neutrality is taken from them. If their net neutrality is taken, they won't care how or, for example, where in the network infrastructure it is taken.

We believe that the FCC has ample existing statutory authority to maintain net neutrality, but of course, obviously, Congress has the power to set new policies for net neutrality, either entirely through a new statute or through a mix of new and existing statutory authority.

Amazon remains very grateful for Congress' continuing attention to net neutrality. The topic certainly is worth your vigilant oversight, but thank you, Mr. Chairman, especially for creating and sharing your discussion draft bill, and for providing me the opportunity to begin discussing it today.

The principles of net neutrality contained in the discussion draft are excellent. For example, the draft clearly acknowledges that throttling and paid prioritization must be banned; that net neutrality protections must apply to wireless as well as to wire line; and that providers must disclose their practices.

Of course, for these excellent principles of Internet openness to be meaningful to consumers, they need to be effective. In at least three instances, however, the discussion draft could be interpreted to undermine that effectiveness. So the bill should be modified accordingly.

First, in subsection (d), while requiring consumer choice, the bill would explicitly exempt specialized services from that requirement. This could create a huge loophole if, for example, specialized services involved the prioritization of some content in services, just like the proscribed paid prioritization. Consumer choice is baked into the Internet. Nothing would protect consumer choice more than

protecting the open Internet from interference by broadband and Internet access service providers.

Second, in subsection (f), the discussion draft bill would permit broadband Internet access providers to engage in reasonable network management, but any claim of reasonable network management should be viewed suspiciously if in practice it undermines prohibitions of blocking, throttling, prioritization, et cetera.

Third, the discussion draft bill is unclear or silent on an important point of clarification: Which parts of the broadband Internet access service providers network are covered by the net neutrality protections.

As indicated earlier, a consumer will not care where in her service providers network any interference with net neutrality occurs, only whether it occurs.

In sum, these three areas of the discussion draft bill should be modified in order to ensure that the Internet openness of net neutrality is maintained and effective.

In addition, the discussion draft should be modified to provide adequate legal detail and certainty to consumers and businesses in the Internet ecosystem. Like all businesses, Internet companies need confidence in the state of law and regulation in order to innovate and invest in products and services on behalf of their customers. Details, including the factors that would be considered during formal complaint procedures are essential for businesses and consumers to have the confidence to make informed choices about investments and purchases.

We believe that the FCC should be empowered to create adequate legal certainty and detail through effective enforcement tools and notice in comment rule making, but the discussion draft bill in subsection (b) says the FCC may not expand Internet openness obligations beyond the obligations established in the bill. If the intention here is to establish a ceiling for these obligations, that certainly is Congress' prerogative and a reasonable expectation which we would support a provision like this if the bill only went so far.

However, with such a ceiling in place, it is not necessary to rescind the FCC's authority under Title II of the Communications Act, which, as in subsection (e), which could leave the agency helpless to address improper behavior as well within its authority under the ceiling and would leave consumers and businesses in the Internet ecosystem without adequate certainty about the FCC's enforcement powers.

Also in part, because subsection (b) could be directing the FCC to establish formal complaint procedures, this provision could be interpreted to bar the commission from notice and comment rulemaking in this area, and if that is the intent, we oppose it. Directing the FCC not to expand statutorily established obligations is one thing, but we believe it would be a mistake to prohibit the commission from providing, through notice and comment rulemaking, adequate legal detail and certainty to customers, consumers, and businesses below that ceiling.

In conclusion, Mr. Chairman, I look forward to working with you and your committee and the FCC to ensure that the Internet openness of net neutrality is maintained and effective, and, of course, I welcome your questions.

Mr. WALDEN. Mr. Misener, thank you very much, and we look forward to working with you as well.

I think we have got ways to address a lot of what you pointed out and may actually already have, but we will look forward to working with you.

[The prepared statement of Mr. Misener follows:]

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Hearing on

Protecting the Internet and Consumers through Congressional Action

Before the

Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives

January 21, 2015

Testimony of

Paul Misener
Vice President for Global Public Policy
Amazon.com

Thank you, Chairman Walden and Ranking Member Eshoo. My name is Paul Misener, and I am Amazon's Vice President for Global Public Policy. Thank you for your attention to this important topic; for calling this hearing; and for inviting me to testify.

I. INTRODUCTION

Amazon has long supported maintaining the fundamental openness of the Internet, which has been so beneficial to consumers and innovation. We made our first FCC filing in support of the open Internet over twelve years ago, even before the term "net neutrality" was coined. Amazon also has long joined with other parties in support of net neutrality. A decade ago, we were a leading member of a coalition that included dozens of companies, as well as dozens of public interest groups from across the political spectrum. At the time, many policymakers questioned the benefits of Internet openness, and whether such benefits needed to be ensured by government. But now there is widespread acceptance of the need for government action to ensure Internet openness; now policymakers need only decide

how to ensure that the Internet openness of net neutrality is maintained and effective. Amazon currently supports net neutrality through the Internet Association, as well as directly and through other organizations.

At Amazon, our consistent business practice is to start with customers and work backwards. That is, we begin projects by determining what customers want and how we can innovate for them. Here, in the context of net neutrality public policy, we have done the same: we take our position from our customers' – consumers' – point of view.

Consumers want to keep the fundamental openness of the Internet and the choice it provides. After two decades of the World Wide Web, it's no longer a novelty: Consumers have come to expect and demand openness and choice on the Internet – to demand net neutrality. Consumers also have come to understand that bits are bits; that it shouldn't be any harder or more expensive for their broadband Internet access service provider to deliver one bit over another, and that there's no technical or other inherent reason to discriminate against one bit over another, or prioritize one bit over another.

Consumers will recognize if net neutrality is taken from them. And if their net neutrality is taken, they won't care how or, for example, *where* in the network infrastructure it is taken: If net neutrality is taken at one point in the network, rather than another, consumers won't care. They are results-oriented: At the end of public policy discussions and decisions, consumers ultimately will judge whether Internet openness was ensured – whether they got to keep net neutrality, or whether it was taken away from them.

II. LEGAL AUTHORITY

Consumers certainly will be results-oriented in their assessment of what particular legal authority the United States Government uses to ensure that net neutrality is maintained: The authority

will either work, or it won't. We believe that the FCC has ample existing statutory authority to maintain net neutrality, and we welcome Chairman Wheeler's attention to this issue and his efforts to use his statutorily-granted authority in a measured, focused way. We would not want discussions of new statutory authority to derail or delay Chairman Wheeler's work but, like he recently has said, we also would welcome additional statutory direction from Congress.

Some telecom lawyers believe the FCC cannot fully maintain historic net neutrality protections employing only the provisions of Section 706 of the Telecommunications Act. Recent litigation suggests they are right. Such lawyers also point out that the FCC could 'un-forebear' the entirety of Title II of the Communications Act for this purpose, and they are right. But some other telecom lawyers believe that if the FCC reinstated *all* of Title II, there would be myriad unintended consequences unrelated to net neutrality. They are probably right, too, and Amazon is focused on strong, enforceable net neutrality protections, so we don't support a complete return to Title II here. We have concluded that reinstating only a few provisions of Title II – particularly all or parts of Sections 201, 202, and 208 – plus relying on other existing statute, including Section 706, would be adequate to maintain net neutrality without creating unintended consequences.

But, of course, these approaches are within the confines of existing statutory authority. Obviously, Congress has the power to set new policies for net neutrality, either entirely through a new statute, or through a mix of new and existing statutory authority.

III. DISCUSSION DRAFT

Amazon remains very grateful for Congress's continuing attention to net neutrality. The topic certainly is worthy of your vigilant oversight. Thank you also, Mr. Chairman, for creating and sharing

your Discussion Draft bill, and for providing me the opportunity to begin discussing it today. I look forward to continuing conversations about net neutrality protections in the coming weeks and months.

The principles of net neutrality contained in the Discussion Draft are excellent: For example, the draft clearly acknowledges that throttling and paid prioritization must be banned; that net neutrality protections must apply to wireless, as well as wireline; and that providers must disclose their practices.

Of course, for these excellent principles of Internet openness to be meaningful to consumers, they need to be effective. In at least three instances, however, the Discussion Draft could be interpreted to undermine that effectiveness, so the bill should be modified accordingly to ensure that the Internet openness of net neutrality is maintained and effective.

First, in Subsection (d), while requiring "Consumer Choice," the bill would explicitly exempt "specialized services" from that requirement. This could create a huge loophole if, for example, specialized services involved the prioritization of some content and services, just like proscribed "paid prioritization," the only difference being that the content or service prioritized came from the broadband Internet access service provider itself, instead of a third party.

Subsection (d)(1) reads, "Nothing in this section shall be construed to limit consumer choice of service plans or consumers' control over their chosen broadband Internet access service...." Hopefully, no one wants to limit actual consumer choice. Indeed, consumer choice is exactly what advocates of net neutrality have been trying to preserve and protect for over a dozen years. But other than the "specialized services" that are explicitly exempted from the consumer choice requirement, it is not obvious what part of the bill might be construed as limiting consumer choice. Almost explicitly, therefore, the bill acknowledges that the provision of such specialized services would defeat consumer choice and the Internet openness of net neutrality, despite the limitations of Subsection (d)(2).

Consumer choice is baked into the Internet. Nothing would protect consumer choice more than protecting the open Internet from interference by broadband Internet access service providers. As I have described in previous testimony before Congress, the Internet is fundamentally different – both in technical design and practical operation – from other major media, including newspapers, radio broadcasting, satellite TV, and cable. In those media, content is "pushed" out to consumers – and thus fills up the papers, channel, or channels – in the hope that many consumers will want to read, hear, or watch the content. In contrast, Internet consumers "pull" to themselves the content of their choosing, so Internet content does not fill a broadband Internet access provider's network unless a consumer has pulled it through there. Again, the open Internet is all about consumer choice, so Subsection (d) is unnecessary if this bill otherwise would ensure the Internet openness of net neutrality.

If, contrary to these concerns, the purpose of Subsection (d) is to ensure that consumers are allowed to choose among various, non-discriminatory plans based on bit rates or monthly data volumes, then there are ways to say that more clearly: Something along the lines of, "Nothing in this section should be construed to limit the ability of consumers to choose to pay for higher or lower data rates or volumes of broadband Internet access service based on their individual needs." We agree that it makes no sense to require an infrequent email user to pay the same for Internet access as a 24/7 gamer and, if such a clarification is needed, we would support it. But the current language of Subsection (d) does not accomplish this goal and introduces the other noted problems.

Second, in Subsection (f), the Discussion Draft bill would permit broadband Internet access providers to engage in "reasonable network management." This is a standard caveat to net neutrality, and we support it, at least in theory. But particularly with the inclusion of wireless broadband in the ambit of net neutrality protections, any claim of reasonable network management should be viewed

very suspiciously if, in practice, it undermines prohibitions of blocking, throttling, paid prioritization, etc., or if it tends to favor content or services offered by the broadband provider itself.

Third, the Discussion Draft bill is unclear or silent on an important point of clarification: Which parts of a broadband Internet access service provider's network are covered by the net neutrality protections? As indicated earlier, a consumer will not care *where* in her service provider's network any interference with net neutrality occurs, only *whether* it occurs. Providers should not be allowed to accomplish blocking, throttling, paid prioritization, etc., further upstream in the network, just because the bill could be construed to address only the network facilities closer to consumers, such as the "last mile." If, by this possible omission and limitation of FCC powers, net neutrality were made ineffective by allowing the otherwise prohibited behaviors to occur further upstream, consumers would rightly judge their net neutrality to have been taken away.

In sum, these three areas of the Discussion Draft bill should be modified in order to ensure that the Internet openness of net neutrality is maintained and effective.

In addition, the Discussion Draft should be modified to provide adequate legal detail and certainty to consumers and businesses in the Internet ecosystem. Although the Discussion Draft's net neutrality principles are promising, they also are fairly general. And, although the Discussion Draft would require, in Subsection (a)(5), broadband Internet providers to disclose their practices, these disclosures would merely reflect what providers currently are doing, not what they would be legally permitted to do.

Like all businesses, Internet companies need confidence in the state of law and regulation in order to innovate and invest in products and services on behalf of their customers. They need to know, with a reasonable degree of certainty, whether a new product or service could be deployed without interference by broadband Internet access service providers. Certainty does not require legal certitude,

but it does require confidence-inspiring transparency, predictability, stability, and fairness. Yet statutes are necessarily less detailed than agency-written rules. And such details – including the factors that would be considered during formal complaint procedures – are essential for businesses and consumers to have the confidence to make informed choices about investments and purchases.

We believe that the FCC should be empowered to create adequate legal certainty and detail through effective enforcement tools and notice and comment rulemaking. But the Discussion Draft bill would limit the FCC in several ways. Subsection (b) says that the FCC "may not expand ... Internet openness obligations ... beyond the obligations established" in the bill "whether by rulemaking or otherwise." The word "expand" is vague, but if the intention here is to establish a ceiling for these obligations, *i.e.*, a cap on the FCC's authority respecting the substantive provisions of the bill, this is Congress's prerogative and reasonable expectation; we certainly don't support allowing an agency to act beyond its statutory authority, and would support a provision like this, if the bill went only so far.

However, with such a ceiling in place, it is not necessary to rescind the FCC's authority under Title II of the Communications Act, as in Subsection (e). Summarily blocking the FCC's use of existing statutory enforcement authority could leave the agency helpless to address improper behaviors well within its authority under the ceiling created in Subsection (b), and would leave consumers and businesses in the Internet ecosystem without adequate certainty about the FCC's enforcement powers. With so much at stake for consumers and businesses, this very real possibility should not be left to chance. We believe that the FCC's Title II authority should be maintained to ensure the effectiveness of Internet openness, subject to any reasonable substantive ceiling on Internet openness obligations.

Also, in part because Subsection (b) directs the FCC to establish "formal complaint procedures" and "enforce the obligations [of the bill] though adjudication of complaints," this provision could be interpreted to bar the FCC from notice and comment rulemaking in this area. If that is the intent, we

oppose it. Directing the FCC not to "expand" statutorily-established obligations is one thing, but we believe it would be a mistake to prohibit the Commission from providing, through notice and comment rulemaking, adequate legal detail and certainty to consumers and businesses. Outlining the parameters around permissible forms of "reasonable network management" is but one example of where the FCC could provide important detail to consumers and businesses through notice and comment rulemaking. Notice and comment rulemaking also would more readily expose any attempt by the FCC to "expand" the open Internet obligations of the bill, and thus would promote the core purpose of this subsection. And notice and comment rulemaking provides an important avenue for public participation in the work of government agencies; this avenue should not be blocked for net neutrality.

Thus, at a minimum, Subsection (e) should be amended to ensure that the FCC retains its Title II tools, subject to a substantive ceiling on Internet openness obligations, such as included in Subsection (b)(1), which itself should be clarified to allow the FCC to provide, through notice and comment rulemaking, adequate legal detail and certainty to consumers and businesses.

IV. CONCLUSION

In conclusion, Mr. Chairman, I look forward to working with you, your committee, and the FCC to ensure that the Internet openness of net neutrality is maintained and effective.

And I welcome your questions.

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Mr. WALDEN. Next we go to Jessica Gonzalez, Executive Vice President, General Counsel of the National Hispanic Media Coalition. Ms. Gonzalez, we are delighted to have you here at our subcommittee as well. We look forward to your testimony.

STATEMENT OF JESSICA GONZALEZ

Ms. GONZALEZ. Thank you, Mr. Chairman, for having me back, Ranking Member Eshoo, and all the members of the subcommittee.

The open Internet, as we have heard already today, is a crucial tool for all people to engage in our democracy, participate in our economy, become better educated, and share their stories. I am pleased that members on both sides of the aisle recognize the pervasive threat that blocking, throttling, and paid prioritization pose to the American people and our economy, because the open Internet truly is a bipartisan issue.

I am not on this panel to represent vast industries. I am here to speak for the millions of Americans who follow this issue with a level of awareness that is actually very uncommon for inside the beltway telecom policy.

Over the past year, I have been surprised to align on this issue with everyone from my conservative in-laws in the Deep South to my liberal friends on the West Coast, none of whom are particularly well-steeped in Federal policy, particularly not telecom policy, but they get this because it personally affects their lives.

And although NHMC supports congressional attention to this matter to best protect consumers, I respectfully urge Congress to allow the FCC to exercise its Title II authority, complete its rulemaking process, and enact light-touch open Internet rules.

This is the most certain path to ensure that individuals and businesses are protected without delay. It would allow the expert agency flexibility to respond to innovation and changes in the marketplace.

The FCC has wide support from nearly 7 million Americans that submitted comments or signed petitions, as well as hundreds of public interest, civil rights, and consumer advocacy organizations and leaders.

The discussion draft of legislative on the table today would represent a seismic policy shift with repercussions far beyond the open Internet debate. It has drawn robust criticism for four main reasons.

First, it would strip the country's expert communications agency of authority to protect consumers on the communications platform of the 21st Century, upending consumer protections that Americans have come to expect and this subcommittee has supported for decades; privacy, network reliability, access to 911 services, disability access, just to name a few. It effectively freezes the FCC in time, only allowing it to ever confront a handful of harmful practices that we have contemplated based on market conditions and technology that exists today.

Second, it would pour cement on FCC efforts to close the digital divide, such as rural broadband subsidies and modernization of lifeline which could bring greater broadband affordability to the working poor. Today nearly one in three American people still lack

home broadband access. The vast majority of these people are rural, poor, brown, black, or a combination thereof.

At the same time, standardized testing in American public schools is moving to digital formats. It is critically important that we do no harm with legislation that would undermine serious efforts to achieve the now indivisible goals of digital and educational equality.

Third, as compared to FCC rules crafted under Title II, it would offer consumers limited and inferior protections. The draft legislation does not ban unreasonable discrimination and creates an exception for specialized services that threatens to swallow the rules.

Fourth, it would create market uncertainty by relying on a flawed adjudication process. Consumers and aggrieved parties would have the burden to identify, report, and litigate violations, but most of us are likely to lack the technical expertise to identify the violations, the source, or have the legal expertise to pursue enforcement, or both.

Those who oppose reclassification point to four concerns. My written testimony goes into greater detail about those arguments, but let me summarize.

There is no evidence that Title II would harm investment or innovation, hamper broadband adoption, lead to higher taxes or fees or welcome protracted litigation. In fact, the hard evidence, including statements from the ISPs themselves, suggest just the opposite.

The open Internet has allowed Americans to engage in our democracy at a whole new level. Tea party activists, dreamers, organizers of Black Lives Matter are all excellent examples of regular people who have harnessed the power of the open Internet to disseminate their messages and engage in the political process. This is democracy and free speech at work, and it is a virtue deserving of the strongest protections.

Thank you very much for having me here today. I look forward to questions.

Mr. WALDEN. Delighted to have you back. Thanks for your comments on the legislation and the issue at hand.

[The prepared statement of Ms. Gonzalez follows:]

Testimony of
Jessica J. González
Executive Vice President & General Counsel
National Hispanic Media Coalition

Before the

United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications and Technology

Regarding

Protecting the Internet and Consumers Through Congressional Action
January 21, 2015

SUMMARY

Protecting the openness of the Internet and promoting broadband policies that protect consumers and drive our economy are issues of the utmost importance to our future prosperity as a country. Internet access has become a necessity – allowing all people to share their stories, engage in our democracy, participate in our economy, and become better-informed members of our society.

While the Federal Communications Commission (FCC) and Congress each have an important role to play in protecting consumers and the Internet, I humbly request that, in this instance, Congress allow the FCC to complete its rulemaking and retain the ability to exercise its ample existing authority over two-way communications platforms, such as broadband Internet access service, under Title II of the Communications Act. This is the surest and swiftest way to ensure that consumers and the Internet are protected.

Although Congress plays an important role in development and oversight of broadband policy, the discussion draft suffers from a number of fatal flaws that could permanently debilitate the FCC and lead to disastrous unintended consequences. Among the flaws, the discussion draft blesses some forms of discrimination and strips the FCC of authority that could be used to achieve shared policy goals, such as universal service, rural access, accessibility for persons with disabilities, public safety, consumer privacy, and others. Further, the discussion draft contemplates enforcement through a difficult process that disadvantages consumers and small businesses, and opens loopholes that threaten to swallow its rules.

Beyond that, concerns about Title II action that appear to influence this legislative effort are misplaced. Rules based on Title II authority, with appropriate forbearance, will not impede investment, create new taxes, slow broadband adoption, or create additional litigation risk.

INTRODUCTION

Chairman Walden, Ranking Member Eshoo, and esteemed members of the subcommittee, thank you for inviting me to testify this morning on how to best protect the Internet and consumers. My name is Jessica González, and I am the Executive Vice President & General Counsel of the National Hispanic Media Coalition (NHMC), a media advocacy and civil rights organization for the advancement of Latinos, working towards a media that is fair and inclusive of Latinos, and towards universal, affordable, and open access to communications. I am especially pleased to testify here today concerning the Open Internet, which is a crucial tool for all people to share their stories, engage in our democracy, participate in our economy, and become better-informed members of our society.[1]

I am so pleased that members on both sides of the aisle are recognizing the pervasive threat that practices such as blocking, throttling, and paid prioritization pose to the American people and our economy. The legislation under consideration today proposes that Internet Service Providers (ISPs) be held to *per se* common carrier obligations to mitigate this threat. The bipartisan identification of network neutrality violations as serious issues with serious implications is a tremendous step forward in this debate, and reflects the widespread concern echoed in all corners of the nation from people of all ages, colors and political affiliations.

However, respectfully, it is neither prudent nor necessary to pursue congressional action at this time at the expense of the Federal Communications Commission's (FCC) ongoing process. Therefore, I request that Congress allow the FCC to follow the path that it is reportedly on to exercise its existing Title II authority, complete its comprehensive rulemaking process, and impose bounded and light-touch Open Internet rules in the coming weeks. FCC action is the

[1] I would like to thank my colleagues, Michael Scurato and Elizabeth Ruiz, for assisting me with this testimony.

most direct, informed, and certain path to ensuring that individuals and businesses have their rights firmly protected online without additional and unnecessary delay or a prolonged political battle.

Should Congress elect to pursue legislation on this issue, I oppose much of the language in the discussion draft that was circulated last week. On one hand, the draft seeks to implement a number of *per se* common carrier requirements that are favored by the vast majority of millions of FCC commenters by prohibiting blocking of lawful content or devices as well as paid prioritization and throttling. However, due to the limited nature of prohibitions listed and effects of various other provisions, the draft as circulated would represent a seismic telecommunications policy shift with repercussions far beyond the Open Internet debate. It would strip our country's expert communications agency of authority to protect consumers on the communications platform of the 21st century and pour cement on the still vast digital divide. It would offer consumers limited and inferior protections to FCC rules crafted under Title II, needlessly jeopardize past and future policymaking designed to promote broadband access and adoption, disempower consumers and create uncertainty by relying on an onerous and time consuming adjudication process, and create dangerous loopholes that threaten to swallow the useful prohibitions that the draft contains.

I. Allowing The FCC To Complete Its Rulemaking Is The Swiftest And Surest Path To Protecting Consumers And The Internet.

The FCC appears willing and able to complete its Open Internet rulemaking in the coming weeks to implement new protections for consumers and the Internet based on the most extensive record collected in the history of the agency. Allowing the Commission to utilize its existing authority to complete its process is the best way to provide consumers and businesses with new, well-vetted protections while avoiding further delay.

A. The Commission Is Poised To Implement New Protections In The Coming Weeks After Compiling And Analyzing An Extensive Record.

When the FCC acts to implement Open Internet rules on February 26 of this year, 408 days will have passed since the D.C. Circuit Court of Appeals vacated key provisions of the FCC's previous Open Internet Order – provisions that prevented blocking and unreasonable discrimination online – which represent the core of what is required to preserve an Open Internet.[2] That is 408 days of consumers, businesses, and entrepreneurs cautiously utilizing the Internet without the protections that they require.

However, it also represents 408 days of intensive FCC commitment to analyze relevant judicial decisions, reflect on its statutory authority, explore workable proposals, develop a vast record by soliciting and reviewing input from millions of members of the public and hundreds of interested stakeholders and experts, perform its own research and analysis and, ultimately, draft and implement sound and enforceable rules. It represents thousands of hours of work for dozens of dedicated staff members – and likely much more if we consider the FCC's development of its Open Internet expertise over the better part of the past decade. Although it is unfortunate that 408 days will have passed without enforceable protections, this process is often the best and only way to deal with a complex collection of industries and evolving technology. This is democracy at work and it demonstrates the value of expert agencies.

B. The Commission Has Ample Existing Authority To Protect Consumers And The Internet, And Achieve Other Important Policy Goals, Under Title II.

Beyond the favorable timing of FCC action, the Commission has ample authority to adopt strong and enforceable Open Internet rules and does not require a more explicit grant of

[2] *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

authority from Congress to protect consumers. Decisions by the Supreme Court in *National Cable and Telecommunications Ass'n v. Brand X Internet Services* and *Fox Television Stations v. FCC* granted deference to the FCC to periodically revisit classification decisions and policies as needed.[3] As the Court held in *Brand X*, "[The Communications Act] leaves federal telecommunications policy in this technical and complex area to be set by the [FCC]."[4] As the expert agency on telecommunications issues, the FCC is even permitted to reverse its own policies: "For if the agency adequately explains the reasons for a reversal of policy, 'change is not invalidating, since the whole point...is to leave the discretion provided by the ambiguities of a statute with the implementing agency.'"[5] Further, in *Fox* the Court explained, "[The agency] need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better."[6] The FCC has the authority to reclassify broadband Internet access service (BIAS) and achieve the common carrier rules long thought to be necessary to protect consumers and clearly favored in the discussion draft.

Once the FCC applies the correct, "telecommunications service" classification to BIAS, it can take advantage of the authority contained in Title II to meet and often exceed the apparent objectives of the discussion draft. It can assert authority under Sections 201 and 202 of the Communications Act to ensure that "all charges, practices, classifications, and regulations ...

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[3] *National Cable and Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967 (2005); *Fox Television Stations v. FCC*, 556 U.S. 502 (2009).
[4] *Brand X Internet Services*, 545 U.S. at 992 (2005).
[5] *Id.* at 981.
[6] *Fox Television Stations v. FCC*, 556 U.S. 502, 503 (2009) (emphasis in original).

shall be just and reasonable" and prohibit "unjust and unreasonable discrimination."[7] It can utilize that authority to define certain practices, like paid prioritization and throttling as mentioned in the discussion draft, as *per se* unreasonable. It can implement the complaint process found in Section 208, which places on the burden on the defendant to "establish[] that the discrimination is justified and, therefore, not unreasonable" – not on the aggrieved consumer or business.[8] These provisions are absolutely necessary to adequately protect the Open Internet.

However, changing the classification of BIAS would allow the Commission to do more than just meet the protections for consumers and innovators that are contemplated by the discussion draft. It would allow the Commission to explore novel ways to promote a number of other important policy goals favored by members of this subcommittee, as well as NHMC and many of its allies. Section 254 could put the FCC on stronger footing as it strives for Universal Service by granting it the latitude to add new tools to its tool kit to address broadband access and adoption disparities in rural and low-income communities, including communities of color.[9] The application of Section 222 could be a win for consumer privacy and cybersecurity by requiring broadband providers to protect certain confidential information that they receive from consumers.[10] Section 255 could ensure better access to broadband for individuals with disabilities, helping to close yet another digital divide in this country.[11] Section 224 could be a boon to competition by permitting new entrants like Google Fiber to use important infrastructure

[7] 47 U.S.C. § 201(b) (2013); 47 U.S.C. § 202 (2013).
[8] *Beehive Telephone, Inc. v. Bell Operating Companies*, Memorandum Opinion and Order, 10 FCC Rcd. 10562, ¶ 27 (1995) (vacated and remanded on other grounds by *Beehive Telephone, Inc. v. FCC*, No. 95-1479 (1996)); *Ad Hoc Telecommunications Users Committee v. FCC*, 680 F.2d 790, 792 (D.C. Cir. 2013).
[9] 47 U.S.C. § 254.
[10] *Id.* at § 222.
[11] *Id.* at § 255.

to facilitate build out.[12] Many of these provisions would not apply automatically upon a change in classification. The Commission could and should choose to move ahead with implementing Open Internet protections and then consider further application of important Title II provisions.

In addition to considering which provisions of Title II to apply to BIAS, the Commission has the legal authority to refrain from applying certain provisions through forbearance. Section 10 of the Telecommunications Act enables the flexible application of FCC authority to evolving markets and technologies by allowing the Commission to "forbear from applying any regulation or any provision ... to a telecommunications carrier ... or service."[13] The Commission can forbear if it finds that enforcement of a provision is: (1) "not necessary to ensure that the charges, practices, classifications, or regulations ... are just and reasonable and are not unjustly or unreasonably discriminatory"; (2) "not necessary for the protection of consumers"; and (3) "forbearance from applying such a provision or regulation is consistent with the public interest."[14] Even the most strident Open Internet activists agree that there are a number of provisions of Title II that need not apply, such as onerous tariffing requirements.

II. The Substance Of The Discussion Draft Suffers From Fatal Flaws That Prevent Its Provisions From Adequately Protecting Consumers Or The Internet And Foreclose The FCC From Addressing Other Policy Goals.

The discussion draft considered at this hearing suffers from numerous flaws that, unfortunately, make it an inferior vehicle for protecting consumers and the Internet compared to FCC action under Title II.

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[12] *Id.* at § 224; Notice of *Ex Parte* filed by Google Inc., GN Docket No. 14-28 (Dec. 30, 2014), available at http://apps.fcc.gov/ecfs/document/view?id=60001011462.
[13] 47 U.S.C. § 160 (2013).
[14] *Id.*

A. The Discussion Draft Permits Unreasonable Discrimination And Strips The FCC Of Authority To Address Potentially Harmful Practices That Threaten The Open Internet.

The discussion draft, as circulated, prohibits BIAS providers from "block[ing] lawful content, applications, or services," "us[ing] non-harmful devices," or "throttl[ing] lawful traffic" all "subject to reasonable network management."[15] It also prohibits "paid prioritization."[16] NHMC opposes all of these practices and appreciates the discussion draft's recognition that these *per se* common carrier provisions are necessary to protect consumers and the Internet. However, this list does not represent the entirety of practices that could be deemed harmful to consumers and the Open Internet. By prohibiting only this finite list of practices – blocking, throttling, and paid prioritization – and failing to include a provision that parallels Section 202, allowing the FCC to confront unjust and unreasonable discrimination, the discussion draft effectively permits any current or future practices that can be considered unreasonably discriminatory so long as they do not fall under any of the proscribed categories. Although this outcome surely cannot be desired, the language of the discussion draft requires it.

The discussion draft further strips the FCC of any ability to "expand the Internet openness obligations" contained therein "whether by rulemaking or otherwise."[17] This provision prevents the FCC from addressing the shortcomings inherent in failing to account for other forms of unreasonable discrimination and, effectively, freezes the FCC in time, only allowing it to ever confront a small handful of harmful practices that we have contemplated based on market conditions and technologies that exist today. This would be a step in the wrong direction. Even a more comprehensive list of harmful practices that could include potential misuse of data caps or

[15] H.R. ___, 114th Cong. § 13(a)(1)-(3) (2015) *available at* http://docs.house.gov/meetings/IF/IF16/20150121/102832/BILLS-114pih-NetNeutrality.pdf.
[16] *Id.* at § 13(a)(1)(4).
[17] *Id.* at § 13(b)(1).

issues occurring at interconnection points, among others, would eventually become woefully outdated should the FCC be stripped of its ability to respond to current conditions and practices.

B. The Discussion Draft Prevents The FCC From Pursuing Important Policy Goals And Further Protecting Broadband Users By Permanently Classifying Broadband Internet Access Service As An Information Service And Stripping The FCC Of Its Section 706 Authority.

Far beyond simply tying the Commission's hands to confront present and future threats to Internet openness, the language in the discussion draft calls into question the role of the FCC in the future of broadband policy and consumer protection, with the exception of the narrow Open Internet protections contained therein. By making permanent the "information service" classification, the draft forecloses the FCC from exploring the use of Title II authority to address broadband universal service goals, privacy, accessibility for persons with disabilities, interconnection, network reliability, and a number of other important policy goals identified explicitly in the statute.

Further, foreclosing Title II in tandem with stripping Section 706 authority unravels a half-decade of work by the Commission to ensure that broadband is deployed to rural areas in a timely manner. Additionally, as Public Knowledge has explained:

> [This draft] would eliminate the FCC's authority to preempt limits on community broadband. It could have serious unintended impacts on voice-over-IP services, placing the stability of the 9-1-1 system at risk and interfering with the FCC's efforts to resolve rural call completion. Among other things, it could also limit the FCC's authority to promote access by the disabled to communications services, protect consumer privacy, promote broadband deployment by ensuring that new competitors have access to utility poles and rights of way.[18]

[18] Shiva Stella, "Public Knowledge Expresses Strong Concerns About Sen. Thune's Net Neutrality Discussion Draft," *Public Knowledge*, (Jan. 16, 2015), https://www.publicknowledge.org/press-release/public-knowledge-expresses-strong-concerns-about-sen.-thunes-net-neutrality-discussion-draft.

The extent that this draft proposes to eliminate the FCC's authority is so severe that it would all but ensure that the United States will have no expert agency implementing broadband policy for the foreseeable future. As our nationwide communications networks shift to broadband technology in the coming years, this abdication of power could have immense unintended consequences on innovation in this country and our economy as a whole.

At best, the provisions of the discussion draft would leave the FCC grasping for ancillary authority as it attempts to respond to an ever-changing marketplace – an exercise that, to this point, has been largely unsuccessful and fostered tremendous uncertainty.[19] The Commission's ancillary authority permits it to "perform any and all acts…not inconsistent with this chapter [of the Communications Act], as may be necessary in the execution of its functions."[20] During the past 45 years, however, courts have substantially limited the FCC's ability to act on its ancillary jurisdiction.[21] Significantly, in *Comcast v. FCC*, the FCC unsuccessfully argued it had ancillary authority to regulate ISPs' network management practices. The Court emphasized that the FCC's reliance on ancillary authority must be in furtherance of "statutorily mandated responsibilities."[22] Further, in *Echostar Satellite, LLC v. FCC,* the D.C. Circuit Court noted even under the agency-friendly *Chevron* standard of review, the FCC will not receive deference as to its own interpretation of the scope of its ancillary jurisdiction because "*Chevron* [deference] only applies in instances in which Congress has delegated an agency authority to regulate the area at issue."[23] By removing, rather than clarifying, potential sources of FCC authority to make any meaningful

[19] *Comcast Corp. v. FCC*, 600 F.3d 642, 651-58 (D.C. Cir. 2010).
[20] *Comcast Corp.*, 600 F.3d at 646 (*quoting* 47 U.S.C. § 154(i)).
[21] *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968); *United States v. Midwest Video Corp.*, 406 U.S. 649 (1972) (*Midwest Video I*); *FCC v. Midwest Video Corp.*, 440 U.S. 689 (1979) (*Midwest Video II*).
[22] *Comcast Corp.*, 600 F.3d at 644, 661.
[23] *Echostar Satellite, LLC v. FCC*, 704 F.3d 993, FN 3 (D.C. Cir. 2013).

broadband policy, it seems that this discussion draft leaves little to which the agency could claim ancillary authority. Therefore, the discussion draft leaves the FCC with uncertain authority, at best, and increases the litigation threat at its every attempt to protect consumers, encourage competition, or otherwise engage ISPs.

C. The Discussion Draft Disempowers Consumers By Relying On Case-By-Case Adjudication For Enforcement.

The discussion draft dictates that the Commission "enforce the obligations established ... through adjudication of complaints alleging violations."[24] This provision appears to put the burden on consumers and aggrieved parties to identify, report, and litigate violations of Internet openness. The draft also appears to foreclose the FCC from action upon its own motion to pursue violations. This regime will be ineffective as most likely victims of harmful practices – consumers, independent content producers, as well as startup web companies and small businesses – will largely lack either the technical expertise to identify violations and their source, the legal expertise to pursue successful enforcement, or both. Startup web companies, in particular, made this point clearly and consistently in the FCC's docket.[25] Even if an aggrieved

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[24] H.R. ___, 114th Cong. § 13(b)(1) (2015) *available at* http://docs.house.gov/meetings/IF/IF16/20150121/102832/BILLS-114pih-NetNeutrality.pdf.

[25] Notice of *Ex Parte* filed by Marvin Ammori, GN Docket No. 14-28, fn. 1 (Dec. 19, 2014) *available at* http://apps.fcc.gov/ecfs/document/view?id=60001010553, (*citing* Comments of Y Combinator, GN Docket No. 14-28, July 14, 2014, at 3, *available at* http://apps.fcc.gov/ecfs/document/view?id=7521383177 ("No startup has the funds and lawyers and economists to take on billion-dollar ISPs in an FCC action based on the vague legal standards in the proposal. Indeed, the startup ecosystem needs a bright line, per se rule against discrimination."); Comments of Tumblr, GN Docket No. 14-28, Sept. 9, 2014, at 10, *available at* http://apps.fcc.gov/ecfs/comment/view?id=6018347452; Comments of Reddit, GN Docket No. 14-28, July 15, 2014, at 8, *available at* http://apps.fcc.gov/ecfs/document/view?id=7521679127; Comments of Meetup, GN Docket No. 14-28, July 14, 2014, at 8, *available at* http://apps.fcc.gov/ecfs/document/view?id=7521382127; Notice of *Ex Parte* from Gigi Sohn, Special Counsel for External Affairs, Office of Chairman Tom Wheeler, GN Docket No. 14-28, July 16, 2014, *available at* http://apps.fcc.gov/ecfs/document/view?id=7521633973; Comments of Vimeo, GN Docket No. 14-28, July 15, 2014, at 14-15, *available at*

party is able to muster up enough expertise, time, and resources to initiate an enforcement action, it would then find itself contending with an ISP opponent likely to have substantial resources and an army of telecom attorneys at its disposal. This dynamic would make the successful prosecution of a complaint highly unlikely. For these reasons, the enforcement regime contemplated in this draft would leave the vast majority of consumers no better off than if they had no protections at all.

D. The Discussion Draft Opens Loopholes To Its Own Limited Provisions Rendering It Ineffective To Protect Consumers And The Internet.

The discussion draft contains significant loopholes that threaten to swallow its rules and could jeopardize the upkeep of the public Internet by providing ISPs greater leeway to explore "specialized services."

The discussion draft defines "specialized services" as "services other than broadband Internet access service that are offered over the same network as, and that may share network capacity with, broadband Internet access service."[26] The only restrictions placed on "specialized services" is that they "may not be offered or provided in ways that threaten the meaningful availability of broadband Internet access service or ... have been devised or promoted in a manner designed to evade the purposes" of the draft.[27] This definition goes beyond the limited use cases that are utilized today, such as ISP-provided IPTV or VOIP services. Further, it surpasses the finite examples provided by President Obama, who envisioned "dedicated" hospital

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http://apps.fcc.gov/ecfs/document/view?id=7521394546; and comments of dozens of other startups).

[26] H.R. ___, 114th Cong. § 13(g)(3) (2015) *available at* http://docs.house.gov/meetings/IF/IF16/20150121/102832/BILLS-114pih-NetNeutrality.pdf.

[27] *Id.* at § 13(d)(2).

networks,[28] and the FCC, which contemplated connectivity of certain devices such as "e-readers, heart monitors, or energy consumption sensors, to the extent the service relates to the functionality of the device."[29]

By allowing "specialized services" to share network capacity with BIAS and only limiting their use if they "threaten meaningful availability" of BIAS, the draft incentivizes ISPs to heavily invest in premium, proprietary services that could be sold over their networks for those who can afford them while maintaining only "meaningful availability" of BIAS for standard subscribers. In theory, this scenario could pose a larger threat to Internet openness than paid prioritization or throttling by allowing ISPs to diminish or freeze the amount of network capacity dedicated to BIAS while creating a new and, perhaps, unforeseen suite of high-bandwidth services for premium customers.

III. The Title II Concerns That Appear To Be Motivating Congressional Action Are Misplaced.

Numerous press reports and statements from members of this committee and subcommittee as well as the committee of jurisdiction in the Senate, indicate that concerns related to the prospect of the FCC concluding its ongoing rulemaking by exercising its Title II authority are motivating congressional action in this case.[30]

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[28] President Barack Obama, Statement by the President on Net Neutrality (Nov. 10, 2014) *available at* http://www.whitehouse.gov/the-press-office/2014/11/10/statement-president-net-neutrality.

[29] *In re Preserving the Open Internet*, 25 FCC Rcd. 17905, ¶¶ 47, 112-114 (2010) *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-10-201A1_Rcd.pdf.

[30] John Thune and Fred Upton, "Congressional proposal offers Internet rules of the road," *Reuters* (Jan. 14, 2015) *available at* http://blogs.reuters.com/great-debate/2015/01/14/congressional-proposal-offers-internet-rules-of-the-road/; Republican Press Office, "Congressional Leaders Unveil Draft Legislation Ensuring Consumer Protections and Innovative Internet: Legislation to be the Focus of House and Senate Hearings Next Week," U.S. Senate Committee on Commerce, Science, & Transportation (Jan. 16, 2015) *available at*

A. The Application Of Title II With Forbearance Will Not Impact ISPs' Investment Levels.

In a recent press release, congressional leaders described one of the purposes of congressional action as "ensuring that innovation and investment continue to fuel the robust future of the Internet" in part, as Chairman Upton explained, by leaving behind "twentieth century utility regulation" found in Title II.[31] However, the idea that the limited application of Title II that many Open Internet advocates favor would negatively impact investment by ISPs is unsupported by historical data and contradicted in statements that many ISPs have made to their investors and the Commission.[32]

Historically, the application of Title II has not hampered investment or build-out. As Free Press succinctly explained in a recent FCC filing:

> [It is a] historical fact that DSL availability went from zero to four out of every five U.S. homes while DSL was under Title II... [a] historical fact that [mobile] availability went from zero to 99.9 percent of the country while under Title II, with 93 percent of the U.S. covered by at least four Title II [mobile providers] ... [and a] historical fact that cable [companies] had their greatest period of network investment during the two years that followed the Ninth Circuit Court of Appeals' decision that classified cable modem as a Title II service.[33]

This historic perspective helps makes sense of a slew of recent public statements from broadband company executives, assuring investors that the increasing palatability of rules based

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http://www.commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=98278 3dd-612b-418a-a92e-ef8eded4592e.

[31] Republican Press Office, "Congressional Leaders Unveil Draft Legislation Ensuring Consumer Protections and Innovative Internet: Legislation to be the Focus of House and Senate Hearings Next Week (Jan. 16, 2015) *available at* http://www.commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=98278 3dd-612b-418a-a92e-ef8eded4592e.

[32] *See infra* FN 34.

[33] Notice of *Ex Parte* filed by Free Press, GN Docket No. 14-28, GN Docket No. 10-127 (Nov. 21, 2014) *available at* http://www.freepress.net/sites/default/files/resources/Free_%20Press_11-20-2014_ex_parte_USTA%20Investment%20Study_Final.pdf.

in Title II authority would do little to impact their investment decisions across the country.[34] Google, which offers its competitive Google Fiber service in a handful of markets, told the FCC that applying certain provisions of Title II could actually "promote competition and spur more investment and deployment of Internet service."[35] Sprint should be commended for being the first major ISP to tell the Commission the truth about Title II and investment. In a recent filing, Sprint explained that it does not believe that "a light touch application of Title II, including appropriate forbearance, would harm the continued investment in, and deployment of, mobile broadband services."[36]

These statements are also consistent with the current application of Title II to profitable services that many use today. For instance, Title II currently applies to Commercial Mobile Radio Services (CMRS), or mobile voice service, and many enterprise broadband services. In fact, in 2013, shortly before arguing that Title II "would ... impose barriers to broadband infrastructure investment" in the FCC's Open Internet docket, AT&T told the Commission that

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[34] *See e.g.*, Brian Fung, "Verizon: Actually, strong net neutrality rules won't affect our network investment," *The Washington Post* (Dec. 10, 2014) *available at* http://www.washingtonpost.com/blogs/the-switch/wp/2014/12/10/verizon-actually-strong-net-neutrality-rules-wont-affect-our-network-investment/, (When asked how Title II reclassification would affect Verizon's investment in the U.S., Francis J. Shammo, Verizon's executive vice president and chief financial officer said, "I mean to be real clear, I mean this does not influence the way we invest. I mean we're going to continue to invest in our networks and our platforms, both in Wireless and Wireline FiOS and where we need to. So nothing will influence that...I mean we were born out of a highly regulated company, so we know how this operates...").

[35] Alistair Barr, "Google Strikes an Upbeat Note With FCC on Title II," *Digits: Tech News & Analysis from the WSJ*, (Dec. 31, 2014) *available at* http://blogs.wsj.com/digits/2014/12/31/google-strikes-an-upbeat-note-with-fcc-on-title-ii/?mg=blogs-wsj&url=http%253A%252F%252Fblogs.wsj.com%252Fdigits%252F2014%252F12%252F31%252Fgoogle-strikes-an-upbeat-note-with-fcc-on-title-ii (*citing* Letter to FCC filed by Austin C. Schlick, Director of Communications Law at Google, Inc., GN Docket No. 14-28 (Dec. 30, 2014) *available at* http://apps.fcc.gov/ecfs/document/view?id=60001011462).

[36] Letter to Chairman Wheeler filed by Stephen Bye, Chief Technology Officer at Sprint, GN Docket No. 14-28 (Jan. 15, 2015) *available at* http://apps.fcc.gov/ecfs/document/view?id=60001013965.

the limited application of Title II[37] to its enterprise broadband service was an "unqualified regulatory success story ... represent[ing] the epicenter of the broadband investment that the Commission's national broadband policies seek to promote."[38]

B. The Application Of Title II With Forbearance Will Not Lead To New Taxes Or Fees.

In a *Reuters* editorial that appeared shortly before the release of the discussion draft, Chairman Thune and Chairman Upton labeled Title II an "ill-fitting tool" for the task of protecting Internet openness that "could result in billions of dollars in higher government fees and taxes on consumers' monthly broadband bills, according to a Progressive Policy Institute report."[39] However, the report that Chairman Thune and Chairman Upton relied upon has been widely refuted and since been awarded three out of a possible four "Pinocchios" by the *Washington Post* "Fact Checker" for containing "significant factual errors and/or obvious contradictions."[40]

Among various errors and overstatements, the Progressive Policy Institute report inexplicably overlooked a key piece of federal law that is directly on point: the Internet Tax Freedom Act (ITFA). The ITFA, which has been in place since 2004 (with similar legislation in place even earlier) and was recently reauthorized, prevents state and local governments from

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[37] Including key provisions such as 47 U.S.C. §§ 201, 202, 208, 222, 254, and 255.
[38] Comments of AT&T, WC Docket No. 05-25, RM-10593 at 3 (April 16, 2013) *available at* http://apps.fcc.gov/ecfs/document/view?id=7022283535.
[39] John Thune and Fred Upton, "Congressional proposal offers Internet rules of the road," Reuters (Jan. 14, 2015) *available at* http://blogs.reuters.com/great-debate/2015/01/14/congressional-proposal-offers-internet-rules-of-the-road/.
[40] Michelle Ye Hee Lee, "Will the FCC's net neutrality decision cost Americans $15 billion in new taxes? Nope," *The Washington Post* (Jan. 16, 2015) *available at* http://www.washingtonpost.com/blogs/fact-checker/wp/2015/01/16/the-claim-that-fccs-net-neutrality-decision-would-cost-americans-15-billion-in-new-taxes/; Glenn Kessler, "About The Fact Checker," *The Washington Post* (last visited Jan. 19, 2015) *available at* http://blog.washingtonpost.com/fact-checker/2007/09/about_the_fact_checker.html#pinocchio (explaining The Fact Checker's methodology for verifying sources).

imposing any new state or local taxes on Internet access. The definition of "Internet access" in the law, as well as the legislative history, makes it abundantly clear that Internet access is to be exempted from state and local taxes regardless of the platform used or the regulatory treatment of the service. Further, as the *Washington Post* pointed out, there is no indication that existing state fees on telephone service would actually apply to broadband service after a change in classification by the FCC.

C. The Application Of Title II With Forbearance Will Not Slow Broadband Adoption.

Another argument, closely related to those about investment or additional taxes, is that Title II will hamper broadband adoption, particularly in communities of color. Promoting policies to increase broadband adoption, especially within the Latino community and other communities of color, is one of NHMC's core policy goals. Accordingly, this is an argument that NHMC has carefully vetted and dismissed.

Adherents to this argument reason that decreased investment by ISPs will disproportionately diminish access in lower income communities of color and that new taxes will increase overall cost and make broadband less affordable. However, as the investment and tax myths were dispensed with above, the idea that Title II would negatively impact broadband adoption is unsupported.

In addition to being unsupported by the facts, the idea that enforceable, common carrier Open Internet rules would discourage broadband adoption is counterintuitive. The Commission has stated many times, in reasoning accepted by the D.C. Circuit in *Verizon,* that Open Internet rules like the rules against blocking and unreasonable discrimination that it adopted in 2010 enable a "virtuous circle of innovation in which new uses of the network—including new content, applications, services, and devices—lead to increased end-user demand for broadband, which

drives network improvements, which in turn lead to further innovative network uses."[41] As the FCC rightly noted when it adopted its original Open Internet rules in 2010, rules against blocking and unreasonable discrimination "help close the digital divide by maintaining relatively low barriers to entry for underrepresented groups and allowing for the development of diverse content, applications, and services."[42]

Further, the argument ignores the authority the FCC could assert to pursue universal service goals under Title II. By embracing the solid legal footing afforded by classifying BIAS as a telecommunications service, the FCC could more easily modernize existing Universal Service Fund programs to address broadband affordability barriers and rural access problems. Taken together, Title II would give the FCC many of the tools that it needs to more comprehensively address the digital divide.

D. Preventing The FCC From Applying Title II With Appropriate Forbearance Will Not Avoid Lengthy Court Battles Or Market Uncertainty.

In recent days, many have asserted that moving forward with legislation instead of allowing the FCC to complete its rulemaking would avoid protracted litigation.[43] Unfortunately, given the litigious environment that currently exists in telecommunications sector, any attempt to preserve the Open Internet will likely end up in court, one way or another.

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[41] *In re Preserving the Open Internet*, 25 FCC Rcd. 17905, ¶ 14 (2010) *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-10-201A1_Rcd.pdf.
[42] *Id.* at ¶ 18.
[43] Republican Press Office, "Congressional Leaders Unveil Draft Legislation Ensuring Consumer Protections and Innovative Internet: Legislation to be the Focus of House and Senate Hearings Next Week," U.S. Senate Committee on Commerce, Science, & Transportation (Jan. 16, 2015) *available at* http://www.commerce.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=983783dd-612b-418a-a92e-ef8eded4592e.

The FCC's 2010 Open Internet rulemaking is a perfect example of the unpredictability of litigation. In the 2010 Open Internet Order, the FCC made every effort to respond to many of the concerns and proposals contained in the record. It exempted wireless carriers from having to comply with stronger rules, failed to issue a bright line prohibition of paid prioritization, left the door open for specialized services and reasonable network management and, above all else, declined to classify BIAS as a telecommunications service.[44] Interested parties from across the spectrum – wireless companies, cable providers, public interest groups, civil rights organizations, and Internet companies – accepted the FCC's efforts and embraced the rules as a reasonable, albeit imperfect, framework to build upon that provided much needed certainty to the sector.[45] However, despite widespread acceptance of what seemed an effective and hard won compromise, the American people were still subject to three years of litigation as Verizon successfully challenged the rules in court.

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[44] *In re Preserving the Open Internet*, 25 FCC Rcd. 17905 (2010) *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-10-201A1_Rcd.pdf.

[45] *See e.g,* David L. Cohen, Executive Vice President and Chief Diversity Officer, "Comcast Supports the Open Internet," Comcast Voices (Sept. 10, 2014) *available at* http://corporate.comcast.com/comcast-voices/comcast-supports-the-open-internet ("Comcast has a history of supporting an open Internet. We publicly and strongly supported the FCC's 2010 Open Internet Order…"); Bob Quinn, "Banning Paid Prioritization within a Viable and Sustainable Framework," AT&T Public Policy Views & News (July 17, 2014) *available at* http://publicpolicy.att.com/att-open-internet-policy-statement ("AT&T also supported the FCC's 2010 rules, including the ones which were ultimately vacated by the Verizon court. We recognized then, and now, that those rules represented a purposeful and careful balance between ensuring the openness of the Internet and promoting the continued massive infrastructure investments necessary to deliver to American consumers the ever increasing amount of bandwidth needed…"); Andrew McDiarmid, "Court Strikes Down Open Internet Rules: What Now?" *Center for Democracy and Technology* (Jan. 14, 2014) *available at* https://cdt.org/blog/court-strikes-down-open-internet-rules-what-now/ ("The decision is a real loss for U.S. Internet users; the rules offered an important safeguard for keeping the Internet the remarkable engine for free expression, creativity, and innovation that it is").

No action by the FCC is immune from litigation. Nor will this proposed legislation inoculate the Commission from the threat. At the outset, this draft directs the FCC to "adopt formal complaint procedures to address alleged violations" – a process that could be contentious as it will largely determine the process by which complaints are filed and the burden that they will impose on defendant ISPs. Beyond that, the draft requires the FCC to interpret its provisions and apply its definitions through case-by-case adjudication. The interpretation and application of this draft to ISPs' practices could surely lead to significant litigation due to the multitude of fact-specific determinations the Commission will be required to make in any adjudication such as: whether network management is reasonable; whether a device is harmful; whether a practice constitutes throttling; whether packets are prioritized or compensation is received; whether disclosure is required; whether a specialized service is designed to circumvent any prohibitions; whether a specialized service threatens the meaningful availability of BIAS; and, perhaps in the future as an echo of our current question of whether BIAS is a telecommunications service, whether a service is BIAS at all. Even more damaging, without rulemaking authority, the Commission will be unable to clarify any of these questions or countless others in advance, creating an environment of significant uncertainty and litigation risk.

CONCLUSION

The ideal course of action is for the FCC to classify BIAS as a Title II telecommunications service and promulgate bright line, common carrier rules that would prevent ISPs from blocking lawful content, applications, services, or devices or unreasonably discriminating in transmission of lawful network traffic. It would proactively ban practices such as throttling and paid prioritization as *per se* unreasonable. The FCC would also maintain and enhance existing transparency requirements. The Commission would keep a number of key Title

II provisions while forbearing from many others. The FCC would reserve its authority to bring important Title II goals into the broadband age, such as universal service, consumer privacy, accessibility for persons with disabilities, and interconnection, among others. It would apply all authority and rules equally to both fixed and mobile connections. Further, it would create a complaint process that is easily navigable by non-experts and allow the FCC to investigate possible violations and initiate enforcement actions on its own motion.

This is the path favored by hundreds of organizations, including more than one hundred civil rights and racial justice groups, a multitude of startups, established Internet companies, investors, dozens of members of Congress, and a wide majority of the seven million people who have contacted the FCC. It is favored by countless entrepreneurs, small businesses, independent content producers, educators and, in principle, is overwhelmingly supported by liberals and conservatives across the country.[46]

While congressional action could also meet all of these requirements and may, ultimately, be desirable, we need not delay the FCC's process as it nears completion to attempt to imbue it with authority that it already holds. The discussion draft currently under consideration fails to meet these requirements and strips the FCC of statutory authority that is absolutely essential to protecting consumers and the Internet, and achieving a number of other important policy goals. Therefore, I must respectfully oppose the further development of this draft and I urge the

[46] Internet Freedom Business Alliance poll conducted by Vox Populi Polling (Nov. 10, 2014) *available* at http://www.netfreedom.us/wp-content/uploads/2014/11/IFBA-Poll-Memo.pdf (poll found "support for net neutrality is broad and consistent across demographics"); Haley Sweetland Edwards, "Conservatives Overwhelmingly Back Net Neutrality, Poll Finds," Time (Nov. 11, 2014) *available at* http://time.com/3578255/conservatives-net-neutrality-poll/ ("Some 83% of voters who self-identified as 'very conservative' were concerned about the possibility of ISPs having the power to 'influence content' online"); Amy Kroin, "Most Conservative Voters Heart Net Neutrality," *Free Press* (Nov. 12, 2014) *available at* http://www.freepress.net/blog/2014/11/12/most-conservative-voters-heart-net-neutrality.

esteemed members of this subcommittee to support the FCC in swiftly concluding its process of reinstating the rules that were vacated by the *Verizon* court. Thank you Chairman Walden, Ranking Member Eshoo, and members of the subcommittee for your time and attention. I look forward to your questions.

Mr. WALDEN. We will now turn to Dr. Nicol Turner-Lee, the vice president and chief research and policy officer for Minority Media and Telecommunications Council.

Dr. Turner-Lee, delighted to have you here as well. Please go ahead with your testimony.

STATEMENT OF NICOL TURNER-LEE

Ms. TURNER-LEE. Thank you very much, Chairman Walden, Ranking Member Eshoo, and distinguished members of the committee.

And I do have to say, as vice president and chief research and policy officer, that we just changed our name today at 9 a.m. To the Multicultural Media Telecom and Internet Council. So——

Mr. WALDEN. We reserve the right to revise and extend our remarks.

Ms. TURNER-LEE. And at MMTC, still acronym is the same, we actually support and work to represent, for those of you that are unaware, organizations that consist of the NAACP, The National Urban League, Rainbow Push Coalition, AAJC, among others, so as my colleague Ms. Gonzalez has recognized, we also stand on the side of people who are on the other side of the digital divide.

And I think that is pretty important on the topic of open Internet because we have been actively engaged in this debate as historically disadvantaged communities embark on a journey towards first class digital citizenship and all of the opportunities. So we welcome and applaud the draft legislation addressing the President's values.

I want to use my time to bring three issues to the committee's attention today. My statement is on record in much more detail, but my time is best spent on these points.

I first would like to highlight the unique benefits that an open Internet brings to people of color and vulnerable populations who we represent, and encourage the committee's consideration of legislation that promotes an open Internet, and finally I would like to offer two friendly recommendations designed to strengthen and ensure that the legislation realizes the value of all consumers who want to acknowledge the promise of digital equality.

I want to affirm the words of Ranking Member Eshoo that broadband access, adoption, and digital literacy are civil right prerequisites. Broadband allows people to gain new skills, secure jobs, obtain quality education, and receive greater access to healthcare.

Today, however, too many Americans still do not benefit from all that broadband enables. The rate of broadband adoption among vulnerable populations is disproportionately low, contributing to a persistent digital divide. Despite growth in minority home, broadband adoption rates among African Americans and Hispanics are still lower than whites. African Americans over 65, for example, still exhibit especially low rates. Fort-five percent of African American seniors are Internet users, yet 30 percent only have broadband at home, compared to 63 percent and 51 percent respectively for white seniors.

Non-users overall cite a perceived lack of relevance, affordability, and the lack of a device, in that order, as their prime reasons for not being online.

So closing the digital divide should and must be an important goal for policymakers, and steering the right course of action to promote and protect an open Internet is one of the ways to get there.

I want to acknowledge that Congress has had a proud history of recognizing structural injustices in our society and acting to correct them.

In the 1860s Congress framed and passed the 13th, 14th, and 15th Amendments which enabled slavery-extended protection and enfranchised millions of Americans for the first time.

In the 1960s, Congress enacted the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968, all due in great measure to the Reverend Martin Luther King whose birthday we just celebrated.

Today Congress has the opportunity to show that leadership again. By enacting a legislative solution that preserves the open Internet we all enjoy, Congress can extend the promise of justice, equality, and democracy to all and avoid a legal quagmire that will lead to an unending uncertainty for our economy and citizens.

I agree with Jessica Gonzalez that an open Internet stimulates demand for broadband which in turn stimulates investment in infrastructure and innovation. At MMTC, we know firsthand in this, and it is our belief that increased investment in broadband also improves access and adoption to the types of innovations we like to drive in our communities, but of course the way that we get there is going to have an impact.

For the past 20 years, administration and FCC chairs from both political parties have charted a successful regulatory platform for the Internet, and communities of color have benefitted. Look at the state of wireless adoption among people of color.

Under the current regulatory framework, nearly 75 percent of African Americans and nearly 70 percent of Hispanic cell phone owners use their devices to access the Internet more than the overall population, and people of color have embraced it as a tool of empowerment. Under the current rules, we have actually seen the type of collective mobilization in Ferguson, Missouri, New York City, and Columbus, Ohio. These stats to drive policymakers to continue the progress that is already being made.

But unfortunately, meaningful open Internet rules have failed in the FCC. Last year the D.C. Circuit Court struck down key portions of the commission's open Internet order, and notwithstanding the current regulatory framework that has allowed broadband to flourish and adoption to take hold, the FCC is now considering the imposition of Title II regulation, which we believe as national civil rights organizations is ill-suited to the current realities.

Imposing such heavy-handed framework on the Internet would only serve to stifle broadband deployment, discourage investment, and harm innovation. It would also place uncertainty for consumers through regressive taxation on universal service and potential ambiguity on consumer enforcements.

Some have argued that the adverse effects of Title II regulation through judicious application of forbearance authority is the right way. We think that misses the point. If the commission could exercise its forbearance authority in productive matter, it still would

take years to sort out and appropriately calibrate a set of rules, and this uncertainty will continue to drive us away from the attention of those issues that our community needs the most, the modernization of our schools, universal service reform in other areas.

So in closing, it is for those reasons that our groups have actually asked that we steer away from a tight regulatory framework to something that has more flexibility to allow the ecosystem to continue to grow, and we think the proposed legislative is close in actually getting there.

I would like to just close again with two additional recommendations for Congress to ponder in this debate as we look at this issue.

First, Congress should address the harmful practice of digital red lining. Digital red lining is the refusal to build and serve lower income communities on the same terms as wealthier communities. In essence, it imposes digital segregation. Sadly, as the experience of our country shows, segregation harms and degrades all of us, and this is no less true in the digital age. Congress should empower the FCC to prohibit digital red lining and we urge in this legislation that Congress also look at how to prevent that because currently this is a problem.

Second, Congress should ensure that its open Internet rules will be enforced. MMTC has recommended to the commission the creation of an accessible, affordable, and expedited procedure for the reporting and resolution of complaints.

One approach would be to use the consumer friendly complaint process under the Title VII framework of the Civil Rights Act of 1964. Under Title VII, a complainant receiving the expedited ruling from EEOC and does not need to hire a lawyer or write a complicated filing, whether the precise details of implementing a similar mechanism in the communications context, the core principle here remains the same.

Consumers, particularly individuals from vulnerable populations, deserve, as it has been mentioned, an accessible, affordable, and expedited procedure for ensuring that their government protects them, and this must apply at whatever solution that we seek.

My friends, the time is now to get past the morass of a debate that has been lingering for more than a decade, and with Congress' discussion and guidance on this issue, we at MMTC think we can make it happen, and we look forward to working with Congress to do such so that we can get to the issues that mean the most for our communities, universal service, public safety, and assuring that we actually allow the Internet to grow to the next level of innovation to solve our social problems.

Thank you very much.

[The prepared statement of Ms. Turner-Lee [1] follows:]

[1] Attachments to Ms. Turner-Lee's testimony have been retained in committee files and are available at *http://docs.house.gov/meetings/if/if16/20150121/102832/hhrg-114-if16-wstate-turner-leen-20150121-u2.pdf*.

STATEMENT
OF
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MULTICULTURAL, MEDIA, TELECOM AND INTERNET COUNCIL (MMTC)

"PROTECTING THE INTERNET AND CONSUMERS THROUGH CONGRESSIONAL ACTION"

BEFORE THE
UNITED STATES HOUSE COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

JANUARY 21, 2015

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INTRODUCTION

Chairman Walden, Ranking Member Eshoo, distinguished Members of the Subcommittee, esteemed colleagues on the panel, I am pleased and honored to appear before the Subcommittee today to address this Nation's efforts to preserve the open Internet—particularly as it concerns our nation's communities of color and other vulnerable populations including the economically disadvantaged, seniors and people with disabilities. I currently serve as Vice President and Chief Research & Policy Officer of the Multicultural Media, Telecom and Internet Council, previously known as the Minority Media and Telecommunications Council ("MMTC"). It is my privilege to help lead this national not-for-profit organization that for 28 years has been dedicated to promoting and preserving equal opportunity and civil rights in the mass media, telecommunications, and broadband industries. The MMTC proudly represents historic civil rights and advocacy organizations such as the NAACP, the National Urban League, LULAC—and dozens of others. In a previous role, I served as Vice President and first Director of the Media and Technology Institute of the Joint Center for Political and Economic Studies where we developed the first comprehensive study on minority broadband adoption.[1]

At MMTC, we believe that every consumer, entrepreneur, and business has the right to an accessible and open Internet. An open Internet is essential to enabling all Americans—including and especially Americans of color and other vulnerable groups—to experience first class digital citizenship in the 21st century.

Digital citizenship is the new passport that guarantees full access to the opportunities powered by broadband and the Internet, especially those applications and broadband-enabled devices that help promote physical wellness, civic engagement, wealth creation, economic

[1] *See* Nicol Turner-Lee, Jon P. Gant and Joseph Miller, *National Minority Broadband Adoption: Comparative Trends in Adoption, Acceptance and Use*, Joint Center for Political and Economic Studies (March 2010), *available at* http://jointcenter.org/sites/default/files/MTI_BROADBAND_REPORT_WEB.pdf (last visited January 19, 2015).

development and educational readiness. The cost of digital exclusion–whether as consumers or producers–is too high to ignore for people of color and other vulnerable populations. With new technology transforming how we live, learn and earn in our society, it is imperative that no one is left behind: especially your constituents striving to break through the daily challenges of social and economic isolation. Policies that deter efforts to foster broadband adoption will have a profound effect on people of color, particularly those who have not adopted Internet access and as a result are unable to participate fully in society through job search, civic discourse and access to government services. It is essential that we assess these "opportunity costs" for consumers as this discussion is elevated toward a legislative solution.

Consistent with these views, I would like to bring three issues to the Subcommittee's attention today. *First*, I would like to highlight the unique benefits that an open Internet brings to people of color and vulnerable populations, and explain why MMTC—along with a diverse range of other nonprofit, consumer, and labor organizations, as well as businesses and scholars—came out in support of open Internet rules based on the Federal Communications Commission's (FCC) Section 706 regulatory authority, rather than the Commission's Title II authority that applies to legacy utilities.[2] *Second*, I would like to encourage the Subcommittee to consider a legislative proposal to promote an open Internet, provided it preserves the Commission's ability to protect consumers. *Third*, I would like to offer two friendly recommendations that are designed to ensure: (1) that all consumers are included in the promise of first class citizenship in

[2] *See generally* Comments of the National Minority Organizations, FCC GN Docket No. 14-28 (July 18, 2014). *See also* Comments of the Chicagoland Black Chamber of Commerce (July 17, 2014); Comments of the U.S. National Black Chamber of Commerce, National Gay & Lesbian Chamber of Commerce, U.S. Hispanic Chamber of Commerce, and U.S. Pan Asian American Chamber of Commerce (July 18, 2014); Comments of the Black Women's Roundtable (July 18, 2014); Florida State Hispanic Chamber of Commerce (July 14, 2014); Asian Americans Advancing Justice (July 15, 2014); Comments of the Communications Workers of America and National Association for the Advancement of Colored People (July 15, 2014); Comments of League of United Latin American Citizens, National Action Network, National Association for the Advancement of Colored People, the National Coalition on Black Civic Participation, and the National Urban League (July 18, 2014).

the digital age; and (2) that policymakers refocus on other critical broadband priorities that can render positive net impacts for historically disenfranchised communities, such as such as prohibiting redlining, promoting universal service, and ensuring public safety.

I. AN OPEN INTERNET BENEFITS COMMUNITIES OF COLOR

As the nation recognizes the legacy of the Reverend Dr. Martin Luther King, Jr. this week, we can all acknowledge that the journey towards civil and human rights is incomplete. Recent events in Ferguson, Missouri, Columbus, Ohio, and New York City serve as painful reminders. Today, broadband access, adoption and digital literacy join the suite of civil rights prerequisites to first class citizenship in the digital age. Broadband is essential for living a life of equal opportunity in the 21st Century. And broadband access allows all Americans—African American, white, Latino, Asian, women, men, abled, and disabled—to gain new skills, secure good jobs, obtain a quality education, and receive greater access to healthcare through state of the art tele-health technologies. Broadband has also become the new broadcast, streaming in "real time" what transpires both nationally and internationally, and in recent history mobilizing people around social change.

Too many Americans, however, still do not benefit from all that broadband enables. They do not have general Internet access or have not adopted broadband technology at home.[3] This problem is particularly acute in many communities of color and among the poor, seniors and less educated citizens, contributing to a persistent "digital divide." Despite increases in minority home broadband adoption over the past few years, African Americans and Hispanics are still not getting broadband connections at home in sufficient numbers. This is especially the case among two demographic subgroups within minority populations: elderly minorities and

[3] *See* FCC, *Connecting America: The National Broadband Plan* 167-68 (2010) ("National Broadband Plan"); David Honig, Esq. & Nicol Turner-Lee, Ph.D., MMTC, *Refocusing Broadband Policy: The New Opportunity Agenda for People of Color* 7-8 (Nov. 21, 2013) ("MMTC White Paper").

those with limited formal education.[4] Recent data from the Pew Research Center found that older African Americans, as well as those that had not attended college, are significantly less likely to go online or have residential broadband access compared to whites of similar demographic profiles.[5] In the case of African Americans, individuals age 65 and older have especially low rates of adoption when compared to whites. Forty-five percent of African American seniors are Internet users and 30% have broadband at home as compared to 63% and 51% respectively for whites.[6] While younger, college educated, and higher-income African Americans are just as likely as their white counterparts to use the Internet and to have home broadband access, these statistics are less promising as socioeconomic status and educational attainment levels decline.

Nearly 70% of Hispanic Americans access the Internet through cell phone devices.[7] Less than 60% of Hispanics, however, have a home broadband connection,[8] which may impose some limitations when applying for jobs or completing certain homework assignments.

Non-Internet users cite a perceived lack of relevance, affordability, and the lack of an Internet-capable device as their prime reasons for not being online.[9] And, as a recent study conducted by the National Telecommunications and Information Administration, which included

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[4] Aaron Smith, Pew Research Center, *African Americans and Technology Use, A Demographic Portrait*, 1–17 (Jan. 6, 2014), *available at* http://www.pewInternet.org/files/2014/01/African-Americans-and-Technology-Use.pdf (last visited January 19, 2015).

[5] *Id.*

[6] *Id.*

[7] *See* Maeve Duggan & Aaron Smith, Pew Research Center, *Cell Internet Use* (Sept. 2013) *available at* http://www.pewInternet.org/files/old-media//Files/Reports/2013/PIP_CellInternetUse2013.pdf (last visited January 19, 2015).

[8] *See* Pew Research Internet Project, Pew Research Center, *Broadband Technology Fact Sheet* (2015), *available at* http://www.pewInternet.org/fact-sheets/broadband-technology-fact-sheet/ (last visited January 19, 2015).

[9] *Id.*

[10] Carare, Octavian and McGovern, Chris and Noriega, Raquel and Schwarz, Jay A., The Willingness to Pay for Broadband of Non-Adopters in the U.S.: Estimates from a Multi-State Survey (November 18, 2014). Information Economics and Policy, Forthcoming. Available at SSRN:http://ssrn.com/abstract=2375867 or http://dx.doi.org/10.2139/ssrn.2375867 (last accessed January 20, 2015).

analysis by two FCC economists, found, approximately two-thirds of non-subscribing households say they will not subscribe to broadband at any price.[10] Closing the digital divide, therefore, must be a vital goal for policy makers: our challenge is to look toward promoting adoption. Historically disadvantaged groups often have the most to gain from accessing broadband technology.

The current debate concerning whether and how the Commission might regulate the Internet has largely over-shadowed the adoption crisis. Last year, MMTC and a coalition of 45 highly respected, national civil rights, social service and professional organizations representing millions of constituents, urged the Commission to focus its broadband policies on promoting engagement, adoption and informed broadband use by communities of color, and to exercise its Section 706 authority to promote broadband to protect all consumers' rights to an open Internet. These groups, including the National Coalition on Black Civic Participation, Rainbow PUSH Coalition, MANA – A Latina Organization, National Hispanic Caucus of State Legislators and National Organization of Black County Officials, asked the Commission to establish an accessible, affordable, and expedited procedure for the resolution of complaints to strengthen its Section 706 authority. Modeled after the probable cause paradigm in Title VII of the 1964 Civil Rights Act, which ensures equal employment opportunity, our proposal sought to complement the Commission's Ombudsperson proposal and the Commission's efforts to expand transparency. Support of Section 706 authority has also come from other national civil rights organizations that include the National Urban League, the National Action Network, the NAACP, and the League of United Latin American Citizens.

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[10] Carare, Octavian and McGovern, Chris and Noriega, Raquel and Schwarz, Jay A., The Willingness to Pay for Broadband of Non-Adopters in the U.S.: Estimates from a Multi-State Survey (November 18, 2014). Information Economics and Policy, Forthcoming. Available at SSRN:http://ssrn.com/abstract=2375867 or http://dx.doi.org/10.2139/ssrn.2375867 (last accessed January 20, 2015).

We all agree with President Obama that this Nation needs to advance and enforce those values undergirding Internet openness. In our joint filing, our coalition urged the Commission to take a straightforward approach that includes[11]:

- The immediate reinstatement of no-blocking rules to protect consumers.
- Creation of a new rule barring commercially unreasonable actions, while affording participants in the broadband economy, particularly minority entrepreneurs, the opportunity to enter into new types of reasonable commercial arrangements,[12] and through monitoring by FCC's Office of Communications Business Opportunities, ensuring that minority entrepreneurs are never overlooked by carriers seeking to develop new commercial arrangements.
- The establishment of a rebuttable presumption against paid prioritization that protects against "fast lanes" and any corresponding degradation of other content, while ensuring that such presumption could be overcome by business models that sufficiently protect consumers and have the potential to benefit consumer welfare (for example, telemedicine applications).[13]
- The need for greater transparency and enforceable disclosure requirements to maintain online consumer protections.
- The use of Section 706 to rein in bad actors, especially those engaged in blocking, as the D.C. Circuit confirmed the Commission has the authority to do.[14]

Like our President, we believe that an open Internet stimulates demand for broadband, which in turn stimulates investment in broadband infrastructure.[15] Increased investment in broadband infrastructure improves access in all communities.[16] This is especially true in poor and low-income communities that tend to be affected most by increases or decreases in

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[11] *See* Comments of the National Minority Organizations 11-12, FCC GN Docket No. 14-28 (July 18, 2014).

[12] *See In the Matter of Protecting & Promoting the Open Internet*, 29 F.C.C. Rcd. 5561, ¶ 116 (2014).

[13] As indicated in our Comments, any prioritized service that overcomes the presumption would remain subject to enforcement, and consumers would be able to obtain rapid relief by working with the Ombudsperson and through the complaint process modeled after the probable cause paradigm found in Title VII of the 1964 Civil Rights Act.

[14] *See Verizon v.* FCC, 740 F.3d 623, 655 (D.C. Cir. 2014).

[15] *See, e.g.*, Daniel A. Lyons, *Internet Policy's Next Frontier: Usage-Based Broadband Pricing*, 66 Fed. Comm. L.J. 1, 31 (2013) (explaining that an economically rational network operator faced with regular congestion (demand) will "invest capital to expand the network and provide more bandwidth to all users").

[16] *See* National Broadband Plan, *supra* note 3, at 129.

investment and concomitant price changes.[17] This is basic economics.[18] That is why our Coalition opposes Title II reclassification of broadband as a telecommunications service.

We believe that preserving the open Internet is one of the fundamental civil rights issues of our time. And that is why this is an issue that Congress should address.

II. CONGRESS IS WELL POSITIONED TO PRESERVE THE OPEN INTERNET

Congress has a proud history of recognizing structural injustices in our society and acting to correct them. In the 1860's, Congress framed and passed the Thirteenth, Fourteenth, and Fifteenth Amendments, which ended slavery, extended equal protection, and enfranchised millions of Americans for the first time. In the 1960's, Congress enacted the Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968—all due in great measure, I hasten to add, to the work of a man whose birthday we celebrated this past weekend.

Today, Congress has the opportunity to show leadership yet again. By enacting a legislative solution that preserves the open Internet, Congress can extend the promise of justice, equality, and democracy not only to all citizens, but especially to communities of color and more vulnerable groups who are most in need of the opportunity provided by access to high-speed broadband.

For the past 20 years, FCC Chairs from both political parties have charted a successful regulatory paradigm for the Internet.[19] And although overall adoption of broadband by people of

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[17] *See, e.g.*, Kevin A. Hassett & Robert J. Shapiro, Georgetown Center for Business and Public Policy, *Towards Universal Broadband: Flexible Broadband Pricing and the Digital Divide* 12 (Aug. 2009) (*"Towards Universal Broadband"), available at* http:// www.gcbpp.org/files/Academic_Papers/AP_Hassett_Shapiro_Towards.pdf (last visited January 19, 2015).

[18] *See, e.g.*, J. Gregory Sidak, *A Consumer-Welfare Approach to Network Neutrality Regulation of the Internet*, 2 J. Comp. L. & Econ. 349, 357 (2006) ("Private investors will fund the construction of a broadband network only if they have a reasonable expectation that the company making that investment will recover the cost of its investment, including a competitive (risk-adjusted) return on capital.")

[19] *See, e.g.*, Michael Powell, Chairman, FCC, *Preserving Internet Freedom: Guiding Principles for the Industry*, at 2 (Feb, 8, 2004) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-243556A1.pdf (articulating four principles); Julius Genachowski, Chairman, FCC, *Statement re Preserving the Open Internet* (2010), *available at*

color has lagged,[20] innovation among certain broadband technologies has not. For example, nearly 75 percent of African American and 68 percent of Hispanic cell phone owners use their devices to access the Internet,[21] and these numbers are increasing.[22] African Americans and Latinos use smartphones for non-voice applications, such as web surfing and accessing multimedia content, at a higher rate than the population in general.[23] Asian Americans have adopted smartphones at a higher rate than the total U.S. population.[24] And people of color have largely embraced social media, such as Twitter and Instagram.[25] This along with the increasing availability of Wi-Fi services through fixed broadband providers has enabled mobility, which is critically important to communities of color. These are encouraging signs as wireless becomes the new broadcast for American citizens, and demonstrates that the broadband market is both dynamic and competitive in wireless and wireline. Yet, policymakers must act to ensure that this progress continues.

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https://apps.fcc.gov/edocs_public/attachmatch/FCC-10-201A2.pdf (last visited January 19, 2015) ("The rules ... we adopt today are rooted in ideas first articulated by Republican Chairmen ... and endorsed in a unanimous FCC policy statement in 2005.").

[20] *See* MMTC White Paper, *supra* note 3, at 7.

[21] Maeve Duggan and Aaron Smith, Pew Research Center's Internet & American Life Project, *Cell Internet Use 2013* 5 (Sept. 16, 2013), *available at* http://pewInternet.org/Reports/2013/Cell-Internet.aspx (last visited January 19, 2015).

[22] *Id.* at 7.

[23] *See* Kathryn Zickuhr & Aaron Smith, Pew Research Center's Internet & American Life Project, *Home Broadband 2013* (Aug. 26, 2013) *available at* http://pewInternet.org/Reports/2013/Broadband.aspx. *See also* Nielsen, *More of What We Want: The Cross Platform Report of Q1 2014* (June 30, 2014) ("Nielsen"), *available at* http://www.nielsen.com/us/en/insights/reports/2014/more-of-what-we-want.html (last visited January 17, 2015). (reporting that African Americans and Hispanics are more likely than other ethnic groups to watch video on demand).

[24] Nielsen, *Significant, Sophisticated, and Savvy: The Asian American Consumer* 19 (2013), *available at* http://www.aaja.org/wp-content/uploads/2013/12/Nielsen-Asian-American-Consumer-Report-2013.pdf (last visited January 19, 2015).

[25] *See* Yoree Koh, *Twitter Users' Diversity Becomes an Ad Selling Point*, The Wall Street Journal (Jan. 20, 2014), *available at* http://online.wsj.com/news/articles/SB10001424052702304419104579323442346646168?mg=reno64-wsj (last visited July 14, 2014); Nielsen, *supra* note 23, at 11.

Although the Internet has remained open, recent efforts by the FCC to enact prospective open Internet rules have not succeeded. Last year, the D.C. Circuit struck down significant portions of the Commission's Open Internet Order, while offering a roadmap to potentially sustainable rules.[26] Now the agency is considering the imposition of Title II regulations on the Internet notwithstanding the current regulatory framework that has allowed broadband to flourish. But Title II was designed for a telephone era that assumed monopoly control of the communications infrastructure and regulated accordingly.[27] Its tools include common carriage, rate regulation, and the imposition of increased access charges and taxes.[28]

Monopoly control of the broadband marketplace is not what we have today.[29] Because Title II is ill suited to current realities, imposing its heavy-handed framework on the broadband marketplace would only serve to discourage investment and stifle infrastructure deployment.[30] The effects of this investment dis-incentivizing approach could disproportionately impact communities where lower adoption makes the economics of deployment more challenging. It also threatens those innovations inspired by broadband and the Internet to address and solve problems that hold our communities hostage, such as chronic disease, the absence of robust educational resources, and "in line" versus "online" government services. In short, just as the costs of digital exclusion are high, so are the risks associated with Title II.

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[26] *See Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

[27] *See* Robert Litan, Brookings Inst., *Regulating Internet Access as a Public Utility* 2 (June 2, 2014) *available at* http://www.brookings.edu/~/media/research/files/papers/2014/06/regulating_Internet_access_public_utility_litan/regulating_Internet_access_public_utility_litan.pdf (last visited January 19, 2015).

[28] *See id.* at 1.

[29] *See id.* at 2 ("[Title II] never was intended ... to apply to services that were not characterized by monopoly, such as Internet access.").

[30] *See* Comments of the Communications Workers of America and National Association for the Advancement of Colored People, FCC GN Docket No. 14-28 (July 15, 2014).

Some have argued that the FCC could reduce the adverse effects of Title II regulation through judicious application of its forbearance authority.[31] Although this suggestion is well intentioned, it misses the point. Even if the Commission could exercise its forbearance authority in a productive manner, it would take years to sort out an appropriately calibrated set of rules, whether due to lengthy rulemakings or litigation. Meanwhile, this regulatory uncertainty would send capital to the sidelines. The economic literature suggests that these regulatory uncertainty effects would disproportionately harm communities of color.[32] The bottom line is that even if the Commission were to exercise its forbearance authority, the delay inherent in the process would likely stifle the progress we have seen in connecting communities of color. Our communities deserve better than this.

Congress should act to preserve the open Internet, and with it the promise of first class digital citizenship and equal opportunity for all. Congress has the ability to amend the Communications Act to provide strong, bright-line open Internet protections. That is why MMTC and four dozen national minority organizations have urged the Commission to preserve the open Internet we have today by using its Section 706 authority rather than its Title II authority. We encourage Congress to follow the same effective course.

III. MMTC'S RECOMMENDATIONS

As Congress considers how best to achieve these goals, we ask that they keep all options on the table. The legislative proposal should transition to a legislative debate for how to get past this morass so we can address other issues causing strain in the telecommunications ecosystem. Along those lines, we believe it is imperative that Congress narrowly target its effort in resolving

[31] *See, e.g.*, Statement by the President on Internet Neutrality, Daily Comp. Pres. Doc. No. 00841, 2 (Nov. 10, 2014).

[32] *See, e.g.*, Hassett & Shapiro, *supra* note 17, at 4-5, 12 (linking increased private investment with increased minority access); J. Gregory Sidak, *A Consumer-Welfare Approach to Network Neutrality Regulation of the Internet*, 2 J. Comp. L. & Econ. 349, 466-67 (2006) (explaining that marginal broadband users—who tend to be minorities—are most affected by price increases).

the issue of the open Internet, and not attempt to diminish the FCC's authority to address other important consumer protection issues such as prohibiting redlining, promoting universal service, and ensuring public safety.

To this point, I would like to offer two recommendations that I believe are consistent with the spirit of the "eleven principles for bipartisan rules in the Internet Age" that the Subcommittee has laid out.[33]

First, Congress should address, or at a minimum reinforce the FCC's ability to address, the practice of "digital redlining." "Digital redlining" is the refusal to build and serve lower-income communities on the same terms as wealthier communities.[34] It imposes, in essence, digital segregation. Sadly, as the experience of our country shows, both *de jure* and *de facto* segregation harms and degrades all of us—especially the most vulnerable among us. This is no less true in the digital age. Congress has recognized this in the past, which is why it has directed the Commission to collect demographic information concerning unserved areas when it measures deployment of advanced telecommunications capability.[35] Speaking in Cedar Rapids last week, President Obama observed that high-speed broadband is "not a luxury, it's a necessity."[36] Congress should build on its past work and the President's observation by empowering the FCC to prohibit digital redlining and thereby ensure equal access for all.

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[33] *See* Press Release, *Congressional Leaders Unveil Draft Legislation Ensuring Consumer Protections and Innovative Internet* (Jan. 16, 2015), *available at* http://energycommerce.house.gov/press-release/congressional-leaders-unveil-draft-legislation-ensuring-consumer-protections-and (last visited January 19, 2015).

[34] Broadband & Social Justice, Press Release, *MMTC Urges Government to Address Digital Redlining; Ensure Equitable Access for All* (Jan. 15, 2015), http://broadbandandsocialjustice.org/2015/01/mmtc-urges-government-to-address-digital-redlining-ensure-equitable-access-for-all/ (last visited Jan. 17, 2015).

[35] *See* Broadband Data Services Improvement Act, Pub. L. No. 110-385, § 103, 122 Stat. 4095, 4096-97 (2008) (codified at 47 U.S.C. § 1302(c)).

[36] Remarks by the President on Promoting Community Broadband (Jan. 14, 2015), *available at* http://www.whitehouse.gov/the-press-office/2015/01/14/remarks-president-promoting-community-broadband (last visited January 19, 2015).

Second, Congress should ensure that its open Internet rules will be enforced. This requires the creation of an accessible, affordable, and expedited procedure for the reporting and resolution of complaints. As mentioned, one approach would be to use a consumer-friendly complaint process modeled on the probable cause paradigm in Title VII of the Civil Rights Act of 1964.[37] Congress designed Title VII to offer rapid and affordable remedies for employment discrimination faced by women and people of color.[38] Under Title VII, a complainant receives an expedited ruling from the EEOC, and does not need to hire a lawyer or write a complicated filing. The same ought to be true in the context of broadband. Instead of the formal and often byzantine process envisioned by Section 208 of the Communications Act,[39] consumers ought to have an effective, straightforward, expeditious way to provide the Commission with enough information to determine whether there is a *prima facie* case of specific or systemic harm. If the Commission finds probable cause to believe that its rules have been violated, the agency could immediately implement a mediation process or take enforcement action. Whatever the precise details of this mechanism, the core principle remains the same: consumers, particularly individuals from vulnerable populations, deserve an accessible, affordable, and expedited procedure for ensuring that their government protects them from harm.

Honorable Members of the Subcommittee, we are at an impasse. If we do not act, the largest sacrifice will be the next generation: children from all classes, races and educational

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[37] *See* Civil Rights Act of 1964, Pub. L. No 88-352, 78 Stat. 241 (1964) (codified as amended at 42 U.S.C. §§ 2000e *et. seq.*)

[38] *See* 42 U.S.C. § 2000e-2 (prohibiting employment discrimination on the basis of "race, color, religion, sex, or national origin").

[39] *See* 47 U.S.C. § 208. Section 208 directs complainants to submit a petition to the Commission, the Commission then forwards the complaint to the common carrier for response, and the Commission may then open an investigation.

backgrounds may never experience the possibilities that new technology can offer to our communities, our Nation, and their world.

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Thank you again for the opportunity to testify, and I look forward to your questions.

Mr. WALDEN. Dr. Turner-Lee, thank you for your testimony and your suggestions.

We will now turn to our final witness this morning, Meredith Atwell Baker, president and CEO of CTIA—The Wireless Association.

Ms. Baker, glad to have you back before the subcommittee as well. Look for forward to your comments.

STATEMENT OF MEREDITH ATWELL BAKER

Ms. BAKER. Chairman Walden, Ranking Member Eshoo, and members of the subcommittee, thank you for inviting me to share the wireless industry's perspective on the importance of an open Internet. At the outset I want to be clear, America's wireless industry fully supports an open Internet. Wireless users demand it in a marketplace where competition has never been more vigorous. In the past 20 years, the wireless industry has grown from a luxury product to a key driver of economic growth. We all benefit from faster speeds, more services, and lower prices.

The U.S. is the global leader in wireless by any metric, and it is at the forefront of mobile innovation in health, automotive, and payment fields. Central to that growth was Congress's foresight in establishing Section 332, a mobile-specific regulatory framework outside of Title II. Congress has the opportunity to provide the same stability for broadband.

We greatly appreciate this committee's work to develop a regulatory foundation for future innovation with commonsense net neutrality provisions. The draft is an excellent start and offers a viable path to preserve an open Internet with enforceable requirements. Properly crafted legislation will guarantee the protections the President has called for, while allowing broadband providers to continue to invest billions, create jobs, and innovate products.

We do not ask that wireless be exempt from any new laws, only that any new requirements reflect our industry, our technology, and our inherent differences. I want to highlight three key differences.

First, mobile services are technically different and depend upon limited spectrum resources. This requires substantial network management, millisecond by millisecond, to deliver service to consumers. Remarkably, there is more bandwidth in a single strand of fiber than in all of the spectrum allocated to commercial mobile services.

Second, we are competitively different. More than 8 out of 10 Americans can choose from 4 or more mobile broadband providers. This is fierce competition, and it is driving new services, offerings, and differentiation that benefits consumers.

Third, we are evolutionarily different. 4G networks are less than 5 years old, and the future is bright, with advancements like LTE Broadcast, 5G services, and connected life applications. It is vital that any legislation is sufficiently flexible to preserve the competition, differentiation, and innovation mobile consumers enjoy today.

While we are optimistic that the process on the Hill will enhance the wireless experience for all Americans, we have significant reservations with the FCC's proposed path of Title II. The application of Title II in any form to wireless broadband would harm con-

sumers and our economy. Title II is designed for another technology in another era, an era in which competition was largely nonexistent, if at all, and innovation came slowly, if at all.

Given our industry's great success with mobile broadband outside of Title II, we have significant concerns with how Title II and its 682 pages of regulation would apply to the dynamic mobile broadband space. If the Commission proceeds with Title II, as opposed to the 706 path the court contemplated a year ago, the wireless industry will have no choice but to look to the courts. Given the clear language of Section 332, we have every confidence that we would prevail, but it is not our preferred course.

Under Section 332, mobile broadband is legally different too. In 1993, Congress exempted future nonvoice mobile services, like mobile broadband, from common carriage regulation. It did so unambiguously.

Given our industry's great success with mobile broadband outside of Title II, we have significant concerns of how Title II and its 682 pages of regulation would apply. The Commission and the courts have repeatedly found that wireless broadband is not a common carriage service. The FCC lacks the statutory authority to change course, and litigation would harm consumers, with a year or more of uncertainty and delay. As leaders across the globe are trying to replicate our mobile success and embrace 5G, this is the wrong time to inject uncertainty and delay into our Nation's efforts. We risk falling behind when the stakes have never been higher and our connected life and global competitiveness are more within reach.

The better approach would be for Congress to act and end this debate. Doing so would free us to turn to pressing bipartisan issues like spectrum reform and Comm Act modernization. By acting, Congress can help ensure that the United States remains the most dynamic and innovative mobile ecosystem. Thank you for the opportunity to appear on today's panel, and I look forward to your questions.

Mr. WALDEN. Ms. Baker, thank you for being here.

[The prepared statement of Ms. Baker [2] follows:]

[2] Attachments to Ms. Baker's testimony have been retained in committee files and are available at *http://docs.house.gov/meetings/if/if16/20150121/102832/hhrg-114-if16-wstate-bakerm-20150121-u1.pdf.*

Testimony of

Meredith Attwell Baker

President and CEO

CTIA – The Wireless Association®

on

"Protecting the Internet and Consumers through Congressional Action"

before the

House Energy & Commerce

Subcommittee on Communications and Technology

January 21, 2015

Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, thank you for inviting me to share the wireless industry's perspective on the importance of an open Internet.

At the outset, I want to be clear: America's wireless industry fully supports an open Internet, and the mobile Internet is open today. Wireless users demand it and in a marketplace where competition has never been more vigorous or barriers to switching lower, mobile broadband providers know that providing consumers with a robust, reliable, open Internet experience is a business imperative.

A Strong Foundation. More than twenty years ago, wireless communications was very new and did not fit cleanly in the FCC's traditional Title II telephone rules. Future investment and innovation were in jeopardy because of substantial federal and state regulatory overhang. Congress acted decisively in 1993, establishing a federal mobile-specific regulatory approach under Section 332 of the Communications Act with clear rules for mobile voice services and other mobile offerings.

Under this successful regime, the wireless industry has grown from a luxury product to a key driver of economic growth upon which nearly every American relies. For 44 percent of Americans, their only phone is their mobile phone, and the wireless industry is now larger than the agriculture, hospitality, automotive and airplane industries.[1] Prices per megabyte have fallen 99 percent from 2005 to 2013,[2] and mobile broadband use has grown 51 times over since 2008.[3]

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[1] Centers for Disease Control, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2014, http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201412.pdf; Recon Analytics, The Wireless Industry: The Essential Engine of US Economic Growth, http://reconanalytics.com/wp-content/uploads/2012/04/Wireless-The-Ubiquitous-Engine-by-Recon-Analytics-1.pdf.

[2] The Boston Consulting Group, The Mobile Revolution: How Mobile Technologies Drive a Trillion-Dollar Impact (Jan. 15, 2015), https://www.bcgperspectives.com/content/articles/telecommunications_technology_business_transformation_mobile_revolution/.

[3] Cisco, VNI Mobile Forecast Highlights, 2013 – 2018, http://www.cisco.com/assets/sol/sp/vni/forecast_highlights_mobile/index.html#~Country (Filter by Country (United States), then select 2013 Year in Review).

We all benefit from faster speeds, more services, and lower prices, as well as innovative devices and applications unimagined and unforeseen a decade or even a year ago. The U.S. wireless ecosystem is envied around the world as mobility is now at the forefront of American-driven innovation in the health, automotive, payment, and education fields. Small businesses that incorporate mobility are witnessing revenues growing twice as fast, and work forces are growing eight times faster than their non-mobile peers.[4] Mobility has never been more central to our nation's global competitiveness and our future.

A Clear Opportunity. Congress has the opportunity to provide the same regulatory stability for broadband as it did for all of mobility in 1993. We face significant regulatory uncertainty and ongoing legal debate over the FCC's authority over broadband and network management. We greatly appreciate this Committee's work and foresight with today's hearing to develop a solid regulatory foundation for future innovation and investment in mobile broadband with common sense net neutrality provisions that provide certainty for all affected stakeholders. The need for clarity is felt by all, from large to small, including regional and small providers serving the most rural and remote parts of our country, from eastern Oregon to central Kentucky to rural North Carolina.

The draft bill is an excellent start and offers a reasonable path toward ensuring the preservation of an open Internet with real, enforceable requirements. Properly crafted legislation will guarantee the protections the President has called for and would allow mobile broadband providers to continue to invest billions, create jobs, and bring innovative products to all Americans.

Importantly, we do not ask that wireless be exempt from any new laws, only that any new requirements reflect our industry, our technology, and our inherent differences. It is vital that any legislation is sufficiently flexible to preserve the competition, differentiation, and innovation mobile consumers' enjoy and reflect the unique, sometimes millisecond by millisecond technical

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[4] The Boston Consulting Group, The Mobile Revolution: How Mobile Technologies Drive a Trillion-Dollar Impact (Jan. 15, 2015), https://www.bcgperspectives.com/content/articles/telecommunications_technology_business_transformation_mobile_revolution/.

challenges that wireless networks face as they provide service to America's 350 million wireless subscribers.

The FCC's Parallel Path. While we are optimistic that the process on the Hill will enhance the wireless experience for all Americans, we have significant reservations with the path currently contemplated by the FCC. This is at least the third time the FCC has tried to establish jurisdiction over net neutrality. Unfortunately, it appears the Commission may yield to ill-conceived calls for "platform parity" by imposing 1930s-era wired rules on wireless broadband services. CTIA believes the application of Title II, in any form, to wireless broadband would harm consumers and our economy, and is counter to the framework for mobile services Congress established in 1993. We view the Commission's apparent decision to move forward based on Title II as another missed opportunity. The Commission could achieve all of its public policy objectives with mobile-specific rules under Section 706 of the Communications Act: a path the D.C. Circuit clearly signaled could withstand judicial scrutiny if properly structured.

Nonetheless, the Commission appears poised to move forward under Title II even though the reality is that Title II was designed for another technology and another era, an era in which competition was largely non-existent and innovation came slowly, if it came at all. Rules designed for homes with a single black rotary phone and families waiting until after 11 pm before they could affordably make long distance calls: No choice, just voice, and highly regulated prices.

Mobile is Different. America's wireless industry is the exact opposite. Much of the credit for that goes to CTIA's members, whose investment, innovation, and relentless competitive drive has made high-quality wireless service available to nearly every American. This amazing evolution in the way we communicate, access the Internet, and conduct business has occurred at a pace dramatically faster than the speed at which traditional wired service or electricity – services regulated under Title II or Title II-like, utility-style regimes with their origins in the Interstate Commerce Act of 1887 – became available across the country.

Given our industry's great success with mobile broadband outside of Title II, we have significant concerns with how Title II – and its 1000 rules and 682 pages of regulation – would apply to the dynamic mobile broadband space. Any new rules must be mobile-specific and designed for our

networks, not superimposed on them, because mobile broadband is different. Encouragingly, over two thirds of Americans agree that wireless services should not be subject to same exact requirements as wired broadband options.

I want to highlight four key differences that explain why. First, mobile services are technically different, completely dependent upon limited spectrum resources requiring nimble and dynamic network management to deliver service to consumers on the go.[5] There is more bandwidth in a single strand of fiber than in all of the spectrum allocated for commercial mobile services. In recognition of its fundamental technical differences, some have suggested that mobile broadband could be accommodated solely through a reasonable network management exception. While reasonable network management is a necessity for mobile wireless, that approach would not fully reflect the significant additional differences that characterize the mobile broadband industry.

Second, we are competitively different: More than 8 out of 10 Americans can choose from 4 or more mobile broadband providers.[6] This fierce competition is driving new services, offerings, differentiation and options like Music Freedom and Sponsored Data that benefit consumers. No one wants a one-size-fits-all mobile Internet experience. A competitive market also drives sustained investment. Relying on mobile-specific open Internet rules, the wireless industry has invested $121 billion over the last four years alone.[7]

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[5] Dr. Jeffrey H. Reed and Dr. Nishith D. Tripathi, Net Neutrality and Technical Challenges of Mobile Broadband Networks (Sept. 4, 2014), http://www.ctia.org/docs/default-source/default-document-library/net-neutrality-and-technical-challenges-of-mobile-broadband-networks-9.pdf.

[6] Federal Communications Commission, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Seventeenth Report (Dec. 18, 2014), Chart III.A.2, https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1862A1.pdf.

[7] CTIA-The Wireless Association®, Annualized Wireless Industry Survey Results – December 1985 to December 2013, http://www.ctia.org/docs/default-source/Facts-Stats/ctia_survey_ye_2013_graphics-final.pdf?sfvrsn=2; AT&T Financial and Operational Results (3Q 2014), http://www.att.com/Investor/Earnings/3q14/master_3q14.pdf; Verizon Condensed Consolidated Statements of Income (3Q 2014), http://www.verizon.com/about/file/3713/download?token=EKXz8Nx9; T-Mobile 3rd Quarter 2014 Financial Results, http://investor.t-mobile.com/Cache/1001191498.PDF?Y=&O=PDF&D=&fid=1001191498&T=&iid=4091145; David Barden, Bank of America US Wireless Matrix (Nov. 18, 2014); NTELOS Holding Corp. Reports Third Quarter 2014 Results (Oct. 31, 2014), http://ir.ntelos.com/press-

Third, we are evolutionarily different. Wireless is still an early stage technology. 4G networks are less than 5 years old, the modern smartphone only 7, and we are just beginning to see options like VoLTE, LTE Broadcast, LTE Advanced as well as the promise of the next generation of wireless, 5G. The need for a mobile specific approach with respect to new connected life applications is particularly clear as the network management requirements for such services are still in development. For instance, General Motors recently explained that "neither we nor our mobile network operator suppliers can predict all of the techniques that may need to deliver [connected car] services to our customers."[8] The risk of applying wired rules on wireless services "would … constrain the innovation [GM is] seeking to provide."

And fourth, and potentially most relevant for today's discussion, mobile broadband is legally different. In 1993, Congress in section 332 exempted non-voice services – private mobile radio services (PMRS) like mobile broadband – from common carriage regulation.[9] It did so unambiguously, saying those services "shall not" be subject to common carriage obligations. Based on this clear articulation of congressional intent, the Commission itself has repeatedly found that wireless broadband service may not be classified as a common carriage service. And the U.S. Court of Appeals has twice held that "Mobile-data providers are statutorily immune, perhaps twice over, from treatment as common carriers."[10] This clear line of precedent underscores the riskiness of a Commission attempt to classify broadband as a Title II service now.[11]

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releases/detail/1214/; U.S. Cellular Reports third Quarter 2014 Results (Oct. 31, 2014), http://investors.uscellular.com/news/news-release-details/2014/US-Cellular-reports-third-quarter-2014-results/default.aspx; Jennifer Fritsche, Quick And Dirty: Q4 2014 Big 4 Wireless Preview, Wells Fargo Equity Research (Jan. 14, 2015).

[8] General Motors Ex Parte, FCC GN Docket 14-28 (Oct. 9, 2014), http://apps.fcc.gov/ecfs/document/view?id=60000972470.

[9] See appended White Paper, "Section 332's Bar Against Common Carrier Treatment of Mobile Broadband: A Legal Analysis" at 9.

[10] *Cellco P'Ship v. FCC*, 700 F.3d 534, 538 (D.C. Cir. 2012); *see also Verizon v. FCC*, 740 F.3d 623, 650 (D.C. Cir. 2014).

[11] Suggestions that the regulatory framework for CMRS, or mobile voice services, is an appropriate comparison for the Commission's desired Title II with forbearance approach is misguided and misunderstand Congress's clear direction in 1993. Broadband Internet access and CMRS are fundamentally different services governed by disparate Congressional provisions.

The Significant Risk of Title II. Accordingly, if the Commission proceeds down the Title II path, the wireless industry will have no choice but to look to the Court of Appeals for a remedy. Given the clarity of Section 332, and years of FCC and judicial precedent, we have every confidence we would prevail in such an effort,[12] but it is not our preferred course. Litigation inevitably involves more delay and uncertainty, an outcome that is antithetical to investment and the fast-paced technological evolution of the U.S. wireless industry. Consumers would be harmed as we would all lose a year, if not much longer, in regulatory limbo. This harm may be particularly acute for rural consumers, as a collection of regional providers explained that "[a]pplying an outdated and backward-looking Title II common-carriage regime to our services would ... stifle innovation and investment and would do a disservice to rural America."[13]

The use of the Commission's "forbearance" authority to impose expansive new regulatory mandates, rather than to remove existing regulation, would upend the deregulatory purposes for which Congress enacted the forbearance provisions in Section 332(c). In 1993, Congress directed the Commission to apply some Title II common-carrier mandates on CMRS mobile voice services. In sharp contrast, and at the same time, Congress expressly prohibited the Commission from treating services like mobile broadband as common carrier offerings subject to Title II. There is a vast difference between applying Title II's obligations to voice CMRS offerings, as Congress directed, and applying such mandates to mobile broadband, contrary to Congress's clear directive. Further, the very use of forbearance to establish a new affirmative regulatory mandate for services that have never before been subjected to Title II turns Congress' statutory design on its head. Forbearance was designed as a deregulatory tool: The very term "forbear" means to "restrain an impulse to do something" or "refrain." This, of course, is what the Commission did with respect to CMRS under Section 332(c) – it reduced and eliminated existing regulation. There is no evidence whatsoever that Congress intended the Commission to use forbearance as a key tool in applying Title II to services that never were subject to common carrier regulation. Reclassifying broadband as Title II and then forbearing is a regulatory path that only Congress, not the Commission, could pursue.

[12] While Section 332 provides an absolute bar to imposing common carrier duties on mobile broadband providers, mobile broadband also fits squarely under the definition of "information services" under the Communications Act, which is an additional and equally valid bar on applying Title II to mobile broadband. The Commission has correctly concluded that "[w]ireless broadband Internet access service offers a single, integrated service to end users, Internet access, that inextricably combines the transmission of data with computer processing, information provision, and computer interactivity, for the purpose of enabling end users to run a variety of applications." Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks, Declaratory Ruling, 22 FCC Rcd 5901, 5911 ¶ 26 (2007).

[13] Bluegrass Cellular, Inc. et al Ex Parte, FCC GN Docket 14-28 (Nov. 14, 2014), http://apps.fcc.gov/ecfs/document/view?id=60000983742.

As leaders across the globe are trying to replicate our mobile success and embrace 5G, this is the exact wrong time to inject uncertainty into our nation's efforts. We risk falling behind when the stakes have never been higher for our future connected life and global competitiveness.

After more than a decade of debate, the better approach would be for Congress to act and set the ground rules for a generation of new investment, allowing us to get these questions behind us so that we all can turn to pressing bipartisan issues like spectrum policy and modernization of the Communications Act. These key steps will ensure that the United States remains the most dynamic, innovative, and open mobile ecosystem in the world.

Thank you for the opportunity to appear on today's panel. I look forward to your questions.

Mr. WALDEN. And thanks to all of our witnesses. You have blessed us with some really good thought starters. And some of you like what we are doing, some of you don't. All of you, I think we can all agree on the principles at stake here. It is a matter of how we get there.

I have got a couple of questions I want to ask. I will lead off.

To follow up on your testimony, Ms. Baker, regarding Section 332, and I am not trying to mimic our former chairman, Mr. Dingell, but in the essence of time I have a couple of yes-and-no questions that really would be helpful. And I would start with Mr. Powell and just work down.

Yes or no, do you agree with Ms. Baker that mobile would not be covered under the FCC's existing authority when it comes to applying these new net neutrality standards? Mr. Powell?

Mr. POWELL. I forgot whether it is phrased as yes or no, but we believe that the FCC could reach wireless by reclassifying much as they are proposing to do with respect to fixed broadband.

Mr. WALDEN. So you think they could get there, even though 332 has a different view of that.

Mr. POWELL. Not without risk, but we do believe that they could.

Mr. WALDEN. All right.

Mr. Dickerson.

Mr. DICKERSON. I am not an attorney.

Mr. WALDEN. That is two of us. But I stayed in a Holiday Inn, so I can legislate.

Mr. DICKERSON. I think the most important thing for us is that in our minds there is no difference between mobile and broadband.

Mr. WALDEN. So you want them both covered?

Mr. DICKERSON. Both covered in any regulations.

Mr. WALDEN. Right. On these protections. OK.

Mr. Misener?

Mr. MISENER. I agree with Chairman Powell's assessment, legal assessment. I also agree that consumers view these interchangeably——

Mr. WALDEN. Right.

Mr. MISENER [continuing]. And it should be the same policy for both.

Mr. WALDEN. So you think it is legally sustainable.

Ms. Gonzalez.

Ms. GONZALEZ. I agree. It is legally sustainable.

Mr. WALDEN. All right. Ms. Turner-Lee.

Ms. TURNER-LEE. I am not an attorney, but we think that Title II would actually stifle the expansion of mobile. So we think that is a bad idea.

Mr. WALDEN. Ms. Baker, one more time from you.

Ms. BAKER. Mobile broadband has never been under Title II because of the explicit expression of Congress, so it is not sustainable.

Mr. WALDEN. So there might be an opportunity for litigation here, you think. This is my point. We have got some really talented people, some are attorneys, some are not. Some are backed up by really smart attorneys as well. There is division right here on this panel. This is where I think certainty matters and legislating matters.

Yes or no, have you actually seen what the FCC is proposing? Mr. Powell.

Mr. POWELL. No.

Mr. WALDEN. Mr. Dickerson.

Mr. DICKERSON. We have seen principles.

Mr. WALDEN. No, I mean have you seen the language?

Mr. DICKERSON. No.

Mr. WALDEN. Got it.

Mr. Misener.

Mr. MISENER. No.

Ms. GONZALEZ. They don't typically release the order. But I have heard a great deal about what is in.

Mr. WALDEN. Oh, you have. But you haven't read it?

Ms. GONZALEZ. Haven't read it, no.

Mr. WALDEN. OK.

Ms. TURNER-LEE. Don't know nothing.

Mr. WALDEN. Ms. Baker.

Ms. BAKER. No.

Mr. WALDEN. All right. And does anybody anticipate they will see it before they vote on it?

Mr. POWELL. No.

Mr. DICKERSON. I am sorry, could you repeat that question?

Mr. WALDEN. Does anybody anticipate actually being able to see the language before the commissioners are called upon to vote on it?

Mr. POWELL. No.

Mr. WALDEN. Mr. Dickerson.

Mr. DICKERSON. We have found the FCC process so far to be quite open, so we believe it is quite possible that we could.

Mr. WALDEN. All right.

Mr. Misener.

Mr. MISENER. No.

Mr. WALDEN. Ms. Gonzalez.

Ms. GONZALEZ. Not sure if we would see it.

Mr. WALDEN. Right.

Ms. TURNER-LEE. Probably not.

Ms. BAKER. No.

Mr. WALDEN. We have two former commissioners, both of whom said very unlikely, nope, that you will actually see it. That is why I think it is a better process. You will actually get it see it through a legislative, transparent, open environment. Text is posted. You all have given us great input as we move forward.

There is a disagreement, I will say, at least this is what I am hearing, regarding the application of universal service fund fees. If I heard different testimony correctly, some believe that the FCC's order would allow it, some believe it wouldn't. Some think our bill would preclude it, some wouldn't. My question to you is, when it comes to universal service fees, under what we know of the FCC's order, what they are proposing, would the Internet now be subject to USF levy?

Mr. Powell.

Mr. POWELL. Yes. The way it works in short is that Congress requires an assessment of universal service from any telecommunication services provider. If the FCC reclassifies broadband, it will

immediately be in that classification and subject to that assessment. There is an argument that the Commission could theoretically forebear from that, but in the absence of that action it would absolutely result in increased charges on federal universal service.

Mr. WALDEN. All right. There is also an argument out there in the public, some agree, some disagree, that if the FCC goes down a Title II path and declares that the Internet is a public utility under Title II, that that nearly totally eliminates the Federal Trade Commission's authority, because they don't have authority on regulated common carriers. Correct?

Mr. Powell, can you speak to that?

Mr. POWELL. That is correct. Under the Clayton Act Section 5, the FTC is prohibited from exercising its authority over privacy, data security, and a number of other things against telecommunication services providers. They are obviously a champion of privacy today, and have broad-reaching authority to do so. That would be disenfranchised by this decision.

Mr. WALDEN. All right.

Mr. Misener, finally, you raised concerns in your testimony about specialized services—you are not the only one—that exemption in our draft legislation. Now, both the FCC and the President have said a specialized services exemption is necessary, and the language in our draft tracks the FCC's proposals. Has there about been a net neutrality rule proposed that does not acknowledge the need for specialized services?

Mr. MISENER. I can't say that there hasn't been one, but what we are concerned about, if that becomes a substitute for paid prioritization.

Mr. WALDEN. Right.

Mr. MISENER. So that is the concern. Whether someone has proposed it elsewhere, I don't know.

I will point out, however, in light of one of the prior comments by Chairman Powell, that he is viewing Title II as a binary thing, either it is all there or it is not. The Commission did forebear from Title II across the board. It need not have back in 2002. And so it could be partially unforeborn, as it were, and done very judiciously. So I think we can be much more precise about what this means and not view it as an all-or-nothing solution.

Mr. WALDEN. You could also have another Commission that decides to change all that too. So that gets to our issue of certainty.

I have gone over my time. I now recognize the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman.

I want to thank all the witnesses. I think that you have done a marvelous job through your testimony today to highlight what you like and what you don't, where you agree and where you don't. And I think that you have done it very well, and I am grateful to you for it.

I just want to make a comment before I begin with my questions. It is thrown around—and it is a heavy charge, because everyone cares about this—and that is that if we go, we move in a certain direction, that the private sector will stop investing. That is a big chill for me and for everyone else. But there isn't anything to substantiate that. I mean, when you look at the wireless auction, bil-

lions of dollars have come in. And when we began that effort, Chairman Walden, myself, and the subcommittee, people laughed, and they said you are not going to raise a dime out of this. Forty-five billion dollars so far. Well, I don't know about anyone else, I think $45 billion is a lot of money. That is a lot of investment. That is worth something. And the CFO of Verizon said, we will keep investing whether there is Title II or not. The CTO of Sprint. I don't think these are insignificant comments.

So I think it is important for the record, if someone makes that charge, then it should be backed up for us, because we need facts and the evidence that comes with the facts. I think that that would be most helpful to us.

I want to go to Mr. Dickerson. I should say to everyone, today is the first time I met Mr. Etsy. But get a life, Anna, I met him on C-SPAN. He was part of a conference, the Washington ideas conference, and I was so taken with how he presented himself, what he knew, and what his company has been able to do, I said let's invite him in and be a witness.

So thank you for being here. And thank you for all the jobs that you have created.

The proposed bill doesn't prevent a broadband provider from prioritizing content from one of its own affiliates. So my question to you is, if a broadband provider were to prioritize an affiliate's content, what effect would that have on Etsy? And most importantly, everyone that deals with you is a company. They have created a new company. What kind of an effect would that have?

Mr. DICKERSON. Yes. One thing that you may not know about me, I was actually chief technology officer before I was CEO. So I know a lot about technology. And one of the things that we know is that for commerce sites, for business sites, and I define this broadly from Etsy to Amazon to Google, that the speed of your Web site is absolutely directly correlated with revenue. So if things are slower, revenue drops. If things are faster, revenue goes up.

So in a world of paid prioritization, if smaller companies like Etsy were disadvantaged against larger companies, then you could see the larger companies see advantages purely based on speed. Higher revenues. And this would hurt the Etsy sellers who are receiving lower speeds than some of the other competitors.

Ms. ESHOO. Could it put them out of business?

Mr. DICKERSON. Put them out of business. And as I said in my remarks, we have sellers who are making money using the Internet in rural areas and elsewhere, and they are using this money to feed their families, pay for school, do all the things that they need to do in their lives.

Ms. ESHOO. Let me go to Mr. Misener. Under the proposed legislation the problem of interconnection abuse is not only ignored, but the FCC is prevented from doing anything about it in the future. Now, do you believe that if interconnection isn't explicitly addressed, how would your business and the ability to serve your customers, what would happen?

Mr. MISENER. Thank you, Ms. Eshoo, very much. I am not so clear in the bill whether it is precluded or whether it is not. Some people believe very strongly it is precluded. I think it is silent and it needs to be explicit that it is included for the very reason I stat-

ed in my testimony, which is consumers shouldn't care. A customer of Amazon should not care where in a network operator's network discrimination is occurring, only that it is occurring. And to leave that out is a major gap in the legislation, and I would like to see that filled.

Ms. ESHOO. Good.

Let's see. I am over time. Mr. Chairman, I failed to ask for a unanimous consent request to include in the record a letter dated January 20 from the mayors of New York and San Francisco, and the letter urges the FCC to adopt the strongest possible open Internet rules using Title II. And I also ask that letters from the National Association of Realtors and a group of racial justice organizations be included in the record. Both letters reiterate that the legislative process should not hold up the FCC from moving forward with strong, legally enforceable open Internet rules.

Mr. LATTA [presiding]. Without objection. [3]

[The information appears at the conclusion of the hearing.]

Ms. ESHOO. Thank you, Mr. Chairman. Yield back.

Mr. LATTA. The chair recognizes himself for 5 minutes. And, again, thanks to our panel for being here today. And as the gentlelady just said, it has been a very interesting discussion today.

Mr. Powell, if I could start with a question for you. I found your testimony very interesting about when we are dealing with regulations in this town, about trying to put round pegs in square holes and all the different things that folks out there are facing. But for many of us, we have very diverse districts. We represent suburban, urban, rural. But with many of the cable operators that I have in my area there have been concerns that the prospect of Title II regulation may require them to overhaul their billing practices, change their pole attachment rates, require them to review all of the customer privacy terms and conditions, and subject them to new enforcement rules. For many of these small companies, this would stifle future investment. Balancing potential harms with the new regulatory burdens doesn't seem to be equitable to those small providers. Should small providers be exempt from any network neutrality rules?

Mr. POWELL. First of all, I would say that we as an industry, and I would think that my small members would concur, are quite supportive of both the concept of open Internet and the government's interest in developing strong and sustainable rules. It is simply a false choice to suggest that we are opposed to the core and substantive effort to do so.

What we are concerned about is in the effort to do so we will employ a comprehensive, complex regulatory regime that will substantially raise the costs of being in the ISP business. Cost management is a critical concern for small businesses, much more than even the larger. And on the margins of uneconomic regions that have difficulty, like rural America, anything that adds to the costs of deploying that infrastructure in those places will dampen both

[3] The information has been retained in committee files and is also available at *http://docs.house.gov/meetings/if/if16/20150121/102832/hhrg-114-if16-20150121-sd009.pdf.*

the ability and the enthusiasm to reach the hardest parts of the country.

Mr. LATTA. Thank you.

Ms. Baker, if I could turn to your testimony, you also had some discussion about rural America in it, under your section regarding the significant risk of Title II. And you mentioned that if the Commission proceeds down that path that litigation would inevitably have more delays and uncertainties out there, and it's also interesting that the harm may be particularly acute for rural customers, as a collection of regional providers explained that "applying an outdated and backward-looking Title II common-carriage regime to our services...would stifle innovation and investment and would do a disservice to rural America." Could you elaborate on that disservice to rural America?

Ms. BAKER. Of course. Our association this year is chaired by Ron Smith, who is president and CEO of Bluegrass Cellular from Kentucky, and we brought our rural carriers in to visit with the FCC. They don't have armies of regulatory lawyers to go and comply with transparency and other burdens. Mobile broadband has never been under Title II. The uncertainty has already stifled their deployment. They are worried. They do not know what Title II brings.

And, additionally, the wireless industry is extremely competitive. They need to differentiate to serve their communities. They need to make sure that they can compete with different concepts, and they are not sure what Title II will bring them in that respect.

So the lawyers and what Title II would bring is unknown. Competition and differentiation are important to our rural carriers. And I think that is at risk under Title II.

Mr. LATTA. Let me ask you this, because when I am out in my district and talk to folks, especially if you are a small business way out in an area that might not have very good coverage. They are concerned, in fact I just talked with somebody not too long ago, about 2 weeks ago, that they have a problem with being able to connect with their costumers, even though people are trying to contact them. So are you saying build out and things like that for some of these folks would be hampered because of that, because of Title II?

Ms. BAKER. Build out and advanced services.

Mr. LATTA. OK. Thank you.

Mr. Powell, if I could go back to your testimony, you go into great detail about how the current light touch regulatory structure has spurred a rapidly evolving and successful broadband ecosystem. Will Title II regulations do anything to encourage continued growth as we have seen over the past 15 years? And would the reclassification encourage incumbent providers to upgrade networks or new companies to enter the market?

Mr. POWELL. I think, all hyperbole aside, the issue isn't whether people will invest. Of course they will. They have businesses to run. The real question is, will it be at a diminished and dampened level compared to the velocity and the ambitions that the country has? We hear the President and other people talk about wanting the Nation to achieve world class, top broadband speed and status.

We want gigabit to every American, we want every American to have access to the Internet, and we are impatient about that.

Networks are rebuilt every 18 to 24 months to the tune of $30 billion to $50 billion annually. To get to gigabit speeds, we are talking about hundreds of billions of dollars required over some amount of time. It is simply common sense to understand increasing regulatory costs, increasing uncertainty certainly will slow the magnitude or the velocity or the timing or the pace of those evolutions. And I am sure even in companies like Mr. Etsy's or Amazon they have just as much of an imperative of having a continued high growth evolution of network capacity as the primary input to the businesses they provide.

So we do believe both the increased costs associated with the regulatory environment, the cost of borrowing that will go up when now the rate of return is based on being a regulatory industry rather than a lightly regulated one, and the years of uncertainty to truly finalize and settle and stabilize the rules will probably have a negative and depressive effect. All you have to do is look at the recession, when companies had plenty of capital but were unwilling to deploy or hire or invest because of the uncertainties that surrounded the market during the depths of the recession to have an example of how this works.

Mr. LATTA. Thank you very much.

And my time has expired. And the chair recognizes Mr. Pallone for 5 minutes.

Mr. PALLONE. Mr. Chairman, I yield to Ms. Eshoo.

Ms. ESHOO. I thank the gentleman.

I just want to state for the record something that is very important given what Ms. Baker said. Wireless voice has been, as you know, a former commissioner of the FCC, under Title II since 1993. So I think everyone needs to have an appreciation of that, and I don't think the testimony reflected that.

Thank you.

Mr. PALLONE. Thank you.

Ms. Gonzalez, I think we both agree that putting net neutrality protections into law would be a win for consumers. But how might consumers lose if Congress were to enact the draft bill that we are discussing today?

Ms. GONZALEZ. Thank you, Congressman Pallone, for the question. I think with what is on the table today there are serious threats. This undermines FCC efforts to bridge the digital divide. Particularly concerned with rural subsidies and efforts to reform the lifeline program, which could have the potential to bring affordable broadband to the working poor. It undermines privacy, truth in billing, all kinds of consumer protections that we as Americans have come to expect and rely on, and it calls into question the FCC's ability to continue protecting us on the communications platform of the 21st century.

Mr. PALLONE. Thank you.

Now, my Republican colleagues characterize their draft bill as consistent with the FCC's 2010 net neutrality rules. Do you agree that the draft bill provides the same level of protection as the 2010 rules?

Ms. GONZALEZ. I think it is true there are some rules that look like the 2010 rules. There are a number of distinctions that I laid out in my testimony, but I think the critical distinction is that it strips the FCC of any flexibility to oversee consumer protection and ensure that there are not harmful, discriminatory practices on the Internet. And so that is the concern. It essentially freezes the FCC in time so that it cannot address any harms that fall outside of the principles laid out in the draft legislation, nor can it address any new harms that present themselves as technology and the marketplace evolve.

Mr. PALLONE. Thank you.

Mr. Powell, we have heard the argument today that Title II will stifle innovation and investment. In fact, I think the chairman called it the nuclear option. How would we evaluate this argument in light of the fact that cable companies' stock prices are up since President Obama announced his support for Title II?

Mr. POWELL. Well, public stock prices are a complex question. I am no market expert. But a careful examination historically over periods of regulatory intervention versus periods of light regulation will demonstrate a clear pattern. In the wake of the 1992 act, when cable rates were regulated, investment was depressed for several years until the prospect of the 1996 act, which deregulated those rates again and they soared. In 2001 and 2002, when the decisions to regulate broadband as an information service were put in place, it unleashed a radical increase in investment, totaling $1 trillion over the course of the year.

I sincerely believe that the market believes in the assertions and promises that Title II will not include rate regulation, it will not include the whole bevy of onerous regulations that exist. But unless that is clearly identified in an unequivocal way, I don't think it is priced into the market, and very likely would be if anything changed.

Mr. PALLONE. Maybe the economy is just getting so good that——

Mr. POWELL. Could be that too.

Mr. PALLONE. We are just seeing it soar these days based on what the President said last night.

One more question. Most broadband providers, including your member companies, say they are already in compliance with network neutrality, and what they are really afraid of is the rate regulation by the FCC, but both the President and the FCC have said they support forbearance from regulation of consumer prices. So, Mr. Powell, if we all agree rate regulation should be off the table, couldn't Congress narrowly address that issue in legislation, and couldn't there beunintended consequences from placing the kind of broad restrictions on the FCC's authority that are in the draft bill?

Mr. POWELL. Thank you, sir. I would say two things. First of all, rate regulation is the most dangerous of all of the provisions, but I wouldn't concede that of the thousands of regulations in Title II that alone is the sole focus of our concern. We do appreciate the President saying that rate regulation should be forborne from, and Chairman Wheeler's assertions.

But simultaneously, we have heard Chairman Wheeler talk about the adoption of Sections 201, 202, and 208. Section 201 is the

statutory provision where rate regulation is derived. It says that to ensure that practices for charging will be just and reasonable. That is the basis and the historical basis of the Commission's rate regulation.

So we don't yet have any confidence that the words are matching the direction of the order and whether the government will make clear that rate regulation is off the table or merely say they have the power to rate regulate but for now are choosing not to.

Mr. PALLONE. Thank you.

Thank you, Mr. Chairman.

Mr. WALDEN [presiding]. Thank the gentleman.

I will now recognize the gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

My good friend Congresswoman Eshoo kind of had a shot across the bow at former Commissioner Baker, now president or chairman or czar of CTIA, and so I thought I would give her a chance to maybe respond to the statement made by my friend Anna.

Ms. BAKER. Thank you. I appreciate that.

Ranking Member Eshoo is correct. First of all, we know the current framework is working. We have $112 billion of investment in the wireless industry in the last 4 years. But let's go to 1993, when Congress was enacting Section 332 and deregulating wireless. They did it two ways. They did two buckets. They did CMRS, which was mobile voice, and they did that subjected to limited Title II requirements. They separately created a second bucket, which is called PMRS, and that was for all new services, like mobile broadband, and they specifically exempt the FCC from applying Title II requirements on mobile—well, new services, which mobile broadband is a new service. FCC has always acted in accordance with that, and the court has always upheld that mobile broadband is not regulated by Title II and cannot be, according to the explicit language of Congress.

Mr. SHIMKUS. Great. Thank you.

And I know my colleagues have given some credit to the chairman of the subcommittee on movement. I mean, I am a paid prioritization guy. So that is where I come from in this debate. And I have always been the point that if you are going to make the $30 billion of investment every 18 months to upgrade the pipes, you have to have revenue to do that or you have to have a business model to do that.

My whole position in this has not been limited and government control of the existing pipes, but encouragement of the expansion of more. But that was then, this is now, we are in a new world order where I think we have now looked at the debate and said—and businesses have done that too—and said, hey, we need to get this monkey off our back, we need to get some rules and some certainty. Businesses always talks about certainty.

So, again, credit to the chairman by saying, OK, well, let's go back to the previous debates, look at what was put out in front by our colleagues, where can we find middle ground? And I believe that is the product that Chairman Walden has set forth, now with great consternation from my friends on the other side.

So I am with the chairman. I think we can move forward and set some certainty. But I am a legislator. Right? This process we

want to legislate, we want to define in law, and then allow the executive branch, or in this case the FCC, to implement the law. Because as, again, Chairman Walden said, if another FCC comes and is established by some other President, it could get turned topsy-turvy again.

So I just wanted to just in the big point just give some credit about how even Chairman Walden is bringing some of us kicking and screaming along with him on this policy.

Mr. WALDEN. Boy, can he kick.

Ms. ESHOO. Would the gentleman yield just for a second?

Mr. SHIMKUS. Yes, I would.

Ms. ESHOO. I am Catholic, and for Catholics, we understand confession. So thank you.

Mr. SHIMKUS. I still believe in the paid prioritization and incentivizing build-out. I am not sure we get there this way. And that is my concern.

Mr. WALDEN. I appreciate it. Would the gentleman yield?

Mr. SHIMKUS. I would.

Mr. WALDEN. I appreciate that. And remember part of what drives us to legislation. First of all, we would want the FCC, before they go off and regulate something that everybody has testified has worked pretty darn well, right, I mean what we have today has been light touch regulation. That is how it has been built out. There is no overwhelming evidence of clear market failure that would drive to deep regulatory control from Washington top down. That is where some of us have been, why do we have to go down this path?

What is before us today, though, is the President is now turning the FCC into his open puppeteer here, you know, and saying here is what you have to do, which goes beyond where the FCC chairman said he thought he should go, or what was right for the market. He is being pushed. And then he said, we are going to act at the FCC by February 26. And by the way, none of us here is going to necessarily see that order. That is part of our reform effort, by the way, which we passed out of the House, where we would have more transparency in the process.

So they are moving. We don't know precisely what that is going to look like. We would rather give certainty because of this issue that Ms. Baker has outlined regarding mobile devices, because Mr. Etsy and Mr. Misener, as you know, we are all going to a mobile world. And yet the statute under 332 is pretty clear, that authority doesn't exist at the FCC. Now, they may try to go there, and there is dispute whether you can get there and sort of hook something around. You are going to be in court. Consumers aren't going to get certainty. The marketplace isn't going to have certainty. And for the third or fourth time, the lawyers are going to get rich. And, Mr. Dickerson, you and I aren't lawyers. So all we are going to do is get to pay the bill here.

So I would prefer to get the committee together, do what we do as a committee, find a common ground here. And that is why we started with the 2010 order, we started with a lot of the work that the Democrats, frankly, had done with Mr. Waxman. If you go through section by section you will see that here. And then we just

want to give pause to the market. So, anyway, I have overextended your time.

Mr. SHIMKUS. I yield back the balance of my time.

Mr. WALDEN. Thank you.

Where do we go now? We go now to Mr. Doyle, who hopefully will be streamed on the Internet on this version of his comments.

Mr. DOYLE. Thank you, Mr. Chairman.

Let me start by saying I am very concerned about the way in which this bill strips the FCC of its authority under Section 706 and prevents the FCC from giving new entrants access to key infrastructure under Title II. The FCC needs access to every tool in its arsenal to promote and encourage the build-out of advanced broadband infrastructure. Municipal broadband and new entrants in the marketplace, like Google Fiber, they are driving U.S. innovation and driving ISPs to offer faster, cheaper services by bringing much-needed competition to the broadband market. These build-outs also create jobs across the country, and it is often in areas where ISPs have opted not to make the investments theirselves.

I want to ask Mr. Misener and Mr. Dickerson, both of your companies offer innovative and high-bandwidth applications. Mr. Misener, I understand that Amazon has recently begun streaming in 4K. Are either of you concerned that the draft bill does not include any mention of peering or interconnection, particularly given how congestion at points of interconnection has recently been used to leverage payments from edge providers?

Mr. DICKERSON. I will speak first. We are absolutely concerned that interconnection is not included. I agree with what Mr. Misener said earlier, we think very much about our customer experience and their experience of the Internet. So regardless of whether the choke point may happen upstream or in the last mile doesn't matter. So interconnection is very important to us.

Mr. DOYLE. Mr. Misener.

Mr. MISENER. I share that view on behalf of our customers. It is one thing that customers just simply should not need to care about. Where throttling or discrimination or paid prioritization takes place in a network they shouldn't care. Frankly, they shouldn't need to care much about where in the statute their rights are protected, where net neutrality is extended. It could be done in Congress, it could be done at the Commission, a mix of the two. And I would suggest that consumers really don't care, they just want their net neutrality.

Mr. DOYLE. Thank you.

Ms. Gonzalez, do you want to add to that?

Ms. GONZALEZ. Thank you, Congressman Doyle. I think we should consider anything that impacts a consumer's ability to access what they want to access on the Internet. The discussion draft strips the FCC of authority to even investigate this issue, and that is very concerning.

Mr. WALDEN. Would the gentleman just on that point? Because I don't believe our draft does that.

Mr. DOYLE. As long as you give me all my time back.

Mr. WALDEN. I will give you all your time back. I don't believe our discussion draft does that, and would welcome that opportunity. An on the interconnection piece, we leave that authority

with the FCC. We don't do away with that here. So although it is absent in the bill, it is still resident at the Commission. So that interconnection piece we felt was taken care of. We would be happy to have a further discussion. I yield back.

Mr. DOYLE. Thank you, Mr. Chairman.

Mr. Misener and Mr. Dickerson, the draft bill also provides this carveout for so-called specialized services, yet it doesn't allow the FCC to define what constitutes a specialized service. Can you envision this language being used by an ISP to sell preferred treatment or advantaging one competitor over another or even they themselves providing specialized services that unfairly compete in the marketplace?

Mr. DICKERSON. Absolutely. I think the lack of specificity in the language could allow for many applications that could be tantamount to discrimination. So, yes.

Mr. DOYLE. Mr. Misener.

Mr. MISENER. Mr. Doyle, certainly it would permit it with respect to affiliated content. So the network provider itself could engage in the provision of specialized services, which would look a lot like paid prioritization, only it is just a matter of ownership as opposed to payment by a third party. So, yes, we are very concerned.

Mr. DOYLE. Thank you.

I just want to add on to what Ms. Eshoo was saying too about we have read in several news reports that senior executives from major companies that are represented by Chairman Powell and Ms. Baker, having made statements about Title II, which, Mr. Chairman, I would like to enter into the record.

The first is one now that Comcast, Charter, and Time Warner, all members of Chairman Powell's organization, and I quote, Charter Chief Executive Tom Rutledge said that so long as the Federal Communications Commission waived parts of Title II that weren't relevant, a step that Net Neutrality advocates support, it would be an acceptable outcome. Similar statements were made by Comcast and Time Warner Cable.

Stephen Bye, the Chief Technology Officer of Sprint, a member of Ms. Baker's organization, said Sprint will continue to invest in data networks regardless of whether they are regulated by Title II, Section 706, or some other light touch regulatory regime. And Francis Shammo, the CFO of Verizon, said, "I mean to be real clear, I mean this does not influence the way we invest. I mean we are going to continue to invest in our networks and our platforms, both in Wireless and Wireline FiOS where we need to. So nothing will influence that."

So I would like to enter these three into the record, Mr. Chairman.

Mr. WALDEN. Without objection.

[The information appears at the conclusion of the record.]

Mr. DOYLE. I thank you, and I yield back.

Mr. WALDEN. The gentleman yields back.

We now turn to Mr. Guthrie for 5 minutes. Oh, wait a minute, Mr. Barton is back. I am sorry.

Mr. BARTON. I need to get reconnected, Mr. Chairman.

Mr. WALDEN. All right. Then he will yield. And I think next is Mr. Guthrie.

Mr. GUTHRIE. Thank you very much. It is a privilege to be here. And sorry, on this committee we have so many subcommittees going on with interesting testimony. I was out just a few minutes ago. And I understand, Ms. Baker, you mentioned Bluegrass Cellular, which is in my district. And we are very proud to have a very interesting concept and a successful rural carrier. And I understand you also talked about issues facing small rural carriers. But in the context of evaluating what constitutes reasonable network management, how are congestion issues different for wireless networks, particularly in small rural carriers?

Ms. BAKER. Well, that is a great question. I did talk about Bluegrass Cellular. They are our chairman this year. And they are deeply concerned. They have issued a letter in the record at the FCC. I am happy to offer it into the record here about their concerns for rural carriers. So with no objection? So there we go.

As far as the technical capacity and the reasonable network management standard, we have to be very careful. If, say, Mr. Latta and Chairman Walden were reliving the national football championship and Ranking Member Eshoo were tweeting, and you were taking your e-mail, if you were all on the same service provider, you would all be on the same cell. If we had a bunch of 16-year-olds walking through doing a tour of what Congress looks like, that is a millisecond by millisecond management that has to happen by our carriers. That is the same cell. It is constrained. One strand of fiber is the same capacity of the entire electromagnetic spectrum.

So there is an awful lot of network management that goes on. These people, if you were a CTO of one of these smaller carriers, you are updating any sort of things that can help you handle this data capacity, just amazing upload. You say $45 billion in the spectrum auction. Well, it is no surprise because the data that we use has increased by 730 percent.

Mr. GUTHRIE. Was that the same as congestion issues and interference issues? Is that different?

Ms. BAKER. Yes.

Mr. GUTHRIE. And how are they different?

Ms. BAKER. The data is increasing, so the congestion is increasing. So we are all using more data. So it is more and more congested, and we have to manage our network more and more.

Mr. GUTHRIE. It is all about interference, interference issues.

Ms. BAKER. Interference is if we are all using the same, if it is raining outside, if more people come onto our cell site, then we have to manage it, we have to make sure that it is optimized so that all of us have the best user experience.

Mr. GUTHRIE. Well, thanks. And thanks for mentioning Bluegrass Cellular. It is a great business.

And, Mr. Powell, I have a question. I know this issue was touched here earlier, but I wanted your input. The FCC, do they need to act in February? I mean, everyone wants the Internet to remain open and vibrant, but is there some particular reason the FCC shouldn't wait and see whether Congress can enact a bipartisan bill?

Mr. POWELL. It is really the decision of the Commission and the chairman. That is the schedule he establishes. He has that authority under the statute. I do believe that the Commission should al-

ways be respectful of the legislative process and provide both the expertise it needs to make a decision. But I also do respect their separate and different authorities, and they set their own timelines.

Mr. GUTHRIE. So when you were chairman in 2002, when cable modem service was determined to be an information service, in comments to the FCC the NCTA indicated that, quote, "The record shows that today's increasingly sophisticated broadband services fall even more squarely within the definition of information service than ever before," unquote. And could you explain this from the perspective and understanding of technology that you had before you in 2002 to the NCTA comments expressed to the FCC last year?

Mr. POWELL. I will try my best. I think one thing to note is the draft legislation, as I understand it, rather than disenfranchising the FCC of authority, is classifying a service the same way this Commission has classified that service for over 12 years, through both Republican and Democratic administrations, including most recently in 2010 by President Obama's first chairman of the FCC, who also agreed it was an information service. The Commission has been operating under that definition since the very beginning of broadband. That is not new.

It is important to remember this isn't completely discretionary. Congress creates classes of service and defines them. It defines what a telecom service is and it defines what an information service is. When broadband first emerged, and I was privileged to see it come onto the scene when I was at the Commission, there was an open question as to whether the nature of that new integrated Internet service was either a telecommunication service or an information service under our precedents. It was our judgment that the factual characteristics, the nature of the service, the way that it was used was much more faithful to the definition that Congress set out for information services than the one they set out for telephone services. That went all the way to the United States Supreme Court, who agreed with the Commission's judgment.

The Commission now is proposing to try to reinterpret the facts and apply it to the other definition. Certainly they have prerogative to try. But the facts are fundamentally the same as they were in 2002, and that will be a very serious source of litigation risk for the Commission when it fundamentally changes its mind about the factual nature of the underlying service.

Mr. GUTHRIE. Thank you. My time has expired.

Mr. WALDEN. The gentleman's time has expired.

We will now go to Mr. Welch for his 5 minutes.

Mr. WELCH. Thank you, Mr. Chairman. A couple of points and then a few questions.

Number one, I thank you and the ranking member. This is an excellent hearing.

Number two, we are way ahead of where we were last year. I mean, this draft bill does contain I think real responses to the over 3 million comments that were offered to the FCC. So that is terrific.

Third, I think the FCC itself, Chairman Wheeler, has been extremely responsive. And I have had confidence that his experience

in the industry, as well as on the public sector side, makes him someone who we can have confidence with respect to light touch regulation.

But number four, and this is the heart of it for me, whatever we do, my concern is for access to the Internet and the cost. And three out of four Americans, and this is especially true in rural America, really only have one provider. So they have no competition in many parts of the country.

So this question of what do we do has been answered affirmatively about trying to maintain net neutrality in this legislation, but there has been injected into it a major new issue, which is new, and that is, do we take away jurisdiction from the FCC? And that is a fundamental question that requires, I think, an enormous amount of attention before we make a decision to go forward.

Mr. Powell, I appreciate the point you made about uncertainty, because if you are making big investment decisions, obviously knowing what the rules of the road are, are important to you. But the uncertainty goes both ways. If you have legislation, it is very hard to change it. Let's be real. We know that. If you have a regulatory policy, it is there, and if it is done right it can respond to issues.

So I want to go to a couple of things that Mr. Misener said, because I appreciated how specific you were. In the legislation there is talk about specialized services without definition, reasonable network management without definition in the legislation, and third, which parts of the broadband are protected by network connection. And under this legislation, if there were a problem in any one of those three areas, who would resolve the dispute or provide the remedy to somebody adversely affected?

Mr. MISENER. Thank you, Mr. Welch.

It is unclear. I mean, there is a direction in the bill to establish an ex post adjudicatory process, which sounds nice in practice, but it certainly does not provide the kind of certainty and detail that most businesses and consumers seek.

Mr. WELCH. So, Mr. Powell, who would resolve those issues? I mean, there is not a dispute here that there is not a definition in our legislation. We could all anticipate there will be disputes. How would they be resolved?

Mr. POWELL. First thing I think is really important to note is the Commission, under judicial precedent, has the right and the obligation to interpret the words of Congress. What specialized services means or any other term of Congress would absolutely be within the Commission's power to interpret and enforce as they best understood it.

Mr. WELCH. So let me just understand, because that is important, I think, to me at least, what you just said. If there were a dispute, you are saying the FCC would have jurisdiction even though we are taking jurisdiction away from the FCC in this legislation?

Mr. POWELL. The draft, as I read it, certainly contemplates the FCC enforcing the provisions.

Mr. WELCH. OK. This is serious, because we know this question is coming. Let's say Amazon had a dispute. Where would they go

to resolve it? Would they go to their legislator or would they go to the FCC?

Mr. POWELL. Surely, they would complain to the Federal Communications Commission, who as I understand is fully empowered to resolve that complaint under the provisions laid out by Congress, as they do with every other complaint in their regulatory jurisdiction.

Mr. WELCH. OK. Thank you, Mr. Powell.

Mr. POWELL. You are welcome.

Mr. WELCH. Ms. Baker, one of the questions that I have is most of the open Internet talk centers around over the last mile between the Internet service provider and the end consumer. But aren't there very real competitive concerns and potential consumer impacts that arise in the exchange of data between the ISPs and networks too? And how can we ensure under this legislation that the interconnection continues to happen for smaller competitive carriers in the telecommunication marketplace?

Ms. BAKER. That actually might be a better question for Chairman Powell. We have been very focused on the mobile industry and the technical parameters that are around the mobile industry and the competitive factors on the mobile industry. You mentioned competition and only one provider. In the mobile industry, 8 out of 10 Americans have a choice of 4 or more providers, 94 percent have 3 or more providers. So it is a very different issue, so you may want to redirect your question.

Mr. WELCH. OK. I think my time has expired. So thank you. I yield back.

Mr. WALDEN. The gentleman's time has expired.

I would like unanimous consent to submit for the record a letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, from various companies, Bluegrass Cellular and others. Without objection, it will be entered into the record.

[The information appears at the conclusion of the hearing.]

Mr. WALDEN. We will now turn to the gentleman from Texas, Mr. Barton, for 5 minutes.

Mr. BARTON. Thank you, Mr. Chairman.

I am going to ask just kind of a general information question. The gentleman at the end of the table down there, Mr. Powell, I used to know a Michael Powell, but he had some hair.

Mr. WALDEN. He reached perfection. He is my role model.

Mr. POWELL. That was at the beginning of net neutrality.

Mr. BARTON. Is this the same Michael Powell who used to be important, used to be the chairman of the FCC?

Mr. WALDEN. If the gentleman would yield, yes, I believe that is the case, and he has reached folic perfection.

Mr. BARTON. OK. I just wanted to make sure before I asked him a question.

Now, Mr. Powell, now that I know who you are—and I am kidding, I know you—I wouldn't kid you if I didn't know you pretty well.

But he is blushing, Mr. Chairman. Let the record show.

When you were chairman of the FCC, did your Commission give any thought to regulating the Internet under Title II?

Mr. POWELL. No. As I said, this was a question of first impression when broadband was in essence invented. And that question was presented to the Commission of, how should it be properly classified under congressional law? So we did weigh whether to regulate it as a telecommunication provider under Title II or whether to regulate it as an information services provider under Title I. The Commission voted to do the latter.

Mr. BARTON. Are you aware of any academic or industry study that claims the Internet is a natural monopoly?

Mr. POWELL. I am not aware of any study. And in fact I think one of the most substantial decisions made by this body in 1996, when it passed the Telecomm Act, was to abandon that thesis of regulatory policy that the markets are not natural monopolies, they should be subject to competitive forces, and it shouldn't be regulated as such. I mean, I think that is one of the things that concerns us about the historical use of Title II. Built in and woven throughout that body of law is the assumption that the market is served most efficiently by a monopoly, a state-sanctioned monopoly, as AT&T once was for a very, very long time.

Mr. BARTON. Assuming, and I think it is a correct assumption, that the Internet is not a natural monopoly, that it is in fact a competitive market, given your knowledge, both in your prior capacity as chairman of the FCC and your current capacity as an industry leader, do you view any participant on the provider, the base provider part of the market to have what would be called monopoly market power?

Mr. POWELL. No, not during my tenure. And I disagree that is the case today. As an old antitrust lawyer, we know that you don't count noses, you look at what the effects are in the market. Has capacity expanded? Capacity has expanded 1,500 percent in a decade. Has the market continued to invest? It invested over a trillion dollars in that decade. Have prices gone up to monopoly rent levels? Prices have stayed flat and declined on a per megabit basis. I don't think any antitrust scholar or Justice Department could conclude that it is an unhealthy, uncompetitive market based on the actual characteristics of the market that they use to measure that question.

Mr. BARTON. Well, if it is not a natural monopoly and there is no participant in the provider sector of the market that has monopoly market power, then it stands to reason that the committee draft is correct that we should explicitly say you shall not regulate or oversee the Internet under Title II. Do you agree with that?

Mr. POWELL. As I have testified consistently, I do think the cost and damage to Americans' ambitions in broadband and Title II far outweigh its benefits. I think that if the narrow task before us is to create solid, bulletproof, legally sustainable net neutrality rules, which we accept, we believe that can be done without resorting to that hammer.

Mr. BARTON. OK.

Mr. Chairman, I want to thank the former chairman for those comments. I do believe that it is wise to put this out as a draft. I think there are some very valid questions—and my friends on the minority are asking some of those questions—about how to perfect the language. I have some concerns myself about certain parts of

the draft. But as a base principle, the fact that we should not regulate the Internet under Title II, I think is beyond question. And if we start from that premise, I think the discussion draft is an excellent document, and we can iron out the details through these hearings and if you take it to subcommittee markup in the markup itself.

With that, I yield back.

Mr. WALDEN. I thank the gentleman.

We will now turn to the gentleman from Kentucky, Mr. Yarmuth. Welcome aboard, and——

Mr. YARMUTH. Thank you very much, Mr. Chairman, and I want to thank the panel. It has been a very enlightening conversation, and I am new to this entire area. So I am learning a lot as we go.

And one of the things that intrigues me about this entire field is that we have a field that is changing as rapidly as anything probably in history has changed, and we talked—some of the members have talked about the difference between 1996 and now and how the world has changed.

But it is not just the technology that has changed, it is also the industries have changed in the sense that this is kind of an amorphous corporate structure that is out there now too. There is a lot of consolidation going on. There are companies getting into all various areas of the business so that at one point they are acting like a common carrier, at another point they are acting as a content provider and so forth.

So, Mr. Powell, you have mentioned before the distinction between information services and telecommunication services in the law. Is that a meaningful distinction today?

Mr. POWELL. I think over time it shouldn't be, meaning, you know, this is, I think, the case for this institution which I think it is already committed to taking on the responsibility to write a new act. We are entering into a world in which a bit is a bit. Data networks follow radically different characteristics than the ones that informed those judgments when these laws were written in the 1930s or the 1990s, and I do think that is a continuing problem.

I think net neutrality is actually just one of the first highly contentious issues related to ambiguity, and it won't be the last, and what concerns me is that I think Title II is even more inapplicable to modern functions and modern networks, and I think we will be ironing out, if that is the governing body, for years to come how it is properly applied to networks that do not behave in the ways that existed when those judgements were made.

Mr. YARMUTH. Right. Thank you.

Ms. Baker, you say in your testimony this similar conversation, mobile broadband is different, and I agree with you that network neutrality rules need to be flexible enough to take into account the technological differences between networks.

The draft, though, we are discussing today would restrict the FCC's ability to interpret the net neutrality rules once they are enacted.

How can the FCC give wireless carriers the flexibility they need without the authority to modify or clarify the network neutrality rules?

Ms. BAKER. I think the draft is a great start. I think as we evolve we need to work on the definitions and make sure that we have the proper definition for reasonable network management. Currently it acknowledges the technological differences. I think that is important. We will have to watch all the definitions, but I think we have got a great start, and look forward to working with all of you on it.

Mr. YARMUTH. Thank you.

The 1996 act created a partnership between the states and the Federal Government, and each had important telecommunications oversight and responsibilities. Our partners in state governments and public utility commissions are often closer to the ground and can respond quickly to consumer complaints.

As we are considering this legislation, I want to address this to Ms. Gonzalez, should we be thinking about the consumer protection role of the states as well?

Ms. GONZALEZ. Absolutely. In fact, there has been a lot of talk recently about the FCC acting to protect local choice in broadband. In particular, there is an effort to ensure that states do not restrict local communities from building their own broadband networks. I have concern that the draft legislation, as it stands today, would disempower the commission from addressing that very serious issue of local choice for consumers.

Mr. YARMUTH. And while I have your attention, we have been talking about the competitive situation with broadband. In my community there is basically one system, and so there is really no incentive for them to provide great quality service or consumer service.

Are you concerned about the ramifications for consumer protection if we go down this route literally that is in the draft bill?

Ms. GONZALEZ. Yes. Absolutely. I think it calls into question the FCC's role in protecting consumers and there may be some competition that might not be an actual monopoly, but I think if you ask people around the kitchen table do they feel like they have choice in particularly their home broadband connections, I think the vast majority of consumers feel kind of trapped.

Mr. YARMUTH. Yes. I agree.

I just want to say one thing. It is certainly my preference for Congress to act in all of these areas, but I have very serious concerns, again, the way the world is moving, Congress at its optimum efficiency moves at about 10 miles an hour, and the world is moving at 100, and I think in this field and many, many others it is becoming very, very difficult for us to make long-term policy decisions because the future is so uncertain, and we talk about providing certainty, there is not a lot of certainty out in the world just because the worldis changing so fast.

So, anyway, editorial comment.

Thank you very much. I yield back.

Mr. WALDEN. Gentleman yields back.

We now go to the gentleman from Texas, Mr. Olson, for 5 minutes.

Mr. OLSON. Mr. Chairman, as you know, today is my first hearing as a member of this subcommittee, and I think I am thrilled to be here.

All kidding aside, Ms. Baker, it is always refreshing to have someone who went to school in Houston, Texas, as a panelist.

As you know, ma'am, the last major update to the Communications Act occurred 19 years ago. Giving the importance of the Internet to our economy, our social fabric, does it make sense for Congress to take a fresh look at how to tackle Internet openness rather than try to invoke statutory provisions that are decades old?

Ms. BAKER. Absolutely, and we are very committed to work with you on that.

Mr. OLSON. Thank you.

One question for all the panelists. We all agree that these proposed changes by the FCC rule to Title II will bring about legislation. I think we can all agree with that.

My question is that is going to make for a lot of uncertainty. How long will that last? When it is decided by the courts, how long? Any idea? A year? Two years? Five years? A decade? Mr. Powell?

Mr. POWELL. Well it is always hard to say without looking back historically, but when my commission first adopted the definition of information services, it was 3 to 4 years before there was complete resolution of a litigation case because of the ruling of the Supreme Court.

The commission now is proposing to do fundamentally the same thing, a brand-new untested definitional change coupled, by the way, with new and untested other applications of forbearance and other things.

So we are talking about potentially a litigation process that typically would run 3 to 5 years depending on its complexity, depending on the parties, and depending on the court system.

Mr. OLSON. Does that assume applications that decisions come out longer than 3 to 5 years, or is that sort of the whole window?

Mr. POWELL. Well, the problem is if any part of the order is overturned by a court, then there are remands to the commission. That could be a whole new commission. This commission will only be in power for the next 2 years. It could be remanded to the next administration's commission. This thing could start all over again. It is not a complete exaggeration to say 10 years from now we could still be sitting here.

Mr. OLSON. Mr. Dickerson, your comments, sir. How long?

Mr. DICKERSON. Yes. Well, first of all, we don't see the FCC action in congressional action as mutually exclusive. I think, obviously, Mr. Powell has a lot of experience in these areas. So I don't want to contradict his legal expertise and the process expertise.

I am very encouraged by many of the principles in the bill. I have stated the issues that I am concerned about. I think the congressional action can—if the bill is amended in the ways that we have described could provide much more certainty and work along with FCC regulations.

I wanted to really quickly while I have the floor amend an earlier comment. I wanted to clarify that I will not see the draft FCC order before they vote, and I apologize for that mistake.

Thank you.

Mr. OLSON. Duly noted.

Mr. Misener, how about the courts? How long?

Mr. MISENER. Well, all litigation is optional, and so it might be up to the litigants whether they pursue it. If we get a great FCC order that everyone loves, maybe no one will sue. Some parties have suggested that they are going to sue regardless. It is not we, it is they. It is a choice of theirs.

Mr. OLSON. Ms. Gonzalez, how long?

Ms. GONZALEZ. I think the risk of litigation comes with an FCC order as well as with the proposed legislation. I think no matter what there will be legal action to clarify definitional issues in the legislative draft, and so while all of us, especially those of us who are lawyers who don't make a lot of money on these issues would like to see, you know, as little litigation as possible, I think it is unavoidable regardless of the path.

Mr. OLSON. How about 3 to 5 years like Chairman Powell said? Do you think that is the window of this uncertainty?

Ms. GONZALEZ. I think the draft legislation opens up the opportunity for case-by-case adjudications of various definitional issues that the FCC would have to resolve, and so it could even be longer——

Mr. OLSON. Thank you.

Fairly quick, ma'am, because Ms. Baker is waiting.

Ms. TURNER-LEE. Yes. I would actually say that I think the draft legislation would actually reduce the amount of time and that we will experience litigation——

Mr. OLSON. OK.

Ms. TURNER-LEE [continuing]. If we go towards that. And I also think the draft legislation would give the Congress as well as the FCC some room to look at some of the areas of the bill because out of the 11 principles there is probably one that it sounds like needs to be debated, and that is the Section 706 authority piece, but I think Congress would act much quicker than the type of litigation that we would actual have, and we would avoid the consequences of Title II.

Mr. OLSON. Ms. Baker?

Ms. BAKER. So the 2010 rules were not published for a while. There are various kind of procedural ways that the FCC can extend that time before they publish them. Once they were published, they were turned back last year. We are now at the FCC revisiting those.

Certainly the best way to act for certainty is for Congress to act. So it depends on how you count it. That is 2010. It is 2015. They will promote some more rules that will also—depending if they really go Title II, they will be litigated. That will be another window of several years of litigation and uncertainty.

Mr. OLSON. Thank you.

My time has expired.

Mr. WALDEN. Thank the gentleman for his participation.

I ask unanimous consent that we enter into the record a statement on the Verizon Policy Blog from Fran Shammo, the Verizon executive vice president, chief financial officer, which deals with this issue of investment, and in which Fran says, "Experience in other countries shows that over-regulation decreases network investment. If the U.S. ends up with permanent regulations inflicting Title II's 1930-era rules and broadband Internet access, the same

thing will happen in the U.S. And investment broadband networks will go down." So it was a clarifying statement from December 11th.

Ms. ESHOO. Somebody is scolding him.

Mr. WALDEN. I don't have any knowledge of that since this was December 11th, but would enter that into the record.

Without opposition, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. WALDEN. We will go now to Mr. Loebsack.

Welcome aboard the subcommittee. As you can see, we don't deal with many controversial issues here.

Mr. LOEBSACK. I am happy to jump into this one as the very first issue that I am dealing with, despite the admonition from Mr. Powell about the difficulty of this subject.

I want to thank the ranking member as well for this wonderful hearing today. I have learned a lot. This is the first hearing that I have had on this subcommittee. I am on the larger committee as well, and if I might, Mr. Chairman, I would like at the outset to request submission for the record a letter from the Internet Association offering their analysis and concerns of the draft bill that we are discussing.

Mr. Chair, I would like to submit——

Mr. WALDEN. Without objection.

[The information appears at the conclusion of the hearing.]

Mr. LOEBSACK. Thank you.

I come from Iowa. I have 24 counties in my congressional district. It is a much more diverse district than folks on either coast of the United States might imagine. No offense to folks on either coast, especially our chair and ranking member here, but we have got a lot of issues in a district like mine. It is a very big area.

What I would like to start off with is a question to you, Ms. Baker. Those statistics that you cited, something about 8 out of 10 folks have 4 choices or—can you cite those statistics again?

Ms. BAKER. 8 out of 10 Americans have a choice of more mobile broadband providers, and 94 percent have a choice of three or more.

Mr. LOEBSACK. And do you know where the 20 percent and the 6 percent reside? Do you have any idea at all?

Ms. BAKER. I am certain we can get you a map.

Mr. LOEBSACK. That would be wonderful. I would really appreciate it. I would suspect, although I don't know for sure, that it is probably in rural areas where those folks reside.

This is my ninth year in Congress. My first year on this committee, but I have been getting around my district for the last 8 years, and this is a huge issue that has come up, the access on the part of rural areas to broadband, to cellular service, to all the things that we are talking about here. That is why I am so excited to be on this subcommittee. It was my first choice so I could do what I can for the folks in my district, and I want to thank all of you.

Mr. Dickerson, in particular, I knew nothing about Etsy until my daughter requested a gift certificate as a Christmas present, and I immediately went online and found out what a wonderful service you offer. So thank you for you being here as well.

Mr. DICKERSON. Thank you.

Mr. LOEBSACK. I support net neutrality, obviously. I am interested in working with both sides of the aisle so we can craft some kind of legislation to bring this up to where we ought to be in 2015, fully recognizing that we really will never as legislators understand all the issues down the road because things are going to be changing all the time.

We are going to do the best we can, and I do appreciate the majority bringing a bill to the floor—or bringing a draft to us at this point so we can spend a lot of time working on this, but as I said, the rural areas are really probably my major concern as a Congressman, and I would like to ask, Ms. Gonzalez and perhaps Dr. Turner-Lee and maybe the rest of you as time permits what effects might this proposed legislation have on our rural consumers, especially the Universal Service Fund programs, universal programs, service programs, which were already mentioned briefly?

Ms. GONZALEZ. Thank you.

Thank you, Congressman for the question.

This is one of my deep concerns with the draft legislation as it stands. Stripping the FCC of Title II and 706 authority, calls into question the ability of the commission to continue ongoing processes that help subsidize expansion of broadband in rural areas as well as programs that could make it more affordable for those rural folks that do have a connection but can't afford to connect.

We are really concerned about, people in rural areas driving down the road to wherever they can get a wireless signal to do their homework or we need to ensure that this bill does no harm to efforts to, you know, increase digital inclusion. It is an important imperative for education as well.

Mr. LOEBSACK. Thank you.

Dr. Turner-Lee?

Ms. TURNER-LEE. Thank you, Congressman.

I actually want to say that I think that the bill, if you flip it on the other side, has the promise if we were to look carefully at Section 706 authority over Title II to actually increase the further deployment and adoption in rural communities. I think part of the reason why the FCC has the authority of 706 is to get at the very issue that you are talking about, and I think by looking at the bill in a way where that is a point of debate because it is a discussion draft will actually allow us to be careful in the legislative path that we do take.

I mean, if we take Title II—we have already heard from the association leaders about the high capital investment in communities overall, but the communities like rural and the communities that we are concerned with at MMTC will be the last on the list if capital is depressed among our communities.

So I think we need to be real careful about that. In the study that I did in 2010 of the national broadband map, there was very little coverage of census tracks that were the lowest in their areas in their states and communities, and it has been since 2010 under the light-touch regulatory environment that we have seen a lot of growth, particularly with wireless as an onramp for some of these communities as well.

So I would caution against throwing the baby out with the bath water with the legislative proposal and to come to the table to really think about what ways can Section 706 perhaps—and we have offered some solutions that we are willing to work and sit down with congressional members, the staff to talk about, but how can you actually leverage that point in there so that to the earlier point of the congressman we don't spend a lot of time wasted where we can't get to the debate of universal service deployment and other things that you do care about and we do too.

Mr. LOEBSACK. I see my time has expired, Mr. Chair, but I would like a response from the others if that is possible for the record——

Mr. WALDEN. Sure.

Mr. LOEBSACK [continuing]. Moving forward.

Thank you so much.

Mr. WALDEN. Or if they can give it to you really quickly.

Mr. LOEBSACK. Yes.

Mr. DICKERSON. I could go very quickly. In my opening remarks, I said that Etsy is a democratizing force for entrepreneurship. Democratizing entrepreneurship means providing rural broadband so that people are not disadvantaged by where they live on whether or not they can take advantage of this great platform that we have.

So we are concerned that legislation, by revoking the FCC's authority, could really undermine efforts to promote adoption in rural areas, broadband adoption.

Mr. LOEBSACK. All right. Thank you.

Mr. POWELL. I think the thing I would emphasize quickly is the biggest problem of reaching rural America, which should be a sacred obligation of all telecom policy is because the costs are highly uneconomical for entry.

Mr. LOEBSACK. I understand that.

Mr. POWELL. And so you have to balance off FCC power with ensuring that we are not raising the cost of providing services and further disincenting infrastructure builders from coming into those communities, and that is the other worry about moving to a regime that could raise those costs.

Mr. LOEBSACK. Any other——

Mr. WALDEN. Any others real quickly?

Mr. Misener, go ahead.

Mr. MISENER. Thank you.

It is hard for me to believe that investment requires blocking, throttling, not disclosing, engaging in paid prioritization.

Mr. LOEBSACK. Thank you.

Mr. WALDEN. All of which would be banned under our draft. Correct?

Mr. MISENER. Question whether it is enforceably banned, and question whether network operators can get out of it by offering specialized services or claiming reasonable network management.

So there are a lot of questions, but clearly those good things, that what I call excellent principles, should be protected.

Mr. WALDEN. And, remember, you still have the FTC in the background unless it goes Title II.

Ms. Gonzalez.

Ms. GONZALEZ. To response directly to Dr. Turner-Lee, currently the Universal Service Fund is located in Title II in Section 254,

and so 706 isn't enough for us to get there, and we want assurances that the commission continue ongoing and upcoming processes to expand access.

Mr. LOEBSACK. Thank you.

Mr. WALDEN. Dr. Turner-Lee?

Ms. TURNER-LEE. In response to Ms. Gonzalez—we are going down the line.

I mean, I think that in terms of Title II clearly you are correct in terms of the assurances that are there, but then it comes with everything else, and I think that everything else is what we are actually concerned about in our communities if you do go back to the conversation about rate regulation, et cetera.

For the communities that we represent, they are not even at the beginning of the finish line of this, and we have a lot more work to do, and I think we need to be really cautious about the regulatory action that is taken given the fact that there are 30 million people that still do not have broadband access, and Congressman, many of them in your area, and I think the fact that we have been at this conversation and we keep going into this whirlwind continues to disadvantage the people that we represent that needs to get about the business of other issues, and so respectfully, Ms. Gonzalez, I think you are right, but I think, the same token, I think Title II is just much too excessive to actually get the things that we want.

Mr. LOEBSACK. Got it.

Mr. WALDEN. Ms. Baker.

Ms. BAKER. Schools and libraries and rural programs exist as broadband is classified under Title I. I think they would continue. I think it is a good discussion to have. We have a Comm Act rewrite that is going forward. So I think it is important and we all realize it is important and we can continue the conversation.

Mr. LOEBSACK. Thank you.

Thank you, Mr. Chair.

Mr. WALDEN. You are welcome.

I thought it would be helpful too for the whole committee to hear everybody get a shot at it, and, Mr. Loebsack, if you would like to meet with Mr. Cramer and me afterwards, we can show you what a real rural district looks like.

We are now going to go to the gentleman from Florida who has joined our subcommittee, Mr. Bilirakis, for five minutes.

Mr. BILIRAKIS. Thank you, Mr. Chairman.

It is an honor to serve on this subcommittee. It has been a terrific hearing. Thank you so very much. I have a couple questions here.

First for Mr. Powell. After speaking with a medium-sized broadband provider in my district, they were concerned that during this push for a reclassification the FCC has not conducted a single study on the impact that reclassification would have on small- and medium-sized operators.

What are your thoughts on the ability of small- and medium-sized ISPs to handle the increased burden of internet regulation?

Mr. POWELL. I think it is fair to say they are deeply concerned. I would emphasize that the FCC has a legal obligation on the Reg-

ulatory Flexibility Act to take special consideration of small businesses in the cost benefit analysis of their decisions.

Our members have filed with the commission raising grave concerns that they have not complied with the RFA as part of that analysis. That is an ongoing conversation with the commission, but yet another potential vulnerability in the rules that will come out from the commission.

Mr. BILIRAKIS. Thank you, sir.

Ms. Turner-Lee, and I know you touched upon this, but maybe you want to elaborate a little bit, I have a couple areas in my district, Lacoochee and Trilby, as many members do, where even today Internet adoption is significantly behind the rest of the country and they are struggling to get reliable broadband up and running.

Can you explain why Title II reclassification could disproportionately impact and further harm communities with lower broadband adoption already?

Ms. TURNER-LEE. Yes. Thank you, Congressman.

So in my testimony and on record I actually put more statistics in there to actually talk about the fact that relevance actually leads when it comes to the reasons why people do not get online. The cost of broadband as well as the type of device actually come after why do I need to use this tool, and I think for all of us in this room, if we want to equalize democracy, as it was said earlier, we need to get people online to they can realize the full value.

The challenge with Title II, to your question, is, you know, again, as I have said, that we still have to get everybody to the starting point before we get to the finish line, and trying to manage around some of the hypothetical harms of what the Internet can do really does a disservice, and under monopoly-era telephone service we can only talk and hear. Under broadband, we can talk, hear, discuss, engage, see, and do other things.

If a community is of color, we want to solve social problems that are chronic, like chronic disease or the lack of educational resources, et cetera. The possibilities and aspirations of the Internet are so great, and why would we try to restrict and regulate something that is really just still in its infancy, and for our communities, again, relevance is the issue.

We have got to move people of color, more vulnerable populations like the poor and the disabled and seniors and the folks that do not speak English as first language to the Internet for the power of government resources so they can move from an inline economy to an online economy. We have got to move them into places where we can solve those problems much like in Florida where people are not taking advantage of the new technology, and having a restrictive Title II stance, I think, has its impacts outside of chilling investment and deployment.

Mr. BILIRAKIS. Thank you so very much.

Mr. Powell, will Title II regulation do anything to encourage incumbents to upgrade networks or new companies to enter the market?

Mr. POWELL. Well, I would like to take the latter part of your question because I think this is a serious overlooked aspect of Title II. It is a major disincentive for a new competitor to enter the mar-

ket, and all you need to do to look for evidence is some of the examples that are held up as sterling new entry like Google Fiber. Google Fiber entered the market, by the way, it only entered the market in a handful of selected cities, it elected to provide broadband service and it elected to provide video service but refused to offer telephone service.

It refused in its own public statements in saying it chose not to provide telephone service because of the regulatory compliance costs associated with being a telephone company. In fact, the President of the United States was in Iowa recently, in Cedar Falls, talking about the municipal broadband company that provides a very fast Internet service. That company also provides broadband and video service. To date, provides no telephone or telecommunication service in part because of the regulatory cost incentives.

Title II fundamentally assumes an incumbent state-sanctioned monopoly, and it tends to provide a regime that is very hostile to entering and providing a new and competitive alternative.

Mr. BILIRAKIS. Thank you very much.

I yield back, Mr. Chairman.

Ms. GONZALEZ. Gentleman yields back his time.

We now go to the gentlelady from California, Matsui, for five minutes.

Ms. MATSUI. Thank you very much, Mr. Chairman, ranking member, for hold this hearing today.

You know, the Internet is very dynamic, and I must say this hearing has also been dynamic and lively, and has been much appreciated, I know, by the members here.

You know, a year ago no one was talking about paid prioritization. Now people are talking a lot about it. It is also called Internet fast lanes. Now, it is central now to the net neutrality debate, and that is why I had introduced a bill with Senator Leahy to ban paid prioritization or so-called Internet fast lanes.

Now, the reason why I bring this up is because this is where the consumer gets involved. The consumer understands this, and when I had my hearing and at home when I talk with people, they understand. They don't like the idea of having to pay extra to access the content of programs they want to see or view online, and this is pretty clear, and I talk to some of the anchor institutions, schools and libraries, and they also feel that they can't afford to cut deals. Neither can the start-ups cut deals with each ISP to compete. So this is very central to what we are talking about today. So our policy has to be very clear about how it impacts the consumer.

Ms. Baker and Mr. Powell, do your associations support a ban on paid prioritizations? And I would like a yes or no.

Mr. POWELL. Yes.

Ms. BAKER. Yes.

Ms. MATSUI. Thank you.

Ms. Gonzalez, and I would like Mr. Misener to comment on this too, from a consumer point of view, does the bill truly ban all forms of paid prioritization, and if not, why? We have been talking around this, but can you please expand on this, and also Mr. Misener?

Ms. GONZALEZ. Sure. So I think as many have raised, there is a question around the definition or lack thereof of—or the vague defi-

nition of specialized services and whether or not that creates a giant loophole that could severely diminish the rule that was intended to ban paid prioritization. I think it is also worthwhile to consider issues of discrimination on the Internet that fall outside paid prioritization, and there are quite a few.

Ms. MATSUI. OK. Mr. Misener?

Mr. MISENER. Thank you.

I think in addition to the concern about specialized services which, by the way, isn't just possibly a loophole for, quote, "paid prioritization by third parties," but rather by affiliated companies engaged in more or less the same behavior. You can imagine a Internet broadband access provider also having an affiliated content business which gets special treatment. It wouldn't be paid prioritization in the sense that they were getting paid by a third party, but it would be prioritizing traffic based on the ownership rather than a payment.

The other two areas of concern are ones that we have discussed previously. One is keeping the reasonable network management carveout as narrow as possible, and we should again view that askance if it does seem to favor some content over others.

And, lastly, of course, this business about where in the network these things could occur. It needs to be clear in the bill that it is throughout the broadband Internet access service provider's network.

Ms. MATSUI. Do you feel that this bill is a good starting point? How do you feel about this?

Mr. MISENER. Are you asking me?

Ms. MATSUI. Yes.

Mr. MISENER. Yes. I do. I do. I think it is a novel approach where a set of principles, and which I have called excellent principles, are clearly defined and then capped with a ceiling. If that actually works, it is a great start, but our concerns expressed today are that how they would actually—how that ceiling with the great principles would actually work, but if it works, that is a great start.

Ms. MATSUI. Ms. Gonzalez, you feel the same way?

Ms. GONZALEZ. I am certainly pleased that members on both sides of the aisle agree that that net neutrality is a serious problem and we need to address it through government action in some way or another.

I have serious reservations about the draft legislation as it stands, mostly given the level of authority that it would strip of the commission right now and the lack of inclusion of a ban on unreasonable discrimination on the Internet.

Ms. MATSUI. OK. Well, you know, I strongly believe that we have to get this right, either at the FCC or Congress. It is far too important.

You think about the Internet affects everything that we do in our lives, and this is—and I think that this is—the first thing I think is a starting point is 100 percent ban on paid prioritization, and we have to figure out how to do that, and there can't be any loopholes. I mean, you are talking about some loopholes already. So we have to start addressing that.

If we can't get that right, we are moving backwards. Our consumers will know that we are moving backwards, and we are really

stifling competition when you think about that too. I have heard from many start-ups who really feel that they were able to start their businesses, but in fact if we don't play this right and ban paid prioritization, we will go backwards, and if we don't ban it, institute strong net neutrality protections for consumers and innovation.

So I truly believe that this is our opportunity, and this is a wonderful hearing to begin the discussion.

So I yield back. Thank you.

Mr. WALDEN. Thank the gentlelady for her comments.

And we will look forward to working with Mr. Misener, and we appreciated your comments as well as we try and—that is obviously not our intent to ban it and then come back and create a loophole and allow it to go through. So I appreciate your willingness to work with us on that.

We are going to go now to the gentleman from Ohio, Mr. Johnson. New member of our subcommittee and delighted to have you part of the team.

Mr. JOHNSON. And winner of the national championship, Mr. Chairman.

Mr. WALDEN. And the gentleman's time has expired. Let's go——

Mr. JOHNSON. No. In all seriousness, Mr. Chairman, it is an honor to be on the subcommittee. Under your leadership, I look forward to the work that we will——

Mr. WALDEN. No amount of sucking up is going to get you out of that one. OK?

Mr. JOHNSON. All right. I will buy you a new red tie later.

To the panelists, thank you folks for being here. I have about 30-plus years of private sector and DOD experience in information technology, and so I am very familiar with the issues that we are dealing with and the criticality of those issues.

I can remember back in the 1970s when I first got started in information technology and telecommunications, we went through generations of technological upgrades about every 10 years. There was a generation from the 1970s to the 1980s and then the 1980s to the 1990s and about the mid-1990s leading into the 2000s it began to accelerate to where we are today. I mean, many of the devices that we all use on a daily basis, many of them weren't even here even 5 years ago.

Today we see technological turnover about every quarter almost. As soon as one model comes out, the next one comes in. And so technological innovation requires the right conditions, and more government means less flexibility and fewer opportunities to grow. I think it was President Ronald Reagan that said, "The answer to our problems is never more government."

If you look at what the telecom industry needs, in order to be successful it needs to be nimble in order to innovate, which it can't do if a heavy hand of government prevents it from doing so. Windows of opportunity in the industry of telecommunications, they only open for a very, very short period of time, and innovators must have the certainty that if they jump into the fray and if they put big investments on the next great big thing, that they are going to be able to take advantage and get a return on their investment.

So, these issues that we are talking about today are extremely important, I know I represent a very rural district. We have talked about how important this is to some of those areas, and I appreciate those comments.

Mr. Powell, in NCTA's comments to the FCC in the open Internet docket, it is stated that Title II reclassification, and I quote, "Would dampen the very infrastructure investment the commission seeks to foster." These comments go on to indicate that the reclassification, again, quote, "Would require providers to divert substantial time and resources to design and implement numerous systems and processes necessary to comply with the various requirements and obligations of Title II."

Can you quantify in any way the time and resources that you are describing in those comments?

Mr. POWELL. Well, I think it would be difficult to put a number on it without agreeing to what the scope is we would have to comply with it, and I think, as we have all recognized, it depends on what you are going to be subject to and what you are not. There are 1,000 Title II regulations. How many of them will apply, to what depth they apply, and what your obligation is on them is a huge open question.

Mr. JOHNSON. Is it safe to say, though, that this type of diversion of time and resources will have the effect of chilling innovation?

Mr. POWELL. If people want a better understanding of this, they would go read the history of what the biggest regulatory problems were in the 1960s, 1970s, and 1980s with telephone companies. There was an enormous dissatisfaction that they were not investing, that they were not innovating.

What was the last telephone innovation you recall in the area of wired phones? Was it the pink princess phone or the blue one? I mean, there was a real disincentive belief, and it has been the government's policy, both at the FCC and Congress, to be retreating from those regulatory tools for decades in order to spur more investment and innovation into those industries, and it really was that retreat that helped foster and explode the wireless——

Mr. JOHNSON. Right.

Mr. POWELL [continuing]. Industry, the cable industry as a competitor to broadcast and a whole host of other industries with the revision of those policies.

So I think there is plenty of examples of the way that Title II or that kind of regulatory model disincents and if you need one last example, go look at the experience in Europe, who when we defined it as an information service, they pursued the equivalent of Title II regulation. Their ministers today are calling for an end to that regulatory environment and an adoption of the U.S. model because of the depressing effects on innovation and investment and——

Mr. JOHNSON. Like I said, more government is never the answer to the problem.

Ms. Baker, do you have a thought on that as well?

Ms. BAKER. Sure. I would follow up on his example with Europe, because as we talk investment, if we want to put some hard numbers to it, we in the wireless industry don't have it because we have never been under title II, but a real world example is Europe, and from 2011 to 2013 we put 73 percent more capex in investment

than Europe. Our networks are 30 times faster, and we have three times more LTE, which is the 4G platform than the rest of—than Europe.

So we don't know how much this would chill. We don't know—certainly we are going to continue to innovate. We are going to continue to invest. The question is how much. Maybe not as much, and I would say that when we looked towards the future, we look towards specialized services such as the connected car and what mobile health services are going to offer, and we are going to need to have smarter, faster, stronger networks to perform our connected life activities.

It is going to be really exciting, but we want to make sure that we continue the framework that has shown such great investment and such great opportunity that we are leading the world.

Mr. JOHNSON. Mr. Chairman, the case has just been made why it is to critically important that we do this right. Innovation, particularly in this industry, gives us the tools that we need to get our economy thriving once again, and we need to make sure we do this the right way.

And I yield back.

Mr. WALDEN. Appreciate that.

Appreciate the gentleman's experience. We are glad to have you on the subcommittee.

We will turn now to the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. Well, Mr. Chairman, I am thrilled to be back on this subcommittee, and I want to thank you for holding this hearing and for trying to get ahead of this issue by issuing the draft legislation.

You heard our deep concern about the reduction of the enforcement authority both from the Democrats on the panel and from many of our panelists.

Mr. Chairman, I would love to be able to vote for the final package, and I hope that we can work together to find something that would work.

Mr. Powell, I certainly sympathize with your concerns about overregulation raising cost to the providers. However, I also have concerns about reducing enforcement authority,thus raising the cost for end users.

But my first question has to do with the forbearance of the Title II requirements. Mr. Wheeler has indicated that he is willing to forbear, and even if he does this, the current concern is that the legislation may inhibit the FCC's ability to react and adjust to technological advances.

Do you share that concern that the legislation would inhibit the FCC's ability to react?

Mr. POWELL. Well, I think the FCC has way more to react and interpret than is being suggested. The FCC, with any Congressional act, has the first instance in responsibility to interpret those provisions and enforce them across a wide range of activity. Even in the context of specialized service, if the effect of something someone was doing was to block or ban or throttle, I am absolutely confident the commission could reach that behavior even under this statute.

The complexities of forbearance are substantial. Everybody, including the chairman, have professed an interest in doing so. If one were to pull out the record, many of the advocates arguing that this is easy to do and will be a light touch are all on record with laundry lists of other provisions that should not be forborne from. Groups like Public Knowledge and others have long lists of additional requirements that should be maintained.

There are also serious questions about——

Mr. MCNERNEY. Do you think that the FCC is more agile than the Congress in addressing these complex issues?

Mr. POWELL. Not always, to be perfectly honest. The commission and Title II have been no bastion of efficiency over time. Regulatory proceedings rarely take less than a year. They often are quite exhaustive and take a lot of time. Sometimes that is because they struggle to find clear direction from Congress as to how to act. The clearer that direction and the more direct it is, the more expeditious the process works, even with FCC implementation.

Mr. MCNERNEY. Well, we have a chance to pass legislation here, I believe, but it may be a 2015 piece of legislation that is in effect for 10 years. So we have to get this right and give the FCC the flexibility it needs to carry out those intents. At least that is my opinion.

Miss Gonzalez, would you briefly summarize for us the types of litigation risk the FCC will likely face under the approach provided by the draft legislation.

Ms. GONZALEZ. So I think there is quite a few factual determinations. If we are talking about procedural risks that the legislation poses, I think it puts the burden on consumers to, first of all, assess whether or not they have had their net neutrality rights violated, and then to figure out how to bring that before the commission, and it is somewhat complicated adjudication process that requires lawyers that even many of the start-ups that do have some resources, more resources than consumers at least, have said they would be unlikely to be able to engage in because they have limited legal counsel.

But beyond that, after those decisions are issued, there could be follow-up litigation because this creates a situation where we would have to get to the details on a case-by-case basis which could not just be one lawsuit that would likely come from the FCC order, but a series of lawsuits.

Mr. WALDEN. Would the gentleman yield? I was trying to get clarification.

Mr. MCNERNEY. I don't want to lose too much time here.

Mr. WALDEN. I will give you a little extra with unanimous consent, but how is what we are proposing here directing the FCC to put in place appeals mechanism so consumers can appeal differ from how it works across any other agency in the government? I am confused.

Don't we want citizens to have that ability to file a complete and appeal and——

Ms. GONZALEZ. We want them to have the ability, but we also want the Internet service providers to have the burden to show that they are not discriminating.

So it is really about how we are shifting the burden, and it is really difficult for—there is actually not a lot of us consumers activists doing this work, and so it is really difficult for consumers to carry the burden alone.

Mr. WALDEN. We will continue this conversation.

Ms. GONZALEZ. Sure. I would be happy to continue the conversation.

Mr. WALDEN. And I will go back to the gentleman because I——

Mr. MCNERNEY. Thank you.

Mr. Dickerson, do you think that the FCC has a role to play to ensure robust broadband competition?

Mr. DICKERSON. Absolutely, and one of our concerns with the draft legislation is the revocation of authority of the FCC to do that.

Mr. MCNERNEY. OK. Miss Gonzalez, do you think the broadband market is sufficiently competitive to protect consumers on its own?

Ms. GONZALEZ. Not at this time.

Mr. MCNERNEY. OK. Thank you.

I will yield back, Mr. Chairman.

Mr. WALDEN. The gentleman yields back the balance of his time.

We go now to the gentleman from Missouri, Mr. Long, for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman.

And, Mr. Powell, a minute ago you were talking about technology and the old land lines and telephone development, our choices were pink princess phone or a blue princess phone, and I had to think, my 20-year-old daughters—20-something, they are in their 20s, what they would do if I handed them a rotary dial phone today and said: Here. You need to make a telephone call. I question whether they would be able to do that.

And I saw a cartoon the other day of a young man in 1983, and he probably weighed 120 pounds, and he had a desktop computer, like we all had, about that size, and it showed 2015 and his computer was now this size, and he weighed about the same thing I do today. So while his computer got smaller and he got larger, that is kind of what—with this, I am given a reminder or reminded about the story that Steve Forbes used to tell that if the cell phone development was left to the United States Government, what we would have—because in that same year, 1983, first phone I had was a brick phone and made by Motorola.

It weighed two pounds, and in 1983 it cost $3,995. This phone didn't cost me $3,995, and Steve Forbes told the story something to the effect of if it was left to the government to develop cell phone technology today, that same 2-pound phone would weigh 4 pounds and it would cost $7,995. So I think that innovation is a pretty good thing, and the government, the more it stays out of it, the better we would be.

We have had a long hearing here today. Had a full table of witnesses. Lot of my colleagues have spoken before me as they are prone to do in these things. Usually the time it gets around to me I am one of the wrap-up guys. The time it gets around to me a lot of the questions have already been asked, and so normally I like to kind of cut to the chase at this point and just get to the meat of the issue.

And, Mr. Powell, sticking with you here, the consensus is that the Internet should be open and vibrant. Everybody agrees to that. But isn't the controversy really about the extent of the FCC's authority to ensure that it remains open and vibrant, whether the authority should be derived from Title II or Section 706, doesn't it make sense for Congress to make that call?

Mr. POWELL. Well, yes, sir. I think we have to recognize that it is not for the FCC or any regulatory agency to create its own jurisdiction. It is for it to act on the jurisdiction provided to it by this institution. There is no question that the reason this has been a tortuous and long debate for a decade is because the ambiguity surrounding the commission's authority to adopt a set of rules that, as you can tell from this panel, have almost near unanimous consent around the substantive rules we are attempting to achieve.

The only thing that is being argued about is what authoritative basis that is executed on, and every time the commission attempts to do that on its own it is going to face, necessarily, litigation, complexity, and challenge around that.

That is within the power of this institution to pre-terminate, end, and settle once and for all, and I think that is why we are so supportive of your efforts to find bipartisan conclusion.

Mr. LONG. Well, the Title II proponents tell us not to worry about the onerous provisions of title II because the FCC can simply forbear from applying them.

Is there anything simple about forbearance and couldn't numerous individual legal battles occur regarding what the commission has and hasn't decided to forbear upon the net neutrality once the orderis released?

Mr. POWELL. Asking me, sir?

Mr. LONG. Yes.

Mr. POWELL. I think people—not a lot of understanding of how forbearance works. First of all, there is an institutional risk here. It is a pretty hostile thing to say that a regulatory agency should sweep away broadly an act of Congress without Congress directing it to do so. If you get sweeping forbearance, which we are desperately relying that we will get, is the commission doing something in an untested untried way that essentially eliminates statutorily passed, Presidentially signed legislation, and that poses significant legal risk.

The other challenge with forbearance is the commission must make very specific findings for every rule that it forebears from, and it will attempt to do that in a global way we hope, but there is a real risk that the courts will say: You are not permitted to do that. You are not permitted to just brush away a whole title. You have to explain with micro detail why each of these rules doesn't meet the standards Congress set out for you. If that ends up being the law, we are talking about a real morass of a process to go through rule by rule and make a separate and independent forbearance finding.

For example, the commission in the past in forbearance proceedings has often said that it has to do it by market. So the forbearance definition says is the market competitive? Well, whatis the market? The market in Missouri is arguably different than the market in New York City. There have been times when the com-

mission has said it can only assess that question on a specific market basis. If that turns out to be required, now we are talking about a voluminous set of calculations about whether a rule can no longer be implemented or not.

It is easy to believe the commission is just some plenary authority free to make these judgments as it sees fit, but it is bound very strictly by the tools that this institution sets out, and while certainly it can try, and I understand its sincerity, and we are committed to trying to get the best resolution, it is fraught with complexity that can easily be cut through by this institution.

Mr. LONG. OK. Thank you.

I was going to save a little time to yield back to the chairman and let him tell us everything good about the Oregon Ducks and how good they are going to be next year, but I think I am out of time.

Mr. WALDEN. But I could yield you more for that purpose.

We will turn now to the gentleman from Illinois, Mr. Rush.

Mr. RUSH. I want to thank you, Mr. Chairman, for this first-class hearing, and I want to thank the panelists for being an all-star panel of witnesses.

Mr. Chairman, I want to ask the panel if they would answer this question in the Dingell-esque fashion, this first question, with a yes or no answer.

Do you think that the FCC is on a collision course with the D.C. Circuit again if it exercises its Section 706 authority to reclassify broadband Internet access as a common carrier service under its rules? Yes or no beginning with Chairman Powell.

Mr. POWELL. Yes, sir, I do.

Mr. DICKERSON. Yes.

Mr. MISENER. If the network operators choose to make it so, yes.

Ms. GONZALEZ. Is the question whether they will go to the D.C. Circuit or whether the D.C. Circuit will uphold the decision or not?

Mr. RUSH. Will they be on a collision course?

Ms. GONZALEZ. I think it is certain to go to litigation. I do believe that the D.C. Circuit will uphold the Title II if it is done well.

Ms. TURNER-LEE. Yes to a collision course.

Ms. BAKER. Yes.

Mr. RUSH. All right.

Chairman Powell, you have hit on this, but I want to ask you again in more of a forthright manner.

Do you have any concerns that under the Republican draft Congress will be restating its intent to say that Section 706 is not a direct grant of statutory authority?

Mr. POWELL. Let me say that I think that is a question for Congress, but representing my industry, we do not have problems with the commission retaining some 706 authority and breathing room to address changing circumstances as the D.C. Circuit found.

I found the D.C. Circuit interpretation of 706 questionable; highly in conflict with past rulings of the commission and Congressional intent, but the D.C. Circuit ruled that that is what it meant, and I think we would rather live with the FCC administering that provision than Title II.

Mr. RUSH. Thank you.

I want to move on to Dr. Turner-Lee.

Are you concerned that the FCC would not be able to deploy broadband services and invest in network facilities that provide service to low-income rural and minority communities under this proposed bill?

Ms. TURNER-LEE. Under the current bill, I think, as it has been said, if there were some additional discussion around the provision of Section 706 authority as we have all talked about, I actually think, Congressman, to your question, that it would be a win/win for what we are looking for in terms of broadband deployment for low income consumers as well as rural communities as well.

As I said earlier, it would also be a great way to look at a proclamation against digital red lining that has the potential to back stop and limit progress of what we have been trying to do when it comes to ubiquitous deployment among communities.

I honestly want to just keep reiterating that, you know, adoption still is at the top of this debate, and it continues to get swept under the rug when we talk about these issues, and so we are looking for some type of parody. In the legislative proposal, I think that that should stay top of mind as well as the legitimate consumer concerns that need to be dealt with. Even in the case of specialized services, consumer demand is driving everything.

So I think it is important to keep that as the bill is discussed and debated, top of mind, Congressman, but I think to your point we have to avoid that collision course that you just mentioned, and we are on that pathway if we don't put in the right effects to actually make sure that we don't do that.

Mr. RUSH. Miss Gonzalez, I wanted to ask this question. I only have 30 seconds—well, 37 seconds. The chairman might be graceful and give me a couple of more seconds.

The Republicans draft would authorize the FCC to hear and adjudicate complaints brought by individuals against their Internet broadband provider on a case-by-case basis.

Should these complaints and outcomes be germane to FCC consideration on whether certain merger transactions would promote the public interest?

Ms. GONZALEZ. I am sorry, Mr. Congressman. Is the question whether or not this would serve the public interest to allow the commission to adjudicate on a case-by-case basis?

Mr. RUSH. No. If in fact the commission—should they consider that certain merger transactions in association with these complaints brought by individuals, would the FCC take—should the FCC consider these complaints germane to its decisions regarding——

Ms. GONZALEZ. On mergers?

Mr. RUSH. Yes.

Ms. GONZALEZ. Well, I think when it considers complaints, it has to look at the ecosystem in general to determine whether or not there is competition. I think merger determinations are in separate dockets, and rightly so.

But certainly when considering what kind of protections we need, we need to look at the marketplace and whether or not there is competition in the merger. You know, mergers and acquisitions and the level of competition certainly is relevant.

Mr. RUSH. Thank you.

Mr. Chairman, I just have—if I can ask for an additional 45 seconds.

Mr. WALDEN. If you go fast.

Mr. RUSH. OK. As you all know, the cash cow of competition around the passage of the 1996 Telecommunications Act was really a long-distance voice. That is where the profits and traffic volumes were. Congress gave the FCC and state commissions authority to allow competitors to enter in their local phone markets through resale and interconnection. That was the regulatory, and we saw billions and billions of dollars and investments follow into that sector, but times have changed.

Congress knew about the Internet then, but only a few peoples around the world knew what a game changer the Internet would become. By the turn of the decade, it had become more apparent that the cash cows of communications were not long-distance voice but instead wireless voice and later broadband data.

Mr. Powell stated that over the course of a number of proceedings, the FCC found that broadband Internet access services are more like information services than telecommunications services. And perhaps Congress should have stepped back in and reconsidered these definitions, but we did not.

And, Mr. Chairman, I think that we are on our way with this hearing and with additional hearings trying to settle the question of do broadband Internet services now fit the criteria for telecommunications services more than information services?

And with that I yield back.

Mr. WALDEN. Thank the gentleman.

Thank the gentleman.

I will now go to the gentleman from New York, new member of our subcommittee, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

I want to thank all the witnesses. As a new member, we are playing catch up a bit, and your testimony has been very valuable.

My question is for Ms. Baker. I know wireline and wireless, they are two different worlds, and you represent the wireless world. And the language in our bill does talk about reasonable network management. I would think that is the attempt to give you and the wireless some flexibility, because you are in different worlds.

I also seem to understand your industry is adamantly opposed to Title II. So we are here and we are talking and we understand there is difference. Could you expand a little bit on the reasonable network management language, which all of us embrace but may be difficult to interpret, and let me know how you see it impacting the wireless world?

Ms. BAKER. Thanks for the question.

Yes, the wireless industry is different for a number of different reasons. The number one that I think we all have our arms around is the technical parameters. We operate on the spectrum, which is limited capacity, which is shared, and it is moving. So we need dynamic management millisecond to millisecond, and it changes all the time depending on who is sharing the spectrum. And it is going to change from today to 45 days from now, because someone is going to come up with a more efficient way, and we are going to upgrade our networks.

But they are not just technically different, they are also competitively different, and so our guys need to be able to differentiate different services so that they can compete more effectively against each other. We are worried what happens in Title II is that we might become one size fits all, and that is not what we want the wireless industry. We want the wireless industry to remain dynamic and competitive and continue to innovate and differentiate themselves.

We are also very new, so we are worried with the Title II world that we would not be able to introduce some of the exciting things that are coming from the wireless platform. I talk about connected life, meaning mobile health, connected cars, some of the innovations in education.

So we want to make sure that our future in wireless, we are the world's leader in 4G, and we want to make sure that we are the world's leader in 5G. We think this bill is a great start. The definition of reasonable network management includes technology. We will work with the committee on other definitions. But we are encouraged from the action here because we think the FCC is headed down the wrong path.

Mr. COLLINS. That is very helpful, because I am glad to hear you are embracing what we are doing, especially that language, and that you feel your industry can live with that language. And certainly I think the committee would be very open as this moves forward. And I just know that there has been that discussion, because they are two different worlds. Very happy, again, to hear your support of this critical legislation.

With time running late, Mr. Chairman, I will yield back the balance of my time.

Mr. WALDEN. The gentleman has yielded back the balance of his time.

It looks like we will go to our final member at the dais, Mr. Cramer of North Dakota. Thanks for sticking with us, and thanks for being on the subcommittee.

Mr. CRAMER. Thank you, Mr. Chairman, for the opportunity. And as you know, I spent nearly 10 years in North Dakota regulating various industries. And the more telecom cases that came before us, the less I was enthused about it, because it just seemed like every case that came before us was about a new technology that required less regulation, not more.

Nonetheless, I was happy to carry out really several cases, some landmark. I think we did one of the early ETCs for a wireless company. We did an early VoIP interconnection case with a rural telco. We did a very contentious cable company seeking facilities-based ILEC in the Bakken. I don't know that any of them were unanimous. I am proud to say I was on the prevailing side, and all of them were held up in court, both federal and state court. That said, I don't feel as smart as I used to today for some reason. So I appreciate everybody.

I also have to say that I was amused by Ms. Eshoo's admonition of Catholic confession with Mr. Shimkus, but I noticed that he said he came kicking and screaming, which is far short of repentance, I will tell you.

Ms. ESHOO. It is part of it.

Mr. CRAMER. I appreciate, Chairman Powell, your reference to the omission of the RFA in this by the Commission, because this is a far too common omission by several regulatory agencies in recent years, and it was one that hadn't come to my attention yet. But you are right, I think a lot of issues could be solved much better, much more to the liking of investment opportunity if we were applying the RFA appropriately.

I am also interested in this issue of specialized services. And maybe this will demonstrate my ignorance a little bit. But if we are on the one hand arguing that we should give and we trust the FCC's use of flexibility in determining forbearance, why wouldn't we trust their flexibility in determining specialized services under this draft? And is there some way we can tighten that up if it concerns people? If somebody wanted to take that one on.

Mr. Misener.

Mr. MISENER. Yes, thank you for the question, Congressman. I do believe the FCC, as the specialized agency, ought to be empowered to help flesh out rules, provide through notice and comment rulemaking the detail and certainty that both businesses and consumers need, under, again, that ceiling set by Congress. So if the bill goes forward, the ceiling is fine, but the commission ought to have the authority beneath it.

Mr. CRAMER. Did you want to take a stab at that, Mr. Powell?

Mr. POWELL. Well, I just wanted to quickly say, in this denigration of specialized services this Commission has repeatedly held that there is room for specialized services, even in its 2010 rules, because it believed there were really serious consumer-benefiting characteristics to that.

The reason specialized services is an issue is we use the same network for the provision of proprietary services that we built and privately financed and own a network to deliver. A huge amount of that capacity is reserved and used for the services we are in the business of selling. There is an effort, subtle or otherwise, to confiscate the entire platform for public Internet use.

What the FCC recognized was some portion of that infrastructure will always rightfully be available to the incumbent who built the network to deliver the services and innovate for their consumers in the provision of the services they are in business to provide. You have to provide for an allowance for specialized services lest you are creating a taking of property in its totality.

Now, if Mr. Misener is correct, can we talk about how you define it or what the FCC's flexibility in interpreting it? I have absolutely no problem with that.

Mr. CRAMER. Dr. Turner-Lee.

Ms. TURNER-LEE. Thank you. And Congressman, if I may, I will just add on real quickly to the other comments.

I think there is a conversation that can be had about specialized services, particularly if you go back to much of my testimony about adoption and relevance. If we look at the case of zero rating programs, for example, for low-income minority communities that are not engaged, there is some space to actually have some discussion on how those could be used for a public interest. I think it comes back to a legitimate consumer concern, and questions related to who is to say today that tomorrow we won't be looking at telemedi-

cine delivery and our ability to get our health records in real time not being important to us.

I think there is some room for conversation, and with the FCC as the expert agency to help us guide that discussion as to what is important to consumers.

Mr. CRAMER. Well, and that brings me to another point that, again, maybe I am not understanding clearly, but we have heard a lot of bemoaning of the 706 authority, Title II authority being stripped away, and that somehow that leaves the FCC powerless, and we haven't talked a lot about their ancillary authority, which is there to deal with a lot of these issues. And the ones that aren't there, we are here. I mean, Congress, there is a new one every couple of years. I feel like for too many years Congress has sort of just let the agencies become Congress. And I think that is the balance we are trying to strike. And I don't know if somebody has a few seconds to add to that.

Mr. GONZALEZ. I can respond to that, Mr. Congressman.

Mr. CRAMER. Sure.

Mr. GONZALEZ. The reason we are concerned about the stripping of the 706 and the Title II is because of court cases in the past, you know, four decades that have really stripped the FCC of much of its ancillary authority and have whittled it away over the years. And so that to us feels like a less certain solution.

Mr. CRAMER. Chairman Powell, has the Commission's ancillary authority been stripped away?

Mr. POWELL. There are two quick things that I think are important. Number one, the Commission has authorities that come from a range of statutes. It is not exclusively governed by just the Telecommunication Act. The Commission has been very aggressive in the protection of disability access for communities because this body passed the CCVA, which authorizes them to apply disability protections to Internet services, and is aggressively doing so. The Commission has authority under CALEA to protect surveillance and other kinds of issues. There is a whole host of authorities. And some, yes, are ancillary. The Commission, I would argue, has lost ancillary when it has abused that power. It has also frequently used ancillary effectively to do any number of social-positive regulations.

Mr. CRAMER. I thank you all. This has been fascinating.

Thank you, Mr. Chairman.

Mr. WALDEN. Thank you, Mr. Cramer.

I think that brings to a close the participation by our members. I have a series of letters that I ask unanimous consent be added in, letters and op-eds and things. One from Joel White, executive director of Health IT Now Coalition, opposing Title II; Bradley Merrill Thompson, general counsel, mHealth Regulatory Coalition; and Robert B. McCray, president and CEO, Wireless-Life Services Alliance. Without objection, we will put that one in.

An opinion piece by our former colleague Rick Boucher on net neutrality being low hanging fruit for Congress, and urging action. Without objection, we will put that in the record.

From the Telecommunications Industry Association opposing Title II and supporting legislative action from Scott Belcher, chief executive officer, Telecommunications Industry Association. A let-

ter from the Application Developers Alliance, Mr. Jon Potter, president, Application Developers Alliance, agreeing regarding legislation applied in the debate. And then there is a coalition of economic groups, from TechFreedom to Americans for Tax Reform, and a whole bunch of others, and individuals representing educational institutions and elsewhere, in support of our legislative initiatives in whole or part. So without objection, we will put that in the record as well.

[The information appears at the conclusion of the hearing.]

Mr. WALDEN. And, again, we want to thank all of our witnesses, and especially grant some forbearance to the two that have to go now on to the Senate and repeat this. We thank you for your endurance and your participation. To all the witnesses, we are very sincere about following up with you sooner rather than later on language to deal with these issues. The principles that we have outlined in the legislation we feel strongly about. We are not in the business of creating loopholes to go around something we feel strongly about. So we look forward to collaborating with you on that, on the appeals process, and these various things.

So thank you all. And we stand adjourned.

[Whereupon, at 1:12 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. STEVE SCALISE

The importance of today's hearing and the issue before us cannot be overstated. Simply put, the Internet has positively changed the world and transformed our economy in ways previously unimagined. How we communicate, work, get our news, shop or even watch television have all changed, and improved drastically in just a few years.

Even President Obama stated the "Internet has been one of the greatest gifts our economy—and our society—has ever known." That is why I continued to be baffled by this president's belief that the Federal government needs to now swoop in and "fix" the Internet.

Last night the president talked about infrastructure. Well, mobile and fixed broadband networks are the infrastructure of the 21st century. They are the keys to the future of our economy and the ability of individuals to improve their economic well-being.

But apparently the president and the Chairman of the Federal Communications Commission (FCC) believe our 21st century infrastructure must be "fixed" by applying outdated laws and regulations from the 1930s.

Reclassifying broadband under Title II represents a complete paradigm shift in how our government treats the Internet. The long-standing and successful "light touch" regulatory model has ensured the Internet's success.

Why would we want to introduce more government regulation and bureaucratic micromanagement from Washington that would harm a vibrant, successful, well-functioning global set of networks? It makes no sense.

Since its inception, the Internet has been driven by market forces. Consumers have picked winners and losers, and innovators have thrived. My fear is that under Title II, the government—specifically the FCC—would be in the driver's seat dictating the market while consumers—and innovation—suffer.

The impacts of Title II will be profound, and the imminent regulatory uncertainty under reclassification will drag on for years and kill billions of dollars in private investment. We must proceed deliberately. I urge the FCC to do the same and to take its direction from Congress rather than bow to political pressure from the White House.

I commend Chairmen Walden and Upton for putting forward this bill. I urge Chairman Wheeler and the other FCC Commissioners to work with Congress on a broadband policy framework that works for hard-working taxpayers and innovators and ensures a vibrant Internet for generations to come. We do not need the Federal government to "fix" the Internet!

January 20, 2015

Dear Chairman Walden and Ranking Member Eshoo:

The undersigned mayors are writing to support the strongest possible rules to guarantee Net Neutrality. As you know, the Federal Communications Commission ("FCC" or "Commission") is currently engaged in a proceeding to determine the most effective strategies for ensuring that the Internet remains free and open. It is critical that the FCC act now to implement regulations that protect consumers and innovation. The Commission should implement clear, legally defensible rules that: support transparency so that consumers can evaluate service offerings; prohibit blocking of lawful content; bar discrimination and ban paid prioritization.

We believe that the most effective way to truly protect the open Internet is for the FCC to break with its previous approach and re-classify broadband Internet as a telecommunications service subject to regulation as a common carrier, by reclassifying Internet access as a Title II service. The Commission has, to date, classified broadband Internet service—whether offered via wireline facilities, wireless technologies or power lines—as an "information service." By treating broadband as an information service, the Commission has unclear authority and must construct a new regulatory regime. The Commission could remedy this be relying on Title II where the Commission has clear authority and where it has at its disposal an existing array of tools to protect consumers and competition, including service quality, rates, discrimination, disclosure of information requirements. Once Internet service has been classified as a Title II service, the FCC would have the ability to forbear from elements of the Title II regime that are unnecessary or archaic, if they do not serve to protect consumers or serve the public interest.

This approach would enable the FCC to require sufficient transparency for consumers to make informed choices and accurately assess the services they are being provided. Currently, the lack of clear, accurate information results in confusion with respect to key service features, like download and upload speeds, pricing and usage restrictions. This has contributed to widespread consumer dissatisfaction with broadband providers. These practices also place considerable burdens on local agencies, which must use their own resources to help consumers resolve challenges.

The risk that content and content-provider based blocking and other discriminatory practices pose to Net Neutrality has been a source of great public concern. Rules prohibiting the blocking of lawful content, services and applications are particularly important for the public schools and libraries that serve our residents. These institutions serve critically important educational functions for young people and adults. In addition, because they provide Internet access in the context of meaningful education, training, employment and other programs, they are essential vehicles for meeting adoption goals.

It is critically important that our residents—among them many students, parents, educators and others who are only able to connect to broadband at schools or libraries—are able to freely access lawful content without being confronted with delays that threaten adoption. In addition, it is vital that the content our residents, businesses and others create is freely accessible online. With this in mind, we urge the Commission, upon re-classifying broadband as a telecommunications service, to adopt the strongest possible rules against blocking, prioritization and other discriminatory practices.

We urge you to vigorously promote a free and open Internet by supporting the reclassification of broadband as a telecommunications service under Title II, promulgating effective transparency rules and adopting the strongest possible protections against blocking, prioritization and other discriminatory practices.

Sincerely,

MAYOR EDWIN LEE
SAN FRANCISCO, CA

MAYOR BILL DE BLASIO
NEW YORK, NY

#33887989_v1

NATIONAL ASSOCIATION of REALTORS®

Chris Polychron, CIPS, CRS, GRI
2015 President

Dale A. Stinton
Chief Executive Officer

GOVERNMENT AFFAIRS DIVISION
Jerry Giovaniello, Senior Vice President
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Joe Ventrone, Vice President
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January 20, 2015

The Honorable Greg Walden
Chairman
House Subcommittee on
Communications and Technology
2185 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna G. Eshoo
Ranking Member
House Subcommittee on
Communications and Technology
241 Cannon House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

On behalf of 1.1 million members of the NATIONAL ASSOCIATION OF REALTORS® (NAR), I write in advance of your hearing entitled: "Protecting the Internet and Consumers through Congressional Action" to express NAR's belief that open internet rules are necessary to protect our members, who are primarily independent contractors and small businesses, as well as their clients. NAR is encouraged to see lawmakers acknowledge the need for action to protect the open Internet. NAR, together with other Main Street businesses, has been making this case for many years. However, the legislative process should not hold up the rulemaking currently underway at the FCC.

Recent statements from FCC Chairman Wheeler indicating that the FCC is moving toward strong, legally sustainable open Internet rules are encouraging. NAR supports open Internet rules that will protect American businesses and consumers by preventing Internet Service Providers (ISPs) from blocking, throttling, or discriminating against Internet traffic and prohibit paid prioritization arrangements. As you know, the FCC has a complete public record on this issue and should continue its work to vote on an Open Internet Order at its February meeting as planned.

The Internet has been a driving force for innovation for decades, and our members, their customers, and local communities are benefiting from this innovation every day. The economic growth and job creation fueled by the open Internet is unprecedented in American economic history. This growth has been fostered by the Federal Communications Commission (FCC) under both Republican and Democrat administrations for over a decade.

Our members, who identify themselves as REALTORS®, represent a wide variety of real estate industry professionals. REALTORS® have been early adopters of technology, and are industry innovators who understand that consumers today are seeking real estate information and services that are fast, convenient and comprehensive. Increasingly, technology innovations are driving the delivery of real estate services and the future of the real estate sales businesses.

Streaming video, Voice over Internet Protocol, and mobile applications are commonly used in our businesses today. In the future, new technologies, like virtual

reality and telepresence among others, will be available that will no doubt require open internet access unencumbered by technical or financial discrimination.

The benefits of broadband Internet for innovation and economic development are unparalleled. But the nation will lose those tremendous benefits if the Internet does not remain an open platform, where Americans can innovate without permission and with low barriers to launching small businesses and creating jobs. Given this reality, it is important that this Committee work with the FCC to enact and preserve open Internet policies that promote competition between Internet application and service providers. NAR is ready to work with you on this important issue.

Sincerely,

Chris Polychron
2015 President, National Association of REALTORS®

cc: Members of the House Energy & Commerce Committee
Members of the House Subcommittee on Communications and Technology

Comcast, Charter and Time Warner Cable all say Obama's net neutrality plan shouldn't worry investors

By Brian Fung December 16, 2014

Last week, a Verizon exec made headlines when he told an investors' conference that strong, federal net neutrality rules designed to police Internet providers won't stop the company from plowing new money into its networks and making them better. The company shortly after clarified its statement, emphasizing that strict regulations in other countries have been shown to depress infrastructure investment. Still, many, including the nation's top telecom regulator, took the initial comments as a sign that Verizon would continue to thrive under strong oversight.

Turns out, Verizon wasn't the only one trying to ease concerns about the FCC's potential aggressive rules. On the same day Verizon was playing down the investment risks of stricter regulation, so too were three other major Internet providers: Comcast, Time Warner Cable and Charter Communications.

Executives from each of the three broadband companies said at an industry conference last week that the prospect of more stringent rules was something they could — grudgingly, in some cases — live with. That signal contrasts sharply with the broader industry's argument in Washington: that aggressive rules would cause new investments to dry up, hurting consumers in the process.

Asked about President Obama's proposal to regulate ISPs with Title II of the Communications Act — the same law regulators currently use to oversee phone companies — Charter chief executive Tom Rutledge said he was surprised by the plan. But, he added, so long as the Federal Communications Commission waived parts of Title II that weren't relevant — a step that even staunch net neutrality advocates support — it would be an acceptable outcome.

"Obviously, forbearance done properly could work and we think the fundamental objective is reasonable," Rutledge said. "It's not like we can't operate in that world and that we don't want to, but we'd rather have a good regulatory regime than a complicated one."

A Charter spokesman did not immediately reply to a request for comment.

Other companies at the conference sought to soothe investor worries about federal regulation of company prices — a fear expressed by some opponents of stricter rules. When UBS analyst John Hodulik asked Time Warner Cable chief executive Robert D. Marcus to discuss that prospect, he said government intervention of that kind was far-fetched.

"You've got potential Title II," said Hodulik, "which, with all the forbearance we're talking about, won't put a cap on anything anytime soon. But does that change your view on how much pricing power you have in that business?"

"It really doesn't," Marcus replied. "No one, Title II proponents and opponents alike, have suggested that whatever the FCC does it should include any component of rate regulation."

A Time Warner Cable spokesman added that regardless of what the FCC does on net neutrality, the company finds the broadband market "very attractive" in the short and long terms.

When Hodulik asked Comcast about Title II and whether strong broadband regulation stood to affect the "long-term [return-on-investment] potential" of Comcast's assets — including Time Warner Cable, which Comcast is seeking to buy — the cable giant brushed off the idea.

"I don't think so yet," said Michael Angelakis, Comcast's vice chairman and chief financial officer, who qualified his remarks by saying the company still opposed Title II as a form of 20th-century-style regulation.

Hodulik pressed for more.

"Do you think it would change how you run the business or your ability to lessen your price flexibility?" he asked. "Are there any sort of day-to-day issues that you think would change as a result of it?"

"I certainly hope not," Angelakis said. "I think the devil would be in the detail and it's too speculative right now to sort of make those kinds of decisions. ... We want to invest in infrastructure, we want to invest in broadband, we want that to be an important part of our legacy in terms of how we invest in and build these kinds of things and Title II just is unfortunately a negative."

Angelakis' remarks are the least specific of the three; the executive also made clear his preference for weaker rules. Nevertheless, Angelakis signaled two key things: First, that strong net neutrality rules should not deter investors; and, second, that he would "hope" stronger regulations would not affect short-term operations. Both points could bolster the thinking of FCC Chairman Tom Wheeler, who last week said comments like Verizon's were not a surprise.

A spokesperson for Comcast declined to comment, but referred me to the company's blog posts on the matter. In the wake of Obama's statement on net neutrality, Comcast said it was in agreement with the White House's principles seeking to prevent blocking and slowing of Internet content, but that it disagreed with his preferred policy tool, Title II. (In response to Comcast, Gizmodo wrote a snarky rejoinder "fixing" the corporate statement.)

While Internet providers are expected to sue the FCC if it draws up broadband rules based on Title II, last week's remarks suggest that more than a couple of companies may be bracing — outside the Beltway, at least — for greater oversight. It would be one thing if Verizon were alone in playing down Title II concerns to investors. But four companies? That's interesting.

Sprint

Stephen Bye

January 15, 2015

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Protecting and Promoting the Open Internet*,
GN Docket No. 14-28.

Dear Chairman Wheeler:

Over the past several weeks, public interest groups, mobile and wireline carriers, industry associations, and government entities have debated heatedly the appropriate legal basis for the authorization of net neutrality rules. The debate has focused on whether data services should be governed by Title II or Section 706 of the Communications Act. Regardless of the legal grounds proposed, Sprint has emphasized repeatedly that net neutrality rules must give mobile carriers the flexibility to manage our networks and to differentiate our services in the market. With that said, Sprint does not believe that a light touch application of Title II, including appropriate forbearance, would harm the continued investment in, and deployment of, mobile broadband services.

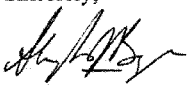
When first launched, the mobile market was a licensed duopoly. This system was a failure, resulting in slow deployment, high prices and little innovation. In 1993, Congress revised the Telecommunications Act to allow new carriers, including Sprint, to enter the market. This competition resulted in tremendous investment in the wireless industry, broader deployment, greater innovation, and falling prices. It is absolutely true that this explosion of growth occurred under a light touch regulatory regime. Some net neutrality debaters appear to have forgotten, however, that this light touch regulatory regime emanated from Title II common carriage regulation, including Sections 201, 202 and 208 of the Communications Act.

With the deployment of IS95 data services in 1999, Sprint was one of the first wireless carriers in the United States to deploy mobile data service on a national scale. Sprint went on to upgrade these data services to IS-2000 1xRTT in 2002, 1xEVDO Rev 0 in 2004, and 1xEVDO Rev A in 2006. Sprint made these investments despite the fact that the FCC had not yet declared mobile broadband to be an information service. Sprint and other wireless carriers have continued to invest in the advancement of mobile data services with the deployment of LTE networks. So long as the FCC continues to allow

wireless carriers to manage our networks and differentiate our products, Sprint will continue to invest in data networks regardless of whether they are regulated by Title II, Section 706, or some other light touch regulatory regime.

Sprint has always believed that competition, not regulation, will provide consumers the best mobile services at the lowest price. We urge the FCC and Congress not to be distracted by debates over Title II but to focus on competition by ensuring that any net neutrality regulations adopted recognize the unique network management challenges faced by mobile carriers and the need to allow mobile carriers the flexibility to design products and services to differentiate ourselves in the market.

Sincerely,



Stephen Bye
Chief Technology Officer

Cc: Commissioner Clyburn
Commissioner Rosenworcel
Commissioner Pai
Commissioner O'Reilly

Verizon: Actually, strong net neutrality rules won't affect our network investment

By Brian Fung December 10, 2014

One of the key arguments put forward by the broadband industry in opposing federal regulation is that it would cause an enormous economic fallout. Aggressive oversight, Internet service providers argue, would raise costs for consumers and force telecom companies to stop investing in their networks. They wouldn't be able to offer new services or faster speeds.

In plain English, this roughly boils down to: "Leave us alone, or the average American gets hurt."

But at least one Verizon executive is telling Wall Street the exact opposite. Even the strongest possible rules to preserve net neutrality — the idea that ISPs should not be allowed to speed up or slow down some Web sites over others — won't change how the company upgrades its infrastructure, Verizon's chief financial officer, Francis Shammo, told investors in a conference call Tuesday.

If Shammo meant what he said, this is a big deal. It would signal that major telecom companies are readying themselves (and their investors) for a world in which broadband is regulated like traditional phone service, under Title II of the Communications Act. Broadband is currently lightly regulated under Title I, but the Federal Communications Commission is considering whether to reclassify ISPs, a move that would give it more power over the industry. Until now, the prospect of Title II has spooked many broadband providers. But in front of investors, Shammo downplayed the fear that Title II would lead to more limited investment.

Here's the money quote from the transcript:

John Hodulik Got you. Obviously there's a lot of commentary coming out of Washington about this move to Title II. Obviously Verizon has been one of the more of a stiffer opponents of any sort of increased regulation, especially on the Wireless side. What's your view of that potential occurrence down in Washington and does it affect your view on the attractiveness of investing further in the United States?

Francis J. Shammo - EVP and CFO I mean to be real clear, I mean this does not influence the way we invest. I mean we're going to continue to invest in our networks and our platforms, both in Wireless and Wireline FiOS and where we need to. So nothing will influence that. I mean if you think about it, look, I mean we were born out of a highly regulated company, so we know how this operates. But related to this discussion around Net Neutrality, the FCC has the right to regulate under 765, they do not need to go to Title II, and why would you go to a 1930 piece of literature to try to regulate something that is a 21st-century technology.

And I also think that if you look at other countries who have done this, it kind of leads you down to path of total failure because it really, really slows down investment and slows down innovation. So I guess the last comment is, it's working, why do we need regulations around something that's working. And again, they can do this under the realms of their legal ability. And I think if they go all the way to the extreme of Title II, I'll quote what Randal said on stage about a month ago, which is, I think it's going to be a very litigious environment.

Shammo and Verizon are still strongly against Title II, and the industry will likely sue the FCC if it resorts to reclassification. But Shammo acknowledged that, Title II or not, Verizon would keep pouring the same money into its network as it has been.

In a statement, Verizon spokesman Rich Young said this has been the company's message all along: "Verizon has been very consistent with what we've been saying in this area. In this case our CFO's message is again clear. At this stage, no change."

In recent weeks, momentum has built for the FCC to use Title II to regulate Internet providers. That's in contrast to previous plans, which proposed a lighter touch. Advocates for stiffer regulations said Shammo's comments prove broadband providers like Verizon will be "just fine" in a Title II world and that the change in rhetoric isn't a surprise, given how the winds seem to have shifted in Title II's favor.

"They want to make an argument about [declining] investment, but the market reality is quite different," said Gene Kimmelman, chief executive of the group Public Knowledge. "They're already adjusting their behavior to reflect what you expect your political market to be. And the economic market is totally stable in that scenario."

November 14, 2014

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: ***Protecting and Promoting the Open Internet, GN Docket No. 14-28; Framework for Broadband Internet Service, GN Docket No. 10-127***

Dear Ms. Dortch:

The undersigned regional mobile broadband providers proudly serve many of America's less populated and/or harder to reach markets, where the cost of providing service is significantly higher than it is in more metropolitan or suburban areas. We nonetheless are committed to providing our customers with all that the Digital Age can offer, including an Open Internet. To protect our ability to offer high-quality mobile broadband services, the Commission should reject calls for prescriptive new rules that would harm smaller, regional providers.

As the Commission has recognized, mobile broadband providers face technical and operational challenges far more complex than our fixed counterparts do – especially regional operators, who often rely on smaller spectrum holdings that make flexibility in network management all the more important. All wireless carriers operate in a dynamic environment with varying user demand and fluctuating interference conditions, and we need the flexibility to aggressively manage traffic to provide consumers the mobile broadband experience they expect. Rigid new rules grounded in a "fixed world" perspective would upend and disrupt this mobile broadband experience and harm those carriers providing broadband access to the most rural and remote communities across the nation.

As regional providers, it is critical that we have the ability to differentiate our services as we seek to compete against larger national mobile broadband providers. Our relationships with our customers are vital to our success, so we are strongly incented to seek out new and innovative pro-consumer offerings, and to examine alternative ways to deliver services that will be valuable to our consumers. It is important that we retain the flexibility to distinguish ourselves that the Commission granted in the 2010 Open Internet rules, and that any new rules be based on a mobile-specific approach. Given our unique challenges, applying sweeping rules, even subject to a network management exception, would not afford us the flexibility to innovate, experiment, and deliver differentiated services to our communities.

Applying an outdated and backward-looking Title II common-carriage regime to our services would also stifle innovation and investment and would do a disservice to rural America. Similarly, Commission adoption of expansive no-blocking rules or "commercially reasonable" standards for mobile broadband would hinder smaller carriers' ability to engage in practices

designed to improve network performance or offer the alternative business models at the heart of competitive differentiation. Rules imposing granular transparency requirements would divert limited small-carrier resources and raise our costs, would be impractical, and even worse, would limit our flexibility in delivering high-quality services. The Commission should steer a wiser course and only consider a regulatory approach that accounts for the unique nature of mobility and encourages ongoing broadband investment, deployment, and skyrocketing use.

Make no mistake; we support Internet openness. Our businesses depend on our subscribers' ability to access the applications, services, and content of their choice, so we have every incentive to keep our consumers happy by offering them the products and services they desire. We live in the communities we serve, and providing our neighbors' world class service is important to us. Indeed, the record contains no evidence that we are infringing on Internet openness. We are committed to working closely with the Commission to preserve the Open Internet.

In recent years, the Commission has pursued policies that foster opportunities for smaller providers in the wireless market in decisions ranging from auction policy to 700 MHz interoperability. In this proceeding, the Commission should continue on this path by rejecting a strict uniform, fixed-mobile, one-size-fits-all, model of outdated regulation that will only disrupt our services and the American mobile broadband experience.

Sincerely,

Ron Smith
President and CEO, Bluegrass Cellular, Inc.

Patrick Riordan
President and CEO, Cellcom

Stewart Slayton
CEO, Carolina West Wireless

Allison C. DiNardo
President, King Street Wireless, Inc

Wirt A. Yerger, III - Manager
Cavalier Wireless, LLC

(http://www.verizon.com/about)

PUBLIC POLICY

(http://publicpolicy.verizon.com/)

Verizon Policy Blog

ww.addtoany.com/share_save#url=http%3A%2F%2Fpublicpolicy.verizon.com%2Fblog%2Fentry%2Fthe-relationship-nt-and-rizon%20Public%20Policy%3A%20The%20Relationship%20Between%20Investment%20and%20Regulation&description=)

The Relationship Between Investment and Regulation

Dec 11

This is a guest post from **Fran Shammo (http://www.verizon.com/about/our-company/francis-j-shammo/)**, *Verizon Executive Vice President and Chief Financial Officer.*

Last night, a few **news (http://www.washingtonpost.com/blogs/the-switch/wp/2014/12/10/verizon-actually-strong-net-neutrality-rules-wont-affect-our-network-investment/)** sites ran **stories (http://arstechnica.com/business/2014/12/verizon-admits-utility-rules-wont-harm-fios-and-wireless-investments/)** about recent **comments I made (http://www.verizon.com/about/investors/ubs-42nd-annual-global-media-and-communications-conference/)** at an investor conference in response to a question about how the threat of Title II regulation might impact Verizon's capital investment.

As Verizon has indicated on several occasions over the past few weeks, discussions about potential regulatory changes related to net neutrality have been going on for a decade, and we don't change our short-term view on investment based on rumors of what might or might not happen. But as we and **other (http://mercatus.org/publication/innovation-investment-and-competition-broadband-and-impact-america-s-digital-economy) observers (https://www.law.upenn.edu/live/news/4786-new-university-of-pennsylvania-analysis-finds-us#.VImyvIelo94)** of the net neutrality debate have made abundantly clear, experience in other countries shows that over-regulation decreases network investment. If the U.S. ends up with permanent regulations inflicting Title II's 1930s-era rules on broadband Internet access, the same thing will happen in the U.S. and investment in broadband networks will go down.

A transcript of the interview can be found **here (/assets/images/content/VZ_at_UBS_Conf.pdf)** *[PDF].*

FCC (/TAG/FCC), INNOVATION (/TAG/INNOVATION), INVESTMENT (/TAG/INVESTMENT), NET NEUTRALITY (/TAG/NET+NEUTRALITY), REGULATION (/TAG/REGULATION)

Coalition of economic groups supporting draft

January 20, 2015

Senator John Thune
Chairman, Senate Commerce Committee
Russell Senate Office Building, Room 254
Washington, DC 20002

Congressman Fred Upton
Chairman, House Energy & Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Senator Bill Nelson
Ranking Member, Senate Commerce Committee
Dirksen Senate Office Building, Room 560
Washington, DC 20002

Congressman Frank Pallone
Ranking Member, House Energy & Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Dear Mssrs. Chairmen and Ranking Members:

Congress, not three unelected officials, should decide the future of the Internet.

The Federal Communications Commission (FCC) has twice tried to regulate the Internet in the name of "Net Neutrality" — and twice failed in court. Lawmakers of both parties have proposed legislation that would avoid the need for the FCC to try again — yet FCC Chairman Tom Wheeler seems intent on issuing new rules. Worse, he plans to break with two decades of bipartisan consensus that the Internet should not be subject to 1930s public utility regulation.

We worry about the unintended consequences of *any* form of regulation — but also recognize that legislation appears to be the only way to stop the FCC from trying to impose Title II of the Communications Act on the Internet and thus prevent years of ensuing litigation. To prevent a slippery slope towards broader regulation of the Internet, any legislative compromise must tightly constrain the FCC's authority and discretion. At a minimum, that means three things:

1. Congress must bar the FCC from imposing Title II on the Internet. Title II was developed for the telephone monopoly of the 1930s; it is utterly inappropriate for the dynamic Internet ecosystem. Invoking Title II threatens both to impose billions of dollars of taxes and fees on consumers, undermine broadband investment, and drag "edge" companies into a regulatory morass.
2. Congress must clarify that it did not intend the 1996 Telecom Act to give the FCC a blank check to regulate the Internet. In its *Verizon* decision, the D.C. Circuit mistakenly upheld the FCC's 2010 re-interpretation of Section 706 of that Act as allowing it to regulate any form of "communications" in any way the agency claims would promote broadband deployment or adoption — not just broadband companies or net neutrality.
3. If Congress gives the FCC clear rules and the power to enforce them, the Commission will not need the power to write additional rules. Congress, not the FCC, should decide whether additional rules become necessary. (Case-by-case enforcement is how the FCC's 2010 Open Internet Order and its 2014 proposed rules would have worked anyway.)

We urge you to proceed with dispatch, but also with the utmost caution and through regular order in the normal legislative process. Only Congress can craft a solution that is appropriately narrow, avoids endless legal challenges, and puts this divisive issue behind us. Only then can we move on to many long-overdue reforms — such as opening up more spectrum for mobile broadband, clearing actual regulatory barriers to broadband deployment and competition, and updating the Communications Act for the Digital Age.

Sincerely,

ORGANIZATIONS

- **TechFreedom**
- **Americans for Tax Reform**
- **Americans for Prosperity**
- **Center for Individual Freedom**
- **Competitive Enterprise Institute**
- **Council for Citizens Against Government Waste**
- **Information Technology and Innovation Foundation**
- **Institute for Liberty**
- **Institute for Policy Innovation**
- **International Center for Law & Economics**
- **Lincoln Labs**
- **Taxpayers Protection Alliance**

INDIVIDUALS *(Organizations listed here are for identification only)*

- **Daniel Berninger**, founder, VCXC
- **Fred Campbell**, Executive Director, Center for Boundless Innovation in Technology
- **Bartlett D Cleland**, Madery Bridge
- **Scott Cleland**, Chairman NetCompetition
- **Alton E. Drew**, Managing Director, Alton Drew Consulting LLC
- **Hance Haney**, Program Director, Technology and Democracy Project
- **Gene Hoffman**, Co-founder, eMusic & Vindicia
- **J. Bradley Jansen**, Director, Center for Financial Privacy & Human Rights
- **Roslyn Layton**, Visiting Fellow, American Enterprise Institute
- **Stan Liebowitz**, Ashbel Smith Professor of Economics, University of Texas, Dallas
- **Katie McAuliffe**, Executive Director, Digital Liberty
- **Seton Motley**, President, Less Government
- **Glen O. Robinson**, Former FCC Commissioner (1974-76) and David and Mary Harrison Distinguished Professor of Law Emeritus, University of Virginia
- **Paul H. Rubin**, Dobbs Professor of Economics, Emory University
- **Mike Wendy**, President, MediaFreedom.org

CEA Applauds House, Senate Draft Legislation on Open Internet

Arlington, VA – 01/16/2015 – The following statement is attributed to Gary Shapiro, president and CEO of the Consumer Electronics Association (CEA)®, regarding the House Energy and Commerce Committee and Senate Committee on Commerce, Science, and Transportation draft legislation providing clear rules for open and unfettered access to the Internet:

"We thank Chairman Upton and Chairman Thune for drafting clear, simple, non-bureaucratic legislation that would preserve an open Internet, while encouraging competition among Internet Service Providers and investment in the Internet. There is a need for a reasonable and balanced approach, and at first glance it appears this draft contains thoughtful provisions and is a welcome contribution to this important national discussion. We will review the proposal in detail and look forward to learning more at next week's committee hearings."

About CEA

The Consumer Electronics Association (CEA) is the technology trade association representing the $223 billion U.S. consumer electronics industry. More than 2,000 companies enjoy the benefits of CEA membership, including legislative and regulatory advocacy, market research, technical training and education, industry promotion, standards development and the fostering of business and strategic relationships. CEA also owns and produces the International CES – The Global Stage for Innovation. All profits from CES are reinvested into CEA's industry services. Find CEA online at www.CE.org, www.Declareinnovation.com and through social media.

Press Contacts:
Izzy Santa
isanta@ce.org

Categories: Public Policy & Government Affairs, CEA General — Tags: Internet, Open

January 15, 2015

VIA ELECTRONIC FILING

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Protecting and Promoting the Open Internet, GN Docket No. 14-28;
Framework for Broadband Internet Service, GN Docket No. 10-127

Dear Mr. Chairman and Commissioners:

Innovation in mobile health[1] and the dynamic transparent measurement of mobile health products and services in the real world empowers consumers and improves outcomes and efficiencies in health care delivery. The undersigned representatives of companies and organizations serving the public in relation to health care are concerned that potential changes to

[1] Note on terminology. Multiple terms are used to describe the influence of technology on healthcare. Commonly used adjectives include "mobile" or "m," "digital", "wireless" and "electronic." Wireless connectivity is the key technology enabler for this field. "Connected health" is the term which best describes the source of value derived from the full convergence of technology and healthcare, including mobile communications infrastructure, digitized information, big data, cloud-based systems and behavioral economics.

the Open Internet framework may adversely affect this opportunity. Mobile health products and services and other digital health services continue to grow and flourish under the Open Internet framework. We submit this letter to caution the Commission against the unnecessary application of additional open Internet requirements, or of antiquated Title II common carrier regulations, to the vibrant wireless ecosystem.

Under the current regulatory approach for wireless providers, the connected health sector has been extraordinarily innovative and vibrant. Crucial for underserved populations and affordability, tech-enabled connected health solutions will democratize medical knowledge, reaching underserved populations in an efficient and personal way, improving health care and making it more accessible. The Commonwealth Fund described the opportunity "to transform health care by making it more responsive to consumers' needs, convenient for patients to access, and efficient and satisfying for providers to deliver."[2]

We are very early in the development of connected health solutions. This is a time when experimentation, fast innovation and investment are critically important. The opportunity represented by connected health will flourish in the open innovation environment that is currently represented by the wireless Internet. Conversely, the addition of limitations on wireless networks will inhibit connected health investment and innovation.

Fortunately, the investment community and both the health care and non-health care business sectors agree on the need for connected health innovation and the business opportunity that it represents. PWC points out that the *Fortune 50* list includes 24 "healthcare new entrants" (including 8 "technology and telecommunications" companies).[3] By 2017, global mobile health revenues are expected to increase nearly six-fold to $23 billion, with the U.S. market commanding $5.9 billion of the revenues.[4]

The U.S. health system faces considerable challenges, and mobile health innovations can play an essential role in cost reduction and improved outcomes. Today, as the Commission considers a revised net neutrality framework, we urge the Commission to consider the effects on the nascent connected health industry that such changes may represent. Rather than inserting new regulatory uncertainty, the undersigned instead ask the Commission to maintain the structure for wireless services adopted in the 2010 net neutrality rules that has allowed the burgeoning mobile health industry to grow and succeed. Further, the country has made significant investments on the creation of a nationwide health information network through the creation of regional health information exchanges laid out in the HITECH Act. This health information network is further enabled by the work carried out by the FCC Connect America Fund.

The U.S. has been at the forefront of connected health deployments worldwide.[5] These deployments include sophisticated solutions to monitor and treat patients, as well as applications

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[2] Hostetter et al, *Taking Digital Health to the Next Level*, Commonwealth Fund, October 2014. *Available at:* http://www.commonwealthfund.org/~/media/files/publications/fund-report/2014/oct/1777_hostetter_taking_digital_hlt_next_level_v2.pdf?la=en.

[3] http://www.pwc.com/us/en/health-industries/healthcare-new-entrants/index.jhtml.

[4] PWC, *Touching Lives Through Mobile Health* at 14 (Feb. 2012), *at* http://www.pwc.in/assets/pdfs/telecom/gsma-pwc_mhealth_report.pdf.

[5] *Touching Lives Through Mobile Health* at 14.

allowing individuals to manage wellness and fitness.[6] Indeed, connected health is heading into a transformative stage of development. Remote monitoring of patients can help reduce costs significantly by decreasing the amount of time required to spend in a hospital and the need for readmissions. Mobile-connected pill bottles allow for connectivity between patients, doctors and pharmacies and provide reminders to users to take medication, adherence reports to caregivers, and automatic prescription refills to pharmacies.[7]

Additionally, Kantar Media found that 78% of physicians use smartphones and 51% use tablets for professional purposes, with smartphones favored for "tasks such as researching specific clinical situations and reading professional news."[8] Smartphone and tablet use by healthcare professionals continues to grow. A 2013 Epocrates survey of primary care doctors, cardiologists, oncologists, psychiatrists, physician assistants, and nurse practitioners revealed that 86% of these clinicians used smartphones in their professional activities, up 78% from the previous year.[9] By June 2014, 94 percent of respondents expected that they would use smartphones for professional activities, while 85% anticipated using tablets.[10] As for individuals, more than 40,000 healthcare apps are available to mobile users, and almost 247 million mobile users have downloaded a healthcare app for personal use.[11]

In the four years since the Commission adopted its 2010 Open Internet framework, mobile wireless – and mobile health in particular – has flourished, with incredible growth, investment and innovation. This was due, in large part, to the sensible mobile-specific regulatory treatment afforded to the wireless industry. The undersigned parties would suggest that the Commission should continue this successful path and avoid changes to the framework that provided a policy foundation for the health information systems innovations described here.

Regulatory and economic factors dictate against the imposition of a one-size-fits-all Title II common carrier regime on competitive and diverse mobile broadband services. An arcane utility-style regulatory approach is inconsistent with and harmful to innovation in mobile health. Economists estimate that an application of Title II regulation on wired and mobile broadband services would reduce network investment by 12.8-20.8%.[12] We are concerned that the wrong regulatory rules could inhibit or greatly delay needed network investment and innovation that will be critical to next-generation health solutions. We should not put at risk advancements that could reduce latency, improve quality of service, and help unlock 5G and machine-to-machine opportunities

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[6] *Id.*
[7] *Id.*
[8] Helen Gregg, "Top Physician Uses of Smartphones, Tablets," *Becker's Hospital Review* (Jan. 28, 2014), *available at* http://www.beckershospitalreview.com/healthcare-information-technology/top-physician-uses-of-smartphones-tablets.html.
[9] Epocrates, *"Epocrates 2013 Mobile Trends Report: Maximizing Multi-Screen Engagement Among Clinicians"* at 5 (2013) *("Epocrates Mobile Trends Report"), available at* http://www.epocrates.com/oldsite/statistics/2013%20Epocrates%20Mobile%20Trends%20Report_FINAL.pdf.
[10] *Id.*
[11] Scott Rupp, "mHealth Stats: Mobile Apps, Devices and Solutions," *Electronic Health Reporter* (Dec. 10, 2013), *at* http://electronichealthreporter.com/mhealth-stats-mobile-apps-devices-and-solutions/.
[12] *See* Sonecon, The Impact of Title II Regulation of Internet Providers On Their Capital Investments, November 2014, *available at:* http://www.sonecon.com/docs/studies/Impact_of_Title_II_Reg_on_Investment-Hassett-Shapiro-Nov-14-2014.pdf.

The public benefits from timely low-cost access to digital information regarding health. These services are immeasurable and demand a regulatory environment that facilitates, not disrupts, innovation and investment.

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, a copy of this letter is being filed in ECFS.

Sincerely,

Joel White
Executive Director
Health IT Now Coalition

Opposing title II.

Bradley Merrill Thompson
General Counsel
M-Health Regulatory Coalition

Robert B. McCray
President & CEO
Wireless-Life Sciences Alliance

ROLL CALL

Supporting legislative action.

Back to Article

Net Neutrality Is Low-Hanging Fruit for Congress | Commentary

By Rick Boucher
Jan. 12, 2015, 2:12 p.m.

As is normal, the start of a new Congress resonated with pledges of bipartisan intention as legislative leaders expressed a determination to work across the aisle in addressing the nation's challenges.

All too often, the opening week's bipartisan good feeling devolves into partisan bickering. But, this year can be different. The tech arena is yielding a promising legislative opportunity with ample incentive for Democrats and Republicans to cooperate in the early passage of a bill that resolves one of the most contentious policy debates of 2015.

The issue is net neutrality, which has dominated the debate in tech policy circles since the U.S. Court of Appeals for the District of Columbia Circuit invalidated the Federal Communications Commission's 2010 open Internet rule and tossed the matter back to the FCC. The rhetoric has sharpened and the partisan divide has widened as the time for FCC resolution of the matter approaches.

The nation's broadband providers are concerned that during the FCC's Feb. 26 public meeting, as a prelude to adopting a new set of net-neutrality rules, the agency will decide to treat broadband Internet access service as a public utility under Title II of the Communications Act. With justification, they claim that imposing monopoly rules from the era of rotary telephones on broadband services would stifle investment at the very time when we have a national goal to extend high-speed Internet service to 98 percent of the nation. Both Republicans and Democrats have echoed those arguments.

On the other side of the debate are claims of potential consumer harm that would result if the commission fails to reclassify broadband under Title II. Without Title II, they argue that the FCC lacks authority to prevent actions such as the blocking of websites, the slowing down of competitors' content or the creation of Internet fast lanes that harm consumers or potentially benefit some content providers to the disadvantage of others.

The coming month, before the FCC acts presents a timely opportunity for Congress to step in and resolve the debate on terms that would seemingly be agreeable to Democrats and Republicans, broadband providers and consumers seeking continued access to robust high-speed Internet services. The FCC promulgated its open Internet rule in 2010 against a backdrop of consensus that had been reached through lengthy discussions among the stakeholders. While not all of the parties were in agreement, a critical mass of consumer groups, broadband providers and policymakers created the consensus that resulted in the FCC's open Internet framework. It's notable that among broadband providers, AT&T publicly expressed support for the rule, and it was ultimately approved with the FCC's Democratic members voting affirmatively. Even more noteworthy is that in the four years since the open Internet rule was adopted, broadband providers have integrated its requirements into daily operations, and high-speed Internet access service has expanded absent consumer complaints of violations.

Narrow legislation that specifically empowers the FCC to re-promulgate the 2010 open Internet rule would simultaneously cure the D.C. Circuit's objection that the FCC lacked the statutory authority to act, maintain the existing classification of broadband, avoid imposing new barriers to investment associated with reclassification, and assure that rules are in place that maintain Internet openness. While enabling the FCC to adopt the 2010 rule, the legislation would circumscribe the agency's authority to impose onerous Title II regulations on broadband.

This approach would allow parties on both sides of the debate to claim victory and secure for each its major objective. It's a rare opportunity for Congress to act in a bipartisan fashion while a substantial measure of bipartisan good intention remains. Let's not let the moment pass.

Rick Boucher is a former Democratic congressman from Virginia who chaired the Energy and Commerce Subcommittee on Communications and the Internet. He heads the government strategies practice at Sidley Austin LLP and is honorary chairman of the Internet Innovation Alliance.

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Melissa · 8 days ago

People are so focused on slow lanes, but something equally as terrifying are data caps. Who cares if you get 1gbps, if you only have a 300gb data cap, with excessive overage fees for going over that limit, in a day in age where media streaming startups is a bastion of opportunity for our economy, and many of us have turned online for our entertainment and news. Looming data caps should be mentioned in conjunction with slow lanes, as much as Comcast is horrified by the notion.

Furthermore, Congress needs to step up, because Wheeler is just double-speaking like he always has. He wants to to prevent slow lanes, but he doesn't think that expedited data is bad in all cases. He uses the emergency system example, fine, but I'm sure he has a broader vision for such a system, which can only be harmful for internet users, and would obviously be to the benefit of his ex(current telecom) employers., His CES statements didn't convince me he had changed his ideology at all. He's about to give the keys to the kingdom to his corporate masters, unless someone above his head sees his intention and acts now. The problem stands, are there any congressman left who haven't taken a big telecom payout.

The Internet needs to be reclassified to protect it. ISPs argue about over-regulation, but the regulation they're afraid of is having the abuse of their power ebbed, which would only benefit society at large. ISPs should have one job and one alone, provide the speed at which theyre selling without restricting via caps or deprioritization. Any move to not protect us from such practices is not the right move. Title II would also open infrastructure for competitive net services, so that we can actually have some competition in our market. I hope google, amazon, netflix, and online media provdiers are putting their money where their mouths are, because they stand to be hurt the most by deprioritization and data caps. Also, we the people will have our choice stolen, and the once great equal and open internet will be a corporate buffet solely existing to gouge the customers.

With that said, Congress will be more apt to act if continue to tell them how we feel. Do not trust ex-telecom lobbyist Tom Wheeler to make a decision that's to our benefit.

Reply · Share

James Jackson · 8 days ago

The US Government is at a crossroads with this ruling. Do they control the Internet through the companies that all ready control The Us Government? -or- Do they listen to the people and give them what they want (no slow lanes, etc) eventhough the Internet makes us look bad?

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Net Neutrality: President Obama's Plan for a Free and Open Internet

More than any other invention of our time, the Internet has unlocked possibilities we could just barely imagine a generation ago. And here's a big reason we've seen such incredible growth and innovation: Most Internet providers have treated Internet traffic equally. That's a principle known as "net neutrality" — and it says that an entrepreneur's fledgling company should have the same chance to succeed as established corporations, and that access to a high school student's blog shouldn't be unfairly slowed down to make way for advertisers with more money.

That's what President Obama believes, and what he means when he says there should be no gatekeepers between you and your favorite online sites and services.

And as the Federal Communications Commission (FCC) considers new rules for how to safeguard competition and user choice, we cannot take that principle of net neutrality for granted. Ensuring a free and open Internet is the only way we can preserve the Internet's power to connect our world. That's why the President has laid out a plan to do it, and is asking the FCC to implement it.

Watch President Obama explain his plan, then read his statement and forward it on.

TELECOMMUNICATIONS INDUSTRY ASSOCIATION | 1320 N. Courthouse Rd., Suite 200 Arlington, VA 22201 USA www.tiaonline.org | Tel: +1.703.907.7700 Fax: +1.703.907.7727

January 20, 2015

The Honorable John Thune
U.S. Senate
511 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Fred Upton
U.S. House of Representatives
2183 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Thune and Chairman Upton:

The Telecommunications Industry Association (TIA), the leading trade association for global manufacturers, vendors, and suppliers of information and communications technology, applauds your leadership in releasing draft legislation and conducting hearings on "Protecting the Internet and Consumers through Congressional Action." We particularly appreciate your scheduling each Committees' inaugural hearings of the 114th Congress on this important issue.

There is a clear consensus that consumers should be assured of unfettered access to their choice of content or services, as well as connectivity of devices to the Internet. Determining the appropriate FCC legal authority to achieve these goals has been challenging. TIA believes strongly that reclassifying broadband internet access under Title II has significant adverse consequences. Using Title II to achieve net neutrality attempts to put a round peg into a square hole.

Congress is uniquely qualified to resolve the net neutrality issue by directing the FCC to assure an Open Internet without applying regulatory excesses that would cripple continued investment.

We look forward to working with you on these important issues.

Regards,

Scott Belcher
Chief Executive Officer
Telecommunications Industry Association

→ D opposing Title II and supporting legislative action

App Developers Alliance Supports Open Internet; Welcomes Legislative Option

January 21, 2015

Statement from Jon Potter, President, Application Developers Alliance:

"The Applications Developers Alliance supports developers as creators, innovators and entrepreneurs. Developers need an Internet – wired and wireless – that is open, competitive, stable, fast, and fair to all who use it – and that continues to grow in size, scale and speed.

reloading legislative debate

Press Contact

Sarah Elliott,

Communications

sarah@appalliance.org

"An open Internet protects consumer choice, enables startups to compete fairly with incumbents, is transparent, and prohibits blocking and throttling content, paid prioritization and discrimination. The open Internet must be ensured permanently; three more years of litigation creates uncertainty that undermines small innovators.

"The open Internet can be guaranteed through legislation or regulation – but either must be drafted narrowly and carefully. The bills introduced by Chairmen Thune and Upton, with some improvements, could guarantee the open Internet that stakeholders have been discussing for more than a decade, and could guarantee opportunity for generations of innovators and app developers. We welcome the legislative debate."

###

The Application Developers Alliance is a non-profit global membership

(650) 477-6585

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organization that supports developers as creators, innovators, and entrepreneurs. We promote industry growth and advocate on public policy and industry issues. The Apps Alliance, which now includes more than 200 corporate members and a 50,000-strong developer network, launched in January of 2012 and initiated European services in early 2014. Membership includes app publishers, developer agencies, platforms, wireless carriers, hardware manufacturers, ad networks, enterprise tools and service providers.

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Internet Association

January 21, 2015

The Honorable Fred Upton
Chairman
House Energy & Commerce Committee
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Chairman, Communications & Technology
Subcommittee
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
House Energy & Commerce Committee
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member, Communications &
Technology Subcommittee
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton, Ranking Member Pallone, Chairman Walden, and Ranking Member Eshoo:

I write on behalf of the Internet Association to share our views on today's legislative hearing to discuss the proposed net neutrality legislation before your Committee. The Internet Association is the unified voice of the Internet economy, representing the interests of leading Internet companies[1] and their global community of users. The Internet Association is dedicated to advancing public policy solutions to strengthen and protect Internet freedom, foster innovation and economic growth, and empower users. As such, we are keenly aware of and interested in any net neutrality related public policy, regardless of its origins and legal foundation.

Since last May, when the Federal Communications Commission first requested public comments on its proposed open Internet rules, the Internet Association has taken a position that is results oriented. By this, we mean that our priority is for the adoption of robust and light touch open Internet rules that protect Internet freedom, foster innovation and economic growth, and empower users. The rules for which we specifically advocated are a ban on blocking, discrimination, and paid prioritization by both wired and wireless broadband Internet access providers. We also have expressed our concern – outside of the traditional last mile net neutrality debate – that these providers can use interconnection as a chokepoint to degrade consumer access and harm online services.

Many of the principles outlined by Chairman Upton and Chairman Walden are responsive to our concerns in key respects, and we are grateful for the leadership both the House and Senate have shown in crafting them, as well as the outreach to stakeholders throughout this process. With respect to the draft legislation, changes need to be made to ensure the outcomes match these principles so that an open Internet is fully protected. Although this list is not intended to be exhaustive, we have concerns about

[1] The Internet Association's members include Airbnb, Amazon.com, AOL, auction.com, eBay, Etsy, Expedia, Facebook, Gilt, Google, LinkedIn, Lyft, Monster Worldwide, Netflix, Practice Fusion, Rackspace, reddit, Salesforce.com, Sidecar, SurveyMonkey, TripAdvisor, Twitter, Yahoo!, Yelp, Uber and Zynga.

1333 H Street NW, Washington, DC 20005
12th Floor, West
www.InternetAssociation.org

Internet Association

certain key provisions in the discussion draft – namely discrimination, throttling, specialized services, consumer choice, and reasonable network management practices.

The bill as currently drafted does not expressly ban discrimination. Allowing discrimination unconnected to a payment creates the possibility of discrimination by vertically integrated Internet access providers. Similarly, the current prohibition on throttling in the discussion draft is ambiguous since it prohibits "selective" throttling only when the throttling is "based on source, destination, or content" of the traffic. This leaves open the possibility that an access provider could adopt a policy of generally throttling Internet traffic of a particular "type," such as video traffic.

We also have concerns about the definitions of specialized services, consumer choice, and reasonable network management practices in the discussion draft. These terms as currently drafted could be used as loopholes to avoid the legislation's obligations, leading to the unintended consequence of the exception swallowing the rule. Specialized services are defined expansively and are permitted save where "devised or promoted" to evade the open Internet rules, or where they impinge on the "meaningful availability" of broadband Internet access. Unfortunately, neither term is specifically defined. Similarly, we are concerned that the discussion draft's consumer choice provision could be read to allow broadband Internet access providers to prioritize a service if consent is given through a provision buried in a dense and lengthy consumer service contract. Finally, the discussion draft could allow access providers to hide reasonable network management practices from transparency requirements, and thus, potentially hide discrimination under the guise of reasonable network management.

We look forward to working with the Committee on some key issues of concern for Internet companies – including the issues outlined above – as the Committee's process advances. As we review Congressional open Internet proposals, we will continue to work with stakeholders – including the FCC – to produce enforceable rules. The path forward is not binary, and we have a responsibility to protect the free and open Internet for our members, as well as their community of users, by working with regulators, legislators, and stakeholders to achieve this end.

It is encouraging to see that support for net neutrality rules cross party lines. We must all work together to ensure that the Internet is free and open for users and innovators.

Respectfully,

Michael Beckerman
President & CEO
Internet Association

1333 H Street NW, Washington, DC 20005
12th Floor, West
www.InternetAssociation.org

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

April 2, 2015

Ms. Meredith Attwell Baker
President and CEO
CTIA – The Wireless Association
1400 16th Street, N.W., Suite 600
Washington, D.C. 20036

Dear Ms. Baker:

Thank you for appearing before the Subcommittee on Communications and Technology on January 21, 2015, to testify at the hearing entitled "Protecting the Internet and Consumers Through Congressional Action."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on April 16, 2015. Your responses should be mailed to Charlotte Savercool, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to Charlotte.Savercool@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Attachment—Additional Questions for the Record

Answers from Meredith Attwell Baker, President and CEO, CTIA—The Wireless Association

The Honorable Renee Ellmers

1. Ms. Baker, as we begin to benefit from the intersection of wireless and health care, would the regulation of wireless broadband under Title II help or hinder the industry's ability to deliver more patient-centric treatment solutions?

As your question suggests, new mobile health products and services portend extraordinary consumer benefits, as well as exciting new business opportunities. Entrepreneurs are creating and investing in sophisticated solutions to monitor and treat patients, make critical health data more accessible and understandable, enhance patient awareness, and improve well-being. PricewaterhouseCoopers expects global mobile health revenues to increase to $23 billion by 2017, with the U.S. market commanding almost $6 billion.[1] Mobile technologies already play an essential role in the health field today and are poised for continued growth and greater promise.

Given that seamless wireless broadband connectivity is the key driver in this exciting field, we are concerned that the FCC's recent action to impose Title II regulation will curtail investment and thereby stifle the important innovations taking place in the mobile health sector. In fact, leaders in this important field, including the Health IT Now Coalition, M-Health Regulatory Coalition and the Wireless-Life Sciences Alliance, wrote to the FCC expressing the same view. For your convenience, I have attached a copy of their letter, which was filed in the agency's docket. *See* Exhibit A.

The FCC ruling is particularly troubling in light of Congress's 1993 action to prohibit the agency from applying old-fashioned telephone voice rules to mobile broadband. In enacting Section 332, Congress recognized the myriad benefits that would result from a vibrant wireless marketplace and legislated that the FCC "shall not" treat the data services that have evolved into today's mobile broadband "as a common carrier for any purpose." Indeed, more than twenty years later, our nation's renown in wireless in general and mobile health in particular is a direct result of Congress's prescience.

Imposition of a one-size-fits-all Title II common carrier regime on competitive and diverse mobile broadband services is also inconsistent with the dynamic mobile health marketplace. We fear that the substance of the new FCC rules, as well as the uncertainty they have created, will delay the network investment necessary to continue to increase speeds, reduce latency, and improve quality of service, each of which is critical to the success of next-generation, patient-centric health treatment solutions. Thus, we think it critical that the FCC clearly state that all mobile health products and services fall outside of the new Title II-based requirements. The FCC must recognize that these cutting-edge innovations are best treated as specialized services, now known as "non-broadband Internet access" services.

---

[1] *See* PwC, *Touching Lives Through Mobile Health* (Feb. 2012) at 14.

Exhibit A

Letter from Health IT Now Coalition, M-Health Regulatory Coalition and the Wireless-Life Sciences Alliance to FCC Chairman Thomas Wheeler et al., GN Dockets 14-28 and 10-127 (filed Jan. 15, 2015).

January 15, 2015

VIA ELECTRONIC FILING

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Protecting and Promoting the Open Internet, GN Docket No. 14-28;
Framework for Broadband Internet Service, GN Docket No. 10-127

Dear Mr. Chairman and Commissioners:

Innovation in mobile health[1] and the dynamic transparent measurement of mobile health products and services in the real world empowers consumers and improves outcomes and efficiencies in health care delivery. The undersigned representatives of companies and organizations serving the public in relation to health care are concerned that potential changes to

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the Open Internet framework may adversely affect this opportunity. Mobile health products and services and other digital health services continue to grow and flourish under the Open Internet framework. We submit this letter to caution the Commission against the unnecessary application of additional open Internet requirements, or of antiquated Title II common carrier regulations, to the vibrant wireless ecosystem.

Under the current regulatory approach for wireless providers, the connected health sector has been extraordinarily innovative and vibrant. Crucial for underserved populations and affordability, tech-enabled connected health solutions will democratize medical knowledge, reaching underserved populations in an efficient and personal way, improving health care and making it more accessible. The Commonwealth Fund described the opportunity "to transform health care by making it more responsive to consumers' needs, convenient for patients to access, and efficient and satisfying for providers to deliver."[2]

We are very early in the development of connected health solutions. This is a time when experimentation, fast innovation and investment are critically important. The opportunity represented by connected health will flourish in the open innovation environment that is currently represented by the wireless Internet. Conversely, the addition of limitations on wireless networks will inhibit connected health investment and innovation.

Fortunately, the investment community and both the health care and non-health care business sectors agree on the need for connected health innovation and the business opportunity that it represents. PWC points out that the *Fortune 50* list includes 24 "healthcare new entrants" (including 8 "technology and telecommunications" companies).[3] By 2017, global mobile health revenues are expected to increase nearly six-fold to $23 billion, with the U.S. market commanding $5.9 billion of the revenues.[4]

The U.S. health system faces considerable challenges, and mobile health innovations can play an essential role in cost reduction and improved outcomes. Today, as the Commission considers a revised net neutrality framework, we urge the Commission to consider the effects on the nascent connected health industry that such changes may represent. Rather than inserting new regulatory uncertainty, the undersigned instead ask the Commission to maintain the structure for wireless services adopted in the 2010 net neutrality rules that has allowed the burgeoning mobile health industry to grow and succeed. Further, the country has made significant investments on the creation of a nationwide health information network through the creation of regional health information exchanges laid out in the HITECH Act. This health information network is further enabled by the work carried out by the FCC Connect America Fund.

The U.S. has been at the forefront of connected health deployments worldwide.[5] These deployments include sophisticated solutions to monitor and treat patients, as well as applications

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[2] Hostetter et al, *Taking Digital Health to the Next Level*, Commonwealth Fund, October 2014. *Available at:* http://www.commonwealthfund.org/~/media/files/publications/fund-report/2014/oct/1777_hostetter_taking_digital_hlt_next_level_v2.pdf?la=en.

[3] http://www.pwc.com/us/en/health-industries/healthcare-new-entrants/index.jhtml.

[4] PWC, *Touching Lives Through Mobile Health* at 14 (Feb. 2012), *at* http://www.pwc.in/assets/pdfs/telecom/gsma-pwc_mhealth_report.pdf.

[5] *Touching Lives Through Mobile Health* at 14.

allowing individuals to manage wellness and fitness.[6] Indeed, connected health is heading into a transformative stage of development. Remote monitoring of patients can help reduce costs significantly by decreasing the amount of time required to spend in a hospital and the need for readmissions. Mobile-connected pill bottles allow for connectivity between patients, doctors and pharmacies and provide reminders to users to take medication, adherence reports to caregivers, and automatic prescription refills to pharmacies.[7]

Additionally, Kantar Media found that 78% of physicians use smartphones and 51% use tablets for professional purposes, with smartphones favored for "tasks such as researching specific clinical situations and reading professional news."[8] Smartphone and tablet use by healthcare professionals continues to grow. A 2013 Epocrates survey of primary care doctors, cardiologists, oncologists, psychiatrists, physician assistants, and nurse practitioners revealed that 86% of these clinicians used smartphones in their professional activities, up 78% from the previous year.[9] By June 2014, 94 percent of respondents expected that they would use smartphones for professional activities, while 85% anticipated using tablets.[10] As for individuals, more than 40,000 healthcare apps are available to mobile users, and almost 247 million mobile users have downloaded a healthcare app for personal use.[11]

In the four years since the Commission adopted its 2010 Open Internet framework, mobile wireless – and mobile health in particular – has flourished, with incredible growth, investment and innovation. This was due, in large part, to the sensible mobile-specific regulatory treatment afforded to the wireless industry. The undersigned parties would suggest that the Commission should continue this successful path and avoid changes to the framework that provided a policy foundation for the health information systems innovations described here.

Regulatory and economic factors dictate against the imposition of a one-size-fits-all Title II common carrier regime on competitive and diverse mobile broadband services. An arcane utility-style regulatory approach is inconsistent with and harmful to innovation in mobile health. Economists estimate that an application of Title II regulation on wired and mobile broadband services would reduce network investment by 12.8-20.8%.[12] We are concerned that the wrong regulatory rules could inhibit or greatly delay needed network investment and innovation that will be critical to next-generation health solutions. We should not put at risk advancements that could reduce latency, improve quality of service, and help unlock 5G and machine-to-machine opportunities

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[6] *Id.*

[7] *Id.*

[8] Helen Gregg, "Top Physician Uses of Smartphones, Tablets," *Becker's Hospital Review* (Jan. 28, 2014), *available at* http://www.beckershospitalreview.com/healthcare-information-technology/top-physician-uses-of-smartphones-tablets.html.

[9] Epocrates, *"Epocrates 2013 Mobile Trends Report: Maximizing Multi-Screen Engagement Among Clinicians"* at 5 (2013) *("Epocrates Mobile Trends Report"), available at* http://www.epocrates.com/oldsite/statistics/2013%20Epocrates%20Mobile%20Trends%20Report_FINAL.pdf.

[10] *Id.*

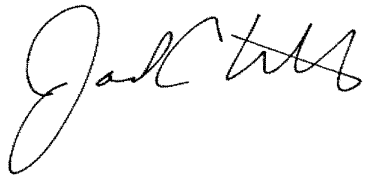
[11] Scott Rupp, "mHealth Stats: Mobile Apps, Devices and Solutions," *Electronic Health Reporter* (Dec. 10, 2013), *at* http://electronichealthreporter.com/mhealth-stats-mobile-apps-devices-and-solutions/.

[12] *See* Sonecon, The Impact of Title II Regulation of Internet Providers On Their Capital Investments, November 2014, *available at:* http://www.sonecon.com/docs/studies/Impact_of_Title_II_Reg_on_Investment-Hassett-Shapiro-Nov-14-2014.pdf.

The public benefits from timely low-cost access to digital information regarding health. These services are immeasurable and demand a regulatory environment that facilitates, not disrupts, innovation and investment.

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, a copy of this letter is being filed in ECFS.

Sincerely,



Joel White
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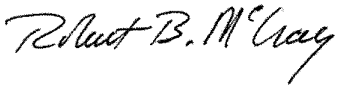
Health IT Now Coalition

Bradley Merrill Thompson
General Counsel
M-Health Regulatory Coalition



Robert B. McCray
President & CEO
Wireless-Life Sciences Alliance

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