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4 OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

5 TUESDAY, MAY 20, 2014

6 House of Representatives,

7 Subcommittee on Communications and Technology

8 Committee on Energy & Commerce

9 Washington, D.C.

10           The Subcommittee met, pursuant to call, at 10:30 a.m.,  
11 in Room 2123 of the Rayburn House Office Building, Hon. Greg  
12 Walden [Chairman of the Subcommittee] presiding.

13           Members present: Representatives Walden, Latta,  
14 Shimkus, Terry, Rogers, Blackburn, Scalise, Lance, Guthrie,  
15 Gardner, Pompeo, Kinzinger, Long, Ellmers, Barton, Upton (ex  
16 officio) Eshoo, Matsui, Braley, Welch, Lujan, Dingell,

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17 DeGette, Matheson, Butterfield, and Waxman (ex officio).

18 Also present: Representative Yarmuth.

19 Staff present: Gary Andres, Staff Director; Ray Baum,  
20 Senior Policy Advisor/Director of Coalitions; Matt Bravo,  
21 Professional Staff Member; Leighton Brown, Press Assistant;  
22 Andy Duberstein, Deputy Press Secretary; Gene Fullano,  
23 Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; Sean  
24 Hayes, Deputy Chief Counsel, Oversight & Investigations;  
25 Grace Koh, Counsel, Telecom; David Redl, Counsel, Telecom;  
26 Charlotte Savercool, Legislative Coordinator; Macey Sevcik,  
27 Press Assistant; Tom Wilbur, Digital Media Advisor; Phil  
28 Barnett, Democratic Staff Director; Shawn Chang, Democratic  
29 Chief Counsel for Communications and Technology Subcommittee;  
30 Margaret McCarthy, Democratic Professional Staff Member; Ryan  
31 Skukowski, Democratic Staff Assistant; and Patrick Donovan,  
32 Democratic FCC Detailee.

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33           Mr. {Walden.} We will call to order the Subcommittee on  
34 Communications and Technology, and I certainly want to  
35 welcome our members and our witness, the Chairman of the  
36 Federal Communications Commission. Mr. Wheeler, we are  
37 delighted that you would make time to come and spend with us  
38 on this important day with so much going on in the  
39 telecommunications world.

40           Six month ago, this subcommittee met for the very first  
41 time with the current complement of FCC Commissioners and  
42 welcomed Mr. Wheeler as the new chairman. Today--and let me  
43 welcome Mr. Wheeler back--we meet to review the record of  
44 action and selective inaction that the Commission has taken  
45 under the first 6 months of your leadership. Unfortunately,  
46 given some of the most recent actions out of the Commission,  
47 I fear that we may be heading into rough waters.

48           When we last met I offered two pieces of advice to  
49 Chairman Wheeler and his colleagues. First, I urged them to  
50 heed the words of Congress where it has spoken and reject  
51 calls to act in ways contrary to Congressional intent.  
52 Second, I urged them to bear in mind that even seemingly

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53 small changes in the Federal Communications Commission's  
54 rules can have significant impact on the marketplace. I  
55 called upon all the members of the Commission to discharge  
56 their duties with transparency, accountability, and a long  
57 view of the technological landscape. In sum, my advice was  
58 that they must approach their duties with humility and  
59 restraint.

60 Unfortunately, recent actions have hinted that my advice  
61 was ignored. In December we had yet to know that the D.C.  
62 Circuit Court of Appeals would once again reject the  
63 Commission's attempt to regulate the Internet and could only  
64 speculate as to whether the Commission under Chairman  
65 Wheeler's lead would mount a third attempt. Sadly, we now  
66 know the answer. Not only is Chairman Wheeler leading us  
67 down this path again, the item the Commission adopted last  
68 week tees up the long-dead idea that the Internet is  
69 a common carrier. This reinvigorated willingness to consider  
70 regulating the Internet under Title II of the Communications  
71 Act, rules that find their roots in 19th Century railroad  
72 regulation and were designed to regulate the world of a  
73 telephone monopoly, harken back to a world in which a twisted

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74 copper was the only portal for consumers to the  
75 communications network and voice, the only service.

76         The modern communications landscape bears no resemblance  
77 to the world Title II was meant to regulate, and application  
78 of Title II to the Internet is, at best, a poor fit. Worse  
79 still, the practical consequences of reclassification are to  
80 give the bureaucrats at the FCC the authority to second-guess  
81 business decisions and to regulate every possible aspect of  
82 the Internet. We should all pause and consider the prospect  
83 of the FCC as a rate-setting authority over Internet access  
84 and what that meant for innovation in the telephone network  
85 of yesteryear. We should also be aware that this path opens  
86 the door for states to regulate the Internet.

87         Contrary to any intended effect, the reclassification of  
88 broadband service under Title II will harm consumers, halt  
89 job creation, curtail innovation and stifle investment. In  
90 sum, at a time when the Commission, at Congress's direction,  
91 is taking steps toward even greater growth and innovation  
92 across Internet access platforms, the Commission is  
93 simultaneously contemplating rules that undermine those  
94 very efforts and compromise the fundamental approaches of

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95 both the Clinton and Bush administrations that laid the  
96 foundation for the Internet we know today.

97 As troubling as some of the actions taken under Chairman  
98 Wheeler's watch, the selective inaction of the FCC is equally  
99 troubling. Although required under the Telecommunications  
100 Act, the Federal Communications Commission has failed to  
101 complete its quadrennial review of the limitations on  
102 ownership of broadcast properties. It has been 6 years--6  
103 years--since the Commission last fulfilled this statutory  
104 mandate. Rather than focus on ensuring that the rules  
105 reflect reality, however, the chairman has now announced that  
106 the Commission would essentially scrap the 2010 quadrennial  
107 review, and begin in earnest its 2014 quadrennial review.

108 Notwithstanding this stale record, the FCC also moved  
109 forward to make major changes to the regulations that govern  
110 media ownership anyway, the adopted changes to its  
111 attribution rules that determine how to count stations  
112 toward the local television ownership rule. The FCC also  
113 stated that it would begin counting certain shared service  
114 arrangements toward the local ownership cap. In order to  
115 comply with local ownership rules, these pronouncements will

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116 likely force broadcasters to divest stations and unwind  
117 shared service agreements that are beneficial to ensuring  
118 local content in the smaller markets. These changes do not  
119 bring benefits to the communities served by these  
120 broadcasters drawing into question how this change could  
121 serve the public interest.

122 Finally, FCC process reform has been an ongoing priority  
123 of our Subcommittee. It is an issue my colleagues and I are  
124 deeply invested in as demonstrated by the unanimous passage  
125 in the House of the bipartisan Federal Communications  
126 Commission Process Reform Act on March 11 of this year.  
127 Unfortunately, after the events of the past few months, I am  
128 sad to say I continue to be troubled by the FCC's seemingly  
129 flawed processes.

130 In March, the FCC chose to restrict license transfers  
131 involving certain shared service agreements, which had long  
132 been blessed, implicitly blessed, by the Commission. This  
133 action was not debated by the commissioners, nor is it  
134 subject to any kind of vote. Rather, it was announced by the  
135 Chief of the Media Bureau as a fait accompli.

136 Recent press reports also allege that the chairman's

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137 office withheld presentation of revisions to the Open  
138 Internet Notice of Proposed Rulemaking from Republicans for  
139 as long as 24 hours after having provided the material to the  
140 Democratic commissioners and to the press during the run up  
141 to the May 15th FCC Open Meeting. The concern raised by  
142 these reports is only compounded by revelations that a  
143 substantially revised draft of another item scheduled for  
144 vote at the Open Meeting was not presented to other offices  
145 until the closing minutes of the evening before. According  
146 to Commissioner Pai's dissent from the commission's Mobile  
147 Spectrum Holdings item, his office received the revised item  
148 fewer than 12 hours before the Open Meeting, and the item  
149 contained more than 3,000 revisions.

150 So I find myself channeling Commissioner Rosenworcel who  
151 said of the Open Internet NPRM that the ``process that got us  
152 to this rulemaking today is flawed.'' The committee has  
153 opined in the past that withholding of a revised draft item  
154 from other members of the commission until the eleventh hour  
155 precludes the scrutiny and analysis necessary for reasoned  
156 decision-making. It is my hope that these occurrences were  
157 anomalies. Perhaps Chairman Wheeler will want to commit



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158 today to providing his fellow commissioners with adequate and  
159 equal time to review proposed orders and rules.

160         The transformative impact of the evolution of technology  
161 from analog to digital, from narrowband to broadband, has  
162 forever altered our lives. The evolution continues and the  
163 Commission has before it the issues I just mentioned and many  
164 more, all significant in their impacts on our lives and the  
165 economy. You stated in your written testimony that you are  
166 eager to build on the progress of the last 6 months going  
167 forward. And I hope working together we can move forward in  
168 a direction that protects the success this critical sector of  
169 the economy has enjoyed and facilitates its continued growth  
170 and job creation unencumbered by regulatory overreach.

171         [The prepared statement of Mr. Walden follows:]

172 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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|

173           Mr. {Walden.} With that I yield back, and I recognize  
174 my friend and colleague from California, Ms. Eshoo, the  
175 Ranking Member of the Subcommittee, for her opening  
176 statement.

177           Ms. {Eshoo.} Thank you, Mr. Chairman, and good morning  
178 to all of my colleagues, and welcome back to the committee,  
179 Chairman Wheeler.

180           Before we do a deep dive into the specifics of the  
181 chairman's proposal as well as so many other major issues  
182 that are before the FCC, I think that it would be well for us  
183 to step back and appreciate what I believe is one of the most  
184 consequential inventions in human history. This was dreamed  
185 of and built by disruptors. It is an American story. It is  
186 a product of American genius--the Internet, one word but it  
187 really takes one's breath away in terms of the arc of  
188 history.

189           It is not only an invention, it has reshaped lives,  
190 economies here and around the world, and our thinking and our  
191 debate today really should be viewed, I think, through the  
192 prism of a critical step that we are taking now in the 21st

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193 Century. The Internet is a continuum of change. It is  
194 accessible, it is open and its innovations continue. They  
195 empower individuals, entire fields of learning, growing not  
196 only our economy but economies around the world and serving  
197 humanity in countless ways.

198 All of this has taken place, and here we are in the  
199 second decade of the 21st Century. So this is huge. This is  
200 huge. This is not what is behind door number one, door  
201 number two, door number three, where the price is right.  
202 This is not some guessing game. This is huge. This is  
203 something--these decisions are going to affect every single  
204 American going forward just as it has in the past, and it  
205 will continue to.

206 So all of us--regulators, innovators, consumers,  
207 legislators--we have to get this right. The stakes are very  
208 high, and America cannot lose. It has been our leadership  
209 that has advanced the digital age, and now is not the time,  
210 and actually I don't think there should be ever a time, to  
211 unravel the values that have really been the hallmarks and  
212 the bulwarks of the Internet.

213 So the question is, how do we seize the future? At

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214 least in my view, that is what the question is. I know what  
215 I want to see continue, openness, free, accessible. These  
216 are also the hallmarks of our democracy, and that is why this  
217 has been such an extraordinary export of our country.

218 I know what I don't want. I don't want this to become  
219 an auction, selling off the best in bits and pieces where  
220 some pay for faster lanes, others can't pay. They get stuck  
221 in a slow lane--some giant company blocking content and  
222 others discriminating so that they can sell their stuff to  
223 keep the other guy's stuff stymied. That is not a very  
224 pretty description, but it is a street description of what  
225 can be at hand.

226 I want every day to be essentially the 4th of July for  
227 American innovation so that it just keeps bursting, it just  
228 keeps bursting. And I see it every day in my Congressional  
229 district. Looking forward 10 years, 25 years, 50 years, I  
230 want this to continue, and we should all be thinking on a  
231 grand scale because this growth and this economic driver  
232 should be for everyone. We need smart, savvy regulations,  
233 regulatory decisions. We need a Congress that is engaged in  
234 this and a Congress that is vigilant, and I plan to be.

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235           So what should the FCC do? I think in all the articles  
236 you read, there is a debate. Should it be 706 or should it  
237 be Title II? I think that we have to have a clear  
238 understanding of what has made the Internet what it is today  
239 and what basic values need to be protected and preserved and  
240 then what that is going to look like.

241           And there is more on top of all of this. Can anyone  
242 here today piece together the effects of a Comcast/Time  
243 Warner merger and an AT&T/DirectTV merger on consumers and a  
244 free and open Internet? These are massive decisions and  
245 massive pieces that are moving forward. And what is going to  
246 happen to innovation?

247           Mr. Chairman, Chairman Walden, I urge you to convene a  
248 hearing to examine these issues here. I think they deserve  
249 to be examined and to be debated and questions asked. So as  
250 I said earlier, every person in the country will be affected  
251 by the outcome of these decisions that are before the  
252 Commission and before us. And so I look forward to  
253 questioning Chairman Wheeler today. I also ask for unanimous  
254 consent to two letters, two very important letters, be  
255 entered into the record, one signed by more than 100 venture

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256 capitalists and angel investors who support simple, strong,  
257 enforceable rules against online discrimination and access  
258 fees, and the other signed by more than 100 Internet  
259 companies, small and large, mostly small, that support a free  
260 and open Internet.

261 Mr. {Walden.} Without objection.

262 [The information follows:]

263 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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264           Ms. {Eshoo.} And I don't know if I have any time  
265 remaining. No, I think I have gone over. With that, I will  
266 yield back what I don't have.

267           [The prepared statement of Ms. Eshoo follows:]

268           \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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269           Mr. {Walden.} Thank the gentlelady for her opening  
270 statement and the letters. I will now turn to the Full  
271 Committee Chairman, Mr. Fred Upton from Michigan, for opening  
272 comments.

273           The {Chairman.} Well, thank you, Mr. Chairman.  
274 Oversight is a critical part of this committee's work to  
275 foster a smaller, more nimble government for the innovation  
276 age. We have held lots of hearings with all of the FCC's  
277 commissioners to address issues of national importance, to  
278 keep a close eye on the budget, and to ensure that Commission  
279 process focuses on promoting jobs and innovation, and today's  
280 oversight hearing with Chairman Wheeler will continue that  
281 discussion to ensure that the FCC works in a way that  
282 benefits consumers, industry, and certainly the economy, and  
283 I thank you for coming today.

284           There is a lot to discuss. In the 6 months since Mr.  
285 Wheeler was confirmed as chair, he has addressed a number of  
286 items including media ownership, the IP transition, universal  
287 service, and just this past week, of course, the incentive  
288 auctions and net neutrality. While I appreciate the



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289 chairman's leadership on some of these, I have serious  
290 concerns with some others.

291 As an initial matter, Chairman Wheeler started off his  
292 chairmanship with the review of FCC procedure, an issue that  
293 this Subcommittee has spent lots of time working to reform in  
294 a bipartisan manner. But I was disappointed to see some of  
295 the process failures that occurred last week. Media reports  
296 of an open meeting items being circulated to commissioners as  
297 late as midnight the evening before the vote on one item and  
298 what seems to be partisan sharing of items with Democrats as  
299 much as 24 hours before sharing them with Republicans on  
300 another is particular concerning. Regardless of political  
301 affiliation, commissioners must be given adequate and equal  
302 time to consider the items on which they are going to vote.  
303 Let us all hope that such incidents of favoritism and  
304 selective sharing are isolated and not emblematic of the  
305 Chairman's new operating procedure.

306 Additionally, I continue to be concerned with the  
307 Commission's ongoing defiance of its statutory obligations to  
308 complete the 2010 quadrennial review of media ownership  
309 rules. Despite the commission's woefully outdated record on

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310 this issue, it has nonetheless moved forward with changes  
311 that effectively bar joint sales agreements and change  
312 Commission treatment of shared service agreements under its  
313 media attribution rules. These actions, in the absence of  
314 the statutorily required media ownership review, do raise  
315 significant questions about the Commission's commitment to  
316 making decisions informed by facts and utilizing sound  
317 process.

318         And lastly, I am troubled by the chairman's insistence  
319 on attempting to regulate the Internet under rules that were  
320 informed by 19th century railroad regs and adopted to  
321 regulate the monopoly telephone network of the past. The  
322 Internet has indeed flourished under the current light touch  
323 regulatory scheme, and subjecting it to burdensome regs is a  
324 leap in the wrong direction. Title II is inappropriate for  
325 the Internet, and attempting to reclassify it would be  
326 harmful to consumers, businesses, and the future of the  
327 Internet as we know it. Nobody wants telephone service to  
328 look like it did in 1984, and we certainly shouldn't wish for  
329 our Internet access to return to that rotary phone era,  
330 either.

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331           The communications sector is vital to our national  
332 economy, and Commission action on even small items  
333 can have broad impact. I thank Chairman Wheeler for being  
334 here today and look forward to working together toward a  
335 bipartisan, measured, transparent, and responsible actions  
336 that do benefit consumers, job creation and our economy.

337           [The prepared statement of Mr. Upton follows:]

338 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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339           The {Chairman.} And I yield the balance of my time be  
340 split between Mr. Latta and Mr. Barton.

341           Mr. {Latta.} Well, thank you, Chairman, for yielding,  
342 and Chairman Walden, and I appreciate you holding this  
343 hearing today, and welcome Chairman Wheeler. Thanks for  
344 being here.

345           The communications and technology industry is hailed as  
346 a vibrant, dynamic and productive sector of our economy.  
347 This is not by accident. As networks and services transition  
348 to IP-based platforms, they have had the flexibility to grow,  
349 advance and evolve in large part because they have not been  
350 subjected to the stifling hand of legacy government  
351 regulations.

352           We pursued a light-touch regulatory approach to the  
353 Internet ecosystem because we have seen time and again that  
354 it serves as a catalyst for increased investment, innovation,  
355 job creation and competition. As we look forward to develop  
356 policies that would further this growth, we would be remiss  
357 to overlook the significance of how regulatory restraint has  
358 been a fundamental component of the industry's success. That

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359 is why I am concerned with some of the proposals emerging  
360 from the FCC, particularly in consideration of reclassifying  
361 broadband Internet access services, telecommunications  
362 service, under Title II of the Communications Act. This  
363 policy would be an extreme exercise of government overreach  
364 and likely result in failed Web sites, downgraded and poor  
365 customer service, less choice and flexibility for consumers,  
366 businesses and stifling of innovation through regulation.  
367 Unwarranted attempts to manufacture and shape markets'  
368 outcome, propose solutions in search of problems and impose  
369 antiquated regulation will frustrate future progress and  
370 innovation.

371 I intend to introduce legislation that prevents the FCC  
372 from following through on this misguided regulatory proposal.

373 [The prepared statement of Mr. Latta follows:]

374 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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375           Mr. {Walden.} Mr. Chairman, with that I yield back the  
376 balance of my time, and I yield to Mr. Barton.

377           Mr. {Barton.} We just welcome Chairman Wheeler, and the  
378 question before the committee today is are we soon going to  
379 be calling him Mr. Wheeler Dealer? And with that, I will put  
380 my statement in the record and in the interest of time yield  
381 back to the chairman.

382           [The prepared statement of Mr. Barton follows:]

383 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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384           Mr. {Walden.} I thank the chairman. The gentleman  
385 yields back. I now turn the gentleman from California, Mr.  
386 Waxman, for opening comments.

387           Mr. {Waxman.} Thank you, Mr. Chairman, and I want to  
388 welcome back Chairman Wheeler. Federal Communications  
389 Commission had an historic week last week. You are tackling  
390 some of the most complex and pressing issues in the  
391 communications sector today. In 2012, Congress gave the FCC  
392 a big job, create the world's first incentive auction to  
393 ensure that each front low-band spectrum is put to its  
394 highest economic value, and you established the ground rules  
395 for this crucial auction last week. You had a hard job  
396 because you needed to balance four potentially conflicting  
397 objectives: one, maximizing the amount of spectrum made  
398 available for auction; two, promote competition; three,  
399 create bands of unlicensed spectrum to spur innovation; and  
400 four, raise money. It appears you hit this one out of the  
401 ballpark.

402           I particularly want to commend you for your work to  
403 advance unlicensed spectrum. Your plan will create three

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404 channels of each front unlicensed spectrum throughout the  
405 Nation. The vision of new super Wi-Fi can now become a  
406 reality. I also want to commend you for promoting  
407 competition by reserving spectrum for competitive carriers.  
408 It would be an enormous setback for innovation and consumers  
409 if the incentive auction turns the wireless market into a  
410 duopoly, dominated by Verizon and AT&T. This auction is the  
411 best and possibly the last chance the FCC has to invigorate  
412 competition.

413 I would have preferred if you reserved even more  
414 spectrum for competitive carriers, but I recognize the  
415 pressures you are under and your need to secure three votes.

416 By the way, you may hear arguments today from  
417 Republicans on this committee that you lack the authority to  
418 promote competition. These claims are nonsense and  
419 contradict the express language of the statute.

420 Last week you also launched the FCC's third attempt in 8  
421 years to protect the open Internet. You didn't hit this one  
422 out of the park, but you didn't need to, either. You made a  
423 wise decision to solicit comment on a wide range of options.  
424 As I wrote you, the time has come to end the legal gymnastics



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425 and stop the lobbying games being paid by the big broadband  
426 providers. In 2010, Verizon, AT&T and Comcast pled with the  
427 FCC not to use its undisputed authority under Title II of the  
428 Communications Act, and then after FCC did what they wanted,  
429 Verizon sued the agency for lacking authority when the FCC  
430 agreed with the company. This time, you need a different  
431 approach. You should use your Title II authority as a  
432 backstop authority to protect the open Internet. If you want  
433 to proceed under Section 706 as your main legal theory, that  
434 is fine, but you shouldn't water down the open Internet rules  
435 to fit Section 706. Instead, you should get the substance  
436 right and invoke Title II as an independent basis of  
437 authority.

438         The FCC has already lost two rulings in court over the  
439 open Internet. You don't have to choose between weak rules  
440 and a weak legal case. You can issue strong rules and have a  
441 strong legal case if you use a belt-and-suspenders approach  
442 to the next rule-making.

443         I look forward to exploring this issue with you further  
444 in the question period.

445         [The prepared statement of Mr. Waxman follows:]

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446 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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447           Mr. {Waxman.} In the meantime, I would yield the  
448 balance of my time to my friend and colleague, Congresswoman  
449 Matsui.

450           Ms. {Matsui.} Thank you very much, Ranking Member  
451 Waxman, for yielding me time, and welcome, Chairman Wheeler.  
452 The FCC certainly has a lot on its plate. The Commission is  
453 considering net neutrality rules, rules on the broadcast  
454 incentive auction, the AWS-3 auction, USF and E-Rate reforms  
455 and two very significant mergers. I am confident the FCC  
456 will be able to demonstrate that it can walk and chew gum at  
457 the same time.

458           This Subcommittee should also do its part. For one, I  
459 join in calling for the chairman to hold oversight hearings  
460 on the two proposed mergers between Comcast and Time Warner  
461 and on AT&T and DirecTV. Those are some of the largest  
462 mergers in our Nation's telecommunications history.

463           Americans including many in my district of Sacramento  
464 are seeing the trends towards consolidation, content  
465 impairing deals and how they hear phrases like paid  
466 prioritization and wondering what is going on. What does all

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467 this mean for them, for competition and for the economy? It  
468 has been encouraging that so many Americans are speaking up  
469 in support of protecting an open Internet. I was one who  
470 thought the FCC should have taken more time to deliberate on  
471 what net neutrality rules the Commission should propose. But  
472 we are where we are. The proposal has certainly proved over  
473 the last few weeks it is still far from perfect. I support a  
474 ban on paid prioritization deals. We can't afford a two-  
475 tiered Internet system.

476 I look forward to hearing from you today, and I yield  
477 back the balance of my time.

478 [The prepared statement of Ms. Matsui follows:]

479 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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|

480           Mr. {Walden.} The gentlelady yields back the balance of  
481 her time, and with that, you have heard from us or at least a  
482 few of us up here, Mr. Chairman. And now we are delighted to  
483 have you here, and we look forward to your opening statement  
484 and comments. And thank you again for the work you are  
485 doing. Go ahead.

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|

486 ^STATEMENT OF HON. TOM WHEELER, CHAIRMAN, FEDERAL  
487 COMMUNICATIONS COMMISSION

488 } Mr. {Wheeler.} Thank you, Mr. Chairman, and members of  
489 the committee. As you have pointed out, it has been about 6  
490 months since we last sat down, and what I wanted to do was to  
491 highlight some of the things we have done in that period and  
492 then engage in a dialogue with you with whatever topics that  
493 you would like to address.

494 As has been evidenced by a lot of these comments up  
495 here, one of the principal responsibilities of the Commission  
496 is dealing with the spectrum crunch, and we have taken a  
497 significant step forward in terms of getting more spectrum  
498 out to the market. We had the H-Block auction which raised  
499 \$1.5 billion for 10 megahertz spectrum. We have opened a  
500 new, 100 megahertz swath in the 5 gigahertz band which is  
501 already being referred to as gigabit-Wi-Fi because of the  
502 incredible through-put that it enables. We have begun a  
503 proceeding on spectrum sharing on 3.5 gigahertz, and we  
504 announced yesterday that in accord with the mandate of this

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505 committee and Congress to auction off AWS-3 spectrum, that we  
506 will begin the auction on November 13, and we will finish as  
507 per your mandate February--we will license February 22, 2015.

508 We have also, as some of the committee had noted,  
509 established a new set of mobile spectrum holding rules which  
510 have been praised by everybody from public interest groups to  
511 small operators to large operators as was commented on by Mr.  
512 Waxman, hitting the ball out of the park. And we have begun  
513 the incentive auction process. You mandated us, as you have  
514 said, with a non-trivial task, and we have taken the first  
515 important steps to that.

516 On the question of universal service and what is going  
517 on there, we have fulfilled the pledge that I made to this  
518 committee last time we were together to eliminate the  
519 infamous quantile regression analysis, and we are seeking  
520 comments on what its replacement should be.

521 We have funded the Connect America Fund to provide  
522 connectivity to 5 million more Americans who do not have  
523 access to broadband today. That is about 1/3 of the total  
524 and a significant bite out of that. And we are seeking input  
525 on multiple additional issues, a through-put standard.

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526 Should we--as technology increases and bandwidth increases,  
527 do we need to think about higher bandwidth that is supported  
528 by the Connect America Fund? How do we best deal with the  
529 mobile component of broadband delivery in Connect America and  
530 how best to support broadband for rate of return carriers?  
531 Those are all proceedings that we have under way.

532 We have made some significant strides also in the area  
533 of public safety. We took a good chunk out of the FirstNet  
534 \$7.5 billion with the H band auction. Expect obviously that  
535 the AWS-3 auction will do more, and I wouldn't be surprised  
536 if we show up at the incentive auction having met the  
537 requirement, or at least taken a huge bite out of the  
538 requirement for funding FirstNet.

539 We had rule-making on text-to-911. You know, phones  
540 aren't used just for talking anymore but texting. And so if  
541 you want to text to an emergency service provider, we had a  
542 rule-making on that. The major carriers stepped up and  
543 literally in the last couple of days, they all met their  
544 goals for the implementation on that, which is a terrific  
545 step forward. And we have also issued a further notice on  
546 location accuracy because as wireless usage increases, and



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547 particularly, as it replaces wire line connections inside and  
548 as GPS usage has increased, there has been a fascinating  
549 reality that location accuracy has actually declined. And we  
550 have got a notice going on, how do we address that, because  
551 that is literally a matter of life and death.

552 As you mentioned, we began the 2014 quadrennial review  
553 on media issues with an expedited delivery date. We closed a  
554 loophole that was being exploited to get around the ownership  
555 rules using joint services agreement, and we brought  
556 competition back to the retransmission consent negotiations.

557 We have also continued to press on the reform issues  
558 that so many of you and I share in common as being important.  
559 Last time we were together I told you we stood up a task  
560 force to deal with this. That task force came back with 154  
561 recommendations. About 3/4 of those are now well along their  
562 way to being in process. They kind of break into two parts.  
563 There are procedural issues that you might associate with the  
564 Administrative Procedure Act and things like this, and there  
565 is also just how you make the agency more efficient.

566 And last week, as many have discussed, we opened a  
567 Notice of Proposed Rulemaking on preserving and protecting

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568 the open Internet. It is important to recognize that there  
569 are no protections for an open Internet in place today. The  
570 January court decision affirmed the Commission's authority  
571 under Section 706 to deal with the open Internet and  
572 identified what I call a roadmap for how to achieve that.  
573 And what I proposed is a method that follows that roadmap.

574 I understand that there is a great debate on this issue.  
575 I heard the debate here this morning between those who say  
576 there is no need and those who say it ought to be a regulated  
577 utility. What we have tried to do is to follow the court's  
578 direction, the roadmap, the blueprint, and to come up with a  
579 proposal that stops blocking, that prohibits anything that  
580 degrades a consumer's access, including prioritization, that  
581 asks a broader question about prioritization as to whether it  
582 should be banned outright and if so, how, and then engages in  
583 the discussion that we have heard already this morning about  
584 Title II versus 706 and collecting a broad scope of learned  
585 information on that.

586 I have consistently said that there is only one  
587 Internet. There is not a fast Internet and a slow Internet.  
588 There is not special services Internet and non. There is one

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589 Internet, and when the consumer buys access to the Internet,  
590 they are buying access to the full Internet. And that is  
591 what our rules attempt to protect.

592 This has become debate among legal approaches--about  
593 legal approaches. It is a healthy debate. It is a debate  
594 that our Notice of Proposed Rulemaking furthers with multiple  
595 requests for input. But my position has been similar to that  
596 of the Consumer Federation of America and that is that we  
597 ought to explore the powers that are granted in the '96 act,  
598 specifically Section 706, keep asking how Title II fits in,  
599 but develop a regulatory policy that looks forward not  
600 backward because what we need is a regulatory plan for the  
601 21st Century. And I look forward to discussing that with  
602 you, Mr. Chairman, and members of the committee.

603 [The prepared statement of Mr. Wheeler follows:]

604 \*\*\*\*\* INSERT 1 \*\*\*\*\*

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|

605           Mr. {Walden.} Mr. Wheeler, Chairman, thank you for  
606 being here. We appreciate your work and your willingness to  
607 come and spend some time with us and respond to our  
608 questions.

609           I want to pick up on the Middle Class Tax Relief Act  
610 which, as you know, was designed to create a forum where  
611 broadcasters could volunteer their spectrum up for auction  
612 for mobile broadband use. It has never been done quite like  
613 proposed, and you have got--we all knew that going in. But  
614 it seemed like a good balance. The critical term in all of  
615 this was that the broadcasters would volunteer to put their  
616 spectrum up. They wouldn't be forced into it. That was the  
617 agreement. Yet many of the actions that we have seen coming  
618 out of the Commission would lead some to believe that the FCC  
619 might be bullying broadcasters into giving up spectrum  
620 without providing hard data and clear models so that the  
621 broadcasters can thoroughly and thoughtfully deliberate and  
622 choose to participate or not in this first-of-a-kind auction.

623           Let me tell you what I am thinking here--for example,  
624 the joint sales agreements that are now outlawed. These

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625 agreements essentially offer broadcasters a viable business  
626 model in small markets that would otherwise suffer from lack  
627 of service. You are considering increasing the attribution  
628 value of UHF stations such that more broadcasters could end  
629 up in violation of the national cap under the Broadcast  
630 Ownership Rule. And the FCC has failed to process  
631 broadcasters' petitions for allocation changes from VHF to  
632 UHF even though the petitions were filed prior to the Middle  
633 Class Tax Relief Act.

634         And finally, you are seeking to use the modified version  
635 of OET-69. I am hearing about this to repack broadcasters.  
636 This will likely result in reduced coverage for broadcasters  
637 that choose to stay in the business, making the business  
638 itself less viable. So the very people you are trying to  
639 incentive, put spectrum up so that it would be available for  
640 auction, I think are concerned about where the Commission is  
641 headed in a number of areas.

642         Can you explain to me how these actions will actually  
643 encourage broadcasters to participate in this auction?

644         Mr. {Wheeler.} Thank you, Mr. Chairman. You know, I  
645 think the goal here that we have been trying to follow is not

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646 to discourage or to encourage but to follow through with our  
647 responsibilities, and that means enforcing and updating our  
648 rule--

649 Mr. {Walden.} Do you think any of the things I have  
650 just cited encourage broadcasters to participate more? If  
651 you don't have broadcasters showing up with spectrum--

652 Mr. {Wheeler.} So as I said, Mr. Chairman, I don't  
653 think that--we have an important, as you said, an important  
654 and historic role. This is an incentive auction.

655 Mr. {Walden.} I am aware of that, yes.

656 Mr. {Wheeler.} What we have tried to do in the Mobile  
657 Spectrum Holdings Rule, for instance, is to encourage  
658 broadcasters--encourage, I am sorry, wireless carriers to buy  
659 which creates the incentive. The interesting thing, there  
660 was a report by one of the Wall Street analysts last week who  
661 said we expect the greatest risk to this auction,  
662 broadcasters not showing up, just dropped. Because the fact  
663 that AT&T suggested that they are ready to bid between \$9 and  
664 \$18--

665 Mr. {Walden.} Right.

666 Mr. {Wheeler.} --billion for 20 to 40 megahertz, this

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667 analyst said should send positive signals to broadcasters.

668 So our--

669 Mr. {Walden.} All right but--

670 Mr. {Wheeler.} --goal is to create this marketplace,

671 and we are not trying to take regulatory action--

672 Mr. {Walden.} All right. Well--

673 Mr. {Wheeler.} --in unrelated areas that would--

674 Mr. {Walden.} But you are taking lots of regulatory

675 actions, and it does have an effect on the marketplace. I

676 mean those two are fact, the quadrennial review not complete,

677 new decisions being made on ownership. Without that--these

678 things are out there. If we don't have these broadcasters

679 coming to the table voluntarily, there won't be spectrum

680 available.

681 So I want to steal a line from the distinguished

682 gentleman from Michigan, and this one I refer to as Mr.

683 Dingell, to see if I can get to sort of some yes or noes

684 here. Will you commit that the FCC will not score television

685 stations based on their enterprise value?

686 Mr. {Wheeler.} On their enterprise value? That is not

687 our intention, sir.

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688 Mr. {Walden.} So that is a no. Or that is a yes,  
689 actually, that you will commit that you will not score. Will  
690 you commit the FCC--is that correct?

691 Mr. {Wheeler.} Yes.

692 Mr. {Walden.} Yes. You will commit the FCC will ensure  
693 that broadcasters' costs to reallocate are covered by the  
694 \$1.75 billion relocation fund?

695 Mr. {Wheeler.} We believe that that fund will be  
696 adequate.

697 Mr. {Walden.} Okay.

698 Mr. {Wheeler.} That is what Congress told us to spend,  
699 period.

700 Mr. {Walden.} And will you commit to completing  
701 frequency coordination with Canada and Mexico before the  
702 auction?

703 Mr. {Wheeler.} I think the issue there is what is the  
704 term complete? As you know, on the DTV transition, it never  
705 came down to actual signing on paper, but we understood where  
706 each other were. And I am very confident that we will be at  
707 that kind of a point.

708 Mr. {Walden.} Because that is critical. And will you



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709 commit to revoking only those low-powered TV and translator  
710 licenses that are necessary to complete the auction?

711 Mr. {Wheeler.} Yes.

712 Mr. {Walden.} Thank you. And I think I am out of time.  
713 So with that, I will now yield to the gentlelady, my friend  
714 from California, Ms. Eshoo.

715 Ms. {Eshoo.} Thank you, Mr. Chairman. A lot of things  
716 to discuss, but I want to bore down or bore into some of the  
717 particulars on your recent proposal relative to the Internet  
718 on net neutrality.

719 I have argued, many advocates for net neutrality have  
720 argued, that paid prioritization represents a fundamental  
721 departure from the Internet as we know it, just kind of  
722 restating what is obvious. But I think that when you have  
723 hundreds of thousands of people communicating from across the  
724 country to you on it, that it is important to raise.

725 Now, as a policy, not as a legal question, do you think  
726 that paid prioritization should be blocked outright?

727 Mr. {Wheeler.} So I have said, Congresswoman, that I  
728 don't believe there ought to be haves and have-nots--

729 Ms. {Eshoo.} No, no, just answer my question.

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730 Mr. {Wheeler.} --that--

731 Ms. {Eshoo.} Just tell me. Do you think that it should  
732 be blocked outright?

733 Mr. {Wheeler.} We have asked that question in the rule-  
734 making, and what I have said is that I believe that under  
735 Section 706, anything that is anti-competitive or anti-  
736 consumer is competitively unreasonable and therefore can and  
737 should be blocked. And that becomes the trigger with how you  
738 deal with paid prioritization.

739 Ms. {Eshoo.} Yeah. Now, what happens--

740 Mr. {Wheeler.} And on the question, per se, that you  
741 have asked, we specifically asked how and whether.

742 Ms. {Eshoo.} Now, what happens if the FCC determines if  
743 there is no way to create an outright ban on these paid  
744 agreements under 706? Where does that leave you? Where does  
745 that leave the country?

746 Mr. {Wheeler.} So when the court gave us our  
747 instructions, they talked about what they called a virtuous  
748 cycle, and that is that that content drives the need for  
749 conduit which then creates the opportunity for content and  
750 that this cycle is what is our responsibility to protect.

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751 And that's what 706 authorizes us to protect.

752 And so what my proposal is is that we take them up on  
753 that and we say if there is something that interferes with  
754 that virtuous cycle, which I believe paid prioritization  
755 does, then we can move against it.

756 Ms. {Eshoo.} All right. But now let us move over to  
757 Title II. Title II is described--it depends on who is  
758 describing it. It is either a scourge--it has been compared  
759 to the early railroad regulations in our country--to being  
760 the flip side, the savior title. I talked about in my  
761 opening statement about one of the imprimaturs of the  
762 Internet has been consistent innovation, and while there are  
763 those that--and I understand why people would move to Title  
764 II because they want the Internet protected and these values,  
765 they are worth protecting. But I also believe that there is  
766 room in Title II for heavy-handed regulation. And I don't  
767 think that--well, let me put it this way. I think that we  
768 need a light but strengthful legal touch in this because the  
769 values are so essential, and people across the country and in  
770 the world--I mean, I am hearing from people from different  
771 parts of the world as well--are calling for these

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772 protections.

773           How would you envision, how would you handle constraint  
774 under Title II--

775           Mr. {Wheeler.} Well--

776           Ms. {Eshoo.} --in terms of being the chief regulator?

777           Mr. {Wheeler.} So as you know--

778           Ms. {Eshoo.} Have you give thought to this?

779           Mr. {Wheeler.} Pardon me?

780           Ms. {Eshoo.} Have you given thought to this?

781           Mr. {Wheeler.} Yes, ma'am.

782           Ms. {Eshoo.} Okay. Go ahead.

783           Mr. {Wheeler.} And as you know--

784           Ms. {Eshoo.} As some people say, share it with me.

785           Mr. {Wheeler.} As you know, Title II--there is nothing  
786 in Title II that prohibits paid prioritization. As a matter  
787 of fact, we have all kinds of paid prioritization--

788           Ms. {Eshoo.} You are worrying me by bringing that up  
789 first. But anyway, go ahead.

790           Mr. {Wheeler.} So the question, because it goes to  
791 your--I think the root question of yours which is how do you  
792 forebear from that, okay? And so it is possible to go

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793 through and say yes, we will not do this, we will not do  
794 this, we will not do this. In the wireless context,  
795 interestingly enough, Congress created wireless as a common  
796 carrier but then specifically said but this doesn't apply and  
797 this doesn't apply and this doesn't apply and this doesn't  
798 apply. We can do that as a Commission as well. It has been  
799 proposed that that is an approach to take.

800 There are also those who throw up their hands in great  
801 concern over that because they say, okay, well, this  
802 Commission may do this but what about the next commission?  
803 And you can't bind a future of commission by making those  
804 kinds of determinations.

805 So what we have done in this NPRM is to ask the specific  
806 question about here is Section 706, here is Title II. Let us  
807 compare them and contrast them with each other and tell us  
808 what the pluses and minuses and the best ways to get through  
809 this are. And I think that leads us to the kind of answer  
810 that you are asking for today.

811 Mr. {Walden.} The gentlelady's time is expired. We  
812 will go now to the gentlelady from Tennessee, Ms. Blackburn,  
813 the Vice Chair of the Full Committee, for her questions.

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814           Mrs. {Blackburn.} Thank you, Mr. Chairman, and Mr.  
815 Wheeler, we thank you for taking the time to come and be with  
816 us.

817           Mr. {Wheeler.} Thank you.

818           Mrs. {Blackburn.} You have got a feisty term going over  
819 there at the FCC, and in Tennessee we would say you are  
820 kicking up a little dust, and it is causing concern. Many of  
821 our content creators have a tremendous amount of concern  
822 about your approach, and many of our healthcare innovators  
823 who are looking at apps and telemedicine concepts and things  
824 of that nature are also expressing concern. And I think that  
825 probably your actions have inserted a good bit of uncertainty  
826 into the innovation sector that is looking at how we best  
827 utilize all things Internet for quality of life and access  
828 for economic development, for healthcare, for innovation.

829           And I have got just a couple of simple questions for  
830 you. First of all, on cost-benefit analysis--and I thank you  
831 that last night your team sent a letter over to us on that  
832 question. But what concerned me was that in the letter you  
833 say that this is just a tool. Cost-benefit analysis is just  
834 one of many tools that would go into your decision, and your

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835 NPRM does not include an initial cost-benefit analysis. And  
836 your predecessor, Mr. Jenachowski, in this committee, came  
837 before us and assured us he was going to use this, and I am  
838 actually going to read you his statement that he gave to us.  
839 He said, ``During my tenure, I brought particular focus to  
840 this process including by directing the early involvement of  
841 our chief economist in the analytical process of rule-making  
842 and by having FCC staff consult with the staff of the Office  
843 of Information and Regulatory Affairs on best practices in  
844 conducting cost-benefit analysis.''

845         And I think that it is an incredibly important component  
846 of this to look at what the cost of net neutrality rules  
847 would be to the consumer and also to industry. So I want to  
848 know from you, are you going to give us a commitment right  
849 now that you will conduct a thorough and extensive cost-  
850 benefit analysis of the actual cost to the consumer and to  
851 industry on these rules?

852         Mr. {Wheeler.} Thank you, Ms. Blackburn. I agree that  
853 cost-benefit analyses are crucial to decision-making, and in  
854 this rule-making, we specifically ask what are the costs of  
855 one approach or another and what are the benefits, one or

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856 another, so that we can collect that information and have  
857 that kind of analysis. I agree with the importance of cost-  
858 benefit analysis.

859 Mrs. {Blackburn.} Okay. Let me ask you this also. You  
860 know, the Commission's funding really comes from those that  
861 are regulated by the FCC, but we have some that are not--they  
862 are impacted by this but they are not regulated in paying  
863 those fees.

864 So in the net neutrality context, for example, companies  
865 like Google and Netflix want the FCC to act on their behalf  
866 and petition or visit the agency, if you will, in support of  
867 those efforts, but they free-ride because they are not paying  
868 the fees and bearing that part of the regulatory burden. So  
869 since they seem so ready and willing to rely on regulation to  
870 help them with their business models, how would you recommend  
871 that those entities share in the cost, pay their part of the  
872 cost of funding the agency?

873 Mr. {Wheeler.} With all respect, that is above my pay  
874 grade. That is a decision that this committee and the  
875 Congress can make and setting those rules as to--

876 Mrs. {Blackburn.} I am asking what your--



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877 Mr. {Wheeler.} --who we can collect from.

878 Mrs. {Blackburn.} --recommendation would be. They come  
879 and they lobby you, and they are pushing the net neutrality  
880 rules. And while they may like what you are saying because  
881 they want you to step in, we have a lot of people out there  
882 who are paying the fees that are not in favor of what you are  
883 doing, and we have a lot of innovators who are not in favor  
884 of what you are doing. And your door has the name chairman  
885 on it. So I am asking, what is your perspective?

886 Mr. {Wheeler.} So our effort in all of this is to  
887 represent the American people, not Company A or Company B.  
888 We have been told by the Congress from whom we can collect  
889 regulatory fees, and we do. If there is a decision that we  
890 should collect regulatory fees from somebody else, that is  
891 something we obviously will take. If there is a decision  
892 that we should expand regulatory authority over other  
893 entities, that is obviously something we should do. But that  
894 is a decision that is out of our hands.

895 Mrs. {Blackburn.} I yield back.

896 Mr. {Walden.} The gentlelady yields back. The chairman  
897 recognizes the gentlelady from California, Ms. Matsui, for

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898 her questions.

899 Ms. {Matsui.} Thank you, Mr. Chairman. Mr. Chairman, I  
900 would like to understand, given the success of the Internet  
901 in the absence of prioritization, precisely what types of  
902 paid prioritization you believe would speed the deployment  
903 and adoption of broadband Internet access services? Given  
904 that paid prioritization agreements would be used as a  
905 barrier of entry to start-ups and small business, what  
906 prioritization arrangements specifically would be better for  
907 the Internet than the no prioritization norm we have today?

908 Mr. {Wheeler.} What we are trying to do in this item is  
909 to say that anything that affects that virtuous cycle that  
910 the court talked about and I talked about before, is not  
911 appropriate, is unlawful, and that would include paid  
912 prioritization. Now, the court told us to look at this on a  
913 case-by-case basis. We have asked the question in the rule-  
914 making as to whether we should look at it generically and say  
915 it is all out, and we are soliciting comments on that.

916 But you know, the concept of paid prioritization, when I  
917 buy Internet access, I am buying the full pipe. I am buying  
918 access to everything that is out there. And if somebody

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919 comes along and says oh, no, you can't get this unless you  
920 pay more, that is unreasonable and should be banned. If  
921 somebody comes along and says to a content provider you can't  
922 get on unless you pay more, that is unreasonable, and that  
923 would not be permitted.

924 Ms. {Matsui.} Okay. Well, you know, as for my part,  
925 other than public safety, I believe paid prioritization  
926 should be banned.

927 I also think another concern here is a last-mile  
928 equivalent we are seeing appearing. The fact that there is  
929 so much uncertainty with paid prioritization is troublesome.  
930 If this concept moves forward, we could inadvertently block  
931 the next Google or Amazon from the market without even  
932 knowing it. I am concerned that your hands may be tied here.  
933 Even if the Commission wanted to ban anti-competitive paid  
934 prioritization deals, you may not have the authority or the  
935 tools to do so.

936 Chairman Wheeler, if you were to explain to my  
937 constituents what is occurring in the market right now with  
938 the two mergers, content peering agreements and now paid  
939 prioritization could be legitimized under a commercially

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940 reasonable standard, what would you tell them, not just what  
941 it means for them but also for competition and for economy as  
942 a whole?

943         Mr. {Wheeler.} I would tell them that I felt that paid  
944 prioritization was commercially unreasonable and therefore  
945 could be dealt with. And on the question of peering, that  
946 that is a separate issue that the Commission needs to look at  
947 and will be looking at. But I would emphasize that I am a  
948 strong supporter of the open Internet, and I would also tell  
949 them a story that when I was an entrepreneur, I was shut out  
950 of cable systems because they were closed networks. And I  
951 would come with a new product and couldn't get on. And then  
952 when I was a venture capitalist before taking this job, that  
953 the companies that I was backing, had to have access to the  
954 Internet, could only succeed if they had access to the  
955 Internet.

956         So I would say to them that I believe in an open  
957 Internet. I have experienced closed networks and the harm  
958 they cause to innovation and that I want to protect and  
959 preserve an open Internet.

960         Ms. {Matsui.} You know, I think this is a very critical

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961 time. When I have ordinary people practically off the street  
962 coming to me and asking me about all these things they have  
963 heard because people today really depend on the Internet,  
964 ordinary citizens, the entrepreneurs who are concerned about  
965 this and who else we might not know out there. So it is very  
966 concerning to all of us that there is a potential that we may  
967 have a situation where we won't have an open Internet.

968 And I would also like you to consider some of these  
969 mergers. I mean, we feel like we are kind of in the Wild  
970 West of the digital economy now, and now with mergers coming  
971 forward--but can you commit to us these large mergers that  
972 are before us, they may be different from each other, but can  
973 you commit to us here that the FCC will carefully scrutinize  
974 these deals with a focus toward public interest?

975 Mr. {Wheeler.} Without hesitation and with complete  
976 affirmation.

977 Ms. {Matsui.} Okay. Thank you. Mr. Chairman?

978 Mr. {Walden.} The chair now recognizes former chairman  
979 of the Full Committee, Mr. Barton, for his questions.

980 Mr. {Barton.} Thank you, Mr. Chairman, and I want to  
981 echo the last question you lasted, Chairman Wheeler, about

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982 low-power television. You and I are working on a bill  
983 hopefully to give them some protection. We understand under  
984 current law they don't have standing when they repackage, but  
985 we hope to give them some at least priority or help if and  
986 when we do do these repackaging of the spectrums. So I want  
987 to commend you for that last question.

988 I have listened, Chairman Wheeler, to my friends on the  
989 Democratic side repeatedly talk about the open Internet and  
990 whether you should try to regulate it under Section 706 or  
991 Title II. I think you are asking a false question. The  
992 Internet is open. The question is what does the FCC do in  
993 terms of monitoring to make sure that it stays open?

994 And the analogy I am going to use is not perfect, but I  
995 think it is instructive and educational. The airways that we  
996 fly back and forth from Washington to our districts are open,  
997 but they are regulated and monitored for a number of reasons  
998 by the FAA. If I call up American Airlines and I say I want  
999 to go from Washington Reagan to DFW and they quote me a  
1000 price, let us say it is \$350 one way. Well, when I show up  
1001 with my ticket, I get one seat on that plane. I don't get to  
1002 take 100 of my friends and put them on the plane with me

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1003 because I happened to buy the ticket first and show up first.

1004           So it is obvious that it would be great for \$350 if I  
1005 could fill the plane. But we allow the airlines to price by  
1006 volume. You want one ticket? It is \$350. You want two  
1007 tickets? It is \$700. Maybe if you want to buy the whole  
1008 plane, they do give you a discount. It is only \$250. But we  
1009 don't let the first person to buy the ticket use the whole  
1010 plane for \$350.

1011           And for all the bold talk about open access, what people  
1012 are really trying to do is, you know, I want to pay a minimum  
1013 price and get all this broadband and I want to download  
1014 everything from Netflix and I don't want to pay if I download  
1015 every movie they rent or vice versa. Netflix pays a basic  
1016 price, and they can service 10 million instead of whatever it  
1017 would be.

1018           So you know, the broadband providers who have spent  
1019 billions and billions of dollars and have networked this  
1020 country and provided access through the competitive market  
1021 principles are not going to somehow all of a sudden decide as  
1022 long as the FCC under your chairmanship make sure that it  
1023 stays a competitive model. They are going to continue to

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1024 provide an open Internet, but they may want to provide based  
1025 on volume of use some sort of a pricing system that allocates  
1026 if it is in a limited spectrum.

1027 I see no reason to try to shoehorn some sort of a  
1028 regulatory approach into either Title II or Section 706. You  
1029 know, explain to me why my approach which is what we have  
1030 been doing which works is the wrong approach?

1031 Mr. {Wheeler.} Let me see if I can respond to both  
1032 parts of your question. First, on my LPTV, as I said to the  
1033 chairman, we did not want to move those who don't have to be  
1034 moved as a part of it. We also believe that there are  
1035 opportunities to go to digital and the new efficiencies that  
1036 that brings, just like it did in the Class A stations. And  
1037 thirdly, we are opening a new rule-making to specifically  
1038 deal with that because we agree with the importance of low  
1039 power and translators.

1040 To the second part of your question, let me take the  
1041 chairman's hat off and put my consumer hat on for a second  
1042 because 2 weekends ago I called my ISP and increased my  
1043 capacity because I wanted faster through-put. And they said  
1044 for another \$10 a month, we will give you another, what



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1045 turned out to be like, 20 Meg. That is a marketplace  
1046 transaction. That is something that is accepted now. That  
1047 is not something that is part of the open Internet rules.

1048 What the open Internet rules are trying to say is that  
1049 when I buy that capacity, I have bought that ride to every  
1050 place on the Internet, that somebody can't turn around and  
1051 say, oh, but you can't say that or somebody can't turn around  
1052 and say, well, you can deliver that, Tom, but you have got to  
1053 pay me an extra fee.

1054 And so the concept of the open Internet is that I have  
1055 bought this broad pathway, and I have the right to use it  
1056 unfettered on an open basis and that is what we are trying to  
1057 deliver in this rule-making.

1058 Mr. {Barton.} I am not trying--my time is expired. I  
1059 am not trying to oppose that, but if you want--you are  
1060 looking at it from the consumers' standpoint, and I accept  
1061 that, that everybody should have access. But if you are a  
1062 provider of content, you should be willing to pay more based  
1063 on the number of items you are going to put at any given time  
1064 on the open Internet so that everybody has access to it.  
1065 Because if you have a constrained pipeline, somebody has to

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1066 make a decision how you put things into the pipeline, whether  
1067 it is the airplane, whether it is the airwaves or the  
1068 Internet.

1069           With that, Mr. Chairman, I yield back.

1070           Mr. {Walden.} The gentleman yields back. The chair now  
1071 recognizes the former chairman on the Democratic side, Mr.  
1072 Waxman, for his questions.

1073           Mr. {Waxman.} Thank you, Mr. Chairman. Chairman  
1074 Wheeler, I commended your leadership earlier in my opening  
1075 statement about the spectrum auction, so I want to ask  
1076 questions about a different subject and that is net  
1077 neutrality.

1078           Mr. {Wheeler.} Yes, sir.

1079           Mr. {Waxman.} I commend you for tackling this issue and  
1080 for seeking comment on a broad range of issues. But I have  
1081 serious concerns about some proposals that have been  
1082 discussed.

1083           You have said that there would be presumption against  
1084 broadband providers like Verizon, AT&T and Comcast, entering  
1085 into arrangements that give exclusive advantages to their  
1086 affiliates. Is that right?

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1087 Mr. {Wheeler.} Yes, sir.

1088 Mr. {Waxman.} Okay. What I don't understand is why  
1089 this presumption against exclusive arrangements would be  
1090 limited to affiliates. Suppose Netflix entered into an  
1091 exclusive arrangement with AT&T or Comcast for faster speeds  
1092 for its videos that block competitors like Amazon Prime from  
1093 getting similar services. I think that would be a serious  
1094 threat to competition and an open Internet, yet your proposal  
1095 does not create a presumption against these exclusive  
1096 arrangements.

1097 Why would you allow any exclusive arrangement that  
1098 guarantees some content providers faster speeds than  
1099 competitors can access?

1100 Mr. {Wheeler.} Thank you, Mr. Waxman. This goes back  
1101 to this virtuous cycle that the court talked about. You  
1102 know, it was interesting. Yesterday in the Wall Street  
1103 Journal there was an article that interviewed a bunch of  
1104 infrastructure manufacturers about the impact of net  
1105 neutrality, and they flat-out said that if you offer fast  
1106 lanes for some, you are going to degrade service for others.  
1107 I think that is at the heart of what we are talking about

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1108 here. That would be commercially unreasonable under our  
1109 proposal.

1110 Mr. {Waxman.} Okay. The problem with exclusive  
1111 arrangements is that they would let some companies block  
1112 their competition from similar advantages. In markets where  
1113 there is no or only limited choices of broadband providers,  
1114 that would stifle openness in competition. I just want to  
1115 say to you that I am opposed to any form of paid  
1116 prioritization. Paid prioritization divides the Internet  
1117 into the haves and the have-nots, and it will entrench the  
1118 big companies at the expense of start-ups. My understanding  
1119 is that you have asked comment on a multi-factored test for  
1120 determining when paid prioritization is permissible and when  
1121 it would be prohibited. My concern is that this will create  
1122 a lot of ambiguity and a lot of litigation. I believe right  
1123 lines would be much better for the market and for innovation.

1124 So I am going to ask you to consider a presumption  
1125 against all paid prioritization as you develop final rules.  
1126 Will you agree to consider this option?

1127 Mr. {Wheeler.} Absolutely, and we have asked in the  
1128 NPRM specifically whether and if so, how do you accomplish

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1129 it. So that is a ripe debate that is in the NPRM right now,  
1130 sir.

1131 Mr. {Waxman.} My understanding is that the reason you  
1132 have proposed a complicated, multi-factored test is concern  
1133 about the court ruling, and I agree that if you are limited  
1134 to acting under Section 706, your options could be limited.  
1135 But if you are not limited to Section 706, you could  
1136 establish a presumption against paid prioritization under  
1137 Title II. And that is why it is so important for you to use  
1138 your Title II authority as backstop authority. You don't  
1139 have to settle for a weak open Internet rules if you exercise  
1140 your full powers, and I am glad you are looking at that  
1141 possibility.

1142 Let me close by thanking you for seeking comment on the  
1143 backstop proposal in the proposal adopted last week. I am  
1144 committed to working with you to ensure the Commission adopts  
1145 strong and open Internet protections for consumers and  
1146 innovators while encouraging continued investment in the  
1147 online content and services we all rely on and enjoy today.  
1148 I think it is important that we get the substance right. We  
1149 have tried three times, we meaning you at the FCC, because of

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1150 the concern that the consumer have full access to what is on  
1151 the Internet and full access to be able to use the Internet  
1152 to its greatest maximum potential. And I would hate to see  
1153 that net neutrality in any way be diminished if we have an  
1154 opportunity under the law as we look at it to make sure that  
1155 we get the substance right.

1156 Mr. {Wheeler.} Thank you, Mr. Waxman.

1157 Mr. {Waxman.} Thank you. Thank you, Mr. Chairman.

1158 Mr. {Walden.} The gentleman yields back his time. I  
1159 now turn to the distinguished gentleman from Ohio, the vice  
1160 chair of the Subcommittee, Mr. Latta.

1161 Mr. {Latta.} Well, thank you very much, Mr. Chairman,  
1162 and again, Chairman Wheeler, thanks very much again for being  
1163 here. There has been some discussion on Title II, and I  
1164 would like to follow up on some of that questioning.

1165 The central premise of Title II regulation has always  
1166 been that the regulation was a substitute for competition.  
1167 And two parts for the question then. What types of findings  
1168 has the Commission made to justify entertaining the idea of  
1169 Title II regulation of the Internet? And then do you believe  
1170 the FCC should have to make a specific showing that of a

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1171 market failure before imposing rate regulation or reporting  
1172 requirements that are the precursor to rate regulation?

1173 Mr. {Wheeler.} So again, these are the kinds of  
1174 questions that we have tried assiduously not to decide on but  
1175 to ask about in this rule-making. We are going to have to  
1176 make a decision on exactly those questions at some point in  
1177 time, but what we want to achieve is a record that gives  
1178 everybody the opportunity to opine on that so that we can be  
1179 appropriately informed.

1180 Mr. {Latta.} Well, let me ask, what is your timeline on  
1181 that then?

1182 Mr. {Wheeler.} So we have got 60 days for comments and  
1183 then 45 days for reply comments.

1184 Mr. {Latta.} Okay. So are you saying then that you are  
1185 not ruling out rate regulation?

1186 Mr. {Wheeler.} I am saying we have asked the question  
1187 about Title II and the full panoply of Title II, yes, sir.

1188 Mr. {Latta.} Okay. Well, let me ask you this. What  
1189 have you been hearing from the communities thus far,  
1190 especially when you are saying that you are going to be  
1191 asking those questions? What have you been hearing out

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1192 there?

1193 Mr. {Wheeler.} Well, we have heard very little on the  
1194 record thus far. There has been a great outpouring of people  
1195 speaking to us through the press, people speaking to us  
1196 through letters and this sort of thing. And as I indicated  
1197 at the outset, there are two diametrically opposed positions.  
1198 One is that you should not do anything and the other is that  
1199 it should go all the way to being regulated like a public  
1200 utility. And our job is to find that which is best for  
1201 consumers and best for encouraging investment in the Internet  
1202 which itself is best for consumers.

1203 Mr. {Latta.} Let me go on with this question. While  
1204 you have resolved some of the issues in the 5 gigahertz rule-  
1205 making, there are a number of issues outstanding that have  
1206 the potential to open up another 195 megahertz of spectrum  
1207 for unlicensed use. What is the FCC's and your plan for  
1208 tackling the open issues?

1209 Mr. {Wheeler.} In 5 gig?

1210 Mr. {Latta.} Right.

1211 Mr. {Wheeler.} So there is--you actually think about 5  
1212 gig in 3 bits. The first bit we have dealt with. That is



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1213 the lower end of 5 gigahertz. In the middle component of 5  
1214 gigahertz, there are lots of national defense kinds of  
1215 activities, radar and this sort of thing. And the question  
1216 is, how can you work out sharing arrangements there, and we  
1217 are working with those parties.

1218 On the upper end is where you have spectrum that has  
1219 been identified for intelligent traffic, ITFS, kinds of  
1220 activities, and that is based around the 802.11 standard.  
1221 There are strong feelings about the need to protect that. I  
1222 believe that it is possible to work together to meet both  
1223 sets of needs since it is based around a common 802.11  
1224 standard.

1225 Mr. {Latta.} And in my remaining time, I want to ask  
1226 this last question. The FCC's 2011 Universal Service  
1227 Transformation Order requires phone companies to set minimum  
1228 prices that they can charge the consumers if the provider  
1229 wants to continue receiving the same amount of funds from the  
1230 USF program to support the high cost of its business. So as  
1231 a result, many of our rural consumers, a lot that I represent  
1232 out there, will see the rate floor go from \$14 to about  
1233 \$20.46. And while the Communications Act requires rural

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1234 rates to be reasonable comparable to rates in urban areas as  
1235 affordable, reasonable comparable does not necessarily mean  
1236 that the rural rate should be exactly the same as the urban  
1237 rate when the rural customer right be able to call only a few  
1238 thousand people locally while an urban can call many times  
1239 more than that.

1240           Should the rate be the same in the rural areas where the  
1241 average income is significantly lower? Then it might in fact  
1242 not be as affordable. The rate floor continues to be a  
1243 concern for many of our telecommunications providers in my  
1244 district and other servicing rural America. While I  
1245 understand that the FCC has agreed to phase-in the increase  
1246 at \$2 per year and postpone that start date until after 2015,  
1247 can you explain why the FCC interpreted the reasonably  
1248 comparable rates to mean exactly the same rates between urban  
1249 and rural areas considering the smaller population of rural  
1250 calling areas and the fact that what is affordable in the  
1251 largest urban areas is not what is also affordable to  
1252 consumers in the rural?

1253           Mr. {Wheeler.} Thank you. I am glad you asked that  
1254 question. It is an important question. So as you stated, we

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1255 are supposed to make sure that things are reasonably  
1256 comparable. The reason for that is to make sure that the  
1257 subsidies that some Americans are paying to deliver service  
1258 to other Americans don't end up being subsidies that some  
1259 Americans are paying to reduce the bills of other Americans  
1260 but to overcome the high cost of getting to them.

1261 In some instances, it has been, unfortunately, the  
1262 former. In 16 states there are situations where some  
1263 consumers are paying \$5 a month for telephone service because  
1264 they are being subsidized by people in your district and  
1265 other districts. We need to get our arms around that. So  
1266 what we have done is to say, okay, step one goes into effect  
1267 January 15. Then what we are going to do is--and that can't  
1268 be more than \$2 by the way. And then what we are going to do  
1269 is go back out with another survey that hits the kind of  
1270 granularity you were talking about in terms of service and  
1271 including long distance and all these kinds of things so that  
1272 we have a better understanding of exactly what comparable  
1273 means, and then look at that issue again.

1274 Mr. {Latta.} Thank you. Mr. Chairman, my time is  
1275 expired, and I yield back.

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1276           Mr. {Walden.} The gentleman yields back. The chair now  
1277 recognizes the chairman emeritus of the committee, the  
1278 gentleman from Michigan, Mr. Dingell.

1279           Mr. {Dingell.} Mr. Chairman, I thank you for your  
1280 courtesy. I commend you for holding this hearing. I would  
1281 like to welcome our old friend, Mr. Wheeler, back, fine  
1282 public servant, and we are looking forward to good things of  
1283 him.

1284           Mr. Chairman, at last week's open meeting, the  
1285 Commission adopted a number of big-ticket items including a  
1286 new net neutrality NPRM and draft rules for the upcoming  
1287 incentive auction of broadcaster spectrum. Concerning the  
1288 former, I commend you for your efforts to keep the Internet  
1289 open and will be watching the matter closely as it goes  
1290 forward. It is my hope the Commission will work with this  
1291 committee to ensure that any final action it takes to conform  
1292 to its statutory authority, especially concerning Title II,  
1293 reclassification.

1294           Now, with respect to the incentive auction, I am  
1295 interested in what the committee intends to do about treating  
1296 broadcasters fairly. My questions will require a simple yes

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1297 or no answer.

1298 Mr. {Wheeler.} Yes, sir.

1299 Mr. {Dingell.} Mr. Chairman, I would like to begin with  
1300 a parochial matter. Section 6403(b)(1) of the Middle Class  
1301 Tax Relief and Job Creation Act specifies that the Commission  
1302 may, subject to international coordinates along the border  
1303 with Mexico and Canada, reassign and relocate and reallocate  
1304 broadcast frequencies. Is that correct?

1305 Mr. {Wheeler.} Yes, sir.

1306 Mr. {Dingell.} Now Chairman Wheeler, in the  
1307 Commission's July 2013 response to my letter of inquiry about  
1308 the reverse auction, Gary Eptstein, head of the Commission's  
1309 Incentive Auction Task Force stated the following. The  
1310 language used in Section 6403(b)(1) of the Act is ``identical  
1311 to that used by the Commission in describing its handling of  
1312 the earlier DTV transition in which the Commission adopted  
1313 our proposed allotments for these stations subject to our  
1314 continuing negotiations with Canada, notwithstanding the  
1315 broadcasters' requests to the contrary.' ' One here could  
1316 reasonably assume based on the statement that the Commission  
1317 may reassign and reallocate broadcast frequencies pursuant to

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1318 the Act while in negotiations with Canada and Mexico are  
1319 still ongoing. Is that correct?

1320 Mr. {Wheeler.} Yes, sir.

1321 Mr. {Dingell.} I am going to ask you to submit for the  
1322 record how you are going to assure protection to the  
1323 broadcasters and the viewers in that process.

1324 Mr. {Wheeler.} Yes, sir.

1325 Mr. {Dingell.} Now, Mr. Wheeler, does the Commission  
1326 believe that concluding negotiations with Canada and Mexico  
1327 prior to commencing the reverse action will give  
1328 broadcasters, particularly in border regions, greater  
1329 certainties and likely to increase their willingness to  
1330 participate in such auction? Yes or no.

1331 Mr. {Wheeler.} Yes, sir.

1332 Mr. {Dingell.} Now, Mr. Wheeler, does the Commission  
1333 expect to conclude negotiations with Canada and Mexico prior  
1334 to commencing the reverse action next year? Yes or no.

1335 Mr. {Wheeler.} The expectation is it is the goal.

1336 Mr. {Dingell.} You may not make it is what you are  
1337 saying.

1338 Mr. {Wheeler.} It is the goal, and I answered you in

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1339 your previous question--

1340 Mr. {Dingell.} Will you notify this committee as soon  
1341 as that becomes likely or dangerous?

1342 Mr. {Wheeler.} Yes, sir.

1343 Mr. {Dingell.} Now, in this matter, Mr. Chairman, I  
1344 would like to state for the record that it is my  
1345 understanding based on exchange with counsel at the Energy &  
1346 Commerce Subcommittee on Communications and Technology,  
1347 December 1, 2011, markup of the act that border negotiations  
1348 are to be completed before the Commission reassigns broadcast  
1349 channels. I hope that Chairman Wheeler will honor that  
1350 understanding. I hope, Mr. Chairman, you understand I have  
1351 great apprehensions about that because of the impacts it  
1352 could have on the broadcasters and also on my constituents.

1353 Mr. {Wheeler.} Mr. Chairman, this is--I share your deep  
1354 concern about this, not only because of the very legitimate  
1355 concern you have about your constituents and other Americans  
1356 getting service along the border but also that the  
1357 cantilevering effect, if you will, as spectrum allocation  
1358 then goes into the middle of the country.

1359 I can assure you this is an incredibly high priority. I

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1360 can also assure you that our Canadian colleagues have been  
1361 very forthcoming and very helpful.

1362 Mr. {Dingell.} I would like to have this submitted for  
1363 the record in response to correspondence. Now, Mr. Chairman,  
1364 I note that the Commission proposes to use a method called  
1365 ``scoring'' to set individual prices for each broadcast  
1366 station participating in the reverse auction. Is that  
1367 correct? Yes or--

1368 Mr. {Wheeler.} It is one of the things we are  
1369 considering. We have not made the final decision yet.

1370 Mr. {Dingell.} There are others?

1371 Mr. {Wheeler.} We are looking at others. Scoring--

1372 Mr. {Dingell.} I am going to ask that you submit in  
1373 response to correspondence a proper answer on that particular  
1374 point.

1375 Mr. {Wheeler.} Yes, sir.

1376 Mr. {Dingell.} Now, Chairman Wheeler, is the Commission  
1377 concerned that scoring as opposed to competitive bidding will  
1378 decrease broadcasters' willingness to participate in the  
1379 reverse auction? Yes or no.

1380 Mr. {Wheeler.} No.



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1381           Mr. {Dingell.} Chairman Wheeler, in general, do you  
1382 intend to work in good faith with broadcasters as the  
1383 Commission refines the rules for reverse auction in order to  
1384 see to it that their needs are met as the act specifies to  
1385 the best of your abilities? Yes or no.

1386           Mr. {Wheeler.} Absolutely.

1387           Mr. {Dingell.} I want to quote Admiral Rickover who  
1388 once observed, the devil is in the details but so is  
1389 salvation. I am hoping that you are going to see that the  
1390 salvation is there and not just that we are going to find  
1391 ourselves amidst trouble because of carelessness, not by you,  
1392 but by some of your overenthusiastic and less-than-competent  
1393 predecessors.

1394           I thank you, Mr. Chairman, and I yield back.

1395           Mr. {Latta.} [Presiding] The gentleman's time is  
1396 expired and has yielded back. The chair now recognizes the  
1397 gentleman from Illinois, Mr. Shimkus, for 5 minutes.

1398           Mr. {Shimkus.} Thank you, Mr. Chairman, and Chairman  
1399 Wheeler, welcome. I am going to try to get this through  
1400 three pretty quick points if I can. As you know, there is a  
1401 lot of concern on this side of the dais on this Title II

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1402 debate.

1403 Mr. {Wheeler.} Yes, sir.

1404 Mr. {Shimkus.} And the basic premise is, for me, how do  
1405 you build out? We want more, not less. Does a regulated  
1406 monopoly incentivize more build-out, more pipelines? Or does  
1407 a competitive, capital-intensive incentivize market-driven  
1408 process? I believe the second. We have gone from copper to  
1409 cable, coaxial cable, satellite, cellular, fiber, a lot of  
1410 different ways for data to now flow, and we want to encourage  
1411 that. And I think only--I kind of like the idea of  
1412 incentivizing people who want to use more, making them pay  
1413 more, to incentivize those who carry so someone may want to  
1414 build out more. So that is where I kind of where I come  
1415 from. My position is more pipes, not less. More pipes, not  
1416 regulated pipe. Competitive markets versus controlled  
1417 markets.

1418 Because here is an example of a recent--on May 16, a  
1419 Wireline Competition Bureau released a public notice seeking  
1420 comment on state regulation of dial-up Internet traffic.  
1421 Dial-up? I mean, this is a dinosaur. It is hardly used.

1422 You want to talk about uncertainty for the state and for

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1423 the providers when we are still in this process more than 15  
1424 years after the FCC first discussed the treatment of dial-up,  
1425 we are now to this process? That is just kind of a  
1426 statement. That doesn't create certainty. Would you agree?

1427 Mr. {Wheeler.} Well, what we are trying to do, Mr.  
1428 Shimkus, is to create an environment that assures consumers  
1429 and those who rely on the Internet that there is openness,  
1430 while at the same point in time encouraging investment and--

1431 Mr. {Shimkus.} Well, let us just go back. I get that.  
1432 But this is dial-up.

1433 Mr. {Wheeler.} So if we are dealing with the dial-up  
1434 issue, I mean, that is really--that is a different topic--

1435 Mr. {Shimkus.} Well, it is but it is not because it is  
1436 the whole debate about certainty, and we actually have a  
1437 dinosaur application that--why are we even--

1438 Mr. {Wheeler.} So we still have 40 percent of our  
1439 consumers on dial-up telephone lines. One of the challenges  
1440 that we have is, how do we evolve that into an all IP  
1441 environment which would be, you know, an Internet-like  
1442 environment? And one of the things that I have said to this  
1443 committee is that we believe that this IP transition is a

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1444 crucial part in helping to make sure--

1445 Mr. {Shimkus.} Okay. I get it. I am going to try to  
1446 move--

1447 Mr. {Wheeler.} Okay. Sorry, sir.

1448 Mr. {Shimkus.} And one deals in both of our sweet spot  
1449 is kind of the public service, 911--

1450 Mr. {Wheeler.} Yes, sir.

1451 Mr. {Shimkus.} --the Spectrum Act called for the  
1452 creation of the Do Not Call Registry and the automatic  
1453 dialing issue. The Commission keeps saying there is not  
1454 enough money to do this. I would ask you to check into that.  
1455 I think there is a lot of money in the FCC because obviously,  
1456 this automatic dialing freezes up lines and it is a public  
1457 safety concern, and I would hope that we would work together  
1458 to try to--you would take this--

1459 Mr. {Wheeler.} I would look forward to that, sir.

1460 Mr. {Shimkus.} --under consideration.

1461 Mr. {Wheeler.} Let me get back, and I will come--

1462 Mr. {Shimkus.} And you know, myself and the ranking  
1463 member have been better involved in these issues--

1464 Mr. {Wheeler.} Right.

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1465           Mr. {Shimkus.} --as you have in the early days also.  
1466 The last thing I want to, from rural America, is kind of  
1467 there seems to be a de facto freeze on this shared service  
1468 agreements, and this is in the broadcast sector, as you know,  
1469 the local. When you represent 1/3 of the State of Illinois  
1470 as I do now, 33 counties, these shared agreements are now  
1471 helping to provide--and we have got real-world cases--better  
1472 local service to the local folks than less. And I guess the  
1473 basic question in my last minute is, what is your plan to  
1474 ensuring that the FCC action on television transfer  
1475 application is predictable, consistent, fair and timely?

1476           Mr. {Wheeler.} Thank you, Mr. Shimkus. What we have  
1477 done is to put out a public notice on how we look at  
1478 transfers, and I consider this to be a procedural reform  
1479 because the way it used to be was broadcasters would come  
1480 together in some kind of a merger situation, and they would  
1481 come to the Commission which was a black box that had  
1482 constantly changing--well, we will look at it this way, we  
1483 will look at it that way. And what I wanted to do was to  
1484 say, okay, what are the things that we will look at? So that  
1485 everybody has notice, everybody understands, and it is not a

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1486 black box. And that is the process that we have now  
1487 established to be able to make those kinds of decision.

1488 Mr. {Shimkus.} Thank you. I know my time has expired.  
1489 I appreciate it if you would keep me in mind as these things  
1490 move forward. It would be helpful.

1491 Mr. {Wheeler.} Yes, sir. Thank you.

1492 Mr. {Latta.} The chair now recognizes the gentlelady  
1493 from Colorado, Ms. DeGette, for 5 minutes.

1494 Ms. {DeGette.} Thank you, Mr. Chairman. I want to  
1495 follow-up, Chairman Wheeler, on this discussion about the  
1496 open Internet NPRM. Leading up to the Commission's vote last  
1497 week, there was as robust public exchange among ISPs and edge  
1498 providers and others about the impact of paid prioritization  
1499 on their business models, and as Ms. Matsui said, we have  
1500 been hearing from a lot of our constituents about this as  
1501 well. Now, you talked very briefly a few minutes ago about  
1502 what the FCC is doing in its review process to look at the  
1503 effect of paid prioritization on consumers' broadband bills.  
1504 I was wondering if you can comment about what you think the  
1505 proposed open Internet rules will have on access to new and  
1506 innovative content on line? Because that is one reason why

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1507 we are concerned about these proposed rules.

1508 Mr. {Wheeler.} They each should be encouragement of new  
1509 and innovative programing because of the fact that it assures  
1510 that they will be able to reach the consumer unfettered and  
1511 without having to pay special fees.

1512 Ms. {DeGette.} And what impact do you think that the  
1513 rules will have on average broadband speeds, network  
1514 investments and overall quality of service?

1515 Mr. {Wheeler.} That is a terrific question.

1516 Ms. {DeGette.} Thank you.

1517 Mr. {Wheeler.} I am glad you asked it. You know, one  
1518 of the fascinating things is that in 2010, when the open  
1519 Internet rules were first proposed, since then there has been  
1520 hundreds of millions of dollars of broadband investment made.  
1521 So the rules don't seem to have a chilling effect. And  
1522 speeds have been doing this, going up. And this is what the  
1523 court was talking about when they talk about this virtuous  
1524 cycle because everything--in the Internet ecosystem,  
1525 everything adds to everything else.

1526 Ms. {DeGette.} So what do you think that the new rules,  
1527 what effect will they have on these issues?

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1528 Mr. {Wheeler.} I believe--

1529 Ms. {DeGette.} You just talked about what has been  
1530 happening.

1531 Mr. {Wheeler.} Yeah, we are--

1532 Ms. {DeGette.} What about your rules?

1533 Mr. {Wheeler.} We believe that the rules that we have  
1534 designed will continue to encourage investment in broadband,  
1535 continue to encourage increases in through-put, and as a  
1536 result continue to encourage innovation from edge providers.

1537 Ms. {DeGette.} And so are you saying also then average  
1538 broadband speeds will increase?

1539 Mr. {Wheeler.} Yes, ma'am.

1540 Ms. {DeGette.} And overall quality of service will  
1541 increase?

1542 Mr. {Wheeler.} Yes, ma'am. They need to.

1543 Ms. {DeGette.} All right. Okay. One last thing no one  
1544 has raised yet is the issue of industry consolidation, and  
1545 this year we have seen two major merger proposals in the  
1546 telecom industry. Now, clearly the industry is going through  
1547 a period of significant, technological and economic change,  
1548 and some folks think that consolidation is the best approach



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1549 to this.

1550 So all things being equal, do you think industry  
1551 consolidation is good or bad for the consumers?

1552 Mr. {Wheeler.} So I read the other day that we are  
1553 probably--in the last decade the biggest year for telecom  
1554 mergers. And what we are doing is opening a record on each  
1555 of them, and we will make that decision based on the record  
1556 that is developed for each--

1557 Ms. {DeGette.} So you don't have an opinion at this  
1558 point?

1559 Mr. {Wheeler.} I would not want to prejudge the record.

1560 Ms. {DeGette.} Okay. And as you know, Congress has  
1561 recognized the importance and unique character of the  
1562 telecommunications marketplace by giving the FCC the  
1563 authority to review mergers under the public interest  
1564 standard. Do you think the conditions the FCC placed on the  
1565 Comcast/NBC U merger were effective at promoting the public  
1566 interest?

1567 Mr. {Wheeler.} Oh, wow. I, you know--that is something  
1568 that, a decision that my predecessor made. I know that it  
1569 had an impact. My goal is to look at the record that we were

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1570 presented before, me and my colleagues, and make a decision  
1571 on those.

1572 Ms. {DeGette.} Do you think it promoted the public  
1573 interest? Yes or no.

1574 Mr. {Wheeler.} I think that there were multiple things  
1575 in it that promoted the public interest.

1576 Ms. {DeGette.} And what other lessons do you take away  
1577 from the Commission's previous attempts to promote the public  
1578 interest by placing conditions on mergers as you go forward?

1579 Mr. {Wheeler.} That it is an important role that the  
1580 Commission has. You know, there is a lot of discussion as to  
1581 why should there be any authority at the FCC to look at  
1582 public interest obligations. I strongly believe that there  
1583 is a big difference between the kind of statutory rigidity  
1584 that the Justice Department is required to look at mergers  
1585 with and the kind of broader public interest issues that you  
1586 have raised that the statute asks the FCC to look at.

1587 Ms. {DeGette.} Mr. Chairman, I would just ask if you  
1588 could supplement your testimony with some specific takeaways  
1589 that this has given you.

1590 Mr. {Wheeler.} Great.

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1591 Ms. {DeGette.} Thank you very much. Thanks, Mr.

1592 Chairman.

1593 Mr. {Latta.} The gentlelady yields back. The chair now  
1594 recognizes--I am sorry, the chair recognizes--

1595 Mr. {Walden.} Would you yield a second?

1596 Mr. {Latta.} The chair recognizes the chairman.

1597 Mr. {Walden.} I just wanted to clarify one thing, make  
1598 sure I heard it right.

1599 Mr. {Wheeler.} Yes, sir.

1600 Mr. {Walden.} Did you say 40 percent of Americans are  
1601 still using dial-up for Internet access?

1602 Mr. {Wheeler.} No, I am talking about dial-up phone  
1603 service at large.

1604 Mr. {Walden.} All right, because I was thinking it is  
1605 more like 3 percent.

1606 Mr. {Wheeler.} No, dial-up phone service at large.

1607 Mr. {Walden.} Thank you much. And I thank the courtesy  
1608 of the--

1609 Mr. {Latta.} Thank you for clarifying that, sir. The  
1610 chair now recognizes the gentleman from Nebraska for 5  
1611 minutes, Mr. Terry.

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1612 Mr. {Terry.} Well, it is good to know that my 82-year-  
1613 old is in those 3 percent. That makes him very elite. I am  
1614 trying to talk him out of that, but that is a work in  
1615 progress.

1616 Mr. {Wheeler.} We all remember those when we were  
1617 thrilled to get 56 KB, right?

1618 Mr. {Terry.} So switching gears just a little bit, I  
1619 want to ask about quantile regression analysis progress, and  
1620 I do think that you have probably captured its deficiencies  
1621 better than anyone else has, and I appreciate that work. I  
1622 was glad to see the Commission's follow-up by repealing the  
1623 QRA formula.

1624 Mr. {Wheeler.} Yes, sir.

1625 Mr. {Terry.} So congratulations. I appreciate that. I  
1626 am curious on your thoughts of how it should be replaced, and  
1627 if you could walk me through what factors are going to be  
1628 used in any decision-making and timetables and process.

1629 Mr. {Wheeler.} I respect the question but I can't  
1630 really answer it right now because we are in the process of--  
1631 there are several proposals. We are in the process of  
1632 looking at what the best components of each are, and I don't

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1633 want to hip shoot here, but we do have proceedings under way  
1634 to say, okay. What is it we replace QRA with?

1635 Mr. {Terry.} So if those--where are we within the  
1636 process of those?

1637 Mr. {Wheeler.} I think that we are probably heading  
1638 into something that you would see before fall.

1639 Mr. {Terry.} Before fall?

1640 Mr. {Wheeler.} Early fall.

1641 Mr. {Terry.} Okay.

1642 Mr. {Wheeler.} Football season.

1643 Mr. {Terry.} Well, I don't want to get distracted.

1644 Mr. {Wheeler.} Well, if you joined the big 10--

1645 Mr. {Terry.} Do that when we play McNeese State, and I  
1646 would appreciate it.

1647 Mr. {Wheeler.} Yes, sir.

1648 Mr. {Terry.} For the rest of you, that was humor. Now,  
1649 let me go to a broadcast question since we succinctly dealt  
1650 with one I thought would take all of 5 minutes. The spectrum  
1651 bill that was authorized and incentive auction and passed  
1652 through the committee was a bipartisan bill. Unfortunately,  
1653 the order that recently removed the FCC was not bipartisan,

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1654 and some Commissioners, particularly Republicans, stated that  
1655 the order treats TV broadcasters that choose not to  
1656 participate in the auction unfairly, and that has me  
1657 concerned. Congress set aside the 1.75 to reimburse  
1658 broadcasters forced to move. Part of the incentive auctions  
1659 are aimed to fully recover their expenses. Why did the FCC  
1660 not adopt the number as its repacking budget and ensure that  
1661 broadcasters would not have to go out of pocket when forced  
1662 to the FCC to move?

1663 Mr. {Wheeler.} Thank you. Congress said \$1.75 billion  
1664 is the max that can be spent on repacking. We think that  
1665 will be sufficient. There have been broadcasters who have  
1666 expressed a concern that it might not be sufficient. So we  
1667 have said, okay, we don't think that's going to happen, but  
1668 we will put in place a process that will have a structure in  
1669 place if and when that should happen. Sir, I don't expect  
1670 that we are going to get there.

1671 Mr. {Terry.} All right. I will just yield back my  
1672 time.

1673 Mr. {Wheeler.} Thank you, sir.

1674 Mr. {Latta.} The gentleman yields back, and the chair

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1675 now recognizes the gentleman from Utah, Mr. Matheson, for 5  
1676 minutes.

1677 Mr. {Matheson.} Thanks, Mr. Chairman, and Mr. Wheeler,  
1678 thanks for your testimony. I appreciate your candor and  
1679 your articulate way you answer questions.

1680 Mr. {Wheeler.} Thank you, sir.

1681 Mr. {Matheson.} I just want to commend you on your  
1682 efforts to open up more spectrum broad license uses. The FCC  
1683 took an important step last month by opening up the 100  
1684 megahertz spectrum for unlicensed uses in the 5 gigahertz  
1685 band, and I am pleased to see in your testimony that the FCC  
1686 is actively participating in ongoing efforts to free up  
1687 additional unlicensed spectrum in the 5 gigahertz band. Can  
1688 you provide an update on where things currently stand with  
1689 resolving the technical issues in the ITS band currently used  
1690 for vehicle-to-vehicle communications and the parts of the  
1691 band used by the DOD for military radar?

1692 Mr. {Wheeler.} Yes. So as we talked earlier, there are  
1693 three slices to 5 gigahertz. There is the lower slice that  
1694 we took care of. The middle, as you suggest, is DOD. We are  
1695 having ongoing discussions with them. I have been personally

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1696 involved in those discussions about a wide range of spectrum  
1697 issues including this. There are strongly held beliefs on  
1698 both sides, sir. I continue to believe, however, that people  
1699 of good faith can find answers if you sit at the table long  
1700 enough, and that is the goal.

1701           Insofar as the high band in 5 gig, yes, that is  
1702 intelligence, transportation, which offers such great  
1703 opportunities. We have seen the Google smart car and all  
1704 this sort of thing. The thing that is really encouraging is  
1705 that that is an 802 type of standard. It is not a dissimilar  
1706 reality, however, where we need to make sure that people are  
1707 sitting around the table looking for commonalities rather  
1708 than looking for differences.

1709           Mr. {Matheson.} Something we ought to do around  
1710 Congress a little more.

1711           Mr. {Wheeler.} I--but you have a little experience.  
1712 You have a little experience.

1713           Mr. {Matheson.} It's an editorial--on my part, yeah.

1714           Mr. {Wheeler.} But that's the goal of what we are  
1715 trying to do here.

1716           Mr. {Matheson.} Do you have a sense of what the--do you



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1717 have a timeframe for when this additional spectrum could be  
1718 freed up?

1719 Mr. {Wheeler.} I wish I did. I would be misleading  
1720 you, sir, if I gave you a date right now.

1721 Mr. {Matheson.} I understand. Another issue I wanted  
1722 to mention, the administration's Connect Ed Program--

1723 Mr. {Wheeler.} Yes, sir.

1724 Mr. {Matheson.} --the goal to bring 100 megabit  
1725 broadband to every school in the United States. To the  
1726 extent that this initiative is implemented through the E-Rate  
1727 program, what can the Commission do to maximize efficiency  
1728 and get the most bang for the buck?

1729 Mr. {Wheeler.} Wow. Thank you. Great question. There  
1730 were multiple challenges in that. One is that we need to  
1731 spend our money, the people's money, on 21st Century high-  
1732 speed broadband solutions, not 20th Century solutions like  
1733 dial-up telephone service and long distance. Right now about  
1734 half of the \$2 billion, \$2.4 billion that is being spent is  
1735 spent for old stuff.

1736 Mr. {Matheson.} Not today?

1737 Mr. {Wheeler.} Today. Today. Second part is that we

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1738 have to design a system that helps schools and library  
1739 administrators find their way through the maze that is  
1740 telecom. We put them in those jobs to educate students, not  
1741 to be telecom wizzes. So we are trying to develop a process  
1742 that says, you know, here is what you ought to be paying.  
1743 Here is what somebody next door is paying. Here is like  
1744 situated--so that they can go in and understand where their  
1745 bargaining position is. We are going to be talking about  
1746 being able to have longer contracts because buying it on a  
1747 monthly basis as we all know is the worst way to buy. So let  
1748 us talk about several years. We are going to be encouraging  
1749 consortia so that you can buy in bulk and get better prices,  
1750 and I just think that there are a myriad of things that we  
1751 can do to get more efficiency out of the existing bucks, and  
1752 we intend to do that.

1753 Mr. {Matheson.} That is great. Does the FCC plan on  
1754 using the national broadband map to identify fiber that is  
1755 already in place in a given community so it could be  
1756 leveraged toward these Connect Ed goals?

1757 Mr. {Wheeler.} Absolutely, and we have now taken over  
1758 ownership of the broadband map, so yes, sir.

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1759 Mr. {Matheson.} Okay. I appreciate that. I will yield  
1760 back, Mr. Chairman.

1761 Mr. {Latta.} Well, thank you very much. The gentleman  
1762 yields back the balance of his time, and the chair now  
1763 recognizes the gentleman from New Jersey, Mr. Lance, for 5  
1764 minutes.

1765 Mr. {Lance.} Thank you very much, and good afternoon to  
1766 you. I believe that some of my colleagues on the other side  
1767 of the aisle would prefer a Title II reclassification, and if  
1768 the Commission were to decide to proceed in that direction, I  
1769 am concerning that it might trigger a lot of ill-fitting  
1770 regulations that might not make sense in the context of these  
1771 services.

1772 In your opinion, Chairman, would the process of going  
1773 through forbearance to separate the wheat from the chaff,  
1774 could it be a messy exercise and might it lead to more years  
1775 of litigation and uncertainty is my real concern, sir?

1776 Mr. {Wheeler.} Thank you, Congressman. That is one of  
1777 the things that gets teed up in the NPRM when we ask about  
1778 Title II versus Section 706. And I presume that that will be  
1779 exhaustively discussed in the responses. And that is exactly

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1780 the kinds of questions that we are asking.

1781 Mr. {Lance.} Thank you. One concern has been raised  
1782 about the proposed net neutrality rule, making the process--  
1783 protections that would be afforded companies who use a  
1784 carrier who is providing the same service as another carrier.  
1785 For example, the large carriers are beginning bundle services  
1786 that go well beyond phone service, the Internet and  
1787 television, to include smart home services such as  
1788 temperature control, home health monitoring, which of course  
1789 is important to another subcommittee of this committee, as  
1790 well as alarm services such as monitoring of home intrusions  
1791 and fires, video surveillance or personal emergency response  
1792 systems. What protections will the FCC provide to ensure  
1793 that a carrier does not give its service provider a  
1794 preference over a company using them as a broad-based  
1795 carrier?

1796 Mr. {Wheeler.} I am not sure I exactly understand what--  
1797 --your concern is will there be preferences--

1798 Mr. {Lance.} Yeah.

1799 Mr. {Wheeler.} --among providers of those services?

1800 Mr. {Lance.} Yes, Chairman.

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1801 Mr. {Wheeler.} That is contrary to the concept of an  
1802 open Internet.

1803 Mr. {Lance.} Do you can assure us and through us, the  
1804 American people, that that will not be the case as these  
1805 other services are provided moving forward?

1806 Mr. {Wheeler.} Let me give you an example personally.

1807 Mr. {Lance.} Yes, sir.

1808 Mr. {Wheeler.} I just switched out ADT in my home  
1809 security system for another company, and I was able to access  
1810 both of them over the Internet and both of them over my  
1811 mobile device. And there should be no interference with my  
1812 ability to move from ADT to the other provider.

1813 Mr. {Lance.} Thank you. And that is the goal of the  
1814 Commission and you will assure us that that is how we will  
1815 proceed moving forward?

1816 Mr. {Wheeler.} It is open. There needs to be open  
1817 access for all providers.

1818 Mr. {Lance.} Well, thank you. I look forward to  
1819 working with you. I understand you are a proud graduate of  
1820 Ohio State, is that--

1821 Mr. {Wheeler.} You bet. Yes, sir.

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1822 Mr. {Lance.} Please be gentle with Rutgers now that  
1823 Rutgers has entered the Big whatever-it-is, the Big 16 or  
1824 whatever it is.

1825 Mr. {Wheeler.} It is the Big 10 that can't count.

1826 Mr. {Lance.} The Big 10 that can't count. I defer back  
1827 to the chairman the balance of my time, a proud  
1828 representative from Ohio.

1829 Mr. {Latta.} Well, thank you very much for the  
1830 gentleman yielding back the balance of his time. The chair  
1831 now recognizes the gentleman from North Carolina, Mr.  
1832 Butterfield, for 5 minutes.

1833 Mr. {Butterfield.} Thank you very much the gentleman  
1834 for yielding time, and thank you to you, Chairman Wheeler,  
1835 for your service and thank you for your testimony today.

1836 Mr. {Wheeler.} You are welcome.

1837 Mr. {Butterfield.} I especially thank you for your  
1838 clarity. I told you that the first time that I met you, and  
1839 whenever I hear you speak, it is unambiguous, at least until  
1840 the subject of your home security system comes up. And then  
1841 you are a little ambiguous on who the new provider is. But  
1842 thank you so very much.

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1843           Mr. Chairman, in the Communications Act, Congress  
1844 mandated that the Commission ensure diverse participation in  
1845 media and telecom, and that includes participation of  
1846 minority and women-owned businesses. The quote from the  
1847 statute basically says that the mandate is ``to promote  
1848 economic opportunity and competition by disseminating  
1849 licenses among a wide variety of applicants including small  
1850 businesses, rural telecoms and businesses owned by members of  
1851 minority groups and women.''

1852           It seems to me that the response of the Commission to  
1853 judicial criticism of the FCC's inaction in this area and the  
1854 lack of meaningful study in progress as well as the low level  
1855 of minority and women-owned participation in media and  
1856 telecom licensing, that the Commission it seems to me is not  
1857 committed to these diversity goals. And if I am wrong about  
1858 this, I would ask that you correct me.

1859           On May the 14th, members of the Congressional Black  
1860 Caucus including Congressman Rush and myself, addressed these  
1861 diversity concerns in a letter to you. I suppose the letter  
1862 may not have made its way to your desk yet, but I ask that  
1863 you look at it very carefully when you do.

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1864           Question, what precisely do you need beyond the  
1865 Congressional directives and judicial criticism to get the  
1866 Commission to make progress in creating opportunities for  
1867 diverse communities?

1868           Mr. {Wheeler.} Thank you, Congressman, and I got the  
1869 letter this morning, so thank you.

1870           Mr. {Butterfield.} Okay.

1871           Mr. {Wheeler.} First of all, I agree that we have a  
1872 mandate to have a broad swath of opportunity for all  
1873 Americans to participate in all aspects of  
1874 telecommunications. I can assure you that that is a goal of  
1875 mine. Now, let us talk about some specifics. Number one, I  
1876 think what we did on the JSAs in the broadcast space actually  
1877 opens up opportunities for minority and small operators.  
1878 That is why it was supported by more than a dozen  
1879 representative minority groups.

1880           Secondly is we are going to move on the AWS-3 auction to  
1881 make sure that there are appropriate steps taken to assure  
1882 that minorities can participate through waivers and other  
1883 kinds of processes in that auction.

1884           Thirdly, we are going to have, and I should pause in all



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1885 of these to call out Commissioner Clyburn who has been the  
1886 constant pusher on all of these issues. There will be  
1887 designated--rules for the incentive auction that will create  
1888 bidding credits for appropriate designated entities. And I  
1889 very much take to heart, both as an institutional  
1890 responsibility and as a personal responsibility, the language  
1891 that you read.

1892 Mr. {Butterfield.} And so when the spectrum is  
1893 auctioned, you are making a commitment that diversity will be  
1894 an overriding concern of the Commission?

1895 Mr. {Wheeler.} So what we want to do is to make sure  
1896 that there are opportunities for designated entities to get  
1897 bidding credits so that, for instance, they can bid with 75-  
1898 cent dollars against AT&T and Verizon's 100-cent dollars.

1899 Mr. {Butterfield.} All right. Let me get this last one  
1900 in if I can, Mr. Chairman. In light of the demographic  
1901 changes occurring in our country and the growing number of  
1902 mergers in the communications industry, how is the Commission  
1903 encouraging companies to partner with diverse businesses in  
1904 the secondary market?

1905 Mr. {Wheeler.} We have been doing that both formally

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1906 and informally that there are great opportunities when there  
1907 are transactions for minority companies. You know, Green  
1908 Telecom, for instance, comes to mind which is now operating  
1909 spectrum I believe for both AT&T and Verizon which they  
1910 purchased as a part of some settlements with the Commission.  
1911 And those kinds of opportunities are important and  
1912 worthwhile.

1913 I also believe that there can be new opportunities in  
1914 the broadcast space, particularly after the auction in terms  
1915 of being able to share spectrum and offer other kinds of  
1916 services.

1917 Mr. {Butterfield.} Thank you, Mr. Chairman.

1918 Mr. {Lance.} [Presiding] Thank you very much. The  
1919 chair recognizes the gentleman from Kentucky, Mr. Guthrie.

1920 Mr. {Guthrie.} Thank you, Mr. Chairman. Thank you for  
1921 coming today. I know you had a busy week, so your time is  
1922 appreciated. My colleague from California, Ms. Matsui, and I  
1923 have spent a lot of time on spectrum, spectrum issues, and we  
1924 founded Congressional Spectrum Caucus--

1925 Mr. {Wheeler.} Yes, sir.

1926 Mr. {Guthrie.} --with the goal of looking with

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1927 different ideas of how we can move forward on spectrum. And  
1928 I appreciate the efforts that you have done to move the  
1929 incentive auction forward, and I have a couple of questions  
1930 about the guard bands in the 680 megahertz band.

1931       It appears to me that the band plan for spectrum cleared  
1932 in the broadcast incentive auction carefully considered the  
1933 importance of maximizing license spectrum and adhered to the  
1934 technically reasonable standard set by Congress for creating  
1935 a duplex gap, and I applaud the Commission for its work in  
1936 this regard.

1937       Two questions. One, how do you foresee going forward  
1938 with unlicensed spectrum in the duplex gap? As you know, it  
1939 will be important for those who have been on adjacent license  
1940 spectrum to have assurance there will not be interference.  
1941 And are you confident the FCC will have technical guidelines  
1942 to provide assurance to those who bid for license spectrum,  
1943 there will be no interference in the duplex gap from--

1944       Mr. {Wheeler.} Yes, sir. I think you just--the answer  
1945 to both you just identified, technical standards. And so for  
1946 instance, we are going to have technical standards proceeding  
1947 for wireless mikes and others who would be using the

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1948 unlicensed spectrum, so yes, sir.

1949 Mr. {Guthrie.} Okay. Thank you. And we have been  
1950 using social media to reach out to interested Americans, and  
1951 we said we are here representing the American people. And  
1952 one came from Kelly on Facebook, and Kelly asked this  
1953 question. Well, Kelly submitted through Facebook, user name  
1954 Kelly, who would like to ask you the question about your  
1955 plans for future spectrum policy. And can you give Kelly a  
1956 brief answer to her question about why do you--just broadly a  
1957 future spectrum policy overall?

1958 Mr. {Wheeler.} Thank you, Kelly. The answer is that,  
1959 you know, they are not making it no more. And so what we  
1960 have to do--I believe that we are today on the cusp of the  
1961 new horizon on spectrum policy with two things that we are  
1962 doing. One is the incentive auction that you all created  
1963 because when you boil everything down, it ultimately comes to  
1964 economics. And if you can address the other person's  
1965 economics, you can probably go a long way to solving your  
1966 economics issue. And that's what the auction does.

1967 The other component is spectrum sharing, and the days of  
1968 here, this is all yours, you can use it, are over. And

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1969 fortunately, digital allows that kind of sharing. You know,  
1970 think about going into a Starbucks and everybody is sharing  
1971 that Wi-Fi spectrum. You put those two together, and that is  
1972 I think the answer to Kelly's question as to where is  
1973 spectrum policy going. And we are in the middle of making  
1974 both of those work right now, which is why what we are doing  
1975 is so terribly important.

1976 Mr. {Guthrie.} Yeah, to use a metaphor, it is a very  
1977 simple metaphor compared to a complex physics in this, but we  
1978 don't have special highways for ambulances or fire trucks.  
1979 We get out of the way when they need to go down the highway.  
1980 So sharing that, that is kind of a simple way to look at the  
1981 metaphor.

1982 There is something in one of your statements--and I am  
1983 putting on my hat as a former state legislator, so I was the  
1984 state Senator in Kentucky before here, and there are some  
1985 convincing concerns of places like Utah and Oregon where  
1986 there has been municipal broadband deployed--

1987 Mr. {Wheeler.} Right.

1988 Mr. {Guthrie.} --in the projects that failed in areas  
1989 where there were competitive providers. And these projects

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1990 have resulted in putting millions of dollars of taxpayer  
1991 funds in municipal bonds, proper tax and sale and franchise  
1992 taxes at risk. And I believe the iProvo was sold to Google  
1993 for a dollar and leaving city taxpayers on the hook for  
1994 repayment of tens of millions of dollars.

1995 My understanding is 5 states or so have passed laws  
1996 saying that cities can't do this for--because the states  
1997 usually--

1998 Mr. {Wheeler.} About 20 states.

1999 Mr. {Guthrie.} Like in our area, if something happens  
2000 to a city, the state is kind of on the hook for it as well.  
2001 And I believe in your prepared, your written testimony, you  
2002 have said that you believe the FCC can do prevention in this  
2003 area over the state law? And I just wanted you to clarify  
2004 that.

2005 Mr. {Wheeler.} Yes, sir.

2006 Mr. {Guthrie.} And why you think Washington could have  
2007 a better view of this than Frankfort, for example, in  
2008 Kentucky?

2009 Mr. {Wheeler.} So there about 20 states that have put  
2010 some kind of restrictions in place. And I can see it through

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2011 just exactly the opposite end of the telescope, with all due  
2012 respect, that if the citizens of a community want to organize  
2013 through their local government to say, to bring competition  
2014 in broadband provision, they should not be inhibited.

2015 Mr. {Guthrie.} Not be inhibited by their elected--

2016 Mr. {Wheeler.} They should not be inhibited by the fact  
2017 that the incumbents have been urging the adoption of  
2018 legislation that would ban it. And if we believe in  
2019 competition, we ought to let competition flourish. So what I  
2020 have said is that I am following again Judge Silverman's  
2021 comments in his dissent, nonetheless, in the open Internet  
2022 case in which he said if there is ever an example where 706  
2023 would apply, it is in the ability to say to states, you  
2024 cannot get in the middle of this virtuous cycle and prohibit  
2025 consumers from being able to have access to a competitive  
2026 service.

2027 Mr. {Guthrie.} So your protection is the governments  
2028 are doing that because of incumbents or because they don't  
2029 want to be on the hook for an iProvo type situation?

2030 Mr. {Wheeler.} So the--again, I go back to first  
2031 principles, that is, this is a decision that ought to be made

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2032 by the people of the community and that--but if they want to  
2033 take the risk, if they own it themselves, but you don't have  
2034 to own it yourself. It is also--the gentleman from Utah has  
2035 left, but for instance, in Utah, there is a group of cities  
2036 that have banded together to solicit bids for somebody else  
2037 to own that they would have a participation in, that kind of  
2038 structure. If the people say that is what we want, we want  
2039 this kind of competition, then I think they ought to be  
2040 encouraged to get it. And competition has clearly been shown  
2041 to be the best tool.

2042 Mr. {Guthrie.} Well, I don't disagree with you on that,  
2043 but my time actually is expired. I know the chairman is  
2044 ready to gavel me down, so I will yield back. Thank you.

2045 Mr. {Lance.} Thank you very much. The chairman would  
2046 never do that to the gentleman from Kentucky. The chair  
2047 recognizes the gentleman from Vermont, Mr. Welch.

2048 Mr. {Welch.} Thank you very much, Mr. Chairman. Mr.  
2049 Wheeler, I have five questions. We have 5 minutes, so we can  
2050 go lickety-split.

2051 Mr. {Wheeler.} Yes, sir.

2052 Mr. {Welch.} The first thing, Bob Latta and I started



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2053 the Rural Caucus. We so appreciated you coming in. Enormous  
2054 concern in rural America that we get access to the Internet.  
2055 It is essential for our future. Net neutrality is a big  
2056 deal. That is the big topic. You have been getting  
2057 comments. There is an enormous amount of concern that if we  
2058 make the wrong decision, the big guys are going to get the  
2059 fast lane, the little guys, many in rural America, are going  
2060 to get the breakdown lane.

2061 Can you give us some reassurance that at the end of this  
2062 process we are going to have access on equal terms for folks  
2063 in rural America to the Internet?

2064 Mr. {Wheeler.} You want a quick answer?

2065 Mr. {Welch.} Yes.

2066 Mr. {Wheeler.} Yes.

2067 Mr. {Welch.} And that is the sentence. You can give a  
2068 full sentence to reassure all of us, especially rural  
2069 America--

2070 Mr. {Wheeler.} I should.

2071 Mr. {Welch.} --that we are going to be driving in the  
2072 fast.

2073 Mr. {Wheeler.} There should not--there is one Internet.

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2074 There is not a fast Internet, there is not a slow Internet.  
2075 There is not an urban Internet, there is not a rural  
2076 Internet. There is one Internet. Everybody ought to have  
2077 open, equal access to the capacity delivered by the Internet.

2078 Mr. {Welch.} Okay. Thank you. Now, getting the  
2079 Internet, rural America is spread out, and the investors want  
2080 to put their money where they can make their money. We all  
2081 understand that. That was true for electricity, but we have  
2082 got to get that Internet out into rural America so we can be  
2083 part of the modern economy. And we have a Universal Service  
2084 Fund with the Mobility Fund. We need to have that, and I am  
2085 wondering if you could comment on the status of that and what  
2086 we need to do to make sure that the funds are there to build  
2087 out that broadband.

2088 Mr. {Wheeler.} Specifically on mobility? Here is the  
2089 interesting question that gets raised by mobility. Broadband  
2090 wireless is LTE. It is being built out across America.  
2091 Recently just one of the major carriers announced a new  
2092 initiative in rural America with LTE. The question becomes  
2093 that we are wrestling with is should we subsidize something  
2094 if it is already happening and that prudent fiscal

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2095 responsibility suggests probably not?

2096 Mr. {Welch.} Well, I got three more questions--

2097 Mr. {Wheeler.} Okay.

2098 Mr. {Welch.} So we want to work with you on that to  
2099 make it rational and not have us investing in things that  
2100 aren't working but invest in things that are going to help  
2101 rural America get--

2102 Mr. {Wheeler.} Yes. That is where we are trying to get  
2103 to.

2104 Mr. {Welch.} All right. Third, we have got to work  
2105 with you and your entire commission, the Republicans and the  
2106 Democrats, and when you came into our Rural Working Group,  
2107 you explained a couple of problems you had, ancient IT and  
2108 also procedures where I guess it is easier to hire a lawyer  
2109 than an engineer.

2110 Mr. {Wheeler.} Yes.

2111 Mr. {Welch.} I am a lawyer, so maybe I would like that.  
2112 But I wouldn't be very much use to you. What are the things  
2113 that this committee can advocate to help your entire  
2114 Commission, Rs and Ds who want to do the job, so you have the  
2115 tools you need to do it?

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2116 Mr. {Wheeler.} Thank you for asking. Our IT  
2117 infrastructure is worthy of the Smithsonian. I came from a  
2118 business background. The things that you cannot do that are  
2119 common sense in the business world, the fact that we are  
2120 still using computers that have known cyber risk associated  
2121 with them, the fact that we can't organize a consumer  
2122 complaint process on line for American consumers because our  
2123 IT system isn't up to it is ridiculous. So we have serious  
2124 problems there.

2125 And the issue of lawyers versus engineers, far be it  
2126 from me to take a side on that, but we do need more  
2127 engineers, sir.

2128 Mr. {Welch.} Okay. Thank you.

2129 Mr. {Wheeler.} And economists.

2130 Mr. {Welch.} Right.

2131 Mr. {Wheeler.} And economists.

2132 Mr. {Welch.} Okay, well, I would like our committee to  
2133 work with you on that.

2134 Next, Section 706, there is a lot of concern about  
2135 whether you have the sufficient authority under that section  
2136 in order to give you the rule-making power to guarantee the

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2137 outcome being net neutrality. Can you comment on that? Do  
2138 you still feel that that is sufficient and the court gave you  
2139 a roadmap forward?

2140 Mr. {Wheeler.} I think that we do have sufficient  
2141 authority, and when the court talked about this virtuous  
2142 cycle and they said anything that interferes with that  
2143 virtuous cycle is a violation of 706, that is a very broad  
2144 grant of authority.

2145 Mr. {Welch.} Okay. My last question in 26 seconds,  
2146 retrans consent and blocking online content. We have seen  
2147 that in the broadcast area where there is a dispute and  
2148 people can't get access to the signal. Now that is starting  
2149 to migrate into the online content. Is this the beginning of  
2150 the cablization of the Internet?

2151 Mr. {Wheeler.} Sir, I think it is the right question.  
2152 Our authority goes to the--retransmission and program access  
2153 goes to the authority to good faith negotiations. I think  
2154 there is reason to be concerned when because I happen to  
2155 subscribe to an ISP who is in a dispute with a program  
2156 provider, that the program provider blocks all access from IP  
2157 addresses coming from that ISP, I think that is something

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2158 that is of concern and that we all should worry about.

2159 Mr. {Welch.} Okay. I yield back. Thank you very much,  
2160 Mr. Wheeler.

2161 Mr. {Wheeler.} Thank you, sir.

2162 Mr. {Lance.} Thank you very much. The chair recognizes  
2163 the gentleman from Kansas, Mr. Pompeo.

2164 Mr. {Pompeo.} Thank you, Mr. Chairman. Thank you for  
2165 being here today. I don't want to spend a lot of time on net  
2166 neutrality. We have different views. I view it as nothing  
2167 more than a price control. I think we have seen how that  
2168 works in creating supply, and I think it is a very dangerous  
2169 path that you are headed down.

2170 I do want to ask a couple of process questions related  
2171 to that. Have you spoken to anyone at the White House or OMB  
2172 in the last month regarding net neutrality?

2173 Mr. {Wheeler.} Only to keep them apprised. They have  
2174 been assiduous in their recognition that we are an  
2175 independent agency.

2176 Mr. {Pompeo.} And did you call them or did they call  
2177 you?

2178 Mr. {Wheeler.} I called them.

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2179 Mr. {Pompeo.} And has anyone else on your staff spoken  
2180 to folks at the White House or OMB in the last month in  
2181 addition--

2182 Mr. {Wheeler.} Not my--well, the answer is I am sure.  
2183 On this issue, I don't know, but I can assure you from my  
2184 discussions with everybody, from the President on down, the  
2185 recognition of the independence of our agency, and I will go  
2186 further and assure you that never have I or to my knowledge  
2187 anyone of my staff felt any pressure to decide any issue.

2188 Mr. {Pompeo.} I appreciate that. Thank you. I want to  
2189 follow up on something Representative Guthrie was saying.  
2190 You believe the FCC has the power to preempt state laws to  
2191 ban competition from community broadband?

2192 Mr. {Wheeler.} Yes, sir.

2193 Mr. {Pompeo.} Under Section 706?

2194 Mr. {Wheeler.} Yes, sir.

2195 Mr. {Pompeo.} Do you believe that states have the same  
2196 authority?

2197 Mr. {Wheeler.} I think that is the--the issue that I  
2198 believe is do we have the authority to preempt? That raises  
2199 the question of what is the authority of the state, and I

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2200 think we have preemptor authority. I think we will probably  
2201 end up having this answered in court.

2202 Mr. {Pompeo.} I just read the statute. The states have  
2203 the same authority that the FCC does. The language is  
2204 identical. It says whatever authority it is, you have and  
2205 they have.

2206 Mr. {Wheeler.} Well, in state commissions.

2207 Mr. {Pompeo.} Right.

2208 Mr. {Wheeler.} Well, yes.

2209 Mr. {Pompeo.} The states--

2210 Mr. {Wheeler.} It says that we have preemptory  
2211 authority over state commissions.

2212 Mr. {Pompeo.} So state commissions have the same  
2213 authority that you do? You would agree with that?

2214 Mr. {Wheeler.} No--

2215 Mr. {Pompeo.} It is a simple statute. I mean, it just  
2216 says the same thing. I just--

2217 Mr. {Wheeler.} No, I think that it says that both of us  
2218 have authority but that we have preemptory authority on this  
2219 issue, and I think that is what Judge Silverman was saying in  
2220 his dissent in that Verizon case.



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2221           Mr. {Pompeo.} Right, in that law, dissent. Well, the  
2222 FCC's media bureau recently issued new and they call them  
2223 processing guidelines for broadcast transactions, and these  
2224 broadcast--it talks not only about future broadcast  
2225 transactions but also pending applications. I have three  
2226 questions with respect to that. First, how many applications  
2227 have been singled out for close scrutiny since the new  
2228 guidelines have been issued? How many have been approved in  
2229 those 2 months? And when might those broadcasters see the  
2230 resolution of their applications?

2231           Mr. {Wheeler.} I don't know the answer to any of those  
2232 three off the top of my head, but I will be happy to get it  
2233 for you for the record.

2234           Mr. {Pompeo.} Okay. You can understand these are  
2235 pending applications submitted under a set of rules. You  
2236 have now moved the goal posts on them. This is--

2237           Mr. {Wheeler.} No, actually--yes, sir, I understand  
2238 your point. What we are trying to do is not move the goal  
2239 posts but to open up the process so that everybody knows what  
2240 the rules are.

2241           Mr. {Pompeo.} But that is what you did. That is what

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2242 you did. I mean, you changed the rules with respect to  
2243 applications already submitted under a preexisting set of  
2244 standards. But I don't know how you could describe that as  
2245 anything but moving the goal post.

2246 Mr. {Wheeler.} With all respect, sir, we had a series  
2247 of transactions that were in place, and in the decisions on  
2248 those transactions, we said note, going forward there will be  
2249 a new look at what financial structures are in transactions,  
2250 not in these transactions that we are approving. Then we put  
2251 out a public notice that said here is how we are going to  
2252 open up this black box, and here is what is going to be going  
2253 on. And it is that standard. So there was notice as a part  
2254 of a decision that was not affected. Then there was notice  
2255 through a public notice. And now those that the Bureau is  
2256 reviewing are subject to both of those.

2257 Mr. {Pompeo.} And my last 20 seconds, with net  
2258 neutrality there are also cyber security issues. Do you plan  
2259 to explicitly give network providers liability protections in  
2260 their efforts to protect their network from cyber security as  
2261 part of your rule-making for net neutrality?

2262 Mr. {Wheeler.} It was not considered as a part of the

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2263 rule-making to have that.

2264 Mr. {Pompeo.} Great. Mr. Chairman, I yield back my  
2265 time.

2266 Mr. {Lance.} Thank you very much. The chair recognizes  
2267 the gentleman from New Mexico, Mr. Lujan.

2268 Mr. {Lujan.} Mr. Chairman, thank you very much.  
2269 Chairman Wheeler, thank you so much--

2270 Mr. {Wheeler.} Mr. Lujan.

2271 Mr. {Lujan.} --for being here as well. Chairman  
2272 Wheeler, 2 weeks ago this committee added my amendment  
2273 calling on the FCC to conduct a study on reforming the  
2274 designated market area system to the STELA reauthorization  
2275 bill. As you know, DMAs are currently defined by a map drawn  
2276 by Nielsen, a for-profit marketing research company based  
2277 upon the reach of television broadcast antennas. This  
2278 network of antennas is based upon technology deployed back in  
2279 the '40s and '50s. Americans could have a multitude of  
2280 viewing options via technology such as cable, broadband and  
2281 wireless Internet, but current DMA rules prevent the  
2282 viewership of much of that content.

2283 I believe that a system embraced by these technologies

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2284 could revitalize television broadcasting with new affiliates  
2285 reaching viewers who have more in common than their placement  
2286 on Nielsen's old map. It is my hope that the Commission  
2287 takes this study seriously and brings the policy into the  
2288 21st Century, Mr. Chairman, so I hope that we might be able  
2289 to work--

2290 Mr. {Wheeler.} Thank you for your leadership on this,  
2291 Mr. Lujan, and I assure you that we will take it seriously.

2292 Mr. {Lujan.} Thank you, Mr. Chairman. And Mr.  
2293 Chairman, it wasn't too long ago that a company would not  
2294 allow access to another company's apps. There was a question  
2295 a few years ago with AT&T and Facetime in an Apple product.

2296 Mr. {Wheeler.} Yes, sir.

2297 Mr. {Lujan.} As I talk about fixed versus mobile, they  
2298 defended it by saying it was allowed under the FCC's net  
2299 neutrality rules. Granted, this was under 3G. Section 62 of  
2300 the proposal suggests the no blocking rule was applied in  
2301 different standard to mobile broadband Internet access, and  
2302 mobile Internet access service was excluded from the  
2303 unreasonable discrimination rules. We are seeing mobile  
2304 getting faster now and with the new spectrum options, even

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2305 faster than fixed. I appreciate and I agree with you that we  
2306 are talking about one Internet with open and equal access.  
2307 With my colleagues in rural areas, I have shared with you  
2308 before if there is a conversation about taking phone calls  
2309 with bandwidth capabilities as well as streaming of content  
2310 on airplanes, in rural America we should be able to get the  
2311 same treatment. I don't understand why we are not there yet.  
2312 But nonetheless, it is coming.

2313 So I am hopeful that as we have this conversation, that  
2314 we are able to have equitable treatment. I know that as I  
2315 read in the proposal that there are elements of asking for a  
2316 look into this--

2317 Mr. {Wheeler.} Right.

2318 Mr. {Lujan.} --in the rule, but I am certainly hopeful  
2319 that this will be treated with the same scrutiny and level of  
2320 attention and again, as I talked about an old, antiquated  
2321 rule within the '40s and '50s, we talked about dial-up, that  
2322 this is another area that we are going to have equitable  
2323 treatment as well, especially with new gigabit access as  
2324 well.

2325 Mr. Chairman, in another area I know that there is a

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2326 number of my colleagues who join me in their concern for  
2327 recent reports of interconnection deals, particularly the one  
2328 between Comcast and Netflix. You stated that peering is not  
2329 a net neutrality issue, that there is a matter of the open  
2330 Internet and there is a matter of the Internet connection  
2331 among the various disparate pathways that become the  
2332 Internet. And while I understand that net neutrality refers  
2333 only to the behavior of Internet service providers blocking  
2334 or throttling the speeds of certain Web sites, my question is  
2335 how is interconnection an agreement that essentially  
2336 throttles content substantially different?

2337         Mr. {Wheeler.} Thank you, sir. That is a very good  
2338 question. You can think of the Internet in three parts,  
2339 actually four parts. There is somebody like Netflix getting  
2340 on the Internet and then writing so-called middle-mile  
2341 providers to a peering point, which is just a fancy word for  
2342 interconnection, where they then have access to Comcast,  
2343 Verizon, whoever the case may be.

2344         The consumer buys from their computer up to the peering  
2345 point. Traditionally, peering has been I will take mine, you  
2346 take yours, back and forth kind of a thing. And for free.

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2347 That has begun to change over time.

2348 Mr. {Lujan.} Mr. Chairman, if I may, I apologize. My  
2349 time is going to elapse, and maybe what I will do is if we  
2350 could get that into the record. All that I would add is once  
2351 upon a time peering agreements didn't have an exchange of  
2352 money. People found a way to work with each other--

2353 Mr. {Wheeler.} Exactly right.

2354 Mr. {Lujan.} --and I am hoping that we can get some  
2355 certainty with the treatment of fixed versus mobile, in that  
2356 area. And lastly I would like for the record, if there is  
2357 any way that you might be able to provide us more specifics  
2358 and details with what has been talked about as commercially  
2359 reasonable--

2360 Mr. {Wheeler.} Good.

2361 Mr. {Lujan.} --as well as we talked about not putting  
2362 smaller companies at a disadvantage. I apologize to cut you  
2363 off, Mr. Chairman. I could always sit and visit with you.  
2364 And the last thing that I would say is President Obama is in  
2365 support of an open Internet, and I would encourage you to  
2366 speak with him. So thank you very much for that as well.

2367 Mr. {Wheeler.} Let me just--Congressman, so am I.

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2368 Mr. {Lujan.} Thank you.

2369 Mr. {Lance.} Thank you very much. The chair recognizes  
2370 the gentleman from Louisiana, Mr. Scalise.

2371 Mr. {Scalise.} Thank you, Mr. Chairman, for having the  
2372 hearing, and thank you Commissioner Wheeler for being here  
2373 today and answering our questions. I know as we look at the  
2374 potential changes that have been proposed, a lot of us that  
2375 want to continue to maintain a free and open Internet want to  
2376 make sure that we are going about it the right way. I know I  
2377 have got some concerns with the fact that the FCC would even  
2378 consider going the Title II route in terms of reclassifying  
2379 broadband. You know, and a lot of us had reached out to our  
2380 constituents to have them also give us suggestions on things  
2381 that they would like to ask you as well. And a lot of the  
2382 comments that we got, I know that I got in my district, were  
2383 just concerns about maintaining that open Internet and  
2384 keeping the government out of regulating it and trying to  
2385 make sure that the government doesn't impede the ability for  
2386 the innovations that we have seen, which have been so  
2387 dramatic and revolutionized not only the country but  
2388 revolutionized the entire world. And it is a lot of



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2389 innovation that is made in America, and we want to continue  
2390 to see that innovation thrive.

2391           When you look at going into the reclassification, and it  
2392 is a proposal that is out there, I know, like I said, I have  
2393 got concerns about that. But in your written statement you  
2394 assert that the private sector must play the leading role in  
2395 extending broadband networks to every American. If it were  
2396 to be reclassified under Title II, who would pay for  
2397 extending those networks if they are subject to common  
2398 carrier regulations?

2399           Mr. {Wheeler.} Private sector.

2400           Mr. {Scalise.} But then when you look at the Title II  
2401 route, would the FCC have the authority to regulate broadband  
2402 pricing?

2403           Mr. {Wheeler.} So in the vastness of Title II, that is  
2404 conceivable. One of the reasons that we are asking for Title  
2405 II versus Section 706 comments in this proceeding is to be  
2406 able to specifically zero in on what are issues such as that,  
2407 what are the--

2408           Mr. {Scalise.} So you think you may have the ability to  
2409 regulate broadband pricing? Is that something you think

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2410 would be an open possibility for the FCC?

2411 Mr. {Wheeler.} Should a full Title II regime be chosen,  
2412 which it has not been, we are proposing--

2413 Mr. {Scalise.} But you are making the proposal.

2414 Mr. {Wheeler.} --Section 706.

2415 Mr. {Scalise.} Right.

2416 Mr. {Wheeler.} No, we are not--what we are doing is we  
2417 are proposing Section 706 as the approach and then we have  
2418 asked questions about Title II. And these are the kinds of  
2419 issues that come up, will come up in that discussion and that  
2420 are going to warrant serious consideration.

2421 Mr. {Scalise.} But if you deem them telecommunication  
2422 services, because that puts broadband into a different realm  
2423 than it is today. It is not there right now. If you do  
2424 choose to try to put it there, would state public utility--in  
2425 our state we have got a public service commission--would  
2426 those state public service commissions and other related  
2427 entities in the states be able to regulate broadband at that  
2428 point?

2429 Mr. {Wheeler.} So what we have proposed is not Title  
2430 II. It is Section 706. What we have asked is for a

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2431 discussion of Title II and those kinds of issues. But our  
2432 proposal, for which I have taken a lot of heat, is not Title  
2433 II. I have said--

2434 Mr. {Scalise.} You don't have to go forward with the  
2435 proposal.

2436 Mr. {Wheeler.} I have said--

2437 Mr. {Scalise.} You can stop taking the heat right now  
2438 and--

2439 Mr. {Wheeler.} No, I said that Title II was on the  
2440 table, that we are looking to look at Title II, and Mr.  
2441 Waxman has a specific proposal where he thinks that Title II  
2442 ought to be a backup, and that is a proposal that is  
2443 important and worth considering. But the proposal that we  
2444 made is Section 706.

2445 Mr. {Scalise.} Let me ask you this because you are  
2446 also--it seems like a one-way street where you are just  
2447 targeting this toward Internet service providers. There are  
2448 a lot of content carriers out there, too, content providers  
2449 that, you know--a lot of members have used the Netflix  
2450 example or, you know, Google and other content providers that  
2451 also have a play in this realm, that you seem to just be

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2452 targeting this toward Internet service providers. And so I  
2453 am not sure if there is some ax to grind there, but it just  
2454 seems like it is a one-sided approach that you are taking  
2455 even in the review. And I wouldn't recommend going down that  
2456 road for any of these folks. But I just wanted to point that  
2457 out.

2458         And one last thing, because I know I am running out of  
2459 time, in a February report, the FCC, some of your staff I  
2460 know in a working group, recommended eliminating some of the  
2461 reports that are out there, the Orbit report, the  
2462 International Broadband report, the Modifying Video  
2463 Competition report and cable prices--some of those things. I  
2464 have got a piece of legislation we have passed out of the  
2465 Full House twice now--very bipartisan, I think was unanimous  
2466 earlier--in this Congress called the FCC Consolidated  
2467 Reporting Act which really tries to take a broad view and to  
2468 eliminate a lot of the outdated reports, to streamline the  
2469 reporting process, something that I think you have seen  
2470 bipartisan support to do in the House. We are trying to get  
2471 the Senate to take that up. I am not sure if you have got a  
2472 comment on what you think should happen there, if that is

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2473 something you are supportive of generally, especially as it  
2474 relates to the bipartisan bill in the House trying to move  
2475 through the Senate to ultimately become law, to streamline  
2476 the processes as your staff has suggested and some of these--

2477 Mr. {Wheeler.} So, you know, on the Senate side, it is  
2478 Senator Heller who has been--

2479 Mr. {Scalise.} Yeah.

2480 Mr. {Wheeler.} --pushing on this, and I know that he  
2481 and Senator Rockefeller are talking about it in terms of  
2482 their package of legislation over there.

2483 I definitely agree that there is a plethora of reports  
2484 and that we are spending a lot of time that could be better  
2485 organized, shall we say.

2486 Mr. {Scalise.} Including competitiveness in the  
2487 telegraph industry, which is still on the books which we are  
2488 trying to get rid of in this bill. But I appreciate that and  
2489 anything you can do to help us advocate for the advancement.  
2490 I do think that is one area where we found a lot of  
2491 bipartisan support in the way it passed the House. Hopefully  
2492 we can get the Heller bill moved through the Senate as well  
2493 and get that to the President's desk.

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2494 Mr. {Wheeler.} Thank you, sir.

2495 Mr. {Scalise.} Thank you very much for your time, and I  
2496 yield back the balance of my time.

2497 Mr. {Lance.} Thank you very much, Mr. Scalise. I do  
2498 not see any member on the Democratic side. Mr. Kinzinger of  
2499 Illinois is recognized.

2500 Mr. {Kinzinger.} Thank you, Mr. Chairman, and thank you  
2501 for being here today with us. I know it is a long day.

2502 Mr. {Wheeler.} Thank you for your patience, Mr.  
2503 Kinzinger.

2504 Mr. {Kinzinger.} Yeah, you are welcome. I might be the  
2505 end. Wow. But we got a lot of big issues that we want to  
2506 talk about. I am just going to hit a couple right now. I  
2507 would like to talk to you a little--I know it was touched  
2508 earlier about the E-Rate program. I am a big supporter of  
2509 the intentions of this program and especially its  
2510 modernization. And I appreciate the Commission putting on  
2511 the recent workshop on this issue. I have a few concerns I  
2512 want to address. I represent a rural district with a number  
2513 of very small schools and libraries, and over the past few  
2514 months I have reached out to a lot of these entities and

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2515 asked them what their concern is and asked them about their  
2516 participation or their lack of participation in the program  
2517 to see what concerns or issues they have with the program  
2518 itself.

2519 The number one problem raised in these conversations was  
2520 the complexity involved in both applying for and eventually  
2521 receiving the funding necessary to move forward in  
2522 implementing new technology in their facilities through the  
2523 E-Rate program.

2524 In hearing this, I actually looked into the issue a  
2525 little further and found out that the basic application for  
2526 funding--and this is the process of it--but the basic  
2527 application is 17 pages long. And with additional  
2528 technologies not deemed necessary, it can run even longer,  
2529 i.e. Wi-Fi. I would actually probably rather punch myself in  
2530 the face than be the guy that has to fill this out.

2531 So the complexity of the application process has  
2532 actually caused a number of these schools to spend money on  
2533 outside consultants to help guide them through this process,  
2534 and this is money that is no longer being spent on our  
2535 students and automatically puts many smaller rural schools at

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2536 a disadvantage as they don't have the funds necessary to pay  
2537 these outside consultants essentially leaving individuals in  
2538 a technological desert if you will.

2539 As the Commission continues its efforts to modernize the  
2540 E-Rate program, what are your plans to simplify the  
2541 application process for these small and rural districts? And  
2542 also, will you commit to working to address the issues faced  
2543 by these schools who have routinely told me that they simply  
2544 cannot afford to pursue these funds?

2545 Mr. {Wheeler.} Congressman, I share your shock and  
2546 dismay. We are going to fix it.

2547 Mr. {Kinzinger.} Good. All right. Do you have an idea  
2548 of a timeframe? How long? This is easy. We are going home.

2549 Mr. {Wheeler.} Yeah, it is going to be part of our E-  
2550 Rate modernization program that we are bringing forward.  
2551 There are actually a series of things that we are going to  
2552 begin administratively even before that rule-making takes  
2553 place. It is--yes, sir.

2554 Mr. {Kinzinger.} All right.

2555 Mr. {Wheeler.} I mean, I am as, you know--how do we get  
2556 online? It becomes an interesting challenge. So here we are



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2557 talking about broadband access for schools and libraries, and  
2558 we have a 17-page paper process.

2559 Mr. {Kinzinger.} Right.

2560 Mr. {Wheeler.} So unfortunately it is not something you  
2561 can solve just like this because as I indicated I think to  
2562 Mr. Welch, we have awful IT systems. But what I would like  
2563 to get to is for your schools and all schools and libraries  
2564 to be able to get online, to make their filing, to be able to  
2565 track that filing and where things stand and to do it less  
2566 frequently than annually.

2567 Mr. {Kinzinger.} Right. Well, I appreciate that. I  
2568 want to touch on one other quick issue in the short amount of  
2569 time, and again, thank you for your consideration with the E-  
2570 Rate issue. I am concerned with the process and policy  
2571 rationale used to change the FCC's treatment of broadcast  
2572 JSAs for the purpose of the broadcast ownership rules. The  
2573 decision to count TB JSA's ownership has the effect of  
2574 tightening ownership restrictions without the comprehensive  
2575 review of the ownership rules that is required by statute,  
2576 and your analysis seemed to lack an appreciation for the  
2577 public interest benefits fostered by JSAs.

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2578           In Rockford, for instance, an area I represent, without  
2579 these agreements, the Fox station produces actually a  
2580 Hispanic news cast, and they have said that they will not be  
2581 able to produce that Hispanic news cast, for instance. While  
2582 I don't believe my local TV station should have to fight for  
2583 a waiver, and we can have a broader issue on the whole  
2584 discussion in general, I do want to say in light of your  
2585 rule, are you going to make sure that these stations can take  
2586 advantage of waivers and will there be clear, transparent  
2587 standards for applying for waivers in this process?

2588           Mr. {Wheeler.} Thank you, Congressman, because you have  
2589 raised a really important point about waivers. The reality  
2590 was why we had to deal with JSAs is there was becoming a  
2591 cottage industry in this town, down on K Street, of lawyers  
2592 figuring out creative ways to get around the ownership rules  
2593 that the Commissions had in place forever. And JSAs were a  
2594 favorite way of doing that.

2595           What we have said is that you have to have attributable  
2596 ownership as you indicated but that there is a waiver process  
2597 to address exactly what you are talking about in Rockford.  
2598 And yes is an expedited process. And it is a situation

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2599 unfortunately where the process took over and perverted the  
2600 underlying rules and the basic concepts of ownership.

2601 Mr. {Kinzinger.} And we can have that broader  
2602 discussion when I have more time. My time is expired. But I  
2603 will say, I have heard a lot of concerns from local TV  
2604 stations even in my district, and I hope that, you know,  
2605 while we disagree with the rule, I hope that you make it very  
2606 clear how they can apply for these waivers and how they can  
2607 get this taken care of.

2608 Mr. {Wheeler.} Yes. Thank you.

2609 Mr. {Kinzinger.} Mr. Chairman, I yield back. And thank  
2610 you.

2611 Mr. {Lance.} Thank you very much. On behalf of Mr.  
2612 Matheson and of myself, thank you, Chairman Wheeler, for your  
2613 testimony this morning. We look forward to working with you  
2614 in the future, and the hearing is now adjourned.

2615 [Whereupon, at 1:04 p.m., the Subcommittee was  
2616 adjourned.]