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4 FCC REAUTHORIZATION: OVERSIGHT OF THE COMMISSION

5 THURSDAY, MARCH 19, 2015

6 House of Representatives,

7 Subcommittee on Communications and Technology

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 11:02 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, Shimkus,
14 Blackburn, Scalise, Lance, Guthrie, Olson, Pompeo, Kinzinger,
15 Bilirakis, Johnson, Long, Collins, Cramer, Barton, Eshoo,
16 Doyle, Clarke, Loeb sack, Rush, Butterfield, Matsui, McNerney,

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17 Lujan, Cardenas, and Pallone (ex officio).
18 Staff present: Gary Andres, Staff Director; Ray Baum,
19 Senior Policy Advisor for Communications and Technology; Sean
20 Bonyun, Communications Director; Leighton Brown, Press
21 Assistant; Karen Christian, General Counsel; Andy Duberstein,
22 Deputy Press Secretary; Gene Fullano, Detailee, Telecom;
23 Kelsey Guyselman, Counsel, Telecom; Peter Kielty, Deputy
24 General Counsel; Grace Koh, Counsel, Telecom; David Redl,
25 Counsel, Telecom; Charlotte Savercool, Legislative Clerk;
26 Jeff Carroll, Democratic Staff Director; David Goldman,
27 Democratic Chief Counsel, Communications and Technology;
28 Margaret McCarthy, Democratic Professional Staff Member; Tim
29 Robinson, Democratic Chief Counsel; and Ryan Skukowski,
30 Democratic Policy Analyst.

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|
31 Mr. {Walden.} If everyone could take their seats? And
32 while they are, I am going to--before we start the clock, I
33 just--as many of you know, I am going to exert a little
34 Chairman's prerogative here, because Mr. Wheeler and I have
35 not always gotten along. And I have my opening statement
36 here, but I am just sick and tired of sort of your third
37 string approach to winning, and the way you are willing to
38 tackle and run over the top of people, and score points just
39 for scoring points.

40 Now, now that the U of O/OU game is over in the national
41 football championship, I want everybody to know I have kept
42 my promise and worn the Ohio State tie. So--

43 Mr. {Wheeler.} Mr. Chairman, I--

44 Mr. {Walden.} No, you are out of order.

45 Mr. {Wheeler.} I hope we--

46 Mr. {Walden.} I am just going to say that right now.
47 Mute the mikes--nothing.

48 Mr. {Wheeler.} I hope we are on the record, because I
49 just want to say two things. Number one, you are an
50 honorable man, and--

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51 Mr. {Walden.} Thank you.

52 Mr. {Wheeler.} --you had the wrong side, and we were
53 pleased to beat you with our backup to the backup
54 quarterback.

55 Mr. {Walden.} You think this is going to go better for
56 you?

57 Mr. {Wheeler.} But I do think that the color is very
58 becoming on you.

59 Mr. {Walden.} Now, just so you know, I have now filled
60 my bet that I would wear the Ohio State tie if they beat my
61 Ducks, and vice versa. I also want you to know there is a
62 pending matter to be settled. I did offer up dates for
63 lunch, which I will buy, and I suggested February 26 might
64 have been a wonderful day for the Chairman to have lunch with
65 me. He suggested he had other matters to attend to. All
66 right. Enough of fun and frivolity. Thank you all for being
67 here, and I thank our FCC Commissioners for being here, and
68 my colleagues. I know this is a ``go away day'', and we will
69 probably interrupt it by votes, so we will try and move
70 through this. But this is really important business we are
71 going to take up, as we always do in this committee, and so

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72 on to the serious matters.

73 You know, it was just over two weeks ago that we had the
74 Commission's managing director present us with his rationale
75 for the largest budget request in history for the Federal
76 Communications Commission. We were able to discuss with him
77 whether the funding levels requested would actually yield an
78 effective and credible agency. Today we have the opportunity
79 to ask the Commissioners themselves whether this agency is
80 functioning as it should, whether it is producing the high
81 caliber policymaking that American society requires and
82 deserves, and I, for one, have to confess, I am skeptical.

83 I think I have a good reason for my skepticism. The
84 Federal Communications Commission was once a transparent,
85 predictable agency, presiding with a light touch over an
86 explosion of mobile and Internet investment and innovation
87 that has greatly benefitted consumers. Today that agency, in
88 my opinion, has evolved into a place where statutory
89 obligations are left to languish in favor of scoring points.

90 The agency's capitulation to the President's demands
91 comes at the end of a proceeding mired in what I say is
92 procedural failures, and the White House's behind the scenes

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93 influence on the FCC's process has been well documented by
94 credible news sources, including the Wall Street Journal,
95 through e-mails from Senator Reid's office last May as well.
96 It is the responsibility of an expert independent agency to
97 issue detailed notice to the public when it intends to act,
98 and to apply its expertise to resolve the hard questions of
99 law and policy. This process should be transparent, and
100 every effort should be made to resist calls to politicize the
101 outcome. Perhaps in this respect, the FCC should learn a
102 thing or two from the Federal Trade Commission, an agency the
103 FCC rendered moot in protecting ISP consumers.

104 A properly functioning commission doesn't work behind
105 closed doors with the President to bypass the administrative
106 process, and a properly functioning commission doesn't make
107 decisions based on the number of click and bait e-mails that
108 interest groups can generate. A properly functioning
109 commission focuses on law and facts to generate thoughtful
110 and legally sound analysis, rather than being carried away by
111 politically generated populous furor.

112 The Open Internet proceeding is not the only place where
113 the FCC seems to have abandoned good process. I am also

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114 concerned about the use of delegated authority.
115 Commissioners have the responsibility for dealing with
116 matters that are controversial or make new policy, and should
117 not simply delegate a decision to bury the result. I am
118 concerned that transparency has suffered between the
119 Commissioners. Lack of agreement should not mean that
120 decisional documents are kept from other Commissioners until
121 the 11th hour. And I am concerned that an excessive number
122 practical proceedings remain unresolved, and thousands of
123 businesses wait in the wings while the Commission focuses on
124 extending its regulatory reach.

125 But mostly I am concerned that the FCC has overstepped
126 its jurisdiction too regularly, Net Neutrality, the obvious
127 example here, but there are others. An agency only has the
128 authority given to it by statute, and I can't see how any
129 reading of the Communications Act would give the impression
130 that Congress granted the FCC authority to be the ultimate
131 arbiter of the use of personal information. I cannot see how
132 the Telecommunications Act could be read to gut the 10th
133 Amendment, place the FCC in the position of deciding how
134 states can spend their tax dollars. I cannot see how the FCC

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135 could possibly interpret its governing statutes to wrest
136 control of content from the creators and mandate its
137 presentation on the Internet.

138 But for the fact that I only have 5 minutes for my
139 statement, we could keep going. A bidding credit waiver for
140 grain management, government researchers in newsrooms
141 adopting trouble damages without notice, excessive and
142 unfunded merger conditions, last minute data dumps into the
143 record. The FCC appears to believe it is authorized to take
144 the Potter Stewart approach to its authority. I know it when
145 I see it.

146 To be fair, some of the responsibility lies right here
147 in Congress. We have not updated the Communications Act for
148 decades, and technology has out-evolved its regulatory
149 framework. The FCC does not have the tools to do its job,
150 but this doesn't mean the agency should distort or ignore the
151 current law, or worse, threaten to manufacture authority out
152 of whole cloth, should regulated industries have the temerity
153 to resist the Commission's demands. Instead it should work
154 with Congress. We have offered a way forward on Net
155 Neutrality that is more certain, and less costly for society,

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156 and it is not clear to me that the objections to our
157 legislation are based on policy.

158 But if we could work together on fixing the Net
159 Neutrality situation, I think we would be able to chalk up a
160 victory for all of us, and for all our consumers, and for the
161 American economy. So it starts today with trying to fix the
162 agency itself. It is our job to do our due diligence and
163 reauthorize this agency for the first time since 1995. I
164 thank our Commissioners, and Chairman Wheeler, for their
165 attendance today, and I look forward to our productive
166 session ahead.

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

168 ***** COMMITTEE INSERT *****

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169 [H.R. _____ follows:]

170 ***** INSERT A *****

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171 Mr. {Walden.} I would yield the remaining 30 seconds to
172 the Vice Chair, Mr. Latta.

173 Mr. {Latta.} Well, thank you, Mr. Chairman, and I
174 appreciate you for yielding, holding today's hearing. I
175 thank the Commissioners for being here. This is--the success
176 and productivity of the communications and technology
177 industry never ceases to amaze me, as it has been, and is a
178 constant bright spot in our economy as it rapidly advances
179 and evolves to meet consumer demands.

180 Given the FCC's integral role in the marketplace, it is
181 critical that the agency is transparent, efficient, and
182 accountable. That is why I am concerned with the FCC's
183 decision to reclassify broadband Internet service as a
184 telecommunications service under Title 2, despite the fact
185 that the order goes against a light touch regulatory approach
186 that was fundamental for providing the industry with
187 flexibility it needed to invest, innovate, and create jobs.
188 The order--and the order process was not transparent, and
189 represents a regulatory overreach that will have lasting
190 negative consequences.

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191 Today's hearing is a step in the right direction in an
192 effort to make the agency more efficient and effective by
193 reviewing the Commission's policy decision and processes. I
194 look forward to hearing from the Commissioners.

195 Mr. Chairman, I yield back with a point of personal
196 privilege. From an Ohioan, I think your tie looks great.

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

198 ***** COMMITTEE INSERT *****

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199 Mr. {Walden.} Sure glad I yielded time to you. With
200 that, I will turn to my friend from California, part of the
201 Pac-12, Ms. Eshoo.

202 Ms. {Eshoo.} Thank you, Mr. Chairman. I don't have any
203 sports analogies, so--and obviously I hold a much different
204 view, and so I want to express that view with an intensity
205 that I think needs to be brought to really what this issue is
206 all about. And I appreciate having the hearing, but I think
207 that the main point is that on February 26 the American
208 people finally won one, and it was big. The regular guys and
209 gals across our country, part of the beleaguered middle
210 class, were heard. It was a historic day when the FCC voted
211 for bright line Open Internet rules to protect the ability of
212 consumers, students, and entrepreneurs to learn and explore,
213 create and market, all on equal footing. This is about net
214 equality.

215 The FCC decision ensures that the Internet remains open
216 and accessible to everyone, a source of intellectual
217 enrichment, and an engine for economic growth and prosperity
218 in our country. The Internet is the public library of our

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219 time, a laboratory in the most robust marketplace imaginable,
220 and the FCC declared it open to all, and for all. I think
221 this is nothing short of extraordinary.

222 It was a day when the average person witnessed something
223 very rare. The big shots in Washington, D.C. sided with
224 them. Decision makers actually took in and considered the
225 advice of over four million Americans. I remember watching
226 TV when Dr. King addressed a million people on the Mall. It
227 was a sea of humanity. Well, put a multiplier on that. It
228 is over four million people that weighed in, and I think that
229 kind of public engagement with our government should be
230 celebrated, and not rolled over and disrespected.

231 Today the majority has offered a legislative discussion
232 draft intended to reauthorize the FCC. I have reviewed the
233 draft legislation, and concluded that, in effect, it is meant
234 to squeeze an agency that is already operating at the lowest
235 number of full time staff in 30 years. The FCC has to have
236 the means to fulfill its mission, to protect consumers,
237 promote competition, and advance innovation. That is their
238 mission. This includes huge issues, and they are huge, like
239 freeing up additional spectrum, promoting municipal broadband

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240 deployment, and enhancing 911 services. Any attempt to
241 overhaul the FCC's funding structure should be fully
242 analyzed, and the implications of these changes should be
243 fully understood. We shouldn't be horsing around with it, in
244 plain English, and a 48 hour review is simply insufficient.

245 So I find myself wondering, why are we having this
246 hearing today? I hope it isn't a fishing expedition. By
247 compelling the FCC Chairman and Commissioners to testify five
248 times over the course of 8 days, it seems to me that the
249 majority seems to have chosen to ignore a glaring fact. Four
250 million--over four million Americans did something. They,
251 and countless more, contacted their members of Congress to
252 say, we don't want to pay more for less. We don't think any
253 kind of discrimination, blocking, or throttling is good or
254 fair. We are tired of poor service from providers, confusing
255 bills, and having to wait for a half hour or more on hold to
256 try and talk to a human being, and we don't want any
257 gatekeepers.

258 So I think that is really what this is all about. I
259 welcome the debate. I welcome the discussion with the
260 Commissioners. And I yield the remainder of my time to

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261 Congresswoman Matsui.

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

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

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264 Ms. {Matsui.} Thank you very much, Ranking Member. I
265 would also like to welcome the Chairman and the Commissioners
266 here today. We know over the last year the debate over the
267 future of the Internet has not been an easy one. There have
268 been many twists and turns. But in the end, I was
269 specifically pleased that the FCC's Net Neutrality rules
270 ensure that pay prioritization schemes, or so-called Internet
271 fast lanes never see the light of day in our economy.
272 Americans will not experience Internet slow lanes or
273 gatekeepers hindering traffic. We know, however, the fight
274 to preserve Net Neutrality is not over.

275 That said, it is time for us to really get back to
276 working on issues that advance our Internet economy. I think
277 spectrum should be at the top of that list. The AWS3 option
278 demonstrated the massive appetite for spectrum. I look
279 forward to re-introducing bipartisan legislation with
280 Congressman Guthrie that would create the first even
281 incentive auction for Federal agencies.

282 With that, I yield back the balance of my time.

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

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284 ***** COMMITTEE INSERT *****

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285 Mr. {Walden.} The gentlelady yields back. Chair
286 recognizes the Vice Chairman of the full Committee, Ms.
287 Blackburn.

288 Mrs. {Blackburn.} Thank you, Mr. Chairman. And to the
289 Commission, I want to say thank you for being here and
290 offering your testimony. As you all know, we have got
291 questions, and we want to move right on to them. I think
292 that the recent actions taken by the FCC have really raised
293 more questions about your scope, and your reach, and your
294 authority, and I will also say about transparency. Chairman
295 Wheeler, I will tell you, I do not think it is acceptable for
296 the Commission to pass a Net Neutrality rule before the
297 American people have the opportunity to find out what is in
298 it, and that was disappointing to us. Releasing a draft
299 final order should have been a part of the rulemaking
300 process, and it is disappointing that it was not. Every
301 dollar you spend is a taxpayer dollar. Every action that you
302 take affects the American taxpayer, so that lack of
303 transparency is incredibly disappointing.

304 I am sure that also you are hearing from Netflix, and

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305 some of the other stakeholders who have been very
306 disappointed on what they found out once they started to read
307 the 322 word-filled pages. I will tell you also, as a former
308 State Senator from Tennessee, and someone that worked on the
309 telecommunications and interactive technology issues there, I
310 was terribly disappointed to see the action of the
311 Commission, to choose to take a vote, and choose to preempt
312 state laws in Tennessee and North Carolina that restrict
313 municipal broadband entry. These are decisions that should
314 be made by their state legislators. Your actions there are
315 disappointing, and we have questions about them.

316 And, Mr. Chairman, I yield back my time.

317 [The prepared statement of Mrs. Blackburn follows:]

318 ***** COMMITTEE INSERT *****

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319 Mr. {Walden.} Anyone else on the Republican side
320 seeking time? If not, gentlelady yields back. Chair now
321 recognizes the Ranking Member of the full Committee, the
322 gentleman from New Jersey, Mr. Pallone, for 5 minutes.

323 Mr. {Pallone.} Thank you, Mr. Chairman. Over the past
324 few days we have had--we have heard quite a bit about
325 process, fairness, and transparency at the FCC. We just
326 heard it again from the previous--from my previous colleague.
327 But given what has transpired in this Subcommittee over the
328 last 48 hours, I wonder whether we first have to make sure
329 our own house is in order. As witness testimony was already
330 being submitted, the Republicans released, with no notice, a
331 partisan discussion draft that would completely overhaul the
332 FCC's funding, and this maneuvering is unfair to the
333 witnesses, and unfair to the members of the Subcommittee, Mr.
334 Chairman. Unfortunately--

335 Mr. {Walden.} Gentleman yield?

336 Mr. {Pallone.} Yes?

337 Mr. {Walden.} Yes. So the draft--discussion draft was
338 put out at least an hour and a half before any testimony came

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339 in. I realize that is still not enough time, but we
340 circulate--this isn't a markup. This is a hearing. We
341 followed all the Committee rules. We have circulated drafts,
342 and always tried to be open and transparent. We will
343 continue to be. We are not marking up a bill.

344 Mr. {Pallone.} Well, Mr. Chairman, unfortunately, in
345 this Congress, we seem to have halted a tradition. I am not
346 sure it is in the rules, but we have had a long tradition of
347 sharing text with all members of the Subcommittee at least a
348 week prior to a legislative hearing, and we have seen these
349 same partisan tactics--

350 Mr. {Walden.} Will the gentleman yield on that point?

351 Mr. {Pallone.} Sure.

352 Mr. {Walden.} Because actually, when you all were in
353 charge, I have got a list here of examples where that wasn't
354 the case. I agree we should be more transparent--

355 Mr. {Pallone.} Well, let us just say, if I can take
356 back my time, as--that--I would like to see us go back to a
357 tradition, process, whatever it was, that we have at least a
358 week prior to a legislative hearing. I mean, the same thing
359 happened in the Consumer Manufacturing and Trade Subcommittee

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360 in the last couple days, and it just, you know, I understand-
361 -you--maybe give examples of things that were done in the
362 past by us, but I just think that, you know, Mr. Upton,
363 yourself, the Subcommittee Chairs have all said that they
364 want to act in a bipartisan way, they want bipartisan bills,
365 and I appreciate that. But, you know, if you are going to do
366 that, then we need to have more time than just the 48 hours
367 that occurred here today. And we had the same thing
368 yesterday in one--in the other subcommittee. If we are going
369 to really move forward, we are trying to do bills on a
370 bipartisan basis, we need to have more than the 48 hours.

371 In addition to that, I have yet to hear a convincing
372 explanation for why this legislation is a good idea. Given
373 what we just went through with the Department of Homeland
374 Security, I doubt our constituents are clamoring for us to
375 create another funding cliff, especially for an agency that
376 just netted \$41 billion for public safety and deficit
377 reduction without raising a dime in taxes. I just think this
378 agency is too important to play these types of games with its
379 funding.

380 And nonetheless, I am grateful that we are having the

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381 hearing today. It gives us the opportunity to show our
382 appreciation in person and in public to the FCC for its work.
383 So thank you, Chairman Wheeler, and to his fellow
384 Commissioners for all that you have accomplished. This has
385 been an eventful year for the FCC. The Commission has
386 certainly received more than its fair share of attention, and
387 also an unprecedented level of civic engagement. Four
388 million Americans weighed in, overwhelmingly calling for
389 strong Network Neutrality rules. 140 members of Congress
390 engaged in the process. And, of course, the President
391 expressed his opinion as well, which is not something that we
392 should be embarrassed about, by the way.

393 Yet despite the withering glare of the spotlight, the
394 Commission stood tall. The Commissioners, and the entire
395 staff of the FCC, have shown a steadfast dedication to
396 serving the public interest. You showed everyone who called
397 in, who wrote in, who came in to support Net Neutrality that
398 the FCC and the rest of Washington know how to listen, so
399 thank you.

400 Now, I have repeatedly said that I welcome the
401 majority's change of heart, and their offer to legislate on

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402 this issue of Net Neutrality, and I remain open to looking
403 for truly bipartisan ways to enshrine the FCC's Network
404 Neutrality protections into law. But after what has taken
405 place over the past few days, I wonder if bipartisanship may
406 only be in the eye of the beholder.

407 If we are able to find a real partner in this process,
408 we must make sure that our efforts do not come at the expense
409 of all the other work the Commission does. The FCC must
410 remain an effective cop on the beat to protect consumers.
411 The FCC must continue to promote universal service to all
412 Americans. The FCC must ensure that the telecommunications
413 and media markets are competitive. And the FCC must maintain
414 the vitality of our public safety communications. And that
415 is why I look forward to hearing today how the FCC can
416 continue to serve an important role in the broadband age.
417 And so, to the Commissioners, thank you for coming here
418 today, and thank you for your public service.

419 May I just ask--I know, because I yielded time to you,
420 Mr. Chairman, I wanted to yield a minute of my time to Mr.
421 Lujan, but I don't have it now. But if I could ask unanimous
422 consent--

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423 [The prepared statement of Mr. Pallone follows:]

424 ***** COMMITTEE INSERT *****

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425 Mr. {Walden.} Without objection.

426 Mr. {Pallone.} Thank you.

427 Mr. {Lujan.} Thank you, Ranking Member Pallone, and let
428 me second your comments about the need for us to work
429 together. Telecommunications policy has a long history of
430 being made on a bipartisan basis, and I would hate to see the
431 polarization that defined so many of our policy debates
432 dominate our efforts on this Subcommittee.

433 Before us are real challenges. We still have 77 percent
434 of New Mexicans living in rural areas that lack access to
435 fixed high speed broadband. And as I have shared with
436 Chairman Wheeler before, if we can have Internet access at
437 30,000 feet on an airplane, we should be able to have
438 Internet access all across rural America, including New
439 Mexico.

440 Today I am especially interested in hearing from
441 Commissioner Rosenworcel on the innovative potential of
442 unlicensed spectrum, and I am also excited to hear from a
443 former public utility commissioner, a colleague of mine as
444 well, Commissioner Clyburn's ideas to modernize a lifeline

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445 program on the broadband era. And I want to hear from all
446 Commissioners on how we can work with the FCC, including
447 strengthening the information and technology systems that
448 collapsed under the weight of millions of comments generated
449 last year when a friend of ours, John Oliver, and four
450 million others filed comment to the FCC, which crashed its
451 servers. Four million comments is a lot, but surely the
452 agency that is charged with overseeing the Internet should be
453 able to handle the traffic.

454 And with that, Mr. Chairman, I want to thank everyone
455 for being here today, and I look forward to this important
456 conversation today.

457 [The prepared statement of Mr. Lujan follows:]

458 ***** COMMITTEE INSERT *****

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459 Mr. {Walden.} Thank the gentleman for his comments. We
460 will go now to the Chairman of the FCC for an opening
461 statement. Mr. Wheeler, thank you for being here. We know
462 you have a tough job, and we look forward to your comments,
463 sir.

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464 ^STATEMENTS OF THE HONORABLE TOM WHEELER, CHAIRMAN, FEDERAL
465 COMMUNICATIONS COMMISSION; THE HONORABLE MIGNON CLYBURN,
466 COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; THE
467 HONORABLE JESSICA ROSENWORCEL, COMMISSIONER, FEDERAL
468 COMMUNICATIONS COMMISSION; THE HONORABLE AJIT PAI,
469 COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; AND THE
470 HONORABLE MICHAEL O'RIELLY, COMMISSIONER, FEDERAL
471 COMMUNICATIONS COMMISSION

|

472 ^STATEMENT OF TOM WHEELER

473 } Mr. {Wheeler.} Thank you very much, Mr. Chairman,
474 Ranking Member Eshoo. It is a privilege to be here with all
475 of my colleagues. There has been some reference up here
476 about the Open Internet. I am sure we will discuss it more
477 today. Clearly the decision that we made was a watershed.
478 You, in your legislation, Mr. Chairman, and we in our
479 regulation, identify a challenge, a problem that needs to be
480 solved. We take different approaches, to be sure, and no
481 doubt we are going to be discussing those, now and in the

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482 future. But there is common agreement that the Internet is
483 too important to ignore, and too important to not have a set
484 of yardsticks and rules. We have completed our work, now
485 Open Internet rules will be in place.

486 Now let me move on to another couple of issues that I
487 think are important to the Committee, and one is that there
488 is a national emergency in emergency services, and Congress
489 holds the key to the solution. The vast majority of the
490 calls to 911--Ms. Eshoo referenced the public safety
491 challenges. The vast majority of calls to 911 come from
492 mobile devices. In a unanimous decision of this entire
493 Commission, we have established rules for wireless carriers
494 to provide location information as to where that call is
495 coming from. The carriers are stepping up. But delivering
496 that information is only the front end of the challenge.

497 Mr. Shimkus, about 15 years ago, led legislation making
498 911 a national number. Amazing it had never been that. The
499 calls now go through, but many times it is like a tree
500 falling in the forest. And there was a recent tragic example
501 in Georgia, when a lady by the name of Shanelle Anderson
502 called as she was drowning in her car, and the signal was

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503 received by an antenna that happened to be an adjacent PSAP,
504 public safety answering point, that did not have--that had
505 decided not to have maps of the area next door.

506 And I have listened to the call, and it is
507 heartbreaking. She keeps saying, well, here is where I am,
508 and the dispatcher keeps saying, I can't find it on the map.
509 I can't find it, I don't know where you are, and didn't know
510 where to send somebody. There are 6,500 different PSAPs in
511 this country. They are all staffed by incredibly dedicated
512 individuals, but there needs to be some kind of set of
513 standards, and only Congress can deal with it. We have dealt
514 with the front end, but now it is necessary to do something
515 about the back end. And this is not a power grab. I don't
516 care how it gets done, or what agency is responsible, but we
517 really need--we owe this to the American people.

518 The second quick issue that I would like to raise is--I
519 know, Mr. Chairman, that both you and I want a Commission
520 that works openly, fairly, and efficiently. And while three
521 to two votes always get the attention, about 90 percent of
522 our decisions during my tenure have been unanimous. About
523 two percent have been four to one, and there have been 21 out

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524 of 253 votes that have been three to two.

525 We also have, during my tenure, the best record of any
526 full Commission this century for getting decisions out
527 quickly. 73 percent of our decisions are released in one
528 business day or less. The last--the measure of that is the
529 last Republican led Commission, it took a week before they
530 could hit that number. We also have the lowest number, and
531 percentage, of actions made on delegated authority in--of any
532 Commission, Republican or Democrat, in the last 15 years.
533 But regardless of this, we should be constantly striving for
534 improvement.

535 Commissioner O'Rielly has raised some really good
536 questions about longstanding processes. He and I were in the
537 same position. We walked in the door at the same time, and
538 we found processes in place that had been typical for both
539 Republican and Democratic administrations. As I say, he
540 raised some really good questions, and to address these
541 questions, I am going to be asking each Commissioner to
542 appoint one staff person to work on a task force to be headed
543 by Diane Cornell, who ran our process reform task force. And
544 I am asking Diane--I have already asked her to begin a review

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545 of all similarly situated independent agencies so that we
546 know what the procedures are for those agencies, and that can
547 be a baseline which--against which we can measure our
548 procedures and move forward to address what I think are some
549 of the legitimate issues that Commissioner O'Rielly has
550 raised. Thank you, Mr. Chairman.

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

552 ***** INSERT 1 *****

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|

553 Mr. {Walden.} Thank you, Mr. Chairman. We will now
554 move to the Honorable Mignon Clyburn, Commissioner of Federal
555 Communications Commission. It is a delight to have you back
556 here, former Chairwoman. We are delighted to have you here.
557 Please go ahead.

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|

558 ^STATEMENT OF MIGNON CLYBURN

559 } Ms. {Clyburn.} Thank you, Chairman Walden, Ranking
560 Member Eshoo, distinguished members of the Committee. Thank
561 you for the opportunity to share my perspectives with you
562 this morning. In my written testimony for the record, I
563 discussed the Commission's work in several policy areas.
564 This morning I will focus on spectrum auctions and inmate
565 calling services reform.

566 In March of 2014 we unanimously adopted licensing and
567 service rules to auction 65 Megahertz of spectrum in the AWS-
568 3 bands. This was not only important for wireless seeking to
569 meet skyrocketing consumer demand on their networks, but it
570 was critical for the promotion of more competitive options.
571 My colleagues and I agreed on a plan with smaller license
572 blocks, and geographic licensed areas. We also agreed on the
573 need for interoperability between the AWS-1 and AWS-3 bands.
574 Such rules encourage participation by smaller carriers,
575 promote competition in local markets, and ensure the auction
576 allocates spectrum to the highest and best use.

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577 Most experts predicted intense bidding in this auction,
578 but no one forecasted that the total gross amount of winning
579 bids would be a record setting \$44.89 billion. The success
580 of this auction was due in large part to a painstaking effort
581 to pair the AWS-3 spectrum bands that involve the broadcast
582 and wireless industries, Federal agencies, and members of
583 this Committee, and for that I thank you. We should follow a
584 similar collaborative approach in the voluntary incentive
585 auction.

586 Robust participation by small and large wireless
587 carriers in the forward auction will encourage broadcast
588 television stations to take part in the reverse auction. A
589 unanimously adopted notice of proposed rulemaking seeks to
590 strike a proper balance between licensed and unlicensed
591 services. We also initiated a proceeding to reform our
592 competitive bidding rules in advance of the incentive
593 auction. We proposed comprehensive reforms so small
594 businesses can compete more effectively in auctions, and
595 sought comment on how to deter unjust enrichment.

596 An example of how the markets do not always work, and a
597 regulatory backstop is sometimes necessary, is inmate calling

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598 services. While a petition requested relief from egregious
599 inmate calling rates remained pending at the FCC for nearly a
600 decade, rates and fees continue to increase. Calls made by
601 deaf and hard of hearing inmates have topped \$2.26 per
602 minute. Add to that an endless array of fees. \$3.95 to
603 initiate a call, a fee to set up an account, another fee to
604 close an account. There is even a fee charged to users to
605 get a refund from their own money. These fees are imposing
606 devastating societal impacts that should concern us all.
607 There are 2.7 million children with at least one parent
608 incarcerated, and they are the ones most likely to do poorly
609 in school, and suffer severe economic and personal hardships,
610 all exacerbated by an unreasonable rate regime.

611 Studies consistently show that meaningful contact beyond
612 prison walls can make a real difference in maintaining
613 community ties, promoting rehabilitation, successful
614 reintegration back into society, and reducing recidivism.
615 Ultimately, the downstream costs of these inequalities are
616 borne by us all.

617 We have had caps on interstate inmate calling rates
618 since February of last year, and despite dire predictions of

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619 losing phone service and lapses in security, we have
620 witnessed nothing of the sort. What we have seen is
621 increased call volumes, ranging from 70 percent to as high as
622 300 percent, and letters expressing how this relief has
623 impacted lives.

624 I look forward to working with the Chairman and my
625 colleagues to finally bring this issue over the finish line,
626 my sports reference, the best I am going to do this morning,
627 by reforming all rates, while taking into account robust
628 security protections.

629 Mr. Chairman, and Ranking Member, and others of the
630 Committee, I appreciate the opportunity to appear before you
631 today, and I look forward to any questions you may have.

632 [The prepared statement of Mr. Clyburn follows:]

633 ***** INSERT 2 *****

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|

634 Mr. {Walden.} I think you have a winner there. Okay,
635 we are going to go now to Commissioner Jessica Rosenworcel.
636 We are delighted to have you back before the Subcommittee.
637 Look forward to your comments as well, Commissioner. Thank
638 you for being here.

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|

639 ^STATEMENT OF JESSICA ROSENWORCEL

640 } Ms. {Rosenworcel.} Good morning, Chairman Walden.

641 Mr. {Walden.} I don't think that microphone stayed on.

642 Ms. {Rosenworcel.} Have I got it now?

643 Mr. {Walden.} There you go.

644 Ms. {Rosenworcel.} Okay. Good morning Chairman Walden,
645 Ranking Member Eshoo, and distinguished members of the
646 Committee.

647 Today communications technologies account for 1/6 of the
648 economy, and they are changing at a breathtaking pace. How
649 fast? Well, consider this. It took the telephone 75 years
650 before it reached 50 million users. To reach the same number
651 of users, it took television 13 years, and the Internet 4
652 years. More recently, to reach the same number of users it
653 took Angry Birds 35 days. So we know the future is coming at
654 us faster than ever before. We also know the future involves
655 the Internet, and our Internet economy is the envy of the
656 world. It was built on a foundation of openness. That is
657 why Open Internet policies matter, and that is why I support

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658 Network Neutrality.

659 As you have undoubtedly heard, four million Americans
660 wrote the FCC to make known their ideas, thoughts, and deeply
661 held opinions about Internet openness. They lit up our phone
662 lines, clogged our e-mail inboxes, and jammed our online
663 comment system. That might be messy, but whatever our
664 disagreements are on Network Neutrality, I hope we can agree
665 that is democracy in action, and something we can all
666 support.

667 Now, with an eye to the future, I want to talk about two
668 other things today, the need for more Wi-Fi, and the need to
669 bridge the homework gap. First, Wi-Fi. Few of us go
670 anywhere today without mobile devices in our palms, pockets,
671 or purses. That is because every day, in countless ways, our
672 lives are dependent on wireless connectivity. While the
673 demand for our airwaves grows, the bulk of our policy
674 conversations are about increasing the supply of licensed
675 airwaves available for auction. This is good, but we also
676 need to give unlicensed services and Wi-Fi its proper due.
677 After all, Wi-Fi is how we get online in public and at home.

678 Wi-Fi is also how our wireless carriers manage their

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679 networks. In fact, today, nearly one-half of all wireless
680 data connections are at some point offloaded onto unlicensed
681 spectrum. Wi-Fi is also how we foster innovation. That is
682 because the low barriers to entry for unlicensed airwaves
683 make them perfect sandboxes for experimentation. And Wi-Fi
684 is a boon to the economy. The economic impact of unlicensed
685 activity has been estimated at more than \$140 billion
686 annually. By any measure, that is big.

687 So we need to make unlicensed services like Wi-Fi a
688 priority in our spectrum policy, and at the FCC, we are doing
689 just that with our upcoming on the 3.5 Gigahertz band, and in
690 guard bands in the 600 Megahertz band. But it is going to
691 take more than this to keep up with demand. That is why I
692 think the time is right to explore greater unlicensed use in
693 the upper portion of the five Gigahertz band. And I think,
694 going forward, we are going to have to be on guard to find
695 more places for more Wi-Fi to flourish.

696 Now, second, I want to talk about another issue that
697 matters for the future, and that is the homework gap. Today,
698 roughly seven in 10 teachers assign homework that requires
699 broadband access, but FCC data suggests that as many as one

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700 in three households today lack access to broadband at any
701 speed. Think about those numbers. Where they overlap is
702 what I call the homework gap. And if you are a student in a
703 household without broadband, just getting homework done is
704 hard. Apply for a scholarship is challenging. And while
705 some students may have access to a smartphone, let me submit
706 to you that a phone is just not how you want to research and
707 type a paper, apply for jobs, or further your education.

708 This is a loss to our collective human capital, and to
709 all of us, because it involves a shared economic future that
710 we need to address. That is why the homework gap is the
711 cruelest part of our new digital divide, but it is within our
712 power to bridge it. More Wi-Fi can help, as will our recent
713 efforts to upgrade Wi-Fi connectivity--through the e-rate
714 program, but more work remains.

715 I think the FCC needs to take a hard look at modernizing
716 its program to support connectivity in low income households,
717 and especially those with school-age children. And I think
718 the sooner we act, the sooner we bridge this gap, and give
719 more students a fair shot at 21st century success. Thank
720 you.

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721 [The prepared statement of Ms. Rosenworcel follows:]

722 ***** INSERT 3 *****

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|

723 Mr. {Walden.} Thank you, Commissioner. We appreciate
724 your testimony. Those bells that went off, or buzzer, as we
725 so lovingly say--we have got two votes, but we should have
726 time to get through both the other Commissioners' testimony,
727 and then we will probably break to go vote, and then we will
728 come back immediately after votes to resume questioning.

729 So welcome, Commissioner Pai. Thank you for being here.
730 Please go ahead with your--

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|

731 ^STATEMENT OF AJIT PAI

732 } Mr. {Pai.} Chairman Walden, Ranking Member Eshoo,
733 members of the Subcommittee, thank you for giving me the
734 opportunity to testify here today. It has been an honor to
735 work with the members of the Subcommittee on a wide variety
736 of issues, from making available more spectrum for mobile
737 broadband, to improving the nation's 911 system.

738 I last testified in front of the Subcommittee more than
739 a year ago, and since that hearing on December 12 of 2013,
740 things have changed dramatically at the FCC. I wish I could
741 say that these changes, on balance, have been for the better,
742 but, unfortunately, that has not been the case. The foremost
743 example, of course, is the FCC's decision last month to apply
744 Title 2 to the Internet.

745 The Internet is not broken. The FCC didn't need to fix
746 it. But our party line vote overturned a 20 year bipartisan
747 consensus in favor of a free and Open Internet. With the
748 Title 2 decision, the FCC voted to give itself the power to
749 micromanage virtually every aspect of how the Internet works.

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750 The FCC's decision will hurt consumers by increasing their
751 broadband bills and reducing competition. A Title 2 order
752 was not the result--rulemaking process. The FCC has already
753 lost in court twice, and its latest order has glaring legal
754 flaws that are guaranteed to mire the agency in litigation
755 for a long time.

756 Turning to the designated entity program, the FCC must
757 take immediate action to end its abuse. What was once a
758 well-intentioned program designed to help small businesses
759 has become a playpen for corporate giants. The recent AWS3
760 auction is a shocking case in point. Dish, which has annual
761 revenues of \$14 billion, and a market cap of over \$34
762 billion, holds an 85 percent equity stake in two companies
763 that are now claiming \$3.3 billion in taxpayer subsidies.
764 That makes a mockery of the small business program. The \$3.3
765 billion at stake is real money. It could be used to
766 underwrite over 580,000 Pell grants, fund school lunches for
767 over six million schoolchildren, or incentivize the hiring of
768 over 138,000 veterans for a decade.

769 The abuse had an enormous impact on small and
770 disadvantaged businesses, from Nebraska to Vermont. It

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771 denied them spectrum licenses they would have used to provide
772 consumers with competitive wireless alternative. The FCC
773 should quickly adopt a further notice of proposed rulemaking
774 so that we can close these loopholes in our rules before our
775 next auction.

776 Turning next to profits, the FCC is at its best when it
777 acts in a bipartisan collaborative manner. During my service
778 under Chairman Genachowski, Chairwoman Clyburn, 89 percent of
779 votes on FCC meeting items, where the agency votes on the
780 most high profile, significant matters affecting the country,
781 were unanimous. Since November 2013, however, only 50
782 percent of votes at FCC meetings have been unanimous. This
783 level of discord is unprecedented. Indeed, there have been
784 40 percent more party line votes at the FCC in the last 17
785 months than there were under the entire Chairmanships of
786 Chairman Martin, Copps, Genachowski, and Clyburn combined.

787 I am also concerned that the Commission's longstanding
788 procedures and norms are being abused in order to freeze out
789 Commissioners. For example, it has been customary at the FCC
790 for bureaus planning to issue significant orders on delegated
791 authority to provide those items to Commissioners 48 hours

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792 prior to their scheduled release. Back then, if a
793 Commissioner asked for the order to be brought up for a
794 commission level vote, that request from a single
795 Commissioner would be honored. Recently, however, the
796 leadership has refused to let the commission vote on items
797 where two Commissioners have made such a request. Given this
798 trend, as well as others, I commend the Subcommittee for
799 focusing on the issue of FCC process reform, and I welcome
800 the Chairman's announcement this morning.

801 Finally, I would like to conclude by discussing an issue
802 where it should be easy to reach consensus. When you dial
803 911, you should be able to reach emergency personnel wherever
804 you are. But, unfortunately, many properties that use multi-
805 line telephone systems require callers to press nine, or some
806 other access code, before dialing 911, and this problem has
807 led to tragedy.

808 Unfortunately, the phone systems at many Federal
809 buildings are not configured to allow direct 911 dialing.
810 Recognizing this problem, Congress directed the General
811 Service Administration to issue a report on the 911
812 capabilities of telephone systems in all Federal buildings by

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813 November 18 of 2012. I recently wrote to GSA to inquire
814 about the status of that report, and I was disturbed to learn
815 through a press report just a couple of days at the GSA never
816 completed it.

817 The FCC's headquarters is one such Federal building
818 where direct 911 dialing does not work. But as Ranking
819 Member Eshoo recently observed, when it comes to emergency
820 calling, the FCC could be the example not only for the rest
821 of the Federal government, but for the entire country. I
822 commend her, and Congressman Shimkus, for their leadership on
823 this issue.

824 Chairman Walden, Ranking Member Eshoo, and members of
825 the Subcommittee, thank you once again for inviting me to
826 testify. I look forward to your questions, and to working
827 with you and your staffs in the days to come.

828 [The prepared statement of Mr. Pai follows:]

829 ***** INSERT 4 *****

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830 Mr. {Walden.} Thank you, Mr. Pai.

831 We now turn to the fifth Commissioner, or fourth

832 Commissioner and the Chairman, Commissioner O'Rielly. We are

833 delighted to have you here. Please go ahead with your full

834 testimony.

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835 ^STATEMENT OF MICHAEL O'RIELLY

836 } Mr. {O'Rielly.} Thank you, Mr. Chairman, Ranking Member
837 Eshoo, Ranking Member Pallone, and members of the
838 Subcommittee for the opportunity to deliver testimony today.
839 I have always held the Energy and Commerce Committee in the
840 highest regard, given my past involvement as a Congressional
841 staffer, with oversight hearings and responsibilities that
842 you have to face every day. I applaud the Subcommittee for
843 focusing on this issue of reauthorizing the FCC and improving
844 its process, and I recommit myself to being available of any
845 resource I can in the future.

846 In my time at the Commission, I have enjoyed the many
847 intellectual and policy challenges presented by the
848 innovative and ever challenging communications sector. It is
849 my goal to maintain friendships, even when we disagree, and
850 seek out opportunities where we can work together. To
851 provide a brief snapshot, I voted with the Chairman on
852 approximately 90 percent of all items. Unfortunately, this
853 percentage drops significantly, to approximately 62 percent,

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854 for the higher profile open meeting items.

855 One of the policies I have not been able to support is
856 the insertion of the Commission into every aspect of the
857 Internet. As you may have heard, the Commission pursued an
858 ends justified the means approach to subject broadband
859 providers to a new Title 2 regime without a shred of evidence
860 that it is even necessary, solely to check the boxes on a
861 partisan agenda. Even worse, the order punts authority to
862 FCC staff to review current and future Internet practices
863 under vague standards such as just and reasonable,
864 unreasonable interference or disadvantage, and reasonable
865 network management. This is a recipe for uncertainty for our
866 nation's broadband providers, and ultimately--providers.

867 Nonetheless, I continue to suggest creative ideas to
868 modernize the regulatory environment to reflect the current
869 marketplace, often through my public blog. I have written
870 extensively on the need to reform numerous outdated and
871 inappropriate Commission procedures. For instance, I have
872 advocated that any document to be considered at an open
873 meeting should be made publicly available on the Commission's
874 website at the same time it is circulated to the

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875 Commissioners, typically 3 weeks in advance. This fix is not
876 tied to a Net Neutrality item, although it provides a great
877 example why change is needed.

878 Under the current process, I meet with numerous outside
879 parties prior to an open meeting, but I am precluded from
880 telling them, for example, having read the document, that
881 their concerns are misguided, or already addressed. This
882 could be a huge waste of time and effort for everyone
883 involved, and allows some favored parties an unfair advantage
884 in the hunt for scarce and highly prized information nuggets.
885 The stated objections to this approach, presented under the
886 cloak of procedural law, are really grounded in resistance to
887 change, and concerns about resource management. In addition,
888 the Commission has a questionable post-adoption process that
889 deserves significant attention.

890 While I generally refrain from commenting on
891 legislation, I appreciate the ideas approved by this
892 Subcommittee, and ultimately the full House last Congress,
893 which would address a number of Commission practices that
894 keep the public out of the critical end stages of the
895 deliberative process. I believe that these proposed changes,

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896 as well as others, would improve the Commission--the
897 functionality of the Commission, and improve consumer access
898 to information.

899 In addition, I would turn the Subcommittee's attention
900 to a host of other Commission practices that I believe
901 reserve--deserve attention. The 48 hour notification that my
902 friend mentioned, testimony provided by outside witnesses at
903 the Commission open meetings, delegating vast authority to
904 staff to make critical decisions or set policy, the
905 Regulatory Flexibility Act and Paperwork Reduction Act
906 compliance, and accounting for the Enforcement Bureau's
907 assessed penalties.

908 Separately, I have also been outspoken on many
909 substantive issues, such as the need to free up spectrum
910 resources for wireless broadband, both licensed and
911 unlicensed. I look forward to working with my colleagues on
912 this issue, and so many more in the months ahead. I stand
913 ready to answer any questions you may have.

914 [The prepared statement of Mr. O'Rielly follows:]

915 ***** INSERT 5 *****

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916 Mr. {Walden.} Thank you, Commissioner. We appreciate
917 your input as well.

918 Mr. {O'Rielly.} Thank you.

919 Mr. {Walden.} We will recess now so that members can go
920 to the House floor and vote. Please return as promptly as
921 possible, as we will begin our questioning thereafter. We
922 stand in recess. We have two quick votes.

923 [Recess.]

924 Mr. {Walden.} Public and Commissioners to please resume
925 their places. We will get restarted here in the hearing in
926 just a second, when everybody gets settled.

927 All right. Thank you very much, and we will resume the
928 Subcommittee on Communications and Technology. We are now
929 into the questioning phase from the members of the Committee.
930 And, again, we want to thank all of you for your testimony
931 today, and the work that you do with all of us every day, so
932 we do appreciate that.

933 You know, throughout the debate on the Internet
934 proceeding, I was amused--there were some comparisons to what
935 former Chairman Kevin Martin did or didn't do with respect to

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936 his media ownership proceeding. Yes, he wrote a late in the
937 day op-ed, put out a public notice, testified before
938 Congress, but he didn't do a further notice of proposed
939 rulemaking, and that seems to be precisely why the Third
940 Circuit threw his newspaper/broadcast cross-ownership rule
941 out. Apparently--I guess Federal Appellate Judges don't
942 think much of op-eds, news releases, or even Congressional
943 testimony when it comes to satisfying APA notice and comment
944 requirements. They actually think the agency should go
945 through the procedural steps to make sure that all interested
946 parties, even those outside D.C. policy circles, get a real
947 opportunity to understand a significant shift in direction,
948 and have a reasonable amount of time to comment.

949 So I have got just a couple of questions, and perhaps I
950 will just direct them to Mr. Pai. How many of the
951 Commission's tentative conclusions found in the NPRM were
952 reversed in the final order?

953 Mr. {Pai.} Mr. Chairman, virtually all of them.

954 Mr. {Walden.} And how many of the Commission's--or--
955 well, what number paragraph in the NPRM says that they--that
956 the Commission planned to assert its authority over IP

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957 addressing? Was that in the NPRM?

958 Mr. {Pai.} It was not, sir.

959 Mr. {Walden.} And what number paragraph of the NPRM put
960 the public on notice that the Commission intended to redefine
961 the term public switched network?

962 Mr. {Pai.} There is no such paragraph.

963 Mr. {Walden.} That is what I was concerned about. I
964 didn't see that either. There are a number of issues that
965 are pending at the Commission, and I know Chairman has had a
966 lot on his plate. You all have, I get that. It is a rapidly
967 changing environment, and you have limited resources and all.
968 You--some of you have heard me talk about our little
969 applications for FM translators when I was in the radio
970 business, 10 years waiting, 3--30 days to satisfy the
971 requirements and all. And we get a lot of input here from
972 constituencies out across the country. And so I--just
973 because of limited time, has the Commission acted on the AM
974 modernization order yet?

975 Mr. {Pai.} Mr. Chairman, it has not yet, and the NPRM,
976 as you know, was adopted about a year and a half ago. The
977 record is complete, unanimous support from the public.

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978 Mr. {Walden.} There is another issue that came up, I
979 was speaking at a group, and it involves this issue to allow
980 small cable operators to operate as a buying group for the
981 purchase of content. Has that been acted on yet? That has
982 been pending for some time, I am told.

983 Mr. {Pai.} It has not. I voted on the NPRM about--I
984 want to say 3 years ago, but--

985 Mr. {Walden.} Three years ago?

986 Mr. {Pai.} If I recall, it was the summer of 2012, and,
987 you know, I am not sure what the status of it is. But I
988 stand ready to vote whenever it is teed up for a vote.

989 Mr. {Walden.} And my understanding is the Commission
990 has not yet issued its quadrennial review of media ownership
991 rules for 2010. I believe that is about 5 years ago, is that
992 correct?

993 Mr. {Pai.} Five years ago, but December of 2007 was the
994 last time the actual rules were adopted.

995 Mr. {Walden.} So it has been 8 years since--

996 Mr. {Pai.} Correct.

997 Mr. {Walden.} And isn't that a statutory obligation?

998 Mr. {Pai.} It is, and that is why I said we need to put

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999 the quad back in quadrennial.

1000 Mr. {Walden.} And what about the work on the Connect
1001 America Fund? Has the Commission finished its work on how
1002 Connect America will work in the mobile--support mobile?

1003 Mr. {Pai.} My understanding is not yet, but that work
1004 is underway.

1005 Mr. {Walden.} These are some of the things that trouble
1006 us, to say the least. We also had an issue come to our
1007 attention involving the Western Amateur Radio Friendship
1008 Association interference case, and maybe, Chairman, I could
1009 direct this to you. I understand it has been going on for
1010 quite a while, and it is quite disturbing. I have been told
1011 about some of the audio recordings, allegedly that there is
1012 this jamming that is included. Really awful, repulsive
1013 racial epithets, and threats against a female member. And it
1014 has come to our attention this has been sitting there for a
1015 while, where these operators are jamming and using really
1016 awful, awful language. Do you know the status of that? Can
1017 you give us some update on that? Anybody on the--

1018 Mr. {Wheeler.} I can give you an update on that, Mr.
1019 Chairman. I will--

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1020 Mr. {Walden.} If you could get back to us? Yeah, I
1021 think it is called the Western Amateur Radio Friendship
1022 Association interference case. And as a--I guess there are a
1023 couple of these that--involving pirate radio operators.
1024 Which leads into a discussion, and I am going to run out of
1025 time here, about the closing of the regional office.

1026 You know, when we had the CFO, I guess would be close,
1027 managing director here, it--we weren't really brought up to
1028 speed, or advance notice at least, of this notion that you
1029 are going to close these regional offices. Isn't that where
1030 this enforcement activity generally takes place?

1031 Mr. {Pai.} Mr. Chairman--

1032 Mr. {Walden.} That is fine, whoever. Commission Pai?

1033 Mr. {Pai.} Yes. Indeed, I think the field offices of
1034 the Enforcement Bureau perform one of the core functions,
1035 which is to protect the public interest by, among other
1036 things, resolving interference concerns, protecting public
1037 safety. And while I--while, obviously, I am still studying
1038 the issue, I have had a chance to meet with our union
1039 representatives. And I know members of this Committee, such
1040 as Congresswoman Clark, have recently expressed concern about

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1041 the field offices' function.

1042 Mr. {Walden.} Yeah.

1043 Mr. {Pai.} We want to make sure that, however it is
1044 reorganized, we protect the public interest.

1045 Mr. {Walden.} And I will quit here in a second, but we
1046 clearly don't have--it would leave only two offices, one in
1047 L.A. and San Francisco, nothing for the west coast, which I
1048 am hearing from various entities. And I was pleased--

1049 Mr. {Wheeler.} Can I at least--

1050 Mr. {Walden.} Sure.

1051 Mr. {Wheeler.} --on that? So there are multiple things
1052 going on there. First of all, we need to make sure that, in
1053 flat budgets for reduced budgets, that we are spending our
1054 money efficiently. When you have more trucks than you have
1055 agents, which is the reality that exists today--

1056 Mr. {Walden.} I would sell some trucks.

1057 Mr. {Wheeler.} --you have got to ask yourself the
1058 question, are you distributing resources as they ought to be
1059 distributed? When you have got one manager for every four
1060 people, you say to yourself, is this the right kind of
1061 structure?

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1062 Mr. {Walden.} I fully agree, and I understand--

1063 Mr. {Wheeler.} Then how do you fix that? That--

1064 Mr. {Walden.} So I--so what we would like to have is
1065 the backup for this, because I understand that wasn't what--

1066 Mr. {Wheeler.} Happy to.

1067 Mr. {Walden.} --and I think we have a request pending
1068 for that, and we are told--

1069 Mr. {Wheeler.} Yes.

1070 Mr. {Walden.} --well, I don't know whether we were told
1071 we can't get it or whatever, but we would like to see--

1072 Mr. {Wheeler.} No, I think you have--if my
1073 understanding is correct, you asked for the consultant's
1074 report. The final consultant's report is--and--

1075 Mr. {Walden.} Yes.

1076 Mr. {Wheeler.} --you will have it when I have it. I
1077 have seen a draft of the--

1078 Mr. {Walden.} Okay.

1079 Mr. {Wheeler.} --structures, but have also--

1080 Mr. {Walden.} All right.

1081 Mr. {Wheeler.} --sent it back for some more detailed
1082 information.

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1083 Mr. {Walden.} All right.

1084 Mr. {Wheeler.} You will have that.

1085 Mr. {Walden.} Thank you.

1086 Mr. {Wheeler.} You will--

1087 Mr. {Walden.} I have far exceeded my time. I

1088 appreciate the indulgence, Committee. I recognize the

1089 gentle lady from California.

1090 Ms. {Eshoo.} It is okay, because I will ask you for the

1091 same. Thank you, Mr. Chairman. Welcome again to the entire

1092 Commission. It is obvious that, you know, that we have

1093 different takes on the issues, but I sincerely thank you for

1094 your public service. And, to Commissioner O'Rielly, this is

1095 a graduate of this Committee. He--you were here under

1096 Chairman Bliley, whom I had the pleasure of working with, and

1097 getting a lot of things done together, so welcome back.

1098 Commissioner Pai, thank you for your advocacy on the 911

1099 issues. You know that the mother and father, the mommy and

1100 daddy of this are right here at the Committee. Congressman

1101 Shimkus and myself founded that caucus, and then helped--

1102 Mr. {Pai.} This--

1103 Ms. {Eshoo.} Well, we did. What is so funny about

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1104 that? I think it is terrific. And it was when no one was
1105 paying attention to those issues, but it was before our
1106 country was attacked. Commissioner Rosenworcel, thank you
1107 for your clarity, and your passion when you speak. And
1108 Commissioner Clyburn, go get them. Just go get them. And to
1109 the distinguished Chairman, I don't know how many people
1110 realize this about the Chairman, but he is a man of history,
1111 and so I want to pick on the vein of history. Because I
1112 think it is very important for us--around here, life is
1113 incremental. It is incremental anyway. God gives us life a
1114 day at a time, so those are increments. But I think what I
1115 would like to do is to have you, and I want to say a few
1116 things about it first, to widen the lens of what is before us
1117 today, in terms of history.

1118 Now, the majority has defined, or tries to define, Net
1119 Neutrality with some very scary things. They call it
1120 railroad regulation, billions of dollars in taxes, new taxes
1121 are going to be levied, no investment is going to be made,
1122 the market is going to be chilled. In terms of history, we
1123 have been through the Stone Age, the Bronze Age, the Iron
1124 Age, the Age of Invention, the Industrial Revolution, the

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1125 Technology Age, and now the Information Age.

1126 And I think why this is difficult for some to actually
1127 see--and when you see something, you either get it or you
1128 miss it. We are at a moment in our nation's history where we
1129 are moving to a new age. And I would say that those that are
1130 on the other side of this issue are back in an older age,
1131 where you have huge corporations, gatekeepers, duopolies.
1132 That is not what the Internet is all about. So what I would
1133 like you to--as a historian, to address what this moment is,
1134 and place it on the stage of history.

1135 Mr. {Wheeler.} Thank you, Ms. Eshoo. I am--my--you get
1136 me started on history, and this--we--

1137 Ms. {Eshoo.} Well, we don't have very much time.

1138 Mr. {Wheeler.} We could--

1139 Ms. {Eshoo.} I have got a minute and 40 seconds left.
1140 Yeah.

1141 Mr. {Wheeler.} I think that we are living through the
1142 fourth great network revolution in history.

1143 Ms. {Eshoo.} Um-hum.

1144 Mr. {Wheeler.} And if you look at those, what you will
1145 find is that every single time it was the end of Western

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1146 civilization--

1147 Ms. {Eshoo.} Um-hum.

1148 Mr. {Wheeler.} --as we know it that--

1149 Ms. {Eshoo.} Um-hum.

1150 Mr. {Wheeler.} --was being--people who didn't want to
1151 embrace the change was like, this is awful. I have hanging
1152 in my office a poster from 1839 that was put out by people
1153 who were against the interconnection of railroads. And it
1154 was all patterned around, women and children are going to be
1155 hurt by this. It was paid for by all the people whose
1156 businesses would be affected because the railroads would
1157 interconnect. Yet that interconnection drove the 19th and
1158 20th century.

1159 We always hear these imaginary horribles about the awful
1160 things that are going to result, and we also always end up
1161 saying, as a society, you know, we need rules. We need to
1162 have a known set of rules. We need to have a referee on the
1163 field who can throw the flag. And that is the process that
1164 we have gone through since time immemorial, every time there
1165 is a new network revolution. And we have the privilege of
1166 living through that, and trying to deal with those realities

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1167 today.

1168 Ms. {Eshoo.} Well, I think that that is magnificent in
1169 a short period of time. I wish I could question--I have
1170 questions for all of you. I am going to submit them to you.
1171 And, with that, Mr. Chairman, I would like to ask unanimous
1172 consent that Congressman Cardenas's questions be submitted
1173 for the record. He is a guest of our Subcommittee today--

1174 Mr. {Latta.} [Presiding] Without objection.

1175 Ms. {Eshoo.} --and demonstrates his great interest in
1176 the issues at hand. And another from many, many--I don't
1177 know, maybe 50 racial justice and civil rights organizations
1178 who have addressed a letter to the Chairman and myself in
1179 support of Net Neutrality.

1180 Mr. {Latta.} Without objection.

1181 [The information follows:]

1182 ***** COMMITTEE INSERT *****

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|

1183 Ms. {Eshoo.} Thank you, Mr. Chairman.

1184 Mr. {Latta.} The lady yields back. The next questioner
1185 will be the gentlelady from Tennessee, Ms. Blackburn, for 5
1186 minutes.

1187 Mrs. {Blackburn.} Thank you, Mr. Chairman, I appreciate
1188 that. Chairman Wheeler, I will just add my viewpoint of,
1189 when you look at our economic revolutions in society, whether
1190 it was the Agricultural or the Industrial, the Technology,
1191 the Information, successful revolutions are about freeing up,
1192 not restricting. And what we are looking at right now is the
1193 vantage point from--that you all are coming from is taking
1194 away and restricting, not freeing up.

1195 Chairman--Mr. O'Rielly--Commissioner O'Rielly, let me
1196 come to you for a moment and talk taxes. You and I penned an
1197 op-ed back in July, calling for the need for a cost benefit
1198 analysis, and really looking at what had been said by PPI,
1199 Free Pressed, Professor Farber, and, you know, what they
1200 thought would happen with taxes. New York Times agreed with
1201 that. I want to hear from you a little bit, 30 seconds'
1202 worth, about why we should have had a cost benefit analysis,

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1203 and what you think the outlook is.

1204 Mr. {O'Rielly.} So I believe that we should do better
1205 at the FCC on cost benefit analysis, and this is a perfect
1206 case. I think the--

1207 Mrs. {Blackburn.} None was done.

1208 Mr. {O'Rielly.} This is a woeful job that was done in
1209 this instance. We are talking about hypothetical harms and
1210 real world impacts on business.

1211 Mrs. {Blackburn.} Yeah.

1212 Mr. {O'Rielly.} But in terms of your question on taxes,
1213 I would say--I would switch it more to taxes and fees,
1214 because the question has been on universal fees, and what
1215 happens in universal service going forward? The Chairman has
1216 been very clear that the item in and of itself before us does
1217 not impose universal service. That is something we are going
1218 to punt for about a month or two, and we are waiting for the
1219 joint board--

1220 Mrs. {Blackburn.} Okay.

1221 Mr. {O'Rielly.} --this is something that has to go
1222 forward. We are going to see those fees in the months ahead.

1223 Mrs. {Blackburn.} Okay. Commissioner Pai, you gave an

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1224 interview this week and stated that there was going to be a
1225 tax on broadband, and the Commission is waiting for a joint
1226 board to decide April 7 how large that tax is going to be.

1227 You want to expand on that?

1228 Mr. {Pai.} Thank you for the question, Congresswoman.

1229 The order suggests that the joint board is going to make a
1230 recommendation on April 7. The order also says that a
1231 ``short deadline'' might be appropriate. So at some point
1232 very soon the joint board is going to recommend whether and
1233 how to increase these fees that are--

1234 Mrs. {Blackburn.} Okay.

1235 Mr. {Pai.} --going to be assessed on broadband for the
1236 first time. In addition, it is not just the USF fees, as
1237 Commissioner O'Rielly has pointed out. It is also state and
1238 local fees. For example, state property taxes. Localities
1239 also impose taxes. The District of Columbia imposes an 11
1240 percent tax on gross receipts. These are all fees that are
1241 going to have to be paid by someone. It is going to be paid
1242 by the consumer at the--

1243 Mrs. {Blackburn.} Okay. Chairman Wheeler, rate
1244 regulation. I read something from Professor Lyons at Boston

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1245 College, and he said Title 2 is fundamentally a regime for
1246 regulation. And then we are looking at another thing which
1247 he said about a person, which might include a large company,
1248 can file a complaint with the FCC under Section 208 if they
1249 don't think their charges are just and reasonable.

1250 So you have denied that the FCC is going to get into
1251 rate regulation through this Net Neutrality order, but--I
1252 understand that the order does not explicitly state that the
1253 FCC will be regulating rates on the date the rules are
1254 effective, but what about the first time that a complaint is
1255 filed with the FCC under Section 208 because a party feels
1256 that their rates are not just and reasonable? What is the
1257 remedy going to be, and isn't it true that the FCC will be
1258 engaged thereby in de fact rate regulation?

1259 Mr. {Wheeler.} So--thank you, Congresswoman. I hope
1260 somebody files that kind of a complaint. As you know, there
1261 hasn't been a complaint filed for 22 years in the wireless
1262 voice space, despite the fact that this authority--same kind
1263 of authority exists. If somebody files that kind of a
1264 complaint, and I don't want to prejudice a decision, but I
1265 will assure you that there will be a process that will look

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1266 at that, and that will develop, I would hope, a record that
1267 would make it very clear that the FCC is not in the consumer
1268 rate regulation business.

1269 Mrs. {Blackburn.} Mr. Chairman, don't you think what
1270 you just said about there hasn't been a complaint filed in
1271 that space for 22 years proves the point that the Internet is
1272 not broken, this space is not broken, and it does not need
1273 your oversight and guidance?

1274 Mr. {Wheeler.} No, that is--was--I was referring to
1275 wireless voice, not to broadband. And--but I think the key
1276 thing is, you know, you said in your--

1277 Mrs. {Blackburn.} Okay, let me cut you off there. I
1278 have got one question for Commissioner Clyburn. And I want
1279 to go to the Lifeline and USAC Program--

1280 Ms. {Clyburn.} Um-hum.

1281 Mrs. {Blackburn.} --with you. You have advocated
1282 restructuring and rebooting that program, and you have had
1283 several supply-side reforms, and did eliminate incentives for
1284 waste, fraud, and abuse. And the FCC's Inspector General, as
1285 you know, has performed a review of the verification process
1286 on this, and recommended that the FCC may improve the

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1287 effectiveness of the warnings that it gives subscribers, and
1288 reduce the level of fraud in that program. We have had
1289 hearings on this, and I want to work with you on it.

1290 Ms. {Clyburn.} Thank you.

1291 Mrs. {Blackburn.} And is it true that, under the
1292 current system, the penalty for a subscriber defrauding the
1293 program by having multiple phones is to lose the subsidy for
1294 that--for those phones, all but one? They get to keep one,
1295 and then the carrier is prosecuted. And I will tell you why
1296 your answer is important. You all are talking about getting
1297 into broadband, and then--in addition to the phones, and you
1298 have got to reform all of this before you talk about
1299 expanding.

1300 Ms. {Clyburn.} I totally agree. And one of the reasons
1301 why I set out five points for reform is because I recognize
1302 two things. One, we need to eliminate all incentives, and
1303 all existing waste, fraud, and those abuses. We need to do
1304 that, and the key way to do that is to get those providers
1305 out of the certification business. They will no longer
1306 greenlight customers--

1307 Mrs. {Blackburn.} We need to prosecute the user--

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1308 Ms. {Clyburn.} And--

1309 Mrs. {Blackburn.} --not the--

1310 Ms. {Clyburn.} And we have--

1311 Mrs. {Blackburn.} --you know, not the--

1312 Ms. {Clyburn.} Under--with guidance from my colleagues,

1313 and while I was acting Chair--

1314 Mrs. {Blackburn.} I yield back. My time is expired.

1315 Ms. {Clyburn.} I am sorry.

1316 Mrs. {Blackburn.} Thank you, Mr. Chair.

1317 Mr. {Latta.} Thank you. The gentlelady yields back.

1318 The Chair now recognizes the gentleman from New Jersey, the

1319 Ranking Member, for 5 minutes.

1320 Mr. {Pallone.} Thank you, Mr. Chairman. I just want

1321 the Commissioners to know, my district was ravaged by

1322 Hurricane Sandy in 2012, and one of the most concerning

1323 impacts of the storm was the loss of communications services.

1324 A lot of people couldn't call their friends, their family,

1325 and 40 percent of our cell towers were knocked out in the

1326 state. A lot of people there basically learned the hard way

1327 that when the power lines go down, communications services go

1328 down along with electricity.

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1329 So I wanted to ask Commissioner Rosenworcel, I know that
1330 you toured New Jersey after Sandy, and I asked what lessons
1331 did you learn about how to prevent these kinds of
1332 communication failures during future emergencies?

1333 Ms. {Rosenworcel.} Thank you for the question. I did
1334 tour the New Jersey shore with public safety officials
1335 following Hurricane Sandy, and I won't long forget what I
1336 saw. A lot of broken homes and businesses, and cars and
1337 boulders strewn this way and that, and piles of sand many
1338 blocks from where the ocean is because wind and water had
1339 delivered it there.

1340 But I also saw a lot of people were very committed to
1341 rebuilding, and I learned a lot about how communications
1342 succeeded and failed during that storm. What stuck with me
1343 was that many of the wireless towers in the affected areas
1344 went out. Now, throughout the 10 states that were impacted
1345 by the storm, about a quarter of the wireless cell towers
1346 went out of service. In New Jersey, as you mentioned, it was
1347 about 40 percent. But I would bet the number was
1348 significantly higher on the New Jersey shore.

1349 And in the aftermath of learning those things, we were

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1350 able, at the agency, to start a rulemaking to ask, well, how
1351 can we fix this going forward? Because we know that 40
1352 percent of all households in this country are wireless only,
1353 and in the middle of a storm, at the very least, they should
1354 be able to connect and get the help they need.

1355 So we issued a rulemaking in 2013, and among the issues
1356 discussed in that was the question of how much backup power
1357 is necessary at cell sites, and how much of a reporting duty
1358 our wireless carriers should have when these sites go out of
1359 service. I hope that we can actually turn around and deliver
1360 a decision on that in short order because we don't know when
1361 the next storm is going to hit, but I am pretty sure people
1362 are going to try to use communications when it does.

1363 Mr. {Pallone.} Well, thank you. Let me ask Chairman
1364 Wheeler, I understand the FCC, as was mentioned, considering--
1365 --is considering updates to its rules to ensure that consumers
1366 have access to essential communications during disasters.
1367 Can you commit to updating those rules this year?

1368 Mr. {Wheeler.} I--absolutely. We are--the issue that
1369 Commissioner Rosenworcel raised is a paramount issue. There
1370 are broader issues too, and that is the whole issue of copper

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1371 retirement, which got forced by Sandy, and how do we make
1372 sure that, when the power goes down, and you are relying on
1373 fiber, which doesn't carry its own power, that you have got
1374 the ability to make a 911 call?

1375 We have a rulemaking going on that literally just closed
1376 last week. All of these issues interrelate, but first and
1377 foremost in our responsibility, which was why I focused on
1378 the 911 location issue in my statement, first and foremost in
1379 our responsibility is public safety.

1380 Mr. {Pallone.} I wanted to ask you about the designated
1381 entity rules, Mr. Chairman. Obviously small businesses are
1382 so important in my state and elsewhere, and I just don't
1383 think small businesses can survive in capital intensive
1384 industries, like telecommunications, without some, you know,
1385 smart public policy. I am concerned that the current rules
1386 for small businesses still contain Bush era loopholes that
1387 allow large corporations to game the system, and so I
1388 actually introduced today the Small Business Access to
1389 Spectrum Act to update the FCC's rules, and give small
1390 businesses a fair shot at accessing the nation's airwaves.

1391 So I just--I will start--I mean, I--well, there is not

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1392 much time left, but I will start with Chairman Wheeler, if
1393 the others want to chime in. Would you commit to working to
1394 maintain a robust designated entity program focused on
1395 genuine small businesses?

1396 Mr. {Wheeler.} You wrote us and asked us that, and I
1397 replied yes, we will, and yes, we are. We have had a
1398 rulemaking going on, and we will issue shortly a public
1399 notice, making sure that it is broadened out, the discussion
1400 is broadened out, and the record is built on the question of
1401 the recent AWS-3 auction, and some of the very legitimate
1402 concerns that have been raised about that.

1403 The thing that is frustrating to me, Congressman--you
1404 say yes, these were Bush era rules, they haven't been
1405 reviewed since then, and it is time to review them. And what
1406 is really upsetting is the way in which slick lawyers come in
1407 and take advantage of rules that this committee--I was in the
1408 room, in this room, when this Committee created designated
1409 entities. And, as you say, the world changes dramatically in
1410 how a designated entity can be structured and can play in now
1411 what is a big market, whereas before it was a much smaller
1412 market.

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1413 Our rules have not kept up, but the slick lawyers sure
1414 have figured out how to do it. And we want to make sure,
1415 whether it is in this, or whether it is in slick lawyers
1416 playing around with broadcast licenses, that there is no way
1417 that we keep our rules current. And we are going to do that
1418 on this issue, and we are going to make sure--the commitment
1419 that I will ironclad give you, sir, is that we want to make
1420 sure that we have a new set of DE rules in place before the
1421 spectrum auction that takes place early next year.

1422 Mr. {Pallone.} Thank you.

1423 Mr. {Latta.} Gentleman's time is expired, and yields
1424 back. The Chair now recognizes himself for 5 minutes.
1425 Again, thanks very much to the Commissioners for being here
1426 today.

1427 Commissioner Pai, in January the FCC voted to update the
1428 broadband benchmark speeds to 25 Megabits per second for
1429 downloads and three Megabits per second for uploads. The
1430 speeds had previously been set at four Megabits per second
1431 and one Megabits per second.

1432 While I understand the need to update the broadband
1433 span--speeds, I am kind of curious as to the process the

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1434 Commission chose the speeds of 25 Megabits and the three
1435 Megabits. It seems, to an outside observer, that an
1436 arbitrary number was picked, especially considering that
1437 recently the Commission voted to spend \$10.8 billion over the
1438 next 6 years through the Connect America Fund to employ 10
1439 Megabits per second broadband. According to the Commission's
1440 new benchmark, 10 Megabits per second is going to no longer
1441 even be considered broadband.

1442 Can you walk us through how the agency came to these new
1443 benchmarks? And then also if you could follow up--and how
1444 does it still plan to spend over \$10 billion on those 10
1445 Megabits per second deployment in light of that new
1446 definition?

1447 Mr. {Pai.} Thank you for the question, Mr. Chairman. I
1448 think the problem is that the agency has viewed each of these
1449 issues in a vacuum, and so, in December, when we were talking
1450 about rural broadband deployment, we agreed to spend, over
1451 the course of a decade, billions of dollars to establish what
1452 we considered to be broadband at the time, which was 10
1453 Megabits per second. Flash forward 1 month, all of a sudden
1454 we learn that actually isn't broadband. Broadband is 25

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1455 Megabits per second, under which standard there is no such
1456 thing as mobile broadband, because even the fastest LG--4G
1457 LTE connection can't get you to 25 Megabits per second.
1458 Flash forward 1 month more, all of a sudden we learn that
1459 there is such a thing as mobile broadband, and it is going to
1460 be classified as a Title 2 service.

1461 And I think the schizophrenia that we have seen over the
1462 last several months from the Commission as to what is
1463 broadband illustrates the basic point. We need intellectual
1464 consistency that is grounded in the facts. And the facts in
1465 this case basically stem from the question, what do people
1466 use broadband for? And by and large, if you look at my
1467 statement in--on--with respect to the January order, I was
1468 trying to look at patterns of usage. And obviously there are
1469 going to be some folks who use the Internet, you know, for
1470 very high bandwidth applications, others who use it for less.

1471 The goal of the FCC shouldn't be to artificially pick a
1472 number so that it can declare that the broadband marketplace
1473 is uncompetitive, and thus justify regulation. It should be
1474 to try to tailor, with some forward thinking, what broadband
1475 means in the current era. And that is why I think the

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1476 problem with the 25 Megabits per seconds standard, which I
1477 forecast would be jettisoned soon, I didn't know it would be
1478 1 month from then, is that it was, you know, simply based on,
1479 I think, you know, more press release--or grabbing--grasping
1480 for press headlines, as opposed to what actually was in the
1481 record.

1482 Mr. {Wheeler.} Can I--

1483 Mr. {Latta.} Let me follow up. I am also concerned
1484 that this new threshold would reduce the broadband investment
1485 in rural areas. You know, if you look at my district, and
1486 you have seen it, is that it could ultimately deter the
1487 competitive entry into the broadband market. Do you foresee
1488 any of these benchmark speeds unfairly impacting consumers
1489 and businesses in the rural areas?

1490 Mr. {Pai.} That is a great question, Congressman, and
1491 coming from a rural area myself, that is something that I
1492 take very personally. The FCC heard from a great number of
1493 small providers, and that is service providers in rural
1494 areas, who told us that Title 2, ironically, would take us in
1495 the opposite direction of getting more competition. A lot of
1496 folks in rural areas, if they have an option, it is going to

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1497 be from one of these smaller providers.

1498 And so we heard, for instance, from 43 municipal
1499 broadband providers, who said that Title 2 regulation will
1500 undermine our business model that supports our network, raise
1501 our costs, and hinder our ability to further deploy
1502 broadband. We even heard from 24 small broadband providers
1503 on February 17, who said that Title 2 will badly strain our
1504 limited resources, because we have no in-house attorneys, and
1505 no budget line items for council.

1506 And those ISPs, by the way, include very small ISPs,
1507 including one called Main Street Broadband that serves four
1508 customers in Cannon Falls. The notion that Main Street
1509 Broadband in Cannon Falls exerts some kind of anti-
1510 competitive monopoly vis-à-vis edge providers like Netflix,
1511 Google, and Facebook is absurd, but I think that is part of
1512 the reason why the Obama Administration's Small Business
1513 Administration was exactly on point when it urged the FCC
1514 last year to take a careful look at how these rules would
1515 affect small businesses, because, ultimately, that is where
1516 the digital divide is going to open up. It is for the rural
1517 Americans, who have a tough enough time getting a broadband

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1518 option as it is.

1519 Mr. {Latta.} Well, thank you. I would like to ask the
1520 question now--the Chairman mentioned, in his opening
1521 statement, about the task force starting the agency process,
1522 and I am just curious, Commissioner Clyburn, when did you
1523 find out about the task force?

1524 Ms. {Clyburn.} When did I find out about the actual
1525 task force? To--best of my knowledge, last quarter of last
1526 year. It issued a report in February. There was a very
1527 interactive process. They asked each office to weigh in, and
1528 that is when--subject to check. My memory is--sometimes it
1529 is challenged, but last quarter of last year, with a
1530 February--

1531 Mr. {Latta.} All right. Thank you.

1532 Ms. {Clyburn.} Thank you.

1533 Mr. {Latta.} Commissioner Rosenworcel? Excuse me.

1534 Ms. {Rosenworcel.} I believe they issued a report
1535 sometime last year. I would have to go back and check.

1536 Mr. {Latta.} Commissioner Pai?

1537 Mr. {Pai.} If you are referring to the task force that
1538 the Chairman announced this morning, is that the one?

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1539 Mr. {Latta.} Right, the--he asked about--that he spoke
1540 about in his opening testimony.

1541 Mr. {Pai.} Then I learned about it this morning, when
1542 he announced it.

1543 Mr. {Latta.} Commissioner O'Rielly?

1544 Mr. {O'Rielly.} Well, I appreciate the kind words from
1545 the Chairman on the ideas that I put forward. I just learned
1546 about it this morning.

1547 Mr. {Latta.} Thank you. My time has expired, and the
1548 Chair now recognizes Mr. Doyle.

1549 Mr. {Doyle.} Thank you, Mr. Chairman. I want to take a
1550 moment and recognize, along with my colleague, Ms. Eshoo, the
1551 historic step forward the Commission has made in its Open
1552 Internet Order, and the order on municipal broadband. You
1553 know, taken together, these actions by the Commission
1554 represent incredible wins for consumers, entrepreneurs, and
1555 millions of Americans who called on the Commission to take
1556 action. Innovators shouldn't need to ask permission, or pay
1557 gatekeepers to deploy new products and services, and the
1558 FCC's actions will ensure that this remains true.

1559 And I want to point out one more thing too. My

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1560 colleagues on the other side of the aisle have been talking
1561 about Title 2 like it is the end of the world. Well, up
1562 until 2002, the Internet was treated as a Title 2 service.
1563 It was a Republican FCC Chairman, and a Republican
1564 Commission, that acted to re-classify the Internet as an
1565 information service. I see this rule as the FCC finally
1566 setting things straight.

1567 Chairman Wheeler, last September you testified before
1568 the House Small Business Committee. You were asked about Net
1569 Neutrality proceedings, and you stated Title 2 is on the
1570 table. Now, my Republican colleagues are making the
1571 allegation that you only started looking at Title 2 as a
1572 result of White House interference in November of 2014. Was
1573 the FCC considering using its Title 2 authority before
1574 President Obama joined millions of Americans in calling on
1575 the FCC to take that course of action?

1576 Mr. {Wheeler.} Yes, sir, and the Small Business
1577 Committee that you cite there was one member who was saying
1578 to me, don't you dare do Title 2, and I was saying we are
1579 seriously considering Title 2. And there was one member who
1580 was saying, we want you to do Title 2, and I said, yes, we

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1581 are considering doing Title II.

1582 Mr. {Doyle.} Thank you, Mr. Chairman. Let me ask you
1583 another question. The Open Internet Order makes great
1584 strides to protect consumers and innovators, but in
1585 particular by including interconnection and protections for
1586 consumer privacy through Section 222 in this order. I want
1587 to get your commitment that the Commission will move quickly
1588 to complete the rulemaking on Section 222, and ensure that
1589 the Commission has rules in place to protect consumer privacy
1590 online. And I would also like your commitment that the
1591 Commission will take seriously this new responsibility on
1592 interconnection. With all of the recent announcements by
1593 over the top providers releasing new streaming video
1594 services, I think it is more important than ever that
1595 gatekeepers do not restrict these new services access to
1596 consumers.

1597 And also, Mr. Chairman, while I have got you here, I
1598 would be remiss if I didn't take the opportunity to mention
1599 special access. I understand that the data collection
1600 component is complete. I would encourage you to move forward
1601 as quickly as possible to complete analysis of that data, and

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1602 to take action to address any harms taking place. Fixing
1603 this situation is a great opportunity to improve competition
1604 and economic growth across this country.

1605 Mr. {Wheeler.} So let me see if I can go through it
1606 one, two, three. One, on privacy, absolutely, sir, and it
1607 starts next month, when we are holding the workshop that gets
1608 the parties together and says, okay, let us talk specifically
1609 about how Section 222 exists in this new reality. Next
1610 month, and then we move after that.

1611 Secondly, with regard to interconnection, I could not
1612 agree more with your point about how over the top services
1613 are revolutionizing, and are going to be the consumers'
1614 savior. I sit before this Committee before, and other
1615 committees, and it is a bipartisan belief that something has
1616 to be done about cable prices, and that starts with
1617 alternatives. And those alternatives are delivered over the
1618 top, and those alternatives are delivered via the Internet.
1619 And that is why the Internet has to be open, so that there
1620 are competitive alternatives for people. And I got myself
1621 so--

1622 Mr. {Doyle.} Special access.

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1623 Mr. {Wheeler.} Special access. My hair was not gray
1624 when I first started asking the Commission about special
1625 access. Special access. Actually, we are in the process--we
1626 have just gotten permission, and have begun the data
1627 collection on special access. Special access is an
1628 incredibly important issue that is particularly essential to
1629 those who are bringing competition to communications. And my
1630 goal is that we are going to have this whole special access
1631 issue on the table and dealt with before the end of the year.

1632 Mr. {Doyle.} Thank you, and one last thing. And I--
1633 this question, it is on the AWS-3 auction. It raised \$45
1634 billion in revenue, meeting all the funding targets,
1635 including fully funding First Net and next gen 911. You
1636 know, considering this new reality, and the massive appetite
1637 for spectrum by wireless carriers, haven't--hasn't the FCC
1638 been liberated from these fully funded objections, and its
1639 reconsideration of its previous decision on the size of the
1640 spectrum reserve, and the incentive auction?

1641 Mr. {Wheeler.} Well, that is one of the issues that we
1642 are going to be addressing again as we put together the final
1643 rules for the auction. I understand your point, that we have

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1644 now lived up to our committed obligations, and this is an
1645 issue that we will be dealing with in the next couple of
1646 months.

1647 Mr. {Doyle.} Commissioner Clyburn, Rosenworcel, do you
1648 have comments on that too, very briefly?

1649 Ms. {Clyburn.} I--one of the things that I joke about,
1650 and this is a positive joke, is that all predictions were
1651 wrong, that--

1652 Ms. {Rosenworcel.} Right.

1653 Ms. {Clyburn.} --two and a half, three times the amount
1654 of money that was predicted was raised. You were right to
1655 say that we have met our obligations, and we will continue
1656 through other auctions, including incentive auction, to
1657 deliver spectrum to the American people.

1658 Mr. {Doyle.} Yes.

1659 Ms. {Rosenworcel.} I agree with the Chairman. We will
1660 be looking at this in the next few months. It is important
1661 we follow the statute, and it is also important that we make
1662 sure that everybody has some opportunities to bid in this
1663 upcoming auction, and that no community--single player walks
1664 away with all the spectrum.

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1665 Mr. {Doyle.} All right. Mr. Chairman, I appreciate
1666 your indulgence, then. I would just like to include in the
1667 record this letter from the Public Interest Spectrum
1668 Coalition in regards to the incentive auction.

1669 Mr. {Latta.} Without objection.

1670 Mr. {Doyle.} Thank you. I yield back.

1671 Mr. {Latta.} The yields back. The gentleman's time has
1672 expired. The Chair now recognizes the gentleman from
1673 Illinois, Mr. Shimkus, for 5 minutes.

1674 Mr. {Shimkus.} Thank you, Mr. Chairman. Welcome to the
1675 Commissioners. It is great to have you here. The--I want to
1676 be careful in--because history does tell us a lot of things.
1677 I was fortunate to be on the Committee during September 11.
1678 Chairman Upton of the Subcommittee, at that time, took us to
1679 Ground Zero because we had the Verizon switching station
1680 right across the street. And what I learned in walking
1681 through that process, it was really only a big company that
1682 could get Wall Street back online after that catastrophic
1683 attack. And it is true. I mean, I have still got pictures
1684 of it. The basement was flooded. You had wires going up to
1685 the third floor. You had individuals hand tying the copper

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1686 lines. So as we talk about our great country, and
1687 competition, and large entities, sometimes large entities are
1688 very important in the security of this country.

1689 The--and I want to also--thanks for kind words on 911.
1690 It is really a team effort. Anna and I have been fortunate
1691 to work on this, but it is a process that you have got to
1692 stay vigilant on, as, Chairman Wheeler, you mentioned. First
1693 we dealt with 911 over cell, then really went to location,
1694 then we went to voice over Internet. Now we are back into
1695 location, because I am being told by some PSAPs that there is
1696 really too many right now, and that they maybe should
1697 centralize those. Any comments, briefly, if you can?

1698 Mr. {Wheeler.} Well, you know, one of the interesting
1699 things that was in your bill that you and Ms. Eshoo had was--
1700 you asked states to voluntarily have state level coordination
1701 of their PSAPs, and by and large, that has been observed in
1702 the breach. It hasn't existed. I mean, the situation I
1703 talked about in Georgia, there is no state level coordination
1704 in Georgia. And this is--introducing mobile means that the
1705 people on the right side and the people on the left side of
1706 the map need to be able to be talking to each other. They

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1707 need to have similar standards.

1708 Let me give you just one more--you ticked off some of
1709 the issues, in terms of the technologies. The other is text
1710 to 911, which we have required carriers to do, and when--of
1711 the 6,500 PSAPs in the country, 200 have implemented it. And
1712 that means that America's deaf and hard of hearing community,
1713 which, thanks to the unanimous action of this Commission, has
1714 text to 911 capabilities provided by carriers. They can text
1715 away, and there is nobody who hears it.

1716 Mr. {Shimkus.} And I guess the other thing that we also
1717 didn't talk about was the testing that you did on the
1718 elevation--I would say the elevation--

1719 Mr. {Wheeler.} Yes, sir. The ability to get the Y
1720 coordinate.

1721 Mr. {Shimkus.} --stuff like that, and--very excited
1722 about that opportunity. Of course, I don't have much high
1723 rises--

1724 Mr. {Wheeler.} The Z coordinate.

1725 Mr. {Shimkus.} --in--

1726 Mr. {Wheeler.} Yeah.

1727 Mr. {Shimkus.} --in my Congressional district, but I

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1728 know it is probably important in large metropolitan areas.

1729 Give me some comfort--my concern with the rule being

1730 presented is, one, litigation. Two, I have this concern

1731 about how do you incentivize build-out of the pipes when it

1732 looks like you are moving back to re-regulation?

1733 Mr. {Wheeler.} Yeah.

1734 Mr. {Shimkus.} And that, if you are re-regulating, then

1735 you have to have a fee. That is where this fee debate comes

1736 from. So how do you get a fee to help build out? And maybe

1737 I am a simplistic view, but--and then the other question I

1738 have is really about the Megabit debate, 10, 25. How do you

1739 encourage in this new venue, and then I will end, and you

1740 all--if you all can--how--the individual consumer decide what

1741 speed they want versus being forced to buy a speed which they

1742 will never do--use, like my mother-in-law?

1743 Mr. {Wheeler.} Right. It is interesting, Congressman,

1744 everybody cites their mother or their mother-in-law in that

1745 example. And the--there is nothing in here that regulates or

1746 established tariffs for consumer services--for the rates for

1747 consumer services. The--there is nothing in here that says

1748 that a company can't have multiple levels of services. So

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1749 your mother-in-law gets e-mail only, you know, and the person

1750 next--

1751 Mr. {Shimkus.} And will pay for that--

1752 Mr. {Wheeler.} And will pay--

1753 Mr. {Shimkus.} --simple service--

1754 Mr. {Wheeler.} --for that kind of--

1755 Mr. {Shimkus.} --versus what--

1756 Mr. {Wheeler.} And the person next door wants--

1757 Mr. {Shimkus.} Just so I can have a contrary debate,

1758 can I have Commissioner Pai or Commissioner O'Rielly address

1759 those before I run out of time, which I am about ready to do?

1760 Mr. {Pai.} Well, a couple different issues,

1761 Congressman. One, I think the order explicitly opens the

1762 door to ex-post rate regulation. Anyone can file a complaint

1763 under Section 208, either with the Commission, or with any

1764 Federal Court across the country, and that Commission or

1765 Court will have to adjudicate whether or not the rate is just

1766 or reasonable. And the fact that, while on the surface you

1767 might allow for differential prices based on different

1768 services, nonetheless it is ultimately up to the caprice of

1769 any given Commission or Court to decide after the fact

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1770 whether the rate is just and reasonable, and that is the
1771 essence of rate regulation.

1772 Additionally, you pointed out the incentive--or the
1773 effect that this would have on deployment. You have heard
1774 from companies that are--that were responsible for the
1775 largest capital expenditures in our country when it comes to
1776 broadband, and companies that represent very small market
1777 areas, and they have told us that the impact of this kind of
1778 rate regulation, and other Title 2 regulations, is going to
1779 impede them from delivering some of those advanced services
1780 to anybody, whether it is a high bandwidth user or your
1781 mother-in-law.

1782 Mr. {Shimkus.} With respect to my colleagues and
1783 everybody else, I will just yield back now. Thank you very
1784 much.

1785 Mr. {Latta.} Well, thank you very much. The gentleman
1786 yields back. The Chair now recognizes, for 5 minutes, the
1787 gentleman from Iowa, Mr. Loeb sack, for 5 minutes.

1788 Mr. {Loeb sack.} Thank you, Mr. Chair. Thanks to all of
1789 you for being here today. Great discussion about various
1790 issues. I guess I will start out by saying--I don't want to

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1791 be too presumptuous about this, but I think a lot of us up
1792 here have a lot of concerns about rural broadband in
1793 particular. I know that that is a big concern for all of
1794 you. I have 24 counties, and although the Committee Chairman
1795 reminded me that his district is a lot larger than mine--I
1796 don't mean the current chair, I mean Chairman Walden, and we
1797 have got some from North Dakota, that is a lot bigger than my
1798 district too.

1799 But I have 24 counties, and I have a lot of rural
1800 broadband carriers, a lot of ISPs--small ISPs, as you
1801 mentioned, Commissioner Pai. But a lot of folks who need
1802 rural broadband for education, educational opportunities,
1803 for, you know, health opportunities--we are going to see a
1804 lot more tele-health, I think, in rural areas going forward.
1805 We are going to need that. For farmers, who have to access
1806 GPS so they can plant, and do it efficiently, and make a
1807 living, and for economic development, there is no question,
1808 and a lot of other reasons as well.

1809 I have one quick statistical question for you,
1810 Commissioner Pai. You mentioned--you gave us some numbers as
1811 far as--I think it was municipal providers and small

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1812 providers. Can you repeat those numbers? You had two
1813 numbers, I believe.

1814 Mr. {Pai.} Sure. We received a letter from 43
1815 municipal broadband providers on February 10, and we also
1816 received a letter from 24 small broadband providers, each of
1817 which serves less than 1,000 customers, on February 17.

1818 Mr. {Loebsack.} Thank you for those numbers. How many
1819 small providers are there in the country? You received 20--
1820 from 24. How--do you know what the number is total?

1821 Mr. {Pai.} I am not sure of the total number--

1822 Mr. {Loebsack.} We have a lot in Iowa alone.

1823 Mr. {Pai.} Yeah, I am not sure what the overall number
1824 is, but this is very representative--

1825 Mr. {Wheeler.} About 800, sir.

1826 Mr. {Loebsack.} About 800? Thank you.

1827 Mr. {Pai.} We also--

1828 Mr. {Loebsack.} Thank you very--thank you, Mr. Pai.

1829 Thank you, Commissioner.

1830 Chairman Wheeler, as I am sure you are aware, the FCC
1831 reauthorization bill draft that we had before us on this
1832 Committee that has been offered by the majority would make

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1833 the Universal Service Fund subject to the appropriations
1834 process. I have been here 9 years, my 9th year, and things
1835 are pretty dysfunctional here, as we all know, when it comes
1836 to the appropriations process.

1837 In this current environment, where Congress really is--
1838 seems utterly incapable, if you will, of passing a bill
1839 through regular order, we saw this with the last minute--with
1840 the DHS, tying USF funding, which is so important for rural
1841 areas, as you know, to the appropriations process, I think,
1842 does risk a lot of instability down the road. I know you may
1843 not be willing to weigh in on this, but my question to you is
1844 do you support attaching USF funding to the appropriations
1845 process?

1846 Mr. {Wheeler.} Well, let me see if I can answer that,
1847 Congressman, by talking about what we hear from the kind of
1848 carriers you were talking about, the small rural carriers.
1849 And they say, we need certainty. You are asking us to deploy
1850 capital, and we need to know that the capital from you is
1851 going to come behind that, and we need to know 5, 7 years of
1852 certainty that this money is going to be there. And that is
1853 the way the Universal Service Program has been run, to

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1854 provide that kind of certainty.

1855 Clearly a serious concern is that if, all of a sudden,
1856 that certainty is impacted because the appropriations move
1857 like this, or don't move--

1858 Mr. {Loebsack.} Um-hum.

1859 Mr. {Wheeler.} --and we are dealing with CRs, or
1860 whatever the ability of these rural carriers to make the
1861 investments that are necessary to provide service in high
1862 cost areas will be significantly impaired.

1863 Mr. {Loebsack.} Not to mention putting a cap on such a
1864 fund as well, which I think is something that is called for
1865 as well. It is--this is just a really huge concern for so
1866 many of us, you know, the rural broadband issue, as I
1867 mentioned. And I have had concerns in the past about how the
1868 USF is administered as well.

1869 I want to make sure--and I would be happy to hear from
1870 any of you here, I want to make sure that the USF fund
1871 actually goes to where it is supposed to go as well, and that
1872 those folks who can access that, and provide that kind of
1873 broadband that is necessary in those rural areas can have
1874 access to those funds. Because we also know that a lot of

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1875 those folks are the ones who are paying into it in the first
1876 place, and I have just heard complaints that sometimes the
1877 funding doesn't come back to them, they feel as though they
1878 are being disproportionately put upon, if you will, in terms
1879 of contributing to that fund, and then not getting back, you
1880 know, in a proportionate way what they have been putting into
1881 it. Would any of you care to respond to that?

1882 Mr. {Wheeler.} So if I can pick up on that,
1883 Congressman? The--particularly for the smaller rate of
1884 return carriers. We are going to be putting into effect this
1885 year a revision of the Universal Service Program for them.
1886 We are going to deal with the hated quadrennial--or the QRS,
1887 the hated QRS regressive analysis--regression analysis. We
1888 are going to come up with a model that says, here is what you
1889 can base your business decisions on.

1890 And we do need, if I can pause for a commercial--a self-
1891 interested commercial for a second, we do need those carriers
1892 to help us come together. Because the reason I knew there
1893 were 800 is because we hear multiple voices talking about
1894 what they need, and everybody sits in a slightly different
1895 position, and we have got to come together with a common--and

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1896 if the industry could come together and say, here is a common
1897 approach, that would be very helpful.

1898 Mr. {Loebsack.} Thank you.

1899 Mr. {Wheeler.} I also need to correct the record on
1900 something that Mr. Pai said, where he was talking about
1901 making a broad brush statement about small carriers. The
1902 National--the NTCA, they--represents these small carriers,
1903 has said--so the track records of RLEX rural carriers makes
1904 clear, Title 2 can provide a useful framework, and does not
1905 need to be an impediment to investment in ongoing operation
1906 of broadband networks. And the small rural wireless
1907 carriers, in a statement, also said a similar thing, that
1908 they will not object to this. And so we have got to be
1909 careful that we don't haul out a handful of people and make
1910 great generalizations from it.

1911 Mr. {Latta.} The gentleman's time is expired.

1912 Mr. {Loebsack.} Thank you--thank the Chair for
1913 indulging me--

1914 Mr. {Latta.} The Chair now recognizes for 5 minutes the
1915 gentleman from New Jersey, Mr. Lance, for 5 minutes.

1916 Mr. {Lance.} Thank you very much. Commissioner Pai,

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1917 would you like to respond to that?

1918 Mr. {Pai.} Thank you, Congressman, for the opportunity.

1919 I would. I think, first, it is significant to remember that,

1920 number one, one of those folks who submitted the comments

1921 about Title 2 were conceiving of Title 2 in terms of just the

1922 last mile connectivity between the ISP and the customer.

1923 They had no idea, because the FCC never published the

1924 proposal, that this would go all the way to the far reaches

1925 of the Internet, including interconnection.

1926 Mr. {Wheeler.} That is not correct.

1927 Mr. {Pai.} Second--well, Mr. Chairman, please, if I

1928 could respond to the Congressman? Secondly, among the

1929 municipal broadband providers who--these are folks who, by

1930 definition, represent the public interest in their

1931 communities. Indeed, one of the municipal broadband

1932 providers was visited by the President himself in the week

1933 leading up to our vote. They themselves said, please don't

1934 fall prey to what they called the facile argument that Title

1935 2 won't have an effect.

1936 Thirdly, I think it is important to remember that, with

1937 respect to the effect that Title 2 will have on investment

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1938 and opportunity, no one has said--none of these services have
1939 been subjected to Title 2 previously. At the very most you
1940 can make the argument that last mile connectivity was, but I
1941 think it is critical for us to remember that regulation does
1942 have an effect.

1943 We have heard from members of the American Cable
1944 Association, from small ISPs, from municipal broadband
1945 providers, and we can we all debate about the numbers. What
1946 is indisputable is that these providers have thrived with
1947 light touch regulation, and I think that is part of the
1948 reason why just yesterday we heard from a major broadband
1949 provider, ``we have benefitted from, essentially, government
1950 staying out of the Internet, and I am worried that we are now
1951 on a path to starting to regulate an awful lot of things on
1952 the Internet.'' Who was that? That was Google's Executive
1953 Chairman Eric Schmidt--

1954 Mr. {Lance.} Thank--

1955 Mr. {Pai.} --in Washington.

1956 Mr. {Lance.} Thank you. Commissioner Pai, in your
1957 dissenting statement you state, I see no legal path for the
1958 FCC to prohibit paid prioritization or the development of a

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1959 two-sided market, which appears to be the--objection by many
1960 to the Chairman's proposal. The NPRM frankly acknowledges
1961 Section 706 of the Telecommunications Act could not be used
1962 for such a ban, and while the NPRM resists saying it
1963 outright, neither could Title 2. After all, Title 2 only
1964 authorizes the FCC to prohibit unjust or unreasonable
1965 discrimination, and both the Commission and the Courts have
1966 consistently interpreted provision to allow carriers to
1967 charge different prices for different services. Could you
1968 elaborate on that--

1969 Mr. {Pai.} Thank you for the question, Congressman. It
1970 has been textbook law since the--Title 2 and its antecedents
1971 were adopted, and this goes back to the 1880s, when--

1972 Mr. {Lance.} Yes.

1973 Mr. {Pai.} --you are regulating railroads, that
1974 differential services could be assessed at different prices
1975 by common carriers. Extending that toward the
1976 Telecommunications Age, it has long been the case, as I
1977 pointed out in my dissent, that you cannot ban paid
1978 prioritization. And in that regard, I completely agree with
1979 the Chairman's statement on May 20 of last year that there is

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1980 no, ``nothing in Title 2 that bans paid prioritization.''

1981 Mr. {Lance.} Given that, how long do you think that
1982 this is likely to be litigated in the courts? And I ask that
1983 because businesses need certainty as to what the rules of the
1984 road will be long term.

1985 Mr. {Pai.} I think whether you support or oppose the
1986 FCC's order, the unfortunate aspect, everyone can agree on,
1987 is this will be litigated for a long time.

1988 Mr. {Lance.} And this goes first, I guess, to the
1989 District Court here in the District of Columbia? Is--

1990 Mr. {Pai.} Well, it will depend on where a petition
1991 refer--review is filed. It could be filed in any of the
1992 regional Courts of--

1993 Mr. {Lance.} Um-hum.

1994 Mr. {Pai.} --Appeals. And then, if there are multiple
1995 appeals, it will have to be chosen by a lottery.

1996 Mr. {Lance.} And is it your opinion that this will
1997 eventually reach the Supreme Court of the United States?

1998 Mr. {Pai.} I think it will. It presents a very
1999 substantial question, on which I could easily imagine the
2000 Supreme Court granting writ of certiorari.

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2001 Mr. {Lance.} Commissioner O'Rielly, your views as to
2002 the length of a litigation?

2003 Mr. {O'Rielly.} I agree wholeheartedly with my
2004 colleague on this. This is a 3 plus year debate that we are
2005 going to have in the court system.

2006 Mr. {Lance.} Commissioner Rosenworcel, your views on
2007 that, please?

2008 Ms. {Rosenworcel.} I believe we will see litigation,
2009 yes.

2010 Mr. {Lance.} And Commissioner Clyburn? And it is
2011 certainly an honor to serve with your father in Congress.

2012 Ms. {Clyburn.} Thank you, I appreciate that. I am
2013 99.99 percent sure that bill will be a legal--

2014 Mr. {Lance.} So this is even purer than Ivory soap?

2015 Mr. {Wheeler.} Wait a minute, I will go better than my
2016 colleague, okay? Because they--the big dogs have promised
2017 they are going to--

2018 Mr. {Lance.} I see.

2019 Mr. {Wheeler.} --their word.

2020 Mr. {Lance.} I do think that we need certainty going
2021 forward, and I am deeply concerned of that--regarding that.

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2022 Commissioner Clyburn, in a speech you gave several years
2023 ago, you said, without forbearance, there can be no
2024 reclassification, and I believe you went on to compare it as
2025 peanut butter and jelly, salt and pepper, Batman and Robin.
2026 Would you have supported reclassification under Title 2
2027 without forbearance?

2028 Ms. {Clyburn.} Without forbearance?

2029 Mr. {Lance.} Yes.

2030 Ms. {Clyburn.} One of the things that I think we did
2031 right was recognize the current dynamics of the day.

2032 Mr. {Lance.} Um-hum.

2033 Ms. {Clyburn.} This is not your father's or your
2034 mother's Title 2. We forbore from 27 provisions, over 700
2035 rules and regulations, so I am very comfortable in saying
2036 this is looking at a current construct, and that is you
2037 looking at me. My seconds are up. Thank you.

2038 Mr. {Lance.} Thank you. I think you should have
2039 compared it to Bogart and Bacall myself.

2040 Ms. {Clyburn.} That will be the next--

2041 Mr. {Lance.} Thank you very much, Mr. Chairman. I
2042 yield back my time.

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2043 Mr. {Latta.} Well, thank you very much. The gentleman
2044 yields back. The Chair now recognizes the gentleman from
2045 California, Mr. McNerney, for 5 minutes.

2046 Mr. {McNerney.} Well, I thank the Chairman--I thank the
2047 Commissioners for your hard work on this. Regarding the
2048 litigation issue, is there any decision you could make
2049 whatsoever on Net Neutrality that wouldn't involve
2050 significant litigation?

2051 Mr. {Wheeler.} I think you have just hit the nail on
2052 the head, sir.

2053 Mr. {McNerney.} Okay. Just wanted to make sure about
2054 that. You know, most--all--I believe most of all--most or
2055 all stakeholders believe that it is important to meet the big
2056 three of Net Neutrality, no throttling, no paid
2057 prioritization, and no blocking, but there is other stuff
2058 that might be controversial in your recent decisions.
2059 Anything that you want to bring up that might be of interest?

2060 Mr. {Wheeler.} Thank you, sir. Well, there is--
2061 actually, there are only four regulations in here, no
2062 throttling, no blocking, no paid prioritization, and
2063 transparency. You have got to tell the consumers what you

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2064 are doing, and--so they have a fair choice. The other thing
2065 that we do is to establish general conduct rule that says you
2066 will not harm consumers, you will not harm innovators, you
2067 will not harm the functioning of the Internet and the public
2068 interest.

2069 Now, it is really interesting because people come in and
2070 say, I don't know what that means. Well, that is exactly the
2071 way the FTC operates, and the way that the carriers have been
2072 saying, well, let us take things away from the FCC, and give
2073 it to the FTC, because we like this case by case analysis
2074 better than somebody coming in and having a rulemaking. So
2075 we are not having a rulemaking that says we know best, this
2076 is the way you are supposed to operate. What we are saying
2077 is that there needs to be a judgment capability that says, is
2078 there harm? And there needs to be the ability, if harm is
2079 found, to do something about it, but never to pre-judge, and
2080 always to be in a situation where you are weighing all of the
2081 interests.

2082 Mr. {McNerney.} Okay. Commissioner Rosenworcel, does
2083 the FCC have the power to regulate broadband providers,
2084 consumer privacy practices that are unregulated--that are

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2085 unrelated to their phone services?

2086 Ms. {Rosenworcel.} No. I mean, unrelated to their
2087 telecommunications.

2088 Mr. {McNerney.} Right.

2089 Ms. {Rosenworcel.} No.

2090 Mr. {McNerney.} No. Is that something that would be of
2091 value?

2092 Ms. {Rosenworcel.} Well, obviously privacy is an
2093 important issue to all Americans, and privacy in the digital
2094 age is an evolving thing. Our statute, which dates back to
2095 1996, involves customer proprietary network information under
2096 Section 222, and that is where the bulk of our privacy
2097 authority comes from, with respect to telecommunications
2098 services.

2099 Mr. {McNerney.} Are there enough engineers at the FCC
2100 to help you do your job?

2101 Ms. {Rosenworcel.} I think we have terrific engineers
2102 at the FCC, but in revamping the agency, I think we should
2103 make it a priority to have more. It is clear that wireless
2104 technologies are exploding. The demand for our equipment
2105 authorization process is also multiplying exponentially. And

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2106 if we had more engineers, I believe we would be in a position
2107 to help facilitate more innovation getting to the market
2108 faster.

2109 Mr. {McNerney.} Do engineers tend to stay out of the
2110 politics of the Commission, or are they like other human
2111 beings and want to get into it once in a while?

2112 Ms. {Rosenworcel.} Well, that is a kind of metaphysical
2113 question. I am not sure I want to answer that one.

2114 Mr. {McNerney.} All right. Let us see. You mentioned
2115 that the--there would be--there should be greater use for the
2116 upper portion of the five Gigaband--Gigahertz band. Could
2117 you expand that a little bit, please?

2118 Ms. {Rosenworcel.} Absolutely. We benefit immensely
2119 from Wi-Fi in this country. About 50 percent of us use it to
2120 go online regularly in public places, and 60 percent of us
2121 use Wi-Fi at home. The bulk of our Wi-Fi activity takes
2122 place on the 2.4 Gigahertz band, but that place is getting
2123 mighty crowded. We also have spectrum in the five Gigahertz
2124 band that we use for Wi-Fi. Many of us, for instance, our
2125 home Wi-Fi systems are based on it. But only a portion of
2126 the five Gigahertz band is dedicated to unlicensed and Wi-Fi

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2127 services. We have got some other uses in there, and I think
2128 we should start studying those other uses, and find out if we
2129 can free up more spectrum in the five Gigahertz band so more
2130 people have more access to unlicensed and Wi-Fi service.

2131 Mr. {McNerney.} Well, what are the physical limitations
2132 of the five Gigahertz band? Line of sight, or what are the
2133 physical limitations?

2134 Ms. {Rosenworcel.} So the easy way to describe it is
2135 the higher you go, you get more capacity, but it doesn't
2136 travel as far. So five Gigahertz is really good inside
2137 buildings, inside households. And as more of us use devices
2138 that are not tethered to a cord, having that functionality is
2139 really important.

2140 Mr. {McNerney.} Thank you. I yield back, Mr. Chairman.

2141 Mr. {Latta.} Thank you very much. The gentleman yields
2142 back. The Chair now recognizes the gentleman from Texas for
2143 5 minutes.

2144 Mr. {Olson.} I thank the Chair, and welcome to all the
2145 Commissioners. Folks back home noticed that Commissioner Pai
2146 and Commissioner O'Rielly weren't at the rollout of the new
2147 rules on February 26 this past year. They have got some

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2148 questions they want answered, and want to know what you guys
2149 would answer if you had been at that rollout.

2150 I know there are claims about these Open Internet rules,
2151 that they do not violate the Fifth Amendment by ``taking''
2152 broadband providers' property. The Commission states that
2153 the rules do not break the Fifth Amendment because they
2154 ``actually enhance the value of broadband networks'' by
2155 protecting innovation. If these rules enhance the value of
2156 these networks, as the FCC's majority claims, why do
2157 broadband providers large and small, wired and wireless,
2158 oppose the rules? Any thoughts, Commissioner Pai?

2159 Mr. {Pai.} Congressman, thank you for the question. I
2160 think part of the reason why established broadband providers
2161 oppose these rules is that they have invested in literally
2162 hundreds of billions, if not trillions of dollars since the
2163 inception of the Internet in reliance on the bipartisan
2164 consensus, started in the Clinton Administration, that the
2165 Internet would ``remain unfettered from Federal and state
2166 regulation''. That same combination of President Clinton and
2167 Congress agreed that access to the Internet would be an
2168 information service in Section 238 of the Act.

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2169 In reliance on that determination, a lot of these
2170 providers went to the capital markets, spent a lot of money,
2171 took a lot of risk, to build out what I consider to be the
2172 best Internet environment in the world. As Commissioner
2173 Rosenworcel has said, our Internet is the envy of the world.
2174 And part of the reason why they have a concern about
2175 regulatory takings is, under the leading case of, you know,
2176 Pension Benefit Corporation vs. Connolly, there is a question
2177 about whether reliance expectations have been disturbed by
2178 the exertion of these Title 2 regulations, and that is
2179 something that a court is going to have to work out and take
2180 very seriously.

2181 Mr. {Olson.} So they think it is taking it, it sounds
2182 like. Mr. O'Rielly, your thoughts, Commissioner O'Rielly?

2183 Mr. {O'Rielly.} So I would suspect that there will be
2184 an argument made and challenged on the Fifth Amendment, and
2185 the assumptions made by the Commission are likely to be put
2186 to test in court.

2187 Mr. {Wheeler.} Congressman?

2188 Mr. {Olson.} Yes, sir. One question for Commissioner
2189 Pai, hold on a second, if I have some time, but I have got

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2190 some questions my--want me to answer.

2191 Commissioner Pai, let us talk about transparency, how
2192 the Committee works behind the scenes. You wrote in your
2193 testimony that your edits in the e-rate proceedings were
2194 rejected, and yet miraculously they came back when another
2195 Commissioner introduced those same edits. Is that true,
2196 false? Can you elaborate on what happened there?

2197 Mr. {Pai.} Thank you for the question, Congressman. I
2198 put my own proposal for e-rate on the table 2 years ago.
2199 When the FCC teed up its own proposal last year, I suggested,
2200 okay, I don't need to go with my proposal. Working within
2201 your framework, here are a number of suggestions that would
2202 get my vote. I was told no, a lot of these are all red
2203 lines, we don't want your vote.

2204 One of the suggestions I had didn't--obviously didn't go
2205 to the core of the item. It said, I want to allow schools
2206 and libraries to be able to use e-rate funds for caching
2207 servers. Doesn't seem too ideologically troublesome to me,
2208 but that was rejected explicitly as what was ``a red line''.
2209 Miraculously, when the order was ultimately adopted, and when
2210 my colleagues on the other side suggested it, it was agreed

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2211 to. Same thing on the incentive option. I made 12 different
2212 asks. I was told no to 11, and maybe on the 12th.

2213 One of the ones that was deemed a red line was extending
2214 the comment deadlines, because we had put some very complex
2215 proposals on the table, we might want to understand what the
2216 public thought about it. I was told no, that was a red line,
2217 that would risk delaying the incentive option. Lo and
2218 behold, now the Bureau on Delegated Authority has extended
2219 those very comment deadlines twice. These are just some of
2220 the pretty non-ideological proposals I have made that have
2221 been rejected.

2222 Mr. {Olson.} Is that standard practice?

2223 Mr. {Pai.} It has not been historically. I can tell
2224 you that, based on my first year and a half with the
2225 Commission, while I might have disagreed with, you know, some
2226 parts of an order that were ultimately adopted, nonetheless
2227 there was a spirit of collaboration and consensus that
2228 ultimately gained buy-in from all the Commissioners. And
2229 that, I think, ultimately really makes our product stand the
2230 test of time. It gains us legitimacy among the American
2231 public, and gives us more insulation from litigation risk.

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2232 Mr. {Olson.} One final question. It is just about--
2233 there are some parties out there that have said this action
2234 has been essential because the Internet is so essential to
2235 our life, the American life, and that the current situation
2236 is outdated, and it must be changed. This is a change.
2237 Should that agent of change be you all, or Congress, the
2238 elected officials for the American people, our voices, as
2239 opposed to, not an offense, but five unelected Commissioners?
2240 I am going to go home today and take some heat, good and bad,
2241 about what has happened here. You guys will go home to your
2242 families and be okay. How about us being in control, as
2243 opposed to you all? Any thoughts?

2244 Mr. {Pai.} Congressman, that is precisely why, when the
2245 D.C. Circuit rendered its decision last year, I said, without
2246 knowing how this would turn out, we should go to Congress for
2247 guidance. You wrote the Communications Act. You have
2248 updated it over the years. You are the elected officials who
2249 should decide how the Internet economy should proceed. On a
2250 matter this important, with laws to essentially constrain our
2251 authority, we should turn to the experts, which is Congress.

2252 Mr. {Olson.} Constitution. Yield back.

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2253 Mr. {Latta.} Thank you very much. The gentleman yields
2254 back. The Chair recognizes for 5 minutes the gentlelady from
2255 California.

2256 Ms. {Matsui.} --Mr. Chairman, I would like to yield my
2257 time, and I--we are going to switch our time.

2258 Mr. {Latta.} Well, in that case, the gentlelady yields
2259 her time to the gentlelady from New York.

2260 Ms. {Matsui.} Thank you.

2261 Mr. {Latta.} Five minutes.

2262 Ms. {Clarke.} Thank you very much, Mr. Chairman, and I
2263 would like to yield a few seconds to my Ranking Member, Ms.
2264 Eshoo.

2265 Ms. {Eshoo.} Thank you for your time, appreciate it.
2266 To Commissioner Pai, as you went through the litany of your
2267 ideas, and you didn't get your way, welcome to the minority.

2268 Ms. {Clarke.} Thank you. Let me just ask a few
2269 questions of our distinguished Commissioners. And the first
2270 question is to Commissioner--Chairman Wheeler.

2271 Chairman Wheeler, I am concerned about multilingual
2272 broadcasting alerts, and the FCC's urgency around this issue.
2273 In addition to 911 upgrades, what is being done to ensure

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2274 that the EAS reflects the growing ethnic and language
2275 diversity of our nation?

2276 Mr. {Wheeler.} Thank you, Congresswoman, I am glad you
2277 asked that question. Literally yesterday I was meeting with
2278 our--what is called--which is our public safety and security
2279 body that is an advisory group, and talking with them about
2280 the importance of updating EAS, and the recommendations that
2281 they have put out, insofar as making sure that those updates
2282 are communicated to all the parties. Yes, we have an EAS
2283 system that hasn't been updated since the Cold War. We have
2284 to fix it to represent not only new technology, but also
2285 increased diversity.

2286 Ms. {Clarke.} And I hope that we will make that a
2287 priority because, you know, with the challenges that we are
2288 facing, 21st century challenges of climate change, of
2289 flooding, of, unfortunately, terrorist attacks, it is
2290 becoming more and more of a pressing need, a current day
2291 need.

2292 The next question I have to you has to do with the
2293 Section 257 report. Congress requires the FCC to report on
2294 market entry barriers every 3 years, but your latest report

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2295 to Congress, the 257 report, was due December 31, 2012, and
2296 it is still forthcoming. Would you give us an idea, or share
2297 with us how the FCC will prioritize this as a process reform
2298 to ensure more diversity and inclusion in the media and
2299 telecom industries?

2300 Mr. {Wheeler.} Thank you. This has been an item of
2301 contention. My colleague, Commissioner Clyburn, when she was
2302 acting Chair, was moving this process forward. I think it is
2303 fair to say that it ran into some difficulties inside of the
2304 Commission on the--amongst the Commissioners. She did an
2305 admirable and excellent job that I am attempting to pick up
2306 on, and to move forward on, because these kinds of issues are
2307 important to not only the future of how we build out
2308 telecommunications, but the future economic opportunities and
2309 structure in our country.

2310 Ms. {Clarke.} Very well, I appreciate that. And 2
2311 years ago I sent a letter to then FCC Chairman Julius
2312 Genachowski, asking that the issue of activated FM chips in
2313 cell phones be examined. I also understand that you,
2314 Chairman Wheeler, are interested in this issue. What
2315 progress has been made to ensure that my constituents have

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2316 every tool at their disposal to receive life-saving
2317 information in the event of another terrorist attack, power
2318 grid outage, or weather emergency?

2319 Mr. {Wheeler.} So FM chips are a great idea, and they
2320 are in an increasing number of phones. They bring with them
2321 a couple of technological challenges. One is antenna size.
2322 They need a bigger antenna to get the FM signal that--in a
2323 tiny device, that becomes an issue. They also can drain
2324 battery power. But they are increasingly showing up, and
2325 consumers have the ability to purchase them, and some
2326 carriers specifically focus on them.

2327 I think the broader question is whether or not the
2328 Commission should be forcing wireless carriers to activate
2329 these chips, or whether they ought to be leaving that to
2330 consumer choice. I know that broadcasters around the country
2331 are running commercials--

2332 Ms. {Clarke.} Um-hum.

2333 Mr. {Wheeler.} --saying write the FCC, write your
2334 Congressperson, and make them do it. I think this is
2335 something that is being resolved in the marketplace, and that
2336 we ought to monitor that, and watch what happens.

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2337 Ms. {Clarke.} I appreciate it. I have a few more
2338 questions. I will submit them to the record, Mr. Chairman,
2339 but I thank you, and I thank all of you Commissioners for
2340 your hard work and diligence.

2341 Mr. {Latta.} Well, thank you very much. The Jenny--
2342 gentlelady's time has expired. The gentleman from Illinois
2343 is now recognized for 5 minutes.

2344 Mr. {Kinzinger.} Thank you, Mr. Chairman. Thank you
2345 all for being here. Thanks for serving your country, and
2346 spending all afternoon with us. We appreciate it. Hopefully
2347 not overly much longer.

2348 Commissioner Pai, I have to tell you, when you were
2349 asked by Mr. Olson about your suggestions to the Commissioner
2350 were ignored, and then other folks made the same suggestion,
2351 and they were taken in, that was actually pretty mind blowing
2352 to me, to be honest with you. And, you know, the joke was
2353 made earlier, and I chuckled too, about how--welcome to the
2354 minority, but I hope the Commission doesn't become like
2355 Congress, because I think the intention of the Commission was
2356 not to be overtly partisan. That is Congress's job. We
2357 battle issues, we debate them. I mean, that is what happens.

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2358 We look for compromise. I hope the Commission doesn't follow
2359 our lead on that.

2360 Commissioner Pai, in your statement of dissent on the
2361 Open Internet Order, you spent some time talking about the
2362 procedure surrounding the Notice of Proposed Rulemaking.
2363 Specifically, you talked about how much the order changed
2364 from its initial creation, and stated that the standard is
2365 whether all interested parties should have anticipated the
2366 final rule, not that they could have anticipated the final
2367 rule. Could you explain a bit further the problems you see
2368 with what was originally proposed by the Commission, as
2369 compared to what was eventually adopted?

2370 Mr. {Pai.} Thank you for the question, Congressman, and
2371 for the kind words about some of the bipartisan efforts I
2372 have made at the Commission to reach consensus. I think the
2373 problem with respect to notice is substantial. I think the
2374 FCC teed up, in May of 2014, a very different proposal from
2375 the one it ultimately adopted.

2376 The May proposal, for example, was based on Section 706,
2377 and never mentioned such things as redefining the public
2378 switch network. It never mentioned the extent of

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2379 forbearance, or even what specific sections would be forborne
2380 from. It never mentioned a whole host of other things, and I
2381 think the problem is that, once the FCC teed up this plan in-
2382 -on February 5, and voted on February 26, virtually--a lot of
2383 the things in there, unfortunately, have not--there is no
2384 record sufficient to support them. Forbearance is the best
2385 example of that. There is no evidence in the record,
2386 certainly not on a geographic market basis, to support a
2387 finding sufficient grant forbearance on a lot of these
2388 things.

2389 And that is part of the reason why the FCC completely
2390 recast its forbearance analysis, created this new analysis
2391 that junked a lot of the private--previous FCC precedence in
2392 order to find forbearance. And I think there are going to be
2393 substantial legal problems with this.

2394 Mr. {Kinzinger.} Thank you. Chairman Wheeler, earlier
2395 you said that if asked to regulate rates, that the Commission
2396 would make it clear that the Commission will not regulate
2397 retail rates on broadband. Would you agree that a
2398 prohibition on the Commission regulating broadband rates is
2399 consistent with your views?

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2400 Mr. {Wheeler.} So I have said repeatedly that we are
2401 not trying to regulate rates, and that, again, if Congress
2402 wants to do something in that--

2403 Mr. {Kinzinger.} Sure.

2404 Mr. {Wheeler.} --regard, that is Congress's authority.
2405 I would--

2406 Mr. {Kinzinger.} So, wait, you are not interested in,
2407 but what about the next FCC Commissioner? Do you believe
2408 that under Title 2 that they have the authority to regulate
2409 rates? Now, you--I mean, and I respect that you don't want
2410 to, but you have created something that will now be passed
2411 down through generations of FCC Commissioners.

2412 Mr. {Wheeler.} Well, as I said in my earlier response,
2413 I--if this comes before us while I am there, I hope that,
2414 without pre-judging the issue, that we can build a record
2415 that will make it difficult for that to happen.

2416 Mr. {Kinzinger.} But you could understand, then--

2417 Mr. {Wheeler.} Congress clearly has the authority to
2418 do--

2419 Mr. {Kinzinger.} You could understand--

2420 Mr. {Wheeler.} --like to--

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2421 Mr. {Kinzinger.} You could understand our concern, you
2422 know, again, we respect when you say, I have no intention of
2423 doing it. That is great. But you can understand the concern
2424 of Congress, where you implement a rule, and then, in
2425 essence, say, I don't have any intention of regulating rates,
2426 but I am not going to prevent--I mean, I, you know, the next--
2427 -

2428 Mr. {Wheeler.} So--

2429 Mr. {Kinzinger.} --Commissioner could do it.

2430 Mr. {Wheeler.} Yeah. One of the things that we did was
2431 we patterned this after Section 332, and the regulation of
2432 mobile voice. And for 22 years this exact same authority has
2433 rested at the Commission for mobile voice service, and never
2434 been used.

2435 Mr. {Kinzinger.} So if legislation that said,
2436 notwithstanding any provision of law, the Federal
2437 Communication Commission may not regulate the rates charged
2438 for broadband Internet access service, that would be
2439 consistent with that view?

2440 Mr. {Wheeler.} That is what we are trying to
2441 accomplish.

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2442 Mr. {Kinzinger.} Okay. Commissioner Pai, we have heard
2443 Chairman Wheeler assert that his decision to apply Title 2 to
2444 mobile broadband services will have no impact on investment
2445 because mobile voice service has been subject to Title 2, and
2446 we have seen substantial investment in mobile voice under
2447 that regime. Do you agree?

2448 Mr. {Pai.} I do not, Congressman, for a couple of
2449 different reasons. First, it is critical to remember that
2450 the reason rate regulation for mobile voice didn't occur was
2451 because the FCC, from the inception, determined that
2452 competition was sufficient in the voice marketplace so that
2453 there wasn't any need for rate regulation. Here, by
2454 contrast, the FCC explicitly finds that the broadband market
2455 is not competitive, so it explicitly opens the door to the
2456 kind of rate regulation that was not contemplated for mobile
2457 voice.

2458 Secondly, with respect to mobile investment, one of the
2459 reasons why we have seen such huge investment since 2007 was
2460 because of the inception of the smartphone, and the huge
2461 increase in mobile data traffic that was generated as a
2462 result. Wireless carriers now, big and small, have to spend

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2463 to keep up in terms of infrastructure and spectrum to deliver
2464 some of that mobile data traffic. Mobile data traffic has
2465 never been classified as a Title 2 service. That is what is
2466 driven in mobile investment, not the Title 2 application to
2467 mobile voice.

2468 Mr. {Kinzinger.} Thank you, and thank you all again for
2469 your service, and I yield back.

2470 Mr. {Walden.} Thank the gentleman. We now turn to the
2471 gentlelady from California, Ms. Matsui, for--

2472 Ms. {Matsui.} Thank you, Mr. Chairman. I want to thank
2473 you, Commissioners, for being here. Question for
2474 Commissioner Rosenworcel. One of the keys to innovation is
2475 spectrum, and more spectrum, and I believe we need a national
2476 spectrum plan, actually, a plan that considers both licensed
2477 and unlicensed spectrum. Now, you have done a lot in this
2478 space, I know, so can you share with us briefly some of your
2479 ideas to generate revenue from spectrum sharing, and the ways
2480 to incentivize Federal agencies to relocate?

2481 Ms. {Rosenworcel.} Thank you for this question, and you
2482 do, I know, along with Congressman Guthrie, have done a lot
2483 of work in this area. Let us see. The fuel for our wireless

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2484 revolution is spectrum, and if we want to have a modern
2485 spectrum economy, we are going to need a more consistent
2486 spectrum pipeline. Today, as you probably know, when we need
2487 more airwaves for commercial mobile use, we knock on the door
2488 of Federal authorities--

2489 Ms. {Matsui.} Um-hum.

2490 Ms. {Rosenworcel.} --and we beg, coax, and cajole, and
2491 over time they will give us some scraps. And then Congress
2492 will probably direct those Federal authorities to clear out
2493 of that spectrum, relocate, and then you will ask the FCC to
2494 auction off those airwaves. This process is slow, it is
2495 clunky, it is not reliable, and it is not the pipeline that a
2496 modern wireless economy needs.

2497 That is why I think it is really important that we
2498 develop a system of structured incentives for Federal
2499 spectrum authorities so that, when we try to secure more
2500 airwaves for commercial use, they see benefits in
2501 reallocation, and not just loss. And that could, obviously,
2502 include anything from changes in their budgets to benefits
2503 through the appropriations process, to the ability to
2504 actually security what sequestration might have taken away.

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2505 But in any event, I think that this type of pipeline would
2506 actually make our spectrum markets much more effective, and
2507 work more fast.

2508 Ms. {Matsui.} Well, thank you very much for those
2509 comments. Chairman Wheeler, I have a question for you.

2510 Mr. {Wheeler.} Yes, ma'am.

2511 Ms. {Matsui.} I remain very concerned about the
2512 Stingray surveillance devices that are used by a number of
2513 local law enforcement agencies, without which appear--there
2514 doesn't seem to be any Federal oversight, and the public
2515 should actually have more access to the information about the
2516 Stingray device, including what it is being used for, its
2517 surveillance capabilities, and who has access to the
2518 sensitive information that it collects. And despite some
2519 assurances to the contrary, it is unclear to me, and many
2520 others, how the Stingray device does not collect data on
2521 innocent Americans.

2522 And so, Mr. Chairman, in August you announced the
2523 creation of a task force on the Stingray device and similar
2524 technology. I would like to know the status of this task
2525 force, and why haven't we seen anything come out of it, and

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2526 what--a series of questions--and what you are doing to
2527 address the real concern about the lack of oversight over
2528 this device.

2529 Mr. {Wheeler.} Thank you, Congresswoman. The task
2530 force did look into the situation, and what we found was as
2531 follows. That our jurisdiction, and our authority, is to
2532 certify the electronics and the RF components for such
2533 devices for interference questions, and that if the
2534 application was being made in conjunction with law
2535 enforcement, then we would approve it. This is for the
2536 technology. This is not for who buys it--

2537 Ms. {Matsui.} Right.

2538 Mr. {Wheeler.} --sort of thing, but in general, that we
2539 would approve it. And that, from that point on, its usage
2540 was a matter of law enforcement, not a matter of the
2541 technological question of whether or not a piece of hardware
2542 interfered with other RF devices.

2543 Ms. {Matsui.} So you are saying that it is out of your
2544 jurisdiction, and we have to go to other Federal agencies,
2545 including law enforcement? Because I am concerned about the
2546 device being sold on the market, or over the Internet, to

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2547 non-law enforcement organizations, or the general public. So
2548 this is something we have to follow up with law enforcement,
2549 Federal law enforcement?

2550 Mr. {Wheeler.} We would--on the broad issue, it is
2551 follow up with--I think that we would have enforcement
2552 jurisdiction on an--in an unauthorized use of an RF device
2553 if, in fact, it were being sold illegally.

2554 Ms. {Matsui.} Okay. Thank you. I just want to bring up
2555 another issue here. More consumers, particularly the
2556 Millennials, are opting for online subscriptions to buy the
2557 TV channels and programming content they want, and we are
2558 really clearly seeing the market react. HBO and Apple
2559 streaming agreement, CBS is offering monthly online
2560 subscriptions, and on and on.

2561 I really think this is the future, and no doubt it is a
2562 complex issue, however, cable video is going IP, and soon the
2563 consumer will be basically paying for bandwidth, and we
2564 should look for ways to empower the consumer to be able to
2565 pay for programming they want to watch. So I think this is
2566 something our Subcommittee should explore moving forward in a
2567 bipartisan manner, and I just put that out there, and I will

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2568 yield back the balance of my time.

2569 Mr. {Walden.} Gentlelady yields back the balance of

2570 time. Chair recognize the gentleman from Florida, Mr.

2571 Bilirakis, for questions.

2572 Mr. {Bilirakis.} Thank you. Thank you, Mr. Chairman, I

2573 appreciate it. And I want to thank the Commission for their

2574 patience today, and also for their testimony.

2575 Mr. Chairman, Chairman Wheeler, there was an unfortunate

2576 accident in the Tampa Bay area, the area that I represent in

2577 Congress, last April involving Mr. Humphries. It seems that

2578 he had a powerful jammer in his SUV, powerful enough to jam

2579 local law enforcement radios and calls to 911. He had been

2580 doing this for the last--for over 2 years. When a local cell

2581 phone company reported interference, the field agents in the

2582 Tampa office quickly tracked him down, and ended the

2583 significant threat to the safety of the folks in the Tampa

2584 Bay area.

2585 It is my understanding you are planning to close this

2586 enforcement office in my area. As a former Chairman of the

2587 Homeland Security, Emergency Preparedness, Response, and

2588 Communications Subcommittee, I have a few questions. How

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2589 many offices, if you are closing any, do you plan to close,
2590 sir?

2591 Mr. {Wheeler.} 16.

2592 Mr. {Bilirakis.} 16? Will the job slots saved from the
2593 Tampa Bay area be moved to the Washington, D.C. area, yes or
2594 no?

2595 Mr. {Wheeler.} No.

2596 Mr. {Bilirakis.} Okay. Are you closing the field
2597 offices and laying off staff to support the Enforcement
2598 Bureau's new work under the Net Neutrality order?

2599 Mr. {Wheeler.} No. We are doing it to increase
2600 productivity, that--what we are finding is it costs two to
2601 three times what a centralized operation would cost, that we
2602 have got too many people doing too few things in a specific
2603 area, not meaning there is not--there aren't issues there,
2604 but that we can get greater productivity if we follow the
2605 kind of model the FAA has been doing, where you have strike
2606 forces. And so we would leave in place, in Tampa, for
2607 instance, necessary equipment, and would bring people in out
2608 of the Miami office to deal with the kind of situations that
2609 you are talking about, and that that is a more cost efficient

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2610 way of accomplishing the kind of goals you are talking about.

2611 Mr. {Bilirakis.} Florida is a big state, sir.

2612 According to the budget request, page 50, the agency will

2613 preserve the integrity of public safety communications

2614 infrastructure by taking action on 99 percent of complaints

2615 of interference to public safety communications within 1 day.

2616 Will you commit to ensuring that this metric is met--has been

2617 met historically according to the performance report the

2618 Commission has issued over the years? Will you commit that

2619 this metric will be met--

2620 Mr. {Wheeler.} We believe that we can do this without a

2621 diminution in quality, sir.

2622 Mr. {Bilirakis.} Okay. Will you provide the Committee

2623 a quarterly report detailing the Enforcement Bureau's success

2624 in meeting that metric, including a list of actions taken

2625 through the remainder of your Chairmanship, sir?

2626 Mr. {Wheeler.} Good idea.

2627 Mr. {Bilirakis.} Okay. Very good. What do you want me

2628 to tell the deputies--I know you talked about it. If you can

2629 elaborate a little bit more, what would you like me to tell

2630 the deputies and other first responders in the Tampa Bay area

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2631 who may be in danger? This is a very important issue, as you
2632 know, public safety, by the delayed response inevitable, and
2633 losing an Enforcement Bureau field office, which, again,
2634 Florida is a big state, and I know other members probably
2635 have questions with regard to the offices that are being
2636 closed, 16 nationwide.

2637 Mr. {Wheeler.} So I think the reality that we face is
2638 that we have a flat or diminishing budget, we have unfunded
2639 mandates imposed by the Congress, and we have to say, how can
2640 we increase efficiency? Do I want to close these offices? I
2641 don't want to--to hear you--what you are saying, I don't want
2642 other folks who are representing areas that are going to lose
2643 offices, and hear their complaints. But I have got a fixed
2644 amount of dollars to work with, and--

2645 Mr. {Bilirakis.} I will go on--

2646 Mr. {Wheeler.} --so the question becomes how do you
2647 become efficient? And that's what we're trying to do.

2648 Mr. {Bilirakis.} Thank you. Commissioner O'Rielly, how
2649 do we, the United States, have any credibility telling other
2650 countries, like China or Iran, not to control network
2651 management practices within their borders if we are taking

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2652 large steps in that direction, with the recent overreaching
2653 broadband reclassification?

2654 Mr. {O'Rielly.} So I think there is an extreme trouble
2655 that we are setting our stage by passage of this item on Net
2656 Neutrality. I think it sends the wrong message
2657 internationally. It was--that matches up with my
2658 conversations internationally, when I went to both Spain
2659 recently, and I was in South Korea for the ITU. They are
2660 interested in engaging on issues of the broadband. They
2661 would like to get as much involvement as they can.

2662 Those regimes you speak of obviously have greater
2663 government control on the practices of Internet in their
2664 nations. So it is a bifurcated messages that we were able to
2665 send before the passage of this item, that we shouldn't do it
2666 here, and you shouldn't do it there. Now we are saying,
2667 well, we are willing to do some things on regulating
2668 broadband, but you shouldn't do them over there, or that it
2669 is okay, acceptable practice across the world, which I think
2670 is just a terrible message for them to send--

2671 Mr. {Bilirakis.} Mr. Pai, what are your thoughts on
2672 this issue?

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2673 Mr. {Pai.} Congressman, thanks for the question. I
2674 agree with my colleague, Commissioner O'Rielly, and I would
2675 associate myself with the State Department's views 5 years
2676 ago, when the represented, ``We are concerned that in some
2677 countries Net Neutrality may be used as a justification for
2678 blocking access for purposes of preventing unwelcome
2679 political, social, or cultural information from being
2680 disseminated to their citizens.'' And I think this is a
2681 bipartisan issue on which the U.S. has historically stood
2682 together, and I hope, notwithstanding the February 26 order,
2683 that would continue into the future.

2684 Mr. {Walden.} Gentleman's time--

2685 Mr. {Wheeler.} Congressman--

2686 Mr. {Bilirakis.} Thank you.

2687 Mr. {Wheeler.} Mr. Chairman, could I just say, for the
2688 sake of the record, could we submit for the record--

2689 Mr. {Walden.} Sure.

2690 Mr. {Wheeler.} --the full quote that was just excerpted
2691 by Commissioner Pai?

2692 Mr. {Walden.} Absolutely.

2693 Mr. {Wheeler.} Great. Thank you. Because it is really

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2694 taken out of context.

2695 Mr. {Pai.} It is not.

2696 Mr. {Walden.} Yeah. We now recognize the gentleman

2697 from Ohio, Mr. Johnson, for 5 minutes.

2698 Mr. {Johnson.} From the great state of Ohio--

2699 Mr. {Walden.} Stop it.

2700 Mr. {Johnson.} Chairman Wheeler, I want to tell you how

2701 honored I am that you have chosen to join with our Chairman

2702 in paying tribute to--

2703 Mr. {Wheeler.} You--

2704 Mr. {Johnson.} --Ohio State today.

2705 Mr. {Wheeler.} You picked up on this, sir, the--

2706 Mr. {Walden.} Is this button the one I use to mute?

2707 Mr. {Johnson.} Okay. Commissioner Rosenworcel, I--in

2708 your opening testimony, I want to associate myself with

2709 something you said. You said we rarely go anywhere these

2710 days without our mobile devices on us. I couldn't agree with

2711 you more. I was in information technology for over 30 years,

2712 long before there was any such thing as the Internet as we

2713 know it today, and I submit that the reason we have these

2714 things is because we have had an unregulated, by the Federal

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2715 Government, Internet and information services that have
2716 allowed the innovators to blossom. So I agree with you.

2717 Chairman Wheeler, we have requested--this Committee has
2718 requested a number of documents that have been denied under
2719 the claim of deliberative process privilege. For the
2720 deliberative process privilege to apply, an agency must show
2721 that a communication was a ``direct part of the deliberative
2722 process, and that it makes recommendations or expresses
2723 opinion on legal or policy matters''. And in proceedings
2724 like the Open Internet proceeding, ex parte filings are
2725 required to disclose communications between the FCC and the
2726 executive branch, or its staff, if those discussions are, I
2727 quote, ``are of substantial significance and clearly intended
2728 to affect the ultimate decision''.

2729 Now, I am trying to figure out how these two different
2730 concepts apply here. In withholding certain communications
2731 between the White House and the FCC, you have asserted the
2732 deliberative process privilege. If those communications were
2733 relevant to the Commission's deliberation, several questions
2734 emerge. Weren't they subject to the Commission's ex parte
2735 rules? Are the concerned--or are the contents of those

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2736 meetings memorialized in any docket at the Commission? How
2737 could these conversations with the White House have been both
2738 a direct part of the deliberative process, but not have been
2739 of substantial significance in that proceeding? Those are
2740 questions that are rolling around in my mind. Now I will get
2741 to a question for you.

2742 I know that you have indicated in your written testimony
2743 that you received no secret instructions from the White
2744 House. But, of course, secret instructions, that is not the
2745 standard for determining when ex partes are available. In
2746 the 10 meetings that you had with the White House--here is my
2747 question. In the 10 meetings that you had with the White
2748 House in advance of the FCC's action on the Open Internet, is
2749 it your opinion that only--that that was the only meeting
2750 that addressed the merits of the Commission's Open Internet
2751 proceeding occurred last November?

2752 Mr. {Wheeler.} Yes, sir, and--

2753 Mr. {Johnson.} That--did you say yes?

2754 Mr. {Wheeler.} Yes, and the 10 meetings, just to be
2755 clear, were not meetings that were necessarily on Open
2756 Internet. We had trade issues, we had national security

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2757 issues, we had cyber issues, we had auction issues--

2758 Mr. {Johnson.} But in the 10 meetings that came in
2759 advance of the FCC's action on the Open Internet, you are
2760 saying that there was no information or discussions of
2761 substantial significance and clearly intended to affect the
2762 ultimate decision, which would require the disclosure of that
2763 information?

2764 Mr. {Wheeler.} There are--

2765 Mr. {Johnson.} Is it your opinion that--

2766 Mr. {Wheeler.} There are two parts here. One, you
2767 have--

2768 Mr. {Johnson.} No, that is a yes or a no answer--

2769 Mr. {Wheeler.} No, you have--you correctly identified
2770 what the test--

2771 Mr. {Johnson.} So is it yes or no?

2772 Mr. {Wheeler.} --and I did not get instructions in
2773 those meetings.

2774 Mr. {Johnson.} No, I am not talking about that. I said
2775 do they qualify under ex parte, or do they--how do they
2776 qualify for both--I am asking you a question--

2777 Mr. {Wheeler.} And there is an exemption--

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2778 Mr. {Johnson.} Mr. Wheeler, I am--my time.

2779 Mr. {Wheeler.} And--

2780 Mr. {Johnson.} How do they qualify under both? If they
2781 are discussion with the White House, my goodness, that is the
2782 highest office in our land. I find that the American
2783 taxpayer doesn't see that as significant and substantial.
2784 How can they not be significant and substantial, clearly
2785 intended to affect the ultimate decision, and yet you deny
2786 them under a deliberative process claim?

2787 Mr. {Wheeler.} Well, there is multiple parts to that.
2788 You asked how. One is there were not instructions given to
2789 me. I have been on the record on that, and been clear.
2790 Second is that--

2791 Mr. {Johnson.} That is not the determination.

2792 Mr. {Wheeler.} I am about to--the determination also is
2793 that, specifically, interactions with Congress and the White
2794 House are excluded from ex parte, and have been since 1991.
2795 And--but I am going beyond that, and saying that is a non ex
2796 parted conversation, if there was a conversation that was
2797 taking place in that kind of a construct, and two, that--I
2798 will even go--

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2799 Mr. {Johnson.} Under what basis?

2800 Mr. {Wheeler.} --I got no instructions--

2801 Mr. {Johnson.} Under what basis? I mean, you can't

2802 just make that up. The law says what is required to be

2803 revealed and what is not to be revealed, and a deliberative

2804 process privilege applies when you can show a direct part of

2805 the deliberative process, and that it makes recommendations,

2806 or expresses opinion in legal or policy matters, rather than

2807 substantial significance and clearly intended to affect the

2808 ultimate decision.

2809 Mr. {Wheeler.} I am quoting the--

2810 Mr. {Johnson.} Well, I am disagreeing with you, Mr.

2811 Chairman, and I think it is irresponsible that you are

2812 withholding information that rightfully should be open--

2813 openly disclosed to this Committee, and to the American

2814 people. And, Mr. Chairman, I have--

2815 Mr. {Walden.} Gentleman's time--

2816 Mr. {Johnson.} --exhausted my time.

2817 Mr. {Walden.} Chair now recognize the gentleman from

2818 New York, Mr. Collins, for--

2819 Mr. {Collins.} Thank you, Mr. Chairman. Before I get

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2820 to my questions for Commissioners O'Rielly and Pai, one
2821 follow up to Mr. Johnson's question, Chairman Wheeler. There
2822 were 10 meetings, and we do understand there was, on the ex
2823 parte side, disclosure on one of those 10 meetings. It is my
2824 understanding that on the other nine meetings there was
2825 nothing of significance discussed relative to the FCC, where,
2826 under the rules of ex parte, that you should have, or would
2827 be required to otherwise disclose those. Is it true there
2828 was nothing disclosed on nine of the 10 meetings?

2829 Mr. {Wheeler.} No, there is--the test is--

2830 Mr. {Collins.} No, I am not asking you for the test.

2831 Mr. {Wheeler.} No, there is a--

2832 Mr. {Collins.} Was there anything disclosed?

2833 Mr. {Wheeler.} There is--

2834 Mr. {Collins.} Sir, I am asking the questions.

2835 Mr. {Wheeler.} Okay.

2836 Mr. {Collins.} Was there anything disclosed on the
2837 other nine meetings? That is a yes or a no.

2838 Mr. {Wheeler.} I had no--

2839 Mr. {Collins.} That is a yes or no.

2840 Mr. {Wheeler.} --instructions. No. I had no

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2841 instructions.

2842 Mr. {Collins.} Well, I guess I would just--am befuddled
2843 that in nine of the 10 meetings in the White House there was
2844 nothing of any consequence discussed relative to the FCC that
2845 would require disclosure. I will take you at your word, and
2846 just say I am befuddled by that.

2847 Now, one thing that we were clear about today is the
2848 importance of certainty. And Mr. Wheeler, more than--
2849 Chairman Wheeler, more than anyone, stressed the importance
2850 to the providers in the Internet space of certainty,
2851 certainty, certainty, and I can't agree more, with my life in
2852 the private sector. Certainty drives investment and returns,
2853 and with certainty you invest in innovation. And I would say
2854 it is pretty obvious today, the way things have worked has
2855 been pretty good, the light touch.

2856 We have the number one service in the world. The
2857 investments have been billions, and, as Chairman--or as
2858 Commissioner Pai said, maybe trillions of dollars. We lead
2859 the world today. Now, here is my concern. We have also
2860 heard unanimous agreement by the Commissioners litigation is
2861 coming, and likely to take 3 years. It is guaranteed.

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2862 Chairman Wheeler said guaranteed there is litigation coming
2863 for 3 years. Well, if that is not the definition of
2864 uncertainty, I don't know what is.

2865 The--for the next 3 years the folks looking to invest
2866 and innovate in this world have to live under the ultimate
2867 uncertainty of which court is going to rule how, and when
2868 does it move, and what do you do? So, to me, there is a real
2869 issue here, a very genuine issue of inconsistency with the
2870 Chairman stressing importance of certainty, and then saying,
2871 and one thing is certain, we are going to court, which
2872 guarantees uncertainty.

2873 So I guess, Commissioner Pai, I would like to say again,
2874 to me, lack of certainty is a wet blanket on investment.
2875 Lack of certainty is a wet blanket on innovation. And my
2876 worry is, with less innovation, and less investment, we will
2877 someday wake up and not be the leaders in the world relative
2878 to what we think and know is probably one of the most
2879 important aspects of where we are headed. Could you briefly
2880 comment on that, and perhaps take a minute, and then I would
2881 like Mr. O'Rielly to fill in the remaining time.

2882 Mr. {Pai.} Thank you for the question, Congressman. I

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2883 couldn't agree with you more that uncertainty is the bane not
2884 only of the private sector, but ultimately--who won't get the
2885 benefit of some of that private sector risk. I will give you
2886 just two instances of uncertainty that this order generates.

2887 First, with respect to the so-called Internet conduct
2888 standard, which lays out seven vaguely worded non-exhaustive
2889 factors under which the FCC is going to determine what is
2890 allowed and what isn't allowed. And the FCC, after the vote,
2891 conceded ``we don't know where things go next''. The FCC
2892 will sit there as a referee and be able to throw the flag.
2893 The Electronic Frontier Foundation targeted this particular
2894 rule and said the problem with a rule this vague is that
2895 neither ISPs, nor Internet users, can know in advance what
2896 kind of practices will afoul of the rule.

2897 Second example, the Enforcement Bureau advisory opinion
2898 process. Nobody knows exactly how it is going to work.
2899 Commissioners aren't going to have the ability to have input
2900 into that. And when you pair the Enforcement Bureau advisory
2901 opinion process with this Internet conduct standard,
2902 essentially the entrepreneurial spirit of American is going
2903 to be funneled through this regulatory bottleneck, and nobody

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2904 is going to know in advance until they get permission from
2905 Washington what is allowed and what isn't.

2906 Mr. {Collins.} I couldn't agree more that the only
2907 thing certain is uncertainty for the next 3 years.
2908 Commissioner O'Rielly?

2909 Mr. {O'Rielly.} I couldn't agree with my colleague any
2910 more. I think he has hit it right on the head. I would say
2911 I was in St. Louis not but a couple weeks--month ago and
2912 talked to wireless ISPs, and talked about what could happen
2913 under this item, and what it would mean for their business.
2914 And there is--these are the guys that are the small guys. We
2915 talk about 800 other providers, well, these are 800 wireless
2916 ISPs trying to serve in the most rural parts of America, and
2917 they are stringing together networks under unlicensed bands,
2918 and they are asking for more spectrum, and they are like,
2919 what does this mean for me? And I am like, it means more
2920 paperwork, it means more compliance, it means you don't know
2921 what you can do for your business for a number of years. And
2922 they were just frustrated--belief.

2923 Mr. {Collins.} Well, I share your concerns, and I think
2924 America will too, and we will have to see where that heads.

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2925 Mr. Chairman, my time is up, and I yield back.

2926 Mr. {Walden.} Thank the gentleman from New York, and
2927 our witnesses. And I have heard some of the same things from
2928 small Internet providers in my district. They are feeling
2929 like they are going to be overwhelmed by this, and so I am
2930 meeting with some of them as well.

2931 I know Mr. Scalise is on his way here, the Whip of the
2932 House, so we will try to accommodate his questioning. He--

2933 Ms. {Eshoo.} Mr. Chairman, I am going to have to leave.
2934 I have to catch a flight, and I don't know if that has an
2935 effect on--if I leave, can you keep the hearing open?

2936 Mr. {Walden.} We can seek counsel on that. But,
2937 obviously, we should try to accommodate the third Ranking
2938 Member of the--

2939 Ms. {Eshoo.} No, I know, but I--

2940 Mr. {Walden.} --of our Committee, who is on his way.

2941 Ms. {Eshoo.} We started at 11 o'clock, so, I mean, he
2942 could--

2943 Mr. {Walden.} I--

2944 Ms. {Eshoo.} He has had some time to get here.

2945 Mr. {Walden.} I--

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2946 Ms. {Eshoo.} I mean, I am--

2947 Mr. {Walden.} I understand.

2948 Ms. {Eshoo.} I am a patient person, but I am--I don't
2949 want to miss my flight, so--

2950 Mr. {Walden.} What time is your flight?

2951 Ms. {Eshoo.} I have to go out to Dulles.

2952 Mr. {Walden.} So while we--

2953 Ms. {Eshoo.} It doesn't leave from the Rayburn
2954 horseshoe, unfortunately.

2955 Mr. {Walden.} So while he comes in the door here--we
2956 are now going to let him get settled, but, as he is--first of
2957 all, if I could ask all of the witnesses to--there will be
2958 some follow-up questions. Some of them you have all taken
2959 down. Because of the nature of our work, we would like to
2960 have prompt responses to the questions. I know you have
2961 probably had questions from other Committees as well, I get
2962 that, but the extent to which you can respond promptly, that
2963 would be helpful. Thank you, Anna. And we would like your
2964 feedback on the draft legislation that we put out there. All
2965 of your feedback would be most helpful. It is not a rush
2966 job. We are trying to get this right, and we think it is

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2967 very important.

2968 So, with that, I would now recognize the gentleman from
2969 Louisiana, the Whip of the United States House of
2970 Representatives, allowing him to catch his breath fully, Mr.
2971 Scalise.

2972 Mr. {Scalise.} Thank you, Mr. Chairman, and I tested my
2973 40 speed getting here, but I appreciate the Commissioners
2974 being here, coming to testify about their Commission, also
2975 about this Net Neutrality proposal that I know I have strong
2976 concerns about, and a lot of my other colleagues have
2977 expressed real strong concerns about as well.

2978 You know, I guess when you get back to the basic
2979 question of what has worked so well with the Internet, and
2980 the technology community as a whole, you know, somebody who
2981 graduated in computer science, who has worked in the
2982 technology industry, I have always felt that the reason that
2983 the industry has been so successful is because the Federal
2984 government hadn't figured out a way to regulate it, to slow
2985 it down. And then yet here you come with an answer to a
2986 problem that doesn't exist, a heavy handed role of
2987 government, and the FCC's traditional role has not been to

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2988 have a heavy hand.

2989 And this, when you look at the proposal that has come
2990 out, my goodness, I mean, over 300 pages of regulations. And
2991 this is just the first round, before the proposal is even
2992 been put into effect. I guess, you know, anybody is looking
2993 for a free and Open Internet, I am sure they looked to the
2994 over 300 pages of regulations from the Federal Government to
2995 start that process. It is not broken. Why is the Federal
2996 Government here to fix something that has been working
2997 incredibly well? Especially when you look at the role of
2998 Federal regulations over the years, and just what they have
2999 done to harm our economy.

3000 I do want to ask you, Commissioner Pai, because you made
3001 some comments earlier about the potential taxes and fees that
3002 can come with this Title 2 classification, and when you look
3003 at Section 202 of the law, it clearly gives that ability to
3004 get involved--for the FCC to get involved in regulating costs
3005 for the Internet. And so if you could share with me just
3006 what kind of impact this can have on both fees being
3007 implemented, higher prices that consumers will ultimately pay
3008 from this new classification?

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3009 Mr. {Pai.} Thank you for the question, Congressman. I
3010 think a multitude of fees and taxes are going to be levied on
3011 broadband in a way that is ultimately going to--down to the
3012 consumer's detriment. Just to give you one example, now that
3013 broadband has been reclassified as a telecommunication
3014 service, it--that order explicitly opens the door to billions
3015 of taxes and fees being assessed through the Universal
3016 Service Fund. So now, in addition to that line item you see
3017 on your phone bill which only applies to your voice, the
3018 Universal Service Fee, you are going to be paying a fee on
3019 broadband, and that will happen, I would imagine, in the next
3020 several weeks or months.

3021 Secondly, and critically, there are all sorts of other
3022 fees that are going to be assessed. For example, currently a
3023 lot of broadband providers that had not been classified as
3024 telecom providers paid a lower rate for the equipment that
3025 they attached to the utility poles, known as pole
3026 attachments. They paid a rate under Section 224(d). Now,
3027 because they are all telecom providers, they will have to pay
3028 a much higher rate at Section 224(e), and smaller providers
3029 in particular will have to pay \$150 to \$200 million a year

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3030 just for those higher pole attachment rates. Then you add on
3031 top of that the higher state and local property taxes that a
3032 lot of these companies will have to pay, because they are now
3033 telecom providers. All of these costs have to come out of
3034 somewhere, and it is going to be the consumer's wallet, and
3035 that is one of the reasons why I am concerned.

3036 Mr. {Scalise.} Yeah, and we have seen this time and
3037 time again, that these kind of regulations, and ultimately
3038 these new fees and taxes that would be paid are ultimately
3039 going to be paid by consumers, by people that have been
3040 enjoying the benefits of the investments that have been made
3041 by private companies. This isn't the Federal Government
3042 investing. This is private investment, to the tune of
3043 billions of dollars.

3044 I will read you this quote, and maybe I will let you
3045 answer it. ``There is nothing worse for investment,
3046 innovation, job creation, all things that flow from
3047 investment, than businesses not knowing what the rules are.''
3048 You want to comment on that?

3049 Mr. {Pai.} I think that is, as I have pointed out many
3050 times, the bane of not just the private sector, but the

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3051 consumer, to not know what is going to be allowed and what
3052 isn't. And it is in--exactly in that environment where the
3053 private sector is the least likely to take the risk, to raise
3054 the capital, to build the infrastructure that is going to
3055 connect Americans with digital opportunities.

3056 And I believe, as you pointed out eloquently in your
3057 statement, that part of the reason why we enjoy the best
3058 Internet experience in the world is because we have had this
3059 historic bipartisan commitment, dating back to the Clinton
3060 Administration, that the Internet would be free from state
3061 and Federal regulation.

3062 Mr. {Scalise.} That quote, by the way, was Chairman
3063 Wheeler at his confirmation hearing. I do want to ask you,
3064 Commissioner O'Rielly, because you commented on this order
3065 that it will negatively impact edge providers. Of course,
3066 many of the edge providers have been proponents of these Net
3067 Neutrality regulations, but you have raised some concerns
3068 about how even they would be negatively impacted, people that
3069 even asked for this. So if you could comment on that?

3070 Mr. {O'Rielly.} Yes. A number of people have
3071 highlighted on this fact, is that the lines between an edge

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3072 provider and a telecommunications provider under our new
3073 definition are blurring over time. And so you may be--today
3074 you may be an edge provider, tomorrow you may be something
3075 else. You may have multiple parts to your business, and that
3076 is going to, you know, that is problematic as you try to
3077 figure out how best to comply with our rules.

3078 More importantly, I believe that the Commission is going
3079 to continue to push its regulations up the chain. And so
3080 today is about telecommunications providers, and we talked
3081 about that under our new definition. And then we are going
3082 to, you know, we now are having a debate in terms of--we are
3083 going to have some kind of structure to deal with
3084 interconnection, or the middle mile, what used to be known as
3085 peering. In my conversation, we are bleeding right into the
3086 backbone of the Internet, and I think that only leads us to
3087 edge providers over time.

3088 Mr. {Scalise.} I see I am out of time, but I appreciate
3089 your answers, and hopefully this does go forward. But, with
3090 that, I yield back the balance of my time.

3091 Mr. {Walden.} Gentleman yields back, and now that I
3092 know the rules only require two members of either party to be

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3093 here, we could go five or six more rounds.

3094 Mr. {Scalise.} Let us go. I am sure they would love to
3095 stay around longer, and--

3096 Mr. {O'Rielly.} Could we order in?

3097 Mr. {Walden.} I want to thank our witnesses. I know
3098 you have a tough job, and we may disagree, but we are all
3099 trying to do the right thing for the country, so thanks for
3100 testifying. Again, if you can promptly respond to our
3101 questions, that would be appreciated, and we look forward to
3102 your return visit in the not too distant future, we hope.
3103 So, with that, the Committee stands adjourned.

3104 [Whereupon, at 2:15 p.m., the Subcommittee was
3105 adjourned.]