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A LEGISLATIVE HEARING ON
FOUR COMMUNICATIONS BILLS
TUESDAY, JANUARY 12, 2016
House of Representatives,
Subcommittee on Communications and
Technology,
Committee on Energy and Commerce
Washington, D.C.

The subcommittee met, pursuant to call, at 10:15 a.m., in
Room 2123 Rayburn House Office Building, Hon. Greg Walden
[chairman of the subcommittee] presiding.

Members present: Representatives Walden, Latta, Shimkus,
Blackburn, Lance, Guthrie, Kinzinger, Bilirakis, Johnson,
Collins, Cramer, Eshoo, Doyle, Welch, Clarke, Loeb sack, DeGette,
Butterfield, Matsui, McNerney, and Pallone (ex officio).

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Staff present: Ray Baum, Senior Policy Advisor for Communications and Technology; Leighton Brown, Press Assistant; Rebecca Card, Assistant Press Secretary; Andy Duberstein, Deputy Press Secretary; Gene Fullano, Detailee, Telecom; Kelsey Guyselman, Counsel, Telecom; David Redl, Counsel, Telecom; Charlotte Savercool, Professional Staff, Communications and Technology; Gregory Watson, Legislative Clerk, Communications and Technology; Christine Brennan, Minority Press Secretary; Jeff Carroll, Minority Staff Director; David Goldman, Minority Chief Counsel, Communications and Technology; Jerry Leverich, Minority Counsel; Lori Maarbjerg, Minority FCC Detailee; and Ryan Skukowski, Minority Policy Analyst.

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1 Mr. Walden. I will call to order the Subcommittee on
2 Communications and Technology and welcome everyone here for our
3 first hearing of 2016.

4 I thank our distinguished panelists for being here to share
5 your views on these bills with us today and I want to welcome my
6 colleagues back as we get underway in what should be another very
7 busy and hopefully productive year for the Subcommittee on
8 Communications and Technology.

9 I would like to thank you all for the great work we have done
10 not only last year but over the last few years that have produced
11 bipartisan legislation that has become law.

12 And, actually, as you look to - I think today's the deadline
13 for broadcasters to decide if they are going to participate in
14 the auction.

15 Another big auction could be underway, the first of its kind,
16 that could produce more revenue for the taxpayers and more
17 wireless broadband for people.

18 So pretty exciting times in which we live and we will be
19 continuing to do oversight on the auction and the issues
20 associated with it.

21 We will continue to do oversight on FirstNet and those issues
22 as we go forward and other issues that members have brought to
23 our attention.

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24 So look forward to another big and productive year for our
25 subcommittee and I thank the great participation that we get.

26 Now on to today's hearing. We will hear from a panel of
27 distinguished witnesses on four bills, each designed to improve
28 the legal and regulatory environment for consumers and small
29 businesses.

30 First, the subcommittee will consider H.R. 2669. This is
31 the Anti-Spoofing Act of 2015 introduced by Representatives Meng,
32 Barton and Lance.

33 It is a reintroduction of legislation that came out of this
34 subcommittee last Congress. H.R. 2669 would extend the
35 provisions of the Truth in Caller ID Act to text messaging and
36 VoIP services.

37 This legislation passed the House unanimously last Congress.
38 I expect it will enjoy a similar level of support in this Congress.

39 Second, we will examine H.R. 1301. This is the Amateur Radio
40 Parity Act of 2015. As a ham radio operator and perhaps one of
41 the only in Congress, I am acutely aware of the passion that
42 amateur radio operators have for their service.

43 Despite its widespread use and importance in times of
44 emergency, some land-use restrictions in some areas have
45 prioritized aesthetics over the rights of hams.

46 H.R. 1301 seeks to ensure that amateur radio operators get

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47 a fair shake and protection from unnecessary bans on their
48 equipment by instructing the FCC to adopt rules to this end.

49 Now, I know some have said that this is opening the door to
50 40-foot towers in town home backyards. That is not the case. Ham
51 equipment can be as small as over-the-air digital television
52 antennae that are becoming popular with cord-cutters.

53 Surely ham radio operators= communications deserve no less
54 protection than access to prime time television. This is a common
55 sense bill and I urge my colleagues to support it.

56 Finally, we will consider two bills that concur with FCC's
57 own policy. H.R. 2666, Representative Kinzinger=s No Rate
58 Regulation of Broadband Internet Access Act, seeks to codify the
59 assurances of FCC Chairman Tom Wheeler by prohibiting the FCC from
60 using its new authority under the Open Internet order to regulate
61 rates charged for broadband.

62 Simply put, this is what President Obama and Chairman Wheeler
63 have stated publicly time and again, but put in statutory form.

64 President Obama, in his now infamous YouTube directive to
65 the FCC, directed the FCC to reclassify broadband under Title II
66 "while forbearing from rate regulation.@"

67 In front of multiple congressional committees in both the
68 House and the Senate, Chairman Wheeler has continually repeated
69 what he stated succinctly in his statement when the FCC adopted

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70 the open Internet order, that "that means no rate regulation, no
71 filing of tariffs and no network unbundling."

72 H.R. 2666 simply does what President Obama and Chairman
73 Wheeler cannot -- it binds future chairmen to live by the
74 commitments that this administration has made as to how the
75 sweeping authority the FCC granted itself is to be used.

76 Some have been critical of this bill, seeking to change the
77 language to preclude the use of tariff authority, an authority
78 the FCC has already forborne from using, while leaving the
79 commission and its enforcement bureau free to use enforcement
80 authority to regulate rates.

81 Rate regulation by after-the-fact second guessing is rate
82 regulation nonetheless. We should ensure that the specter of
83 rate regulation of broadband is off the table permanently.

84 In addition to Mr. Kinzinger's rate regulation bill, we will
85 also examine a discussion draft of a bill that I am offering to
86 make permanent the exception to the commission's enhanced
87 transparency rule for small businesses.

88 In the Open Internet order, the commission rightly
89 recognized that the work required by the enhanced transparency
90 rule would be an undue burden on small businesses and it provided
91 a temporary exception from the rule.

92 Just last month, the FCC extended that exception through the

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93 end of 2016. While I am sure that small businesses are
94 appreciative of the reprieve from the costs of compliance with
95 this rule, the reprieve is not a pardon.

96 Small businesses deserve the certainty of a permanent
97 exception from this unnecessary burden. Additionally, this
98 draft would also harmonize the FCC's definition of a small ISP
99 with the definition used by the U.S. Small Business
100 Administration.

101 It makes no sense to subject businesses to different
102 definitions of small across different agencies and deference to
103 the SBA definition ensures that the part of the federal government
104 charged with small business issues reigns.

105 These four bills will ensure that consumers and small
106 businesses are protected from unnecessary burdens and misuse of
107 the authorities granted in law and I look forward to advancing
108 these bills to the House floor as soon as possible.

109 I thank our witnesses for being here to discuss the diverse
110 sets of bills and I look forward to their counsel.

111 I ask unanimous consent now to enter into the record a letter
112 from Mr. Chris Imlay, general counsel of the Amateur Radio Relay
113 League, expressing support for the Amateur Radio Parity Act, as
114 well as a letter from Mr. Thomas Skiba, CEO of the Community
115 Association's Institute suggesting changes to the legislation

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116 from the perspective of homeowners and community associations.

117 Without objection.

118 [The information follows:]

119

120 *****COMMITTEE INSERT*****

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121 Mr. Walden. I also want to thank both the ARRL and CAI for
122 their comments on this legislation and we look forward to working
123 with them and with the ranking member as we advance this important
124 legislation.

125 I would also like to ask unanimous consent to enter into the
126 record a letter from FCC Commissioners Pai and O'Rielly expressing
127 concern with the impact of the enhanced transparency rule on small
128 businesses and questioning the veracity of the FCC's Paperwork
129 Reduction Act analysis. Without objection.

130 [The information follows:]

131

132 *****COMMITTEE INSERT*****

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133 Mr. Walden. I yield back the balance of my time. I thank
134 the committee's indulgence and I recognize the gentlelady from
135 California, Ms. Eshoo, for opening comments.

136 Ms. Eshoo. Thank you, Mr. Chairman, and happy New Year to
137 everyone and thank you to the witnesses.

138 It is wonderful to see you, and I want to associate myself
139 with what the chairman said about looking forward to this year.

140 We have a lot on our plate. There are exciting things that
141 are taking place and I think that the full engagement of this
142 subcommittee not only in oversight but legislative ideas that come
143 up that we will make optimum use of this year.

144 It is always said that the presidential election year nothing
145 happens but I don't think that that tagline is going to apply to
146 our subcommittee.

147 So I too look forward to working with you and with all of
148 the members on both sides of the aisle to uphold the doing of this
149 committee -- the work that the committee does.

150 So today is our first subcommittee meeting of the year and
151 we have some important bills in front of us. I think it is a
152 mixture of good and perhaps not so good bills. But I think that
153 with the key witnesses that we have here today I will raise my
154 questions with them.

155 First up is H.R. 2666, the No Rate Regulation of Broadband

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156 Internet Access Act. I agree, Mr. Chairman, about no rate
157 regulation. So you can put my name down next to the president,
158 to the FCC chairman and Anna Eshoo.

159 I am not for the FCC regulating the monthly recurring rate
160 that consumers pay for broadband Internet access service. Now,
161 consistent with this view, last year, as we all know, Chairman
162 Wheeler adopted what some of us call a modern light touch approach
163 that foregoes the unnecessary provisions of Title II such as rate
164 regulation, tariffing and cost accounting rules.

165 At the same time, the commission has an important role to
166 play -- and this is what I want to highlight on this issue -- in
167 consumer protection, which includes the billing practices of the
168 nation's broadband providers.

169 You will recall that I raised the issue over and over again
170 of below-the-line fees and I think that in our discussions with
171 the witnesses it is something that we really should kind of pull
172 apart and examine to make sure that there aren't any unintended
173 consequences of the legislation for consumers.

174 And I think that we all -- I think it is an area that we can
175 come to an agreement on because it includes discriminatory data
176 caps or some future practice that we don't even foresee right now.
177 So I think it is an area that we need to take a good look at.

178 Secondly, the subcommittee is considering the Small Business

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179 Broadband Deployment Act. Now, this is proposed so that small
180 businesses will not be burdened -- small broadband providers --
181 and I think that that is very important.

182 The bill exempts companies with hundreds of millions in
183 annual revenue from complying with the enhanced transparency
184 requirements included in the FCC's 2015 open Internet order.

185 Now, this includes disclosure of promotional rates, fees,
186 charges and data caps. But it would leave millions of consumers,
187 particularly those in rural areas, with fewer protections than
188 those in big cities.

189 I think that we can reach some common ground on this and I
190 want to work with everyone on this. But I don't think that rural
191 areas that are particularly hard hit -- when you see the report
192 that came out of the FCC, rural areas are really lagging behind
193 in our country with broadband.

194 Third, while I have been a long-time supporter of amateur
195 radio operators including you, Mr. Chairman, and the services that
196 they provide -- and I have a lot in my district -- I do have some
197 concerns with the Amateur Radio Parity Act.

198 As written, the legislation could violate the rights of
199 homeowners associations and that is who I have heard from. So
200 I think, again, we have got to take a look at this and make sure
201 that we can blend the underlying purpose of this and not stick

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202 it to the homeowners associations -- the HOAs in the country --
203 by overruling covenants and easements that are conveyed with the
204 purchase of a property from one seller to another.

205 And I am proud to be a co-sponsor of Congresswoman Grace
206 Meng's legislation, the Anti-Spoofing Act. It is a bipartisan
207 bill. It is a good bill.

208 I think there are, what, nearly 20 members of the
209 subcommittee that are co-sponsors of it and it deserves to move
210 forward the way it did before.

211 So, again, Mr. Chairman, for convening this hearing. Look
212 forward to this year and I yield back.

213 Mr. Walden. I thank the gentlelady for --

214 Ms. Eshoo. Yield back though. Thank you for your patience.

215 Mr. Walden. -- comments and we look forward to working
216 together on these and other issues this year.

217 We turn now to the vice chair of the full committee, the
218 gentlelady from Tennessee, Ms. Blackburn. Good morning.
219 Welcome.

220 Mrs. Blackburn. Thank you, Mr. Chairman, and I want to say
221 welcome to our witnesses. We are pleased that you are here and
222 I am appreciative of the four bills that we are going to discuss
223 this morning.

224 I want to touch on two of these. First, the Small Business

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Broadband Deployment Act, protecting the small ISPs who really don't have the resources to comply with net neutrality's enhanced disclosure requirements.

This is important for us. The small ISPs and serving their footprint are many times the way we can increase that access to affordable broadband. So we are going to be anxious to talk about that and to get your insights on that.

Secondly, H.R. 2666, which codifies Chairman Wheeler's pledge that he made and President Obama's pledge likewise, to not engage in rate regulation.

This is something that is important to us to do. I thought it was so interesting last March in Barcelona at the Mobile World Congress.

Chairman Wheeler said, "This is not regulating the Internet. Regulating the Internet is rate regulation, which we don't do," ending the quote.

We want to make certain that he is good to that promise. Rate regulation is something that causes us tremendous concern.

I appreciate Congressman Kinzinger bringing the legislation forward and look forward to a full discussion of that proposal with you all.

And at this time, I yield the balance of the time to Mr. Latta.

Mr. Latta. Well, I appreciate the gentlelady for yielding

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248 and also thank the chairman for holding today's hearing and I would
249 also like to thank our witnesses for being with us today. Greatly
250 appreciate it.

251 All four bills before us today are good legislative measures
252 that will eliminate unnecessary government regulations and
253 protect consumers.

254 I would like to focus my time on the two bills that stem from
255 the FCC's decision to reclassify broadband as a telecommunication
256 service under Title II of the Communications Act.

257 First, they resolved Title II; the FCC extended its authority
258 to regulate rates charged for broadband. The threat of rate
259 regulation would chill network investments and stifle innovation.

260 H.R. 2666, of which I am a co-sponsor, would prohibit the
261 commission from regulating rates and remove regulatory
262 uncertainty for Internet service providers.

263 Secondly, the Small Business Broadband Deployment Act would
264 help eliminate a burdensome regulation created by Title II by
265 making permanent the temporary exemption for small ISPs from
266 enhanced transparency requirements.

267 Providers in my district have made it clear to me that this
268 exemption is vital for their continued operation. I look forward
269 to today's hearing and I appreciate the gentlelady yielding.

270 I yield back.

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271 Mrs. Blackburn. Yield back.

272 Mr. Walden. The gentlelady yields back, and now we will turn
273 to the ranking member of the full committee, the gentleman from
274 New Jersey, Mr. Pallone.

275 Mr. Pallone. Thank you, Mr. Chairman, and our ranking
276 member, Ms. Eshoo, for holding this hearing, and let me also thank
277 our witnesses for being here.

278 I know you are not strangers to the subcommittee and I
279 appreciate your willingness to come up to testify.

280 I also appreciate the commitment that Chairman Walden is
281 showing to regular order. Legislative hearings like this one we
282 are holding today do not simply check a box.

283 They help our members and the public better understand the
284 potential effects of the bills before us. When the committee is
285 given opportunities to make reasonable and thoughtful decisions,
286 we end up with better results.

287 I am particularly interested in learning more today about
288 the bill prohibiting the FCC from regulating rates for broadband
289 Internet access. I agree with the sentiment driving this bill.

290 The commission should not be setting rates for broadband
291 access. In fact, we have heard from FCC Chairman Wheeler himself
292 that he does not intend to set rates.

293 Nonetheless, I have also heard concerns that as drafted this

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bill may result in significant unintended consequences. For instance, some believe that it could spur endless litigation, leading to uncertainty in the market and deterring investment.

Worse, the bill could seriously curtail the FCC's ability to protect consumers. Obviously, that result is not acceptable. Today's hearing gives us the chance to learn more about these potential consequences and whether the bill can be better targeted to avoid these pitfalls.

I would also look forward to hearing more about the other three bills on today's agenda. Amateur radio, transparency into service provider practices and prevention of fraudulent caller ID are all important topics worthy of a fair hearing.

But while today's hearing marks a good start for the year, I hope that this is only the first legislative hearing we hold.

I further hope that future hearings include ideas put forward by Democratic members such as Congressman Welch's Digital Learning Equity Act, Congresswoman Matsui's Spectrum Challenge Prize Act, Congressman Lujan's FCC Transparency Act and even my own Viewer Protection Act, or SANDy Act.

All of these bills address pressing issues the American people care about and they deserve the opportunity to be heard.

So with that, I look forward to the rest of the discussion and I yield the balance of my time to the gentlewoman from

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317 California, Ms. Matsui.

318 Ms. Matsui. I thank the ranking member for yielding me time.

319 Two of the bills on our agenda address the FCC's net
320 neutrality order. Like millions of Americans who made their
321 voices heard last year, I support a free and open Internet.

322 At the same time, I do not believe the FCC needs to get into
323 the business of regulating consumer broadband rates. Chairman
324 Wheeler has also stated many times that he is not interested in
325 rate regulation either.

326 What I am concerned about is the potential for paid
327 prioritization schemes to create fast and slow lanes on the
328 Internet and that is why I introduced a bill with Senator Leahy
329 to instruct the FCC to write rules to ban paid prioritization,
330 and I was pleased that the FCC included a ban on paid
331 prioritization in the net neutrality rules.

332 I am concerned that the two net neutrality bills we are
333 considering today could undermine important consumer protections
334 like the paid prioritization rule.

335 I do look forward to hearing from today's witnesses about
336 all four bills under consideration today. I thank the witnesses
337 for being here today and I yield back to the ranking member to
338 give time to anybody else, if he so feels. Thank you.

339 Mr. Walden. All time has been consumed and yielded back and

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340 we appreciate the comments of all of our members.

341 We will now go to our witnesses and thank them for being here
342 -- the Honorable Robert McDowell, partner, Wiley Rein LLP, and
343 senior fellow at the Hudson Institute -- we thank you for being
344 here -- Mr. Harold Feld, senior vice president, Public Knowledge
345 -- good to have you back before our committee as well -- and Ms.
346 Elizabeth Bowles, president and chair of the board of Aristotle,
347 Inc. on behalf of the Wireless Internet Service Providers
348 Association. Ms. Bowles, we appreciate your being here to
349 testify, too.

350 So I think we will start with Mr. McDowell. We have always
351 enjoyed having you before the committee and we are glad to have
352 you back this time.

353 So welcome to -- as the first witness in the new year before
354 our subcommittee. Don't blow it, okay?

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STATEMENTS OF THE HONORABLE ROBERT MCDOWELL, PARTNER, WILEY REIN LLP, SENIOR FELLOW, HUDSON INSTITUTE; HAROLD FELD, SENIOR VICE PRESIDENT, PUBLIC KNOWLEDGE; ELIZABETH BOWLES, PRESIDENT & CHAIR OF THE BOARD, ARISTOTLE, INC. (ON BEHALF OF WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION)

STATEMENT OF ROBERT MCDOWELL

Mr. McDowell. No pressure. Thank you, Mr. Chairman, and happy New Year to all distinguished members of the committee and Ranking Member Eshoo as well. It is an honor to be here again and to be your first witness of 2016.

And by the way, although I am a partner at Wiley Rein and a senior fellow of the Hudson Institute, the opinions I express today are strictly my own.

Congress has a terrific opportunity to pass the legislation before this subcommittee today on a bipartisan basis.

Specifically, and in the observance of time, I will refer to just two bills and then we can talk about the other two bills later -- one being the No Rate Regulation of Broadband Internet Access Act and the Small Business Broadband Deployment Act.

As has been pointed out, both President Obama and FCC Chairman Wheeler have expressed their opposition to rate regulation of broadband services.

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378 Although in 2014 the president called on the FCC to classify
379 broadband services under Title II before it did so last year, he
380 also asked that it forebear from rate regulation.

381 Similarly, Chairman Wheeler stated last May that broadband
382 providers should be, quote, "free from any limiting rate
383 regulation,@ end quote.

384 He also testified before the Senate Appropriations Committee
385 that, quote, "If Congress wants to come along and say that's,@
386 meaning rate regulation, "is off the table for the next
387 commission, I have no difficulty with it,@ end quote.

388 These sentiments also echo the policies of the Clinton-Gore
389 White House and the Clinton era FCC under then Chairman Bill
390 Kennard.

391 They, as well as the Federal Trade Commission on a unanimous
392 bipartisan vote in 2007 and the Obama Department of Justice, have
393 all warned against regulating the rates of broadband networks.

394 Why? Because they and scores of independent market
395 analysts, entrepreneurs, economists and think tanks agree that
396 rate regulation deters investment and constructive
397 entrepreneurial risk taking, stifles innovation and would slow
398 the evolution of a lightning-fast Internet, and we appear to have
399 a bipartisan consensus here today on rate regulation.

400 In short, H.R. 2666 merely codifies what Democrats and

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401 Republicans have been seeking, essentially, for decades -- a ban
402 on rate regulation of Internet services.

403 The bill could benefit, however, from clarifying at least
404 two ambiguities. The first would be to make it clear that it
405 prohibits all rate regulation including ex post, or
406 after-the-fact, determinations that rates are unjust or
407 unreasonable. As written, it applies only to ex ante, or
408 before-the-fact, regulation.

409 The second would be to clarify which rates it addresses.
410 Currently, with the Open Internet order the FCC attempted to give
411 itself the authority to rate regulate all Internet access services
412 including interconnection and peering.

413 It is the bipartisan consensus, it appears, that these
414 services should not be rate regulated. This bill simply offers
415 to codify that bipartisan spirit and hold future FCCs to that
416 promise through clear statutory language.

417 Similarly, the Small Business Broadband Deployment Act would
418 codify on a permanent basis what the FCC has attempted to do on
419 a temporary basis, which is to exempt small ISPs from the order's
420 transparency requirements.

421 As the current regulatory regime now stands, the commission
422 will review the exemption on an annual basis, leaving small
423 business owners in a perpetual state of limbo.

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424 There is a lot more to discuss. I do support the other two
425 bills and look forward to a robust in-depth discussion of amateur
426 radio.

427 In seven years as an FCC commissioner, I think I spent maybe
428 ten minutes on amateur radio. But I think five of them are
429 renewing your license, Mr. Chairman. So --

430 Mr. Walden. I am glad you took a personal interest in it.

431 Mr. McDowell. Yes. So I look forward to discussing it.

432 Thank you again.

433 [The prepared statement of Robert McDowell follows:]

434

435 *****INSERT*****

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436 Mr. Walden. At least I didn't have to take the code test
437 again.

438 We will now go to Mr. Feld of Public Knowledge. Good to have
439 you back before the committee, Mr. Feld. Please go ahead with
440 your comments.

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441 STATEMENT OF HAROLD FELD

442
443 Mr. Feld. Thank you, Chairman Walden, Ranking Member Eshoo,
444 for inviting me here to testify.

445 I am pleased to support H.R. 2669, the Anti-Spoofing Act of
446 2016, and H.R. 1301, the Amateur Radio Parity Act. Both bills
447 are carefully drafted and narrowly tailored to address clear and
448 pressing problems.

449 As a result, these bills may be seamlessly integrated into
450 the Communications Act without unintended consequences.
451 Unfortunately, the same cannot be said for the broadband bills
452 under consideration.

453 Let me start with H.R. 2666, the No Rate Regulation of
454 Broadband Internet Access Service Act. As everyone agrees, there
455 is no evidence that the FCC plans to start regulating broadband
456 prices.

457 Supporters support the bill from the fear that a future FCC
458 may someday change the policy. Unfortunately, the broad sweeping
459 language of H.R. 2666 virtually guarantees a host of unintended
460 consequences that are bad for consumers and bad for competition.

461 The bill prohibits any FCC action under any law to, quote,
462 "regulate the rates broadband providers charge for broadband
463 access.@"

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464 This would appear to prevent FCC enforcement action of laws
465 against deceptive billing practices, deliberate overcharges or
466 even outright fraud.

467 Further, although the bill's supporters claim it leaves the
468 core protections of the FCC's net neutrality rules alone, it is
469 easy to argue that enforcing the rule against paid prioritization
470 or prohibiting providers from favoring their own content and
471 services either directly or indirectly regulates the rates
472 charged for broadband Internet access service.

473 Finally, the bill's broad sweeping language will disrupt the
474 FCC's ongoing efforts to reform the Universal Service Fund. The
475 proposed bill's broad sweeping language would force the FCC to
476 halt and perhaps discontinue the already complicated process of
477 making broadband in rural America affordable, as affordable, of
478 course, is a price regulation.

479 Similarly, the proposed Small Business Broadband Deployment
480 Act raises the spectre of significant unintended consequences.

481 Consider the impact on the millions of residential and small
482 business subscribers the bill strips of the protections of
483 transparency.

484 This puts every family-owned business at risk from
485 fly-by-night providers that the proposed legislation will render
486 unaccountable for incomplete and dishonest disclosure.

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487 The proposed Small Business Broadband Deployment bill will
488 create an incentive for small business broadband subscribers to
489 select national providers over local small providers so that their
490 businesses can enjoy the full protection of the transparency rule.

491 It would be ironic if, in the haste to protect small broadband
492 providers from possible paperwork, the proposed bill accidentally
493 drives away the very small business customers these small
494 providers need to survive.

495 Finally, the bill expands the size of the current FCC
496 exemption to providers with up to 1,500 employees or 500,000
497 subscribers.

498 These providers, which most of us would consider mid-size
499 providers rather than small providers, are already subject to the
500 FCC's transparency rules. Nothing since the rules went into
501 effect shows that these larger firms need relief.

502 Nevertheless, the bill strips millions of consumers and
503 small business subscribers of valuable protections they currently
504 enjoy.

505 Bluntly, before Congress strips millions of people of
506 important protections against fraud and abuse, it should have
507 clear evidence of a real need and should narrowly tailor the
508 language to address that need.

509 At the very least, making the small business exemption

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510 through the commission's enhanced transparency rules is
511 premature. The FCC has not yet finished its paperwork reduction
512 analysis or adopted a final rule.

513 At a minimum, Congress should wait for the FCC to assess the
514 burden estimates submitted by stakeholders and see whether the
515 FCC adopts stakeholder suggestions such as those made by the ACA
516 to minimize the estimated burden.

517 Let me conclude with this analogy. We have all experienced
518 the frustration of downloading an update to our phone or laptop
519 and discovering that a poorly written line of code has created
520 a new security breach or caused key applications to crash.

521 The same unfortunate leak can happen with the Communications
522 Act. Rushing to pass bills with broad sweeping language to
523 address vaguely defined hypothetical problems will create bugs
524 in our legal code that bad actors can exploit and will crash FCC
525 efforts to bring affordable broadband to all Americans.

526 Congress should not release this legal software update until
527 it has been thoroughly debugged and checked for compatibility with
528 the existing operating system.

529 Thank you, and I am happy to answer any further questions
530 you may have.

531 [The prepared statement of Harold Feld follows:]
532

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533

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534 Mr. Walden. Thank you, Mr. Feld.

535 We will now go to Ms. Bowles. Thank you for being here. We
536 look forward to your testimony as well.

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STATEMENT OF ELIZABETH BOWLES

Ms. Bowles. Thank you for having me.

Chairman Walden, Ranking Member Eshoo, members of the subcommittee, I appreciate the opportunity to be here today. I am going to limit my remarks in the interest of time to the H.R. 2666 and the Small Business Broadband Deployment Act.

WISPA represents the interests of more than 800 providers all over the United States and my company, Aristotle, provides broadband service to approximately 800 residential and business subscribers in central Arkansas including small underserved rural Arkansas communities such as Sardis, Vilonia and Shannon Hills.

Our members use unlicensed spectrum primarily to provide broadband to underserved areas that are not cost effective for traditional wireline companies to serve and they operate in diverse communities like Scott, Arkansas, Stony Bridge, Ohio and La Grande, Oregon, all of which are very small towns. Scott, for example, has 72 people.

There are hundreds of other places where service from a WISP may be the only terrestrial means to access the Internet and the vast majority of our members have built their networks without the benefit of federal subsidies.

Under any definition, nearly all of WISPA's members

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560 including my company are small businesses. Some WISPs have only
561 a handful of employees who do everything from climbing the towers
562 to doing the accounting to customer service.

563 According to the FCC, 17 broadband access providers serve
564 93 percent of the population. The remaining 7 percent -- 21
565 million people -- is served by the over 3,000 broadband Internet
566 access providers that are considered small ISPs.

567 As Congresswoman Eshoo said, what is going on in rural
568 America is critical. We have to get broadband into rural America
569 and the 3,000 small ISPs are bringing that service to those people.

570 WISPA believes in an open Internet and in the effectiveness
571 of the 2010 "light touch" regulatory regime. My company has never
572 throttled, never capped usage nor required anyone to pay to
573 prioritize traffic.

574 The FCC's reclassification of broadband as a Title II service
575 was misguided and WISPA is concerned about the effects that the
576 2015 order will have on small businesses.

577 My company is already feeling the impact of the FCC's rules.
578 Because of the risks and costs imposed by the order, Aristotle
579 has reassessed its plan to expand its service pending the
580 clarification of the regulatory regime.

581 Instead of expanding our network to cover a three-county
582 area, we are now deploying in three smaller communities. We

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583 cannot justify a greater investment in light of regulatory
584 uncertainty.

585 Small businesses, those with providers of 100,000 or fewer,
586 are temporarily exempt from the new enhanced disclosure
587 requirements. But the uncertainty still exists.

588 The FCC's decisions may have provided short-term relief but
589 the agency failed on two occasions to make the exemption permanent
590 despite an overwhelming record supporting that move.

591 First of all, the FCC received not a single comment alleging
592 that small ISPs were flaunting the 2010 disclosure rules or that
593 those rules were insufficient to protect consumers.

594 In fact, the records show that consumers, including rural
595 consumers, will bear the cost burden as small businesses are
596 forced to pass on additional regulatory compliance costs.

597 The FCC failed to consider adequately the cost that will be
598 imposed on consumers which in turn led to the flawed decision to
599 impose a one-size-fits-all regulatory regime that penalizes small
600 business.

601 Second, the FCC failed to analyse properly the impact on
602 small businesses required by the Paperwork Reduction Act. It
603 estimated with no supporting facts that the burden on small
604 business would be less than that on larger businesses.

605 That conclusion failed to grasp that small ISPs do not have

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606 in-house lawyers to review and understand the new disclosure
607 rules, do not have the administrative staff to maintain the
608 ongoing compliance or the means to measure packet loss.

609 Every dollar a small business spends on unnecessary
610 regulatory compliance is a dollar not being spent on new hires,
611 network upgrades and expansion.

612 Third, the record in the follow-on proceeding overwhelming
613 supported a permanent exemption. Not a single one of the millions
614 of consumers who wrote in to the FCC in the months before open
615 Internet was adopted wrote to oppose a permanent exemption.

616 The FCC has had two opportunities to get it right and we would
617 not be here today if the FCC had followed the clear record. But
618 they didn't, and now small ISPs face the prospect of more FCC
619 proceedings and continuing uncertainty.

620 As I sit here today, WISPA members have been declined
621 funding. One of our members in Oregon was told by his bank that
622 he would not be funded because they were uncertain about the
623 regulatory regime.

624 Other WISPA members have changed their business plans, cut
625 back or redirected investment funding and ordered a higher
626 regulatory counsel.

627 The reality is clear. Imposing excessive and unnecessary
628 burdens on small ISPs has dampened the very investment that has

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629 made broadband service to rural America possible.

630 And as for rate regulation in H.R. 2666, WISPA supports any
631 legislation that would prevent the FCC from regulating the rates
632 we charge our subscribers.

633 Thank you.

634 [The prepared statement of Elizabeth Bowles follows:]

635

636 *****INSERT*****

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637 Mr. Walden. Ms. Bowles, thank you for your testimony, and
638 to all of our witnesses, thank you.

639 I would like to go back to you and start off the questioning.
640 Having been a small business owner with my wife for 20 years in
641 the broadcast business -- we are out it now for more than -- well,
642 quite a while -- I know what it was like to deal with government
643 regulations and all of this.

644 Can you tell us what does it really mean to you if you had
645 to comply with these new transparency rules? I mean,
646 fundamentally, what does that mean?

647 What would you have to start monitoring and doing and
648 reporting and the kind of staff levels that would take and what
649 it takes away from expanding your service?

650 Ms. Bowles. Well, what it -- what it means specifically is
651 we have to get our arms around what the regulations actually
652 require us to do and I don't have a grasp of that because my company
653 has never been under Title II and I don't know which of these
654 provisions are locking and loading and which of them are not.

655 So there has to be an analysis done over what applies and
656 what doesn't apply.

657 Mr. Walden. Okay.

658 Ms. Bowles. And there is a lot of conversation on the list
659 from our members asking just those questions -- what does this

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660 mean, what does it mean that I have to do a transparency statement,
661 what does it mean that I need to be more open, what does it mean
662 that I have to make my rates available. They don't actually
663 understand what the regulation is saying.

664 So that is an expense. I need regulatory counsel to explain
665 even what I am doing and then there is an ongoing regulatory
666 compliance burden.

667 And I didn't have a chance really to get into it but in
668 addition to that there is the threat of litigation because if there
669 is a problem in the net neutrality statement or if there is a reason
670 that a consumer feels that they are not being dealt with frankly,
671 then there is a potential risk of litigation. So I need counsel
672 to deal with that as well.

673 I think the estimate -- one estimate -- member got a quote
674 from \$40,000 is what it would cost them. That is the cost of
675 deploying a tower. So I am looking at choosing between deploying
676 a tower into a rural community or hiring regulatory counsel.

677 Mr. Walden. All right.

678 Mr. McDowell, in a letter to the committee yesterday,
679 Commissioners Pai and O'Rielly expressed their concerns with the
680 process by which the FCC decided to extend the exemption, focusing
681 primarily on the lack of a cost benefit analysis prior to adoption
682 of the rules and the use of the Paperwork Reduction Act process

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683 as an excuse to delay a final decision.

684 Could you -- how could a thorough cost benefit analysis in
685 this situation have benefited the final rules?

686 Mr. McDowell. Well, it would glean facts and analyses that
687 would help the commission render a final decision. So actually
688 the commission sort of got the cart before the horse if it is going
689 to adopt a rule and then do the analysis rather than doing the
690 analysis and then decide whether or not to adopt the rule.

691 But it seems to be the intent of the commission to at least
692 have a temporary exemption, and if it is going to be a temporary
693 exemption why not make this a permanent exemption.

694 So there appears to be enough evidence in the mind of the
695 majority of the commission that there is an undue burden on these
696 smaller companies such as WISPs and others so why not make that
697 the permanent public policy.

698 Mr. Walden. And by the way, the size of the exemption that
699 we picked for the draft legislation or the proposal we are talking
700 about here is actually the federal government's definition of a
701 small business.

702 It is the SBA that comes up with this, size of provider. So
703 if you are not a small business exemption then one standard is
704 the theory here and the government already sets that standard.

705 Does this kind of -- and I will get to the rate regulation

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706 issue and the issue of post facto rate regulation -- does that,
707 Mr. McDowell, limit innovation?

708 I am concerned that companies will be unwilling to create
709 new products or engage in new services if they are uncertain as
710 to how they will be received by the agency after the fact.

711 I am concerned that inquiries like the commission's recent
712 request to the wireless providers for information on sponsored
713 data plans will create a mother-may-I environment for innovation.

714 Is that a legitimate concern?

715 Mr. McDowell. It is. I mean, let us let history be our
716 guide real quickly. You know, under the Carter administration
717 airlines were deregulated -- prior to that, trucking and railroads
718 as well -- from common carrier rate regulation.

719 And what we found was the opposite of what all the critics
720 of that said happens. So rates went down for consumers.

721 Quality went up. Investment went up. Transit time shrunk.
722 So in other words, the consumer experience got better at a lower
723 cost with more investment.

724 So that tells us a couple of things, and similar -- by the
725 way, similar effect after the 1996 Telecom Act, which was
726 partially deregulatory, and this has happened in Europe with
727 railroads and telecoms and other contexts, too.

728 That tells us that rate regulation, by the way, keeps rates

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729 artificially high and inhibits constructive risk taking and
730 investment.

731 And, you know, I kept on my desk at the FCC my grandmother's
732 black rotary dial phone from St. Angelo, Texas, to remind me of
733 the innovation you get from Title II in general and rate regulation
734 and that was the state of the art for decades -- the black rotary
735 dial phone.

736 Mr. Walden. Yes. Indeed. All right. My time is expired.

737 I thank our panelists again for your comments and your
738 answers to our questions and I will turn to my friend from
739 California, Ms. Eshoo.

740 Ms. Eshoo. Thank you, Mr. Chairman, and thanks again to the
741 witnesses for your fine testimony.

742 I want to go to Ms. Bowles first. It is my understanding
743 that there is a -- you know, that there -- you spoke of,
744 essentially, time and cost of time and rural areas and the number
745 of customers.

746 And I don't know what is based in actual facts, though. It
747 seemed as if, you know, we are afraid of some big bogeyman out
748 there and we think that this might happen and therefore we need
749 a law.

750 And laws are a big deal. They are a big deal. So some have
751 told me that the -- that these revisions they are estimated, you

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752 know, to develop and draft and revise the disclosures would
753 require an annual expenditure of 16 to 24 hours.

754 You are talking about having to hire suites of lawyers. I
755 don't know what other word to use. It sounds like an exaggeration
756 to me. Now, burdens are burdens and small businesses are small
757 businesses.

758 What is the largest outfit that you represent? How many
759 employees do they have?

760 Ms. Bowles. I actually don't know the number of employees.
761 They have 200,000 subscribers.

762 Ms. Eshoo. Two hundred thousand subscribers.

763 Ms. Bowles. And they are probably ten times larger than the
764 next largest WISP and the average WISP is between 1,500 and 2,000
765 subscribers.

766 Ms. Eshoo. So the largest of who you represent has 200,000
767 subscribers?

768 Ms. Bowles. Yes.

769 Ms. Eshoo. Nothing larger than that?

770 Ms. Bowles. Not at this time. But they are continuing to
771 grow.

772 Ms. Eshoo. Well, on this whole issue of what the -- what
773 the burden would be if it is 16 to 24 hours, as has been reported
774 to me, that is about 2.9 seconds a day per year.

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775 That doesn't seem -- see, what I am worried about the end
776 result on the customers -- on the consumers -- and, you know, it
777 is being said well, they are going to call -- they are going to
778 want to know -- they are going to want to have a question answered.

779 That is the life of a business. You don't have a business
780 unless you have customers. Customers are always going to have
781 questions.

782 So I just want to make sure in this and I am not sure from
783 your testimony that it really is clear that the very customers
784 that are consumers don't end up being screwed somehow, in plain
785 English.

786 I have every empathy and respect for small businesses. I
787 am the daughter of a small business owner. I worked in that
788 business with my father. So but I do think that there needs to
789 be a balance.

790 So I think we are going to have to get more information from
791 you because the -- there seems to be an overstatement, in my view,
792 of the case and if the largest number of those served is 200,000,
793 I don't think the burdens that you are talking about are -- it
794 doesn't seem to fit.

795 So we are going to be able to ask more questions in writing
796 and I plan to do that. So thank you.

797 To my friend, Commissioner McDowell, in your statement you

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798 stated that the no-rate regulation legislation would be improved
799 by clarifying two ambiguities.

800 In your view, could the current language impact the FCC's
801 ability to take action on special access or USF reform?

802 Mr. McDowell. Well, I think clarity is always good coming
803 Congress to the FCC.

804 Ms. Eshoo. Right.

805 Mr. McDowell. So if you have concerns really on any issue
806 I think there are probably a whole host of friendly amendments
807 that could help clarify. So --

808 Ms. Eshoo. I think, Mr. Chairman, that is what I was
809 referring to in my opening statement. So I think that that is
810 an area that we should work on relative to Mr. Kinzinger's
811 legislation so that there is real clarity.

812 To Mr. Feld, by the FCC's own data on the small business
813 deployment -- Broadband Deployment Act, it represents over 11
814 million households.

815 Do you think it is premature that these rules will have a
816 deleterious effect on broadband providers without a determination
817 of what the actual burden is on small businesses?

818 Mr. Feld. I do think this is premature and that Congress
819 will definitely benefit from allowing developments to move
820 forward. The FCC is in the middle of its evaluation process.

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821 I am sympathetic to the problems and burdens for small
822 business and this is not the first time the FCC has dealt with
823 the very difficult question of how do you balance the needs of
824 the customers, which include many small businesses, and the needs
825 of the small providers who are, clearly, not in the same place
826 as a Comcast or an AT&T where they can do these things trivially.

827 Nevertheless, I also just would like to point out that
828 oftentimes when there is a change in regime people are concerned.
829 They have a tendency to look at oh my god, all of these terrible
830 things are going to happen, to think about worst-case scenarios
831 and, ultimately, these things work out.

832 And I do think that Congress will have significant
833 opportunity -- the FCC will have significant opportunity to
834 recalibrate if things do not work out.

835 But I do think that we need a record before we move forward,
836 particularly in light of the potential unintended consequence to
837 consumers and small businesses.

838 Ms. Eshoo. Thank you very much.

839 Mr. Walden. Just for the record, our legislation has
840 nothing in it advocating regime change.

841 We will now go to Ms. Blackburn.

842 Mrs. Blackburn. Thank you, Mr. Chairman.

843 Chairman McDowell, I want to come to you for just a couple

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844 of points. I am concerned about private sector investment, and
845 as we look at 3.9 billion network devices by the time we get to
846 2019, which is not my number, not your number -- it is a number
847 that the experts give us -- and we look at a billion dollars in
848 investment that has already taken place by the private sector to
849 handle broadband expansion.

850 And one of the things those of us that have constituents that
851 live in underserved areas when it comes to high-speed Internet
852 -- one of the things we constantly hear is when is this going to
853 reach us.

854 And we know the fastest path is primarily through private
855 sector investment and the ability to do this. But my concern is
856 as you look at the private sector investment the effect that having
857 the FCC's authority to do rate regulation, having that sitting
858 out there undefined, not being corralled, if you will, the effect
859 that that is going to have on that investment.

860 And I would like to know if you all have looked at what you
861 think the decrease in private sector investment will be for
862 expansion and building out these networks if the FCC takes this
863 authority and runs with it.

864 Mr. McDowell. Thank you for the excellent question.

865 And now that I am in the private sector I work a lot and talk
866 a lot with investors and market analysts, both sort of on the

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867 venture side and all the way to the secondary market end of the
868 ecosphere, and the record in 2010 -- in May of 2010 the FCC
869 initiated its Title II proceeding which then was shelved by
870 Chairman Genachowski for the other open Internet order of 2010.

871 But during the course of that, during the comment period,
872 the record was filled by investors and market analysts of all
873 stripes and flavors -- small businesses, large businesses --
874 indicating that Title II and rate regulation in particular would
875 squelch investment.

876 What the exact number is is hard to tell and also, you know,
877 we don't have rate regulation yet but this can be a slow grinding
878 halt. It is not like one day it just falls off of a cliff. But
879 the reduction in investment over time can slow down considerably.

880 So you see just a slow decay or sort of a hardening of the
881 arteries, if you will, in the lightning-fast Internet space and
882 that would be a shame.

883 So it is in the -- potentially, in the tens of billions of
884 dollars. But every analyst I talk to every week asks me about
885 what the future potential rate regulation is on broadband and they
886 are very concerned about it.

887 Mrs. Blackburn. Well, conversely, then let us look at if
888 you provide certainty to the space and the FCC is prohibited from
889 moving forward with rate regulation, what do you think the

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890 increase would be? Is it exponential? Is it unlimited?

891 Mr. McDowell. I think let us -- again, let history be our
892 guide. If you look at the investment, the -- you know, hundreds
893 of billions in infrastructure investment since just the mid-90s
894 I think you would see that sort of growth line continue.

895 I think without some sort of assurance or if there is actually
896 the sword of Damocles hanging over --

897 Mrs. Blackburn. Yes.

898 Mr. McDowell. -- these investors, it will slow down.

899 Mrs. Blackburn. Okay. Let me quickly go to the Small
900 Business Deployment Act. I am concerned about that.

901 I know these temporary extensions are good but, you know,
902 we need something that is going to make it permanent.

903 And I think of some of my smaller providers like Ritter
904 Communications, which serves some of west Tennessee and is one
905 of the small disclosures.

906 What can they expect if the exemption is not made permanent
907 and how will these disclosure requirements affect their ability
908 to serve some of these rural and underserved areas which are just
909 clamoring they need this -- they need access to broadband for
910 economic development, for enhanced educational opportunities.

911 So tell me what Ritter and other small providers would
912 expect.

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913 Mr. McDowell. Is that for Ms. Bowles?

914 Mrs. Blackburn. It is for you.

915 Mr. McDowell. Oh, for me. Certainly. And I think she is
916 actually going to give you an even better answer.

917 But, you know, the notion that more regulation is going to
918 help smaller providers deploy and serve customers in hard to reach
919 areas sort of turns all the logic on its head, right.

920 So I will let Ms. Bowles elaborate on that but --

921 Mrs. Blackburn. Okay. That is good. Go ahead. Go ahead.

922 Ms. Bowles. Yes. Right now, companies like Ritter and like
923 Aristotle are moving into rural areas and deploying and bringing
924 much-needed service into the very areas that you are talking about
925 and regulation will slow that down.

926 It isn't going to augment that in any way. Even taking some
927 of the numbers that Congresswoman Eshoo put out there and saying
928 that they are accurate, 24 hours is a lot of time in a company.
929 Like, there is one in Colorado run by Eaton Rakour and he is the
930 only employee of that company.

931 He recently hired a second employee. It is his daughter.
932 That man doesn't have 24 hours. If a tower goes down, he has to
933 go out there. He doesn't have 24 hours in a year to be dealing
934 with this regulation, and that is assuming it can all be done
935 in-house.

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936 We don't mind dealing with customer complaints. We don't
937 want to pay attorneys to have to deal with this regulation. That
938 takes away from our ability to deploy into the same rural areas
939 that we all agree are in desperate need of this service. We
940 are in Arkansas. You don't have to go very far outside of Little
941 Rock and they have, literally, nothing. And this regulation and
942 the fact that I have to be concerned about spending 80 hours a
943 year on an attorney even that is expensive for a business of my
944 size.

945 We are not talking about businesses with hundreds of millions
946 of dollars in revenue. We are talking about very small businesses
947 with one employee and under a thousand customers.

948 Mrs. Blackburn. Okay. Yield back.

949 Mr. Walden. The gentlelady yields back.

950 The chair recognizes the gentleman from Pennsylvania, Mr.
951 Doyle.

952 Mr. Doyle. Thank you, Mr. Chairman.

953 Welcome to our panelists and, Commissioner McDowell, it is
954 good to see you again.

955 Mr. Feld, I have been fighting for a long time for reforms
956 to the competitive market for business-to-business high capacity
957 data lines, or what we call special access.

958 This market is ripe with allegations of price gouging,

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959 predatory terms and conditions and anti-competitive behavior by
960 incumbent telecommunications companies and I am glad to see the
961 FCC acting to make the much needed reforms to these markets.

962 Tell me, what effect do you think the rate regulation bill
963 before us will have on the FCC's ability to complete its special
964 access proceedings?

965 Mr. Feld. Well, as written I believe it will bring
966 everything to a crashing halt.

967 It is important to recognize that a legal argument does not
968 have to ultimately prevail to prevent the FCC from moving forward
969 on important competitive policies and consumer protections.

970 Some years back, we were involved in the bill shock
971 proceeding where, as members know, they were receiving letters
972 from constituents that their folks were receiving bills for \$5,000
973 because their phone got turned on in Canada.

974 And when the FCC went to take action they ran into the concern
975 about their authority, that what is called the common carrier
976 prohibition would prevent them from applying basic consumer
977 protections -- basic.

978 A requirement to send an alert that you are about to generate
979 an overcharge would be preempted by the common carrier prohibition
980 because broadband at that time was a Title I service.

981 It is very easy to see how in the special access proceeding,

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982 which has been going on for more than ten years, where the GAO
983 has twice reported that the FCC needs to take action and where
984 we are, finally, after a mound of evidence has been collected,
985 a framework established, we are on the verge of being able to put
986 this thing to bed and get it done and stop monopoly pricing, now,
987 a new broadly-worded sweeping law will be introduced which will
988 bring everything to a halt and may force the process to be
989 discontinued altogether.

990 Mr. Doyle. Let me ask you also -- a number of ISPs have
991 announced plans to institute zero rating policies. These plans
992 allow ISPs to designate certain types of Internet traffic as not
993 counting against a consumer's data cap.

994 I am very concerned that some of these plans involve ISPs
995 zero rating their own services, particularly video services that
996 compete against over-the-top services like Netflix, Amazon Prime,
997 iTunes, forcing consumers to use their own data with a competing
998 service while zero rating their own -- you know, zero rating their
999 own services.

1000 It seems blatantly anti-competitive to me. And
1001 additionally, there is reports that ISPs are establishing paid
1002 zero rating agreements where edge providers have to pay the ISP
1003 to get their data zero rated.

1004 Most worrisome is reports that companies are using the guise

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1005 of zero rating to throttle entire classes of content without even
1006 notifying their customers.

1007 Aggressive zero rating policies paired with restrictive data
1008 caps threaten the very core of the open Internet in the dynamic
1009 ecosystem of the competitive services we have all come to enjoy.

1010 What effect do you think this rate regulation bill before
1011 us will have on the FCC's ability to police this type of behavior?

1012 Mr. Feld. Well, I am very concerned about that. It would
1013 seem that -- as Commissioner McDowell said, he would like to
1014 actually have this clarified to make sure that it would absolutely
1015 prevent the FCC from going after even basic fraud.

1016 There are 12,000 complaints at the FCC already about Comcast
1017 having inaccurate broadband data meters. So that even if we
1018 accept that it is okay for them to charge -- to not count their
1019 own product stream as opposed to counting everybody else's
1020 streaming product like Amazon or Netflix, even if we were to accept
1021 data as okay and not anti-competitive, which raises particular
1022 concerns, we have thousands of customers complaining that the
1023 broadband meters that they use are inaccurate, that Comcast does
1024 not adequately explain the charges of where they come from.

1025 And I think everyone on this committee has read the joys of
1026 trying to work your way through the Comcast complaint system to
1027 have these charges explained and potentially reversed.

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1028 It is, even from a basic consumer protection standpoint, very
1029 troubling to have such a, you know, sweeping broadly-worded law
1030 injected into this process, and when we look at defending the core
1031 net neutrality principles, which everybody has said there is broad
1032 consensus on from many Republicans as well as from Democrats, I
1033 would say that Ms. Matsui is absolutely correct -- that it becomes
1034 effectively impossible for the FCC to enforce its core net
1035 neutrality principles, which are exceedingly popular and on which
1036 there is widespread consensus, because any of them can be
1037 interpreted as either directly or indirectly regulating the rate
1038 by -- at which broadband services are offered.

1039 Mr. Doyle. Mr. Chairman, thank you.

1040 Mr. Walden. You are more than welcome.

1041 And we will now turn to the vice chair of the subcommittee,
1042 the very capable Mr. Latta.

1043 Mr. Latta. Well, thank you, Mr. Chairman.

1044 Mr. Walden. I can be more complimentary now that Ohio and
1045 Oregon aren't playing the national championship.

1046 Mr. Latta. That is right. But, again, thanks for holding
1047 today's hearing. Again, thanks for our panel for very good
1048 testimony today.

1049 Ms. Bowles, if I could start with you. I would like to kind
1050 of combine a couple questions right off the bat because I think

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1051 that we all have -- a lot of our districts look very similar to
1052 one another.

1053 And last year I was contacted by a company in my district
1054 called Amplex, which serves about 5,500 customers, and they made
1055 me aware of their concerns about losing the exemption to enhanced
1056 transparency rules for small providers because if the exemption
1057 were to expire they would incur additional legal costs, which you
1058 have been really explaining here in what it would do in network
1059 and monitoring costs that they simply could not afford.

1060 In your testimony you also recognized how making the
1061 transparency exemption for small ISPs permanent keeps resources
1062 where they should be -- expanding the company, hiring more
1063 employees, upgrading the network and providing better service to
1064 rural and underserved Americans.

1065 Two questions, and I am going to also have you maybe back
1066 up to what the gentlelady -- the ranking member -- had asked to
1067 Mr. McDowell.

1068 First, why do you think the FCC ignored hundreds of comments
1069 and letters to make the exemption permanent and only extended it
1070 by one year? And if you would also like to elaborate a little
1071 bit on the ranking member's question to Mr. McDowell.

1072 Ms. Bowles. I think that the FCC has some discomfort and,
1073 obviously, I am not in their mind and so I don't know what their

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1074 thinking is. The record was extremely one-sided.

1075 There is not anything in the record that indicates that small
1076 businesses are the bad actors. There is not a single idea in the
1077 record that the small businesses are the ones that are engaging
1078 in these predatory practices.

1079 Companies like mine don't have the market power to influence
1080 in the way of a company like Comcast. And so I believe that the
1081 FCC hasn't done its homework.

1082 I go back to what Commissioner McDowell said. It didn't do
1083 its homework. It got its cart before the horse. I think that
1084 is a very good way of putting it.

1085 It wanted to get this out there as quickly as it could and
1086 it, essentially, punted on the issue of the small business
1087 exemption.

1088 Mr. Latta. You know, why would they want to get it out there
1089 that quickly then?

1090 Ms. Bowles. Hmm?

1091 Mr. Latta. If they didn't do their homework, why do you
1092 think they wanted to get it out there so quickly?

1093 Ms. Bowles. I think they wanted to get the open Internet
1094 order out, and when we had our meetings with the FCC prior to that
1095 order and we were saying you have not looked under the Paperwork
1096 Reduction Act, you haven't looked at the impact on small

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1097 businesses, I think they realized that they hadn't.

1098 And so they put in the exemption so that they could get the
1099 order out and, like, punt that down the road and deal with it later.
1100 And then at the very last minute on the last day when that order
1101 was set to expire, they punted it for another year.

1102 I think they are trying to figure out a way -- I don't know
1103 what they are trying to get to. I don't know whether they are
1104 trying to find a compromise.

1105 I don't know if they don't like the 100,000 number that they
1106 were using and if they should be using the SBA definition. I don't
1107 know where they are coming from on that front.

1108 But I do know that there was no justification in the record
1109 for making the exemption temporary. The exemption should have
1110 been made permanent. It should have been made permanent in
1111 December.

1112 There was absolutely nothing to support a temporary let us
1113 extend this again and create more regulatory uncertainty for
1114 another year, and that is really the problem. The problem is we
1115 don't know what to expect.

1116 Nobody knows what the regulation is going to be at the end
1117 of the day and it is very difficult to assess how we are supposed
1118 to respond to something when we don't actually know what is going
1119 to come out at the very end.

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1120 We live in these communities. We work in these communities.
1121 We support these communities and we want to bring broadband into
1122 the communities in which we live. We are very, very small
1123 businesses and I can't emphasize that enough.

1124 Even \$10,000 -- Amplex -- I know the owner of Amplex and he
1125 has a very robust business but it is small by any measure. By
1126 any definition his business is small, and having to come up with
1127 even \$10,000, \$15,000 for regulatory counsel is a huge amount of
1128 money for a company of that size.

1129 So I don't feel that it is an exaggeration to say that it
1130 is impacting our businesses very severely even to get the legal
1131 advice necessary to understand what we are supposed to do to deal
1132 with this.

1133 And we would like certainty. We encourage Congress to act
1134 to give us that certainty and I think that the appropriate thing
1135 in light of the record, in light of the fact that we are not the
1136 bad actors, that is to make this exemption permanent.

1137 Mr. Latta. Thank you.

1138 Mr. Feld, if I could ask in my remaining, well, 30 seconds
1139 here, and you testified about the rural broadband subscribers who
1140 are in need of protection from fraud or fly-by-night providers.

1141 Could you describe some of the business models of a
1142 fly-by-night rural broadband provider?

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1143 Mr. Feld. Certainly, and I need to emphasize that we have
1144 a long history that wherever we establish a permanent exemption
1145 exempting an entire class of businesses bad actors move in.

1146 And as a consequence, it is not a question of the providers
1147 that we are -- that we have today in the market that troubles me.

1148 I have worked with WISPA and with Ms. Bowles on a number of
1149 spectrum issues and I am, in fact, very supportive of their efforts
1150 to bring broadband to rural America and I am happy to testify to
1151 that when we have a spectrum hearing.

1152 But I do worry that once we put out a sign out there that
1153 says this is a great place to go if you want to set up a scam
1154 operation because you can't be held accountable that people will
1155 take advantage of that.

1156 In particular, I worry about a failure to disclose about
1157 network management practices where extra charges would be put in.
1158 If I were a bad actor looking to scam small businesses, I would
1159 offer them, you know, great introductory rates. I would offer
1160 an --

1161 Mr. Latta. Yes. We are running out -- if I could just ask
1162 real quickly, could you point us to one of those actors, like,
1163 an example?

1164 Mr. Feld. As in an example in the real world today?

1165 Mr. Latta. Right. One of those type of nefarious type

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1166 operators.

1167 Mr. Feld. I am sorry. I am not sure that I understand the
1168 question. Specifically with regard to the FCC's transparency
1169 rules?

1170 Mr. Latta. You know, do you have the evidence to those type
1171 of operators and can point us to one of those type of operators?

1172 Mr. Feld. Well, the FCC continues to receive complaints on
1173 a regular basis. Most of them, it is true, concern the larger
1174 operators, which is not surprising because they have the --
1175 because they have the larger number of customers. With regard
1176 to small businesses, I am happy to --

1177 Mr. Latta. My time -- if I could ask you to follow up to
1178 the committee with some written examples, we would appreciate
1179 that.

1180 Mr. Feld. Certainly.

1181 Mr. Walden. We now need to turn to the gentlelady from New
1182 York, Ms. Clarke.

1183 Ms. Clarke. Thank you very much, Mr. Chairman, and I thank
1184 our ranking member for holding this hearing. To the panelists,
1185 thank you for lending your expertise to the examination of today's
1186 legislation.

1187 Mr. Feld, the transparency rule has been an important staple
1188 of the FCC's net neutrality rules for some time. As they say,

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1189 knowledge is power.

1190 Could you briefly explain what the transparency rule and its
1191 enhancements seek to accomplish and why it may be so important?

1192 Mr. Feld. Certainly. The transparency rule, and there has
1193 been broad bipartisan consensus about the value of transparency,
1194 seeks to provide to subscribers a clear understanding of how the
1195 provider will manage the network -- what the capacities of the
1196 network is -- from a business perspective, whether the network
1197 is actually up to the task that you need to hire it for.

1198 This encourages market competition, protects consumers,
1199 businesses and innovators. We have a broad policy in this country
1200 of encouraging telecommuting, of moving -- increasing traffic to
1201 broadband and if I am a small business operator -- an architect,
1202 for example, that uses very heavy data-intense files, gigabits
1203 of data which is not necessarily the same as the needs of another
1204 small business, I need to know if the broadband provider I am
1205 choosing can handle the kind of business that I am running.

1206 I am a private subscriber but I spend a lot of time doing
1207 high bandwidth things -- following hearings in Congress, for
1208 example, but also talking to my mother in Boston with Parkinson's
1209 -- and those sorts of things take a lot of bandwidth.

1210 I need to know when I am choosing, since I am lucky enough
1211 to be in an area with choice, which providers are going to impose

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1212 limits on things like my video calls and my streaming and how they
1213 will manage these things when there is congestion.

1214 Ms. Clarke. And I understand there is a difference between
1215 the small business definition that the FCC uses for transparency
1216 exemption compared with the definition in the discussion draft.

1217 Can you briefly explain the difference and the impact it has?

1218 Mr. Feld. Certainly. One of the things that is important
1219 to recognize is the SBA, and for many years the FCC and other
1220 agencies that deal with specific industries, do not employ a
1221 single definition for what constitutes a small business.

1222 SBA and the FCC have always looked to the particular sectors
1223 of the telecommunications market. So a small business from a
1224 television perspective means something different from a small
1225 business, from a cable perspective, from a wireless provider and
1226 so on, including broadband providers.

1227 We have, in the broadband industry, a huge disparity between
1228 the large cable providers and the large telephone providers and
1229 wireless companies, which have millions of customers and where
1230 they are able to achieve economies of scale, and very small
1231 providers who do not have the economies of scale, who have
1232 different costs and expenses for whom relief may be appropriate.

1233 So the FCC, in using its general definition, crafts a
1234 definition and SBA similarly crafts a definition suitable to the

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1235 broadband industry specifically.

1236 In this case, we are talking about an expansion of, I am given
1237 to understand, about 85 percent over and above the current SBC
1238 exception.

1239 These are businesses that have been subject to the
1240 transparency requirements for six months and there is no evidence
1241 that these businesses are suffering any of the concerns that Ms.
1242 Bowles has suggested afflict smaller companies.

1243 And as a consequence, we would look at doubling the number
1244 of Americans who lose the benefits of transparency and include
1245 companies that, by the standard definitions in the industry, would
1246 be considered to be mid-size carriers rather than small carriers.

1247 Ms. Clarke. Thank you.

1248 Ms. Bowles, in your testimony you noted several times the
1249 enhancements to the transparency rule would place an inordinate
1250 burden on your members.

1251 Could you explain precisely what this burden would be for
1252 your members?

1253 Ms. Bowles. The enhanced transparency requires additional
1254 disclosures which have to meet certain standards that have been
1255 set by the FCC.

1256 Those standards are vague. It is not clear what it is
1257 exactly that we are supposed to be doing and a lot of the FCC's

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1258 determinations are going to be made sort of after the fact or
1259 through litigation and in the courts.

1260 What determines -- this is more of a direct regulation but
1261 what determines reasonable rates is not defined.

1262 So as soon as -- what includes sufficient transparency or
1263 adequate transparency that has all got to be litigated through
1264 the courts or done through rural rate making through the FCC. We
1265 don't really know.

1266 So we are taking our best guess at what we are supposed to
1267 be doing, and we may do our absolute best effort to find out six
1268 months later that it wasn't what the FCC had in mind or it isn't
1269 sufficient.

1270 We may end up in litigation. We are subject to frivolous
1271 complaints, potentially, from customers who feel that they
1272 haven't been disclosed properly and we don't have enough guidance
1273 to know what it is that we are supposed to be doing.

1274 So we are looking to regulatory counsel to give us that
1275 guidance but they don't know either because the guidance is not
1276 coming out of the FCC and it is not coming out of anywhere else.

1277 And so until this is settled and we understand what it is,
1278 we have to have some better guidance, and just to speak personally
1279 from my business, we do believe in an open Internet. We do
1280 disclose our policies to our customers.

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1281 I have no idea whether that disclosure is sufficient under
1282 these enhanced disclosure requirements and I have no way to find
1283 that out other than to hire an attorney to give me an opinion as
1284 to whether our disclosures are sufficient, and it is expensive.

1285 Mr. Walden. The gentlelady's time has expired.

1286 We will turn to the gentleman from New Jersey, Mr. Lance.

1287 Mr. Lance. Thank you, Mr. Chairman.

1288 I have from the CTIA, the wireless association, fine
1289 information regarding the blocking of robocalls perhaps that
1290 might be utilized and I ask unanimous consent to place that
1291 information in the record.

1292 Mr. Walden. Without objection.

1293 Mr. Lance. Thank you, Mr. Chairman.

1294 Commissioner McDowell, you say that the order does not
1295 proscribe ex post facto rate regulations. Could you describe an
1296 example in which the FCC might engage in an ex post facto rate
1297 regulation and what would it look like?

1298 Mr. McDowell. So, hypothetically, what we are talking about
1299 there is if whether it is the interconnection points or for end
1300 users or whatever. It could be at any point in the network.

1301 Someone brings a complaint to the FCC. They say look, they
1302 are giving us access or whatever but we think the rate is too high.
1303 And the commission will say look, we are not going to engage in

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1304 rate regulation but you are right, that rate is too high.

1305 So through an enforcement proceeding it would be essentially
1306 a rule making and that is essentially the implementation of what
1307 we call a price cap regime. This is not rate of return. It is
1308 sort of a de facto price cap.

1309 So that then creates more uncertainty in the market -- well,
1310 what is too high, what is just right, you know, what is the
1311 Goldilocks price here.

1312 Mr. Lance. Thank you. And any response to the claim that
1313 the bill prohibiting rate regulation could result in prolonged
1314 litigation uncertainty, from my perspective, doesn't current
1315 ambiguity and overly broad rules also lead to the fact that there
1316 might be litigation?

1317 Mr. McDowell. Sure. I mean, it is important to note that
1318 just Sections 201 and 202 of the 1934 Act have been litigated about
1319 400 times in the appellate courts and over 1,000 times within the
1320 FCC administrative regulation. And that is just two sections of
1321 Title II, both of which, by the way, deal with rate regulation.

1322 So I think we can expect that in the future, should there
1323 be rate regulation, even if it is sort of this de facto ex post
1324 type regulation.

1325 Mr. Lance. Thank you. Would anybody else on the panel like
1326 to comment? Mr. Feld, yes.

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1327 Mr. Feld. Thank you. I do wish to express a couple of
1328 points.

1329 One is what concerns me is when Congress took this approach
1330 in 1984 with regard to cable and in the 1984 Cable Act preempted
1331 all forms of rate regulation including the kinds described by
1332 Commissioner McDowell, it turned out to be a disaster.

1333 The price of basic cable service escalated. Cable operators
1334 were quick to take advantage of their incumbency and engage in
1335 broad anti-competitive action.

1336 By contrast, the Title II Section 201, which is what we are
1337 talking about here, is the period where Commissioner McDowell
1338 agrees that investment telecommunications under the 1996 act
1339 flourished.

1340 Those are the conditions under which the wireless industry
1341 flourished, and when those industries have begun to consolidate
1342 and begin to overcharge consumers it is the ability of the FCC
1343 to come in and act, which has helped to restrain them.

1344 If the prices are generally monopoly rate prices and
1345 therefore people come to the FCC saying they are too high, I would
1346 hope that the FCC would act to constrain genuine monopoly rate
1347 prices.

1348 I think that, additionally, the -- as Commissioner McDowell
1349 noted earlier, this is not going to happen overnight in terms of

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1350 impacts. When we are talking about these things it will be --
1351 you know, potentially if there are problems it will be a gradual
1352 process that emerges.

1353 I think the Congress will benefit enormously from seeing how
1354 this develops, allowing the FCC to resolve the existing
1355 uncertainty rather than perpetuating uncertainty by passing laws
1356 before we know what the final effect will be.

1357 Mr. Lance. Mr. McDowell.

1358 Mr. McDowell. If I could just -- thank you very much.

1359 So a couple things. First of all, cable rates are not
1360 regulated. So the notion that they have been or should be is
1361 incorrect.

1362 By the way, also information services, which is what we
1363 called these things until last year -- broadband internet access
1364 -- had no transparency requirement before the 2010 open Internet
1365 order, right.

1366 So as Ms. Bowles has pointed out, the record before the FCC
1367 does not contain really even a scintilla of evidence that
1368 certainly WISPs or smaller Internet services providers are
1369 engaging in fraud and deceptive practices and all the rest.

1370 And, by the way, one of the problems with the Title II
1371 classification is that it took away jurisdiction from the Federal
1372 Trade Commission under Section V of the Federal Trade Commission

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1373 Act to protect consumers.

1374 That was the cop on the beat that people say is needed. They
1375 took a cop off of the beat and sent it to a different agency which
1376 doesn't have the same expertise as the Federal Trade Commission
1377 does.

1378 So we haven't had information services rate regulated,
1379 cable has not been rate regulated forever, and so the notion that
1380 somehow there was this utopia where there was command and control
1381 rate regulation and everything was fine is just not true in this
1382 space.

1383 The Internet has flourished precisely because it migrated
1384 further away from government involvement.

1385 Mr. Lance. Thank you. My time has expired. Thank you, Mr.
1386 Chairman.

1387 Mr. Walden. Let us see. Next up the gentlelady from
1388 Colorado, Ms. DeGette.

1389 Ms. DeGette. Thank you, Mr. Chairman.

1390 I want to thank the panelists for coming today. I am sorry
1391 I was late but I actually had my own bill out for hearing in another
1392 subcommittee.

1393 I did want to ask -- as the FCC's net neutrality order
1394 continues to be implemented, one of the concerns that we heard
1395 is that there is regulatory uncertainty costs to potential Title

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1396 II regulation and so I wanted to talk about that a little bit.

1397 First of all, Mr. Feld, H.R. 2666 seeks to bar rate regulation
1398 under the net neutrality order and I am wondering without clearly
1399 defining regulating the rates would this bill create more or less
1400 uncertainty for telecom companies and, being a lawyer, I always
1401 ask this question -- would it result in additional litigation.

1402 Mr. Feld. Well, I think that it definitely, when you have
1403 broad-sweeping language with undefined terms but where the
1404 breadth of the language indicates a congressional intent to
1405 prevent even basic consumer protection such as protection against
1406 monopoly rates, this is going to create enormous uncertainty.

1407 There is a conflict here in that there is a claim that we
1408 are not going after the core Title II protections. We are not
1409 going after the core bright line rules that the FCC established.

1410 We are only going after rate regulation. But without
1411 defining this we have essentially said yeah, but anything you do
1412 to actually enforce the rules you have could be considered rate
1413 regulation and that is just going to encourage an enormous amount
1414 of uncertainty and litigation.

1415 I also do -- must respond just a little bit to Commissioner
1416 McDowell in saying the sweet spot we have now is exactly the one.
1417 It is not command and control tariffing, which everybody agrees
1418 is bad.

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1419 It is not the Wild West where a handful of companies in a
1420 concentrated industry decide what the prices are to be on critical
1421 infrastructure. It is the current sweet spot of just don't rip
1422 off consumers and keep things reasonable, okay?

1423 Can we just make an honest profit, you know, and not a
1424 monopoly profit? And I think the FCC ought to remain in a position
1425 to make sure that broadband companies make healthy returns but
1426 have to work for a living and satisfy consumer demands to do so.

1427 Ms. DeGette. What do you think about that, Commissioner
1428 McDowell? Obviously, you have a few.

1429 Mr. McDowell. There is a lot there so which that are you
1430 referring to?

1431 Ms. DeGette. Well, in particular, the definition of
1432 regulating the rates. Do you think that is going to lead to more
1433 litigation since --

1434 Mr. McDowell. Well, regulation is going to lead to more
1435 litigation, absolutely, even if it is --

1436 Ms. DeGette. But, I mean -- but the fact that it is not so
1437 clearly defined in the legislation.

1438 Mr. McDowell. Well, I sort of offered a couple of ideas --
1439 general categories of ideas as to how you could define it, I think,
1440 better.

1441 You know, in terms of consumer protection I think there could

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1442 be probably friendly amendments offered to where you could find

1443 consensus on that. I don't think --

1444 Ms. DeGette. So you actually -- you share my concern that
1445 that term might be over broad in the legislation?

1446 Mr. McDowell. Well, you know, as I -- my testimony speaks
1447 for itself.

1448 Ms. DeGette. Yes or no will work.

1449 Mr. McDowell. Yes, there could be some clarity involved
1450 there.

1451 Ms. DeGette. Thanks. Okay. I think it would be really
1452 great if you could work with us on helping to clarify that if you
1453 have some ideas --

1454 Mr. McDowell. Be happy to. Happy to work with you.

1455 Ms. DeGette. -- we would love to hear it.

1456 Mr. McDowell. Okay.

1457 Ms. DeGette. Now, it is my understanding that the FCC
1458 forbore itself from the portions of Title II that it would need
1459 an order to set the rates of Internet service providers.

1460 So I am wondering, Commissioner, what would be required for
1461 a future FCC commissioner to set the same rate -- set the rates
1462 for ISPs.

1463 Mr. McDowell. To prohibit a future FCC from doing that?

1464 Ms. DeGette. Right.

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1465 Mr. McDowell. Yes. So I think the seeds for that are
1466 definitely in the legislation before you today so to help prevent
1467 that from happening. And, again, this could be the bipartisan
1468 consensus from President Obama on down.

1469 Ms. DeGette. So you -- so you really think that we could
1470 work to really hammer out this legislation for more clarity?

1471 Mr. McDowell. I am very optimistic, absolutely.

1472 Ms. DeGette. Okay. But you think it --

1473 Mr. McDowell. It would be an honor for me to work with you.

1474 Ms. DeGette. -- you think it needs some work?

1475 Mr. McDowell. Absolutely, as I said in my written
1476 testimony.

1477 Ms. DeGette. Okay. Great. Thanks. I yield back.

1478 Mr. Walden. The gentlelady yields back. The chair
1479 recognizes the gentleman from Kentucky, Mr. Guthrie.

1480 Mr. Guthrie. Thank you, Mr. Chairman, and thank you all for
1481 being here.

1482 And Mr. Feld, I want to ask you a question. You argue that
1483 there is no need to grant an exemption for small businesses for
1484 the enhanced transparency rules.

1485 But in my opinion, the record does not support your
1486 contention. The record actually indicates that the burdens
1487 imposed by the enhanced transparency rules could require hundreds

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1488 of hours of compliance work by small ISPs like Ms. Bowles' who
1489 can ill afford to spend that money on anything that does not
1490 improve underlying ISP service.

1491 There are very few arguments that the rules are necessary
1492 for small businesses. One argument that you make is that the
1493 transparency requirements are necessary to catch the, quote --
1494 your quote -- "fly-by-night actors and scammers."

1495 But isn't that more like using a sledgehammer to swat a fly?
1496 And the question I had, really, is why should all small business
1497 operators be saddled with onerous and costly transparency
1498 requirements so that we can catch a few bad actors?

1499 Mr. Feld. I am sorry if I am unclear.

1500 What I believe I said, and what I certainly mean, is not that
1501 we should not have a set of rules that are sensitive to the needs
1502 of small carriers.

1503 I am not even opposed to the FCC deciding that at this time
1504 we don't need -- we could make the exemption permanent. What I
1505 worry about is Congress' preemptive effect, and when Congress
1506 passes a law, as Ranking Member Eshoo said, that is a big deal
1507 because it makes it impossible for the agency to respond to
1508 changing circumstances.

1509 As we move forward, we may -- and things settle we may need
1510 to revisit this. We may find that we are -- we see the emergence

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1511 of scams.

1512 That has been, as I have said, a long history that wherever
1513 we have set up a permanent congressional exemption to oversight
1514 or accountability that bad actors move in because they can.

1515 So, again, I am not against a permanent exemption on a
1516 complete record. I simply believe the moment now is premature.
1517 The FCC is in the process of evaluating the record and I believe
1518 their process is correct.

1519 I know there has been some suggestion that the cart was before
1520 the horse. But I would suggest that the FCC determined that the
1521 enhanced transparency was in the public interest. That is
1522 self-evident.

1523 Mr. Guthrie. Thanks. I appreciate you clarifying that,
1524 and but I guess the fundamental question, and I think throughout
1525 this city and throughout this probably history written about this
1526 era in government is I think Congress has in the past -- I think
1527 some of this is Congress' own fault.

1528 They have been very deferential to the administration and
1529 not just here. I am talking in -- everything that we are talking
1530 about here. Well, I was just in a meeting beforehand in the labor
1531 area, and in doing so it allows the vagueness.

1532 We need -- it is too hard to get things changed, let us make
1533 it open, let us make it where the administration can administer

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1534 -- why should Congress put something that is too hard to get it
1535 undone if it needs to be undone.

1536 And I would argue in EPA, and not just labor meeting,
1537 whatever, then what happens if the administration doesn't do the
1538 intent of Congress. And I would certainly say that is -- so that
1539 is -- I think it is our responsibility to clarify.

1540 So but I appreciate your position. I think it is our
1541 responsibility to make sure if it is something we think is in the
1542 good interest that it is congressionally enforced and mandated.

1543 And, Ms. Bowles, you said the FCC -- earlier the FCC punted
1544 on making the small business exemption permanent? Do you think
1545 they fell back when they should have?

1546 Ms. Bowles. That they failed to make it permanent when they
1547 should have? Yes.

1548 Mr. Guthrie. You think that it would be -- so the question
1549 also that I hear, and it is kind of not just in this world but
1550 it is in the entire government world, everywhere I go -- and you
1551 are a small business person -- in my district my family has a small
1552 business, a medium-sized business, so everywhere I go it is not
1553 just what the rules and regulations are.

1554 It is just that they are not -- people don't know what they
1555 are going to be from day to day or month to month. I had a bill
1556 out of this full committee in another subcommittee on the health

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1557 care bill for small businesses and even the witness against the
1558 bill said exactly what was just said is that I believe we should
1559 do this but let us not make it permanent -- let us do a waiver
1560 for a year to see if this works or not work.

1561 And that is what I said -- the entire -- throughout government
1562 and people trying to develop business, grow business and hire
1563 people to put them to work or just -- there is so much uncertainty.

1564 That is a common word I hear if you go into a restaurant,
1565 a manufacturing business or in a high-tech business, such that
1566 you are in.

1567 So what does the uncertainty of these reporting requirements
1568 prevent you or help you? Let us just say I am looking -- prejudice
1569 the question -- how does it help or hurt you in what you want to
1570 do as a business person?

1571 Ms. Bowles. Well, I want to reiterate that all members are
1572 small. The average WISP has 1,500 to 2,000 customers. They are
1573 small businesses with very few employees, usually less than a
1574 handful of employees that are doing this.

1575 They live in the communities they serve. They are working
1576 next to their neighbors. They live in the real world and they
1577 are dealing with real world problems.

1578 And so what the regulatory uncertainty does is it distracts
1579 them from dealing with the real world that they are in and getting

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1580 broadband service to their neighbors with this thing that is not
1581 necessary, based on the record, that causes them to turn their
1582 attention away from expanding their networks and getting
1583 broadband into rural America.

1584 Rural America can least afford additional regulatory expense
1585 and that is what essentially is happening. The 3,000 small ISPs
1586 are serving the areas in this country that the larger providers
1587 cannot financially justify going into.

1588 We are able to do it because the barriers to entry are so
1589 low because the cost for our company -- all members coming in to
1590 serve it are low enough that we can justify it. If those costs
1591 go up, then that justification changes. Their community --

1592 Mr. Guthrie. Thanks. I know my -- I understand my time has
1593 expired. Appreciate the answer. Mr. Feld, I appreciate you for
1594 clarifying as well.

1595 Thank you. I yield back.

1596 Mr. Collins. Mr. McNerney, five minutes.

1597 Mr. McNerney. I thank the chairman. I thank the witnesses
1598 this morning.

1599 Ms. Bowles, looking at the Small Business Broadband
1600 Deployment Act, one of the contentious issues is how to define
1601 a small business.

1602 If you look at the earlier definition of 100,000 subscribers,

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1603 that sounds like a lot to me. I mean, if each subscriber is \$100
1604 a month and you have 100,000 subscribers that's \$10 million a
1605 month, \$120 million a year.

1606 That is not a small business, in my mind. So what would be
1607 -- how could you define a small business? What would be the
1608 measure of a small business, in your mind?

1609 Ms. Bowles. Honestly, I have to defer to the experts in the
1610 United States government who define that. I understand that
1611 there are a lot of different definitions for small business and
1612 the 100,000 number or the SBA's use of a 500,000 subscriber number.

1613 As I said, the majority of our members are significantly
1614 smaller than that.

1615 Mr. McNerney. Right.

1616 Ms. Bowles. That would fit under any definition of small
1617 business. So from our perspective, the important thing is
1618 whatever number you end up with it needs to embrace the smallest
1619 of the small businesses so that they are protected so that they
1620 can continue to grow their business and continue to serve rural
1621 America.

1622 Mr. McNerney. So, I mean, is the number of subscribers a
1623 good metric for to define --

1624 Ms. Bowles. It is an -- it is an adequate metric. I mean,
1625 it is a proxy for revenue. So I suppose it is fine.

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1626 But number of employees is also significant because if you
1627 have only five employees, even if you have 10,000 subscribers it
1628 would be a very substantial burden for a company of that size.

1629 So I think you need to look both at how many employees you
1630 have as well as your revenue or the number of subscribers that
1631 you have. I don't think it is a singular number necessarily.

1632 Mr. McNerney. Commissioner McDowell, would you want to
1633 weigh on this? How would you --

1634 Mr. McDowell. I think it is a healthy discussion to have
1635 exactly how you are defining small business -- is it on a
1636 subscriber basis, an employee basis, revenue basis, although
1637 employees and subscribers, I think, capture a lot.

1638 I think the point that Ms. Bowles, though, is making is that
1639 the vast majority, in fact, if not 99.99 percent of their members
1640 -- WISPA's members -- are mom and pop organizations, quite
1641 literally, or dad and daughter, as you pointed out, organizations.
1642 And so --

1643 Mr. McNerney. So, I mean, 100,000 subscribers seems like
1644 a --

1645 Mr. McDowell. If you are at risk and you have 100,000
1646 subscribers, roughly, how many employees would you have?

1647 Ms. Bowles. Oh, wow. You would have to have several
1648 hundred employees to have -- to have 100,000 subscribers. You

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1649 have to have several hundred employees.

1650 Mr. McDowell. But that could still fit within a small
1651 business definition?

1652 Ms. Bowles. That could still fit within a small business
1653 and it is correct, 99.98 percent of our members fit underneath
1654 the small business definition provided by the FCC.

1655 Mr. McNerney. I mean, it sounds like moving from 100,000
1656 to 500,000 subscribers is a bit of an overreach.

1657 Mr. Feld, my next question has to do with the Universal
1658 Service Fund. I think in your testimony you indicated that the
1659 2666 might impede that development. What is your feeling on that?

1660 Mr. Feld. I have a lot of concerns. The USF reform has been
1661 very complicated. Part of it is based on a core provision of the
1662 statute, Section 254, which directs that services should not cost
1663 substantially more in rural areas than comparable services in
1664 urban areas.

1665 So if you can't -- if the core purpose of the statute,
1666 particularly for the rural high cost fund, is to regulate rates
1667 and make them more affordable for people and you have a law that
1668 says absolutely no -- under any law can you do anything that
1669 regulates rates, then I don't see how you avoid the problem of
1670 well, the purpose of the whole law is to make the broadband
1671 affordable. That is rate regulation -- indirectly through a

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1672 subsidy, but still rate regulation.

1673 The additional problems are that one of the goals in high
1674 cost in particular has been to end the system of implicit
1675 subsidies, intercarrier compensation and termination fees and
1676 shift to a more straightforward explicit compensation through the
1677 high cost fund.

1678 That was in order to balance these things out without raising
1679 the rate on the ratepayers done by price regulation. So and that
1680 was challenged and affirmed in the Tenth Circuit.

1681 But this would give those folks who lost a fairly lengthy
1682 and contentious litigation -- a second bite at the apple -- and
1683 I don't see how the FCC doesn't just throw up its hands and put
1684 everything on hold or abandon the operation altogether.

1685 Mr. McNerney. Okay. I am going to let the commissioner
1686 answer but please keep it brief.

1687 Mr. McDowell. Yes. I am sorry. I know we are short on
1688 time.

1689 First of all, I think it will give both of you some comfort
1690 that in October 2011, three Democrats and one Republican, we got
1691 together for the first time in history and incorporated some
1692 reforms for the universal service to extend those subsidies to
1693 broadband services when they were deemed an information service
1694 prior to the Title II order of last year.

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1695 So there was not -- it was the unanimous consensus of the
1696 commissioners and of the staff at the FCC that you did not have
1697 to have broadband classified as common carriage and therefore
1698 subject to rate regulation, which is where I am going with that.

1699 So that is number one, and that was litigated before the Tenth
1700 Circuit and upheld. So that was challenged and upheld by the
1701 courts. So I don't think there is going to be an issue here at
1702 all.

1703 But if there is an issue, then the other comfort I would like
1704 to offer is that perhaps there could be a friendly amendment to
1705 that regard saying universal service is a carve out.

1706 Mr. McNerney. Okay. Thank you for the suggestion.

1707 I yield back.

1708 Mr. Collins. The chair recognizes Mr. Kinzinger.

1709 Mr. Kinzinger. Thank you, Chairman, and thanks to the folks
1710 here and thank you for holding this hearing to the committee.

1711 I want to just talk about a couple of bills I introduced --
1712 2666 and 1301. The Amateur Parity Radio Act has over a hundred
1713 bipartisan co-sponsors including the chairman, and as a point of
1714 interest every member of Congress throughout the country has at
1715 least a few hundred licensed amateur radio operators in their
1716 district.

1717 Under current law and regulation in certain areas, ham radios

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are outright prohibited from placing any form of antenna on their home, even those as small as a four millimeter diameter wire that would run under an awning or flat against a house.

For some, this is merely a nuisance but for others -- those that go through additional training and certification to become an emergency communications volunteer -- this can be dangerous.

During the times of emergency, like a hurricane or a tornado, amateur radio operators are able to use their skills and equipment to create a network of communications for first responders when all other networks have failed.

And as a point of interest, as a military pilot, there were a number of times overseas where we would actually use phone patches and pass coded messages through ham radio operators to our command post, and so I think that is very interesting to note that they serve that purpose, too.

And to quote something from the FEMA director, Mr. Fugate, I guess -- I don't know if I said his name right -- on the issue he said, quote, "I think that there is a tendency to believe that we have done so much to build infrastructure and resiliency in all of our other systems. When everything else fails, amateur radio oftentimes is our last line of defense. When you need amateur radio, you really need them." And I think this is very important.

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1741 H.R. 1301 would change some of these issues by implementing
1742 a reasonable accommodation standard. There is no mandate on the
1743 placement size aesthetics, as those decisions are left to the
1744 discussion to take place between ham radio operators and their
1745 jurisdictions.

1746 We would just simply add the same standard that has been used
1747 successfully in municipal areas to other areas.

1748 Switching gears, the rate regulation bill comes about as a
1749 result of comments and statements made by the president and by
1750 Chairman Wheeler.

1751 Following those statements, Chairman Wheeler and I had a
1752 conversation in this subcommittee where I asked him the question
1753 of would you support legislation that simply said notwithstanding
1754 any provision of law the Federal Communications Commission may
1755 not regulate the rates charged for broadband Internet access
1756 service -- very simple. And the chairman agreed and so we have
1757 this bill before us today.

1758 Simply put, the government should not be in the business of
1759 regulating the rates of private industry and that is a lesson that
1760 we learn when we look at failed governments of the 1980s in the
1761 past in terms of regulating private industry.

1762 Chairman Wheeler has stated that he will not go down the path
1763 of rate regulation and I give him credit for that, rightfully so.

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1764 But the power is still there for any future chairman.

1765 In listening to the debate today, some legitimate concerns
1766 have been raised and I would offer that if it takes some small
1767 changes to address those concerns I am more than happy to sit down
1768 with any interested parties.

1769 We want to do this in a bipartisan way. But I think that
1770 is important that we have this conversation and I appreciate you
1771 being here.

1772 Mr. McDowell, you bring up the risk of not only this FCC
1773 regulating broadband access rates but a future commission as well,
1774 and I know you have served under different administrations.

1775 Can you elaborate how that is a concern for you?

1776 Mr. McDowell. Absolutely. Statutory interpretations can
1777 change based on the political philosophy and ideology of whoever
1778 is chair and who constitutes a majority of the commission.

1779 So eight years ago, for instance, Section 706 was never
1780 contemplated as giving the FCC some sort of secret expansive power
1781 over the Internet space. But that came out of the 2010 order and
1782 then it was blessed by two judges on the D.C. circuit.

1783 So that changed dramatically, just the interpretation of
1784 Section 706, which, at the time of the 1996 act, was considered
1785 deregulatory, not more regulatory.

1786 So you want to make sure that what the interpretation by an

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1787 FCC is today remains the same. You want to codify that, enshrine
1788 that in the statute. That is the only way to really have certainty
1789 for the long run.

1790 Mr. Kinzinger. Yes, and I know, you know, we are involved
1791 in this committee in terms of process reform for the FCC, which
1792 I think is necessary in opening, you know, up a lot of the process.

1793 But I think what is important to note is that big decisions
1794 like this, without this codified, can be made by a few people --
1795 a few people that make the decision at the moment, and it is the
1796 jurisdiction of this committee and this Congress to regulate
1797 things like interstate commerce.

1798 And when we say we don't want broadband regulated by the
1799 government, I think we have a rightful position to have that
1800 debate, have that argument and to get this done.

1801 And, frankly, again, I would just reiterate my position is
1802 very bipartisan because the chairman of the FCC agreed with me.
1803 The president agrees with me. So at this moment of bipartisanship
1804 in this committee we may as well codify that into law.

1805 So with that, I want to say thank you to you all and I yield
1806 back.

1807 Mr. Collins. I thank the gentleman for his questions. The
1808 chair recognizes Mr. Johnson.

1809 Mr. Johnson. Thank you, Mr. Chairman, and thank the panel

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1810 for being with us today.

1811 Ms. Bowles, can you point to any specific flaws in the FCC's
1812 analysis when the agency attempted to determine how much the
1813 enhanced transparency requirements would cost small businesses?

1814 How did the agency fail to account for the specific needs
1815 of small businesses? Can you comment on that?

1816 Ms. Bowles. Yes. The FCC drew its conclusion from having
1817 made an assumption that because the business is smaller the
1818 regulatory burden would be smaller and that is almost exactly
1819 backwards from the reality.

1820 A smaller business doesn't have the armies of lawyers. It
1821 doesn't have the teams that are already meeting regulatory burdens
1822 that many of the people who are affected by open Internet already
1823 have in place.

1824 So the small ISPs weren't in the record and they weren't --
1825 there wasn't an analysis done of the actual cost, the actual
1826 monetary costs or the impact on the networks or the impacts on
1827 expansion.

1828 And I have said this before but we have very, very small WISPs
1829 who -- for whom this could literally put them out of business.
1830 They have one employee.

1831 So it is very hard to -- I don't think the FCC really did
1832 any analysis of that side of the equation. They just came off

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1833 --

1834 Mr. Johnson. And it is your assessment that that impact on
1835 small business would be significant?

1836 Ms. Bowles. Yes.

1837 Mr. Johnson. Okay. Mr. Feld's testimony discusses
1838 significant unintended consequences of the Small Business
1839 Broadband Deployment Act including customers turning instead to
1840 national providers.

1841 As a representative of the small business community, would
1842 you like to respond to that?

1843 Ms. Bowles. I don't think that is a realistic concern.

1844 Mr. Johnson. Okay. And it is not --

1845 Ms. Bowles. We compete in an open marketplace right now with
1846 larger providers. My company serves rural communities but we
1847 also compete in Little Rock, Arkansas.

1848 We compete directly with AT&T and Comcast and larger
1849 providers and we compete on service, we compete on locality and
1850 we compete on price.

1851 Mr. Johnson. Okay.

1852 Ms. Bowles. And in the rural communities we serve we are
1853 -- these are our neighbors and our friends and we compete, again,
1854 on service and on price and it is a competitive marketplace. It
1855 doesn't concern us at all.

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1856 Mr. Johnson. Okay. All right.

1857 Finally, Ms. Bowles, was there overwhelming support for
1858 making the small business exemption permanent?

1859 Ms. Bowles. Yes. To my -- to my knowledge, there were no
1860 comments opposing until the very last moment and before the
1861 closing --

1862 Mr. Johnson. I want to -- yes, I want to get into that.

1863 Mr. Feld, based on the FCC's order, it appears that Public
1864 Knowledge did not file comments in response to the bureau's public
1865 notice on this issue.

1866 In fact, it appears that the only party to disagree with the
1867 extension at all in the proceeding was free press doing so not
1868 in comments but in an ex parte submission made the Friday before
1869 the order was released. That is 97 days after the close of the
1870 comment period.

1871 So is it correct that Public Knowledge did not file?

1872 Mr. Feld. We believe the extension for the FCC to complete
1873 its work was justified.

1874 Mr. Johnson. No, that is not the -- that is not the question
1875 I asked you.

1876 Mr. Feld. You are correct. We did not file.

1877 Mr. Johnson. That is not the -- you did not file?

1878 Mr. Feld. That is correct.

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1879 Mr. Johnson. Okay. I yield back. Thank you.

1880 Mr. Collins. I thank the gentleman for his questions and
1881 as we bring this hearing to a conclusion, I will recognize myself
1882 for a couple of minutes here as we wind down.

1883 So Mr. Feld, I am, like, a little bit confused or concerned
1884 about Public Knowledge not being supportive of H.R. 2666, which
1885 is the no rate regulation.

1886 So I want to make sure if we are on the same page here in
1887 saying I think, and hopefully you would agree, that the president
1888 was clear in saying that the FCC should forbear from rate
1889 regulation. I mean, you would agree with this, I am assuming?

1890 Mr. Feld. Yes, from standard rate regulation.

1891 Mr. Collins. And then we have Chairman Wheeler also saying
1892 time and again that they will forbear -- he believes in forbearing
1893 no rate regulation, no filing tariffs. Again, I --

1894 Mr. Feld. Having once upon a time and long ago done
1895 tariffing and rate regulation through that fashion, I would not
1896 wish it on anyone.

1897 Mr. Collins. So with both the president and the chairman
1898 saying this, I am a little confused by why Public Knowledge
1899 wouldn't support H.R. 2666.

1900 Mr. Feld. Well, as we have heard, there are a number of
1901 interpretations of what the broad sweeping language of H.R. 2666

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1902 would mean.

1903 I certainly don't think of preventing monopoly providers
1904 from charging monopoly prices as being rate regulation.

1905 On the other hand, we have heard views expressed that even
1906 that kind of ex ante enforcement of traditional consumer
1907 protection should be considered rate regulation under the
1908 statute.

1909 So while I think that there is agreement on a very broad
1910 principle, nobody wants to go back to the old days when we were
1911 all, you know, quibbling about whether -- what went into the rate
1912 base and concerned about the ability to raise prices through rate
1913 regulation in the fashion that Commissioner McDowell described
1914 earlier.

1915 I think that we do have a great deal of concern that where
1916 providers are charging fraudulent prices, billing in ways that
1917 are designed to confuse consumers -- what I like to refer to as
1918 the nickel and diming of the American people, which it is the FCC's
1919 job to stop -- I am greatly concerned that the statute as written,
1920 given its broad sweeping language, would have that effect.

1921 Mr. Collins. Well, I can appreciate your interpretation,
1922 perhaps, but I would like to think forbearance is forbearance and
1923 the rate regulation piece was the key sticking point with a lot
1924 of Republicans on this and we were always uncomfortable with the

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1925 president saying he would forbear on the rate side, as did Chairman
1926 Wheeler.

1927 And since we are -- a year from now we will have both a new
1928 president and at some point probably a new chairman, I think at
1929 some point this Congress could codify where we stand on that.

1930 So I want to thank the witnesses for their testimony and the
1931 ranking member has certainly indicated, I think, we have a context
1932 we can all work with here. That is what the hearing is all about.

1933 Your input has been very valuable, and as we move forward
1934 in the next month or so into a markup we will take your testimony
1935 into account and I want to thank you for that and also encourage
1936 you for the members that ask for some follow up if you could provide
1937 that in a timely manner that would be appreciated.

1938 So I would remind all members there are ten business days
1939 to submit questions for the record. I ask the witnesses to
1940 respond accordingly.

1941 And without objection, the committee is adjourned.

1942 [The bill H.R. 2669 follows:]

1943

1944 *****INSERT*****

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1945 [The bill H.R. 1301 follows:]

1946

1947 *****INSERT*****

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1948

[The bill H.R. 2666 follows:]

1949

1950

*****INSERT*****

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1951 [The bill Small Business Broadband Deployment Act follows:]

1952

1953 *****INSERT*****

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1954

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]