

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

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Good morning Chairmen Pallone and Doyle, Vice Chair Matsui, and Republican Leaders Walden and Latta, and Members of the subcommittee:

Thank you for the opportunity to appear before you today. It is an honor to be here and speak about Net Neutrality and the consequences of applying Title II to the Internet.

***Witness background:***

I am the Chief Executive Officer of Eastern Oregon Telecom (EOT), a rural competitive telephone company and Internet service provider serving residents and businesses in Umatilla and Morrow counties, primarily in Northeast Oregon. EOT is currently providing residential and commercial gigabit services in four of the communities in its service area.

In 2009, I was appointed by the governor of Oregon to the Oregon Broadband Advisory Council (OBAC) representing rural broadband interests in Oregon. I have been serving as the chairman of the council since 2010. The OBAC's mandate is to advise the legislature and governor's office on matters pertaining to broadband in the state, and to specifically promote the adoption and utilization of broadband for economic development, e-government, tele-health/tele-medicine, education, public safety, and tribal lands.

I also served in various roles as an officer in the United States Army, where I held an SCI – Top Secret security clearance.

***The Telecommunications Act of 1996:***

The following quote is directly from the FCC's website: "The Telecommunications Act of 1996 was the first major overhaul of telecommunications law in almost 62 years. The goal of this new law was to let anyone enter any communications business -- to let any communications business compete in any market against any other. The Telecommunications Act of 1996 has the potential to change the way we work, live and learn. It will affect telephone service -- local and long distance, cable programming and other video services, broadcast services and services provided to schools."

Internet service was deemed an "Information Service", and so not subject to Title II regulation like voice services. Since that occurred, we have seen the Internet grow into a remarkably impactful tool for good. Nothing else has the same potential for transformative good, whether through distance education, enhanced public safety, access to healthcare, and even enhanced access to government at all levels -- all of this regardless of socio-economic status, age, or race. I would argue that it was that freedom from regulation that allowed the Internet to begin to realize its potential.

## **Title II:**

The FCC's 2014 Notice of Proposed Rule Making (NPRM) said that they wanted to "...classify a telecommunications component service of wired broadband Internet access service as a 'telecommunications service'. The Commission also asked whether it should similarly alter its approach to wireless broadband Internet access service, noting that section requires that wireless services that meet the definition of 'commercial mobile service' be regulated as common carriers under Title II."

What would that accomplish? What does Title II say and do? Section 201 says: *"All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful."*

Who determines whether a practice is just and reasonable, and on what grounds? In general, public utilities are subject to centralized ratemaking procedures in which the government dictates the prices that can be charged to consumers based on mathematical formulas that factor in costs of service, operating expenses, taxes, depreciation, investment in capital and interest rates. Rather than allow market competition to set prices, a centralized authority presumes to determine what is "fair".

The U.S. Energy Information Administration lists [more than 47,000](#) individual rates for electricity alone, illustrating the immensity and impracticality of this regulatory task. One can only imagine the chaos of trying to apply this process to something as decentralized and quickly evolving as the internet.

Section 205 states: *"Whenever, after full opportunity for hearing, upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of opinion that any charge, classification, regulation, or practice of any carrier or carriers is or will be in violation of any of the provisions of this Act, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge or the maximum or minimum, or maximum and minimum, charge or charges to be thereafter observed..."*

A plain English translation of this somewhat obscure passage basically states that the FCC can impose any fine it likes on companies that violate its rules, so long as they are "just and reasonable", which is again undefined and left to the discretion of the Commission. And, even though you do not think that the FCC will regulate Internet prices, Title II allows the possibility of someday the FCC being able to do just that – and that is what goes through the mind of an investor if they have to choose between putting their dollars into entities like mine versus an edge provider.

Section 208 states: *"No complaint shall at any time be dismissed because of the absence of direct damage to the complainant."* This section permits anyone to complain about the activities of a carrier to the Commission without any need of having actually been harmed.

None of the above would keep the Internet free, nor would they address the reason Title II was applied to the Internet in the first place. I am confident that you all remember the public outrage when it was discovered that some providers had incentives to give preference to their own content delivery over the delivery of content that they did not own. It was this that sparked the discussion that ultimately led to application of Title II to the Internet.

### ***Repeal of Net Neutrality – the Impact:***

The application of Title II as part of Net Neutrality had a dramatic chilling effect on rural telecom in the Pacific Northwest and I suspect the same could be said about the rest of the country. The uncertainty of the regulatory environment, even on non-regulated telcos and internet service providers like EOT, made investors hesitant to invest in the telecommunications sector. Further, the ill-informed public furor and fear surrounding the Net Neutrality subject precluded any objective discussion of the topic. This resulted in distrust of and anger toward ISP's, like my company, that had never manipulated their networks or internet protocol (IP) traffic in an anti-competitive nature. It also prompted state legislation forcing Net Neutrality practices on local providers who, again, had never violated the public trust and had no interest in anti-competitive behavior.

All of this took place without the ability to have an objective discussion about the scope of the problem and how to address it without harming the Internet, all because of the fear-mongering by those who didn't fully understand the subject or had other reasons for advancing Title II application to the Internet. Yes, I believe that Title II had begun to harm the Internet in the U.S. and a reapplication of it has the very real possibility of resulting in unforeseen and irrevocable damage in the future. I applaud your interest in having an objective conversation about the subject in this hearing today.

Since the repeal of Net Neutrality, investors have been much more willing and perhaps eager to invest in rural telecommunications. Additionally, my company has been able to focus on continuing to provide exceptional telecommunications and is currently expanding into other markets that are underserved. We do this with confidence because we don't have to concern ourselves with unnecessary regulatory interference and the draining cost of reporting and compliance. We also have plans in years 2019/20 to significantly expand our infrastructure, serving many more underserved communities in our region.

I believe that Title II does not have to be, nor should it be, part of the solution to the problem of bad behavior by a few internet service providers. Such application of Title II would not just be damaging but also unnecessary. When I say "unnecessary", I say so because my company does not participate in the bad behavior that started the Net Neutrality debate in the first place. In fact, I don't know of any rural providers in Oregon who do. Nevertheless, I do believe that further discussion on the topic of prioritization of traffic is warranted.

### ***Does all Internet traffic have the same value to society?***

Oddly, in the vast media coverage on Net Neutrality, I never heard a discussion about whether all Internet traffic had equal value. As I prepared for this testimony, I struggled with that question. As a service provider or even as a consumer, why would I want to have the choice to prioritize one form of traffic over another?

As a society, we apply different values to everything, sometime rightly, and sometimes not. For example, multi-passenger vehicles can use the High Occupancy Vehicle (HOV) lane while automobiles with only one occupant are not allowed to. Large trucks are most often subject to lower speed limits than smaller vehicles. Some electric utilities charge more for electricity during peak usage times. Even the airline that transports me from the West Coast to Washington, D.C. treats their passengers differently based on how much they were willing and able to pay for their ticket.

In fact, I think we would all agree that as most forms of information, voice, data, video, etc. are now being moved via internet protocol (IP), some are clearly more important than others. Here are some of my own examples:

- A long-distance call to 911 should take priority over a regular call.
- If my daughter was in a car wreck and had a head injury late one night, I would want the digital imaging that needed to be analyzed remotely by a radiologist or surgeon to take priority over someone's online gaming tournament.
- Students participating in distance education or online standardized testing should get priority over those streaming on-line movies for entertainment.

Prioritization of traffic becomes a problem only when it is anti-competitive in nature, when it is done to harm/eliminate the competition. And, there are consumer protection laws in place that target this type of behavior. Adding additional layers of regulatory burden is not the answer.

In conclusion, it is important for me to convey that every dollar I spend reporting to regulatory agencies is a dollar I don't have available to invest in new infrastructure to serve rural Eastern Oregon and Southeast Washington.

Instead of adding to that burden, I encourage you to consider leaving the long-standing Title I regulation of the Internet in place, abandon any initiative to reinstate Title II through legislation, and address the anticompetitive abuses that everyone fears with light touch surgical precision.

Finally, I would be remiss if I did not advocate for initiatives from this committee specifically designed to promote competition in the marketplace. Giving consumers choices for their Internet service offers the greatest mechanism for rewarding the good performer and punishing the bad performer. If enough customers choose to leave, the bad performer will either adjust their behavior or go out of business. Only robust competition in the marketplace ensures innovation, lower prices, and excellent customer service. A complacent monopoly has no incentive to change. Robust competition is the answer.

I'd be happy to answer any questions that you may have.