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6 LEGISLATING TO SAFEGUARD THE FREE

7 AND OPEN INTERNET

8 TUESDAY, MARCH 12, 2019

9 House of Representatives

10 Subcommittee on Communications and

11 Technology

12 Committee on Energy and Commerce

13 Washington, D.C.

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17 The subcommittee met, pursuant to call, at 11:00 a.m., in
18 Room 2322 Rayburn House Office Building, Hon. Mike Doyle [chairman
19 of the subcommittee] presiding.

20 Members present: Representatives Doyle, McNerney, Clarke,
21 Loeb sack, Veasey, McEachin, Soto, O'Halleran, Eshoo, DeGette,
22 Butterfield, Matsui, Welch, Lujan, Schrader, Cardenas, Dingell,
23 Pallone (ex officio), Latta, Shimkus, Olson, Bilirakis, Long,
24 Flores, Brooks, Walberg, Gianforte, and Walden (ex officio).

25 Also Present: Representative Rodgers.

26 Staff present: AJ Brown, Counsel; Jeff Carroll, Staff
27 Director; Jennifer Epperson, FCC Detailee; Evan Gilbert, Press
28 Assistant; Waverly Gordon, Deputy Chief Counsel; Tiffany
29 Guarascio, Deputy Staff Director; Alex Hoehn-Saric, Chief
30 Counsel, C&T; Jerry Leverich, Counsel; Dan Miller, Policy
31 Analyst; Phil Murphy, Policy Coordinator; Kaitlyn Peel, Digital
32 Director; Chloe Rodriguez, Policy Analyst; Mike Bloomquist,
33 Minority Staff Director; Robin Colwell, Minority Chief Counsel,
34 C&T; Jordan Davis, Minority Senior Advisor; Kristine Fargotstein,
35 Minority Detailee, C&T; Margaret Tucker Fogarty, Minority Staff
36 Assistant; Peter Kielty, Minority General Counsel; and Tim Kurth,
37 Minority Deputy Chief Counsel, C&T.

38 Mr. Doyle. The Subcommittee on Communications and
39 Technology will now come to order and the chair recognizes himself
40 for five minutes for an opening statement.

41 I am very pleased to welcome everyone to the Subcommittee
42 on Communication and Technology's first legislative hearing of
43 this new Congress.

44 Today, we will be discussing the Save the Internet Act, which
45 I introduced last week along with 132 of our colleagues here in
46 the House.

47 First, this legislation would restore popular, bipartisan,
48 common sense net neutrality protections and put a cop back on
49 the beat to protect consumers, small businesses, and competitors
50 from unjust and unreasonable practices by internet service
51 providers.

52 Second, this bill would give the FCC the authority to protect
53 consumers now and in the future through forward-looking
54 regulatory authority.

55 Third, this bill would restore the Commission's legal
56 authority to support broadband access and deployment programs
57 through the Universal Service Fund. These programs pay for the
58 deployment of broadband in rural communities through the Connect
59 America Fund and support access to working families, seniors,
60 and veterans through the LifeLine program.

61 The Save the Internet Act would enact permanent, effective
62 net neutrality protections into law by codifying the FCC's 2015

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63 Open Internet Order as a new free-standing section of law. That
64 would ensure the internet remains an open platform for innovation
65 and competition, regardless of political changes at the FCC.

66 By authorizing the order as a free-standing part of the U.S.
67 Code, this legislation also permanently prevents the FCC from
68 applying 27 sections of Title II of the Communications Act as
69 well as over 700 regulations, which is the majority of Title II,
70 to internet service providers.

71 The bill also permanently prohibits the FCC from engaging
72 in rate regulation or requiring broadband providers unbundle
73 their network.

74 Last but not least, the Save the Internet Act restores the
75 Commission's ability to police unjust and unreasonable practices
76 by ISPs. The approach that we are discussing here today charts
77 a new course for net neutrality and puts in place 21st century
78 rules for a 21st century Internet.

79 In doing so, we remove much of the regulatory overhang of
80 Title II that ISPs and our colleagues on the other side of the
81 aisle have long complained about.

82 Opponents of this legislation need to explain to their
83 constituents which unjust and unreasonable practices they want
84 ISPs to engage in and why they want to allow such practices.

85 Americans, broadly and overwhelmingly, support these rules.

86 Polls have shown that 88 percent of Republicans, Independents,
87 and Democrats support restoring strong net neutrality

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88 protections.

89 This bill is a new approach and an open invitation to our
90 colleagues and ISPs alike to come together and support a new way
91 forward, because a free and open internet is critical for so many
92 communities and sectors of our economy and because broadband
93 connectivity touches almost every aspect of our economy,
94 politics, and culture.

95 I encourage my colleagues on the other side of the aisle
96 to seriously consider this legislation. Whether you are a rural
97 broadband provider based in Idaho, like Mr. Green's company,
98 Fatbeam, or you are working to ensure that minority and
99 underrepresented voices get heard online, like Ms. Ochillo's
100 organization, or you have heard from millions of constituents
101 who have called or emailed their elected representatives, the
102 message the people are sending us is clear.

103 We need to restore strong net neutrality rules and that is
104 exactly what this bill does. Together, we hope to advance this
105 legislation through the Congress and restore these essential
106 protections for all Americans.

107 I would also like to remind my friends and particularly my
108 friends on the other side of the aisle that this is the bill that
109 is before the committee today and this is the issue we are
110 discussing.

111 I am happy to talk to members about other issues at the
112 appropriate time for them to be brought before the subcommittee.

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113 But for today, this bill is the subject of our discussion.

114 And with that, 29 seconds remaining, I would now like to
115 represent my friend and colleague, Mr. Latta, the ranking member
116 of the subcommittee, for five minutes for his opening statement.

117 Mr. Latta. Well, thank you very much, Mr. Chairman, and
118 good morning to our witnesses for being with us today. I am glad
119 you are here.

120 I am always happy to be here with my colleagues and learn
121 more from the real experts on important issues in the telecom
122 space. I have to admit I am confused why we need to spend another
123 entire hearing on net neutrality less than a month after talking
124 about the same thing.

125 In the meantime, the majority has introduced essentially
126 the same bill that has already failed to garner the support of
127 their entire caucus as a CRA in the last Congress.

128 Make no mistake, there are a lot of different ways for
129 Congress to go about protecting consumers with permanent net
130 neutrality rules.

131 For example, the bill I introduced last month is based on
132 Chairman Waxman's approach in 2010 and my colleagues, Republican
133 Leader Walden and Mrs. Rodgers, offered two more bills based on
134 the rules from FCC's 2015 order and Washington State's bipartisan
135 legislation of 2018.

136 These bills all originated from Democratic net neutrality
137 proposals or laws. Anyone interested in a bipartisan legislative

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138 solution would consider each of them to be a reasonable starting
139 point for real discussion.

140 In contrast, the majority came to that hearing with no ideas.

141 Since that time, we have not heard a word from them until they
142 were ready to announce yet another net neutrality hearing.

143 Worst of all, instead of engaging with us to try to solve
144 the problem, my colleagues have retrenched back to the most
145 extreme position in this debate.

146 The idea that only Title II is real net neutrality is
147 dangerous and wrong. Those who are newer to the subcommittee
148 or to this debate should not be fooled.

149 You have heard over and over again that we need to protect
150 consumers from blocking, throttling, and internet fast lanes,
151 which sounds reasonable enough.

152 Well, we can easily do all of these -- of this without giving
153 the government free rein over the internet through the specter
154 of Title II.

155 Everyone who has followed this net neutrality debate or on
156 even the most superficial level is aware that Title II is a
157 nonstarter with Republicans and even some Democrats. It has no
158 chance of even passing the Senate or being signed into law.

159 Yet, here we are, in a repetitive hearing followed by a string
160 of partisan victories that will simply ensure that anyone -- if
161 that anyone digs in further and nothing meaningful ever gets done
162 to protect consumers.

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163 Even if there were a chance that the majority's Title II
164 bill would become law we now know unequivocally that it would
165 be the wrong direction for rural America.

166 As we heard from Mr. Franell at the last hearing and from
167 countless other rural carriers as well, Title II was a
168 devastatingly investment killer for small ISPs who need to be
169 expanding to serve more of our constituents of rural America.

170 At that hearing, so many members on both sides of the aisle
171 engaged Mr. Franell with questions and concerns about this impact.

172 There seems to be an overwhelming and bipartisan interest in
173 working to close the digital divide and get modern broadband
174 service out to the communities that are being left behind.

175 So why aren't we spending our time working together on that
176 instead of putting the crushing regulatory regime of Title II
177 back onto the folks we need to be out there investing and
178 expanding? It makes no sense.

179 I look forward to hearing from our witnesses today and with
180 that, Mr. Chairman, I yield back the balance of my time.

181 Mr. Doyle. The gentleman yields back.

182 The chair now recognizes Mr. Pallone, chairman of the full
183 committee, for five minutes for his opening statement.

184 The Chairman. Thank you, Chairman Doyle.

185 Words like net neutrality and open internet don't capture
186 how central this issue is for our society. We are talking about
187 what the country stands for.

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188 We are talking about saving economic opportunity and
189 innovation, saving our kids' educational opportunities, and
190 saving our democracy, and it is that important.

191 Without net neutrality, a free and open internet simply does
192 not exist. We have all heard the fears of our constituents.
193 In my district, small businesses like Rock Star Bakery and Second
194 Life Bikes in Asbury Park are concerned that without net
195 neutrality their businesses could be blocked from reaching their
196 customers.

197 They worry large corporations could buy "fast lanes," which
198 would make their businesses less competitive. Conservatives and
199 liberals alike worry about their voices being shut down by
200 corporations that don't agree with their point of view, and
201 without access to a free and open internet, my constituents are
202 worried it would be harder to find a job, harder to get the training
203 they need, and harder for their kids to keep up at school.

204 After all, today, people need the internet to find
205 good-paying jobs and to prepare their children to succeed in life.

206 A free and open internet isn't just about making sure that we
207 can watch videos on our computers or on our phones.

208 It is much more than that. It is about protecting free
209 speech, commerce, creativity, and innovation, and that is why
210 it is sad that we even have to hold this hearing on legislating
211 to safeguard the internet.

212 The FCC's order in 2015 established strong net neutrality

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213 rules and that was upheld twice in federal court. The debate
214 about net neutrality was over. Consumers and small businesses
215 were protected.

216 But the Trump FCC defied the American people and rolled back
217 those common-sense protections. It didn't matter that polling
218 showed that 86 percent of Americans supported these protections
219 nor did it matter that a historic 24 million people commented
220 on their action, and the overwhelming majority in opposition.

221 And that is why this committee must act. The Save the
222 Internet Act will restore the meaningful net neutrality
223 protections Americans want. It will stop this FCC or a future
224 FCC from undermining free speech, small businesses, and
225 consumers, and we must act swiftly.

226 There is no time for delay. Without net neutrality, we are
227 already seeing the slow march of anti-consumer behavior. ISPs
228 are charging internet users more for using their smart phones'
229 internet connection on another device. In other instances, they
230 are charging consumers more for watching high-definition videos.

231 And that is not what a free and open internet looks like.

232 So that is why I am very happy that so many of my colleagues
233 have joined with Chairman Doyle in signing on as original
234 co-sponsors of this legislation. After unveiling the Save the
235 Internet Act last Wednesday, the bill was introduced with 132
236 original co-sponsors.

237 And the Save the Internet Act will bring back the FCC's

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238 commonplace bedrock principles. It will put a cop on the beat
239 at the FCC and protect Americans and small businesses from abusive
240 and discriminatory network practices.

241 And with that, I would like to yield one minute to the vice
242 chair of our subcommittee, the gentlewoman from California, Ms.
243 Matsui, whatever time she may consume.

244 Ms. Matsui. Thank you, Chairman Pallone.

245 As you know, paid prioritization has been a priority of mine
246 for several years and I think we all agree that calls terminating
247 at public safety answering points shouldn't be dropped and various
248 content delivery systems and network traffic operations have
249 become important parts of the internet ecosystem that can improve
250 the consumer experience.

251 The core issue here is ensuring consumers don't have to pay
252 more for the same products and services online and it doesn't
253 take a technologist to know when you are getting a bad deal.

254 I am mindful of the potential use cases that next-generation
255 networks can facilitate and I previously introduced legislation
256 to ensure that allowing all consumers to access content equally
257 remains at the center of the important debate on the service
258 requirements and consumer benefits of our open internet policies.

259 I am very pleased that we are having this hearing and I feel
260 it is very, very necessary. We need a free and open internet
261 and hearings like this are very necessary.

262 Thank you, and I yield back.

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263 Mr. Doyle. The gentlelady yields back.

264 Does the gentleman yield back his time?

265 The Chairman. Yes, I do. Thank you.

266 Mr. Doyle. The gentleman yields back.

267 The chair now recognizes Mr. Walden, the ranking member of
268 the full committee, for five minutes for his opening statement.

269 Mr. Walden. Good morning, Mr. Chairman.

270 Mr. Doyle. Good morning.

271 Mr. Walden. Thank you for having this hearing.

272 Before I start, I just have a question for the chair. Does
273 18 USC Section 1001 involving false statements to Congress apply
274 to witnesses who testify here even if they don't stand up and
275 swear in?

276 Mr. Doyle. It does.

277 Mr. Walden. Okay. Thank you.

278 I want to -- I want to thank our witnesses, especially our
279 sole Republican witness. Mr. McDowell, it is always good to have
280 you before the committee.

281 A permanent legislative solution produced in good faith with
282 our Democratic colleagues is the only way to protect consumers,
283 innovation, and an open internet.

284 I have repeatedly called for an end to this ridiculous
285 partisan back and forth. It is time for bipartisan legislation
286 that could actually become law and I think we could find common
287 ground as this committee has a history of doing.

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288 Yet, even after offering a menu of bipartisan legislative
289 proposals at our hearing last month to preserve an open internet
290 once and for all, unfortunately, my friends on the other side
291 have not decided to work with us on a bipartisan solution and
292 I am really disappointed.

293 The partisan approach is not the answer. It will not become
294 law. Title II is not necessary to preserve a free and open
295 internet. We could permanently ban blocking, we could
296 permanently ban throttling, and Ms. Matsui's concerns -- we could
297 permanently ban paid prioritization without the heavy-handed
298 approach of Title II.

299 We heard last month about the regulatory impact of Title
300 II on rural broadband deployment from a small internet service
301 provider, Mr. Joe Franell of Eastern Oregon Telecom. Indeed,
302 he is from my district in eastern Oregon and across rural America
303 it is where we rely on small ISPs like Eastern Oregon Telecom
304 to help connect our communities with high-speed internet.

305 In an opinion piece in the East Oregonian that is running
306 this morning, Joe wrote that "The heavy hand of Title II shifted
307 Eastern Oregon Telecom's focus from our consumer to regulatory
308 interference and draining costs of reporting and compliance,"
309 closed quote.

310 Joe went on to say that every dollar he spends on reporting
311 to regulatory agencies is a dollar not spent on serving rural
312 Oregon.

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313 Frankly, Title II could provide the federal government near
314 unlimited and unchecked authority to regulate and tax -- regulate
315 and tax -- the internet. It is not an internet that protects
316 consumers nor is that an internet that would allow for American
317 ingenuity to thrive. I think we could do better.

318 I would also like to take note that the internet seems to
319 be working today, despite all the hyperbolic rhetoric to the
320 contrary last year. So what internet crisis brings us to the
321 hearing room today?

322 It is certainly not the abuses by the tech platforms that
323 occupy the news every day, not the limiting of conservative voices
324 on social media, shadow banning and throttling and things of that
325 nature, not the seeming inability to curb harmful and illicit
326 behavior online, not how tech companies make their deals to
327 prioritize internet traffic on the off ramps, not their own
328 agreements on sharing the people's personal information.

329 No, that is not what brings up here today. What brings us
330 here is that Speaker Pelosi still believes broadband providers
331 are the real threat and so, I assume, directed the majority to
332 move this bill.

333 The internet of today grew dramatically with little or no
334 government interference. Sadly, now, with an archaic regulation
335 from the 1930's monopoly era copper land line phone company seems
336 like an odd way to spur investment and innovation.

337 Meanwhile, big tech companies want complete freedom not just

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338 from regulation but also from liability for facilitating all sorts
339 of harmful and illicit activity.

340 Twenty years ago, Republican Congress and a Democratic
341 president granted special liability limitations to help the tech
342 sector to flourish.

343 This is Section 230 of the Telecom Act of 1996 and, without
344 objection, this bipartisan agreement accomplished its primary
345 objective. Online platforms are now major venues for
346 communication and commerce and not just in the United States but
347 around the world.

348 But Section 230 was also supposed to be about responsibility.
349 With a liability limitation in their back pocket, we increasingly
350 see the tech giants wield their power at the wrong targets.

351 When will this subcommittee seriously consider the role of
352 edge providers either as common carriers in the information age
353 or how they are the ones with business models that actually use
354 our data for their profits?

355 If you are going to protect consumers online, should those
356 online protections apply to the whole internet ecosystem?

357 Meanwhile, Mr. Chairman, we should hear directly from the
358 Federal Communications Commission about how this legislation will
359 impact the vitality of the internet.

360 I was under the impression the majority planned to have the
361 FCC up here to testify in the first quarter of this year.

362 Unfortunately, that hasn't happened yet.

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363 From a process standpoint and considering the need for the
364 full commission to weigh in on the impact of this proposal, Mr.
365 Chairman, will you commit to letting us have a hearing with the
366 commissioners before this measure is ushered through in a markup?

367 I know Ms. Eshoo was quite vocal last summer when Republicans
368 wanted to match our bipartisan success of enacting the FCC
369 reauthorization with completing an NTIA reauthorization.

370 Despite having had numerous hearings that included NTIA's
371 administrator as well as former administrators and interested
372 parties, there was still a demand by the Democrats that Mr. Redl
373 appear again before our -- following our legislative hearing.

374 So what I would like to know is can we have the commission
375 here before we are asked to markup this legislation?

376 Mr. Doyle. I will make sure to let you know when we invite
377 them.

378 Mr. Walden. That is a little different, but thank you, Mr.
379 Chairman, for your response.

380 [Laughter.]

381 Mr. Walden. And I yield back.

382 Mr. Doyle. I would just say to my friend -- and he is my
383 friend -- that I must have missed the phone call when you said,
384 let us get together and sit down and see if we can work together
385 on net neutrality.

386 What we got instead was three bills being dropped without
387 our knowledge, before any of us knew about it. I would just

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388 suggest to the gentleman that that's not the way to work together.

389 Mr. Walden. Mr. Chairman, may I respond?

390 Mr. Doyle. Yes, you may.

391 Mr. Walden. Thank you.

392 For four or five years I have had an open door. I have had
393 draft legislation and I have publicly and privately offered up
394 the opportunity to sit down and work through these things, and
395 the idea of having three bills out there was simply to say here
396 is menu of options. We didn't expect you to co-sponsor those.

397 But we remain willing to work with you to find a bipartisan
398 --

399 Mr. Doyle. Yes. I am glad your door is open. Mine is too
400 and I just -- if you had wandered into it we might have had a
401 conversation before you dropped the bills.

402 Okay. Let us move on. The gentleman yields back.

403 The chair wants to remind members that pursuant to committee
404 rules all members written opening statements will be made part
405 of the record.

406 Before I introduce our witnesses, I do want to recognize
407 and introduce a former member of Congress and a member of this
408 Energy and Commerce Committee. Former Congressman Ron Klink is
409 in the audience.

410 Ron, nice to see you. Welcome. Yeah, you could clap for
411 Ron.

412 [Applause.]

413 Mr. Doyle. Okay. I would now like to introduce our
414 witnesses. Oh, and stand right in front of me. Chip Pickering,
415 please -- Chip also a member of the committee.

416 [Applause.]

417 Mr. Doyle. Sorry, Chip.

418 Okay. Now, let us get to today's witnesses.

419 Ms. Francella Ochillo, vice president of policy and general
420 counsel for the National Hispanic Media. We also have Mr. Gregory
421 Green, chief executive officer of Fatbeam, Mr. former
422 commissioner, Robert McDowell, senior fellow at the Hudson
423 Institute and partner at Cooley LLP, and last but not least, Mr.
424 Matt Wood, vice president of policy and general counsel for Free
425 Press Action.

426 We want to thank all of our witnesses for joining us here
427 today. We look forward to your testimony.

428 You are each going to have five minutes to do your opening
429 statements. We do not have the lighting system here in front
430 of you but we will be tracking this here, and once you get to
431 your five minutes you will hear a little gentle tap of the gavel
432 and know that it is time to wrap up your testimony if you haven't
433 already done so.

434 So we will start with Ms. Ochillo. You are recognized for
435 five minutes.

436 STATEMENTS OF FRANCELLA OCHILLO, VICE PRESIDENT OF POLICY AND
437 GENERAL COUNSEL, NATIONAL HISPANIC MEDIA COALITION; GREGORY
438 GREEN, CHIEF EXECUTIVE OFFICER, FATBEAM; ROBERT M. MCDOWELL,
439 SENIOR FELLOW, HUDSON INSTITUTE, PARTNER, COOLEY LLP; MATTHEW
440 F. WOOD, VICE PRESIDENT OF POLICY AND GENERAL COUNSEL, FREE PRESS
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443 STATEMENT OF MS. OCHILLO

444 Ms. Ochillo. Good morning, Chairman Doyle, Ranking Member
445 Latta, and other members of the subcommittee.

446 My name is Francella Ochillo. I am the vice president of
447 policy and general counsel at the National Hispanic Media
448 Coalition based in Pasadena, California.

449 For years, NHMC has advocated for a free and open internet.
450 We help policymakers and lawmakers like you understand the impact
451 and what is at stake for Americans who do not have the resources
452 or the capacity to engage in these types of debates in Washington,
453 D.C.

454 Today, my comments are intended to reflect those voices
455 including families, students, creators, and activists who support
456 a free and open internet but do not have the good fortune of being
457 able to join us in this room.

458 The net neutrality consumer protections that we have fought
459 so tirelessly to restore were always intended to safeguard an
460 open and free internet, the one that we envision for tomorrow.

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461 Access to that open internet has revolutionized the way that
462 we think, the way that we work, the way that we communicate, the
463 way that we learn. It has challenged the way that we see each
464 other and tested our willingness to grow.

465 In all of its wonder, the internet has also been one of the
466 most important tools in remedying a long history of discrimination
467 that still plagues our country.

468 Taking messages online was the only way that activists were
469 able to get the nation to stop and listen to the cries of Native
470 Americans protecting sacred lands in North Dakota and how
471 disenfranchised voices were able to put a spotlight on unarmed
472 African-American men being shot by police.

473 Online social justice movements forced people to stop and
474 ask hard questions about contaminated water in Flint and why
475 families seeking asylum at the border were irreconcilably
476 separated from their children.

477 But when there is a premium for access, the dangerous
478 underbelly of the internet exposes people to a risk whether or
479 not you are online, creating a digital caste system of those who
480 can afford to pay more. It feeds the dark chambers of the internet
481 where division and hate speech and discrimination thrive.

482 Sunlight and open access -- that is the best remedy because
483 this internet has connected us in a way that, historically, our
484 nation has been unable to do so.

485 It serves as the digital encyclopedia where students can

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486 go to find out why the Japanese should have never been in
487 internment camps or the many reasons why Jim Crow was wrong.

488 Being able to discover those unpleasant truths about who
489 we are as a nation and how we grow together requires that all
490 Americans have access to the same information.

491 Under the current regulatory framework, ISPs have no
492 obligation to transmit messages as is. There are no rules that
493 prevent them from blocking content online, slowing down certain
494 websites, or giving preferential treatment.

495 In essence, they have the power to decide what we see online
496 and whose voices are heard. Simply put, this is a dangerous
497 experiment at the expense of the American people, which should
498 give all of us pause.

499 The United States regularly ranks as one of the most
500 expensive places for internet among developed countries in the
501 world and affordability remains the main barrier to adoption.

502 In 2018, approximately 24 million people still did not have
503 access to broadband of any kind. Forty percent of those people
504 -- 40 percent of Americans living in rural communities had no
505 access and 60 percent of people living on tribal lands face the
506 same fate.

507 These Americans, all on the wrong side of the digital divide,
508 regularly find their opportunities for growth, their opportunity
509 to participate in our democracy, as well as their upward mobility
510 that is directly linked to their level of access.

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511 If we can find a way to provide wifi for astronauts while
512 they are outer space, I don't understand why we can't find a way
513 to connect people in Peoria, Illinois, or Augusta, Georgia, or
514 Brownsville, Texas, or Chimayo, New Mexico, or even in my hometown
515 of New Orleans, Louisiana.

516 We have a choice. We can affirmatively protect the internet
517 that was started with public funds and always intended for public
518 good, or we can hope that this digital caste system of the haves
519 and the have nots steers clear of the communities that we call
520 home.

521 We have a responsibility to ensure that every American has
522 an opportunity to participate as well as a responsibility to
523 understand the insurmountable costs and the consequences when
524 they are disconnected, because while they may shoulder the
525 individual burden, there is a collective cost.

526 If this is, in fact, the digital revolution then that means
527 that we are having one of the most important conversations of
528 our time and we need to be vigilant about understanding the
529 consequences of creating an internet where some have basic and
530 limited access and others get a VIP pass.

531 We have to decide what type of digital infrastructure that
532 we plant to leave behind for generations to come and the only
533 questions that remains is did we stand up for them when we had
534 the chance.

535 Thank you.

536

[The prepared statement of Ms. Ochillo follows:]

537

538

*****INSERT 1*****

539

Mr. Doyle. Thank you.

540

We now recognize Mr. Green for five minutes.

541 STATEMENT OF MR. GREEN

542

543 Mr. Green. Chairman Doyle, Ranking Member Latta, thank you
544 very much, and members of the subcommittee, thank you for having
545 me.

546 I am Gregory Green. I am the CEO and co-founder of Fatbeam.
547 Fatbeam is a small ISP and fiber-based infrastructure provider
548 in the West Coast.

549 Today, Fatbeam operates in seven markets -- Washington,
550 Idaho, Montana, Wyoming, and Oregon. We also just opened a region
551 in -- Southwest region in Nevada, Arizona, and New Mexico.

552 We build fiber optic networks in, typically, markets tier
553 2 and tier 3, 150,000 in population and below, and in those markets
554 we provide health care providers, government agencies, schools,
555 education, higher ed, and other businesses and institutions open
556 access to our network, which also means that we share our fiber
557 network with other ISPs such that they can deliver residential
558 and other services that maybe we don't initially provide in that
559 market space.

560 I have also been a proponent of net neutrality. Fatbeam
561 supports net neutrality and we support very much the FCC order
562 in 2015 for net neutrality.

563 In fact, since net neutrality, we have invested in eight
564 new markets from the order coming out in 2015. Overall, we have
565 invested \$30 million in fiber-based infrastructure -- not

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566 wireless, but fiber-based infrastructure, and we are in 40
567 markets, as I mentioned, that we operate today.

568 The driver for that is, obviously -- in other words, demand
569 for our inventory and our product set is driven by our customers.

570 When there is a need we will prevail and we provide that solution
571 and we very much enjoy coming into a marketplace that is requesting
572 demand in services when in fact there is only maybe an incumbent
573 of a cable company and a phone company in place.

574 In 2017, I wrote a letter -- an open letter -- supporting
575 the rules for net neutrality. I was concerned about the repeal
576 and I remain so today.

577 I have 20-plus years in the organization and I am very
578 confident that over those years we have had many successes
579 including that in the cellular industry where we utilize Title
580 II.

581 There is a fallacy that seems to be out there that there's
582 a history and the fallacy of investment where AT&T and Comcast
583 and others would possibly invest less money if net neutrality
584 were to continue and, having looked at those actual numbers, there
585 may have been a smaller investment but was very, very minuscule.

586 We continue to invest today and we continue to grow our
587 business, and net neutrality is a very large component of that
588 because we believe in the foundation that net neutrality provides
589 for equal access for everyone.

590 We know that in a lot of marketplaces that 70 percent of

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591 the consumers only have one choice for their ISP and we do not
592 feel that is a competitive -- it may be a competitive advantage
593 but it is not an open access advantage so that the consumer ends
594 up with what they need at the end of the day. They need
595 competition, they need a landscape which they can count on, and
596 investment in the community.

597 I am not a lawyer. I am a businessman. But I was very much
598 part of the bipartisan Telecommunications Act of 1996 when Craig
599 McCaw and myself and a lot of other gentlemen began the path down
600 a company called Nextlink.

601 You remember the name Nextlink and Craig McCaw. We built
602 a company called Nextlink. It later became XO Communications,
603 one of the first CLECs in the United States. We raised \$400
604 million during that time, and the Telecommunications Act of '96
605 gave us that very opportunity to do so.

606 So I appreciate the opportunity to speak today. I
607 appreciate the opportunity that you provided us to be a part of
608 this. I would like to say that we very much support net neutrality
609 and we will answer any questions that you may have today.

610 Thank you.

611 [The prepared statement of Mr. Green follows:]

612

613 *****INSERT 2*****

614 Mr. Doyle. Thank you, Mr. Green.

615 The chair now recognizes Commission McDowell for five
616 minutes.

617 STATEMENT OF MR. MCDOWELL

618

619 Mr. McDowell. Thank you, Chairman Doyle. It is great to
620 be here. Ranking Member Latta, Chairman Pallone, and Ranking
621 Member Walden, it is an honor always to be back before your
622 committee. So thank you.

623 I did serve at the FCC from 2006 to 2013. I am a partner
624 at Cooley LLP. I am also a senior fellow at the Hudson Institute
625 but I testify today only in my personal capacity and the views
626 today that I express are purely my own.

627 The debate over the best way to keep the internet open and
628 freedom enhancing has raged for about 15 years. While the
629 national political pendulum has swung back and forth during that
630 time, the American internet ecosphere has blossomed as the most
631 powerful explosion of entrepreneurial brilliance in human
632 history.

633 And let us make no mistake. The American internet market
634 is the envy of the world. The legal and regulatory framework
635 that provided the necessary certainty and protections for the
636 phenomenon that became the internet was rooted in consumer
637 protection, pro-competition, and antitrust statutes such as the
638 Federal Trade Commission Act, the Clayton Act, the Sherman Act,
639 as well as tort and contract common law, among others.

640 Furthermore, a fundamental agreement in the successful
641 public policy recipe was Title I of the Communications Act of

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642 1934. A quarter century ago at the time of the internet's
643 privatization, the Clinton-Gore administration made a wise choice
644 to insulate the internet ecosphere from the heavy-handed
645 regulation of Title II of the 1934 act.

646 This monumental decision made it a crucial tipping point
647 in historical arc of the net, enjoyed not only bipartisan and
648 nearly unanimous support here in the U.S. but internationally
649 as well.

650 In short, reliance on this time-tested legal construct
651 created an environment where ideas hatched in dorm rooms or
652 garages could become some of the most successful companies in
653 the world in just a handful of years.

654 Light touch regulation not only allowed the internet's edge
655 to flourish but it also provided the certainty and stability
656 needed for the capital markets to take the leap to invest more
657 than \$1.6 trillion in private risk capital in broadband
658 infrastructure since the mid-1990s.

659 Furthermore, it was not that long ago that the FCC itself
660 issued unanimous and bipartisan orders classifying broadband
661 internet access service across all platforms as an information
662 service. I supported such efforts in concert with my Democratic
663 colleagues as recently as 2007.

664 Needless to say, the political and public policy atmosphere
665 has changed a few times since then. The FCC has attempted to
666 regulate broadband services in various ways over the past 11 years

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667 including by classifying broadband as a Title II
668 telecommunications service for the first time in early 2015.
669 And most recently, it acted in December 2017 to restore the
670 pre-2015 legal framework that was proven to work so well.

671 To be clear, I do not think that additional legislation is
672 needed to protect consumers, startups, or broadband investment.

673 The proof is in the pudding of the internet's brief but brilliant
674 history.

675 Nonetheless, the public policy pendulum has been swinging
676 back and forth above the heads of internet entrepreneurs like
677 the sword of Damocles and has created uncertainty and it is
678 counterproductive.

679 For instance, anticipating uncertainty in 2015 surrounding
680 the Title II classification, there is evidence that capital
681 markets slowed their investment in broadband infrastructure.

682 After the Restoring Internet Freedom order of 2018,
683 investment in broadband rebounded. The time has come, however,
684 for Congress to provide clarity and certainty by enacting new
685 legislation.

686 Such an effort could end this era of bitter and vitriolic
687 zero-sum advocacy where, in order for one faction to win others
688 must lose.

689 The 116th Congress serves during a unique period in the
690 internet's history and it has the power to forge a reasonable
691 majority to craft new bipartisan legislation that could last for

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692 decades and serve as a beacon for an open and freedom-enhancing
693 internet across the globe.

694 Any bill passed by this House must have a reasonable chance
695 to garnish 60 votes in the Senate if there is to be any hope of
696 it becoming law.

697 The only path to that goal of meaningful, positive, and
698 constructive public policy for the internet, a law that will last
699 beyond election cycles of two to four to eight years, is through
700 finding that majority that offers a win-win-win scenario for all
701 who build and are affected by the internet.

702 Without a large bipartisan majority, any legislative effort
703 is, largely, symbolic. A hopeful starting point, however, could
704 begin with the principles laid out by FCC Chairman Michael Powell
705 in 2005, some of which were echoed by Chairman Julius Genachowski
706 in 2010, such as no anti-competitive throttling, blocking, or
707 prioritization.

708 This Congress has a rare opportunity to create a lasting
709 legacy for the internet ecosphere and I look forward to helping
710 you achieve it.

711 Thank you, Mr. Chairman.

712 [The prepared statement of Mr. McDowell follows:]

713 *****INSERT 3*****

714

Mr. Doyle. Thank you, Commissioner.

715

We now recognize Mr. Wood for five minutes.

716 STATEMENT OF MR. WOOD

717

718 Mr. Wood. Chairmen Doyle and Pallone, Ranking Member Latta
719 and Walden, and subcommittee members, thank you for inviting me
720 back.

721 Free Press Action is a nonpartisan nonprofit with 1.4 million
722 members around the country and we support H.R. 1644, the Save
723 the Internet Act.

724 Our members know that having equitable access to technology
725 and information is the key to making change and making a living.

726 Net neutrality is an issue of economic and racial justice. It
727 is a timeless nondiscrimination law safeguarding people's rights
728 to say and see what they want online, free from unjust interference
729 by ISPs.

730 This bill restores the FCC's 2015 Open Internet Order
731 released four years ago today, as luck would have it, and it brings
732 back the three bright line bans on blocking, throttling, and paid
733 prioritization.

734 But it does more than that and that's a good thing. It
735 restores the FCC's whole decision that adopted those rules, put
736 them on the bedrock of Title II, and forbore from the parts of
737 that law that we don't need.

738 Restoring the 2015 framework is precisely the right approach
739 on the law and the facts and is tremendously popular, too. Huge
740 majorities oppose this repeal. Eighty-six percent, including

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741 82 percent of Republicans, supported keeping the 2015 rules.

742 So when I hear we can't have the 2015 rules back because
743 we need a bipartisan solution, it reminds me of the "Princess
744 Bride" line, "You keep using that word. I do not think it means
745 what you think it means."

746 This bill restores the FCC's power to make new rules,
747 preventing new forms of ISP discrimination. That is why Section
748 202 of the Communications Act is crucial.

749 The FCC needs that authority to address any unreasonable
750 discrimination like AT&T's schemes to favor its own video content
751 and voice services or Comcast's abuse of interconnection points
752 to slow traffic to a crawl.

753 Provisions like Section 201 are crucial, too. It allows
754 the FCC to address unjust and reasonable behavior like Verizon
755 slowing down firefighters' data.

756 Those who cynically say that wasn't a real net neutrality
757 violation suggest that the FCC fiddled while forests and homes
758 burned rather than have the power to protect people's lives and
759 public safety.

760 They also say that Title II is somehow too new and untested
761 and yet also too old while claiming, funnily enough, even older
762 antitrust and FTC laws can protect the open internet. Their
763 claims don't add up.

764 The FCC has used the 2015 framework with great success for
765 decades for internet access, wireless voice, and business grade

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766 broadband, too. When it returned to the right law for net
767 neutrality in 2015, that decision was upheld in the courts twice.

768 Some still say we have no business applying laws written
769 for 1930s monopolies. But what about present day ones? By 2017,
770 39 percent of people in the U.S. still had, at most, one choice
771 for wireless broadband offering downstream speeds of 25 megabits
772 per second.

773 At 300 megabits per second, that figure is 77 percent. But
774 even if they have a couple of choices, I doubt many constituents
775 back home complained to you that broadband is just so darn
776 affordable and reasonable they would be glad for no oversight
777 at all.

778 Yet, while the Save the Net bill restores the FCC's ability
779 and mandate to watch out for abuses and fraudulent billing, it
780 also locks in the FCC's 2015 decision to forebear from rate setting
781 under Section 205.

782 It also puts the FCC back on solid ground to protect a whole
783 host of broadband rights outside of net neutrality with provisions
784 like Section 254, offering a solid base for broadband universal
785 service, and Section 224, granting competitive providers access
786 to rights of way.

787 And it fixes in place the 2015 order's decision not to apply
788 resale or unbundling obligations in Section 251 but, by their
789 own terms, do apply to telephone services alone.

790 In sum, the bill restores not just the fundamental

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791 communications rights internet users need but the certainty that
792 broadband providers have. That is why they continue to invest
793 and deploy at, largely, the same pace and on the same trajectory
794 as they did before the 2015 vote.

795 New numbers for 2018 show that Chairman Pai's simplistic
796 and silly promises on booming investment after repeal have not
797 panned out. Broadband investments and speeds trend up over time
798 though spending does come in cycles, and it trends that way for
799 rural carriers, too.

800 As my written testimony explains, one witness here last month
801 claimed that he couldn't get a loan or expand his coverage for
802 two years all because of Title II's supposed shadow.

803 Yet, during the first two years of Title II's return he
804 invested \$2 million in fiber and tripled the speeds offered to
805 all of his cable broadband customers in rural parts of Oregon.

806 Thankfully, the Save the Net Act cuts through the clutter
807 of false claims about supposed investment impacts and it restores
808 all of the rights that internet users need.

809 Thank you very much, and I look forward to your questions.

810 [The prepared statement of Mr. Wood follows:]

811 *****INSERT 4*****

812 Mr. Doyle. Thank you, Mr. Wood.

813 So we have now concluded opening remarks and we are going
814 to move to member questions. Each member will have five minutes
815 to ask questions of our witnesses.

816 Let me say to my colleagues that I am very interested in
817 your questions but not after they go over five minutes. So I
818 would ask all of our colleagues to get their final ask in before
819 their five minutes. We will allow the witnesses to answer a
820 question if it goes past there. But let us all respect one
821 another's time as we move forward.

822 And I will start and try to set a good example by recognizing
823 myself for five minutes.

824 Mr. Wood, this bill would permanently prevent the FCC from
825 enforcing the majority of Title II. Let me say that again for
826 all my colleagues.

827 This bill would permanently prevent the FCC from enforcing
828 the majority of Title II. However, it would keep the prohibition
829 on unjust and unreasonable practices.

830 I want to know why you think this provision is necessary
831 and what are some examples of practices that were not violations
832 of the three bright lines that we all seem to agree on that limits
833 blocking, throttling, and paid prioritization?

834 What are something outside the three bright lines that would
835 be a violation of unjust and unreasonable standards and why we
836 need that section in the bill?

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837 Mr. Wood. Thank you, Chairman Doyle. I mentioned the
838 firefighter example. I think that one cries out for attention.
839 It was not necessarily a throttling violation under one of the
840 bright line rules because Verizon was not throttling content
841 coming into the firefighters. It was, basically, slowing them
842 down no matter what they were doing with their service.

843 So the unjust and unreasonable standard in Section 201
844 actually couples with the nondiscrimination standard in 202 and
845 would apply in situations like that.

846 It would apply to fraudulent billing practices or other sort
847 of price gauging that ISPs might engage in, not with the FCC
848 deciding what rates providers could charge but having at least
849 some oversight of that rate making that the providers do for
850 themselves.

851 Mr. Doyle. Mr. Green, at our last hearing we heard from
852 another small ISP about how open internet rules hurt investment
853 in his network.

854 I am curious, did the 2015 rules or FCC oversight hurt your
855 ability to get financing or impact your investment in any way,
856 and has a potential investor ever declined to invest because of
857 net neutrality rules?

858 Mr. Green. No. We have, in fact, had great success with
859 net neutrality rules. The discussion maybe comes up once in a
860 while because it is so public. But I actually sit on the board
861 of an organization, Northwest Washington -- excuse me, Northwest

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862 Telecommunications Association.

863 I am very familiar with the member that you are referring
864 to -- the ISP. We certainly -- I certainly have a position to
865 disagree with the opinion that it has any way deterred any
866 investment into our sector by any such imagination.

867 So we have had great success since the the act in 2015.

868 Mr. Doyle. Thank you.

869 Ms. Ochillo, are you concerned that, based on Chairman Pai's
870 restoring Internet Freedom Order that millions of Lifeline
871 subscribers could be at risk of losing access and does Safe the
872 Net bill put Lifeline program on a firmer legal footing?

873 Ms. Ochillo. Thank you for that question, because I didn't
874 have time to focus on Lifeline in my opening statement and it
875 is one of the programs that my organization is most passionate
876 about.

877 Lifeline is the only federal telecom subsidy for people who
878 are in need to actually get connections to both broadband internet
879 via phone or wireline phones at home and I think that it is
880 important for us to recognize that Title II is where the actual
881 authority for FCC to have those types of universal service plans
882 comes from.

883 I think that this bill is something that we need. I think
884 that it is important for the FCC to have express authority to
885 do universal service programs like Lifeline and the others that
886 are funded through the USF program.

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887 Mr. Doyle. Thank you.

888 Mr. Green, tell me, how does Save the Net bill help your
889 business and do you feel that it balances appropriate net
890 neutrality rules with regulatory certainty that you need to
891 conduct your business?

892 And I am just curious, are you comfortable with the
893 obligations that the Save the Net bill would put on you as well
894 as the way that it preserves the integrity of the product you
895 sell access to -- an open internet?

896 Mr. Green. Thank you for the question, Mr. Doyle.

897 I am very much a proponent of Save the Internet. I think
898 that it gives us all the protections, and I don't just mean a
899 few. I mean all of the protections that are necessary such as
900 interconnection, enforcement, and conduct. So I very much
901 support Save the Internet.

902 Thank you.

903 Mr. Doyle. Thank you very much.

904 And with 45 seconds left on my time, I am going to yield
905 back to set a good example for the rest of our colleagues and
906 I am now going to ask my friend and ranking member, Mr. Latta,
907 you have five minutes to ask questions.

908 Mr. Latta. Thanks, Mr. Chairman, and again, thanks to our
909 panel of witnesses for being with us today.

910 Mr. McDowell, if I could start my questioning with you.
911 My concern with reinstating Title II is that the broad authority

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912 it provides would open the door to intrusive government regulation
913 that has nothing to do with net neutrality.

914 Will you answer yes or no to whether Title II could lead
915 to the following scenarios?

916 The government setting prices.

917 Mr. McDowell. Yes, Title II could.

918 Mr. Latta. The government determining what services ISPs
919 could offer consumers and whether and how they could be bundled?

920 Mr. McDowell. Yes, Title II does that as well.

921 Mr. Latta. The government directing where ISPs put their
922 investments and how much they should earn.

923 Mr. McDowell. Title II has that authority -- that power,
924 yes.

925 Mr. Latta. The government dictating how parts of the
926 internet should be interconnected and on what terms.

927 Mr. McDowell. Yes.

928 Mr. Latta. The government requiring ISPs to share networks
929 they have built with private capital.

930 Mr. McDowell. Yes, same answer.

931 Mr. Latta. Okay. Let me move on.

932 I want to clarify something from Mr. Wood's testimony,
933 contrary to his argument. Before 2015 the FCC had never
934 classified broadband internet access under Title II.

935 I would like to introduce for the record a letter you wrote
936 back in May of 2010 to then Chairman Henry Waxman, which explains

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937 how the FCC issued a series of orders all without dissent that
938 classified all broadband services as information services.

939 Mr. Chairman, I would like to offer that for the record.

940 Mr. Doyle. Without objection, so ordered.

941 [The information follows:]

942

943 *****COMMITTEE INSERT 5*****

944 Mr. Latta. Thank you very much.

945 Mr. McDowell, will you explain to us why it is a myth that
946 broadband was regulated under Title II?

947 Mr. McDowell. So as I outlined in that letter, which is
948 almost nine years old but the history remains the same, so you
949 can go back to the 1996 act when Congress had a chance to make
950 a distinction between enhanced and basic services, which it did.

951 So think of enhanced services as advanced services or
952 computer-to-computer communications, going back to the computer
953 inquiries at the FCC. So it is their storage forwarding
954 processing of data is there something -- some other service other
955 than a pure transmission service.

956 So Congress looked at that in 1996 and then the FCC in 1998,
957 pursuant to the prompting of Senator Ted Stevens, issued what
958 would be called in the vernacular the Stevens report.

959 So this was the Clinton -- second Clinton term and this was
960 Chairman Bill Canard of the FCC -- which looked at the emerging
961 broadband or internet access space, which became broadband --
962 and concluded that those services -- internet access services
963 -- were rightly in Title I.

964 Where this gets confusing or sometimes gets deliberately
965 conflated is what do you do about the underlying transmission
966 facilities if they are owned or operated by a carrier that is
967 otherwise providing Title II services.

968 So the transmission facilities, especially during the

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969 implementation of the 1996 Act -- Section 251 and other sections
970 -- were under Title II.

971 Folks often point to a GTE -- the GTE ADSL order of 1998
972 as well, saying, aha, that was the FCC classifying internet access
973 as a telecommunications or Title II service.

974 That's not the case. The FCC did not reach that conclusion.
975 That was about a tariff, again, of the underlying transmission
976 component of DSL or ADSL services by GTE at the time.

977 So there is a lot of confusion. It gets very technical very
978 fast. Both legalese and engineering involved. But suffice it
979 to say that internet access services have never been classified
980 as common carriage. They have always been classified as an
981 information service, or in the old days we called those enhanced
982 services.

983 Mr. Latta. Okay. In my last minute, what concerns did you
984 have about the 2015 rule's so-called general conduct standard
985 and are there consumer-friendly services that could be prohibited
986 under that standard?

987 Mr. McDowell. So the general conduct standard in the 2015
988 Title II order allowed the FCC to basically roam around the
989 internet ecosphere so long as it could tether its decision to
990 broadband.

991 It was certainly untested in the appellate courts but it
992 was very open ended. I think it would have led to a lot of appeals,
993 and keep in mind that, you know, Title II -- just Sections 201

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994 and 202 -- have been appealed in the courts hundreds of times
995 and within the FCC thousands of times.

996 And so that general conduct standard actually took the leash
997 -- Congress's leash off of the FCC's jurisdiction and would let
998 it regulate as it saw fit until an appellate court put it back
999 inside some boundary.

1000 Mr. Latta. Thank you very much.

1001 And, Mr. Chairman, I have 10 seconds left. I will yield
1002 back my time.

1003 Mr. Doyle. Thank you very much.

1004 I would just note, for the record, that all of the questions
1005 that the ranking member asked of Title II with the exception of
1006 the interconnection question was accurately answered by
1007 Commissioner McDowell except that those are all the sections of
1008 Title II that are not part of this bill. So I would note that
1009 for the record.

1010 The chair now recognizes Mr. McNerney for five minutes.

1011 Mr. McNerney. Well, I thank the chair. I thank the
1012 witnesses. It is a good hearing. It is a good subject.

1013 My district does care strongly about net neutrality
1014 protections. When the FCC moved to repeal net neutrality, more
1015 than 8,000 of my constituents reached out to me to express their
1016 concerns.

1017 So I held a town hall meeting on net neutrality. I heard
1018 from a veteran. I heard from a librarian. I heard from students

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1019 and I heard from a small business owner about their concerns what
1020 this would do to their -- to their interests.

1021 Mr. McDowell, thank you for your service as a commissioner,
1022 as a chairman. You were an FCC commissioner when the agency
1023 issued its first net neutrality enforcement action in 2008.

1024 Is that right?

1025 Mr. McDowell. That is correct.

1026 Mr. McNerney. Thank you. And you dissented from that
1027 action and issued a statement. Is that right?

1028 Mr. McDowell. Correct.

1029 Mr. McNerney. I would like to -- I have a copy of your
1030 statement. I would like to submit that for the record.

1031 Mr. Doyle. Without objection, so ordered.

1032 [The information follows:]

1033

1034 *****COMMITTEE INSERT 6*****

1035 Mr. McNerney. Mr. McDowell, I also have a copy of the
1036 dissent you filed when the FCC adopted the 2010 Open Internet
1037 Order. Can you confirm that you dissented?

1038 Mr. McDowell. Yes.

1039 Mr. McNerney. All right. I would like to submit a copy
1040 of that for the record as well.

1041 Mr. Doyle. Without objection.

1042 [The information follows:]

1043

1044 *****COMMITTEE INSERT 7*****

1045 Mr. McNerney. And you sat down for an interview with the
1046 Wall Street Journal in 2017. Can you confirm that you sat for
1047 an interview on this subject in 2017?

1048 Mr. McDowell. I may have. I don't -- I had many interviews.
1049 I am sorry to say I don't remember the specific one you are talking
1050 about.

1051 Mr. McNerney. I understand.

1052 Mr. McDowell. But for the -- for the sport of it, yes.
1053 Let us say that.

1054 Mr. McNerney. But I have a copy of that and I would like
1055 to submit that for the record, without objection.

1056 Mr. Doyle. Without objection.

1057 [The information follows:]

1058

1059 *****COMMITTEE INSERT 8*****

1060 Mr. McNerney. So while I appreciate your willingness to
1061 engage on the issue and your suggestion that perhaps some rules
1062 are appropriate, I have to wonder whether you are truly interested
1063 in any safeguards to protect the free and open internet.

1064 In 2008, you claimed that net neutrality issues may be better
1065 left to nongovernmental internet governance groups. In 2010,
1066 you said that net neutrality would cause irreparable harm to
1067 broadband investors and consumers.

1068 In 2017, when talking about net neutrality you said it is
1069 hype. My constituents don't think it is hype. And the broadband
1070 market is competitive as is. It seems like the only time you
1071 have agreed with the government actions on net neutrality was
1072 the FCC's 2007 order repealing protections.

1073 Given you repeated opposition to net neutrality, it is hard
1074 for me to see that your critiques of our bill are anything more
1075 than a tactic meant to delay or halt efforts at giving Americans
1076 and my constituents critical online protections.

1077 Mr. McDowell. Am I -- can I address these other questions?

1078 Mr. McNerney. Sure. No, it's not a question but --

1079 Mr. McDowell. Okay. So --

1080 Mr. McNerney. If you can respond in 30 seconds.

1081 Mr. McDowell. Real quick, in observance of your time.

1082 So in 2008 that was an attempt to enforce the principles
1083 as rules and I objected on that basis -- that they were not rules.

1084 The appellate court agreed with me and struck it back and turned

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1085 it back to the FCC.

1086 In 2010, I thought the FCC had overreached. You are right.

1087 I didn't think that rules were necessary because there were other
1088 laws already on the books that I talk about in my opening statement
1089 that gave us this wonderful internet ecosphere that we enjoy
1090 today.

1091 But I also thought the FCC overstepped its bounds and didn't
1092 explain itself well and the appellate court, largely, agreed with
1093 me regarding the 2010 order.

1094 So in both of those cases, that is true. When it comes to
1095 today and having this sort of Damocles swing back and forth every
1096 two to four to eight years -- and we have learned that surprise
1097 elections do happen so we don't know what is next -- can we get
1098 a bill through the House that would get 60 votes in the Senate?
1099 I think that is a big question for this committee today.

1100 Mr. McNerney. All right.

1101 Thank you for your response to that.

1102 Mr. Wood, what do you think about Mr. McDowell's critiques
1103 of past FCC efforts to consumers' open internet protections?

1104 Mr. Wood. Well, he is, obviously, right that those attempts
1105 failed in court in 2010 and in 2014 but that was because those
1106 rules weren't grounded in Title II.

1107 So I think the Save the Net act neatly solves that problem
1108 by permanently grounding the rules in the right part of the law
1109 and doesn't leave it prone to challenges from ISPs like Comcast

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1110 and Verizon who went in and sued and had those rules knocked down.

1111

1112 I also don't see the Sword of Damocles that he is talking
1113 about because, as Mr. Green testified and his research shows,
1114 investment has trended along just fine.

1115 Mr. McNerney. Well, I am going to follow up on that a little
1116 bit. Would you -- would the proposed legislation give ISPs both
1117 large and small certainty in opening up investment?

1118 Mr. Wood. I believe so, yes. I think that is what the
1119 record shows. They have continued to invest on the same path
1120 and trajectory that they did before 2015 during the Title II period
1121 and then since it has been repealed.

1122 Mr. McNerney. Do you have any estimates for how much
1123 investment might be -- have been made?

1124 Mr. Wood. Well, I mean, the last page of our written
1125 testimony has some current aggregate figures. It tends to be,
1126 on the aggregate, about \$70 or \$80 billion a year. But we think
1127 those figures are actually somewhat uninformative because we look
1128 at individual companies and we see that they are investing at
1129 about the same percentages they have been for the past decade
1130 or more.

1131 Mr. McNerney. Thank you.

1132 All right, Mr. Chairman. I give you four seconds.

1133 Mr. Doyle. I thank the gentleman.

1134 The chair now recognizes the full committee ranking member,

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1135 Mr. Walden, for five minutes.

1136 Mr. Walden. Thank you very much, Mr. Chairman. Again,
1137 thanks for this hearing.

1138 Mr. McDowell, a quick question for you. Would Section 201
1139 allow the FCC to do basically everything Mr. Latta asked you that
1140 could be done?

1141 Mr. McDowell. Section 201 is a very powerful statute that
1142 has been litigated both administratively and in the appellate
1143 courts many times and the power of 201 is very broad and powerful.

1144 Mr. Walden. So the FCC could, basically -- the questions
1145 Mr. Latta asked?

1146 Mr. McDowell. Yes. 201 and 202, by the way. It's a
1147 necessary cousin as well. Yes.

1148 Mr. Walden. Necessary cousin. That is an interesting
1149 phrase.

1150 And so this legislation would not preclude the FCC from using
1151 its Section 201 and necessary cousin 202 to engage in all the
1152 things Mr. Latta expressed?

1153 Mr. McDowell. Not in my opinion.

1154 Mr. Walden. They could do a rulemaking and do that?

1155 Mr. McDowell. That is what it appears.

1156 Mr. Walden. Okay.

1157 Mr. Green, I am curious about Fatbeam. Are you principally
1158 a business-to-business internet service provider?

1159 Mr. Green. Thank you for asking -- thank you for asking

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1160 the question.

1161 We do deliver indirectly -- directly and indirectly
1162 residential services as --

1163 Mr. Walden. So what percent of your business is residential
1164 versus business to business? Because I was looking at the website
1165 and it really seems to be marketing more to business to business,
1166 schools, hospitals.

1167 Mr. Green. Yes. I would say that probably less than 12
1168 percent of our --

1169 Mr. Walden. Less than 12 percent is residential. So very
1170 little of your business would actually fall under the Title II
1171 regime then, right?

1172 Mr. Green. Not necessarily. We have edge providers and
1173 other providers that would lease facilities from us.

1174 Mr. Walden. So but the edge providers aren't covered under
1175 Title II?

1176 Mr. Green. They are not.

1177 Mr. Walden. Do you think they should be?

1178 Mr. Green. I am sorry?

1179 Mr. Walden. Do you think they should be?

1180 Mr. Green. They should not be.

1181 Mr. Walden. Okay. So it is okay for them to throttle and
1182 block and do that sort of activity that they do as part of their
1183 business plan?

1184 Mr. Green. They have a different set of rules that they

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1185 operate under.

1186 Mr. Walden. Yes, they do, don't they?

1187 Mr. Green. Yes.

1188 Mr. Walden. Yes. And so then I want to go to Mr. Wood's
1189 testimony, which I have been through, and I see you spent a very
1190 -- incredible amount of time trying to rebut the witness we had
1191 from my district the other hearing, Mr. Franell, on Page 25 and
1192 all.

1193 And so we had the opportunity last night to share your
1194 testimony with Mr. Franell. When did you -- did you reach out
1195 to Eastern Oregon Telecom?

1196 Mr. Wood. No. After the hearing, we published a piece
1197 about that and I understand --

1198 Mr. Walden. Right, but my question -- it is a simple
1199 question. Did you email them? Did you talk to them?

1200 Mr. Wood. No. We relied on public and news reports about
1201 investment at the time --

1202 Mr. Walden. Right.

1203 Mr. Wood. -- and FCC data as well.

1204 Mr. Walden. Yes. That's why I was concerned about your
1205 testimony and why I raised the issue about, you know, how witnesses
1206 should behave here because Mr. Franell's testimony -- he sends
1207 the letter and I want to read from it, just part, and I will submit
1208 it for the record without objection, Mr. Chairman.

1209 Mr. Doyle. Without objection.

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1210

[The information follows:]

1211

1212

*****COMMITTEE INSERT 9*****

1213 Mr. Walden. He says, in part, he goes through what really
1214 happened here in detail and I will make sure you see it, because
1215 he basically rebuts what you are saying and says, "Mr. Wood's
1216 assertions are, simply put, ill-informed and, unfortunately, tell
1217 a story far different," and then in parens "and not accurately
1218 from the one that actually occurred here in eastern Oregon. Had
1219 Mr. Wood simply picked up the phone or emailed I would have helped
1220 him so that his testimony could be a complete representation of
1221 the facts."

1222 And he points out that his deployment was limited in scope
1223 to a lack of available cash, "ultimately only resulting in us
1224 building out to about 700 homes in Hermiston. The loan we secured
1225 to do the build was obtained prior to the Open Internet Order
1226 and had to be guaranteed by Umatilla Electric Co-op. Sadly, the
1227 project scope that we had hoped for was significantly limited
1228 due to a lack of capital."

1229 And then he said in response to Mr. Wood's second bullet
1230 on Page 25 of his written testimony, "We obtained a cable system
1231 at zero dollars through RFPs from Boardman, Hermiston, Umatilla
1232 in unincorporated areas in northwest Umatilla County as they had
1233 been abandoned by their previous owner. We originally activated
1234 them with DOCSIS 2.0 cable modem termination system -- CMTS --
1235 bought on eBay. They allowed us to provide download speed up
1236 30 megs. We upgraded the system to 3.0 systems in 2016 using
1237 Huawei-distributed CMTSS using cash organically generated. This

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1238 new and extraordinarily cost-effective upgrade now allows us to
1239 offer speeds up to 100 megs to home."

1240 And so there is more to this story than what your testimony
1241 gives this committee and it is, I think, unfortunate that you
1242 didn't actually reach out and do the rest of that -- of that look.

1243 Mr. McDowell, so for what part of the internet's life and
1244 flourishing occurred under the Wheeler order of net neutrality?

1245 Mr. McDowell. Well, most everything up until February of
1246 2015. So pretty much everything we know today.

1247 Mr. Walden. And then that order was repealed when?

1248 Mr. McDowell. That order was voted on December 14th of 2017.
1249 I think it became effective last summer.

1250 Mr. Walden. So -- and I know I am out of time, Mr. Chairman
1251 -- but, basically, two years of the internet's lifespan was under
1252 the Wheeler order?

1253 Mr. McDowell. Yes. The internet was not born in February
1254 of 2015.

1255 Mr. Walden. I yield back.

1256 Thank you.

1257 Mr. Doyle. I thank the gentleman.

1258 The chair now recognizes Mr. Loeb sack for five minutes.

1259 Mr. Loeb sack. Thank you, Mr. Chair. I do want to thank
1260 Chairmen Doyle and Pallone, Ranking Members Latta and Walden,
1261 for having this hearing today and I thank the witnesses for their
1262 participation as well.

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1263 Net neutrality, obviously, is a very important issue with
1264 this committee -- I think for the country, and I am really glad
1265 that we are taking action today or at least beginning that process.

1266 As a representative of a rural district, I think net
1267 neutrality comes down to being pretty similar to many of the
1268 challenges that face rural Americans. That the challenge of
1269 access as much as anything.

1270 Rural Americans, I think, are often left behind when it comes
1271 to access to infrastructure and having many of the same
1272 opportunities as those living in the coasts -- on the coasts or
1273 in urban areas. I know that is a constant refrain from me here
1274 on this committee and others on this committee as well.

1275 I have been a constant advocate before this committee for
1276 rural communities -- in my southeast Iowa district, about 12,000
1277 or so square miles -- it is very rural -- and broadband in
1278 particular, because expanding access for all Iowans is one of
1279 the biggest challenges for my district as it is for many of the
1280 folks -- districts of the folks on this committee.

1281 And the hard truth is that for many of my constituents it
1282 is not a question of where is service is being throttled or blocked
1283 but whether there is reliable service, if any, at all.

1284 And so that is a really important aspect of what I am
1285 interested in is just making sure that we have the services and
1286 access to good quality service across my district and open
1287 internet principles I think are an important part of that

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1288 conversation as we consider the larger tech and internet
1289 environment facing us out there.

1290 Our responsibility is to make sure that Americans have
1291 reliable service everywhere and we do need to make sure that that
1292 access isn't being unfairly blocked or slowed down or degraded.

1293 So I do want to turn to some questions and I apologize.
1294 I had to step out briefly. So I thank my friend. Mr. McNerney
1295 may have addressed the issue of investment and I apologize for
1296 not being here to hear your answers.

1297 But I do want to talk about that because, you know, we have
1298 talked about the time frame here when we had the Open Internet
1299 Order, when it was repealed, when it -- when the repeal went into
1300 effect and then where we are now.

1301 When it comes to investment, Mr. McDowell, how did the Open
1302 Internet Order affect investment? And I really would like you
1303 to be specific about that as well.

1304 Mr. McDowell. Absolutely. So if you look in the record
1305 of the FCC, filings made by the Wireless Internet Service
1306 Providers Association -- we call them WISPs -- and these are often
1307 mom and pop operations in rural areas including in Iowa, about
1308 80 percent of their members, they said in comments to the FCC,
1309 had trouble getting financing or loans.

1310 I am delighted Mr. Green's company hasn't had that problem,
1311 and so there may be better cases than others. But for these,
1312 these are the smallest of the small ISPs and --

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1313 Mr. Loeb sack. And when specifically did this happen and
1314 for what length of time?

1315 Mr. McDowell. From the time of the Title II order in 2015
1316 onward that they were having trouble raising money, because they
1317 would get questions. Same with the American Cable Association
1318 -- ACA. They filed in the record that there were many of their
1319 members having trouble getting financing --

1320 Mr. Loeb sack. And did you say --

1321 Mr. McDowell. -- as well as municipal broadband companies.

1322 Mr. Loeb sack. Did you say it was a survey of the small
1323 providers, that you said 70 or 80 percent of them are having
1324 trouble?

1325 Mr. McDowell. So that is the WISPA said about 80 percent
1326 of their members were having trouble.

1327 Mr. Loeb sack. And that was a survey that was done on them.
1328 Is that correct?

1329 Mr. McDowell. Right. And then --

1330 Mr. Loeb sack. And when was that survey done, specifically?

1331 Mr. McDowell. After the Title II order.

1332 Mr. Loeb sack. But can you tell me when specifically?

1333 Mr. McDowell. Between 2015 and into 2017 when the FCC was
1334 collecting comments.

1335 Mr. Loeb sack. I am sorry. I am a former social scientist
1336 so I like to be precise about when things were done.

1337 Mr. McDowell. Yes.

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1338 Mr. Loeb sack. If you could provide that information to me
1339 in writing that would be fantastic because I would like to know
1340 those specifics.

1341 Mr. McDowell. In the FCC's records. I would be happy to
1342 get it for you.

1343 Mr. Loeb sack. That would be great.

1344 Mr. McDowell. Same with the ACA filing. Same with the 19
1345 municipalities that said the same thing. Same with the
1346 independent Wall Street analysts who really have no dog in the
1347 fight. They said the same thing, that this is affecting -- mainly
1348 because there are so many questions being asked.

1349 Mr. Loeb sack. Right.

1350 Mr. McDowell. And I -- you know, part of what I do is I
1351 help investors understand Washington, which is no easy task
1352 sometimes --

1353 Mr. Loeb sack. And I will --

1354 Mr. McDowell. -- and then other questions I would get or
1355 got --

1356 Mr. Loeb sack. I really hate to cut you off but I have a
1357 limited amount of time. I got to ask some other folks.

1358 Mr. McDowell. Okay. Sure.

1359 Mr. Loeb sack. Thank you so much.

1360 Mr. Green, would you like to respond to that?

1361 Please do.

1362 Mr. Green. Yes. We have not had any difficulty. In fact,

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1363 we have had great success in terms of getting financing. I would
1364 say that the stability of net neutrality in 2015 even helped more.

1365 Mr. Loeb sack. Right.

1366 Mr. Green. I would view it in that -- in those terms, if
1367 I could.

1368 Mr. Loeb sack. Mm-hmm. Thank you.

1369 Mr. Green. I don't know if that's specific enough for you.

1370 Mr. Loeb sack. And maybe you could give me some specifics
1371 in written form, if you would, and I have 17 seconds left.

1372 Mr. Wood, I would like you to answer that question, too,
1373 and then whatever more you would like to say beyond the time here
1374 I would like to see that writing and respect the rules of the
1375 committee here.

1376 Mr. Wood. Sure. But we do have some of that information
1377 in our written testimony. We had some in our previous testimony,
1378 too.

1379 I don't think there are very many specifics in what
1380 Commissioner McDowell gave you, with all due respect. WISPs said
1381 they had trouble getting financing.

1382 What we look at and what we looked at for Eastern Oregon
1383 Telecom and also five other ISPs who came to the FCC in December
1384 2017 and said they had had trouble as well as we look at their
1385 deployment data that they file with the FCC and we look at the
1386 investor reports that the publicly-traded providers make to the
1387 SEC.

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1388 What we see there are companies basically investing at the
1389 same level. Sometimes they go up. Sometimes they go down. But
1390 that is because of their upgrade cycles, not because of any impact
1391 of the rules.

1392 Mr. Loeb sack. Thank you, Mr. Chair, for indulging my going
1393 over the time.

1394 Mr. Doyle. I thank the gentleman.

1395 The chair now recognizes Mr. Shimkus for five minutes.

1396 Mr. Shimkus. Thank you, Mr. Chairman.

1397 It is great to have you all here.

1398 Mr. Green, I just want to make a point. I did -- a colleague
1399 one time -- one time I had a colleague and we voted differently.

1400 Then he went on to explain to the media why he thought I voted
1401 the way I did.

1402 Obviously, I went to meet with him on the floor and I said,
1403 "I will define how I vote, not you." I would caution you to
1404 comment in direct analyses of other people's business models and
1405 when the small providers in my district think that this is going
1406 to be harmful.

1407 And that is just a cautionary note because speak to your
1408 own business model. Don't speak to any other business model that
1409 you may or may not know who they are serving, how they are serving,
1410 and why they are serving it.

1411 Mr. Green. Duly noted. Thank you.

1412 Mr. Shimkus. Mr. Wood, we talked last time and I brought

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1413 up -- so Adam Kinzinger, our colleague here, is a National Air
1414 Reserve pilot. Flew two weeks on the southern border.

1415 My friends on the Democrat side want smart technology on
1416 the wall at the southern border. Part of that is National Guard
1417 deployment and that is kind of what Adam was doing.

1418 The panel last week all agreed with Mr. Wheeler, who
1419 highlighted in his order that that ensured the protection for
1420 smart wall protections. All but one witness in the last panel,
1421 which was you and your -- and the Free Press Action were opposed.

1422 I just want to give you an opportunity to correct the record
1423 if you are okay with that sort of prioritization since a smart
1424 wall is the proposal from my friends on the Democrat side.

1425 Mr. Wood. Thank you, Congressman.

1426 I think if I remember the question, it was about whether
1427 we supported two things -- funding for a wall or for somebody
1428 to sort of --

1429 Mr. Shimkus. No, it was on smart wall technology and
1430 prioritization.

1431 Mr. Wood. Right. So the answer on prioritization -- to
1432 stay away from the wall for a second -- is that prioritization
1433 --

1434 Mr. Shimkus. Well, it is kind of defined the same. I mean
1435 --

1436 Mr. Wood. Right. Well, as I talked about last year --

1437 Mr. Shimkus. -- that is part of the debate of -- part of

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1438 it is the smart wall.

1439 Mr. Wood. Right.

1440 Mr. Shimkus. Smart technology, using electronics and so
1441 I don't want to --

1442 Mr. Wood. But what I testified to last year, sir, was that
1443 prioritization of public safety services is allowed. I don't
1444 know if the question was posed in a way that got people to answer
1445 with their opinions on the wall. We don't support the building
1446 of any wall --

1447 Mr. Shimkus. No, I am just talking about the smart wall
1448 technology on the wall. So you --

1449 Mr. Wood. So under the 2015 rules, prioritization of public
1450 safety services is definitely allowed. What's not allowed is
1451 charging the public safety services for that privilege.

1452 Mr. Shimkus. So you -- so I think, if I hear what you are
1453 saying is, prioritization for public safety is allowable.

1454 Mr. Wood. That is not defined as paid prioritization under
1455 the rules.

1456 Mr. Shimkus. Well, it is prioritization.

1457 Mr. Wood. Right. The paid part -- paid is an important
1458 word there, sir.

1459 Mr. Shimkus. It is prioritization.

1460 Mr. Wood. That is right.

1461 Mr. Shimkus. Okay. Thank you.

1462 Mr. Wood. It could be if it is necessary.

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1463 Mr. Shimkus. It is paid. It is prioritization.

1464 Let us go back, and I just do this because Anna Eshoo and
1465 I, we are really in the 911 space. This is not broadband but
1466 this is FirstNet -- FirstNet's premise is based upon
1467 prioritization. Companies use a system and then if their -- the
1468 answer is this and if there is a need they push everybody off
1469 to allow first line responders to use that.

1470 Let me go to Mr. McDowell.

1471 Search engines provide content to consumers on the internet.
1472 When a consumer searches for content, do search engines
1473 prioritize the ads that are served to the consumers based upon
1474 paid prioritization?

1475 Mr. McDowell. They do. It is an algorithm. Yes.
1476 Absolutely.

1477 Mr. Shimkus. So this is -- to Mr. Wood's word, this is
1478 actually where paid prioritization occurs?

1479 Mr. McDowell. There is paid prioritization all throughout
1480 the economy and is actually -- it can be very efficient.

1481 Mr. Shimkus. So in your --

1482 Mr. McDowell. And consumers want it, in many cases. It
1483 is anti-competitive paid prioritization. That is the problem.
1484 So we shouldn't conflate the two, all right.

1485 Mr. Shimkus. So in your communication and conversations
1486 -- I was down for the Health Sub gavel -- to Mr. Walden, you said
1487 edge providers play by a different set of rules.

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1488 Mr. Green, so what are those different set of rules?

1489 Mr. Green. Well, first of all, thank you for the question.

1490 First of all, the provider -- as the infrastructure provider
1491 and ISP, we are transport --

1492 Mr. Shimkus. No, I am talking about edge providers. This
1493 is your --

1494 Mr. Green. Yes. I am here to respond. That is not what
1495 we do.

1496 Mr. Shimkus. No, I know. But you -- so I want to know what
1497 -- since you know edge providers play by different rules -- I
1498 mean, that is your statement you just made -- what are they?

1499 Mr. Green. Correct. I am not an attorney. I don't make
1500 those rules.

1501 Mr. Shimkus. But you are the one who said edge providers
1502 play by different rules. So what are those different rules?

1503 Mr. Green. So the rules are different. We are a -- okay.

1504 [Laughter.]

1505 Mr. Shimkus. Okay. I got that.

1506 Mr. Green. Yes. Yes. We are a communications --

1507 Mr. Shimkus. Mr. Chairman, my time has expired.

1508 Mr. Green. Okay. Thank you.

1509 Mr. Doyle. They are governed under a different set of rules
1510 than ISPs are is what I think he was --

1511 Mr. Shimkus. Well, if you will allow me to respond. He
1512 is the one who defined that and then he wouldn't answer the

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1513 question.

1514 Mr. Doyle. I think -- I think he responded appropriately.

1515 Okay. Who is next? The chair recognizes Mr. Veasey for
1516 five minutes.

1517 Mr. Veasey. Thank you, Mr. Chair, and before I ask my
1518 questions I just want to clarify. I know that the gentleman that
1519 just finished asking questions said that he didn't want his
1520 thoughts interpreted wrongly.

1521 And so I don't want us to call each other names on the
1522 committee, but I think he said Democrat Party, which is a kind
1523 Republican operative type word, and it is the Democratic Party.

1524

1525 So if he is going to refer to us he ought to refer to us
1526 correctly if he doesn't want his thoughts being interpreted the
1527 wrong way.

1528 I wanted to ask Ms. Ochillo a question, because you mentioned
1529 the Lifeline program which I think is a very important discussion
1530 that needs to be had in this entire debate.

1531 And when you start thinking about the Lifeline program and
1532 who it serves, which is a lot of the constituents in the district
1533 that I represent, I wanted to ask you, about 50 percent of
1534 Americans with households under \$30,000 have broadband and as
1535 a -- as a good friend of mine that was very wealthy that has passed
1536 away now from Texas had said, if you make \$30,000 a year and you
1537 don't have to pay one cent in taxes, you probably -- especially

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1538 if you have kids, you probably still don't have any money at the
1539 end of the month.

1540 And so I wanted to ask you how do you think that having this
1541 service disrupted in any way would undermine the routines of these
1542 families that make under \$30,000 a year? Because that is a big
1543 number.

1544 Ms. Ochillo. Yes, and thank you so much, Congressman
1545 Veasey.

1546 I want to make sure that I frame the background to this
1547 because this is -- forgive me, this is my first hearing and some
1548 of what happens the -- maybe the tone of the dialogue -- people
1549 in my home state they don't care about Democrat or Republican.
1550 They don't care about Title II or net neutrality.

1551 What they care about is that they have access and that their
1552 families can apply for jobs online or that they can apply for
1553 scholarships to go to school so that they have a way out of poverty.

1554 And then you mentioned the statistics. Just to give
1555 background, when you're talking about Latino communities, 30
1556 percent of Latinos do not have access to broadband of any kind
1557 and when you talk about the non-English-speaking groups, that
1558 number even goes higher.

1559 When you're talking about tribal groups, we have literally
1560 60 percent of Americans who do not have access to any broadband.

1561 So when there are programs like Lifeline that are basically --
1562 their legal foundation is Title II and the FCC has an obligation

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1563 to connect these disconnected people, that is life or death for
1564 some of them.

1565 The Lifeline program in times of hurricane is what gives
1566 people a way out to actually get access to FEMA and make sure
1567 that they can fill out their applications for students.
1568 Sometimes it is the only way that they can access to broadband
1569 to do their homework. For some families, that is their only
1570 opportunity to connect, maybe to apply for jobs or to get health
1571 care.

1572 So it is so important that we fund not only just Lifeline
1573 but even start being more imaginative about the way that we connect
1574 people because Lifeline is not enough. But right now, it is the
1575 only program that is connecting people to telecom services.

1576 Mr. Veasey. Yes. No, thank you very much, and you
1577 mentioned something very important. Seven out of 10 children
1578 do their homework -- need broadband access to do their homework.

1579
1580 My son is one of those students. He is in 7th grade and
1581 much of the homework that he does that's required and most of
1582 the kids at his school are on free and reduced lunch, they have
1583 to have this program.

1584 I wanted to ask Mr. Wood a question. You know, one of the
1585 things that happened by the FCC chair was that he reversed a
1586 decision made by the previous chair that allowed nine new
1587 providers of Lifeline into the program.

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1588 Of course, most of the people that offered this Lifeline
1589 they are resellers. They are not a lot of the big companies that
1590 we know about.

1591 Can you please just sort of touch on, very briefly, by taking
1592 the competition out by the current chair -- removing the
1593 competition and making it harder for these new providers to --
1594 or resellers to provide Lifeline -- what that has done to the
1595 entire program and what it has done to undermine it?

1596 Mr. Wood. Yes, sir. Thank you for the question. I think
1597 that is a great follow-up to the last one.

1598 As you said, one of the consequences of this FCC's fight
1599 against Title II and the sound basis it provides for Universal
1600 Service was that they tossed out of the Lifeline program nine
1601 providers who are either already providing or willing to provide
1602 a broadband-only service.

1603 And so what they have done is by getting rid of Section 254
1604 and also swearing off Section 706 of the Telecom Act as the source
1605 of authority they have said, well, if existing providers -- if
1606 the existing phone company wants to provide broadband, that is
1607 fine.

1608 They can use USF money for that. They really have no way
1609 to require them to provide that service and in fact, as you noted,
1610 when a company wants to only provide broadband and not a telephone
1611 service, historically, they many not even be eligible for that
1612 Lifeline or any other Universal Service funding.

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1613 So we think that is a problem for keeping out new entrants
1614 and innovation.

1615 Mr. Veasey. Thank you very much.

1616 Mr. Chair, I yield back.

1617 Mr. Doyle. Thank you.

1618 The chair now recognizes Mr. Olson for five minutes.

1619 Mr. Olson. I thank the chair, and welcome to our witnesses.

1620 A very special welcome to Chairman McDowell. My wife, who I
1621 have been married to for 25 years, is a Duke Blue Devil, and just
1622 like you, she will never buy another pair of Nike shoes because
1623 our star -- his shoes blew apart -- Zion Williamson -- against
1624 their arch rivals, North Carolina, 30 seconds into the game.

1625 Mr. McDowell. They will be back. Don't worry.

1626 Mr. Olson. Okay. That is off my chest.

1627 I am very concerned about returning to the so-called Wheeler
1628 Title II. We keep playing ping pong with net neutrality, just
1629 back and forth, back and forth, back and forth. That means the
1630 market is unstable, it is unsure, and, sadly, the majority party
1631 had little outreach to us on our side of the aisle, which means
1632 this bill will die -- die -- in the Senate. It is dead.

1633 And so this is just plain messaging and the people who use
1634 it need real rules. They need this thing to work. But, again,
1635 I don't think it is going to happen with this bill.

1636 My question is for you, Mr. McDowell. In the Title II order,
1637 the FCC, led by Chairman Wheeler, recognized that sponsored data

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1638 programs are pro-consumer because they allow consumers to watch
1639 and listen to their favorite content without being charged for
1640 data.

1641 All right. But the FCC also put them under the, quote,
1642 "general conduct standard," end quote, and opened up, quote,
1643 "bureau investigations," end quote, in the companies who offer
1644 these pro-consumer plans under the vague general conduct
1645 standards.

1646 How does the threat of these investigations impact a company
1647 decision looking to innovate with the internet?

1648 Mr. McDowell. So what that does is create an atmosphere
1649 of what we call ex ante regulation, which is before the facts,
1650 or "Mother may I."

1651 So before an innovator wants to do something they were having
1652 to go to the FCC to make sure it was okay to do that, other than,
1653 you know, just trying to experiment in the marketplace and say
1654 here is a sponsor data plan or zero rating and things of that
1655 nature, which are very popular with consumers.

1656 So that slowed down innovation and the rollout of some
1657 experimentation that consumers ended up liking.

1658 Mr. Olson. And a follow-up to that question. Since the
1659 FCC restored the long-standing Title I classification in May of
1660 2017, ISPs are no longer being scrutinized for every pro-consumer
1661 innovative offering they might introduce to the market.

1662 What innovations do we have now today that we might not have

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1663 had we let the general conduct standard still be in effect? And
1664 specific examples of what this bill may do, once again?

1665 Mr. McDowell. So what is interesting about this debate is
1666 sometimes we don't know what does not make it to market because
1667 it didn't make it to market, right.

1668 So now we do have an environment where there can be
1669 experimentation in things like zero rating or sponsored data so
1670 long as it is not anti-competitive, and I think the word
1671 anti-competitive has to be part of this conversation because there
1672 is the Federal Trade Commission Act, the Clayton Act, the Sherman
1673 Act, common law tort law, common law contract law, and other
1674 things.

1675 If there were violations of any of those, there would be
1676 investigations by the Federal Trade Commission and there have
1677 been some over the years in this space.

1678 So it is important to make sure when we talk about either
1679 discrimination or the offering of services, is it competitive
1680 or anti-competitive, is it pro-consumer or not, and that is really
1681 the litmus test.

1682 Mr. Olson. Any specific examples of how a business might
1683 have stepped out because of concerns about the Wheeler rule, just
1684 all these things --

1685 Mr. McDowell. So there were some offerings such as Binge
1686 On by T-Mobile, which was held up for a while while the FCC
1687 investigated and that is now a thing in the marketplace -- a very

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1688 popular service offering -- which is not anti-competitive. It
1689 is pro-competition. It is pro-consumer and consumers seem to
1690 love it.

1691 Mr. Olson. And competition drives prices down, encourages
1692 innovation, and just good, good, good. The free market works,
1693 works, works.

1694 Mr. Chairman, I will bank 45 seconds.

1695 Mr. Doyle. I thank the gentleman.

1696 The chair now yields to Mr. McEachin five minutes.

1697 Mr. McEachin. Thank you, Mr. Chairman, and thank you for
1698 pulling this hearing together today.

1699 Mr. Chairman, as you know, I am a new member on this
1700 committee. I am also a forming lawyer, and what that means or
1701 what I hope that means is that I am not necessarily burdened by
1702 the knowledge of the past since I wasn't here for a lot of it.

1703 But I am also intrigued by the past.

1704 And last month, Chairman Wheeler really captured my
1705 imagination and my attention when he discussed the fact that we
1706 really dealing with 600 years of English common law or English
1707 jurisprudence -- 600 years -- that if for some reason some of
1708 my friends here on the other side of the aisle want to just toss
1709 it out of the window and forget it ever happened.

1710 Mr. Wood, based on building on Mr. -- Chairman Wheeler's
1711 testimony, would you please speak to the points of common carrier
1712 protections to the openness of what is the most powerful

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1713 technology in this era?

1714 Mr. Wood. Certainly, Congressman. Thank you for the
1715 question.

1716 I think you are exactly right. Common carriage law is a
1717 time-honored tradition but it is one that is still vital. I think
1718 the big difference that we are not hearing about so far in this
1719 hearing is the difference between common carriage law and
1720 antitrust law or other consumer protections statutes, and that
1721 is that common carriage law and the Title II foundation for the
1722 net neutrality rules that we look to restore here protect
1723 everybody's speech on the internet.

1724 So a common carrier cannot discriminate against their
1725 individual users and they are not just prohibited from interfering
1726 with competition but with any free and open use of the transmission
1727 capacity that they sell.

1728 And so that is why I think it is true that, yes, the big
1729 edge providers do play by a different set of rules, as we have
1730 heard, but they are speakers. They are publishers. They are
1731 aggregators. They are users on the edge of that common carrier
1732 network.

1733 There could be some debate to be had about which of those
1734 companies are transmitting speech. I don't think we have the
1735 answer to that right now. But what we do know is we need common
1736 carriage law to preserve that open transmission pathway that we
1737 have had for decades and even centuries on many of these

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1738 infrastructures you are talking about.

1739 Mr. McEachin. Thank you. And as a follow-up, how does the
1740 Save the Internet Act ensure the important aspect of common
1741 carrier law are kept in place while many of those that need to
1742 be omitted because they are outdated?

1743 Mr. Wood. Well, it does that, sir, by restoring the
1744 provisions that the FCC kept in the 2015 order and that does
1745 include Title I -- excuse me, Section 201 and 202 -- what we said
1746 the necessary cousins. Is that the phrase we are using?

1747 I wouldn't say those are -- that is a bad thing. For me,
1748 that is a feature, not a bug. I don't think most internet users
1749 or most of your constituents are worried about Comcast's hands
1750 being tied or AT&T's or Verizon's.

1751 What they want is somebody to be able to step in and act
1752 as a watchdog when a company does abuse those kinds of privileges
1753 that they can take under the current lack of any rules.

1754 And so you talk about zero rating. In my testimony, I cite
1755 examples of research saying that zero rating actually makes costs
1756 go up for wireless users. There may be no such thing as a free
1757 lunch, and when these wireless companies say we will put a data
1758 cap on you but then we will exempt you for some of those purposes,
1759 that, to us, doesn't sound like a great deal.

1760 What we have seen in the market since the 2015 rules came
1761 into place, not just because of them but thanks to them and thanks
1762 to other developments, as we've seen, a return to unlimited data

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1763 on wireless programs and wireless carriers service offerings.

1764 So we actually think that giving people the data they pay
1765 for and letting them use it for what they want is a good thing
1766 and not something to be worried about. In fact, it is exactly
1767 what we all need.

1768 Mr. McEachin. And I thank you for that, and thank you to
1769 all of our witnesses.

1770 Today's high speed internet services are intimately tied
1771 to social mobility, economic quality, and community growth. As
1772 such, we must ensure that access to internet services remain open
1773 and not dependent on one's ability to pay.

1774 The Save the Internet Act does just that. I look forward
1775 to it becoming law.

1776 Thank you, Mr. Chairman, and I will yield you a whole minute,
1777 Mr. Chairman.

1778 Mr. Doyle. I thank the gentleman.

1779 We will now recognize Mr. Flores for five minutes.

1780 Mr. Flores. Thank you, Mr. Chairman. I appreciate the
1781 witnesses for joining us today.

1782 In a letter that I would like to submit for the record, the
1783 chairman of the Vermont Telephone Company, or VTel for short,
1784 notes the very direct connection between its investments and the
1785 light touch that the FCC reinstated in 2017 and that VTel would
1786 not have made the decision to invest millions of dollars on
1787 Ericsson 4G and 5G upgrades in the absence of restoring internet

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1788 freedom order.

1789 Mr. Doyle. Without objection, so ordered.

1790 [The information follows:]

1791

1792 *****COMMITTEE INSERT 10*****

1793 Mr. Flores. Thank you, Mr. Chairman.

1794 Mr. McDowell, Ms. Ochillo talked about the digital divide
1795 and I am glad you brought that up.

1796 Mr. McDowell, what impact would Title II classification have
1797 on broadband investment when it is needed most to close the digital
1798 divide?

1799 Mr. McDowell. Well, as we have seen and we can debate, but
1800 as we have seen in the FCC's record and the record of the hearing
1801 here a few weeks ago as well as today, there are a lot of rural
1802 carriers, in particular -- not that this is just a rural issue
1803 -- who felt as though their ability to raise revenue to build
1804 out for mainly residential consumers was impaired by the Title
1805 II regime.

1806 But, overall, let us keep in mind that the FCC has an \$8
1807 billion Universal Service Fund and under that umbrella are a lot
1808 of other funds and Lifeline was one that I defended vociferously
1809 when I was at the commission. I was worried about its fiscal
1810 long-term health in 2012.

1811 But we also expanded the support of Universal Service to
1812 broadband to advance services which, by the way, Section 254
1813 allows for, and I know if Congressman Pickering were testifying
1814 today -- because he helped write 254 -- he would agree with that.

1815 So in the fall of 2011, we actually had a unanimous bipartisan
1816 decision, the only one of its kind in FCC history to expand
1817 Universal Service support to broadband and, ultimately, to the

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1818 Lifeline recipients as well.

1819 So that is a huge component of this. Sometimes the market
1820 does not work for everybody and that is what the Universal Service
1821 Fund is there to do.

1822 Mr. Flores. Continuing on this subject, Mr. Wood's written
1823 testimony claims that just because small providers continued to
1824 invest in their networks while Title II was in effect that Title
1825 II did not hurt them.

1826 The challenge with that is that these investment decisions
1827 are made far in advance. How far in advance do you think these
1828 decisions are made?

1829 Mr. McDowell. They could be sometimes years in advance.

1830 But, and again, I am going to enumerate -- I dug through my folder
1831 here -- there is Gigabit Minnesota, there is Shentel, there is
1832 Schurz, there is Sjoberg's, there is CATV Telecommunications.

1833 There are a lot of smaller outfits who filed in the FCC's
1834 record saying that Title II impaired their plans. There are far
1835 more smaller companies -- ISPs -- that said that than others.

1836 Mr. Flores. That is right, and I appreciate you helping
1837 us make sure we have a holistic record of the investment decisions
1838 that were made when Title II was -- when the 1930s-era statute
1839 was slapped on the internet.

1840 And that is important to me because about 90 percent of the
1841 land mass in my district is rural and I care about closing the
1842 digital divide. I would like to see rural America have just as

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1843 much access to capital and technology as my constituents do that
1844 live in urban and suburban areas.

1845 And it is unfortunate that we are having a messaging bill
1846 today instead of one of the three bills that would actually solve
1847 the issues that have been complained about and that is the blocking
1848 and throttling and paid prioritization.

1849 And so this bill has no chance of passage and so I think
1850 we would be better spending our time on something else.

1851 During our hearing a few weeks ago, I had the opportunity
1852 to ask former FCC Commissioner Powell about the possibilities
1853 of further government intrusion under a Title II regime.
1854 Chairman Powell shared my concern that under Title II the
1855 government could eventually set prices or direct investment
1856 decisions of private entities.

1857 Looking at the bill that we have before us today, Mr.
1858 McDowell, could some -- has the Democrat proposal that we have
1859 before us have they safeguarded against these possibilities of
1860 changing prices or regulating prices or investment decisions?

1861 Mr. McDowell. I am sorry. Could you repeat the question?

1862 Mr. Flores. Yes. Let me -- let me rephrase it. The
1863 Democrat proposal today, is it safeguarding against the ability
1864 of the FCC to set prices for internet services or to direct the
1865 investment decisions of private entities?

1866 Mr. McDowell. The concern with inviting the Title II beast
1867 into your tent is even if you only have a few claws of it in the

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1868 tent it is a pretty big and strong beast.

1869 So, you know, look, I am an attorney in private practice.

1870 I think there would be tons of appellate work. I should be all
1871 for this, selfishly, but I am not because I know that there will
1872 be tons of appeals.

1873 But let me say something real quickly, if I may, that is
1874 counter cultural, which is actually I have faith in this Congress.

1875 I have faith that you can find common ground on this issue.

1876 I don't think this is the bill for it. But I think you can
1877 do this and you can find 60 votes in the Senate, and I am not
1878 just being naive saying that.

1879 Mr. Flores. Well, and I agree with you and this committee
1880 has a long history of bipartisanship. This bill is not that.

1881 So thank you. I yield back the balance of my time.

1882 Mr. Doyle. I thank the gentleman.

1883 The chair now yields to Mr. Soto for five minutes.

1884 Mr. Soto. Thank you, Chairman. I want to start by having
1885 everybody take a deep breath and exhaling. I know the stakes
1886 are high but, you know, let us start by a perspective and what
1887 this bill is, which is an opening offer as we negotiate these
1888 very complex and important rules.

1889 We are going to conduct hearings, yes, more than one. This
1890 is the internet. So I think we could have even a half a dozen
1891 hearings and that may not be sufficient about the information
1892 we need to get.

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1893 We will have a markup so this bill is not just messaging.
1894 It will be an opportunity for amendments. I, for one, am open
1895 to amendments and we have heard some good ones here today.

1896 The Senate appears open to negotiate after passing a similar
1897 CRA. So this idea that there is no chance of passage is also
1898 not true. We were asked by the public to create basic net
1899 neutrality rules and this bill is a start to doing that.

1900 In addition, we were asked by industry to create a new chapter
1901 and this bill will create a new chapter. Don't you think the
1902 internet deserves its own chapter? I mean, it is so
1903 all-encompassing.

1904 And then we were asked to make sure there was some parity
1905 between the ISPs and edge providers and this bill does that through
1906 memorandums of understanding and that was sort of a confusion.
1907 So I want to clarify what our staff has explained.

1908 By reinstating the 2015 that applies Section 201 and 202
1909 of the Commutations Act that creates a standard to prevent unjust
1910 and unreasonable and discriminatory network practices. This
1911 would apply to everyone -- edge providers and ISPs. Those were
1912 two recommendations from business in the space that we are on
1913 the road to meeting.

1914 But I want to get some consensus on some of the things this
1915 bill does. By a show of hands, how many of you are opposed or
1916 believe this bill should give FCC regulation over blocking?

1917 Raise your hand if you believe that the FCC should, under

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1918 this bill, be able to stop blocking? Raise your hand.

1919 Mr. Wood. Blocking by regulated entities, sir. But yes.

1920 Mr. Soto. Okay. And how many of you believe the FCC should
1921 have the authority to regulate throttling? Raise your hand.

1922 Raise them a little higher. Come on, everybody.

1923 Mr. McDowell. You're saying under this bill. Is that
1924 right?

1925 Mr. Soto. Under this bill.

1926 Mr. McDowell. Okay.

1927 Mr. Soto. Okay. And how many of you support the FCC having
1928 the ability to stop paid prioritization? Raise your hand if you
1929 support that.

1930 Okay. And how many of you believe there should be FCC
1931 investigatory power for consumer and business complaints given
1932 to the FCC? Raise your hand.

1933 Okay. And fines for violations? Raise your hand.

1934 Thank you. And I want to personally thank the chairman for
1935 reviving FCC authority to fund rural broadband and Lifeline.
1936 That is important for areas of my district like south Osceola
1937 County and Polk County that, obviously, are really important.

1938 There are a series of concerns that Congressman Latta brought
1939 up which I think we do need to hash out. The chairman has already
1940 said that setting prices and rates, dictating capital investments
1941 has now been part of the bill -- is now part of what the intent
1942 of this bill is.

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1943 So, Mr. McDowell, if we explicitly put in place exclusions
1944 saying that the FCC shouldn't be setting pricing arrays or dictate
1945 where ISPs or edge providers have to put in their capital, would
1946 that make the bill more palatable, in your opinion?

1947 Mr. McDowell. I wouldn't be able to endorse it. I think
1948 this Congress can do better than that. I think we can do better
1949 than relying on Title II. I think the internet, to your point,
1950 deserves its own chapter and Title II is not the internet's
1951 chapter.

1952 Mr. Soto. But you do agree this isn't the old telephone
1953 company model where people have a monopoly and we would need these
1954 pricing rates and that it would greatly improve the bill if there
1955 were -- if we were explicit in these two areas?

1956 Mr. McDowell. If the intent is to fashion something new,
1957 then let us fashion something new. But taking a couple of piece
1958 parts of Title II isn't the way to go.

1959 Mr. Soto. I would like to give each of our other witnesses
1960 -- give us one suggestion you would like to see in the bill,
1961 starting with Ms. Ochillo.

1962 Ms. Ochillo. If I were to add something to the bill, I would
1963 like to see that the FCC had some sort of obligation to actually
1964 disclose how their -- how effective their Universal Service
1965 programs actually are. So they should have an obligation to do
1966 so as well as to actually create incentives for deployment
1967 explicitly.

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1968 Mr. Soto. Thank you.

1969 Mr. Green.

1970 Mr. Green. Not some but all protections.

1971 Mr. Soto. Okay. Mr. Wood?

1972 Mr. Wood. I don't think, Congressman, there is anything
1973 to add because we supported the 2015 rules and we don't think,
1974 as I said in my testimony, there are people who do face a monology
1975 today.

1976 But we do have a long track record under Title II with
1977 wireless voice and business broadband services where there was
1978 not after the fact rate regulation for more than two or three
1979 decades now at the FCC.

1980 So we don't really think that is a realistic danger or one
1981 that your constituents should fear or would look askance at.

1982 Mr. Soto. Thanks. My time has expired.

1983 Mr. Doyle. I thank the gentleman.

1984 The chair now recognizes Mr. Walberg for five minutes.

1985 Mr. Walberg. I thank the chairman and thank you to witnesses
1986 for being here.

1987 A little over one month ago we sat here in this room, as
1988 has been noted, discussing net neutrality. Here we are again
1989 and already over the half of the hearings I have attended on this
1990 subcommittee have dealt with net neutrality and it is only March.

1991 The last time around my Republican colleagues introduced
1992 three net neutrality bills to kick off discussion on a potential

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1993 legislative solution that would preserve congressional
1994 prerogative over agencies to which it delegates authority.

1995 And, unfortunately, it looks like we are going the opposite
1996 direction -- truly back to 1930s or Ma Bell type regulation that
1997 I am old enough to remember.

1998 I am glad we are past that, in most cases. As legislators,
1999 Congress must be clear about what authority the FCC has and does
2000 not have when we think they failed. This seems to be a clear
2001 case where Congress must cut through the uncertainty that is
2002 hampering broadband investment in places like my district -- a
2003 rural district -- and not rubber stamp an old Commission's
2004 decision.

2005 Codifying existing Commission action doesn't seem to be a
2006 serious attempt to legislate this issue as the title of this
2007 hearing suggests and falls short of delivering the expectation
2008 of a free and open internet our constituents desire.

2009 I expressed my willingness last hearing to work across the
2010 aisle on this issue and I remain willing to have that discussion
2011 today. But while I respect the Commission as an expert technical
2012 agency over communication issues, I firmly believe that
2013 ultimately Congress needs to provide the certainty and clarity
2014 that consumers demand.

2015 Mr. McDowell, you refer in your testimony to some legislative
2016 efforts as zero sum, implying that in order for one faction to
2017 win others must lose. Can you explain what parts of this debate

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2018 are not zero sum?

2019 Mr. McDowell. And, sir, my testimony is referring mainly
2020 to the regulatory actions at the FCC.

2021 So Title II does bring uncertainty. It does bring
2022 uncertainty to the investment community, to analysts, to the folks
2023 making the loans, to internet service providers. That's just
2024 a fact. That is just the case.

2025 So that becomes zero sum. So when you bring in Title II
2026 and whether the intent is to have the specter of rate regulation
2027 or not in this particular bill, there will still be questions
2028 about that because lawyers will get paid to find the maximum path
2029 forward of that language as well as others on the other side to
2030 try to make it as narrow as possible.

2031 So zero sum, when you start -- it starts coming into play
2032 when you talk about Title II in this regard. I think that if
2033 you were to take Title II off the table and start with some
2034 principles, which I think everyone in this room shares -- those
2035 core principles that I talk about in my testimony -- then you
2036 have a chance at a large bipartisan majority to get through those
2037 60 votes in the Senate so something could actually become law
2038 and last for decades.

2039 Mr. Walberg. And so following that up, does the bill before
2040 us today or any other net neutrality legislation like the bills
2041 introduced by Republican leaders Walden, Latta, or Rodgers
2042 incorporate features that are not zero sum that everyone has

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2043 agreed on?

2044 Mr. McDowell. So for you Star Trek fans, there is an old
2045 Vulcan saying that says only Nixon can go to China. So let me
2046 say this, which is the 2010 FCC order, I think there are many
2047 parts of that which -- some of which are echoed in the Latta bill
2048 could be the nucleus for some successful legislation.

2049 Mr. Walberg. Can each of you down the line, starting with
2050 Ms. Ochillo, quickly answer if you think this issue is zero sum.

2051 Ms. Ochillo. I don't. I don't think is a zero sum. No.

2052 Mr. Walberg. Mr. Green?

2053 Mr. Green. I don't think --

2054 Mr. Walberg. My time is running out.

2055 Mr. Green. I don't think that it is a zero sum.

2056 Mr. Walberg. Mr. Wood?

2057 Mr. Wood. Yes. I am not sure that we all understand the
2058 question, sir, but I do think that this is a net positive is what
2059 I would call it. Setting the rules straight again and making
2060 it certain to people that they can say what they want online and
2061 see what they want online without interference by their ISP but,
2062 as my testimony shows, with no interference to broadband
2063 providers' investment decisions, despite what we have heard
2064 today.

2065 Mr. Walberg. And I would suggest if that is what we were
2066 doing I could agree with you, but I can't.

2067 I yield back 90 seconds.

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2068 Mr. Doyle. I thank the gentleman.

2069 The chair now recognizes Mr. O'Halleran for five minutes.

2070 Mr. O'Halleran. Thank you, Chairman Doyle, and my
2071 colleagues on this subcommittee for continuing this critical
2072 conversation on how we can codify important bright line
2073 protections for consumers on the internet while promoting
2074 innovation in every corner of the internet ecosystem.

2075 At our first hearing on this issue it was clear that broad
2076 support exists when it comes to making the principles we all care
2077 about permanent.

2078 Today, I look forward to examining the Save the Internet
2079 Act with that same spirit. Everyone on this committee
2080 understands the necessity for protecting access to broadband for
2081 our communities and our economy.

2082 As I have previously said, I want to see a permanent solution
2083 that is enforceable, robust, and has lasting protections for
2084 consumers and our small businesses.

2085 Mr. Green, as someone who represents an incredibly rural
2086 district, as I do -- I know up in Idaho you have many of those
2087 same type of districts -- I would like to thank you for your
2088 organization's work in serving rural communities in the western
2089 United States including some in Arizona with critical access to
2090 the internet.

2091 In your experience, how are small businesses in rural
2092 communities impacted by a lack of certainty regarding net

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2093 neutrality rules?

2094 Mr. Green. Thank you for your question, Mr. Congressman.

2095 I think that, obviously, the business that we are in is
2096 delivering service to a community that is requiring demand.
2097 Demand is creating this need. So we are a for profit business.

2098 So I will start with that, to try not to take up your time.

2099 But I will also say that as we build that business and
2100 enterprise network for your business communities, surrounding
2101 communities, for education, for economic development, we also
2102 provide connectivity in and out of that community so that you
2103 have access to the internet.

2104 Let us just hope that one day a child, someone in college,
2105 someone working from home, will get a better education.

2106 Let us hope that maybe someone, some young talented
2107 individual will create the next Netflix in a rural market that
2108 you live in and you support like Netflix and that sort of, quite
2109 frankly, is really one of our goals.

2110 Yes, we are for profit. We are a business. But at the end
2111 of the day, if the outcome is that a child can have the same access
2112 in your community that they can in New York, in any other markets
2113 in the United States, then we have done our job.

2114 Mr. O'Halleran. There is nothing bad about for profit.
2115 I think that is a good way to invest in America and invest in
2116 the future of America.

2117 But I guess I am coming from the perspective that there is

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2118 a sentiment within our country that rural America is kind of --
2119 well, they are out there. We know they are out there.

2120 But, you know, for them to participate is just going to cost
2121 way too much money. It is going to not get us where we need to
2122 be and, yet, at the same time we need everybody in the workforce
2123 up to the highest level we can as far as education.

2124 We need good health services. We need people to full
2125 understand the connection between our entire country, not just
2126 parts of our country at the same level. And I heard some
2127 discussion earlier about, well, you are mostly for businesses.

2128

2129 Well, if you get in to the communities in my area, and others
2130 can get links to you, then you are for everybody in that community
2131 and that is a critical element and that investment is important
2132 to each and every one of those communities.

2133 Mr. McDowell, I agree with your statement that the time has
2134 come for Congress to provide clarity and certainty by enacting
2135 new legislation with regard to neutrality rules.

2136 Now, I haven't been here for your entire testimony and you
2137 have brought up a lot of ideas and concepts that I would like
2138 to hear more about.

2139 But I also have noted that a lot of what you have talked
2140 about is kind of, as they would say, in the cloud and not specific
2141 to how you personally would like to see this type of a bill address
2142 the issues that you do not agree to.

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2143 Mr. McDowell. Thank you, and first of all, happy early St.
2144 Patrick's Day to you.

2145 Mr. O'Halleran. And the same to you.

2146 Mr. McDowell. Thank you, sir.

2147 So as a starting point, I want us to listen to the Supreme
2148 Court from 2005 when it talked about Title II reclassification.

2149 It said, "Title II reclassification was subject to mandatory
2150 common carrier regulation of all information service providers
2151 that use telecommunication as an input to provide information
2152 service to the public," end quote. That's at U.S. -- 545 U.S.
2153 at 994. I think that is important.

2154 Mr. O'Halleran. Mr. -- I am sorry. My time is up and we
2155 will get back to it another time.

2156 Mr. McDowell. Okay. Thank you.

2157 Mr. O'Halleran. Thank you, Mr. Chairman. I yield.

2158 Mr. Doyle. I thank the gentleman.

2159 The chair now recognizes Mr. Bilirakis for five minutes.

2160 Mr. Bilirakis. Thank you, Mr. Chairman.

2161 I want to talk like -- again, I know some of the members
2162 before asked but I want to start again with this issue. Clearly,
2163 the FCC needs congressional authority to prevent these huge swings
2164 of all -- again, of all or nothing rule under the Title I or Title
2165 II.

2166 If we are all in agreement that we must prevent blocking
2167 and throttling of service -- and I think we are all in agreement

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2168 -- then let us codify those consumer protections and let us do
2169 it now in a bipartisan fashion. I believe that is what the people
2170 want, in my opinion.

2171 What I am afraid of for my constituents is the open-ended
2172 forbearance that the 2015 order, H.R. 1644, puts in place.

2173 Mr. McDowell, under the 20156 order, if the current FCC
2174 decides to forbear a particular Title II regulation, does
2175 subsequent FCC leadership have to abide by that decision?

2176 Mr. McDowell. Under the 2015 order, no.

2177 Mr. Bilirakis. No? Okay. Okay.

2178 Under the current law, internet users are protected from
2179 the Universal Service fee by statute. Is that correct?

2180 Mr. McDowell. Correct, essentially. Yes.

2181 Mr. Bilirakis. Okay. Essentially. Okay.

2182 Florida greatly benefits from this protection so as we are
2183 already a payor. So we are a payor state into the Universal
2184 Service Fund and do not receive -- we don't receive our
2185 proportionate share of benefits. That is the case in a lot of
2186 matters, unfortunately.

2187 Again, Mr. McDowell, if passed, would H.R. 644 remove this
2188 protection and potentially allow the internet to be subject to
2189 USF fees?

2190 Mr. McDowell. So the 2015 order equated IP addresses --
2191 internet protocol addresses -- with phone numbers. That not only
2192 had implications potentially for Universal Service -- for

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2193 contributions -- I will call it taxation, although that is
2194 controversial for me to say that -- for Universal Service purposes
2195 but also internationally as well for just international
2196 intergovernmental regulation of internet services.

2197 So there is that potential, again, that when you start
2198 talking about Title II, as I was saying earlier, and that is the
2199 backdrop, it starts to bring up all of these questions and that
2200 is why I think you need to erase the white board and start clean.

2201 Mr. Bilirakis. Okay. Thank you very much.

2202 I yield back, Mr. Chairman. Thank you.

2203 Mr. Doyle. I thank Mr. Bilirakis.

2204 Let me just say for my colleagues, for the record, that when
2205 the -- Mr. Bilirakis asked if a future FCC commissioner could
2206 unforbear the -- once again, Mr. McDowell correctly answered that
2207 under the 2015 Open Internet Order that answer is yes. But under
2208 this bill that answer is no because this bill puts in statute
2209 that forbearance and only an act of Congress could do that.

2210 Who is next? Oh, I see the chairman of our full committee
2211 has returned and we yield five minutes to Mr. Pallone.

2212 The Chairman. Thank you, Mr. Chair.

2213 Net neutrality is really about the core values that Americans
2214 hold dear -- free speech, competition, innovation.

2215 I wanted to ask Mr. Wood, I know these ideas are important
2216 to Free Press. Can you discuss how the Save the Internet Act
2217 would promote free speech and economic opportunity for small

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2218 businesses and how that compares to the Republican neutrality
2219 proposals that we have seen recently?

2220 Mr. Wood. Sure, Chairman Pallone. Thank you very much for
2221 the question.

2222 We have heard today that the FCC rules could be a sort of
2223 "Mother may I" for ISPs. I don't think that is actually true,
2224 based on the conduct of the FCC.

2225 The last thing we want and the reason we are so much in support
2226 of these rules is we can't afford a "Mother may I" for American
2227 businesses.

2228 So what these rules do is they provide that open pathway
2229 that people have always had to start a business, to get educational
2230 opportunities, to say what they want, to organize for change,
2231 without having to get the cable or telephone companies' permission
2232 and that is a good thing. It keeps in place the rules we've had
2233 albeit on a shifting legal framework over the course of the last
2234 decade and a half.

2235 The Chairman. Thank you.

2236 Ms. Ochillo -- I hope I am pronouncing it properly -- it
2237 is incredibly important to this committee that we help every
2238 American be able to afford the incredible power that comes with
2239 broadband internet access and I know making sure more people can
2240 access a wide array of material on the internet is key for the
2241 National Hispanic Media Coalition.

2242 So my question is can you explain how the Save the Internet

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2243 Act would help low-income folks get access? And I have heard
2244 some say that without net neutrality poorer Americans will be
2245 relegated to second-class status online, only being able to afford
2246 junk internet plans. So what do you think about that? How would
2247 the bill help low-income and what about without neutrality what
2248 would happen? Would they just get junk plans?

2249 Ms. Ochillo. To the first part of your question -- thank
2250 you, Congressman -- I do want to tie it to something that I said
2251 when Congressman Soto asked me about what I would add to this,
2252 and since we are in the spirit of compromise and talking about
2253 things that we can do to make it better, I think that we should
2254 think about putting in protections for Lifeline and,
2255 specifically, Lifeline, as I have mentioned over and over again,
2256 is one of the only programs that people have to get access to
2257 telecommunications and there are no other federal agency -- there
2258 is no one who is dreaming up any other programs.

2259 To why net neutrality is helpful to people who are currently
2260 denied access, I think we need to be honest about the fact that
2261 when there are -- when there is no net neutrality in place, even
2262 though it will be hard to detect at first, ISPs are going to slowly
2263 start to rise -- like, prices will eventually start to rise.

2264 They are going to start putting in more tolls to access.
2265 If they say you have a Comcast plan but you want to have Netflix,
2266 you want to have Hulu, it is going to cost you maybe instead of
2267 a \$10 add-on it might be \$12. And I think that it is important

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2268 to note that when the net neutrality repeal was announced back
2269 in November of 2017, that day Comcast actually removed from its
2270 website its three-year pledge against paid prioritization. Not
2271 the paid prioritization that is helpful for safety but paid
2272 prioritization that costs consumers more for the things that they
2273 access now.

2274 So I think that we would be fooling ourselves if we thought
2275 that if we just left it to internet companies to regulate
2276 themselves that we wouldn't eventually pay more because when the
2277 cable companies went and interrupted the broadcast in 1960s, they
2278 were supposed to be offering new competitive and diversity and
2279 all sorts of things.

2280 And 20 years later, they started bundling packages and
2281 saying, I think the consumers in this section of the country want
2282 to watch X and I think that you should pay Y because this is what
2283 this provider is charging you.

2284 So I think that it is just -- we have to have an honest
2285 conversation that eventually that will trickle down to consumers.

2286 The Chairman. I appreciate that, and I have one last
2287 question for Mr. Green.

2288 At our last hearing, we heard some argue that we shouldn't
2289 have strong net neutrality protections because they would
2290 undermine investments in networks.

2291 But I find that hard to believe, since we saw the Financial
2292 Times report recently that the big four broadband companies

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2293 invested less in capital projects last year after the repeal of
2294 net neutrality protections, undermining the Trump FCC's reasoning
2295 for doing away with the rules.

2296 So, Mr. Green, in your experience, as an internet service
2297 provider, should we believe these arguments that strong net
2298 neutrality, like those that the Save the Internet Act would
2299 reinstate, would undermine network investment, and why or why
2300 not?

2301 Mr. Green. Demand is driving the investment. That is just
2302 -- the end of the day, it is the economy. If there is demand
2303 and there is a need, people like myself in business,
2304 entrepreneurs, will find the capital and the resources to create
2305 a return for their investment and compete in a fair marketplace.

2306 The Chairman. So you don't think that reinstating the rules
2307 under the Save the Internet Act would undermine network investment
2308 at all? You don't see that being linked?

2309 Mr. Green. No, I do not.

2310 The Chairman. All right. Thank you so much. Thank you,
2311 Mr. Chairman.

2312 Mr. Green. You are very welcome.

2313 Mr. Doyle. I thank the gentleman.

2314 The chair now recognizes Mr. Long for five minutes.

2315 Mr. Long. Thank you, Mr. Chairman.

2316 And Mr. McDowell, Title II is intended for common carriage
2317 networks such as the state of the art telegraph and railroads.

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2318 But what strikes me is that with each network revolution the
2319 old rules no longer make sense and new rules were needed.

2320 That is exactly why we need 21st century rules for a 21st
2321 century service, not rules from the 1930s for rotary telephone
2322 service.

2323 From your vantage point, what are the risks to regulating
2324 the internet in the same way as common carriers?

2325 Mr. McDowell. Thank you, Congressman. So excellent
2326 question.

2327 So, you know, the history of common carriage goes back to
2328 the idea of natural monopolies like a canal. You dig a big long
2329 ditch, fill it with water, and it is the shortest point between
2330 -- distance between point A and point B.

2331 The telephone system was considered to be a natural monopoly
2332 because of the telephone poles and the wire you had to string
2333 up, or railroads -- again, the shortest point between point --
2334 shortest distance between point A and point B.

2335 And then that common carrier regulation really started with
2336 the Interstate Commerce Act of 1889 in our country for railroads
2337 and then was applied to airlines and trucking, et cetera and we
2338 still have the 1934 act, obviously, with the Ma Bell monopoly.

2339 But things are different with the internet and it was
2340 actually during the Carter administration -- Jimmy Carter's
2341 administration -- where a lot of these common carriage statutes
2342 and regulations started to be regulated. So railroads, airlines,

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2343 trucking -- those were all deregulated under the Carter
2344 administration.

2345 We saw investment go up. We saw transit time go down for
2346 the transportation sector. We saw consumer choice go up. So a
2347 lot of what is advertised to be the benefits of common carrier
2348 regulation it is actually the opposite.

2349 So what does that tell us? That tell us that transit times
2350 were slower under common carrier regulation. Prices were
2351 artificially higher under common carrier regulation. Consumer
2352 satisfaction was lower. They just didn't know it because that
2353 was the only choice at the time.

2354 So those are some of the problems with common carrier
2355 regulation.

2356 Mr. Long. Okay. Thank you.

2357 And, Ms. Ochillo, while you were speaking to Chairman Pallone
2358 a minute ago, you said, when we are in the spirit of compromise.

2359 Some others have said compromise and they call it bipartisanship
2360 at a earlier hearing.

2361 When we are in the spirit of compromise, do you think
2362 attacking people on Twitter is a good idea or a bad idea?

2363 Ms. Ochillo. Sir, respectfully, I don't attack people on
2364 Twitter any day of the week. So I don't ever do something like
2365 that.

2366 Mr. Long. I appreciate that. Thank you. I am glad you
2367 don't. What happened to -- is it on? Yes, I appreciate that

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2368 and I am glad that you don't attack people on Twitter.

2369 Mr. Wood, one question comes to mind is Free Press was --
2370 I don't know if that was pun intended or not when they named Free
2371 Press. But I have two items that I would like for Free Press
2372 to respond to on the record, and I know you won't have these figures
2373 with you here today. So if you can provide those in writing I
2374 would appreciate it.

2375 The first is how many fundraising emails your organization
2376 sent regarding net neutrality and the open internet rules within
2377 the -- in the last two years, and second, how much money Free
2378 Press raised through those emails?

2379 I want to highlight the fact that Free Press, Flight for
2380 the Future, and other groups exist by dividing Congress on this
2381 issue. During the February 7th hearing, as soon as a
2382 representative from the majority said he or she would like to
2383 work on bipartisan legislation they were -- from the minority,
2384 I think, they were immediately attacked by you on Twitter and
2385 you attacked me on Twitter right after that hearing.

2386 Attacking people is the only thing Free Press does where
2387 they seem to think they need to operate in a bipartisan fashion
2388 -- where they need Republicans, which is somebody to attack, and
2389 I think all members of the committee should be wary when an
2390 organization says compromise and bipartisanship is the enemy,
2391 especially if their financial interests are involved.

2392 And I hope you would follow Ms. Ochillo's lead and quit

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2393 attacking people on Twitter when we are trying to do things in
2394 a bipartisan fashion and, as she says, in the spirit of compromise.

2395 I yield back.

2396 Mr. Doyle. I guess that wasn't a question, huh?

2397 Okay. The gentleman yields back.

2398 Mr. Long. It was a question. I said I would like for him
2399 to respond in writing, so I yield back.

2400 Mr. Doyle. Okay. Thank you.

2401 The chair now recognizes the vice chair of the full
2402 committee, Ms. Clarke, five minutes.

2403 Ms. Clarke. Thank you very much, Mr. Chairman. I thank
2404 you for holding this hearing. I thank our witnesses for their
2405 expertise today.

2406 And I just want to say I don't know why Ms. Ochillo's name
2407 was even raised in that last piece that you had. We should
2408 restrain ourselves from trying to contrast and compare panelists.

2409 It is not a good thing. People can get confused from what was
2410 being said.

2411 Mr. Long. Will the gentlelady yield?

2412 Ms. Clarke. I will.

2413 Mr. Long. I didn't intend to cast any aspersion on Ms.
2414 Ochillo and I know she doesn't --

2415 Ms. Clarke. It came across that way, sir.

2416 Mr. Long. Well, I apologize because she does not -- I knew
2417 she didn't attack people on Twitter.

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2418 Ms. Clarke. Thank you. That is all I needed was the
2419 apology. Okay. Very well.

2420 Mr. Long. I wanted her to say, I don't attack on Twitter
2421 --

2422 Ms. Clarke. Yes.

2423 Mr. Long. -- because I don't think that is a good --

2424 Ms. Clarke. I understand that. But we are in a hearing
2425 where we are trying to make sure that the record is accurate.
2426 And so I appreciate your apology, Mr. Long.

2427 Mr. Long. I yield back.

2428 Ms. Clarke. Let me get to my questions. So Mr. Wood, could
2429 you remind the committee of some of the historical net neutrality
2430 violations we have seen that the Save the Internet Act would
2431 actually address?

2432 Mr. Wood. Certainly. Thank you, Congresswoman Clarke.

2433 There have been several. There were some that happened
2434 before the decision that Commission McDowell referred to earlier.

2435
2436 So one of the most famous ones was Comcast was actually
2437 blocking video not from a competitor but, really, from any
2438 streaming video service being sent over a file-sharing
2439 application called BitTorrent. Before that we saw local phone
2440 companies in rural areas blocking Vonage and other VOIP
2441 applications.

2442 More recently we saw AT&T not allow usage of FaceTime on

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2443 mobile networks unless people were willing to pay more money for
2444 that privilege and, in fact, you pay an unlimited -- pay for an
2445 unlimited voice plan.

2446 So we have seen a lot of these kinds of transgressions even
2447 with the rules in place or principles in place throughout the
2448 last decade and a half.

2449 Ms. Clarke. Very well. And in your prepared testimony you
2450 described the ability of the Save the Internet Act to protect
2451 marginalized communities by repealing the 2017 FCC order and
2452 returning to the regulatory framework outlined in the 2015 Open
2453 Internet Order.

2454 Can you expand on the role Title II Section 202 of the
2455 Communications Act plays in protecting marginalized and
2456 low-income communities.

2457 Mr. Wood. Certainly. Thank you again.

2458 So what we want to have and make sure that we have is
2459 nondiscrimination protections for anything someone says, not just
2460 for competitors. I think sometimes net neutrality is case as
2461 some sort of battle between Comcast and Netflix or between AT&T
2462 and Google.

2463 And, really, what we think it is is a guarantee for every
2464 internet user's right to see and say what they want online. So
2465 we have examples of this -- actually, other services sometimes.

2466

2467 Verizon blocked text messages about abortion rights at one

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2468 point in 2007, I believe. It could have been a year or two off
2469 of that.

2470 And actually NARAL and the Christian Coalition came together
2471 and said, this is the last thing we want. We can't have carriers
2472 dictating what we can say to our members.

2473 So that was a Title II service at that point in time, or
2474 arguably one, in text messaging and sometimes ISPs will say why
2475 would we block things for political purposes. It is exactly the
2476 same kind of decision that we see them making at times.

2477 If they think something will be unsavory to their users they
2478 might decide to block it or treat it in a less favorable fashion
2479 and we can't afford that.

2480 Ms. Clarke. Very well.

2481 Ms. Ochillo, in your opinion, does this seem reasonable for
2482 one of the approximately 24 million Americans without access to
2483 broadband to file an antitrust suit against a major ISP?

2484 Ms. Ochillo. Absolutely not, and I do want to point out
2485 that NHMC last year pointed out -- I actually visited a lot of
2486 offices here on the Hill just to raise that the FCC at some point
2487 had an ombudsperson who was able to at least receive the open
2488 internet complaints and at least help people navigate that
2489 process. But, in general, consumers don't have any recourse and
2490 wouldn't know who to call.

2491 Ms. Clarke. Very well.

2492 Mr. Green, can you -- there was something in your testimony

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2493 that you said earlier I need a little clarification on. Aren't
2494 enterprise broadband services, while not under the Open Internet
2495 Order, still under the nondominant carrier Title II just as
2496 broadband internet access service is?

2497 Mr. Green?

2498 Mr. Green. I thought you said Mr. Wood. I am sorry.

2499 Ms. Clarke. No, I am sorry. Mr. Green. Let me repeat.

2500 Aren't enterprise broadband services, while not under the
2501 Open Internet Order, still under nondominant carrier Title II
2502 just as broadband internet access service is?

2503 Mr. Green. They are.

2504 Ms. Clarke. Very well.

2505 Mr. Chairman, thank you very much. I yield back the balance
2506 of my time.

2507 Mr. Doyle. I thank the gentlelady.

2508 The chair now recognizes Mrs. Brooks for five minutes.

2509 Mrs. Brooks. Thank you, Mr. Chairman and Ranking Member
2510 Latta, and thank you to all the witnesses for being here today.

2511

2512 I apologize I have not been able to be here. I have been
2513 a part of a hearing on Select Committee on the Modernization of
2514 Congress where technology has been a big part of that hearing.

2515 So we have been hearing from members all morning and it just
2516 finished, so I apologize.

2517 I do feel a little bit like in a bit of deja vu right now

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2518 because I feel like we had discussions about this about a month
2519 ago and I just want as members of the committee to know that I
2520 believe all of us support a free and open internet that has proper
2521 transparency protections to ensure there is no blocking and
2522 throttling, and I know we are debating a bill that I wish was
2523 not partisan -- that I do wish and I heard when the hearing began
2524 we need to end the ping ponging on this issue and I think the
2525 country really is demanding that.

2526 But I think right now, as I understand it, the bill that
2527 is before us has no chance of really being taken up by the Senate
2528 or being signed by the president. So we need to move forward.

2529 And one of the reasons we need to move forward I am a
2530 co-founder of a 5G caucus here in the House of Representatives
2531 and we have got to stop fighting about this in the country.

2532 We have got to get our act together as a country so we are
2533 not falling behind the rest of the world and falling behind many
2534 other countries that are going to beat us in this next round of
2535 technology called 5G.

2536 So I have been proud to work with colleagues on both sides
2537 of the aisle on some of these issues. I want to continue do to
2538 that.

2539 I guess I would like to start out, Mr. McDowell, and would
2540 ask all of you actually what impact would, if you were to restore
2541 the FCC's 2015 Open Internet rules, have on the likelihood that
2542 U.S. will be able to lead the world in the deployment of 5G network

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2543 and services, something I think we all need to be very focused
2544 on?

2545 Mr. McDowell. First of all, congratulations on founding
2546 the 5G Caucus. I think that is very important.

2547 Mrs. Brooks. And for the record, I founded that with
2548 Congresswoman Debbie Dingell, also Congresswoman Annie Kuster
2549 and Congressman Tim Walberg.

2550 So we are going to be focused on this. We have to be focused
2551 on this as a country. It is a bipartisan caucus. I encourage
2552 my colleagues to join the caucus.

2553 But let us talk about how what we are talking about could
2554 have an impact on our global competition to be a leader in the
2555 world on 5G, and I will start with you.

2556 Mr. McDowell. And so the U.S.'s leadership in 5G is by no
2557 means a foregone conclusion. It is not inevitable and you are
2558 right to call that into question. There is a lot that has to
2559 be done as we spend maybe \$300 billion or more over the next six
2560 or seven years as a country to build out 5G.

2561 So when you are raising that kind of capital, you are going
2562 to get questions from lenders, from investors, of all stripes
2563 as to what are the potential economic effects of the economic
2564 regulation of Title II. And Title II, make no mistake, is a
2565 statute all about economic regulation. That is exactly what it
2566 is.

2567 So that could cause a stutter step, as we have seen evidence

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2568 in the record thus far with the smaller ISPs -- for not just smaller
2569 ISPs in the 5G space but the larger ones as well. So that kind
2570 of uncertainty is not what we need to win the race to 5G.

2571 Mrs. Brooks. I guess I would ask some other panelists how
2572 would you assure me and assure those of us who are trying to promote
2573 5G that this type of regulation would not impede 5G
2574 implementation.

2575 Ms. Ochillo?

2576 Ms. Ochillo. I don't think that net neutrality regulations
2577 impede it. However, I do want to acknowledge that a lot of 5G
2578 is based on actually some paid prioritization networks.

2579 5G, I think that people forget, is based on fiber wireline
2580 in the ground and, essentially, we have to create incentives for
2581 companies to want to go into places, especially hard-to-reach
2582 rural communities, poor communities where they are not getting
2583 the same return on those -- that investment.

2584 I think that we can create incentives from both the federal
2585 and state governments by saying if you want to get a permit to
2586 lay wire in this district then you also have to lay it these other
2587 two.

2588 I think that there are other creative ways that we can think
2589 about this rather than saying that net neutrality is closing a
2590 door, because if we are giving access to people with net neutrality
2591 by saying here, here is something that everyone should have access
2592 to this universal platform and, concurrently, the United States

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2593 is working on becoming a leader in the 5G network, that does not
2594 mean that they have to compete with one another.

2595 They might complement one another. But that is going to
2596 take some creativity and a commitment from the federal and state
2597 governments.

2598 Mrs. Brooks. Thank you.

2599 Mr. McDowell, I keep hearing the word balance more around
2600 this debate. Given that you think no legislation is needed to
2601 ensure the rights of consumers with broadband investment, what
2602 do you think the FCC should do to prevent throttling, blocking,
2603 or prioritization, looking forward?

2604 Mr. McDowell. Those concepts are all about competition or
2605 what's anti-competitive, right. So I think Section V of the
2606 Federal Trade Commission Act covers that, as do other antitrust
2607 statutes.

2608 What is important to understand, too, about the FTC, a
2609 consumer doesn't have to file an antitrust complaint. The FTC
2610 is a consumer protection agency and thousands of times a year
2611 responds to average everyday consumers and acts on their behalf.

2612 It has, you know, over \$300 million and 600 lawyers to do
2613 just that and that is what they do. You don't need to be spending
2614 any money as a consumer or worry about time. That is precisely
2615 what it does. That is where broadband internet access services
2616 are today is at the Federal Trade Commission.

2617 Mrs. Brooks. Thank you. I yield back. I am out of my time.

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2618 Thank you. I yield back.

2619 Mr. Doyle. The chair recognizes Ms. DeGette for five
2620 minutes.

2621 Ms. DeGette. Thank you very much, Mr. Chairman.

2622 You know, I really agree with my colleague, Mrs. Brooks,
2623 about the need to get some certainty here and I really think it
2624 is important. But I need -- when we look at certainty we need
2625 to make sure that we are putting the rights of the consumers and
2626 of access first that is what I really think.

2627 But I was so happily reminded by my staff that I was on the
2628 Energy and Commerce Committee in 2005 when Chairman Martin issued
2629 his first version of the net neutrality rules.

2630 Then I was on -- still on the subcommittee in 2010 when
2631 Chairman Genachowski issued his version of net neutrality rules.

2632 And then now I was still on the committee in 2015 when Chairman
2633 Wheeler issued his version of the rules.

2634 And so we have had no shortage of creative approaches to
2635 this issue and, of course, we've had court decisions and other
2636 things that intervened.

2637 And I guess I want to ask -- I want to start with you, Mr.
2638 Green. Would you say that this long-running process has created
2639 more or less certainty for your company, as you make your business
2640 plans?

2641 Mr. Green. I find it to have created less certainty on the
2642 long run. I certainly feel your pain in sitting through those

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2643 number of changes.

2644 I would also add that around 5G, number one, we should thank
2645 the FCC for removing some barriers to open up things in the area
2646 of 5G so we should appreciate the FCC for the changes that they
2647 have made and acknowledge that.

2648 The other thing I would say is that, you know, this open
2649 internet -- the very reason we are here today, it is a driving
2650 investment for 5G.

2651 I mean, open internet is a driver for 5G. So I think it
2652 is very important to acknowledge it.

2653 Ms. DeGette. So would you agree with Ms. Ochillo that 5G
2654 and open internet are not necessarily counter to each other?

2655 Mr. Green. I would agree with that. I think open internet
2656 is another -- first of all, the one thing you have with open
2657 internet is, you know, you have a common ground in terms of
2658 competition and then from there the competitive demands will drive
2659 -- will drive one another.

2660 Ms. DeGette. Thank you.

2661 Mr. Wood, is there any reason you can see why Congress should
2662 start all over on a whole new bill?

2663 Mr. Wood. No, I don't believe so, Congresswoman. I think
2664 that is the important part about compromise here and the
2665 legislative process.

2666 Sometimes I say if we want the same rights we will have the
2667 same fights about these bills and I think that is in my testimony.

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2668 So I don't think that the last 15 years have been legally certain.
2669 That is obvious. The rules have gone back and forth.

2670 Now, the FCC won when it used Title II and it lost the previous
2671 two times. But each time those three lawsuits were brought by
2672 cable and telecom providers or their lobbying associations.

2673 So if we are tired of ping pong, I would respectfully ask
2674 those companies to put down the paddle and just to keep investing
2675 as they have done throughout that time.

2676 The trend lines have been basically the same and the
2677 investment goes up and down over time because, as AT&T said,
2678 investment is cyclical. They actually called it lumpy.

2679 And so companies invest and we are seeing the wireless
2680 companies ramp up their investments now for 5G.

2681 Ms. DeGette. But, you know, even for those companies, like
2682 Mr. Green's company, the lack of certainty has to be a real
2683 impediment.

2684 Mr. Wood. I think it is a factor. But we haven't seen it
2685 in the numbers at the FCC, what the companies tell their investors
2686 in analyst calls. Despite what Mr. McDowell said, we don't see
2687 analysts or the companies themselves, more importantly, saying
2688 there is an impact and we also see steady -- not necessarily
2689 sufficient but steady improvement in rural areas, too, if we look
2690 at the FCC's deployment data.

2691 Ms. DeGette. Thank you.

2692 One last thing, and I know some of my colleagues talked about

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2693 this, but my congressional district includes Denver, Colorado,
2694 which is one of the top places not only for telecom but also for
2695 Millennials moving there.

2696 And whenever we talk about net neutrality this is the
2697 number-issue that my constituents raise. When I tell my
2698 colleagues this they can hardly believe it sometimes but it is
2699 the number-one issue for the constituents and what they are --
2700 what they are saying is they think ISPs are a mean to an end,
2701 whether that is streaming music or movies or accessing my
2702 congressional website or whatever they are trying to do.

2703 So my question -- my last question for you, Mr. Wood, is
2704 what does public opinion polling tell us about what average
2705 Americans think about net neutrality.

2706 Mr. Wood. Thank you.

2707 It is, remarkably, high the consistent level of support we
2708 saw last April. Eighty-six percent of people saying they
2709 supported keeping the FCC's 2015 rules and opposing that repeal.
2710 That included 82 percent of Republicans.

2711 I think most people think of this as common sense, and then
2712 when we talk about the edge providers as well, they do see internet
2713 access as a means to get there.

2714 I want to be clear. We don't have some sort of blank check
2715 for edge providers. We think that they are engaging in all sorts
2716 of abuses. But they are still different from the wire that gets
2717 you there and that is why people basically want and demand that

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2718 these rules be restored and be put back the right way.

2719 Ms. DeGette. Thank you. Thank you, Mr. Chairman.

2720 Yield back.

2721 Mr. Doyle. I thank the gentlelady.

2722 The chair now recognizes Mr. Butterfield for five minutes.

2723 Mr. Butterfield. Did we run out of the minority, Mr.

2724 Chairman?

2725 Let me just begin by thanking the four panelists for coming
2726 today and thank you so much for your testimony.

2727 Commissioner McDowell, I was listening very carefully to
2728 your opening statement and I just want to thank you for your
2729 thoughtful approach to the subject matter.

2730 You called for a bipartisan approach. You called for
2731 certainty, and I am going to do something I rarely do. I am going
2732 to take your opening statement home with me tonight and I am going
2733 to read it again.

2734 Mr. McDowell. I am so sorry.

2735 Mr. Butterfield. And so I thank all of you.

2736 [Laughter.]

2737 Mr. Butterfield. But, Commissioner McDowell, in 2015 --
2738 and I, too, have been here under three chairs -- Genachowski,
2739 Wheeler, and Chairman Pai.

2740 But in 2015, the -- I think you had just left a year or two
2741 before then -- the FCC forbore over 700 regulations that the
2742 Commission had the authority to enforce under Title II.

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2743 Will this bill as we know it make it more or less difficult
2744 for the FCC to utilize its forbearance authority on additional
2745 regulations in the future?

2746 Mr. McDowell. I will take it face value Chairman Doyle's
2747 assertion that the intent is to make it harder for the FCC to
2748 wiggle away from the parameters of the bill.

2749 But I will say this, as an attorney. There will be lots
2750 of lawyers trying to argue both sides of that. They will argue
2751 every word of it. So the uncertainty doesn't necessarily go away.

2752 Mr. Butterfield. Commissioner McDowell, ISPs have
2753 expressed concern that the additional regulations under Title
2754 II have a chilling effect on their ability to invest in the
2755 expansion of their networks, and I understand their anxiety.
2756 Even though I may not agree with it totally, I certainly understand
2757 their anxiety.

2758 How will this bill affect the deployment of rural broadband
2759 by ISPs?

2760 Mr. McDowell. We have seen in the FCC's record as well as
2761 your hearing a few weeks ago and throughout the debate concern
2762 by the smallest of ISPs.

2763 So perhaps we can all say that the big carriers can take
2764 care of themselves. Actually, most of them are engaging in M&A
2765 in areas outside of broadband in order -- which can also distort,
2766 by the way, their CAPEX figures.

2767 But the smaller ISPs I think are genuinely, sincerely, and

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2768 verifiably very concerned about the questions they will get from
2769 lenders and that is in the record. It is under oath. It is in
2770 a lot of different places.

2771 Mr. Butterfield. Mr. Wood, if I can address this to you,
2772 sir. Historically, the FCC's policy positions have changed with
2773 each administration. Will this bill provide ISPs and other
2774 stakeholders with the regulatory certainty to innovate and to
2775 invest?

2776 Mr. Wood. Yes, Congressman. Thank you for the question.

2777 I believe it will. I would not quibble with the
2778 characterization but I would alter it perhaps slightly to say
2779 that the FCC hasn't changed policies.

2780 It has just changed the legal grounds on which it has founded
2781 those policies. And so when the FCC tried to adopt the internet
2782 principles -- open internet principles in 2005 and grounded those
2783 on Title I, they failed in the court of law.

2784 The same thing happened with the Genachowski administration
2785 or the Genachowski FCC. They, once again, were struck down in
2786 court. They came back with essentially the same principles.

2787 There had been some changes in the wording and the rules
2788 over time. But we have had the same kind of principles that the
2789 FCC has tried to enact three times and they finally got it right
2790 on that third try and were upheld in court two times.

2791 Mr. Butterfield. All right.

2792 Ms. Ochillo, thank you for your testimony. In your

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2793 testimony, you remarked that the way in which we decide to regulate
2794 the internet will have a direct impact on broadband adoption and
2795 access.

2796 How will this bill create opportunities for communities of
2797 color and help to eliminate disparities that you and I know exist
2798 in broadband access?

2799 Ms. Ochillo. I think that it is important -- thank you very
2800 much for the question, Congressman.

2801 I think that it is important to put net neutrality
2802 protections in statute and I think at this point we need to be
2803 very aware of the fact that the people who are left behind in
2804 the digital divide don't have an opportunity to come into this
2805 space and to, basically, fend for themselves.

2806 And our organization is constantly just trying to explain
2807 if we are not aggressive about saying we need to actually make
2808 sure that no one can have discriminatory practices to make sure
2809 that access is a priority for congressmen, for everybody, whether
2810 it is a provider, for everybody.

2811 There is actually a cost when people can't get online and
2812 I think that it is important for us to support this type of
2813 legislation because at least it gives people an opportunity to
2814 acknowledge that the internet is like a utility.

2815 It is something that everyone needs, and the truth is that
2816 even the FCC has acknowledged that it is essential for every single
2817 part of daily life, and I think that this is something that

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2818 supports that proposition.

2819 Mr. Butterfield. Thank you.

2820 Thank you, Mr. Chairman. I yield back 16 seconds.

2821 Mr. Doyle. I thank the gentleman and I would comment that
2822 while my good friend, Mr. McDowell, acknowledges that the bill
2823 would make it -- would make it -- prohibit forbearance --
2824 unforbearing what has been for beared in the order that we all
2825 understand his comment that an attorney will argue anything as
2826 long as someone will pay him to do it.

2827 So I think that is something we are never going to change
2828 no matter what the bill looks like. But I thank the gentleman.

2829 Mr. Schrader, you are recognized for five minutes.

2830 Mr. Schrader. Thank you, Mr. Chairman.

2831 I just want to thank you for bringing the bill to the hearing
2832 here. It is a good opportunity for us to have this debate. The
2833 testimony has been informative for me at least and I look forward
2834 to moving on and hopefully come to some bipartisan agreement,
2835 as everyone has talked about, at some point in time.

2836 The best legislations stand the test of time through various
2837 administrations and different commissioners. It would be best
2838 if we actually got together and tried to come up with a compromise
2839 that would work for everybody out there because we all do want
2840 a free and open internet, at the end of the day.

2841 With that I yield back, Mr. Chairman.

2842 Mr. Doyle. I thank the gentleman.

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2843 I see that Mr. Welch has entered the room and he is recognized
2844 for five minutes.

2845 Mr. Welch. Thank you very much, Mr. Chairman.

2846 And by the way, I really appreciate the work you are doing
2847 in leadership on this. We have got a -- and I missed some of
2848 the testimony but watched some of it on TV.

2849 Mr. McDowell, it is good to see you back.

2850 You know, the bill that we have -- I know you have discussed
2851 this -- but it really seems practical to me. There is uniformity
2852 that we don't want blocking or throttling or some of the other
2853 things.

2854 We also don't want the heavy hand of regulation, and what
2855 I thought was very wise about the proposal here was that we
2856 guaranteed there would not be all the Title II concerns and that
2857 was in response, frankly, to a lot of our colleagues and some
2858 of the folks in industry expressing apprehension about the
2859 uncertainty with the potential of heavy-handed Title II
2860 regulation.

2861 I wasn't fearful of that. You know, Mr. Wheeler, when he
2862 was the head of the committee or when he was the chair forbear
2863 but -- trust but verify. So this, to me, makes a lot of sense
2864 and I hope that we ultimately can proceed.

2865 But so thank you, Mr. Doyle, on that.

2866 I want to go to Mr. Green. I think you have been asked this
2867 already but I would like to hear it again because a lot of the

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2868 argument that we have had here is about this crucial question
2869 of how we deploy broadband and the apprehension that some folks
2870 have that unless there is certainty it will inhibit the deployment
2871 of broadband.

2872 That is an incredible concern to Republicans and Democrats
2873 on this committee who represent rural areas because we have been
2874 left behind and it is intolerable.

2875 So you were investing before under the old rules and you
2876 are investing now under the new rules, and I would like you to
2877 just elaborate on that because I think all of us, at the end of
2878 the day, want to be confident that there is going to be investment
2879 to deploy broadband.

2880 Mr. Green. Thank you for your question, Congressman.

2881 We have had excellent success and we have been very fortunate
2882 and we have been blessed. I always like to mention that because
2883 that is my higher calling, from my perspective.

2884 But we have \$30 million of fiber assets in the ground today.
2885 We started in 2010. I am just an old telecom guy from Spokane,
2886 Washington, and Coeur d'Alene, Idaho.

2887 But the investments at the moment -- to answer your question
2888 more specifically, we have \$10 million of backlog, meaning we
2889 have \$10 million of customers who have requested services from
2890 us to reach to internet and at the moment we are deploying that
2891 capital so that we can get those customers connected to the
2892 internet.

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2893 So we are having great success. If you look at the fact
2894 that we have \$30 million in the ground and in the last year we
2895 created another \$10 million of demand, that is, obviously, telling
2896 you the demand is great and it becomes greater and greater every
2897 day.

2898 It is a combination of 5G. It is a combination of, you know,
2899 the cloud, streaming, all of those sorts of things. And so we
2900 are having excellent success and have had excellent success during
2901 the tenure of our company and, certainly, from the act of 2015.

2902 Mr. Welch. So this act, in your view, would not -- this
2903 proposal by -- authored by Mr. Doyle would not inhibit your plans,
2904 going forward?

2905 Mr. Green. Not at all.

2906 Mr. Welch. All right.

2907 You know, my goal here on the committee with respect to
2908 internet has been to do two things: expand broadband in rural
2909 areas and across the country and, second, guarantee that the
2910 internet remains free and open. I think we are all on the same
2911 page on that.

2912 But in my rural state, we are not debating 5G. We are dealing
2913 with no G in many places, and it has got to be a decision that
2914 we make in this Congress as to whether we are going to treat
2915 internet much like we did electricity in the 1930s.

2916 And there is not an economic case to be made to put it out
2917 in rural America but there is a social case to be made. We are

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2918 all in it together or we are not.

2919 Do you see having clarification about these rules that are
2920 codified in this proposed legislation as being helpful to
2921 accomplish that?

2922 I will ask you, Mr. McDowell. I will let you weigh in on
2923 that.

2924 Mr. McDowell. So, first of all, let me say something at
2925 the outset, which is -- and I know we don't have much time but
2926 that open internet and Title II don't have to be synonymous or
2927 exclusively synonymous to each other.

2928 From the time the internet was privatized in the mid-90s
2929 until the 2015 Title II order, we had an open and freedom-enhancing
2930 internet. I think that is very important.

2931 It has just been raised here a few times that the only way
2932 you can have an open internet is by bringing in Title II. You
2933 might be able to bring up a principle of Title II. I think it
2934 is better to start with the 2005 principles from Chairman Powell.

2935

2936 But Title II is not synonymous with an open internet and
2937 brings in a whole host of collateral circumstances and unintended
2938 consequences.

2939 So that is what provides a lot of investment uncertainty
2940 or just operational uncertainty, going forward, especially as
2941 ISPs, as was said earlier, are merely a means to an end.

2942 Actually, ISPs are converging into many business lines and

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2943 offering multiple services and benefits to consumers just the
2944 way edge providers are providing not just content and apps or
2945 algorithms but also delivery systems.

2946 So as you see this convergence I think it is important for
2947 this committee to take that into account as you come up with a
2948 new piece of legislation.

2949 Sorry, Mr. Chairman.

2950 Mr. Welch. I yield back.

2951 Mr. Doyle. The chair now recognizes Mr. Cardenas for five
2952 minutes.

2953 Mr. Cardenas. Thank you, Mr. Chairman. I appreciate the
2954 opportunity for us to talk on this bill and have a better
2955 understanding of what is going on out there and how we are going
2956 to effectuate change, especially when it comes to consumer
2957 protections.

2958 One of the goals of this legislation is to codify the
2959 provision of the 2015 rules that forbears 700 regulations from
2960 applying to internet service providers.

2961 During the last hearing here, former FCC Chairman Wheeler
2962 argued that some of the most onerous provisions of the Title II
2963 regulation don't make sense for the internet, which is why the
2964 FCC forbore these provisions in the 2015 order.

2965 This component is important to balance consumer protection
2966 while also ensuring business can invest and build their networks
2967 on consumers, which have great products to choose from.

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2968 So, Mr. Wood and Commissioner McDowell, if this bill is
2969 enacted into law, could any future FCC apply any of those
2970 regulations that have put in forbearance -- that are putting in
2971 forbearance?

2972 Mr. Wood. You said my name first. I guess I will go first.
2973 Thank you, Congressman.

2974 I don't believe so. As we have heard, that could be
2975 litigated and that is, obviously, true. I would point to the
2976 decades of lucrative litigation after the '96 Act to reinforce
2977 Chairman Doyle's notion that any new bill could be litigated.

2978 I think this one is actually very tightly written, though, and
2979 would prevent that kind of retreat by the FCC.

2980 Mr. Cardenas. So you see that this bill would protect
2981 against that if it comes along?

2982 Mr. Wood. I think that is exactly what it says, that it
2983 would basically ratify the 2015 decisions and make those part
2984 of the statute or part of a congressional enactment rather than
2985 leaving it to the FCC to strictly determine forbearance.

2986 I should say that over the years that is what they have done.
2987 They have forborne from wireless voice and from nondominant
2988 carrier regulation of broadband when it sold to businesses. So
2989 we do have a track record of that. But this will would make
2990 Congress giving the stamp of approval to that.

2991 Mr. Cardenas. Thank you.

2992 Commissioner McDowell?

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2993 Mr. McDowell. Given sort of the long lens of history and
2994 the history of common carriage regulation, I would say not --
2995 that actually history -- the trajectory of history is on the side
2996 of sort of a one-way ratchet of common carrier regulation -- that
2997 once you have some you are going to get more.

2998 So I would respectfully say that this bill actually would
2999 open the door and not close the door to more regulation.

3000 Mr. Cardenas. Yes. Okay. Do you have an opposite answer
3001 to Mr. Wood?

3002 Mr. McDowell. No.

3003 Mr. Wood. That is right. We never disagree. You always
3004 used to talk about the bipartisanship at the FCC, right? It is
3005 95 percent of the time we agree.

3006 Mr. Cardenas. Okay.

3007 Mr. Wood, can you talk about how Lifeline broadband was
3008 provided before the 2015 rules?

3009 Mr. Wood. Before the 2015 rules, sure.

3010 The FCC has, for some time, been asking this question and
3011 before they reclassified basically the FCC was relying on Section
3012 706 and other authorities it has to say, well, we can provide
3013 support at least for telecom companies because that is the way
3014 the Universal Service statute is written. You have to be an
3015 eligible telecommunications carrier.

3016 So, basically, the FCC allowed telephone companies to
3017 provide Lifeline but it didn't have great mechanisms for requiring

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3018 that they do. We think the 2015 order actually got that right
3019 and treated broadband as a telecom service.

3020 And now, not only has the Pai FCC walked away from Title
3021 II, they have also said Section 706 is not a source of authority.

3022 So now we are not really sure what they can do at least on a
3023 solid legal basis, speaking of litigation.

3024 Mr. Cardenas. Can you give an example on what -- on what
3025 way the 2015 rule has impacted the Lifeline program?

3026 Mr. Wood. Well, I think we talked about this a bit earlier.

3027 I know Ms. Ochillo talked about it, too. There were nine
3028 providers who were offering a broadband only progress, or at least
3029 plan to.

3030 I believe one of them had launched service in Queens, New
3031 York, and they were cut off from the program because the FCC
3032 basically said, we have no way of funding you anymore if you are
3033 not an eligible telecommunications carrier, to use the words in
3034 the statute in Title II.

3035 Mr. Cardenas. So this legislation, if enacted into law,
3036 Mr. Wood, it would affect -- in your opinion it would affect the
3037 opportunity for Lifeline programs in a good way, to flourish more,
3038 or would it limit them?

3039 Mr. Wood. I think it would clarify that broadband is a
3040 telecom service and fully eligible for eligible
3041 telecommunications carrier status and, thus, for support under
3042 the deployment aspects and also under the Lifeline program and

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3043 Universal Service.

3044 Mr. Cardenas. Okay.

3045 Mr. McDowell. But just so there is no confusion, under the
3046 second Obama -- the first Obama term, FCC, in 2011 and early 2012
3047 we expanded Lifeline support and other Universal Service support
3048 to broadband, right. So that was before the 2015 Title II order
3049 at the FCC. So I want to make sure folks are understanding that
3050 Lifeline is supported even if it is not a telecommunications
3051 service.

3052 Mr. Wood. And I would just ask under what authority that
3053 step was taken. If it was Section 706 or if it was Section 254
3054 or some other sort of murkier cloud of authority.

3055 Mr. McDowell. All of the above. That case went to the 10th
3056 Circuit under a variety of theories and survived appeal.

3057 Mr. Cardenas. Mr. Wood? What section do you --

3058 Mr. Wood. I think it survived appeal because they had 706
3059 and how this FCC has said not only do we not want to use Title
3060 II, we don't think Section 706 is a grant of substantive authority.

3061 So now I am not really sure what is left -- what survived in
3062 the 10th Circuit -- if we actually see another challenge to that.

3063 Mr. Cardenas. So with what time I have left, Mr. Chairman,
3064 I think it is important and I thank you, Mr. Chairman, for us
3065 taking on this responsibility because when we don't do our job
3066 as a legislature then we leave the appointed officials to do the
3067 job.

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3068 So thank you very much, Mr. Chairman. I yield back.

3069 Mr. Doyle. I thank the gentleman.

3070 I don't want anyone to think that we are ignoring Mrs.

3071 McMorris Rodgers over here. But she is going to waive on to the

3072 committee and under our rules she would be entitled to speak after

3073 all members of the committee have spoke.

3074 So Mr. Lujan, you have five minutes.

3075 Mr. Lujan. Thank you very much, Mr. Chairman, and to our
3076 ranking member for holding this important hearing.

3077 Mr. Wood, yes or no -- does Mr. Doyle's legislation prevent
3078 internet service providers from blocking content?

3079 Mr. Wood. It does. It restores the rules.

3080 Mr. Lujan. Yes or no -- does this legislation prevent the
3081 throttling of content?

3082 Mr. Wood. Yes.

3083 Mr. Lujan. Yes or no -- does it prohibit paid
3084 prioritization?

3085 Mr. Wood. Yes.

3086 Mr. Lujan. Yes or no -- does the Republican proposal clearly
3087 prevent blocking, throttling, and paid prioritization?

3088 Mr. Wood. Some do that. They have some different
3089 approaches. Some say they would prohibit other behaviors and
3090 some actually do try to adopt the three bright line rules but
3091 in ways that we think are not sufficient to fully protect internet
3092 users.

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3093 Mr. Lujan. Yes or no -- am I correct that Mr. Doyle's
3094 legislation prevents the FCC from applying 700 regulations under
3095 the Communications Act?

3096 Mr. Wood. Yes. I think that is the count.

3097 Mr. Lujan. Beyond that, though, does Mr. Doyle's
3098 legislation include any other provisions that would unreasonably
3099 or needlessly handcuff the FCC including the authority to engage
3100 in rulemaking, going forward?

3101 Mr. Wood. No, I don't believe so, and I think that is key
3102 -- that rulemaking authority is preserved and the FCC isn't
3103 handcuffed in doing its job to implement the statute.

3104 Mr. Lujan. Yes or no -- is that true of the proposals
3105 introduced by my Republican colleagues?

3106 Mr. Wood. Again, I think they differ in some respects from
3107 each other. But no, it is not true, as a rule.

3108 Mr. Lujan. Let us put aside the legislation before us today.
3109 Do you think it would be reasonable for Democrats as part of
3110 free and open internet, meaning no blocking, no throttling, and
3111 no paid prioritization to trade codifying those provisions for
3112 a Federal Communications Commission without meaningful
3113 rulemaking authority, going forward?

3114 Mr. Wood. No, I don't believe that would be a wise trade.

3115 Mr. Lujan. Why not?

3116 Mr. Wood. Well, we talked about a lot of the things the
3117 FCC does outside of net neutrality under Title II. So the

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3118 Lifeline discussion with Mr. Cardenas and the rest of Universal
3119 Service was a good example of that.

3120 But then there are also these questions that the FCC was
3121 trying to answer and needs to be able to answer about whether
3122 or not discriminatory conduct is in fact unreasonable even if
3123 it doesn't fit neatly within one of the bright line rules.

3124 So we don't see that as a problem. In fact, we see that
3125 as necessary -- that the FCC had some residual authority as it
3126 is granted in Section 202 of the Communications Act to assess
3127 other kinds of unreasonable behavior even if they don't fit into
3128 the bright lines that this body may draw at some point in their
3129 future.

3130 Mr. Lujan. Those were very similar points that I raised
3131 during the 2015 hearings on this particular subject. There was
3132 either markup or hearings on legislation of interest by Republican
3133 colleagues and this was an area that I focused on from a rulemaking
3134 perspective.

3135 On another subject, can you also tell us why interconnection
3136 protections are so important?

3137 Mr. Wood. Sure. So what we have seen in the last half
3138 decade or so as occasionally or probably even more than
3139 occasionally but one especially well-documented period, millions
3140 of internet users were not getting the content that they had chosen
3141 to receive at the speeds that they deserved, and that wasn't
3142 because of congestion in the last mile, as it is sometimes called,

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3143 but congestion outside of the network that comes to your home
3144 -- the last mile of broadband network. And there were some
3145 disputes about what was causing that.

3146 We think the evidence shows that companies like Comcast,
3147 AT&T, and Verizon were choking off the flow of information at
3148 that point and then they demanded payments in some cases, struck
3149 deals with not just Netflix but also other kinds of carriers,
3150 and that resolved the situation at least to our knowledge.

3151 But we think there has to be some sort of oversight of that
3152 kind of behavior, and I think to your rulemaking point, too, this
3153 is exactly why we need it. You know, we have heard a lot about
3154 the FTC today and under context one of the things people note
3155 about the FTC is that it is not always able to do the best job
3156 it could do because it lacks rulemaking authority.

3157 So while we talk about granting rulemaking authority to the
3158 FTC at times, I think we have to remember we shouldn't take it
3159 away from this agency to address these kinds of new problems and
3160 new impacts on internet users, and that is why this bill is
3161 actually the right way to go to keep that residual substantive
3162 authority as well as the agency's discretion to implement it.

3163 Mr. Lujan. Commissioner McDowell, are interconnections
3164 important to small ISPs across America?

3165 Mr. McDowell. Absolutely. Interconnection is an
3166 important part. Interoperability as well as standards. All
3167 related.

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3168 Mr. Lujan. What are your thoughts with the importance of
3169 inclusion of interconnection protections to ensure that smaller
3170 ISPs are able to survive?

3171 Mr. McDowell. So what happened since the internet was
3172 privatized in the mid-1990s until the Title II order of 2015 is
3173 that you didn't have Title II governing that, right. So you had
3174 a thriving internet marketplace with ISPs, small WISPs, et cetera,
3175 even in New Mexico, without Title II.

3176 So why was that? Well, you had --

3177 Mr. Lujan. Well, being a former utility commissioner myself
3178 I can tell you that many of those ISPs had to go before the local
3179 utility commission and the committee -- the commission itself
3180 had to require some of those interconnection agreements be enforce
3181 because of the lack of rule of law.

3182 Mr. McDowell. Well, in that there were Title II common
3183 carrier transition components that they were either leasing or
3184 offering themselves. That is where the common carriage came in.
3185 That is where state jurisdiction came in -- mostly the Title
3186 II transition component of all that.

3187 But there is Section I and II of the Sherman Act, Section
3188 III of the Clayton Act, Section V of the Federal Trade Commission
3189 Act. All of that could help in that regard.

3190 Mr. Lujan. Okay.

3191 Mr. Chairman, I will be submitting a question to the record
3192 for Ms. Ochillo based on her profound testimony as well,

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3193 especially looking at comparison between New Mexico and New York
3194 and I very much appreciate where that testimony is going.

3195 So thank you, Mr. Chairman.

3196 Mr. Doyle. I thank the gentleman.

3197 The chair now requests unanimous consent to allow Mrs.
3198 McMorris Rodgers to waive onto the committee. Without objection,
3199 so ordered.

3200 And I now recognize her for five minutes to ask questions.

3201 Mrs. McMorris Rodgers. Thank you, Mr. Chairman. I
3202 appreciate you being willing to have me join you all today and
3203 I continue to seek a bipartisan solution to address this issue
3204 of net neutrality and I believe that there is bipartisan support
3205 for the bright lines for, you know, making clear no blocking,
3206 not throttling, nor paid prioritization.

3207 I am very disappointed to see the majority moving forward
3208 without really seeking a bipartisan solution. It is clear that
3209 this bill will not go anywhere in the Senate and if it is as dire
3210 as the other side continues to suggest, then I would -- I would
3211 implore this committee to come together in a bipartisan way.

3212 I believe that there is really an opportunity for us to come
3213 together and stop politicizing this issue. What we continue to
3214 see is a lot of rhetoric around net neutrality that has really
3215 been driven to a fever pitch.

3216 We see dire predictions as to the end of the internet. We
3217 saw threats against the chairman of the FCC and his family --

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3218 death threats -- as well as some of our own colleagues.

3219 And if it were truly the crisis that it is made out to be,
3220 I believe that there should be more willingness to solve it instead
3221 of moving ahead with a partisan approach.

3222 This bill is not going to pass the Senate. It is not going
3223 to be signed into law and it is not really intended to do that.

3224 It is apparent the goal is not about protecting consumers,
3225 innovation, and internet. It is about scoring political points.

3226 For those who say they want to save the internet, however,
3227 in the time since Title II was repealed, network speeds are up
3228 drastically. Investment in coverage in rural areas has
3229 increased.

3230 As we work to continue to close the digital divide we need
3231 to decrease barriers to deployment, not increase them. I agree
3232 we need to protect consumers. But we also need to do it in a
3233 way that does not leave underserved areas of our country behind.

3234 I represent a rural area of eastern Washington where we
3235 continue to have broadband needs and we need more deployment.

3236 Republicans for years have been offering to work with the
3237 Democrats to find an agreement only to be blocked and denied again
3238 and again.

3239 Earlier this year, Mr. Walden, Mr. Latta, and I introduced
3240 three separate reasonable solutions to protect consumers and
3241 ensure the internet remains free and open.

3242 My bill is based upon a law that passed in Washington State

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3243 with overwhelming bipartisan support, signed into law by Governor
3244 Jay Inslee. It gives the FCC clear authority to enforce the
3245 bright line rules of net neutrality -- no blocking, no throttling,
3246 no paid prioritization.

3247 It is a solution that does not institute changes to the
3248 internet that would stop innovation, stifle broadband deployment
3249 and leave millions of Americans behind.

3250 If my friends on the other side would like changes to my
3251 bill or others, we need to have that conversation. Let us work
3252 together. It is time to end the regulatory and legal confusion
3253 and bring certainty to consumers and the marketplace.

3254 We want to guarantee that the United States remains a leader
3255 of technological innovation that we have been the last 20 years.

3256 We want every American to have access to the internet and the
3257 economic and social and educational benefits that connection
3258 brings.

3259 We want to ensure that the next generation of networks
3260 originate here, ushering in a new era of technology that we can't
3261 even now imagine, and we should want to do it in a bipartisan
3262 way.

3263 As Senator Cantwell tweeted when the Washington State bill
3264 became law, quote, "In our state, Republicans and Democrats came
3265 together. Why can't we see this same bipartisanship in the U.S.
3266 House?"

3267 And I would like unanimous consent to enter into the record

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3268 various tweets of support from Republicans and Democrats for the
3269 Washington State law.

3270 Mr. Doyle. Without objection, so ordered.

3271 [The information follows:]

3272

3273 *****COMMITTEE INSERT 11*****

3274 Mrs. McMorris Rodgers. Mr. McDowell, can you speak to the
3275 bipartisan consensus you saw around the issue, both at the
3276 Commission and here in Congress prior to Wheeler's FCC move to
3277 reclassify broadband under Title II in 2015?

3278 Mr. McDowell. Sure. In 2005, which was about a year before
3279 I got to the FCC under Chairman Powell, there was unanimous
3280 bipartisan adoption of the internet freedom principles -- the
3281 consumer kind of bill of rights for the internet, if you will,
3282 and I think that is what could be the starting point.

3283 Subsequent to that, though, you had bipartisan and unanimous
3284 votes after the Brand X decision, which was in June of 2005 --
3285 the Supreme Court decision -- making sure that it was clear that
3286 cable modem and broadband over power line and DSL and wireless
3287 broadband -- all of those were properly classified under Title
3288 I and those were unanimous and bipartisan through the year of
3289 2007.

3290 But I think what we have seen today and in other discussions
3291 is -- you know, no anti-competitive conduct that involves
3292 throttling and blocking and prioritization that is
3293 anti-competitive, et cetera, I think those are great starting
3294 points forward. You could have an overwhelming bipartisan
3295 majority of both Houses.

3296 Mrs. McMorris Rodgers. Great. Okay. Thank you.

3297 I will yield back and just urge again that we come together
3298 and do this in a bipartisan way.

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3299 Mr. Doyle. I thank the gentlelady.

3300 Let me just say a few things. If the minority desires a
3301 bipartisan approach and wants to work with the majority, they
3302 should let us know about that. I got no phone call from the chair
3303 or the ranking member of the subcommittee that they were
3304 interested in sitting down to discuss this.

3305 What we got instead was three bills that were dropped without
3306 our knowledge, without us being informed in advance that you were
3307 going to do that, and then we got a letter that we didn't know
3308 was coming also on it.

3309 I would suggest a better approach would be to sit down and
3310 talk with us before you drop bills. I know that after being in
3311 the majority for so long it might be difficult for some of my
3312 friends to recognize that they are not anymore and that the proper
3313 approach would be to talk to us before you drop bills.

3314 Let me say a couple other things, too. This has been tried
3315 a long time. We talk about the ping pong that has gone on, and
3316 it has. But, you know, when this was tried by the FCC under Title
3317 I back initially in 2005, eventually Comcast -- it was done as
3318 not a rule but as a set of principles.

3319 But when it was put in real form Comcast sued and the
3320 Commission lost. In 2010, once again, when the Commission tried
3321 to do net neutrality rules under Title I, Verizon sued and the
3322 Commission lost.

3323 Under 215, Chairman Wheeler again put net neutrality rules

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3324 that were anchored under Title II and it survived two challenges
3325 in court. That is where we are today.

3326 What are Democrats doing with this bill? We are stepping
3327 towards our colleagues -- our colleagues and people in the
3328 industry express concern that Title II with all its regulations,
3329 some which have no applicability to today's internet and the over
3330 27 sections and 700 regulations, even though Commissioner Wheeler
3331 had forbearance on them that a future FCC commissioner could
3332 unforbear, and that caused them great concern.

3333 So what we have done to address those concerns and step
3334 towards our colleagues is to codify the 2015 Open Internet Order,
3335 which also codifies the forbearance, which means those 700
3336 regulations in 27 sections are no longer applicable, and while
3337 my good friend, Mr. McDowell, says attorneys can file lawsuits,
3338 well, that is what attorneys do and on matter what bill was put
3339 forward that could happen.

3340 So this was a good faith effort to move in their direction.

3341 I would remind my colleagues that in the Senate for the CRA 52
3342 members voted for the CRA in the Senate and that was before we
3343 have codified forbearance, basically eliminating 700 regulations
3344 and sections under Title II.

3345 So we are trying to work in a new way to put out a bill that
3346 recognizes some of the concerns we have heard from the minority
3347 and from some of those people in the industry and we are going
3348 to continue to move forward in regular order.

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3349 We have had our hearing today. We intend to put this through
3350 a subcommittee markup and then a full committee markup. The
3351 minority will certainly have opportunities at that time to express
3352 their opinions and their amendments and we look forward to that.

3353 To the extent that they want to talk to us in advance about
3354 things we may be able to work on together, I would recommend that
3355 would be a good course of action.

3356 So with that, I am going to ask unanimous consent to enter
3357 the following documents into the record: Number one, an opening
3358 statement from Representative Eshoo, an editorial from the
3359 Houston Chronicle, an op-ed from The Hill, an L.A. Times
3360 editorial, a letter from Alvanza, a blog from Alvanza, statement
3361 from CITA, a statement from the NCTA, U.S. Telecom blog, tweet
3362 from Rick Boucher, Bloomberg article, Politico Pro article,
3363 Washington Post editorial, The Hill editorial, East Oregonian
3364 op-ed by Joseph Franel, Multi Channel article, letter from Tech
3365 Freedom to Chairman Doyle and Ranking Member Latta.

3366 Is that everything? Without objection, so ordered.

3367 [The information follows:]

3368

3369 *****COMMITTEE INSERT 12*****

3370 Mr. Doyle. I want to now thank the witnesses for their
3371 participation in today's hearing. We appreciate your testimony
3372 and we appreciate how patiently you have sat there and answered
3373 every question that was thrown at you, and it has been very helpful
3374 to this committee.

3375 I want to remind members that pursuant to our committee rules
3376 they have 10 business days to submit additional questions for
3377 the record to be answered by the witnesses who have appeared and
3378 I would ask each witness to respond promptly to any such questions
3379 that you may receive.

3380 At this time, the subcommittee is adjourned.

3381 [Whereupon, at 1:49 p.m., the committee was adjourned.]