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4 MARKUP ON H.R. 2576, TSCA MODERNIZATION ACT OF 2015; AND

5 H.R. 2583, FEDERAL COMMUNICATIONS COMMISSION PROCESS REFORM

6 ACT OF 2015

7 WEDNESDAY, JUNE 3, 2015

8 House of Representatives,

9 Committee on Energy and Commerce

10 Washington, D.C.

11 The Committee met, pursuant to call, at 10:09 a.m., in
12 Room 2123 of the Rayburn House Office Building, Hon. Fred
13 Upton [Chairman of the Committee] presiding.

14 Members present: Representatives Upton, Barton,
15 Whitfield, Shimkus, Pitts, Walden, Murphy, Burgess,
16 Blackburn, Latta, McMorris Rodgers, Harper, Lance, Guthrie,
17 Olson, McKinley, Pompeo, Kinzinger, Griffith, Bilirakis,
18 Johnson, Long, Ellmers, Bucshon, Flores, Brooks, Mullin,

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19 Hudson, Collins, Cramer, Pallone, Eshoo, Engel, Green,
20 DeGette, Capps, Doyle, Schakowsky, Butterfield, Matsui,
21 Castor, Sarbanes, McNerney, Welch, Lujan, Tonko, Yarmuth,
22 Clarke, Loeb sack, Schrader, Kennedy, and Cardenas.

23 Staff present: Gary Andres, Staff Director; Will
24 Batson, Legislative Clerk; Ray Baum, Senior Policy Advisor
25 for Communications and Technology; Leighton Brown, Press
26 Assistant; Karen Christian, General Counsel; Andy Duberstein,
27 Deputy Press Secretary; Gene Fullano, Detailee, Telecom;
28 Kelsey Guyselman, Counsel, Telecom; Brittany Havens,
29 Oversight Associate, Oversight and Investigations; Peter
30 Kielty, Deputy General Counsel; Grace Koh, Counsel, Telecom;
31 Tim Pataki, Professional Staff Member; Graham Pittman,
32 Legislative Clerk; David Redl, Counsel, Telecom; Chris
33 Sarley, Policy Coordinator, Environment and Economy;
34 Charlotte Savercool, Legislative Clerk; Jessica Wilkerson,
35 Oversight Associate, Oversight and Investigations; Jen
36 Berenholz, Democratic Chief Clerk; Christine Brennan,
37 Democratic Press Secretary; Jeff Carroll, Democratic Staff
38 Director; Jacqueline Cohen, Democratic Senior Counsel;
39 Elizabeth Ertel, Democratic Deputy Clerk; David Goldman,
40 Democratic Chief Counsel, Communications and Technology;
41 Tiffany Guarascio, Democratic Deputy Staff Director and Chief

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42 Health Advisor; Caitlin Haberman, Democratic Professional
43 Staff Member; Ashley Jones, Democratic Director of
44 Communications, Member Services, and Outreach; Rick Kessler,
45 Democratic Senior Advisor, and Staff Director, Energy and
46 Environment; Lori Maarbjerg, Democratic FCC Detailee;
47 Margaret McCarthy, Democratic Senior Professional Staff
48 Member; Tim Robinson, Democratic Chief Counsel; Ryan Schmit,
49 Democratic EPA Detailee; and Ryan Skukowski, Democratic
50 Policy Analyst.

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51 H.R. 2576

52 10:09 a.m.

53 The {Chairman.} The committee will come to order. At

54 the conclusion of opening statements yesterday, the Chair

55 called up H.R. 2576, TSCA Modernization Act of 2015, and the

56 bill was open for amendment at any point. And before I ask

57 if there are bipartisan amendments to the bill, I am just

58 going to strike the last word for a minute or two. And I

59 just want to extend my thanks and my gratitude to players on

60 both sides of the aisle, particularly Mr. Tonko and Mr.

61 Pallone and certainly Mr. Shimkus on our side getting a bill

62 that we could see pass with a very, very strong vote when we

63 finish.

64 This has been in the works--we haven't modernized this

65 in literally 40 years. We thought we were coming close in

66 the last Congress, and I decided with Mr. Shimkus and others,

67 that though we could pass a bill, it would be pretty much

68 along party lines. We could pass it on the House Floor, but

69 we probably wouldn't see it go through the Senate and we

70 would have wasted a lot of really hard work. And we came to

71 the conclusion last summer that it would be better to wait.

72 Time would help us, and thanks to the good work, particular

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73 on the Democratic side of the aisle and our great staff, we
74 were able to put together I think a very strong bipartisan
75 bill that has great opportunity of working with the Senate.
76 I look at our friends, Tom Udall and Jim Inhofe over there,
77 and it looks very much that we will get a bill pretty close
78 to the President's desk. It looks a lot like what we are
79 going to be doing here in Full Committee and work with the
80 Senate to get a bill done. And it is a great accomplishment
81 for something that really deserves a lot of attention.

82 And I can say as a Midwesterner, as I look at my friends
83 in New Jersey, I look at Mr. Lance. I certainly look at Mr.
84 Pallone. This means a lot to States with heavy chemical
85 industry in their States. I look to the South as well, Mr.
86 Scalise and others, and I can name a lot of members here.
87 But it is I think a real fine accomplishment that we came
88 together on a bill that could have a similar vote to what we
89 did with the Cures Act 2 weeks ago.

90 So I just want to say thank you.

91 Mr. {Pallone.} Would the gentleman yield?

92 The {Chairman.} I yield to the--

93 Mr. {Pallone.} I just wanted to echo what you said. If
94 anybody had told me, you know, a year or two ago or even 6
95 months ago that we could have come up with a strong

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96 compromise bill, I would have said, you know, that wasn't
97 very likely. But I do think that it is because of you, Mr.
98 Shimkus, the staff, Mr. Tonko, so many people that we have
99 been able to work this out. And it is a strong compromise
100 bill that will empower EPA and better protect the American
101 public which is so important to so many of us. I mention New
102 Jersey in particular. And again, I think it is an example as
103 with 21st Century Cures of how this committee can work
104 together and produce bipartisan legislation that, you know,
105 ultimately becomes law, which is really the only purpose in
106 my opinion of our being here. So I just want to say that I
107 fully support the bill, and I appreciate the process that got
108 us here. Thank you.

109 The {Chairman.} Thank you. Reclaiming my time which
110 never started, I will now ask if there are any bipartisan
111 amendments to the bill.

112 Mr. {Shimkus.} Mr. Chairman?

113 The {Chairman.} I am looking. Yes, Mr. Shimkus.

114 Mr. {Shimkus.} I have an amendment at the desk.

115 The {Chairman.} Is it a bipartisan amendment?

116 Mr. {Shimkus.} Bipartisan. I believe it is.

117 The {Chairman.} The Clerk will report the title of the
118 amendment.

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119 The {Clerk.} Amendment to H.R. 2576 offered by Mr.

120 Shimkus.

121 [The amendment of Mr. Shimkus follows:]

122 ***** INSERT 1 *****

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123 The {Chairman.} And without objection, the amendment
124 will be considered as read. The staff will distribute the
125 amendment, and the gentleman is recognized for 5 minutes in
126 support of his amendment.

127 Mr. {Shimkus.} Thank you, Mr. Chairman. This is just a
128 tactical and conforming amendment. It is agreed upon by the
129 majority and minority staff with some input from the EPA.
130 These should be non-controversial, and I ask my colleagues to
131 support it. And with that I yield back my time.

132 The {Chairman.} The gentleman yields back. Other
133 members wishing to speak on the amendment?

134 Mr. {Pallone.} I would just if I could strike the last
135 word and say that yes, this is a technical amendment, and we
136 do support it.

137 The {Chairman.} And the gentleman yields back. Time is
138 expired.

139 All those in favor of the amendment offered by the
140 gentleman from Illinois please say yes.

141 Those opposed say no.

142 In the opinion of the chair, the ayes have it. The ayes
143 have it. The amendment is agreed to.

144 Are there other amendments to the bill? The gentlelady

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145 from California has an amendment at the desk.

146 Ms. {Eshoo.} Thank you. Mr. Chairman, I have an
147 amendment at the desk.

148 The {Chairman.} And the clerk will report the title.

149 The {Clerk.} Amendment to H.R. 2576 offered by Ms.
150 Eshoo.

151 [The amendment of Ms. Eshoo follows:]

152 ***** INSERT 2 *****

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153 The {Chairman.} And the amendment will be considered as
154 read, and the gentlelady is recognized for 5 minutes as the
155 staff distributes the amendment.

156 Ms. {Eshoo.} Thank you, Mr. Chairman. I think that
157 this bill is going to go a long way toward improving our
158 broken federal regulation of toxic chemicals, but I think it
159 needs to be clarified with respect to its impact on State
160 laws.

161 In 1986, California voters passed a landmark Proposition
162 65 to require the listing and the labeling of toxic
163 chemicals. Prop 65 has increased public awareness of toxic
164 chemicals and has motivated many companies to reduce or
165 eliminate these chemicals from their products. Other states
166 have also passed important toxic chemical regulations
167 including New York's ban of BPA in children's products, North
168 Carolina's ban on mercury in schools, Maryland's ban on
169 cadmium in children's jewelry, and Vermont's ban on toxic
170 flame retardants.

171 In the absence of effective federal regulation, these
172 State laws have provided critical protections against toxic
173 chemicals and should be preserved to every extent possible.
174 My amendment would make two minor changes to the savings

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175 provision of the bill based on the recommendations of 12
176 State Attorneys General that have written to our committee,
177 and I believe it was last week that the committee received
178 their letter.

179 This would clarify the savings provision to prevent
180 litigation over vague terms and ensure that it achieves its
181 intended purpose of protecting State laws and certainly Prop
182 65.

183 First, my amendment would clarify the circumstances when
184 an existing State law will be preempted by the bill. Under
185 the current bill, an existing State law is preempted if it
186 ``actually conflicts'' with a federal determination. To
187 eliminate the need for litigation over this undefined term,
188 my amendment would clarify that preemption only occurs when
189 it is impossible to comply with both State and federal laws.
190 For example, if an existing State law sets a limit for a
191 chemical at 1 percent and the EPA sets a limit of 5 percent,
192 under my amendment the State law would not be preempted
193 because it is possible to comply with both standards.

194 Secondly, my amendment would clarify that the bill
195 allows States to continue to enforce their existing State
196 laws unless preempted under the limited circumstances I just
197 described. The underlying bill grandfathers any State action

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198 taken prior to August 1 of this year. As pointed out by the
199 Attorneys General in their letter, this could be interpreted
200 narrowly to only protect ongoing enforcement actions taken
201 prior to that date rather than prior regulatory or
202 legislative actions. This would mean that only active
203 enforcement cases pending on August 1, 2015, would be saved
204 and no future enforcement of State law could be performed.

205 So my amendment would ensure that California and the
206 other States mentioned can continue to enforce their strong
207 State laws unless it is impossible for the parties to comply
208 with both the State and federal standard.

209 Again, Mr. Chairman, I commend my colleagues for putting
210 this important bill forward and for including the savings
211 provision to protect certain State regulation of toxic
212 chemicals. I agree with the 12 Attorneys General that wrote
213 to the committee that this provision needs to be clarified,
214 and that is why I am offering this amendment and urge members
215 to support it. In particular, obviously the members of this
216 committee that are part of the State delegations listed on
217 the Attorneys General letter, and they include Massachusetts,
218 New York, Iowa, Oregon, Maryland, Vermont, and Washington
219 State to take note of their Attorneys General that have
220 written to us.

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221 So thank you, Mr. Chairman, and I yield back the balance
222 of my time unless someone else would like the 26 seconds.
223 Yield back.

224 Mr. {Pallone.} Mr. Chairman, if I could strike the last
225 word?

226 The {Chairman.} Gentleman is recognized for 5 minutes.

227 Mr. {Pallone.} I just wanted to say that the issue that
228 Ms. Eshoo raises is very important. We have heard from the
229 State AGs in these States. There are probably others that
230 have similar concerns. And it is an issue that we need to
231 address, you know, before the bill goes to the Floor,
232 particularly if we are going to have, you know, bipartisan
233 support for the bill when it goes to the Floor which I know
234 is so important to all of us.

235 I don't think we really have time to deal with it today,
236 and I would rather move the bill forward and not have this
237 amendment voted on. But I do want to stress that it is
238 something that needs to be addressed because if it isn't
239 addressed in some fashion, we will get significant opposition
240 to the bill.

241 So I was going to ask--I mean, obviously, I would like
242 to have more discussion, but I was hoping that we could have
243 the discussion and then, you know, get some response from

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244 you, Mr. Chairman, and then see if it is possible to not
245 actually vote on this today because--but I do want to stress
246 how important it is if we are going to continue to have
247 bipartisan support for the bill when it moves to the Floor.

248 The {Chairman.} Does the gentleman--

249 Mr. {Pallone.} I will yield to you or however.

250 The {Chairman.} Why don't I take 5 minutes and let me
251 first yield to Mr. Shimkus?

252 Mr. {Pallone.} Sure.

253 Mr. {Shimkus.} Thank you, Mr. Chairman. I appreciate
254 my friend. We work closely together on my many issues,
255 Congresswoman Eshoo, for her friendship and her work ethic
256 which I know is strong, and I know California is viewed as a
257 national leader on many issues. And many times it deserves
258 that credit for being a national leader.

259 But I would be careful about pushing, that we did the
260 savings clause with the focus on making sure we were
261 receptive to California concerns. What has brought us
262 together here is 4 decades of a flawed law.

263 Ms. {Eshoo.} Um-hum.

264 Mr. {Shimkus.} And we think we have got it balanced
265 where we can move it with a pretty good majority vote. My
266 concern is that this pushes us over the limit and could

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267 really disrupt the bill as it moves forward not for your side
268 but for our side because, you know, what we have tried to do
269 in the bill is say once the EPA makes a final judgment on a
270 chemical but prior to that, the States can be involved and
271 the States can be engaged. But once they make a final ruling
272 of what a chemical a company can use and how it can be used
273 and how it should be in commerce, then there is State
274 preemption, and that really just falls to the constitutional
275 principles under the Interstate Commerce Clause which there
276 is always that fight, right? States' rights versus
277 interstate commerce. But that is kind of why we haven't
278 entertained Commerce Committee.

279 I would just look forward to having further discussions,
280 but I would just caution that push too far, this gets
281 disrupted and we will come back here in the next Congress and
282 try again.

283 Mr. {Pallone.} Will the gentleman yield?

284 The {Chairman.} Let me just reclaim my time and I will
285 yield to you in a second. You know, this bill has not been
286 quite as hard as balancing basketballs on each other as we
287 look at the time that we have taken. But it has been a
288 carefully crafted, honest discussion and bill that we have
289 today. We all know that preemption is a huge issue. We know

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290 that the Senate bill is fairly close to where the House bill
291 is. They have different language than we have in this bill,
292 and as I understand it, our bill is actually better under--

293 Mr. {Pallone.} Well, we always do everything better.

294 The {Chairman.} --California. No, no, no. I know. We
295 are always better. I know. But from the California
296 perspective, which generally supports fairly strong
297 preemption, our bill I think is closer to where that
298 California test is than the Senate bill. And as we expect
299 this bill to be on our House Floor before the month is out, I
300 am not sure that we can negotiate something different than
301 what we have now.

302 Saying that, the Senate is behind us. They are not too
303 far behind us. I expect that their bill could be up in July.
304 We are going to have a lot of discussions whether we go to
305 conference or, you know, whatever. I mean, this will be part
306 of that discussion, and I will just say for the record that
307 from my perspective, I don't want us to slip from the
308 California perspective further than where we are now, and if
309 we did slip, it would be away from California. But there may
310 be some things that we can do. We are open for that
311 discussion, but prior to having this bill on the House Floor,
312 my guess is that we are not going to come to some bipartisan

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313 agreement, ready for the floor. I don't know if the
314 gentleman--it is my time still.

315 Mr. {Pallone.} Let me just say if I could take the
316 last--

317 The {Chairman.} Yeah, let me just--

318 Mr. {Pallone.} --few minutes.

319 The {Chairman.} I will give you some time. I will ask,
320 do you want to comment on what I--

321 Mr. {Shimkus.} No, I am--

322 The {Chairman.} All right. I will yield back to my
323 friend.

324 Mr. {Pallone.} I just--well, first all, everything we
325 do is always better than the Senate--

326 The {Chairman.} I know.

327 Mr. {Pallone.} --needless to say. But look. I think
328 that we have done a good job so far when things come up of
329 trying to address them, even when they seem hopeless maybe.
330 This came up, you know, in the last, you know, few days, and
331 it needs to be addressed in some fashion. So all I am really
332 asking is that we have some sort of commitment over the next
333 few days or weeks to try to address this because again, I
334 think that on closer inspection, it may very well be that it
335 is something that we can address. So that is my only point

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336 is, you know, if we could at least agree that we are going to
337 try to address it between now and the floor.

338 The {Chairman.} Well, let me just say we will continue
339 to listen and have somewhat of an open mind.

340 Ms. {DeGette.} Mr. Chairman?

341 The {Chairman.} But I just don't know with the time
342 constraints if we could actually come up with something in
343 the next 2 weeks or so. But the discussions will continue,
344 particularly assuming that the Senate is going to move their
345 bill, and we will see where we are and, you know, what
346 happens.

347 Ms. {DeGette.} Mr. Chairman?

348 The {Chairman.} My time is now expired. So I will only
349 go to you this--gentlelady. I saw her hand first, the
350 gentlelady from Colorado.

351 Ms. {DeGette.} Move to strike the last word. Mr.
352 Chairman, this is the same issue that came up right before
353 the subcommittee markup, the issue of preemption of State
354 laws. And with the help of Mr. Shimkus, Mr. Tonko, and
355 everybody else and Mr. Green, we were able to negotiate some--
356 --it is a real concern that Ms. Eshoo raises about preemption
357 of State law. And part of the problem we have is even though
358 the language in the original bill before the markup in

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359 subcommittee attempted to not preempt State law, in
360 particular Prop 65 in California and other laws. There was
361 some concern about the drafting of the language.

362 And so actually we were able to come up with some
363 compromise language before the subcommittee hearing that
364 seemed to satisfy all parties. So as I look at this letter
365 from the AGs which I frankly have just seen, it seems to me
366 that their concern is the same essential concern that was
367 raised before the subcommittee hearing. And so I would think
368 that if we all sat down with Ms. Eshoo, the other
369 Californians and the other people who cared and also the AGs
370 and the trial lawyers and others to see if there was some way
371 that we could make the language more clear, I think it would
372 be in all of our interest and I think that we could--I think
373 it is worth looking at and I wouldn't be so pessimistic
374 about--

375 The {Chairman.} If the gentlelady would yield?

376 Ms. {DeGette.} I would be happy to.

377 The {Chairman.} We will be glad--

378 Ms. {DeGette.} Thank you.

379 The {Chairman.} We will be glad to set up meetings and
380 listen and just see if we can come to some agreement before
381 it comes to the Floor, but even if we are unable to do that,

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382 we will continue to work and listen and see what we might be
383 able to do.

384 Again, I want to compliment all the folks that worked
385 hard on where we are today.

386 Ms. {DeGette.} Okay. I yield the rest of my time to
387 Ms. Eshoo.

388 Ms. {Eshoo.} I thank the gentlewoman. Mr. Chairman, my
389 intent is not to blow this bill up at all. It just isn't. I
390 believe I started out by saying that this bill has gone a
391 long way toward improving our broken Federal Regulation of
392 Toxic Chemicals and thanked all the members that have been
393 involved in this. We really need to have a good, solid
394 federal law. You know, my record on preemption I think is
395 pretty strong. So it is not that I oppose that. I think
396 there is always a time and a place for it. I just want these
397 States to be able to be assured that their State laws, that
398 they can implement what they have. And I don't think we have
399 that far to go. These are large delegations, Mr. Chairman,
400 with a lot of votes. I mean, two of the largest States in
401 the Nation, California and New York. So there are a lot of
402 votes in these delegations which I think needs to be taken
403 into consideration in a very pragmatic way. And I want to
404 thank my friend, John Shimkus, for your good words and your

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405 excellent work on this. So when you take into consideration
406 the number of votes between California, Massachusetts, New
407 York, Iowa, Oregon, Maryland, Vermont, and Washington State,
408 you have got to take that into consideration, too.

409 So all I can say is that I will withdraw the amendment
410 with the understanding of what our ranking member has said,
411 and you know, I really don't think we have that much farther
412 to go. I don't think you want trouble from these delegations
413 when the bill is voted on because again, I think the country
414 needs a strong law relative to the regulation of toxic
415 chemicals. There are some 80,000 of them, and they threaten
416 the public's health, you know, across the country. So with
417 that, I don't know if anyone wants--do you want to reclaim
418 your time, Diana? No?

419 Ms. {DeGette.} If no one else wants it, I will yield
420 back.

421 Ms. {Eshoo.} Okay. Thank you. Thank you very much.

422 The {Chairman.} Are there other members wishing to
423 speak on the amendment? Seeing none, does the gentlelady
424 suggest to withdraw the amendment or is she going to proceed?
425 Gentlelady asks that her amendment be withdrawn. And I just
426 want to again emphasize we will continue to listen. We will.
427 We want to make the bill pass with a strong vote, and so

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428 certainly in the next couple weeks but even after the bill is
429 scheduled for the Floor, we will continue to work with all
430 sides, particularly with the Senate to get language that we
431 can support.

432 So are there further amendments to the bill? Seeing--
433 the gentlelady--I am sorry. The gentlelady from Colorado.

434 Ms. {DeGette.} Mr. Chairman, I just move to strike the
435 last word.

436 The {Chairman.} The gentlelady is recognized for 5
437 minutes.

438 Ms. {DeGette.} I just want to thank you, Mr. Shimkus,
439 Ranking Member Pallone, and Mr. Tonko for making this a
440 priority. A lot of us have been working on TSCA for a long
441 time, and all of the work from the last few years has paid
442 off. And I just want to commend you. I don't think the
443 American public realizes how bad the existing law is and how
444 vulnerable it leaves us all to chemicals linked to cancer,
445 developmental problems, and other issues.

446 It is long-past time that we update the law. As
447 everybody said, this is a true compromise. But I do want to
448 raise a couple of issues that I think we need to talk about
449 as we go forward. I don't have an amendment, but I think it
450 is important to put this in the record.

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451 We need to make sure the new law is going to equip EPA
452 to protect us from the toxic chemicals over the long term.
453 First of all, I am worried that the industry-driven
454 assessments under this bill could result in the EPA spending
455 too much time on reviews important to the industry at the
456 expense of time devoted to the chemicals of most danger to
457 public health. There needs to be a balance in the EPA's
458 workload.

459 Second, as I have talked to your staff and others about
460 this week, I remain concerned that the EPA testing authority
461 is unclear. Outside of the risk evaluations that will now be
462 directed specifically by law, EPA remains caught in a Catch-
463 22 where it is unable to require testing without evidence of
464 risk. That should be clarified, and I look forward to
465 working on report language that makes it clear that the EPA
466 will have the data it needs to determine whether or not to
467 initiate a risk evaluation.

468 And the third issue that really is an issue if there are
469 still problems with preemption because certainly if we have
470 States like California that have robust laws, we don't want
471 to preempt those laws.

472 So I really appreciate the hard work that has gone into
473 this bill and the dedication of everybody to fixing this

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474 badly broken chemical safety law. But we are ultimately
475 going to be judged by how well the law works in the next few
476 decades. And so I hope we can continue these discussions,
477 Mr. Chairman, to make sure that we have the most robust
478 legislation going forward, either when it comes to the Floor
479 in the next few weeks or as it moves forward to the Senate.

480 So you know, I know I speak on behalf of Mr. Green and
481 myself, Mr. Tonko, and others. This really has been a
482 collaborative effort, and I applaud all of you for carrying
483 it over the finish line. I yield to anybody who wants it or
484 I will yield back. I will yield to Ms. Clarke.

485 Ms. {Clarke.} I thank the gentlelady for yielding, and
486 I want to again thank Chairman Upton and Ranking Member
487 Pallone. While I am in support of the bipartisan bill, I
488 would like to raise for discussion, that is, my opinion that
489 this bill does not adequately address what I perceive to be
490 future issues concerning the disposal of toxic chemicals.
491 The EPA Administrator is not specifically directed to refer
492 to more stringent environmental protections mandated under
493 the Resource Conservation and Recovery Act, and this is
494 particularly troubling for communities of color and low-
495 income, vulnerable communities that rely on the EPA for
496 protection from lawless chemical dumping and inadequate

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497 cleanup and remediation should violations occur.

498 So I hope that we would take another look at that
499 because this has been an issue for many communities across
500 this Nation. With that, I yield back to the gentlelady.

501 The {Chairman.} Gentlelady yields back, and the chair
502 recognizes Mr. Schrader to strike the last word

503 Mr. {Schrader.} Thank you, Mr. Chairman. I want to
504 commend Chairman Shimkus and Ranking Member Tonko like
505 everybody else for all their hard work and the chair and
506 ranking member of the Full Committee, too, for bringing us
507 together on this bill. It is easy for me to support a bill
508 like this that has a huge bipartisan backing, and people have
509 worked in good faith together and agree to agree with what we
510 can agree on and leave some other stuff behind.

511 But in that regard there is a portion of the bill that
512 would fall under Section 8 I just would like to bring to
513 everyone's attention regarding the recycle byproducts. I
514 think it is important to have a regulatory environment that
515 incentivizes recycling and not taking some of this stuff to
516 the landfill. I have been working with my fellow colleague,
517 Congressman Johnson, on this issue and think there is a way
518 we can focus EPA's resources in a way that doesn't discourage
519 companies from doing the recycling here and provide for the

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520 human health and environment protections we want.

521 So I am not going to offer an amendment or anything like
522 that, just ask the chair and ranking member if they commit to
523 continue the dialogue, maybe get some strong reporting
524 language in the bill along these lines. And if I could, I
525 would like to yield the remaining of my time to Mr. Johnson.

526 Mr. {Johnson.} Well, I want to thank my colleague for
527 yielding, and it is a pleasure working with you on this very
528 important issue.

529 I would like to also express my support for including
530 strong language in the committee report for EPA to address
531 this issue. We must make certain that current requirements
532 are encouraging industry to recycle inorganic byproducts, not
533 incentivizing them to landfill them. Simply put, our
534 regulations should promote environmental protection and
535 economic prosperity, not discourage it. Inclusion of this
536 bipartisan language is common sense, especially when you
537 consider that inorganic byproducts were not even subject to
538 reporting for the first 30 years of the program because they
539 pose such a low risk.

540 Additionally, I would like to see language that
541 addresses EPA's partial reporting exemption petition process
542 for low current interest chemicals. Among other

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543 consideration factors, EPA's ability to apply a partial
544 reporting exemption to a chemical substance is contingent on
545 if the Agency believes it has enough information about the
546 chemical in question. However, there are cases in which the
547 EPA has insisted it does not have enough information from a
548 stakeholder petitioner without saying what more it needs.

549 For instance, I am aware of partial reporting exemption
550 petitions that have taken up to 8 years to be acted on and
551 denied without specifying what information it lacks. The
552 current requirement is for petitions to receive a response in
553 120 days. In my view, the EPA should be directed at a
554 minimum to provide a public notice and justification for any
555 delay in responding to a petition beyond 120 days.

556 So I am hopeful that both of these issues receive the
557 attention they deserve before the completion of this
558 legislation and look forward to continue working with the
559 chairman and the ranking member on these Section 8 issues.
560 And thanks again, Congressman Schrader, for letting me be a
561 part of this. Mr. Chairman, I yield back.

562 Mr. {Shimkus.} Would the gentleman from Oregon yield?
563 And just in response, I think we look forward to working with
564 you. As we have talked through this process, you heard of
565 our interest. Again, I think the folks in the room

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566 understand now how finely crafted and balanced this bill is,
567 and we are sorry we couldn't get it where you wanted it to
568 be. But I think we are going to commit to work on really
569 strong report language to try to address some of the concerns
570 that you and Congressman Johnson have raised, and we look
571 forward to working with you. With that, I yield back.

572 Mr. {Pallone.} Would the gentleman yield? I just want
573 to thank my colleague, Mr. Schrader, for raising this issue.
574 I think all members of the subcommittee have heard concerns
575 from regulated industries about how EPA has implemented
576 Section 8 of TSCA, and the committee has developed a very
577 strong record on the major statutory problems in TSCA. But
578 our record on Section 8 concerns us. The concerns also seem
579 to be on the implementation side, not in statute. So I
580 welcome Chairman Shimkus' willingness to explore the concerns
581 further, develop the record, and acknowledge the concerns
582 possibly in report language rather than legislative text.

583 This committee's oversight rule is very important and
584 will continue to be important if and when this bill becomes
585 law, and I look forward to working together to investigate
586 these concerns and any others that develop as EPA moves
587 forward with implementation. So again, I thank the gentleman
588 for yielding and yield back.

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589 The {Chairman.} Gentleman yields back. Other members
590 wishing to speak on the bill? Further amendments to the
591 bill? Seeing none, the question now occurs on favorably
592 reporting H.R. 2576 as amended to the House.

593 All those in favor say aye.

594 All those opposed say no.

595 In the opinion of the chair, the ayes have it. A roll
596 call vote is asked for. The Clerk will call the roll.

597 The {Clerk.} Mr. Barton?

598 [No response.]

599 The {Clerk.} Mr. Whitfield?

600 Mr. {Whitfield.} Aye.

601 The {Clerk.} Mr. Whitfield votes aye.

602 Mr. Shimkus?

603 Mr. {Shimkus.} Aye.

604 The {Clerk.} Mr. Shimkus votes aye.

605 Mr. Pitts?

606 [No response.]

607 The {Clerk.} Mr. Walden?

608 Mr. {Walden.} Aye.

609 The {Clerk.} Mr. Walden votes aye.

610 Mr. Murphy?

611 Mr. {Murphy.} Aye.

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612 The {Clerk.} Mr. Murphy votes aye.
613 Mr. Burgess?
614 Mr. {Burgess.} Aye.
615 The {Clerk.} Mr. Burgess votes aye.
616 Ms. Blackburn?
617 [No response.]
618 The {Clerk.} Mr. Scalise?
619 [No response.]
620 The {Clerk.} Mr. Latta?
621 Mr. {Latta.} Aye.
622 The {Clerk.} Mr. Latta votes aye.
623 Ms. McMorris Rodgers?
624 [No response.]
625 The {Clerk.} Mr. Harper?
626 Mr. {Harper.} Aye.
627 The {Clerk.} Mr. Harper votes aye.
628 Mr. Lance?
629 Mr. {Lance.} Aye.
630 The {Clerk.} Mr. Lance votes aye.
631 Mr. Guthrie?
632 Mr. {Guthrie.} Aye.
633 The {Clerk.} Mr. Guthrie votes aye.
634 Mr. Olson?

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635 Mr. {Olson.} Aye.

636 The {Clerk.} Mr. Olson votes aye.

637 Mr. McKinley?

638 Mr. {McKinley.} Aye.

639 The {Clerk.} Mr. McKinley votes aye.

640 Mr. Pompeo?

641 [No response.]

642 The {Clerk.} Mr. Kinzinger?

643 Mr. {Kinzinger.} Aye.

644 The {Clerk.} Mr. Kinzinger votes aye.

645 Mr. Griffith?

646 Mr. {Griffith.} Aye.

647 The {Clerk.} Mr. Griffith votes aye.

648 Mr. Bilirakis?

649 Mr. {Bilirakis.} Aye.

650 The {Clerk.} Mr. Bilirakis votes aye.

651 Mr. Johnson?

652 Mr. {Johnson.} Aye.

653 The {Clerk.} Mr. Johnson votes aye.

654 Mr. Long?

655 Mr. {Long.} Aye.

656 The {Clerk.} Mr. Long votes aye.

657 Mrs. Ellmers?

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658 [No response.]

659 The {Clerk.} Mr. Bucshon?

660 Mr. {Bucshon.} Aye.

661 The {Clerk.} Mr. Bucshon votes aye.

662 Mr. Flores?

663 The {Chairman.} Wait, the Clerk will suspend. Mrs.

664 Ellmers, I heard Mrs. Ellmers.

665 Mrs. {Ellmers.} Aye.

666 The {Clerk.} Mrs. Ellmers votes aye.

667 Mr. Flores?

668 [No response.]

669 The {Clerk.} Mrs. Brooks?

670 Mrs. {Brooks.} Aye.

671 The {Clerk.} Mrs. Brooks votes aye.

672 Mr. Mullin?

673 Mr. {Mullin.} Aye.

674 The {Clerk.} Mr. Mullin votes aye.

675 Mr. Hudson?

676 Mr. {Hudson.} Aye.

677 The {Clerk.} Mr. Hudson votes aye.

678 Mr. Collins?

679 Mr. {Collins.} Aye.

680 The {Clerk.} Mr. Collins votes aye.

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681 Mr. Cramer?

682 Mr. {Cramer.} Aye.

683 The {Clerk.} Mr. Cramer votes aye.

684 Mr. Pallone?

685 Mr. {Pallone.} Aye.

686 The {Clerk.} Mr. Pallone votes aye.

687 Mr. Rush?

688 [No response.]

689 The {Clerk.} Ms. Eshoo?

690 Ms. {Eshoo.} Abstain.

691 The {Clerk.} Okay. Ms. Eshoo abstains.

692 Mr. Engel?

693 Mr. {Engel.} Aye.

694 The {Clerk.} Mr. Engel votes aye.

695 Mr. Green?

696 Mr. {Green.} Aye.

697 The {Clerk.} Mr. Green votes aye.

698 Ms. DeGette?

699 Ms. {DeGette.} Aye.

700 The {Clerk.} Ms. DeGette votes aye.

701 Mrs. Capps?

702 Mrs. {Capps.} Aye.

703 The {Clerk.} Mrs. Capps votes aye.

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704 Mr. Doyle?

705 Mr. {Doyle.} Yes.

706 The {Clerk.} Mr. Doyle votes aye.

707 Ms. Schakowsky?

708 Ms. {Schakowsky.} Aye.

709 The {Clerk.} Ms. Schakowsky votes aye.

710 Mr. Butterfield?

711 Mr. {Butterfield.} Yes.

712 The {Clerk.} Mr. Butterfield votes aye.

713 Ms. Matsui?

714 Ms. {Matsui.} Aye.

715 The {Clerk.} Ms. Matsui votes aye.

716 Ms. Castor?

717 Ms. {Castor.} Aye.

718 The {Clerk.} Ms. Castor votes aye.

719 Mr. Sarbanes?

720 Mr. {Sarbanes.} Aye.

721 The {Clerk.} Mr. Sarbanes votes aye.

722 Mr. McNerney?

723 Mr. {McNerney.} Aye.

724 The {Clerk.} Mr. McNerney votes aye.

725 Mr. Welch?

726 Mr. {Welch.} Aye.

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727 The {Clerk.} Mr. Welch votes aye.

728 Mr. Lujan?

729 Mr. {Lujan.} Aye.

730 The {Clerk.} Mr. Lujan votes aye.

731 Mr. Tonko?

732 Mr. {Tonko.} Aye.

733 The {Clerk.} Mr. Tonko votes aye.

734 Mr. Yarmuth?

735 Mr. {Yarmuth.} Aye.

736 The {Clerk.} Mr. Yarmuth votes aye.

737 Ms. Clarke?

738 Ms. {Clarke.} Aye.

739 The {Clerk.} Ms. Clarke votes aye.

740 Mr. Loeb sack?

741 Mr. {Loeb sack.} Aye.

742 The {Clerk.} Mr. Loeb sack votes aye.

743 Mr. Schrader?

744 Mr. {Schrader.} Aye.

745 The {Clerk.} Mr. Schrader votes aye.

746 Mr. Kennedy?

747 Mr. {Kennedy.} Aye.

748 The {Clerk.} Mr. Kennedy votes aye.

749 Mr. Cardenas?

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750 Mr. {Cardenas.} Aye.

751 The {Clerk.} Mr. Cardenas votes aye.

752 Chairman Upton?

753 The {Chairman.} Votes aye.

754 The {Clerk.} Chairman Upton votes aye.

755 The {Chairman.} Other members wishing to cast their
756 vote? Mr. Pitts?

757 Mr. {Pitts.} Aye.

758 The {Clerk.} Mr. Pitts votes aye.

759 The {Chairman.} Mr. Flores?

760 Mr. {Flores.} Aye.

761 The {Clerk.} Mr. Flores votes aye.

762 The {Chairman.} Mr. Whitfield, did you vote? Other
763 members wishing to cast their vote? Mr. Butterfield, did you
764 vote? Did you--Mr. Butterfield recorded?

765 Other members wishing to cast a vote? Seeing none, the
766 Clerk will report the tally.

767 The {Clerk.} Mr. Chairman, on that vote there were 47
768 ayes and 1 abstain.

769 The {Chairman.} Forty-seven ayes, 1 abstention. The
770 bill is favorably reported, and technical changes will be
771 made.

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|

772 H.R. 2583

773 10:44 a.m.

774 The {Chairman.} The chair now calls up H.R. 2583 and
775 asks the Clerk to report.

776 The {Clerk.} H.R. 2583, to amend the Communications Act
777 of 1934 to provide for greater transparency and efficiency in
778 the procedures followed by the Federal Communications
779 Commission and for other purposes.

780 [The bill follows:]

781 ***** COMMITTEE INSERT *****

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|

782 The {Chairman.} Without objection, the first reading of
783 the bill is dispensed with, and the bill will be open for
784 amendment at any point. Are there any bipartisan amendments
785 to the bill? Seeing none, are there any amendments to the
786 bill? The gentlelady from California has an amendment at the
787 desk.

788 Ms. {Eshoo.} Thank you, Mr. Chairman. I do have an
789 amendment at the desk. It is DSUB1-02.

790 The {Clerk.} I am sorry, ma'am. I couldn't hear you.

791 Ms. {Eshoo.} I have an amendment at the desk. I
792 believe it is DSUB1-02.

793 The {Chairman.} The Clerk will report the title of the
794 amendment.

795 The {Clerk.} Amendment to H.R. 2583 offered by Mr.
796 Eshoo and Mr. Pallone.

797 [The amendment of Ms. Eshoo and Mr. Pallone follows:]

798 ***** INSERT 3 *****

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|

799 The {Chairman.} The amendment will be considered as
800 read. The staff will distribute the amendment, and the
801 gentlelady is recognized for 5 minutes in support.

802 Ms. {Eshoo.} Thank you, Mr. Chairman. Today I am
803 offering an amendment in the nature of a substitute which
804 preserves our areas of bipartisan agreement on FCC process
805 reform while excluding the provisions that would effectively
806 tie the FCC in knots. The proposals offered in this
807 amendment provide real transparency and accountability, not
808 regulatory uncertainty or the potential for legal challenges
809 on every Commission action.

810 The substitute amendment preserves the FCC Process
811 Reform Act with one exception. It ensures that
812 implementation of the FCC Collaboration Act will occur at the
813 same time as the other reforms included in the underlying
814 bill. During last month's subcommittee legislative hearing
815 and markup, not one substantive reason was given for delaying
816 this much-needed reform, and all of the committee's witnesses
817 supported its passage.

818 My amendment also includes three bills which passed the
819 subcommittee by voice vote on May 20. As Chairman Walden
820 described last month, Representative Loeb'sack's bill ``would

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821 allow the public to understand the up-to-now secret processes
822 of the Eighth Floor. This is the kind of transparency that
823 even the staff at the FCC will appreciate.'

824 Collectively, these three bills will help the FCC to be
825 faster, more efficient, and transparent. A bipartisan vote
826 of the committee is a win for more a transparent and
827 accountable FCC, and I urge my colleagues to support the
828 Democratic substitute and reject any partisan amendments that
829 reduce the flexibility and efficiency of the FCC.

830 So in essence, this substitute amendment is a package of
831 all of the bipartisan bills that have been offered. And it
832 also eliminates the delay that has been placed in what is
833 really the Sunshine Law or Act. We have been working on this
834 now for 6 years, and you have been successful at delay. It
835 has been delayed for 6 years. So why put a delay in it now
836 again? Nothing has been offered that explains, you know, the
837 substance of why there should be a delay. All of the
838 Commissioners, Republicans and Democrats are for it.
839 Everyone that has testified has said the same thing.

840 And so I think that this is a win to move forward on a
841 bipartisan package. We both have different views of some of
842 the other things that are being offered, but I think that on
843 process reform we should move ahead with bipartisan package

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844 and get it done, and it will be a feather in everyone's cap.
845 And it would be healthy for the FCC because there is really
846 some meat on the bones in terms of the legislation that has
847 been offered on both sides of the aisle.

848 So with that, Mr. Chairman, unless someone would like
849 the rest of my time, I will yield back.

850 The {Chairman.} Gentlelady yields back.

851 Ms. {Eshoo.} I am sorry.

852 The {Chairman.} The gentlelady from New York--

853 Ms. {Eshoo.} The gentlelady from New York would like
854 the remainder of time.

855 Ms. {Clarke.} Thank you, Madam Ranking Member. Thank
856 you to the chairman. I would like to thank my colleagues for
857 offering this substitute amendment that combines the
858 amendments offered by Mr. Loeb sack, Mr. Matsui, and myself at
859 the subcommittee markup. These amendments were supported by
860 the subcommittee, and I ask that they be supported today at
861 the Full Committee markup.

862 The FCC oversees dynamic sectors that make up 1/6 of our
863 national economy. Consequently, it is important for the
864 Government to understand and act quickly to keep up with the
865 rapid innovation and shifts affecting these industries. The
866 substitute offered today is smart and only adds in the

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867 transparency of the FCC. I fully support this amendment, and
868 I ask my colleagues to do the same. With that, I yield back
869 to the gentlelady, Ms. Eshoo.

870 The {Chairman.} Gentlelady yields back. Other members
871 wishing to speak on the amendment? The gentleman from the
872 State of Oregon is recognized for 5 minutes.

873 Mr. {Walden.} I thank the chairman, and I thank my
874 colleague and ranking member on the subcommittee for bringing
875 these proposals forward, although I wish I was in a position
876 to support them. Actually, the three bills we discussed in
877 subcommittee and marked up, we actually had six, and
878 Republicans agreed to make the three the Democrats put
879 forward as bipartisan bills, they are good reforms, just as
880 we believe our bills are good reforms as well.

881 I would take a different view of characterizing what my
882 ranking member is proposing here as continuing a bipartisan
883 process because actually the underlying bill that she seeks
884 to change is the very bill that we passed in subcommittee,
885 Full Committee, and unanimously across the House Floor last
886 year and agreed to introduce intact this year until the day
887 before the markup when Ms. Eshoo decided she did not--she has
888 never liked the 1-year delay--I admit that, agree to that--
889 and decided to move the amendment. And that really did kind

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890 of alter the agreement that we had negotiated last session
891 and that I believe we had an agreement on this session as
892 well.

893 If we want to get into what the witnesses on the panels
894 testified, I would concur they did say that the 1-year delay
895 from their perspective was not necessary. I will get into
896 why I believe it is. But then they also--including the
897 Democrats' witnesses, supported adding in cost benefit
898 analysis. By the way, the President of the United States has
899 called for cost-benefit analysis to be used by agencies.
900 This agency happens to be an independent agency. So as the
901 executive order does not apply, but if the gentlelady would
902 like to agree with adding in cost benefits as every witness
903 testified, then we would be open to reconsidering the 1-year
904 delay.

905 The 1-year delay was put in there to give the FCC an
906 opportunity to comply with the rest of the legislation
907 designated to open up its process, allow the FCC to set
908 various timelines and deadlines, and meet certain
909 requirements. And if they did that, then they would have the
910 opportunity to get what they seek most out of this which is
911 the ability to talk in private about matters of importance to
912 the Commission. And so that is why we have a 1-year delay.

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913 We want them to actually comply with what Congress says. The
914 FCC is littered with requirements to comply with statutory
915 mandates that have gone unmet, and that is an issue that
916 bothers me greatly and should bother every member of this
917 committee, that this Commission and its predecessor
918 Commissions have not complied with statute.

919 So if they want this additional ability to meet in
920 private, then we think they should comply with the new
921 requirements to make their new processes more open and
922 public.

923 Now let me address the three Republican bills that we
924 would offer as amendment today. One of them simply says that
925 after the Federal Communications Commission votes on a rule,
926 that within 24 hours of doing so, the text of that rule would
927 be made available to the public. By the way, this is the
928 public's business we are talking about here. Our amendments
929 are right here. They have been filed 2 hours in advance.
930 Substitute amendments are filed 24 hours in advance I
931 believe. We notice our hearings within a certain timeline in
932 advance. We do our business in public. It is the public's
933 business, and so is the Federal Communications business
934 should be the public's business. They need to be more
935 transparent.

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936 So we say if you pass a rule, just make what you passed
937 public within 24 hours. You can do your explanations later,
938 but link it on your Web site. We say if you are going to
939 engage in matters on delegated authority to the employees as
940 opposed to the Commissioners, 48 hours ahead of that you
941 would make notice, again, a link to your Web site of
942 something you already produce that just says here is what we
943 are going to take up 48 hours from now in delegated
944 authority. That is onerous? Are you kidding me?

945 And then we say on rules for circulation 3 weeks in
946 advance which was when they already share them internally,
947 they make it public. We just went through this debate on net
948 neutrality, and these reforms are not about net neutrality,
949 but I think there is an example here that was reported in the
950 trade press of various public interests who wonder why they
951 affect the decision-making of the FCC which is their right
952 except they didn't know what the draft rules were going to
953 be. They didn't know what was to be considered.

954 Let me give you a prime example. On the issue of
955 interconnection, the Chairman of the Federal Communications
956 Commission, when he put forth this MPRM did not have
957 interconnection in it. He said publically I believe in July,
958 it would not be part of the order. And at the end of the

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959 day, guess what? It was there. So if you are affected by
960 this issue, you didn't know. In fact, you were told twice in
961 effect that that issue wasn't even on the table. And yet in
962 the end, it was in the rule. Is that really what my
963 colleagues want to embrace? Secrecy cloaked in star-chamber
964 activities driven by a single person at times regardless of
965 party who happens to chair the Commission? We can do better
966 than this. This legislation does. I reject my colleague's
967 amendment to the bill.

968 The {Chairman.} Gentleman's time has expired. Other
969 members wish to speak? Gentleman from New Jersey, recognized
970 for 5 minutes.

971 Mr. {Pallone.} Thank you, Mr. Chairman. I would yield
972 my time to Ms. Eshoo.

973 Ms. {Eshoo.} I appreciate the ranking member doing so.
974 Mr. Chairman, I want to set the record straight. There have
975 been reports suggesting that I pulled my support for the
976 underlying FCC Process Reform Bill because of the delay on
977 the Sunshine reform. It is simply not true. I have strongly
978 disagreed with the inclusion of an artificial delay.
979 Everyone knows that. It has been delayed for almost 3
980 Congresses now, and again, no one on the other side has ever
981 offered anything substantive about why it should be delayed.

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982 I don't know what the reason is. No one ever says what the
983 reason is.

984 Now the artificial delay of the FCC Collaboration Act is
985 something--yes. I don't agree with it. I think it should
986 move forward. But what I have offered is a compromise
987 approach to enhance transparency and accountability at the
988 FCC, and I have never wavered in that belief. Now, my
989 decision not to co-sponsor 2583 came when I was informed that
990 the majority would be offering its 3 partisan amendments at
991 today's markup. Now why would I cosponsor a bill that I know
992 will be reported out of the committee and sent to the House
993 Floor in a form that I can't support? So, you know, I think
994 it has just been--I think I have been absolutely clear on
995 that. Suggesting that I reneged on the deal made in the last
996 Congress I think is really disingenuous and inaccurate. The
997 subcommittee's passage of that bill by voice vote 2 weeks ago
998 demonstrated that the Democrats continue to support the
999 underlying bill while maintaining their objections to the 3
1000 Republican bills to have the effect of tying the FCC in
1001 knots.

1002 In the previous Congress, I did. I let it go for the
1003 good of the order so that it would keep moving. So we have a
1004 disagreement, and I still think that while we don't see eye

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1005 to eye on some of the bills that we can still move forward
1006 with a bipartisan package. Now to throw in, you know, cost-
1007 benefit analysis and equate that with something else and then
1008 the last Congress, I think it is just throwing a lot of sand
1009 in the gears. We are for reforms. Some of them we agree on,
1010 some of them we don't. But we do have consensus on a package
1011 of bipartisan bills, and my choice is that we move forward on
1012 that. So that is where I am. If colleagues would like to
1013 speak to this, I would be happy to yield the remainder of my
1014 time. Seeing none, yield.

1015 Mr. {Pallone.} I guess it is my time, so I will--

1016 Ms. {Eshoo.} It is your time.

1017 Mr. {Pallone.} I will yield back, Mr. Chairman.

1018 The {Chairman.} Gentleman yields back. Other members
1019 wishing to speak on the amendment in the nature of a
1020 substitute? Seeing none, the vote occurs on the Eshoo
1021 amendment.

1022 All those in favor will say aye.

1023 Those opposed say no.

1024 In the opinion of the chair, the noes have it.

1025 Ms. {Eshoo.} Recorded vote.

1026 The {Chairman.} Roll call vote is requested. The Clerk
1027 will call the roll.

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1028 The {Clerk.} Mr. Barton?

1029 [No response.]

1030 The {Clerk.} Mr. Whitfield?

1031 [No response.]

1032 The {Clerk.} Mr. Shimkus?

1033 [No response.]

1034 The {Clerk.} Mr. Pitts?

1035 [No response.]

1036 The {Clerk.} Mr. Walden?

1037 Mr. {Walden.} No.

1038 The {Clerk.} Mr. Walden votes no.

1039 Mr. Murphy?

1040 [No response.]

1041 The {Clerk.} Mr. Burgess?

1042 Mr. {Burgess.} No.

1043 The {Clerk.} Mr. Burgess votes no.

1044 Mrs. Blackburn?

1045 Mrs. {Blackburn.} No.

1046 The {Clerk.} Mrs. Blackburn votes no.

1047 Mr. Scalise?

1048 [No response.]

1049 The {Clerk.} Mr. Latta?

1050 Mr. {Latta.} No.

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

1051 The {Clerk.} Mr. Latta votes no.

1052 Mrs. McMorris Rodgers?

1053 Mrs. {McMorris Rodgers.} No.

1054 The {Clerk.} Mrs. McMorris Rodgers votes no.

1055 Mr. Harper?

1056 Mr. {Harper.} No.

1057 The {Clerk.} Mr. Harper votes no.

1058 Mr. Lance?

1059 Mr. {Lance.} No.

1060 The {Clerk.} Mr. Lance votes no.

1061 Mr. Guthrie?

1062 Mr. {Guthrie.} No.

1063 The {Clerk.} Mr. Guthrie votes no.

1064 Mr. Olson?

1065 Mr. {Olson.} No.

1066 The {Clerk.} Mr. Olson votes no.

1067 Mr. McKinley?

1068 Mr. {McKinley.} No.

1069 The {Clerk.} Mr. McKinley votes no.

1070 Mr. Pompeo?

1071 Mr. {Pompeo.} No.

1072 The {Clerk.} Mr. Pompeo votes no.

1073 Mr. Kinzinger?

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1074 Mr. {Kinzinger.} No.

1075 The {Clerk.} Mr. Kinzinger votes no.

1076 Mr. Griffith?

1077 Mr. {Griffith.} No.

1078 The {Clerk.} Mr. Griffith votes no.

1079 Mr. Bilirakis?

1080 Mr. {Bilirakis.} No.

1081 The {Clerk.} Mr. Bilirakis votes no.

1082 Mr. Johnson?

1083 Mr. {Johnson.} No.

1084 The {Clerk.} Mr. Johnson votes no.

1085 Mr. Long?

1086 [No response.]

1087 The {Clerk.} Mrs. Ellmers?

1088 Mrs. {Ellmers.} No.

1089 The {Clerk.} Mrs. Ellmers votes no.

1090 Mr. Bucshon?

1091 Mr. {Bucshon.} No.

1092 The {Clerk.} Mr. Bucshon votes no.

1093 Mr. Flores?

1094 [No response.]

1095 The {Clerk.} Mrs. Brooks?

1096 Mrs. {Brooks.} No.

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1097 The {Clerk.} Mrs. Brooks votes no.
1098 Mr. Mullin?
1099 Mr. {Mullin.} No.
1100 The {Clerk.} Mr. Mullin votes no.
1101 Mr. Hudson?
1102 Mr. {Hudson.} No.
1103 The {Clerk.} Mr. Hudson votes no.
1104 Mr. Collins?
1105 Mr. {Collins.} No.
1106 The {Clerk.} Mr. Collins votes no.
1107 Mr. Cramer?
1108 Mr. {Cramer.} No.
1109 The {Clerk.} Mr. Cramer votes no.
1110 Mr. Pallone?
1111 Mr. {Pallone.} Aye.
1112 The {Clerk.} Mr. Pallone votes aye.
1113 Mr. Rush?
1114 [No response.]
1115 The {Clerk.} Ms. Eshoo?
1116 Ms. {Eshoo.} Aye.
1117 The {Clerk.} Ms. Eshoo votes aye.
1118 Mr. Engel?
1119 Mr. {Engel.} Aye.

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1120 The {Clerk.} Mr. Engel votes aye.
1121 Mr. Green?
1122 Mr. {Green.} Aye.
1123 The {Clerk.} Mr. Green votes aye.
1124 Ms. DeGette?
1125 Ms. {DeGette.} Aye.
1126 The {Clerk.} Ms. DeGette votes aye.
1127 Mrs. Capps?
1128 Mrs. {Capps.} Aye.
1129 The {Clerk.} Mrs. Capps votes aye.
1130 Mr. Doyle?
1131 Mr. {Doyle.} Aye.
1132 The {Clerk.} Mr. Doyle votes aye.
1133 Ms. Schakowsky?
1134 Ms. {Schakowsky.} Aye.
1135 The {Clerk.} Ms. Schakowsky votes aye.
1136 Mr. Butterfield?
1137 Mr. {Butterfield.} Aye.
1138 The {Clerk.} Mr. Butterfield votes aye.
1139 Ms. Matsui?
1140 Ms. {Matsui.} Aye.
1141 The {Clerk.} Ms. Matsui votes aye.
1142 Ms. Castor?

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1143 Ms. {Castor.} Aye.

1144 The {Clerk.} Ms. Castor votes aye.

1145 Mr. Sarbanes?

1146 Mr. {Sarbanes.} Aye.

1147 The {Clerk.} Mr. Sarbanes votes aye.

1148 Mr. McNerney?

1149 Mr. {McNerney.} Aye.

1150 The {Clerk.} Mr. McNerney votes aye.

1151 Mr. Welch?

1152 Mr. {Welch.} Aye.

1153 The {Clerk.} Mr. Welch votes aye.

1154 Mr. Lujan?

1155 Mr. {Lujan.} Aye.

1156 The {Clerk.} Mr. Lujan votes aye.

1157 Mr. Tonko?

1158 Mr. {Tonko.} Aye.

1159 The {Clerk.} Mr. Tonko votes aye.

1160 Mr. Yarmuth?

1161 [No response.]

1162 The {Clerk.} Ms. Clarke?

1163 Ms. {Clarke.} Aye.

1164 The {Clerk.} Ms. Clarke votes aye.

1165 Mr. Loeb sack?

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1166 Mr. {Loebsack.} Aye.

1167 The {Clerk.} Mr. Loebsack votes aye.

1168 Mr. Schrader?

1169 [No response.]

1170 The {Clerk.} Mr. Kennedy?

1171 Mr. {Kennedy.} Aye.

1172 The {Clerk.} Mr. Kennedy votes aye.

1173 Mr. Cardenas?

1174 Mr. {Cardenas.} Aye.

1175 The {Clerk.} Mr. Cardenas votes aye.

1176 Chairman Upton?

1177 The {Chairman.} Votes no.

1178 The {Clerk.} Chairman Upton votes--

1179 The {Chairman.} Other members wishing to cast their

1180 vote? Mr. Shimkus?

1181 Mr. {Shimkus.} No.

1182 The {Clerk.} Mr. Shimkus votes no.

1183 The {Chairman.} Mr. Barton?

1184 Mr. {Barton.} No.

1185 The {Clerk.} Mr. Barton votes no.

1186 The {Chairman.} Dr. Murphy?

1187 Mr. {Murphy.} No.

1188 The {Clerk.} Dr. Murphy votes no.

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1189 The {Chairman.} Mr. Pitts?

1190 Mr. {Pitts.} No.

1191 The {Clerk.} Mr. Pitts votes no.

1192 The {Chairman.} Mr. Long?

1193 Mr. {Long.} No.

1194 The {Clerk.} Mr. Long votes no.

1195 The {Chairman.} Other members wishing to cast a vote?

1196 Seeing none, the Clerk will call the roll--or the Clerk will
1197 report the tally.

1198 The {Clerk.} Mr. Chairman, on that vote there were 20
1199 ayes and 28 nays.

1200 The {Chairman.} Twenty ayes, 28 nays. The amendment in
1201 the nature of a substitute is not agreed to.

1202 The chair would now call up an amendment under my name,
1203 but I would add Ms. Clarke, Matsui, and Loeb sack to the
1204 amendment. And the Clerk will report the title of the
1205 amendment.

1206 The {Clerk.} Amendment to H.R. 2583 offered by Mr.
1207 Upton, Ms. Clarke, Ms. Matsui, and Mr. Loeb sack.

1208 [The amendment of Mr. Upton, Ms. Clarke, Ms. Matsui, and
1209 Mr. Loeb sack follows:]

1210 ***** INSERT 4 *****

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|

1211 The {Chairman.} And the amendment will be considered as
1212 read, and I will recognize myself for 5 minutes in support of
1213 the amendment.

1214 I want to first congratulate or commend my three
1215 Democratic colleagues for their hard work on these
1216 amendments. We thought as this bill moved through the
1217 subcommittee that it would be a very good addition to the
1218 committee, and although we tweaked them just a bit perhaps, I
1219 am glad that they are still very supportive of what we are
1220 doing, and we think that it is a constructive addition to the
1221 amendment which was why I wanted to include these as part of
1222 the bill.

1223 These amendments add their thoughtful and productive
1224 ideas that further our commitment to create a better
1225 functioning, more transparent FCC to this important bill.
1226 Their efforts demonstrate that members on both sides of the
1227 aisle understand the importance of reforming an agency that
1228 significantly affects the lives of everyday Americans.

1229 Complicated, sometimes secret processes have served as a
1230 barrier to small businesses who just want a seat at the
1231 table. This amendment incorporates these provisions or the
1232 provisions offered by Representative Matsui that encourages

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1233 the Commission to engage with small businesses as well as
1234 recommend legislation so that we can do our job as lawmakers
1235 to make sure that small businesses are not shut out at the
1236 FCC proceedings.

1237 The amendment also requires the publication of any
1238 policies related to the functioning of the Commission itself.
1239 Even the soundest policies and procedures serve no purpose if
1240 they aren't clear for those affected, and clear publication
1241 of the FCC's internal rules as originally offered by
1242 Representative Loeb sack enhances understanding and promotes
1243 participation in the work of the Commission.

1244 Finally, this amendment includes provisions proposed by
1245 Representative Clarke that enhance the public's ability to
1246 review the Commission's progress on petitions, applications,
1247 and complaints by requiring the reporting of pending matters
1248 before the committee. Our goal is to spur the Commission to
1249 increase its efficiency in handling the public's interest,
1250 request for action. Transparency to the public furthers that
1251 goal. So these reforms do have an important place in this
1252 bill. I want to thank them for their hard work, and we were
1253 glad to include this and would urge my colleagues to support
1254 the amendment.

1255 Mr. {Walden.} Would the gentleman yield?

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1256 The {Chairman.} Would yield to the gentleman from
1257 Oregon.

1258 Mr. {Walden.} Yeah, I will make it quick. I, too, want
1259 to commend my colleagues on the other side of the aisle for
1260 bringing these forward. As you can see in a bipartisan way,
1261 not only did we support them in subcommittee, we worked with
1262 our colleagues to address some issues that had been brought
1263 to our attention in a bipartisan way and plan to include them
1264 in the underlying bill.

1265 I think also if you look at the new requirements that
1266 these three provisions put on the FCC, and some can make an
1267 argument that they actually exceed what we are requiring with
1268 the 3 pieces of legislation we will bring forward from our
1269 side of the aisle because I think in nearly every case the
1270 three Republican amendments that we will consider later
1271 simply require the FCC to link what they already produce to
1272 their Web site. And so for the most part, the documents are
1273 already there, and what they do is already done. We are just
1274 making it more public.

1275 And so I thank my colleagues on the other side of the
1276 aisle. I look forward to continue to working with them as
1277 together we try and improve the processes at the FCC and open
1278 it up and make it a more transparent public body. With that,

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1279 I yield back, Chairman.

1280 The {Chairman.} The gentleman yields back. Other
1281 members wishing to speak on the amendment? If not, a vote
1282 occurs on the amendment offered by the four members of the
1283 committee.

1284 Those in favor will aye.

1285 Those opposed say no.

1286 In the opinion of the chair, the ayes have it. The
1287 amendment is agreed to.

1288 Other further amendments to the bill? Mr. Sarbanes has
1289 an amendment to the bill. The Clerk will report the title.

1290 Mr. {Sarbanes.} The title is Yarmuth.

1291 The {Chairman.} Oh, I am sorry. Mr. Sarbanes is
1292 offering Mr. Yarmuth's amendment.

1293 Mr. {Sarbanes.} Yeah.

1294 The {Clerk.} Amendment to H.R. 2583 offered by Mr.
1295 Yarmuth, Mr. Pallone, Ms. Eshoo, Mr. Butterfield, Mr. Green,
1296 Ms. Matsui, Mr. Sarbanes, Mr. Welch, and Ms. Clarke.

1297 [The amendment of Mr. Yarmuth, Mr. Pallone, Ms. Eshoo,
1298 Mr. Butterfield, Mr. Green, Ms. Matsui, Mr. Sarbanes, Mr.
1299 Welch, and Ms. Clarke follows:]

1300 ***** INSERT 5 *****

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|

1301 The {Chairman.} The amendment will be considered as
1302 read, and the gentleman from Maryland is given 5 minutes to
1303 speak in support of the amendment.

1304 Mr. {Sarbanes.} Thank you, Mr. Chairman. I want to
1305 thank Mr. Yarmuth for authoring this important amendment. I
1306 appreciate the opportunity to present it to the committee.

1307 The topic of today's markup is all about transparency as
1308 you have heard from a number of members, but there is one
1309 area where transparency is seriously lacking right now, and
1310 that is with respect to the disclosure of political ad
1311 donors.

1312 Millions of dollars--we have seen this over the last few
1313 cycles--are being funneled into issue advertisements that are
1314 designed to sway the American public on specific candidates
1315 and on other important political issues. In fact, the amount
1316 of political spending by organizations that don't disclose
1317 their donors at all has grown tremendously. In 2006, these
1318 groups spent \$5.2 million. Within 6 years, in 2012, that had
1319 increased to \$300 million, and there are millions more spent
1320 on advertisements where we don't know who the donors are
1321 behind those advertisements.

1322 The FCC currently has the authority under the

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1323 Communications Act to require on-air disclosure of the ``true
1324 identity'' of the people and groups buying ads. But
1325 unfortunately today, mega donors hide behind innocuous and
1326 misleading titles of these groups that are sort of fronting
1327 these political advertisements. The amendment before us, the
1328 Yarmuth amendment, would require disclosure of the donors
1329 behind superPACs and 501(c)(4) organizations that are
1330 flooding the Nation's airwaves with anonymous ads. It
1331 directs the FCC to use the agency's existing authority I the
1332 Communications Act and update the sponsorship identification
1333 rules before the 2016 election season. In particular it
1334 would say that when somebody steps into the discussion of a
1335 political matter, a matter involving the discussion of a
1336 controversial issue of public importance, that announcement
1337 or advertisement shall include the names of significant
1338 donors that are behind that particular expenditure.

1339 Mr. Chairman, the average American out there is deeply,
1340 deeply cynical about politics these days, and a lot of it has
1341 to do with these hidden donors that are putting tremendous
1342 amounts of money behind these advertisements. It has led to
1343 the cynicism, this lack of faith, and Americans fundamentally
1344 just want to know who is behind these advertisements.

1345 If you think about it, when they go to a town hall to

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1346 talk or testify on a zoning ordinance or something they have
1347 to sign in. They have to put their name. They have to stand
1348 up and show who they are. But yet these people that are
1349 spending millions of dollars are completely hidden from
1350 public view.

1351 And if they are going to spend significantly, they ought
1352 to disclose who they are. They don't have to participate in
1353 the process. They don't have to step out and enter the
1354 political arena. But if they do it, they should indicate who
1355 they are. They should step forward and present who they are.
1356 Americans want to see this disclosure. They want to see this
1357 transparency, and it is important to do that if we are going
1358 to restore some faith. And no less a protector of our
1359 democracy than Mitch McConnell has talked at length about
1360 transparency and disclosure. He hasn't done it recently, but
1361 in 1997, Senator McConnell said, ``I think disclosure is the
1362 best disinfectant.''' I agree. He also said public
1363 disclosure of contributions and spending should be expedited
1364 so voters can judge for themselves what is appropriate.
1365 These are reforms which respect the Constitution and would
1366 enhance our democracy. And in 2001 he said what we ought to
1367 have is disclosure. I agree with that. We need disclosure.
1368 We need transparency. We need to know who these donors are

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1369 behind these commercials, these advertisements. If we do
1370 that, if we pass an amendment like this one which is a
1371 common-sense amendment, it will demonstrate that we have
1372 respect for the American people and perhaps begin to restore
1373 some faith and confidence in the political process which is
1374 sorely needed these days. And with that, I yield back my
1375 time and I urge this committee to adopt this Yarmuth
1376 amendment.

1377 The {Chairman.} The gentleman yields back. The
1378 gentleman from Oregon is recognized for 5 minutes.

1379 Mr. {Walden.} Thank you, Mr. Chairman, and I appreciate
1380 the gentleman's amendment and his discussion about
1381 transparency which we would like in this bill to first apply
1382 to the Federal Communications Commission itself which is the
1383 underlying issue here, not necessarily campaign finance
1384 reform. But since he has brought his amendment, I would like
1385 raise a few issues that I think are important for
1386 consideration.

1387 First of all, in the amendment, you do not determine who
1388 would decide what a controversial issue is of public
1389 importance. Ultimately it would fall on the individual
1390 broadcaster to make that decision we believe. It is not
1391 defined. It raises First Amendment issues and therefore

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1392 constitutional issues about how this would be applied, who
1393 would determine what a controversial issue is of public
1394 importance.

1395 Second, there is no definition of what the names of
1396 significant donors to the person means. And that is an
1397 issue. If you have a city council race where you raise
1398 \$10,000, \$1,000 from each person, then each person I would
1399 assume would be a significant donor. And therefore, within
1400 the disclaimer ad, you would have to list the names of all of
1401 those individuals. Now, you can imagine as you apply this on
1402 across larger races and up to congressional races and all
1403 that suddenly your ad wouldn't be long enough to list all the
1404 donors that someone might consider to be significant, and
1405 because significant is not defined, that is a problem.

1406 Now the other piece I would like to raise is certainly
1407 one, and while I am not a lawyer, I know many on the
1408 committee are, and that is the Loveday case from 1983 in the
1409 D.C. Circuit where this issue in part was addressed in terms
1410 of trying to figure out the true sponsor. And what the court
1411 said there was, and I will quote, even supposing a searching
1412 investigation to be a realistic possibility, the result of
1413 requiring it would be an administrative quagmire.

1414 Broadcasters differ greatly in their resources and personnel

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1415 ranging from large stations in suburban areas to small
1416 stations that often have no more than 1 person on the
1417 premises. Similarly, the sponsors whom they would have to
1418 investigate, may be large or small, nearby or geographically
1419 remote, cooperative, or recalcitrant. And as you may
1420 remember in the WJLA case, they basically rejected this as
1421 impossible to do.

1422 So I think while disclosure is a good thing--and I was
1423 in that business and we had to keep files, we had to
1424 disclose, the disclosure really takes place over in the
1425 Federal Elections Commission and other places, and if this is
1426 put on broadcasters, cable casters, others who would be under
1427 the FCC's regulation, it seems to by many measures present
1428 constitutional freedom of speech issues. It presents, as the
1429 court said, a quagmire of administrative issues and
1430 potentially could result in ads that would have nothing more
1431 than disclosure of sponsors' names which would really be
1432 meaningless.

1433 Beyond all that, the media world has changed. In 2016
1434 online political spending topped almost \$1 billion for the
1435 first time, surpassing newspapers, direct mail, and
1436 telemarketing. So what it would mean is you just shift the
1437 money somewhere else. Freedom of speech matters. Disclosure

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1438 matters. But I think this amendment is not well-perfected,
1439 and therefore, I would urge opposition and--

1440 Mr. {Sarbanes.} Gentleman yield?

1441 Mr. {Walden.} --restore the--sure.

1442 Mr. {Sarbanes.} I mean, I understand your concerns and
1443 the points that you have raised. I have a fair amount of
1444 confidence that the FCC, based on its experience in these
1445 matters of advertisement, would be able to come up with
1446 standards that are sensible to avoid the kind of
1447 administrative quagmire that you just referred to. And I
1448 think that public would probably respond to what you said by
1449 saying, well, let's try and do this and see if we can make
1450 progress with it. Let's--

1451 Mr. {Walden.} Reclaiming my time. This Loveday case
1452 was involving the Federal Communications Commission in 1983.
1453 So we have been down that path. And the D.C. Circuit came
1454 back and said this really is not workable in what was being
1455 proposed.

1456 There are other places where money is disclosed, as you
1457 know. There are other places where it is not disclosed as
1458 fully as you would like and others would like. But clearly
1459 this amendment as crafted presents both constitutional
1460 freedom of speech issues as well as creating undue burdens

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1461 that the court in Loveday has already said are a problem that
1462 likely could cause major additional problems.

1463 So with that, my time is expired.

1464 The {Chairman.} Gentleman's time has expired. The
1465 gentleman from Kentucky, Mr. Yarmuth, since it is his
1466 amendment. Let me just jump the others who had their hand
1467 up.

1468 Mr. {Yarmuth.} Thank you, Mr. Chairman. I move to
1469 strike the last word.

1470 The {Chairman.} Recognized.

1471 Mr. {Yarmuth.} First of all, let me thank Mr. Sarbanes
1472 for presenting this. I was sitting in the ranking chair in
1473 budget keeping the hearing going, so I appreciate that very
1474 much.

1475 When we talked about this in subcommittee, I know a lot
1476 of people on our side said if you are concerned about
1477 transparency as the Republicans' initiative would indicate,
1478 that we ought to be concerned about transparency as to
1479 campaigns. I thought about that a lot, and I said, you know,
1480 I intend to vote for the final measure here. I know a lot of
1481 my colleagues on our side won't because I think if we are
1482 asking you to take a more expansive look at transparency,
1483 that I ought to be willing to do that as well. So I intend

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1484 to do that.

1485 But I think what we have here is an opportunity to
1486 really change public attitudes about elections. And there
1487 was a poll released yesterday, New York Times poll, 75
1488 percent of Americans think that donors to these--people
1489 paying for these ads ought to be disclosed, equal numbers of
1490 Republicans and Democrats. There is no party divide in terms
1491 of the public as to what should be done. As a matter of
1492 fact, 72 percent of the people in the polls said we ought to
1493 be limiting contributions.

1494 So what we are suggesting now, what this amendment is
1495 suggests is do what the majority opinion in Citizens United
1496 suggested. Make sure that the public knows through full
1497 disclosure who is spending huge money to influence elections.
1498 And that was kind of the precondition. If you read the
1499 majority report, that is what they said makes that possible.
1500 If we are going to allow unlimited contributions, it is fine
1501 as long as the people know who is making them, whose money it
1502 is.

1503 That is what this amendment does. It basically says the
1504 FCC has the authority to require disclosure of any of these
1505 groups who are running ads on television, and they should use
1506 that authority to require disclosure. Again, broad support

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1507 among the American people. This is what the Citizens United
1508 decision suggested. Even my Senator, Mitch McConnell, over
1509 the years has said--and obviously he is not a champion of
1510 eliminating campaign contributions--but he has said until
1511 recently but going back 40 years that what makes this
1512 possible is complete, thorough disclosure. And that is what
1513 we ought to be doing. This is one mechanism the Federal
1514 Government has to make sure that the American people are
1515 fully informed about those who are trying to convince them,
1516 manipulate them, lobby them, whatever word you want to use.
1517 And I think it is very, very critical that again, we take
1518 this opportunity to help restore credibility of our elections
1519 with the American people, and I would urge my colleagues to
1520 support this amendment.

1521 Mr. {Pallone.} Will the gentleman yield?

1522 Mr. {Yarmuth.} I will yield to the ranking member, yes.

1523 Mr. {Pallone.} I just wanted to urge support for the
1524 Yarmuth-Sarbanes, Sarbanes-Yarmuth amendment and also commend
1525 both of you because I know that this isn't the only time that
1526 the two of you have been out there talking, you know,
1527 responding to Citizens United, talking about the need for
1528 transparency and disclosure. And I see no reason why this
1529 couldn't be included today with this FCC bill since again, it

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1530 is talking about the FCC and disclosure.

1531 I am a little concerned about the suggestion by Mr.
1532 Walden. I understand what he is saying but that somehow this
1533 is a violation of the First Amendment. It seems to me that,
1534 you know, any type of disclosure or limitation if you will
1535 that involves disclosure, if you want to even see it as a
1536 limitation, I don't see that violating the First Amendment.
1537 It seems to me that when you talk about free speech that
1538 those who are making the speeches shouldn't have--or you
1539 know, you exercising the right to free speech shouldn't be in
1540 any way worried about the fact that they have to acknowledge
1541 that they are doing it. So to me, this is the proper place
1542 really to have this kind of amendment introduced and added to
1543 the bill that we are moving today. And again, I can't say
1544 enough about how, you know, the way that money is corrupting
1545 the system, and I think one way of limiting that corruption,
1546 if you will, is by making people responsible for what ads
1547 they are putting up and what money they are spending. I
1548 don't see it in any way as an infringement on the First
1549 Amendment.

1550 Mr. {Walden.} Would the gentleman yield?

1551 Mr. {Pallone.} Well, it is not my time. I yield back
1552 the time that I--to the gentleman.

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1553 Mr. {Walden.} If you would, just on that point, it is
1554 not the speech itself. It is who it is that you would ask
1555 somebody to determine what is or is not a controversial issue
1556 or whatever the language was here. Controversial issue of
1557 public importance. That is where I think the constitutional
1558 question comes up is who determines that? Is it a small-
1559 market radio station out in rural Oregon or a TV station in
1560 New York City? That is where the burden would rest.

1561 The {Chairman.} The gentleman's time from Kentucky has
1562 expired. Other members wishing to speak on the amendment?
1563 The gentleman from Vermont is recognized.

1564 Mr. {Welch.} I appreciate this amendment, and I
1565 appreciate the comments that Mr. Walden made. There are
1566 constitutional issues. There are legal issues. There are
1567 practical issues. But I think all of us know, every single
1568 one of us in this committee and every single one of us in
1569 Congress knows that as much as we may have a relationship
1570 with the people in our district that we represent, people are
1571 just disgusted with this institution. It is not working.
1572 And money is a big problem, and there is not an easy solution
1573 to it. But the steady as she goes is not going to work.

1574 I mean, when you think about this Congress not even
1575 being able to pass the Transportation Bill, you know, it is

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1576 not on you, it is not on us. Really it is on all of us.
1577 Arguing about the details about how perfectly this is
1578 designed or what some of the practical issues are is just
1579 rearranging the deck chairs on the Titanic.

1580 So this is one opportunity for us to make a modest
1581 statement that we get it, that money is killing us. We look
1582 at our presidential candidates, and the first round of effort
1583 is to go to the billionaires that are going to support them.
1584 You know, there is a place for billionaires. They have been
1585 successful. But all of us know in our hearts that the poll
1586 numbers that the American people express their discontent
1587 with this institution have a real basis, and we have got to
1588 start responding to that somehow, some way, and we have got
1589 to do it together.

1590 So I see this amendment by Mr. Yarmuth and Mr. Sarbanes
1591 is at least a modest acknowledgment that we have got to try
1592 to address this problem that is I think corroding the
1593 institution that we represent and try to start taking steps
1594 towards taking money out of politics and putting people back
1595 into it.

1596 The {Chairman.} The gentleman yields back. Other
1597 members wishing to speak on the amendment? The gentelady
1598 from California first.

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1599 Ms. {Eshoo.} Thank you, Mr. Chairman. I want to thank
1600 Mr. Yarmuth for the work that he has done on this and to the
1601 members on this side of the aisle for the bills that they
1602 have offered. They have worked hard. They thought long and
1603 hard about it, and I think that their work is being
1604 recognized and I thank them for it.

1605 On this issue, you know, the operative word for the last
1606 several months has been transparency. Transparency. What
1607 does the word mean? It means that you can see through
1608 something, that everyone can see through it. We are not a
1609 private corporation. We are not a board of directors here.
1610 We are public officials representing the public collectively
1611 across the country.

1612 And within this institution are the tools of democracy.
1613 This isn't just about yin and yang. This strikes at the
1614 heart of democracy, and if those that are governed do not
1615 trust those that are governing, our country is in trouble.

1616 The reason we have the broadest, deepest markets in the
1617 world turns on the coin of the realm of confidence, of
1618 confidence that we are a safe place to invest. And yet the
1619 confidence of the American people does not ride with this
1620 institution. And it is for several reasons. And this
1621 subject is one of them.

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1622 Anyone that says we believe in transparency but not
1623 here, that is--I can't help but think of Shakespeare. Thou
1624 doth protest too much. This is wrong. We can't do this.
1625 The Constitution. The FCC. People won't know or they will
1626 know or it is cumbersome. You know what? That is on every
1627 piece of legislation. We always have to work hard at working
1628 out the details. That isn't anything new. We always have to
1629 work to make bills meet those high standards as we move
1630 along. This isn't the first time that we are challenged by
1631 this.

1632 But I think that the American people are on the right
1633 side of history on this and that is these unreported, unknown
1634 donors with unknown sums of money belong to a banana republic
1635 and not the United States of America and our system.

1636 So to upgrade this, we know (a) that the FCC has the
1637 authority to do so. Number two, that it would, it would help
1638 to regain the confidence that the American people should have
1639 in their elections. We send monitors all over the world to
1640 monitor other countries' elections to make sure that they are
1641 sound and democratic. Look at our own. It is not
1642 defensible. It simply is not defensible. This has nothing
1643 to do with the amounts of money. The FCC doesn't have any
1644 authority over that. This is simply the reporting and making

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1645 transparent and public who actually paid for the ad. Is that
1646 too much for our system to bear and then at the same time say
1647 we are for transparency for something else but we are not
1648 transparent when it comes to the essence of democracy? These
1649 ads are part of elections. Candidates spend more money on
1650 advertisements than they do on any other part of their
1651 campaign budget. The public knows this. The public is
1652 turned off by it, and we are saying as we are considering FCC
1653 reforms that this belongs in it.

1654 I think that my party is on the right side of history on
1655 this one. I think we are on the right side of history. I
1656 know we are on the side of the American people on this. That
1657 is abundantly clear.

1658 So I thank the gentleman for offering this. It is
1659 extraordinarily critical, and I yield back.

1660 The {Chairman.} The gentlelady's time has expired.
1661 Other members--gentleman from New Mexico.

1662 Mr. {Lujan.} Thank you very much, Mr. Chairman, and
1663 again, thank you, Mr. Yarmuth, for the work that he is doing
1664 here and Mr. Sarbanes for the attention that he always brings
1665 with the polls to the country. But what Mr. Yarmuth is doing
1666 is something that is pretty simple, and all it does is it
1667 ensures that every American knows who is really behind all

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1668 the ad spending during every election. It seems like common
1669 sense to me, right? We talk about making sure that everyone
1670 knows what is happening, real transparency.

1671 As we talk about a common-sense approach and something
1672 that should be embraced by the American people, and as Mr.
1673 Yarmuth pointed out, the New York Times article that covered
1674 a poll that showed 75 percent of the American people support
1675 significant reforms, to reporting, to transparency, to
1676 disclosure when it comes to money and campaigns. And what I
1677 don't understand is as this debate ensues, already anybody
1678 who donates more than \$200 to a single candidate, party, or
1679 PAC already has to disclose who they are, something that
1680 millions of Americans already do. And asking the FCC to list
1681 who is buying ad time to influence the election is somehow a
1682 heavy burden to reporting and to suggest that is not
1683 consistent with free speech? Well, the American people don't
1684 seem to agree. And if there is a concern with some of the
1685 definitions or the approach, this is a place that we should
1686 be able to work together because in the end, this can be
1687 listed on the FCC's Web site as the legislation is asking
1688 for, and the last time that I checked if you go to a--

1689 Mr. {Walden.} Would the gentleman yield?

1690 Mr. {Lujan.} I will in a moment.

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1691 Mr. {Walden.} That is not what the amendment does.

1692 Mr. {Lujan.} Well, I think as we talk about this, Mr.
1693 Chairman, there might be a way for us to work through this if
1694 there is agreement to maybe address this in a different
1695 fashion as we go to the Floor. But the last time that I
1696 checked--and if you go to a local radio station or if you go
1697 to a local broadcaster, they have information there that says
1698 who bought the TV time, right? You can go check who bought
1699 commercials, and if it is during campaign season, that is
1700 available. What is not included is just the additional
1701 reporting mechanism of how and where that money is coming
1702 from.

1703 So as we look at how we might be able to make this
1704 better--and I think that is what legislating and compromise
1705 is all about. If there is some language that we agree with
1706 but maybe those principles are a little bit off or the
1707 definitions are a little bit off from where both sides can
1708 find common ground, let's work to get it done and maybe there
1709 is a way to get this done before we go to the Floor as we are
1710 hearing some of the opposition here with the amendment today.
1711 And I would just say, Mr. Chairman, that just imagine for a
1712 moment how powerful this would be. Every American who wants
1713 to know about where this money is coming from could go to one

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1714 place, and my recommendation as we continue to look at this
1715 as I brought up during the subcommittee markup on this, maybe
1716 the FCC's Web site. That would be real transparency in
1717 action as we talk about a central location. And Mr.
1718 Chairman, just to be clear on this, we should be using every
1719 tool possible, whether it is with the FCC with reporting who
1720 is buying this and where the money is coming from or through
1721 any other federal agency that we can work with to make sure
1722 full disclosure is truly transparent. So I hope, Mr.
1723 Chairman, that my colleagues will support Mr. Yarmuth's
1724 proposal to restore accountability to our electoral system
1725 and transparency to the American people. And with that, if
1726 none of my colleagues need time, I will yield to Mr. Walden.

1727 Mr. {Walden.} Well, I was just saying I appreciate what
1728 the gentleman is saying, but that is not what the amendment
1729 calls for. It didn't call for that in sub or now in full.
1730 It is like--and we both run the campaign committees, right?
1731 And so this is instead of saying paid for by the DCCC, it
1732 would say paid for by the DCCC and then list the names of
1733 significant donors. Now, I want you to--you tell me. I
1734 can't tell you how many significant donors we have but it is
1735 a lot. Not as many as you because you outraised us by \$60
1736 million, but that is another story. We got a better rate of

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1737 return.

1738 But my point is, I know who you are trying to go after.

1739 I get the title of the bill. I do. But this isn't about

1740 listing on a Web site or in the public--

1741 Mr. {Lujan.} Well, Mr. Chairman, reclaiming my time

1742 because it is going to run out here. The reason that we had

1743 more donors is because our average was a lot lower than yours

1744 from people across the country. But with that being said--

1745 Mr. {Walden.} It would be longer.

1746 Mr. {Lujan.} --Mr. Chairman, if we could, maybe this is

1747 an area that you and I could work together with the chairman

1748 with the idea that I am suggesting so that way it doesn't

1749 show up on a commercial. Let's work to make sure there is

1750 full disclosure reporting with the money behind it, and we

1751 will get it on the FCC's Web site. Clearly there is room

1752 there.

1753 And so I would be happy to work with you and the staff--

1754 The {Chairman.} The gentleman's time is expired.

1755 Mr. {Lujan.} Thank you.

1756 The {Chairman.} I would note that if the two gentlemen

1757 can work something out together that they agree to, I look

1758 forward to having that as an amendment on the House Floor. I

1759 will let you do that in the next number of days.

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1760 We have debated this for about 25 minutes, and I would
1761 like to get to conclusion here. But I will recognize the
1762 gentlelady from Florida to strike the last word.

1763 Ms. {Castor.} Thank you, Mr. Chairman. I wanted to
1764 speak in favor strongly of the Yarmuth and Sarbanes amendment
1765 and thank them for their leadership. This isn't something
1766 that they just devised today. They have devoted a
1767 substantial amount of time since the Citizens United Supreme
1768 Court decision to bring transparency to our election process.

1769 What a travesty that Citizens United Supreme Court
1770 decision was. What it had said in essence is that Americans
1771 with the most cash have the loudest voices in our elections.
1772 That is dangerous for our democracy. People with the fattest
1773 wallets have more influence. It invites corruption. We need
1774 to address this.

1775 Now many of you don't know that the gentleman who flew
1776 the gyrocopter onto the Capitol grounds was a gentleman from
1777 my district back home. I do not suggest that anyone do this.
1778 In fact, do not do it. It is very dangerous. Do not do
1779 that. But do you see how desperate the American people have
1780 become for the Congress to address this matter?

1781 We know how to do this. The fact that you say that the
1782 FCC couldn't handle this, that is ridiculous. There are many

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1783 high-price media consultants that know very well how to put
1784 disclaimers onto political ads, to have voice-overs to
1785 explain who is paying for that political ad. We should not
1786 allow these superPACs to go unrecognized. Who is funding
1787 them? People want to know. Americans need to know who is
1788 behind certain candidates and certain causes. That is what
1789 democracy is all about.

1790 I invite you all to go back and read Justice Breyer's
1791 dissenting opinion in Citizens United where he in essence
1792 said he noted the appearance of corruption to Americans so
1793 disillusioned by the influence of money in politics and
1794 government further erodes our democracy.

1795 We have got to address this, and the fact that we don't
1796 have a constitutional amendment on the horizon, we don't have
1797 a change in the United States Supreme Court makeup on the
1798 horizon makes this legislative effort all the more important.

1799 So I salute my colleagues, Congressman Yarmuth,
1800 Congressman Sarbanes, all of you who have supported campaign
1801 finance reform. This is a very modest but important step to
1802 promote disclosure of big money, who is funding our elections
1803 in the United States of America. I urge the adoption of the
1804 amendment.

1805 Mr. {Yarmuth.} Will the gentlewoman yield?

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1806 Ms. {Castor.} And I yield the balance of my time to--
1807 Mr. {Yarmuth.} I appreciate that very much. Just one
1808 comment about the logistics of implementing the amendment
1809 were it to pass. I fully expect that the FCC would say that
1810 disclosure would be required of people who paid more than a
1811 certain percentage of the ad, for instance. I mean, there
1812 are standards that could be set so that you wouldn't
1813 obviously result in the scenario that Mr. Walden suggested
1814 where the DCCC and the RNCC would have to publish all their
1815 donors or their large donors. I think there are ways that
1816 the FCC would implement this that would be very reasonable,
1817 would say if somebody is paying 50 percent of the cost of the
1818 ad, then they have to be listed. But there are ways to do
1819 that. We don't prescribe that. We assume that the FCC would
1820 take that into consideration in adopting the policy. I yield
1821 back.

1822 Ms. {Castor.} I yield to Mr. Sarbanes.

1823 Mr. {Sarbanes.} Mr. Chairman, this is just 10 seconds,
1824 but I would just observe that it is not good enough for us to
1825 say that this is too hard, it is too complicated, it is too
1826 difficult to do. We should be able to find a way to make
1827 this work so that disclosure and transparency is there. If
1828 we care about restoring faith in our government, in our

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1829 politics, addressing the deep cynicism that is out there, we
1830 got to work hard to make that happen, and this would be a
1831 first step. Thank you, Mr. Yarmuth, for introducing it.

1832 The {Chairman.} Gentlelady yields back. Other members
1833 wishing to speak? Seeing none, the vote occurs on the
1834 amendment offered by Mr. Yarmuth by Mr. Sarbanes.

1835 Those in favor will say aye.

1836 Those opposed say no.

1837 In the opinion of the chair, the ayes have it. So a
1838 roll call vote is requested. The Clerk will call the roll.

1839 The {Clerk.} Mr. Barton?

1840 [No response.]

1841 The {Clerk.} Mr. Whitfield?

1842 [No response.]

1843 The {Clerk.} Mr. Shimkus?

1844 Mr. {Shimkus.} No.

1845 The {Clerk.} Mr. Shimkus votes no.

1846 Mr. Pitts?

1847 Mr. {Pitts.} No.

1848 The {Clerk.} Mr. Pitts votes no.

1849 Mr. Walden?

1850 Mr. {Walden.} No.

1851 The {Clerk.} Mr. Walden votes no.

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1852 Mr. Murphy?

1853 Mr. {Murphy.} No.

1854 The {Clerk.} Mr. Murphy votes no.

1855 Mr. Burgess?

1856 Mr. {Burgess.} No.

1857 The {Clerk.} Mr. Burgess votes no.

1858 Mrs. Blackburn?

1859 [No response.]

1860 The {Clerk.} Mr. Scalise?

1861 [No response.]

1862 The {Clerk.} Mr. Latta?

1863 [No response.]

1864 The {Clerk.} Mrs. McMorris Rodgers?

1865 [No response.]

1866 The {Clerk.} Mr. Harper?

1867 Mr. {Harper.} No.

1868 The {Clerk.} Mr. Harper votes no.

1869 Mr. Lance?

1870 Mr. {Lance.} No.

1871 The {Clerk.} Mr. Lance votes no.

1872 Mr. Guthrie?

1873 Mr. {Guthrie.} No.

1874 The {Clerk.} Mr. Guthrie votes no.

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1875 Mr. Olson?

1876 [No response.]

1877 The {Clerk.} Mr. McKinley?

1878 Mr. {McKinley.} No.

1879 The {Clerk.} Mr. McKinley votes no.

1880 Mr. Pompeo?

1881 Mr. {Pompeo.} No.

1882 The {Clerk.} Mr. Pompeo votes no.

1883 Mr. Kinzinger?

1884 Mr. {Kinzinger.} No.

1885 The {Clerk.} Mr. Kinzinger votes no.

1886 Mr. Griffith?

1887 Mr. {Griffith.} No.

1888 The {Clerk.} Mr. Griffith votes no.

1889 Mr. Bilirakis?

1890 Mr. {Bilirakis.} No.

1891 The {Clerk.} Mr. Bilirakis votes no.

1892 Mr. Johnson?

1893 Mr. {Johnson.} No.

1894 The {Clerk.} Mr. Johnson votes no.

1895 Mr. Long?

1896 Mr. {Long.} No.

1897 The {Clerk.} Mr. Long votes no.

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1898 Mrs. Ellmers?
1899 Mrs. {Ellmers.} No.
1900 The {Clerk.} Mrs. Ellmers votes no.
1901 Mr. Bucshon?
1902 Mr. {Bucshon.} No.
1903 The {Clerk.} Mr. Bucshon votes no.
1904 Mr. Flores?
1905 Mr. {Flores.} No.
1906 The {Clerk.} Mr. Flores votes no.
1907 Mrs. Brooks?
1908 Mrs. {Brooks.} No.
1909 The {Clerk.} Mrs. Brooks votes no.
1910 Mr. Mullin?
1911 Mr. {Mullin.} No.
1912 The {Clerk.} Mr. Mullin votes no.
1913 Mr. Hudson?
1914 Mr. {Hudson.} No.
1915 The {Clerk.} Mr. Hudson votes no.
1916 Mr. Collins?
1917 Mr. {Collins.} No.
1918 The {Clerk.} Mr. Collins votes no.
1919 Mr. Cramer?
1920 Mr. {Cramer.} No.

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1921 The {Clerk.} Mr. Cramer votes no.
1922 Mr. Pallone?
1923 Mr. {Pallone.} Yes.
1924 The {Clerk.} Mr. Pallone votes aye.
1925 Mr. Rush?
1926 [No response.]
1927 The {Clerk.} Ms. Eshoo?
1928 Ms. {Eshoo.} Aye.
1929 The {Clerk.} Ms. Eshoo votes aye.
1930 Mr. Engel?
1931 Mr. {Engel.} Aye.
1932 The {Clerk.} Mr. Engel votes aye.
1933 Mr. Green?
1934 [No response.]
1935 The {Clerk.} Ms. DeGette?
1936 Ms. {DeGette.} Aye.
1937 The {Clerk.} Ms. DeGette votes aye.
1938 Mrs. Capps?
1939 Mrs. {Capps.} Aye.
1940 The {Clerk.} Mrs. Capps votes aye.
1941 Mr. Doyle?
1942 Mr. {Doyle.} Yes.
1943 The {Clerk.} Mr. Doyle votes aye.

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1944 Ms. Schakowsky?

1945 Ms. {Schakowsky.} Aye.

1946 The {Clerk.} Ms. Schakowsky votes aye.

1947 Mr. Butterfield?

1948 Mr. {Butterfield.} Aye.

1949 The {Clerk.} Mr. Butterfield votes aye.

1950 Ms. Matsui?

1951 Ms. {Matsui.} Aye.

1952 The {Clerk.} Ms. Matsui votes aye.

1953 Ms. Castor?

1954 Ms. {Castor.} Aye.

1955 The {Clerk.} Ms. Castor votes aye.

1956 Mr. Sarbanes?

1957 Mr. {Sarbanes.} Aye.

1958 The {Clerk.} Mr. Sarbanes votes aye.

1959 Mr. McNerney?

1960 Mr. {McNerney.} Yes.

1961 The {Clerk.} Mr. McNerney votes aye.

1962 Mr. Welch?

1963 Mr. {Welch.} Aye.

1964 The {Clerk.} Mr. Welch votes aye.

1965 Mr. Lujan?

1966 Mr. {Lujan.} Aye.

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1967 The {Clerk.} Mr. Lujan votes aye.
1968 Mr. Tonko?
1969 Mr. {Tonko.} Aye.
1970 The {Clerk.} Mr. Tonko votes aye.
1971 Mr. Yarmuth?
1972 Mr. {Yarmuth.} Aye.
1973 The {Clerk.} Mr. Yarmuth votes aye.
1974 Ms. Clarke?
1975 Ms. {Clarke.} Aye.
1976 The {Clerk.} Ms. Clarke votes aye.
1977 Mr. Loeb sack?
1978 Mr. {Loeb sack.} Aye.
1979 The {Clerk.} Mr. Loeb sack votes aye.
1980 Mr. Schrader?
1981 Mr. {Schrader.} Aye.
1982 The {Clerk.} Mr. Schrader votes aye.
1983 Mr. Kennedy?
1984 Mr. {Kennedy.} Aye.
1985 The {Clerk.} Mr. Kennedy votes aye.
1986 Mr. Cardenas?
1987 Mr. {Cardenas.} Aye.
1988 The {Clerk.} Mr. Cardenas votes ayes.
1989 Chairman Upton?

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1990 The {Chairman.} Votes no.

1991 The {Clerk.} Chairman Upton votes no.

1992 The {Chairman.} Members wishing to cast their vote?

1993 Mrs. McMorris Rodgers?

1994 Mrs. {McMorris Rodgers.} No.

1995 The {Clerk.} Mrs. McMorris Rodgers votes no.

1996 The {Chairman.} Mr. Latta?

1997 Mr. {Latta.} No.

1998 The {Clerk.} Mr. Latta votes no.

1999 The {Chairman.} Mr. Barton?

2000 Mr. {Barton.} No.

2001 The {Clerk.} Mr. Barton votes no.

2002 The {Chairman.} Mr. Olson?

2003 Mr. {Olson.} No.

2004 The {Clerk.} Mr. Olson votes no.

2005 The {Chairman.} Mr. Cramer, are you recorded? Other

2006 members wishing to cast a vote? I am sorry. Mr. Green?

2007 Mr. {Green.} Votes aye.

2008 The {Clerk.} Mr. Green votes aye.

2009 The {Chairman.} Other members? Seeing none, the Clerk

2010 will report the tally. Is Mrs. Ellmers recorded? She is?

2011 Okay. Keep going.

2012 The {Clerk.} Mr. Chairman, on that vote there were 22

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2013 ayes and 28 nays.

2014 The {Chairman.} Twenty-two ayes, 28 nays. The
2015 amendment is not agreed to.

2016 Other members offering an amendment to the bill? The
2017 gentleman from Illinois, Mr. Kinzinger.

2018 Mr. {Kinzinger.} Mr. Chairman, I have an amendment at
2019 the desk.

2020 The {Chairman.} The Clerk will report the title of the
2021 amendment.

2022 The {Clerk.} Amendment to H.R. 2583 offered by Mr.
2023 Kinzinger.

2024 [The amendment of Mr. Kinzinger follows:]

2025 ***** INSERT 6 *****

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|

2026 The {Chairman.} The amendment will be considered as
2027 read. Staff will distribute the amendment, and the gentleman
2028 is recognized for 5 minutes in support of his amendment.

2029 Mr. {Kinzinger.} Well, thank you, Mr. Chairman. I
2030 would like to offer this amendment based on a bill I
2031 introduced with Congressman Allen, H.R. 2592 that would
2032 require the FCC to publish the draft of any item that is
2033 circulating on a vote at the Commission.

2034 The goal of this bill is to require the FCC to allow the
2035 public better access to its rule-making. As things stand
2036 right now, only those companies or individuals fortunate
2037 enough to employ or hire lobbyists have access to the
2038 Commission's thinking during a critical phase of the rule-
2039 making. This is when the last arguments can be made. This
2040 is when the last analysis of how these rules can impact your
2041 small business is done. Instead of allowing the Chairman to
2042 pick and choose who can access this information or worse,
2043 allowing only the companies who can afford to pay to access
2044 the information, this amendment would allow anyone access to
2045 the draft order.

2046 Given the effort of the chairman and myself over the
2047 past few years to reform other processes at the FCC, I

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2048 believe this legislation rightly belongs in the larger
2049 overall package of FCC reforms being discussed.

2050 I have heard some of the critics of my bill argue that
2051 this change to FCC procedures would result in endless rounds
2052 of comments, but we have talked to the experts in
2053 administrative law, and they simply don't believe this to be
2054 true.

2055 The draft order doesn't give anyone the right to appeal
2056 because a draft order is not binding or final. No one's
2057 rights are modified by a draft order. Moreover, publication
2058 of a draft order may generate new comments in ex parte
2059 meetings, but these comments can be handled during the FCC
2060 sunshine period. And if by chance something comes up that is
2061 so new and so significant that the FCC has to address the
2062 issue, then I think it makes sense of the FCC to stop and
2063 rethink the course of its decision.

2064 At this point I would also like to thank Public
2065 Knowledge for lending their help to ensure that the changes
2066 made by this amendment will, with all clarity, not create any
2067 new procedural rights within the publication of drafts.

2068 Additionally, we have already marked up the language for
2069 this amendment at subcommittee to address concerns raised by
2070 critics. I believe we have shown that we are open to making

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2071 this idea better so that we can all support the notion that
2072 all American people should have access to the FCC rules that
2073 impact all of our lives.

2074 I wish I could say that my Democratic colleagues have
2075 been equally forthcoming. What I have heard is that they
2076 oppose the concept and have offered no path forward. Let me
2077 say that again. They oppose the American people's right to
2078 see for themselves how the FCC's rules and regulations will
2079 be changed in their lives. This amendment would change that,
2080 and I hope you can support the rights of citizens to see
2081 clearly what their government is doing.

2082 With that, I will either yield back or yield to someone
2083 on my side that needs time. And I yield back.

2084 The {Chairman.} Gentleman yields back. Gentlelady from
2085 California is recognized.

2086 Ms. {Eshoo.} Thank you, Mr. Chairman. I think everyone
2087 here agrees that members on both sides of the aisle have
2088 worked hard on the amendments that they wish to offer and
2089 that we have differing opinions about them. I don't think
2090 that is bad. I think it is fair. And some we agree on, some
2091 we don't. But I think it is a mischaracterization to say
2092 that one side, you know, wears Robin Hood's hat and the other
2093 side wears no hat or whatever. I don't know. I don't get

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2094 that one.

2095 But at any rate, I move to strike the last word. I do
2096 thank the gentleman from Illinois for his attempt to improve
2097 FCC accountability and transparency. Unfortunately, this
2098 amendment will not help the FCC make decisions faster, more
2099 efficient, or provide meaningful transparency. In fact, the
2100 amendment potentially creates a never-ending cycle of
2101 lobbying where stakeholders have no incentive to participate
2102 in the rule-making process until the last minute. The
2103 amendment could also have the perverse effect of undercutting
2104 the ability of the four FCC Commissioners to have an input on
2105 FCC orders. As professor Stewart Benjamin testified last
2106 month, ``The point at which Commissioners review proposed
2107 rules and suggest changes would be the point at which such
2108 changes would become more difficult to make. This is I think
2109 a recipe for less meaningful review by other Commissioners.''

2110 Let's be clear about what this particular bill is really
2111 about. The majority doesn't like the outcome of the FCC's
2112 net neutrality decision, and they will use every tool they
2113 can to bring the agency to a standstill. All you have to do
2114 is look no further than the January 22 letter from Chairman
2115 Upton, Walden, and Thune to Chairman Wheeler which asked that
2116 the draft order be released before the other Commissioners

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2117 had an opportunity to review it. Let me say that again.

2118 Asking that the draft order be released before the other

2119 Commissioners had an opportunity to review it.

2120 Now, 3 months later, this bill was put forward for

2121 discussion by the subcommittee. I don't think this makes

2122 things work any better at all. And I respect the author of

2123 it, but I stand in opposition to it. I just think that this

2124 is like an arrow that is pointed at the heart of 4

2125 Commissioners not being able to study and respond. How is

2126 that Commission going to function? Would you do the same

2127 thing to this committee and our process? I don't think so.

2128 So I don't think this is worthy of our support, and I

2129 urge members to oppose it. Thank you and yield back.

2130 Mr. {Walden.} Mr. Chairman?

2131 The {Chairman.} Gentleman from Oregon.

2132 Mr. {Walden.} Thank you, Mr. Chairman. First of all, I

2133 want to ask Counsel a question. Is there underlying existing

2134 law that would prevent the so-called never-ending cycle of

2135 comment?

2136 {Counsel.} The changes that this amendment would make

2137 would only permit folks to continue to comment. There are

2138 two ways to comment at the FCC. One is through ex parte

2139 commentary, the other is through notice and comment rule-

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2140 making. The changes in the amendment would not trigger
2141 further notice and comment rule-making and it would not
2142 change the ability of outside parties to continue ex parte
2143 commentary during the non-Sunshine period.

2144 Mr. {Walden.} So this would not trigger an endless
2145 cycle or comment as referenced?

2146 {Counsel.} That is correct.

2147 Mr. {Walden.} So Mr. Chairman, I would just say I
2148 disagree with my friend of California on a couple of points,
2149 obviously. One is we are not the first to ask for this.
2150 Actually the former Chairman and then Ranking Member Mr.
2151 Dingell asked for disclosure. Also one Barak Obama when he
2152 was Senator asked for disclosure when it came to media
2153 ownership rules. They asked for the same thing.

2154 We had some really good testimony before the committee
2155 from the Commissioners themselves and others, and we have
2156 read the stories where you don't know what the final rule is
2157 going to contain. And we are not asking for the final rule.
2158 We are saying when this is put out 3 weeks before, put it out
2159 to the public. Again, I get back to--and somebody can
2160 correct me if I am wrong--but there was this notion that the
2161 issue of interconnection was not going to be part of the net
2162 neutrality rules. It was not in the original MPRM. The

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2163 Chairman indicated that this was not going to be part of it.
2164 And then in the end, it ended up in the rules. And so people
2165 didn't have--the public, the public, the people. That is who
2166 we serve did not have an opportunity to know what was even
2167 before them.

2168 We don't operate that way in this committee nor should
2169 we. We have tried to change how Congress operates. I
2170 chaired the transition so that we could at least--when my
2171 party took control of the House, we changed House rules and
2172 procedures and protocols so that bills are posted online. We
2173 haven't been perfect, but we have tried to move forward on
2174 openness and transparency, the public's business.

2175 The legislation proposed by Mr. Kinzinger first of all
2176 is not an additional burden of any significance on the
2177 Commission, but it is a positive step forward for the public
2178 because it says now you can see what we are going to work on
2179 in our final period here. And you know what? The Commission
2180 may learn something from that. If I recall the testimony
2181 correctly, and maybe I will go to Counsel, isn't it true that
2182 the Commissioners, by practice at the Commission, cannot
2183 discuss with somebody who comes in what is actually in the
2184 order under consideration?

2185 {Counsel.} That is correct.

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2186 Mr. {Walden.} So you as a member of the public come
2187 into the Commission and say I am really concerned about what
2188 I am hearing, and the Commissioner you are talking to can't
2189 tell you, well, that is not in the Order. Or they are not
2190 supposed to tell you that is not in the Order. And the
2191 Commissioners cannot make what they are considering public.
2192 Is that correct?

2193 {Counsel.} Not without the permission of the Chairman.

2194 Mr. {Walden.} So the Chairman himself or herself
2195 decides solely what the public knows or doesn't know. Now,
2196 can outside, paid lobbyists, whatever you want to call them--
2197 people come in and meet with the Commissioner and have a
2198 robust discussion about what the document may or may not
2199 include.

2200 {Counsel.} In practice, when an item is put on
2201 circulation, everyone with stake in the game tries to get a
2202 meeting with Commissioners in the Chairman's office to get
2203 their changes made--

2204 Mr. {Walden.} But the Chairman has--

2205 {Counsel.} --without acknowledging--

2206 Mr. {Walden.} But doesn't the Chairman have the
2207 flexibility to determine how far that conversation goes,
2208 unlike the other Commissioners.

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2209 {Counsel.} Yes. The Chairman is solely in charge of
2210 how much information the FCC releases.

2211 Mr. {Walden.} So this is where we can do better. This
2212 is where we can do better. There was a reference made
2213 earlier about a banana republic. We can fix this problem. I
2214 yield to Mr. Kinzinger.

2215 Mr. {Kinzinger.} Well, thank you for yielding. I just
2216 want to make the point, and again I respect everybody's
2217 opinion on this, appreciate the conversation. There is all
2218 this talk about this being, you know, like I guess sour
2219 grapes on net neutrality. And I would just remind as we
2220 talked about in subcommittee, Mr. Walden, you and I have had
2221 this conversation long before net neutrality was even a
2222 player. And you know, just the reality of making things more
2223 available, more visual, more out there for people to have
2224 input I think makes complete sense to what we are trying to
2225 do here.

2226 And so, you know, I will of course be asking for a
2227 recorded vote on this because I think everybody ought to own
2228 whether or not, you know, they believe in this level of
2229 transparency with the FCC. So I thank the gentleman for
2230 yielding. I will yield back his 15 seconds.

2231 Mr. {Walden.} And I will yield back the balance.

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2232 The {Chairman.} Gentleman yields back. Other members
2233 wishing to speak? The gentleman from Vermont is recognized.

2234 Mr. {Welch.} On transparency, I think there is two
2235 issues. One is the publication and timeliness of doing that.
2236 The other is the explanation that is offered substantively to
2237 explain the basis of the decision. And this amendment would
2238 have every decision announced within a day, and that is in
2239 some ways a good thing. As I understand it, the FCC--

2240 Mr. {Walden.} Would the gentleman yield? That is the
2241 next amendment.

2242 Mr. {Welch.} Well, it has to be published within 24
2243 hours. That is Ellmers. Okay. I will withdraw.

2244 Mr. {Walden.} That is coming.

2245 Mr. {Welch.} Yeah, okay.

2246 Mr. {Walden.} But that is the next one.

2247 Mr. {Welch.} Then I will be patient. Thank you.

2248 The {Chairman.} Gentleman yields back. The chair
2249 recognizes the gentlemen from New York, Mr. Engel.

2250 Mr. {Engle.} Thank you. I would like to yield my time
2251 to Ms. Eshoo.

2252 Ms. {Eshoo.} I thank the gentleman. I would like to
2253 ask Counsel about the following: When I spoke about the
2254 potential for creating never-ending cycle of lobbying where

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2255 stakeholders have no incentive to participate in the rule-
2256 making process until the last minute, did you examine in
2257 terms, the answer that you gave, the potential?

2258 {Counsel.} I am not sure I understand the question. Do
2259 I believe that this will cause an endless cycle of--

2260 Ms. {Eshoo.} Well, I didn't ask whether you believe.
2261 You are the counsel. So you are talking about law, and you
2262 rejected, you know--well, Mr. Walden rejected or questioned
2263 my use of those words and so did you. But I am asking you
2264 if, in your answer, that you examined the potential of what
2265 this amendment would do.

2266 {Counsel.} Yes.

2267 Ms. {Eshoo.} You did?

2268 {Counsel.} Yes.

2269 Ms. {Eshoo.} And under what statute did you find that
2270 what I put forward doesn't stand? Under what statute?

2271 {Counsel.} Well, pursuant to Title 47 of the Code of
2272 federal regulations and the FCC's rules on ex parte contacts
2273 and how they file their ex parte--

2274 Ms. {Eshoo.} The possibility of litigation. Where does
2275 that--

2276 {Counsel.} I am confused which question. Are you
2277 asking about the potential for an endless cycle of comments

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2278 or the potential for litigation?

2279 Ms. {Eshoo.} Well, you have already told me your
2280 opinion on that. What about litigation, in your legal
2281 opinion?

2282 {Counsel.} Under the Administrative Procedure Act, the
2283 FCC is not supposed to introduce anything in their final
2284 document that would not be contained in the underlying
2285 record.

2286 Ms. {Eshoo.} But this is not a final document.

2287 {Counsel.} Correct. So if they are offering a draft
2288 that complies with the Administrative Procedure Act, that
2289 draft would not create any new litigation risk that does not
2290 exist with the final Commission document.

2291 Ms. {Eshoo.} Let me say something about, you know, what
2292 has been said about this. I would like someone to explain to
2293 me how our system, which for all of this saying the public
2294 knowledge, the public should know everything that we are
2295 doing, the chairman and the ranking member meet to discuss
2296 bills. They don't put that out. They are not required to
2297 put that out in 24 hours. You met I think this morning
2298 before this markup. The Democrats met. The ranking member
2299 spoke about many things to inform members, and there were
2300 things that several of us didn't know. But they were part of

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2301 the conversation that Chairman Upton and the ranking member
2302 had which are absolutely appropriate. Was that posted? Did
2303 that go out to the public? No.

2304 Mr. {Walden.} Would the gentlelady yield?

2305 Ms. {Eshoo.} No. I am trying to draw a comparison. It
2306 has been said that we wouldn't operate this way. We do
2307 operate this way, and most frankly, those conversations and
2308 the knowledge that is shared and what comes out of them to
2309 the rest of the members is very important. Chairman Upton,
2310 Walden, and Thune wrote to Chairman Wheeler and asked that
2311 the draft order be released before other Commissioners has an
2312 opportunity to review. Why? Why? Why? Can't the
2313 Commission do its work and then put the order out? It is not
2314 just the Chairman. There are five Commissioners, and I think
2315 that what they need to do is their due diligence and then a
2316 combination of all of that goes out to the public. And that
2317 is not what is in--well, that speaks for itself. That
2318 January 22 letter speaks for itself. And I don't know if the
2319 Counsel has any legal opinion on that.

2320 {Counsel.} Could you repeat the question, ma'am? What
2321 is my legal opinion on what question?

2322 Ms. {Eshoo.} On the January 22 letter. Is there any
2323 legal ground on this?

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2324 {Counsel.} Is there any legal ground for a Member of
2325 Congress to request a document from an administrative agency?

2326 Ms. {Eshoo.} No. I am asking you about the January 22
2327 letter, which I am sure you reviewed because you are the
2328 Counsel, that a draft order be released before the other
2329 Commissioners had an opportunity to review. What is the
2330 legal standing of that? What are the legal merits of that?

2331 {Counsel.} The Chairman is solely responsible for
2332 deciding what the Commission's output would be. So if the
2333 Chairman of the FCC wanted to put that out, he was well-
2334 within his rights to do so.

2335 Ms. {Eshoo.} And leave all the other Commissioners out?

2336 {Counsel.} Under the FCC's rules, he is solely
2337 responsible for that decision, yes.

2338 Ms. {Eshoo.} What is the precedent for doing that?

2339 {Counsel.} It has not been done before, but it is
2340 permissible.

2341 Ms. {Eshoo.} But there isn't any precedent for it?

2342 {Counsel.} None that I am aware of.

2343 Ms. {Eshoo.} Um-hum. Thank you. I will yield back.

2344 The {Chairman.} The gentlelady's time has expired.

2345 Other members wish to speak on the amendment? Seeing none,

2346 the vote occurs on the Kinzinger amendment.

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2347 Those in favor will say aye.

2348 Those opposed say nay.

2349 In the opinion of the chair, the ayes have it. The ayes

2350 have it.

2351 Mr. {Welch.} Mr. Chairman, recorded vote.

2352 The {Chairman.} Recorded vote is asked for. The Clerk

2353 will call the roll.

2354 The {Clerk.} Mr. Barton?

2355 Mr. {Barton.} Aye.

2356 The {Clerk.} Mr. Barton votes aye.

2357 Mr. Whitfield?

2358 Mr. {Whitfield.} Aye.

2359 The {Clerk.} Mr. Whitfield votes aye.

2360 Mr. Shimkus?

2361 Mr. {Shimkus.} Aye.

2362 The {Clerk.} Mr. Shimkus votes aye.

2363 Mr. Pitts?

2364 Mr. {Pitts.} Aye.

2365 The {Clerk.} Mr. Pitts votes aye.

2366 Mr. Walden?

2367 Mr. {Walden.} Aye.

2368 The {Clerk.} Mr. Walden votes aye.

2369 Mr. Murphy?

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2370 Mr. {Murphy.} Aye.

2371 The {Clerk.} Mr. Murphy votes aye.

2372 Mr. Burgess?

2373 Mr. {Burgess.} Aye

2374 The {Clerk.} Mr. Burgess votes aye.

2375 Mrs. Blackburn?

2376 Mrs. {Blackburn.} Aye.

2377 The {Clerk.} Mr. Blackburn votes aye.

2378 Mr. Scalise?

2379 [No response.]

2380 The {Clerk.} Mr. Latta?

2381 [No response.]

2382 The {Clerk.} Mrs. McMorris Rodgers?

2383 Mrs. {McMorris Rodgers.} Aye.

2384 The {Clerk.} Mrs. McMorris Rodgers votes aye.

2385 Mr. Harper?

2386 Mr. {Harper.} Aye.

2387 The {Clerk.} Mr. Harper votes aye.

2388 Mr. Lance?

2389 Mr. {Lance.} Aye.

2390 The {Clerk.} Mr. Lance votes aye.

2391 Mr. Guthrie?

2392 Mr. {Guthrie.} Aye.

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2393 The {Clerk.} Mr. Guthrie votes aye.
2394 Mr. Olson?
2395 Mr. {Olson.} Aye.
2396 The {Clerk.} Mr. Olson votes aye.
2397 Mr. McKinley?
2398 Mr. {McKinley.} Aye.
2399 The {Clerk.} Mr. McKinley votes aye.
2400 Mr. Pompeo?
2401 Mr. {Pompeo.} Aye.
2402 The {Clerk.} Mr. Pompeo votes aye.
2403 Mr. Kinzinger?
2404 Mr. {Kinzinger.} Aye.
2405 The {Clerk.} Mr. Kinzinger votes aye.
2406 Mr. Griffith?
2407 Mr. {Griffith.} Aye.
2408 The {Clerk.} Mr. Griffith votes aye.
2409 Mr. Bilirakis?
2410 Mr. {Bilirakis.} Aye.
2411 The {Clerk.} Mr. Bilirakis votes aye.
2412 Mr. Johnson?
2413 Mr. {Johnson.} Aye.
2414 The {Clerk.} Mr. Johnson votes aye.
2415 Mr. Long?

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2416 Mr. {Long.} Aye.

2417 The {Clerk.} Mr. Long votes aye.

2418 Mts. Ellmers?

2419 Mrs. {Ellmers.} Aye.

2420 The {Clerk.} Mr. Ellmers votes aye.

2421 Mr. Bucshon?

2422 Mr. {Bucshon.} Aye.

2423 The {Clerk.} Mr. Bucshon votes aye.

2424 Mr. Flores?

2425 Mr. {Flores.} Aye.

2426 The {Clerk.} Mr. Flores votes aye. Mrs. Brooks?

2427 Mrs. {Brooks.} Aye.

2428 The {Clerk.} Mrs. Brooks votes aye.

2429 Mr. Mullin?

2430 Mr. {Mullin.} Aye.

2431 The {Clerk.} Mr. Mullin votes aye.

2432 Mr. Hudson?

2433 Mr. {Hudson.} Aye.

2434 The {Clerk.} Mr. Hudson votes aye.

2435 Mr. Collins?

2436 [No response.]

2437 The {Clerk.} Mr. Cramer?

2438 Mr. {Cramer.} Aye.

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2439 The {Clerk.} Mr. Cramer votes aye.
2440 Mr. Pallone?
2441 Mr. {Pallone.} No.
2442 The {Clerk.} Mr. Pallone votes no.
2443 Mr. Rush?
2444 [No response.]
2445 The {Clerk.} Ms. Eshoo?
2446 Ms. {Eshoo.} No.
2447 The {Clerk.} Ms. Eshoo votes no.
2448 Mr. Engel?
2449 Mr. {Engel.} No.
2450 The {Clerk.} Mr. Engel votes no.
2451 Mr. Green?
2452 Mr. {Green.} No.
2453 The {Clerk.} Mr. Green votes no.
2454 Ms. DeGette?
2455 Ms. {DeGette.} No.
2456 The {Clerk.} Ms. DeGette votes no.
2457 Mrs. Capps?
2458 Mrs. {Capps.} No.
2459 The {Clerk.} Mrs. Capps votes no.
2460 Mr. Doyle?
2461 Mr. {Doyle.} No.

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2462 The {Clerk.} Mr. Doyle votes no.
2463 Ms. Schakowsky?
2464 Ms. {Schakowsky.} No.
2465 The {Clerk.} Ms. Schakowsky votes no.
2466 Mr. Butterfield?
2467 [No response.]
2468 The {Clerk.} Ms. Matsui?
2469 Ms. {Matsui.} No.
2470 The {Clerk.} Ms. Matsui votes no.
2471 Ms. Castor?
2472 Ms. {Castor.} No.
2473 The {Clerk.} Ms. Castor votes no.
2474 Mr. Sarbanes?
2475 Mr. {Sarbanes.} No.
2476 The {Clerk.} Mr. Sarbanes votes no.
2477 Mr. McNerney?
2478 Mr. {McNerney.} No.
2479 The {Clerk.} Mr. McNerney votes no.
2480 Mr. Welch?
2481 Mr. {Welch.} No.
2482 The {Clerk.} Mr. Welch votes no.
2483 Mr. Lujan?
2484 Mr. {Lujan.} No.

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2485 The {Clerk.} Mr. Lujan votes no.
2486 Mr. Tonko?
2487 Mr. {Tonko.} No.
2488 The {Clerk.} Mr. Tonko votes no.
2489 Mr. Yarmuth?
2490 [No response.]
2491 Mr. Loeb sack?
2492 Mr. {Loeb sack.} No.
2493 The {Clerk.} Mr. Loeb sack votes no.
2494 Mr. Schrader?
2495 Mr. {Schrader.} Yes.
2496 The {Clerk.} Mr. Schrader votes yes.
2497 Mr. Kennedy?
2498 Mr. {Kennedy.} No.
2499 The {Clerk.} Mr. Kennedy votes no.
2500 Mr. Cardenas?
2501 Mr. {Cardenas.} No.
2502 The {Clerk.} Mr. Cardenas votes no.
2503 Chairman Upton?
2504 The {Chairman.} Votes aye.
2505 The {Clerk.} Chairman Upton votes aye.
2506 The {Chairman.} Other members wishing to cast their
2507 vote? Mr. Latta?

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2508 Mr. {Latta.} Aye.

2509 The {Clerk.} Mr. Latta votes aye.

2510 The {Chairman.} Other members wishing to cast their
2511 vote? Seeing none, the Clerk will report the tally.

2512 Mr. {Walden.} Mr. Chairman--

2513 The {Chairman.} Can we--

2514 Mr. {Walden.} --personal privilege?

2515 The {Chairman.} Gentleman is recognized--can we call
2516 the vote first or not?

2517 Mr. {Walden.} However you want it.

2518 The {Chairman.} Let me just call the vote first.

2519 The {Clerk.} Mr. Chairman, on that vote there were 30
2520 ayes and 18 nays.

2521 The {Chairman.} Thirty ayes, 18 nays. The amendment is
2522 agreed to. The chair would recognize the gentleman from
2523 Oregon.

2524 Mr. {Walden.} Mr. Chairman, a lot was made about the
2525 January 22 letter that was signed by yourself, me, and
2526 Senator Thune, and if I recall hearing multiple times my
2527 colleague from California make the argument that we asked for
2528 the Chairman to publically release the draft text of the open
2529 internet order before it was circulated to the other
2530 Commissioners. I believe that was the case. We could go

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2531 back on the record and listen.

2532 The {Chairman.} Yeah, that is--yeah.

2533 Mr. {Walden.} That is factually wrong. Factually
2534 wrong. And I would like to have the letter entered in the
2535 record because here is exactly what it says, and I quote,
2536 accordingly, we urge you publically release the draft text of
2537 the open internet order when you circulate it to your fellow
2538 Commissioners. Not after, when. I would be happy to share
2539 the letter as sent.

2540 Ms. {Eshoo.} Would the gentleman yield?

2541 Mr. {Walden.} Yes.

2542 Ms. {Eshoo.} What I said was that the January 2 (sic)
2543 letter--

2544 Mr. {Walden.} 22nd.

2545 Ms. {Eshoo.} 22nd. I am sorry--asked that the draft
2546 order be released before the other Commissioners had an
2547 opportunity to review.

2548 Mr. {Walden.} And that is--

2549 Ms. {Eshoo.} If you put it out to the public and the
2550 Commissioners at once, the Commissioners have not had the
2551 time to do due diligence because it is all just put out there
2552 at once. And so I think that--I stand with what I said.

2553 There isn't any reason for me to try to twist something into

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2554 something that it is not. I mean, I think that all of us are
2555 much better than that. We may disagree on the amendment--

2556 Mr. {Walden.} Reclaiming my time.

2557 Ms. {Eshoo.} But do the Commissioners and the public
2558 receive it at the same time?

2559 Mr. {Walden.} We ask for it to be made public when the
2560 Chairman circulated it to the fellow--

2561 Ms. {Eshoo.} Well, that is right and for--the
2562 Commissioners don't have any leg up to do their work.

2563 Mr. {Walden.} I stand.

2564 The {Chairman.} Are there further amendments to the
2565 bill?

2566 Mrs. {Ellmers.} Mr. Chairman?

2567 The {Chairman.} The gentlelady from North Carolina.

2568 Mrs. {Ellmers.} Mr. Chairman, I have an amendment at
2569 the desk.

2570 The {Chairman.} The Clerk will report the title of the
2571 amendment.

2572 The {Clerk.} Amendment to H.R. 2583 offered by Mrs.
2573 Ellmers of North Carolina.

2574 [The amendment of Mrs. Ellmers follows:]

2575 ***** INSERT 7 *****

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|

2576 The {Chairman.} Without objection the text of the
2577 amendment is read, and the staff will distribute the
2578 amendment, considered as read. And the gentlelady is
2579 recognized for 5 minutes in support of her amendment.

2580 Mrs. {Ellmers.} Thank you, Mr. Chairman. I am pleased
2581 to offer an amendment to H.R. 2583 based on my legislation
2582 that would require the FCC to publish its newly adopted rules
2583 in a timely fashion. My bill is a good-government bill that
2584 would require the FCC to ensure that the public has timely
2585 access to the rules that will impact their everyday lives.

2586 While I recognize that this Commission and the previous
2587 Commission have made great strides towards ensuring that the
2588 public has access to the orders quickly after the
2589 Commission's open meeting, there is no guarantee that this
2590 effort will continue with the next chairman. Currently there
2591 are no rules surrounding the publication of the rules after
2592 adoption, and staff of the FCC is routinely granted editorial
2593 privileges on the adopting order which may draw out the
2594 process beyond what is reasonable.

2595 My hope is that this amendment will help increase the
2596 transparency of the FCC rule-making process, and so my
2597 amendment rightfully belongs in the FCC Process Reform Bill.

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2598 I hope you can join me in ensuring that the public
2599 enjoys the right to speedy access to the FCC rules. And with
2600 that, if anyone else would like to speak, I will be happy to
2601 yield my time.

2602 The {Chairman.} The gentlelady yields back her time.
2603 Other members wishing to speak on the amendment? Now the
2604 gentleman from Vermont is recognized.

2605 Mr. {Welch.} I was over-eager. Thank you very much.
2606 As I was saying before, there are two concerns. One is the
2607 publication which lets people know immediately what the rule
2608 is, and then secondly is the explanation. Both are actually-
2609 -

2610 The {Chairman.} Do you want to take a minute?

2611 Mr. {Welch.} Both are important. The practice in the
2612 FCC as I understand it is to release in general items on the
2613 day of the vote, and the vast majority of orders and new
2614 rules are public within 2 business days of the FCC. So as a
2615 practical matter, pretty much the orders get out in 24 hours
2616 or 48 hours.

2617 The real question is in those situations where there is
2618 a very difficult case, it is not a routine case, is it better
2619 to give the FCC time to fully write the explanation that
2620 oftentimes addresses the very specific concerns raised by the

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2621 minority in the vote on the FCC. Sometimes that is Democrat,
2622 sometimes it is Republicans. And in fact I think getting
2623 that explanation is extremely helpful to the public. And the
2624 apprehension I have with the Ellmers amendment is that in
2625 situations where that explanation would be very useful for
2626 the public awareness of the basis of that order, the public
2627 would be denied it because the Commission would have to meet
2628 this 24-hour deadline. So this is kind of a balancing issue.
2629 The speed with which the order is published at the expense of
2630 the explanation behind it or in some cases, delayed beyond
2631 the 24 hours in order to provide the comprehensive
2632 explanation.

2633 If this had more time to it, it might work a little bit
2634 better because I get the spirit of this. Sooner is generally
2635 better than later. But sooner without an explanation may not
2636 be better than sooner.

2637 So the amendment as drafted, I intend to oppose.

2638 Mrs. {Ellmers.} Will the gentleman yield?

2639 Mr. {Welch.} Yes, I will.

2640 Mrs. {Ellmers.} Just to answer your question, the FCC
2641 has full ability to add additional information at a later
2642 date as they see necessary if there is miscommunication or
2643 they feel that the information that has been released is not

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2644 adequate. So you know, I think it is open-ended, and you
2645 know, look. This is a very common-sense approach. I think
2646 that 24 hours is a very reasonable amount of time, you know?
2647 We are not asking them to go, you know, well beyond their
2648 means. Twenty-four hours is reasonable. It is common sense,
2649 and I think this is something that will be good for the
2650 American people. And there again, they can add additional
2651 information. So you know, although I can understand the
2652 concern, I think that it can be addressed at a later date.

2653 Mr. {Doyle.} Will the gentleman yield?

2654 Mr. {Welch.} Yes, I will.

2655 Mr. {Doyle.} Yeah, just to Mr. Welch's point. The
2656 stakeholders need both the rule and the explanatory text to
2657 understand the decision. And so while I think the amendment
2658 is well-intentioned, you are really not giving people the
2659 information they need within the 24 hours. If they are
2660 getting the rule and not the explanatory text to go along
2661 with the rule, it is going to be longer than 24 hours before
2662 they know what they are reading. So I think the criticism of
2663 the amendment is without both, you are really not getting the
2664 public information any faster, and that is the flaw in this
2665 amendment. I yield back.

2666 The {Chairman.} Gentleman yields back. Other members

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2667 wishing to speak on the amendment? Seeing none the vote

2668 occurs on the Ellmers amendment.

2669 Those in favor will say aye.

2670 Those opposed say no.

2671 In the opinion of the chair, the ayes have it. The ayes

2672 have it. And a roll call is requested. The Clerk will call

2673 the roll.

2674 The {Clerk.} Mr. Barton?

2675 Mr. {Barton.} Aye.

2676 The {Clerk.} Mr. Barton votes aye.

2677 Mr. Whitfield?

2678 Mr. {Whitfield.} Aye.

2679 The {Clerk.} Mr. Whitfield votes aye.

2680 Mr. Shimkus?

2681 [No response.]

2682 The {Clerk.} Mr. Pitts?

2683 Mr. {Pitts.} Aye.

2684 The {Clerk.} Mr. Pitts votes aye.

2685 Mr. Walden?

2686 Mr. {Walden.} Aye.

2687 The {Clerk.} Mr. Walden votes aye.

2688 Mr. Murphy?

2689 [No response.]

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2690 The {Clerk.} Mr. Burgess?

2691 Mr. {Burgess.} Aye.

2692 The {Clerk.} Mr. Burgess votes aye.

2693 Mrs. Blackburn?

2694 Mrs. {Blackburn.} Aye.

2695 The {Clerk.} Mrs. Blackburn votes aye.

2696 Mr. Scalise?

2697 [No response.]

2698 The {Clerk.} Mr. Latta?

2699 Mr. {Latta.} Aye.

2700 The {Clerk.} Mr. Latta votes aye.

2701 Ms. McMorris Rodgers?

2702 Mrs. {McMorris Rodgers.} Aye.

2703 The {Clerk.} Mrs. McMorris Rodgers votes aye.

2704 Mr. Harper?

2705 Mr. {Harper.} Aye.

2706 The {Clerk.} Mr. Harper votes aye.

2707 Mr. Lance?

2708 Mr. {Lance.} Aye.

2709 The {Clerk.} Mr. Lance votes aye.

2710 Mr. Guthrie?

2711 Mr. {Guthrie.} Aye.

2712 The {Clerk.} Mr. Guthrie votes aye.

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2713 Mr. Olson?

2714 Mr. {Olson.} Aye.

2715 The {Clerk.} Mr. Olson votes aye.

2716 Mr. McKinley?

2717 Mr. {McKinley.} Aye.

2718 The {Clerk.} Mr. McKinley votes aye.

2719 Mr. Pompeo?

2720 [No response.]

2721 The {Clerk.} Mr. Kinzinger?

2722 [No response.]

2723 The {Clerk.} Mr. Griffith?

2724 Mr. {Griffith.} Aye.

2725 The {Clerk.} Mr. Griffith votes aye.

2726 Mr. Bilirakis?

2727 Mr. {Bilirakis.} Aye.

2728 The {Clerk.} Mr. Bilirakis votes aye.

2729 Mr. Johnson?

2730 Mr. {Johnson.} Aye.

2731 The {Clerk.} Mr. Johnson votes aye.

2732 Mr. Long?

2733 Mr. {Long.} Aye.

2734 The {Clerk.} Mr. Long votes aye.

2735 Ms. Ellmers?

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2736 Mrs. {Ellmers.} Aye.

2737 The {Clerk.} Mrs. Ellmers votes aye. Mr. Bucshon?

2738 Mr. {Bucshon.} Aye.

2739 The {Clerk.} Mr. Bucshon votes aye.

2740 Mr. Flores?

2741 Mr. {Flores.} Aye.

2742 The {Clerk.} Mr. Flores votes aye.

2743 Mrs. Brooks?

2744 Mrs. {Brooks.} Aye.

2745 The {Clerk.} Mrs. Brooks votes aye.

2746 Mr. Mullin?

2747 Mr. {Mullin.} Aye.

2748 The {Clerk.} Mr. Mullin votes aye.

2749 Mr. Hudson?

2750 Mr. {Hudson.} Aye.

2751 The {Clerk.} Mr. Hudson votes aye.

2752 Mr. Collins?

2753 Mr. {Collins.} Aye.

2754 The {Clerk.} Mr. Collins votes aye.

2755 Mr. Cramer?

2756 Mr. {Cramer.} Aye.

2757 The {Clerk.} Mr. Cramer votes aye.

2758 Mr. Pallone?

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2759 Mr. {Pallone.} No.

2760 The {Clerk.} Mr. Pallone votes no.

2761 Mr. Rush?

2762 [No response.]

2763 The {Clerk.} Ms. Eshoo?

2764 Ms. {Eshoo.} No.

2765 The {Clerk.} Ms. Eshoo votes no.

2766 Mr. Engel?

2767 Mr. {Engel.} No.

2768 The {Clerk.} Mr. Engel votes no.

2769 Mr. Green?

2770 [No response.]

2771 The {Clerk.} Ms. DeGette?

2772 Ms. {DeGette.} No.

2773 The {Clerk.} Ms. DeGette votes no.

2774 Mrs. Capps?

2775 Mrs. {Capps.} No.

2776 The {Clerk.} Mrs. Capps votes no.

2777 Mr. Doyle?

2778 Mr. {Doyle.} No.

2779 The {Clerk.} Mr. Doyle votes no.

2780 Ms. Schakowsky?

2781 Ms. {Schakowsky.} No.

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2782 The {Clerk.} Ms. Schakowsky votes no.
2783 Mr. Butterfield?
2784 [No response.]
2785 The {Clerk.} Ms. Matsui?
2786 Ms. {Matsui.} No.
2787 The {Clerk.} Ms. Matsui votes no.
2788 Ms. Castor?
2789 Ms. {Castor.} No.
2790 The {Clerk.} Ms. Castor votes no.
2791 Mr. Sarbanes?
2792 Mr. {Sarbanes.} No.
2793 The {Clerk.} Mr. Sarbanes votes no.
2794 Mr. McNerney?
2795 Mr. {McNerney.} No.
2796 The {Clerk.} Mr. McNerney votes no.
2797 Mr. Welch?
2798 Mr. {Welch.} No.
2799 The {Clerk.} Mr. Welch votes no.
2800 Mr. Lujan?
2801 Mr. {Lujan.} No.
2802 The {Clerk.} Mr. Lujan votes no.
2803 Mr. Tonko?
2804 Mr. {Tonko.} No.

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2805 The {Clerk.} Mr. Tonko votes no.
2806 Mr. Yarmuth?
2807 [No response.]
2808 The {Clerk.} Ms. Clarke?
2809 [No response.]
2810 The {Clerk.} Mr. Loeb sack?
2811 Mr. {Loeb sack.} No.
2812 The {Clerk.} Mr. Loeb sack votes no.
2813 Mr. Schrader?
2814 Mr. {Schrader.} Aye.
2815 The {Clerk.} Mr. Schrader votes aye.
2816 Mr. Kennedy?
2817 Mr. {Kennedy.} No.
2818 The {Clerk.} Mr. Kennedy votes no.
2819 Mr. Cardenas?
2820 Mr. {Cardenas.} No.
2821 The {Clerk.} Mr. Cardenas votes no.
2822 Chairman Upton?
2823 The {Chairman.} Votes aye.
2824 The {Clerk.} Chairman Upton votes aye.
2825 The {Chairman.} Other members wishing to cast their
2826 vote? Mr. Shimkus?
2827 Mr. {Shimkus.} Votes aye.

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2828 The {Clerk.} Mr. Shimkus votes aye.

2829 The {Chairman.} Mr. Green?

2830 Mr. {Green.} Votes no.

2831 The {Clerk.} Mr. Green votes no.

2832 The {Chairman.} Dr. Murphy?

2833 Mr. {Murphy.} Aye.

2834 The {Clerk.} Dr. Murphy votes aye.

2835 The {Chairman.} Ms. Blackburn, are you recorded? Yeah.

2836 Other members wishing to cast their vote? Seeing none, the

2837 Clerk will report the tally.

2838 The {Clerk.} Mr. Chairman, on that vote there were 29

2839 ayes and 18 nays.

2840 The {Chairman.} Twenty-nine ayes, 18 nays. The

2841 amendment is agreed to.

2842 It is my understanding we have one amendment that is

2843 going to be offered left. I may be wrong, but it is my

2844 understanding there is only one left, and the chair will

2845 recognize the gentlemen, Mr. Latta, from Ohio--

2846 Mr. {Latta.} Well, thank you, Mr. Chairman.

2847 The {Chairman.} --who has an amendment at the desk.

2848 The Clerk will report the title of the amendment.

2849 The {Clerk.} Amendment to H.R. 2583--

2850 The {Chairman.} And it will be considered as read.

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2851 [The amendment of Mr. Latta follows:]

2852 ***** INSERT 8 *****

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|

2853 The {Chairman.} The staff will distribute the language,
2854 and the gentleman is recognized for 5 minutes or less in
2855 support of his amendment.

2856 Mr. {Latta.} Thank you again, Mr. Chairman. I am
2857 offering amendment based on my bill to require the FCC to
2858 list and describe all items to be adopted on delegated
2859 authority. We have all heard lately the troubling reports
2860 that the Chairman may be delegating items that should be
2861 considered by the Full Commission for open debate and
2862 discussion. This is not how American Government should
2863 operate. It is inappropriate for the Commission to delegate
2864 items that pose new and novel questions of policy. Those
2865 items should be considered and voted on by all the
2866 Commissioners. My amendment would remove the suspicions of
2867 any abuse of delegated authority by requiring the FCC to list
2868 and describe on its Web site all items to be adopted on
2869 delegate authority a full 48 hours in advance.

2870 Opponents of my draft will argue that too many items are
2871 taken on delegated authority and the FCC would be burdened by
2872 the number of items that it would have to notice in advance.
2873 I am not entirely convinced by the argument given the FCC's
2874 current practices to publish a list of all items including

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2875 items taken on delegated authority on a daily basis.

2876 Nonetheless, the intent of my amendment was to ensure
2877 that transparency and that it does not create burdens. That
2878 is why in my amendment, to require the listing and
2879 description of only those delegated items that receive a DA
2880 number from the FCC. As I understand these items are given a
2881 DA number by the FCC bureau chiefs who consider whether the
2882 decision will have precedent in the future and whether the
2883 item is an issue of broad public attention.

2884 I believe that these are the items we would like to
2885 catch by the 48-hour notice. This amendment reflects that
2886 modification, and I believe will give greater transparency
2887 and openness to the Commission. And also as we saw in the
2888 subcommittee markup when we were talking about this issue
2889 that in 2014 there are 1,845 DAs that were assigned numbers,
2890 and if you break that down, that is only 5 per day. So I
2891 don't think that is overly burdensome for the Commission to
2892 have the come up with, even if you go back in the last four
2893 years, it would be 6.6, 5.5, or 5.6 per day.

2894 So Mr. Chairman, I would ask for the adoption of the
2895 amendment, and I yield back.

2896 The {Chairman.} The gentleman yields back. Other
2897 members with to speak on the amendment? Mr. Doyle?

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2898 Mr. {Doyle.} Five minutes. Thank you, Mr. Chairman. I
2899 move to strike the last word. Mr. Chairman, my friend and
2900 colleague, Mr. Latta's goal of enhancing transparency at the
2901 FCC is admirable, and I am all for that. But this amendment
2902 doesn't really achieve that. Instead, this amendment
2903 effectively delays many FCC actions by 48 hours arbitrarily.

2904 The FCC acts on delegated authority thousands of times
2905 each year, and it has done that under both Democratic and
2906 Republican administrations. The vast majority of these
2907 actions are non-controversial by any standard, and while the
2908 amendment states that summaries of these decisions should be
2909 published 2 days ahead of their release, much of this work is
2910 currently released as soon as it is approved by the Bureau.
2911 So the actual effect of the Latta amendment would be a 2-day
2912 delay in creating an unnecessary hurdle by delaying full
2913 release of these decisions to the public and penalizing the
2914 businesses and stakeholders which rely on the FCC.

2915 I appreciate that some changes have been made since we
2916 raised some concerns about delegated authority, but I still
2917 think the language in this particular amendment continues to
2918 be fundamentally flawed because it artificially delays
2919 thousands of routine and non-controversial items that the FCC
2920 processes annually. We are talking about things like public

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2921 notices, division- and bureau-level decisions, bureau-level
2922 petitions for reconsideration. These are non-controversial,
2923 routine matters. And let me state also that all actions that
2924 are taken on delegated authority can still be appealed to the
2925 full Commission. That is a right that has always been
2926 maintained, and it is frequently exercised. So I would just
2927 say that this amendment is flawed and not worthy of our
2928 support. I will yield back.

2929 The {Chairman.} Chairman yields back. Other members
2930 wishing to speak on the amendment? Seeing none, the vote
2931 occurs on the amendment offered by the gentleman from Ohio.

2932 All those in favor will say aye.

2933 Those opposed say no.

2934 In the opinion of the chair, the ayes have it. The ayes
2935 have it, and the amendment is agreed to.

2936 Are there further amendments to the bill? Seeing none,
2937 the question now occurs on favorably reporting H.R. 2583 as
2938 amended to the House.

2939 All those in favor will say aye.

2940 Those opposed say no.

2941 In the opinion of the chair, the ayes have it. The ayes
2942 have it, and the bill is favorably reported. And without
2943 objection, staff is authorized to make technical and

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2944 conforming changes to the bills reported by the committee
2945 today. So ordered. And pursuant to House Rule 1121, all
2946 members will be given 2 calendar days to file written and
2947 signed views for the bills approved by the committee today.

2948 Without objection, the committee stands adjourned.

2949 [Whereupon, at 12:27 p.m., the Committee was adjourned.]