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4 #CommActUpdate: PERSPECTIVES FROM FORMER FCC CHAIRMEN

5 WEDNESDAY, JANUARY 15, 2014

6 House of Representatives,

7 Subcommittee on Communications and Technology

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The subcommittee met, pursuant to call, at 10:03 a.m.,
11 in Room 2123 of the Rayburn House Office Building, Hon. Greg
12 Walden [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Walden, Latta, Shimkus,
14 Terry, Rogers, Blackburn, Scalise, Lance, Guthrie, Gardner,
15 Pompeo, Kinzinger, Long, Barton, Upton (ex officio), Eshoo,
16 Doyle, Matsui, Braley, Lujan, Dingell, Pallone, Matheson and

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17 Waxman (ex officio).

18 Staff present: Gary Andres, Staff Director; Ray Baum,
19 Senior Policy Advisor/Director of Coalitions; Sean Bonyun,
20 Communications Director; Matt Bravo, Professional Staff
21 Member; Andy Duberstein, Deputy Press Secretary; Gene
22 Fullano, Detailee, Telecom; Kelsey Guyselman, Counsel,
23 Telecom; Sean Hayes, Counsel, O&I; Grace Koh, Counsel,
24 Telecom; Gib Mullan, Chief Counsel, CMT; David Redl, Counsel,
25 Telecom; Charlotte Savercool, Legislative Coordinator; Tom
26 Wilbur, Digital Media Advisor; Jessica Wilkerson, Staff
27 Assistant; Shawn Chang, Chief Counsel for Communications and
28 Technology Subcommittee; Margaret McCarthy, Professional
29 Staff Member; Kara van Stralen, Policy Analyst; and Patrick
30 Donovan, FCC Detailee.

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31 Mr. {Walden.} I will call to order the Subcommittee on
32 Communications and Technology and thank our witnesses for
33 being here for this first of what will be many hearings as we
34 look to update the Communications Act. Few sectors of our
35 economy are equal to the communications and technology sector
36 when it comes to innovation, investment in the American
37 economy and job creation. In these tough economic times, we
38 as policy makers should be committed to fostering this
39 critical sector of the economy. Yet, the laws that regulate
40 the industry are outdated at best, and some are affirmatively
41 damaging. This is why Chairman Upton and I, along with
42 members of this subcommittee, have decided to undertake the
43 difficult task of updating the Communications Act of 1934.
44 In the eight decades since its passage, Congress' have come
45 and gone. Some have even made substantial though targeted
46 changes to the law. But none have undertaken to rethink the
47 act for the environment of convergence and innovation in
48 which we live today. It is time for our laws to reflect our
49 modern technological landscape, one grounded in the networks
50 and services of our past and drive by our IP and mobile

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51 future.

52 Just yesterday, the D.C. Circuit issued its decision in
53 the Net Neutrality case, striking down the rules ordered by
54 the Federal Communications Commission. I for one was pleased
55 to see the Court remove the government from the business of
56 making management judgments and give providers the freedom to
57 make decisions that are pro-competitive and pro-consumer.
58 While this decision benefits consumers and providers alike by
59 keeping the Internet free from government interference, the
60 rationale highlights the ongoing confusion regarding
61 regulation of different services. This is yet another
62 example of why it is vital that we take a hard look at the
63 laws in this space and reconcile them with the realities of
64 technology. The answer is not to subject new technology to
65 outdated regulations, but rather to craft laws appropriate to
66 innovative services and platforms.

67 As we embark on this effort, it should come as no
68 surprise that I am focused on ensuring that we engage in a
69 transparent and collaborative process, not just with our
70 colleagues here in the Congress but also with the many
71 stakeholders outside of these halls. All we want is a

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72 dialog.

73 Last week, the Committee released the first of what will
74 be a series of white papers seeking input from the public.
75 And I hope that interested parties will take the opportunity
76 to make their voices heard to us.

77 Today's witnesses provide a unique and valuable
78 perspective on the Communications Act. As chairman of the
79 agency tasked with carrying out Congress' will in
80 implementing the Act, the four witnesses today have had a
81 front row seat to witness the Act in the real world to see
82 where it works and where it doesn't. These chairmen have
83 varied experiences and viewpoints that in many ways represent
84 the evolution of modern communications.

85 When Chairman Wiley led the agency, telephone service
86 was a government regulated monopoly. Consumers got their
87 news from broadcast television and print newspapers, and the
88 Internet was still years away. Sixteen years later, when
89 Reed Hundt took the reins, the Internet was coming into full
90 force and mobility was beginning to take off. Chairman
91 Powell's tenure saw the convergence of services towards the
92 bundled offerings we see today, as well as the deployment of

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93 broadband to Americans. And in the four years since Michael
94 Copps served as Acting Chairman, there have been dramatic
95 changes to the way we communicate and the technology that
96 powers our lives. For example, the title of today's hearing
97 contains a hashtag. Twitter, then with no vowels in its
98 name, had yet to be discovered by--at South by Southwest.

99 Neither we nor the august panel before us can predict
100 the future and what technology changes it will bring. But by
101 learning the lessons of the past, we can do our best to
102 create a legal and regulatory environment that will foster
103 innovation and competition, encourage consumer choice and
104 optimum services.

105 So again, I want to thank you for--to our witnesses for
106 this impressive panel. We look forward to hearing your
107 testimony. And we appreciate your public service. With
108 that, I would yield to the Vice-Chair of the Subcommittee,
109 Mr. Latta, for any opening comments he may have.

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

111 ***** COMMITTEE INSERT *****

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|
112 Mr. {Latta.} Well, thank you very much, Mr. Chairman,
113 and thank you very much to our panel of distinguished
114 witnesses for testifying before us today. I appreciate you
115 all being here.

116 Since 1966, we have witnessed an unprecedented
117 technological evolution in the communications industry. The
118 rapid emergence of new and innovative technologies has
119 fostered increased investment throughout the industry in the
120 development of a vibrant, competitive communications
121 marketplace. As we move into the future, it is important to
122 examine the Communications Act to ensure that our public
123 policy continues to encourage this kind of growth in
124 innovation that is essential to fueling our economy. Reforms
125 to current law should reflect the technology we enjoy to
126 today and be able to adapt to the technology of tomorrow
127 without further government intervention. Our efforts should
128 be dedicated to ensure that the laws governing the
129 communications marketplace do not stifle current and future
130 investment, innovation, economic growth and consumer choice
131 in this dynamic and converging digital age of communications.

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132 I look forward to the testimony from our witnesses
133 today. And again, Mr. Chairman, I thank you very much for
134 holding this hearing.

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

136 ***** COMMITTEE INSERT *****

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|
137 Mr. {Walden.} I thank the gentleman for his comments.
138 Now, I turn to the gentlelady from California, Ms. Eshoo, the
139 Ranking Member of the Subcommittee, for her opening comments.
140 Good morning.

141 Ms. {Eshoo.} Thank you, Mr. Chairman, and good morning
142 to you, to all of the members and the warmest welcome to each
143 of the witnesses that are at the table. Your combined public
144 service is--really stands as a hallmark of devoted service to
145 our country, but also to move the country forward in one of
146 its most important economic sectors. So welcome to you. It
147 is wonderful to see all of you at the same time at the table.

148 With news of the Court's Net Neutrality decision,
149 today's hearing I think is a timely opportunity to hear from
150 each one of you who have led the expert agency, the FCC. And
151 combined, it represents over 4 decades of services. That is
152 nothing short of extraordinary. And each of you have had a
153 hand in really I think changing our nation's communications
154 and technology landscape. So not only kudos to you, thank
155 you to you, but a recognition of what each one of you
156 accomplished.

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157 When Congress passed the Telecommunications Act of 1996,
158 it was my second term in Congress, my first term on the
159 Committee. And there were just 11 references to the
160 Internet--the word Internet, and only one mention of
161 broadband across a 128 page bill. Many proponents of
162 updating the Act have cited this as evidence that the Act is
163 outdated and unable to keep up with changes in technology.

164 But as Chairman Wheeler affirmed last week, the
165 Communications Act continues to provide the FCC with ample
166 authority to exercise its role in this new environment. The
167 Court's decision yesterday I believe furthers this argument
168 by upholding the FCC's existing authority to oversee
169 broadband services. And I think that is very important for
170 consumers across the country.

171 I make these points not to discourage the Subcommittee's
172 review of the Act. I join with the Chairman to review this.
173 I think that it is a worthy exercise. But rather, we need to
174 ensure that we know what problems we are trying to fix before
175 undertaking a multi-year examination that include hearings,
176 stakeholder meetings, white papers and the such.

177 Since the '96 Act was enacted, hundreds of new entrants

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178 of emerged, and more than 1.2 trillion dollars has been
179 invested by U.S. telecommunications companies. I want this
180 success story to be an unending one. And I think that is the
181 goal of everyone on this wonderful Subcommittee.

182 So to that end, my goal throughout the Subcommittee's
183 review will be to see more competition, greater consumer
184 choice and more innovation. I am so proud, as the Chairman
185 was making his opening remarks, that so much of this has been
186 born in my congressional district. And so, innovation,
187 innovation, innovation. And these goals were imbedded in the
188 '96 Act, and they remain just as important today.

189 At the same time, our process of examining the
190 Communications Act should not derail, in my view, a more
191 immediate update of our video laws, a view shared by a
192 majority of the witnesses at a September Subcommittee
193 hearing. Recurring TV blackouts, coupled with the rising
194 cost of broadcast television programming with limited choice
195 has left consumers frustrated and looking to Congress and the
196 FCC for answers. I believe that working together on a
197 bipartisan basis, we can make this happen in 2014.

198 So, Chairman Walden, thank you for holding today's

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199 hearing on the Communications Act. I welcome the review, and
200 I look forward to hearing the unique insights from the top
201 experts from our country who have given so much in terms of
202 their leadership in leading the expert agency. And with
203 that, I have 34 seconds to yield to Congresswoman Matsui.

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

205 ***** COMMITTEE INSERT *****

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|
206 Ms. {Matsui.} Thank you, Ranking Member. And I want to
207 welcome all the former chairmen. We welcome you here for
208 your ideas and experience that provide a basis for
209 discussions moving forward.

210 As technology evolves, I believe it is important that we
211 consider appropriate updates to the Communications Act that
212 with goals that promote competition and innovation in the
213 marketplace. To that point, I am pleased that yesterday, the
214 D.C. Circuit affirmed the FCC's authority to oversee
215 broadband services. In my opinion, that was the crux of the
216 debate, and the FCC's argument prevailed on the question of
217 authority over broadband. The FCC will need to exert its
218 authority to ensure now that all Americans have access to a
219 free and open Internet. A competitive marketplace with
220 checks and balances will fare well for all Americans.

221 I look forward to the hearing today, and I yield back
222 the balance of my time.

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

224 ***** COMMITTEE INSERT *****

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|
225 Mr. {Walden.} The gentlelady yields back the balance of
226 her time. The Chair now recognizes the distinguished member
227 from Michigan, the Chairman of the Full Committee, Mr. Upton,
228 for opening comments.

229 The {Chairman.} Thank you, Mr. Chairman.

230 Last month, you and I announced our plans for a
231 comprehensive update to the Communications Act of 1934. And
232 the changes in technology since the last update in '96 have
233 been dramatic, and existing laws have failed to keep pace
234 with the vibrant and dynamic telecommunication industry.

235 Communications and technology sectors have consistently
236 been areas of American leadership, innovated--innovation and
237 job creation, certainly. But the Communications Act is
238 showing its age, and our continued international leadership
239 is indeed at stake.

240 Yesterday's Net Neutrality decision, while a victory for
241 consumers in the economy, illustrates the uncertainty flowing
242 from the current statutory scheme and the need for this
243 action. It is time to revamp these laws to reflect the new
244 competitive landscape and changing consumer expectations.

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245 And as we begin the open process leading to a calm Act
246 update, we are looking for input--yes, we are--from all of
247 the stakeholders in the communications and technology world.
248 Where better to start than with our distinguished panel of
249 former leaders of the FCC? These leaders served during
250 diverse times in the evolution of the communications sector,
251 and they have seen the market operate under the strong hand
252 of the U.S. government and the challenges with them divorcing
253 the government from its heavy regulation of the
254 communications sector from times before. They have seen
255 cable grow from its stages of struggling startup. They have
256 seen satellite services succeed in bringing competition to
257 the video market, and failed to find success as a competitor
258 to mobile phone service. And they have seen the Internet
259 grow from a DOD project to a tool for research universities,
260 and now as the commercial economic force that we know today.

261 Throughout the many nuanced iterations of Communications
262 Act, today's witnesses have firsthand seen the Act at its
263 finest, and also when its inability to keep pace with
264 technological innovation has impacted those vital economic
265 issues. So I want to thank the witnesses for taking their

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266 time to share their experiences with us. We value indeed
267 their expertise and welcome their thoughts on how we can
268 ensure the Communications Act fosters our communications and
269 technology sectors well into this century.

270 And I yield the balance of my time to Vice-Chair--

271 [The prepared statement of Mr. Upton follows:]

272 ***** COMMITTEE INSERT *****

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|
273 Mrs. {Blackburn.} And thank you, Mr. Chairman. And if
274 I had my iPhone in my hand, I would hit re-tweet for
275 everything that he has just said.

276 We do appreciate that you all are here. We do want to
277 take advantage of the perspective that you have had. Think
278 about what has happened in the past 17 years since '96 and
279 the changes that we have seen, not only in how we communicate
280 but the rapidity of those communications and entertainment
281 and how we access that, how we take it with us, how we
282 consume it. So we know that the pace of change means that we
283 have to be very judicious and careful as we look at a
284 rewrite. We know that there are issues that are going to
285 come on the plate that we are going to have to discuss also
286 as we look at not only the telecomm rewrite but at the use of
287 the virtual space, privacy, data security, the way the
288 virtual marketplace is used and the way our constituents want
289 to have a toolbox to protect, as I call it, their virtual you
290 online.

291 So we appreciate your time, your willingness to be with
292 us this morning. And I yield back to the Chairman of the

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293 Committee.

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

295 ***** COMMITTEE INSERT *****

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296 The {Chairman.} Yield back.

297 Mr. {Walden.} The gentleman from Texas, Mr. Barton,
298 will use some of that time.

299 Mr. {Barton.} If it--

300 Mr. {Walden.} It is?

301 Mr. {Barton.} Thank you. Thank you, Mr. Chairman. I
302 have served on this Committee since 1986. I have served with
303 three of the four former chairmen. Mr. Wiley preceded me.
304 We have had some agreements. We have had some disagreements.
305 So it is good to have all four of you gentlemen here today.

306 When I was Chairman of the Full Committee back in 1996,
307 my Committee introduced a bill we call the COPE Bill, the
308 Communication Opportunity Promotion Enhancement Act of 2006.
309 It dealt with national franchising, neutrality, public
310 educational and governmental access, E911 and what we now
311 call VOIP. It passed this Committee 42 to 12, and passed the
312 House 321 to 101. But it didn't come up for a vote in the
313 Senate. I voted for the Telecommunications Act of '96 and
314 the Cable Act of '92. And I hope this year to get to vote
315 for another major bill that comes from the leadership of Mr.

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316 Upton, Mr. Walden, Mr. Waxman and Ms. Eshoo. This is a good
317 thing to be doing. And we are going to get some good
318 information from you gentleman. And we appreciate you being
319 here.

320 [The prepared statement of Mr. Barton follows:]

321 ***** COMMITTEE INSERT *****

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|
322 Mr. {Walden.} The gentleman's time has expired. I
323 appreciate his comments. We will now go to the former
324 Chairman of the Committee, Mr. Waxman, for opening comments.

325 Mr. {Waxman.} Thank you very much, Mr. Chairman. I
326 appreciate your convening this morning's hearing and
327 launching the Subcommittee's examination of potential updates
328 to the Communications Act. And I want to thank our
329 distinguished panel for being here to help us think through
330 these ideas. And I think I have been in Congress during the
331 time that all of you have been the heads of the FCC.

332 Technology has changed at a blistering pace since the
333 enactment of the 1996 Telecommunications Act, 18 years ago.
334 The communications and technology industries are a thriving
335 sector of our economy. As broadband plays an increasingly
336 central role in the daily life of our nation, having a strong
337 Federal Communications Commission to oversee its successful
338 growth is more critical than ever.

339 Yesterday, the D.C. Court affirmed what never should
340 have been in question. The FCC is the expert agency charged
341 by Congress to oversee broadband networks. In doing so, the

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342 Court reaffirmed that the FCC has broad, flexible authority
343 to regulate in the broadband and digital age. However, while
344 the Court recognized the FCC's jurisdiction, it also
345 overturned the specific rules the Commission had adopted in
346 the open Internet order. I believe the FCC now has an
347 opportunity, as well as a duty, to exercise the authority the
348 Court recognized yesterday and reinstate the no-blocking and
349 nondiscrimination rules. And Open Internet is critical to
350 the continuing growth of this economic sector.

351 The Internet is a vibrant platform for commerce,
352 innovation and free speech. Having enforceable, Open
353 Internet rules of the road means that consumers are in
354 control of the experience online. I am pleased that Chairman
355 Wheeler has stated his intention to expeditiously adopt a new
356 set of rules following the Court's guidance. And I look
357 forward to working with the Chairman and my colleagues in
358 Congress to make sure these pro-consumer, pro-competition
359 policies will continue to guide the expansion of broadband
360 services.

361 This Subcommittee is now embarking on a journey to
362 update the Communications Act. And regardless of the

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363 advancements in network architecture or transmission
364 protocol, the principles of competition and consumer
365 protection remain as sound today as they were in 1934. I
366 know Chairman Wheeler recognizes the importance of these
367 values and the action of the FCC that plans to take later
368 this month to initiate technology transitions trials reflects
369 that.

370 I look forward to hearing from our witnesses about what
371 Congress can do to help the FCC meet the challenges of the
372 broadband and digital age.

373 Thank you, Mr. Chairman. I want to yield the balance of
374 my time to Mr. Doyle.

375 [The prepared statement of Mr. Waxman follows:]

376 ***** COMMITTEE INSERT *****

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377 Mr. {Doyle.} Thank you, Mr. Waxman. Mr. Chairman,
378 thank you for holding this hearing. And thank you to this
379 distinguished panel. It is good to see all of you here in
380 front of the Committee.

381 I just want to briefly concur with Mr. Waxman in light
382 of yesterday's decision by the D.C. Circuit that I want to
383 encourage Chairman Wheeler to work quickly to ensure that the
384 Internet remains an open platform for innovation, competition
385 and economic growth, which the FCC now clearly has the
386 authority to do. I look forward to working with the
387 Commission and the stakeholders to put in place a robust
388 framework that sustains an Open Internet.

389 Mr. Waxman, I thank you for your courtesy. And I would
390 yield back to you if someone else needs some more time.

391 [The prepared statement of Mr. Doyle follows:]

392 ***** COMMITTEE INSERT *****

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|
393 Mr. {Waxman.} Would--like a minute? If not, I yield it
394 back, Mr. Chairman.

395 Mr. {Walden.} The gentleman yields back the balance of
396 his time. We will proceed now to our distinguished panel of
397 witnesses and begin with Chairman Richard Wiley who was
398 nominated by President Nixon and served as Chairman of the
399 Federal Communications Commission from 1970 to 1977. As
400 Chairman for most of the '70s, Chairman Wiley's tenure at the
401 Commission predates many of the major changes in the
402 communications sector. Chairman, we are glad to have you
403 here today. Pull that microphone up close and then we are
404 good to go. Thank you for being here. You need to push the
405 button on the microphone there one time.

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406 ^STATEMENTS OF RICHARD WILEY, FORMER CHAIRMAN OF THE FCC;
407 REED HUNDT, FORMER CHAIRMAN OF THE FCC; MICHAEL POWELL,
408 FORMER CHAIRMAN OF THE FCC; AND MICHAEL COPPS, FORMER
409 CHAIRMAN OF THE FCC

|
410 ^STATEMENT OF RICHARD WILEY

411 } Mr. {Wiley.} Thank you very much, Chairman Walden,
412 Ranking Member Eshoo and other Subcommittee members. Thank
413 you for the invitation to testify today.

414 While I know it is not going to be self-evident due to
415 my youthful appearance, I have been involved for nearly 45
416 years in federal telecommunications policy. And from my own
417 standpoint, what has occurred during that period is simply
418 amazing. When I was at the FCC in the 1970s, the average
419 American enjoyed just three broadcast television stations,
420 and one local and long distance telephone provider. And the
421 Department of Defense had just begun to explore a
422 revolutionary computer project known as ARPANET. But today,
423 our citizens have access to hundreds of video channels

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424 delivered by countless providers and transmission
425 technologies, dozens of voice and tech services, numerous
426 wire line and wireless companies. And, of course, ARPANET
427 has morphed into the Internet, which has become a universal
428 medium of communications.

429 Interestingly, the bulk of this stunning technological
430 metamorphosis has emerged since the 1996 Telecommunications
431 Act was passed. That legislation significantly altered the
432 rules governing virtually every aspect of communications.
433 The Act's purpose was as simple in theory as it was complex
434 in implementation. That is to provide for a pro-competitive,
435 deregulatory national policy framework designed to accelerate
436 the deployment of advanced services and open all telecomm
437 markets to competition.

438 To this end, the statute sought to eliminate cross-
439 platform barriers and to encourage competition among service
440 suppliers, previously treated as monopolies or oligopolies.
441 Now to the credit of the drafters, the 1996 Act helped to
442 bring about the vibrant competition that consumers enjoy
443 today in a variety of communication sectors, be it voice,
444 data or video. Whether delivered by twisted pair coaxial

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445 cable, optical fiber or the electromagnetic spectrum, myriad
446 providers today are offering their customers suites of
447 advanced services in a marketplace that really could not have
448 been imagined 18 years ago.

449 In my view, where the statute and indeed FCC
450 implementation has succeeded is when a lighter regulatory
451 touch has been applied to markets such as mobile and
452 information services. The result has been that these sectors
453 have thrived. For example, in the robustly competitive
454 wireless marketplace, there are now more wireless subscriber
455 connections than the population of the United States. Just
456 think of that. And mobile broadband has spawned an entirely
457 new industry. Mobile apps, one that is estimated to employ
458 more than 500,000 developers and related jobs, and
459 contributes billions to the economy.

460 A similar success story is unfolding in the delivery of
461 digital content where seemingly unlimited video streaming
462 websites have developed to compete against traditional MVPDs
463 offering an eagerly waiting public new ways to consume video.
464 This marketplace, I would suggest, is emerging because of
465 innovation and competition and not because of government

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466 regulation.

467 Conversely, where the government has been less effective
468 in maintaining is in maintaining highly restrictive
469 regulations on traditional industries like, for example, wire
470 line telephony and broadcasting. The end result has been to
471 disadvantage these sectors, even though they may be providing
472 services that are often equivalent to those offered by their
473 less regulated competitors. In the developing IP centric
474 world, all types of providers should be able to market all
475 kinds of services, employing the same computer oriented
476 language that defines digital communications.

477 And yet, the 1996 Act continues to regulate
478 communications markets differently based on the conduit used
479 to reach the customer, as well as the geographic location
480 where traffic originates and terminates. Now, the underlying
481 problem is not a failure of Congressional or FCC vision.
482 Instead, the reality is that the government has great
483 difficulty in writing laws or promulgating regulations that
484 can keep pace with advancing technology, and especially so in
485 a dynamic and ever changing industry like communications.

486 Thus, I would suggest that the objective of a statutory

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487 rewrite should not be to legislate premised on the current
488 state of the marketplace, or even on predictions of what it
489 may look like in the future. Instead, Congress may want to
490 consider a flexible and technologically neutral framework
491 that will be capable of adapting to technical invention and
492 innovation, whatever that may prove to be.

493 In this regard, let me close by setting forth a few
494 principles that might guide the drafting of a new statute.
495 First, the industry's silos embedded in the 1996 Act should
496 be abolished. And, instead, functionally equivalent services
497 should be treated in the same manner, regardless of who
498 provides them or how they are delivered to consumers.
499 Second, the traditional dichotomy between interstate and
500 intrastate services should be eliminated, because regulatory
501 classifications based on geographical end points no longer
502 makes sense in an IP environment. Third, legislation should
503 be focused on maintaining consumer protection and public
504 safety regulations. Conversely, economic regulations should
505 be considered in the case of non-competitive markets or in
506 the event of demonstrated market failure. And, fourth, new
507 regulations should be instituted with a lighter touch, as I

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508 said, accompanied by some set provisions so that the rational
509 for continued government intervention can be reviewed on a
510 regular basis.

511 Thank you once again for the opportunity to testify.

512 [The prepared statement of Mr. Wiley follows:]

513 ***** INSERT A *****

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|

514 Mr. {Walden.} Chairman Wiley, thank you very much for
515 your learned comments. We appreciate your counsel. We go
516 now to Chairman Reed Hundt who was nominated by President
517 Clinton and served as Chairman of the FCC from 1993 to 1997.
518 Chairman Hundt's tenure at the Commission saw the passage of
519 the Omnibus Budget Reconciliation of '93, which granted the
520 Commission the authority to auction spectrum licenses, and
521 the Telecommunications Act of '96. So, Chairman Hundt,
522 thanks for joining us today. We look forward to your
523 comments as well.

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|

524 ^STATEMENT OF REED HUNDT

525 } Mr. {Hundt.} Thank you, Chairman Walden. Thank you for
526 inviting me. Good morning to Ranking Member Eshoo and to all
527 the other members of this distinguished Committee. I am very
528 proud that many of you have become lifelong friends. And it
529 is a pleasure to be here with you.

530 I also want to thank the D.C. Circuit for giving me a
531 flashback to law school so that I was late last night
532 scrambling to read the key case right before this class. I
533 have a feeling I am not the only person here who did that,
534 but I also want to note I didn't have any staff or
535 classmates. So I apologize if I haven't read it correctly,
536 but I thought that I would throw away my remarks and, for
537 whatever it is worth, offer you my reading of the case.

538 In my view, the D.C. Circuit has written, first, a very,
539 very well-reasoned and very important case. There is no
540 question that this reflects that Circuit's experience in
541 these topic areas, and that they have brought that experience
542 to bear in a bipartisan way to express a view about how the

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543 United States looked to grant the authority to create the
544 legal culture that governs broadband.

545 What have they said? I believe the Court has vindicated
546 the wisdom of Congress in the 1996 Act. Specifically, the
547 Court has said that when Congress, in that Act in Section 706
548 conveyed to its expert agency the ``authority to enact
549 measures encouraging the deployment of broadband
550 infrastructure.'' In doing that, according to the D.C.
551 Circuit, Congress said the FCC, you will be our instrument
552 for creating a flexible and a supple legal culture that will
553 change over time as the market changes and as technology
554 changes, but that can always be used to protect competition,
555 to protect consumers and, fundamentally, to make sure that
556 absolutely everybody in America is participating in the
557 common medium of the Internet, and that absolutely everybody
558 in America is able to use it to publish their views and to
559 review all the views of everyone else. Not all those words
560 are in this decision, but almost all those words are actually
561 in this decision.

562 Section 1706 of course is just one part of the 1996 Act.
563 But I know I don't have to remind many of the members here.

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564 Maybe I don't have to remind any of the members here. That
565 was passed by a very large bipartisan vote in the Senate and
566 in the House. We all were--those of us who were in public
567 service then remember being in the Library of Congress when
568 President Clinton, the Democratic President, passed this law
569 that was passed by a Senate controlled by the Republicans and
570 a House controlled by the Republicans. And all came together
571 and said we have a common vision. And that is that there
572 will be networks. We did not know technically speaking what
573 they would all exactly look like, but that there would be
574 networks that would connect all of us to each other and to
575 all of the resources of information that in fact would be
576 utilized for entrepreneurship, for innovation and for
577 learning. And I have to say, this is what has happened.

578 Now, no one here things the government built these
579 networks. No one thinks the FCC built these networks. But
580 everyone should know that the legal culture that was created
581 by Congress and its expert agency, through the terms of
582 Republican and Democratic chairs, the legal culture is the
583 legal culture that is regarded all around the world as the
584 absolute best legal culture for governing the Internet. Any

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585 one of us knows 12 things that we think should be done
586 differently, or maybe two dozen. But we ought to recognize,
587 just for a little while, that we as a country should pat our
588 country on the back and say, for the last 20 years, the legal
589 culture that has been created that has governed the Internet
590 has really created the best possible environment for
591 innovation, for entrepreneurship for consumers. That is what
592 has actually happened. And this Court has said and that law
593 still exists. This Court has said, already, Congress has
594 enacted the law that gives the FCC the authority to protect
595 competition and consumers. And that authority, according to
596 this Court, lies in Section 1706. And the Court also said
597 that Congress can--that the FCC can, if it choose, classify
598 broadband as a common carrier. It could use either of these
599 methods. It could use one of these methods. But it can
600 accomplish the goals that are stated in the act and that have
601 repeatedly been restated by this Congress.

602 The only thing the Court said is if you are going to
603 pass rules that look like common carrier rules, and you are
604 going to classify broadband as an information service, then
605 you are going to be creating a contradiction that we won't

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606 permit. You can't call it an information service and then
607 pass rules that look like common carrier rules, because if it
608 quacks like a duck, it is a duck. So that is why it was sent
609 back.

610 I read a lot of articles that said that this was a
611 victory for Verizon. This is a victory for Congress. If it
612 was a victory for Verizon, it was a Pyrrhic victory. It was
613 the most perfect example of a Pyrrhic victory since Pyrrhus.
614 So I just want to compliment this Congress on passing a
615 supple law that has worked well, and this Court has just said
616 still will permit you to achieve your goals through the
617 expert agency. Thank you.

618 [The prepared statement of Mr. Hundt follows:]

619 ***** INSERT B *****

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|
620 {Voice.} Thank you.

621 Mr. {Walden.} Thank you, Chairman Hundt. We appreciate
622 your comments and your staying up all night to cram for our
623 hearing. We will now turn to Chairman Michael Powell who was
624 nominated by George W. Bush and served as Chairman of the FCC
625 from 2001 to 2005. During Mr. Powell's Chairmanship, they
626 saw a significant increase in the deployment of broadband to
627 American homes, as well as convergence of services toward the
628 development of broadband--toward the bundles of services that
629 are common today, among many other things. Chairman Powell,
630 thank you for joining us today. And please, go ahead.

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|

631 ^STATEMENT OF MICHAEL POWELL

632 } Mr. {Powell.} Thank you, Mr. Chairman. And as a former
633 chairman, I am happy to be sitting around with a bunch of
634 these other chairmen offering, as best we can, our historic
635 perspectives on how to prudently go about rewriting the Act,
636 should that be your intention. And I am pleased to be with
637 Ranking Member Eshoo again and all the distinguished members
638 of the Committee.

639 I think it goes without saying, and all of us will say
640 it in different ways that the world has changed quite
641 radically from 20 years ago in terms of markets and services.
642 But don't ask us, ask your kids. Ask them to name three
643 broadcast networks, if you will. Ask them to do without the
644 Internet for a week. And for God sakes, ask them to put
645 their phone down at dinner and see what reaction you get. I
646 think you will be convinced.

647 That transformation has taken place largely because of
648 an enormous revolution in network architecture in the form of
649 the Internet, which has unleashed a form of intermodal

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650 competition that heretofore wasn't really possible. And it
651 has really introduced an exciting world. And we should
652 remember, gave birth to a host of companies and opportunities
653 that never were envisioned before, the companies that aren't
654 here, Google, Facebook, Amazon, eBay, Twitter, Instagram, you
655 name it, all able to be born and flourish because of this
656 transformation.

657 I would say that any consideration of the Act should
658 start with not only cataloging its ills but cataloging its
659 success, as much as Reed was alluding to. I think it is
660 really important to note that over this period, we have seen
661 the most stunning amount of investment in infrastructure and
662 architecture that we have ever seen. We have reached 90
663 percent of Americans faster than any other technology in
664 world history. Innovation and growth have continued at
665 exponential rates with broadband increasing over 19 times
666 just in the last decade, doubling basically, increasing about
667 50 percent annually. That is a stunning achievement and
668 something we should make sure we keep going. So I think, you
669 know, being guided by the old maxim of do no harm is an
670 important cautionary tale.

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671 As I thought about how you might think about
672 architecting a new regime, I am guided by the idea of the
673 Internet itself, which is the fundamental principle of
674 simplicity as a design principle. It has been a very, very
675 powerful one in the Internet. And I think it offers some
676 guidance in this space as well.

677 So I would like to, toward that end, offer--I am going
678 to see Mr. Wiley's four principles and do them three better
679 and offer you seven as briefly as I can. The first is we
680 have heard a lot about innovation. I do think the principle
681 goal of the government should be to nurture that innovation.
682 This is the kind of fermenting change we have never been able
683 to harness as fully as we are today. Innovation has allowed
684 us to bring completely new products and services and network
685 changes to the market. It has created a form of creative
686 destruction that keeps the market energetic and keeps a
687 monopoly in check. And I think it has created new kinds of
688 transparency for the American consumer through crowdsourcing
689 and visibility. And we should study the conditions that go
690 into innovation and make sure we harness them. I think three
691 are critical. Innovations really do require freer markets.

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692 And a market that moves at Moore's Law speed, the pace of
693 adaptation, transformation and change are incredibly fast.
694 And there needs to be a constant and intense dialog between
695 producers and consumers. And we should be careful to protect
696 that.

697 Innovation requires risk taking. And as we know, most
698 new adventures fail. There has to be room in government
699 policy for failure. There has to be room in government
700 policy for encouraging taking those risks. And innovation
701 requires stability. Investing more than a trillion dollars,
702 as Congressman Eshoo was talking about earlier since 1996, is
703 stunning. But it requires a stable regulatory environment to
704 provide that uncertainty. Because if investment slows,
705 innovation will slow with it.

706 The second rule of simplicity I think is once you have
707 created a lighter regulatory environment by trying to pursue
708 the maxim of less is more, organize it better. We certainly
709 have heard about the challenges of silos and buckets.
710 Clearly, that had its place in another time when these
711 technologies, applications and type of companies were deeply
712 intertwined, were not able to provide alternative services in

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713 other spaces. That day has moved on, and we certainly crave
714 a more unified, integrated kind of legal regime that doesn't
715 make those sorts of distinctions. In fact, as I have heard
716 mentioned today, I think yesterday's court decision in the
717 multi-year debate on Net Neutrality that illustrates the
718 almost torturous challenges, sometimes, of addressing a
719 modern circumstance in using provisions of last century's
720 rules. I think there is certainly widespread agreement on
721 core principles around an open Internet. After somewhat
722 kludge past we have had to follow in an effort to implement
723 them has made the matter, I believe, infinitely more complex
724 and controversial than necessary. And the threat of
725 radically upending the longstanding light regulatory
726 foundation of broadband on which massive investment and
727 growth have been built with good effect, to implement one set
728 of rules seems distressing. Any shift of that magnitude, I
729 do think would require Congress'--the people's
730 representatives to weigh in on.

731 A third principle, give regulators the ability and
732 obligation to address changing markets. As we have said, the
733 markets move drastically. And the FCC often has limited

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734 ability to make those migrations. Yes, in places they have.
735 There are other instances in which they have not been able
736 to, even when they concede that the fundamental circumstances
737 are changed.

738 Fourth, the law should ensure competitive parity and
739 technical neutrality. There is a hodgepodge of applications
740 of statutes I could point out in which certain rules apply to
741 one sector of a service and not to other sectors. This has
742 just really been an outgrowth of the passage of years and the
743 changing nature of companies. But there are many rules that
744 apply to cable, for example, that don't apply to DBS for no
745 discernible reason. One very valuable think the Committee do
746 is prune through the statute to try to harmonize those
747 differentiated treatments as best as possible.

748 Fifth, the FCC should police markets, not create them.
749 I think this is genuinely well understood. But there is a
750 role for a cop on the beat. What I don't think there should
751 be is a master chef who believes it is the Commission's
752 objective to make markets or create the conditions and
753 circumstances for them.

754 And, finally, the last two, timeliness. If you are

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755 working in Moore's Law, you need timely and prompt decisions
756 from the government.

757 Lastly and most importantly, the law still needs to
758 preserve important societal values and protect consumers from
759 harm. And the FCC and the government will always have a
760 sacred responsibility in that regard.

761 Thank you for your time.

762 [The prepared statement of Mr. Powell follows:]

763 ***** INSERT C *****

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|

764 Mr. {Walden.} Chairman, thank you. Speaking of cops on
765 the beat--

766 Mr. {Copps.} Here I am.

767 Mr. {Walden.} We will now go to Michael Copps, served
768 as Acting Chairman of the Federal Communications Commission
769 from January to June of 2009, and served as Commissioner from
770 2001 to 2011. Prior to joining the Commission, Commissioner
771 Copps worked right here on Capitol Hill and the U.S.
772 Department of Commerce. Commissioner Copps, Chairman Copps,
773 thank you for being with us. And we look forward to your
774 comments to round out our panel.

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775 ^STATEMENT OF MICHAEL COPPS

776 } Mr. {Copps.} Thank you, Chairman Walden, Chairman
777 Upton, Ms. Eshoo, Mr. Waxman, Vice-Chairman, Former Chairman
778 and all the members of the Committee. I am delighted to be
779 here.

780 We are here today to review whether the Communications
781 Act needs to be updated or otherwise reformed. I have heard
782 some say that simply because the Act is old, it must be
783 obsolete. That no matter how well it has served us, an act
784 written 18 years ago cannot have relevance in today's altered
785 world. Now, as someone only a little younger than the
786 original Act of 1934, I would raise a caution flag or two.
787 The Declaration of Independence and the Constitution were
788 written long ago, too. Yet, we still find them critically
789 relevant in our lives. While it is praiseworthy to ponder
790 changes to the law, I would suggest firstly that the
791 framework of the current statute remains in many ways strong,
792 and secondly that the current Act's provisions can still do
793 much to improve our communication's landscape to enlarge

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794 economic and social opportunity for all of us and nourish the
795 kind of civic dialog upon which successful self-government
796 inevitably rests.

797 In an ideal world, most of us would welcome an up to the
798 minute rewrite of the law to reflect how we believe it could
799 be improved. The last such revision in 1996 was born of a
800 unique political moment that aligned a sufficient and sundry
801 member--number of stakeholders across sectors and
802 constituencies who were able to negotiate a compromised
803 statute that, while far from perfect, at least envisioned
804 delivering to every American, no matter who they are, where
805 they live or the particular circumstances of their individual
806 lives, the most advanced communications, technologies and
807 services feasible at reasonable and comparable prices,
808 replete with consumer protections, rights of privacy,
809 assurances of public safety and utilizing competition to help
810 achieve these goals. Putting the statute to work to deliver
811 these benefits was my mission at the FCC, working with some
812 of the most amazing public servants anywhere. Nowadays, I
813 carry out my public interest mission in the non-profit sector
814 at common cause.

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815 In the immediate wake of the new law's passage, the
816 Commission indeed made important strides to carry out these
817 Congressional mandates. But, alas, things changed. Some of
818 the very interests who helped negotiate the new
819 Communications Act spend more time undermining the statute
820 than implementing it. Such efforts continue to this day, as
821 we saw in yesterday's court decision that, left unaddressed,
822 will seriously jeopardize the future of the Open Internet.

823 I appeared in front of this panel many times over the
824 years to voice my dissent and Commission decisions involving
825 the reclassification of communication services, industry
826 consolidation across both our telecomm and media sectors, the
827 elimination of policies that had long safeguarded the public
828 interest, and the heavy toll thereby exacted on consumer
829 choices, consumer prices and slowing the deployment of
830 competitive low-cost high-speed broadband. This century is
831 the most important infrastructure.

832 We can I know debate for hours, but a record of these
833 hearings needs to show that many people do not share the easy
834 optimism that others express about the state of America's
835 communications readiness. As you consider legislation in the

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836 coming months, some will tell you that America is a variable
837 broadband wonderland, a triumph of free market
838 entrepreneurship that puts us at the front of high-tech
839 nations. But there are stubborn facts we must never avoid.
840 The United States, originator of so much of the technology
841 behind the Internet, has fallen from leader to laggard in
842 broadband penetration. According to the OACD, our country is
843 16th in wired broadband connections for 100 residents.
844 Worse, comparative research shows that Americans are paying
845 more and getting less than wired broadband consumers in
846 competitor countries. The Department of Justice has noted
847 that the local wireless marketplace offers consumers little
848 in the way of choice, even as mobile data plans are saddled
849 with data caps that harm consumption and innovation alike.
850 And once again for the third time, the FCC found itself
851 unable to certify that we enjoy a competitive wireless
852 marketplace. Surely, the time is now for proactive and pro-
853 consumer measures to make quality broadband universally
854 affordable once and for all.

855 While we are not gathered here this morning to rehash
856 those decisions, I do think it is important to understand

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857 that many of the faults attributed to the current statute are
858 more the result of powerful industry efforts to undermine it
859 and of Commission decisions that too often aid and abet the
860 effort. So while we open discussions on revising
861 communications law, let us recognize that our present statute
862 has been interpreted and implemented in ways not originally
863 intended, and that many of its constituent parts are still
864 relevant, workable and consumer friendly. There is a statute
865 to enforce. And putting that job on hold while we consider
866 changing it is not a good option.

867 Additionally, I think most of us here this morning
868 understand that finding a new correlation of interest that
869 can come together to forge the Communications Act to 2015 or
870 2020 would be even more challenging than the jockeying that
871 gave birth to the current law.

872 As the world races ahead, we have a duty to make the
873 best possible use of the laws we have in order to achieve the
874 ongoing goals that Congress laid out. These remain powerful
875 interests. A statute that invokes the public interest over
876 100 times that highlights the universality of service,
877 competition and consumer protection, and that underlines the

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878 necessity for media that informs communities and engages
879 citizens cannot be all bad. Would I have some preferences
880 for a rework statue? Of course. Although a good part of it
881 would be making sure the Commission and the industry follow
882 through on what is already on the books, to foster
883 competition and consumer protection, to deliver on public
884 safety, to preserve privacy in this age of massive intrusion,
885 to avoid never ending industry consolidation, to put the
886 brakes in gate keeping in our media, both traditional and
887 new, and to provide the FCC with the resources it needs to
888 discharge its responsibilities.

889 My greatest disappointment at the Commission is that we
890 didn't do enough to encourage media that truly reflects the
891 diversity of our people. Can you believe that today there is
892 no African-American owned full power commercial television
893 station anywhere in the land? America is diversity. And if
894 our media fails to represent diversity, diversity of
895 providers and content and viewpoint and ownership, it fails
896 us. The sad plight of communications across our native lands
897 needs to be addressed with renewed urgency and additional
898 resources. Imagine that there are still areas where the

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899 majority of first Americans cannot access even plain old
900 telephone service, let alone the kind of high speed broadband
901 that is the most powerful tool they could have to create
902 opportunity where there is so little opportunity now.

903 I would hope we could find ways to stimulate basic
904 communications research by private public partnerships. I am
905 not talking about the next glitzy app, but the basic
906 fundamental research that will determine who wins and loses
907 in the global sweepstakes.

908 I am for making the Commission more efficient, like
909 doing away with the closed meeting rule that prevents more
910 than two commissioners from even talking to one another. And
911 I hope that reform needs to go forward, whether or not it is
912 accompanied by more far reaching revisions. And I believe
913 that when three commissioners have something they want to do
914 at the FCC, that item should go on the agenda.

915 My list could go on, and I welcome the opportunity to
916 discuss such things today. But I always come back to
917 Democracy, because that is what concerns me most. Our
918 country is in trouble, reminiscent in many ways are the
919 severity of the economic global and social crises it faced in

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920 the 1930s, and there are no guaranteed happy outcomes. I
921 just do not see how citizens can be expected to navigate
922 through all these issues and come out with smart decisions
923 for our nation's future when the telecommunications tools we
924 need are not available to all. And in a media environment
925 where community outlets have been short circuited,
926 investigative journalism hangs by a thread, and wherein we
927 expect some invisible hand to produce those things that the
928 market itself no longer produces and which in fact the market
929 alone has never produced.

930 Communications are vital to our economy, but they are
931 the lifeblood--the lifeblood of our Democracy. They must be
932 available to all, open to all, never the exclusive province
933 of the affluent or the few, always alive to the common good.
934 We shouldn't see our communications world as part telecomm,
935 part media or part traditional media, part new media. We
936 have one communications ecosystem. And our job is to make it
937 work for everyone. And I know of no greater challenge that
938 confronts the Congress, the Commission or the country.

939 Thank you for holding this hearing today and for
940 inviting me to be a part of it, and I look forward to our

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941 discussion.

942 [The prepared statement of Mr. Copps follows:]

943 ***** INSERT D *****

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|
944 Mr. {Walden.} Chairman Copps, thank you for your
945 thoughtful presentation. We appreciate it. And as you know,
946 our Subcommittee has moved forward on some of these
947 initiatives, and we welcome encouragement over on the other
948 side of the building on Sunshine Act and a few other things.

949 So I would like to open up the questioning process now
950 with the questioning of Chairman Powell. Since you have
951 presided over the Federal Communications proceedings that
952 classified cable and telco-delivered broadband services as
953 information services, do you think we would have seen the
954 same level of broadband investment during the past decade had
955 the FCC classified these services as common carrier
956 communication services?

957 Mr. {Powell.} I think in short, my judgment is no. I
958 think the Internet at the time that that classification
959 decision was made was more unknown than known. I think it
960 was a period of rampant experimentation. I think the capital
961 required to drive and produce the broadband networks that
962 were not in place needed conditions that allowed them the
963 flexibility to make those choices without the risk that they

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964 would be put back into kind of the monopoly era regulatory
965 model. So I think it was an important component, disbursing
966 that investment.

967 Mr. {Walden.} Chairman Wiley, does the Federal
968 Communications Commission need to continue to have broad
969 discretion over mergers and acquisitions, or should the
970 Department of Justice anti-trust review be enough?

971 Mr. {Wiley.} Well, I think there has been duplication
972 from time to time. Although I would point out that the
973 Justice Department is looking at anti-trust aspects, and the
974 FCC has got a broader public interest standpoint. I think
975 the two agencies need to work together, and I think they have
976 worked together through the years. So I think the process is
977 appropriately developing. But I do worry sometime that we
978 see great delays in the handling of these consolidations and
979 mergers, which I think is contrary to the best interest of
980 the companies involved, and also contrary I think to the
981 public interest and consumers.

982 Mr. {Walden.} And to both Chairman Powell and Chairman
983 Wiley, can the FCC ever really future proof regulations given
984 how rapidly technology is changing? And are elements of the

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985 Communications Act holding the Commission back from flexibly
986 addressing new technologies?

987 Mr. {Powell.} No, I don't think any agency can future
988 proof the regular environment, no more than Congress could
989 write a statute that wouldn't overtime fray in its relevancy
990 in a market that is driven by technological change. I do
991 believe though that there are tools to give greater
992 flexibility and not more prescriptive constraints that we
993 have seen in some regulatory vehicles. So no, they can't
994 future predict. And I thought--I think the other guidance is
995 I think asking the Commission to engage in anything that
996 requires predictive judgment about future outcomes should be
997 avoided where possible.

998 Mr. {Wiley.} Yes, and that is why I suggested in my
999 prepared testimony that we ought to have an opportunity to
1000 have a light touch here and have the government have a--in
1001 your statute, have a very flexible technology neutral type of
1002 approach to this, because it is very hard to predict. And
1003 the 1996 drafters did not really foresee the development of
1004 the Internet to become a universal medium. And I don't think
1005 they predicted broadband to be what it is today. So I think

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1006 you have to step back a little bit and I think allow the
1007 technology to develop and to allow innovation--invention to
1008 occur without stifling it.

1009 Mr. {Walden.} Okay. I am going to start with Chairman
1010 Powell, and then each of you can take this one in the minute
1011 and a half I have left. Should the Internet be regulated as
1012 a common carrier under Title II?

1013 Mr. {Powell.} Well, for me, that is easy. No. I think
1014 one of the things I would like to say about that though is
1015 that people should fully understand what that means. Even if
1016 that were able to give you a better basis for recovering
1017 these two components of the rules, it would be the instant
1018 application of thousands of pages of decades old regulations
1019 instantly to the Internet where they heretofore have not
1020 been, both through--on a bipartisan basis, we have had a much
1021 more regulatory environment. The shatter to investment
1022 backed expectations that would result I think would be
1023 exceedingly damaging and more than most people realize.

1024 Mr. {Walden.} Chairman Hundt, do you care to comment on
1025 that?

1026 Mr. {Hundt.} Just two points. The 1996 Act was shorter

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1027 than the rules for Little League Baseball, meaning Congress
1028 does not necessarily have to write thousands of pages. And
1029 in its wisdom, it did not do so in 1996. And that Act now
1030 has given the FCC the ability to achieve the fundamental
1031 goals. As I mentioned earlier, it can choose to use the
1032 specific methods that are dictated by the Common Carrier
1033 Treatment. But it absolutely does not have to use very many
1034 of these methods to accomplish its goals. In fact, the Court
1035 on page 61 outlined its view of what the FCC should do--

1036 Mr. {Walden.} Right.

1037 Mr. {Hundt.} --and said you can treat it as common
1038 carrier and have about 30 words that establish the
1039 principles. I am not saying they should do that. I am
1040 saying they can do that.

1041 Mr. {Walden.} Do you think they should?

1042 Mr. {Hundt.} I think what they should do--and I
1043 hesitate to say to the current Chairman what he ought to do,
1044 but since you asked, I think they ought to take a fresh look
1045 at all the facts and law as exist right now, and they also
1046 ought to be down here listening to you all and having a
1047 robust discussion. But the key point is they have the

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1048 authority.

1049 {Voice.} Um-hum.

1050 Mr. {Walden.} Got it. Real quickly, the two remaining,

1051 because I have gone over my time--violated the rule.

1052 Conclude.

1053 Mr. {Wiley.} I think--okay.

1054 Mr. {Walden.} No, go ahead.

1055 Mr. {Wiley.} All right. I think it would be a big

1056 mistake to turn away from the information service pathway

1057 that we have started and go back to common carrier regulation

1058 however that might be defined. I think we want to provide an

1059 environment where there is I think opportunities for

1060 investment, encouraging innovation, allowing businessmen to

1061 try to experiment and try to find ways to serve the customer.

1062 And I think to go back to a 1934 style common carrier

1063 regulation, which was really based on regulating the

1064 railroads, I think doesn't make any sense at all.

1065 Mr. {Walden.} All right. Mr. Copps, real quick?

1066 Mr. {Copps.} My answer is yes, I do. The Court says we

1067 have the authority to do that. Whatever we do, we need to do

1068 it quickly, promptly and provide some certainty in the

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1069 marketplace.

1070 Mr. {Walden.} Okay.

1071 Mr. {Copps.} I have always stressed the importance of
1072 that reclassification. People talk about Section 706. I
1073 have always said that there is authority there to do a lot of
1074 things. But what--we don't need now to get into months of
1075 third ways and fourth ways and fifth ways to thread this
1076 needle. We need some clarity. Business needs clarity.

1077 Mr. {Walden.} Right.

1078 Mr. {Copps.} Consumers need clarity.

1079 {Voice.} Um-hum.

1080 Mr. {Walden.} Yeah--

1081 Mr. {Copps.} The Commission needs clarity, too. And we
1082 have to make sure whatever we do that things like
1083 interconnection and those things, consumer protections, are
1084 provided.

1085 Mr. {Walden.} Appreciate that. I thank the indulgence
1086 of the committee. I turn now to the Ranking Member, Ms.
1087 Eshoo, for 5 minutes.

1088 Ms. {Eshoo.} Thank you, Mr. Chairman, and to each one
1089 of our distinguished witnesses. What a rich, rich hearing

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1090 with your testimony. Thank you very, very much. To Chairman
1091 Hundt, thank you for your eloquent summation, without any
1092 staff or other counsel to assist you late last night.

1093 In your testimony, you discussed the importance of the
1094 decision that this country made to allow Internet service
1095 providers full use of the existing telephone network without
1096 paying the owners anything. It was a very, very--I mean one
1097 of the essential platforms in the success of the Internet.
1098 So, essentially, we said the incumbents could not be gate
1099 keepers that charge a toll for getting online. In your view,
1100 does yesterday's circuit decision reverse that longstanding
1101 policy?

1102 Mr. {Hundt.} No, it doesn't. And I think,
1103 Congresswoman, that you have put your finger on the central
1104 issue, if I may say. Yes, Internet service providers are
1105 gate keepers. And they also are two-sided networks--or two-
1106 sided gate keepers, like any gate keepers.

1107 Ms. {Eshoo.} Um-hum.

1108 Mr. {Hundt.} There is somebody on one side and somebody
1109 on the other side.

1110 Ms. {Eshoo.} On the other--um-hum.

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1111 Mr. {Hundt.} And so the situation then is very similar
1112 to the credit card industry. So we all have credit cards.
1113 And then there is the credit card company. And then on the
1114 other side of that, there is the restaurant. And it is very
1115 useful for restaurants that we all have credit cards. And it
1116 is useful for us that all the restaurants will take them.
1117 But it is not so useful if the gate keeper says now, some of
1118 these restaurants, we are not going to allow them to
1119 participate in the system.

1120 Ms. {Eshoo.} Um-hum.

1121 Mr. {Hundt.} Translating that to the present, if the
1122 Internet service provider were to say, you know, not all the
1123 people that are putting the content on their computers, we
1124 don't want all of them to be able to have access to all of
1125 the users.

1126 Ms. {Eshoo.} Um-hum.

1127 Mr. {Hundt.} That is a problem if the gate keeper
1128 behaves that way.

1129 Ms. {Eshoo.} Um-hum. Thank you very much.

1130 Mr. {Hundt.} That is the central issue.

1131 Ms. {Eshoo.} Yes, thank you very much. To Chairman

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1132 Powell, it is wonderful to see you again. As you know, under
1133 current law, cable subscribers are required to buy the so
1134 called broadcast basic tier as a condition of getting access
1135 to any other cable programming. As we transmission consent
1136 fees continue to rise and are inevitably being passed on to
1137 consumers in the form of below the line fees--I mean, I don't
1138 think it is a sustainable business model, most frankly. I
1139 just don't think that it can continue to work this way. Do
1140 you think that the so called must buy requirement makes any
1141 sense? Shouldn't consumers have the ability to lower their
1142 bills by electing to receive broadcast channels over the air?

1143 Mr. {Powell.} I don't. I think it should be an
1144 extraordinary circumstance in which the government tells the
1145 consumer you have to buy a television package as a
1146 prerequisite of buying more of what you want, which is
1147 essentially what the rule does.

1148 Ms. {Eshoo.} Um-hum.

1149 Mr. {Powell.} The other grounds on which I think it is
1150 fatally flawed is only cable subscribers have that
1151 obligation. Dish and direct satellite subscribers do not
1152 have that obligation. And they are the second and third

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1153 largest MVPDs in the United States. Yet, a consumer who
1154 subscribes to Direct TV does not have to, under a must buy
1155 rule, purchase those programming. But if the switch to
1156 Comcast or Time Warner Cable, they do. That is the parity
1157 point that I was making, and I think is a perfect place for
1158 harmonization.

1159 Ms. {Eshoo.} Um-hum. Thank you very much. Chairman
1160 Copps, thank you for being here today, the man with real
1161 wisdom, the man that we always count on to put--place
1162 Democracy front and center of everything.

1163 Mr. {Copps.} Thank you.

1164 Ms. {Eshoo.} You know so well that since Citizens
1165 United, the last two election cycles that have set records
1166 for money spent, including hundreds of millions of dollars
1167 from undisclosed sources, the bulk of this so called dark
1168 money spending by outside groups that hide their donors go
1169 toward negative TV ads. We all know that. Would you
1170 recommend changes to the Communications Act to ensure that
1171 voters are informed about who exactly is behind these
1172 anonymous TV ads, and is there anything in your view that the
1173 FCC can do on its own without Congressional intervention?

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1174 Mr. {Copps.} I would recommend enforcing the statute
1175 that we already have. And if you take a close look at
1176 Section 317, which has to do with sponsorship identification,
1177 and which goes back even before the Telecommunication Act of
1178 1934 was written. It goes back to 1927--ensuring that
1179 listeners and viewers, more recently, know by whom they are
1180 trying to be persuaded, whether it is a commercial product or
1181 a political product. Those rules were last revisited in a
1182 meaningful way by the FCC in the 1960s, which repeated that
1183 people have a right to know by whom they are being persuaded.
1184 Since then, we have all these new avenues of dark money and
1185 super pacts and all of the rest. But we also have the
1186 authority, recently reemphasized by the government
1187 accountability office, the recommendation that the Commission
1188 update those rules and get on with the job. So we can have
1189 this kind of information available to consumers so that when
1190 you see that negative ad, and it says brought to you by
1191 citizens for Purple Mountain Majesties and Amber Waves of
1192 Grain, and it is really a chemical company dumping sludge
1193 into the Chesapeake Bay, potential voters--citizens have a
1194 right to know that and will know that. That is basic

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1195 information that you need to have if you are going to have a
1196 viable civic dialog. So this is something the FCC can do.
1197 It doesn't await a President to making a proposal to do this.
1198 It doesn't involve Congress having to pass a law. It
1199 involves the Federal Communications Commission doing its job.
1200 And it could do this within 90 to 120 days and update the
1201 rules to take mind of the new dark money avenues that I was
1202 talking about earlier. So this would be a real way to shine
1203 a little bit of sunlight on the dark world of TV political
1204 advertising.

1205 Ms. {Eshoo.} Thank you very much. And, Mr. Wiley,
1206 thank you for your wonderful distinguished public service. I
1207 will submit my questions to you in writing. All right?

1208 Mr. {Wiley.} All right. Thank you.

1209 Ms. {Eshoo.} Thank you. Thank you, Mr. Chairman.

1210 Mr. {Walden.} Thank you. We will now turn to the Vice-
1211 Chair of the Full Committee, the gentlelady from Tennessee,
1212 Mrs. Blackburn, for 5 minutes.

1213 Mrs. {Blackburn.} Thank you, Mr. Chairman. And thank
1214 you all for the time this morning. I want to pick up where
1215 the Subcommittee Chairman left off talking about the

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1216 responsibility of the FCC and what it would look like going
1217 forward. I think that it is fair to say--and, Mr. Powell, I
1218 will address this to you, because I have heard you say, you
1219 know, AOL was on top at one point when you were on top of the
1220 game. And where are they now I think was the comment. But
1221 anyway, looking at what the FCC would be, and as we look at
1222 the Telecomm Act, should be begin to think in terms of the
1223 FCC being more as enforcement rather than regulatory in its
1224 scope, or in its--really, in its scope? Mr. Powell, and then
1225 Mr. Wiley, I would like to hear from you.

1226 Mr. {Powell.} I think some aspects of that deserves a
1227 fresh examination. You know, the FCC, which I am a huge
1228 supporter of. I have served there with great people, and I
1229 think it does an enormously great public service and that we
1230 functions that are critical to it in spectrum management and
1231 many other things. But it is one of the last of the New Deal
1232 era agencies that actually has affirmative economic
1233 regulatory power, that is the ability to set the prices,
1234 terms and conditions of market activity as opposed to having
1235 a more significant enforcement, policing or consumer
1236 protection role. Not to say that some of that may or may not

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1237 still be warranted, but I do think that is a kind of holdover
1238 from judgments of different administrative eras. And I would
1239 recommend if you are going to look at--you should look at the
1240 dichotomy and the balance of that role.

1241 Mrs. {Blackburn.} Look at the balance?

1242 Mr. {Powell.} I do think good leaders, and many of the
1243 sitting at this table have migrated more toward that more
1244 defensible role. But many of those provisions still remain.
1245 And I think they are worthy of second consideration.

1246 Mrs. {Blackburn.} Okay. Mr. Wiley?

1247 Mr. {Wiley.} Yes. I would agree with--largely with
1248 what Chairman Powell has suggested. I think the Commission
1249 does have strong enforcement efforts today. And some would
1250 say almost too strong in some instances. But I think frankly
1251 a lighter touch is the way to go in this area.

1252 Mrs. {Blackburn.} Okay. Let me ask you this, privacy
1253 data security, it is front page news right now. It is going
1254 to be. Do you think that now is the time for the FCC to
1255 focus on its core competencies, or should it move over and
1256 look at privacy data security, or leave that to the FTC, Mr.
1257 Wiley?

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1258 Mr. {Wiley.} I didn't hear that one. I didn't hear it.

1259 I am sorry.

1260 Mrs. {Blackburn.} Oh, privacy data security, leave it
1261 to the FTC and the FCC focus on its core mission, or what is
1262 your thought on that?

1263 Mr. {Wiley.} I think so.

1264 Ms. {Blackburn.} You think so.

1265 Mr. {Wiley.} I would agree with that.

1266 Mrs. {Blackburn.} Okay. Mr. Powell, coming back to
1267 you, 706, we are hearing a lot about that today. And you may
1268 have had others who think that, you know, the FCC--that this
1269 is an invitation--706 is an invitation to come in and
1270 regulate Internet services. So as you look at 706, do you
1271 agree that the provision was intended to give the FCC the
1272 ability to forebear from regulations that would stifle
1273 broadband investment and innovation?

1274 Mr. {Powell.} I agree that the decision certainly gives
1275 them the power to forebear. And for many years, many people
1276 interpreted 706 as principally deregulatory. It speaks of
1277 removing barriers and removing obstacles, less so than
1278 introducing them. I certainly was serving at a time where

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1279 the commissions had held that that was not a separate basis
1280 of authority. And in fairness to the facts, every commission
1281 had so held until recently. So that was the position of the
1282 law when I was there at least. I will say though that I
1283 think if the Commission is going to have a role in broadband,
1284 I highly would prefer that be under the construct of the
1285 light regulatory information services definitions that reside
1286 around with 706 than to make a radical transformation to
1287 Title II as a regulatory framework for those questions.

1288 Mrs. {Blackburn.} Okay. Thank you very much. Mr.
1289 Chairman, I will yield back the balance of my time.

1290 Mr. {Walden.} The gentlelady yields back, and the Chair
1291 now recognizes the gentleman from California, the Ranking
1292 Member of the Committee on the Democrat side, Mr. Waxman.

1293 Mr. {Waxman.} Thank you very much, Mr. Chairman. My
1294 colleague, Ms. Blackburn, suggested the FCC needs to act more
1295 like the Federal Trade Commission. The FTC does important
1296 consumer protection work. But I believe we need an agency
1297 like the FCC that can write forward looking rules of the road
1298 for industry and consumers. Chairman Hundt and Copps, do you
1299 agree with that?

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1300 Mr. {Hundt.} Absolutely, Mr. Waxman. Forward looking
1301 is--here is the best example of a useful forward looking law.
1302 It is in the incentive auction legislation that you passed
1303 where this Congress said we want the FCC to establish before
1304 the auction a generally applicable rule about how much
1305 spectrum anybody can buy. That has to be forward looking.
1306 You don't want to go into the auction with your money and not
1307 know whether or not you are going to be permitted to win in
1308 the--keep the license that you thought you were the high
1309 bidder on. That has to be forward looking. So that is a
1310 great example of you all asking for a forward looking rule
1311 and really deserving a forward looking rule.

1312 Mr. {Waxman.} Um-hum. And, Mr. Copps?

1313 Mr. {Copps.} Absolutely. I concur. We all talk about
1314 how rapidly the telecommunications, technology and services
1315 are changing. The Commission has to be aware of that, have
1316 the flexibility to react to that, and certainly to fulfill
1317 its responsibilities to look into the future and try to
1318 determine how best to fulfill its mission, which includes
1319 consumer protection, includes privacy and includes ubiquity
1320 of services.

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1321 Mr. {Waxman.} Um-hum. Mr. Powell, in light of
1322 yesterday's decision, the D.C. Court circuit recognized the
1323 authority granted by Congress to the FCC in the '96 Act. Do
1324 you believe that the Agency can properly oversee the growth
1325 of broadband infrastructure services?

1326 Mr. {Powell.} I do. For a matter of record, as
1327 Chairman of the FCC and the Commission that classified
1328 broadband the way that it is today, we quite pointedly
1329 recognized that the importance of that continuing role to a
1330 degree. And we believe that the authority existed within
1331 that Title I framework to take care of those circumstances.
1332 Whether you agree or disagree, the Court certainly validated
1333 yesterday, from a judicial standpoint, that Title I and 706
1334 do provide that flexible authority.

1335 Mr. {Waxman.} Um-hum. And, Mr. Wiley--

1336 Mr. {Wiley.} Yeah.

1337 Mr. {Waxman.} --if you agree the FCC has the authority,
1338 do you think it ought to use it?

1339 Mr. {Wiley.} Well, the Court said that the Commission
1340 could have authority in this area. I would strongly advise,
1341 in my own view, the Commission to let the marketplace develop

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1342 and if problems do exist, then to step in. There are
1343 avenues--if we find blocking, if we find discrimination,
1344 there are avenues that can be taken. I think the problem is
1345 sometimes we are in search of a problem here that may not
1346 exist. I think if you look at all the suggestions of the
1347 carriers that have come out of the decision from yesterday,
1348 all want to keep the marketplace open, all want to give
1349 consumers access to various kind of content. And I take them
1350 at their word. I think that is going to develop.

1351 Mr. {Waxman.} Um-hum. Mr. Hundt, if we want to keep
1352 the marketplace open, isn't it reasonable to anticipate that
1353 some of the players will not want it to be so open if it is
1354 to their financial advantage? Shouldn't the FCC play a role
1355 to make sure prospectively that we have an open, competitive
1356 market with the consumers being in charge?

1357 Mr. {Hundt.} I completely agree. And if I might, I
1358 think it is important--well, let me say this. I have the
1359 view that the case and the statute have the following
1360 meaning. Section 1706 gives the FCC the authority to
1361 accomplish the goals you just stated, without also requiring
1362 the FCC to make a classification decision.

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1363 Mr. {Waxman.} Um-hum.

1364 Mr. {Hundt.} That is to say it can make a
1365 classification decision and act with the authority that would
1366 come from that, but it doesn't need to do that in order to
1367 pass rules that are authorized under Section 1706. Meaning
1368 1706 and the common carrier provision are two independent
1369 bases for FCC action. That is why the FCC can choose both or
1370 either in order to have a--making that would accomplish the
1371 goals you described.

1372 Mr. {Waxman.} Didn't the Court say that the FCC made
1373 the wrong choice and they have two titles they can rely on?
1374 You are saying they don't need either title, they can just go
1375 ahead and think about regulation?

1376 Mr. {Hundt.} Yeah, I think what the Court said is if
1377 you do choose the information services classification, then
1378 you are bound by the restrictions in that.

1379 Mr. {Waxman.} Um-hum.

1380 Mr. {Hundt.} But you don't need to make that choice in
1381 order to accomplish the goals that you are desiring, which
1382 the Court has said that it approves of the goals.

1383 Mr. {Waxman.} Um-hum. And you don't need to be a--

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1384 regulate as a common carrier either?

1385 Mr. {Hundt.} Beg your pardon?

1386 Mr. {Waxman.} You don't have to regulate it as a common
1387 carrier either?

1388 Mr. {Hundt.} The Court has said you can choose that, or
1389 you can choose 706 or you could choose both. The only thing
1390 you can't do is choose information services classification
1391 and pass common carrier like rules.

1392 Mr. {Waxman.} Um-hum. I see. Thank you. That is very
1393 helpful. Thank you, Mr. Chairman. Yield back my time.

1394 Mr. {Walden.} The gentleman yields back. And the Chair
1395 now recognizes for 5 minutes the former Chairman of the Full
1396 Committee, the gentleman from Texas, Mr. Barton.

1397 Mr. {Barton.} Thank you, Mr. Chairman. I have listened
1398 to our testimony and our questions so far. I am going to
1399 make a brief statement before I ask a question.

1400 I was here in 1996. And that Act was a philosophical
1401 change from where the Committee had been and, to some extent,
1402 where the country had been in terms of telecommunications
1403 policy. You had a Republican Congress, House and Senate for
1404 the first time in over 50 years, maybe 60 years. You had a

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1405 Democratic President, Mr. Clinton, who came from a kind of
1406 conservative pro-business background down in Arkansas. And
1407 the former chairman of the Committee, Mr. Dingell, and Mr.
1408 Waxman and Mr. Marky and some of those folks, had a very
1409 regulatory approach, although not totally so, and the Telco
1410 Act of '96, Mr. Bhlcy and Mr. Fields, we went--we decided to
1411 go with a market approach. And, Mr. Copps, as he has pointed
1412 out, markets don't always work. But, generically, if they
1413 are open and transparent, unless there is a natural monopoly,
1414 they do give a lot more choice to people. And that is what
1415 the Telco Act of '96 did. It rejected the philosophy that
1416 the government knows best, that the regulatory knows best,
1417 that people can't--if they have access to appropriate
1418 information, can't make choices that are good choices. And
1419 we see reflected today in some of the questions that Mr.
1420 Waxman especially just asked, you know, that some of my
1421 friends on the Democrat side just don't like a market
1422 approach. You know, how dare it be possible that under Title
1423 I, Informational Services, you can have an open, transparent
1424 Internet, and you don't need the FCC to tell you what to do?
1425 My God, that is scary. We better get that FCC back on the

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1426 job. They just maybe--you know, if they can't do it under
1427 Title II as a common carrier, well, they are just going to
1428 have to figure out how to regulate under Title I.

1429 Well, you know, if you look at the explosion and what
1430 has happened, I mean, I have--I had somebody--a young person--
1431 -a very young person about 9 years old come into my office
1432 down in Texas and apparently did not know there was such a
1433 thing as a hard line telephone--did not know what that was on
1434 my desk. This young lady thought a phone was just something
1435 you carried around with you. And her parents were very
1436 young, and they didn't have hard line phones in their home.
1437 And they--you know, her dad worked out of his truck doing
1438 stuff and--contracting and stuff. She didn't know what it
1439 was.

1440 So, you know, this thing that Mr. Upton and Mr. Walden
1441 are starting to take a real comprehensive review, and working
1442 with Mr. Waxman and Ms. Eshoo, it is a good thing. But
1443 philosophically, I don't want to go back to where I have to
1444 depend on the intelligence of Mr. Copps or Mr. Powell or Mr.
1445 Hundt or Mr. Wiley and the three or four other wise people at
1446 the FCC to know what is best for me in telecommunications

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1447 policy. You know, I think if we set the ground rules--and I
1448 agree that you have to have a traffic cop. But I don't agree
1449 that you got to be so prescriptive that the market just flat
1450 gets strangled before it even has a chance to get underway.

1451 So my question, and I throw it open to the panel, is
1452 there still a need for a Title I--I mean, for Title II, for
1453 common--in the telecommunication marketplace today, could we
1454 deregulate the telephone companies in totality because, you
1455 know, there really is no such thing as a natural monopoly
1456 anymore?

1457 Mr. {Copps.} If we can find a way to assure that some
1458 of the qualities that people fought for long and hard in
1459 terms of privacy and public safety and consumer protection do
1460 not accompany the new tools of broadband and the Internet as
1461 the accompanied telephone, then I think we are in trouble. I
1462 like the market approach, too. And it was decided long ago
1463 that the telecommunications industry, the media industries
1464 would operate on the capitalistic system. And you don't
1465 blame business for trying to seize market control or capture
1466 the market, or even to have gate keeping. But we have
1467 always, since very early in the last century, had protections

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1468 against untrammelled building toward monopoly and duopoly.

1469 I read the '96 Act, and I wasn't as intimately involved
1470 with it as you were. But I followed it with some degree of
1471 interest. As being somewhat more proactive, I read that Act
1472 as instructing the Federal Communications Commission to do
1473 what it needs to do to encourage bringing the most advanced
1474 telecommunications feasible to all of our citizens, no matter
1475 where they live at reasonably, comparable prices, reasonably,
1476 comparable services, allowing them to access media that
1477 serves communities and provides information that are
1478 necessary to exercise a citizen's responsibilities in a
1479 Democratic society. So I think yes, a light touch where
1480 possible. But, you know, we set here and talk about well, we
1481 have to do away with these stove pipes and all. And I agree
1482 to that with some extent. But we have--in trying that--I
1483 mean, if we are going to say we are going to treat a
1484 telephone call you make in the Internet entirely different
1485 than we make a telephone call somewhere else, that is not
1486 functional equivalent. That is not treating technologies
1487 alike. So I think--

1488 Mr. {Barton.} It is just an--I mean, I know my time is

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1489 way over. But it is something to think about, because we
1490 have got a real chance in the rest of this Congress and the
1491 next Congress to build on what we started in '96.

1492 Mr. {Wiley.} I would just like to say that I agree with
1493 much of what you say. I think in a competitive marketplace
1494 that we see today with the kind of IP centric world, I think
1495 economic regulation has to be considered with some
1496 skepticism. Because if the markets are competitive, if you
1497 don't have market failure, then the question is why should
1498 the government be stepping in? Consumer protection, E911,
1499 you know, those kinds of things, that is a different story.

1500 Mr. {Barton.} Right.

1501 Mr. {Wiley.} But we are talking about economic
1502 regulation here. And I think it is more questionable. And I
1503 certainly wouldn't be thinking about going back to common
1504 carrier world in an information services environment. I
1505 don't think that makes sense.

1506 Mr. {Walden.} Well, thank you. The gentleman's time
1507 has expired. And the Chair recognizes for 5 minutes the
1508 gentleman from Pennsylvania, Mr. Doyle.

1509 Mr. {Doyle.} Thank you, Mr. Chairman. Once again,

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1510 thank you to our witnesses for your testimony today. We have
1511 talked a lot about net neutrality in the court decision. So
1512 I would like to maybe go to a couple different topics and ask
1513 Chairman Hundt and Chairman Copps about special access. How
1514 can the FCC enhance competition in the special access
1515 marketplace? And is new statutory authority necessary, or do
1516 you think the Commission has the sufficient authority to
1517 ensure that the markets are competitive?

1518 Mr. {Copps.} On a special access, I think what needs to
1519 happen, yes, I think the Commission has the authorities for
1520 the FCC to make up its mind. I was before this Committee,
1521 and I think you were here too. And perhaps it was Mr. Marky
1522 or somebody who asked us all back in 2007 to sign a letter
1523 saying we would have this problem resolved by September. And
1524 we all said whoopee, let us do that. And it hasn't been done
1525 yet. All these seven years have gone by. Enormous amounts
1526 of money are at stake here. The ability of competitors to
1527 enter the business and to compete is at stake here. I am
1528 pleased to--at some signs now that the FCC is beginning to
1529 move. And I want to especially commend you, because I know
1530 you were a big proponent of getting this data collection

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1531 process going. And that is the prerequisite of doing
1532 something final on this. The Commission also has to look at
1533 allegations of anti-competitive practices in special access,
1534 such things as loyalty mandates and excessive early
1535 termination and shortfall penalties. But getting this right
1536 is important. And each year that goes on is billions of
1537 dollars going to maybe where they should go or maybe where
1538 they shouldn't be going.

1539 Mr. {Doyle.} Thank you. Commissioner Hundt?

1540 Mr. {Hundt.} I echo Commissioner Copps' remarks and
1541 would just add this is another example of a very useful
1542 forward looking rule. Or to put it another way, we could all
1543 use a forward looking rule on this topic.

1544 Mr. {Doyle.} Thank you. Yes. And, Commissioner Copps,
1545 we have been waiting years and years and years. And I hope
1546 before my tenure in Congress is over that we will see the FCC
1547 do something on special access.

1548 Mr. {Copps.} Yes.

1549 Mr. {Doyle.} And I intend to be here a little bit
1550 longer. Commissioner Copps, the FCC recently closed a very
1551 successful low power FM application process, and is currently

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1552 considering thousands of LPFM applications. And I want to
1553 personally thank you for your efforts in that regards, and
1554 ask you what other opportunities you see for the FCC to
1555 further empower communities in innovative ways?

1556 Mr. {Copps.} Well, first of all, I want to thank you,
1557 because without you and the leadership of your colleagues
1558 here, this would not have happened. We wouldn't have had
1559 that window, the first one opened since 2000. And it is a
1560 window of enormous potential. So number one, we want that to
1561 move forward with all dispatch and maybe go from 800 low
1562 power stations to maybe thousands of them.

1563 Going beyond that though, we just have to look at
1564 whatever kind of options we can think of to encourage
1565 community radio, to revivify the peg channels and make sure
1566 that they are not just cast aside as some of the big
1567 companies seem to want to do, look at new models for non-
1568 commercial media, non-profit media. And that applies not
1569 just to media companies but to telecom companies, newspapers
1570 and so many other things. And there is a lot of potential
1571 here in a market that doesn't seem to be able to provide all
1572 the tools that we need for media and for news for non-profit

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1573 media to step in. But they are also dragging its feet on
1574 making a lot of these determinations that it should be
1575 making. So low power, yes, looking at channels five and six
1576 are all sorts of options out there, put some special emphasis
1577 on using community radio and diversity in communities and
1578 native lands. It is just a field that is rife with potential
1579 if we can just step up to the plate and realize our
1580 responsibility to do it.

1581 Mr. {Doyle.} Thank you. Gentlemen, thank you for your
1582 insight today. We appreciate it here on the Committee. And
1583 I will yield back, Mr. Chairman.

1584 Mr. {Walden.} Thank you very much. The gentleman
1585 yields back the balance of his time. And the Chair now
1586 recognizes himself for 5 minutes.

1587 And, Mr. Powell, thanks again for you being here today.
1588 And if I could just start with some questions to you?

1589 Mr. {Powell.} Yes, sir.

1590 Mr. {Walden.} Yeah, it is kind of interesting, because
1591 I am reviewing your testimony and also Mr. Wiley's. You both
1592 used very similar language in spots. And in your opening
1593 statement, you said that this market requires a greater

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1594 degree of business flexibility, fewer prescriptive rules and
1595 an assurance that any government involvement is applied on a
1596 technology neutral basis and creates a better investment
1597 climate. And I also saw that Mr. Wiley also had said in his
1598 testimony about the government can't keep up, and there is a
1599 need for flexibility and technology neutral framework in his
1600 testimony. So very similar language.

1601 But in your testimony, when you go through it--and I
1602 found it interesting, because when you are going through your
1603 seven points--and for simplicity--and one of the things that
1604 you bring out--because you were also talking about that
1605 flexibility and also having a better business climate, you
1606 state in your testimony that since 1996, we have seen a
1607 trillion dollars invested in an Internet infrastructure. And
1608 then you also laid out that, you know, the simplicity that
1609 has to be there. But also in that simplicity, you said that,
1610 you know, practicing simplicity can be scary.

1611 Mr. {Powell.} Yeah.

1612 Mr. {Walden.} And it takes courage to discourage--
1613 discard old ideas and rules that are no longer needed. Could
1614 you give a couple examples of those?

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1615 Mr. {Powell.} Yeah. It is a great challenging
1616 question. I think I might actually go back to some of what
1617 Mr. Barton was talking about. If you think about one of the
1618 wisest things that was done in the 1996 Act, it has nothing
1619 to do with the individual rules. It was the fundamental
1620 judgment that the government rejected the natural monopoly
1621 thesis and believed instead that competition was the more
1622 fruitful approach. But common carriage law inherently is
1623 about a government sanctioned monopoly. It is essentially
1624 the queen of the realm who grants an exclusive license to a
1625 ferry boat captain to go across the river in exchange for all
1626 the privileges of that monopoly, they agree to be bound to
1627 serve all the citizens in a non-discriminatory way and other
1628 things that the sovereign wishes to have as part of that
1629 exclusive benefit. Mutual in some regards, the monopolist
1630 gets the exclusive profits, and the realm gets the benefits
1631 of serving all the citizens.

1632 In some ways, in 1996, the government sued for divorce
1633 from companies through, you know, the notion of an exclusive
1634 monopoly and instead said go compete, raise your own capital,
1635 no guaranteed return on investment, no guaranteed success.

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1636 But yet, the lingering notions of common carriage, which are
1637 still in the statute and, by the way, still being raised in
1638 the context of the net neutrality debate, still hover around
1639 our regulatory questions. To me, whether the country comes
1640 to some committed conclusion that even with its challenges
1641 and the need for oversight that we are really about
1642 competition and are really ready to let go of common carriage
1643 is a great example, a fundamental one, of how to make that
1644 decision.

1645 Mr. {Walden.} Thank you. And let me follow-up with
1646 another question. And when you are looking at the--assessing
1647 the competition in the communications industry, do you think
1648 an updating Communications Act should modify how the FCC
1649 currently conducts its competitive analysis?

1650 Mr. {Powell.} I think so, only because I think there is
1651 some ambiguity there that when managed in responsible hands
1652 works fine. At times, it doesn't. I am worried about the
1653 FCC merger review process in part because it professes to do
1654 a competitive analysis following essentially anti-trust
1655 guidelines administered by other departments. But under the
1656 public interest standard, which I do think is valuable, it

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1657 turns into a competition of conditions. And as an anti-trust
1658 lawyer, I used to believe that the FCC, if they are doing
1659 something bad, shoot them. If they are not, don't let them
1660 cure harm by how many good jelly beans you can put on the
1661 scale and to make the thing go away. And then by doing it in
1662 a way that it extracts these concessions as a voluntary
1663 proffer, you make sure that the case can't be appealed to the
1664 courts, because you no longer have standing. I think
1665 insulating the review process from judicial review through
1666 the conditioning mechanism, and allowing the commissioning
1667 mechanism to be a vehicle by which the Commission can
1668 legislate beyond its authority can get companies to do things
1669 in the context of that proceeding it couldn't pass laws
1670 about, borders on kind of administrative improbability. So
1671 does that happen every time? No. Do I think it happens
1672 sometimes? Yes. And I think Congress should at least
1673 examine the review process and see if whether better controls
1674 could be in place.

1675 Mr. {Walden.} Thank you very much. And I see my time
1676 has expired. And the Chair now recognizes for 5 minutes the
1677 gentlelady from California, Ms. Matsui.

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1678 Ms. {Matsui.} Thank you, Mr. Chairman. And I want to
1679 thank all of the former chairmen for being here. This has
1680 been really an interesting and formative discussion.

1681 Under Section 254, carriers have certain obligations to
1682 provide universal access. In the D.C. Circuit's decision
1683 yesterday, the Court made clear the FCC has a similar charge
1684 under 706 to ensure that all Americans have access to
1685 broadband and that the FCC has authority over broadband
1686 providers to meet that mandate from Congress. I have two
1687 questions for all of the chairmen relating to the Court's
1688 decision yesterday.

1689 The first, do you agree the FCC should and must promote
1690 universal access to broadband for all Americans, Mr. Wiley?

1691 Mr. {Wiley.} Yes, I would agree with that.

1692 Ms. {Matsui.} Sir?

1693 Mr. {Hundt.} Yes.

1694 Ms. {Matsui.} Mr. Powell?

1695 Mr. {Powell.} Yes.

1696 Mr. {Copps.} Absolutely. There is no way you can be a
1697 functioning member of society without access to this
1698 technology.

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1699 Ms. {Matsui.} Okay. Then does the Court's decision
1700 yesterday affirm the FCC's authority to transition the
1701 universal service fund to broadband, Chairman Wiley?

1702 Mr. {Wiley.} Yes, I think the FCC has done a good job
1703 in looking at that. I am concerned somewhat with the size
1704 and the growth of the universal service fund, and I think the
1705 Commission has got to look at the competency, the pay and the
1706 covering that and some issue that has got to be looked at, I
1707 think.

1708 Ms. {Matsui.} But it is generally yes. Chairman Hundt?

1709 Mr. {Hundt.} Yes.

1710 Mr. {Powell.} Yes, I would commend Chairman Genachowski
1711 for migrating the fund toward broadband, and he did it on a
1712 theory of 706. So in that extent, I think seven--the ruling
1713 yesterday only strengthens the Commission moving in that
1714 direction.

1715 Ms. {Matsui.} Good.

1716 Mr. {Copps.} Yes.

1717 Ms. {Matsui.} Chairman Copps? That is great. I
1718 appreciate your views, because I believe that it is one of
1719 the potentially biggest unintended consequences avoided by

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1720 the Court's decision, because transitioning a USF to
1721 broadband is really a critical step toward achieving
1722 universal access and adoption in this country.

1723 Chairman Hundt, you said that yesterday's circuit
1724 decision is a victory for Congress and the smart flexible
1725 approach of the 1996 Telecom Act. How can we continue that
1726 success? Are there any unintended consequences we should
1727 watch out for as this Committee starts the process of
1728 updating the Communications Act?

1729 Mr. {Hundt.} Well, I think as a number of you have
1730 mentioned, of course the FCC on remand needs to commence a
1731 new proceeding, which I believe Chairman Wheeler has already
1732 said that he intends to do.

1733 Ms. {Matsui.} Um-hum.

1734 Mr. {Hundt.} And, naturally, that should be and will be
1735 an open proceeding. I am sure this Committee will have an
1736 ample opportunity to express its views. I don't myself have
1737 the ability to forecast where that will come out or should
1738 come out, because I think it is really, really important to
1739 examine all the new facts about emerging network
1740 architectures and about competition problems on both sides of

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1741 the two-sided network. I would just say that is why it is so
1742 useful that the Court has said that the FCC's authority is
1743 broad and powerful, because the technologies in the network
1744 architectures and the competition problems are constantly
1745 changing. And the FCC, in rulemaking, has the ability to
1746 adapt to those changes, sometimes eliminating rules,
1747 sometimes writing new rules. So this is a very, very
1748 workable process that we have here. And, as I said before,
1749 congratulations to this Committee for the 1996 Act which did
1750 create this legal culture.

1751 Ms. {Matsui.} Um-hum. Chairman Powell, would you like
1752 to comment?

1753 Mr. {Powell.} I am sorry. Can you refresh the
1754 question?

1755 Ms. {Matsui.} Well, I really--

1756 Mr. {Powell.} Sorry.

1757 Ms. {Matsui.} You know, we--as Chairman Hundt
1758 commenting that the Court decision he felt was a victory for
1759 Congress and for the smart flexible approach of the '96 Act,
1760 are there any unintended consequences that we should watch
1761 out for as we reexamine and update the Communications Act

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1762 moving forward?

1763 Mr. {Powell.} Yeah. Yeah, I more or less would agree
1764 with Chairman Hundt.

1765 Ms. {Matsui.} Oh.

1766 Mr. {Powell.} I mean, I think to the degree that, you
1767 know, in some ways I saw a quote the other day that I thought
1768 summed it up great, which is it is not a victory for any
1769 side, but it might have been a victory for the debate. And
1770 that is that the Commission continues to have a meaningful
1771 role in the oversight and protection of broadband without
1772 crossing the line into the more dangerous concerns around
1773 common carriage. And if that is ultimately the outcome,
1774 maybe that is workable. Unintended consequences, I do think
1775 the Court even struggled with them itself, which is 706 is an
1776 extraordinarily broad, unconstrained provision. How it is
1777 interpreted, and how responsibly it is interpreted and
1778 applied, I think is important, because I think, you know,
1779 Congress hasn't spoken with much specificity about broadband
1780 regulation. And to take a provision as open-ended as vague
1781 as 706 and see that as the foundation for everything
1782 broadband going forward has potential risks and dangers, but

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1783 I think that will be worked out over time through the--

1784 through its application and through dialog with Congress.

1785 Ms. {Matsui.} Thank you very much. Chairman Copps?

1786 Mr. {Copps.} While I am pleased that the Court

1787 recognized the authority of the Commission, I don't know that

1788 I am ready to declare victory yet. If it is a victory for

1789 the debate, that is not necessarily a good thing, because we

1790 have had so many years of debate while the evolution of the

1791 Internet continues and gate keeping shows the rise of its

1792 ugly head. So it is a victory if the Commission reacts and

1793 reacts promptly and provides some certainty and some

1794 guarantees. But we have lost a couple of years looking for

1795 third ways and other ways, and I don't want to lose a couple

1796 more years going down that road.

1797 Ms. {Matsui.} Well, I think it is an opportunity here.

1798 Mr. {Wiley.} Well, I was just going to say--

1799 Ms. {Matsui.} Yes?

1800 Mr. {Wiley.} --I think if it is a victory, I think it

1801 is a victory for technical innovation, a victory for

1802 investment, and ultimately a victory for the consumer. And I

1803 think that we ought to see how the marketplace develops in

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1804 this area, and see where the problems, as I said earlier,
1805 really come about as some people predict.

1806 Ms. {Matsui.} Well, I think this is an interesting
1807 moment in time. And we have to provide a thoughtful way as
1808 we move forward. And I appreciate all your comments. Thank
1809 you very much, and I yield back.

1810 Mr. {Walden.} The gentlelady yields back. The Chairman
1811 now recognizes the gentleman from Illinois, Mr. Shimkus.

1812 Mr. {Shimkus.} Thank you, Mr. Chairman. Welcome you
1813 all. It is good to have you. And I think it would be safe
1814 to say that no one envisioned this world in which we live in
1815 technologically, no one envisioned in '96. So really, the
1816 basic first question is, in a rewrite for public policy
1817 elected officials, or even folks in a commission to envision
1818 what the world will be like 10 years after a rewrite, that is
1819 going to be--that is impossible to do, is that--most people
1820 view that as correct? No one knew what '96 would come. So
1821 that talks about what these basic premises that I enjoy,
1822 Democracy, freedom, marketplace, capitalism. The one thing
1823 that hasn't really been addressed is consumer choice, and how
1824 that really does drive innovation and drives--and it is that

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1825 marketplace that--and I remember going to the consumer
1826 electronics show, and the MP3 was being unveiled. And I just
1827 was amazed at how much capital flowed for just music in this
1828 space, in the technology space. And that is the same thing
1829 now with Internet, broadband, downloads, Pandora, you name
1830 it. It has all migrated to that. So we don't ever want to
1831 lose the aspect of the power of the individual consumer in
1832 this debate, you know, versus what some people would say
1833 would be the power of a governmental regulatory arena or
1834 agency. And, Mr. Copps, I think that is true for these
1835 segments of society that feel they don't have access. I
1836 think that you can pull together, based upon technology,
1837 ability to get the word out through broadband information,
1838 newsletters and the like. I mean, the technology has allowed
1839 us to really--there is really no excuse for people not to
1840 have access to information flow today, even if they go
1841 through a universal service fund or they go to the library,
1842 they get on broadband through what we have been able to do
1843 through the E-Rates and all that other stuff, which we talked
1844 about a lot in your day, Mr. Hundt. So here is the basic
1845 question I have, because I--and a couple of you, in your

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1846 opening statements, talk about silos. You were all members
1847 of the Commission, and you all were chairmen, which is a
1848 different position than just being a standard commissioner,
1849 because you had the responsibility for the whole body of
1850 workers within the FCC. So we have got consumer--we have got
1851 the bureaus and other things other than the bureaus. I only
1852 talk about bureaus. But you go on the website, you see all
1853 these other little offices and stuff, consumer and government
1854 affairs, enforcement, international media, public safety,
1855 wireless and wire line. So in a rewrite of the '96 Act,
1856 should there not be some discussion on how we reform the
1857 Commission itself based upon what current technology is
1858 today? And I think, Mr. Wiley, you kind of talked about this
1859 a little bit. And just a guess at where it might head in the
1860 future? I mean, there is a future look, right, Mr. Copps?
1861 There is a future. But how do we reform the FCC itself and
1862 start tearing down some of these silos, which some of you
1863 have addressed are a problem? And if we can go from left to
1864 right? Mr. Wiley, if you want to go first? And that will be
1865 the end of my questions.

1866 Mr. {Wiley.} Yeah. I think what has changed in the

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1867 Internet world is that you find different parties doing the
1868 same kinds of services, providing the same kind of activities
1869 that you wouldn't have thought of before.

1870 Mr. {Shimkus.} Right.

1871 Mr. {Wiley.} You wouldn't have thought of broadcasters
1872 being in the technology end, or cable being in the wire line
1873 field. But this is happening now. And I think therefore the
1874 Commission probably does have to change its internal
1875 structure. In a digital world, if you have functionally
1876 equivalent services being provided by different parties, I
1877 think they should be regulated in a functionally equivalent
1878 way. And that is not the way the Commission has done it
1879 through the years. It is not the way they are organized. It
1880 is going to take some change. I--

1881 Mr. {Shimkus.} Thank you. Mr. Hundt?

1882 Mr. {Hundt.} You know, the French say well, that works
1883 in practice, but, you know, maybe it doesn't really work in
1884 theory. And I think it is really, really important to focus
1885 on practice. The current structure allows the FCC Chair, in
1886 what I will definitely describe as an open process, to
1887 reorganize the FCC to meet the objectives that are set by any

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1888 particular Congress in any particular situation. And that is
1889 a good thing. So when this Congress had the wisdom to ask
1890 the FCC to auction spectrum in 1993, I was allowed--thanks to
1891 you--but not because of a statutory mandate, but because of
1892 flexibility, I was allowed to create a wireless bureau which
1893 previously did not exist. At any given moment, it is hard to
1894 say exactly what the administrative structure ought to be.
1895 And I think the current system, which tells the Chair, figure
1896 it out, tell us what it is, you are held accountable. That
1897 is a good system.

1898 Mr. {Powell.} I do think form follows function. And I
1899 think certainly when I was Chairman, we merged few bureaus.
1900 Cable was a separate bureau from broadcasting. Today, it is
1901 the media bureau now with changes we made to try to reflect.
1902 I think a common principle is organize around the way it is
1903 seen through the eyes and the ears of consumers. And, you
1904 know, to me, at the time, television was television to most
1905 Americans. And making sure you had cross-pollination of
1906 the bureaucrats, professionals who--the bureaucracy and the
1907 professionals who manage that I thought was important so that
1908 they saw their functions through the same eyes of our

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1909 constituents. And I think that is one principle you can
1910 follow. I do agree with Reed. I think the Chairman is also
1911 CEO. The statute assigns them that responsibility. I don't
1912 think we talk enough about the CEO role and the management of
1913 that operation. But I think there is plenty of flexibility
1914 to respond to that, if it is clear what it is we are trying
1915 to execute.

1916 Mr. {Copp.} I don't think there is any magic formula.
1917 Certainly, there have been times when the stove pipe approach
1918 has been too much in presence. I think Michael tried to work
1919 against that and go towards a little more holistic type of
1920 view. So did Chairman Genachowski. That being said though,
1921 you need the experts in these specific bureaus. There is a
1922 specific telecom expertise in the wire line and the wireless
1923 and all the details of that, and special access and
1924 everything else we are talking about. So I think you still
1925 have to have those bureaus. But if you can have--I think
1926 Chairman Genachowski established a consumer taskforce whose
1927 job it was to go across those agencies and look at whatever--
1928 or those bureaus--at whatever those bureaus were doing to
1929 assess the impact on consumer wellbeing. So I think that is

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1930 a good approach. But it is a management thin and something
1931 that I think is the product of good leadership at the
1932 Commission and good oversight by the Committee.

1933 {Voice.} Mr.--

1934 Mr. {Walden.} We need to move on to Mr. Dingell, I
1935 think, for the next 5 minutes. Mr. Chairman?

1936 Mr. {Dingell.} I want to commend you for this hearing.
1937 I think this has been an important hearing. In the events of
1938 this week, you tell us that it is time that the Committee is
1939 going to have to start looking at what we are going to do
1940 about bringing the '96 Act up to date. I have enjoyed the
1941 comments that my dear friend, Mr. Barton, in announcing my
1942 position is being strongly regulatory. Sometimes I have a
1943 hard time recognizing my position when it is set forth by
1944 other members. In any event, that is not important. But I
1945 would just like to remind everybody that this business of the
1946 '96 Act started when we began to try and get Judge Reed out
1947 of the business of regulating the Telecommunications
1948 industry. It also started when we started trying to get the
1949 amount of spectrum that was held out of use by industry and
1950 business and government, and get that available to people,

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1951 and to see to it that we had a fair program for dealing with
1952 our legislation and a fair program for dealing with these
1953 matters. I would like to welcome our friends, the chairmen
1954 here for their appearance and for their assistance to us, and
1955 for what it is that they have done with us over the years.

1956 If there is an attempt made to update the Communications
1957 Act, I will offer my support. Yesterday's court decision
1958 vacating the anti-discrimination and anti-blocking rules of
1959 the Federal Communications Commission Open Internet order is
1960 proof that the Congress needs to bring our communication laws
1961 into the 21st century. Only clear direction from Congress
1962 will strengthen consumer protections, promote competitions
1963 and give industry the regulatory certainty it needs to
1964 innovate in the future.

1965 Now, as we go about this important work, I caution that
1966 we do so with great care, and on the benefit of a carefully
1967 collected and substantial body of evidence. This is going to
1968 require a rigorous oversight by the Committee and
1969 considerable work to get the information that we have need of
1970 so that we can legislate properly. And I hope that the
1971 undertaking will be bipartisan in order so that any final

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1972 product that we complete here moves through the Senate and to
1973 the President's desk for signature.

1974 We have to resolve a number of very important high line
1975 and hard questions to inform our work as we move forward. I
1976 respectfully suggest that these questions included--or rather
1977 include but are not limited to the following. First, how do
1978 we improve and protect American's access to content, while
1979 also preserving the ability of private companies to monetize
1980 their investments for future growth? Likewise, how do we
1981 best foster the ongoing development of future technologies
1982 that will ensure American leadership in the fields of
1983 technology and communications? And then we have to decide
1984 how we are to promote the more efficient and fair use of
1985 value and increasingly scarce commodities like spectrum,
1986 which we have not administered too well of late, and if
1987 administered at off times on the basis of perhaps the amount
1988 that we could get for it in money rather than how it would
1989 serve the nation to allocate this spectrum? Lastly, we are
1990 going to have to decide how we will ensure that the Federal
1991 Communications Commission, the National Telecommunications
1992 and Information Administration, and other related bodies

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1993 function smoothly, protect consumers and promote growth
1994 rather than hindering it. Regardless of these answers, and
1995 the answers to these questions and others, I submit that our
1996 work should proceed from the conviction that the public
1997 interest is still and always going to remain the central
1998 concern that we have with regard to the Communications Act.

1999 I have had the good fortune to be one of the authors of
2000 almost every major piece of telecommunications legislation
2001 passed by the Congress in the past three decades. And the
2002 public interest is in the heart of each, going back to the
2003 '33 and '34 Act. I see no reason why that should be any
2004 different this time around. The only issue here worth
2005 exploring is what that standard has meant in years past, and
2006 whether there is any reason to give the Commission different
2007 guidance for the future in interpreting it as we address the
2008 other questions I have just outlined.

2009 Mr. Chairman, I wish you God speed in this endeavor.
2010 And I offer you my support. And I am delighted that the
2011 Chairman of the Commission who have been here this morning to
2012 assist us in beginning this process, which I hope will go
2013 forward with reasonable speed, with great care and again,

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2014 with great attention to the public interest. I thank you all
2015 for listening to me.

2016 Mr. {Walden.} Chairman Dingell, thank you for your kind
2017 comments and your always generous words and willingness to
2018 work to improve our communication and other laws. We look
2019 forward to working with you. My only disappointment is you
2020 did not have a list of yes or no questions for this panel.

2021 {Voice.} Yes.

2022 Mr. {Walden.} Now, with that, we will turn to Mr. Terry
2023 from Nebraska. And we look forward to your comments and
2024 questions, sir.

2025 Mr. {Terry.} Yes, you do. Thank you. And I just, for
2026 our esteemed guests here today, I want to follow-up on what
2027 my friend from California, Ms. Matsui, began. And that is
2028 with high cost areas. But I want to take it from a little
2029 bit different angle and get your input.

2030 As kind of mentioned here, we have seen a convergence of
2031 technologies and services that are all kind of being wrapped
2032 into one anymore. And the same as--we talked about it in my
2033 early days on this Committee in voice, and Barton brought
2034 that up. Well, now, it is in video. And so when we talk

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2035 about a rural telecom and the Internet as a basis of
2036 delivering video today, it is kind of making--well, it is
2037 altering the way that rural telecoms used to work. And so we
2038 have a current legal structure with this QRA, and a mindset
2039 of--on treating rural telecoms like old copper wires, which a
2040 lot of them still are using. So I just want to ask your
2041 opinions about in Reform 4--or within the FCC, should rural
2042 and high cost areas--so, Mr. Copps, it even comes back to
2043 inner-city where you have low-take by high-cost. How do we
2044 think about this differently in making sure that if you live
2045 in rural America, or you are setting up a wind farm where you
2046 want to continuously oversee but remotely, thereby requiring
2047 broad broadband for all of that data? Do we need to think
2048 about things differently than high-cost, rural high-cost,
2049 inner-city? Mr. Wiley, why don't we start with you?

2050 Mr. {Wiley.} Well, I am not an expert in the rural
2051 telephone area. But I still think there is a concern that is
2052 different than in the big cities. And I think, therefore,
2053 high-cost funds still are something that have to be part of
2054 the full equation, in my opinion. And you know that better
2055 than anybody in Nebraska.

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2056 Mr. {Terry.} Yeah.

2057 Mr. {Wiley.} So I don't have any huge input to you
2058 today as to how to change the system.

2059 Mr. {Terry.} Yeah. And later, I guess to clarify,
2060 since video and Internet are becoming the same, and your
2061 telecom is really maybe your sole provider of that, it is all
2062 meshed together. Does that change anything, Mr. Hundt?

2063 Mr. {Hundt.} I think that many people have said we
2064 really want broadband to be the network for everyone in the
2065 country. In rural areas, as I am sure you know, Congressman,
2066 there are many places where the cable broadband penetration
2067 is as low as 15 and 20 percent, not anything nearly as high
2068 as it is in Washington D.C. or in the suburbs. Now, that is
2069 a problem that the FCC really does need to think about in
2070 conjunction with the industry that Michael represents so
2071 ably. And in particular, not to touch too many other
2072 buttons, the recent increases in the prices of the content
2073 have a disproportionate impact in rural America. Because
2074 when those content price increases are passed on by the cable
2075 industry, they are taking a lot of money out of the wallets
2076 of the people in those areas, and those are the same areas

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2077 where broadband is expensive. And so as people are paying
2078 more for the broadcast content and the cable channel content,
2079 they have less available to purchase broadband. This is a
2080 problem that is real and existing right now. And this also
2081 gives me a chance to pass the solution over to the--to
2082 Chairman Powell.

2083 Mr. {Powell.} Congressman, I think you make a couple of
2084 important points that we should just put top of mind, which
2085 is the challenge of reaching that last five to seven percent
2086 is because under traditional market fundamentals, they are
2087 uneconomic. And if they are uneconomic, the only way to cure
2088 something is you have to change the economic equation. This
2089 is why I have always had no problem understanding and
2090 respecting the government has a meaningful and significant
2091 role in terms of our ubiquity objectives in universal
2092 service, of universality and affordability, to play a role
2093 through either the universal service program or any other
2094 properly constructed program to try to change the economic
2095 equation that attracts the infrastructure that those
2096 communities deserve.

2097 I think it is a more optimistic scenario in the modern

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2098 world than it was before. Because in the old world, we had a
2099 single technology that tried to string twisted copper wire
2100 between two farms 300 miles apart, and that was enormously
2101 and hideously expensive. One of the things I think really
2102 opens up an opportunity today is because of a common IP
2103 platform, we can essentially deliver almost any kind of
2104 service over almost any kind of network. So that means that
2105 wireless and probably its companion of satellite available
2106 services have real hope and promise for rural America. That
2107 is they have very dynamically different cost characteristics.
2108 A satellite at 28,000 feet sees rural Nebraska no differently
2109 than it sees Manhattan. Wireless has a much lower cost
2110 infrastructure for some of those areas. So I think that
2111 isn't a complete answer. But putting a lot of energy and
2112 investment into how those services will solve those problems
2113 is useful. And I think as the Chairman of the FCC is moving
2114 toward an IP network common regulatory proceeding, that
2115 convergence you are talking about also can get harmonized and
2116 the universal service program get harmonized along with it.

2117 Mr. {Terry.} Thank you. Agree.

2118 Mr. {Copp.} I have a little different answer.

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2119 Reasonably comparable services at reasonably comparable
2120 prices is the injunction and the charge of the
2121 Telecommunications Act. Reforming USF, which the Commission
2122 is in the process of doing with lots of wrinkles and problems
2123 to work out, no question about that, is certainly an
2124 important part of the equation. But anybody who thinks that
2125 the universal service fund alone is going to bring this
2126 country the kind of high speed low-cost broadband that we
2127 need to have to be competitive in the world arena in the 21st
2128 century, I think is not looking at the situation as it is.
2129 This has to be an infrastructure mission. Our country has
2130 had infrastructure missions before when we came together to
2131 build highways and railroads and rural electricity, and so on
2132 and so forth. And that is what we need now. We are not
2133 going to be competitive. We are not going to get out of the
2134 holes that we are in unless every citizen in this country has
2135 that access. And, yes, it is reaching that last five to
2136 seven percent. That is extremely important. But way more
2137 than half of our homes don't have the kind of high speed,
2138 low-cost broadband, fiber broadband, that we are going to
2139 really need to be competitive. So we need to look at that,

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2140 not just as an FCC problem but as a problem confronting our
2141 government and our society, and act upon it and figure out
2142 whether we are really serious of being competitive in the
2143 global sweepstakes.

2144 Mr. {Terry.} Thank you.

2145 Mr. {Walden.} The gentleman yields back. I look to the
2146 gentleman from New Mexico, Mr. Lujan, for 5--

2147 Mr. {Lujan.} Mr. Chairman, thank you very much. And I
2148 must say, I was concerned with some of the approach that was
2149 being taken in the line of questioning leading up to those
2150 last responses to my colleague where for the first time I
2151 heard the importance of rural America. Coming from a western
2152 state, a congressional district that represents 17 of New
2153 Mexico's 22 tribes and the sprawling nature associated with
2154 what the west brings us, many parts of rural America where
2155 our food is grown, where energy is generated, critically
2156 important to be able to get coverage to these areas. And as
2157 I joked with Chairman Wheeler when we had him in front of us
2158 a couple of weeks ago, I explained to him that, you know,
2159 these last flights home, it has been great to see the TSA
2160 debating whether we can make phone calls at 30,000 feet. I

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2161 know that I have streaming video content at 30,000 feet. I
2162 can communicate with my office and anyone else that I so
2163 choose to. So if I can communicate with constituents and get
2164 the video content that I want at 30,000 feet, why can't I do
2165 it on the ground in rural America? The technology is here.
2166 And there is no reason that we can't push it out. To the
2167 three responses, I just can't say thanks enough for that.

2168 Chairman Copps, with the response associated with the
2169 very aggressive push to infrastructure investment in America,
2170 it is absolutely needed. And we shouldn't forget, especially
2171 as we talk about different ideals and philosophies that we
2172 have on this Committee, and even in this Congress and across
2173 the country, that it was in many conservative and rural parts
2174 of America that benefited from government investment with
2175 rural electrification, with major water projects that provide
2176 us power now that could be in question because of water
2177 flows--a whole other topic of conversation, but nonetheless
2178 that we need to make sure that we are addressing.

2179 So, Chairman Powell, you talked about twisted pairs and
2180 what that brought us, decisions that were made as a result of
2181 the '96 Act. And looking at Section 706(a), I am not certain

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2182 what we are arguing about with concerns in that particular
2183 area. It is encouraging deployment of reasonable and timely
2184 basis on advanced telecom, especially for educational
2185 purposes. There may be some concerns with some of my
2186 colleagues on a price cap regulation. But regulatory for
2187 bands, measures that promote competition in local markets.
2188 This could be read by any member on this Committee,
2189 encouraging ideals that I think that we all share.

2190 But one thing that hasn't been talked about very much--
2191 and even given the fact that there was a huge data breach
2192 with Target, 70 million customers that were impacted, is the
2193 security of this network. I would hope that--and I would
2194 like to get your opinion if 706(a) provides us the necessary
2195 standards to be able to bring safeguards, or if you think
2196 that that is something that needs to be addressed? And I
2197 would like to invite comments from each of you. Mr. Hundt?

2198 Mr. {Hundt.} As Chairman Powell said, Section 1706 is
2199 very broad. And I think that it is an opportunity and a duty
2200 for the FCC to dig into it and to create an appropriate
2201 framework, with the help of this Committee and its
2202 counterpart in the Senate. If I might continue your point--

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2203 your theme of rural America, there are a number of other
2204 provisions as well in the '96 Act that the FCC can use to try
2205 to achieve the goal of completely widespread broadband, even
2206 in rural and high cost areas. And one that I would identify
2207 is the current proceeding to re-imagine the E-Rate.

2208 The E-Rate, if we went--I just recently met with the
2209 chief librarian in Pima County, Arizona, which isn't very far
2210 away from you. And you know the geography is not dissimilar.
2211 They have a fantastic system of broadband for not just the
2212 central library in Tucson, but all the branch libraries. All
2213 over this very, very sparsely populated geography, the
2214 library is the number one public Internet access point in
2215 southern Arizona. Therefore, it is the proper focus of extra
2216 E-Rate support, and the proper focus of the combination of
2217 network architectures that might well resemble what Chairman
2218 Powell was talking about. We shouldn't decide that part.
2219 But we should decide that is a very flexible tool, also, that
2220 can be used to deliver the right participation in the
2221 American community to rural America.

2222 Mr. {Lujan.} Chairman Powell?

2223 Mr. {Powell.} Congressman, I really would like to put a

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2224 punctuation on what you raise. Because I think it goes to
2225 the Committee's desire, I hope, to try to harmonize and see
2226 the communication landscape as a single ecosystem. All the
2227 wonderful benefits we are bragging and celebrating are
2228 continuously and daily at risk. I think cyber threat, data
2229 retention, breach are all issues that are the Achilles Heel
2230 of all the promise of the network that we are celebrating.
2231 But they require very complex solutions that look through an
2232 entire ecosystem. 706 is no more--is not particularly up to
2233 that job. Why? Even for no other reason that you can't have
2234 a discussion without software involved. The cyber security
2235 question on a global--ecosystem basis means a conversation
2236 with every element of that massive connective chain. And
2237 that is the web companies, the infrastructure companies,
2238 wireless companies, content companies, there is just no way,
2239 in my opinion, even with its breadth that one could look
2240 hopefully to that as the single point of authority to make
2241 the most meaningful impact on this issue, mostly because 50
2242 percent of that ecosystem aren't even implicated by that
2243 provision.

2244 Mr. {Lujan.} Chairman?

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2245 Mr. {Copps.} I hope 706 is up to the job. I think it
2246 does confer a lot of authority. But I don't want this to
2247 become just a solution de jure and we talk about 706 for the
2248 next 2 years. And then another court somewhere strikes that
2249 down or whatever. I do want to highlight one thing that you
2250 mentioned in terms of getting broadband out. And I commend
2251 you for your interest and your work with native lands and
2252 Native Americans. And one area where I think maybe a rewrite
2253 would help would be to more formally institutionalize--put
2254 some flesh on the bones of the trust relationship and the
2255 consulted--consultative mechanisms that we have between the
2256 Commission and Native Americans. It is not--it is working
2257 better than it has. I think there has been more emphasis in
2258 recent years. Obviously, back in Chairman Kennard's time,
2259 who is not here today, there was an interest in moving us
2260 forward and getting us into a new trust relationship. But
2261 that is 13 or 14 years ago. And the situation, as you point
2262 out, is so dire when one member of a tribe can't call
2263 somebody else, but you can make the call from 30,000 feet.
2264 That is something wrong there. But that might be a concrete
2265 area where the Commission can--or where the Congress can

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2266 actually lend a hand.

2267 Mr. {Lujan.} Appreciate that.

2268 Mr. {Walden.} Appreciate that. The gentleman's time
2269 has expired. We will now go to the gentleman from New
2270 Jersey, Mr. Lance, for 5 minutes.

2271 Mr. {Guthrie.} Thank you, Mr. Chairman. And to the
2272 distinguished panel, this is among the most interesting
2273 hearings in which I have ever participated. And it is my
2274 honor to be able to meet all of you.

2275 I gather there is a consensus from the distinguished
2276 panel that the 1996 legislation needs, to some extent,
2277 statutory update and revision, is that accurate, from the
2278 panel?

2279 {Voice.} I would agree.

2280 Mr. {Hundt.} I don't agree.

2281 Mr. {Guthrie.} And, Chairman Hundt, if you would
2282 indicate why you do not agree there needs to be statutory
2283 update?

2284 Mr. {Hundt.} I think that the D.C. Circuit has made it
2285 very clear that the '96 Act has given the authority to the
2286 FCC to address all the economic and social problems that this

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2287 Committee, in recent years and in past years, has asked the
2288 FCC to address.

2289 Mr. {Guthrie.} Other distinguished members--

2290 Mr. {Copps.} I basically concur and agree with what
2291 Chairman Hundt has said.

2292 Mr. {Guthrie.} Um-hum.

2293 Mr. {Copps.} Sure, it is always nice to have some
2294 additional clarity. But time is of the essence here. We
2295 have a statute that I think can deliver on a lot of the
2296 things that need to be delivered, and we should be about that
2297 job. I just--it is so difficult to see the correlation of
2298 forces coming together to give birth to an act after what we
2299 went through in 1996. And I don't think it is going to be
2300 any easier in 2014 to do that than it was 18 years ago.

2301 Mr. {Guthrie.} Chairman Powell?

2302 Mr. {Powell.} I think by any measure, a deliberative
2303 process in the legislature would take a meaningful number of
2304 years, as the chairman--as Chairman Walden himself has
2305 recognized in setting out a multi-year process. I do think
2306 there are sufficient conditions to justify the institution of
2307 that kind of examination over that period of time, because I

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2308 think the market is radically different and the relevancy of
2309 law as applied to reality should be a core principle of
2310 governance.

2311 Mr. {Guthrie.} Thank you.

2312 Mr. {Wiley.} I think the very fact that you didn't have
2313 the Internet really developed, you didn't have broadband, you
2314 didn't have all the technological changes that have occurred
2315 since 1996, really gives I think substance to taking another
2316 look. And I think that gives Congress an opportunity I think
2317 to perhaps make some suggestions to the regulatory body that
2318 I think would be very helpful.

2319 Mr. {Guthrie.} Thank you, Chairman Wiley. Am I
2320 accurate--I have not read the decision. I have reviewed its
2321 consequences, but I have not read it. And I certainly will
2322 read yesterday's decision. Am I accurate that the FCC
2323 decided in 2004 that Internet access services would not be
2324 classified as telecommunications services? Is that true,
2325 Chairman Powell?

2326 Mr. {Powell.} Yes, sir. That is correct.

2327 Mr. {Guthrie.} And if that decision were to be
2328 revisited, that could be revisited by the administrative

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2329 agency, is that accurate as to how it could proceed?

2330 Mr. {Powell.} It is accurate. It could.

2331 Mr. {Guthrie.} And if there were to be a revisiting of
2332 the 2004 decision that this is not classified as
2333 telecommunications services, then there would have to be an
2334 extensive period of review, and there would have to be some
2335 sort of high level determination as to why a different
2336 decision were to be made. Is that the way it would work?

2337 Mr. {Powell.} Yes. Under administrative law, even with
2338 deference, the Agency has to provide a reasoned explanation
2339 for its change in policy. It would require a notice and
2340 comment proceeding, which is open.

2341 Mr. {Guthrie.} Yes.

2342 Mr. {Powell.} And I wouldn't--you know, the suggestion
2343 has been made that somehow that would lead to instant
2344 clarity. It would lead to another three to four year period
2345 of conflict and litigation--

2346 Mr. {Guthrie.} And litigation. And, Chairman Copps?

2347 Mr. {Copps.} But I would just say I don't think it
2348 would take forever to compile that record. I and a lot of
2349 other people I know would be happy to contribute to the

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2350 rational for that sort of action. So it is not really
2351 starting at--on the tabula rasa. I think a lot of that
2352 information is out there. It was just a route not taken.
2353 And now we need to go back and look at it.

2354 Mr. {Guthrie.} And the FCC's reclassification would be
2355 considered arbitrary and capricious unless there were a
2356 period of comment and refreshing the record, and some sort of
2357 heightened standard, is that accurate legally?

2358 Mr. {Powell.} Yes, sir. They have to follow the
2359 Administrative Procedure Act obligations.

2360 {Voice.} And I am certain they would.

2361 Mr. {Guthrie.} I would presume that would be the case.
2362 And, finally, the decision that yesterday possibly could be
2363 appealed to the Supreme Court, but it is not clear whether or
2364 not either side is likely to do that.

2365 {Voice.} That is correct.

2366 Mr. {Guthrie.} Thank you very much. My time has
2367 expired, Mr. Chairman.

2368 Mr. {Walden.} I thank the gentleman. Now, I turn to
2369 Mr. Long from Missouri. I think our last member to ask
2370 questions. Please go ahead.

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2371 Mr. {Long.} Thank you, Chairman. And, Chairman Hundt,
2372 last night you said that you spent quite a bit of time trying
2373 to go through the court ruling of yesterday. And most of the
2374 congressmen were home trying to read through a 1,562 page
2375 bill that we are going to be voting on this afternoon. So I
2376 have ordered my staff to bring a copy of that to you. And if
2377 you could peruse that over your lunch hour and kind of
2378 decipher it for me, I would appreciate it.

2379 Earlier in your testimony, Chairman Hundt, you said
2380 that--and I didn't get--understand your point, I don't think,
2381 concerning the auction. You said, if I remember right, that
2382 we need a cap so people know what they are buying. Can you
2383 kind of tell me what you were--in full disclosure, I come
2384 from a 30 year career as an auctioneer before I came to
2385 Congress a few years ago. So I have got a lot of interest in
2386 how an auction operates and try and make it operate the best
2387 it can for the public and the taxpayers.

2388 Mr. {Hundt.} I remember very well that in our first
2389 auction, we had Senator Burns who had a--

2390 Mr. {Long.} Conrad Burns, you are right.

2391 Mr. {Hundt.} --come and conduct the very first auction.

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2392 Mr. {Long.} He is from Missouri. Now, he served from
2393 Montana, but he is originally from Missouri. So that is two
2394 of us.

2395 Mr. {Hundt.} He did claim that particular heritage.
2396 And he did a great job. And I would recommend to Chairman
2397 Wheeler that he should come and ask you to conduct the next
2398 auction.

2399 Mr. {Long.} I am not worried about conducting as much
2400 as I am the--you know, how it is put together. And that is
2401 what I have been trying to drill down on.

2402 Mr. {Hundt.} Well--

2403 Mr. {Long.} But what was your comment? I didn't
2404 understand you said that we need a cap so people know what
2405 they are buying. What exactly did you mean?

2406 Mr. {Hundt.} So in any auction, when folks come in, you
2407 want the high bidder to be able to walk away with whatever
2408 was auctioned. And the way to do that I believe is to make
2409 sure that everybody bidding in that auction knows the
2410 following, what are the rules about how much you can buy. It
2411 doesn't have to be a cap. It could be--some people think it
2412 should be an aggregation level. There is many different ways

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2413 to define it. But people ought to know as they are about to
2414 take the money out of the wallet, as they are about to raise
2415 the hand and say that they are putting in the high bid, they
2416 ought to know that they can walk away with whatever they can
2417 buy, instead of having to have another proceeding where they
2418 ask the FCC or the Department of Justice later, am I
2419 permitted to walk away with this, because I don't know
2420 whether or not I have violated any of your aggregation rules.
2421 So this Congress, in the Incentive Auction Rule, did say that
2422 the FCC should create a generally applicable aggregation
2423 rule. And I think that was a very wise thing to do, that way
2424 everybody going into the auction can estimate in advance
2425 whether or not what they buy is what they--what they bid on
2426 and win on is what they can walk away with.

2427 Mr. {Long.} Okay. Talking to the interested parties
2428 that are interested in buying this spectrum, they have told
2429 me--and this is probably a topic for another day. But they
2430 said if they can buy A, B and C spectrum, then maybe they
2431 want to buy L, M, N, O, P later in the auction. Or if they
2432 can't buy A, B and C, L, M, N, O, P doesn't--if they can't
2433 but that too, then the first three things that they bought--

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2434 so it is a very confusing situation. So do you any of you
2435 have any staff--anybody you want to get with my staff that we
2436 can talk about to kind of sort that out, I would appreciate
2437 it.

2438 I want to move to Chairman Wiley for a minute. If you
2439 turn on the TV at night, the only reason it is not 100
2440 percent phone company ads and the cellular companies and
2441 things is because it is interspersed with auto insurance ads.
2442 So there would be more--so it seems like there is quite a bit
2443 of competition out there now. And as far as the auction that
2444 I was talking about with Chairman Hundt, the wireless market
2445 I think appears to be extremely competitive. And you do have
2446 larger companies, AT&T, Verizon, T-Mobile, Sprint. And given
2447 that, doesn't it make sense that the FCC--why will they--
2448 should they not--they shouldn't handicap bidders, should
2449 they, to get the most money for the taxpayers and have the
2450 best auction they can where either some people are wanting to
2451 limit who can buy what? Can you kind of walk me through
2452 that?

2453 Mr. {Wiley.} Well, my view is that the auction ought to
2454 be available, open to all. I think if Congress really wants

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2455 to see the maximum amount of revenue derived in order to
2456 support the public safety network we are going to have to pay
2457 the broadcasters, it is a very complex process. And I do--I
2458 am concerned about the fact that we start to begin to limit
2459 people in this that you are going to find you are going to
2460 have less revenue than might be otherwise anticipated. I
2461 think a free auction ought to be open to all.

2462 Mr. {Long.} All right. When people would attend my
2463 auction, I was always interested in having the most people
2464 there and having them spend the most money that they could.
2465 And if they didn't want to bid, I would bid for them. I
2466 would tell them just to hold their hand up in the air. And
2467 when they paid enough, I would tell them to take it down. So
2468 with that, Mr. Chairman, I yield back.

2469 {Voice.} That is quite an auction.

2470 Mr. {Walden.} I want to thank our distinguished panel
2471 of witnesses, both for your prior government service and your
2472 continuing involvement and interest in public policy to
2473 assist us in our mission and goals in updating the
2474 Communications Act. I draw attention to those who are
2475 observing our hearing. They can go to our hashtag and--at

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2476 CommsActUpdate. I think it is right in front here--and give
2477 us your information. A lot of people have been doing that
2478 during the hearing. We appreciate that. Another reflection
2479 of how technology is changing the world, and we need to keep
2480 up with it. So thank you for your participation. Our
2481 Subcommittee stands adjourned.

2482 [Whereupon, at 12:25 p.m., the subcommittee was
2483 adjourned.]