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4 THE UNCERTAIN FUTURE OF THE INTERNET

5 WEDNESDAY, FEBRUARY 25, 2015

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 10:33 a.m.,
11 in Room 2322 of the Rayburn House Office Building, Hon. Greg
12 Walden [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Walden, Latta, Barton,
14 Shimkus, Blackburn, Scalise, Lance, Guthrie, Olson,
15 Kinzinger, Bilirakis, Johnson, Collins, Cramer, Upton (ex
16 officio), Eshoo, Doyle, Yarmuth, Clarke, Loeb sack, Rush,

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17 DeGette, Matsui, Lujan, and Pallone (ex officio).

18 Staff present: Gary Andres, Staff Director; Ray Baum,
19 Senior Policy Advisor for Communications and Technology;
20 Leighton Brown, Press Assistant; Andy Duberstein, Deputy
21 Press Secretary; Gene Fullano, Detailee, Telecom; Kelsey
22 Guyselman, Counsel, Telecom; Peter Kielty, Deputy General
23 Counsel; Grace Koh, Counsel, Telecom; David Redl, Counsel,
24 Telecom; Charlotte Savercool, Legislative Clerk; David
25 Goldman, Democratic Chief Counsel, Communications and
26 Technology; Margaret McCarthy, Democratic Professional Staff
27 Member; Ryan Skukowski, Democratic Legislative Assistant,
28 Jeff Carroll, Democratic Staff Director; Tiffany Guarascio,
29 Democratic Deputy Staff Director; and Tim Robinson,
30 Democratic Chief Counsel.

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|
31 Mr. {Walden.} If members would take their seats and our
32 guests? We appreciate everyone being here. The subcommittee
33 will come to order. Before we begin, I would like to remind
34 our guests in the audience the chair is obligated under the
35 rules of the House and rules of the committee to maintain
36 order and preserve decorum in the committee room. The chair
37 appreciates the audience's cooperation in maintaining that
38 order.

39 Good morning and welcome to the Subcommittee on
40 Communications and Technology's hearing on ``The Uncertain
41 Future of the Internet.'' Tomorrow, the Federal
42 Communications Commission is expected to adopt an order that
43 may not ultimately provide net neutrality protections for
44 American consumers, that might lay the ground for future
45 regulation of the internet, that may raise rates for the
46 American internet users, and that could stymie internet
47 adoption, innovation, and investment. This Order may be the
48 salvation of edge providers that fear speculative ISP
49 practices or it may be the beginning of regulation of all
50 platform providers wherever they sit on the internet. We

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51 just don't know, and it doesn't have to be this way.

52 Let us take a moment to point out that Chairman Upton
53 and I asked for this process to be more open than is usual.
54 We asked the Chairman of the FCC to release the draft Order,
55 the rules and the jurisdictional arguments for the rules,
56 before the Commission vote, so that people could really
57 understand what they were getting themselves into. I
58 recognize that it is not customary for the FCC to release its
59 document before a vote, but then again, it is not customary
60 for an FCC proceeding to attract the attention of an HBO
61 comedian or scores of protesters and cat mascots parading in
62 front of the FCC and Chairman Wheeler's Georgetown Home, nor
63 is it customary to have the President add his weight to steer
64 an independent agency's decision. Our calls for transparency
65 have been echoed by others to no avail. In short, we are
66 still in the dark on the net neutrality rules, and we don't
67 have to be.

68 Uncertainty is what we hoped to stave off by introducing
69 legislation that would clearly demarcate the FCC's authority
70 over the internet. Most of you know I did not see the need
71 for net neutrality rules, and some of my colleagues had to be

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72 dragged ``kicking and screaming'' toward our draft bill.
73 Thanks for that remark, John Shimkus. Despite our
74 reservations, we came to the table with legislation for two
75 reasons. The first is that not one of us disagrees, not one
76 of us disagrees, with the four principles adopted by the FCC
77 in 2005, the first principle being consumers are entitled to
78 access the lawful internet content of their choice. We all
79 agree on that. Number two, consumers are entitled to run
80 applications and services of their choice, subject to the
81 need of law enforcement. Three, consumers are entitled to
82 connect their choice of legal devices that do not harm the
83 network. And four, consumers are entitled to competition
84 among network providers, application and service providers,
85 and content providers.

86 The internet has been a catalyst for our modern
87 information economy and culture precisely because of these
88 guiding principles. But the current draft Order, which will
89 purportedly subject the internet to monopoly-era regulation
90 under Title II of the Communications Act, threatens to throw
91 all of this out the window and to generate significant
92 uncertainty that will impact the industry, its investors, and

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93 ultimately its consumers.

94 Accordingly, the second reason that we have offered
95 legislation is to quell that wave of uncertainty. No more
96 trips to the D.C. Circuit for the FCC, at least on this
97 issue. Our economy and our communities are better served by
98 ISPs that can invest in services rather than in lawyers. We
99 are all better served by an agency with clear jurisdiction
100 rather than one that engages in policymaking by litigation.
101 I think that this is something that everyone would support,
102 but I have yet to find anyone willing to engage in a real
103 negotiation over what this bill should look like. I am not
104 above asking again. So let's talk about how we can work
105 together to solve the problem and end the uncertainty. The
106 door remains open.

107 So today our hearing is intended to lay out some of the
108 questions we have been asking and to explore the uncertainty
109 surrounding these new proposed rules. Our panel of witnesses
110 today contains several veterans of this debate. Mr. Boucher,
111 in particular, welcome back. You sat right here in this very
112 chair with a gavel that looked a lot like this one when the
113 FCC began its first attempt to enforce net neutrality through

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114 regulation. It is very good of you to return to talk to us
115 about this same issue today.

116 I hope that all of us here in the room will continue to
117 engage in a productive dialogue and use the tools at our, and
118 only our, disposal to end the net neutrality debate once and
119 for all.

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

121 ***** COMMITTEE INSERT *****

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|

122 Mr. {Walden.} I now recognize the gentlelady from
123 Tennessee for the remainder of my time.

124 Mrs. {Blackburn.} Thank you, Mr. Chairman. I want to
125 welcome each of you here today. I am one of those that
126 believes the internet is a bright spot in today's economy.
127 It is not broken, and it does not need the FCC's help in
128 order to be effective. Title II of the Communications Act is
129 the regulatory nuclear option. It will stifle private-sector
130 investment in networks by creating regulatory uncertainty and
131 lead to courtroom challenges. We know that Title II
132 reclassification could result in as much as \$11 billion in
133 new fees and taxes.

134 We welcome you here today. We look forward to hearing
135 your viewpoints and to a lively discussion, and I yield back.

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

137 ***** COMMITTEE INSERT *****

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138 Mr. {Walden.} I thank the gentlelady. I now recognize
139 my friend from California, the Ranking Member of the
140 Subcommittee, Ms. Eshoo, for an opening statement.

141 Ms. {Eshoo.} Thank you, Mr. Chairman, and welcome to
142 all of the witnesses, most especially our former colleague
143 who is a member, a distinguished member, of this committee
144 both as a chairman of the subcommittee and ranking member of
145 the subcommittee.

146 Mr. Chairman, I had a wonderful statement that I was
147 going to read, but I received a letter from Engine. It is
148 dated February 18 of this year. It is addressed to the
149 Federal Communications Commission, and I think that what they
150 had to say and the 102 entrepreneurs and start-ups that
151 signed the letter is really an eloquent statement about where
152 we are and where we need to go.

153 And it reads, ``Dear Commissioners. We are the small
154 independent businesses and entrepreneurs that Commissioner
155 Pai referenced in his February 6, 2015, press release about
156 the FCC's impending net neutrality rule-making, and we write
157 to say unequivocally that his release does not represent our

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158 views on net neutrality. Quite the opposite. Entrepreneurs
159 and start-ups throughout the country have consistently
160 supported Chairman Wheeler's call for strong net neutrality
161 rules enacted through Title II.

162 For today's entrepreneurs and start-ups, failure to
163 protect an open internet represents an existential threat.
164 Because net neutrality is such an important issue, the start-
165 up community has been engaged in the Commission's open
166 internet proceeding to an unprecedented degree. The clear,
167 resounding message from our community has been that Title II
168 with appropriate forbearance is the only path the FCC can
169 take to protect the open internet. Any claim that a net
170 neutrality plan based in Title II would somehow burden 'small
171 independent businesses and entrepreneurs with heavy-handed
172 regulations that will push them out of the market' is simply
173 not true.

174 The threat of ISP's abusing their gatekeeper power to
175 impose tolls and discriminate against competitive companies
176 is the real threat to our future. Contrary to any
177 unsupported claims otherwise, we believe that the outlined
178 proposal that the Chairman circulated last week will

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179 encourage competition and innovation by preventing ISPs from
180 using their gatekeeper power to distort the internet market
181 for their own private benefit. A vibrant internet economy
182 depends on an open playing field in which small, innovative
183 entrepreneurs can compete with incumbents on the quality of
184 their services, not on the size of their checkbook or their
185 roster of lobbyists. In Verizon v. FCC, the DC Court stated
186 in no uncertain terms that without reclassifying broadband
187 under Title II, the FCC cannot impose the bright line bands
188 on ISP discrimination that start-ups need to compete. As
189 such, any plan that does not include Title II
190 reclassification cannot support strong net neutrality rules.

191 We are pleased that Chairman Wheeler has recognized this
192 simple reality. His plan is the best proposal we have seen
193 to date for protecting the open internet, and while there are
194 important details yet to be finalized, the substance of the
195 rules that the Chairman circulated last week are encouraging.
196 Any attempt to undermine the Chairman's proposal through
197 obfuscation and innuendo is not productive and certainly does
198 not represent the opinion of the start-ups and entrepreneurs
199 that have worked so hard to make the internet great.''

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200 And again, the letter is from Engine, and it is signed
201 by 102 start-ups. And obviously that is now part of the
202 record. I also would like to place in the record, ask for
203 unanimous consent to place in the record, the editorial by
204 Chad Dickerson at Etsy CEO that testified before the
205 committee, and I want to yield--

206 Mr. {Walden.} Without objection.

207 Ms. {Eshoo.} --the remainder of my time--thank you, Mr.
208 Chairman--to Congresswoman Matsui.

209 [The information follows:]

210 ***** COMMITTEE INSERT *****

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|

211 Ms. {Matsui.} I thank the ranking member for yielding
212 me time, and I welcome the witnesses here today.

213 The future of this internet has sparked unprecedented
214 interest. We all know that. Let us not forget that over
215 four million Americans took time out of their day to share
216 their voices with the FCC on the future of the internet.

217 The American people overwhelmingly rejected the idea of
218 so-called internet fast lanes, and as a result, Chairman
219 Wheeler rightly made a U-turn to ban prioritization
220 agreements and as to a ban on paid prioritization is a right
221 move for the future of the internet.

222 Tomorrow's FCC vote will not be the end of the road. In
223 some ways the vote will be the beginning of the fight to
224 preserve net neutrality and protect consumers and encourage
225 innovation. That is why it will be critical for the FCC to
226 maintain the flexibility for the internet age.

227 I look forward to the FCC's vote tomorrow, and I will
228 continue to work with my colleagues on this moving forward.
229 And I yield back the balance of my time.

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

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231 ***** COMMITTEE INSERT *****

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|

232 Mr. {Walden.} The gentlelady yields back. The chair
233 now recognizes the Chairman of the Full Committee, Mr. Upton
234 of Michigan, for an opening statement.

235 The {Chairman.} Well, thank you, Mr. Chairman. In less
236 than 24 hours the FCC will begin proceedings to green light
237 new net neutrality rules that rely on outdated utility-style
238 regulations to govern the internet. They are taking this
239 path in part because of the limits on the FCC's statutory
240 authority and in part because of political pressures to act.
241 Unfortunately, whether intended or not, this approach brings
242 with it a host of consequences that have the potential to
243 disrupt the internet that we have come to know and rely on.

244 Title II means applying regs that were never meant for
245 this technology or marketplace and relying on unstable legal
246 ground to refrain from applying others. It also means an
247 inevitable return to the courts for net neutrality rules,
248 which will lead to more years of uncertainty for consumers
249 and providers. Until it is resolved, there may be no rules
250 of the road for either consumers or industry.

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251 To avoid this result, Chairman Walden, Thune, and I
252 offered draft legislation proposing net neutrality rules
253 guided by the principles for an open internet that we all
254 share. Our committee has a rich history of taking on complex
255 and difficult issues and finding common ground that both
256 sides can support.

257 Given what is at stake here, I had hoped this would be
258 another instance of such bipartisan cooperation. While I
259 knew that not everyone would be interested in the legislative
260 path, I am both surprised and deeply disappointed that we
261 have not yet been able to engage in a negotiation and produce
262 a bipartisan product with our colleagues. But tomorrow's
263 commission vote does not signal the end of this debate,
264 rather it is just the beginning. And I have to believe that
265 as members review the FCC's rules and hear today about the
266 many problems that will result, there will be an opportunity
267 for a thoughtful solution like the one we have offered:
268 bright line internet rules of the roads, safeguards to
269 encourage innovation, and enforcement mechanisms that allow
270 the FCC to protect consumers without years of court battles.

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271 A legislative answer to the net neutrality question will
272 finally put to rest years of litigation and uncertainty.
273 Today's hearing will illustrate many of the harms that could
274 come from the FCC's Title II approach to net neutrality. Let
275 us work to avoid those landmines and get this done here, in
276 Congress, where policy decisions should belong. There is no
277 question that Americans deserve the most robust and
278 innovative internet possible. This requires clear rules
279 tailored to protect consumers and companies. Rules like the
280 ones we have put forward in our discussion draft and the same
281 rules the FCC Chair, President Obama, and Democrats in
282 Congress have sought for years.

283 Once again, I would urge my colleagues to work with us
284 and help put net neutrality into law in a way that avoids the
285 costly, harmful consequences that we will hear about today.
286 It is the right thing to do, so let us get it done. I yield
287 the balance of my time to the Vice Chair of the Subcommittee,
288 Mr. Latta.

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

290 ***** COMMITTEE INSERT *****

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291 Mr. {Latta.} I appreciate the chairman for yielding and
292 thanks very much for witnesses for being with us today. I
293 look forward to your testimony.

294 The FCC will vote tomorrow on a net neutrality proposal
295 that reclasses broadband internet access service under Title
296 II of the Communications Act. I strongly disagree with this
297 approach. Time and time again we hear from businesses large
298 and small that the reclassification will disrupt our
299 flourishing internet ecosystem by stifling innovation and
300 slowing investment. Subjecting a thriving, dynamic industry
301 to navigate the FCC's bureaucracy and red tape will adversely
302 alter the internet as we know it today.

303 Furthermore, the FCC's proposal will inevitably
304 introduce legal and certainly due to its lack of statutory
305 authority. The discussion draft brought forth by Chairman
306 Upton and Walden is a strong indication to this issue--pardon
307 me, a strong solution to this issue. A legislative fix will
308 provide regulatory certainty and enact the President's
309 network management prohibitions without treating broadband as
310 a common carrier.

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311 I look forward to the hearing today, and Mr. Chairman, I
312 appreciate you yielding, and Chairman Walden, I yield back.

313 Thank you.

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

315 ***** COMMITTEE INSERT *****

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316 Mr. {Walden.} The gentleman yields back the balance of
317 the time. The chair now recognizes the Ranking Member of the
318 Full Committee from New Jersey, Mr. Pallone.

319 Mr. {Pallone.} Thank you, Mr. Chairman. As I have said
320 before, net neutrality is critical because access to the
321 internet is critical. We go on line to apply for jobs, to
322 help our kids with their homework, and to grow our
323 businesses. These are just a few of the reasons why four
324 million Americans reached out to the FCC demanding strong
325 network neutrality protections. Due to this overwhelming
326 civic engagement, we are on the eve of a historic event at
327 the FCC. Tomorrow the Commission is set to put into place
328 what may be the strongest internet protections consumers have
329 ever had. And for all of you who called in, who wrote in,
330 who came in to support net neutrality, you will see that the
331 FCC and the rest of Washington knows how to listen, even if
332 it doesn't always appear that way.

333 So I welcome the Republicans' change of heart on their
334 effort to legislate. I remain open to looking for ways to
335 enshrine the FCC's network neutrality protections into law,

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336 but our effort can only work if it is truly bipartisan which
337 is why I am baffled about why we are holding this hearing
338 today, Mr. Chairman. Just a few weeks ago this subcommittee
339 met on these same issues. We all heard a number of major
340 concerns with the Republicans' discussion draft. We all
341 heard that these are complicated issues that take more than a
342 few weeks to sort through. This subcommittee and our Full
343 Committee have too much other important work to do to have
344 the same hearings over and over again.

345 For instance, the FCC just completed the most successful
346 auction in history for our Nation's airwaves. We could be
347 spending this time building on that auction and establishing
348 a spectrum pipeline for the future. We are nearly 2 months
349 into the new Congress with very little to show for it. I
350 think this subcommittee has enough talent to do more than
351 just obsess over one topic at a time. Our constituents
352 expect more of us.

353 Now once we have all had time to review and evaluate the
354 FCC rules and their effects, we can hopefully look for ways
355 to find and reach consensus on a bipartisan legislative
356 draft, but now is not that time. Now is the time for the FCC

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357 to do its work. I know that Chairman Wheeler will do
358 everything in his power to release the FCC Order as soon as
359 he can after the vote. To deliver on that promise, however,
360 the Chairman needs the cooperation of his fellow
361 Commissioners. So I ask all the Commissioners at the FCC,
362 even those who may disagree with the final decision, to work
363 with Chairman Wheeler to make this Order public as soon as
364 possible.

365 And I now yield the remainder of my time to the
366 gentlewoman from New York, Ms. Clarke.

367 [The prepared statement of Mr. Pallone follows:]

368 ***** COMMITTEE INSERT *****

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369 Ms. {Clarke.} I thank our Ranking Member, Mr. Pallone,
370 as well as our Ranking Member, Ms. Eshoo, for yielding me
371 time today. I would also like to thank our witnesses for
372 lending their expertise to today's hearing.

373 Mr. Chairman, protecting the free and open internet is
374 truly and essentially an issue of access to economic
375 opportunity. More than 80 percent of Fortune 500 companies
376 require on-line job applications. Our constituents simply
377 cannot compete without access to all that the internet has to
378 offer.

379 In my district and across our country, people are
380 increasingly moving to their smartphones and tablets as their
381 primary access point to the internet. That is especially
382 true for the most economically vulnerable Americans.
383 Seventy-seven percent of our low-income families rely on
384 their mobile phones to get on line. So I support making sure
385 that all Americans have open access to the internet. People
386 should be able to find the content and applications they
387 want, no matter who they are or where they live. They should

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388 not be constrained by internet gatekeepers, and the time has
389 finally come to establish certainty in this regard.

390 Therefore, I urge the Federal Communications Commission
391 to finish its work. Four million Americans have called in on
392 the FCC to adopt strong network neutrality protections. That
393 eye-popping number demonstrates how important this is. The
394 country has waited long enough.

395 I thank you, and I yield back.

396 [The prepared statement of Ms. Clarke follows:]

397 ***** COMMITTEE INSERT *****

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398 Mr. {Walden.} The gentlelady yields back the balance of
399 the time. And now we will move forward to hear from our
400 witnesses.

401 We again thank you all for being here today to share
402 your expertise on this issue as we move forward. I want to
403 start with former chairman of this subcommittee, Mr. Boucher
404 of Virginia, who is with the Internet Innovation Alliance now
405 as the Honorary Chairman. Mr. Boucher, we are delighted to
406 have you back as we have all said, and we look forward to
407 your commentary this morning.

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408 ^STATEMENTS OF THE HONORABLE RICK BOUCHER, HONORARY CHAIRMAN,
409 INTERNET INNOVATION ALLIANCE; GENE KIMMELMAN, PRESIDENT AND
410 CEO, PUBLIC KNOWLEDGE; ROBERT ATKINSON, FOUNDER AND
411 PRESIDENT, THE INFORMATION TECHNOLOGY & INNOVATION
412 FOUNDATION; AND LARRY DOWNES, PROJECT DIRECTOR, GEORGETOWN
413 CENTER FOR BUSINESS AND PUBLIC POLICY

|

414 ^STATEMENT OF RICK BOUCHER

415 } Mr. {Boucher.} Well, thank you very much, Chairman
416 Walden and Ranking Member Eshoo and other members of the
417 subcommittee. It is a privilege to accept the committee's
418 invitation to return to this very familiar surroundings and
419 to share with you this morning my views on the best way to
420 assure protection for network neutrality.

421 As the Chairman said in the introduction, I am the
422 Honorary Chairman of the Internet Innovation Alliance. It is
423 a membership organization. We have 175 members including
424 some technology companies. I am also a partner at Sidley
425 Austin. We also there have clients who are

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426 telecommunications companies. But here today, I am
427 expressing my own views, not the views of our law firm's
428 clients or of the Internet Innovation Alliance.

429 From the very time that the debate began about a decade
430 ago on the network neutrality issue, I have been a strong
431 proponent network neutrality and of imbedding a central
432 network neutrality guarantees into our federal law. In those
433 days I joined with now Senator Markey and Congresswoman Eshoo
434 and others on this committee in a legislative effort that at
435 that time was not successful to assure network neutrality
436 guarantees. I remain a strong supporter today of network
437 neutrality as I was then.

438 I believed then as I believe today that assuring an open
439 internet is essential to maintaining the Web as a vibrant
440 medium for free expression, for commerce, for education, for
441 healthcare delivery. It is clearly the most capable and
442 versatile communications medium that has been derived to
443 date.

444 To keep it that way, I am here today to urge that the
445 committee develop a narrow bipartisan bill that gives
446 statutory permanence and an assured legal foundation to

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447 network neutrality. I am concerned that if Congress does not
448 act, all protection for network neutrality is at risk of
449 being lost.

450 FCC Chairman Wheeler has said that his reclassification
451 Order that will be approved tomorrow rests on a stronger
452 legal foundation than the FCC's 2010 Open Internet Order
453 which ultimately was overturned in court. And that may be
454 true. But it certainly is going to be subject to legal
455 challenge. And we can't know today what the outcome that
456 that litigation is going to be. We can predict that the
457 court decision will be years into the future and coming, and
458 that will be at a time that is well into the next
459 presidential administration. We can just look at the
460 timeline for the Verizon decision that declared the Open
461 Internet Order be invalid. That didn't come until more than
462 3 years after the suit was filed. Three years from now we
463 are into the next administration.

464 If the Republicans win the presidency in 2016, the next
465 FCC will have a Republican majority, 3 to 2, the mirror image
466 of what it is today. And it would be very unlikely to appeal
467 and adverse court decision or to institute a new proceeding

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468 that would establish network neutrality guarantees. In fact,
469 it is very likely that a Republican FCC would move very
470 quickly to reverse tomorrow's classification decision, even
471 if that decision survives court determination.

472 Tomorrow's reclassification order and the network
473 neutrality principles it embodies truly rests on a tenuous
474 foundation. Without statutory protection, the network
475 neutrality guarantees can be swept away in the next
476 presidential election, and judging from the polling we are
477 seeing today, that is going to be a very close race.

478 Therefore, my sole purpose in appearing today is to say
479 that legislation is the superior solution. That is true for
480 those of us who strongly support network neutrality
481 guarantees. It is virtually impenetrable to judicial
482 challenge and would resolve the debate with statutory
483 permanence that is simply not available through the
484 regulatory and administrative process.

485 I know the Democratic members of this committee have
486 raised concerns about the draft that has been circulated by
487 the Republicans, but I would make a couple of points in
488 closing. First of all, as Chairman Walden and Chairman Upton

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489 both have indicated, the Republicans have made a major move
490 toward the historic Democratic position in offering to place
491 strong network neutrality guarantees into federal law. In
492 essence, they are offering to Democrats the very network
493 neutrality principals that, for a decade, Democrats have
494 sought to achieve.

495 By the same token, Democrats have concerns, and I think
496 it is important for the Republicans to acknowledge those
497 concerns and address them in a bipartisan negotiation.
498 Surely those concerns are subject to resolution. Candidly, I
499 have some concerns about the draft legislation, and if I were
500 on the Democratic side of the dais today, I would be
501 expressing some concerns as well.

502 In the end, what really matters is two key principles,
503 first, establishing strong network neutrality guarantees
504 perhaps using the FCC's 2010 Open Internet Order as a model
505 and secondly providing a continuation of the light touch
506 information service Title I treatment of the internet that
507 has welcomed investment and made it a dynamic platform that
508 has become the envy of the world. Everything else should be
509 open to discussion, negotiation, and resolution.

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510 At the moment, both sides have leverage. Both sides
511 have the opportunity to obtain their key priorities, and I
512 very much hope that a conversation will ensue and that you
513 will adopt legislation that does a service for the country
514 and keeps the internet open and maintains the light touch
515 regulatory treatment that it enjoys today.

516 Thank you very much for having me here, and I will be
517 pleased to take your questions.

518 [The prepared statement of Mr. Boucher follows:]

519 ***** INSERT A *****

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|

520 Mr. {Walden.} Mr. Boucher, thank you very much for your
521 testimony and your comments.

522 We now go to the President and CEO of Public Knowledge,
523 Gene Kimmelman, not a stranger to our committee. We welcome
524 your comments as well, sir.

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525 ^STATEMENT OF GENE KIMMELMAN

526 } Mr. {Kimmelman.} Thank you so much, Mr. Chairman,
527 Ranking Member Eshoo, members of the subcommittee. On behalf
528 of Public Knowledge, which is a non-profit that promotes
529 creativity, freedom of expression on open communications
530 platforms, I am pleased to appear before you this morning,
531 and I am most honored to join with millions of consumers,
532 citizens, civil rights activities, start-up companies, small
533 businesses, to praise the direction that Chairman Wheeler at
534 the FCC is going in his proposed rules for open internet
535 because it is those rules that will do more for our society
536 to promote freedom of expression and opportunity on what has
537 become the most important platform for economic opportunity,
538 social mobility, as Mr. Boucher said, education, healthcare.
539 That is the internet. These rules are critical.

540 The proposed rules as we understand them actually follow
541 a long tradition of the FCC flexibly applying the mandate
542 that this Congress has directed it to follow in preventing
543 discriminatory practices that are unjust and unreasonable on

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544 communications platforms. They are perfectly aligned with
545 what this Congress has asked in the past and update in
546 conjunction with all the innovation and technology that we
547 have seen exploding in this space, the fundamental principles
548 that are necessary to promote freedom of expression.

549 It is the Title II principles that have been
550 undergirding through all of our communications infrastructure
551 the exposure and investment, the tremendous innovation in
552 telecommunications that we have experienced in the last few
553 decades, and the enormous growth in the internet economy. It
554 is those same principles the FCC is applying as we understand
555 it in tomorrow's ruling.

556 We think this just continues through light touch
557 regulation as again Mr. Boucher referred to, the approach
558 that this Congress has always been asking the FCC to be
559 sensitive to with clarity in its policing tools that are
560 necessary to guide an open internet and prevent unreasonable
561 discrimination on that platform. We believe that is all they
562 are doing.

563 Now, I understand from the comments made already this
564 morning and more that we will hear that there are questions

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565 about regulation. There are questions about how to apply
566 them. There are questions about how far they go. It is not
567 unreasonable. It is not the first time. This is my third
568 decade of going through debates about common carriage and
569 discrimination going back to the breakup of AT&T through the
570 computer inquiry, through the 1996 Act, and now into the
571 internet era. These are the very same important principles
572 to discuss.

573 But here is one thing I would like to highlight. I
574 don't know Chairman Wheeler that well. I have come to know
575 him better in the last few years, given where he sits and
576 what he has said, and here is what I have seen. This is a
577 Chairman of the FCC who is very sensitive to the need for
578 investment in infrastructure and expansion of broadband
579 opportunities for Americans. This is a chairman who my
580 perception is wants to regulate as little as possible to
581 accomplish the goals that Congress has directed him to
582 accomplish. And I therefore feel very confident that he is
583 attuned to all the concerns that you are raising, he has
584 listened to the public's input, and that these proposed rules
585 as we know them are likely to be consistent with that.

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586 So while I fully understand the interest in legislating,
587 I would urge you today to sit back and see what is put
588 forward tomorrow. See what will work and what you think
589 won't work and then consider what Congress rightfully needs
590 to do to step in and address those concerns. But I will also
591 suggest please consider if you are legislating addressing all
592 the other concerns that have been legitimately raised about
593 potential shortcomings in the Communications Act.

594 In that endeavor, we look forward to working with you as
595 you move forward. Thank you so much, Mr. Chairman.

596 [The prepared statement of Mr. Kimmelman follows:]

597 ***** INSERT B *****

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|

598 Mr. {Walden.} Mr. Kimmelman, thank you for your
599 testimony as always. I would just point out that we are not
600 doing a mark-up today on legislation. We actually have said
601 we are not going to do a mark-up until we see what the FCC
602 does, but we wanted to hear from people like you about what
603 you know about the Act at this point or the Order at this
604 point.

605 We will go now to Mr. Atkinson, the Founder and
606 President, Information Technology & Innovation Foundation.
607 Mr. Atkinson, we are delighted to have you here this morning
608 to get your perspective. Please go ahead.

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609 ^STATEMENT OF ROBERT ATKINSON

610 } Mr. {Atkinson.} Thank you, Chairman Walden and Ranking
611 Member Eshoo and members of the subcommittee. ITIF is a
612 think tank that focuses on advancing innovation and smart
613 innovation policy.

614 Let me start by arguing that I think it is time we
615 should consign the term net neutrality to the dustbin of
616 history. It is a misleading term. It is a bias term that
617 has driven the debate to the false conclusion that there is a
618 one-size-fits-all internet and that absent Title II, internet
619 Armageddon is one decision away.

620 Neither of these claims are true. Instead, what we need
621 to be talking about is the need for effective network policy
622 for the 21st century. Ten years from now our goal should be
623 to have a better, smarter internet than we have today, and to
624 be sure, it should be a network that effectively polices
625 abuses. We have been and have continued to be long
626 supporters of the view that internet providers should not be
627 able to capriciously block or degrade or create pay-to-play,

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628 forced pay-to-play. That has been our position for 8 years
629 now in the debate. And when we see other nations that are
630 doing things like shifting to a carrier-pay model or allowing
631 blocking competing applications, for example, of VOIP, we
632 strongly oppose those and rules should do that.

633 But we also need a network that supports a rich
634 diversity of applications with the optimal levels of
635 performance. This is not the telephone era where you have
636 one application riding on one wire. What you have are
637 multiple different applications with multiple different needs
638 all riding on one wire.

639 So the idea that we should have a rigid regulatory
640 scheme that requires all traffic to be delivered the same way
641 is a little bit like saying that we should force bicycles and
642 mopeds to drive on the interstate with sports cars and
643 tractor trailers. Or it is a little bit like the Postal
644 Regulatory Commission telling the U.S. Postal Service that
645 they can no longer have Priority or Express Mail. You can
646 only deliver mail at one speed, and that is really what we
647 are talking about here.

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648 So in other words, there are two threats to the internet
649 today, or potential threats. One is unreasonable
650 discrimination which we have seen frankly very, very little
651 of, and the other is the risk of a dumb static network that
652 doesn't evolve as the internet economy evolves. Title II in
653 our view is a bad idea because it embodies the first of
654 those--the second of those two visions instead of the first.

655 But Title II is a bad idea not just because of its
656 rigidity but because of the uncertainty it puts industry,
657 both network providers and edge providers under. As the
658 Honorable Rick Boucher said, the notion that Title II is
659 going to put regulations on a sure footing is simply wrong.
660 To think that Title II will provide certainty for anyone but
661 the FCC is a pipe dream. As Dr. Boucher referred to, there
662 will be significant legal challenges, significant legal
663 uncertainty, and certainly political uncertainty. Whoever
664 the next president is, could go in either direction, could go
665 towards banning, going back to Title I or could go and say we
666 are going to reverse any kind of forbearance actions that
667 this current FCC Chairman is committed to. So we just simply
668 have no idea what is going to happen.

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669 Significantly, if Title II goes forward, there is also
670 going to be uncertainty over its implementation. Chairman
671 Wheeler has tried to mollify critics saying that he will
672 forbear and forbear from this and from that and from this.
673 But the fact that he has to give assurances is proof that
674 Title II is a kludge of a solution. It is not a solution
675 when you have to take whole components of it and move it off
676 the table. It is a little bit trying to fit the square peg
677 of a smart network policy into the round hole of Title II
678 Telephone Regulation.

679 The other problem or challenge with the Chairman's
680 actions is that many groups are going to file petitions in
681 terms of forbearance. We already have some groups already,
682 and I will refer to my colleague, Gene Kimmelman's
683 organization. Public Knowledge has asserted just last week
684 that they intend to push to use Title II to require broadband
685 providers, including new entrants into the marketplace with
686 innovative business models deploying fiber, to serve all
687 areas of a community at once. This may or may not be a valid
688 view. In our view, it is not. But it has nothing to do with
689 net neutrality.

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690 We have seen Free Press state, ``with Title II, we have
691 the legal authority to win the battles that are coming around
692 the bend.'' So this is not really an argument about net
693 neutrality. This is an argument about broad-based regulation
694 of network providers.

695 So going forward, the only way in our view to achieve
696 certainty, for edge providers and network providers, is
697 congressional legislation, and to achieve that certainty, we
698 would argue that balance needs to be the watch word as you go
699 forward, and we need to have balance between the edge and the
700 core. We need balance between requiring a one-size-fits-all
701 dump pipe and allowing capricious discrimination, neither of
702 those solutions is the right way. And frankly, we need
703 balance between the over governance of Title II and the under
704 governance of doing nothing.

705 We believe that it is possible and desirable to get that
706 kind of solution that serves everybody's interest in the
707 debate. There is a real moment of opportunity. What we have
708 heard today is a broad consensus on the principles, and we
709 believe that Congress should work together to draft the kind
710 of framework we need for network policy for the 21st century.

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711 Thank you for the opportunity to appear before you.

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

713 ***** INSERT C *****

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|

714 Mr. {Walden.} Mr. Atkinson, we appreciate your
715 comments, and thank you for being here today. We will now go
716 to our final witness this morning from the Internet Industry.
717 He is an analyst and an author, Larry Downes. Mr. Downes, we
718 are delighted to have you here as well. Please go ahead.

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|

719 ^STATEMENT OF LARRY DOWNES

720 } Mr. {Downes.} Thank you. Thank you, Mr. Chairman,
721 Ranking Member Eshoo, and members of the subcommittee. I
722 appreciate the opportunity to testify before you today. I am
723 based in Silicon Valley, have been for over 20 years, and
724 have been actively engaged in what really is the remarkable
725 development of the broadband internet ecosystem in several
726 capacities including as an entrepreneur and advisor to start-
727 ups and investors.

728 Since March 2014 I have also served as a Project
729 Director at the Georgetown Center for Business and Public
730 Policy studying the increasingly uncomfortable tension
731 between the accelerating pace of disruptive innovation and
732 the necessarily deliberative processes of government.

733 My written testimony focuses on four major concerns with
734 the FCC's pending proceeding which I would like to summarize
735 now. Number one, Chairman Wheeler has flip-flopped from
736 pursuing open internet rules to what now appears a full-force
737 effort to transform broadband into a public utility,

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738 threatens to end nearly 20 years of bipartisan policy
739 favoring light touch regulation of the internet, perhaps the
740 most successful approach to regulating an emerging technology
741 in history.

742 Under the visionary approach of Congress, the Clinton
743 administration and FCC Chairman of both parties at the time
744 and since the 1996 Act wisely left internet governance to the
745 engineering-driven, multi-stakeholder process, a process that
746 continues to rapidly evolve and improve the internet's
747 architecture protocols and network management technologies.

748 Number two: The May 2014 NPRM which promised to follow
749 the, quote, roadmap laid out by the Verizon court to reenact
750 the open internet rules under the authority of Section 706
751 now appears to have been jettisoned in favor of an all-
752 inclusive plan to regulate every node of the internet
753 infrastructure including peering, transit, and other
754 essential but non-neutral network management principles the
755 2010 report and Order wisely and explicitly excluded. Though
756 we have yet to see the final report and Order, it is reported
757 to be over 300 pages long. Its length will challenge even
758 its strongest proponents to say with a straight face that it

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759 is any way a simple or light touch resolution to a decade of
760 debate over the appropriate and legally permitted role of the
761 FCC in policing the internet. And as we know from its 2010
762 counterpart, most of its most contentious and legally
763 challenged aspects will be intentionally buried deep in the
764 text and in hundreds of footnotes.

765 The jurisdictional gymnastics were bad enough in 2010.
766 Now, given the acknowledged misfit, both from a legal and
767 policy standpoint of Title II written decades ago to closely
768 regulate the former public switch telephone network monopoly,
769 the process is already confounded by the need to first
770 transform the internet into a public utility and then
771 immediately begin the process of unraveling that decision.
772 Having selected the blunt instrument of Title II, the FCC in
773 its discretion must continually decide on its least-
774 appropriate provisions in an attempt to undo them through
775 clumsy and legally uncertain forbearance proceedings. At the
776 very least, extensive forbearance invites the worst kind of
777 rent-seeking behavior by self-interested parties throughout
778 the internet ecosystem.

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779 Number three: Recent developments in this long-running
780 debate over who and how to regulate the internet have now
781 made clear that for many advocates that open internet rules
782 were always the populist tail wagging the shaggy Title II
783 dog. Though the rhetoric of net neutrality remains the
784 substance of the FCC's pending rule-making instead advances a
785 long-running campaign to abandon the light touch model and
786 replace it with a public utility regime, the goal all along
787 for many supposed open internet advocates. Though the FCC
788 may today attempt or not to forbear from the most damaging
789 provisions of Title II, the campaign is already preparing to
790 drive the Title II wedge as far as possible which, for the
791 most vocal advocates have always included mandatory
792 unbundling, required build-outs, pre- or post-hoc rate
793 regulation, universal service fees and other taxes, and
794 shared jurisdiction with state public utility commissions.
795 Perhaps the light touch model was wrong all along. Perhaps
796 the transformation of the internet into a public utility
797 would do a better job of encouraging investment, adoption in
798 innovation. I don't think so, but if that is what we are

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799 debating, we should at least acknowledge it and move the
800 debate to Congress where it obviously belongs.

801 Number four: Abandoning the Verizon court's Section 706
802 roadmap in favor of public utility regime as the Chairman has
803 not hesitated to acknowledge introduces considerable legal
804 uncertainty that at best will mean another 2 years or more
805 without resolution to the open internet debate. It is not
806 simply my personal belief that Congress never intended for
807 broadband internet to be regulated as a public utility like
808 the old telephone network. That of course has long been the
809 interpretation of the 1996 Act of the FCC itself, an
810 interpretation ratified in 2005 by the United States Supreme
811 Court in the Brand X case. Overcoming a decade of FCC policy
812 and Supreme Court precedent will require considerable
813 innovation and outright creativity by government lawyers that
814 will certainly take years to resolve one way or the other.

815 There is a better way, one that removes all legal
816 uncertainty in an instant and avoids many of the intended and
817 unintended consequences of the public utility gambit. The
818 legislation introduced last month in both the House and the
819 Senate would quickly and cleanly resolve the FCC's persistent

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820 jurisdictional problems and enact precisely the rules called
821 for in even the most aggressive articulation of open internet
822 principles. Though I continue to believe the engineering-
823 driven multi-stakeholder governance of the internet is the
824 optimal solution, one that has worked with remarkable
825 efficiency since its inception, I have from the beginning
826 supported the proposed legislation if only as a way to end
827 the largely academic debate about the need for what the FCC
828 itself calls, quote, prophylactic rules.

829 I thank you again for the invitation and look forward to
830 your questions.

831 [The prepared statement of Mr. Downes follows:]

832 ***** INSERT D *****

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833 Mr. {Walden.} Mr. Downes, thank you, and thanks to all
834 of our witnesses for testifying today. We appreciate your
835 comments, your suggestions, and your concerns. I would like
836 to ask unanimous consent to submit into the record an opinion
837 piece written by Robert McDowell, former FCC Commissioner,
838 and Gordon Goldstein that was in the Wall Street Journal
839 entitled Dictators Love the FCC's Plan to Regulate the
840 Internet; the Obama Administration's Efforts to Treat the Web
841 Like a Utility has Fans from Saudi Arabia to the Putin's
842 Kremlin. Without objection.

843 [The information follows:]

844 ***** COMMITTEE INSERT *****

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|

845 Ms. {Eshoo.} Oh, my God. Come on.

846 Ms. {Walden.} Well, I don't generally comment on the
847 submissions you have. So Mr. Downes, the United States
848 recently returned from a treaty conference in South Korea
849 where our delegation fought to keep the internet from coming
850 under the purview of the UN's International
851 Telecommunications Union. The ITU has an extensive set of
852 regulations that apply to telecommunications including
853 economic relations on interconnection. Would the FCC
854 redefine a broadband internet as a public utility
855 telecommunications service within the ITU constitutional
856 remand? And with the FCC stating that its regulatory powers
857 would include internet interconnection agreements, have the
858 implications for international termination agreements been
859 considered by the Commission and what effect do you think
860 this will have?

861 Mr. {Downes.} Thank you, Mr. Chairman. So of course,
862 again, we have to qualify that we have not seen the full
863 report. We don't know exactly how they are going to do this,
864 but certainly if we are talking about a telecommunications

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865 service, that is within the purview of the ITU and the
866 treaties that the United States is subject to in conjunction
867 with its membership in the ITU.

868 Whether or not this is going to stand up legally, I
869 think there is no question that these forces within the ITU
870 that are eager to introduce things like sending network pays,
871 models that we have had on telephone service and introduce
872 that for internet service is a way of subsidizing their own
873 local broadband connections. They will certainly make the
874 argument, whether they are successful or not, that our move
875 undermines our longstanding commitment to keeping the
876 internet away from those kinds of telecommunications and
877 settlement regimes, and really, it does--it certainly
878 undermines our moral high ground in saying so whether or not
879 they get away with it or not.

880 Mr. {Walden.} Under GATS, countries that declare
881 services to be basic services like telephony could limit U.S.
882 investment opportunities abroad. Up until now the USTR has
883 argued that internet broadband is a value-added service, and
884 importantly in many country trade commitments, there are more

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885 liberal market access opportunities for value-added services
886 as compared to basic services.

887 For example, China has more restrictive rules for who
888 can obtain a basic service license, and China has defined
889 services connected to the internet to be basic services, a
890 definition that the U.S. trade representative has challenged
891 in the past.

892 Taking this as an example, could the FCC
893 reclassification to a telecommunications utility as they are
894 doing allegedly under their rule change USTR negotiating
895 positions abroad and result in closing market access and
896 competition opportunities for U.S. companies?

897 Mr. {Downes.} So I don't feel comfortable sort of
898 answering the question in terms of what it would force the
899 USTR to do, but certainly as I say, from a rhetorical
900 standpoint, it makes our negotiating position, our leverage,
901 much more subject to those kinds of arguments coming from the
902 countries we have been urging so strongly over the years to
903 try to keep internet as a light touch regulatory model the
904 way we have historically done.

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905 Mr. {Walden.} All right. Mr. Atkinson, you raised some
906 issues involving Mr. Kimmelman's organization. I would like
907 to hear you pursue that a bit and then get Mr. Kimmelman's
908 reaction as well. What else do you see out there in terms of
909 what the FCC is proposing in their Open Internet Order?

910 Mr. {Atkinson.} Well, again, we haven't seen it, but I
911 would agree with Mr. Downes that the net neutrality argument
912 for some groups, not all groups, and I don't really believe
913 this is true for most of the industry advocates, for example,
914 in Silicon Valley, but the net neutrality argument in my view
915 has been a stocking horse for going back to a network that is
916 highly regulated and ultimately going to a network that is
917 publically owned. I think that is the end goal for many,
918 many of these organizations. They want cities or governments
919 to be running these networks, and they equate them to roads
920 which most roads are publically operated and publically
921 funded, not all. And so I think what we will see--and I
922 didn't mean to just point out Public Knowledge alone because
923 there are other groups that do that, but I noticed it last
924 week when I was on their Web site. It was pretty stark. It
925 was essentially saying that they would use the Title II power

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926 to require broadband providers to roll out broadband in a
927 certain way. Now, if you do that, I think what the end rules
928 of that will be will be much less competition because it is
929 harder for new entrants to come into a market and put a
930 little bit of broadband here. They may not have the capital.
931 They may not have the markets right away. But if you are
932 requiring them to serve an entire area from the day one, you
933 will simply get fewer competitors coming into the wireline
934 marketplace, and I think that is going to end up hurting.

935 So I think we will see more and more of that as -- my
936 prediction is if Title II decision is made tomorrow, you will
937 see sort of period of sort of quiet for maybe 3 or 4 months,
938 and then you will start seeing this next sort of wave. Well,
939 we have done that for net neutrality but what about this?
940 What about prices? What about discrimination?

941 So I think it is just really the first step that we are
942 going to be seeing here.

943 Mr. {Walden.} I appreciate that. Mr. Kimmelman?

944 Mr. {Kimmelman.} Thank you. I think Mr. Atkinson has
945 fundamentally misunderstood what was a Q&A session that was
946 reported on our Web site. It was a response to the question

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947 about is there a concern for red-lining as broadband is built
948 out, denying service to low-income marginalized communities?
949 And our staff indicated that there was a concern. We didn't
950 call for regulating everyone.

951 Mr. {Walden.} All right.

952 Mr. {Kimmelman.} And I think as Mr. Atkinson knows, we
953 have supported differing treatment of dominant and non-
954 dominant carriers for years and years and years. Everyone
955 knows as competition grows, you need to let start-ups get
956 into a market and challenge the dominant players.

957 So I think that is just a misunderstanding.

958 Mr. {Walden.} All right. Mr. Atkinson, anything else?
959 Five seconds.

960 Mr. {Atkinson.} Well, I would be happy to submit to the
961 committee the actual statement that a Public Knowledge
962 employee researcher--

963 Mr. {Walden.} All right.

964 Mr. {Atkinson.} --puts on there, and it is very clear
965 that they intend to use Title II for this purpose.

966 Mr. {Walden.} All right. My time is expired. I
967 recognize my friend from California, Ms. Eshoo.

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968 Ms. {Eshoo.} Thank you, Mr. Chairman, and thank you to
969 all the witnesses.

970 First on the issue of equating the open internet rules
971 with repressive government attempts at online censorship I
972 really think is misinformed and irresponsible. Several of
973 the governments seeking to expand the UN and ITU role in
974 internet governance are actively engaged in blocking their
975 citizens' access to information online. And that is very
976 important to have down in the record. This is the opposite
977 of U.S. policy. This is not U.S. policy. It is the stark
978 opposite of it.

979 We adopted the open internet rules to protect consumers'
980 access to the content of their choosing. That is one of the
981 basic tenants of an open internet. So I think it is
982 important to get that down for the record.

983 Let me just--I have several questions. I doubt that I
984 am going to be able to ask all of them. I ask that you keep
985 your answers brief. Mr. Downes, you are really lathered up
986 about this. Last week T-Mobile--this is on the issue of
987 investment and this whole notion, wild accusations that the
988 market is going to be chilled, there isn't going to be any

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989 investment. Last week T-Mobile became the second major
990 wireless carrier to downplay the implications of Title II on
991 their ability to continue investing. So how do you reconcile
992 T-Mobile's statements and similar comments by Sprint with
993 your belief that the FCC action will threaten the long-term
994 health and continued investment in broadband?

995 Mr. {Downes.} Okay. Thank you, Ms. Eshoo. I can't
996 obviously comment on what T-Mobile and Sprint are thinking
997 and their reasoning, but what I can say is, you know, under
998 this light touch bipartisan policy we have had the last 20
999 years, we have had over a trillion dollars of investment in
1000 broadband--

1001 Ms. {Eshoo.} No, but I am asking you, the charge is,
1002 and it has been made by those that oppose essentially my
1003 position and those, you know, like-minded individuals and
1004 organizations, it is a very charge that has been made. So do
1005 you--can you reconcile it? Do you have proof? Is there lack
1006 of investment? Is there already a chill? Do you have
1007 information from the New York Stock Exchange or others? I
1008 think it is one thing to say we are concerned about

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1009 something. It is another thing to make a charge that, A, is
1010 definitely going to happen and is going to produce B.

1011 So let me move on to Rob Atkinson. Thank you. Good
1012 friends. I am an Honorary Co-Chair of ITIF and proud to be.
1013 In the absence of robust broadband competition, I think there
1014 is an even greater need for strong enforceable open internet
1015 rules. Now, your testimony doesn't raise this issue, but the
1016 facts I think point to rather dismal picture. At speeds of
1017 25 MB per second, nearly half of Americans have just one
1018 choice. At slower broadband of 10 MB per second, 30 percent
1019 of all Americans still have only one choice.

1020 So what would you propose be done to enhance broadband
1021 competition? And just be as brief as possible. If you have
1022 like maybe three bullet points?

1023 Mr. {Atkinson.} Well, first of all, as we have written
1024 on that, no country in the world has a majority of its
1025 connections over 25 MB, even North Korea--North Korea
1026 certainly doesn't. Even South Korea.

1027 Ms. {Eshoo.} Yeah, but we are talking about the United
1028 States of America. So I am asking--

1029 Mr. {Atkinson.} Right, but my point is that--

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1030 Ms. {Eshoo.} --you a very direct question.

1031 Mr. {Atkinson.} Congresswoman, my point on that is
1032 simply 25 MB I think is a standard that is just too high. No
1033 country meets it. So we do have robust competition, more
1034 around the 10 to 15 MB range where we have a lot of providers
1035 competing.

1036 But I would agree with you. I don't think competition--
1037 you could have more competition or less competition. I would
1038 fully agree. It doesn't mean that we shouldn't have rules
1039 because even with competition, you can have abuse. So I
1040 agree with you we need rules.

1041 Ms. {Eshoo.} Okay. I am going to ask you to stop so I
1042 can get to our friend, Rick Boucher. And it is wonderful to
1043 see you, and thank you for being here today.

1044 Eight years ago you introduced the Community Broadband
1045 Act of 2007, yourself and then-Representative Upton, as a way
1046 to overturn state bans on municipality-built broadband
1047 networks to spur deployment. Would you still stand with that
1048 today?

1049 Mr. {Boucher.} My views have not changed, Congresswoman
1050 Eshoo.

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1051 Ms. {Eshoo.} Good.

1052 Mr. {Boucher.} I believed then and believe today that
1053 where the incumbent providers are not offering an adequate
1054 service and in many places their service is either quite slow
1055 or in some very rural communities and reaches of the
1056 community is non-existent. If a community wants to step up
1057 and provide a broadband service that enhances economic
1058 development, then it ought to be free to do so.

1059 I would just note that in one community in my formal
1060 congressional district, the City of Bristol, the public
1061 utility there that is city owned overbuilt the incumbent
1062 provider and offers a gigabit-level network that has been
1063 tied directly to the creation of more than 1,000 jobs in that
1064 community.

1065 So yes, I think it makes a lot of sense. I indicated
1066 that my testimony here today is entirely my own views, and
1067 you have asked for my view and I can assure you that my view
1068 has not changed.

1069 Ms. {Eshoo.} Well, that is wonderful, and I hope that
1070 the FCC Chairman's proposal includes what you began many

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1071 years ago. Thank you. I think my time has more than
1072 expired.

1073 Mr. {Walden.} The gentlelady yields back. The chair
1074 now recognizes the gentlelady from Tennessee, the Vice Chair
1075 of the Full Committee, Ms. Blackburn, for 5 minutes.

1076 Mrs. {Blackburn.} Thank you, Mr. Chairman, and thank
1077 you to each of you for your time to be here. Our
1078 constituents are really concerned about this issue. As I
1079 said in my opening remarks, they don't think the internet is
1080 broken and they don't understand why the FCC would be trying
1081 to step in. So we appreciate hearing from you.

1082 Another thing that I hear and I want to take my
1083 questions this direction is the issue of new fees and taxes.
1084 I know Progressive Policy Institute had a study, and they
1085 said maybe \$11 billion in new fees and taxes. And then
1086 January 16 the Washington Post ran a story attacking that
1087 figure, but then they noted that through interviews with tax
1088 and regulation experts that Title II reclassification would
1089 likely, and I am quoting, ``cost some consumers something.''
1090 And we know that Chairman Wheeler is, as Mr. Atkinson, you
1091 pointed out, there has been discussion about forbearance from

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1092 applying universal service fees on broadband and other
1093 components. So we do have concern about this in the
1094 reclassification, that it will lead to some amount of
1095 increased fees and taxes. And February 2 the New York Times
1096 ran a piece titled In Net Neutrality Push, the FCC is
1097 Expected to Propose Regulating Internet Service as a Utility.
1098 And in that piece, David Farber, Professor Farber from
1099 Carnegie Mellon, and I think all of you probably are familiar
1100 with him. He helped to design parts of the backbone of the
1101 internet. And as we say in Tennessee, it was not done by Al
1102 Gore. It was done by others. But the article states
1103 Professor Farber commented, ``Regulating the internet like a
1104 telecom service potentially opens up a Pandora's Box.''

1105 And he advised that information services are typically
1106 free of taxes while telecommunications services are not
1107 especially at the state level.

1108 So what I want to ask you all, looking at these
1109 components, from Progressive Policy Institute, the review of
1110 that by the Post, the comments as in the New York Times by
1111 Professor Farber, does anyone on the panel dispute the

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1112 conclusions of Dr. Farber, the Progressive Policy Institute,
1113 and the Washington Post? Mr. Kimmelman? Go ahead.

1114 Mr. {Kimmelman.} Ms. Blackburn, I certainly dispute the
1115 implications of that is being said. What is being said is if
1116 there will be new taxes and fees. My understanding is the
1117 Chairman's proposal will have no new federal taxes and fees.
1118 He is forbearing from a portion of Section 254 as I
1119 understand it from his own description of what he will
1120 propose tomorrow. So there will be no federal taxes and
1121 fees.

1122 As to state and local government, which I believe is
1123 what Dave Farber was also referring to, it is today the case
1124 that every state can decide on its own what it wants to tax,
1125 what it wants to impose fees on, subject to limitations that
1126 this Congress is and has imposed on the internet tax
1127 moratorium legislation which you can adjust as need be to
1128 make sure that state and local governments do not go beyond
1129 what you think is reasonable.

1130 Mrs. {Blackburn.} Okay. So Mr. Kimmelman, you are
1131 disagreeing with the conclusions of Dr. Farber? You disagree
1132 with him as one of the architects of the internet?

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1133 Mr. {Kimmelman.} I don't believe he is the architect of
1134 tax systems. I believe that is your job here and what state
1135 governments do, and he presented--

1136 Mrs. {Blackburn.} Okay. So you are--

1137 Mr. {Kimmelman.} --a point of view of what he thinks
1138 might happen somewhere and--

1139 Mrs. {Blackburn.} Okay. I am going to interrupt you
1140 again--

1141 Mr. {Kimmelman.} --that is plausible but it is not a
1142 statement of fact.

1143 Mrs. {Blackburn.} --so we can continue on this. So let
1144 me ask you this. How much do you anticipate it is going to
1145 cost consumers and private industry, especially if USF funds
1146 are eventually applied to internet access? And most people
1147 agree, even Free Press, that reclassification would lead to
1148 some net increase in taxes and fees of about \$4 billion. So
1149 what do you really think?

1150 Mr. {Kimmelman.} I am hopeful, Ms. Blackburn, that the
1151 FCC will review its universal service rules, will do
1152 something about the approximately 10 percent, way-too-
1153 inflated fee that all of us are paying--

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1154 Mrs. {Blackburn.} Okay.

1155 Mr. {Kimmelman.} --on our telephone bills and figure
1156 out a better system where we actually all pay less. I
1157 believe--

1158 Mrs. {Blackburn.} Mr. Kimmelman--

1159 Mr. {Kimmelman.} --that is certainly plausible.

1160 Mrs. {Blackburn.} --let me ask you this in my few
1161 seconds that remain. Were you or your organization, Public
1162 Knowledge, privy to any of the closed-door sessions at the
1163 White House where there was a discussion on what the net
1164 neutrality order would look like coming from the FCC?

1165 Mr. {Kimmelman.} No. No, Ms. Blackburn. We were not
1166 privy to any--

1167 Mrs. {Blackburn.} Have you seen draft language?

1168 Mr. {Kimmelman.} No, I have not.

1169 Mrs. {Blackburn.} Yield back.

1170 Mr. {Walden.} The gentlelady yields back, and I now
1171 recognize Mr. Pallone.

1172 Mr. {Pallone.} Thank you, Mr. Chairman. As I said just
1173 a few weeks ago at the subcommittee's other open internet
1174 hearing, one of the important aspects of net neutrality is

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1175 ensuring that the FCC stands ready to protect consumer
1176 privacy, whether with regard to consumers needing telephone
1177 access or consumers needing broadband internet access. Yet
1178 yesterday Administrator Strickland confirmed to me that the
1179 White House intends to release as early as this week its
1180 Consumer Privacy Bill of Rights proposal which could
1181 effectively strip the FCC of its ability to regulate consumer
1182 privacy. The administration has not shared the proposal with
1183 members of this committee but has shown it to industry. As
1184 confirmed yesterday under the current draft which I am
1185 hopeful can be modified before release, telephone, internet
1186 or cable companies can get out of FCC privacy oversight by
1187 creating a self-regulatory privacy code of conduct through a
1188 multi-stakeholder process. Specifically, these companies
1189 would no longer be covered by Section 222, the privacy
1190 section of Title II or other similar provisions.

1191 So Mr. Kimmelman, I wanted to ask you. There are
1192 several concerns with the current draft privacy bill from the
1193 White House from basing it on a tried and failed multi-
1194 stakeholder process to potentially weakening FTC's current
1195 authorities. However, can you please comment on the concept

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1196 of allowing telephone, internet, and other providers being
1197 relieved of their obligations under Section 222?

1198 Mr. {Kimmelman.} Thank you, Mr. Pallone, and I
1199 appreciate your strong concerns about this. I certainly hope
1200 what you have heard is not accurate. I think this could be
1201 an enormous problem for consumers who have relied on the
1202 ability to protect their own personal privacy on telephone
1203 calls and their own viewing habits over cable television.
1204 That has been what Section 222 of the Communications Act has
1205 been applied to most generally. I certainly hope the
1206 administration is not considering rolling that back.

1207 Mr. {Pallone.} Can I ask you, I don't know if you
1208 wanted to respond to anything else that members have brought
1209 up so far if you haven't had the opportunity and wanted to
1210 comment further?

1211 Mr. {Kimmelman.} I would like to say something about
1212 the ITU having spent a bit of time at the WCIT Conference
1213 where Rob McDowell was as well. I think there is a little
1214 bit of a misunderstanding or sleight of hand here of raising
1215 telecom utility as a definition which I do not believe is
1216 what, based on what I have seen of the statements of the

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1217 Chairman of the FCC, he is proposing to do with his Open
1218 Internet Order and drawing things into some broader
1219 regulatory framework at the ITU. I just don't believe that
1220 is on the table.

1221 On the contrary, I believe from the description that has
1222 been provided of the proposed plan, it is the actual
1223 effectuation of the U.S. Government's position against Russia
1224 and China and Iran and other repressive regimes that we not
1225 only ask other governments to prevent censorship and
1226 interference with their citizens' communications but we
1227 ourselves practice that and do not censor citizens'
1228 communications on the open internet and do not allow
1229 corporate gatekeepers to do the same.

1230 So I view it as quite consistent with our past policies.

1231 Mr. {Pallone.} I thank you. You know, Mr. Chairman, I
1232 just wanted to say I know--and Ms. Eshoo and I were talking
1233 about this earlier. You know, the Republicans keep talking
1234 about court challenges, and the fact of the matter is that
1235 anything can be tied up in a court challenge. And you know,
1236 there was a time when the Republicans tried to avoid
1237 litigation. I specifically remember, you know, they have and

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1238 continue to talk about tort reform in the healthcare sector.
1239 But now it looks like the GOP wants to sue on everything, you
1240 know? They sue on the ACA. They sue on immigration reform.
1241 I am just, you know, commenting on the fact that I really
1242 don't quite understand why, you know, we as a subcommittee or
1243 as a committee have to be constantly worried about who is
1244 going to sue who because we never know who is going to sue no
1245 matter what the action is by FCC or any other agency.

1246 So, you know, I just, you know, a comment on the fact
1247 that I really don't think that we should be deciding what to
1248 do here, you know, based on who we think is going to sue who.
1249 And certainly I see that if anything, it is the Republicans
1250 that appear to be more litigious these days than our side of
1251 the aisle.

1252 I yield back.

1253 Mr. {Walden.} The gentleman yields back the balance of
1254 his time. Chair now recognizes the former chairman of the
1255 committee, Mr. Barton, for 5 minutes.

1256 Mr. {Barton.} Thank you, Mr. Chairman. And we are
1257 delighted to have the Honorable Boucher here. It is a level
1258 of the respect and the amount of intimidation factor that you

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1259 have not yet been asked a question. We are afraid of you,
1260 Mr. Boucher. But I remember well the debates you and I have
1261 had, some on the same side, some on opposite sides. And we
1262 are delighted that you are here again. We love Robert
1263 Griffin. He is a great member of this committee, but we miss
1264 you and we wish you well.

1265 Mr. {Boucher.} Thank you very much, Mr. Barton.

1266 Mr. {Barton.} I do want to--you know, we have talked
1267 about this issue of net neutrality, and Mr. Atkinson quite
1268 rightly pointed out that that is a misnomer. Net neutrality
1269 as espoused by the most aggressive proponents, there is
1270 nothing neutral about it. It is net regulation. What the
1271 FCC is probably going to vote on tomorrow is net nonsense.
1272 It is not going to work. It is going to be tested in court.
1273 It is going to fail in court. The chairman of this
1274 subcommittee and the Full Committee have put out a draft that
1275 would give some certainty but would maintain the premise of
1276 true neutrality.

1277 Now, Mr. Boucher, you are a smart guy, you know? You
1278 are a lot smarter than me. But you understand, and I want to
1279 commend you for your--you were the only one that really made

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1280 any political comments, you know? You put it on the table.

1281 You have great candor, and I appreciate that.

1282 But 1934, when we passed whatever we call that Act, the

1283 Communications Act, there was one phone company basically.

1284 Now, there were some small rural telephone companies, but if

1285 you wanted a phone company in your particular area, you went

1286 to one company. You went to one company. Today in Ennis,

1287 Texas, if I don't like my internet provider, which is Charter

1288 Cable, AT&T will come in and do it for me. Verizon will come

1289 in and do it for me. There are any number of providers that

1290 all I have to do is pick up a solicitation letter in my

1291 mailbox or next time the phone answers say yes to somebody

1292 who wants to provide me different internet services. There

1293 are all kinds of competition.

1294 Title II was passed when you had one provider. Do you

1295 agree with that?

1296 Mr. {Boucher.} Mr. Barton, I don't disagree with

1297 anything that you just said. The phone--

1298 Mr. {Barton.} Including--and everybody else.

1299 Mr. {Boucher.} The tone that I would express that

1300 sentiment in is the following, that there is a better way.

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1301 Title II is kind of a blunt instrument. It is a relic from
1302 another era that doesn't fit very well in today's highly
1303 competitive communications market where you have got the
1304 world's most capable platform for delivering information of
1305 all kinds and multiple parties delivering access to that
1306 platform, depending on whose service you want. Title II was
1307 never conceived for an environment like that. There is a
1308 better way, and the better way--I will come back to my
1309 original remarks--is for this committee--

1310 Mr. {Barton.} I am not going to let you filibuster too
1311 long.

1312 Mr. {Boucher.} Well, I am only going to take about 10
1313 seconds here, but you come together on terms that are for
1314 today's modern era that offer network neutrality assurances
1315 and maintain broadband as a lightly regulated Title I
1316 information service. That honestly is what is called for in
1317 today's environment.

1318 Mr. {Barton.} In the Chairman's draft as he has put
1319 out, you would generally support it?

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1320 Mr. {Boucher.} I think it moves in the right direction,
1321 and I think it is important to note how far the Republicans
1322 have now moved toward the historic Democratic position.

1323 Mr. {Barton.} See, and that bothers me.

1324 Mr. {Boucher.} Well, I know you, and I am not
1325 surprised. But I hope you will see the light this time. And
1326 let me just stay that I think it is a major development that
1327 now everyone is talking about the best way to preserve
1328 network neutrality, and the best way to do that is a narrowly
1329 crafted statute that gives permanence to these principles.

1330 You know, we have been debating this issue now for a
1331 decade, and everyone has more important work to do. Mr.
1332 Wheeler at the FCC has more important work to do, but he is
1333 going to spend a lot of time responding to requests here and
1334 litigation in court unless this issue is put to rest.

1335 So a decade into it now, it is time to settle it. This
1336 committee has within its ability the power to do that--

1337 Mr. {Barton.} Okay. I want to--

1338 Mr. {Boucher.} --and both of you have an incentive.
1339 Both sides have an incentive to get it done. So I hope you
1340 will.

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1341 Mr. {Barton.} I want to go to Mr. Atkinson very
1342 quickly. Do you and the people you represent generally
1343 support what Chairman Walden and Chairman Upton have put out
1344 in draft form?

1345 Mr. {Atkinson.} I would associate myself with
1346 Congressman Boucher's remarks. I think it is in the right
1347 direction. I think there is room for compromise in it. I
1348 think the Democratic side has raised some points that have
1349 validity. Though it is not a perfect bill in my view, but it
1350 is a very, very important first step and it lays the
1351 groundwork for a legislative solution.

1352 Mr. {Barton.} Thank you. And thank you, Mr. Chairman.
1353 I yield back.

1354 Mr. {Walden.} The gentleman's time is expired. Now we
1355 go to the gentleman from Pennsylvania, Mr. Doyle, for 5
1356 minutes.

1357 Mr. {Doyle.} Thank you, Mr. Chairman, for holding this
1358 hearing, and thank you to all the witnesses, particularly my
1359 good friend and colleague, Rick Boucher. It is good to see
1360 you back here, Rick.

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1361 I am excited to see the FCC take this next step tomorrow
1362 in protecting an open internet. I think the Chairman has
1363 recognized the passion and interest that people around the
1364 country have for this issue, and he has seen broad support
1365 from an array of stakeholders, from investors to venture
1366 capitalists to edge providers and ISP. Most recognize that
1367 the sky isn't falling, and many applaud the certainty that
1368 these rules will bring to the marketplace.

1369 You know, this morning I was checking the stock prices
1370 for many of the major telecom companies, and most companies'
1371 values were up. So clearly investors don't think the sky is
1372 falling, either. Statements by executives by many of the
1373 Nation's largest telecom companies reflect their expectation
1374 that these rules won't change their investment or deployment
1375 strategies and that they believe properly crafted rules will
1376 not affect their businesses.

1377 I also want to point out that the FCC is also moving
1378 forward to grant a number of petitions by communities to lift
1379 restrictions on municipal broadband deployments. I think
1380 that is a great step in the right direction, and I think the

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1381 communities can bring some much-needed competition to the
1382 broadband market.

1383 And finally, let me say with regards to some of the
1384 concerns expressed by Ms. Blackburn, the Washington Post fact
1385 checker looked at this study that she cites and completely
1386 debunked the study. The fact checker said the more complex
1387 the issue, the easier it is for politicians to obfuscate the
1388 reality of the dramatic numbers, and our constituents deserve
1389 better than scare tactics that deliberately mislead the
1390 public and gave it three Pinocchios. So I think that speaks
1391 to that issue.

1392 Mr. Kimmelman, I want to follow up on a question that
1393 Mr. Pallone asked you. This proposal by the White House
1394 sounds like it would severely undercut the FCC's authority to
1395 prevent ISPs from using their position in the marketplace to
1396 do things like charging subscribers not to have their
1397 browsing history data-mined or setting super-cookies that
1398 allow users to be identified and tracked across the internet.

1399 What benefit do you see in the FCC's ability to enforce
1400 privacy protections on ISPs and what do you think would be
1401 lost if that authority was removed and vested in the FTC that

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1402 may lack the authority to establish bright line rules the way
1403 the FCC could under Title II?

1404 Mr. {Kimmelman.} Mr. Doyle, I think it is a very
1405 serious concern if what you describe is accurate. I think
1406 that consumers across the country rely upon the
1407 infrastructure of communications in this country to protect
1408 their privacy. It has historically done so. Section 222 has
1409 been used for that, and I think we need to look at that in
1410 the broadband environment. It would be extremely unfortunate
1411 if that were thrown out the window at this moment.

1412 I have a concern just based on the characterization that
1413 you provided and Mr. Pallone that the administration which
1414 had been working on privacy legislation 4 years ago and had
1415 brought together many stakeholders has pulled something out
1416 of the drawer and hasn't maybe fully looked at changes in the
1417 environment, including the regulatory environment, since
1418 those ideas were first floated. And I certainly hope that
1419 they are updating that and are listening to the concerns
1420 raised.

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1421 This would be a very significant concern for consumers
1422 if all of a sudden they thought their privacy was in
1423 jeopardy.

1424 Mr. {Doyle.} Mr. Kimmelman, some have argued that paid
1425 prioritization and unencumbered zero rating of apps and
1426 services can be beneficial to consumers. Others say that
1427 these policies could lead to greater barriers to entry in the
1428 marketplace and in fact hurt consumers by limiting the array
1429 of new businesses and start-ups that can climb the pay walls
1430 that these policies erect. Where do you stand on that?

1431 Mr. {Kimmelman.} Mr. Doyle, I think paid prioritization
1432 can be extremely dangerous to the internet ecosystem that we
1433 have today. I constantly think back to what Tim Berners-Lee
1434 has talked about as permissionless innovation. He didn't
1435 have to ask anyone to develop the World Wide Web. I think
1436 that is an important concept to keep in mind here.

1437 Now having said that, that does not mean everything is--
1438 it is one size fits all as Rob has said. It means there
1439 needs to be important regulatory oversight functions applied
1440 as to what a particular service does, whether it is
1441 beneficial to the competitive process, whether it opens

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1442 opportunities for innovators, whether it creates a new
1443 competitive option in the marketplace.

1444 So I wouldn't classify every service one way or the
1445 other, but in general, I think there should be a big alarm
1446 bell goes off when you see something that looks like paid
1447 prioritization as a starting point.

1448 Mr. {Doyle.} Thank you. Mr. Chairman, I will yield
1449 back.

1450 Mr. {Walden.} The gentleman yields back his time. I
1451 would like to ask unanimous consent to submit in the record a
1452 letter from Mr. Mark Cuban who says the market is aware of
1453 the uncertainty. The FCC is--and will respond accordingly by
1454 creating volatility, and a story in News Bay Media. Moffet
1455 Downgrades Cable Sector on Title II Woes. Without objection,
1456 those two items will be inserted in the record.

1457 [The information follows:]

1458 ***** COMMITTEE INSERT *****

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|

1459 Mr. {Walden.} I now turn to Mr. Olson. Are you sure it
1460 is not Mr. Shimkus I believe was here?

1461 {Voice.} Sorry, sir.

1462 Mr. {Walden.} Yeah, Mr. Shimkus overriding my own
1463 counsel here for the next 5 minutes.

1464 Mr. {Shimkus.} Thank you. Well, it is great to be
1465 here, a great panel, great discussion, and again, it is good
1466 to see Rick here, although his real name is Frederick
1467 Carlisle, goes by Rick. So I did my due diligence.

1468 Mr. Atkinson, given the Title II explicitly allows for
1469 discrimination, how can the FCC place an outright ban on paid
1470 prioritization?

1471 Mr. {Atkinson.} Well, I disagree with this notion on
1472 paid prioritization. If we really want to ban paid
1473 prioritization, then we should ban CDNs, content delivery
1474 networks, that major companies like Netflix use. They are
1475 paying to get their traffic as close to the customer as
1476 possible. And a little Silicon Valley start-up, maybe they
1477 can't pay for a CDN.

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1478 So I think this notion that somehow some kind of paid
1479 prioritization is okay and some kind is not. Now my position
1480 is we should let the market determine that. I actually think
1481 this could be really good for start-ups. There may be start-
1482 ups that can't afford to use CDN services. They may want to
1483 say, you know, I have an application that has what engineers
1484 call low latency needs. The best efforts internet isn't
1485 going to do that. As long as the rule says that if you don't
1486 pay you always get best efforts internet, we can never have a
1487 system where a carrier says you have to pay to get best
1488 efforts. So that is what any congressional rule has to say.

1489 But if you want to go beyond it, it is like I can get a
1490 40-cent stamp or whatever it costs for the mail today, but if
1491 I want to go beyond it as a businessperson, I have the right
1492 to get it. And I think that is very much pro-consumer and
1493 pro-business.

1494 Mr. {Shimkus.} But to have the certainty, that would
1495 require legislation. That would require language other than
1496 FCC, you know, going to, you know, the current Communications
1497 Act and then trying to wiggle in one section over the other.

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1498 Mr. {Atkinson.} Right. Absolutely. And that is why we
1499 supported so strongly Chairman Wheeler's initial proposal
1500 because he allowed paid prioritization, but he said it has to
1501 be reasonable and has to be pro-consumer and there are some
1502 safeguards around it. But he backed off from that position.
1503 I am not sure why. But I think that was the right position.
1504 And guaranteed, if the FTC goes forward tomorrow with Title
1505 II, you won't be able to have that level of customization.

1506 Mr. {Shimkus.} I have been told to make sure I answered
1507 the same way. I am not sure why, but I think I know why.
1508 Rick, you have looked at the European use of broadband, and
1509 it is obviously a different way of handling that. Obviously
1510 the concern and part of this debate is that by moving into
1511 Title II, we may be falling into the same trap as the
1512 European community. Can you address that?

1513 Mr. {Boucher.} The Internet Innovation Alliance with
1514 which I am affiliated, did a study which we published about 3
1515 weeks ago. The results of that are on the Alliance's Web
1516 site. And in that study, we took a close look at the
1517 broadband performance of Europe versus the United States. We

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1518 did that in parallel to the regulatory structures that
1519 prevail in Europe and also in the United States.

1520 In the United States we have historic light touch
1521 regulation going back about a decade now for broadband, and
1522 that light touch regulatory environment has been very
1523 welcoming to investment.

1524 In the European Union for about the same period of time,
1525 going back to about 2002, they have had a more intrusive
1526 regulatory regime characteristic of their regime and most of
1527 the member states of the EU is something called unbundling
1528 and least access over the last mile. And that basically
1529 means that competitors are welcomed on to the incumbent's
1530 network at a set price, at a regulated rate.

1531 The history is pretty clear that in the European Union
1532 that least access requirement has impeded investment, and on
1533 virtually every measure of internet capability, the European
1534 Union is behind the United states, behind in access to
1535 broadband capabilities on the part of the public, behind in
1536 terms of speed, behind in investment on both the wired and
1537 wireless side and even the European Commission has now
1538 concluded that the reason their performance in lagging is

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1539 because of the intrusive regulatory structure that they have
1540 and has recommended to the member states that for next
1541 generation networks, the fiber optic deployments, the gigabit
1542 level networks that are only now beginning to come to Europe,
1543 even though we have them more commonly in the United States,
1544 that the member states should not apply the least access
1545 regime, saying that to do so would impede investment.

1546 So the simple conclusion we reach in our study is that
1547 at the very time when we appear to be moving now toward
1548 Europe in terms of a regulatory posture with Title II
1549 reclassification. Europe is now moving our way and
1550 lightening up its regulatory structure. Now, you know, the
1551 FCC is proposing to forbear from imposing least access, but I
1552 will be very surprised if Title II is adopted, if you don't
1553 see some competitive carriers suing, saying that the FCC did
1554 not have an adequate record to undertake that level of
1555 forbearance and saying that now that Title II applies, there
1556 has to be least access. Rob Atkinson earlier said that Title
1557 II is going to create a lot of uncertainty. This is yet
1558 another example of where I think it will.

1559 Mr. {Shimkus.} Thank you.

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1560 Mr. {Walden.} The gentleman's time expired. We now go
1561 to Mr. Yarmuth for 5 minutes.

1562 Mr. {Yarmuth.} Thank you, Mr. Chairman. Rick, it is
1563 good to see you. Thanks to all the panelists. Now we have
1564 heard arguments that the FCC's net neutrality rules will make
1565 internet speeds offered to American consumers as slow as
1566 those in Europe. But according to Akamai's most recent State
1567 of the Internet Report, average U.S. internet speeds ranked
1568 behind what consumers can get in Moldova and 20 other
1569 countries.

1570 I will address this to Mr. Kimmelman. Do you think that
1571 American broadband consumers are getting a good deal as
1572 compared to their European counterparts?

1573 Mr. {Kimmelman.} Thank you, Mr. Yarmuth. I think it is
1574 really hard to do apples-to-apples comparison of the U.S. and
1575 Europe. Some of their rules are European Union-wide. Some
1576 of them are nation-specific. So it is a bit tricky.

1577 But in general, there are some policies they are
1578 imposing that are much more government driven, that much more
1579 come out of a single provider monopoly environment, and they

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1580 can keep prices low and they can open up their platforms.

1581 And then they have other problems.

1582 And I think the better way to think about it is can we
1583 do better here with our speeds and with our deployment, and I
1584 think the answer is clearly yes. I don't think it is to
1585 follow a European model as such, and I don't think Title II
1586 is anywhere near the same as what most of the Europeans have
1587 done. But I think the goal of actually pushing up speeds of
1588 reaching higher for what has now become this essential
1589 platform for economic and social growth in our society,
1590 absolutely, yes. We should be pushing as hard as possible.

1591 Mr. {Yarmuth.} Some of your fellow panelists seem to
1592 take a different view of the current state of consumer choice
1593 in the American broadband market. I know in my district,
1594 there is one provider that dominates the market. Essentially
1595 that is the only game in town. What is your view on the
1596 level of broadband competition our constituency currently
1597 enjoy?

1598 Mr. {Kimmelman.} I think there are a number of
1599 different measurements that are being used. The FCC is now
1600 pushing the envelope to really push for greater deployment.

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1601 But by anything other than a snail's pace, we lack robust
1602 competition in our broadband market, particularly for the
1603 delivery of video quality services. And so often one
1604 provider, sometimes two. Mr. Barton I guess is lucky to
1605 have, fortunate to have more. Some people can use wireless
1606 for a variety of services but usually not the most robust
1607 video delivery system.

1608 So we suffer from a very significant problem and lack of
1609 competition.

1610 Mr. {Yarmuth.} And what about the issue of cost versus
1611 quality and service? How do we rate in terms of what
1612 consumers pay for quality video?

1613 Mr. {Kimmelman.} Well, again I hate to say anything too
1614 definitive because different countries have different rules,
1615 different frameworks. But there is no doubt there are some
1616 countries that have faster speeds and better quality. And I
1617 would just urge the committee to look at what are the
1618 policies that go with those that actually deliver that.
1619 Sometimes it is with greater government involvement, and that
1620 is something to actually consider as a matter of tradeoff.

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1621 Mr. {Yarmuth.} Just as a matter of principle, if you
1622 have one provider with very little regulation, then the odds
1623 of getting good service at a reasonable cost are lower than
1624 if you had either multiple providers in a vibrant competition
1625 or some kind of heavy-handed regulation.

1626 Mr. {Kimmelman.} Absolutely. And I will just point out
1627 that going way back in history, we did have more of the open
1628 market that Mr. Atkinson was talking about, and it was
1629 bedlam. There was a refusal to interconnect in the early
1630 1900s which led to the development of the AT&T monopoly with
1631 a set of public obligations that came with it.

1632 So obviously a different timeframe, but I just raise the
1633 admonition. The economics of that could still be
1634 problematic, that interconnection is not something that has
1635 traditionally worked well in a totally free-market
1636 environment.

1637 Mr. {Yarmuth.} Great. Thank you, Mr. Chairman. I
1638 yield back.

1639 Mr. {Walden.} The gentleman yields back the balance of
1640 his time. The chair now recognizes the gentleman from New
1641 Jersey, Mr. Lance, for 5 minutes.

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1642 Mr. {Lance.} Thank you, Mr. Chairman. Mr. Atkinson, in
1643 your testimony you eschew the term net neutrality in favor of
1644 a more generic term, network policy. You say, and I quote,
1645 any network policy for the 21st century recognizes that the
1646 internet is not inherently neutral and that while some forms
1647 of traffic differentiation can be anti-consumer or stifle
1648 innovation, other forms may enable innovative new services.
1649 And I would like you to elaborate. Perhaps that might be in
1650 healthcare or educational fields, but I ask for your
1651 expertise into how this could further innovation.

1652 Mr. {Atkinson.} So I think one of the things that has
1653 been striking about this debate is the absence of the voice
1654 of network engineers. The internet has never been neutral,
1655 and it is not neutral now. In the internet engineering
1656 space, there are different priorities that network traffic
1657 receives because frankly, if your email goes and you get it
1658 50 milliseconds late, you don't notice and you don't care.
1659 But if your two-way video with your doctor is 50 milliseconds
1660 late, you basically cannot have that conversation with your
1661 doctor. Fifty milliseconds is way too long.

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1662 So the idea that we would treat all traffic the same is
1663 essentially an anti-consumer. It is going to stifle these
1664 kinds of innovations. If I can just make one quick point
1665 about the question on competition, we released a report last
1666 year called The Whole Picture where we looked at competition.
1667 Using the OECD data, we have the third most-competitive
1668 intermodal broadband market in the world. We are almost tied
1669 with Korea and Canada. We have more intermodal competition,
1670 in other words, two providers serving each home, than any
1671 other country. The reason there are a few countries ahead of
1672 us like Japan, like Korea, is really two factors. They have
1673 very high population density. They are serving apartment
1674 buildings largely. Super-easy to do. And secondly, they
1675 have put in massive government subsidies. Now, we can have
1676 an argument about whether that is a good policy or a bad
1677 policy, but many of these countries have used public monies
1678 from tax incentives and grants.

1679 So this notion that somehow we are lagging behind
1680 because of the light touch regulation I think is mistaken.

1681 Mr. {Lance.} Thank you and I appreciate that point.
1682 You said in your testimony the almost certain legal

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1683 challenges to the FCC's Order and the uncertainty that would
1684 in turn create as evidence that a legislative route would be
1685 better than the FCC's reclassifying broadband under Title II.
1686 How long do you think the legal challenge would last if this
1687 were to occur?

1688 Mr. {Atkinson.} I imagine it would begin quite soon,
1689 and I would imagine--I would agree with Congressman Boucher,
1690 I think it is probably--you are talking 3, maybe 4 years
1691 before we would end up with any sign of real decision and
1692 certainty, whether this we can do a go or no-go.

1693 Mr. {Lance.} Thank you, and others on the panel are
1694 certainly willing to--

1695 Mr. {Boucher.} Let me just--

1696 Mr. {Lance.} Yes, thank you, Congressman. Yes.

1697 Mr. {Boucher.} Just to look at the most recent decision
1698 in this space. It was the Verizon decision of the D.C.
1699 Circuit.

1700 Mr. {Lance.} Yes, sir.

1701 Mr. {Boucher.} It invalidated the FCC's 2010 Open
1702 Internet Order.

1703 Mr. {Lance.} Yes.

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1704 Mr. {Boucher.} More than 3 years from the time the suit
1705 was filed until the decision was handed down. You know, my
1706 point is that puts us into the next presidential
1707 administration. If there is a Republican FCC at that point,
1708 the network neutrality for all practical purposes is gone.
1709 There will no longer be network neutrality assurances. Those
1710 who strongly support network neutrality should be looking for
1711 greater permanence. A statutory alternative offers that.

1712 Mr. {Lance.} And regarding the former case, did that
1713 go, sir, to the Circuit Court here at the D.C.--

1714 Mr. {Boucher.} Yes.

1715 Mr. {Lance.} And of course, in this situation, there is
1716 the potential that it could be appealed further and the
1717 Supreme Court might grant, sir, and that would even be a
1718 longer period of time.

1719 Mr. {Boucher.} Yes.

1720 Mr. {Lance.} Yes. Thank you. Mr. Downes, you have
1721 cited in your testimony how network management technologies
1722 could exist regarding oversight of the FCC. Do you believe
1723 that this will lead to reduced investment and innovation on
1724 the part of ISPs in broadband networks?

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1725 Mr. {Downes.} Well, it depends I think on how far the
1726 FCC goes now or in the future in terms of this public utility
1727 regime. Obviously we have investment in our public utilities
1728 including the wireline telephone network, but it is clearly
1729 not at the same pace and at the same froth level as what we
1730 have seen in the last 20 years under the light touch regime.

1731 Mr. {Lance.} Thank you, and Mr. Chairman, I yield back
1732 16 seconds.

1733 Mr. {Walden.} The gentleman yields back the balance of
1734 his time. The chair now recognizes Ms. DeGette next up.

1735 Ms. {DeGette.} Thank you, Mr. Chairman. You know, as a
1736 supporter of net neutrality, I have been glad to see that the
1737 latest debate has led to a consensus around principles of
1738 access to lawful content, no harmful discrimination, and
1739 transparency. These are really the core principles that have
1740 been laid out, both in the Republican draft and also in
1741 Democratic proposals, and also the White House is in favor of
1742 this and most importantly maybe is what our constituents
1743 expect when they use the internet. But of course, the
1744 constituents expect much more than just an open internet.

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1745 They expect faster speeds, affordable prices, and access to
1746 new and innovative content.

1747 So for the last decades, the virtuous cycle of
1748 investment and innovation have given consumers these
1749 advantages as well. I know there is disagreement among the
1750 panel about the best way to implement net neutrality, but I
1751 want to step back to the core net neutrality principles, and
1752 I want to ask each member of this panel the same question.
1753 And this can be answered yes or no. Are the net neutrality
1754 principles of access to lawful content, no harmful
1755 discrimination, and transparency if properly implemented
1756 compatible with the continued investment necessary to give
1757 consumers the broadband experience they expect? Mr. Boucher?

1758 Mr. {Boucher.} Yes.

1759 Ms. {DeGette.} Mr. Kimmelman?

1760 Mr. {Kimmelman.} Absolutely, yes.

1761 Ms. {DeGette.} Mr. Atkinson?

1762 Mr. {Atkinson.} Yes.

1763 Ms. {DeGette.} And Mr. Downes?

1764 Mr. {Downes.} Yes, especially the way you phrased it,
1765 yes.

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1766 Ms. {DeGette.} Thank you. So I am glad that we all
1767 agree that strong net neutrality can be an unambiguous win
1768 for consumers. I want to--do you want me to ask this?

1769 Mr. {Lujan.} If--

1770 Ms. {DeGette.} Okay.

1771 Mr. {Lujan.} --you want to yield.

1772 Ms. {DeGette.} I will yield--let me ask one more
1773 question. Then I will yield to you if that is okay. Mr.
1774 Lujan has an excellent question that he wants to ask. Mr.
1775 Kimmelman, some have suggested that the power of the free
1776 market is sufficient to protect the open internet, but in
1777 your testimony you pointed out that some of the biggest ISPs
1778 have admitted there is a business advantage to violating open
1779 internet principles. Is this merely a theoretical concern or
1780 have we seen cases of business actually trying to gain an
1781 advantage on their competitors by violating net neutrality
1782 principles?

1783 Mr. {Kimmelman.} We have seen examples, Ms. DeGette.
1784 Fortunately we have had rules in place or we have had rules
1785 proposed for a long period of time that have very effectively
1786 disciplined most market behavior. And so we haven't seen a

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1787 lot, but we have seen this and it is very simple. It can be
1788 advantageous to the bottom line to favor one's own content,
1789 to favor one's own preferential relationships in content
1790 providers to make more money. And so there is nothing
1791 nefarious about it. It is a natural economic incentive--

1792 Ms. {DeGette.} Right.

1793 Mr. {Kimmelman.} --for these ISPs to pursue suction
1794 actions.

1795 Ms. {DeGette.} Thanks. Of course, Congressman Boucher,
1796 we all agreed up here after your testimony that we should
1797 just hire you as a mediator to work out this legislation. So
1798 I want to ask you. You said we need to have narrow
1799 bipartisan legislation, but you single out the network
1800 neutrality principles as a key non-negotiable element. So
1801 why do you think the debate has moved past negotiations over
1802 network neutrality principles?

1803 Mr. {Boucher.} I think very simply because both sides
1804 now have quite a bit of leverage, and when both sides have
1805 leverage roughly equal, and I think that is the situation
1806 today, it is the optimal circumstance for legislating.

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1807 There are two key principles that really matter here,
1808 and the first of these is that the Republican offer for
1809 imbedding strong network neutrality principles in the statute
1810 be accepted by Democrats. In return for that, we ought to be
1811 continuing to treat broadband by the proven method and that
1812 is an information service subject to Title I with light
1813 regulation. We have had that for a decade, and we have
1814 developed the most capable internet by virtually every
1815 measure that exists anywhere in the world. If you add all of
1816 our ecosystem of the internet together, it is the envy of the
1817 world. Let us not upset that very workable formula. Keep
1818 Title I in place. Those are the two key principles of
1819 legislation.

1820 Ms. {DeGette.} Thanks.

1821 Mr. {Boucher.} And I think the fact that Republicans
1822 have moved as far toward the Democratic position as they have
1823 is really a major development. It is noteworthy, and it is
1824 because of the leverage the Democrats now have as a
1825 consequence of the reclassification decision.

1826 Ms. {DeGette.} Thanks. And I yield the balance of my
1827 time for follow-up to Mr. Lujan.

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1828 Mr. {Lujan.} Thank you very much. I thank the lady
1829 from Colorado. Mr. Atkinson, something that you said earlier
1830 caught my attention. You said in regards to Mr. Boucher that
1831 that Mr. Boucher had valid issues regarding the Republican
1832 discussion draft. Can you expound on that?

1833 Mr. {Atkinson.} Well, I am not in a position to go into
1834 a significant amount of detail, but I think there are 2 key
1835 points there. One is there are valid issues because there
1836 are no Democrats who supported that. And so you cannot get
1837 this bill passed with the President signing it unless there
1838 is some compromise. So I think that is point number one.
1839 Point number two is the FCC--I think the bill could go
1840 slightly further giving the FCC some authority. Now what I
1841 think the bill rightly does, under 706 for example, there us
1842 unlimited authority. 706, you can use that to justify pretty
1843 much anything, and that is clearly too broad and was clearly
1844 too broad when it was passed in '96.

1845 So there needs to be some constraints on the FCC in our
1846 view, but there needs to--also at the same time they need
1847 some abilities to be able to go out and effectively police
1848 issues.

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1849 Mr. {Boucher.} If I may, Mr. Lujan, since you were
1850 asking about my thoughts and if the Chair will just indulge
1851 me for a moment, I am going to take issue a little bit with
1852 what Mr. Atkinson just said about 706. I did note at the
1853 outset that I had some issues with the Republican draft. I
1854 am going to be very candid to say that I think when the draft
1855 suggests that Section 706 not be deemed an affirmative grant
1856 of authority to the FCC, that does go too far. And that is
1857 not a necessary provision in order either to assure that we
1858 have strong network neutrality principles in the statute or
1859 to continue the light touch regulatory treatment that
1860 broadband enjoys today.

1861 So as a starting point while Democrats sit down with
1862 Republicans to negotiate an agreeable statutory formulation,
1863 I would hope Republicans would say, you know, that does go
1864 fairly far. We acknowledge your concerns. We are willing to
1865 take that provision out. To me that would be a sensible step
1866 to take.

1867 Mr. {Walden.} The gentleman's time, gentlelady's time,
1868 has expired, and we appreciate the comments from former

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1869 member, former chairman. At least we are having those
1870 discussions with you. Mr. Collins for 5 minutes.

1871 Mr. {Collins.} I want to thank the witnesses today. It
1872 seems as though the discussion now has moved from net
1873 neutrality to Title II because we have all coalesced around
1874 the concept of net neutrality. So Mr. Atkinson, you brought
1875 up the point that you are fairly certain litigation is the
1876 next step absent congressional legislation. I think I heard
1877 Mr. Downes say that could be 2-plus years. So I am a
1878 private-sector guy, an entrepreneur. You make investments
1879 based on as much certainty as you can get. That is kind of
1880 just a rhetorical statement. And as you introduce
1881 uncertainty, with uncertainty-doesn't mean it is all or
1882 nothing. Some would say, well, isn't there going to be
1883 investment? Well, sure there is. But the more investment I
1884 think the better to certainly grow broadband and the others.
1885 We want more investment, not less. It is my belief as a
1886 private-sector guy, uncertainty brings less investment than
1887 certainty. And as I now look at where we are with the
1888 upcoming rule as we understand it from the FCC, it is
1889 disappointing to say the least that the FCC in what they are

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1890 going to do, relative to Title II, the consequences of what I
1891 call that overreach will be uncertainty. And with that, less
1892 investment than otherwise. It doesn't mean no investment but
1893 less investment, and that is not a good thing which is why I
1894 think I am very happy to hear a lot of consensus. It is the
1895 role of Congress to push forth a bill. If we do so, we do it
1896 in a bipartisan way that should trump what the FCC is going
1897 to do.

1898 And so Mr. Atkinson, I would like to talk a little more
1899 about the litigation piece, where you see it coming, how
1900 quickly you see it coming, and if you agree with me that in
1901 the arena of litigation absent something else, there will be
1902 less investment than more.

1903 Mr. {Atkinson.} I do agree with you. It won't be
1904 catastrophic but at the margin there will be likely less
1905 investment if we go down this path.

1906 I also would like to point out the uncertainty, really,
1907 I think is for both sides on this debate. I mean, there is a
1908 legitimate argument I think that the advocates of net
1909 neutrality make that Silicon Valley entrepreneurs or other
1910 offers, they need some level of certainty. You know, are

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1911 they going give me 5 years to know? Carriers do this.
1912 Totally agree with this. Carriers need certainty. My
1913 concern with Title II and what the Commission is doing is it
1914 really is not providing certainty. It is providing certainty
1915 in a way for maybe a year or 2 or 3, but don't forget. We
1916 have an election coming up, and just say for the
1917 hypothetical, 50/50 chance. That means you have a 50/50
1918 chance that you are not going to have any rules

1919 I agree with you on the legal challenge. I think what
1920 we will see, as Mr. Downes said, rent-seeking from particular
1921 carriers with particular interests or other groups who will
1922 go in and say, you know what? We can gain a slight advantage
1923 over our competitors if we challenge the FCC on this
1924 particular component. And that is perfectly reasonable for
1925 them to do. It just will gum up the entire process.

1926 Mr. {Collins.} Now, as I understand it, there is
1927 something around 1,000 provisions in Title II, and we have
1928 heard rumors anyway that they are going to forbear on this
1929 one, this one, and another one? Maybe forbear on the ROI as
1930 we limit returns on electric utilities, true monopolies that
1931 they would forbear on that piece which would be the death of

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1932 the internet if they decided the rate of return could be 6
1933 percent or something like that. But with a thousand
1934 provisions, and we don't know which ones they will forbear on
1935 your not. Isn't it also in the uncertainty realm once they
1936 have Title II, they forbear now, a year from now, 2 years
1937 from now a different president. They decide not to forebear.
1938 So I will go back again. I am encouraged to hear I think
1939 almost a coalescing. We need congressional legislation on
1940 net neutrality. Title II is just a wet blanket on it, and
1941 perhaps that is part of the incentive that has brought us
1942 together. Well, let us not question that. We are I think
1943 more together than not. But especially, would you agree that
1944 those thousand provisions and forbearing or not is really
1945 what is going to have this gummed up?

1946 Mr. {Atkinson.} I would definitely agree with that,
1947 that this is going to provide anything but certainty.

1948 Mr. {Collins.} Mr. Downes, any comments in our last 30
1949 seconds?

1950 Mr. {Downes.} Yes, while I agree with Mr. Atkinson, and
1951 as I say, I am jut baffled by the Chairman's decision here
1952 because as he himself said, when the DC circuit ruled in the

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1953 Verizon case, it provided him a roadmap and an invitation to
1954 reenact the 2010 rules under Section 706. It was, you know,
1955 certainly not without legal risk but certainly nothing
1956 compared to the legal risk now of Title II and all the
1957 forbearance proceedings that will go with it.

1958 Mr. {Collins.} All right. I want to thank all the
1959 panel today. I yield back, Mr. Chairman, my last 10 seconds.

1960 Mr. {Walden.} The gentleman yields back the balance of
1961 his time. And now we turn to the gentleman from Illinois,
1962 Mr. Rush, for 5 minutes.

1963 Mr. {Rush.} I want to thank you, Mr. Chairman. Mr.
1964 Chairman, I had been involved in another hearing, a Joint
1965 Subcommittee hearing downstairs. And so I have not been able
1966 to participate as fully as I would like. But the time that I
1967 have been here, this has been quite interesting to me. I
1968 certainly want to take a moment to join in with the chorus of
1969 welcoming our esteemed colleague, Chairman Boucher back
1970 again. Your time on this subcommittee where I served with
1971 you was really an era of enlightenment for me. So I really
1972 want to thank you for much for your contributions, and I wish
1973 that we were spending as much time on reforming program

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1974 carriage rules as we are on these issues that we are
1975 discussing, net neutrality and associated issues.

1976 Reforming carriage rules especially as it relates to
1977 independent networks. I think that is something that we need
1978 to get to. That said, a free and open internet with
1979 unfiltered access is what I believe we all want. You believe
1980 the Title II reclassification is not a viable solution in
1981 addressing net neutrality. In your years as chairman of this
1982 subcommittee, do you really believe that the FCC will be able
1983 to forbear all of the onerous provisions from Title II?

1984 Mr. {Boucher.} Thank you very much, Mr. Rush, and thank
1985 you for your kind words and your words of welcome as I return
1986 to the committee to offer some views.

1987 I think it is challenging for the FCC to undertake
1988 forbearance without the development of a complete record that
1989 justifies each of the forbearance steps. And the FCC's
1990 record in developing its forbearance decisions is really
1991 pretty thin. My guess, and I am just guessing, is that a lot
1992 of the basis of the litigation that is going to be upcoming
1993 is going to be challenging the absence of an adequate record

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1994 for the FCC to take its various actions in association with
1995 this reclassification, forbearance among those actions.

1996 So the short answer to your question is I think Chairman
1997 Wheeler is trying to forbear from the most onerous provisions
1998 of Title II such as tariffing requirements, rate regulation,
1999 least access and unbundling. He is making a serious effort
2000 to do that. I think his decision to do that is going to be
2001 significantly challenged in court, and we don't know what the
2002 outcome can be.

2003 Coming back to my core point today, that is yet another
2004 reason that it is in the interest of everyone to use this
2005 moment to provide permanent protection for network
2006 neutrality, to do so in a statute, and also in that statute
2007 continue the light touch Title I treatment that has been so
2008 successful here for the last decade.

2009 Mr. {Rush.} You point out that the Republican
2010 discussion draft would codify transparency requirements and
2011 prohibit buffering, throttling, and paid prioritization. What
2012 is your position on including a ban on zero rating practices?

2013 Mr. {Boucher.} I am going to forgo dissecting the
2014 legislative draft in any detail because I think that is

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2015 uniquely the responsibility of the subcommittee, and there
2016 are clearly provisions in the legislative draft that ought to
2017 be open to discussion and negotiation as long as in the end
2018 what is achieved is the embedding of network neutrality
2019 principles and light touch regulation. This subcommittee
2020 will perform a great service.

2021 So I would leave to the bipartisan conversation a
2022 discussion of the specific elements that are in the draft
2023 legislation.

2024 Mr. {Rush.} Mr. Chairman, I yield back.

2025 Ms. {Eshoo.} I appreciate the gentleman yielding the
2026 remainder of his time. I think it is very important to raise
2027 the issue when it comes to legislation that there not be an
2028 automatic assumption that because there is the recognition
2029 that these three items are mentioned in the bill that they
2030 are automatically banned. There are problems in the
2031 legislation because there is no follow-up by the agency that
2032 has jurisdiction. In fact, the agency is prohibited on
2033 behalf of the American people to implement these so-called
2034 prohibitions.

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2035 So there is a distance to go, and this really needs to
2036 be addressed if there is ever any hope--and no one has raised
2037 this from the panel, and it is a very important item I think
2038 for all of us to know. There was something raised earlier
2039 about thousands of things in Title II. There are actually,
2040 what, 47 sections in Title II with only a handful that in my
2041 view need to be used relative to the regulations.

2042 Mr. Chairman, I would like to ask for unanimous consent
2043 to submit a letter for the record from the Internet Friedan
2044 Business Alliance that supports the action the FCC is taking
2045 tomorrow on net neutrality.

2046 Mr. {Walden.} Of course. Without any objection.

2047 Ms. {Eshoo.} Thank you very much.

2048 [The information follows:]

2049 ***** COMMITTEE INSERT *****

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2050 Mr. {Walden.} Yeah. And I must just respond to my
2051 colleague. There are actually a thousand, exactly a thousand
2052 provisions within the CFRs. That is where the rules are.
2053 That is the reference I believe Mr. Collins was making. And
2054 as for our draft legislation, the FCC would have complete and
2055 total enforcement capability to enforce the law. And so I
2056 would disagree with the characterization by my colleague.

2057 And I would ask unanimous consent to submit for the
2058 record a number of items including a story quoting the Chief
2059 Operating Officer, Mike Siebert of T-Mobile where he says
2060 while there is nothing in there that gives us deep concern
2061 about our ability to continue executing our strategy, he said
2062 the reclassification is not the most desirable approach.
2063 Without objection.

2064 We have a series of documents concerned with the
2065 partisan Title II approach including editorial from the
2066 Washington Post, a letter signed by Mark Cuban and others to
2067 the Commission. Some other publications I think have been
2068 shared with the minority, and without objection those will be
2069 in. We have some documents regarding people's views

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2070 affecting small business from Barbara Espen, Counsel for the
2071 American Cable Association and ex parte that we would submit
2072 for the record.

2073 Consumer Impact I believe is the next one from the
2074 Progressive Policy Institute that as much as \$11 billion per
2075 year might be put on consumers' backs as a result of Title II
2076 reclassification, and we have information for the record
2077 regarding successful U.S. approach with European history with
2078 approach the FCC plans to take, a number of articles and
2079 statements. And I think that is the bulk of our submissions
2080 for the record. Without objection they will be submitted as
2081 well.

2082 [The information follows:]

2083 ***** COMMITTEE INSERT *****

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2084 Mr. {Walden.} We thank our witnesses for your clarity
2085 to this issue and for your sharing your comments. We look
2086 forward to see what the Commission does and eventually
2087 actually having the opportunity to read the 332 alleged pages
2088 of whatever it is they are going to vote on tomorrow. So
2089 with that, the committee stands adjourned.

2090 [Whereupon, at 12:26 p.m., the Subcommittee was
2091 adjourned.]