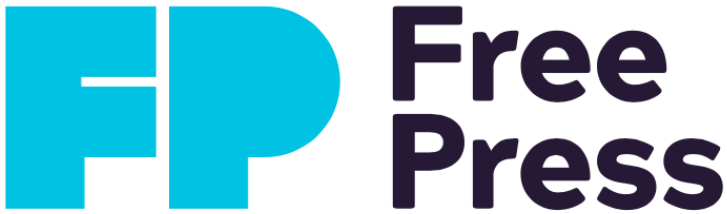

Written Testimony of

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before the

Congress of the United States
House of Representatives
Committee on Energy and Commerce
Subcommittee on Communications and Technology

regarding

"From Core to Edge: Perspective on Internet Prioritization."

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SUMMARY

Net Neutrality enjoys tremendous popular support across party lines. That support extends not only to the general framework in the 2015 *Open Internet Order*, but the belief that small businesses cannot afford to pay for prioritization. Yet after the FCC's repeal of rules banning such payments, there are disagreements about whether Congress might restore them.

Net Neutrality opponents oppose restoration of the 2015 rules and successful legal framework. Among the arguments they make for dismantling the rules or weakening them in Congress is their claim that the paid prioritization ban is harmful. They say ISPs should indeed be able to charge new kinds of fees, arguing that users and business would benefit from such new charges and that such fees would help last-mile network congestion.

As a general matter, prioritizing rather than building capacity to solve sustained congestion would misalign ISP incentives, letting them profit from artificial scarcity rather than encouraging deployment. Free Press used ISPs' own data to show that under the rules the FCC voted to abandon, broadband investment and speeds increased in rural and urban areas alike.

Jettisoning the paid prioritization ban would upset that balance and radically change the internet in the bargain. The ban only prevented ISPs' from favoring traffic in exchange for payment from third parties, or to benefit an ISP's affiliated video or voice offers. It did not ban user-directed traffic management, or innovations that might depend on that. ISP customers already can and do buy faster sped tiers. They could even buy higher quality of service ("QoS") – for apps of their choosing, at times of their choosing. Longstanding network protocols also can and do and make choices neutrally without ISPs inspecting traffic or second-guessing protocols.

Academics may speculate that such new fees might reduce subscriber costs, but do not explain why ISPs facing so little competition would have any incentive to lower retail prices.

INTRODUCTION

Chairman Blackburn, Ranking Member Doyle, Chairman Walden, Ranking Member Pallone, and Members of the Subcommittee: thank you for inviting me to testify in this hearing entitled "From Core to Edge: Perspective on Internet Prioritization."

Free Press and the Free Press Action Fund (together, "Free Press") are nonpartisan, non-profit organizations with 1.4 million members around the country and around the world. We were founded fifteen years ago to elevate people's voices in the policy decisions that shape the media landscape. Today we believe that achieving racial and social justice means achieving equitable access to technology and information. That's why we've worked on Net Neutrality for almost all of our fifteen years. During much of our history, and over the course of a now decade-plus legal battle on this issue, Free Press has been a leader in advocating for open internet principles based on a strong legal foundation.

That is why we supported the strong open internet rules adopted in 2015,[1] before they were recently (and wrongly) repealed by the current FCC.[2] That is also why we support Congressman Doyle's resolution under the Congressional Review Act ("CRA") to restore them.[3]

We are not alone. Hundreds of Members of Congress have co-sponsored that resolution in the House and Senate. Thousands of businesses, organizations, and state and local officials support it too. Millions of people made their voices heard, first at the FCC to oppose that repeal; and then in the Halls of Congress too, calling on you to stop Chairman Pai's plan and now calling on you to pass the CRA.

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[1] *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, FCC 17-166 (rel. Jan. 4, 2018) ("*2017 Net Neutrality Repeal*").

[2] *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) ("*Open Internet Order*").

[3] *See* H.J. Res. 129, 115th Congress (2018).

That's not surprising: poll after poll shows that Net Neutrality enjoys tremendous popular support across party lines. Only inside the beltway and buildings like these does this (sometimes) remain a partisan issue. Results like that this have helped change the debate. We welcome the newfound expression of commitments from lawmakers on both sides of the aisle to preserve fundamental communications rights.

Now, instead of hearing from ISPs that Net Neutrality is a solution in search of a problem, we've heard Chairman Walden say Chairman Blackburn's bill might "help solve a very complicated problem."[4]

Yet there are disagreements about how solve it. Free Press supports restoring the entire 2015 FCC order. We need more than three "bright lines" to preserve the open internet. We need FCC authority to prevent new forms of discrimination, and also to address digital divides, protect privacy, and promote competition.

THE 2015 *OPEN INTERNET ORDER* STRUCK THE RIGHT BALANCE.

On December 14, 2017, the FCC voted 3 to 2 to repeal rules set in place in 2015. The repeal abdicated the agency's congressional mandate to prevent unreasonable ISP practices. Contrary to ISPs' talking points, the 2017 repeal did not restore a "light-touch" regulatory framework for internet access: it repealed all rules preventing ISP blocking, throttling, paid prioritization and other forms of unreasonable discrimination, and it tossed aside the only legal foundation upheld in court for such rules. The prior FCC had restored that proper legal framework in 2015, after Verizon appealed and overturned an earlier version of these rules grounded on the weaker statutory authority in Section 706 of the 1996 Telecommunications Act that ISPs later said they would have preferred.

[4] "Chairman Walden Statement on the Open Internet Preservation Act," Dec. 19, 2017, https://energycommerce.house.gov/news/press-release/chairman-walden-statement-open-internet-preservation-act/.

The FCC's 2017 reversals leave internet users without sufficient protections, not only against Net Neutrality violations like blocking content or slowing it down, but also against privacy violations if ISPs make unauthorized and unpermitted use of customers' personal data. The FCC's recent repeal also purported to preempt states' attempts to fill this vacuum and restore these rights. And as this hearing should show, repealing the rule that prohibited "paid prioritization" by ISPs only harms internet users and innovators. It does so by creating the possibility that ISPs could for the first time charge third parties who are not their broadband customers for delivering traffic those broadband customers already paid to send and receive.

The FCC's 2017 abdication puts internet users at risk. It jeopardizes the ability of individual internet users, businesses, educational institutions, elected officials, and other political speakers to participate in the civic and economic life of the country. Net Neutrality is important not only for small businesses and commerce, but also for free speech and democracy. These protections are particularly important for communities of color and other marginalized groups, as they let people make their voices heard on the internet and bypass traditional media gatekeepers.

The fight to restore these protections is gathering momentum, with tens of millions of people organizing to reinstate the rules. In addition to the Congressional Review Act efforts, some twenty-three state attorneys general have joined in a federal appeal of the FCC's decision. Free Press is among dozens of public interest organization, private companies, and state and local officials that will be involved in this litigation too.

There is good explanation for all of this energy: Net Neutrality rules are immensely popular. Poll after poll shows strong support for the rules, and opposition to the FCC's repeal decision, with consensus across party lines. This polling even shows strong support for the legal foundation and conceptual framework underpinning those now-repealed rules.

Internet Users Oppose the Kind of Paid Prioritization the Net Neutrality Rules Banned.

For instance, one poll released in July 2017, conducted by Freedman Consulting and Civis Analytics, shows that 88 percent of respondents agreed with the statement "when I buy internet service, I am paying to transmit information between my computer and the websites I visit, free from interference."[5] It found that "[a] strong majority (77 percent) of Americans support keeping the existing net neutrality rules in place," as did 73 percent of Republicans.

A second poll, also released in July 2017 and conducted by Republican consulting firm IMGE, found that Trump voters believe by more than a 2 to 1 margin that "Internet should be treated like any other utility such as gas or electric service."[6] This poll told respondents that "Companies like Comcast, AT&T, Charter[ ], and Verizon provide home internet access [and] . . . are prohibited from slowing or blocking websites or video services like NetFlix." A full 75 percent of all voters agreed that such rules were necessary, including 72 percent of Republican voters and 75 percent of Trump voters.

Similarly strong majorities overwhelmingly said they would be "concerned if companies like Comcast, AT&T and Verizon could discriminate against main street businesses on the internet" (by a margin of 79 percent to 15 percent). They strongly disagreed, by a tally of 72 percent to 19 percent, "that small businesses like local hardware stores and restaurants should have their websites run slower than bigger national chains that can afford to pay more for paid prioritization."[7]

[5] "New Poll: Americans Overwhelmingly Support Existing Net Neutrality Rules, Affordable Access, and Competition Among ISPs," at 2 (July 10, 2017), http://tfreedmanconsulting.com.routing.wpmanagedhost.com/wp-content/uploads/2017/07/Tech-Policy-Poll-Summary_Final_20170710.pdf.

[6] "Open Internet Survey: Key Findings," at 3 (July 13, 2017), http://www.incompas.org/files/IMGEInsights-Presentations-KeyFindings-1c.pdf.

[7] *Id.* at 4 (emphasis added).

Those surveys were conducted prior to the FCC's initial comment deadline in July 2017. Yet another survey taken just days before the December 2017 vote, and conducted by the nonpartisan University of Maryland's Program for Public Consultation and Voice of the People, found that 83 percent of Americans did not approve of the FCC's repeal.[8] The partisan split in this more recent poll was slightly larger, but the support level for retaining the rules (and thus opposing what this FCC ultimately voted to do) was even higher than it had been in the summer. Making up the 83 percent total of survey respondents supporting the rules were 88 percent of Democrats, 86 percent of Independents, and 75 percent of Republicans.

Net Neutrality Implements Basic and Vital Nondiscrimination Law for Internet Access.

Net Neutrality's foundation in nondiscrimination law answers contentions that falsely suggest the FCC's 2017 repeal merely rescinded rules that were only in effect for two years and unnecessary to protect the open internet. To the contrary, the Net Neutrality rules wrongly taken away by this FCC are based on longstanding nondiscrimination law for communications services; and they are in need of preservation, whether ISPs violate them or promise not to.

Net Neutrality is a rather well-known term at this point in time – perhaps much to the surprise of those who previously criticized the concept as too weedy or obscure for mass appeal. But in the end, Net Neutrality is a term of art for rules implementing federal law against unreasonable discrimination by the carriers that operate essential broadband telecommunications networks. Even if Net Neutrality were not immensely popular – and the polls cited above show that it is – it would be worth preserving. People's fundamental communications rights, as granted to them by Congress, do not and must not change simply because our communications technologies evolve and improve.

[8] Program for Public Consultation, Net Neutrality Survey Questionnaire (Dec. 6 – Dec. 8, 2017), http://www.publicconsultation.org/wp-content/uploads/2017/12/Net_Neutrality_Quaire_121217.pdf.

Press, pundits, and ISPs sometimes describe Net Neutrality to lawmakers and the general public as a clash between the likes of Comcast and AT&T, Google and Facebook. The impact of communications policy on the fortunes of these hundred-billion-dollar companies is real (though often exaggerated). Yet the rights enshrined in federal communications law do not exist primarily to protect either ISPs or companies that transmit information to their customers over internet access lines. These rights protect internet users themselves, in their freedom to access the content of their choosing once they have paid for the transmission service that ISPs provide.

Even if ISPs did not routinely interfere with these choices – and history shows that they do[9] – these rights would remain essential. ISPs over time have blocked access to voice and video communications applications like FaceTime and Skype, blocked access to mobile payment apps that competed with their own apps of this sort, and slowed or blocked access to video content that competed with ISPs' legacy cable television offerings. In fact, as research conducted by the Open Technology Institute showed,[10] there were significant and sustained end-user harms as a result of interconnection disputes from 2013 to at least 2014, with millions of people not receiving broadband service they paid for and suffering from unusable speeds for months on end.

The law that establishes these rights, as well as the FCC's mandate to protect them, is the Communications Act. It divides communications services into different categories or classifications, including "information services" such as websites, apps or other kinds of content accessed online; and "telecommunications services," which transmit that information to users. Telecom services are governed by Title II of the Communications Act, which applies to telecommunications carriers (also sometimes called "common carriers" as well).

[9] *See, e.g.*, Tim Karr, "Net Neutrality Violations: A Brief History," Jan. 24, 2018, https://www.freepress.net/our-response/expert-analysis/explainers/net-neutrality-violations-brief-history.

[10] *See Beyond Frustrated*, New America, Nov. 12, 2014, https://www.newamerica.org/oti/policy-papers/beyond-frustrated-the-sweeping-consumer-harms-as-a-result-of-isp-disputes.

The nondiscrimination principles that apply to such carriers has evolved, but those principles have been with us as long as we've had communications networks. ISPs may simultaneously criticize the strong Net Neutrality rules repealed by this FCC as both old-fashioned and untested. The reality is just the opposite: the 2015 rules repealed by this FCC are well-tested. They are based on the same principles that long governed telephone networks, competitive wireless voice services, and business broadband offerings, as well as residential broadband internet access using various technologies at various times over the past two decades.

Yet these principles are also timeless. There is nothing old-fashioned about nondiscrimination law, and it remains as essential for broadband internet access as it does for other telecom offerings. Just as the telephone company can't tell its customers whom to talk to or what to say, ISPs shouldn't be able to dictate or influence what their customers see or say online.

Such nondiscrimination rules are still quite necessary in non-monopoly settings. Many broadband subscribers still face a situation in which they have just one provider of high-speed service available; yet the Title II framework has remained in place for wireless voice offerings since the inception of cellular service. Even as Congress and the FCC deregulated pricing for wireless voice in the early 1990s, and refused to adopt rate regulations in that relatively competitive market, these lawmakers still rightly understood the need for regulations preserving nondiscriminatory access on wireless telecom networks in such competitive markets.

Put even more simply, a modicum of competition does not completely obviate the need for Net Neutrality rules. It would seem odd indeed to condone blocking of certain phone calls and phone numbers by Verizon Wireless simply because customers thus blocked might have the option to switch to AT&T, Sprint, or T-Mobile. This is not how communications networks are meant to work, and people understand that.

Until the FCC's drastic repeal, the agency seemed to understand it too. Few questioned the wisdom of FCC rules safeguarding these nondiscrimination rights, and the FCC maintained principles and rules prohibiting ISPs from blocking lawful content or otherwise interfering with their customers' content and application choices. The only question, if any, concerned the proper legal foundation for such rules – and admittedly, that legal foundation did shift over time because the FCC attempted to shift it.

Between 2002 and 2005, in a misguided attempt to more or less completely deregulate broadband, the FCC started to tinker with its service classifications by deciding that broadband was an information service and not a telecom service. The FCC lumped together (for regulatory purposes) a website and the wire over which people access that site. Yet the Bush FCC and the first FCC Chairman in the Obama administration still tried to retain Net Neutrality rules.

That approach did not stand up in court. The FCC twice tried to argue that it could prevent blocking, throttling, prioritization, and discrimination by broadband providers without treating those companies as telecom carriers under Title II. It lost both times, first to Comcast in 2010 and then Verizon in 2014. The question about the legal foundation for rules safeguarding these rights took some time to resolve, it is true; but there is a right answer under current law.

Prior to the unfounded and ideologically motivated repeal order issued in December, the FCC had finally settled on a very certain and solid approach. On the third time though the rulemaking process in 2015, the Commission finally got it right. Thanks to millions of people calling on it to do so, the FCC put rules into place that prevented blocking, discrimination, and paid prioritization by ISPs, and it put those rules on solid legal footing by restoring the Title II legal classification for broadband.

STRONG RULES DID NOT DAMPEN ISP INVESTMENT OR DEPLOYMENT.

Any claim that Title II delayed or dampened broadband rollouts simply is not true. ISPs' own data (discussed in somewhat greater detail below and far greater depth in Free Press's FCC comments [11]) proves such arguments wrong beyond a shadow of a doubt. Broadband deployment is by no means satisfactory in every area in the nation. And even when and where fast broadband networks are deployed, not every person can afford to subscribe. That is why Free Press works to guard Lifeline's broadband adoption program from attacks by the Pai FCC, and always advocates for policies that promote universal deployment of robust and affordable services.

Despite the continuing, twin challenges of deployment and affordability, ISPs' own deployment data and investment data show that Title II's reinstatement and the 2015 Net Neutrality rules did not slow down deployment, speed upgrades, or overall investment by ISPs. The data that these companies report to the FCC – and also to their own investors, to Wall Street analysts, and to the U.S. Securities and Exchange Commission – all show that deployment continued apace during the time that Title II was in place.

To reach this conclusion, Free Press analyzed FCC Form 477 deployment data to answer what should be the central question on this topic for all policymakers: <u>how did the broadband market's capacity and capability change after the FCC's 2015 Title II reclassification and adoption of Net Neutrality protections</u>? This self-reported data is a rich source of information on broadband deployment, the types of technology ISPs offer, and the transmission speeds available for every Census Block in which they offer broadband. Free Press has analyzed changes in this data since December 31, 2014, just prior to the FCC's adoption of the now-repealed 2015 order.

[11] *E.g.*, Comments of Free Press, WC Docket No. 17-108, at 86–294 (filed July 17, 2017) ("Free Press Comments").

Our analysis of this FCC broadband deployment data shows that the national broadband market continued to thrive after Title II reclassification.[12] We found that:

- The number of Census blocks with two or more ISPs offering service with downstream speeds at or above 25 Mbps increased by 42 percent following the *Open Internet Order*.
- At the end of 2014, approximately one-third of the population had access to two or more ISPs offering 25 Mbps or higher-level services. By mid-2016, more than half of the population could purchase broadband at this speed threshold from two or more ISPs.
- At the end of 2014, only 10.5 percent of the population had access to one or more wired ISPs offering consumer services above the 300 Mbps downstream threshold. But just 18 months later, this had more than doubled to nearly 23 percent of the population able to access this level of broadband service.
- In Census Blocks with cable DOCSIS 3.0 services, the average available speed of this technology increased from 118 Mbps to 173 Mbps (47 percent). In blocks with fiber to the home, its average available speed increased from 251 Mbps to 380 Mbps (51 percent). And average available VDSL downstream speeds more than doubled, from 24 Mbps to 52 Mbps.
- Examples of specific ISP company growth include:
    - Comcast sharply increasing the speeds of its offerings in the months following the *Open Internet Order,* from a Census block-average of 129 Mbps to 191 Mbps.
    - Cox going from offering 300 Mbps and higher-level service in none of its Census blocks to doing so in 68 percent of its blocks following the *Open Internet Order*.
    - AT&T improving from offering 25 Mbps and higher-level downstream speeds to consumers in just 5 percent of its Census blocks in 2014, but by mid-2016 offering this level of service in nearly 40 percent of its territory – a massive increase reaching more than 50 percent of the population in AT&T's service area.
    - In rural blocks, AT&T's average available downstream speed doubling to 18 Mbps during the period following adoption of the *Open Internet Order*.
- Among cable ISPs (which disclose in their quarterly SEC filings the specific amounts of capital expenditures they devote to network infrastructure):
    - During the two years following the *Open Internet Order* vote, cable-industry physical-network investments increased 48 percent when compared to the amount invested in such facilities during the two prior years.
    - Cable's core network investments accelerated dramatically during 2016 (a $2.1 billion increase over 2015, compared to 2015's $0.8 billion increase over 2014).
    - That one-year increase in cable-industry core network investments during 2016 marked the biggest single-year jump since 1999.

[12] *See* Reply Comments of Free Press, WC Docket No. 17-108, at 21 (filed Aug. 30, 2017).

The period after adoption of the *Open Internet Order*, and prior to this FCC's vote to repeal it, saw historic levels of investment, deployment, and innovation across the entire internet ecosystem. In addition to the numbers we presented regarding deployment and investment, we copiously documented each publicly traded ISPs' comments made to their own investors and investor analysts, which clearly reflected these broadband providers' justified belief that the Commission's 2015 order had no negative impact on their broadband deployments.

Net Neutrality Rules Banning Paid Prioritization Work to Align ISP Incentives Correctly.

These real-world facts and figures are curiously – and even irreconcilably – at odds with theories advanced by paid prioritization proponents as much as a decade ago and as recently as two weeks before this hearing.

On the one hand, these theorists have speculated that without paid prioritization capacity upgrades simply won't happen. One wrote in 2007 that with "the advent of streaming video and other bandwidth-intensive applications, the demand for bandwidth [was] projected to overtake the existing supply quickly." He cautioned that "[r]egulators and legislators should not interfere with a broadband service provider's ability to manage this 'coming exaflood' with intelligent networks," because without prioritization "the price of Internet service will skyrocket if [ISPs] can meet the coming traffic using only expanded infrastructure [or] the Internet experience for all users will deteriorate."[13] Of course, we see instead that broadband providers of all types have dramatically expanded capacities and continued to meet demand – for the most part, though with notable exceptions, done without resorting to discriminatory routing, charging "skyrocketing" prices, or uniformly letting user experiences deteriorate.

[13] Hal J. Singer, "Net Neutrality: A Radical Form of Non-Discrimination," *Regulation* (Summer 2007).

On the other hand, and far more recently, another academic echoed the notion that "additional capacity is expensive," coupling it with the rather truism that it generally would be "uneconomic to build a network with zero congestion at peak time because this would create significant excess capacity at off-peak periods."[14] (Of course, no broadband internet access network is engineered for "zero congestion" at peak time, and as discussed below, network management already occurs without paid prioritization.)

The shift here over the course of a decade and two authors is subtle but substantial. Paid prioritization is still seen as a way to manage congestion, though no longer offered up as the only way to staunch the "coming exaflood" otherwise supposed to swamp the internet. But after years of attacks claiming Title II, strong Net Neutrality rules, and the paid prioritization ban in particular would dampen broadband investment or even make it uneconomic, we're now told that paid prioritization may actually spare ISPs from spending so much to deploy in "capacity-constrained" rural areas. That's a particularly bitter pill to swallow in the wake of so much ISP lobbying money spent to suggest that Net Neutrality rules kill investment: now we're told that instead of making ISPs invest too little, they make ISPs invest too much!

With the prospect of paid prioritization made a reality again by the FCC's repeal, we can see such schemes for what they are: a tollbooth in search of a traffic jam. The deployment and speed increases documented above are the better outcome, and the one expected from the FCC's 2015 order (seemingly) settling the legal uncertainty. ISPs then understood their path to prosperity depended not on discriminatory schemes, but on selling users the capacities they demand – much of that created by the exponential growth in online content and applications.

[14] Daniel Lyons, "Paid prioritization: Debunking the myth of fast and slow lanes," *AEIdeas,* Apr. 2, 2018. The Lyons piece offers a few additional arguments easily rebutted by the sections of this testimony that follow. Lyons' biggest red herring is his insinuation that Net Neutrality proponents suggest "central planning" as the only alternative to price mechanisms such as having third parties pay that price.

There is no evidence of any change in 2015 and 2016 to the *status quo* buildout trajectory. This strongly suggests that the central premise of the FCC's repeal was completely wrong. There is simply no evidence that restoration of Title II, and codification of basic Net Neutrality duties, negatively impacted the nation's broadband internet access market.

In our comments in the FCC's 2017 rulemaking docket, we documented extensively how the internet access and online content markets continued to thrive after that 2015 FCC's decision. Broadband access companies large and small increased their capital investments, and uniformly told their investors that Title II reclassification had not impacted their deployment plans. And with the confidence that ISPs would not be allowed to implement discriminatory shakedown schemes, online content and service providers increased their investments too.

Broadband Investment Increased, But Raw Investment Is Still the Wrong Metric.

In our reports and filings, we also cautioned that what matters most is not the raw dollar amount ISPs invest each year in capital equipment. What matters most is deployment of broadband capacity, and progress in improving on what little competition exists in this highly concentrated industry. The facts and figures recited above show that there was progress in those important areas. Policymakers and internet users shouldn't dwell on whether or not an ISP spent more in a given year than it did the prior year; they should care if that ISP and its competitors continued to rollout better quality and more competitive services.

Yet with those caveats in mind, we have also shown in our thoroughly documented and researched comments and reports that aggregate investment by the broadband industry increased during this time period too – again, contrary to the claims made by some of the ISPs' lobbyists and by FCC commissioners that voted for repeal.

Free Press's compilation of broadband industry investment totals, as publicly traded broadband internet access service providers themselves reported this data for the two years preceding the FCC's February 2015 vote and the two years following it, conclusively demonstrates that the investment total for all of these publicly traded ISPs together increased by 5.3 percent for the two-year period following the adoption of the 2015 Net Neutrality rules.[15]

Those who still insist on incorrectly claiming some harm to broadband investment from Title II focus on supposed decreases in this aggregate figure, but the manipulated totals they cite stem from vague and unspecified tabulations for the broadband industry as a whole. These commenters also distort the amount invested by certain providers while ignoring freely available public statements explaining individual firms' decisions.[16]

Even were these manipulated aggregate figures correct (and they are not), a myopic focus on raw dollars spent ignores the Commission's statutory mandate to promote deployment – as well as the overwhelming evidence that deployment continued (and even improved) in the years following the order.

The blunt measure of an aggregate total is easily swayed by changes in either direction at any large firm, and it obscures changes (if any) in investment decisions, cycles, and strategies by all of the individual firms that make up the aggregate total. Looking at those individual results, the majority of publicly traded broadband providers in their own financial disclosures reported investment increases after the vote. This fact alone does much to disprove the fanciful notion that Title II was a systemic threat or source of harm to investment across the entire industry.

[15] *See* Free Press Comments at 129–130 & Fig. 24.

[16] *See id.* at 145–151; *see also id.* at 151 (quoting AT&T's explanation that the company's costs were falling due to technological improvements and the efficiencies therefrom, not due to any regulatory concerns, as evidenced by the fact that AT&T was then "going to deploy more fiber next year than we did this year, but the capital requirements are going down").

Twice as many individual ISPs increased their capital spending as the relative few that decreased it. Several individual ISPs increased their capital spending by double digits. To name just a few specific examples, Comcast's total capital spending for the two years following the 2015 vote increased by 26 percent, Verizon's by 3 percent, and Charter's by 15 percent.

As Free Press has copiously documented,[17] again relying on broadband providers' own words, there is no reason to think the relatively few individual ISPs reporting less capital spending decreased it due to Title II. In fact, as AT&T itself has made clear in earlier filings, largely explaining long in advance its own temporary decline following the 2015 vote:

> [T]here is no reason to expect capital expenditures to increase by the same amount year after year. Capital expenditures tend to be "lumpy." Providers make significant expenditures to upgrade and expand their networks in one year (*e.g.*, perhaps because a new generation of technology has just been introduced), and then focus the next year on signing up customers and integrating those new facilities into their existing networks, and then make additional capital expenditures later, and so on. Minor variations from year to year thus should not be surprising[.][18]

Broadband providers have spoken at length since the 2015 vote and reclassification decision about how they are leveraging technological advances to deploy higher capacities at a lower capital cost than was required in prior upgrade cycles. In the few instances when analysts asked these executives how Title II (or its potential repeal) impacted their company's investments, these executives did not say that Title II had a concrete impact on their own numbers, nor quantify how its repeal would impact their spending.

As a Free Press report prepared almost a year ago explained, and as our further research and analysis in the FCC docket confirmed, the 2015 *Open Internet Order* was working for all parties on the internet: retail users, edge providers, and ISPs too. What is the supposed justification to get rid of the paid prioritization ban, and what would that even entail?

[17] *See, e.g.*, Free Press Comments at 209–281.

[18] Comments of AT&T, WT Docket No. 10-133, at 34 (filed July 30, 2010); *see also id.* at 39.

THE RULES PROHIBITED PAID PIORITIZATION, NOT ALL PRIORITIZATION.

A cursory glance at the Net Neutrality rules that the Pai FCC voted to repeal shows that they define "paid prioritization" in a manner broad enough to encompass several types of unreasonably discriminatory ISP behavior. Yet the definition is narrow enough to permit multiple methods of traffic management – including even user-directed prioritization, chosen and paid for by an ISP's broadband customers.

Section 8.9 of the FCC's rules, subject to repeal if and when OMB approves the FCC's new information collection requirements in the 2017 order, says in its entirety:

> (a) A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not engage in paid prioritization.
>
> (b) "Paid prioritization" refers to the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either;
>
> (1) In exchange for consideration (monetary or otherwise) from a third party, or
>
> (2) To benefit an affiliated entity.
>
> (c) The Commission may waive the ban on paid prioritization only if the petitioner demonstrates that the practice would provide some significant public interest benefit and would not harm the open nature of the Internet.[19]

As the definition makes clear, management of the broadband provider's network only constitutes prohibited "paid prioritization" if and when it comes in exchange for payment from a third party, or when such traffic management is done to benefit an ISP's affiliated entities (likely but not necessarily offering services such as pay-TV video, online video, or voice). And by third party, the rule means an individual or entity that is not the ISP's own broadband customer, such as the so-called "sender" of data on the other side of the internet connection from the ISP's subscriber or another party that might wish to pay the ISP for some kind of advantage.

[19] 47 C.F.R. § 8.9 (2017) (emphases added).

Allowing ISPs to Impose Any Charges on Non-Broadband Internet Access Customers Would Be a Radical Shift in How the Internet Works Today.

Thus defined, we can see how even this carefully crafted paid priority ban does more than just prevent unreasonable discrimination by ISPs. It preserves the traditional structure of the internet and ISPs' relationships with their access customers.

Broadband subscribers pay their ISPs to transmit information of the users' choosing. ISPs recover their costs and make their money by selling this service to those users. This is a very different model from the telephone system, for which it took decades of work just to start the transition away from the intercarrier compensation regime that telephone companies and wireless voice providers had to navigate when paying each other to terminate traffic. Whether in recognition of the fact that internet "conversations" may have no obvious sender – because after all, a streaming video app likely sends me traffic only after I first request that video – or simply to embrace the benefits of what telephone carriers might call a "bill and keep" business model, the internet has grown up and flourished this way.

What does this mean in practical terms? When I visit a website, it means that the third party on the other "edge" of the network from my ISP is not suddenly made into a potential paying customer of my ISP. So if MarshaBlackburn.com or MikeDoyleforCongress.com sit on servers connected to the internet by Comcast broadband service, those sites and their owners cannot be made to pay Verizon for delivery of their content simply because I'm a Verizon subscriber at my home. This is a very good thing.

Proponents of paid prioritization often describe it as a benefit – "allowing" distant websites and apps the privilege of paying not just for their own connectivity and upload capacity, but also an additional amount to the ISPs that an edge provider's customers just so happen to use.

Somehow, the vast majority of internet innovators, investors, entrepreneurs, start-ups, and small businesses seem to think otherwise.[20] They have told the FCC and now Congress, in no uncertain terms, that "letting" apps pay for priority will instead become an obligation to pay for priority – taxing the few edge providers that could afford to pay in an attempt to keep up with the largest and most dominant platforms, and lining ISPs' pockets in the process.

Suggestions that Congress either could or would forbid the sale of paid prioritization to the largest platforms, and thus to the (likely) highest bidders, are outlandish at best. Absent some such law or other highly regulatory intervention to forbid ISPs from selling priority to some buyers, why would any ISP forgo the chance to obtain the highest price? Will Congress in its wisdom, or the ISPs in their good graces, really devise a workable policy to reserve priority treatment only for small businesses or certain kinds of edge providers? The answer is no, unless ISPs really are looking to pick winners and losers by distorting the market for their own services and for the disfavored edge providers denied the chance to buy priority.

Once again, it is important to note that the slim chances for such a plan are a good thing, but not only and not even primarily due to the benefits for app makers and content providers online. Let me be clear: I'm not here to defend edge providers from such payments. I represent internet users. Letting gatekeeper ISPs impose new tolls on the edge would distort the choices users have, and ISPs undoubtedly would get together with the largest edge providers to set the terms and prices for such advantages.

[20] *See, e.g.*, Fred Wilson, "VC Pitches In A Year Or Two," *AVC Blog*, Jan. 15, 2014, https://avc.com/2014/01/vc-pitches-in-a-year-or-two/ ("Telcos will pick their preferred partners, subsidize the data costs for those apps, and make it much harder for new entrants to compete with the incumbents."); *see also* Letter from Engine Advocacy, Techstars, Y Combinator *et al.* to Hon. Ajit Pai, Chairman, FCC (Apr. 26, 2017), http://www.engine.is/startups-for-net-neutrality/; Letter from American Sustainable Business Council *et al.* to Hon. Ajit Pai, Chairman, FCC (Aug. 31, 2017), https://www.keepthewebopenforbusiness.com/FCC_17-108_smallbusiness-ASBC-filing-170830.pdf.

This would crowd out diverse speakers, startups, and smaller competitors on the internet, all to the detriment of broadband users and the denial of their rights to send and receive the information of their choosing over their connections. As the 2015 *Open Internet Order* rightly decided, allowing third parties to "purchase of priority treatment can lead to degraded performance . . . for traffic that is not covered by such an arrangement," and can "introduce artificial barriers to entry, distort the market, harm competition, harm consumers, discourage innovation, undermine public safety and universal service, and harm free expression."[21]

THIRD PARTY PAID PRIORITIZATION IS NOT THE ONLY WAY TO MANAGE CONGESTION ACCORDING TO NEUTRAL STADARDS OR PRICE MECHANISMS.

Since the FCC's repeal of its Net Neutrality rules and abdication of its responsibility to protect a free and open internet, ISPs have all but announced their intention to deploy not just end-to-end management of traffic but third-party paid prioritization. In their years-long effort to upend these rules, ISPs have consistently touted the supposed benefits of allowing ISPs to pick what internet traffic to move to the head of the queue. Yet allowing ISPs to take advantage of their gatekeeper position by giving priority to the edge providers that can pay them the most will result in all of the harms outlined just above.

What is Last-Mile Prioritization?

As traffic moves throughout the internet or crosses a particular interconnection point or router, the amount of information that can travel through that link is limited by its bandwidth. Most of the time this has no effect on internet traffic, but during peak usage hours nodes of the internet can become congested, slowing down traffic in the network. Under the Net Neutrality rules, ISPs could engage in reasonable network management practices but not charge third parties for prioritization (as defined in Section 8.9 of the 2015 open internet rules).

[21] *Open Internet Order* ¶ 126 (citations omitted).

Paid prioritization would mean, in times of last-mile congestion, that an ISP would permit information from content providers who have paid them to cut to the front of the line at congested nodes, thus de-prioritizing other customer-selected content.

By Definition, Prioritizing One Bit Slows Down All Other Bits.

Setting aside the differences in first-party payment vs. third-party payment, there is another key difference between prioritization in tasks such as physical parcel delivery and internet routing. The routing of IP data over a given network at a given time is a zero-sum game – even if that prioritization itself may not impair other applications so far as users can perceive it. If a router speeds up one set of bits, by definition all other bits are slowed down or moved down in the queue. Prioritization only has value during times when that network is experiencing congestion; otherwise the bits are routed in a first-in-first-out manner.

What's more, the value of the prioritization to a third-party is directly proportional to how much faster their content loads in comparison to non-prioritized content; but the more priority relationships there are, the less this difference in load time. This means that ISPs wanting to charge third parties for priority (or to violate the other part of the ban in Section 8.9 by prioritizing their affiliates' content) will only be able to prioritize a relatively small amount of content on the whole.

Paid Prioritization Will Entrench Incumbents and Harm the Open Internet.

Despite claims made in the current FCC's Net Neutrality repeal order that paid prioritization might actually encourage the entry of new edge providers, any mechanism that lets third parties who pay the most go first in line at chokepoints will naturally favor the most well-established companies with the deepest pockets to bid on a limited number of priority slots.

The incumbency protection effects of ISPs favoring their own content or content produced by affiliated companies is even more pernicious. Customers have limited choices in their broadband provider and typically purchase only one fixed broadband connection. By prioritizing their own traffic, ISPs could distort the market to favor content they own.

New entrants into the market would be systematically disadvantaged in favor of established firms. This is especially true for content creators from historically disadvantaged communities, for whom a free and open internet creates a more level playing field. A network that does not require content creators to bid for limited priority slots is one where new content and ideas can compete more equitably with content from established firms and without the permission of ISPs.

Banning Paid Prioritization Hardly Means That Priority Cannot Be Assigned Neutrally, Or That It Must Be Assigned in the Absence of Any Price Mechanism.

As suggested above, and as real-world experience makes patently clear, ISPs typically receive payment from their broadband customers to transmit data. Any prioritization or traffic management that must take place when and where congestion arises in a last-mile network can take place in a neutral fashion.

It can be handled in due course by network protocols already used universally (like TCP/IP), or capabilities largely unused today but still written into those protocols (like DiffServ – which contrary to AT&T's assertions over the years does not violate Net Neutrality principles and does not obligate third parties to pay for users' prioritization choices with respect to their own traffic). Lastly, congestion can be handled neutrally, as Comcast decided to do after its BitTorrent blocking scandal, by throttling high-bandwidth users when and where congestion occurs without respect to the source, type, or content of that high-volume user's traffic.

Obviously, in light of the payments that ISPs receive from their broadband customers for internet access, none of these methods to deliver data lacks a "price mechanism" for the allocation of resources. To return to Professor Lyons blog post, and the false dichotomy he suggests by eliding users' "first party" payments to their own ISPs, the only alternative to third-party paid prioritization is not some kind of imperfect and intrusive "central planning model" that must decide based on subjective criteria which service is "more important."[22] Instead, users can pay their ISP for a higher speed tier, increasing the proportion of network resources the ISP allocates to them without concern for the source or type of content they transmit.

USER-PAID PRIORITY IS DIFFERENT FROM THIRD-PARTY PAID PRIORITY.

If such "unpaid" methods – though unpaid only in the sense of there being no separate charge for QoS – are not enough to ensure that a latency-sensitive application works in times of congestion, users could also pay for a service tier that offers not just faster speeds but a QoS promise as well. As one leading Net Neutrality scholar explained at length, a Net Neutrality rule can quite readily support a ban on third-party paid prioritization while still allowing a "type of user-controlled Quality of Service [that] offers the same potential social benefits as other, discriminatory or provider-controlled forms of Quality of Service without the social costs."[23] User-directed QoS could:

> (1) "preserve the application-agnosticism of the network" because QoS provision "is not dependent on which applications users are using, but on the . . . choices that users make; thus, the network providers does not need to know anything about which applications are using its network in order for this scheme to work. The network provider only makes different classes of service available, but does not have any role in deciding which application gets which Quality of Service; this choice is for users to make"; and

[22] Lyons, *supra* note 14.

[23] Barbara van Schewick, "The Case for Meaningful Network Neutrality Rules," WC Docket No. 17-108, at 21 (filed Aug. 31, 2017),

> (2) provide QoS that meets users' preferences because "users choose when and for which applications to use which type of service . . . even if even if these preferences differ across users or (for a single user) over time."[24]

In the end, there is a better answer for all of the innovations and applications that – according to some Net Neutrality opponents – supposedly "need" third-party paid prioritization to function. That is true whether or not they are telemedicine applications of the sort so often referred to in these debates as the most deserving of priority.

And these other answers have at least one more benefit: they don't paint the absurd or even immoral picture of ISPs like AT&T suggesting that new prioritized pathways are the only way to get the medical services through the traffic – then putting up a toll booth, sticking their hands out, and demanding that lifesaving or emergency applications pay a toll.

PAID PRIORITIZATION FEES WOULD CREATE BARRIERS FOR APPS BUT NOT SAVE INTERNET USERS MONEY.

Suffice it to say that it would be inefficient in the extreme for app makers, websites, online platforms, internet content suppliers, and other edge providers to strike paid prioritization deals with every ISP whose broadband customers they'd like to reach. Even if they could manage it, these edge providers would essentially be double-charged for data that ISP subscribers have already paid to send and receive.

Academics may yet speculate that if we had a different kind of access market, in which broadband customers paid on a strictly metered basis, the new fees paid by edge providers could offset subscriber costs. What these academics cannot explain, however, here in the real world, is why ISPs facing so little competition and no oversight of the fees that might charge in either direction of this two-sided market would have any incentive to lower their retail prices rather than pocketing the additional revenues.

[24] *Id.* at 21–22.

When ISP executives talk about paid prioritization, if they do, it seems quite unlikely that they'd describe it as a way to reduce their revenues, or merely to change the source of them from their end-users to the edge. It seems far more likely that they would talk about it (if at all) as a chance to increase those revenues. So in the end, speculation that paid prioritization could save people money is just that: speculation. And it is even less well informed than suggestions that some applications simply "need" priority and need to pay for it themselves too.

CONTENT DELIVERY NETWORKS ARE NOT PRIORITIZATION.

Are there other justifications for lifting the paid prioritization ban, besides supposedly addressing congestion, reducing "excess" broadband investment, and miraculously creating trickle-down savings for internet users? One suggestion is that Content Delivery Networks (or "CDNs") constitute a form of "prioritization" that only large edge providers can afford – and that this advantage might be offset by letting ISPs charge third parties for priority. While there is no time in this testimony to provide a full description of the law, technology, or marketplace realities for CDNs, it is enough to say that this formulation is mistaken in every respect.

First, CDNs do nothing to address last-mile congestion. Edge providers may use CDNs in an attempt to reduce transit costs and latency by storing content closer to the end-user. But CDNs certainly do not prioritize a service by letting it cut to the front of the line for a fee when last-mile congestion occurs. If the term "prioritization" is to have any meaning at all, it must mean placing one message or packet ahead of another one, not simply improving the speed or other performance characteristics of a particular message without moving other packets back in line. That is why even the FCC's 2017 Net Neutrality repeal order conceded that it did "not mean to suggest that CDN services themselves constitute paid prioritization."[25]

[25] *2017 Net Neutrality Repeal* ¶ 255 n.926.

Second, it's strange to hear that CDNs are expensive or out of reach for any edge provider, small, medium or large, when there are numerous competitive CDNs in the market – including CDN services provided by the largest ISPs themselves. Verizon,[26] Comcast,[27] and AT&T[28] all offer their own CDNs, and they apparently did so for the entire time that the 2015 rules were in effect. They are not typically in the habit of suggesting that their own offerings are unaffordable and ineffective, so perhaps that's why they aren't attending this hearing to make this claim. All kinds of edge providers, large and small, use CDNs. They are not confined to the largest platforms by any stretch.

Third, even if paid prioritization could be used to level the playing field, and offset this supposed advantage that CDNs confer on large edge providers, it's implausible to believe it would be sold this way. As explained above, absent new laws or highly regulatory interventions to forbid ISPs from selling priority to the highest bidder, and to reserve it only for small businesses or certain kinds of edge providers, why would any ISP do this? The answer is it wouldn't, unless that ISP were once again looking to pick winners and losers.

We sometimes talk about artificial scarcity in the broadband market, but there's an artificial abundance of Net Neutrality analogies. Nevertheless, I'll try one here. I'd guess that even in this internet era, most or all Members of Congress still send direct mail during campaign season. Using a CDN is something like using a local printer or direct mail firm to produce, store, and deliver your materials, rather than printing them here in Washington and shipping them back to the district.

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[26] Verizon Digital Media Services, "Better matters: Why our content delivery network is simply better," (last visited Apr, 16, 2018), https://www.verizondigitalmedia.com/platform/edgecast-cdn/.

[27] Comcast Technology Solutions, "Content Delivery Network," (last visited Apr, 16, 2018), https://www.comcasttechnologysolutions.com/our-portfolio/video-platform/content-delivery-network.

[28] AT&T Business, "Content Delivery Network," (last visited Apr, 16, 2018), https://www.business.att.com/solutions/Family/cloud/content-delivery-network/.

Let's imagine that the market for such services is competitive, just as the CDN market is; and that there are many providers to choose from, just as there are with CDNs today. Now, imagine that in addition to such a service – or instead of one – you got this pitch from the Post Office: why pay for local storage and delivery of mail when you could buy prioritization instead? Not just local storage that cuts down on costs and transit time, available on the same terms and at the same prices to everybody who chooses a particular class of service, regardless of the sender or content of the message. No, prioritization here would mean the ability to cut in line – paying to have your message delivered before your opponent's. Or, heaven forbid, your opponent's ability to do that to you.

I think you'd have little trouble in that case understanding how paid prioritization, achieved by purchasing an advantage and jumping the queue in the last mile, is different from simply ensuring that earlier phases in the transit, storage, and delivery process are fast and efficient. Attempts to conflate CDNs with paid prioritization should be understood the same way.

PLATFORMS' CURATION AND TARGETED ADS AREN'T PRIORITIZATION.

Less than week after the Facebook CEO's hearings in this Committee and in the Senate, the sprawling questions swirling around what to do about online platforms can barely be contained inside all of Washington, DC, let alone inside a single Net Neutrality hearing. Yet from the tenor of some Committee Members' questions last week, it is evident that there has been some thought given to connecting the topic of ISPs' traffic management practices on telecommunications networks and online platforms' practices more generally.

Before offering even a few thoughts on the topic, one misperception I need to address at the top is the notion that Free Press or other Net Neutrality supporters are unwilling to regulate dominant online platforms and edge providers generally.

Nothing could be further from the truth. When it comes to such platforms' troubling data collection practices and privacy abuses; their pattern of profiting from hate and racism, and from their own or other parties' violations of election law and civil rights law; and their impact on journalism revenues and digital ad competition, Free Press is deeply concerned and researching answers.

We have endorsed the Honest Ads Act to promote greater transparency in political advertising. We supported the FCC's privacy rules in order to protect against abuses by broadband providers; but we certainly support opt-in requirements for edge providers too – frankly, in terms that could require far more than the FCC rules did, and that also go further than Chairman Blackburn's BROWSER Act introduced last year or Senator Markey's CONSENT Act introduced last week. We need more than just general, one-time opt-in requirements, that apply to more than just a pre-defined category of "sensitive information," because we've now seen the many flaws in such approaches.

One person may deem a particular type of personal information "sensitive" even though another does not. So-called non-sensitive information may still be very useful – and valuable – to the entity collecting it and then allowing others to use or misuse it. Opt-in language in privacy policies is not clear or prominent enough; but beyond being written more clearly and placed more conspicuously, it must be more specific and time-bound, explaining exactly what is collected, how it's used, and for how long.

Without that kind of breadth, depth and specificity for new laws or rules, companies like Facebook could deploy fleets of lobbyists and lawyers to argue quite plausibly that they already comply with a more vaguely drawn opt-in requirement. And that's before we even talk about regulating numerous abuses of data once it is collected, for example by advertisers blatantly allowed to violate housing laws by excluding people based on race, religion, or family status.

But even with all of that hopefully understood, we still reject suggestions made by some advocates today – and even by some sitting members of the majority, or by former Senator Franken in a speech last year – to apply the same kinds of neutrality rules we had for broadband networks and other common carriers to online speakers, curators, or platforms.

I can't help but pause to remark on this ironic twist in the fight against Title II. It seems that some people's rallying cry has become "Don't regulate the internet . . . just the websites!"

Needless to say, a platform like Facebook has tremendous power to shape what its users see – on Facebook and off of it too, thanks to its billions of users and its referral of traffic to other sites. But even with two billion Facebook users worldwide, there are just as many billions of websites, applications, media outlets, and other sources of information online and off. So while Facebook has great sway over news, opinion, and public dialogue, it does not have the same type of power that ISPs could wield to exclude online information from users altogether.

Economic power and political persuasion alone have historically been insufficient in this country to support content restrictions on speakers and editors such as newspapers.[29] Even the spectrum scarcity rationale put forward by the *Red Lion*[30] case to support the FCC's broadcast "Fairness Doctrine" – long disfavored by the Republican party, and long ago cast aside by the FCC – may be subject to challenge in a world of unlicensed spectrum technology.

[29] *See, e.g., Miami Herald Publishing Co. v. Tornillo*, 418 US 241 (1974).

[30] *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969).

Common carriers, on the other hand, have always been subject to reasonable nondiscrimination rules and not held liable for speech they carry. That remains true today, five years after Verizon dangerously argued in a Net Neutrality appeal that "broadband providers possess 'editorial discretion'" and said that "[j]ust as a newspaper is entitled to decide which content to publish and where, broadband providers may feature some content over others."[31] This is simply not true. Edge providers and other speakers are not the same thing as telecommunications networks.

And just like ISP-owned sites are – whether in Verizon's sprawling Oath empire, that includes legacy AOL and Yahoo! content; on Comcast's NBC and Universal properties; or for the Time Warner content that AT&T hopes to acquire – an online platform or website can and does function as a speaker, editor, or curator of content.

There are interesting academic questions we could take up, about whether or not a large and essential internet platform might be made subject to common carrier rules someday. Though it is also worth noting in that context that those calling to remove internet companies' liability exemptions under Section 230 of the Communications Act would actually encourage more blocking, not less, by treating sites as the publisher of their users' speech and comments.

But the answers to these questions right now are relatively easy. Facebook is not a common carrier. Neither is Twitter, or Google search. Neither is MikeDoyleforCongress.com, MarshaBlackburn.com, or Freepress.net while we're at it. Lawmakers who view this as a game about which sector to regulate, as if it's just a battle between competing interests in Silicon Valley and ISP headquarters, will ensure that their constituents are the real losers in that fight.

[31] *Verizon v. FCC*, 740 F.3d 623 (2014), Joint Brief for Verizon and MetroPCS at 43 (filed July 2, 2012).

There are some kinds of privacy and disclosure rules that could or should be made the same for all participants in the internet "ecosystem," and that even could be enforced by the same federal agency so long as it had the power to make rules and then enforce them adequately.

But a one-size-fits-all approach that suggests the same kinds of rules for vastly different kinds of services is never the right approach, and it would not serve anyone well here.

CONCLUSION

Thank you again for the opportunity to testify in this hearing, for your questions during the hearing itself, and for any written questions thereafter. Free Press's position has been and remains that the FCC was wrong to repeal the Net Neutrality rules, its 2015 order, and the legal framework and classification decisions undergirding those earlier policies. We urge you to adopt the resolution of disapproval intended to restore the policies and legal interpretations in place prior to the repeal vote taken by the current FCC majority. And we respectfully remind you that Net Neutrality is not just an astonishingly popular political issue in 2018, but also an essential part of maintaining your constituents' congressionally granted communications rights.