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6 PRESERVING AN OPEN INTERNET FOR

7 CONSUMERS, SMALL BUSINESSES, AND FREE SPEECH

8 THURSDAY, FEBRUARY 7, 2019

9 House of Representatives

10 Subcommittee on Communications and

11 Technology

12 Committee on Energy and Commerce

13 Washington, D.C.

14  
15  
16  
17 The subcommittee met, pursuant to call, at 11:02 a.m., in  
18 Room 2322 Rayburn House Office Building, Hon. Michael Doyle  
19 [chairman of the subcommittee] presiding.

20 Members present: Representatives Doyle, McNerney, Clarke,  
21 Loeb sack, Veasey, McEachin, Soto, O'Halleran, Eshoo,  
22 Butterfield, Matsui, Welch, Lujan, Schrader, Cardenas, Pallone  
23 (ex officio), Latta, Shimkus, Olson, Kinzinger, Bilirakis,

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24 Johnson, Long, Flores, Brooks, Walberg, Gianforte, and Walden  
25 (ex officio).

26 Staff present: Jeff Carroll, Staff Director; Jennifer  
27 Epperson, FCC Detailee; Evan Gilbert, Press Assistant; Waverly  
28 Gordon, Deputy Chief Council; Alex Hoehn-Saric, Chief Council,  
29 C&T; Zach Kahan, Outreach and Member Service Coordinator; Jerry  
30 Leverich, Counsel; Dan Miller, Policy Analyst; Joe Orlando, Staff  
31 Assistant; Kaitlyn Peel, Digital Director; Alivia Roberts, Press  
32 Assistant;  
33 Chloe Rodriguez, Policy Analyst; Mike Bloomquist, Minority Staff  
34 Director; Robin Colwell, Minority Chief Council, C&T; Kristine  
35 Fargotstein, Minority Detailee, C&T; Margaret Tucker Fogarty,  
36 Minority Staff Assistant; Theresa Gambo, Minority Human  
37 Resources/Office Administrator; Peter Kielty, Minority General  
38 Counsel; Tim Kurth, Minority Chief Counsel, C&T.

39 Also present: Representative McMorris-Rodgers.

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40 Mr. Doyle. I think all members have taken their seats.  
41 I know we are getting used to where we sit right now because we  
42 have done a little switching.

43 But I want to call the Subcommittee on Communications and  
44 Technology to order. Before we get started, I want to  
45 congratulate Congressman Bob Latta on taking over the ranking  
46 member.

47 Bob, I look forward to working with you in this Congress  
48 to address our shared interests and I would also like to introduce  
49 the new members of the committee on the majority side and welcome  
50 them to the subcommittee.

51 They are Congressman Mark Veasey of Texas, Congress Donald  
52 McEachin of Virginia, Congressman Darren Soto of Florida, and  
53 Congressman Tom O'Halleran of Arizona.

54 And we also have some new friends and returning favorites  
55 who have also joined the subcommittee including Congresswoman  
56 Diana DeGette, who is holding a hearing downstairs and probably  
57 will not make it up here today.

58 Ben Ray Lujan of New Mexico, Kurt Schrader of Oregon, and  
59 Tony Cardenas of California--I look forward to working with all  
60 of you.

61 Bob, I will yield to you if you want to introduce your new  
62 members.

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63 Mr. Latta. Thank you very much, and Mr. Chairman, I want  
64 to congratulate you on assuming the gavel and I really look forward  
65 to working with you.

66 This is--as we all know, this is the greatest committee in  
67 Congress and this is a great subcommittee to be on. So I look  
68 forward to working with you, and we all know that the  
69 bipartisanship that this committee has exhibited through the  
70 years is exemplary and I think over 94 percent of the bills that  
71 went out of the committee last Congress were bipartisan.

72 So I look forward to working with you. First, I would like  
73 to introduce two new members to our subcommittee. First is  
74 Congressman Tim Walberg from Michigan. Tim joined the committee  
75 last Congress but this is his first term being on this  
76 subcommittee.

77 So, Tim, we look forward to working with you and, you know,  
78 there is always great cooperation, not just because Tim and I  
79 share a border. He says I protect his southern flank, which is  
80 Ohio. He protects my northern flank in Michigan. So when Ohio  
81 and Michigan work together we can all work together. So--

82 [Laughter.]

83 Mr. Doyle. Except on the football field.

84 Mr. Latta. I also would like to introduce to our--new to  
85 the committee is Greg Gianforte from Montana. He brings

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86 expertise in computer science, electrical engineering, and  
87 technology, and so we welcome him to the committee.

88 So, Mr. Chairman, thank you very much and I yield back.

89 Mr. Doyle. Thank you.

90 Before we get started, I do want to mention some sad news  
91 that we got this week. We know our dear friend and former chairman  
92 and longtime member of this committee, John Dingell, is now on  
93 Hospice care as he is being treated for cancer. We want to hold  
94 John and Debbie Dingell, who is a great member of this committee,  
95 in our thoughts and prayers.

96 Having said that, I want to welcome everyone to the  
97 Subcommittee on Communications and Technologies' first hearing  
98 of the 116th Congress.

99 First of all, I want to thank my colleagues on the Energy  
100 and Commerce Committee for making me chair of this subcommittee.

101 I consider it a great honor and a great responsibility to hold  
102 this gavel and I look forward to working with all my colleagues  
103 on the committee.

104 I believe we share many of the same goals and values. I  
105 believe in the power of competition to spark innovation, expand  
106 access, and give consumers a better experience at a lower price.

107 Today's hearing is on net neutrality. I believe this is  
108 one of the most important digital rights issues we face today.

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109 The internet is certainly one of the most influential inventions  
110 ever and today it touches almost all aspects of our economy,  
111 culture, and politics.

112 According to the estimates by the Bureau of Economic  
113 Analysis, the digital economy accounts for 6.5 percent of the  
114 total U.S. economy or, roughly, \$1.2 trillion a year in GDP.

115 Last years, the Pai FCC repealed the 2015 Open Internet  
116 Order. Let me be clear. This repeal had far greater impact than  
117 just removing the FCC's net neutrality rules.

118 It was a step back by the FCC from its role as an agency  
119 that regulates and oversees internet access and a fundamental  
120 shift from all previous FCC chairs who worked to put in place  
121 enforceable net neutrality rules and preserve the Commission's  
122 vital oversight and consumer protection roles.

123 Today, the online publication Motherboard is again reporting  
124 that mobile carriers sold access to millions of consumers' real  
125 time locations to bounty hunters and who knows who else.

126 Their investigation found that one entity had requested more  
127 than 18,000 data location requests. These allegations are very  
128 troubling and need to be addressed and investigated.

129 Last year, firefighters in California had their mobile  
130 command center's internet connection slowed down to a snail's  
131 pace because they exceeded their data limit.

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132           Because of the FCC's repeal of the Open Internet Order and  
133 specifically repeal of Sections 201 and 202 of the Communications  
134 Act as well as the general conduct standard, the firefighters  
135 couldn't call the FCC to restore critical access to their systems.

136           Instead, they had to call wireless--their wireless company  
137 and pay a representative over the phone to increase their data  
138 plan while in the midst of fighting the largest, most complex  
139 fire in California's history.

140           In fact, because of the repeal, these practices were  
141 permissible under the FTC's jurisdiction because they were  
142 disclosed in the terms of service.

143           Now, if we agree that public safety is a priority, we need  
144 to make sure that they are a priority, not just another subscriber.

145           We not only need rules on the books that protect and preserve  
146 our nation's digital economy, we need a cop on the beat and the  
147 FCC is the agency that was empowered by Congress to protect  
148 consumers, competition, and innovation--and innovators' access  
149 to the internet.

150           With that, I would like to yield the remainder of my time  
151 to my colleague, Congresswoman Anna Eshoo.

152           Ms. Eshoo. I thank the chairman and I congratulate you,  
153 Mr. Doyle, on being the chairman of this great subcommittee and  
154 it is wonderful for the whole committee to be together today and

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155 I can't think of a more important subject to be examining.

156 I want to reinforce what you just said about what happened  
157 last summer. This is a fire department that is part of my district  
158 in Santa Clara County. Those of you that don't know the area  
159 you know it by the moniker Silicon Valley. These were Santa Clara  
160 County firefighters and they were battling one of the worst forest  
161 fires in the history of the state of California.

162 Now, their data speeds were slashed. Now, just picture what  
163 is going on. This is an emergency. This is real red lights and  
164 sirens blaring, people's lives at stake--and they weren't able  
165 to communicate. The firefighter weren't able to communicate with  
166 each other to get the directions they needed to do their jobs.

167 Now, if the 2015 open internet rules--they could have  
168 prevented this because if they had--there were specific  
169 exemptions for public safety. Now, I don't take a back seat to  
170 anyone on public safety issues and telecommunications.

171 Congressman Shimkus and I have been on this for more years  
172 than we want to count. So, you know, what do we want to chalk  
173 this up to? Misbehavior? Bad PR?

174 Listen, this is the United States of America. We have to  
175 have first rate system that works for everyone and that is why  
176 the 2015 rules--internet rules are so, so important. So that is  
177 why this hearing is so important.

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178 I thank you, Mr. Chairman, and I yield back.

179 Mr. Doyle. I thank the gentlewoman.

180 The chairman now recognizes Mr. Latta, the ranking member.

181 Mr. Latta. Well, thank you, again, Mr. Chairman, and I am  
182 very glad to see that we are starting off with this subject that  
183 has attracted so much attention over the past 15 years.

184 Despite the long track record on net neutrality, I believe  
185 there is plenty of room for consensus here and there is also great  
186 need for consensus. In my district, as in many others across  
187 the nation, our constituents want us to focus on getting broadband  
188 out to close the digital divide, and the uncertainty generated  
189 by these years and net neutrality wars is very unhelpful to that  
190 goal.

191 So I am hopeful that this is the year we can finally come  
192 together on a permanent legislative solution. I would also like  
193 to welcome our witnesses, especially former FCC Chairman Michael  
194 Powell.

195 As chairman, he had the distinction of creating a bipartisan  
196 consensus on this subject in 2004. Before internet freedoms he  
197 outlined for consumers--freedom to access the lawful content of  
198 their choice, use applications and devices of their choice, and  
199 receive meaningful information about their service plans still  
200 serve as benchmarks for what we are trying to accomplish with

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201 net neutrality rules.

202 Since then, there have been several attempts to create  
203 consensus in Congress and I think it would be instructive for  
204 us to go back and consider some of them as potential starting  
205 points for our conversation this year.

206 To that end, yesterday I introduced a bill that closely  
207 tracks Chairman Waxman's proposed legislation from 2010, the  
208 attempt to add a compromise on this issue from our Democratic  
209 colleagues on this committee.

210 Like most attempts over the years in Congress and the FCC  
211 alike, the bill focuses on the potential behavior concern, namely,  
212 blocking, throttling, and discriminatory practices.

213 What it does not include is the drastic outlier measure of  
214 reclassing broadband into Title II, the part of the statute meant  
215 to regulate the monopoly of telephone carriers of the last  
216 century, and to that end, this is--this is Title II.

217 It harkens back to an era where we have a telephone that  
218 doesn't even have a dial on it. This was used by my ancestors  
219 and this is what we don't want to go back to.

220 And the phones weren't all that-- it was heavily about Title  
221 II. Title II carries with it close to 1,000 carrier regulations,  
222 a nightmare of government micro management both for the providers  
223 bringing the power of the internet into our pockets on devices

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224 like these--of course, everyone has on them today--are iPhones  
225 and for their consumers alike.

226 Reversing the consensus on classification made by Chairman  
227 Powell, Martin, and Genachowski, the FCC dropped the anvil on  
228 Title II onto broadband providers in 2015. At the time, the FCC  
229 did not forebear from applying over 700 of those regulations of  
230 broadband service, at least temporarily.

231 But that just begs the question of why anyone still views  
232 Title II as a critical component to net neutrality legislation  
233 instead of complete overkill.

234 Chairman Waxman recognized these three years after the first  
235 iPhone was introduced that he didn't need Title II to protect  
236 Chairman Powell's four freedoms to ensure an open internet. We  
237 don't either.

238 In fact, since the reversal of the 2015 Open Internet Order,  
239 the internet has continued to remain open and free. Americans  
240 have not been restricted from freely searching, posting, or  
241 streaming content.

242 It is clear that Title II is not needed to protect consumer  
243 access to the internet.

244 I look forward to hearing from all of our witnesses today  
245 and I look forward to moving forward on a long-awaited legislative  
246 compromise.

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247 And with that, Mr. Chairman, I yield back the balance of  
248 my time.

249 Mr. Doyle. Thank you.

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

252 The Chairman. Thank you, Chairman Doyle, and I want to  
253 thank--first of all, I am glad to see that you are a chair but  
254 I also want to thank you for all that you have done over the years  
255 on the subject matter of this subcommittee but particularly on  
256 net neutrality because you were the sponsor of the CRA Resolution.

257 Today's hearing examines a communications service that is  
258 essential to consumers and businesses alike. The internet is  
259 indispensable to modern life and a catalyst for American  
260 innovation and social interaction.

261 Until last year, both Republican and Democratic-led FCCs  
262 recognized that net neutrality principles were core for ensuring  
263 the internet remain free and open. Until last year, both  
264 Republican and Democratic FCCs believed that when consumers pay  
265 their hard-earned money each month to connect to the internet  
266 they should get access to the entire internet.

267 And until last year, both Republican and Democratic FCCs  
268 would nod in agreement that your internet service providers should  
269 not be the one deciding what you see, how you see it, and when

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270 you see it.

271 But then came President Trump and the FCC stepped in--well,  
272 I should say this. Before Trump, the FCC stepped in to stop net  
273 neutrality violations that stifled innovative technologies and  
274 allowed ISPs to pick winners and losers on the internet.

275 They knew that consumers would lose if the government stood  
276 by and did nothing, and that is because the history of broadband  
277 is chock full of bad behavior that strong net neutrality  
278 protections like those in FCC's 215 order were designed to  
279 address.

280 And I would like to introduce an article for the record from  
281 the Free Press detailing many of those violations with your  
282 permission, Mr. Chairman.

283 Mr. Doyle. Without objection, so ordered.

284 [The information follows:]

285

286 \*\*\*\*\*INSERT 1\*\*\*\*\*

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287 The Chairman. But instead of standing with the American  
288 people with the FCC's 215 order, when President Trump came in  
289 the Trump FCC eliminated common sense net neutrality protections  
290 under the guise of promoting broadband investment.

291 While ISPs told the FCC what it wanted to hear, its senior  
292 executives told a different tale to investors. Hindsight tells  
293 us that the ISPs were more honest to Wall Street than the FCC  
294 and despite enormous tax benefits from the GOP tax scam and the  
295 elimination of net neutrality rules, any of the largest ISPs  
296 invested less in broadband than in previous years.

297 And, again, the Trump FCC ignored the millions of Americans  
298 pleading from strong net neutrality protections. The agency  
299 falsely claimed a flood of pro-net neutrality comments were a  
300 denial of service attack and shortly thereafter it accepted an  
301 onslaught of bogus submissions aimed at skewing the FCC's  
302 Rulemaking against net neutrality, clearly.

303 Now, I just believe that Chairman Pai's mind was made up  
304 from the beginning and the Trump administration's mind was made  
305 up from the beginning. I often remember listening to TV one night  
306 when the--I forget that guy who was the--President Trump's first  
307 press secretary--said, oh, don't worry, the FCC is going to repeal  
308 the net neutrality rule. Spicer--yeah. He was on Saturday Night  
309 all the time. And Spicer said, don't worry--you know, long before

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310 the FCC even took action, we are going to repeal net neutrality.

311

312 You know, I was always told that the FCC was supposed to  
313 be an independent commission and make--and not make up their mind  
314 and not have the administration decide for them, you know, before  
315 they even decided what to do. But that, clearly, wasn't the case  
316 with President Trump.

317 In the wake of the repeal, the Republican-led Senate passed  
318 a congressional review act resolution rejecting the FCC's mistake  
319 and 182 members of the House supported the same. That was Mike  
320 Doyle's resolution in the House.

321 But Speaker Ryan ignored the public and so the American  
322 people handed control of the House to Democrats in November,  
323 giving us a second chance. Without a change, there is no backstop  
324 to make sure big corporations can't use their power over the choke  
325 points of the internet to undermine and silence their small  
326 competitors or the political opposition.

327 Consumers don't have anywhere to turn when they are wronged  
328 by these large corporations because the FCC took itself off the  
329 beat entirely. Consumers are left watching the internet slowly  
330 change in front of their eyes.

331 Research shows many ISPs are throttling streaming video  
332 service or boosting some websites over others. Wireless internet

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333 providers charge consumers an HD fee just like your pay for TV  
334 company and this is all happening when ISPs are on their best  
335 behavior because the court is considering whether to overturn  
336 Chairman Pai's order and they know Congress is watching.

337 So I shudder to think what plans are being hatched up for  
338 when they think no one is watching. Those plans won't be good  
339 for consumers, competition, or innovation.

340 Mr. Chairman, until strong open internet protections are  
341 enacted, our only hope is the millions of Americans who are fed  
342 up and will hold Congress accountable for passing strong net  
343 neutrality laws.

344 And I look forward to working in a bipartisan manner to return  
345 strong safeguards to the internet. And I want to thank you, Mr.  
346 Chairman, because this has always been something that you care  
347 so much about and I know that by having this hearing today that  
348 we are going to move forward to have a free and open internet  
349 again.

350 Thank you.

351 Mr. Doyle. The gentleman yields back.

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

354 Mr. Walden. Well, thank you very much and congratulations  
355 on taking over the gavel of a really cool subcommittee. I mean,

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356 I chaired this for six years. I can tell you it is--well, you  
357 can't pick among your children when you are a chairman or the  
358 top Republican leader on the committee but this is a pretty good  
359 subcommittee.

360 So I look forward to continuing the work and I want to welcome  
361 all of our witnesses here. I cannot help myself a bit. In terms  
362 of presidential pressure on net neutrality, we should not forget  
363 the video that President Obama put out in the middle of the NPRM  
364 that Mr. Wheeler had that I believe caused an enormous pivot in  
365 November of 2014 after the election, pushing forward toward Title  
366 II regulation because I know from meetings I had prior to that,  
367 that was not necessarily the first course of action that the FCC  
368 was headed towards. So I don't know that ever made Saturday Night  
369 Live but, certainly, there was presidential push to go toward  
370 the 2015 Title II.

371 Look, the internet has been the single most important driver  
372 of economic growth, job creation, and better quality of life for  
373 Americans and people worldwide. It has brought us together.  
374 It has been amazing in terms of the innovation it has brought  
375 in every sector of our lives.

376 And all of that blossomed under a regime of light touch  
377 regulation, not Title II--not your grandparents' phone there,  
378 or whoever's it is. It was light touch, and entrepreneurs and

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379 innovators in Silicon Valley and everywhere else didn't have to  
380 come to the government and get permission to do what they did  
381 that gave us what we had.

382 It was only under the Wheeler regime that we got this heavy  
383 government approach and ask-the-government-first idea under  
384 Title II.

385 I am delighted that my friend, Joe Franell, could be here  
386 from Eastern Oregon Telecom. He made the long trip from  
387 Hermiston, Oregon, and he has a very important voice in this debate  
388 about Title II and about how we close the digital divide in rural  
389 America.

390 Now, I know my colleagues on the other side of the aisle  
391 like to throw big rocks at anybody that is big corporation. Well,  
392 you are talking to the small operator here.

393 Now, in eastern Oregon we might consider him to be a big  
394 operator. But these are the kind of people the ISPs that are  
395 putting things together to close the digital divide in difficult  
396 to serve areas.

397 And so thanks for being here and I want to welcome the other  
398 witnesses and especially former Chairman Powell will be here as  
399 well. You actually created bipartisan consensus on this back  
400 in 2004 and I think the principles you put forth then should guide  
401 us today. And so I will look forward to your testimony as well.

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402 And I think we should be able to agree on this committee  
403 on bipartisan solutions we could put in statute to stop bad  
404 behavior by ISPs.

405 As Mr. Latta outlined, Title II is the outlier in our debate.  
406 It throws away 20 years of bipartisan consensus that built the  
407 modern internet and it replaces it with an authority that dates  
408 back to the early 1900s used to govern monopoly telephone  
409 companies.

410 It may sound innocuous--Title II--but it gives enormous  
411 power to the federal government and unlimited authority to micro  
412 manage every single aspect of a provider's business including  
413 rates. There is nothing neutral about that kind of authority.

414 For 15 years every attempt at legislative compromise from  
415 both sides of the aisle has addressed rules on blocking,  
416 throttling, and discriminatory behavior like paid prioritization  
417 without Title II authority.

418 But efforts to reach agreement have, unfortunately, failed.  
419 I acknowledge there might have been times when our side should  
420 have accepted some offers but the same could be true and said  
421 for the other side.

422 That is why I have introduced the offer I made in 2015, which  
423 codifies the FCC's protection so they are not subject to changing  
424 administrations and commissions. The bill prohibits blocking.

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425 It prohibits throttling and paid prioritization and requires  
426 that ISPs be transparent in their network management practices  
427 and prices.

428 This is the offer, by the way, that has been on the table  
429 that preceded Mr. Wheeler's 2015 proposal. If my colleagues  
430 don't agree to this that that is the right starting point, then  
431 my friend, Mr. Latta, has introduced legislation drawn directly  
432 from former Chairman Waxman's proposal from 2010 that he also  
433 filed to the FCC as then Chairman Genachowski was drawing up the  
434 2010 offer.

435 Of course, as a former state legislator, I realized that  
436 some of the best ideas actually come from our states, and in this  
437 case, my neighbor to the north, Washington State. My colleague,  
438 Mrs. Rodgers, has a bill that would give you the Washington State  
439 net neutrality rules from 2018.

440 So it is important to point out that Washington State has  
441 a bicameral legislature in which Democrats control both houses  
442 as well as the governorship.

443 As a permanent legislative solution, we should make that  
444 our goal to produce in good faith what our colleagues have talked  
445 about all along. So I am once again asking my friends across  
446 the aisle to work with us on a bipartisan solution.

447 And let me close with this. I want to read from a letter

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448 that is from 2010 and it says, and I quote, "Classifying broadband  
449 internet access as telecommunications services that are subject  
450 to the provisions of Title II of the Communications Act may have  
451 far-reaching implications.

452 To reclassify these services is to create uncertainty,  
453 something that is sure to adversely affect investment decisions  
454 and job creation, both of which are in short supply right now.

455 This is a job for Congress.'

456 Chairman Pallone, I couldn't agree more with you. This was  
457 your letter from 2010, and I look forward to reaching across the  
458 aisle to find a solution here that will give certainty to the  
459 market and protection to consumers.

460 And with that, I yield back the balance of my time.

461 Mr. Doyle. The gentleman yields back.

462 I will remind my friend that the past efforts of both  
463 Republican and Democratic FCC chairmen to do it in a way that  
464 you describe was struck down by the courts and the only rule was  
465 the Tom Wheeler rule that was also taken to court was upheld by  
466 the courts.

467 Mr. Walden. If the gentleman would yield, since he  
468 referenced--

469 Mr. Doyle. No. No. We are going to get started now.

470 Thank you.

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471 The chair want to remind all members that pursuant to  
472 committee rules all members' written opening statements will be  
473 made part of the record.

474 I would now like to introduce our witnesses for today's  
475 hearing and welcome them all to this committee.

476 First, we have Ms. Denelle Dixon, who is chief operating  
477 officer of Mozilla; next, we have Ms. Ruth Livier, and actress,  
478 writer, and UCLA doctoral student; Mr. Joseph Franel, a general  
479 manager and CEO of Eastern Oregon Telecom; Ms. Jessica Gonzalez,  
480 vice president of strategy and senior counsel at Free Press and  
481 Free Press Action Fund; former FCC Commissioner Michael Powell,  
482 who is now president and CEO of NCTA. Welcome back, Commissioner.

483 And last, but certainly not least, Tom Wheeler, former  
484 commissioner who--Tom, I know you were before this committee more  
485 than any other FCC commissioner and you thought you would never  
486 have to come back here, but here you are, and thank you. Tom  
487 is a Fellow with the Brookings Institute.

488 We want to thank all our witnesses for joining us today.  
489 We look forward to your testimony.

490 At this time, the chair will now recognize each witness for  
491 five minutes to provide their opening statement. Before we  
492 begin, in front of our--I want to just talk a little bit about  
493 the lighting systems, for those of you that are new to testifying

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494 here.

495 In front of you you will see a series of lights. The light  
496 will initially be green at the start of your opening statement.

497 It is going to turn yellow when you have one minute remaining.

498 So please be prepared to wrap up your testimony at that point,  
499 and when the light turns red your time has expired.

500 So with that, Ms. Dixon, you are now recognized for five  
501 minutes.

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502 STATEMENTS OF DENELLE DIXON, CHIEF OPERATING OFFICER, MOZILLA;  
503 RUTH LIVIER, ACTRESS, WRITER, AND UCLA DOCTORAL STUDENT; JOSEPH  
504 FRANELL, GENERAL MANAGER AND CEO, EASTERN OREGON TELECOM; JESSICA  
505 J. GONZALEZ, VICE PRESIDENT OF STRATEGY AND SENIOR COUNSEL, FREE  
506 PRESS & FREE PRESS ACTION FUND; MICHAEL POWELL, PRESIDENT AND  
507 CEO, NCTA, THE INTERNET & TELEVISION ASSOCIATION; TOM WHEELER,  
508 FELLOW, BROOKINGS INSTITUTION

509

510 STATEMENT OF MS. DIXON

511 Ms. Dixon. Chairman Doyle, Ranking Member Latta, and  
512 members of the subcommittee, thanks to net neutrality, with the  
513 touch of a button an owner of a small business in Pittsburgh,  
514 Pennsylvania, or in Perrysburg, Ohio, can get on the open web  
515 and instantly reach billions of customers around the world.

516 She doesn't need to negotiate with multiple ISPs to make  
517 sure none of those customers are blocked from shopping on her  
518 site. She doesn't need to hire an army of lawyers to make sure  
519 that she isn't put in Comcast's or Verizon's slow lane. She only  
520 needs to make sure that she is creating the best product for her  
521 customers.

522 That is the genius of net neutrality--an open internet  
523 without ISP gatekeepers where the best ideas and businesses can  
524 be seen instantly, and that is what we are here to talk about

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525 today.

526 My name is Denelle Dixon. I am the chief operating officer  
527 of the Mozilla Corporation. We are the makers of the open source  
528 Firefox browser and other web-based products and services.

529 As defenders of the open internet, Mozilla has a long history  
530 of support for net neutrality and we remain as committed as ever  
531 to the strong net neutrality protection and clear FCC authority.

532 Given the importance of this issue to internet users all  
533 around the world, I want to thank you for the opportunity to  
534 testify. I would like to make three points today.

535 First, net neutrality is essential for businesses online  
536 and particularly small businesses. We need an internet where  
537 small businesses can flourish by delivering what users want,  
538 finding the gaps in opportunities in the market that aren't being  
539 served, and delivering those.

540 I am certain that Mozilla would not be here today without  
541 net neutrality, and if you look around the tech industry, this  
542 same origin story is repeated over and over.

543 Losing net neutrality does not--does more than just lock  
544 in the positions of dominant players. It also stifles the market  
545 of ideas, puts innovation behind a barrier of permission and  
546 negotiation, and places roadblocks in front of diverse viewpoints  
547 and approaches.

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548 Second, while the FCC has worked to repeal protections over  
549 the last two years, the case for net neutrality has grown even  
550 stronger. The FCC claimed that repealing net neutrality wouldn't  
551 pose any problems and would instead unlock investment and  
552 competition in the telecom industry.

553 But here is what we have actually seen over the last two  
554 years. We have seen Verizon slow connections of California  
555 firefighters as they battled the blaze and research from  
556 Northeastern University and the University of Massachusetts  
557 reports providers are slowing internet traffic to and from popular  
558 video streaming services like YouTube and Netflix.

559 Did the repeal unlock massive ISP investment as promised?  
560 No. The data says that major ISP infrastructure investment has  
561 in fact declined. This shouldn't be surprising because,  
562 remember, after the 2015 rules were adapted major ISP executives  
563 in quarterly earnings calls told their shareholders that the FCC's  
564 actions would not impact their investments.

565 Similarly, many opponents of net neutrality claim that  
566 competition among internet service providers would be enough to  
567 protect users and small businesses. But competition among ISPs  
568 remains an illusion today. Roughly, half of this country has  
569 at most one option for high-speed access.

570 And third, we must restore strong net neutrality protections

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571 and clear FCC authority today. There is no time to waste. We  
572 need to protect net neutrality and the clearest path forward today  
573 is to restore the protections of the 2015 order through  
574 litigation.

575 That is why Mozilla led the effort to file suit against the  
576 FCC in the D.C. Circuit Court and we were joined by a broad  
577 coalition of public interest organizations, public sector  
578 agencies, and technology companies.

579 We understand the value of legislative solutions to provide  
580 lasting protections. But any effort must offer at the very least  
581 the protections that are as strong as the 2015 order with adequate  
582 and flexible authority for the FCC to enforce it. Anything less  
583 does a disservice to consumers.

584 In conclusion, as a business leader I would note how  
585 unfortunate it is to see this issue take on such a partisan view  
586 in D.C. Polling shows that the broad majority of Americans, both  
587 Republicans and Democrats, support net neutrality.

588 Promoting a level playing field of competition and  
589 innovation is not a Democratic or a Republican value. It is an  
590 American value.

591 Thank you for the opportunity to testify.

592 [The prepared statement of Ms. Dixon follows:]

593

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28

594

\*\*\*\*\*INSERT 2\*\*\*\*\*

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595 Mr. Doyle. Thank you, Ms. Dixon.

596 We now recognize Ms. Livier. You are recognized for five  
597 minutes.

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598 STATEMENT OF MS. LIVIER

599

600 Ms. Livier. In 2014, I testified before the Senate  
601 Judiciary Committee on how net neutrality changed my life as a  
602 Hollywood entertainment professional. I shared that the open  
603 internet put worldwide distribution of media content at the  
604 fingertips of independent artists like me.

605 This gave us the unprecedented opportunity to tell our  
606 stories from our points of view and share them globally without  
607 the financial and corporate gatekeeping roadblocks of traditional  
608 media. It empowered us to define ourselves.

609 This matters, because the media produced by Hollywood  
610 historically tell an incomplete and unbalanced narrative about  
611 U.S. society. Latinx communities are largely misrepresented,  
612 symbolically annihilated and/or positioned as peripheral  
613 characters in someone else's story.

614 With net neutrality rules in place to ensure that internet  
615 access service would remain open, with low barriers to entry,  
616 artists could actively participate in balancing Hollywood's  
617 irresponsible exclusions.

618 Net neutrality is the reason I went from approaching a  
619 traditional media executive for advice on a script I has written  
620 and being told by them, "Who are you for anyone to produce your

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621 show'' two years later, becoming the first person to join the  
622 Writers Guild of America West via my work in digital media for  
623 a web series that I produced based on that very same script.

624 The difference between these two scenarios is--was that  
625 camera equipment was no longer cost prohibitive and the exciting  
626 new frontier of the open internet allowed the rest of us,  
627 regardless of ethnicity or socioeconomic standing, to finally  
628 tell our stories without getting discouraged, derailed, or turned  
629 away.

630 Net neutrality is about ensuring that traditional media's  
631 exclusionary practices are not transferred and amplified by  
632 broadband providers. It is about who has the power to control  
633 narratives and does shape perceptions and perspectives.

634 This has significant impacts on society. From marginalized  
635 communities, our presentation or lack thereof is--can be a matter  
636 of life or death. When we are dehumanized in the media it makes  
637 it easier for immoral individuals and groups to justify their  
638 targeted aggressions against us.

639 A neutral internet empowers us to virtually walk arm and  
640 arm with the confidence of knowing that our voices matter and  
641 we are not alone, that we are not invisible, and that our  
642 experiences are not isolated.

643 In the summer of 2018, for example, a group of Latinx

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644 entertainment media colleagues and I formed a group to rally  
645 against the cruelty of family separations. Because of net  
646 neutrality, we were able to learn about the crisis from a variety  
647 of online sources.

648 Brave journalists, activists, and whistleblowers exposed  
649 the injustices that were and continue to be perpetrated on brown  
650 men, women, and children at our southern border and beyond.

651 The open internet allowed us to organize and to join forces  
652 to push back against this administration's inhumanity. As a  
653 Latina who has grown up in a low-income family where English is  
654 our second language I have firsthand experiences of how much you  
655 have to juggle just to stay afloat and how mentally, physically,  
656 and emotionally exhausting it can be to navigate daily and  
657 persistent forms of oppression.

658 The system is so relentlessly stacked against you that it  
659 just seems easier to give up, tune out, and put your head down  
660 and believe the myth that there is nothing that we can do--that  
661 that is just the way things are.

662 But social inequities are social constructs. They have been  
663 structured to serve particular purposes, helping some and harming  
664 many other human beings in very real and very personal ways.

665 Net neutrality is a ray of light that can put us on the path  
666 to bridging some of these inequities by affording us the option

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667 to make ourselves visible and to make our voices heard in the  
668 digital spaces.

669 This policy is also about protecting our ability to have  
670 access to job opportunities, since more and more jobs are being  
671 partially or fully migrated onto the digital space. This is true  
672 for me as an actress.

673 Some of my jobs now take place in the digital arena. As  
674 a UCLA doctoral student, this is within the area of my research.

675 Taking a cue from my academic advisor, Dr. Sarah T. Roberts,  
676 and her great groundbreaking work in digital labor, my research  
677 sheds light on the relationship between the exclusionary  
678 structures of traditional media and the exploitation of human  
679 beings who are doing creative work in digital environments.

680 My ability to do this research would be significantly  
681 hindered without net neutrality, without access to diverse  
682 viewpoints and within such a mediated and corporate-facing  
683 environment.

684 A few powerful internet service providers should not be  
685 entitled to mediate our voices, to frame discourses in order to  
686 serve their interest nor to decide who or what is worthy of being  
687 visible--and/or invisible in our society or under what  
688 conditions.

689 Net neutrality impacts human beings in very real ways every

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690 single day. It impacts our ability to participate in society,  
691 to make a living, to connect with our loved ones, to earn an  
692 education, and to collaborate in pushing back against social  
693 inequities.

694 Market discourse has served the market and are designed to  
695 keep conversations within certain parameters. I am here to  
696 participate in highlighting the human impacts of net neutrality  
697 because things look different from a human perspective.

698 Thank you.

699 [The prepared statement of Ms. Livier follows:]

700

701 \*\*\*\*\*INSERT 3\*\*\*\*\*

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702 Mr. Doyle. Thank you very much.

703 We now recognize Mr. Franell. You are recognized for five  
704 minutes.

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705 STATEMENT OF MR. FRANELL

706

707 Mr. Franell. Good morning, Chairman Pallone and Doyle.  
708 Sorry. Good morning, Chairman Pallone and Doyle, Vice Chair  
709 Matsui and Republican leaders Walden and Latta, and members of  
710 the subcommittee. Thank you for the opportunity to appear before  
711 you today.

712 It is an honor to be here and talk about net neutrality and  
713 the consequences of applying Title II to the internet. The  
714 application of Title II as part of net neutrality had a dramatic  
715 chilling effect on rural telecom and the Pacific Northwest, and  
716 I suspect the same could be said of the rest of the country.

717 The uncertainty of the regulatory environments, even on  
718 nonregulated telcos and internet service providers like Eastern  
719 Oregon Telecom made investors hesitant to invest in the  
720 telecommunications sector.

721 Further, the ill-informed public fervor and fear surrounding  
722 the net neutrality subject precluded any objective discussion  
723 of the topic. This resulted in distrust of and anger towards  
724 ISPs like my company that had never manipulated their networks  
725 or internet protocol traffic in any anti-competitive nature.

726 It also prompted state legislation forcing net neutrality  
727 practices on local providers who, again, had never violated the

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728 public trust and had no interest in anti-competitive behavior.

729 All of this took place without the ability to have an  
730 objective discussion about the scope of the problem and how to  
731 address it without harming the internet all because of the  
732 fearmongering by those who didn't fully understand the subject  
733 or had other reasons for advancing Title II application to the  
734 internet.

735 Yes, I believe Title II had begun to harm the internet in  
736 the U.S. and a reapplications of it has a very real possibility  
737 of resulting in unforeseen and irrevocable damage in the future.

738 I applaud your interest in having an objective conversation  
739 about the subject in this hearing today. Since the repeal of  
740 net neutrality, investors have been much more willing and perhaps  
741 eager to invest in rural telecommunications.

742 Additionally, my company has been able to focus on continuing  
743 to provide exceptional telecommunications and is currently  
744 expanding into other markets that are under served.

745 We do this with confidence because we don't have to concern  
746 ourselves with unnecessary regulatory interference and the  
747 draining cost of reporting and compliance.

748 I believe that Title II does not have to be nor should it  
749 be part of the solution to the problem of bad behavior by a few  
750 internet service providers. Such application of Title II would

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751 not just be damaging but also unnecessary. When I say  
752 unnecessary, I say so because my company does not participate  
753 in the bad behavior that started the net neutrality debate in  
754 the first place.

755 In fact, I don't know of any rural provider in Oregon who  
756 does. Nevertheless, I do believe that further discussion on the  
757 topic of prioritization of traffic is warranted.

758 As a society, we apply different values to everything,  
759 sometimes rightly and sometimes not. In fact, I think we would  
760 all agree that as most forms of information--voice, data, video,  
761 et cetera--are now being moved via internet protocol, some are,  
762 clearly, more important than others.

763 Here are some of my own examples. A long distance call to  
764 911 should take priority over a regular call. If my daughter  
765 was in a car wreck and had a head injury late one night I would  
766 want the digital imaging that needed to be analyzed remotely by  
767 a radiologist or surgeon to take priority over someone else's  
768 online gaming tournament.

769 Students participating in distance education or online  
770 standardized testing should get priority over those streaming  
771 online movies for entertainment.

772 Prioritization of traffic becomes a problem only when it  
773 is done to harm or eliminate the competition and there are consumer

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774 protection laws in place that target this type of behavior.

775 Adding additional layers of regulatory burden is not the answer.

776 Instead of adding to that burden, I encourage you to consider  
777 leaving the longstanding Title 1 regulation of the internet in  
778 place, abandon any initiative to reinstate Title II through  
779 legislation, and address the anti-competitive abuses that  
780 everyone fears with light touch surgical precision.

781 Finally, I would be remiss if I did not advocate for  
782 initiatives from this committee specifically designed to promote  
783 competition in the marketplace. Giving consumers choices for  
784 their internet service offers the greatest mechanism for  
785 rewarding the good performer and punishing the bad performer.

786 If enough customers choose to leave, the bad performer will  
787 either adjust their behavior or go out of business.

788 Only robust competition in the marketplace ensures  
789 innovation, lowers prices, and ensures excellent customer  
790 service. A complacent monopoly has no incentive to change.  
791 Robust competition is the answer.

792 I would be happy to answer any questions you may have. Thank  
793 you.

794 [The prepared statement of Mr. Franel follows:]

795

796 \*\*\*\*\*INSERT 4\*\*\*\*\*

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797

Mr. Doyle. Thank you very much.

798

Ms. Gonzalez, you now have five minutes.

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799 STATEMENT OF MS. GONZALEZ

800

801 Ms. Gonzalez. Thank you, Chairman Doyle and Full Committee  
802 Ranking Member Walden. Calling him out on the way out--excuse  
803 me. Members of the subcommittee, thanks very much for having  
804 me.

805 I am here today on behalf of Free Press's 1.4 million members  
806 who are calling for reinstatement of the FCC's 2015 net neutrality  
807 rules and the return of the FCC's legal authority to protect us  
808 from ISP discrimination and abuse.

809 I am also here as a Mexican-American woman from a working  
810 class family. My father grew up in a Los Angeles suburb where  
811 Mexicans were not allowed to live. I understand that millions  
812 of people who came before me, including members of this House  
813 past and present, have fought against discrimination and for other  
814 causes that enabled me to be here today.

815 I say this to underscore that what we are doing here really  
816 has impacts on real people's lives. The U.S. government has a  
817 long history of discrimination and racism--indeed, used the media  
818 system to legitimize the enslavement of black people and the  
819 genocide and displacement of Native peoples.

820 And although it has taken some steps to reduce racism and  
821 discrimination in certain aspects of American life, like housing,

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822 it has done little to remedy structural racism in the  
823 communications sector.

824 The FCC's 2015 net neutrality order is one exception. That  
825 order gave the FCC clear authority to prevent and investigate  
826 shady ISP business practices like, but not limited to, blocking,  
827 throttling, and discriminating against lawful content.

828 The Trump FCC's 2017 decision to repeal that order was wildly  
829 unpopular. Polls show that 82 percent of Republicans, 90 percent  
830 of Democrats, and 85 percent of independents object, and people  
831 of color have been some of the most vocal critics, in part because  
832 we have more at stake.

833 Never before in history have barriers to entry been lower  
834 for us to reach a large audience with our own stories in our own  
835 words, to start small businesses, to organize for change.

836 This hits close to home for me because my best friend,  
837 Vanessa, is a blogger and small business owner. While she was  
838 pregnant and in the midst of the Great Recession, she was laid  
839 off from her job, and she began blogging from her apartment in  
840 2010 after her daughter's birth.

841 It was a labor of love. Her intention was to fill the void  
842 of content designed for and by parents of multiracial children.

843 She began writing love letters to her daughter to ensure that  
844 the beauty and power of black and brown women were front and

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845 center, even in a world that subjugates us at every turn.

846 Vanessa's blog, desumama.com, underscores that mothers are  
847 the storytellers, dream keepers, and legacy builders for the next  
848 generation. Today, De Su Mama has a loyal following and is  
849 building understanding across cultures.

850 It is also a successful business that has helped Vanessa  
851 supplement the family income and supported her journey to home  
852 ownership.

853 The end of net neutrality means that her voice might be  
854 drowned out by corporate media that can pay more to access her  
855 audience--some of the same corporate media that have failed  
856 spectacularly to represent us.

857 This could impair her family's livelihood and the reach of  
858 her cultural influence. And Vanessa cares so deeply about this  
859 issue that she actually flew here from Long Beach, California--she  
860 is sitting behind me today--on her own dime to bear witness to  
861 this hearing.

862 I am not going to look back there. I will get emotional.  
863 But she really believes that this is critical to her business  
864 model and to her ability to spread the word.

865 So I will get on to the lawyer points. In my testimony,  
866 I go into great detail about how ISPs have abused their power  
867 when net neutrality is not in place. I will give just a few

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868 examples here.

869 We have seen Comcast secretly block and slow file-sharing  
870 apps. We have seen Metro-PCS announce plans to block streaming  
871 from all providers except for YouTube. AT&T said it would disable  
872 the use of FaceTime over cell connections unless their customers  
873 paid for higher cost options. AT&T, Time Warner Cable, and  
874 Verizon deliberately limited capacity ISP interconnection  
875 points, throttling Netflix, and those are just a few examples.

876 And since the 2017 repeal we have seen some seriously suspect  
877 ISP behavior that my colleague, Denelle, already touched on.  
878 But because the FCC has sworn off its authority to protect  
879 broadband consumers it doesn't even have the power to investigate  
880 and look into this.

881 And the real shame of this whole thing is that net neutrality  
882 was working. Chairman Pai's justification for the repeal was  
883 built on a mountain of lies. Pai promised us that ISP investment  
884 and deployment declined under net neutrality and would expand  
885 following its repeal.

886 But the numbers are in and that is just not true. I hope  
887 this new Congress seizes the opportunity to right the wrongs of  
888 the Pai FCC and restore fundamental protections to Americans.

889 Thank you.

890 [The prepared statement of Ms. Gonzalez follows:]

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893

Mr. Doyle. Thank you.

894

Commissioner Powell, you have five minutes.

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895 STATEMENT OF MR. POWELL

896

897 Mr. Powell. Mr. Chairman, members of the committee, it is  
898 always an honor and a privilege to be with you. I also send my  
899 prayers to the Dingells. John Dingell is a dear friend and was  
900 a lion of the legislature, and our thoughts are with him.

901 To be clear, the virtues of an open internet are simply  
902 unassailable. It has proven to be one of the most democratizing  
903 forces we have ever known, putting the power to innovate in the  
904 hands of billions.

905 The ISP industry is proud of its role in building that network  
906 and engineering it to be an open platform has been good for society  
907 and it has been good for the bottom line.

908 That is why we unequivocally support legislative efforts  
909 to codify open internet rules in a manner that preserves the  
910 incentives for investment and dynamic growth.

911 But to craft rules that maximize public welfare, we must  
912 appreciate the symbiotic nature of the internet ecosystem. Just  
913 as great software depends on great hardware, the internet depends  
914 on an ever-improving network to facilitate cycles of  
915 ever-improving applications.

916 We all recognize that users need an open internet to thrive.

917 But we cannot ignore the fact that they also need the network

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918 to continuously innovate and improve.

919 A startup needs confidence that the network will reach their  
920 customers. Rural communities need networks to reach them in  
921 remote regions. Consumers require high-quality, secure, and  
922 reliable networks, and advanced applications will require even  
923 more powerful infrastructure.

924 Put simply, the internet is not fully baked. It must  
925 continually innovate and improve, and policy must protect the  
926 conditions that make that possible.

927 But Title II throws a wrench in the flywheel of innovation.  
928 Dumping a mountain of regulations designed for a different time  
929 for a different network with different economic conditions and  
930 different consumer needs throws off the balance.

931 Title II is a massive body of economic regulations. It lets  
932 the government set prices, decide the terms and conditions of  
933 services, and approve new products and services.

934 Let us be transparent with the American public. A debate  
935 about Title II is not a debate about net neutrality. It is a  
936 debate about whether to regulate the internet as a public utility  
937 with implications that far beyond simply protecting the internet.

938 The old and haggard Title II should not be tucked in under  
939 the shimmering cloak of restoring net neutrality protections.

940 The future of the internet deserves more careful consideration.

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941           Moreover, a bill that includes Title II will rupture any  
942 hope of bipartisan legislation in a divided government, ensuring  
943 that the count--for countless more years we will go by without  
944 the resolution the public deserves.

945           There is unique common ground on which to build enduring  
946 net neutrality rules and we should seize the opportunity rather  
947 than squander it.

948           As you consider legislation, I would encourage you to heed  
949 the caution but first do no harm. By almost every measure, the  
950 internet ecosystem has thrived for decades. The internet is the  
951 fastest deploying technology in the history of the world.

952           It gets better at a relentless and unprecedented pace. It  
953 has been built with trillions of dollars of private capital,  
954 freeing public resources for other pressing societal needs.

955           Innovation has advanced at a dizzying pace, giving birth  
956 to startups that have grown to become global giants. And against  
957 this positive backdrop there simply is no evidence of systematic  
958 patterns of ISPs undermining the openness of their networks.

959           One must rigorously ask with an open mind how will Title  
960 II utility regulation improve on these enviable results and is  
961 it worth risking messing things up by adopting it.

962           We have compelling evidence that utility regulations will  
963 mess things up. There is a voluminous literature documenting

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964 the negative effects of utility regulation on dynamic industries.

965 To ignore it is to ignore the hard-won lessons of history.

966 But we don't need to spend hours in the library reading  
967 economic articles. We have real-world examples right in front  
968 of us. In Europe, regulators did adopt utility style regulations  
969 and as a result they have achieved substantially slower speeds  
970 and attracted dramatically less investment than in the United  
971 States.

972 And on our own shores we can see that our utility-based  
973 infrastructures in this nation are crumbling. The electric grid,  
974 our roads, our airports, and our drinking water have all earned  
975 failing grades due to chronic under investment under this  
976 regulatory approach.

977 Is that truly the model we hope to emulate for the internet?

978 In summary, in software programming an infinite loop is  
979 defined as a piece of coding that lacks a functional exit so that  
980 it repeats indefinitely. Net neutrality has been stuck in that  
981 infinite loop for way too long.

982 It is time for Congress to debug this debate once and for  
983 all and reach a bipartisan solution that protects the open  
984 internet without damaging internet growth.

985 Thank you, and we stand ready to help you do that.

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

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989 Mr. Doyle. Thank you.

990 Commissioner Wheeler, you are recognized for five minutes.

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991 STATEMENT OF MR. WHEELER

992

993 Mr. Wheeler. Thank you, Mr. Chairman, and I want to begin  
994 by associating myself with my friend, Michael, and his wishes  
995 for the Dingell family. In all the world, there was only one  
996 Big John and he is Mr. Chairman.

997 One of the things that allows me to reflect on that is that  
998 it seems like I have been before this committee so many times  
999 over the last 40 years, first when I had Michael's role at--as  
1000 the CEO of NCTA, then when I had a similar role in the wireless  
1001 industry and then when I had the great privilege of being the  
1002 chairman of the Federal Communications Commission.

1003 But today, I appear before you as an American citizen who  
1004 has 40 years of experience dealing and living at the intersection  
1005 of new technology and public policy.

1006 The lesson of that is that net neutrality is not a new  
1007 concept. Essential networks have always historically been  
1008 required to be open. It started back in feudal times when English  
1009 common law required that the ferryman had to provide  
1010 nondiscriminatory access to haul people across the river.

1011 When the telegraph came along, the first telecommunications  
1012 service, in 1860 Congress said it must be nondiscriminatory.  
1013 Net neutrality was passed in 1860.

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1014           When the railroads became the dominant network, Congress  
1015 again stepped up and said open, just, and reasonable, the rules  
1016 that have to govern that network and, of course, in the  
1017 Communications Act of 1934 openness and just and reasonableness  
1018 was applied to the telephone network.

1019           Now, let us be real clear. It was those policies that  
1020 created the internet. It was the ability of anyone to access  
1021 an open network that gave us ARPANET and AOL and everything else.

1022           The 2015 Open Internet Order extended those enduring  
1023 principles to internet service providers while removing outdated  
1024 and unnecessary Title II common carrier requirements.

1025           I understand why the ISPs don't like this. They want to  
1026 be able to make their own rules. They argue that transmitting  
1027 zeroes and ones rather than analog somehow absolves them of the  
1028 responsibility to be open and just and reasonable.

1029           That is kind of like saying that electric cars don't have  
1030 to obey the speed limit because it was established for gas  
1031 vehicles. No, there are enduring principles that apply to  
1032 essential networks. Let me quickly address three policy issues  
1033 that flow from that.

1034           One, the game is being played that we are dealing with an  
1035 information service as opposed to a telecommunications service.  
1036 It is clear what that effort is: to shoehorn the ISPs into a

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1037 less regulatory structure. It is a phony construction.

1038 Regulating networks like the content they carry is just like  
1039 saying that because a road leads to Macy's that the road ought  
1040 to be regulated the same way Macy's is. Justice Scalia said it  
1041 a lot better when he said there is a difference between delivering  
1042 a pizza and making a pizza.

1043 There has been a lot of talk about the second point I would  
1044 make about how the Trump FCC presented false evidence that open  
1045 internet regulation would hurt investment.

1046 But thirdly, focusing on blocking, throttling, and  
1047 prioritization ignores the future and doesn't even protect today.  
1048 It doesn't protect today because it says you are free to  
1049 discriminate--just don't do it this way.

1050 And worse than that, Michael was right--the cake is not fully  
1051 baked. But those three principles apply Netflix concepts to a  
1052 dynamic and constantly evolving internet.

1053 Today, the internet is about transporting things. Web 3.0,  
1054 which is now upon us, is about a network that orchestrates, not  
1055 transports. Today, 4G is about full signal transition. 5G is  
1056 about network slicing into pieces.

1057 There must be a general expectation that no matter how  
1058 technology develops, the essential networks must be open, just,  
1059 and reasonable.

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1060 Thank you.

1061 [The prepared statement of Mr. Wheeler follows:]

1062 \*\*\*\*\*INSERT 7\*\*\*\*\*



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1063 Mr. Doyle. Thank you very much, and let me say both to Mr.  
1064 Powell and Mr. Wheeler, I should have referred both of you as  
1065 chairman, not commissioner.

1066 Mr. Powell. There is enough chairmen in this room.

1067 [Laughter.]

1068 Mr. Doyle. My apologies.

1069 With the conclusion of witness testimony, we are now going  
1070 to move to member questions. Each member will have five minutes  
1071 to ask questions of our witnesses. I will start by recognizing  
1072 myself for five minutes.

1073 Chairman Wheeler, sir, when the FCC enacted the Open Internet  
1074 Order it included the bright line rules we all talked about--no  
1075 blocking, no throttling--

1076 Mr. Wheeler. Right.

1077 Mr. Doyle. --paid prioritization. But it also included  
1078 a general conduct standard, consumer protections, and commission  
1079 oversight of interconnection and zero rating policies.

1080 Can you briefly, and I would underline briefly, give us some  
1081 examples of past problems that necessitated the addition of these  
1082 additional provisions in the order.

1083 Mr. Wheeler. Well, you have heard many of them being  
1084 discussed in the--in the previous testimony. There is a  
1085 historical reality when Comcast tried to block P2P. There is

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1086 the experience of Comcast trying to block--not trying but, indeed,  
1087 blocking ports into their network.

1088 There is when AT&T and Verizon said they would not allow  
1089 Google Wallet on their networks. It is when Verizon said they  
1090 would not allow tethering apps on their wallet, so forcing you  
1091 to pay \$20 for their tethering service.

1092 And it continues, as we have heard multiple times. You,  
1093 Mr. Chairman, referenced the Mendocino fire, and what is  
1094 significant about the Mendocino fire is not just the impact that  
1095 it had on the firefighters, which is significant, but the impact  
1096 it had on the people who were suffering as a result and who suddenly  
1097 found that they were being throttled and had no place to go because  
1098 the FCC had washed their hands.

1099 The study from Northeastern University on throttling, how  
1100 Sprint degraded Skype, the whole--and then the whole issue of  
1101 the so-called zero rating. There is just a study that just came  
1102 out that proves that free is not free.

1103 The interesting thing is that what the study found was that  
1104 data rates where zero rating free services are allowed are  
1105 actually higher than where they are not allowed, which makes  
1106 sense, of course, because somebody has to subsidize what some  
1107 folks are getting for free.

1108 I mean, there's a--this is an ongoing how creative can you

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1109 be to figure out ways around it.

1110 Mr. Doyle. Thank you very much.

1111 Ms. Dixon, your company, Mozilla, has been the lead plaintiff  
1112 in suing the FCC and hoping to overturn the Pai FCC's repeal of  
1113 the Open Internet Order.

1114 Can you also briefly tell us why you think these protections  
1115 are critical for small businesses and innovation, and do you think  
1116 that the bright line rules of the open internet alone are  
1117 sufficient by themselves?

1118 Ms. Dixon. Thank you. The bright line rules are just three  
1119 things we can rattle off very quickly and then ignore the fact  
1120 that those bright line rules can be--you can get around those  
1121 rules. There are loopholes everywhere.

1122 So they are not sufficient. Governance is incredibly  
1123 important in this area and you cannot rely on the FTC consumer  
1124 protection because it takes years for those things to correct  
1125 harms that occurred years before.

1126 So you have to look at how we can stop the harm from occurring  
1127 so that Americans don't have to suffer during that time, and then  
1128 we lose years of innovation and opportunity because net neutrality  
1129 rules wouldn't have been in place during that time period.

1130 So we can't actually make up for it by relying on the consumer  
1131 protection statutes. So there is a lot in there that needs to

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1132 be looked at with respect to it.

1133 I believe very firmly that Mozilla actually wouldn't exist  
1134 today if net neutrality hadn't been in place and I want to talk  
1135 about that from the small business angle.

1136 We started 17 years ago or so. We did it because Microsoft  
1137 had 95, 99 percent of the market share with respect to browsers  
1138 and we wanted to give users and opportunity for choice.

1139 And if Microsoft, for example, had been able to negotiate  
1140 with ISPs during that time to say, let's just throttle or make  
1141 it harder to get access to our download page we wouldn't be here.

1142 The open internet rules, while they might not have existed  
1143 in the order as of 2015, they were status quo. That was how we  
1144 operated. That is what the internet was built on.

1145 The openness, the transparency, the standardization, the  
1146 requirement that we all work together--that is how we got to all  
1147 of this record revenue that folks have today. So small businesses  
1148 need an opportunity to participate in that.

1149 Thank you.

1150 Mr. Doyle. Thank you very much.

1151 Tom, I just want to get back to you just for one quick sec.  
1152 You know, a lot is talked about Title II and my friends like  
1153 these props of bringing the old phones up from the 1800s.

1154 But Title II had many, many sections to it and there was

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1155 a lot of forbearance in your open internet order. Many of the  
1156 things that are--concerns that -- rate regulation and others,  
1157 they were forebared, weren't they?

1158 Mr. Wheeler. So I believe that Title II has, like, 45  
1159 sections and we forbore, if that's the word, from 27 of them and  
1160 I am--Mr. Latta, I am just--I got to pull this out because--to  
1161 say that this is also a Title II phone.

1162 Mr. Doyle. Thank you. I see my--I don't want to abuse my  
1163 time too much because I am hoping other members don't either.

1164 So with that, I will give--I yield to Mr. Latta for five minutes.

1165 Mr. Latta. I appreciate the chairman for yielding and,  
1166 Chairman Powell, we discussed the four freedoms for internet  
1167 consumers that you outlined back in 2004. Your accomplishment  
1168 in creating a bipartisan consensus at the commission looks even  
1169 more impressive, given what has happened in later commissions.

1170 Will you elaborate on the meaning of the first freedom, the  
1171 freedom to access the lawful content of a consumer's choice?  
1172 It seems to me that we have all agreed since then that nobody  
1173 wants ISPs blocking content they don't like.

1174 In your opinion, is there a serious threat to free speech  
1175 on the internet today and, if so, where is it coming from?

1176 Mr. Powell. I think that rule was a predecessor to what  
1177 has ultimately morphed into the no blocking, no throttling, paid

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1178 prioritization concepts. It is important to remember  
1179 historically at the time that we were announcing this the internet  
1180 was just burgeoning as a commercial service and it was really  
1181 important to try to create a set of customer and corporate  
1182 expectations about how the engineering aspects of the internet  
1183 should evolve.

1184 We did that and I think that proved successful. In fact,  
1185 recently Reed Hastings of Netflix said quite squarely in his own  
1186 earnings call that he believed that consumer expectation of net  
1187 neutrality was so strong even a repeal of rules wouldn't threaten  
1188 them as a company and noted that many countries don't have net  
1189 neutrality rules which they operate under open environments quite  
1190 successfully because of that expectation.

1191 Our rules were intended to generate that expectation at a  
1192 time when things were new, and I would highlight so many of the  
1193 examples we hear about today, about the flourishing invention  
1194 of Mozilla or other products and services all took place during  
1195 a period in which there were no net neutrality rules, in which  
1196 the fact exists that if you believe ISPs had the incentive and  
1197 ability and desire to block content, throttle it, and impose paid  
1198 prioritization they were free to do so for over 20 years with  
1199 the creation of every product from Google to Uber, and nonetheless  
1200 those products thrived and survived.

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1201 I think it is a misnomer that ISPs do not have a corporate  
1202 self-interest in an open internet. To be blunt, they made a whole  
1203 lot of money on an open internet because when you build a network  
1204 with some costs you are rewarded by filling that network with  
1205 as much content as possible and creating artificial scarcity.  
1206 That simply doesn't make economic sense.

1207 Mr. Latta. Thank you.

1208 Mr. Wheeler. Could I agree with my friend, Mr. Powell?

1209 Mr. Latta. No, not your time.

1210 Mr. Wheeler. Okay.

1211 Mr. Latta. Continuing on, Chairman Powell, new  
1212 applications are becoming possible with advanced networks such  
1213 as self-driving vehicles, remote surgery, and augmented reality.  
1214 These will require extremely time--sensitive network  
1215 management. What impact would the 2015 FCC rules, if they were  
1216 restored, have on these applications?

1217 Mr. Powell. Well, I would like to be really clear,  
1218 particularly on behalf of the cable industry. We don't dispute  
1219 or dissuade anybody from pursuing strong net neutrality, codified  
1220 rules that can be enforced.

1221 The only thing that we have an objection to is the  
1222 ill-considered application of Title II. Now, in credit to my  
1223 colleague, Tom Wheeler, he was a regulator. He had a different

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1224 problem than you have.

1225 He had the problem of finding a source limited authority  
1226 in order to embrace the rules after a series of court cases that  
1227 questioned whether they were acting beyond the authority that  
1228 Congress had ever given them.

1229 This is not a limitation that applies to the United States  
1230 Congress whose power is unbound by anything other than the  
1231 Constitution. So the restoring of net neutrality is also  
1232 restoring a sort of clever parlor trick to give the commission  
1233 FCC jurisdiction where you otherwise did not provide it.

1234 But writing on a blank slate, as you have the power to do,  
1235 there is no need to import those steps in order to create effective  
1236 rules. And so the restoring of them as is would create the same  
1237 problem of unbalancing the flywheels of innovation I mentioned  
1238 in my opening statement.

1239 Mr. Latta. Let me just ask you one quick follow-up. You  
1240 know, when you worked on the four freedoms how did you get that  
1241 consensus at that time?

1242 Mr. Powell. Yes, how does one ever get consensus?

1243 [Laughter.]

1244 Let me--I think what I would tell you is that I think one  
1245 of the things we have forgotten as lawyers have taken over the  
1246 net neutrality debate. In the early days of the internet open

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1247 internet and net neutrality was an engineering principle. It  
1248 wasn't a legal principle.

1249 It was the idea that you could use IP protocols and reach  
1250 any consumer on any computer, whether it was a Macintosh or a  
1251 Windows computer. Didn't matter what devices they use, what  
1252 computers they use, and it ensured that it was a network that  
1253 nobody centrally controlled, which is true today.

1254 In the phone network it was like a spoke and wheel in which  
1255 somebody sat at the center of the network making all command and  
1256 control decisions about the flow of traffic.

1257 In the internet world there is no central orchestrator.  
1258 The network is owned by no one at its core and it flies around  
1259 unfettered by any intervention.

1260 So what we understood was we were trying to give voice in  
1261 a regulatory sense to what had already become a pretty rigid  
1262 engineering concept and there was pretty universal bipartisan  
1263 agreement about that was in fact how the internet worked and any  
1264 policy should reflect that.

1265 Mr. Latta. Thank you very much.

1266 Mr. Chairman, my time has expired and I yield back.

1267 Mr. Doyle. Thank you. The chair now recognizes Mr.  
1268 Pallone, the full committee chairman, for five minutes.

1269 The Chairman. Thank you, Mr. Chairman.

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1270 It has been noted, Chairman Wheeler, that you have had the  
1271 unique experience of leading both the FCC as well as some of the  
1272 industries that now oppose strong net neutrality and, as you know,  
1273 when Chairman Pai sought to repeal the 2015 net neutrality  
1274 protections, he did so citing the potential for increased  
1275 broadband investment and now we hear investment went down after  
1276 Chairman Pai's order was adopted.

1277 So I have two questions. The first one is, can you explain  
1278 what is going on here? Was the 2015 order as bad for the internet  
1279 service providers as they claim?

1280 Mr. Wheeler. Well, I think the evidence of that is no, in  
1281 a word, and investment has--investment increased in the two years  
1282 following the Open Internet Order as opposed to the two years  
1283 preceding the Open Internet Order.

1284 The Chairman. All right. Well, let me ask you my second  
1285 question. Some internet service providers claim they don't  
1286 oppose net neutrality protections that would stop blocking,  
1287 throttling, or paid prioritization.

1288 But I worry and I know Chairman Doyle has expressed this  
1289 about the threats to an open internet that we haven't anticipated.

1290 Rules like the general conduct standard that you included in  
1291 2015 rules and that Governor Murphy of New Jersey included in  
1292 his executive order recently are aimed at providing a regulator

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1293 the flexibility to protect consumers from new threats or  
1294 unanticipated threats.

1295 With that in mind, why is it important to have strong federal  
1296 protections like the general conduct standard or protections for  
1297 interconnection?

1298 Mr. Wheeler. Thank you, Congressman.

1299 You know, the interesting thing is that saying I am for an  
1300 open internet--I am just not for the common carrier rules is kind  
1301 of like saying I am for justice, just not for the courts overseeing  
1302 it.

1303 One of the--the reason that I was saying to Mr. Latta that  
1304 I agree with my friend, Michael, and the leadership that he showed  
1305 with his four principles, and there is a huge difference between  
1306 his four principles as chairman and the advocacy that you are  
1307 hearing today.

1308 The four principles are just that. They are principles.  
1309 They are broad. They cover a multitude of topics. Blocking,  
1310 throttling, and paid prioritization, that is it. And as I said  
1311 in my--in my opening statement, what that means is you are free  
1312 to do whatever you want in discriminating so long as you say,  
1313 well, it is not blocking, it is not throttling, it is not paid  
1314 prioritization.

1315 We do not know what the internet is going to be and we can't

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1316 sit here and make Netflix-era decisions that we assume will apply  
1317 tomorrow. The nature of the internet has changed since Michael  
1318 did his four points and it is going to change again tomorrow,  
1319 and our challenge is how do we make sure that the public interest  
1320 is represented in that change.

1321 The Chairman. Well, thank you.

1322 And I want to ask one more question. Ms. Gonzalez, I am  
1323 concerned that the FCC ran a flawed process leading up to the  
1324 repeal of net neutrality, specifically by ignoring thousands of  
1325 consumer complaints and allowing millions of fake comments with  
1326 stolen identities flood the docket and I am worried that the  
1327 proceeding is tainted.

1328 So, Ms. Gonzalez, in your view, was the FCC's repeal of net  
1329 neutrality tainted and does that put the repeal on shaky ground,  
1330 in your opinion?

1331 Ms. Gonzalez. Yes, and we actually covered this in our  
1332 petition for--our brief in the net neutrality case where we are  
1333 a party. The process seemed to be guided by ideology and not  
1334 facts right from the outset and in announcing his efforts to begin  
1335 the repeal process Chairman Pai said, this is a fight that I am  
1336 going to win.

1337 And it appeared that that skewed sort of the approach of  
1338 the commission. You mentioned thousands of potentially

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1339 fraudulent comments in the docket that the FCC failed to  
1340 investigate and just went ahead and rushed forward to a final  
1341 order without truly vetting what was happening in the democratic  
1342 process--rulemaking process.

1343 The electronic comment filing system that allows the public  
1344 to weigh in went down the same night that John Oliver covered  
1345 net neutrality on his--on his show and thousands of net neutrality  
1346 complaints that had been filed by consumers with the net  
1347 neutrality ombudsperson were not put on the record.

1348 The only reason we ever heard about them was that National  
1349 Hispanic Media Coalition filed a FOIA request and analyzed those  
1350 documents and found that what they showed was that people, the  
1351 public, understand broadband internet access as a  
1352 telecommunication service.

1353 So I, too, share your concern that it was a flawed process  
1354 and that it puts it on shaky ground.

1355 The Chairman. Thank you. Thank you, Mr. Chairman.

1356 Mr. Doyle. The gentleman yields back.

1357 The chair now recognizes Mr. Walden, the full committee  
1358 ranking member, for five minutes to ask questions.

1359 Mr. Walden. Thank you, Mr. Chairman, and I want to thank  
1360 again all the witnesses.

1361 Mr. Franell, according to Ms. Gonzalez's testimony, and I

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1362 quote, "ISPs' own deployment and investment data show that Title  
1363 II reinstatement and 2015 net neutrality rules did not slow down  
1364 deployments, speed upgrades, or overall investment by ISPs," and  
1365 she is relying on her own figures or the organizations' or wherever  
1366 you got the data.

1367 I am not questioning that, but what I want to know is, Mr.  
1368 Franell, from your standpoint as somebody on the ground doing  
1369 build out what did you see during this period?

1370 Mr. Franell. Thank you, Congressman Walden.

1371 So, you know, it is interesting because I have read the U.S.  
1372 Telecom report on investment and it shows a different or tells  
1373 a different story than what I am hearing here today.

1374 So I don't know which set of numbers is right. All I can  
1375 talk about is what things look like Eastern Oregon Telecom trying  
1376 to bridge the digital divide, doing the work in these very remote  
1377 areas and when I say remote it is a different definition than  
1378 what we have in the East, and I grew up a lot out here. So I  
1379 know the different between East and West.

1380 And we--you know, we are talking about frontier areas and  
1381 how do we serve those folks. And so as the discussion about  
1382 applying Title II and net neutrality rules and, again, the  
1383 big--the biggest issue for Eastern Oregon Telecom has been Title  
1384 II, not fair use of the internet.

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1385 Mr. Walden. Why?

1386 Mr. Franell. But I could not get loans from the bank during  
1387 the net neutrality debate and during the net neutrality period.

1388 It was only as we started to hear the commitment from the new  
1389 FCC to repeal Title II that we started to see the cash open up--

1390 Mr. Walden. Right.

1391 Mr. Franell. --that availability and, quite frankly, for  
1392 more than a year I never got an offer from a single equity investor.

1393 Now I get them weekly almost and investment cash flow has been  
1394 freed up.

1395 So there had--at least from my perspective, there was a  
1396 dramatic impact and it has changed.

1397 Mr. Walden. Thank you.

1398 Chairman Powell--Mr. Powell--a couple of things. One, we  
1399 heard how Title II wasn't all that bad because so many of its  
1400 provisions were foreborne by the then Wheeler FCC. Could  
1401 another FCC change its mind in terms of what would be forborne  
1402 or not?

1403 Mr. Powell. I believe so. It is a discretionary act of  
1404 the commission.

1405 Mr. Walden. Would that require a full rulemaking to  
1406 determine that or could a chairman do it?

1407 Mr. Powell. I think it would require a full commission vote,

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1408 yes.

1409 Mr. Walden. But they could do it on their own. Does that  
1410 create uncertainty, going forward?

1411 Mr. Powell. Well, obviously, it does. I mean, I think we  
1412 could play a game about how many rules get forborne from. But  
1413 what is important to remember is it is not the volume. It is  
1414 which rules got forborne and which ones don't.

1415 Rules that didn't get forborne from do allow for lawsuits  
1416 and challenges to rate making proceedings. It allows the  
1417 commission to opine on all terms and conditions of service to  
1418 determine whether they are, quote, "just and reasonable."

1419 Almost all powerful net neutrality--I mean, all powerful  
1420 Title II rules are derived from Section 201 and 202, which remain  
1421 in force.

1422 Mr. Walden. So would--is it possible under Title II that  
1423 phone traffic on the internet could be subject to fees like USF?

1424 Mr. Powell. Well, in fact, under the USF statutes if you  
1425 are a telecommunications service provider it is mandatory under  
1426 congressional law that you charge contribution factors to  
1427 internet service.

1428 So to put this more simply, consumers on the broadband  
1429 internet today or for the last, you know, 20 years have not seen  
1430 that morass of phone charges, taxes, and fees that you see on

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1431 a typical phone bill.

1432 But once an information service becomes a telecom service,  
1433 there is an argument that the statute requires those same fees  
1434 and charges go on to an internet bill, which means the consumer's  
1435 bill would go up.

1436 Mr. Walden. So one of the issues I know some groups raised  
1437 with me last year--I think it was the realtors--very concerned  
1438 about what they saw as paid prioritization net neutrality. But  
1439 what they were really talking about was more uncertainty of  
1440 some of the search engines and how you could buy rankings. They  
1441 were afraid their competitors were being ranked up.

1442 Do you think these net neutrality provisions we are debating  
1443 here should apply to the edge providers?

1444 Mr. Powell. Well, I do. I have always been stunned at the  
1445 lack of comparison between the alleged behavior of ISPs with  
1446 regard to neutrality and the actual demonstrable behavior of edge  
1447 providers with regard to the same principles.

1448 It seems to me just this week we learned about Apple blocking  
1449 Facebook applications in its store. Just this week we learned  
1450 of Twitter blocking speakers who they disagree with. All those  
1451 companies have subjective policies that determine who they allow  
1452 to speak on their platforms and who don't. Facebook prioritizes  
1453 news feeds at its choice. Google has a very profitable business

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1454 model of allowing people to pay for who gets seen in search results  
1455 higher than others.

1456 It is a hollow promise to consumers to say that we are going  
1457 to guarantee a world of neutral access when all the destinations  
1458 that you attend are engaging in the very practices that we say  
1459 are supposedly so heinous if they are enacted by an ISP.

1460 So, at best, we are talking--we are having a very incomplete  
1461 conversation.

1462 Mr. Walden. Thank you.

1463 Thank you, Mr. Chairman, for your indulgence.

1464 Mr. Doyle. Thank you.

1465 The chair now recognizes Mr. McNerney for five minutes.

1466 Mr. McNerney. Mr. McNerney from California. Yes.

1467 I thank the chairman and I thank the witnesses for your  
1468 testimony this morning. No, the truth is my constituents care  
1469 deeply about net neutrality. Just last March, more than 150 of  
1470 my constituents attended a town hall meeting to voice their  
1471 concerns.

1472 The way the FCC has handled this proceeding makes me question  
1473 whether the agency even cared to hear my constituents' concerns  
1474 and the concerns of millions of Americans who voiced their  
1475 opposition.

1476 When the agency's failure to respond to my repeated requests

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1477 regarding fabricated DDOS attacks to its failure to respond to  
1478 FOIA requests and its failure to make thousands of submitted  
1479 comments part of the record, there are major questions about how  
1480 the proceedings were handled.

1481 In fact, FCC Commissioner Rosenworcel has accused her own  
1482 agency of hiding information.

1483 Chairman Wheeler, briefly, please, would you make--

1484 Mr. Wheeler. I am hanging around too long.

1485 [Laughter.]

1486 Mr. McNerney. What would you make of how the agency handled  
1487 the proceedings and is this any way to run a show?

1488 Mr. Wheeler. No.

1489 Mr. McNerney. That is brief. Thank you.

1490 [Laughter.]

1491 Mr. McNerney. More than 9.6 million identities were stolen  
1492 and used to file fake comments in this proceeding. About 26,000  
1493 of those were my constituents' identities. It is my  
1494 understanding that these action are now being investigated by  
1495 federal and state law enforcement agencies and it has been  
1496 publicly reported that Broadband For America and Free Press  
1497 subpoenas are a part of this investigation.

1498 Chairman Powell, what is the NCTA's relationship with  
1499 Broadband for America?

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1500 Mr. Powell. We are a member of it.

1501 Mr. McNerney. Does Broadband for America still exist?

1502 Mr. Powell. Yes.

1503 Mr. McNerney. Is Broadband for America complying or its  
1504 former representatives complying with subpoenas and document  
1505 requests for the investigation?

1506 Mr. Powell. Yes, my understanding they are.

1507 Mr. McNerney. Good. Did the NCTA ever engage Broadband  
1508 for America to submit fake comments using stolen identities in  
1509 those proceedings?

1510 Mr. Powell. Absolutely not.

1511 Mr. McNerney. Okay. Well, we will be looking into that,  
1512 Mr. Powell.

1513 Ms. Gonzalez and Mr. Powell, did either of your  
1514 organizations' consultants or members pay for fake comments using  
1515 stolen identities to be considered for the docket?

1516 Ms. Gonzalez?

1517 Ms. Gonzalez. No, sir. Absolutely not.

1518 Mr. McNerney. Chairman Powell?

1519 Mr. Powell. No, sir.

1520 Mr. McNerney. Thank you.

1521 Ms. Gonzalez, my home state of California is prone to a number  
1522 of natural disasters from devastating wildfires to floods and

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1523 earthquakes. During times of emergency and in the weeks and  
1524 months that follow, people immediately rush to the web to check  
1525 evacuation routes to see if their loved ones are safe and to find  
1526 out if it is even safe to breathe outside.

1527 Ms. Gonzalez, if some information sources are taking  
1528 priority because they paid for it and are unrelated to safety  
1529 information people are trying to access in these circumstances,  
1530 how might people's access to such information be affected?

1531 Ms. Gonzalez. I think, you know, it has long been the  
1532 consideration of this committee and the FCC that public safety  
1533 is one of if not the most important job that we have to do and  
1534 we want to make sure that the commission has the full authority  
1535 to ensure the consumers are protected in those times.

1536 Mr. McNerney. Thank you.

1537 Ms. Livier, you gave a few examples of how open access was  
1538 critical to establish artistic talent. Was the example list you  
1539 gave exhaustive or is it the tip of the iceberg?

1540 Ms. Livier. That is the tip of the iceberg.

1541 Mr. McNerney. Okay. And so you could give other examples  
1542 if we asked for that?

1543 Ms. Livier. Yes, sir.

1544 Mr. McNerney. Okay. I might be asking you to submit a list,  
1545 if you would, of examples of that.

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1546 Ms. Livier. I would be happy to, yes.

1547 Mr. McNerney. Ms. Dixon, I understand that some smaller  
1548 ISPs including Sonic, which serves many of my constituents, raised  
1549 concerns in a letter to the FCC that Chairman Pai's order would  
1550 threaten their ability to interconnect with the larger ISPs.

1551 I would like to introduce a letter for the record, Mr.  
1552 Chairman.

1553 Mr. Doyle. Without objection, so ordered.

1554 [The information follows:]

1555

1556 \*\*\*\*\*INSERT 8\*\*\*\*\*

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1557 Mr. McNerney. Ms. Dixon, can you explain the risks to  
1558 consumers now that the FCC no longer has a framework to address  
1559 interconnection complaints?

1560 Ms. Dixon. It just creates the same issue. It puts the  
1561 power in the hands of the larger ISPs. It puts the power in their  
1562 hands to work with the largest companies on the web, the largest  
1563 companies in the world, and leaves all the small businesses to  
1564 have to wait and try to get the leftovers in the back and to go  
1565 behind it.

1566 The interconnection agreements are a very important part  
1567 of what the FCC needs to continue to regulate.

1568 Mr. McNerney. Thank you.

1569 Mr. Chairman, I yield back.

1570 Mr. Doyle. I thank the gentleman from the great state of  
1571 California.

1572 [Laughter.]

1573 Mr. Doyle. The chair now recognizes Mr. Shimkus.

1574 Mr. Shimkus. Thank you, Mr. Chairman.

1575 First I want to make sure we recognize Marcia Latta, who  
1576 is observing her husband's ascension to the leader of the Telecom  
1577 Subcommittee, and he didn't do that--we usually forget our spouses  
1578 in public speaking engagements. So I have learned that that is  
1579 a bad mistake.

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1580 [Laughter.]

1581 Mr. Shimkus. Secondly, to the new members of the  
1582 subcommittee, this is why this is a great full committee and this  
1583 is why this subcommittee--I mean, we have got really very  
1584 articulate experts who are trying to wrestle with an issue.

1585 As my--as the chairman of the full committee has reminded  
1586 me numerous times, if we want--if--you know, we could have  
1587 messaging fights, and we will have those, or we could pass laws.

1588 And when we were in the majority I learned from that because  
1589 when I had to pass things through my subcommittee I had to reach  
1590 for that bipartisan compromise if we wanted to pass a law. If  
1591 we want to have this fight and pull our hair out--I taught high  
1592 school--for a bill to become a law the president has to sign it.

1593 He is not going to sign this. So I think what our attempt  
1594 is to say is where do we go to the middle--where do we address  
1595 these real problems.

1596 Now, I sympathize a lot with Mr. Franell because I represent  
1597 14,000 square miles in southern Illinois. And Ms. Dixon, Mozilla  
1598 is a foundation. Does that mean it is a not for profit?

1599 Ms. Dixon. We are owned by a not for profit.

1600 Mr. Shimkus. Yes. So a lot of my communication providers  
1601 are not for profits, just like in districts like Mr. Franell,  
1602 where they are--I understand that approach to small business.

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1603 Our approach to small business is little small businesses  
1604 in towns that don't even have access yet, and Chairman Wheeler  
1605 or Chairman Powell know that I have been focused, throughout my  
1606 life, about mapping.

1607 Let us find out where we have service and where we don't.

1608 Mr. Wheeler. Yes.

1609 Mr. Shimkus. And then where do we find out how fast that  
1610 service is so that when we have these battles--Anna, do you want  
1611 time? Okay. I thought you were trying to--I thought you  
1612 were--so if we are going to be involved how can we help get that  
1613 full build out? It would be helpful to everybody.

1614 So I have always been focused in this debate about how do  
1615 you build out. How do you get the fiber into the ground, and  
1616 I am not as smart as you all but I know that that's private sector  
1617 dollars that do that and there has got to be an incentive for  
1618 them to lay the fiber.

1619 And fiber is a lot better than coaxial cable and there is  
1620 more information going out. So I would hope and I would plea  
1621 that we eventually get through the emotion, which I am not  
1622 discounting, and we focus on fixing this problem, because if I  
1623 finally get my small businesses connected in Gallatin County--Old  
1624 Shawneetown, right--they are going to want to have full access.

1625 But I got to get them access first. Otherwise, it is kind of

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1626 a moot point to some of us who represent rural areas.

1627 So I hope--I just hope we get there. You know, we are having  
1628 this big fight on border security and one of the responses is  
1629 walls, fencing, and some is smart technology.

1630 Now, the southern border, as you probably all know fairly  
1631 well, is pretty rural. If you are going to use drones--I mean,  
1632 and this the--one of the Democrat responses is let us do smart  
1633 technology--let us do drones--let us do technology--let  
1634 us--cameras and let us see who is coming.

1635 That will require a lot of investment and a lot of build  
1636 out. Would there--should, if there is information of child  
1637 trafficking, fentanyl being pushed across the border--is there  
1638 any role for anyone to prioritize information?

1639 So if we want our border security guys to go and stop a coyote  
1640 bring across child trafficking, and that information is trying  
1641 to get to the operation--the tactical operation center--former  
1642 military guy like Mr. Powell--should that be prioritized?

1643 And I guess my time has expired and I don't--it is your call,  
1644 Mr. Chairman.

1645 Mr. Doyle. If Mr. Powell wants to answer that briefly I  
1646 will give him the opportunity. But was there a question in there?

1647 [Laughter.]

1648 Mr. Shimkus. Yes. We need to build more fiber.

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1649 Mr. Doyle. Do you guys have to mention the wall at every  
1650 hearing?

1651 [Laughter.]

1652 Mr. Shimkus. I didn't yesterday.

1653 Mr. Powell. Well, Mr. Chairman, I will just take advantage  
1654 of the opportunity to say--

1655 Mr. Doyle. Briefly.

1656 Mr. Powell. --when I was chairman I was a huge champion  
1657 of public safety and I think it is a perfect example of why we  
1658 should be careful about what we mean about no prioritization.

1659 There are societal uses that we will all agree should employ  
1660 a higher priority over other uses. It is true in every tangible  
1661 part of the economy. I don't know why we think it wouldn't be  
1662 true in the digital space.

1663 Mr. Wheeler. Well, there is just one thing that you left  
1664 out, though.

1665 Mr. Doyle. Yes.

1666 Mr. Wheeler. The 2015 rule allowed for that kind of  
1667 prioritization. Mr. Shimkus and I started working 20 years ago,  
1668 probably longer than that, on public safety issues and we  
1669 allowed--we made sure that the 2015 rule allowed for that kind  
1670 of prioritization.

1671 Mr. Doyle. Thank you.

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1672 The chair now recognizes the vice chair of the full  
1673 committee, Ms. Clarke, five minutes.

1674 Ms. Clarke. Thank you--thank you very much, Mr. Chairman.  
1675 I thank the ranking member and I thank all of our expert panelists  
1676 for bringing your expertise to the table today, and I say good  
1677 afternoon.

1678 I am glad that we are having this hearing and we have decided  
1679 to kick it off this week with the hearing on net neutrality.  
1680 This issue is a major concern for my constituents on the state  
1681 of New York.

1682 In fact, Governor Cuomo signed an executive order to keep  
1683 the net neutrality rules in place post-FCC repeal. Additionally,  
1684 former New York Attorney General Barbara Underwood led a lawsuit  
1685 with 22 other attorney generals to reinstate the 2015 open  
1686 internet rules and led an investigation into fraudulent net  
1687 neutrality comments.

1688 So along the lines of Mr. McNerney of California, I would  
1689 like to just ask a couple of things. Well, first, I want to  
1690 highlight a few things--the voices that the FCC ignored in 2017,  
1691 those like Brooklyn's own Take Shape and Staff Base and millions  
1692 of other small businesses across the country whose existence  
1693 depends on a free and open internet.

1694 And the irony of millions of Americans that took the time

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1695 to write the FCC opposing the repeal of net neutrality and that  
1696 literally broke the public comment records doing it, yet their  
1697 voices went unheard.

1698 So, Chairman Wheeler, can you explain why so many small  
1699 businesses oppose the gutting of the 2015 net neutrality  
1700 protections? I think that we need to have that in context and,  
1701 you know, even when we talk about rural communities the idea at  
1702 the end of the day is to get us to a broadband ubiquity. But  
1703 what does this mean for small businesses?

1704 Mr. Wheeler. Thank you very much, Ms. Clarke.

1705 If a business cannot get to its consumers it does not have  
1706 a business, and the network that connects us all in the 21st  
1707 century is the internet.

1708 I remember a time when I was in eastern Kentucky meeting  
1709 with coal miners who were learning to code because they had lost  
1710 their mining jobs. But I also met with a young man who had a  
1711 guitar shop--a guitar shop in Pikesville, Kentucky. When the  
1712 bottom fell out of the coal economy the bottom fell out of his  
1713 guitar shop.

1714 But he went on the internet and started selling guitars on  
1715 the internet, and he is now a bigger business in Pikesville than  
1716 he was when he was not.

1717 If you can't get to your customers you don't have a business

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1718 and the internet is how you get to your customers.

1719 Ms. Clarke. Very well.

1720 Ms. Livier, your testimony discussed how in your line of  
1721 work lots of jobs are being migrated to the digital space and  
1722 how this is an opening opportunity for people of color.

1723 How do small companies and entrepreneurs alike end up on  
1724 the losing end in the 21st century economy without open internet  
1725 protections?

1726 Ms. Livier. First, there is a series of ways in that you  
1727 lose out, right. From my experience as an actress and as a  
1728 creative person, how are people going to find you online if  
1729 somebody has a faster lane than you do? So they are going to  
1730 win out in order to, like, reach a client.

1731 I do, for example, voice work and if I recorded on my laptop  
1732 at home and I sent it in to my client, but if my connection is  
1733 slow then that is going to cause a problem.

1734 So for an independent like me and folks like me it is really  
1735 important to have an open internet so that is an even playing  
1736 field. Otherwise, we can't--we can't compete. We don't have  
1737 the pocketbooks to pay for access and that shouldn't be the case.

1738 Ms. Clarke. Absolutely. Thank you for your response.

1739 Ms. Gonzalez, anything you would like--you would like to  
1740 add on that?

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1741 Ms. Gonzalez. Yes. I mean, there is a lot of research out  
1742 there, Congresswoman, about how people use the internet and what  
1743 even a couple of seconds of delay does--turns people away to  
1744 different sites.

1745 So if I am an independent creator or if I am like my friend,  
1746 Vanessa, who runs her own blog--she is two rows behind me with  
1747 her nine-year-old daughter today--and my site is slightly slower  
1748 than other content produced by mainstream media, some of whom  
1749 also own the pipes--Comcast owns NBC Universal--they are  
1750 producing content that competes with Vanessa's content--she will  
1751 tell you herself she can't pay to go faster to access audience  
1752 and even a few seconds of delay, people want it now.

1753 We are in a rapid economy, rapid expectations about how we  
1754 are delivered our content and it really would hamper competition  
1755 and her ability to run her own business, reach an audience, earn  
1756 a living.

1757 Ms. Clarke. Very well.

1758 Mr. Wheeler, in 2014, interconnection disputes involving  
1759 edge providers, backbone companies, and the last-mile ISPs  
1760 resulted in Netflix video service being degraded for some--I am  
1761 sorry. I yield back, Mr. Chairman.

1762 Mr. Doyle. Thank you.

1763 Ms. Clarke. Didn't realize the time.

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1764 Mr. Doyle. The chair now recognizes Mr. Olson from the great  
1765 state of Texas--five minutes.

1766 Mr. Olson. I thank the chair. Congratulations on your  
1767 having the gavel for the 116th Congress. Here we go again, or  
1768 as the New York Yankee sage wisdom of Yogi Berra said, deja vu  
1769 all over again.

1770 It doesn't matter if a Democrat is in the White House, a  
1771 Republican in the White House, a Democrat speaker, or Republican  
1772 speaker. We fight, fight, and we fight and do nothing about net  
1773 neutrality, and our inaction has forced agencies like the FCC  
1774 and the administration to try to fill the void.

1775 And that is sad because as Chairman Latta mentioned in his  
1776 opening statements, we have so much in common--so much common  
1777 ground. For example, the title of this hearing, Preserving an  
1778 Open Internet for Consumers--yes. Small business--yes--and free  
1779 speech--double yes.

1780 And then the spirit of bipartisanship, the donkey and  
1781 elephant in the room, Title II, and that is when this whole thing  
1782 breaks down because, as Mr. Latta mentioned, Title II is based  
1783 on the phone of Alexander Graham Bell right over there.

1784 And, sadly, instead of working together as neighbors and  
1785 friends and solve this problem once and for all, we keep going  
1786 down this road over and over and over.

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1787 My first questions are for you, Mr. Franell, and Chairman  
1788 Powell. In you all's testimony--mostly you, Mr. Franell--your  
1789 testimony brought an in-depth analysis of how Title II regulations  
1790 would harm small ISPs.

1791 I was hoping you could expand on how shifting away from 20  
1792 years of previous precedent of being regulated under Title I would  
1793 affect small ISPs such as yours.

1794 Mr. Franell. Thank you for the question and, for the record,  
1795 I graduated from high school and college in Texas. So thank you  
1796 very much for--

1797 Mr. Olson. The stars at night.

1798 [Laughter.]

1799 Mr. Franell. And so the reality of my world is, and Eastern  
1800 Oregon Telecom has been around for almost 20 years--in those 20  
1801 years we were created to provide advanced telecommunications in  
1802 a market where the incumbent was not doing their job and today  
1803 that is still true.

1804 So in the markets that we serve, Eastern Oregon Telecom,  
1805 a nonregulated competitive carrier who takes no federal dollars,  
1806 no state dollars, is providing 100 meg service or gigabit service  
1807 to the communities that we serve while the incumbent is still  
1808 struggling to provide ten one.

1809 So we are doing that in an area that on the interstate takes

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1810 about an hour to drive going 70 if you are driving the speed limit,  
1811 from one end to the other, and crosses into the Washington border.

1812

1813 We do that with 19 employees. Every dollar that we have  
1814 made since we started has been reinvested in the company. There  
1815 has not been a single distribution even for taxes to the owners,  
1816 of which I am one. So the tax thing is painful, by the way.

1817 So even as a nonregulated ISP, there are reporting  
1818 requirements. I still have to report the 470, 499--all of those  
1819 reporting requirements to the FCC that helps with the mapping,  
1820 even though it is not accurate.

1821 It is still a problem. You know, we are still doing our  
1822 part. I probably am--between the state and the federal  
1823 requirements I probably have a third full time equivalent right  
1824 now dedicated to regulatory reporting.

1825 Now, to put that in perspective, every fixed wireless tower  
1826 that I put up I can put up and activate for about \$10,000 and  
1827 each one of those towers can serve a community or about 500  
1828 addresses.

1829 So if I am--if I am paying full bore for a third full time  
1830 equivalent, that means I am probably not expanding my  
1831 infrastructure by some percentage every year. If you add a layer  
1832 to that or layers to that, then I can't keep up and I can't continue

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1833 to expand the network.

1834 Mr. Olson. So, basically, if it is under Title II your small  
1835 business gets hit hard and over time fades away, fades away, and  
1836 eventually it is gone?

1837 Mr. Franell. Or, at a bare minimum, is no longer able to  
1838 continue to expand and serve unserved or under served communities  
1839 in the rural remote areas of eastern Oregon and eastern--

1840 Mr. Olson. No new jobs, no new revenue, no new equipment,  
1841 no growth, no growth, no growth.

1842 Thank you. I yield back.

1843 Mr. Doyle. Thank you.

1844 We now recognize Mr. Loeb sack for five minutes.

1845 Mr. Loeb sack. Thank you, Chairman Doyle and Ranking Member  
1846 Latta. Really happy that we have got a good team there leading  
1847 this committee.

1848 I am a little concerned if I am going to have to keep following  
1849 Mr. Olson every time, given that we are up here on the top. But  
1850 we have worked together on things and thank you so much.

1851 Mr. Olson. Stay away from the Army and the Astros and we  
1852 will be fine.

1853 Mr. Loeb sack. Yes. We are okay with Navy. That is right.  
1854 Thank you.

1855 A lot of great people here on the panel--a lot of great issues

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1856 that we have discussed. I have worked--I have worked with a  
1857 number of folks on the other side of the aisle since I got on  
1858 this committee on a number of these issues, and I do want to thank  
1859 you, Mr. Franell, for being here because we have over a hundred  
1860 companies like yours in the state of Iowa.

1861 My district is about the size of Shimkus's, maybe not quite  
1862 as big. Walden reminds us all the time that his district is bigger  
1863 than my state. So I understand the issues in rural America.

1864 But I worked with Congressman Walden to try to reduce some  
1865 of those regulatory burdens on folks like you when I first got  
1866 on this committee four years ago. I worked with Congressman Latta  
1867 on precision agriculture--I am going to get to that in a  
1868 second--and worked with former Congressman Costello on the  
1869 mapping--I am going to get to that in a second, too.

1870 I have some faith--how much, I don't know--but some faith  
1871 that we can arrive at some kind of bipartisan solutions to these  
1872 issues and I am looking over here at Gianforte. He is, like,  
1873 why am I not talking about him because we worked together on EMS  
1874 issues as well the last Congress, and I appreciate that, Greg.

1875 I talk all the time about rural broadband. That is my thing.  
1876 It has to be given to the people I represent in the 2nd District  
1877 of Iowa and, you know, we have got to do everything we can to  
1878 make sure that the quality of service is there and we are able

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1879 to build out, going forward.

1880 I was going to ask a small business question but that has  
1881 kind of been dealt with. I do want to go right to precision  
1882 agriculture's growing importance with connectivity in  
1883 agriculture, how important--I want to ask Mr. Wheeler this  
1884 question.

1885 How important do you think the Open Internet Order  
1886 protections are for advancing smart and connected agriculture?

1887 What threats do you see for precision agriculture if these  
1888 principles are not in place?

1889 Mr. Wheeler. Thank you, Congressman.

1890 You know, it is interesting to watch how technology--and  
1891 you watch it far more closely than I do--but how technology has  
1892 changed the nature of the agricultural activity and, you know,  
1893 the day when you had a GPS to your tractor changed productivity  
1894 for agriculture in a huge way.

1895 We are now moving to a period where fifth generation and  
1896 next generation broadband services are going to be able to put  
1897 out into the field things that we haven't even imagined, any more  
1898 than we imagined the GPS to the tractor those years ago.

1899 The reality, however, is that somebody is going to control  
1900 whether or not that capability gets to that field and when you  
1901 say, well, we are only going to do blocking, throttling, and

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1902 prioritization, then you say everything else that I can do to  
1903 advantage myself as the provider of the service can be done.

1904 And so what--a key component of the 2015 order was how do  
1905 we maintain flexibility to take a look at what happens--what we  
1906 don't know is going to happen but we know will happen. That is  
1907 an essence of--a key essence of how you deal with maintaining--not  
1908 just having an open internet today but maintaining an open  
1909 internet tomorrow.

1910 Mr. Loeb sack. Thank you. I want to move on to a mapping  
1911 issue. We have got an REC in my district--Chariton Valley Rural  
1912 Election Cooperative--and they are trying their best--they have  
1913 tried every which way to get the FCC to allow them to provide  
1914 broadband service to their service area. But the mapping as it  
1915 now exists doesn't allow them because it says that there is a  
1916 lot more coverage there than there in fact is.

1917 And as I said, I worked with Ryan Costello on a bill on that.  
1918 The FCC is supposed to be coming up with better maps as we speak.  
1919 But it depends upon the data that they are using, obviously.

1920 I guess I want to ask both the former chairman, starting  
1921 with you, Chairman Powell. How the heck are we going to deal  
1922 with this? I mean, Shimkus brought this up. You know, this is  
1923 something that we are just fighting with all the time--and  
1924 especially to make sure that we get people who want to provide

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1925 that service who might not be an incumbent carrier. They are  
1926 not even a telco. It is an REC. How do we get to that point?

1927 Mr. Powell. Well, I think you have all been very articulate  
1928 about the essential essence and importance of mapping and I know  
1929 you have directed and the commission is working hard to improve  
1930 their map. So, hopefully, we will--we will get an improvement  
1931 that.

1932 Specifically with respect to the circumstances of your  
1933 company and constituent, I would recommend to them there is a  
1934 process in place at the FCC to challenge and appeal the current  
1935 mapping to be able to demonstrate to the commission that an area  
1936 that they show is under served or unserved is in fact unserved.

1937 Mr. Loeb sack. Right.

1938 Mr. Powell. And I am sure that they have been counseled  
1939 and are pursuing that process. So I think that is very, very  
1940 important to them.

1941 Mr. Loeb sack. Thank you, and I know my time has expired.  
1942 Thank you so much, Mr. Chair, for letting me go on.

1943 Mr. Wheeler, if you would get back to us on that other,  
1944 appreciate it.

1945 Mr. Wheeler. Well, we were also whispering back and forth  
1946 here. We agree.

1947 Mr. Loeb sack. Yes. Thank you.

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1948 Mr. Wheeler. How is that for a short answer?

1949 Mr. Doyle. I thank the gentleman. The gentleman yields  
1950 back.

1951 We will now recognize Mr. Bilirakis for five minutes.

1952 Mr. Bilirakis. Thank you, Mr. Chairman. Congratulations,  
1953 Mr. Chairman, and I want to congratulate the ranking member as  
1954 well, and also thank you for the bold nameplates, because I have  
1955 always had a difficult time seeing the nameplates and identifying  
1956 the witnesses. So I appreciate that very much.

1957 Again, first, I want to acknowledge that we need to protect  
1958 users from any blocking and throttling of service that threaten  
1959 freedom of thought and consumer choice on internet services.

1960 At the same time, I do not want to subject the internet  
1961 ecosystem to a system of heavy-handed agency control regardless  
1962 of the administration in charge. This too will lead to  
1963 limitations on consumer choice and limits on broadband  
1964 deployment.

1965 Since the 2008-2009 recession, private broadband spending  
1966 increased year over year except during the period of time Title  
1967 II scheme was in place. And in a October 15th, 2009 letter to  
1968 the FCC, 72 Democrat members agreed that the commission should,  
1969 and I quote, "carefully consider the full range of potential  
1970 consequences that government action may have on network

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1971 investment," unquote, and urged against government regulation.

1972 Mr. Chairman, I would like to submit the October 15th  
1973 letter--2009 letter in to the record.

1974 Mr. Doyle. Without objection, so ordered.

1975 [The information follows:]

1976 \*\*\*\*\*INSERT 9\*\*\*\*\*

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1977 Mr. Bilirakis. Thank you. Thank you, sir.

1978 I have a couple questions. Mr. Franell, in the absence of  
1979 a federal solution, how does the prospect of state patchwork  
1980 legislation impact any interests you may have in expanding  
1981 services and creating competition just north of you to Washington  
1982 State and beyond?

1983 Mr. Franell. Congressman, thank you for the question.

1984 So we currently do provide internet service across the river.  
1985 We serve some wineries so you should come visit, and some large  
1986 farms. We also serve a small community that is right on the river  
1987 on the Washington side and, you know, any time there are  
1988 cross-border jurisdictional differences in regulations it  
1989 creates, you know, a layer of, first of all, uncertainty where,  
1990 okay, well, what is different in Washington than in Oregon.

1991 Washington has got a net neutrality law. Oregon has got a net  
1992 neutrality law. They are different. How do we manage that now?

1993 It is less of a problem for us because our goal is not making  
1994 money by manipulating things. Our goal is to transform rural  
1995 eastern Oregon, eastern Washington, and perhaps other areas with  
1996 broadband and so that is our focus. So, you know, this other  
1997 discussion about manipulation and all that, that doesn't even  
1998 fit into our culture as a company. But anything that makes things  
1999 more complex, you know, it slows us down. It adds a layer of

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2000 uncertainty when we are dealing with different regulatory  
2001 environments.

2002 And so I would prefer to see a national standard for this  
2003 and, again, a light touch. I am not absolutely advocating for  
2004 Title II. I think that that is a bad idea.

2005 But legislation from the federal government solves this  
2006 uncertainty as we look at other states in the West and the Pacific  
2007 Northwest and expanding in those areas, knowing what--that the  
2008 playing field is the same would provide us a lot of confidence.

2009 Not having that creates uncertainty and makes us hesitant to  
2010 expand in those areas. I hope that answered your question.

2011 Mr. Bilirakis. All right. Thank you very much for the  
2012 input. Also, again, for you, Mr. Franell--for the most part,  
2013 a business survives on maintaining a good relationship with its  
2014 customers, obviously. How has the public misunderstanding of  
2015 the 2015 order impacted the relationship you have with your  
2016 customers despite your business not engaging in anti-competitive  
2017 acts?

2018 Mr. Franell. It was actually quite disturbing how angry  
2019 people got over the topic of net neutrality, and when I talked  
2020 about the inability to have a conversation about this that was  
2021 rational I started talking early on about some of my concerns  
2022 about net neutrality in the local newspaper, in the East

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2023 Oregonian, and the feedback was visceral and irrational and I  
2024 think it was driven off of fear.

2025 So people were afraid that even though we clearly stated  
2026 up front that we don't manipulate traffic, we just--that is not  
2027 who we are--

2028 Mr. Bilirakis. Yes.

2029 Mr. Franell. --that they just were suddenly fearful and  
2030 distrustful of all ISPs and somehow it became an evil entity.

2031 And so it was--it was disturbing because our business is built  
2032 on relationships.

2033 Mr. Bilirakis. What about now? Are you still getting that  
2034 to a certain extent?

2035 Mr. Franell. We will see when I get home after this hearing.

2036 Mr. Bilirakis. Okay.

2037 [Laughter.]

2038 Mr. Bilirakis. All right. Good answer. Good answer.

2039 Thank you very much, Mr. Chairman. I yield back.

2040 Mr. Doyle. Thank you. The gentleman yields back.

2041 The chair now recognizes Mr. McEachin for five minutes.

2042 Mr. McEachin. Thank you, Mr. Chairman, and thank you for  
2043 the leadership that you are demonstrating on this issue and the  
2044 leadership that you are providing this committee.

2045 I am going to start off by apologizing to my staff, who worked

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2046 so diligently on questions last night. But I am going to call  
2047 an audible and go off in a little bit of a different direction.

2048 Mr. Franell, I am a recovering trial lawyer and--

2049 Mr. Franell. Bless your heart, sir.

2050 Mr. McEachin. Thank you. And as such, I am awfully  
2051 impressed by analogies and I am awfully impressed by what I would  
2052 call stare decisis, and Mr. Wheeler has taken us back on a journey  
2053 of 600 years of common law tradition where he tells us that the  
2054 ferryman in England couldn't discriminate as he took people across  
2055 the river.

2056 That has a certain appeal to me because at the end of the  
2057 day aren't you just a ferryman who is taking me from one part  
2058 of the internet to another?

2059 Mr. Franell. Yes, sir, and that is why we don't discriminate  
2060 with traffic.

2061 Mr. McEachin. Well, and I heard you give some support for  
2062 the notion of a legislative scheme coming from Washington that  
2063 ensures that. What would that look like if it is not Title II?

2064 Mr. Franell. Well, and I am not a--I am not an attorney  
2065 and I am not a legislator. I am a small businessman.

2066 Mr. McEachin. Well, we forgive you for that.

2067 Mr. Franell. But I--you know, I--

2068 [Laughter.]

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2069 Mr. Franel. --think that--I think that we need to first  
2070 define what is our desired end state and it is a free and open  
2071 internet unencumbered by interference, especially  
2072 noncompetitive, from any provider whether it be the ISP.

2073 And we focus so much on ISPs but rightly so a lot of this  
2074 discussion has to revolve around the browsers, the end users,  
2075 the edge--you know, those are the folks that today are actually  
2076 engaging that more often than the ISP. Most of the ISPs that  
2077 I know that is not our business model and so we don't do that.

2078 And so I think we have to figure out a way to address that issue,  
2079 to create clear boundaries on behavior, so that when people in--an  
2080 end user like myself goes on the internet I have confidence that  
2081 I am going to get where I want to go without somebody interfering.

2082 Now, I did talk about prioritization and I think  
2083 prioritization is--I shouldn't be deciding a prioritization.  
2084 Society should be deciding on prioritization. We have talked  
2085 about public safety an awful lot and how they need prioritization.

2086 That is at the heart of the FirstNet network, that we are spending  
2087 hundreds of millions of dollars on it maybe in the--with the big  
2088 B--I can't remember the amount--where it is this nationwide  
2089 interoperable network that provides prioritization for public  
2090 safety.

2091 That solves a lot of that problem. But, you know, that is

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2092 a national decision. That is not me making that decision,  
2093 although I would love to be able to prioritize every 911 call  
2094 that goes across a county line and it is a long distance call.  
2095 I think that should just always be first.

2096 But, you know, Title II and net neutrality says Joe, you  
2097 ought to just stay out of that because somebody is going to yell  
2098 at you--somebody is going to get upset with you--you are going  
2099 to end up in front of Congress, and here I am.

2100 Mr. McEachin. Mr. Wheeler, I am in my second term in  
2101 Congress and new to these discussions. So I urge you and perhaps  
2102 your friend, Mr. Powell, to write a book called "Net Neutrality  
2103 for Dummies." It should be in a yellow cover and that sort of  
2104 thing.

2105 [Laughter.]

2106 Mr. McEachin. But until you get a chance to do that, can  
2107 you comment on what Mr. Franel said and tell me where the pitfalls  
2108 might be? Or maybe you agree with everything he said.

2109 Mr. Wheeler. So, you know, I think thank goodness for the  
2110 Franel's and the Eastern Oregon Telecom of the world because  
2111 delivering to rural America is essential.

2112 Several things--one, the laundry list that he went through  
2113 in terms of the kind of forms he has to file and has to hire this  
2114 person to do, most of those are not a result of the Open Internet

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2115 Order.

2116 They deal, for instance, with the mapping question that we  
2117 all talk about. They deal with other issues that the FCC needs  
2118 to collect information on.

2119 Number two, prioritization for public safety activities is  
2120 specifically allowed for under the 2015 act, and point three,  
2121 sir, it is not just the firefighters or the policemen who ought  
2122 to have the--who are affected by the lack of an open internet  
2123 but it is also the people who are the victims of those emergencies  
2124 who themselves need to get online and are experiencing the same  
2125 blocking or throttling realities and, as a result of the decision  
2126 of the Trump FCC, have nowhere to go because that is not an unfair  
2127 or deceptive act or practice so long as you say, I am going to  
2128 be doing that. And so there is no place to go.

2129 We need to make sure that we have open networks and an open  
2130 network includes openness and prioritization for basic and  
2131 essential public services.

2132 Mr. McEachin. Thank you. My time has expired and I yield  
2133 back.

2134 Mr. Doyle. Thank you, Mr. McEachin, and I apologize for  
2135 keep butchering your name. I think I got it right now.

2136 The chair recognizes--yes, Billy, you are recognized for  
2137 five minutes--the great state of Missouri.

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2138 Mr. Long. Am I that forgettable?

2139 [Laughter.]

2140 Mr. Doyle. I just couldn't see over there, Billy, you know.

2141 Mr. Long. Yeah, I know. I am a little guy.

2142 Well, welcome to this round of Double Jeopardy, and today  
2143 in Double Jeopardy, just like all Jeopardy shows you need to form  
2144 your answer in the form of a question.

2145 So if I were to show you Mike Pence, you would say, who is  
2146 the vice president. All right.

2147 Ms. Gonzalez, you are up--first round. Who is this?

2148 Ms. Gonzalez. Who is Mr. Boehner.

2149 Mr. Long. Who--kind of close--who is Speaker Boehner.

2150 Thank you. And there is \$45 for each correct question. I have  
2151 your--

2152 Ms. Gonzalez. All right.

2153 Mr. Long. --\$45 up here.

2154 [Laughter.]

2155 Mr. Long. And next we have Mr. Powell. Mr. Wheeler, would  
2156 you not bother the witness? I am trying to communicate.

2157 [Laughter.]

2158 Mr. Long. Next, we have Mr. Powell, and Mr. Powell, the  
2159 question--or the answer--you need to ask the question but the  
2160 answer is--

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2161 Mr. Powell. Who is Speaker Pelosi.

2162 Mr. Long. Very good. Very good. You get \$45.

2163 And Mr. Wheeler, you are adept at history, as you have proven  
2164 here today, and I know that you are a great historian so--

2165 Mr. Wheeler. I am terrified at the picture that is coming  
2166 up.

2167 Mr. Long. I have already given you your \$45 as you--as you  
2168 were trying to show Mr. Powell there. So I have great faith that  
2169 you know the answer to this, and so the question--I guess this  
2170 is answer. You are going to ask the question.

2171 Mr. Wheeler. Oh, wait a minute.

2172 Mr. Long. Correct. That is--

2173 Mr. Wheeler. That is John Sherman, is it not? No? Who  
2174 is it?

2175 Mr. Long. I will get my \$45 back.

2176 Mr. Wheeler. Okay.

2177 [Laughter.]

2178 Mr. Long. No. This is Henry--Speaker, excuse me. I am  
2179 doing Ms. Gonzalez's trick. It is who is Speaker Henry Thomas  
2180 Rainey. He was speaker of the House when Title II passed Congress  
2181 in 1934.

2182 Mr. Wheeler. A wise man.

2183 Mr. Long. And I think even Speaker Rainey would admit that

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2184 a bill passed should not be governed--that he passed should not  
2185 be governing this century's internet.

2186 So a question for Mr. Powell. Mr. Powell, if we all agree  
2187 that the 21st century Congress should establish basic net  
2188 neutrality rules, can't we solve the problem by putting them under  
2189 new authority and not use a set of rules passed by the very  
2190 distinguished Speaker Rainey?

2191 Mr. Powell. Most certainly. You know, it is a little  
2192 frustrating to hear people cite certain virtues of certain  
2193 elements of Title II, which certainly could be in some form of  
2194 the other written into anything new and organic, without  
2195 considering the millions of pages of things that aren't considered  
2196 that would also automatically apply.

2197 It is the difference between should you dump them out in  
2198 the regulations on a new and emerging service in the hope you  
2199 can whittle away at it to make it optimal, or should you write  
2200 from a clean sheet of paper up in order to tailor it to the  
2201 circumstances that are affecting you.

2202 I have always believed that the internet is so dynamic, so  
2203 different, so radically varied from the telephone system that  
2204 any thoughtful effort to write regulations with respect to its  
2205 oversight should be done from the ground up, not from the  
2206 historical mountain down.

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2207 And so there are no limits to Congress's power. It can have  
2208 rules strong. It can add enforcement strong and it can create  
2209 the sufficient amount of nimbleness to address unforeseen  
2210 situations.

2211 I think it is a red herring to suggest that only that body  
2212 of law affords that possibility of intended--

2213 Mr. Long. Let me--let me move on to another question for  
2214 you.

2215 Chairman Powell, we have seen a rise in the number of comments  
2216 filed in response to policymaking proceedings at the FCC since  
2217 your time as chairman. However, the underpinnings of the  
2218 Administrative Procedure Acts, legal--APA legal requirements  
2219 involving the FCC's treatment of those comments remained largely  
2220 the same as when you were the chairman.

2221 The APA requires agencies to consider all comments received  
2222 but does the APA require the FCC or administrative agency to verify  
2223 the identity of a commenter before it can be considered?

2224 And in the spirit of John Dingell, that is a yes or no answer.

2225 Mr. Powell. No, it does not require that.

2226 Mr. Long. Is the FCC under any legal obligation to adopt--to  
2227 adopt identity verification procedures? Yes or no.

2228 Mr. Powell. Not that I am aware of.

2229 Mr. Long. If the public had to supply--if the public had

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2230 to supply proof of identity before a comment could be considered  
2231 with the FCC, could the additional burdens, not to mention force  
2232 public be one of the beliefs impacted by the full and robust public  
2233 participation of policymaking proceedings that have enjoyed, and  
2234 I think that is probably it.

2235 Mr. Powell. Yes.

2236 Mr. Long. Okay. Now, in my final 15 seconds here of  
2237 Jeopardy, I would like to ask for unanimous consent to enter into  
2238 the record a report examining the influence of the Obama  
2239 administration over the Wheeler FCC's decision to go down the  
2240 path of Title II.

2241 Mr. Doyle. Without objection, so ordered.

2242 [The information follows:]

2243

2244 \*\*\*\*\*INSERT 10\*\*\*\*\*

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2245 Mr. Long. Yield back my one second. I did it.

2246 [Laughter.]

2247 Mr. Doyle. I thank the gentleman.

2248 The chair now recognizes the gentleman from Florida, Mr.  
2249 Soto, for five minutes.

2250 Mr. Soto. Thank you, Mr. Chair, and I think we are  
2251 developing a consensus that we do need to update the law a little  
2252 bit and I am glad to hear at least that much agreement in the  
2253 committee.

2254 You know, the Communications Act was from 1934 under Franklin  
2255 Delano Roosevelt. I won't--I don't have flash cards to show you  
2256 all but radio and telephone were the ones that were covered at  
2257 the time under Title II--common carrier--and in 1984 Congress  
2258 did an amazing thing.

2259 We actually added another chapter, Chapter 6, on cable.  
2260 That was 10 years before the worldwide web was even born. Bell  
2261 System was broke up at that time.

2262 Macintosh PCs and Dell computers were just launched. Mark  
2263 Zuckerberg was born that year. People used pagers and cell phones  
2264 the size of bricks, costing thousands of dollars. So I think  
2265 we all understand it is time, right. The internet is not a fad.

2266

2267 The FCC tried to legislate but that is always going to be

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2268 ephemeral. It is always going to be ping ponging back and forth  
2269 between administrations.

2270 And so I think the most constructive thing we could do with  
2271 our time is hear from everybody and develop a new chapter. It  
2272 is time for Congress to act. It is time to have a new chapter  
2273 covering the internet with new rules for the 21st century.

2274 But I reject this being used as a stall tactic. It is time  
2275 for a call for action for it rather than using this to just have  
2276 more of the same for the next two years in this Congress. But  
2277 we need rules of the road for not only ISPs but content providers  
2278 and others.

2279 There is a lot of folks that make up the internet and so  
2280 it would be great to hear, briefly, one priority from each of  
2281 you that--of what should be in that chapter. And keep your  
2282 remarks brief or I will, unfortunately, have to cut you off.

2283 We will start with Mr.--Chairman Wheeler.

2284 Mr. Wheeler. A referee on the field with the ability to  
2285 throw the flag for unjust and unreasonable activities.

2286 Mr. Soto. Okay. And Ms. Livier?

2287 Ms. Livier. I am going to piggy back on that and have that  
2288 folks need to be held accountable and know that there is going  
2289 to be some repercussions if they are not playing fairly.

2290 Mr. Soto. And Mr. Powell?

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2291 Mr. Powell. I would endorse the original four freedoms that  
2292 I sponsor with sufficient flexibility to address unknown  
2293 situations in the future.

2294 Mr. Soto. And Ms. Gonzalez?

2295 Ms. Gonzalez. I would support legislation that adopts the  
2296 full protections of the 2015 net neutrality order.

2297 Mr. Soto. And Mr. Dixon?

2298 Ms. Dixon. Ms. Dixon.

2299 Mr. Soto. Oh, sorry. Ms. Dixon. I am sorry. That says  
2300 Mr. Dixon in our witness list.

2301 Ms. Dixon. That is okay.

2302 Mr. Soto. Ms. Dixon. I am sorry about that.

2303 Ms. Dixon. We would support legislation that has  
2304 flexibility for enforcement. The most important thing is making  
2305 sure that there is a cop on the beat.

2306 Mr. Soto. And Mr. Franell?

2307 Mr. Franell. Thank you. I would--I would add that all  
2308 pieces of the internet be treated equally so, again, not this  
2309 myopic focus on the ISP but the whole internet so that the  
2310 experience of the end user is equal across the board.

2311 Thank you.

2312 Mr. Soto. Okay. Thank you for your input. That is what  
2313 we are really here for, to actually use this committee to hear

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2314 testimony and develop a new chapter, at least from my opinion,  
2315 and I appreciate all of your advice on that as we are looking  
2316 forward to working with everybody to develop actually a new  
2317 chapter for the internet for the 21st century.

2318 So thank you for that and I yield back.

2319 Mr. Doyle. The gentleman yields back.

2320 The chair now recognizes the gentleman from Ohio, Mr.  
2321 Johnson, for five minutes.

2322 Mr. Johnson. Thank you, Mr. Chairman. I appreciate it,  
2323 and congratulations on your--on your gavel. I look forward to  
2324 working with you this session.

2325 My colleague, Mr. Long, submitted for the record the 2016  
2326 Senate report entitled, "Regulating the Internet: How the White  
2327 House Bowled Over FCC Independence." This report documents how  
2328 FCC staff were working on a net neutrality order that did not  
2329 use Title II for consumer broadband right up until the moment  
2330 President Obama announced support for Title II.

2331 Chairman Wheeler, it is good to see you again.

2332 Mr. Wheeler. Sir.

2333 Mr. Johnson. Are you enjoying your retirement?

2334 Mr. Wheeler. It is a different life.

2335 Mr. Johnson. It is a different life. Good. Well, you have  
2336 stated publicly that Title II is the only legally sustainable

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2337 way to protect net neutrality.

2338 Putting aside for the moment the fact that the D.C. Circuit  
2339 gave the FCC a roadmap for adopting net neutrality without Title  
2340 II and your lead proposal for open internet regulations relied  
2341 on Title I, isn't it true that Congress can create new authority  
2342 to protect net neutrality? A simple yes or no would be helpful.

2343 Mr. Wheeler. Well, I need to also respond to the aspersions  
2344 that you have made about me and my decision making.

2345 Mr. Johnson. No, I didn't--I didn't make any aspersions.

2346 Mr. Wheeler. There have been--there have--

2347 Mr. Johnson. I need an answer to the question. We are not  
2348 going to debate.

2349 Mr. Wheeler. There have been--there were five hearings over  
2350 nine days held by this body -- on this issue and did not come  
2351 up--

2352 Mr. Johnson. So isn't it true that Congress can create new  
2353 authority to protect net neutrality?

2354 Mr. Wheeler. The Congress always has the ability to do  
2355 whatever they want. The question is what are they going to do--

2356 Mr. Johnson. Okay. Good. I appreciate that. That is  
2357 good for now. We are done. We are done.

2358 Mr. Wheeler. What is the quality of the --

2359 Mr. Johnson. No, we are done. We are done, Mr. Wheeler.

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2360 We are done. I have asked my question to you so now we are done.

2361 Mr. Franell, your written testimony states that since the  
2362 repeal of net neutrality investors have been much more willing  
2363 and perhaps eager to invest in rural telecommunications.

2364 As I represent a rural district in eastern and southeastern  
2365 Ohio, this is encouraging to hear. So do you think the broadband  
2366 market is more competitive or less competitive than it was four  
2367 years ago?

2368 Mr. Franell. I think today, I think, we are seeing--and  
2369 I can speak only to my area so not the whole world broadband market  
2370 but the Pacific Northwest--I see more competition, more robust  
2371 competition, more effective competition.

2372 And I am part of a group, the Northwest Telecommunications  
2373 Association, which is rural competitive carriers so nonsubsidized  
2374 non-incumbents, and the work that is being done by them, competing  
2375 in markets where, again, the incumbents have failed to meet the  
2376 needs of rural markets.

2377 I am seeing more competition now than I was, and it is not  
2378 the last four years. Again, you know, the cash has only really  
2379 freed up over the last, you know, 12 to 18 months. So that's  
2380 when we have really seen the market, at least in the Pacific  
2381 Northwest, start to really lift again.

2382 Mr. Johnson. Okay. Do you have any suggestions for the

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2383 committee on how we can continue to improve the ability of ISPs  
2384 to provide broadband internet access to rural areas?

2385 Mr. Franell. So--wow, that is a big question and we have  
2386 a minute left. So, you know, I would say, first of all, find  
2387 ways to encourage competition. Find ways to get the middle mile  
2388 out to these rural areas and then the ISPs like mine will take  
2389 it from there. It is getting that long haul out into these rural  
2390 markets. I mean, it is long distance is what we are talking about.

2391 Certainty is one of the big things, and so I love the idea  
2392 of legislating this instead of being regulatory.

2393 Mr. Johnson. Right.

2394 Mr. Franell. So if it is regulatory it just--every four  
2395 years it seems like it changes and that is where the uncertainty  
2396 comes in because, you know, we are talking about infrastructure  
2397 that we are looking at, you know, a five- or ten-year ROI  
2398 sometimes.

2399 And so to invest that money and not know that I am going  
2400 to have certainty--regulatory certainty, that I am going to be  
2401 able to actually pay the bills for that is really difficult.

2402 So this is really encouraging to me that we are talking about  
2403 legislating to solve this problem. So it's not just a regulatory  
2404 thing that changes when the chair of the FCC changes. So I hope  
2405 that answers that.

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2406 Mr. Johnson. I appreciate it.

2407 Chairman Powell, what has been the impact on consumers over  
2408 the past year of the FCC's restoring the internet freedom order?

2409 Mr. Powell. Well, I think if anyone fairly goes home and  
2410 uses their internet they won't notice any material difference  
2411 from any other time they use their internet other than perhaps  
2412 to notice that it is a lot faster than it was two or three, four  
2413 years ago.

2414 I would also highlight the fact that both the wireless  
2415 industry and the cable industry have announced major monumental  
2416 investments in new generation of networks. With wireless, you  
2417 are hearing about 5G for the first time and new deployment  
2418 announcements were made in 2018 and 2019, and at CES this year  
2419 the cable industry announced an initiative to move to 10 gigabits  
2420 per second into the home over the course of the next several years,  
2421 which is a tenfold increase of any speed available today.

2422 Mr. Johnson. Okay. Well, thank you very much.

2423 Mr. Chairman, I yield back.

2424 Mr. Doyle. The gentleman's time has expired. He yields  
2425 back.

2426 The chair now recognizes the gentleman from Arizona, Mr.  
2427 O'Halleran, for five minutes.

2428 Mr. O'Halleran. Thank you, Mr. Chair. I thank you, the

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2429 witnesses, today for discussing this issue that I have heard from  
2430 so many Arizonans about on a continual basis--an issue that has  
2431 tremendous ramifications for economic opportunity and investment  
2432 across rural America.

2433 In my district the American people have spoken loudly and  
2434 passionately about net neutrality. They have spoken out clearly  
2435 and strong, supportive in free and open internet where winners  
2436 and losers aren't predetermined and where practices like blocking  
2437 and throttling have no place.

2438 I, too, support those principles and know how critical they  
2439 are to ensuring every entrepreneur, every small business, every  
2440 school and town across rural Arizona and America has a fair shot  
2441 at success in competing in today's and tomorrow's global  
2442 marketplace.

2443 Hearing from my colleagues here today and across the aisle  
2444 as well it seems clear to me that we stand in broader agreement  
2445 than what is realized. We agree the internet must be--remain  
2446 open--that the rights of consumers be protected and that  
2447 innovation and entrepreneurship can thrive.

2448 As has been stated, the question now before us comes down  
2449 to what we can do about it. Rural America needs a permanent  
2450 enforceable solution. We can't get the investments we need as  
2451 long as the courts, other states, and this body all fight over

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2452 a patchwork of rules.

2453 And so I think that Mr. Soto here took some of my question  
2454 away but I am going to ask Mr. Wheeler and--Chairman Wheeler and  
2455 Chairman Powell the same question and we have a couple of minutes  
2456 to get this done.

2457 If we had to waive the many things under Title II, why can't  
2458 Congress write a new title? So I want to get right to the question  
2459 that was proposed by a couple people up here.

2460 In your experience, how do we stop the creation of a new  
2461 title from becoming stalled and how do we prioritize or identify  
2462 the pitfalls that we are going to be going through if we go down  
2463 that course?

2464 Mr. Wheeler. That is a great question, Congressman. Thank  
2465 you.

2466 First of all, we have to agree on what Title II means. To  
2467 my friend, Title II is a list of awfuls. To my friend, Jessica,  
2468 it is a list of positives.

2469 And we have got to figure out how to do this. On this panel  
2470 I might be unique because when I was running the Wireless Industry  
2471 Association, my members came to me and said, we want you to go  
2472 to Congress and have us made common carriers, for precisely the  
2473 reason that you said. We need uniformity of rules.

2474 And so this body passed legislation, created Section 332

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2475 of the Communications Act, which made wireless carriers, at their  
2476 request, into common carriers. That was my a-ha moment as I was  
2477 thinking what do we do on an open internet rule, because after  
2478 that happened, two things.

2479 Well, one thing happened was that the rules were modernized.  
2480 We went through and did the same kind of forbearance, okay.  
2481 You did.

2482 And secondly, there were hundreds of billions of dollars  
2483 that were spent after that on the basis of being a common carrier  
2484 under Title II and having that kind of certainty, which the  
2485 industry sought.

2486 So I think you have put your finger on the key driving force,  
2487 which is how do we have a national program and how does that  
2488 national program adhere to the kind of concepts that have always  
2489 been established in protections of Title II.

2490 Mr. O'Halleran. I want to give Mr. Powell or Chairman  
2491 Powell--

2492 Mr. Powell. I would agree with much of what Mr. Wheeler  
2493 said with a couple of really critical exceptions.

2494 Number one, I would note that he said Congress established  
2495 a section making a public determination as to what the parameters  
2496 of regulation for the wireless industry, not the FCC creating  
2497 it itself out of a patchwork of laws available to it.

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2498           Secondly, while wireless telephone service was regulated  
2499 as a common carrier, wireless broadband service was not, and the  
2500 thing that has driven the explosive growth of wireless in the  
2501 last few years is with smart phones, apps, and broadband  
2502 connectivity, ask your kids how many telephone calls they make  
2503 with their Apple iPhone and you will see the difference.

2504           So I wouldn't facilely assume that Title II is a competition  
2505 empowering a regime. In fact, I think it is the regime favored  
2506 by monopolists.

2507           Mr. Wheeler. And the reason why nobody wanted--

2508           Mr. O'Halleran. I have to cut you short--

2509           Mr. Wheeler. They didn't know--

2510           Mr. O'Halleran. --because I got my four seconds to say the  
2511 American people, our citizens, have the right to freedom of  
2512 speech. They don't have that right if we do not allow them to  
2513 be--have free and open access to these systems.

2514           Mr. Wheeler. Yes, sir.

2515           Mr. O'Halleran. They have a right to be heard.

2516           Mr. Wheeler. Yes, sir.

2517           Mr. Doyle. The gentleman yields back.

2518           The chair now recognizes Mr. Walberg for five minutes.

2519           Mr. Walberg. Thank you, Mr. Chairman, and I'd like to take  
2520 a point of personal privilege, first of all, to express my love

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2521 and care for John and Debbie Dingell.

2522 John really was the one who gave me the enthusiasm about  
2523 fighting to get on this committee and, ultimately, on this  
2524 subcommittee when he said--when I asked, as maybe some of you  
2525 did, what the jurisdiction was of this committee and he pointed  
2526 to a globe and said, it is the entire world.

2527 And Debbie and I served together well and respect that and  
2528 so I appreciate your opening comments about supporting and giving  
2529 prayers to John and Debbie at this time.

2530 Also, congratulations to you as chairman of this  
2531 subcommittee and also to my good friend and the border protector  
2532 leader, Republican Leader Latta. I am happy to serve on this  
2533 subcommittee finally in Congress.

2534 And in that spirit of bipartisanship, I hope today's hearing  
2535 provides a good foundation for finding a bipartisan consensus  
2536 on net neutrality legislation that, at the very least, ratchets  
2537 down.

2538 Mr. Franell, I identify with you a bit. Having had a  
2539 firebombing threat, and I take that personally and the FBI,  
2540 thankfully, did as well and took action relative to that.

2541 My position, which at this time I didn't serve on this  
2542 subcommittee, I wasn't involved in that debate. It is an  
2543 emotional issue and I hope we all can ratchet it down.

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2544 I stand ready and willing to find a compromise that protects  
2545 consumers from anti-competitive harms while not sacrificing  
2546 longstanding bipartisan policies that should and could promote  
2547 broadband expansion in the rural parts of my district in southern  
2548 Michigan, something that remains a challenge today and which I  
2549 hope we address in this Congress.

2550 So, Mr. Franell, when it comes down to your business  
2551 decisions, which probably mirror a lot of what goes on in my  
2552 district as well like investing in expanded broadband access and  
2553 upgrading networks to 1G and soon 10G speeds, does the content  
2554 preference of a handful of people drive those investment  
2555 decisions? So it is broader than that?

2556 Mr. Franell. It is broader than that, and, if I may, I don't  
2557 want to lose--please, don't lose sight of the fact that there  
2558 are still large swaths of the United States that are under served  
2559 or unserved and so any legislation or regulation that we put in  
2560 place together we have to keep in mind the fact that whatever  
2561 we do should not impede our ability to expand into those areas  
2562 and take care of those folks.

2563 And if I could give one quick--

2564 Mr. Walberg. So is there any reason for you to block,  
2565 throttle, or--

2566 Mr. Franell. No. Heavens, no. No. Again, every dollar

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2567 I make I spend on infrastructure. We responded to an RFP to  
2568 provide broadband to every address in Wheeler County, Oregon.

2569 Wheeler County is 1,750 square miles. The state of Rhode  
2570 Island is 1,214. So it is larger by a chunk than the state of  
2571 Rhode Island. Rhode Island has over a million people.

2572 Wheeler County has about 1,400 and so but those folks still  
2573 live, work, contribute and trying to access them and provide  
2574 broadband to them is only possible if I don't have barriers that  
2575 are unnecessary hurdles that I have to jump over. And we can  
2576 provide broadband to them. We responded to the RFP. We are  
2577 hopeful. So there is hope for that, but--

2578 Mr. Walberg. Okay. I hope--I appreciate that and that's  
2579 based upon what the customer wants--

2580 Mr. Franell. Yes.

2581 Mr. Walberg. --what they need and what you are able to give  
2582 and based upon some --

2583 Mr. Franell. Absolutely. I have no incentive to throttle,  
2584 block, or--that is not the business we are in.

2585 Mr. Walberg. Thank you.

2586 Mr. Powell, when you talk about upgrading your networks--the  
2587 networks to 1G speeds and there are consumer demand for faster  
2588 internet, that is mostly driven by evolving more data-demanding  
2589 application services, websites, like video applications,

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2590 correct?

2591 Mr. Powell. Yes, sir. It is.

2592 Mr. Walberg. And as the internet matures, is it fair to  
2593 say that your member companies are going to need to continue  
2594 innovating and finding ways to manage their networks in order  
2595 to ensure consumers get the lawful content that they want and  
2596 that they can access that content without a noticeable delay?

2597 Mr. Powell. Yes, and your first question, just by way of  
2598 a data point, according to Cisco, by 2021 82 percent of all  
2599 internet traffic will be video. That is a massive  
2600 bandwidth--intensive set of applications and we have to  
2601 dramatically increase network capacity.

2602 Mr. Walberg. And that involves a lot of flexibility too,  
2603 doesn't it?

2604 Mr. Powell. Absolutely.

2605 Mr. Walberg. Can you reasonably manage your network if  
2606 broadband is codified as an information service under Title I  
2607 of the Communications Act and is there adequate enforcement to  
2608 make sure you are not gaming this exception?

2609 Mr. Powell. We believe so.

2610 Mr. Walberg. So what you are essentially telling me today  
2611 is the FCC can protect consumers from blocking, throttling, and  
2612 paid prioritization and both ISPs and edge providers will still

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2613 be able to manage their networks, innovate, and make up dates  
2614 to keep up with consumers if the FCC is given Title 1 authority  
2615 with robust enforcement?

2616 Mr. Powell. Yes, and I would add the fact that under Title  
2617 1 you also have the additional enforcement capabilities of the  
2618 Federal Trade Commission, which remain viable under that regime  
2619 but would not be viable under Title II.

2620 Mr. Walberg. Okay. Thank you. I yield back.

2621 Mr. Doyle. The gentleman yields back.

2622 The chair now recognizes my friend and colleague from  
2623 California, Ms. Eshoo, for five minutes.

2624 Ms. Eshoo. Thank you, Mr. Chairman.

2625 This is an important hearing and I want to thank each one  
2626 of the witnesses.

2627 Ms. Dixon, I am so proud to represent Mozilla. They are  
2628 headquartered in my congressional district and you gave excellent  
2629 testimony, especially about one of the most important things that  
2630 happens in Silicon Valley and that is new ideas being born every  
2631 single day.

2632 And if they don't have the tools to do that--we represent  
2633 the innovation capital of our country. So your testimony is very  
2634 powerful.

2635 To Ms. Livier, you just killed it. You really did. I will

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2636 tell you, you are--your writing is powerful. Your artistry is  
2637 powerful. Your voice is powerful, and amen.

2638 Ms. Livier. Thank you.

2639 Ms. Eshoo. I don't know how you do all the things that you  
2640 are doing--an actress, a writer, a UCLA doctoral student. My  
2641 goodness.

2642 Jessica, thank you. You are always outstanding and you  
2643 represent a great organization.

2644 Mr. Franell, you are a good man and you are in the struggle  
2645 of doing something that really needs to be done and that is when  
2646 we have one-third of the American people who either do--are either  
2647 under served or not served at all, you are a hero in my book.

2648 You have a great--he is not here so he is not going to hear  
2649 me--your congressman is a terrific representative.

2650 Mr. Franell. Thank you.

2651 Ms. Eshoo. To Michael Powell, I haven't seen you in a long  
2652 time. It is great to see you. I wish we agreed with each other.  
2653 We don't.

2654 [Laughter.]

2655 Ms. Eshoo. But our friendship is going to survive net  
2656 neutrality and to--and both of the former chairmen, you are both  
2657 really distinguished people who have done extraordinary work in  
2658 the public sector that isn't always appreciated.

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2659 I haven't changed my mind, and this is not a bragging point  
2660 but I am proud of where I am and it is an important debate.

2661 Everyone says that they love the internet--how important it is.

2662 Where were so many people when two years ago this last month  
2663 when privacy--ripping off private--ripping privacy off of the  
2664 internet went through here like a bolt of lightning? Who came  
2665 in? Were you here, Michael? You weren't here. Were any of the  
2666 people that you represent here? No.

2667 You know, this Title II has just been beaten to a pulp.  
2668 I want to read out what applies. You decided, in the audience,  
2669 and maybe the American people that are listening in how really  
2670 menacing these provisions are.

2671 It prohibits unjust and unreasonable discrimination in  
2672 charges, practices, and services. So are we for discrimination?

2673 You know, a lot of references have been made to old laws. You  
2674 know what the oldest one is? The Constitution. You know, that  
2675 has got so much dust on it maybe we should throw that one out,  
2676 too.

2677 Common carriers that violate provisions of Title II are  
2678 liable for full damages and attorneys' fees FCC can recover or  
2679 order on their behalf. Carriers are liable for actions of agents  
2680 when acting within the scope of their employment. What is so  
2681 horrible about that?



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2682 Provides process for FCC to receive consumer complaints and  
2683 assist consumers in working out the issue with the carrier. Oh,  
2684 my God. God help us if we help people with their consumer  
2685 complaints.

2686 Protect privacy of consumer information and data--boy, that  
2687 is really darkly menacing, isn't it? Is it just--I am telling  
2688 you, the sky is caving in.

2689 Ensures fair access to poles and conduits--that is a  
2690 showstopper, isn't it? Is your heart stopping? Ensures access  
2691 to telecommunication services for people with disabilities--you  
2692 know, we can't have that. I mean, that is--that is just off the  
2693 charts.

2694 Applies certain universal service principles but does not  
2695 require Universal Service Fund contributions. You know where  
2696 the whole thing rests? It rests around just and reasonable  
2697 charges and practices.

2698 It is money. It is money. That is where the whole debate  
2699 rests, because on the rest of it no one can hold their head up.

2700 Just as Mr. Franell said, absolutely not--I don't block and  
2701 prioritization and all of that.

2702 And, you know, the industry has really behaved themselves  
2703 for a while until the court decides what it is going to do.

2704 But you know what? The worst example is public safety.

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2705 You know, I mean, it just, like, ripped the veil off of this whole  
2706 thing. Firefighters, and someone at the other end saying, you  
2707 know what, if you want more service we will charge you more and  
2708 you can get it, and people's lives are at stake.

2709 I mean, come on. So, you know, to say that these  
2710 provisions--these are the--what I just read are what apply.  
2711 There are--the majority of Title II there is forbearance.

2712 So if you don't believe--

2713 Mr. Doyle. The gentlelady's time has expired.

2714 Ms. Eshoo. Yes. You don't believe in what is forborne and  
2715 you don't accept this. I don't think these are menacing things  
2716 and I think that they are worth fighting for. I really do, and  
2717 how this is going to be settled I don't know. But the internet  
2718 is an open free accessible internet. I think it is consistent  
2719 with our Constitution and the values of the American people.

2720 And I thank the chairman for his forbearance.

2721 [Laughter.]

2722 Mr. Doyle. The gentlelady's time has long expired.

2723 The chair now recognizes the gentleman, Mr. Gianforte. You  
2724 are recognized for five minutes.

2725 Mr. Gianforte. From Montana.

2726 Mr. Doyle. From Montana. Thank you, sir.

2727 Mr. Gianforte. Yes. Thank you, Mr. Chairman, and thank

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2728 you for the panel for being here today. I appreciate this  
2729 discussion.

2730 The internet as we know it came to be around 1995 and for  
2731 20 years it was open and free. It ushered in innovation,  
2732 transformed our economy, leading to a new high-tech sector and  
2733 good-paying jobs. That open and free internet gave us Amazon,  
2734 Facebook, Google, and the company my wife and I started in our  
2735 home in Bozeman, Montana.

2736 We had an idea that the internet might actually make it  
2737 possible for folks to work anywhere--that the internet might  
2738 actually remove geography as a constraint. Our company grew from  
2739 that one little room to one of Montana's largest employers. We  
2740 have 1,100 employees with an average Montana wage of almost  
2741 \$90,000 a year.

2742 Our business is just one example of how a free and open  
2743 internet created more high-paying American jobs and increased  
2744 opportunity and greater prosperity.

2745 In 2015, however, the Obama administration throttled the  
2746 free and open internet and with unnecessary and unilateral  
2747 regulations. The red tape was a solution looking for a problem.

2748

2749 The internet is a lifeline for our rural communities. It  
2750 contributes to our rural economies. It ties together high-tech

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2751 and agriculture, education, and health care. One in three  
2752 Montanans lacks access to broadband.

2753 Unfortunately, these heavy-handed regulatory approach has  
2754 been a challenge for small telecommunications providers in  
2755 our--in my district. Even the smallest federal mandate could  
2756 impact our rural providers and their ability to extend their  
2757 service to new communities, further exacerbating the digital  
2758 divide that we experience in this country.

2759 As I look around this committee today and all of the  
2760 testimony, I think we have a lot of agreement. I don't see anyone  
2761 who opposes opening the doors of opportunity to Americans in rural  
2762 communities and I don't know anyone who wants to discourage the  
2763 expansion of broadband into more communities. And I don't know  
2764 of anyone here who wants providers to block or throttle consumers.

2765 I think we all agree on these issues.

2766 But the internet of 2019 is not the rotary phone of 1934  
2767 and it shouldn't be treated as such with outdated heavy-handed  
2768 regulations. I came to Washington to solve problems and that  
2769 is what Montanans expect.

2770 The committee should work on a permanent legislative fix  
2771 to promote a free and open internet with a light touch regulatory  
2772 framework. Ultimately, Congress can't and shouldn't turn over  
2773 authority of unelected bureaucrats who can change how they treat

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2774 the internet from administration to administration.

2775 The internet has changed our economy in this country. It  
2776 has created jobs, provided better quality of life for many  
2777 Americans. We must be cautious about how we approach this, and  
2778 I look forward to working with my colleagues on the other side  
2779 of the aisle to find a solution that works for both sides.

2780 So in the little bit of time I have left, Mr. Franell, I  
2781 would like to direct a couple of questions to you. You testified  
2782 earlier that these Obama--era regulations cut off access to  
2783 capital for your business.

2784 Is that correct?

2785 Mr. Franell. Yes, sir.

2786 Mr. Gianforte. I would like to have you just highlight for  
2787 us, if you would, when a business like yours that is providing  
2788 broadband to rural communities does not have access to capital,  
2789 what is the impact?

2790 Mr. Franell. Well, for instance, now that capital is freed  
2791 up--and I will answer it because now we have capital--there are  
2792 three rural communities totaling about 800 or 900 homes to our  
2793 east and they are remote.

2794 They currently are all, by any definition, under served.

2795 Our plans now--and we have the capital to do it--are to build  
2796 fiber to the home in those three communities with no government

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2797 subsidies. So that will transform those communities in really  
2798 dramatic ways.

2799 I mentioned the Wheeler County RFP that we responded to.  
2800 With capital, we have a plan to provide robust--at least 25/3  
2801 but in many cases 100 meg service to every address in Wheeler  
2802 County and by any definition that is a frontier county, one of  
2803 the most difficult to get to.

2804 So without that capital, I can't do that. All I can do is  
2805 maintain what I have got.

2806 Mr. Gianforte. In these communities are you providing  
2807 broadband to schools?

2808 Mr. Franell. We will provide broadband to--yes, it is not  
2809 just residential. We do anchor institutions, residential, and  
2810 commercial.

2811 Mr. Gianforte. And do you provide broadband to critical  
2812 access hospitals in these communities?

2813 Mr. Franell. We do, yes.

2814 Mr. Gianforte. And without capital you are unable to do  
2815 that?

2816 Mr. Franell. That is correct.

2817 Mr. Gianforte. Okay. I thank you for your testimony and  
2818 I yield back.

2819 Mr. Franell. Thank you.

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2820 Mr. Doyle. The gentleman yields back.

2821 The chair now recognizes the gentleman from North Carolina,  
2822 Mr. Butterfield, for five minutes.

2823 Mr. Butterfield. Thank you very much, Mr. Chairman, and  
2824 thank you to all of the witnesses. I am told that the hour is  
2825 late and we are going to be having to rush to the floor in just  
2826 a few minutes and so I am going to try to get through this as  
2827 quickly as I can.

2828 And I am surprised to know that so many of my colleagues  
2829 also represent rural communities and that is good to know because  
2830 I too represent a rural community in eastern North Carolina.  
2831 But the word last mile has not been expressly mentioned here in  
2832 this hearing and so I want to put it in--on the table and make  
2833 sure that we are very clear.

2834 We have got to continue to work on the last mile. We have  
2835 got to encourage investment. I certainly agree with that and  
2836 internet access in rural communities is of paramount importance.

2837 Too many citizens are without and they are being  
2838 disadvantaged. So let me move to Chairman Powell.

2839 Chairman, you offer clear support for net neutrality rules  
2840 including no blocking, no throttling, no paid prioritization.

2841 We certainly thank you for that, and this tells me that providers  
2842 are taking the net neutrality protection very seriously.

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2843 But as you know, net neutrality rules--the 2015 rules--are  
2844 being challenged in the courts and they are working their way  
2845 through the courts. And so my--we will have a decision, I  
2846 suppose, very soon.

2847 Why are you calling on Congress to step in, considering that  
2848 these 2015 rules are being litigated? Why should Congress step  
2849 in at this point?

2850 Mr. Powell. Well, thank you for the question. I think--I  
2851 think that is a good explanation of why because this is the fourth  
2852 time these rules have gone to court. Each court cycle is there  
2853 years in length. Whatever happens--

2854 Mr. Butterfield. I am a recovering judge now.

2855 [Laughter.]

2856 Mr. Powell. It was good to you.

2857 Mr. Butterfield. Go ahead.

2858 Mr. Powell. You know, even if we get a decision this summer,  
2859 there is going to be appeals to the U.S. Supreme Court,  
2860 potentially, no matter the result comes out. That is a whole  
2861 another year or so before you reach a decision.

2862 If the court reaches a mixed decision and part of it is upheld  
2863 and part of it is remand, there's a whole another FCC regulatory  
2864 process that could take another year before we even get a final  
2865 compilation of those rules.

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2866           There comes a point at which it is obvious that the problem  
2867 the commission struggles with is the absence of clear direction  
2868 from the people's representatives, and that would bring finality  
2869 and moot the court jurisdictional fight and that is why we call  
2870 on you.

2871           Mr. Butterfield. What regulatory framework will best  
2872 assist in expanding broadband access in rural communities like  
2873 I represent?

2874           Mr. Powell. One that is very, very favorable to  
2875 incentivizing in investment of private capital because the  
2876 fundamental problem of a rural community is it is inherently  
2877 uneconomic to serve.

2878           That is, there is either not enough revenue to cover the  
2879 cost of deployment or the cost of deployment is too high, based  
2880 on the amount of revenue available.

2881           Anything that might raise those costs significantly only  
2882 further impedes the ability to meet those remote areas.

2883           Mr. Butterfield. Now, you mentioned the need for stronger  
2884 protections for consumers and providers. Do you support Congress  
2885 creating these new protections and what types of proposals would  
2886 you consider to be strong?

2887           Mr. Powell. I do wholeheartedly. In many ways it is odd  
2888 for me to hear people criticizing the bright line rules. I have

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2889 watched this issue for 14 years. The movement to bright line  
2890 rules was proposed by the most virulent advocates of net  
2891 neutrality in order to bring certainty and clarity to what is  
2892 covered.

2893 We have evolved with the debate and we fully endorse those  
2894 rules that the commission adopted in 2015, ones that were adopted  
2895 in 2010, and we are perfectly willing to work with you on any  
2896 new set of rules you might consider.

2897 Mr. Butterfield. Thank you.

2898 Finally, Ms. Gonzalez, thank you for highlighting the  
2899 disparities that exist in traditional media for minority  
2900 communities. I share those concerns. Can you tell me the effect  
2901 that net neutrality violations like blocking and throttling might  
2902 have on minority communities? And you have a minute to do that.

2903 Ms. Gonzalez. Yes, Congressman. Thank you for the  
2904 question.

2905 You know, I think traditionally we have not had a voice in  
2906 the media in the same way that white folks have. The open internet  
2907 has democratized not only our access to find an audience, to create  
2908 small businesses, to make sure that we are able to tell our own  
2909 stories in our own words.

2910 And so if there is blocking or throttling that would lessen  
2911 our access to having our stories told in the American fabric that

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2912 has otherwise been defined by mainstream media gatekeepers.

2913 Mr. Butterfield. So are you saying that it would  
2914 disproportionately affect minority communities or--

2915 Ms. Gonzalez. I would say yes. Yes, because we have had  
2916 less access to mainstream media and the access to the internet  
2917 to tell our stories has been critically important to change the  
2918 narrative and invite people to understand who we are.

2919 Mr. Butterfield. Thank you for your passion. I support you  
2920 completely.

2921 Ms. Gonzalez. Thank you, Congressman.

2922 Mr. Butterfield. Thank you, Mr. Chairman. I yield back  
2923 three seconds.

2924 Mr. Doyle. The gentleman yields back.

2925 The chair now recognizes the gentleman from Texas, Mr.  
2926 Flores, for five minutes.

2927 Mr. Flores. Thank you, Mr. Chairman. I appreciate this  
2928 hearing and appreciate the witnesses for joining us today.

2929 I think I am picking up a consensus that Congress needs to  
2930 act, that it needs to develop a new section to prohibit throttling,  
2931 blocking, and discrimination in the internet and I think that  
2932 we can find a way to do that and do it in a way that does--keeps  
2933 the FCC out of the litigation box, if you will.

2934 That said, my concern about the way Title X has been attempted

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2935 to be used in the past is that it doesn't have anything to do  
2936 with net neutrality and so it is not an effective tool for that  
2937 purpose. That is the reason Congress needs to act.

2938 So let us have some questions about Title II just so we can  
2939 get an idea what could go wrong if you had another FCC that wanted  
2940 to try to go further than even the 2015 FCC.

2941 So, Chairman Powell, could you confirm whether Title II could  
2942 lead to the following? The government setting prices.

2943 Mr. Powell. Yes, that is possible.

2944 Mr. Flores. The government determining what services ISPs  
2945 can offer consumers and whether and how they are bundled.

2946 Mr. Powell. That is also possible.

2947 Mr. Flores. That the government could be directing where  
2948 ISPs put their investments and how much they should earn.

2949 Mr. Powell. Yes.

2950 Mr. Flores. Okay. That the government can dictate how  
2951 parts of the internet should be interconnected and on what terms?

2952 Mr. Powell. Most definitely.

2953 Mr. Flores. Okay. And then the government requiring ISPs  
2954 to share their networks that they built with private capital?

2955 Mr. Powell. Yes.

2956 Mr. Flores. Okay. And then lastly, and this is a little  
2957 bit of a wild card, could it be used--we are all excited about

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2958 potential of 5G and I know we are talking wireless versus wired,  
2959 but is there any way that Title II could be used to inhibit the  
2960 effective and efficient role out of 5G?

2961 Mr. Powell. Well, as we said, if 5G is a telecommunication  
2962 service not only the voice component of it but the data component  
2963 of it, then it would--it would suffer from the same restrictions  
2964 that we have talked about all afternoon.

2965 Mr. Flores. I look at 5G as a dynamic information service  
2966 and communications is only a small part of it.

2967 Mr. Franell, like you, I represent several rural counties  
2968 in Texas and I am very concerned about trying to make sure that  
2969 those rural counties have the opportunity to move to the dynamic  
2970 side of the digital divide.

2971 And you discuss in your testimony how every dollar that goes  
2972 to regulation is a dollar that doesn't go into new broadband  
2973 infrastructure. Don't these kinds of onerous regulations in  
2974 Title II crowd out competition and force smaller operators out  
2975 of business?

2976 Mr. Franell. Yes. I think--and so I have--I have specific  
2977 concerns about Title II, and if you will bear with me let me list  
2978 them real quick.

2979 Mr. Flores. Be brief.

2980 Mr. Franell. Real quick.

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2981 Mr. Flores. Okay.

2982 Mr. Franell. First one is determining price, and the cost  
2983 to build the infrastructure and deliver broadband varies wildly  
2984 based on location.

2985 Mr. Flores. Correct.

2986 Mr. Franell. And so price--determining price can be  
2987 catastrophic for rural broadband. The second thing is taxation  
2988 and fees on broadband, and if you were to apply state Universal  
2989 Service Fund of Oregon, federal Universal Service Fund, and then  
2990 franchise fees to broadband because applying Title II and removing  
2991 that exemption you could end up with a 20 to 30 percent increase  
2992 in end user broadband costs.

2993 Mr. Flores. Okay.

2994 Mr. Franell. With no productive outcome.

2995 Mr. Flores. That is another--

2996 Mr. Franell. Those are the things that concern me about  
2997 Title II.

2998 Mr. Flores. Okay. Okay. That is the reason Congress  
2999 needs to come up with a new title to deal with a new area of  
3000 technology.

3001 My friend, Mr. Shimkus, ran out of time and I heard Chairman  
3002 Wheeler and Chairman Powell answer this question that he had about  
3003 prioritizing internet traffic to protect our borders.

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3004 I just wanted to see if the rest of the panel agreed.

3005 Should--Ms. Dixon, should internet traffic be prioritized to  
3006 protect our border?

3007 Ms. Dixon. We already have an exception in the 2015 order  
3008 with respect to public safety.

3009 Mr. Flores. So that would be a yes. Okay.

3010 Ms. Livier?

3011 Ms. Livier. I echo her response.

3012 Mr. Flores. Okay. Mr. Franell?

3013 Mr. Franell. Yes.

3014 Mr. Flores. Okay. Ms. Gonzalez?

3015 Ms. Gonzalez. No.

3016 Mr. Flores. Okay. If not, why? Quickly.

3017 Ms. Gonzalez. I don't want to construct any more walls on  
3018 our border.

3019 Mr. Flores. Okay.

3020 Ms. Gonzalez. I just am morally opposed to that.

3021 Mr. Flores. Gotcha. Okay.

3022 And lastly, Mr. Chairman, I would like to--there was a  
3023 comment made in the testimony both verbal and written that says  
3024 that--that says to the extent that Mozilla would not exist today  
3025 without net neutrality. I want to give you some dates, for the  
3026 record.

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3027 The first version of Phoenix, which ultimately became  
3028 Firefox, rolled out in 2002. Firefox 1.0 rolled out in 2004.

3029 The FCC open internet rule was in effect--was rolled out in  
3030 February of 2015. It became effective in June of 2015. So  
3031 Mozilla prospered before net neutrality was in place.

3032 Thank you. I yield back.

3033 Mr. Doyle. Thank you. The gentleman yields back.

3034 The chair now recognizes the vice chair of our subcommittee,  
3035 Ms. Matsui.

3036 Ms. Matsui. Thank you, Mr. Chairman, and welcome to all  
3037 the witnesses. I know it has been a long time sitting there.

3038 I know many issues have been covered today and I--one of  
3039 the issues that I want to concern ourselves with as we continue  
3040 to grapple with network security in the current next-generation  
3041 networks and the issue has even gained more notoriety because  
3042 of the potential intelligence threats posed by Huawei and ZTE.

3043 Now, these companies have provided access to inexpensive  
3044 and readily available networking equipment to carriers in the  
3045 U.S. and around the world, and as many of you know, the FCC is  
3046 currently considering how to balance its universal service  
3047 mandate with a need to ensure our communication networks are  
3048 secured from the threat of foreign actors.

3049 Now, in the larger conversation surrounding net neutrality,

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3050 broadband expansion, and next-generation networks, how should  
3051 we balance these security concerns?

3052 Now, I expect the chairman would have some things to say  
3053 about it but I was wondering if anyone else on the panel wanted  
3054 to start.

3055 Okay. Mr.--Chairman Powell, would you like to say  
3056 something?

3057 Mr. Powell. Yes, Congresswoman. Thank you.

3058 We have to put front and center concerns--increasing  
3059 concerns about supply chain security and it needs to be designed  
3060 from the beginning up. You know, Congress has addressed supply  
3061 chain issues recently in the National Defense Authorization Act,  
3062 which we support, and DHS recently launched a supply chain risk  
3063 management effort, which NCTA members actively participate in.

3064 So we think this is an extraordinarily important activity  
3065 and we remain committed and highly focused on these issues.

3066 Ms. Matsui. Okay.

3067 Chairman Wheeler?

3068 Mr. Wheeler. History is clear that networks are attack  
3069 vectors and we should expect that the network of the 21st century  
3070 is an attack vector for cyberattacks.

3071 The question is whether we are going to sit back and play  
3072 whack-a-mole in response to those attacks or whether we are going

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3073 to get in front of them.

3074 Ms. Matsui. Right.

3075 Mr. Wheeler. The--Mike just talked about the supply chain.

3076 As we left the commission we put out a report on the importance  
3077 of supply chain cyber management to networks that the Trump FCC  
3078 then pulled.

3079 The Trump FCC has repeatedly said they don't think they have  
3080 any jurisdiction over the security of the network they have been  
3081 entrusted to oversee. They pulled the requirements that we put  
3082 in place for 5G cybersecurity and what we are in the process of  
3083 blowing is the opportunity to deal with cyber as a forethought  
3084 rather than as an afterthought.

3085 Ms. Matsui. Okay.

3086 You know, I mentioned here as part of this the universal  
3087 service mandate and I know a lot of people probably think this  
3088 is boring but it really isn't. The contribution reform regarding  
3089 the Universal Service Fund--I think in 2006 this committee  
3090 considered an effort aimed to ensure a stable contribution base  
3091 for universal service.

3092 Universal Service Fund codified the belief that all  
3093 Americans should have access to advanced communication services  
3094 and rural customers should have access to reasonably comparable  
3095 services at reasonably comparable rates.

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3096 Now, contributions to the federal and universal service  
3097 support mechanisms are currently based on a percentage of  
3098 carriers, interstate, and international end user  
3099 telecommunications revenues.

3100 A necessary part of this discussion surrounding broadband  
3101 classification is the issue of contribution reform. In the first  
3102 quarter of 2019 the contribution factor is 20 percent and that  
3103 number may well continue to climb.

3104 Thirteen years ago the committee considered several  
3105 different methodologies for the FCC to use when assessing  
3106 universal service contributions. Mindful we should not make  
3107 broadband access less affordable, but do you have any suggestions  
3108 on how to ensure the long-term stability of the Universal Service  
3109 Fund? And we don't have much time but you might comment on it.

3110 Mr. Wheeler. Yes. You need to expand the base. You cannot  
3111 rely on a shrinking ice cube.

3112 Ms. Matsui. Absolutely. But we seem to kick the ice cube  
3113 down the road.

3114 Mr. Wheeler. But every time--every time you want to talk  
3115 about expanding the base you hear what we hear today--oh, that  
3116 is going to increase costs for this broadband service or that.

3117 We have--we have heard today the importance of delivering to  
3118 Wheeler County--boy, I like that--and to rural America.

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3119 And we have also heard but let us don't raise the money to  
3120 support that.

3121 Ms. Matsui. Right. Okay.

3122 Mr. Wheeler. That is the conflict and, again, it falls--

3123 Ms. Matsui. Well, this is a central--

3124 Mr. Doyle. The gentlelady's time has expired. We are going  
3125 to try to get this in before votes and we still have four more  
3126 witnesses. So I thank the gentlelady for her patience.

3127 The chair now recognizes Mr. Welch.

3128 Mr. Welch. Thank you very much, Mr. Chairman, and I want  
3129 to thank the panel. A big concern I have no matter what we do  
3130 is to get broadband built out on rural areas. You just mentioned  
3131 that, Mr. Wheeler.

3132 And Mr. Franell, I congratulate you. I live in a rural part  
3133 of Vermont--eight-mile dirt road--and we have high speed internet  
3134 and it is a local small company, nonprofit that somehow figured  
3135 out to do what the big telecoms haven't done and listening to  
3136 you it sounds like you have done that as well. So my hat is off  
3137 to you.

3138 But on this question of repealing the net neutrality rules  
3139 that were part of the Wheeler FCC, one of the arguments that was  
3140 made is that if we got rid of the heavy hand of regulation that  
3141 it would result in an expansive capital-intensive commitment by

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3142 our major telecom carriers that would build out into rural  
3143 America.

3144 And it turns out that is a fairy tale. I mean, Chairman  
3145 Pai--because this was a question I think I asked him--he said  
3146 without the overhang of heavy-handed regulation--and I don't know  
3147 where this heavy-handed deal is coming from because everyone who  
3148 is complaining about the heavy hand says they are for what the  
3149 light hand accomplished.

3150 So there is a lot of rhetoric here. But what Chairman Pai  
3151 said quite specifically was without the overhang of heavy-handed  
3152 regulations, companies will spend more building the  
3153 next-generation networks.

3154 As those networks expand, many more Americans, especially  
3155 low-income rural and urban Americans, will get high-speed  
3156 internet access for the first time. And it turns out my  
3157 skepticism of that assertion has been proven right.

3158 Today, the Financial Times reported that the big four U.S.  
3159 broadband companies invested less in capital projects last year  
3160 than they did in 2017, which is when the Wheeler net neutrality  
3161 rules were still in place, which totally undermines one of the  
3162 rationales for repealing the net neutrality rules.

3163 And it also showed--that article--that the four companies  
3164 collectively undertook less capital spending in 2018, and that

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3165 is the first time there has been a drop in three years when the  
3166 net neutrality rules were first put in place.

3167 Mr. Chairman, I would like to put the Financial Times article  
3168 published today in the record, if I may.

3169 Mr. Doyle. Without objection, so moved.

3170 [The information follows:]

3171 \*\*\*\*\*INSERT 11\*\*\*\*\*

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3172 Mr. Welch. All right. So we all know about the inadequacy  
3173 in rural America. Twenty-four million Americans lack access to  
3174 fixed broadband at high-speed internet speeds. Thirty-one  
3175 percent of Americans in rural areas lack access to broadband.

3176 Forty-four million Americans lack access to both fixed broadband  
3177 at 25/3 speeds and mobile LTE broadband at 10/3 speeds.

3178 I mean, we have--we are on the verge of abandoning rural  
3179 America and that has got to change, and it is not just regulations.

3180 This is about investment. Somehow you have figured out how to  
3181 do it. ECFiber has figured out how to do it. My view, the big  
3182 four don't particularly care to do it. There is not a lot of  
3183 money to be made for them.

3184 So now we have a situation where we don't have the protection  
3185 of the net neutrality rules in the Wheeler administration in rural  
3186 America and we are not getting the build out. And I will just  
3187 ask you, Mr. Wheeler, are you surprised by the earnings report  
3188 that indicate no increase in capital expenditures since the net  
3189 neutrality rules came off the books?

3190 Mr. Wheeler. No, sir.

3191 Mr. Welch. Mr. Powell, can you explain the decrease in  
3192 capital expenditures last year compared to the previous three  
3193 years?

3194 Mr. Powell. I can. The headline numbers in those reports

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3195 are wrong because capital expenditure in net involves more than  
3196 investments just in networks. If you look carefully at the  
3197 earnings reports an enormous amount of that capital reduction  
3198 was due to the video business and the CPE business, not the network  
3199 connectivity business.

3200 If you sorted out those decreases for loss of video  
3201 investment because of competition you would find that the  
3202 increase--there has been an increase in investment in networks.

3203 Mr. Welch. Okay. I don't want to dwell on this but I don't  
3204 understand a word you just said.

3205 [Laughter.]

3206 No, and I don't mean that--I really don't understand it and  
3207 maybe I have to be an accountant. But bottom line, these are  
3208 year over year numbers and what I am seeing is that whatever that  
3209 explanation is, there is not more internet access in rural  
3210 America. I mean, we need more people like your company.

3211 Ms. Gonzalez, would antitrust law prevent an ISP from  
3212 blocking access to a lawful website that presents an opinion the  
3213 ISP does not want?

3214 Ms. Gonzalez. No.

3215 Mr. Welch. Would anti-trust law address--would anti-trust  
3216 law address the situation, Ms. Gonzalez, where an ISP slowed down  
3217 lawful internet traffic after it was pressured to do so by a

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3218 political figure?

3219 Ms. Gonzalez. No.

3220 Mr. Doyle. The gentleman's time has expired.

3221 Mr. Welch. I yield back. Thank you, Mr. Chair.

3222 Mr. Doyle. The chair now recognizes the gentleman from New  
3223 Mexico, Mr. Lujan.

3224 Mr. Lujan. Thank you very much, Mr. Chairman.

3225 Mr. Chairman, we know that this definitely matters.

3226 Otherwise, there wouldn't be so much interest, not just here in  
3227 this committee room but with the millions of people across America  
3228 who responded to this order.

3229 I know that we are still trying to make sense of the number  
3230 of bots and trolls that are part of that filing. But nonetheless,  
3231 I hope that Chairman Pai allows us to make sense of who is a real  
3232 person and which part of those finally should be taken out. I  
3233 hoped that we would all agree with that.

3234 The foundation of a record in order to make a decision is  
3235 only as solid as the quality of the information that has been  
3236 collected. I think that as chairman--I would hope, Chairman  
3237 Powell and Chairman Wheeler, you would both agreed with that,  
3238 with the importance of what happens at the commission.

3239 Now, when Chairman Pai announced that he was repealing the  
3240 2015 Open Internet Order, he said, and I quote, "Many more

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3241 Americans, especially low-income rural and urban Americans, will  
3242 get high-speed internet access for the first time and more  
3243 Americans generally will benefit from faster and better  
3244 broadband."

3245 Mr. Wheeler, the question that I have there is, is this true?  
3246 Does the repeal of the 2015 Open Internet Order mean that more  
3247 New Mexicans will have access to high-speed broadband and how  
3248 does the repeal of that order meaningfully change the economics  
3249 of building out in rural and tribal communities?

3250 Mr. Wheeler. Mr. Lujan, this self-serving economics  
3251 manipulation has been used by the Trump FCC like a drunk uses  
3252 a lamppost--to lean against, to support the unsupportable.

3253 We have heard comments about what investment was before and  
3254 what investment was afterwards. There is only one reason to  
3255 invest and that is to get a return. You don't say, I am not going  
3256 to invest because of regulation. You say, I am going to invest  
3257 because I am going to get a return.

3258 And one of the things we have to do, especially in New Mexico  
3259 and other rural states, is to make sure that we have programs  
3260 in place that help get that return--a universal service support  
3261 program, which itself needs to be directed towards building,  
3262 towards capital expenditures, rather than operating  
3263 expenditures.

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3264 Mr. Lujan. And, Mr. Powell, in your response to Mr. Welch  
3265 I think you touched on this. Do you have the same viewpoint of  
3266 Mr. Wheeler or would you agree with sentiment of my question?

3267 Mr. Powell. I would say since 2016, at least in the cable  
3268 industry, we have had a very significant increase in our network  
3269 investment. Two years ago, 4 percent of Americans had one gigabit  
3270 speeds. As of the end of 2018 in our industry 80 percent of  
3271 American households had gigabit speeds. That is a pretty  
3272 substantial--

3273 Mr. Lujan. But, Mr. Powell, my question is specific to  
3274 tribal communities in rural America in places like where I live.  
3275 Does the same hold true in states like mine with the statistics  
3276 you just laid out?

3277 So if I went back and I evaluated your response would I see  
3278 a correlation in New Mexico?

3279 Mr. Powell. Well, you--look, the low-income hard-to-serve  
3280 areas are a problem we all agree with serving. I am not so sure  
3281 whether any of these order fundamentally change that challenge.

3282 But, yes, I believe some of this advancement for the citizens  
3283 of New Mexico is just as viable as it is in other states.

3284 Mr. Lujan. Well, I appreciate your response because we  
3285 agree with these challenges. Chairman Pai said that this was  
3286 going to revolutionize access in rural America and to tribal

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3287 communities in places like where I live and it is not--

3288 Mr. Powell. Well, he's the other brown guy. I am not the  
3289 one--

3290 Mr. Lujan. Well--no, but my point is it is not true. It  
3291 is not true and that is the concern that I have for the constituents  
3292 that I represent. I will park that aside.

3293 There are a few things, Mr. Chairman, that I want to get  
3294 into the record and I have one question for Ms. Gonzalez I want  
3295 to get in. There is an article that I want to submit into the  
3296 record. It is now clear none of the supposed benefits of killing  
3297 net neutrality are real. This points to the question I just  
3298 asked. It is an article by Karl Bode with Motherboard. If I  
3299 may, Mr. Chairman.

3300 Mr. Doyle. Without objection.

3301 [The information follows:]

3302

3303 \*\*\*\*\*INSERT 12\*\*\*\*\*

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3304 Mr. Lujan. A letter from the internet service providers  
3305 to Chairman Pai with concerns associated with the order as well,  
3306 Mr. Chairman, dated June 27, 2017.

3307 Mr. Doyle. Without objection.

3308 Mr. Lujan. An article, "Filtering Out the Bots: What  
3309 Americans Actually Have Told the FCC About Net Neutrality Repeal."  
3310 This goes to the essence of my opening statement as well, Mr.  
3311 Chairman.

3312 Mr. Doyle. Without objection.

3313 [The information follows:]

3314

3315 \*\*\*\*\*INSERT 13\*\*\*\*\*

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3316 Mr. Lujan. And statements from my district as well  
3317 associated with the net neutrality that I would like submitted  
3318 into the record. And, Ms. Gonzalez, I apologize. My time has  
3319 expired.

3320 Mr. Doyle. Without objection.

3321 [The information follows:]

3322

3323 \*\*\*\*\*INSERT 14\*\*\*\*\*

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3324 Mr. Lujan. I will submit this to you for the record, and  
3325 I have a few other questions that I will submit to the remaining  
3326 panelists.

3327 I really appreciate you all being here. Thank you for taking  
3328 the time. Thank you, Mr. Chairman.

3329 Mr. Doyle. The gentleman's time has expired.

3330 The chair recognizes Mr. Schrader for five minutes.

3331 Mr. Schrader. Thank you very much, Mr. Chairman, and thank  
3332 the witnesses for coming here, and excellent testimony.

3333 I have to admit I came to this hearing with some degree of  
3334 trepidation about how it might be conducted and I would like to  
3335 think we demonstrated a good civil discourse on a very contentious  
3336 issue that, from my standpoint, everyone seemed to be in agreement  
3337 we should fix.

3338 Devil is in the details how to go about that, of course.

3339 But everyone came out in favor of the key elements of net  
3340 neutrality. They at least spoke, which is encouraging from my  
3341 standpoint, and folks seem to be interested in actually solving  
3342 the problem -- big quotes on solving the problem -- going forward.

3343 This thing has been floating around since the Bush  
3344 administration. The rules of the road seem to be depending on  
3345 which party occupies the central office, the presidency. I  
3346 think, Chairman Powell, you mentioned in your testimony over the

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3347 last 15 years six different FCC chairmen from both political  
3348 parties have wrestled with this issue. Net neutrality has been  
3349 at the courts four different times -- more coming up, from what  
3350 you were saying.

3351 You know, I have to believe this leaves consumers, you know,  
3352 virtually unprotected and businesses completely in the dark about  
3353 what the rules of the road are and that is not good for anybody  
3354 or everybody, at the end of the day.

3355 Consumers and folks in the industry I think all agree we  
3356 need the transparency, no blocking, no throttling, no paid  
3357 prioritization except for health and public safety -- that came  
3358 out here today -- and no discrimination. Thank you very much  
3359 for the testimony that Ms. Gonzalez and Ms. Livier gave. I think  
3360 that is very important.

3361 I am an Article I of the Constitution person at heart. My  
3362 job is to legislate. Congress is supposed to be the legislative  
3363 body. We have far too long abdicated, I think, our  
3364 responsibilities to the executive branch and we end up -- put  
3365 Mr. Wheeler and Mr. Powell in tough situations doing the best  
3366 they can. They have done yeoman's work. I appreciate the work  
3367 both of you have done.

3368 So I think what we have heard so far today is that Congress  
3369 has failed, you know, to provide the FCC with clear legislative

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3370 and congressional direction and I, for one, like several others  
3371 here have also said today favor that we go down that route.

3372 The last Congress I supported Congress -- or excuse me,  
3373 Chairman Doyle's resolution of disapproval of Chairman Pai's rule  
3374 because it is pretty irresponsible for Chairman Pai to roll back  
3375 the Wheeler order without putting in any other, you know,  
3376 enforceable protections for consumers.

3377 I would love to see our subcommittee work in a bipartisan  
3378 manner, finally codify some rules with all your help and people  
3379 out there and back in my home district to protect consumers and  
3380 provide those clear rules of the road. I think there is an  
3381 opportunity.

3382 And for my colleagues who are truly concerned following  
3383 Chairman Pai's action about consumers not being protected right  
3384 now, if we choose not to solve this problem in this Congress,  
3385 then those consumers will continue to be at risk at least over  
3386 the next two years and quite possibly into the distant future.

3387 So I think it is time to end the uncertainty for consumers  
3388 and businesses, do our job, legislate net neutrality.

3389 And with that, I yield back, Mr. Chairman.

3390 Mr. Doyle. The gentleman yields back.

3391 I recognize the gentleman from California, Mr. Cardenas,  
3392 five minutes.

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3393 Mr. Cardenas. Thank you -- thank you very much, Mr.  
3394 Chairman, and thank you so much for having this hearing.

3395 I take it that everybody at this panel is for open and free  
3396 internet. Is that true?

3397 Ms. Dixon. I am.

3398 Ms. Livier. Yes.

3399 Mr. Franell. Yes.

3400 Ms. Gonzalez. Yes.

3401 Mr. Powell. True.

3402 Mr. Wheeler. You bet.

3403 Mr. Cardenas. Mr. Chairman, what are we doing here?

3404 [Laughter.]

3405 Mr. Cardenas. Problem solved. It is not an issue.

3406 Some people would have believed that just allowing things  
3407 to be the way they are is solving a problem. But I believe that  
3408 doing nothing in today's space and watching the courts decide  
3409 the fate of consumers, of smaller businesses, good actors like  
3410 yourself, Mr. Franell. I am very impressed with your intent and  
3411 your actions. Thank you so much.

3412 But not every actor on the playing field that we are talking  
3413 about today has that kind of will and commitment to not do things  
3414 differently if in fact the lanes are not defined and that is the  
3415 biggest problem that we have here.

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3416 I think we have former incredible chairmen here. I have  
3417 so much respect for both of you, former Chairman Powell and then  
3418 former Chairman Wheeler.

3419 Every time I talk with you I feel enlightened, and I am not  
3420 joking. I really, really do. The ability for you to articulate  
3421 the decades of knowledge that you have on something that even  
3422 one of my colleagues actually said, I don't even understand what  
3423 you just said.

3424 [Laughter.]

3425 Mr. Cardenas. That -- that is amazing, and thank you for  
3426 your service. Thank you for your service when you were in the  
3427 public sector as chairman of the commission and thank you for  
3428 your service in the private sector continuing to try to wrap your  
3429 head around how do we make a better world for everybody. So thank  
3430 you so much.

3431 And to all of you -- Ms. Gonzalez, for what you do and I  
3432 believe that you are in the public sector in the sense that you  
3433 work for a not for profit and you are just trying to make things  
3434 better for the least among us, and I don't mean it in a derogatory  
3435 way.

3436 I am talking about the smallest of the smallest businesses,  
3437 the mothers and fathers who -- they just want to make a life for  
3438 their family better and this happens to be the space that they

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3439 are doing it in.

3440 And for those of you who are in the smaller space on the  
3441 playing field, God bless you, because you can get squashed like  
3442 a bug or run over in a moment's notice and most people wouldn't  
3443 even know you are gone. So thank you for all that you do.

3444 But, Ms. Dixon, if you want to take the opportunity. I think  
3445 that there was a question -- that my esteemed colleague from Texas,  
3446 Mr. Flores, mentioned Firefox and I think that you may have wanted  
3447 to comment but ran out of time.

3448 Ms. Dixon. I did. I think that the notion that Firefox  
3449 and that Mozilla was created at a time when that neutrality rules  
3450 weren't in play is just silly. We are starting back from the  
3451 status quo. As much as I have a ton of respect for Chairman  
3452 Wheeler, he didn't actually create that neutrality. That  
3453 neutrality existed on the internet for years and years and years.

3454 What we had, we had principles under Chairman Powell's regime  
3455 in the FCC. We also had merger agreements that had restrictions  
3456 with respect to net neutrality. We had lots of protections in  
3457 play and that is what the web was founded on.

3458 So we were founded -- Mozilla and Firefox -- during an era  
3459 when that neutrality was strong. It is now, today, for the first  
3460 time that we actually don't have net neutrality rules that protect  
3461 consumers.

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3462 Thank you.

3463 Mr. Cardenas. Okay. And the thing is that when you talk  
3464 about protections I call them lanes. I happen to have been a  
3465 small business owner at one time in a regulated industry and some  
3466 of my colleagues would get upset when more regulations would come  
3467 along.

3468 And I would look at those regulations and read them, and  
3469 then I would realize that many of them actually helped us stay  
3470 within our lane and actually helped us make sure that we stayed  
3471 out of the legal system because we had lanes that we could follow.

3472 And when we followed them we could defend ourselves and say  
3473 we did proper practice when somebody was trying to sue us or what  
3474 have you and things of that nature.

3475 So lanes, to me, are very important and this is an arena  
3476 where the lanes are basically muddled and right now the courts  
3477 just might even make it even worse as far as less lanes for us  
3478 to -- for everyone to follow by.

3479 But also, Mr. Franell, again, my compliments to you. But  
3480 at the same time, you mentioned something in your opening  
3481 statement about the bad actors and kind of like, you know what,  
3482 the bad actors they will get weeded out because they will lose  
3483 business.

3484 But with all due respect, the smallest businesses in this

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3485 space can disappear almost overnight because of a bad actor that  
3486 they had, you know, run into like a Mack truck. That is -- that  
3487 is my concern -- that when we have lanes less of that, the smallest  
3488 players on the field, disappear.

3489 And I just want to thank Vanessa, if you don't mind -- I  
3490 met your daughter -- if you don't mind me mentioning her name.

3491 People like Vanessa, this is the means of which she feeds her  
3492 daughter, Alina, and I just got to tell you we have to make sure  
3493 that what we do, Mr. Chairman -- and I'll yield back in just two  
3494 seconds -- we have to think about everybody, not just the largest  
3495 players on the playing field.

3496 Thank you, and I yield.

3497 Mr. Doyle. The gentleman yields back.

3498 The committee would like to welcome Mrs. McMorris-Rodgers,  
3499 who waived on today and you are welcome to speak for five minutes.

3500 Mrs. McMorris-Rodgers. Great. Thank you. Thank you, Mr.  
3501 Chairman. I appreciate the chance to join you all today on an  
3502 issue that I believe should have been resolved probably many years  
3503 ago in a bipartisan fashion.

3504 Up until really 2015 there had been decades of bipartisan  
3505 consensus on the principles of an open free internet -- principles  
3506 that would ensure consumer protections without disrupting the  
3507 free flow of information and innovation that has made it the

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3508 cornerstone of our 21st century economy.

3509 This debate isn't about the merits of an open free internet.

3510 I support an open free internet. I think we have large agreement  
3511 on supporting an open free internet. Colleagues on both sides  
3512 of the aisle have mentioned that.

3513 This is really about how we as Americans want to shape the  
3514 future of our economy. Do we want to regulate the internet as  
3515 a 1930s style utility where we have more burdensome regulation  
3516 and price controls that I fear will stifle innovation?

3517 An internet that will leave many rural and under served  
3518 communities behind, like in my district? Or do we want a 21st  
3519 century internet that will juice our economy, create jobs, and  
3520 allow us to be a leader in new cutting-edge technologies like  
3521 AI or IoT, autonomous vehicles -- an economy that utilizes  
3522 advances in technology to lift people out of poverty and provide  
3523 them with more economic opportunities?

3524 I think we all agree that we want the latter. That is why  
3525 I am introducing the Promoting Free Internet Freedom and  
3526 Innovation Act, and this bill is based upon Washington State law.

3527 It would codify the bright line rules of net neutrality,  
3528 specifically, no blocking, no throttling, no paid prioritization.

3529 This is a solution that passed in my home state on a widely  
3530 bipartisan basis, a bill that was signed by Democratic governor,

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3531 supported by Democrats in the congressional delegation, and was  
3532 praised by former FCC Commissioner Clyburn.

3533 But, most importantly, it is a solution that does not  
3534 institute changes to the internet that would stop innovation,  
3535 stifle broadband deployment, and leave millions of Americans  
3536 behind -- a solution that codifies the key principles on which  
3537 both parties agree and have agreed for many years.

3538 The internet has revolutionized every single aspect of our  
3539 lives. It has changed how we communicate. It has changed how  
3540 we approach our own personal health or travel across town.

3541 It has improved the quality of life for millions of  
3542 Americans. We all agree it is vital to our future and the  
3543 opportunity that it provides for our economy and hardworking men  
3544 and women in our 21st century is really endless.

3545 I want to once and for all resolve what I believe is a  
3546 manufactured political debate and provide certainty to the  
3547 internet ecosystem so that we can make that opportunity a reality  
3548 for every single American.

3549 So I would like to focus my questioning on the federal versus  
3550 state debate. While I believe that the provisions of the  
3551 Washington State law are reasonable and consistent with the  
3552 principles both parties have been disusing at the federal level  
3553 for years now, I do not believe that is wise to regulate by a

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3554 state by state approach.

3555 The internet is the key to interstate commerce. It does  
3556 not end at our borders and a federal solution is the only way  
3557 forward.

3558 Chairman Powell, can you briefly discuss why pursuing an  
3559 open internet regulation at the state level can be harmful to  
3560 innovation and consumers and why do we need the federal solution?

3561 Mr. Powell. I remember when the internet really rose there  
3562 was an economist author named Frances Cairncross who said this  
3563 was the death of distance. This was a network that knew no  
3564 boundaries, respected no geographical limitations and,  
3565 consequently, can't really responsibly be regulated in buckets  
3566 and chunks.

3567 We have understood those principles since the days of  
3568 interstate commerce in trucking, in the environment, and all kinds  
3569 of areas where you just don't have a ability to logically organize  
3570 law around different state jurisdictions.

3571 I think there is no question that the internet is interstate  
3572 in nature. It would be hazardous to regulate it in any other  
3573 than a single comprehensive way.

3574 Mrs. McMorris-Rodgers. As a follow-up, do you believe the  
3575 FCC currently has the authority to preempt attempts to regulate  
3576 this issue at the state level?

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3577 Mr. Powell. I do. That has been their position and I also  
3578 believe that it would fall under conflict preemption, meaning  
3579 the two regimes are not reconciled.

3580 Mrs. McMorris-Rodgers. And one final question -- do you  
3581 believe that the Washington State law and this legislation are  
3582 consistent with the four internet freedoms you described in 2004  
3583 when you were chairman of the FCC?

3584 Mr. Powell. My limited understanding of it is yes. I think  
3585 there are some aspects of it be examined more carefully like  
3586 specialized services. But I also would note it's a really  
3587 productive piece of work and didn't include anything that looks  
3588 like Title II.

3589 Mrs. McMorris-Rodgers. Thank you. Okay. I yield back.

3590 Mr. Doyle. Thank you.

3591 The chair is going to request unanimous consent to enter  
3592 the following documents into the record: an article from Free  
3593 Press, a letter from Consumer Reports, a letter from the American  
3594 Library Association, a letter from Tech Freedom Coalition, an  
3595 article from Motherboard, an article from Financial Times, and  
3596 a 2010 letter to former FCC Chairman Genachowski.

3597 Without objection, so ordered.

3598 [The information follows:]

3599

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\*\*\*\*\*INSERT 15\*\*\*\*\*

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available. 172

3601 Mr. Doyle. I want to thank the witnesses for their  
3602 participation in today's hearing. We genuinely appreciate you  
3603 coming here and I want to remind members that pursuant to the  
3604 committee rules they have 10 business days to submit additional  
3605 questions for the record to be answered by the witnesses who have  
3606 appeared.

3607 I would ask each witness to respond promptly to any such  
3608 questions that you may receive.

3609 At this time, the subcommittee is adjourned.

3610 [Whereupon, at 2:20 p.m., the committee was adjourned.]