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2 HIF068.160

3 HEARING ON H.J. RES 37, DISAPPROVING THE RULE SUBMITTED BY

4 THE FEDERAL COMMUNICATIONS COMMISSION WITH RESPECT TO

5 REGULATING THE INTERNET AND BROADBAND INDUSTRY

6 WEDNESDAY, MARCH 9, 2011

7 House of Representatives,

8 Subcommittee on Communications and Technology

9 Committee on Energy and Commerce

10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 10:34 a.m.,
12 in Room 2123 of the Rayburn House Office Building, Hon. Greg
13 Walden [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Walden, Terry,
15 Stearns, Shimkus, Rogers, Bilbray, Bass, Blackburn, Gingrey,
16 Scalise, Guthrie, Kinzinger, Barton, Upton (ex officio),
17 Eshoo, Markey, Doyle, Matsui, Barrow, and Waxman (ex
18 officio).

19 Also present: Representatives Christensen and Inslee.
20 Staff present: Jim Barnette, General Counsel; Neil
21 Fried, Chief Counsel, Communications and Technology; Dave
22 Redl, Counsel, Communications and Technology; Ray Baum,
23 Senior Policy Advisor; Peter Kielty, Senior Legislative
24 Analyst; Alex Yergin, Legislative Clerk; Roger Sherman,
25 Minority Chief Counsel; Sharon Chang, Minority Counsel; Jeff
26 Cohen, Minority Counsel; Sarah Fisher, Minority Policy
27 Analyst; Pat Delgado, Minority Chief of Staff (Waxman); and
28 Phil Barnett, Minority Staff Director.

|
29 Mr. {Walden.} I would like to call the Subcommittee on
30 Communications and Technology to order. Today, we have a
31 hearing and a markup on network neutrality and H.J. Res 37,
32 the resolution of disapproval I introduced to stop the FCC
33 from regulating the Internet. This is our second hearing on
34 this topic. On February 16, 2011, this committee had a 3-
35 hour hearing with all five FCC commissioners. At the request
36 of our Democrat colleagues, I delayed a previously scheduled
37 markup and scheduled this hearing to shed even more light on
38 the impact of the FCC's rules for deregulating the Internet--
39 for regulating the Internet.

40 I have introduced the resolution under the Congressional
41 Review Act, which provides Congress with an expedited process
42 to nullify agency rules. The resolution requires a simple
43 majority in each chamber, and is filibuster-proof in the
44 United States Senate. Because the form of the resolution is
45 provided for in statute, it is not subject to amendment.

46 Senate Majority leader Harry Reid and original cosponsor
47 of the CRA has described the process as ``reasonable,
48 sensible approach to regulatory reform''.

49 We have an open and thriving Internet, thanks to our
50 historical, hands off approach. The Internet works pretty
51 well. It is the government that doesn't. However, on

52 December 21, 2010, the FCC adopted rules regulating the
53 Internet without statutory authority to do so.

54 Before we get into the harm that government regulation
55 of the Internet will cause, it is important to realize that
56 the FCC's underlying theory of authority would allow the
57 Commission to regulate any interstate commerce communications
58 services on barely more than a whim and without any
59 additional input from Congress. I do not want to see such
60 authority to the Federal Communications Commission.

61 Section 230 of the Communications Act makes it U.S.
62 policy to ``preserve the vibrant and competitive free market
63 that presently exists for the Internet and other interactive
64 computer services unfettered by federal or state
65 regulation.'' Under the FCC's rationale, its authority is
66 bounded only by its imagination. This new rule is little
67 more than a weak attempt to do an end run-around the D.C.
68 circuit's Comcast bent torrent ruling that the FCC failed to
69 show it had authority to regulate the Internet.

70 Do my democratic colleagues agree the FCC has the
71 authority to regulate the Internet in coffee shops and
72 bookstores and airlines and other entities? Well, the FCC
73 believes it has that authority, and in its rule it declined
74 to subject those entities to their new regulations. My
75 opinion, this is an agency exceeding its congressional

76 authority, and its actions will hurt investment and cost
77 jobs.

78 A small cable and Internet provider for my district
79 recently wrote to me about her concerns, stating ``Last
80 spring, the FCC chairman primed the pump, threatening to
81 apply portions of Title 2 of the 1934 Telecom Act to
82 broadband. The cable industry has invested billions of
83 dollars of private capital to build broadband and
84 infrastructure to over 90 percent of American homes.
85 Commissioners are looking in the rearview mirror, attempting
86 to regulate the Internet of yesterday, absent any market
87 failure. How will companies like Bend Broadband be able to
88 compete if we bear the brunt of the regulations against,
89 while the giants like Google, Amazon, and Netflix go free?
90 The Internet is evolving. All members of the ecosystem need
91 to work together to innovate. The chairman has picked
92 winners and losers in this recent effort to impose net
93 neutrality regulations. These efforts will cost jobs, stall
94 innovation, and dampen investment.''

95 This is not a partisan issue. In 2006, 58 Democrats
96 voted with us on the House Floor to oppose a network
97 neutrality amendment to video legislation. Some of those
98 Democrats are still on the full committee. Some are still on
99 this subcommittee. That was not a vote against a Title 2

100 versus a Title 1 approach, that was a vote against imposing
101 network neutrality rules.

102 There is no crisis warranting the FCC's deviation from
103 our historical hands off approach. Rather than show an
104 actual problem, the Federal Communications Commission relies
105 on speculation of future harm. The FCC even admits in the
106 order that it conducted no market power analysis. See
107 footnote 87. Dr. David J. Farber, grandfather of the
108 Internet and former FCC chief technologist, warned on
109 December 21, 2010, in an op ed that the FCC's ``order will
110 sweep broadband ISPs and potentially the entire Internet into
111 the big tent of regulation. What does this mean? Customer
112 needs take second place and a previously innovative and
113 vibrant industry becomes a creature of government
114 rulemaking.''

115 This will also make it harder for upstarts to compete
116 with web incumbents. New entrants will have fewer resources
117 to advocate before the FCC, and will also lack the needed
118 flexibility to strike creative deals to compete with web
119 incumbents. As we will hear today, what is even more ``more
120 universally damaging'' is the rule's potential to destroy the
121 ability of infrastructure providers to raise capital. That
122 would threaten the infrastructure which both customers and
123 content providers rely.

124 We will also hear that the FCC's rule will transfer
125 wealth from broadband providers to application providers.
126 ``That does not begin to grasp the problem for both parties.
127 The transfer of wealth between two independent parties can be
128 beneficial to one at the expense of the other. A transfer of
129 wealth that will ultimately cripple the party in which the
130 other relies for its very existence is profoundly harmful to
131 both.'' These regulations will cost jobs. They will hinder
132 the necessary investment in network upgrades in which
133 customers and content providers rely, thus thwarting the
134 competitive free market vibrancy, and innovation of the
135 Internet.

136 Let us keep the Internet open and innovative. I urge my
137 colleagues to support the resolution.

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

139 ***** COMMITTEE INSERT *****

|
140 Mr. {Walden.} With that, I will recognize my friend
141 from California, Ms. Eshoo, for an opening statement.

142 Mr. {Waxman.} Mr. Chairman, I am going to--

143 Mr. {Walden.} With that, I will recognize my friend,
144 the gentleman from California, Mr. Waxman, for an opening
145 statement, as he needs to go to another committee hearing.

146 Mr. {Waxman.} Thank you very much, Mr. Chairman, and I
147 want to thank my colleague, the Ranking Member of the
148 Committee, Representative Eshoo, for allowing me to go before
149 her in making this statement.

150 I want to thank you, Mr. Chairman, for agreeing to our
151 request for a legislative hearing on H.J. Res 37. It is a
152 resolution of disapproval under the Congressional Review Act.
153 Democrats on this subcommittee felt strongly that before we
154 rush to consider this legislation, we would all benefit from
155 hearing from companies, public interest groups, and
156 economists.

157 My concern is that there is an enormous disconnect
158 between the facts and the Majority's policy objectives. As
159 we will learn today, technology innovators oppose the
160 disapproval resolution, consumers oppose the resolution, and
161 economists oppose the resolution. Even broadband providers
162 do not support the resolution.

163 In a letter the committee received on Monday, the cable
164 industry said it supports the FCC order because ``it largely
165 codified the status quo which the industry has voluntarily
166 committed. It contains helpful clarifying language around
167 what constitutes reasonable network management. It provides
168 greater certainty about our ability to manage and invest in
169 our broadband services, and the alternative of Title 2
170 regulation presented a stark and much worse risk.'' Well,
171 here is similar testimony from AT&T today. Yesterday, the
172 Consumer Federation of America and Consumers Union released a
173 poll showing the overwhelming public support for an open
174 Internet. By a two to one margin, consumers opposed
175 congressional action to block the FCC rule.

176 But none of these facts seem to matter. The reason we
177 are debating the disapproval resolution is that Republicans
178 claim that FCC regulation will stifle the Internet and hurt
179 our economy. But the fastest growing, most innovative
180 companies in America, companies like Google, Amazon, Netflix,
181 and others say exactly the opposite. They urge the FCC to
182 adopt open Internet rules because ``baseline rules are
183 critical to assuring that the Internet remains a key engine
184 of economic growth, innovation, and global competitiveness.''
185 In fact, most of the Internet companies wanted stronger rules
186 than those adopted by the FCC.

187 I wanted to get independent advice, so our staff
188 contacted economists at Stanford, NYU, USC, and other leading
189 academic institutions. They told us that the FCC got the
190 rules right. The phone and cable companies have near
191 monopolies as providers of Internet access, especially
192 wireless internet access. Without sensible regulation, they
193 could choke off innovation by charging Internet companies for
194 the right to communicate with consumers.

195 One of the costs of this misguided resolution is that it
196 is distracting us from important telecommunications issues
197 that we should be addressing, and we could do so in a
198 bipartisan basis. We are to be working together to grow our
199 economy by freeing up spectrum. We should be working
200 together to make our Nation safer by building a broadband
201 network for public safety. We should be protecting taxpayers
202 and consumers by enacting universal service reform. But we
203 are doing none of these things. Instead, we are wasting time
204 about a destructive resolution that should threaten openness
205 and innovation on the Internet.

206 I thank our witnesses for being here. I look forward to
207 your testimony. I want to yield the balance of my time to
208 Mr. Markey.

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

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

|
211 Mr. {Markey.} Thank you, Mr. Waxman, very much.

212 Why is the Internet so important? It enables freedom of
213 expression and the sharing of ideas across town or around the
214 world. It prevents a single entity, whether it is a
215 broadband behemoth or the government from exercising total
216 control. It is a vital tool that helps small businesses
217 compete and expand, pumping life into our economy. That is
218 what an open Internet is all about.

219 One of our witnesses here this morning, Robin Chase,
220 embodies the importance of an open Internet to our economy.
221 Ms. Chase co-founded and ran Zipcar, a car-sharing service
222 that is available in more than 200 cities across the U.S.
223 She used the open nature of the Internet to build her
224 innovative business from the ground up, without having to ask
225 permission from Verizon, AT&T, Comcast, or any other carrier
226 for permission. Here are Zipcar's current numbers: 474
227 full-time employees, \$186 million in revenue, 540,000
228 members. That is what the open Internet means to our
229 economy.

230 This debate we are having today is not just a solution
231 in search of a problem, it is a resolution in search of a
232 problem. If we want to move forward here in a way that deals
233 with this issue, Comcast agrees they can live with these

234 Rules. AT&T agrees they can live with these rules. The key
235 to the Internet is ensuring that it is open so that new
236 companies, new applications, new gadgets are being invented
237 on a daily basis in hundred and thousands of cities across
238 our country that utilize this engine for economic growth as a
239 way that keeps America's lead over the rest of the world.
240 That is what makes us great, the open Internet. If we allow
241 a small number of companies to control how fast that change,
242 that innovation moves, then we will be stifling our ability
243 to continue to be the engine of growth in the world, using
244 the Internet as our way of revolutionizing the rest of the
245 world.

246 If we did not have an open Internet, no Facebook, no
247 Twitter, Hulu, Youtube.

248 Thank you, Mr. Chairman, for extending graciously that
249 extra time to me.

250 [The prepared statement of Mr. Markey follows:]

251 ***** COMMITTEE INSERT *****

|
252 Mr. {Walden.} Thank the gentleman from Massachusetts.
253 I would now turn to the chairman of the full committee, Mr.
254 Upton, for opening statement.

255 The {Chairman.} I would just than you, Mr. Chairman. I
256 just remind my friend from Massachusetts that we have all of
257 those currently, and we don't have net neutrality now.

258 I urge my colleagues to support H.J. Res 37 that
259 nullifies the FCC's attempt to regulate the Internet.
260 President Obama has said that it is now his priority to focus
261 on jobs. He has also said that his Administration will avoid
262 onerous and unnecessary regs that stifle investment and
263 innovation. In fact, in a January Executive Order, the
264 President said that agency's must base regulations on a
265 reasoned determination that the benefits, in fact, justify
266 their cost.

267 While the Executive Order does not apply to independent
268 agencies like the FCC, the President urged such agencies to
269 follow it. FCC chair Genakowski has said that he does agree
270 with the Order's principles. Well, if the FCC had taken this
271 approach for the last year, we might not have needed this
272 resolution today. The reality is that if the FCC was truly
273 weighing the costs and benefits of its actions, that the
274 agency would not be attempting to regulate the Internet.

275 There is no crisis warranting intervention. The
276 Internet is open and it is thriving, precisely because we
277 have refrained from regulating it. Imposing these rules will
278 cause more harm than good by chilling the very investment and
279 innovation that we need to ensure that the Internet keeps
280 pace with the growing demands being placed on it. This will
281 only hurt our economy.

282 The Internet is not broken. The market has not failed.
283 To justify its power grab for a favored sector, the FCC is
284 simply speculating about the possibility of future harm.
285 Apparently, they never heard the old phrase ``If it ain't
286 broke, don't fix it.'' Well, we can go one step further. As
287 the late James Crowell, who served as a democratic FCC
288 commissioner said, ``If it ain't broke, don't break it.''

289 The FCC actually confesses in the order, albeit in the
290 footnotes, that it did not conduct a market analysis. Where
291 is the rigorous cost benefit analysis and demonstration in
292 need? We have reviewed the response to our follow-up, and
293 quite frankly, it is lacking. They point to paragraphs that
294 contain little more than conclusory statements or summaries
295 of comments.

296 Let us be clear. I do not believe we should be
297 regulating the Internet, but if we follow the FCC's logic,
298 the agency would ultimately be regulating Google and any

299 number of other Internet companies. Press accounts indicate
300 that Google engages in subjective prioritization of some
301 search results over others. This not only affects what
302 traffic Internet users see, it also can have a financial
303 impact on websites. Should the FCC be determining whether
304 Google is engaged in unreasonable discrimination? Is
305 Google's traffic management reasonable? Would it be
306 appropriate for the government to intervene because of the
307 possibility of future harm without an analysis of current
308 problems or market power? I think not. Not for Google, and
309 not for anybody else.

310 Ultimately, there is a question of authority. The FCC
311 has changed its story about where it gets the power to issue
312 these rules more times than it has uttered the word
313 ``transparency''. Each time it teeters from one weak
314 explanation to another, based on the most legal or political
315 impediment it is facing. None are consistent with its own
316 precedent, and all are end runs around the D.C. Circuit's
317 decision in the Comcast case that the FCC has failed to show
318 its authority in the space.

319 For these reasons, I urge my colleagues to vote for the
320 resolution, and I yield the balance of my time to my friend,
321 the Chairman Emeritus, Mr. Barton.

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

323 ***** COMMITTEE INSERT *****

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324 Mr. {Barton.} Thank you, Chairman Upton. You gave an
325 excellent explanation of why we should all support H.J. 37.

326 To be as succinct as possible, the Internet has thrived,
327 I think, in large part because this Congress repeatedly has
328 stated that we did not want it to be regulated, and the FCC
329 keeps attempting to get some nose under the tent, so to
330 speak, so that in the future they can come back with real
331 heavy handed regulation. This latest attempt, the three to
332 two vote, in my opinion is simply an effort to establish the
333 principle that the FCC can regulate the Internet. It is not
334 as important what they do now, but the fact that they have
335 the authority to do it. H.J. 37 would explicitly say they do
336 not have the authority. As Chairman Upton has just said, if
337 it is not broke, don't fix it. All these great things that
338 are happening are happening under a deregulated environment,
339 and we should keep it that way.

340 With that, I yield back to the subcommittee chairman.

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

342 ***** COMMITTEE INSERT *****

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343 Mr. {Walden.} Thank the gentlemen for their opening
344 statements.

345 I would now yield to the gentlewoman from California,
346 Ms. Eshoo, for 5 minutes.

347 Ms. {Eshoo.} Good morning, Mr. Chairman, and all of my
348 colleagues. To the witnesses, thank you for being here
349 today.

350 Given the significance of the resolution under
351 consideration today, I want to thank Chairman Walden for
352 respecting the request of the ranking member of the full
353 committee, Mr. Waxman, myself, and members of the
354 subcommittee to have a legislative hearing. I think it is
355 essential that members of the subcommittee have an
356 opportunity to hear from key stakeholders who are here today
357 before voting on a resolution that would overturn the FCC's
358 open Internet rules.

359 It is so fascinating to me to listen to the statements
360 that members make. This is all about an open and free
361 Internet. In fact, those words are really the hallmarks of
362 the Internet. All of the reasons that my Republican
363 colleagues are saying they are doing this is fascinating,
364 because the stakeholders themselves are on the other side of
365 the issue. They do not believe that the light touch of the

366 FCC is menacing; in fact, they have said and weighed in. We
367 know the testimony. You have seen it--not only the testimony,
368 but the letters that have poured in to this committee of
369 groups and organizations across the country, from religious
370 leaders to consumer organizations to high technology
371 associations, they have all weighed in and said don't do
372 this. It is fascinating to me that they say they are for an
373 open Internet after reviewing the record of where there have
374 been abuses. We want to see consumers making the choice, not
375 corporations. We want companies to grow to be successful,
376 and there is a long, long, long list of them, so many of them
377 constituent companies from my congressional district.

378 I think that everyone here really needs to think very
379 carefully about the direct and indirect consequences of
380 passing this resolution. Disapproving the FCC's rule is a
381 serious threat to our economy, and I think it is a direct
382 attack on transparency. It could also lead to further
383 uncertainty in areas beyond the December order, such as the
384 FCC's ability to promote public safety and ensure online
385 safeguards that prevent piracy and protect children from
386 accessing harmful Internet content.

387 As I said or alluded to a moment ago, the history of an
388 open Internet speaks for itself. Businesses that rely on an
389 open Internet continue to grow--an open Internet continue to

390 grow. A stunning example is eBay. In just over 15 years, it
391 has gone from a living room startup to a company that enables
392 hundreds of thousands of American small businesses and
393 entrepreneurs to sell their goods to consumers across the
394 country and around the world. The significance to our
395 economy is enormous. It is actually stunning. Sixty billion
396 dollars in goods sold on eBay marketplaces globally in 2009.

397 A similar story of success is Netflix, which in just the
398 last year has added eight million new subscribers. With over
399 2,000 employees and a physical presence in every state,
400 Netflix is continuing to grow, and there is a reason for it.
401 Open, accessible, consumers making the choice. That is what
402 we seek to protect.

403 So why are the basic rules of the road essential to the
404 continued growth of these companies? By preventing blocking
405 and unreasonable discrimination, the Internet can remain a
406 source of innovation and new ideas, not a platform where
407 consumers and businesses are told which sources of news,
408 information, and entertainment they can access.

409 The witnesses that are here today, we are all grateful
410 to. I want to express a very special thanks to Robin Chase,
411 who flew from Paris, France, to be here today, only to fly
412 back to Berlin, Germany, this afternoon. That is one hell of
413 a commitment, to come here and to speak on this really

414 extraordinarily important issue, and we are very grateful to
415 her. I think this is just one example among thousands of
416 Internet innovators who understand how the CRA will hinder
417 job creation and consumer choice. I am also pleased that
418 members will be presented with the economic theory supporting
419 the FCC's rules.

420 So Mr. Chairman, thank you for making sure that we have
421 this legislative hearing. I thank the witnesses, and I don't
422 have any time to yield back. Thank you.

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

424 ***** COMMITTEE INSERT *****

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425 Mr. {Walden.} That is all right. I thank you for your
426 comments, and we look forward to hearing from the witnesses.
427 Obviously, as you all have been briefed, the Prime Minister
428 of Australia is going to be speaking to a joint session of
429 Congress, so at some point here we will recess because we are
430 not allowed under our rules to meet during a joint session.

431 I would like to point out how much we appreciate your
432 being here. Ms. Chase, I know as a witness you had to fly
433 from France and back to Germany today. We could have used
434 high technology maybe to get your testimony and take your
435 questions. We could have worked on that.

436 I would also like to point out for the record, this is
437 our second hearing on this topic. We had all five FCC
438 commissioners before, and now we have six witnesses here,
439 equally divided, I would point out, between the Republicans
440 and the Democrats, the Majority and Minority. At the
441 conclusion of this hearing, there will have been two
442 hearings, and probably one of the first times in the history
443 of the committee that the Minority has actually had more
444 witnesses on a topic than the Majority.

445 So we are trying to hear from people. We are trying to
446 be open and fair and balanced about this, and we look forward
447 to your testimony when we resume. So at this point, I will

448 recess the committee until after the Prime Minister. It will
449 be probably about an hour, we are guessing, by the time
450 members go and get back, maybe a little bit more. So if you
451 can kind of hang out not too far away, that would be helpful.

452 With that, the committee is--stands in recess.

453 [Recess.]

454 Mr. {Walden.} I am going to call back to order the
455 Subcommittee on Communications and Technology, and welcome
456 our witnesses this morning--or now this afternoon. Thank you
457 for being here. Thank you for making the extra effort to be
458 here from Europe and back, and so we will start. Let us
459 start with--I believe we will just go left to right with Mr.
460 Turner. We appreciate your willingness to come and testify.

461 Mr. Turner, if you want to go ahead and start, research
462 director for Free Press. We welcome you here, and we look
463 forward to your testimony, sir.

|
464 ^STATEMENTS OF S. DEREK TURNER, RESEARCH DIRECTOR, FREE
465 PRESS; ROBIN CHASE, CEO, BUZZCAR; JAMES CICCONI, SENIOR
466 EXECUTIVE VICE PRESIDENT, EXTERNAL AND LEGISLATIVE AFFAIRS,
467 AT&T; ANNA-MARIA KOVACS, PH.D., STRATEGIC CHOICES; SHANE
468 MITCHELL GREENSTEIN, PH.D., THE ELINOR AND WENDELL HOBBS
469 PROFESSOR, KELLOGG SCHOOL OF MANAGEMENT, NORTHWESTERN
470 UNIVERSITY; AND TOM DEREGGI, PRESIDENT, RAPIDDSL & WIRELESS

|
471 ^STATEMENT OF S. DEREK TURNER

472 } Mr. {Turner.} Thank you. Good afternoon, Chairman
473 Walden and Ranking Member Eshoo, members of the committee.
474 On behalf of Free Press and the Free Press Action Fund, as
475 the coordinator of the Save the Internet Coalition,
476 representing more than 800 groups and their 10 million
477 members, I appreciate the opportunity to offer the
478 perspective of Internet users in today's hearing on House
479 Joint Resolution 37.

480 Let me begin by acknowledging an often-forgotten truth.
481 The principle of non-discrimination, which is the bedrock of
482 net neutrality policy, was not always the political football
483 it is today. Unfortunately, the debate around non-
484 discrimination has become immune to the calming powers of

485 historical fact and susceptible to the ills of special
486 interest politics and false partisan frames.

487 This recent rhetorical drift is very much at odds with
488 the long bipartisan effort to prevent market power abuses by
489 owners of our Nation's critical communications
490 infrastructure. It was the Nixon administration that put in
491 place strong rules of non-discrimination in order to ensure
492 abuses of market power would not stifle the growth of an
493 infant network computing industry. This successful framework
494 was later improved upon by both the Carter and Reagan
495 administrations.

496 In the Telecom Act of 1996, a bipartisan Congress
497 recognized that in order to foster new industries, we needed
498 the FCC to act to ensure that everyone had open access to the
499 information superhighway. Look no further than Section 10 to
500 see that Congress intended non-discrimination survive any
501 deregulation.

502 In the early 2000s, the FCC began to abandon the Telecom
503 Act's blueprint for reason deregulation through forbearance;
504 however, the Commission still recognized that the underlying
505 nondiscriminatory outcomes were worth preserving. FCC
506 Chairman Michael Powell first articulated the four Internet
507 freedoms that subsequently served as the basis for the open
508 Internet provisions in the COPE Act adopted by the House in

509 2006. Chairman Kevin Martin took action in 2008 to stop
510 Comcast's secret discrimination against certain Internet
511 content.

512 But recently, we have seen this debate move away from
513 the shared goal of preserving the open Internet. The problem
514 of market power in communications networks is very real and
515 increasingly politically inconvenient. As a result, we have
516 seen those who used to recognize this problem abandon those
517 views. Some policy makers now seem resigned to the misguided
518 notion that the duopoly Internet access market is perfectly
519 competitive. This is unfortunate because I believe we all
520 agree that the Internet should be preserved as an open
521 platform. Allowing gatekeepers to erect barriers to speech
522 and commerce is an unacceptable outcome, and public policy
523 should be used to prevent it.

524 If we can agree that ensuring access to an open platform
525 is a worthy policy goal, then we have a duty to confront the
526 reality that network owners have strong incentives to close
527 the platform and favor their own content at the expense of
528 everyone else's. Now, I recognize that some of you are
529 uncomfortable with the FCC's open Internet order. My
530 organization, too, ultimately opposed it. We felt that it
531 failed to adequately preserve and protect the open Internet;
532 however, we oppose the resolution of disapproval. It will

533 leave consumers completely unprotected. It will remove the
534 limited certainty that the FCC's rules provide. Most
535 importantly, it will prevent the FCC from addressing blatant
536 censorship and anti-competitive activities in the future.
537 This resolution is an unnecessary and dangerous overreaction
538 to a policy framework that is, at its core, very similar to
539 the bipartisan COPE Act of 2006. Make no mistake, adoption
540 of this resolution will increase market uncertainty and harm
541 economic growth.

542 Most ISPs have told Wall Street the truth, that these
543 rules are no burden, so to borrow a very tired old phrase,
544 the resolution of this approval is a solution in search of a
545 problem.

546 Innovators in the applications and content sector
547 believe they now have a certain, albeit imperfect, framework
548 to live under. This resolution, if enacted, will remove that
549 certainty and subject them to the discriminatory whims of the
550 ISPs. There may be much to dislike about what this FCC did
551 and how it did it, but the fundamental point here is that we
552 cannot simply set up a false choice between what the FCC did
553 and no policy at all. We can't wish away the concentrated
554 market structure. We can't simply hope that the duopoly ISPs
555 will make decisions in the best interest of all Americans.

556 I am a strong believer in free markets, but I understand

557 the immovable barriers to effective competition in markets
558 like this that have natural monopoly characteristics.
559 Internet users cannot afford for Congress to remove what
560 little oversight is left.

561 So instead of pursuing this perilous path, we urge this
562 body to remember its commitment to protecting non-
563 discrimination, and work on constructive solutions that will
564 benefit all Americans.

565 Thank you for your attention, and I look forward to your
566 questions.

567 [The prepared statement of Mr. Turner follows:]

568 ***** INSERT 1 *****

|
569 Mr. {Walden.} Mr. Turner, thank you for being here
570 today. We appreciate your testimony.

571 Ms. Chase, we welcome you to the subcommittee. We
572 appreciate your testimony as well, and your extra effort to
573 be here today. Please go ahead.

|
574 ^STATEMENT OF ROBIN CHASE

575 } Ms. {Chase.} Chairman Walden, Ranking Member Eshoo, and
576 members of the subcommittee, thank you for this opportunity
577 to discuss the importance of network neutrality rules to job
578 creation, economic development, and innovation.

579 I am the founder of GoLoco, an online ridesharing
580 community; the founder of Meadow Networks, a consulting firm
581 that advises governments about wireless applications in the
582 transportation sector; and the founder and former CEO of
583 Zipcar, the world's largest carsharing company. When I
584 received the invitation late last week to testify before this
585 committee, I was working across the Atlantic, and later this
586 afternoon I will fly back. Despite the significant resources
587 and travel time to come here, I accepted the invitation
588 because the course of action Congress is considering, namely
589 repealing and eliminating the authority of the FCC to enact
590 policies that preserve an open Internet, will greatly harm
591 our country's ability to innovate, produce jobs, and remain
592 globally competitive. As a successful American entrepreneur,
593 I care deeply about maintaining our leadership within the
594 world marketplace.

595 Eleven years ago, I co-founded Zipcar. Our innovation

596 was to make renting a car as simple as getting cash from an
597 ATM, and open access to the Internet was central to Zipcar's
598 success. It is only because of the ease, speed, and zero
599 marginal cost of finding, reserving, and unlocking a car that
600 anyone would be willing to rent a car for an hour or to sell
601 only an hour of a car's time. Without an open Internet
602 facilitating these transactions, Zipcar would simply not
603 exist.

604 Eliminating the FCC's network neutrality rules would put
605 future entrepreneurs and small businesses at a significant
606 disadvantage. Network neutrality prevents the
607 telecommunications industry from discriminating against new
608 applications and supports innovative new services like
609 Zipcar.

610 I want to draw an important parallel. Imagine, for
611 example, if Zipcar had been forced to rely on the auto
612 industry's definitions of car ownership, or worse yet, had to
613 ask their permission to exist. Our vision of a fleet of cars
614 being shared among a community of individuals would have been
615 seen as implausible and threatening. Likewise, we cannot
616 rely on the telecommunications industry to define the
617 Internet or what people may use it for. Without consumer
618 protections like network neutrality, these companies will
619 define the Internet to mirror their preferred ``triple

620 play'', their telephone services, their video channels, and
621 their notion of the ideal Internet experience, and they will
622 seek to squash any service that threatens their revenue
623 stream, a perfect recipe for stifling innovation.

624 This is not just mere speculation about the potential
625 for shortsightedness, but rather personal firsthand
626 experience. During the initial years of Zipcar, the wireless
627 industry was simply unable to think outside the box. When we
628 first approached cell phone companies to buy a data plan
629 access in 2000, we were met with blank non-responsive stares.
630 The industry had only one vision of wireless at that time,
631 and therefore only one product to sell. I recall many
632 representatives not actually understanding the difference
633 between purchasing kilobytes versus purchasing minutes. In
634 their minds, their customers all used cell phones. Others
635 simply did not exist.

636 Today, innovation is the lifeblood of a competitive
637 economy, and the Internet is its circulatory system. An open
638 Internet gives everyone both access and the ability to apply
639 new ways of thinking to problems. An open Internet breaks
640 through silos that often do not get new thinking applied to
641 them. For entrepreneurs, the open Internet allows for
642 extraordinarily low input costs, which allows them to
643 efficiently tap into unused excess capacity and leverage

644 ideas at virtually no cost.

645 Ensuring that the Internet will continue to promote
646 innovation is the reason we are having this debate, and I
647 absolutely agree that excessive regulation stifles innovation
648 and prevents free markets from innovating. But the most
649 important thing I have to say to this committee, and the
650 reason I am here and flew all this way, the protections
651 enacted by the FCC will help ensure an open Internet.
652 Network neutrality is not excessive regulation that will
653 stifle innovation. Network neutrality promotes innovation
654 and protects consumers by preventing telecommunications
655 companies from stifling new thinking, new services, and new
656 applications.

657 Indeed, I think the FCC's rules actually do not go far
658 enough, especially with respect to wireless. The idea that
659 different rules should apply, and that my experience of the
660 Internet would be different depending on whether I am sitting
661 at home on my desk connected or a park bench accessing those
662 same pages wirelessly is nonsense. These arbitrary
663 distinctions dramatically complicate life for innovators and
664 entrepreneurs who will now have to contend with two different
665 Internets, one wireless and one wire line, in everything they
666 do. If Congress wants to truly unlock the economic and job
667 creating potential of the Internet, and fully tap into the

668 innovation potential of our country, it should do so by
669 improving the FCC's rule in this regard, not repealing it.

670 Twenty years ago, no one was thinking that the Internet
671 would be used to share small numbers of cars among large
672 numbers of people, and I don't know what brilliant and
673 unexpected use the Internet will enable tomorrow. No one
674 here does. That is why it is critical that fundamental
675 characteristic of the Internet, its ability to accommodate,
676 adapt, and evolve, is protected from companies that want to
677 control how entrepreneurs and the general public uses our
678 networks. Public policies to ensure this outcome are vital
679 if America wants to remain competitive in the 21st century
680 economy. Protecting the open Internet and preventing an
681 oligopoly from controlling how entrepreneurs like me use the
682 Internet is in America's best interests.

683 Thank you for letting me testify, and I look forward to
684 your questions.

685 [The prepared statement of Ms. Chase follows:]

686 ***** INSERT 2 *****

|
687 Mr. {Walden.} Thank you, Ms. Chase, again for your
688 testimony.

689 Now let us go to Mr. Cicconi. Thank you for being here
690 from AT&T, senior executive vice president, external and
691 legislative affairs. We welcome your testimony, sir.

|
692 ^STATEMENT OF JAMES CICCONI

693 } Mr. {Cicconi.} Thank you, Chairman Walden, Ranking
694 Member Eshoo, members of the committee. Thank you for
695 inviting me to testify today on behalf of my company, AT&T.
696 I recognize it is unusual to be asked to testify on a
697 resolution on which we have not taken a position; however, as
698 I am sure all of you know, we have been involved for years in
699 the issue that underlies H.J. Res 37, and that is the
700 protracted dispute over net neutrality regulation by the FCC.

701 Let me first stress that AT&T has long supported the
702 broadband principles laid out by the FCC over 6 years ago.
703 We support an open Internet, we promise to abide by that
704 concept voluntarily. But like many issues that start from a
705 shared belief, this debate long ago devolved into a long
706 discussion over specifics, whether the FCC should be able to
707 enforce the broadband principles, whether a broad set of
708 rules was needed, what legal authority the FCC has to put
709 such rules in place. And all of this, despite any real
710 evidence of a problem.

711 As in most regulatory debates, this one does not lack
712 for radical voices. Many sought heavy-handed government
713 regulation and control of free markets, some for commercial

714 advantages, others to advance their own ideology. Since this
715 debate began back in 2005, AT&T has consistently opposed any
716 FCC regulation of Internet services or facilities. This is
717 still our strong preference today. We feel the anti-trust
718 laws, the Federal Trade Act, and the discipline of highly
719 competitive markets are more than adequate to police any
720 potential abuses.

721 Nonetheless, the pressure for Internet regulation
722 continued over the years. You have all heard the saying that
723 there is nothing so powerful as an idea whose time has come.
724 Unfortunately, this is sometimes also true of a bad idea.
725 The versions of net neutrality put forth by our opponents
726 were, in many cases, truly bad and truly radical ideas.

727 In October of 2009, some of these bad ideas found their
728 way into a proposed net neutrality rule at the FCC. AT&T and
729 the entire industry strongly opposed this proposal. It
730 created a high degree of market concern, and needless to say,
731 a very bad climate for investment. Unfortunately in the
732 spring of 2010, the situation went from bad to worse.
733 Following a decision by the D.C. Circuit Court of Appeals
734 that questioned the FCC's legal authority to enforce its
735 broadband principle, the Commission reacted by proposing to
736 subject all broadband facilities to common carriage
737 regulation under Title 2 of the Communications Act. This

738 proposal was both extreme and without foundation in law, we
739 feel strongly, and we fought it vigorously. Again, this even
740 more radical proposal upset the financial markets in a very
741 delicate economic situation.

742 By the summer of last year, and after hearing from a
743 bipartisan majority of House and Senate members, Chairman
744 Genakowski, to his credit, began seeking a different
745 approach. Discussions began between the opposing sides.
746 AT&T participated, because quite frankly, we felt the issue
747 was on a dangerous path that could end very badly for our
748 company and for the industry. This process was long, hard,
749 contentious. It led ultimately to discussions last fall
750 under the auspices of Chairman Waxman, and a compromise with
751 which, like most compromises, no one was entirely happy, but
752 most participants felt to be fair. However, legislation
753 proved impossible in that short timeframe, and the FCC made
754 clear its intentions to move forward with a vote on net
755 neutrality regulations by year end.

756 In this situation, my company faced a difficult
757 decision, given that the only proposals currently before the
758 FCC were either bad or worse, in our view. With others in
759 the industry, we decided we would be willing to accept a rule
760 modeled on the compromise we reached in the Waxman process,
761 but we were unwilling to support anything that went beyond

762 that. Chairman Genakowski, I might add, was under tremendous
763 pressure from others, including voices on the Commission, to
764 impose Title 2 regulations. Instead, he and his staff worked
765 with the industry in good faith, and with the various
766 stakeholders to craft a compromise rule to try to balance
767 major differences, while avoiding more extreme proposals.

768 I would be the first to stress this is not a perfect
769 solution. Our preference has always been that the FCC should
770 not regulate any Internet space. But it was also clear to us
771 that a majority of the FCC was determined to move forward in
772 December, and that we would not be representing our
773 shareholders well if we let the perfect be the enemy of the
774 good. We faced opponents pressing for more extreme
775 regulations, and knew that absent a fair middle ground, a
776 good bit of harm might be done to our industry and to needed
777 investment. Chairman Genakowski resisted those pressures and
778 acted in good faith to find that fair middle ground. The
779 rule is consistent with AT&T's current open Internet
780 policies. It would not require us to change any of our
781 business practices or plans, assuming it is applied in a
782 reasonable narrowly tailored way.

783 As the chairman of AT&T has said, it provides a path for
784 continued investment by removing much of the uncertainty this
785 issue has caused. It was a factor, along with recent tax law

786 changes, and AT&T's decision to accelerate the investment in
787 the build-out of our LTE wireless network.

788 In short, we believe the result, given the alternatives
789 before the Commission, is both fair and will help maintain
790 our company's ability to invest.

791 Thank you.

792 [The prepared statement of Mr. Cicconi follows:]

793 ***** INSERT 3 *****

|
794 Mr. {Walden.} Thank you, Mr. Cicconi. We appreciate
795 your testimony.

796 Now we are going to go to Dr. Anna-Maria Kovacs with
797 Strategic Choices. We appreciate your willingness to come
798 and testify on the financial implications of this rule in the
799 markets. Thank you. Go ahead.

|
800 ^STATEMENT OF ANNA-MARIA KOVACS

801 } Ms. {Kovacs.} Thank you. Good afternoon--

802 Mr. {Walden.} Please pull that microphone close and
803 make sure it is turned on.

804 Ms. {Kovacs.} Good afternoon, Chairman Walden, Ranking
805 Member Eshoo, and distinguished members of this subcommittee.
806 Thank you for the opportunity to appear before you today.

807 I spent roughly 25 years working as an investment
808 analyst covering the communications industry before retiring
809 as an analyst at the end of 2010. While I intend in the
810 future to work as a consultant, at the present time I have no
811 clients and I represent myself.

812 The Internet has become central to the lives of most
813 Americans, and it is certainly something I rely on almost
814 every day for news, information and communication. I agree
815 with the stated goals of the FCC's order. The desire for an
816 open Internet, for transparency, for an environment in which
817 innovation and investment flourish to the benefit of both
818 consumers and providers at all levels of the Internet
819 ecosystem.

820 I am concerned, however, that some aspects of the order
821 will ultimately result in unintended, but nevertheless

822 detrimental, consequences to investment and innovation, both
823 at the edge and the core. And I think it is important to
824 emphasize that the debate is not about whether blocking or
825 degradation of service are good or bad. It is about whether
826 they are more likely to occur through the intentional actions
827 of broadband Internet access providers or through lack of
828 investment. That really is what the debate boils down to.

829 The order appears to be premised on the view of the
830 Internet ecosystem that assumes that the edge is embryonic
831 and innovative, and the core is mature and static.

832 Application providers, including content and service
833 providers, are left free to transform their business plans at
834 will. One of their key inputs, transport, is provided to
835 them free over the networks of broadband Internet access
836 providers, carriers with whom they may compete at the
837 application level. Conversely, the order restricts the
838 carrier's flexibility in designing their business plans,
839 limits their sources of revenue, dictates that they spend
840 capital to expand the networks at the edge provider's will,
841 and forces them to subsidize competitors who cannibalize
842 their customer base.

843 To characterize this as a transfer of wealth from
844 broadband Internet access providers to application providers
845 is accurate, but does not begin to grasp the problem for both

846 parties. A transfer of wealth between two independent
847 parties can be beneficial to one at the expense of the other.
848 A transfer of wealth that will ultimately cripple the party
849 on which the other relies for its very existence is
850 profoundly harmful to both. Thus, it is the order's implicit
851 assumption that it is possible to protect the edge at the
852 expense of the core that concerns me most. The two are
853 inextricably entwined. To protect the edge, it is vital to
854 protect the core.

855 Far more devastating to Google, Skype and Netflix than
856 being charged for transport is an Internet whose evolution
857 and capacity are flash frozen for lack of investment. That
858 is because their innovative applications can only follow a
859 step behind the network's capacity and quality.

860 Networks have a voracious and unending need for capital,
861 just as new application can safely rest on its laurels,
862 neither can networks. They must constantly be upgraded to
863 satisfy the need for ever-increasing speed, quality, and
864 security. But carriers can only raise capital to invest if
865 they have enough to cover their costs. To raise the
866 necessary revenues, companies need flexibility. They need to
867 be able to address their business plans to changing market
868 conditions. Above all, they need to be able to charge for
869 their services and to have the flexibility in doing so. Just

870 as professional application providers cannot afford to give
871 away their content and services for free, neither can the
872 carriers.

873 As an example, the FCC's model for bids Frontier to
874 charge Skype at the wholesale level, even while Skype takes
875 away because the voice customers at the retail level from
876 Frontier. If carriers are forced to charge only for
877 broadband access because they can no longer charge for video
878 and voice, the price of that broadband access will increase
879 and investment will fall. That is damaging not only to the
880 carriers, it is also damaging to the application providers
881 that ride on the carrier's networks and are constrained by
882 the capacity and quality limitations of those networks.

883 My concerns is there is a false dichotomy that drives
884 the net neutrality debate, that views the edge as separate
885 from the core as needing to be protected from the core, as
886 able to prosper only at the expense of the core. In fact,
887 because innovation at the application level is so completely
888 tied to investment and innovation at the transport level, the
889 edge can only exist if the core prospers. The best way to
890 encourage innovation, investment, and jobs at the edge is to
891 also promote innovation, investment, and jobs at the core.

892 [The prepared statement of Ms. Kovacs follows:]

893 ***** INSERT 4 *****

|
894 Mr. {Walden.} Dr. Kovacs, thank you for your testimony.

895 We appreciate it.

896 Next is Dr. Shane Mitchell Greenstein, Ph.D., the Elinor

897 and Wendell Hobbs professor at the Kellogg School of

898 Management, Northwestern University. Dr. Greenstein, we

899 welcome you, and look forward to your comments.

|
900 ^STATEMENT OF SHANE MITCHELL GREENSTEIN

901 } Mr. {Greenstein.} Thank you for giving me an
902 opportunity to speak. I am happy to share my views with you.
903 Please understand I do not work for anyone, neither firm nor
904 advocate. I come as a professional economist who has had the
905 privilege to study and write about the commercial Internet
906 access market and almost since its inception.

907 From the standpoint of the economics of the Internet
908 access market, there are great potential risks from disposing
909 of the open Internet order, and the gains from continuity are
910 high. The order looks like good innovation policy and good
911 economic policy. If we want to create a prosperous
912 commercial Internet in the next 15 years, think about how
913 well the Internet works today. Now think about all the ways
914 it could have gone wrong, and my advice boils down to avoid
915 the same problems we avoided in the past.

916 How do you do that? You keep transactions, costs low
917 for entrepreneurs. The United States commercial Internet
918 functions well today because it avoids a number of industry
919 practices that would have raised transaction costs of
920 innovation that would have introduced hassles, delays, and
921 haggling. Instead, today any entrepreneur can enter without

922 worrying about the gains--gaining the permission of a gateway
923 firm.

924 If the U.S. government commits to no regulatory
925 intervention in Internet access markets, would that invite
926 problems? Experience of the last 50 years suggests that
927 there is a risk it will and a chance it will not. It is hard
928 to tell. Until recently, regulatory restraints prevented all
929 carriers from taking certain actions so there is little
930 experience from which to forecast how carriers would behave
931 in the absence of restraint.

932 One central concern arises due to commercial activities
933 in one line of business, for example, broadband service,
934 affecting the prospects in another, for example, video
935 entertainment. If carriers act on their economic incentives,
936 we would expect carriers to help all of their businesses,
937 deliberately becoming less transparent to rivals, blocking
938 some content of rivals, or giving lower priority to traffic
939 from erstwhile competitors. Concentrated supply of access in
940 some locations in the United States also heightens the
941 incentives to act this way.

942 A balanced view would also note that there are other
943 factors pushing in the other direction. National
944 standardization processes generate transparency. User
945 tendencies to substitute to alternative carriers in some

946 markets also reduce incentives to block traffic. Reasonable
947 people can differ on the relative importance of these forces
948 and that is an additional reason why forecasting is hard to
949 make.

950 The dangers would be costly. Any movement towards less
951 transparency and more blocking and more discrimination of
952 traffic introduces hassles and delays for entrepreneurs,
953 software innovators, server companies around the globe, even
954 juniors at Harvard with ambitions to unseat Mark Zuckerberg.

955 Overall, taking away regulatory oversight risks the
956 emergence of a very desirable consequence, less commercial
957 innovation, and its child, less economic growth. Policies
958 that tend towards continuity are the most desirable.
959 Continuity here is the regime of continued regulatory
960 presence with occasional inconsistent action.

961 It is my view, as it is among many others, that the
962 FCC's policy represents continuity. Frankly, I think
963 broadband firms can live with this rule because it really
964 does not change much of what they do. Entrepreneurs can live
965 with this rule because it lets them innovate and start
966 businesses as easily tomorrow as they did in the past, and
967 raises the certainty that no additional hassles will emerge
968 in the near term. Moreover, the rule includes important and
969 appropriate exceptions for reasonable network management, and

970 for the complications of wireless applications.

971 In sum, the potential risks of disproving the rule are
972 great, and the gains from continuity are high, and the order
973 looks like good innovation policy, and good economic policy.

974 Thank you for your attention, and thank you for allowing
975 me to testify.

976 [The prepared statement of Mr. Greenstein follows:]

977 ***** INSERT 5 *****

|
978 Mr. {Walden.} Doctor, thank you for being here. We
979 appreciate your testimony.

980 Now our final witness this afternoon, Tom DeReggi,
981 President, RapidDSL and Wireless from Boyds, Maryland. We
982 welcome you. You probably came maybe the least distance. I
983 don't know, but certainly not from overseas. Mr. DeReggi,
984 thank you for being here.

|
985 ^STATEMENT OF TOM DEREGGI

986 } Mr. {DeReggi.} Thank you. Chairman Walden, Ranking
987 Member Eshoo, and members of the committee, thank you very
988 much for the opportunity to testify. It is a great honor to
989 be here today.

990 Quickly about myself, I started selling--reselling DSL--
991 started outselling DSL. In 2000, I formed RapidDSL and
992 Wireless. My company is a grass roots independently owned
993 and financed fixed wireless broadband access provider. We
994 cover a 30-mile radius around Washington, D.C., serving
995 businesses and residences in urban and rural communities. I
996 have sat on advisory boards of ISPCON and until last year, I
997 served on the Board of WISPA as legislative committee
998 chairman.

999 Quickly a bit about WISP. The WISP industry is
1000 primarily made up of small independent companies serving both
1001 competitive markets and rural markets, many of which would
1002 otherwise have no access to broadband at all. The combined
1003 services of all WISPs nationwide cover more than 75 million
1004 households, 71 percent of the entire population of the United
1005 States.

1006 The speed of wireless is determined by topography. In

1007 heavily treed areas, a connection may be limited to as little
1008 as three megabits shared by 50 households, whereas in areas
1009 with direct line of sight between towers and customers,
1010 speeds as high as 80 megabits are possible. In short, WISPs
1011 are real and relevant competition for AT&T, Verizon, Comcast,
1012 and can reach means--can reach areas others are unlikely to
1013 cover without substantial government subsidies.

1014 I am here today to show my industry's support for H.J.
1015 Res 37, and ask Congress to vote to reverse the FCC's open--
1016 recent open Internet rules which are not open, and are not
1017 neutral. It is my belief that the FCC has overstepped their
1018 authority to address a problem that didn't exist at the
1019 detriment of our industry and the consumers.

1020 If the rules take effect, it will destroy jobs, stifle
1021 innovation, deter investment, create uncertainty, distract
1022 WISPs from building networks to all Americans, increase
1023 government spending, create liability, increase legal costs,
1024 degrade broadband performance and increase consumer's price,
1025 and possibly put some small WISPs and ISPs out of business.
1026 These are facts that would be contrary to the goals of the
1027 FCC's national broadband plan.

1028 Rules and regulations create jobs only for lawyers
1029 instead putting more jobs to expand broadband access to all
1030 Americans, community based jobs that lead to life-long

1031 careers, locally owned WISPs create that. We don't need
1032 regulated band-aids, we need true competitive environments
1033 that give consumers choice. Foster competition between
1034 access providers and the consequences will be open Internet
1035 content. Net neutrality regulation is a foundation for
1036 monopolies and unnecessary if we build competitive
1037 industries.

1038 Internet providers need the support from policy makers,
1039 not regulatory roadblocks. Uncertainty and liability created
1040 by these regulations would be so great that even I, the
1041 business owner, have to reconsider whether to continue
1042 investing money in my company.

1043 The rules applied to broadband as a single uniform
1044 product, rather than recognize that two very different
1045 distinct generation broadband products exist, broadband and
1046 advanced broadband. It is inappropriate to expect first
1047 generation broadband network providers to allow the operation
1048 of second generation advanced broadband applications, such as
1049 HD streaming video, which minimum requirements may exceed the
1050 capability or acceptable use policies of the first generation
1051 basic networks. It is inappropriate to insist that broadband
1052 access products need to support a user application for which
1053 the product was not originally designed to support. I
1054 believe the term reasonable network management does not go

1055 far enough to guarantee that the rules properly match
1056 technology to the appropriate access technology. The rules
1057 give special consideration to mobile carriers but
1058 inappropriately bundle WISP fixed wireless providers. The
1059 rules intended for wireline and fiber providers, but failing
1060 to recognize that WISPs are subject to the same technical
1061 constraints as mobile providers, the Commission failed to
1062 fulfill its role as an expert agency, and instead, succumbed
1063 to political pressure to pick and choose winners.

1064 One size does not work and does not fit all. I wish I
1065 could say the Internet was simple, but it is not. The
1066 Internet is extremely complicated and is different in every
1067 community that it is deployed. The Internet is an ever-
1068 changing dynamic industry with many variables. I see no way
1069 static regulation could ever keep up.

1070 The FCC rules address what could happen, rather than
1071 what actually did happen. For example, ISPs have never
1072 censored legal content, but content providers have
1073 demonstrated actual anti-competitive behavior. For example,
1074 ESPN360/Disney prevents every one of its ISP customers from
1075 accessing its content unless the provider pays it a fixed fee
1076 for every customer it has, even though most will not watch
1077 the content. It gives favorable rates to large carriers than
1078 it gives small providers. This behavior is anything but

1079 neutral, but the FCC fails--rules failed to address the
1080 serious content neutrality issue. Certainly, if the rules
1081 are going to address prospective harms, they ought to address
1082 ones that actually already exist. In an environment where
1083 content providers can be discriminatory is not a neutral
1084 network.

1085 The rules unjustly entitle consumers and content
1086 providers to free reign of someone else's private network at
1087 the access provider's expense. Because the rules literally
1088 could render an Internet provider's network inoperable, the
1089 rules may actually constitute a regulatory taking of Internet
1090 service provider's networks in violation of the Fifth
1091 Amendment. The Commission attempts to justify the rules,
1092 proclaiming that they are necessary, because many areas are
1093 served by only one or two providers. Not only is this false
1094 in most cases, but also the rules themselves would make the
1095 problem worse by making it more difficult to competitive
1096 providers to expand their services.

1097 Are WISPs real competition for wired networks such as
1098 Comcast? The arithmetic says yes. Wimax actually delivers
1099 more capacity to the end user than most widely deployed cable
1100 services, which are based on DOCSIS 2.0. A DOCSIS 2.0 hybrid
1101 fiber cable system has 43 megabits in downstream direction,
1102 two megabits upstream at the equipment cabinet that serves a

1103 neighborhood. The network is usually engineered so that 500
1104 to 2,000 subscribers are connected by coaxial cable to that
1105 cabinet and the bandwidth is divided among them. But in
1106 wireless systems using Wimax or Airmax technology, each radio
1107 has typical capacity of 24 megabits and serves 60 or fewer
1108 users. So if all the bandwidth is in use and is divided
1109 evenly, each cable subscriber gets 86 kilobits per second,
1110 not much more than dial-up, while wireless users get up to
1111 400 kilobits per second.

1112 Mr. {Walden.} Mr. DeReggi, you have exhausted your
1113 time. Can you just wrap it up?

1114 Mr. {DeReggi.} Yeah, let me wrap it up.

1115 I have pointed out many reasons why the FCC open
1116 Internet rules are inappropriate and should be nullified;
1117 however, please do not misinterpret this testimony to mean
1118 that WISPs or ISPs ought to be unfair to their customers or
1119 in any way limit their ability to express themselves online.
1120 What we want is the freedom and the flexibility to compete,
1121 to innovate, and to design our networks to provide the
1122 services the customers really want. The FCC's regulations
1123 should take effect would not only fail to do what the
1124 Commission claims, they will instead degrade harm, preventing
1125 us from competing to provide the best services to our
1126 customers.

1127 Thank you.

1128 [The prepared statement of Mr. DeReggi follows:]

1129 ***** INSERT 6 *****

|
1130 Mr. {Walden.} Thank you, sir. Thank you to all of you
1131 who testified today. We will go into our questions now, and
1132 obviously we are on time constraints here. We each get about
1133 5 minutes, so don't take offense if we ask these in sort of a
1134 yes and no environment. Mr. Dingell probably pioneered that
1135 on the committee quite successfully.

1136 Mr. Turner, do you believe the FCC is on strong legal
1137 ground with this order and it will be upheld in the courts?

1138 Mr. {Turner.} I believe they took an unnecessary risk
1139 by going down the Title 1 route.

1140 Mr. {Walden.} So you do not believe they are on strong
1141 legal ground?

1142 Mr. {Turner.} I think they are on less firm legal
1143 ground than they could have been.

1144 Mr. {Walden.} Do you oppose the resolution disapproval
1145 not because you like the FCC order, you have stated that, but
1146 because you think the FCC might lose in court when that
1147 happens? Won't you push for a reclassification on Title 2?
1148 Isn't that your preference?

1149 Mr. {Turner.} I oppose the resolution disapproval
1150 because of the consequences of once Congress disapproves of
1151 these rules, the FCC is then forbidden from enacting any
1152 similar rules in that space that could extend to things far

1153 beyond network neutrality, bill shot, lots of other issues.

1154 Mr. {Walden.} But the real issue is they can't do Title
1155 2, right, with this disapproval resolution if it becomes law?

1156 Mr. {Turner.} No, I don't believe that. I believe the
1157 issue of reclassification is separate from the resolution
1158 disapproval, and I do not think reclassification acts would
1159 fall under the CRA.

1160 Mr. {Walden.} Because in your own documents from Free
1161 Press, point number five, legal footing, it says ``Genakowski
1162 reportedly is grounding these new rules in the same kind of
1163 legal arguments that were rejected by the courts last spring.
1164 This strategy presents an unnecessary risk in the
1165 shortsighted attempt to avoid reclassifying broadband under
1166 Title 2 of the Communications Act. Such a move doesn't just
1167 put net neutrality on shaky ground, it places the FCC's
1168 entire broadband agenda in jeopardy.''

1169 Mr. {Turner.} That is exactly right.

1170 Mr. {Walden.} So essentially a vote against this
1171 resolution is a vote for reclassification, something that
1172 more than 300 members of Congress have opposed in a
1173 bipartisan basis.

1174 Mr. DeReggi, is it your sense that the larger broadband
1175 providers cut a deal that they could live with because it was
1176 better than Title 2 reclassification, but that ultimately you

1177 will be the one having to pay the price, companies like
1178 yours? Can you turn on your microphone, sir?

1179 Mr. {DeReggi.} That is correct. The smaller providers
1180 and the more competitive providers are the ones that will pay
1181 the price for the rules. I agree. I would say that all of
1182 us could probably live with the rules if we had to, if they
1183 stayed there. The question is they don't necessarily stay
1184 there and the rules don't really give all the protections
1185 that are needed for the access providers. You know, content
1186 providers are not the only person on the table to protect
1187 here.

1188 Mr. {Walden.} And does it give you any concern that the
1189 FCC refuses to close its Title 2 rulemaking? They have that
1190 still open. They are taking information on it. Is it kind
1191 of like the little club hanging out there?

1192 Mr. {DeReggi.} I think this is really an issue that
1193 needs to be solved by Congress. So I think the same thing
1194 applies to Title 2, that Congress should stop that if that
1195 were to happen, and pass laws that are--do the right process.

1196 Mr. {Walden.} I would concur. We--some of us on this
1197 committee believe they don't have the authority, the FCC. It
1198 has not been granted by this Congress or any other Congress.

1199 Ms. Kovacs, you explained in your statement that
1200 networks have a voracious and unending need for capital.

1201 Will the net neutrality order hurt the market for capital for
1202 network providers? Be sure to turn on your microphone there,
1203 ma'am.

1204 Ms. {Kovacs.} Yes, I think that this rule, if it is
1205 implemented at all the way it appears likely, is going to be
1206 detrimental because it is going to hit at the revenue
1207 sources. It is going to make it easier to cannibalize the
1208 network provider's revenues. For example, Skype taking
1209 Frontier's voice revenues, driving up the cost of broadband
1210 by forcing all of the cost on that. So short version yes, I
1211 think it is going to be a problem.

1212 Mr. {Walden.} For capital?

1213 Ms. {Kovacs.} For capital.

1214 Mr. {Walden.} Ms. Chase, again, thank you for coming,
1215 and I would just suggest the members that she does have to
1216 leave some time this afternoon to catch a flight back, so she
1217 may have to depart before we are done with our questions.

1218 Despite the fact that these rules have never existed
1219 previously and the companies you have been involved with and
1220 thousands of others have thrived, do I understand correctly
1221 that you support these rules because you believe they are
1222 needed to ensure that small companies can compete on the
1223 Internet?

1224 Ms. {Chase.} These rules haven't existed. If we think

1225 about the Internet and Internet innovation, it doesn't have a
1226 very long life, so indeed, the power of the tel-co's is
1227 becoming more and more obvious, and yes, I think it does need
1228 protection. And while I didn't have to need that protection
1229 when I founded, today we definitely do.

1230 Mr. {Walden.} And you said that without these rules
1231 small companies will get squeezed out by larger companies
1232 that can pay for priority on the Internet, in effect,
1233 correct?

1234 Ms. {Chase.} Priority is also classifying what
1235 constitutes the Internet, and if we don't have a definition
1236 at the FCC, the telecommunications companies can decide what
1237 access actually looks like. So I think I could be separated
1238 from my market as well.

1239 Mr. {Walden.} The FCC order itself has said this is not
1240 going on today, but Ms. Chase, you are worried that that
1241 might go on in the future, right?

1242 Ms. {Chase.} We typically try to protect small interest
1243 from duopolies, and I see this as a duopoly so it definitely
1244 needs some oversight.

1245 Mr. {Walden.} So would you be worried if web companies
1246 like Google charged websites for prioritized placement on the
1247 Internet?

1248 Ms. {Chase.} I think the FCC ruling doesn't deal with

1249 Google right at this moment. I think it is more talking
1250 about infrastructure and access to the Internet.

1251 Mr. {Walden.} What would you be worried about that?
1252 Are you concerned about that, because somewhere on the end of
1253 the pipe somebody is prioritizing, right?

1254 Ms. {Chase.} Yes, I could become worried about that.

1255 Mr. {Walden.} And in preparation for this hearing, I
1256 did a little search on carshare with Google to familiarize
1257 myself with the market, and I was pretty surprised to find
1258 that my search resulted in a paid place at the very top of
1259 the search list for Zipcar, the company that you founded and
1260 ran. So isn't that exactly the kind of issue you are
1261 concerned about, in terms of a market leader paying an
1262 Internet giant for better access to consumers?

1263 Ms. {Chase.} I would say exact opposite. If we think
1264 about the old days of newspapers where I, as a rich person,
1265 could buy a giant full-page ad on a newspaper and small
1266 companies could never afford that, I think that is the
1267 parallel that I would like to draw.

1268 Mr. {Walden.} My time is expired. I will give it to
1269 Mrs. Eshoo now.

1270 Ms. {Eshoo.} My thanks to all of the witnesses, an
1271 instructive hearing.

1272 First to Ms. Chase, again, thank you for traveling the

1273 distance that you have to be here with us. You are an
1274 American entrepreneur, an American businesswoman, an
1275 innovator. I don't know if my colleagues know this, but Ms.
1276 Chase was named by Time magazine as one of the 100 most
1277 influential people. So you bring a lot to the table, and I
1278 am especially proud that a woman has achieved what you have.

1279 There is a difference at the table. You heard what Dr.
1280 Kovacs said, and while I am not going to--I guess I will be
1281 paraphrasing. She claims that the rules that the FCC adopted
1282 would hit revenue sources, damage capital for investment. Do
1283 you want to comment on that, and then I will ask Dr.
1284 Greenstein to comment on that, just very quickly because I
1285 have several questions.

1286 But would you go the heart of this whole issue of
1287 capital formation, businesses thriving or not thriving,
1288 whether the rules are helpful or hurtful, and this attempt
1289 to--I think there is a virus here in Congress, and it really
1290 is not about net neutrality. I think it is about any kind of
1291 regulation and whether government agencies have authority to
1292 carry out rules through their regulations. I think that is
1293 really what is at the heart of this thing. But at any rate,
1294 go ahead.

1295 Ms. {Chase.} When we think about the core and whether
1296 we are protecting the core, the edges and--the core is a

1297 duopoly, and so their investment choices--they have no
1298 competitive reason to make good investment choices. I think
1299 they--we can invest in something or we can cut our costs. We
1300 can do more innovations from an operational perspective.
1301 There has been an argument that there is only one thing for
1302 them to do to improve their system and only one revenue
1303 source. There are lots of revenue sources, so I do not buy
1304 the argument that just because we are cutting off one
1305 particular revenue source that the whole thing crumbles. It
1306 doesn't make any sense.

1307 Ms. {Eshoo.} Thank you. Dr. Greenstein?

1308 Mr. {Greenstein.} I disagree strongly with the
1309 assertion that all the ISPs in the United States have a
1310 problem covering the costs of data. First of all, we should
1311 recognize that there are different costs and there is a large
1312 variety. About 15 percent of the U.S. population lives in
1313 low density areas where it is expensive to run an ISP. In
1314 the urban populations and the high density parts of the
1315 United States, we had a complete build-out, at least by two
1316 wire line providers. That was shown in the national
1317 broadband plan. Those firms are really very healthy. They
1318 get margins somewhere estimated between 70 and 90 percent;
1319 that is to say, of the dollar they collect, something like 70
1320 cents to 90 cents on the dollar goes back to capital

1321 investment, the stockholders, the owners, and then the rest
1322 of it covers the cost of their data, the costs of customer
1323 maintenance, the cost of service.

1324 So given that is the situation, and for 15 years we have
1325 been watching the amount of data users ask for go up. I
1326 don't really think there is any particular crisis in 85
1327 percent of the population over how much data the ISPs can
1328 handle. It is a dollar a month on average--

1329 Ms. {Eshoo.} I appreciate it. I am going to ask you to
1330 stop because I want to get a couple more questions.

1331 Mr. {Greenstein.} You get the idea.

1332 Ms. {Eshoo.} To Mr. DeReggi, I mentioned in my opening
1333 statement about innovative companies, Netflix and Skype and
1334 eBay and how they have flourished. Other companies,
1335 thousands of jobs that have been created, not just in my
1336 district, my constituent's companies, but across the country.

1337 In your written testimony, you suggest that appropriate
1338 network management might be to simply block Netflix
1339 altogether. I find that a little chilling, and so--

1340 Mr. {DeReggi.} I can explain why. I don't believe--

1341 Mr. {Walden.} Will you turn on your mic?

1342 Mr. {DeReggi.} I don't believe in blocking anything
1343 without--

1344 Ms. {Eshoo.} But I mean to block anyone I think is part

1345 of the heart of all this, so why would you suggest that an
1346 appropriate network management is to block, and then fill in
1347 the blank. I mean, you said Netflix, but what--why do you
1348 find--

1349 Mr. {DeReggi.} If a spammer--

1350 Ms. {Eshoo.} Wait a minute. Why do you find that to be
1351 appropriate, and just real quickly.

1352 Mr. {DeReggi.} Okay. It is appropriate because you
1353 blocked the source of a problem. If the person that is
1354 violating your acceptable use policy is Netflix, you block
1355 Netflix. It takes less system resources to block them--

1356 Ms. {Eshoo.} I think this is--

1357 Mr. {DeReggi.} --than to--

1358 Ms. {Eshoo.} Frankly, I think this is an ineloquent
1359 statement about a school of thought. I just don't agree with
1360 it, and I think it would be offensive to consumers across the
1361 country. But that is my view and you have yours, so thank
1362 you.

1363 Mr. {Terry.} [Presiding] Thank you. Dr. Kovacs, do
1364 you have a response to Ms. Eshoo's question?

1365 Ms. {Kovacs.} I would like to--

1366 Mr. {Terry.} Microphone, please.

1367 Ms. {Kovacs.} Sorry about that. I would just like to--

1368 Mr. {Terry.} It is still not on.

1369 Ms. {Kovacs.} Okay. I would just like to correct a
1370 fact. If you actually look at the margins of the carriers,
1371 that income margin is 10 percent for AT&T and Verizon in
1372 2009, 6 percent for Frontier, that is opposed to 28 percent
1373 for Google. So I am afraid Dr. Greenstein's numbers are
1374 reversed of what he indicated.

1375 To go back to the issue of revenues, I think part of
1376 what is being missed is that not only are the companies not
1377 being allowed to charge for wholesale carriage, so Verizon or
1378 Frontier can't charge Skype for carrying Skype. The revenues
1379 that are going to get lost are the revenues--voice revenues
1380 that Skype then takes away from Frontier or Verizon or AT&T
1381 or the others. The networks are supported by the core
1382 revenues. The cable networks are largely supported by video.
1383 The phone networks are largely supported by voice. Broadband
1384 right now is treated as incremental. If the core revenues go
1385 away, broadband will have to carry it all.

1386 Mr. {Terry.} I appreciate--I just want to give you that
1387 opportunity, but Mr. Cicconi, there was a statement made
1388 during the opening statements that this rule is necessary
1389 because companies like Verizon and AT&T have hindered or
1390 blocked or somehow have interfered with the vibrancy of the
1391 Internet and the ingenuity. Can you tell me what policies
1392 exist with--have existed with AT&T and would you hinder or

1393 block the vibrancy of the Internet?

1394 Mr. {Cicconi.} Mr. Terry, I don't believe anybody can
1395 point to a single instance where AT&T has really done
1396 anything of that nature. In fact, I think one can argue that
1397 probably no company has made available to consumers more
1398 innovations or more choices in the past 5 years than AT&T.
1399 The notion that somehow we would have any interest, economic
1400 or otherwise, in disadvantaging any businesses represented at
1401 this table or frankly any other. I think--

1402 Mr. {Terry.} How about blocking? That is a major issue
1403 here to put that blocking. How have you blocked access?

1404 Mr. {Cicconi.} We haven't.

1405 Mr. {Terry.} You haven't?

1406 Mr. {Cicconi.} We have not.

1407 Mr. {Terry.} You have not, all right.

1408 Ms. Chase, since you have come so far I want to make
1409 sure we use your time. In your statement, you had mentioned
1410 that there was an issue with wireless. Could you tell us
1411 with your previous company where there were problems with
1412 ISPs who were backed on or any part that hindered the ability
1413 of that company?

1414 Ms. {Chase.} The anecdote I gave about starting in
1415 2000, there is a lot of talk about wireless and it turned out
1416 that we were the second application for consumers outside of

1417 cell phones. I was very struck then, and as we make this--
1418 think about it today that the telecommunications industry was
1419 lagging behind innovation, yet they were the gatekeepers so
1420 how I could buy data packets.

1421 Mr. {Terry.} Did they work with you to make sure that--

1422 Ms. {Chase.} No. No, we had to do a workaround for the
1423 first 3 years until they offered a different data plan, and
1424 it was very arduous. I would also add that in a similar
1425 fact, we manipulate black boxes as we put into cars, there is
1426 a permissions process for that, and that was a 3- or 4-month
1427 delay while the telecommunications carrier that we were
1428 working with--I think it was Verizon--gave us permission to
1429 manipulate the box as they saw fit, and that was also a
1430 significant delay for us.

1431 So it is better for innovators to not have to ask
1432 permission whenever possible.

1433 Mr. {Terry.} Would you like to reply? She did say that
1434 Verizon and not AT&T, but is that a net neutrality issue?

1435 Mr. {Cicconi.} That would have been the point I would
1436 have made, Mr. Terry. First of all--

1437 Mr. {Terry.} Microphone, please.

1438 Mr. {Cicconi.} I think companies are certainly free to
1439 price their services in a competitive market. How they
1440 choose to price them, and that may certainly help some

1441 companies and hurt others, but that is within their purview
1442 in our system.

1443 The second point is none of the things cited with
1444 respect would be a net neutrality violation, frankly, under
1445 any of the proposals that were on the table, including the
1446 ones that we rejected pretty strenuously.

1447 Mr. {Terry.} All right, my time is up. At this time I
1448 would like to recognize the ranking member of the full
1449 committee, Mr. Waxman.

1450 Mr. {Waxman.} Thank you very much, Mr. Chairman.

1451 Mr. Cicconi, I would like to thank you for agreeing to
1452 be here today to testify. I know that you and your company
1453 have been under pressure to repudiate your past statements
1454 about the FCC's open Internet order. I understand that AT&T
1455 would have preferred no rules in this area, but based on your
1456 public statements and conversations with my staff, it is my
1457 understanding that you think the FCC landed on a reasonable
1458 middle ground that removes the uncertainty that was impeding
1459 jobs and investment. Is that an accurate description of
1460 AT&T's position?

1461 Mr. {Cicconi.} Yes, sir, it is. We do think it is a
1462 reasonable middle ground. I think provided the FCC, as it
1463 goes forward, interprets this rule in a narrow way and with
1464 appropriate regulatory humility, I think it could also

1465 provide the certainty we need in this industry.

1466 Mr. {Waxman.} Your position is very similar to that of
1467 the cable association. In a letter filed with the committee
1468 earlier this week, NCTA CEO Collin Pasquale stated that the
1469 cable industry supports the FCC order because, among other
1470 things, it ``provides greater certainty about our ability to
1471 manage and invest in our broadband services today, and those
1472 we may deploy in the future.''

1473 Professor Greenstein, in looking at the question of
1474 whether the FCC should put in place rules to protect the open
1475 Internet, my staff reached out to a number of prominent
1476 economists. They spoke with professors at NYU, Wesleyan,
1477 Stanford, Wharton, and USC, all of the economists shared a
1478 common belief in competitive markets, and all suggested that
1479 unnecessary regulation can undermine efficient markets. But
1480 there was also a consensus around the idea that competition
1481 in the market for broadband Internet access services is
1482 limited. Most said this lack of competition made the FCC's
1483 open Internet rules necessary and appropriate. Do you agree?

1484 Mr. {Greenstein.} Yes, I do.

1485 Mr. {Waxman.} You said that the open Internet rules are
1486 essential for growth and innovation of online services. Can
1487 you explain?

1488 Mr. {Greenstein.} The access to the Internet goes back

1489 to the founding of the Internet. There has always been a
1490 question about who can use it and who has access to the
1491 transport level. It goes all the way back to when the NSF
1492 net was first prioritized. Congress has to pass an amendment
1493 to NSF charter in order to allow for multiple users, and in
1494 terms of the economics, there has always been a question of
1495 who can use it. The Internet is designed and it has always
1496 operated as a network for every user and every potential
1497 supplier doesn't have to ask anyone for permission to use it.

1498 Mr. {Waxman.} That leads to growth and innovation in
1499 online services?

1500 Mr. {Greenstein.} Yeah. It is great for entrepreneurs,
1501 even college sophomores at Harvard.

1502 Mr. {Waxman.} I have heard of one, saw the movie.

1503 Ms. Chase, do you agree? Do you think that open
1504 Internet rules are essential for growth and innovation of
1505 services?

1506 Ms. {Chase.} I absolutely agree and I think you only
1507 have to look at the number of jobs and new companies created
1508 over the last 10 years to realize an open innovation--open
1509 Internet is the key to our future in America. I think if we
1510 close that down and we don't protect the status quo, which is
1511 an open Internet, we are putting ourselves in such an anti-
1512 competitive position relative to the rest of the world.

1513 Mr. {Waxman.} Thank you. In addition to reaching out
1514 to academics, my staff also spoke with economists at the
1515 Department of Justice, and we wanted to speak with DoJ to get
1516 their reaction to the argument often repeated here, that the
1517 issue of net neutrality is better addressed through anti-
1518 trust enforcement. DoJ told us that that is not the case,
1519 although anti-trust can be useful if a phone or cable company
1520 uses its market power to stop a competitor from entering the
1521 market, anti-trust law doesn't stop a phone or cable company
1522 from blocking websites or applications that don't pay for
1523 access. According to DoJ, favoring websites that they hide
1524 fees and degrading websites that don't is perfectly legal
1525 under the anti-trust laws, as long as the phone or cable
1526 company isn't in direct competition with the websites being
1527 degraded. I don't know who to direct this to, but let me ask
1528 you, Mr. Greenstein. Do you agree that anti-trust laws are
1529 not sufficient to protect the public against attempts by the
1530 phone and cable companies to take advantage of their market
1531 power?

1532 Mr. {Greenstein.} Anti-trust laws are very good for
1533 looking at mergers, but at a very narrow questions in
1534 mergers. That is principally what they are about.

1535 Mr. {Waxman.} Does anybody on the panel disagree with
1536 the DoJ position?

1537 Mr. {Turner.} Mr. Waxman, I very much agree with
1538 Justice on this. There are numerous problems in the
1539 marketplace that anti-trust will not govern. Further, the
1540 limited selection of problems that anti-trust would govern
1541 has been weakened by the Supreme Court's Trinko case, so
1542 therefore, anti-trust is really no remedy at all to
1543 consumers, or producers, in this case.

1544 Mr. {Waxman.} Thank you very much. Yield back my time,
1545 Mr. Chairman.

1546 Mr. {Terry.} Thank you very much. We will now go to
1547 the gentleman from California, Mr. Bilbray. Mr. Bilbray?

1548 Mr. {Bilbray.} I would yield to the gentlewoman from
1549 Tennessee.

1550 Mr. {Terry.} Okay. The gentleman yields to the
1551 gentlewoman from Tennessee, Ms. Blackburn.

1552 Mrs. {Blackburn.} Thank you, Mr. Chairman, and I want
1553 to thank our witnesses for being here today.

1554 Ms. Chase, I wanted to come to you. Your testimony
1555 seems a little disconnected to me, and so I was hoping that
1556 you could help clear up a couple of things for me. Unless I
1557 am missing something, you set up a very successful company
1558 using the Internet as it was basically the status quo
1559 Internet. You did that without a whole lot of trouble, is
1560 that right?

1561 Ms. {Chase.} I wouldn't say without a whole lot of
1562 trouble at all, but yes.

1563 Mrs. {Blackburn.} Well, you didn't have to overcome
1564 horrific odds or anything. You worked your business plan,
1565 set it up, and got it in place. So now I hear you saying
1566 that what you are wanting to do is to preserve the net
1567 neutrality rules that the FCC moved forward on, is that
1568 right?

1569 Ms. {Chase.} Yes.

1570 Mrs. {Blackburn.} Okay. And you are saying you want to
1571 do that so that edge companies like yours can innovate--like
1572 your current company can innovate. But see, I look at this
1573 and I think the Internet without net neutrality rules has
1574 worked great for innovators, and now you are wanting to
1575 change the rules. So why should the FCC's rules allow you to
1576 innovate, and then not other entrepreneurial companies like
1577 Mr. DeReggi's over here?

1578 Ms. {Chase.} I would say that I would like to see the
1579 FCC's rules preserve the status quo that existed when I was
1580 doing that innovation, and the--

1581 Mrs. {Blackburn.} Ma'am, there was no federal
1582 governments of the Internet.

1583 Mr. DeReggi, do you have a comment on that?

1584 Mr. {DeReggi.} Well yeah, I think you pretty much

1585 summed it up with your statement.

1586 Mrs. {Blackburn.} Okay, well then let me ask you this.
1587 I have a very rural part of my district, Perry, Wayne,
1588 Hickman County where I was last week, they are very concerned
1589 about broadband, so speak to me, what do you think is going
1590 to happen with broadband investment? These communities need
1591 it for education and for economic development, so what should
1592 their expectation be?

1593 Mr. {DeReggi.} Most likely people aren't going to spend
1594 their money if they are not going to get a return on it. I
1595 think what people need to realize is that the cost to deploy
1596 difficult areas to get broadband is much higher than the cost
1597 to deploy broadband to the mass easy areas.

1598 Mrs. {Blackburn.} Let me ask you this, then. Do you
1599 have any idea of what the magnitude of jobs loss would be for
1600 these areas that are underserved or sparsely populated and
1601 can't get it?

1602 Mr. {DeReggi.} Well, it is astronomical, but it is also
1603 going to lead to the population leaving to other areas.

1604 Mrs. {Blackburn.} Okay. Mr. Turner, I wanted to come
1605 to you for a minute. I was sitting here looking through
1606 everything. Now, Mr. Cicconi, we know he is with AT&T, Mr.
1607 DeReggi with RapidDSL, Ms. Chase with Buzzcar, so we know
1608 what interests that they are representing, and it is less

1609 clear to me whom you represent with Free Press. I think it
1610 might be instructive to us as we read your testimony and as
1611 we try to figure out, you know, the bias that you bring to
1612 the argument. If we--if you could detail to us where Free
1613 Press gets its funding.

1614 Mr. {Turner.} Certainly, do you want me to do that now
1615 or in writing?

1616 Mrs. {Blackburn.} I would love to do it now, and if you
1617 want to submit for us the 10 largest supporters of Free
1618 Press, I think that would be great. It would be instructive.

1619 Mr. {Turner.} Free Press takes zero corporate money.
1620 We are completely supported by our members and by foundation
1621 support.

1622 Mrs. {Blackburn.} Okay, and then will you submit your
1623 funding?

1624 Mr. {Turner.} Absolutely. I would pleased to, yes.

1625 Mrs. {Blackburn.} All right, that would be great. I
1626 would appreciate that, and with that, I am going to yield
1627 back the balance of my time.

1628 Mr. {Walden.} Gentlewoman yields back the balance of
1629 her time. The chair now recognizes the gentleman from
1630 Massachusetts for 5 minutes.

1631 Mr. {Markey.} Thank you, Mr. Chairman, very much.

1632 Mr. Cicconi, thank you for being here and walking this

1633 tightrope that you are here today.

1634 Let me just begin. I heard you say that you feel that
1635 the regulations that were promulgated are a fair middle
1636 ground. Is that correct?

1637 Mr. {Cicconi.} Correct.

1638 Mr. {Markey.} And you also testified that as the rules
1639 have now been promulgated, that it is going to require no
1640 change in the business plans of AT&T, is that correct?

1641 Mr. {Cicconi.} That is correct.

1642 Mr. {Markey.} And you are also testifying that it is
1643 creating a longer-term predictable investment environment for
1644 AT&T, is that also correct?

1645 Mr. {Cicconi.} It is correct. Again, with--provided
1646 that the FCC continues to interpret the plain language of the
1647 rule in a narrow way, and again, I would hope with
1648 appropriate regulatory humility.

1649 Mr. {Markey.} But at this point, you identified that
1650 appropriate level of humility, is that correct?

1651 Mr. {Cicconi.} Yes, sir.

1652 Mr. {Markey.} Yeah, and I think that is important for
1653 people to hear. Is there a problem? Is there something here
1654 that we are trying to cure that actually does not exist?
1655 Because obviously, before August of 2005 the non-
1656 discrimination principles were there and the Internet grew,

1657 expanded, for years until that ruling in 2005. So all these
1658 companies, Google, eBay, Hulu, Youtube, Facebook, whatever,
1659 all were able to be founded in that non-discriminatory era.

1660 Ms. Chase, from the entrepreneur's perspective, you
1661 know, you are here representing thousands and thousands of
1662 smaller companies out there now looking at this decision--
1663 this potential resolution that the Republican Majority is
1664 thinking of promulgating. What do you think would be the
1665 impact in terms of how the venture capital industry, other
1666 investors will now view these thousands of companies that are
1667 in this space, trying to innovate using the Internet.

1668 Ms. {Chase.} If the venture capitalists think that I
1669 can't compete because I can't pay for special access or I
1670 might be stymied by special rules, clearly they wouldn't
1671 invest in us.

1672 Mr. {Markey.} Okay, and how many companies are in this
1673 space? I don't mean competing against Zipcar, but I am
1674 talking just the companies that are dependent as smaller
1675 startups?

1676 Ms. {Chase.} If we think about innovation and job
1677 creation, we know that startups are the ones that created all
1678 the jobs in the last 10 years, or 75 percent of them. So I
1679 would say a significant number of them.

1680 Mr. {Markey.} Okay, now this hope that the anti-trust

1681 laws could be used, if you are a small--if you are Zipcar,
1682 how long would it take and how much would it cost Zipcar to
1683 use the anti-trust process, and what is the likelihood that
1684 your vindication would be posthumous from a corporate
1685 perspective if a court ultimately did render a favorable
1686 decision?

1687 Ms. {Chase.} You have made a very good point, that
1688 without a body such as the FCC to whom I can turn to to
1689 protect me, as a small business, you never sue anybody. You
1690 can never enter into that at all.

1691 Mr. {Markey.} Right, and I agree with that. That is a
1692 false promise, false protection because the anti-trust laws
1693 clearly for smaller companies and 80 percent of all new jobs
1694 in America are created by smaller companies, and a
1695 disproportionate number of them are now created by companies
1696 dependent upon the Internet. So that is where our job
1697 creation comes from, and this is a huge decision that the
1698 Republicans are now making, intervening into a marketplace
1699 where AT&T says they can live with the rules, Comcast says
1700 they can live with the rules, and the smaller Internet
1701 companies are all saying that they can live with the rules.

1702 Mr. Turner, when you were just asked who do you
1703 represent, could a simple explanation of who you represent
1704 just be the consumer?

1705 Mr. {Turner.} We are a public interest advocacy group
1706 concentrated on the interest of consumers, yes, sir.

1707 Mr. {Markey.} On the consumers, thank you. Now, why
1708 don't you just expand a little bit on what the impact of a
1709 repeal of these non-discriminatory principles could mean for
1710 our consumers in the United States?

1711 Mr. {Turner.} It could be devastating. Right now I
1712 think through Mr. Cicconi's testimony we have learned that
1713 there is really no problem the marketplace has with the FCC
1714 rules; however, if you remove that certainty, you then create
1715 potential discrimination against innovative companies like
1716 Ms. Chase. You potentially have companies that would block
1717 content, like Netflix, because it competes with their online
1718 video products. You potentially have the next Netflix, the
1719 next Zipcar not being able to start their business, and
1720 consumers ultimately are the losers in that.

1721 Mr. {Markey.} Sir, if you are a kid in a dorm someplace
1722 and you have got an idea right now and your girlfriend is
1723 over at the business school, and she says maybe I can help
1724 you to raise some money right now, what is the difference in
1725 terms of the perspective of an investor if you have
1726 discrimination or non-discrimination principles on the books
1727 in terms of the startup of a small business that would
1728 ultimately provide consumers with more choice?

1729 Mr. {Turner.} Well, it would create tremendous
1730 uncertainty, and I think--we keep hearing, you know, that
1731 there was never network neutrality to begin with, but I think
1732 that is really an inaccurate view of history. The Internet
1733 was born from the principle of non-discrimination. It
1734 existed for the 30 years before it even became
1735 commercialized, and it existed, as you mentioned, until 2005.
1736 It wasn't until that recent change that this got started.

1737 Mr. {Markey.} Thank you. Let me just finish on that
1738 point. That was the testimony that we had here from Tim
1739 Burners Lee, the creator of the world wide web. He made it
1740 quite clear that when he created the world wide web, he baked
1741 the principle of non-discrimination into the personality of
1742 the Internet. He invented the world wide web. He is still
1743 only 54 years old, and that was the first witness that we had
1744 4 years ago before the committee. So we can either give some
1745 deference to the inventor of the world wide web, which is the
1746 basis for all of this commercial activity, or we can just
1747 ignore it, but non-discrimination he testified was the
1748 central characteristic of the web. Thank you, Mr. Chairman.

1749 Mr. {Walden.} Gentleman's time is expired. Chair
1750 recognized the gentleman from Louisiana, Mr. Scalise.

1751 Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate
1752 the opportunity to ask some questions of the panel, and

1753 especially to have us focusing on this issue, this new
1754 government regulation of the Internet, net neutrality, and
1755 especially as we deal with the legislation later on today,
1756 you know, I am kind of amazed at some of the comments I am
1757 hearing not only from some people on the panel, but some of
1758 my colleagues on the other side. You know, I am a computer
1759 science major and I have watched as this industry has
1760 thrived, probably more than any other industry in the world,
1761 and it has thrived because the government hasn't figured out
1762 how to regulate it, how to mess it up. And yet you have got
1763 now a rule coming in by the FCC, this new net neutrality,
1764 where the government is coming in and saying we are going to
1765 fix the Internet. We are going to come in with regulations
1766 to fix the Internet, because boy, if you look all across this
1767 country, all the problems our country is facing, if the
1768 President really was focused on what the real problems of the
1769 country are, he would be focused on creating jobs. If you
1770 want to go and find a good template of how to create jobs, go
1771 look at the Internet. Go look at these great innovative
1772 companies. Go look at these great innovators who dropped out
1773 of college and are now billionaires because the federal
1774 government hadn't figured out how to regulate in a way that
1775 somebody can do just that, can innovate in a way that Ms.
1776 Chase and so many others have innovated.

1777 And so now you have got the FCC coming in and saying we
1778 are going to regulate, and people are actually saying it is
1779 good that the FCC is regulating it to keep the status quo.
1780 Well first of all, it is the other format, the non-regulated
1781 format that allowed all of this innovation, that still to
1782 this day--by the way, it is not over. Unfortunately with the
1783 FCC coming in, there is a big concern in industry of the
1784 people who actually invest billions of dollars.

1785 I want to ask you, starting off with Mr. Cicconi, your
1786 company is one of the many companies who has invested
1787 tremendously. We had testimony a few weeks ago from the FCC,
1788 all five FCC commissioners came before us, talking about this
1789 new regulation of the Internet, net neutrality. We heard
1790 testimony from one commissioner, and nobody disputed it, that
1791 over \$500 billion of investment has been made to build the
1792 broadband infrastructure that exists today that allows all
1793 this innovation, and none of that was taxpayer money, by the
1794 way. Maybe that is one of the things that this
1795 administration doesn't like. It all happened with private
1796 investment.

1797 How much money has your company invested in allowing
1798 this innovation and creating and building this network
1799 infrastructure?

1800 Mr. {Cicconi.} I don't have an exact figure in front of

1801 me, Mr. Scalise, but last year we invested approximately \$19
1802 billion in capital. I think--

1803 Mr. {Scalise.} How much was that? Can you say that
1804 again?

1805 Mr. {Cicconi.} Nineteen billion dollars in capital in
1806 the United States, nearly all of that was in the United
1807 States, and I think that was more than any other American
1808 company invested in the United States last year.

1809 Mr. {Scalise.} And that was under non-net neutrality
1810 rules?

1811 Mr. {Cicconi.} Correct, and this year we will invest
1812 roughly between 17 and \$19 billion in capital again.

1813 Mr. {Scalise.} And let me ask you this, because in your
1814 statement--I listened to your testimony and you used a number
1815 of comments that I thought were interesting. You know, some
1816 people act as if you are really thrilled about net
1817 neutrality, and maybe some people are thrilled about it, but
1818 in your statement you said ``all of this, without any real
1819 evidence of a problem. It is still AT&T's strong preference
1820 to have no regulation. The proposal was extreme and upset
1821 the financial markets. You are talking about earlier
1822 proposals,' and then ultimately you said ``the only
1823 proposals before us were either bad or worse.' So here you
1824 have got the government coming in and saying okay, first of

1825 all, there is no problem. The innovation has never been
1826 greater and no industry in the history of the world has seen
1827 this much innovation, and so now the government is going to
1828 come in and regulate it. But they are going to give you some
1829 options and we are going to give you a bad option and a worse
1830 option. Well, anybody would say well, I guess I will take
1831 the bad option instead of the worse option, and that to some
1832 people on the other side constitutes you supporting this new
1833 regulation of the Internet.

1834 So I just want to put it in that context, but I ask you,
1835 because you expressed this as a concern. There is an
1836 assumption by some that the FCC is going to interpret these
1837 rules in a very narrow way. What if the FCC does not
1838 interpret these rules in a narrow way, which if we are not
1839 able to pass our legislation to block the regulation, the FCC
1840 would be free to interpret it as broadly as they like. What
1841 if they don't interpret the rules narrowly?

1842 Mr. {Cicconi.} I think it depends on the circumstance,
1843 sir. Clearly we would reserve the right to challenge that in
1844 court, if something were to occur that we feel is
1845 inconsistent with the plain language of the rule.

1846 Mr. {Scalise.} And I am sure some people would think
1847 that is good to have now, companies that innovate that add
1848 \$17 billion of their own capital to build out the

1849 infrastructure are now concerned about maybe having to go to
1850 court to be able to continue innovating.

1851 Let me ask you, Ms. Chase, you know, I appreciate you
1852 coming here from France to participate in this. When I did,
1853 as the chairman of the subcommittee did, a Google search on
1854 carsharing, your company that you founded, Zipcar, came up.
1855 Is there anything in this FCC ruling that prohibits you from
1856 being able to buy that premiere placement under net
1857 neutrality where a startup wouldn't have that same advantage?

1858 Ms. {Chase.} I feel like that is not the question at
1859 hand.

1860 Mr. {Scalise.} Well, that is the question at hand. The
1861 bottom line is, you know, maybe you don't want to answer it
1862 because you are given now a monopoly. You are now given an
1863 advantage over the new startup. I am not as concerned about
1864 the companies that are already successful today, being able
1865 to innovate as much as the new company, the new idea that we
1866 will be blocking from innovating and maybe you would like the
1867 idea because under net neutrality, Google is still able to
1868 give you preference over the new startup that now is at a
1869 competitive disadvantage because of net neutrality.

1870 So I would hope you would not only be concerned about
1871 your company's success--

1872 Mr. {Walden.} The gentleman's time is expired.

1873 Mr. {Scalise.} --but also the new startup company that
1874 is going to be as innovative as yours.

1875 Mr. {Walden.} Gentleman's time is expired.

1876 Mr. {Scalise.} And I yield back my time.

1877 Mr. {Walden.} Chair recognizes the gentleman from
1878 Pennsylvania, Mr. Doyle.

1879 Mr. {Doyle.} Thank you, Mr. Chairman, and thank you to
1880 all the witnesses today.

1881 It is amazing. Maybe sometimes we just don't speak
1882 clearly enough, but you know, up until 2005, the transmission
1883 component of DSL service was regulated as a
1884 telecommunications service. In the dial-up world, companies
1885 provided data transmission. They were obviously regulated as
1886 a telecommunications service, because the data traveled over
1887 phone lines. So you know, to keep hearing statements that
1888 there was never any regulation of the Internet and it worked
1889 just peachy keen, it just isn't based in any reality.

1890 Dr. Kovacs, I was interested in your testimony. I hear
1891 you say that we can't take care of the edge at the expense of
1892 the core, and that you feel that these rules that the FCC has
1893 put forward would stifle investment in this. Are you aware
1894 of the analysis done by the Bank of America and Merrill
1895 Lynch?

1896 Ms. {Kovacs.} I am not, no.

1897 Mr. {Doyle.} They came to a different conclusion. How
1898 about Citibank that called this FCC ruling balanced? They
1899 came to a different conclusion to you. Do you know that
1900 Wells Fargo in their analysis of these rules called it a
1901 light touch, and that Raymond James also disagrees with your
1902 analysis? It seems to me that you are somewhat of an outlier
1903 in the field with regards to whether or not this stifles
1904 investment in the field.

1905 Let me ask Dr. Greenstein. You have looked at the
1906 literature on this and did a literature review. What did you
1907 find was, in your review of the literature, was the consensus
1908 on the FCC order and its impact on investment?

1909 Mr. {Greenstein.} It largely doesn't change the
1910 practices at most ISPs. We all went home tomorrow. The
1911 business--it looked the same as it did a year ago.

1912 Mr. {Doyle.} Mr. DeReggi, first of all, I want to say I
1913 appreciate your company and the competition that it provides
1914 in areas that need it, and I know it is hard for
1915 entrepreneurs to come up to this committee and provide
1916 testimony and engage in policy matters, so I appreciate the
1917 fact that you are here.

1918 But I am a little confused by some of the things that
1919 you have said. On prior occasions, you have expressed
1920 support for open Internet principles, specifically in

1921 comments that you made to the NTIA and RUS in response to the
1922 second round of BTOP funding, you stated that RapidDSL fully
1923 endorsed the comments of the Wireless Internet Service
1924 Providers Association, and among those associations'
1925 comments, it argued that the agency should make clear to any
1926 funding recipient that they will agree to abide by the rules
1927 the FCC adopts in its ongoing network neutrality proceedings.

1928 So I guess my question is since you agree with applying
1929 the FCC's rules to funding recipients, why would you support
1930 a wholesale rejection of the rules through a resolution like
1931 this?

1932 Mr. {DeReggi.} Great question, because the government
1933 was paying for the network, not me. Also, I do support an
1934 open Internet. The net neutrality rules passed by the FCC is
1935 not an open neutral policy. It is a policy that favors
1936 content providers and gives it discriminative rights and does
1937 not allow those same--

1938 Mr. {Doyle.} Let me ask you this. Also you sent an e-
1939 mail to then-FCC Chairman Kevin Martin regarding Comcast
1940 blocking your traffic, and your quote was ``Comcast is a
1941 necessary war. It sets the precedent that these net
1942 neutrality blocking won't expand as a strategic advantage to
1943 harm competitors.'' You have also expressed support for
1944 RapidDSL being subject to rules related to truth in

1945 advertising or disclosure of your network management
1946 practices. You said that in an ex parte letter to Chairman
1947 Genakowski. I guess what confuses me is if you are in
1948 support of some of these FCC rules, such as transparency
1949 requirements, why do you want to see the Congressional Review
1950 Act be used to invalidate all of the FCC's rule? Wouldn't
1951 you--

1952 Mr. {DeReggi.} Because they--

1953 Mr. {Doyle.} --prefer Congress to take a more surgical
1954 approach to, you know, deal with those things that trouble
1955 you but not throw the entire rules out?

1956 Mr. {DeReggi.} They don't deal with any of the things
1957 that troubled us, so we are a provider too. We are there.
1958 Just protecting our competition doesn't help us.

1959 Mr. {Doyle.} Thank you.

1960 Mr. {DeReggi.} All the claims that I have asked help
1961 for, we haven't got that help. The rules don't give us
1962 protection--

1963 Mr. {Doyle.} But you are here to support a practice
1964 that is going to throw all of this up, that which you agree
1965 with as well as those things that you have a problem with.

1966 Mr. Turner, your testimony--you don't support this
1967 resolution. You basically think that the FCC didn't go far
1968 enough. Would that be an accurate statement?

1969 Mr. {Turner.} Yes, sir.

1970 Mr. {Doyle.} And Ms. Chase, I just want to say, I see
1971 Zipcars all over Pittsburgh. That is the area that I
1972 represent, and I think it is really a fantastic service and
1973 people use it a lot in Pittsburgh. Just as an entrepreneur
1974 and an innovator and a job creator, you know, you are here
1975 and you have come a long way to do that. We are policy
1976 makers up here, so what is the one thing that you would like
1977 to share with all the policy makers up here with regards to
1978 the Internet? What do you think Congress should be doing?

1979 Ms. {Chase.} We have talked a lot about the stymieing
1980 this promoting and will prevent investment for the core, and
1981 we--there is a figure here that was thrown out of \$19 billion
1982 that was--that Verizon is--AT&T is intending to invest. I
1983 would like to point out that the small business contribution
1984 to the economy is vastly, vastly larger than any of that, and
1985 we are talking about throwing out rules that protect those
1986 small businesses from lawsuits that we can't have anti-trust
1987 suits that we can't go after. I would also like to suggest
1988 that Mr. DeReggi's fears, as he represents a small business
1989 and he is also being crushed by the duopoly, and their
1990 advantages. So it comes back to this duopoly control of
1991 access to the Internet, and not about what happens on the
1992 Internet. The Internet itself is inherently open, if we can

1993 get there.

1994 Mr. {Walden.} Gentleman's time is expired.

1995 Mr. {Doyle.} Thank you, Mr. Chair.

1996 Mr. {Walden.} Chair recognizes the gentleman from
1997 Illinois, Mr. Shimkus.

1998 Mr. {Shimkus.} Thank you, Mr. Chairman. It is great to
1999 have the panel. We appreciate all the effort to be here.

2000 This is what I have always struggled with, and I think I
2001 am going to open up with really Ms. Chase, because I think
2002 all of us appreciate a business model that people have an
2003 idea of a service that is not being rendered, it is an idea.
2004 You all have to develop a business plan and then you go to
2005 the markets to raise money. You are assuming risk.
2006 Hopefully somewhere down the road there is a return. That is
2007 the way the business works. That is the capitalist system.
2008 It is great, it is thriving. It is why we have one of the
2009 greatest economies in the world, even in a down time.

2010 Why doesn't this work for--let me ask the question this
2011 way. If the FCC can control the pipeline by picking winners
2012 and losers in intervention, what is the market signal to
2013 build out more pipes?

2014 Ms. {Chase.} I don't think the FCC is controlling the
2015 pipeline to pick winners and losers.

2016 Mr. {Shimkus.} Okay, let me ask this question again,

2017 and I am not trying to pick a fight. I am saying I want to--
2018 where is the market signal if we want to build out more
2019 pipes? If there is a government agency that then can say bad
2020 boy, bad girl, usually there is a constrained supply, the
2021 market would say you can pay a premium for access.
2022 Eventually, the market signal would be what? Build out
2023 another pipe, just like--and you have made these decisions in
2024 your whole business plan, and that is the way the system--my
2025 question is what is the market signal that would encourage
2026 build out of more pipes? Because what is a better answer,
2027 instead of government regulation, the better answer is build
2028 more pipes.

2029 Ms. {Chase.} I think there is a variety of answers.
2030 Build more pipes might be one of those answers, but I also
2031 think it only--

2032 Mr. {Shimkus.} It is the only market answer. I mean,
2033 it is the only answer in a competitive market that then
2034 private capital would flow to build it. Now, we have an
2035 example of government trying to intervene in building this
2036 and the stimulus, and we found out that we overbuilt, we
2037 incentivize, government-run. We have unserved, underserved
2038 areas. The stimulus is a perfect example of how we failed by
2039 providing government money to do what the market should do.
2040 So let me go--I have got 2 minutes left, and I want to ask

2041 Mr. Cicconi--I hope I pronounced that right--

2042 Mr. {Cicconi.} Yes, sir.

2043 Mr. {Shimkus.} The FCC says that these rules bring
2044 certainty to the broadband economy, and certainty in the
2045 business model is very, very important. If you have got
2046 certainty, you have got lower risk, you can borrow more
2047 capital or the cost of capital is less. That is true, right?

2048 Mr. {Cicconi.} Right.

2049 Mr. {Shimkus.} Isn't the uncertainty that the FCC cure
2050 is originally caused by the FCC?

2051 Mr. {Cicconi.} I couldn't--

2052 Mr. {Shimkus.} Was that unfair?

2053 Mr. {Cicconi.} No, I don't think so, Mr. Shimkus. I
2054 clearly--and I think I reflected this in my opening
2055 statement, that you know, I think this rule is a fair and
2056 middle ground, but certainly that is fair in comparison with
2057 the alternatives that we were facing.

2058 Mr. {Shimkus.} That is great.

2059 I want to end up with Mr. DeReggi, and I appreciate your
2060 testimony and to highlight your background, and again, I see
2061 a segue to market principles is the best way to provide goods
2062 and services to individuals.

2063 But do you believe it is equitable that these rules
2064 apply to you but not web companies?

2065 Mr. {DeReggi.} I find that to be a tragedy that they
2066 apply solely to us and not web companies.

2067 Mr. {Shimkus.} Do you agree with the letter we received
2068 from the NCTA, other cable folks that drawing these types of
2069 distinctions between broadband providers and web companies no
2070 longer makes sense?

2071 Mr. {DeReggi.} I would agree.

2072 Mr. {Shimkus.} Great. Mr. Chairman, I am finished.
2073 Thank you for the time, and I yield back.

2074 Mr. {Walden.} Gentleman yields back the balance of his
2075 time. Chair recognizes the gentlewoman from California, Ms.
2076 Matsui, for 5 minutes.

2077 Ms. {Matsui.} Thank you very much, and I thank the
2078 witnesses for being here today. Mr. Chairman, I thank you
2079 for holding this hearing prior to any markup on such an
2080 important issue, although I still have reservations regarding
2081 the process in which this resolution is moving.

2082 There are far too many unanswered questions to resolve
2083 that would undoubtedly lead to unintended consequences on the
2084 market. That being said, I strongly oppose this resolution
2085 because it undermines market certainty, harms consumers,
2086 discourages innovation, investment, and job creation in this
2087 country, and does nothing to move our Nation's economy
2088 forward.

2089 Mr. Cicconi, it is no secret that over the years AT&T
2090 has raised concerns over proposed net neutrality rules. Yet,
2091 AT&T took a stance in support of the FCC's order as a CEO and
2092 chairman earlier this year that the open Internet order ended
2093 at a place where we have a line of sight and we know we can
2094 commit to investments. What are the specific factors that
2095 lead you to supporting the FCC's order?

2096 Mr. {Cicconi.} As I said earlier, Ms. Matsui, I think
2097 we are comfortable with the order primarily because it locks
2098 this line, we feel, in a more balanced way than the other
2099 proposals that were in front of the FCC. I think keep in
2100 mind that the two proposals that were there, one was an NPRM
2101 that frankly had a discrimination standard in it that we felt
2102 was probably a violation of the Telecom Act and certainly
2103 didn't have support in the Act. It would have inevitably led
2104 to legal challenge. The other was to impose common carriage
2105 regulation on these services, again which would have been, I
2106 think, a very extreme proposal. We were pleased that the FCC
2107 was willing to work with us to try and deal with our
2108 concerns, and frankly, deal with the concerns of stakeholders
2109 to see if there is a middle ground. Like any middle ground,
2110 we are not happy with every part of it. We would have
2111 preferred some different language and different standards.
2112 We would have preferred nothing on wireless.

2113 Ms. {Matsui.} Right, I understand that. We heard from
2114 a great number of leading economists in support of the FCC's
2115 order. Assuming that the FCC moves forward with the order to
2116 ensure rules of the road are in place to protect innovators
2117 and consumers, what impact does CRA have on Wall Street.

2118 Mr. {Cicconi.} I think that is tough to predict, Ms.
2119 Matsui, primarily because I think if the CRA were to pass, I
2120 think the ball then passes to the FCC, and I think the market
2121 reaction would depend heavily on how the FCC then reacted.
2122 If the FCC, for example, reacted by deciding that it didn't
2123 want to move forward with any further regulations in this
2124 area, obviously I think the market would be pleased and that
2125 would provide a high degree of certainty. If, on the other
2126 hand, the FCC reacted by going back to the still open Title 2
2127 proceeding and began that process all over again that we went
2128 through this past year, I think it would create a great deal
2129 of uncertainty.

2130 So I think the answer to that really rests with the FCC.
2131 It doesn't really--it is not really a product of the CRA and
2132 what the Congress decides to do on that. It is really more a
2133 product of what the FCC decides to do in the wake of that.

2134 Ms. {Matsui.} Okay, but you are still dealing with
2135 uncertainty, though?

2136 Mr. {Cicconi.} Potentially, but again, depending on

2137 what the FCC decides to do.

2138 Ms. {Matsui.} Okay. The FCC open internet order
2139 includes a meaningful transparency requirement so that
2140 consumers and innovators have information they need to make
2141 informed choices. I should mention that this transparency
2142 rule is widely supported by all industry stakeholders and
2143 deemed non-controversial. If this resolution becomes law,
2144 the FCC's transparency rule, which simply states that
2145 broadband providers must disclose their network management
2146 practices, performance characteristics, and terms and
2147 conditions of the broadband service to consumers will be
2148 eliminated. That would be bad for consumers, bad for
2149 business, and bad for the Internet economy.

2150 I have a question for the panel and I would like a yes
2151 or no answer, just a yes or no answer. Do you support the
2152 FCC's sixth principle on transparency, which would provide
2153 consumers, small businesses, and innovators with the
2154 information they need to make informed choices? I will start
2155 with you, Mr. Turner.

2156 Mr. {Turner.} Yes.

2157 Ms. {Chase.} Yes.

2158 Mr. {Cicconi.} Yes.

2159 Ms. {Kovacs.} Yes.

2160 Mr. {Greenstein.} Yes.

2161 Mr. {DeReggi.} Yes.

2162 Ms. {Matsui.} Okay, thank you for your answer. The FCC
2163 order includes a meaningful transparency requirement, which
2164 this whole panel seems to agree should be in place.

2165 As our economy continues to evolve, and new emerging
2166 economic sectors are growing, a free and open Internet would
2167 be vital, one that acts as a framework for industry to follow
2168 to ensure that all stakeholders are playing by one rule.

2169 Ms. Chase, you are a leading entrepreneur who relies on
2170 the Internet to conduct business. Using your experience, how
2171 would the FCC open Internet order impact emerging new
2172 economic sectors like smart grid and health IT, among others?

2173 Ms. {Chase.} I think it will have an enormous impact,
2174 and that is one of the things I am concerned about.

2175 Ms. {Matsui.} Okay, thank you. Yield back the balance
2176 of my time.

2177 Mr. {Walden.} Gentlelady's time has expired. I now
2178 recognize the chairman of the Oversight Committee and the
2179 former chairman of this committee, Mr. Stearns, for 5
2180 minutes.

2181 Mr. {Stearns.} Thank you, Mr. Chairman. I listened to
2182 the testimony of Mr. Waxman and Mr. Markey, and Mr. Cicconi,
2183 they have praised you as supporting the FCC approach to
2184 rulemaking, and Mr. Markey has phrased you and Mr. Waxman I

2185 think are the Democrats. I know that must put you in a
2186 little awkward position, having been the ranking member of
2187 this committee and working with you and all the consumer
2188 groups, as well as others, trying for months to try and work
2189 this out and realizing how difficult it was. In reading
2190 through your testimony, I think maybe this will clear it up
2191 for Mr. Waxman and Mr. Markey a little bit. The chairman of
2192 your company, Randall Stevenson, summed up his reaction to
2193 the FCC--this is in your opening statement--his decision, and
2194 I thought I would read it because it really, I think, goes to
2195 the point and perhaps gets you off the hot seat here, because
2196 he is speaking for your company and he said ``We would be
2197 lying if we said we were pleased with the approach, but it is
2198 a place we know we have. We didn't get everything we would
2199 like to have, but I would like to have had no regulation.''
2200 That was his point. ``I would have liked to have had no
2201 regulations, to be candid.''

2202 So Mr. Waxman and Mr. Markey are saying that you folks
2203 are just out there touting this approach. I think your
2204 chairman has pointed out that if he had his druthers, he
2205 would like to have no regulation. Is that still accurate, in
2206 your opinion?

2207 Mr. {Cicconi.} That is absolutely accurate, Mr.
2208 Stearns. I think this entire debate for many years, but

2209 certainly for the past 2 years, has revolved around very
2210 difficult questions, which is should one regulate to deal
2211 with hypothetical problem, because by and large, that is what
2212 we are dealing with, are these hypothetical. It is the
2213 hardest thing, I think, for policymakers to decide. If you
2214 move into this space, it is very, very hard to draw lines,
2215 and this is one of the things that worries us the most about
2216 moving into this area. It was stated earlier that, you know,
2217 different members of the Internet ecosphere might be
2218 regulated in a different fashion, some regulated, some not.
2219 Inevitably, the danger there is of course the government gets
2220 into picking winners and losers. Our concern, of course, is
2221 not only with that but with the fact that the government
2222 doesn't do this very well.

2223 Mr. {Stearns.} Dr. Kovacs, in looking through your
2224 testimony, the aspect about your opening statement where you
2225 talked about the transfer of wealth from broadband Internet
2226 access providers to application providers is accurate, but
2227 you say it does not seem to grasp the problem for both
2228 parties. So you say it provides those who ride the network
2229 with a strategically vital financial weapon to use against
2230 broadband Internet access who in many cases are their
2231 competitors. To put it another way, it takes all bargaining
2232 power away from the BIA. You might just confirm that, what

2233 you mean?

2234 Ms. {Kovacs.} A couple of different things. For
2235 example, one of the things the FCC did not look at is a
2236 situation in which Google might decide to withhold its
2237 services from Verizon in Boston, but continue to provide them
2238 to Comcast, which would, I think, become a huge problem for
2239 Verizon retaining customers. The revenues that are taken
2240 away from the voice provider who is also a broadband
2241 provider, like Frontier, like Google Voice, Skype, Vonage,
2242 all of those represent a transfer of wealth, and they become
2243 problematic for Google and et cetera. That means that the
2244 network cannot continue to innovate, and I think to me, the
2245 really troubling piece of this discussion is the assumption
2246 that only the companies at the edge, like Robin's, need to
2247 innovate, but that Mr. DeReggi doesn't. And in fact, she
2248 won't be able to do her business unless he keeps investing.

2249 Mr. {Stearns.} Mr. DeReggi, have you actually read the
2250 FCC's approach to this net neutrality? I mean, have you
2251 actually--you or your staff actually taken time to read it?

2252 Mr. {DeReggi.} Yes.

2253 Mr. {Stearns.} What specifically is in there that you
2254 don't like? I mean, can you tell the committee maybe some
2255 specifics about it, just briefly?

2256 Mr. {DeReggi.} Yeah, the thing that I don't like about

2257 it most is that it is--everything is a double standard. It
2258 does half the problem. For example, I want consumers to have
2259 their choice of content, but it doesn't really give that, you
2260 know.

2261 Mr. {Stearns.} So it vague in areas you think it should
2262 be precise, would that be--

2263 Mr. {DeReggi.} Right, exactly. It is also very vague,
2264 so because of it, it allows the--it to be interpreted by the
2265 person who just happens to be in the office at that specific
2266 time who could have a completely different viewpoint of what
2267 those terms mean.

2268 Mr. {Stearns.} And because it is vague at this point,
2269 does it create uncertainty to you in terms of investment?

2270 Mr. {DeReggi.} A tremendous amount of uncertainty. I
2271 just don't know what to expect.

2272 Mr. {Stearns.} Thank you, Mr. Chairman.

2273 Mr. {Walden.} Gentleman's time is expired. Chair
2274 recognizes the gentleman from Michigan, Mr. Rogers, for 5
2275 minutes.

2276 Mr. {Rogers.} Ms. Kovacs, the FCC claims that the order
2277 brings certainty to the market. I am having a hard time
2278 finding where the uncertainty was, except for the fact that
2279 the FCC was talking about intervening in the market. Doesn't
2280 a lawsuit over the FCC's lack of authority bring even more

2281 uncertainty into the market?

2282 Ms. {Kovacs.} The issue is definitely not settled at
2283 this point, because of the possibility for litigation and
2284 because of the point that Mr. Cicconi made, that we are not
2285 going to know what the rules mean until the FCC interprets
2286 them one by one. So companies right now really have no idea
2287 of what they can do in terms of pricing, in terms of the kind
2288 of products they can develop as part of their business plan
2289 on the carrier's side, until sort of case law develops at the
2290 FCC.

2291 Mr. {Rogers.} And that never happens in a hurry.

2292 Ms. {Kovacs.} Well--no. The whole--I mean, that is--

2293 Mr. {Rogers.} So now we have added another layer of
2294 uncertainty to the definitive uncertainty that the FCC put
2295 into the market in the first place. A little confusing to
2296 me. We are just a small construction company back in
2297 Michigan. We don't--maybe a little beyond our intellectual
2298 prowess to understand how we got to the uncertainty in the
2299 first place.

2300 Ms. Chase, thank you for being here today. I am really
2301 interested in your business model. When you negotiate a
2302 parking space, say, in Washington D.C. or Philadelphia, is
2303 that something the company pays for, is that something that
2304 the city gives you? How does that work?

2305 Ms. {Chase.} That is a jurisdiction by jurisdiction
2306 thing. It is typically done through an RFP.

2307 Mr. {Rogers.} All right, so there is--you compensate on
2308 most cases or are they given to you in most cases?

2309 Ms. {Chase.} I can't speak for what is happening today
2310 and I couldn't give that count, but I have paid for municipal
2311 parking spaces.

2312 Mr. {Rogers.} And so you took advantage, basically, it
2313 was a good business model, I think it is a smart business
2314 model, but you took advantage of the concrete and the per
2315 paid for by taxpayers. You negotiate a much lower rate, and
2316 the only reason I say that, I have driven by those spaces and
2317 looked with envy as I went around the block 16 times, trying
2318 to park my car.

2319 So what you have done is you have utilized taxpayer-
2320 funded support networks, the infrastructure, you have
2321 utilized that part, taken it off the market for the rest of
2322 the taxpayers who paid for it, and for the service business
2323 model--I think it is clever, don't get me wrong, but you can
2324 clearly see that you are taking advantage of that particular
2325 spot, based on someone else's investment, mainly the
2326 taxpayer. I find it interesting, because I know you have got
2327 several millions of dollars to help you start your company
2328 from the federal government. The argument being--I think we

2329 found \$6.5 million to date on earmarks to Zipcar. I do
2330 believe the figure is larger than that at the end of the day.

2331 So let me make my point, and I will certainly get your
2332 response. So you understand why I think advocacy is
2333 important and why we should understand advocacy and why
2334 people take position. I mean, your company did well, it was
2335 certainly helped--financed by the federal government, you are
2336 taking advantage of taxpayers by using their infrastructure
2337 and making money off of it. If you get away with that, God
2338 bless you. It is capitalism. I am all for it.

2339 But now you are saying we want to do the same thing to
2340 the Internet. We want the government to come in to protect
2341 me so I don't have to pay for the expansion of the Internet
2342 that we know should happen, based on hopefully what we would
2343 see as increased volume and more businesses coming into the
2344 Internet.

2345 And so that is the part that I find confusing about your
2346 advocacy is that--I mean, clearly your business model heavily
2347 weighted on subsidies, especially by taxpayers.

2348 Ms. {Chase.} Let me just correct a couple of things. I
2349 was CEO for the first 3 years. In the first 3 years we took
2350 absolutely zero government dollars. As to parking spaces,
2351 parking is grotesquely under priced everywhere. People--
2352 citizens park for free on street generally, and if you were

2353 to rent that parking space, it would be \$3,000 a month. So
2354 it is certainly by no means--I would feel it is uncompetitive
2355 that we had to compete with free on street parking given to
2356 residents and we could not access that.

2357 Mr. {Rogers.} I am not sure where the free on street
2358 parking has begun. Try putting the quarters in. You better
2359 bring about 8,000 pounds of quarters to Washington, D.C. But
2360 I will just tell you--

2361 Ms. {Chase.} Well, so this is not the argument, but to
2362 this other piece, sir, I do not think at all that we have
2363 sucked at the corporate--at the government tit, in any case.
2364 I would say, though, that when I look at market--I have
2365 written here that market signals are driven by demand and by
2366 competitive pressures, and we can look to the--what we are
2367 talking about, which is that the access to an open Internet
2368 is gated by two major companies. They may be responding, the
2369 market signals might be working for demand but they are not
2370 responding to--

2371 Mr. {Rogers.} Okay, I hear your point. I am running
2372 out of time. I hear your point, but you said something
2373 interesting. You said if you can get there, and I completely
2374 agree with you. On-ramps and off-ramps are incredibly
2375 important. My fear is, and Mr. DeReggi, if you can follow up
2376 on this, we have now purposely--because the government now

2377 comes in and makes everything nice in theory, and they decide
2378 who wins and who loses. Why on God's green earth would you
2379 invent--invest in new on-ramps and off-ramps for the
2380 Internet.

2381 Mr. {Walden.} Gentleman's time is expired.

2382 Mr. {Stearns.} Mr. DeReggi, could you just answer that?
2383 I see my time is almost up.

2384 Mr. {Walden.} Very quickly.

2385 Mr. {DeReggi.} I pretty much fully agree with you. I
2386 am not quite sure how to answer it because I agree with what
2387 you have said.

2388 Mr. {Stearns.} On-ramps and off-ramps are important to
2389 companies like yours, are they not?

2390 Mr. {Walden.} Gentleman's time--

2391 Mr. {DeReggi.} On-ramps and off-ramps are definitely
2392 important to our company.

2393 Mr. {Stearns.} Does this not stifle--

2394 Mr. {Walden.} Gentleman's time--

2395 Mr. {Stearns.} --AT&T and Verizon from investing in new
2396 on-ramps--

2397 Mr. {Walden.} Gentleman's time is expired.

2398 Mr. {DeReggi.} It definitely does, yes.

2399 Mr. {Stearns.} Thank you, Mr. Chairman.

2400 Mr. {Walden.} Gentleman's time is expired. Recognize

2401 Mr. Barrow for 5 minutes.

2402 Mr. {Barrow.} I thank the chairman. I would like to
2403 yield my time to the gentlelady from California, Ms. Eshoo.

2404 Ms. {Eshoo.} I thank the gentleman for yielding his
2405 time to me very, very much.

2406 First, Mr. Chairman, I would like to ask unanimous
2407 consent request that the following items be entered into the
2408 record: a letter to the committee from numerous faith-based
2409 organizations, a letter to the committee from Consumers
2410 Union, a letter to the committee from Consumer Federation of
2411 America, a survey conducted by Consumers Union and Consumer
2412 Federation of America, a letter to the committee from the
2413 Mountain Area Information Network, known as MAIN, an
2414 editorial from the LA Times, an editorial from the New York
2415 Times, and an editorial from USA Today.

2416 Mr. {Walden.} Without objection, each of those items
2417 have been reviewed by the Majority and are--they will be
2418 entered into the record.

2419 [The information follows:]

2420 ***** COMMITTEE INSERT *****

|
2421 Ms. {Eshoo.} Thank you very, very much.

2422 It has been said that there isn't any reason for a--for
2423 the FCC to have developed these rules of the road and that we
2424 are operating in theory. That is not correct, and I don't
2425 think that can stand on the record. The open Internet order
2426 was a reaction to specific abuses designed to prevent future
2427 problems. Those are the facts. This is not theory; this
2428 isn't something that we made up. In 2005, Madison River
2429 Communications blocked VoIP on its DSL network. It was
2430 settled by FCC's consent decree that included a \$15,000
2431 payment. In 2006, Cingular blocked Paypal after contracting
2432 with another online payment service. In 2007, Comcast
2433 initially denied and then admitted, after an FCC complaint
2434 was filed, that it blocked peer-to-peer traffic. Comcast
2435 subsequently changed its practices and the FCC directed
2436 Comcast to disclose its network management practices and
2437 enjoined it from blocking VoIP. In 2008, Max Plank Institute
2438 released a study finding significant blocking of bit torrent
2439 in the United States, including efforts by Comcast and Cox.
2440 In 2009, RCN entered in the class action settlement agreement
2441 in which it acknowledged it blocked degraded or slowed P to P
2442 apps. In 2009, AT&T blocked use of iPhone VoIP applications
2443 that used 2G or 3G, and in 2010, AT&T blocked use of the

2444 slingbox iPhone application on a 3G network.

2445 So we are not operating out in the ether somewhere, and
2446 neither is the FCC. So I think it is important to set those
2447 things down for the record.

2448 I would also like to make an observation, and again,
2449 thank the chairman for having this legislative hearing. What
2450 I have heard today is consumers believe that we should not be
2451 proceeding with the CRA, and that there is a very important
2452 set of standards--light by standard by the FCC that really
2453 should be put into place. We have heard from one of the 100
2454 of Time magazine's most influential persons in our country,
2455 maybe in the world, Ms. Chase, say that this is not menacing
2456 to innovators, that this is helpful and that it is important.

2457 Dr. Kovacs, you are the only one that I really don't get
2458 here, in terms of your theory of economics. But Mr. Cicconi,
2459 I appreciate the fact that you would come, that you would
2460 accept our invitation and say what you have said, and stand
2461 where you are standing. I have had disagreements, policy
2462 disagreements with AT&T, but we see where Comcast, where
2463 AT&T, where small entrepreneurial businesses as well as
2464 consumer organizations, as well as economists all weighing in
2465 and saying that these rules are not menacing. In fact, what
2466 is menacing is this CRA.

2467 So I am glad that we have had this legislative hearing,

2468 because it has cast even a brighter light on what the
2469 committee is considering doing, following this legislative
2470 hearing. I am grateful to all of you, even those whose views
2471 I don't entirely either understand or embrace, but that is
2472 what makes for a great hearing, and I think that this has
2473 been, and I will--oh, right there, almost on the money, used
2474 my time.

2475 Thank you, Mr. Chairman.

2476 Mr. {Walden.} Thank you, and I appreciate your
2477 comments. For the witnesses edification and for the
2478 committee, we are in the middle of a vote right now so we
2479 will recess now and resume the hearing immediately
2480 thereafter. Now I know some of you may have to depart, I
2481 understand that. Our committee members will probably submit
2482 some questions for the record then for those of you that have
2483 to leave. Those who don't, we will reconvene, and then after
2484 we are done with the round of questions, the final round
2485 here, we will then recess briefly so the room can be reset
2486 and we will go right into the markup.

2487 And so I would welcome you all to stay around who can,
2488 and we will be back after the vote. With that, the committee
2489 stands in recess.

2490 [Recess.]

2491 Mr. {Walden.} We are going to call the committee back

2492 to order, so if you would like to take your seats, and maybe
2493 we can close the doors out to the hallway there. Excellent.

2494 I will call the Subcommittee on Communications and
2495 Technology back to order. We are under a hearing on H.J. Res
2496 37, a resolution disapproving the rule submitted by the
2497 Federal Communications Commission with respect to regulating
2498 the Internet and broadband industry practices.

2499 We have a couple more members who have been here for the
2500 duration who want to ask some questions of our remaining
2501 panelists. I appreciate our panelists, by the way, for
2502 staying and continuing to participate.

2503 With that, I would recognize the gentleman from Georgia,
2504 Mr. Gingrey.

2505 Dr. {Gingrey.} Mr. Chairman, I want to thank you, first
2506 of all, for calling today's actually second hearing on the
2507 FCC order on net neutrality. I know that my time is limited,
2508 so let me--I would like to proceed with my questions to these
2509 industry stakeholders that are present today, and thank you
2510 also for your patience.

2511 Dr. Kovacs, before we broke for votes, the distinguished
2512 ranking member of the subcommittee had kind of questioned
2513 your economic logic in your testimony, but you really weren't
2514 given an opportunity to respond to that, so I am going to go
2515 to you first and maybe you would want to expound on that and

2516 my own questions.

2517 Is there currently some sort of network neutrality
2518 crisis warranting government intervention, or do you think we
2519 are better off letting the technology and the relationships
2520 between and among broadband providers and web companies just
2521 continue to evolve?

2522 Ms. {Kovacs.} Let me try and address those and a whole
2523 bunch of questions that came up earlier and went away. I
2524 think one of the best ways to answer that question is to look
2525 at the last few years and say that both the vast investment
2526 in fiber, that is, FIOS, most of the wireless broadband
2527 investment has come since the triennial review and since the
2528 classification of broadband as an information service.

2529 So to me, it clearly shows that giving the companies
2530 flexibility to run their businesses the way they need to run
2531 them makes it a lot easier for them to raise capital. It is
2532 not clear to me that at this point there is any kind of
2533 crisis. Certainly the incidents that have come up that the
2534 ranking member referred to were dealt with one-by-one under
2535 the old regime.

2536 Dr. {Gingrey.} Well, if you will let me comment, and I
2537 agree. I don't know that there is a crisis. Do you see any
2538 market power analysis in this FCC order demonstrating that
2539 there truly is an actual problem and it is not just some

2540 speculation that there could be some future harm?

2541 Ms. {Kovacs.} The FCC looked at an enormous record, and
2542 I think we do have to give them credit for having looked at
2543 an enormous record in reaching their decision. Having said
2544 that, there is not anything like the kind of analysis that
2545 you would have an HHI index, that kind of thing, that would
2546 be looking even at the transport layer at the broadband
2547 access providers, and there is no recognition that wireless
2548 actually, in some markets, does serve--and for some market
2549 segments does serve as a competitor. So I would disagree
2550 pretty strenuously with Ms. Chase's earlier repeated comments
2551 about the duopoly.

2552 There is also no analysis at all of anything above the
2553 transport layer, so the kind of market power, if there is
2554 market power, that Google, for example, has--

2555 Dr. {Gingrey.} Let me reclaim my time, and I thank you
2556 for your answer.

2557 Ms. {Kovacs.} Sure.

2558 Dr. {Gingrey.} I mean, it is certainly nothing that I
2559 would think rises to the level of what the President said in
2560 his Executive Order recently in regard to rulemaking and what
2561 standards need to be met in regard to cost benefit analysis.

2562 Mr. DeReggi, the testimony delivered earlier by Ms.
2563 Chase--I am sorry she had to leave--but she stated that

2564 eliminating the FCC's network neutrality rules will put
2565 future entrepreneurs and small businesses at a significant
2566 disadvantage. Based on your testimony, I can tell that you
2567 are in disagreement with that characterization. In fact, you
2568 go as far to say that the FCC order will--and I think I will
2569 quote you--`result in fewer jobs and indeed stifle
2570 innovation.'

2571 So in addressing Ms. Chase's testimony, can you describe
2572 why the FCC order will do just the opposite of what she
2573 characterized?

2574 Mr. {DeReggi.} Let me share my hometown of
2575 Bernardsville, 70 out of the 300 homes operate home-based
2576 businesses. That was made possible because of three megabit
2577 broadband shared by 50 homes, which we provided. Broadband
2578 provides jobs, not HD video.

2579 When Netflix started streaming across that network, it
2580 compromised the businesses in our town. I had no choice but
2581 to slow Netflix. That is it.

2582 Dr. {Gingrey.} Well, has there been a lack of
2583 innovation in the absence of government regulation over the
2584 Internet during the past decade?

2585 Mr. {DeReggi.} Repeat the question?

2586 Dr. {Gingrey.} Has there been a lack of innovation in
2587 the absence of government regulation over the Internet during

2588 this past decade?

2589 Mr. {DeReggi.} Absolutely not.

2590 Dr. {Gingrey.} Is this a hammer looking for a nail?

2591 Mr. {DeReggi.} Exactly.

2592 Dr. {Gingrey.} Mr. Chairman, I realize my time is
2593 expired and I yield back.

2594 Mr. {Walden.} I appreciate the gentleman's
2595 participation. Now recognize the gentleman from Kentucky,
2596 Mr. Guthrie for 5 minutes.

2597 Mr. {Guthrie.} Thank you, Mr. Chairman.

2598 Mr. Turner, Mr. Markey's questioning established that
2599 you are here on behalf of the consumer. Do you think that
2600 the web content should also be regulated, or do you think it
2601 is sufficient that just the Internet providers are regulated?

2602 Mr. {Turner.} Well, we come at this from the
2603 perspective of economics. I am sure Dr. Greenstein can speak
2604 to this. There are tremendous fixed costs to providing
2605 broadband networks. There are very high switching costs for
2606 consumers in those markets. There is nothing purveying this
2607 consumer going one click away to another website, so think
2608 they exist in different markets.

2609 That is not to say there isn't problems with market
2610 power in those markets, but I don't think that the FCC in the
2611 context of its authority over communication by wire or radio

2612 should really be the ones looking at that. But certainly, we
2613 would welcome--

2614 Mr. {Guthrie.} So they should address that market power
2615 in that place that the one has more than the other?

2616 Mr. {Turner.} Well again, there is--there potentially
2617 is market power in the search markets, but it is not the same
2618 from a consumer perspective in terms of switching costs, nor
2619 from the barriers to entry for other competitors to come in.
2620 If you have a good idea for a search algorithm, it is very
2621 easy for you to start a search engine today. It is not the
2622 same for someone to go build a network next to AT&T.

2623 Mr. {Guthrie.} Okay, thanks.

2624 Mr. Cicconi--Dr. Kovacs, you said it was going to be
2625 more difficult for capital for people to enter the market
2626 because of this rule. Now, would that affect AT&T and Mr.
2627 Cicconi more, or would that affect Mr. DeReggi and his
2628 smaller business more?

2629 Ms. {Kovacs.} It would affect smaller businesses more,
2630 obviously, and--

2631 Mr. {Guthrie.} I knew that too, I just wanted to get
2632 the answer--

2633 Ms. {Kovacs.} I also, if you will allow me just to
2634 comment on switching costs. If it is that easy for anyone to
2635 enter the search business, why have companies like Microsoft,

2636 for example, not been able--or Yahoo not been able to very
2637 effectively challenge Google?

2638 Mr. {Guthrie.} That is a fair point. That is what I
2639 was getting at as well. Thank you so much.

2640 Mr. Cicconi, I know Mr. Shimkus asked--we have used the
2641 word uncertainty I don't know how many times here today. I
2642 still haven't figured out in the marketplace, and you said
2643 this brought certainty to a business. What in the
2644 marketplace was there uncertainty about? I know in general
2645 there is uncertainty in the marketplace, but what in the
2646 marketplace did this rule--may bring certainty to your
2647 business?

2648 Mr. {Cicconi.} Well, I think, Mr. Guthrie, the
2649 uncertainty that was roiling these markets was largely the
2650 result of the prospect of pretty heavy-handed regulation by
2651 the FCC to implement net neutrality. They had a notice of
2652 proposed rulemaking out there in the fall of 2009 that was
2653 very specific and very onerous, and that was followed by a
2654 proposal that was laid out in spring of last year that was
2655 even more onerous and heavy-handed.

2656 Mr. {Guthrie.} But there wasn't something in the
2657 marketplace they were trying to solve that is real--a real
2658 problem in the marketplace today they were trying to solve?

2659 Mr. {Cicconi.} Well--

2660 Mr. {Guthrie.} If you don't want to go there, that is
2661 okay.

2662 Mr. {Cicconi.} I think it is fair to say that, you
2663 know, that the uncertainty that has been created over the
2664 years in this debate, and I think we should stress that the
2665 debate over net neutrality and the authority the FCC should
2666 have in this area didn't just start in January of 2009. It
2667 has been going on for 5 or 6 years. It got worse in 2009 and
2668 2010, but we do feel that this rule, you know, addresses much
2669 of the uncertainty that that debate helped cause.

2670 Mr. {Guthrie.} Unless the new FCC wants to go further,
2671 which is unsettled.

2672 Mr. Greenstein, you said--what is the number you said,
2673 70 to 90 cents of every dollar, is that the gross profit is
2674 what you were--

2675 Mr. {Greenstein.} That's the gross margin.

2676 Mr. {Guthrie.} Gross profit in typical Internet service
2677 providers?

2678 Mr. {Greenstein.} Gross, so that doesn't account for--

2679 Mr. {Guthrie.} Gross profit. Now when you said that,
2680 Mr. DeReggi, you were shaking your head no. Why were you
2681 shaking your head no?

2682 Mr. {DeReggi.} I just wish and dream that I could have
2683 those type of profit margins.

2684 Mr. {Guthrie.} Gross profit. Your gross profit is not
2685 that right?

2686 Mr. {DeReggi.} No, gross profit is not that high. That
2687 would barely--revenue barely covers the antenna co-location
2688 costs, let alone a profit. If we are lucky, we can get legal
2689 and pay permit fees. No, I don't think so. Some business
2690 models may have those costs, but all WISPs aren't uniform.
2691 There are different costs to provide service to different
2692 places in the country.

2693 Mr. {Guthrie.} Thank you.

2694 Mr. Greenstein, that number--

2695 Mr. {Greenstein.} Yeah, I just got this from UVS and
2696 from Craig Moffett at Bernstein. These are authorities. I
2697 am just quoting somebody else.

2698 Mr. {Guthrie.} Okay.

2699 Mr. {Greenstein.} And I think it is largely for wire
2700 line ISPs, so that is quite different than his business.

2701 Mr. {Guthrie.} Okay, I just wanted to establish that.

2702 Ms. Kovacs--Dr. Kovacs, I am sorry.

2703 Ms. {Kovacs.} Not to get arcane, but he is talking
2704 about gross margin, which is when you removed only some part
2705 of the--and then there is a huge amount of other costs that
2706 have to be covered. So again, net income is in the 5 to 10
2707 percent range.

2708 Mr. {Guthrie.} So--

2709 Ms. {Kovacs.} Which is what goes back to the
2710 shareholder.

2711 Mr. {Guthrie.} Net income is what you have to go to
2712 your investors with, isn't it?

2713 Ms. {Kovacs.} That is what goes back to your investors,
2714 exactly.

2715 Mr. {Guthrie.} I yield back.

2716 Mr. {Walden.} Thank you, gentleman's time is expired.

2717 I recognize the gentleman from California, Mr. Bilbray,
2718 for 5 minutes.

2719 Mr. {Bilbray.} Thank you, Mr. Chairman.

2720 Mr. Turner, you indicated in your testimony that you
2721 really don't think the FCC has gone far enough on this, and I
2722 assume that means that you would prefer the FCC to have gone
2723 and reclassified into Title 2?

2724 Mr. {Turner.} Well look, I recognize that net
2725 neutrality appears messy, and it is really because it is a
2726 band-aid to what the earlier FCC--

2727 Mr. {Bilbray.} Okay, well I am just wondering about
2728 this. I am trying to find the line. In your opinion, would
2729 the Title 2 be a better option for us to be going down,
2730 rather than stopping at this level?

2731 Mr. {Turner.} You may not be aware, but much of the

2732 large business enterprise market for broadband is today
2733 regulated lightly under Title 2. Mr. Cicconi's business--

2734 Mr. {Bilbray.} My point is that you would like to
2735 expand that and bring it into this field?

2736 Mr. {Turner.} Well, I think by doing that, the WISP
2737 Association which Mr. DeReggi was a member of, they would
2738 actually probably prefer that because it takes away the
2739 regulation on the Internet service provider layers and--

2740 Mr. {Bilbray.} So your support for going to Title 2 is
2741 because the business--some in the business community would
2742 like that?

2743 Mr. {Turner.} My support for Title 2 is because that is
2744 what Congress adopted in the 1996 Telecommunications Act. It
2745 is the law of the land.

2746 Mr. {Bilbray.} Well, I don't normally associate with
2747 someone who was on the committee at that time that some of
2748 this is an interpretation.

2749 I got to say one thing. Let me just say one thing. I
2750 know--I just think that I want to clarify something. There
2751 was a comment made earlier--Mr. Turner, have you ever run for
2752 elected office?

2753 Mr. {Turner.} I have not, no.

2754 Mr. {Bilbray.} You have never gotten a vote? Okay.

2755 Mr. Chairman, I just want to clarify. There are statements

2756 made here that Mr. Turner represents consumers. Now people
2757 around the world are standing up and demanding the right to
2758 elect their representatives. And it is not just on Mr.
2759 Turner, we do this all the time. I am sorry, in this
2760 country, you elect your representatives. I really think it
2761 is quite inappropriate from this gentleman's point of view
2762 for us to be in this institution and basically assume that
2763 people represent someone without that person being--having
2764 the right to choose who represents them. Self-declared
2765 representatives is what Libya is fighting against right now.

2766 So I just want to say in all fairness, nothing personal.
2767 It is something we do in this institution that is quite
2768 inappropriate, I think, seeing the makeup of this
2769 institution.

2770 So that--

2771 Mr. {Turner.} I meant no offense, sir. We do have
2772 550,000 members that I do represent that are consumers.

2773 Mr. {Bilbray.} Right. Okay, and you say that, but the
2774 fact is that when it comes down to it, the choices you make,
2775 we try to open them up. I just think that we have got to
2776 remember that we elect people in our system, and that--I just
2777 worry about how many people are identified as representatives
2778 without having gone through a due process that I would assume
2779 would be a minimum standard in our society.

2780 That aside, I wish Ms. Chase was here because I had a
2781 question, but Mr. DeReggi, interesting thing on Ms. Chase's
2782 situation. She was at Zipcar and if I remember right,
2783 normally if she wanted to get basically rated somewhere on--
2784 through the system, it would either be alphabetical, which
2785 would put her at the bottom, or it would be based on how many
2786 hits she gets.

2787 Now, if you are little guy going up against a big guy,
2788 that system kind of puts you at a major disadvantage,
2789 wouldn't it?

2790 Mr. {DeReggi.} It certainly does.

2791 Mr. {Bilbray.} Now, so she now actually--her company or
2792 former company had the option of paying into an advertising
2793 mode that moved her up to the front and made it big.

2794 So by having the ability to sort of pay to play, that
2795 gave her the ability to compete on a much more even footing
2796 than somebody who was an established big guy, right?

2797 Mr. {DeReggi.} That is correct.

2798 Mr. {Bilbray.} Now, what would happen if the FCC said
2799 no, that is not an option either, that somebody can't buy
2800 their way onto the front page by paying for advertisement.
2801 What would that do to little guy's ability to take on the big
2802 established operations in this kind of business that Zipcar
2803 was in?

2804 Mr. {DeReggi.} Yeah, that would let the little guy have
2805 an equal opportunity.

2806 Mr. {Bilbray.} Okay. I just think that as we go down
2807 here, there is one--you know, we forget that a lot of times
2808 what we perceive to be a big advantage of the big guy is
2809 really the only vehicle that a little guy has to compete in
2810 the system. And I always get kind of frustrated if somebody
2811 comes from a blue collar background, and that is why, you
2812 know, Mr. Turner, I bring this up all the time because
2813 everybody says they represent the poor and the working class,
2814 and some of us never got to elect these guys.

2815 But I think that when it comes down to the system of who
2816 gets to participate, the fact is big government favors big
2817 business. Little business is the one who keeps big business
2818 honest, and allowing the little guy to compete, get access,
2819 that is what keeps the big guy honest. Traditionally when we
2820 think we are helping with big government, we actually end up
2821 creating more protection for the big guy.

2822 Mr. {Walden.} Gentleman's time--

2823 Mr. {Bilbray.} Is that fair to say?

2824 Mr. {Turner.} The concern for small businesses is why
2825 we are strong supporters of network neutrality, sir.

2826 Mr. {Walden.} Gentleman's time has expired. Now
2827 recognize the gentleman from Illinois, Mr. Kinzinger, for 5

2828 minutes.

2829 Mr. {Kinzinger.} Thank you, Mr. Chairman. Thank you
2830 for spending your morning, afternoon, and forever with us. I
2831 appreciate it.

2832 I have said this before. One of my concerns with this
2833 whole thing is, you know, we can argue the merits for or
2834 against net neutrality, and I have my position, but one of
2835 the biggest concerns is--and you five now, but six weren't
2836 necessary privy to this discussion, but to me, it is just
2837 amazing, the whole idea that we are sitting here talking
2838 about something that I don't even think the FCC had a right
2839 really to do. That was outside of the venue, outside of the
2840 will of the body of the American people. I mean, last year,
2841 last Congress over 300 members of this body signed something
2842 opposing these rules. I heard the FCC commissioners talk
2843 about they are pretty doggone sure, basically, that this is
2844 going to hold up in court. Well, if you are not positive why
2845 don't you come talk to us and we can talk about it.

2846 So that is--I think with this whole discussion--again,
2847 talking about the merits, where it's good, where it's bad.
2848 The 10,000 foot overview I have is just the fact that we have
2849 regulatory bodies that are operating outside of the will of
2850 the House of Representatives, and that, to me, is
2851 unbelievable. That is not what was ever intended to happen.

2852 I had to get that off my chest.

2853 Let me say to Dr. Kovacs. I hope I am saying your name
2854 correctly.

2855 Ms. {Kovacs.} You are.

2856 Mr. {Kinzinger.} The current order, and I know you have
2857 discussed this with, but I want to ask it is in this way. If
2858 the current order from the FCC were to be implemented, with
2859 the current lack of complete definitions in a not of areas in
2860 many of these aspects. Do you believe that that lack of
2861 definitions and this current order would create the necessary
2862 certainty that broadband Internet access providers will need
2863 to determine that long-term strategy?

2864 Ms. {Kovacs.} I think it is going to take a long time
2865 to get to the point where we know what the definitions are,
2866 because it is going to be case by case, as protests are filed
2867 and the FCC deals with them. So we have quite a while to go
2868 before we have certainty about what the rules are actually
2869 going to--

2870 Mr. {Kinzinger.} Well we don't even know in, you know,
2871 5, 10, whatever--I am just pulling those numbers out. We
2872 don't even necessarily know what this is all going to look
2873 like, anyway, so this is all still--

2874 Ms. {Kovacs.} It is going to be a multi-year process.

2875 Mr. {Kinzinger.} Right.

2876 Mr. DeReggi, I hope I am saying that right. You guys
2877 have difficult names. You need an easier one, like
2878 Kinzinger. I currently represent a rural district that is
2879 fairly rural, and it is served by a lot of small companies
2880 like your own. One of the things that I tend to know with
2881 consumers in these kinds of areas is that they choose, in
2882 many cases, small companies like yours so that they are able
2883 to pay for the services that they want to have in that area.
2884 The FCC order has a provision that mandates that every
2885 consumer be able to access every service on every device,
2886 regardless of cost. Could you expound a bit on how that
2887 particular provision would impact your pricing plans as well
2888 as what you think it would do to your ability to serve
2889 customers in areas like that?

2890 Mr. {DeReggi.} It would definitely force us to raise
2891 our prices in order to be able to do that, but it is also not
2892 physically capable of happening because a spectrum is not
2893 available to be able to fulfill that request.

2894 Mr. {Kinzinger.} So we basically are creating something
2895 or something is being created that is just not even possible
2896 to follow through on anyway?

2897 Mr. {DeReggi.} You are basically making the operators a
2898 criminal because I can't comply.

2899 Mr. {Kinzinger.} Right, okay. And you know, finally

2900 Mr. Turner, just to be clear, yes or no is fine on this.
2901 Please, just yes or no. If the FCC loses in court, will you
2902 support Title 2 regulation of the Internet.

2903 Mr. {Turner.} I support Title 2 regulation of Internet
2904 access--the transport segment of internet access services
2905 today.

2906 Mr. {Kinzinger.} So the answer is yes?

2907 Mr. {Turner.} The answer to--you didn't ask the
2908 question the way I would answer, but yes, the answer on the
2909 connectivity side, not the access service side, yes, sir.

2910 Mr. {Kinzinger.} Okay. So basically a vote against
2911 this resolution is a vote for Title 2 regulation.

2912 I yield back. Thank you.

2913 Mr. {Walden.} Gentleman yields back his time.

2914 We have now entertained the unanimous consent request to
2915 allow Mr. Inslee to sit at the subcommittee level. Without
2916 objection, so ordered, and he will be our final questioner
2917 before we go into the markup. So I will yield now 5 minutes
2918 to the gentleman from Washington State, Mr. Inslee.

2919 Mr. {Inslee.} Thank you, Mr. Chair. Thank you for your
2920 courtesy in letting me participate. I appreciate it. These
2921 are very important things. I want to thank all the panel for
2922 being here. These issues and the constellation of issues
2923 this represents, with all the problems we have got in the

2924 world, from Libya to--for gas prices, this one I hear more
2925 about. I mean, not necessarily more than some of those
2926 others, but a lot about, and I have almost come to think that
2927 when people in my district think about life, liberty, and the
2928 pursuit of happiness, they think about free access to the
2929 Internet as either life or liberty or the pursuit of
2930 happiness, or maybe all three of them, and they really do
2931 perceive a threat to that because certain business plans
2932 could result in the loss of their decision-making about what
2933 they look at on the Internet, and losing that ability and
2934 that going to some commercial entity instead. We are
2935 imposing costs on them that are not necessarily in their
2936 benefit.

2937 So it is a huge issue in my district. People are very,
2938 very concerned it and I am as well. I don't believe the FCC
2939 actually went far enough to guard against the life of that
2940 life, liberty, and the pursuit of happiness. Interests in
2941 part because it didn't deal with the wireless spectrum, which
2942 is the future. We are really talking about the past or the
2943 present here in wired, but wireless is the future and the
2944 fact that we haven't considered protections on that is very
2945 disturbing to me.

2946 So I just have a couple questions. First off for Mr.
2947 Cicconi. Do you think that consumers are the ones that ought

2948 to have final say in deciding what content and services they
2949 have when they access the Internet, and in what ways, if any,
2950 does the present order restrict those consumers, if any?

2951 Mr. {Cicconi.} I think by and large we are--the
2952 objective of our business is to provide that very access and
2953 it is not our position or policy to hinder it in any way. I-
2954 -as I have said before, I don't think we have done that in
2955 any way, and I think it is in the interest of our business to
2956 make it as broadly available as possible.

2957 Mr. {Inslee.} And do you think that the FCC's present
2958 net neutrality order restricts access of consumers to access
2959 they would want in any way?

2960 Mr. {Cicconi.} I don't think so, Mr. Inslee. I am not
2961 sure I am getting the import of your question. There are
2962 provisions in the rule that provide for and allow for
2963 reasonable network management, which you know--I mean, there
2964 are certain things you have to do to make sure a network runs
2965 properly, and then on shared networks such as cable or
2966 wireless, your objective is to ensure the most access for the
2967 most people at any given time. And so there could be
2968 policies or terms and conditions on the service that are
2969 related to the ability--to management of that network that
2970 could impede that. But I think the Commission has recognized
2971 that and I don't think there is any disagreement that we have

2972 with the Commission about the importance of that.

2973 Mr. {Inslee.} Thank you.

2974 Mr. Turner, I want to talk if I can about previous
2975 frameworks. Isn't it true that non-discrimination really was
2976 the agreed-upon rule of the game, if you can call it that,
2977 during the past few decades, and including during much of
2978 this explosive growth through the Internet? And AT&T really
2979 agreed to it--that principle of net neutrality in FCC merger
2980 approvals. If that is the truth, and I think it is, what is
2981 the reason that the American people should be asked to abide
2982 by jettisoning that framework?

2983 Mr. {Turner.} Well I don't think they should, and you
2984 raise a great point. I always turn back to the '96 Act,
2985 because that is the governing law here. The focus of the Act
2986 was keeping Internet companies like AOL, CompuServe, Prodigy
2987 viable. They were dependent on the infrastructure. We had
2988 great ISP choice there. We had--any consumer could choose
2989 dozens of ISPs. There was no way I think Congress would have
2990 said the FCC should be not allowed to invent words like
2991 inextricably intertwined to basically take away that choice.
2992 I don't think Congress would have wanted in '96 to look out
2993 at the world of ISP choice and say 15 years later, I only
2994 want consumers to have choice of two, and I don't want them
2995 to be able to choose the content that they would like to

2996 access on the Internet. I wish this body could return to
2997 first principles, return to the principle of non-
2998 discrimination. The FCC may have not done it the right way.
2999 Let us talk about the right way to do it.

3000 Mr. {Walden.} Thank you. Gentleman concludes his
3001 questioning and returns his time.

3002 We have concluded now the hearing phase today--or
3003 actually the hearing today, our second hearing on this topic.
3004 We have a document that has been shared with the Minority
3005 that we will put in the record, National Broadband Plan for
3006 our Future. This is from Solicitor General Seth P. Waxman,
3007 former solicitor general, as counsel for the United States
3008 Telecom Association. I assume not necessarily a relative of
3009 the former Chairman Waxman. And in it he makes the case that
3010 the Internet was never regulated at the retail level.
3011 Without objection, this will be entered in the record.

3012 [The information follows:]

3013 ***** COMMITTEE INSERT *****

|
3014 Mr. {Walden.} And with that, the subcommittee will be
3015 adjourned. Thank you again for testifying, it has been most
3016 helpful to our process.

3017 For our committee members who are watching, listening,
3018 or somewhere out there in telecommunication land, we will
3019 reconvene as the subcommittee and for purposes of the markup
3020 on this legislation at, let us say, 3:30, so 15 minutes. We
3021 will reconvene for the markup.

3022 We stand adjourned as the Subcommittee on
3023 Communications.

3024 [Whereupon, at 3:15 p.m., the Subcommittee proceeded to
3025 other business.]