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1 {York Stenographic Services, Inc.}

2 HIF047.160

3 HEARING ON ``NETWORK NEUTRALITY AND INTERNET REGULATION:

4 WARRANTED OR MORE ECONOMIC HARM THAN GOOD''

5 WEDNESDAY, FEBRUARY 16, 2011

6 House of Representatives,

7 Subcommittee on Communications and Technology

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 9:33 a.m., in
11 Room 2123 of the Rayburn House Office Building, Hon. Greg
12 Walden [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Walden, Terry,
14 Stearns, Shimkus, Bono Mack, Rogers, Bilbray, Bass,
15 Blackburn, Gingrey, Scalise, Latta, Guthrie, Kinzinger,
16 Barton, Upton (ex officio), Eshoo, Markey, Doyle, Matsui,
17 Harman, Barrow, Towns, Pallone, Rush, Dingell, Inslee and
18 Waxman (ex officio).

19 Staff present: Neil Fried; Michael Beckerman; David
20 Reall; Jeff Mortier; Carly McWilliams, Legislative Clerk;
21 Roger Sherman, Minority Chief Counsel; Shawn Chang, Minority
22 Counsel; Jeff Cohen, Minority Counsel; Sarah Fisher, Minority
23 Policy Analyst; Bruce Wolpe, Minority Advisor; Pat Delgado,
24 Minority Chief of Staff (Waxman); and Phil Barnett, Minority
25 Staff Director.

|
26 Mr. {Walden.} Please take your seats, and the hearing
27 is about to begin. I call to order the Subcommittee on
28 Communications and Technology hearing on net neutrality. I
29 want to welcome our witnesses who are here today, and we look
30 forward to your testimony and the response to your questions.

31 We all want an open and thriving Internet. That
32 Internet exists today. Consumers can access anything they
33 want with the click of a mouse thanks to our historical
34 hands-off approach. Changing direction now will only harm
35 innovation and the economy. But before we even get into the
36 harm the network neutrality rules will cause, it is important
37 to realize the FCC's underlying theory of authority would
38 allow the Commission to regulate any interstate communication
39 service on barely more than a whim and without any additional
40 input from the United States Congress. In essence, the FCC
41 argues it can regulate anything if in its opinion doing so
42 would encourage broadband deployment.

43 I am relieved, however, the FCC declined under its
44 newfound authority to regulate coffee shops, bookstores,
45 airlines and other entities. This of course means the FCC
46 believes it has the authority that it has so far declined.
47 It could have subjected these entities to the new rules under
48 its decision.

49 If left unchallenged, this claim of authority would
50 allow the FCC to regulate any matter it discussed in the
51 National Broadband Plan. Recall that the FCC concluded that
52 consumers' concerns over privacy are deterring broadband.
53 Does that mean the FCC can regulate Internet privacy?

54 The National Broadband Plan also addresses health IT,
55 distance learning, smart grid, smart homes, smart
56 transportation. Can the FCC regulate all of these matters
57 too in the promoting broadband? Under the FCC's rationale,
58 its authority is bounded only by its imagination.

59 Former FCC Chairman Kevin Martin tried to go down a very
60 similar path. In the wake of Hurricane Katrina, he claimed
61 that his authority over wireless services allowed him to
62 require backup power at cell sites. During oral arguments,
63 the courts questioned the FCC's logic, asking whether it
64 would grant him seemingly endless authority over things like
65 electric utilities and employees of wireless providers. The
66 FCC eventually backed down. This overreach was problematic
67 with a real disaster like Hurricane Katrina. I don't see how
68 it is justified here.

69 From the Internet's inception, we have taken a hands-off
70 approach. The Internet started as a defense agency project
71 to connect computers to research facilities. It did not
72 become the explosive driver of communications and economic

73 growth it is today until we turned it over to free
74 enterprise. Dating as far back as 1971, the FCC has
75 consistently treated data services as unregulated information
76 services and not as regulated telecommunications services.
77 Congress codified this distinction in the 1996
78 Telecommunications Act.

79 FCC Chairman William Kennard reaffirmed this approach.
80 In rebuffing requests to regulate cable Internet access
81 service, Chairman Kennard explained in a 1999 speech, and I
82 quote, ``that the fertile fields of innovation across the
83 communications sector and around the country are blooming
84 because from the get-go we have taken a deregulatory
85 competitive approach to our communications structure,
86 especially the Internet.' ' There is no crisis warranting
87 departure from this approach.

88 The FCC hangs almost its entire case for regulating the
89 Internet on Comcast's past attempt to combat network
90 congestion by managing peer-to-peer traffic, but Comcast in
91 the peer-to-peer community resolved that issue by gathering
92 their engineers and developing alternative solutions that
93 advanced traffic management techniques to everyone's benefit.
94 No network neutrality rules were in place, and the D.C.
95 Circuit overturned the FCC's attempts to regulate Comcast
96 network management because the Federal Communications

97 Commission failed to demonstrate it had the authority to do
98 so. Most everything else the order discusses is either an
99 unsubstantiated allegation or speculation of future harm.

100 The FCC even confesses in its order that it has done no
101 market analysis, none. It just selectively applied the rules
102 to broadband providers, shielding web companies. If the mere
103 threat of Internet discrimination is such a concern and if
104 the FCC has done no analysis to demonstrate why one company
105 has more market power than another, why would discrimination
106 by companies like Google or Skype be any more acceptable than
107 discrimination by companies like AT&T and Comcast? Instead
108 of promoting competition, such picking of winners and losers
109 will stifle the investment needed to perpetuate the
110 Internet's phenomenal growth, hurting the economy.

111 Section 230 of the Telecommunications Act makes it the
112 policy of the United States to ``preserve the vibrant and
113 competitive free market that presently exists for the
114 Internet and other interactive computer services unfettered
115 by federal or state regulation.'' Statutory statements of
116 policy are not grants of regulatory authority but they can
117 help delineate the contours of that authority. In light of
118 Congress's statutory pronouncement that Internet regulation
119 is disfavored, the FCC's theory of regulation by bank shot
120 stretches too far.

121 At bottom, this is little more than end run around the
122 D.C. Circuit April 2010 ruling in the Comcast that the FCC
123 failed to show it had the ancillary authority to regulate
124 network management.

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

126 ***** COMMITTEE INSERT *****

|
127 Mr. {Walden.} With that I now turn to the ranking
128 member for her opening statement.

129 Ms. {Eshoo.} Good morning, Mr. Chairman, and thank you,
130 and warm welcome to all of the commissioners of the Federal
131 Communications Commission. It is very good to see you. I
132 want to thank Chairman Walden for calling the commissioners
133 before us early in this Congress. It is vitally important
134 that we hear from the full Commission to help members make
135 informed decisions on the key telecommunications issues that
136 will be before us in this Congress.

137 Today's hearing is intended to examine the FCC's action
138 to preserve an open Internet and a proposed mechanism to
139 unravel these rules. Since being elected to the House in
140 1992, I have witnessed my district lead a technology
141 revolution, and the Nation has prospered as has the world.
142 This success has come in large part due to the Internet's
143 growth, an open forum where companies compete online and
144 consumers have a choice in the content they consume.

145 In only a few years, innovative companies like Netflix,
146 Skype and eBay have flourished. These companies have created
147 tens of thousands of jobs and new competition in areas like
148 telephone service, video and online shopping, not just in my
149 district but across the Nation. By one estimate, the open

150 Internet ecosystem has resulted in more than 3 million new
151 jobs, U.S. jobs, over the past 15 years. To promote the next
152 Google or Facebook, we must preserve these essential
153 qualities and ensure that the Internet remains open and free.

154 While the FCC's open Internet rules are not perfect,
155 they are an important step forward. Without some clear rules
156 of the road, large corporations can carve up the Internet
157 into fast and slow lanes, charging a toll for content and
158 blocking innovators from entering the information
159 superhighway. I believe consumers, not corporations, should
160 be in the driver's seat to pick the content they view, listen
161 and watch over the Internet.

162 We are now faced with at least two legal challenges and
163 the use of legislative maneuvers like the Congressional
164 Review Act to overturn the FCC's work. These actions will
165 inevitably create market uncertainty, and I want to repeat
166 that, Mr. Chairman. These actions will inevitably create
167 market uncertainty and delay future innovation in broadband
168 technology.

169 Each member of this subcommittee has made it clear where
170 they stand on the issue, and I don't expect this hearing to
171 change those views. What is important to remember is what
172 the FCC agreed to is a compromise, a word that a lot of
173 Americans celebrate. That understand that compromises have

174 to be made, reflecting the views of both sides of the issue,
175 with more than 100,000 comments from more than 2 million
176 people across the country, 90 percent of whom were in favor
177 of open Internet rules. So the American people have really
178 weighed in with the FCC.

179 There is broad agreement for the adoption of these
180 rules. Comcast, the Nation's largest broadband provider,
181 voluntarily agreed to abide by open Internet conditions for
182 the next 7 years as part of its joint venture with NBC
183 Universal. AT&T has said it will not engage in efforts to
184 overturn the FCC's order. If these commonsense rules are
185 good enough for the Nation's two largest broadband providers,
186 then I think it is time we refocus our efforts on the next
187 steps needed to promote jobs, broadband deployment and new
188 investment.

189 I think it is time to look forward. That is really what
190 America is about, and on what we can work on together in a
191 bipartisan way. We are faced with important issues like
192 universal service reform, spectrum reform and ensuring that
193 our country's first responders have a nationwide,
194 interoperable public safety network. We will be coming up to
195 the 10th anniversary of the attack on our country and we
196 still do not have interoperability with our public safety
197 community. That is what this Congress, this committee and

198 full committee should be tackling. And when we tackle these
199 issues, we will have an opportunity to create jobs in our
200 country, grow the economy, and a platform we can all agree
201 on.

202 I look forward to hearing from the distinguished
203 chairman all of the commission, all the distinguished
204 commissioners and their thoughts on how we can ensure that
205 the Internet remains a vital resource, an American resource
206 to improve the lives of every citizen and everyone around the
207 world for generations to come. Thank you, Mr. Chairman, and
208 I yield back.

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

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

|
211 Mr. {Walden.} I thank the gentlelady for her comments.

212 I now yield 2 minutes to the chairman of the full

213 committee, the gentleman from Michigan, Mr. Upton.

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

215 The FCC's recent adoption of network neutrality rules to
216 regulate the Internet is perhaps the most striking example of
217 a troubling trend that we have seen at this very important
218 agency. Rather than serving as an impartial expert and
219 authority, the Commission seems to be advancing policy agenda
220 of its own, often by twisting the arms of those who have come
221 before it. The activist agenda is particularly embodied in
222 the network neutrality regulations that are the subject of
223 today's hearing.

224 We are pleased to see Chairman Genachowski today
225 alongside of his fellow commissioners who announced plans in
226 September of 2009 to codify four network neutrality
227 principles as enforceable rules. However, the history of
228 these principles is clear. First put forward in 2004, they
229 were intended for all facets of the industry in lieu of
230 regulations. Even when adopted as policies in 2005, the FCC
231 made clear that they were not established as rules nor were
232 they enforceable. The decision came only 3 months after
233 taking the helm of the FCC despite the fact that he made no

234 mention of those plans 4 days earlier during his first
235 appearance before this committee.

236 I have made it clear that the Energy and Commerce
237 Committee will be focused on jobs. As we have seen in the
238 first couple weeks of the 112th Congress, one of the greatest
239 threats to job creation in our current economy is runaway
240 regulation. Regulations are not the problem in and of
241 themselves. In fact, it is regulations that implement the
242 laws passed by Congress. The problem comes when unelected
243 personnel in the maze of the federal bureaucracy began using
244 the regulations to impose their own agendas, and when they do
245 without Congressional authority or thoughtful consideration
246 of the economic consequences. Net neutrality is a case in
247 point. The FCC has done nothing to specifically quantify any
248 harm requiring intervention or the potential harm to
249 consumers, innovation or the economy from the proposed rules.
250 Where is the cost-benefit analysis that President Obama
251 called for in his recent Executive Order?

252 This hearing is to look into that, and I look forward to
253 the answers of those that are here, and I ask that the rest
254 of my statement be included as part of the record.

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

256 ***** COMMITTEE INSERT *****

|
257 Mr. {Walden.} Without objection. And now I think we go
258 to Mr. Barton for a minute on our side.

259 Mr. {Barton.} We have a little high-tech problem
260 getting the button on over here. It just went off again.

261 Welcome, our four commissioners and chairmen of the FCC.
262 You are all great individuals. You are all very bright. I
263 disagree with the majority of you on your net neutrality
264 regulations that you put in place but I am impressed by your
265 intellect.

266 Mr. Chairman, I will put my statement in the record.
267 Suffice it to say that I do not see how this Commission with
268 the intelligence that they have could have adopted the rule
269 they did on a 3-2 partisan vote knowing that there was
270 probably going to--in fact, knowing there has been a change
271 in the Congress and that every candidate who ran on the net
272 neutrality principle that they tried to establish was
273 defeated and knowing that the majority of this committee and
274 a majority of the Congress on both sides of the aisle opposed
275 the rule that they have now put in place.

276 We have two hearings going on simultaneously so Mr.
277 Upton and myself and others will be going up and down and
278 back but I hope to come back in time to question the
279 Commission and try to delve into why they did what they did

280 when they did it, knowing that it was not going to be well

281 reserved. Thank you, Mr. Chairman.

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

283 ***** COMMITTEE INSERT *****

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284 Mr. {Walden.} I now yield a minute to the gentleman
285 from Nebraska, the vice chair of the committee, Mr. Terry.

286 Mr. {Terry.} Thank you, Mr. Walden.

287 I believe it is safe to say that everyone in this room
288 today wants an open and thriving Internet. It is therefore
289 important to point out that such an Internet exists today.
290 It is no coincidence that today's Internet users can access
291 anything they want very quickly and easily. This was made
292 possible due to our historical hands-off approach to the
293 Internet. As users demand more-sophisticated content,
294 service and applications, we must maintain a similar course
295 or face the inevitable decline in investment, service and
296 overall blow to our economy.

297 I am worried that the FCC's adoption of its network
298 neutrality rules regulating the Internet will do just that,
299 and I am further concerned that they were adopted strictly on
300 the speculation of future harm.

301 On October 5, 2009, my colleagues and I sent a letter
302 asking that the Commission undertake a full market analysis
303 prior to any consideration of network neutrality rules. It
304 is made clear in the order that no such analysis took place.
305 Instead the order selectively applies the rules to broadband
306 providers while shielding web-based companies. I am

307 interested in learning today why the Commission instead of
308 promoting competition decided it was more appropriate to pick
309 the winners and the losers. If the were a mere threat of
310 Internet discrimination is such a concern and the FCC has
311 done no analysis to demonstrate why one company has more
312 market power than another, why would discrimination like
313 companies like Google or Skype be any more acceptable than
314 discrimination by companies like Verizon and Cox?

315 Hopefully these questions will be answered today. I
316 plan on seeking the answers to these questions and about
317 impact on the market, and I yield back.

318 [The prepared statement of Mr. Terry follows:]

319 ***** COMMITTEE INSERT *****

|
320 Mr. {Walden.} I now recognize the gentleman from
321 Massachusetts, Mr. Markey, for a minute.

322 Mr. {Markey.} I thank you, Mr. Chairman.

323 I just want to speak on behalf of those of us who ran on
324 net neutrality who are still in Congress, which starts with
325 Ms. Eshoo to Mr. Waxman, to Mr. Markey, to Mr. Doyle, Ms.
326 Matsui, all the way down just so the record is clear that we
327 are here as we have been, and I also want to point out that
328 AT&T was offered the contract to build the Internet in 1966
329 and they turned it down because they said they had a monopoly
330 already and long lines and they did not want to build a
331 packet switch network because they had to go to BB&N, a small
332 company up in Cambridge, Massachusetts, to build the
333 Internet. AT&T didn't want it.

334 In 1996, after we passed the Telecom Act, Verizon sued
335 saying we don't want to open up our network under that law to
336 competitors, and the story goes on and on that the broadband
337 barons, any time they have control of something they don't
338 want competition, but this Internet revolution that created
339 Google and eBay and Amazon and YouTube and Hulu and all of
340 the rest of these companies, it is all as a result, not of
341 the policy of Verizon, the policy of these other large
342 companies, it is that the government acted.

343 So here is the interesting thing. The paradox of
344 competition is that it takes regulations in order to create
345 deregulation, in order to create a marketplace for small
346 entrepreneurial companies can get into the marketplace. That
347 is what has happened over the last 30 years. The government
348 has acted in order to make sure that a company that had
349 already invented broadband, already invented digital, that is
350 AT&T, but had not deployed it so we were all still using
351 black rotary dial phones 100 years after Alexander Graham
352 Bell in our living room. You don't go from black rotary dial
353 phones to BlackBerrys unless the government finally
354 intervenes and says we want these entrepreneurs, we want
355 these small new companies that are entering into the
356 marketplace. That is what has happened over this last
357 generation. That is what this debate is all about.

358 I wish the FCC had gone further so that we could have
359 hundreds, thousands of newer companies coming in and not just
360 relying upon Verizon to innovate because that will be a long
361 day before you hear about the first new product that comes
362 from Verizon. That has never happened and it is unlikely to
363 ever happen in your lifetimes.

364 I yield back, Mr. Chairman.

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

366 ***** COMMITTEE INSERT *****

|
367 Mr. {Walden.} There is Mr. Waxman. We are waiting for
368 the chairman emeritus. Mr. Waxman, you have the remaining 2
369 minutes and 35 seconds once you are comfortably seated and
370 ready to go.

371 Mr. {Waxman.} Thank you very much, Mr. Chairman, and I
372 regret that this committee has another subcommittee meeting
373 at the same time.

374 I am pleased you had this hearing today. This is the
375 first FCC-related hearing of the subcommittee. I think it is
376 appropriate that our witnesses are the five members of the
377 Commission.

378 Last December, the FCC took landmark action to preserve
379 the open Internet. These rules are a bill of rights for
380 Internet users. They contain four key provisions: restore
381 FCC's authority to prevent blocking of Internet content
382 applications and services, which was struck down by the court
383 in the Comcast decision, prevent phone and cable companies
384 from unreasonably discriminating against any lawful Internet
385 traffic, prohibit wireless broadband providers from blocking
386 websites as well as applications that compete with voice or
387 video conferencing while preserving FCC's authority to adopt
388 additional standards and safeguards under existing
389 authorities, and to direct the FCC to issue transparency

390 regulations so consumers know the price, performance and
391 network management practices.

392 We are going to hear about these regulations to protect
393 the open Internet, and I think that we have to recognize that
394 some of the claims that are being made and repeated over and
395 over again are just not accurate. The most vibrant sector of
396 our economy today is our Internet economy. U.S. companies
397 like Google, Facebook, Amazon and eBay lead the world in
398 innovation. They all urged the FCC to act to protect an open
399 Internet because ``commonsense baseline rules are critical to
400 ensuring that the Internet remains a key engine of economic
401 growth, innovation and global competitiveness.''

402 We need to make sure that the Internet is free and open
403 and not regulated by anyone who is just simply delivering the
404 service. Even AT&T and Comcast, which are two of the
405 Nation's largest network operators, support the rules.
406 AT&T's CEO stated, ``We didn't get everything we wanted. I
407 wanted no regulation but we ended at a place where we have a
408 line of sight and we know can commit to investments.''

409 earlier today we received letters from a broad and diverse
410 coalition of more than 100 organizations that oppose efforts
411 to use legislation to block the open Internet regulations.

412 The American people want us to be focusing on creating
413 jobs and rebuilding our economy. We have an important

414 opportunities in this subcommittee to contribute to that
415 effort by making more spectrum available, ensuring universal
416 access to broadband. We have a lot of things we need to work
417 on together, and I look forward to that. This issue has been
418 resolved by the FCC, and I look forward to our following the
419 implementation of it.

420 I would like to ask unanimous consent to put in the full
421 statement.

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

423 ***** COMMITTEE INSERT *****

|
424 Mr. {Walden.} Without objection, all members are
425 allowed the opportunity to put their full statements in the
426 record.

427 With that, I thank the folks who have offered up the
428 opening statement, and I would now like to turn to our panel
429 of witnesses, the distinguished members of the Federal
430 Communications Commission, and I will start with that
431 Commission's chairman. Mr. Genachowski. Thank you for being
432 here today, and we look forward to your statement.

|
433 ^STATEMENTS OF HON. JULIUS GENACHOWSKI, CHAIRMAN, FEDERAL
434 COMMUNICATIONS COMMISSION; HON. MICHAEL J. COPPS, PH.D.,
435 COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; HON. ROBERT
436 M. MCDOWELL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION;
437 HON. MIGNON CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS
438 COMMISSION; AND HON. MEREDITH ATTWELL BAKER, COMMISSIONER,
439 FEDERAL COMMUNICATIONS COMMISSION

|
440 ^STATEMENT OF JULIUS GENACHOWSKI

441 } Mr. {Genachowski.} Chairman Walden, Chairman Upton,
442 Ranking Members Eshoo and Waxman, members of the
443 subcommittee, this committee has jurisdiction over an area of
444 increasing importance: communications and technology
445 including the Internet. I look forward to working with this
446 committee in a variety of ways to strengthen our economy,
447 promote our global competitiveness and extend opportunity to
448 all Americans. I have submitted a written statement on our
449 actions to preserve Internet freedom and openness. I will be
450 brief here.

451 As we considered a framework for Internet freedom, I had
452 three priorities. First, consumers, promoting consumer
453 choice, making sure that people who use the Internet have the

454 freedom to say what they want, go where they want and access
455 any legal content or services on the Internet. Second,
456 innovators, making sure that the Internet will continue to be
457 a vibrant platform for American entrepreneurs, that the next
458 inventor in his garage, the next Mark Zuckerberg in his dorm
459 room, the next Jeff Bezos traveling across the country in his
460 car can start and build the next great business on the
461 Internet, creating jobs, growing our economy and helping us
462 lead the world in innovation. It is essential that we
463 incentivize billions of dollars of private investment in
464 Internet content, applications and services businesses. Now,
465 my third priority is the networks, promoting wired and
466 wireless Internet networks in the United States that are the
467 best in the world, fast, robust and universally available.
468 We have to incentivize billions of dollars of private
469 investment to the core of the network, to network
470 infrastructure.

471 Throughout the history of Internet, innovative online
472 applications and service have spurred broadband deployment
473 and adoption which in turn have encouraged new applications
474 and services. This virtuous cycle of innovation and
475 investment throughout the broadband economy, that is what we
476 want to maintain and advance. Why? Because the free and
477 open Internet has led to the creation of tens of thousands of

478 small businesses, millions of jobs and billions of dollars of
479 investment.

480 Now, since 2005, the FCC on a bipartisan basis has made
481 clear it would act to enforce open Internet protections. It
482 did so several times but it did so without an appropriately
483 adopted framework. That is why we acted to bring some
484 resolution and certainty to this area, and after an open and
485 participatory process with published rules, public workshops,
486 extensive engagement, feedback from over 200,000 commenters,
487 we established a sensible high-level framework to preserve
488 Internet freedom and openness. The rules fit on one page and
489 boil down to four things.

490 First, transparency so that consumers and innovators can
491 have basic information to make smart choices about broadband
492 networks or how to develop and launch the next killer app.
493 Empowering them with information will reduce the need for
494 government involvement. Second, no blocking so that
495 consumers can be free to access lawful content or services
496 and so startup and other Internet companies can be free to
497 reach Internet consumers. Third, a level playing field, a
498 fair, non-discrimination principle so that winners and losers
499 online are picked by who should pick them: consumers and the
500 market. And fourth, flexibility for Internet service
501 providers, flexibility to manage networks, to deal with

502 congestion and harmful traffic, flexibility to pursue
503 innovation and business models and get a real return on
504 investment.

505 Now, I understand that some people think this framework
506 doesn't go far enough. Others think it goes too far. I
507 believe it gets it about right: light-touch approach
508 consistent with the FCC's history of bipartisan action on
509 this issue. Informed by earlier FCC and Congressional
510 initiatives, supported by the broadest consensus ever
511 assembled on this challenging topic, the framework we adopted
512 preserves Internet freedom, preserves the Internet job
513 creation engine, protects consumer choices and promotes
514 private investment throughout the broadband economy.

515 Now, while the Commission was divided on this particular
516 issue, we resolve over 95 percent of our votes on a
517 bipartisan basis, and I believe we are united on the need to
518 promote broadband access, its importance to our 21st century
519 economy and our global competitiveness and to expanding
520 opportunity broadly.

521 So I look forward to working with my colleagues and with
522 the committee on a series of initiatives including unleashing
523 spectrum, reforming universal service, and removing barriers
524 to broadband build-out, to harness the opportunities of
525 communications technologies for all Americans.

526 Thank you, and I look forward to your questions.

527 [The prepared statement of Mr. Genachowski follows:]

528 ***** INSERT 1 *****

|
529 Mr. {Walden.} Chairman, thank you for your testimony.

530 We look forward to your answers.

531 I now recognize the distinguished gentleman, the
532 commissioner, Mr. Copps. We are delighted to have you here
533 this morning.

|
534 ^STATEMENT OF MICHAEL J. COPPS

535 } Mr. {Copps.} Thank you, sir. Good morning, Chairman
536 Walden and Chairman Upton and Ranking Member Eshoo and
537 Ranking Member Waxman and all friends on the committee. I
538 appreciate your invitation to participate in this discussion
539 to share with you my perspectives, and more importantly, to
540 hear yours. I look forward to your counsel as we begin what
541 I think can be a truly productive year in tackling many
542 telecommunications challenges facing Congress, the Commission
543 and the country.

544 It is my firm belief, first of all, that broadband is
545 key to America's 21st century prosperity. The President, the
546 Congress and the Commission are all looking to this
547 communications infrastructure as a key tool for ensuring a
548 better and brighter future for America.

549 There is much work to be done to be ensure that everyone
550 in this country has equal opportunity in the Digital Age. I
551 believe that preserving a free and open Internet, the focus
552 of today's hearing, is a central part of that challenge. I
553 know there are disagreements among us about the issue but I
554 have always been open and candid with you before the
555 subcommittee and in your personal offices on where I stand,

556 and I believe I have consistent in what I say both here and
557 at the FCC. Most Americans have a broadband monopoly or at
558 best, duopoly, from which to choose. Without adequate
559 competition in the Internet access service market, allowing
560 these companies to exercise unfettered control over America's
561 access to the Internet not only creates risk to technological
562 innovation and economic growth but also poses a real threat
563 to freedom of speech and the future of our democracy. This
564 is why I have long advocated for some limited rules of the
565 road to maintain openness and freedom on the Internet. It is
566 why the Commission adopted in 2005 on a bipartisan basis an
567 Internet policy statement that contained the basic rights of
568 Internet consumers. This is not about government regulating
569 the Internet. It is about ensuring consumers rather than Big
570 Telephone or Big Cable have maximum control over their
571 experiences when they go online.

572 During the FCC's proceeding to examine the need for open
573 Internet rules, I swung my door open wide so I could hear
574 from every interested stakeholder. I met with broadband
575 providers, online entrepreneurs, technology investors,
576 consumer groups and many individual citizens from across the
577 country. In the end, given that fewer and fewer places are
578 controlling access to the Internet, I concluded again that we
579 must make sure a few gatekeepers cannot favor their own

580 content, throttle certain types of applications and block
581 access to information at will. With the adoption of the open
582 Internet order last December, we have at least some concrete
583 rules to prevent gatekeepers from circumventing the openness
584 that made the Internet the Internet. The Commission has
585 acted using the authority I believe it has and that I lay out
586 in greater length in my formal statement, and now both
587 Congress and the courts will help to determine where we go
588 from here.

589 While we may not always agree on how to proceed on every
590 policy front, there are so many challenges confronting us
591 where you and I share common cause and where I think we can
592 make real progress this year. First and foremost among them
593 is ensuring that our first responders have the communications
594 tools they need to protect American lives and property. We
595 are fast approaching the 10th anniversary year of 9/11. I
596 believe we must make good on our promise to create a
597 nationwide interoperable public safety network and make
598 progress in significant and tangible ways this year.

599 Another area crying out for attention is spectrum policy
600 as consumers expect ever-faster speeds and mobility for their
601 broadband, the demand on our finite spectrum resource
602 skyrockets. Just last week, the President set an ambitious
603 goal of getting high-speed wireless coverage to 98 percent of

604 Americans. This is another area where we can work hand in
605 hand to find ways to maximize our spectrum resource. In
606 addition, to help meet our shared broadband goals, the
607 Commission took an important step last week toward
608 transforming the Universal Service Fund, an intercarrier
609 compensation system to address our going-forward
610 communications infrastructure needs.

611 There are other challenges, privacy, digital literacy,
612 to name a few, where I believe we can work together to ensure
613 that our citizens have the tools they need for our
614 increasingly online world. In addition, while I will not
615 dwell on it here, I think most members of this subcommittee
616 know of my concerns about America's current media
617 environment, and this goes to the question of broadband and
618 online too. A vibrant media landscape, traditional and
619 online, is critical to providing our citizens with the news
620 and information they need to participate in our democracy.
621 There are some huge problems here.

622 Finally, as I do every time I come up here, I urge you
623 to take action to modify the closed-meeting rule, which
624 prohibits more than commissioners from ever talking with one
625 another at the same time outside of a public meeting. I
626 believe this prohibition has on many occasions during my 10
627 years at the Commission stifled collaborative discussions

628 among colleagues, delayed timely decision-making and
629 discouraged collegiality. Removal of this prohibition would,
630 in my mind, constitute as major a reform of Commission
631 procedures as anything I can contemplate.

632 Thank you again for the opportunity to be here today. I
633 look forward to your comments, your counsel and your
634 questions.

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

636 ***** INSERT 2 *****

|
637 Mr. {Walden.} Thank you, Commissioner, and that is why
638 we have you all here so that you can all get along and chat.
639 It is a good thing. And we have never questioned,
640 Commissioner Copps, your forthright approach to telling us
641 your opinions, either, nor has anyone in America, and we
642 appreciate that.

643 I would like to go now to the commissioner, Mr.
644 McDowell. Thank for you for being here. We welcome your
645 comments and testimony as well.

|
646 ^STATEMENT OF ROBERT M. MCDOWELL

647 } Mr. {McDowell.} Thank you, Mr. Chairman and Ranking
648 Member Eshoo and Chairman Upton and Ranking Member Waxman,
649 and I also want to special shout-out to Congresswoman Harman.
650 This is a sad day for me. This is the last time all of us
651 will testify before you. I want to thank you for your years
652 of public service. It is a sad day for the McDowell
653 household. I know my brother, Kelly, the former mayor of El
654 Segundo, California, is sad to have you leave the U.S.
655 Congress, but I know the Woodrow Wilson Center will be in
656 excellent hands with you at the helm, so thank you for your
657 service.

658 Mr. Chairman and members of the committee, the markets
659 under the purview of the FCC are dynamic and ever evolving.
660 Both the core and the edge of the Internet are growing at
661 breakneck speeds, all to the benefit of American consumers.
662 For instance, the United States leads the world in 4G
663 wireless deployment and adoption. Wireless broadband is the
664 fastest growing segment of the American broadband market.
665 The United States I also the global leader in the creation
666 and use of mobile apps. In fact, the top 300 free mobile
667 applications in the U.S. app stores enjoyed an average of

668 more than 300 million downloads per day last December, and I
669 think most of those were on the McDowell kids' phones,
670 actually. Not surprisingly, smartphone sales have outpaced
671 PCs for the first time.

672 On the other hand, in spite of these positive
673 developments, last year the private sector invested an
674 estimated \$44 billion in new broadband technologies, which is
675 significantly lower than years past. I am hopeful that the
676 FCC can work constructively to increase opportunities for
677 investment and job growth by bringing regulatory certainty to
678 the broadband marketplace. With Congress's guidance I look
679 forward to adopting policies that put the power of more
680 spectrum into the hands of consumers, help accelerate
681 broadband deployment and adoption, make our universal service
682 subsidy program more efficient, and modernize our media
683 ownership rules, among many, many other endeavors.

684 In addition, the FCC should also strive to clear away
685 regulatory underbrush that may have outlived its usefulness
686 and now only deters constructive risk taking. Congress
687 empowered the Commission to do just that when it codified
688 section 10s forbearance mandate more than 15 years ago.
689 Streamlining our regulations could take significant burdens
690 off the backs of entrepreneurs and give them more freedom to
691 invest and innovate. Such deregulatory action could serve as

692 a much-needed short in the arm for America's economy.
693 President Obama said as much in his recent Executive Order.
694 And a little secret about the FCC, which the chairman
695 has already touched on. More than 90 percent of our votes
696 are not only bipartisan but are unanimous. I have enjoyed
697 working with my colleagues on many recent initiatives
698 including continuation of our longstanding work on unlicensed
699 use of the TV white space, simplifying the process for the
700 construction of cell towers, spectrum reallocation, and
701 initiating the next step to perform our universal service
702 subsidy system.

703 Obviously we have had a few respectful disagreements as
704 well such as our differences concerning the new regulations
705 of Internet network management, and I have included for your
706 convenience a copy of my dissent. Nonetheless, I am
707 confident that the five of us have the ability and the desire
708 to continue to find common ground on an array of other issues
709 that touch the lives of every American every day.

710 Thank you, Mr. Chairman, and I look forward to the
711 questions from the committee.

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

713 ***** INSERT 3 *****

|

714 Mr. {Walden.} We appreciate your testimony.

715 Now I'd like to go to the distinguished member of the

716 Commission, Ms. Clyburn. Thank you for being with us today.

717 We look forward to your comments.

|
718 ^STATEMENT OF MIGNON CLYBURN

719 } Ms. {Clyburn.} Thank you very much. Mr. Chairman,
720 Congresswoman Eshoo, members of the subcommittee, good
721 morning, and thank you for inviting me to testify.

722 The current success of the Internet is largely due to
723 this open architecture. This tremendous technological leap
724 is a great equalizer. It allows traditionally
725 underrepresented groups to have an equal voice and equal
726 opportunity. It enables any connected individual to
727 distribute his or her ideas to a global network or run a
728 business right from their very own home. The Internet
729 reduces the barriers to entry for new players. It is a
730 gateway to success at a low capital cost. That is why it is
731 so important for me to see that this technological marvel
732 remains open, accessible and affordable for every American
733 regardless of where they live, work or play.

734 There have been strong criticisms over the past several
735 months regarding the Commission's Open Internet Order. Some
736 say that nothing was broken so rules aren't needed and that
737 this will kill job opportunities and stifle innovation and
738 investment. We have also heard that the order is riddled
739 with loopholes, provides inadequate protections for wireless

740 technologies and prioritizes profits over the general public
741 good.

742 First, I want to speak to the assertion that the
743 Internet marketplace is functioning fine and does not need
744 fixing. There have been formal complaints filed and
745 allegations lodged at the Commission about Internet service
746 providers' behavior despite their expressed belief in an open
747 Internet. To that point, the rules we codified in December
748 will serve to ensure that the Internet remains open and
749 vibrant and that millions of surfers, innovators and everyday
750 consumers will have the essential protections they need so
751 that an open Internet is still there tomorrow. The action we
752 took in December will allow people to view photos, sitcoms
753 and full-length movies without deliberate interruption,
754 distortion or blockage by any ISP which may have competing
755 economic interests.

756 I believe one of my primary obligations as an FCC
757 commissioner is to protect consumers and allow for activities
758 on the Internet. Our Open Internet Order does just that. I
759 embrace the position that without clear rules, investment in
760 new services and applications will be uncertain, overly
761 cautious and will result in an underperforming marketplace.
762 We have heard this repeatedly from innovators and small
763 businesses. A number of companies told me of their

764 difficulty, sometimes inability to obtain financing because
765 the rules of the road were unclear or that open Internet
766 protections were inadequate. Venture capitalists fear that
767 ISPs would discriminate against their possible competitors,
768 they said. Small businesses like these are the lifeblood of
769 this Nation and the uncertainty and lack of investment in
770 this sector will stifle the full potential of these American
771 enterprises.

772 Others argue that existing law provides sufficient
773 consumer protections and safeguards. I disagree. My
774 understanding of current antitrust law is that violations and
775 harms are addressed only after an incident has occurred, thus
776 ISPs have the ability and potentially the incentive to stifle
777 new competitive businesses. No government action after the
778 fact could properly address such significant impact.
779 Therefore, I believe that putting basic protections in place
780 was not a reckless act. The Commission did this in order to
781 prevent very real and irreversible harms that could occur in
782 the marketplace. Hugely effective business models that were
783 not even in existence 10 years ago have experienced
784 staggering growth due to their ability to directly offer
785 their services to consumers on the Internet without ISPs
786 demanding payment for prioritizing their websites. I want to
787 ensure that many more businesses have those same

788 opportunities in 2021.

789 Most people rely on the Internet on a regular basis as
790 indicated in a recent Pew Research Center study, which shows
791 that 78 percent of American adults sign on daily. The
792 President has said that the Internet is a vital
793 infrastructure and has become center to the daily economic
794 life of almost every American, and you recognize its
795 significance too by charging the FCC with developing a
796 National Broadband Plan to ensure that high-speed Internet is
797 available to all Americans no matter where they live. So I
798 do not think we acted recklessly nor do I believe that we
799 have harmed the Internet. What we did was put a policy in
800 place that will ensure access to lawful websites,
801 applications and services so that consumers, not their
802 Internet service providers, can choose which companies,
803 products services and ideas will succeed.

804 Thank you for this opportunity this morning and I look
805 forward to answering any of your questions.

806 [The prepared statement of Ms. Clyburn follows:]

807 ***** INSERT 4 *****

|
808 Mr. {Walden.} And we appreciate your testimony and look
809 forward to your answers.

810 Now I would like to recognize Commissioner Baker. We
811 are delighted to have you here as well. We look forward to
812 your testimony and your answers. Please go ahead.

|
813 ^STATEMENT OF MEREDITH ATTWELL BAKER

814 } Ms. {Baker.} Thank you very much. Good morning,
815 Chairman Walden, Ranking Member Eshoo, Chairman Upton and
816 Ranking Member Waxman. I could on. Thank you all,
817 distinguished members of the subcommittee for the opportunity
818 to appear before you.

819 Today, 95 percent of U.S. households have access to
820 broadband, and the vast majority of those have broadband
821 choice. Our regulatory approach has attracted over half a
822 trillion dollars to build a new network infrastructure since
823 2000. Billions more have been invested in devices and
824 applications that ride on those networks. This is an area of
825 our economy that is clearly working. The Commission's most
826 significant challenge is how to build on this success. Given
827 our Nation's significant budgetary constraints, it is clear
828 that the next generation of networks will be constructed
829 primarily by private capital just as today's networks were
830 built. It is through this prism, how do we craft policies to
831 promote greater investment in our Nation's infrastructure,
832 that I view all FCC decisions.

833 With that perspective, I believe that net neutrality was
834 both the wrong policy and the wrong priority. Further,

835 establishing a nationwide policy is Congress's role, not the
836 FCC's. We exceeded our statutory authority. Preserving open
837 Internet is non-negotiable. It is a bedrock principle shared
838 by all in the Internet economy. The Internet is open today
839 without the need for affirmative government regulation.

840 Lacking an evidentiary record of industry-wide abuses,
841 the Commission's net neutrality decision was based on
842 speculative harms. The word ``could'' alone appears over 60
843 times. By acting in anticipation of hypothetical harms, the
844 result is overly broad rules which I fear will force the
845 government into too prominent a role in shaping tomorrow's
846 Internet.

847 The genius of the Internet is that there is no central
848 command to dictate how innovation is to occur. The
849 Commission has now inserted itself into that role of judging
850 how the Internet will resolve. Government will be hard
851 pressed to manage the next generation of the Internet as well
852 as competition and consumer demand have done for previous
853 generations. This risk is heightened because the Internet
854 and our broadband networks are still very much in their
855 infancy. The Internet will increase fourfold by 2014, and
856 mobile broadband will more than double each and every year.

857 To respond to the consumer demands for faster and more-
858 robust broadband services, operators will have to invest

859 billions more in their infrastructure. They will need to
860 experiment and innovate to serve consumers. Decisions about
861 the future of the Internet will now be managed by the
862 Commission subject to the uncertainty of government sanction
863 and delay of government decision-making. The open-ended
864 nature of this decision both in how it was legally justified
865 and in the number of issues left undefined or undecided will
866 only breed greater regulatory uncertainty which necessarily
867 raises the cost of capital. In too many decisions, this
868 decision was a first step, not a last.

869 Congress has given the Commission clear statutorily
870 mandated responsibilities, and net neutrality is not one of
871 those. Lacking explicit authority, the Commission twisted
872 the statute in order to establish a national Internet policy.
873 Under the same unbounded claim of legal authority, the FCC
874 could adopt any policies it desires to promote its particular
875 vision of the Internet. Net neutrality was also the wrong
876 priority for the Commission. The focus on net neutrality
877 diverted resources away from the bipartisan reform efforts
878 that could have directly addressed the core challenge of
879 promoting broadband deployment. This lost opportunity is one
880 of the gravest consequences of the net neutrality debate.

881 While we may disagree on particular details, I welcome
882 the chairman's renewed focus on universal service, spectrum

883 and broadband infrastructure. All of these reforms are
884 directly linked to broadband deployment, and I only regret
885 that we did not place a higher priority on these efforts
886 sooner. Our ability to successfully take any of these steps
887 is dependent upon our strong working relationship with
888 Congress to ensure that we prioritize and target our efforts
889 appropriately and that we have sufficient statutory authority
890 to move forward to promote our shared goals.

891 I look forward to your questions. Thank you.

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

893 ***** INSERT 5 *****

|
894 Mr. {Walden.} Thank you very much for your testimony
895 and the testimony by all the commissioners and the chairman.
896 We appreciate it.

897 Just for the committee as an announcement, we are going
898 to try and do two rounds at least of questions and we will go
899 in the order in which you arrived and then by seniority after
900 the gavel fell, and I want to just point out that in the
901 great spirit of bipartisanship here on the subcommittee, the
902 Democrats actually have three witnesses and we only have two.

903 Mr. {Upton.} We are looking to change that after 2012.

904 Mr. {Walden.} We will try not to let that happen again.

905 All right. I will start with the first questions.

906 Commissioner McDowell, you said on page 154 of your dissent
907 that less than a year ago the Commission in attempting to
908 defend its Comcast BitTorrent decision in the D.C. Circuit
909 ``acknowledged that it has no express authority over an
910 Internet service provider's network management practices.''
911 They rely on section 706 to authorize the FCC in this order
912 to adopt network neutrality rules. Section 706 also states
913 that ``each State commission'' and Commissioner Clyburn, you
914 will be interested in this ''with regulatory jurisdiction
915 over telecommunications services shall encourage the
916 deployment on a reasonable and timely basis of advanced

917 telecommunications capabilities to all Americans.' ' If the
918 FCC is relying on section 706 and perhaps B, not A, but you
919 do trigger the entire statute, I believe, does that not mean
920 that every State regulatory commission as authorized in
921 706(a) can also adopt its own network neutrality rules
922 including price caps as specified in that statute?

923 Mr. {McDowell.} You know, it could absolutely, Mr.
924 Chairman. One of the concerns is that in the FCC's order,
925 there is no limiting principle on the FCC's authority so that
926 is not defined or limited in the FCC order.

927 Mr. {Walden.} Commissioner Clyburn, in early January
928 just a few weeks after the Commission's open meeting, a
929 complaint was already filed alleging that a wireless provider
930 offering a low-cost data plan to informed customers is
931 violating the Commission's rules. The rules still have not
932 taken effect. So the question is, is Metro PCS's low-cost
933 data plan a violation of the Commission's order?

934 Ms. {Clyburn.} Those type of complaints generally that
935 come before the Commission, I generally do not comment on
936 before a decision is rendered, so I don't know if you have a
937 follow-up but that particular one I am not comfortable in
938 commenting on.

939 Mr. {Walden.} Well, I guess the question is not--let me
940 back off then. Would a complaint like that violate the

941 Commission's rules in general?

942 Ms. {Clyburn.} I can say that in general to answer your
943 question more broadly, in fact there have been complaints
944 before the agency and that is why the chair and the
945 commissioners voted to move in this particular direction. It
946 is in order to be able to have the dexterity to address those
947 particular issues as proof that there are some issues in the
948 market.

949 Mr. {Walden.} Commissioner Baker, the order argues that
950 it can regulate cable Internet access because broadcasters
951 are increasingly providing video over the Internet. Does
952 that mean then, taken to an extreme, that the FCC could
953 regulate Netflix since broadcasters are increasingly offering
954 shows on DVD or Netflix web service?

955 Ms. {Baker.} Well, I think that is the concern with the
956 statutory authority the Commission is using for this order
957 and that we have unbridled access to regulate whatever we
958 want to do on the Internet ecosystem.

959 Mr. {Walden.} It has also been widely reported,
960 Commissioner Baker, that you and Commissioner McDowell did
961 not receive the final draft of the order until close to
962 midnight the day before the vote. Is that correct?

963 Ms. {Baker.} Yes, sir.

964 Mr. {Walden.} Commissioner McDowell, do you want to

965 speak to that at all?

966 Mr. {McDowell.} That is true. We had received other
967 drafts prior to that but the final draft that we were to vote
968 on and base our dissent on didn't come until close to
969 midnight the night before the meeting.

970 Mr. {Walden.} And Commissioner McDowell, while the
971 order does not explicitly apply Title II to broadband
972 Internet access services, aren't the rules that were imposed
973 tantamount to common carriage?

974 Mr. {McDowell.} Mr. Chairman, as I point out in my
975 dissent, I think the rules really is a Title II order in
976 disguise, this sort of a threadbare Title I disguise, and
977 that is part of the concern that you were asking Commissioner
978 Clyburn about the potential for rate regulation. You know,
979 last year, last January when the FCC argued before the D.C.
980 Circuit in the Comcast BitTorrent case that the general
981 counsel was cited in the D.C. Circuit's order from last
982 April. The general counsel said that the Commission could
983 have the authority to regulate broadband rates as well, and
984 there is no limiting principle in the order that would
985 restrain the Commission from regulating the--

986 Mr. {Walden.} I think that is the concern some of us
987 is, this box has been opened pretty widely. The tether seems
988 to have been snapped and the authority could be taken clear

989 to the extreme of where the States now under section 706(a)
990 if it is read that way, it could trigger the statute and the
991 States could enter into regulation of the Internet.

992 Now, Commissioner McDowell, if the FCC has conducted no
993 market analysis, which it says it has not, is there any
994 principled reason for excluding companies like Google and
995 Skype from these rules?

996 Mr. {McDowell.} Again, there is no limiting principle
997 in the order so I think under the logic of the order, the
998 FCC's jurisdiction is boundless.

999 Mr. {Walden.} And after all, Skype blocks access to
1000 competing application providers like fring, right? You have
1001 a blockage going there, and Google and Facebook have had some
1002 blocking issues involving consumer access to their own
1003 contacts.

1004 My time is expired. With that, I would recognize the
1005 gentlelady from California, Ms. Eshoo.

1006 Ms. {Eshoo.} Thank you, Mr. Chairman, and thank you to
1007 each of the commissioners for your excellent opening
1008 statements.

1009 Today's hearing is entitled ``Network Neutrality and
1010 Internet Regulation: Warranted or More Economic Harm than
1011 Good?'' The three basic rules that the chairman rolled out,
1012 which is the framework for what the Commission did--

1013 transparency, no blocking, no unreasonable discrimination--I
1014 don't think anyone is against transparency, for blocking and
1015 for unreasonable discrimination. If you are, raise your hand
1016 on the subcommittee. But I want to examine the issue of harm
1017 and what led to the framework that the chairman stated and
1018 which I just restated. What were the harmful things that
1019 have arisen at the FCC that led to rules of the road? I mean,
1020 the Republicans are the saving the sky is caving in. Really,
1021 life is tidy. No one has crossed any lines. There isn't any
1022 reason to do this; in fact, it is really going to hurt our
1023 country. But I want to give you the opportunity to state as
1024 briefly as you can what led to this and what examples exist
1025 and were brought to the Commission's attention?

1026 Mr. {Genachowski.} Thank you. Well, going back to at
1027 least 2005, the Commission made clear on a bipartisan basis
1028 that it would enforce open Internet violations. Against that
1029 background, it is surprising that there would be any
1030 violations of Internet freedom at all but there have been.
1031 There was a telephone company called Madison River that
1032 blocked access to competing voice over Internet providers.
1033 There was a cable company last year that became significant
1034 litigation that blocked competing video providers. Last year
1035 there was a mobile company that blocked access to mobile
1036 VoIP. There have been court settlements that are part of the

1037 record where as part of the settlements, Internet service
1038 providers agree that they engaged in conduct that was
1039 inconsistent with open Internet principles. So as against
1040 the history of bipartisan intention to enforce, it is
1041 surprising there were any violations at all.

1042 One of the harms that we looked at was, if we for the
1043 first time would be to remove basic open Internet
1044 protections, what we heard repeatedly from startup companies,
1045 entrepreneurs, investors was that without that, they would
1046 lose the confidence to invest in startup companies to develop
1047 the kind of innovative products and services and applications
1048 that we are all so excited about and that we need to lead the
1049 world in innovation in the 21st century.

1050 Ms. {Eshoo.} Thank you.

1051 I have a question for each one of the commissioners, and
1052 a yes or no will do. The Republican House leaders and
1053 members of this committee are considering using a resolution
1054 of disapproval under the CRA, the Congressional Review Act,
1055 to overturn the FCC's Open Internet Order. Do you support or
1056 oppose Congress using the CRA to overturn the order?
1057 Chairman Genachowski?

1058 Mr. {Genachowski.} Well, I don't have a vote in the
1059 Congress. I don't think it is the right idea because I think
1060 it will increase uncertainty in this area.

1061 Ms. {Eshoo.} Commissioner Copps?

1062 Mr. {Copps.} I would not be for it.

1063 Ms. {Eshoo.} Commissioner McDowell?

1064 Mr. {McDowell.} First of all, all the examples cited by
1065 Chairman Genachowski were resolved in favor of consumers
1066 under existing law before the FCC's action. I think that is
1067 important to note. But I also subscribe to the notion that
1068 Congress tells me what to do, I don't tell Congress what to
1069 do, so if Congress wants to overturn an FCC order under the
1070 CRA--

1071 Ms. {Eshoo.} But do you think it is a good idea? Do
1072 you support it?

1073 Mr. {McDowell.} Well, obviously I dissented so I think
1074 the order isn't founded in law or fact.

1075 Ms. {Eshoo.} Commissioner Clyburn?

1076 Ms. {Clyburn.} One of the things that I wanted to point
1077 out, if you will allow me a second, is that the companies
1078 that were cited by the chairman, those companies in fact have
1079 millions of customers who have potential vulnerabilities and
1080 who might not have the ability or the expertise to file a
1081 formal complaint.

1082 Ms. {Eshoo.} About the CRA?

1083 Ms. {Clyburn.} So in terms of your question, while I
1084 respect the body, I am not embracing of the idea.

1085 Ms. {Eshoo.} Thank you.

1086 Commissioner Baker?

1087 Ms. {Baker.} I will be respectful of your time. We
1088 take our orders from Congress so I think it is important for
1089 Congress to tell us what their opinion is.

1090 Ms. {Eshoo.} I don't know what that means.

1091 Ms. {Baker.} It means if Congress has--

1092 Ms. {Eshoo.} Do you think it is a good idea?

1093 Ms. {Baker.} --the CRA to tell us that they disapprove
1094 of this action, I think--

1095 Ms. {Eshoo.} Do you think a CRA is a good idea?

1096 Ms. {Baker.} I would say I also dissented in the order.
1097 I disagree with that we have statutory authority to do what
1098 we have done.

1099 Mr. {Walden.} The gentlelady's time has expired.

1100 Ms. {Eshoo.} Thank you.

1101 Mr. {Walden.} And just for the record, Ms. Clyburn, we
1102 have two chairmen here. I assumed you were referring to that
1103 chairman, not this chairman in your comments there. Yes.

1104 So now let us go to the other chairman, Mr. Upton, for 5
1105 minutes.

1106 The {Chairman.} Thank you, Mr. Chairman.

1107 I know as George Will said not too long ago that most
1108 folks, most Americans are not real fans of how the U.S.

1109 government works. I don't think it works very well. But in
1110 fact the Internet does. Why in the world would you put the
1111 government in charge of the Internet? And as Ranking Member
1112 Eshoo said and also my good friend, Ed Markey, on net
1113 neutrality I think there is no secret that at least this side
1114 of the aisle is not particularly fond of the new net
1115 neutrality rules and I know that some 300 Members of Congress
1116 contacted the FCC in the last year voicing such concerns, and
1117 probably agree that it really isn't the light touch that we
1118 were hoping, which is why in fact a CRA may be introduced in
1119 the next couple of days and the Congress of course then has
1120 60 days, legislative days, to act in both the House and the
1121 Senate.

1122 Commissioner McDowell, you were very outspoken in your
1123 dissent on the need for a market analysis. Would a market
1124 analysis have validated the order, the order's consent?

1125 Mr. {McDowell.} I don't think so. You know, each time
1126 the government has examined the broadband Internet access
1127 market, whether it was the Federal Trade Commission in 2005,
1128 or 2007, the FCC itself in 2007, the antitrust division when
1129 they filed comments to the FCC a year ago in January, we can
1130 debate exactly what they said but what they did not say, they
1131 did not say that there was a concentration and abuse of
1132 market power or any sort of market failure and that actually

1133 in many of those cases independent government agencies had
1134 warned against the uncertainty and the negative collateral
1135 effects of potential regulation in this area.

1136 The {Chairman.} You mentioned a little bit earlier in
1137 response to the Madison River and the one phone company and a
1138 few others as it related to what the FCC had done. Do you
1139 believe that there are existing FCC remedies that are in
1140 place if in fact an Internet service provider engaged in that
1141 type of prospective conduct that this order is designed to
1142 prevent?

1143 Mr. {McDowell.} I think there are laws already on the
1144 books that would prevent this, whether it is section 2 of the
1145 Sherman Act or section 5 of the Federal Trade Commission Act.
1146 There are general consumer protection powers that the
1147 government has here so if it is refusal to deal or exclusive
1148 dealings and things of that nature, the government has the
1149 power to cure that.

1150 The {Chairman.} And that was a little bit of the result
1151 of that debate and that answer came out of the Judiciary
1152 Commission yesterday. Is that not correct?

1153 Mr. {McDowell.} That is what I read, yes, sir.

1154 The {Chairman.} Chairman Genachowski, wouldn't it have
1155 been prudent for the Commission to do a simple market
1156 analysis before adopting the rules that we hear so much will

1157 burden the industry if in fact the order is pursued?

1158 Mr. {Genachowski.} Mr. Chairman, the order engages in
1159 extensive market analysis. There is a specific section on
1160 costs and benefits. There is a footnote that points out that
1161 the order doesn't make a specific market power finding which
1162 would put this in the antitrust area but the order
1163 extensively analyzes the market. We received significant
1164 input and a record from market participants, economists and
1165 others and so I think the Commission engaged in extensive
1166 market analysis.

1167 The {Chairman.} Now, I know Verizon and others have
1168 threatened, will be taking this to court to look at a legal
1169 challenge. Has your legal team given you an analysis that
1170 they think this order will be able to stand on its two feet
1171 and will be verified by the courts?

1172 Mr. {Genachowski.} Yes, they have, that it is
1173 consistent with the Communications Act, with Supreme Court
1174 precedent in this area and with the D.C. Circuit Comcast
1175 decision last year.

1176 The {Chairman.} Mr. McDowell, do you agree with that?

1177 Mr. {McDowell.} Well, I disagree obviously. I wrote a
1178 very lengthy dissent with 130 footnotes, mainly focusing on
1179 our lack of legal authority, so I think it will fail on
1180 appeal.

1181 The {Chairman.} Thank you. Yield back.

1182 Mr. {Walden.} The gentleman yields back his time, and
1183 now recognize the chairman emeritus of the committee, Mr.
1184 Waxman.

1185 Mr. {Waxman.} Thank you very much, Mr. Chairman. I
1186 think the American people would be outraged if they had some
1187 Internet carrier or some provider of the service to their
1188 home, their cable or a telephone company blocking what they
1189 can get on the Internet or choosing something that benefited
1190 them economically and then keeping consumers from getting
1191 programs. I don't think anybody--I hope nobody would think
1192 the idea of stopping Internet freedom, allowing the Web to be
1193 treated in a neutral way, giving the consumers the power to
1194 access whatever they want, that is what I think American
1195 people would support. And if they found that this was
1196 happening, they would want it stopped.

1197 Now, Chairman Genachowski, you think you had enough
1198 reason to believe this could happen unless you set some rules
1199 in place. Is that correct?

1200 Mr. {Genachowski.} That is correct.

1201 Mr. {Waxman.} Freedom is a strange word. It is
1202 overused and misused a lot, especially around this place.
1203 Freedom for the consumer is to get whatever they hope to
1204 access but that freedom can be curtailed, some people say by

1205 government, but it also can be curtailed by other private
1206 interests, and government sometimes has to regulate hopefully
1207 in a light enough way that they don't discourage investment
1208 and competition and all the good things but the government
1209 needs to set rules of the road, saying you cannot do this.
1210 Otherwise we saw what happened in Wall Street, we see in
1211 other places. No regulation means less freedom for the
1212 consumers.

1213 Mr. Copps, is that what your thinking was when you
1214 looked at the Commission regulating in this area?

1215 Mr. {Copps.} I think that is absolutely correct. That
1216 would reflect the thinking I have, and you know we have
1217 talked about some of the specific problems that have come
1218 before the Commission but there is a historical dimension to
1219 this too. This is such an open and dynamic and opportunity
1220 creating technology and to make sure that it is unfettered as
1221 we go down the road is so important. The history of every
1222 other media generation that we have had shows that it goes
1223 from being open, first being touted as the great new opener
1224 and a great new vista for the American people's freedom and
1225 inevitably what you get is closure and consolidation and
1226 tighter and tighter control. That is happened to radio, that
1227 has happened to television. It happened to the film
1228 industry, and I think we need to be taking some precautionary

1229 steps to make sure that this doesn't happen in this
1230 particular technology.

1231 Mr. {Waxman.} Well, those precautionary steps could be
1232 taken by Congress and we could pass a law. We tried to pass
1233 a law. We even had most of the stakeholders agreeing to a
1234 law. We couldn't get the Republican members to pay attention
1235 to it. Congress could pass a law but evidently the FCC
1236 thinks it has the power, and there is some dissent as to
1237 whether you have the legal authority or not. That will be
1238 decided by the courts. But meanwhile, what you are trying to
1239 do is preserve the freedom of the Internet, and a lot of the
1240 complaints we hear about stopping innovation and investment
1241 seem to be quite remarkable when you look at the fact that
1242 most of the groups that are being regulated feel this
1243 regulation, there is a light enough approach that will not
1244 have an undue impact on them, and in fact, it is welcomed by
1245 everybody because it provides some regulatory certainty.
1246 Today in Bloomberg, they said investors so far don't seem to
1247 see the new rules as a threat, and they say that you look at
1248 Comcast, Time Warner cable, AT&T, they are all saying they
1249 can live with this. So it seems to me to sound the alarm
1250 over whether this was a good idea and whether we are hurting
1251 some of the industry in the United States is not accurate.

1252 But I found it interesting that one of the questions

1253 that was raised is how speculative the harm was for the
1254 interference in the Internet, and in order to attack the
1255 proposal, they raised the specter of price controls as a
1256 potential for the FCC. Does the FCC plan to do price
1257 controls? They say this is a slippery slope, opening the
1258 road to regulation that is unfettered. Is that what is
1259 happening, Chairman Genachowski?

1260 Mr. {Genachowski.} Not at all. This is in no way about
1261 price controls.

1262 Mr. {Waxman.} Does anybody in this group believe there
1263 ought to be price controls? If you think so, just say yes.

1264 Ms. {Clyburn.} Mr. Chairman, if you say those words
1265 inside of the walls of the FCC, there is trouble.

1266 Mr. {Waxman.} We don't want price controls either. You
1267 don't want price controls. So to raise that as a specter, it
1268 seems to be unfortunate. Now, this Congressional Review Act
1269 not only repeals this rule but it prevents the FCC from
1270 acting at all in this area, and I would hope that
1271 Commissioner McDowell and Commissioner Baker wouldn't want to
1272 take the power away from the FCC to act when they feel it is
1273 appropriate to act if Congress hasn't passed any legislation.
1274 I strongly hope we can stop that Congressional Review Act
1275 attempt to overturn the FCC's actions.

1276 I yield back my time, Mr. Chairman.

1277 Mr. {Walden.} The gentleman's time is expired. I now
1278 recognize the other chairman emeritus, Mr. Barton, for 5
1279 minutes.

1280 Mr. {Barton.} Thank you, Mr. Chairman. And again,
1281 nothing but compliments to the Commission for the
1282 intellectual ability that is assembled here. I am very proud
1283 that we have jurisdiction over the FCC, and on an individual
1284 basis, I consider each of you friends.

1285 Having said that, I am at a loss as I listen to what my
1286 good friend from California, Mr. Waxman, just said that no
1287 regulation means less freedom, that is Orwellian in the
1288 extreme just on the face of it. We are not so opposed, those
1289 of that oppose this 3-2 ruling, because of what you ruled but
1290 the fact that you established the principle if it goes
1291 unchallenged that you can regulate the Internet. That is
1292 what troubles me, not the light touch that Mr. Waxman refers
1293 to, the fact that if we let this ruling stand, this
1294 Commission is not going to do price controls. I believe the
1295 gentlelady from South Carolina when she says, you know, if
1296 you mouth the word price controls within the walls of the
1297 FCC, bad things happen. I understand that. But a future FCC
1298 could. That is why Chairman Upton and Chairman Walden and
1299 others are going to introduce this Congressional Review Act
1300 or a standalone bill to overturn it. What Chairman

1301 Genachowski and the two commissioners that sided with him
1302 have said is, we have got the votes and we are going to
1303 establish the principle that we can regulate the Internet.
1304 Now, we understand how controversial that is so we are not
1305 going to do a lot, we are just going to try to get the nose
1306 of the camel under the tent, and once we have got that
1307 established, in the future some future Commission can come
1308 forward.

1309 I am so appreciate of Commissioner McDowell and his
1310 dissent and all the intellectual footnotes that he put into
1311 that. I am very appreciative of what Commissioner Baker put
1312 in the record in her opening statement and I associate myself
1313 100 percent with that. It just seems to me that this ruling,
1314 when you listen to the answers to my friends on the Minority
1315 side, you are concerned about potential harm in the future so
1316 you have to establish the principle now that we can regulate
1317 to protect against some unknown harm in the future.

1318 Now, Commissioner McDowell, you said, I believe in your
1319 dissent and again in your opening statement and again in
1320 response to a question that the existing statutory law and
1321 authority that the FCC has is sufficient to handle any
1322 conceivable potential harm in the future without establishing
1323 these rules. Is that not correct?

1324 Mr. {McDowell.} I think what I said is that we have--

1325 the government in general under general consumer protection
1326 and antitrust laws has ample authority so there are lot of
1327 agencies that could intervene.

1328 Mr. {Barton.} And Commissioner Copps, nobody has asked
1329 you a question yet and you are a bright fellow. Why do you
1330 disagree with what your fellow commissioner, oddly, to your
1331 left, just said?

1332 Mr. {Copps.} I have a little different take on this
1333 than probably all of my colleagues that the Commission has
1334 this authority, has had this authority for a long time, has
1335 had this authority recognized by Congress and the courts for
1336 a long, long period of time and that the best way for us to
1337 express and exercise that authority is to put advanced
1338 telecommunications transmission back where it belongs and
1339 that is in Title II. I think the Title I road that we went
1340 down has a substantially better chance in court than the
1341 previous decision that went on the Comcast case, but my best
1342 reading of the statute and the legislative history and the
1343 court decision is that this belongs within Title II. I do
1344 not know of a court in the land including the Supreme Court
1345 that has said we don't have that authority. In the Brand X
1346 case, I don't think the court could have been clearer in
1347 saying that deference is accorded to the Commission in these
1348 cases where there is ambiguity or difference in the

1349 definition of the statute or the terms of the statute. There
1350 are two or more reasonable ordinary ways to interpret it,
1351 that our choice of one of them was accorded deference and
1352 they accorded deference to the decision that was made on
1353 cable modems in 2005 over my objection but they also made
1354 clear that times change and our classification can change and
1355 our decisions can change, and Justice Thomas and others were
1356 eloquent in pointing out that that is where the expertise to
1357 make a lot of these judgments resides. I am not as much in
1358 search for that authority as some other folks are.

1359 Mr. {Barton.} Thank you.

1360 And we are going to do another round?

1361 Mr. {Walden.} Yes, we are, sir.

1362 Mr. {Barton.} Thank you.

1363 Mr. {Walden.} We appreciate your response.

1364 I now go to the gentleman from Massachusetts, Mr.
1365 Markey, for 5 minutes.

1366 Mr. {Markey.} Thank you, Mr. Chairman, very much.

1367 First of all, most of the industry supported the
1368 decision. Comcast has made a commitment to comply with them
1369 for 7 years as part of the Comcast/NBCU merger conditions
1370 regardless of the outcome of any judicial review. Many
1371 wished that the Commission had gone much further, restoring
1372 Title II authority as Congress originally intended in the

1373 Telecom Act of 1996. I wish the Commission had gone much
1374 further than they did.

1375 And let me also say that there is a misunderstanding
1376 here about the Commission's role here. When AT&T had 1.2
1377 million employees and they were the only phone company, it
1378 was the Commission that made the decision that said if you
1379 want to go down to a store and buy another phone other than
1380 the black rotary dial phone, you could do so. AT&T said you
1381 are interfering with the free market if you let people go and
1382 buy another phone other than the black rotary dial phone. In
1383 the 1970s when MCI and Sprint were starting up, AT&T said
1384 that a consumer should have to dial 21 additional numbers
1385 before you reached the number that your mother told you to
1386 memorize in case you were ever in an accident. Well, those
1387 additional 21 numbers made it very hard to have competition
1388 but the FCC made sure that competition and consumers would be
1389 king and queen. That is what the FCC has been doing over the
1390 years.

1391 There is a long history here of AT&T and the Baby Bells
1392 of engaging in anticompetitive, anticonsumer activity. They
1393 said a phone call, a long-distance phone call should cost a
1394 dollar a minute before the government got in. When you were
1395 making a long-distance phone call or you got one, you would
1396 say hurry, grandma is calling from California, it is long

1397 distance, and it was. It was a dollar a minute until we got
1398 the competition in and the FCC ensured that there would be
1399 protection of consumers. Now it is under 10 cents a minute.

1400 So all of this history of light touch, yeah, light
1401 touch, to make sure that a two by four didn't come in from
1402 the big companies and crush the consumers, making them, you
1403 know, be tipped upside down and paying more than they should
1404 have to.

1405 So Mr. Chairman, we have fallen in the United States to
1406 15th in broadband ranking in price and accessibility and in
1407 capacity. Is this ruling part of your goal to make sure that
1408 America regains its position as number one and two in the
1409 world before George Bush was sworn in and appointed the FCC
1410 that was chaired by Michael Powell?

1411 Mr. {Genachowski.} Absolutely, and I would say before
1412 addressing that directly, in response to what you said
1413 before, in each of those cases where the FCC took action to
1414 protect consumers, promote competition and innovation,
1415 someone sued and someone said the sky would fall, and in each
1416 case that is not what happened. Competition was enhanced,
1417 innovation was enhanced and the authority was established.

1418 Mr. {Markey.} Who sued after we passed the 1996 Telecom
1419 Act?

1420 Mr. {Genachowski.} A number of the carriers.

1421 Mr. {Markey.} Verizon sued. They said oh, that is
1422 anticompetitive. Pac Bell sued, Bell South sued. They said,
1423 oh, that is anticompetitive, you are going to let more
1424 consumers in. The people who sued are the same companies
1425 that right--actually AT&T and the NCTA and Comcast, they are
1426 not saying that. It is Verizon that is coming in and saying
1427 that they are going to sue but the rest of the industry so
1428 far has stayed on the sidelines. Yes, Mr. Genachowski?

1429 Mr. {Genachowski.} On your point about U.S. leadership
1430 in innovation, it is so tied to preserving, in my opinion,
1431 the freedom and openness of the Internet. I mentioned before
1432 some of the Internet openness violations that we have seen,
1433 even as protections were in place, one of the things that we
1434 heard from innovators, startup companies, technology
1435 companies in terms of harm that would occur now if we didn't
1436 adopt baseline rules is that without that investment would
1437 dry up. Investment in early--

1438 Mr. {Markey.} Predictability in the marketplace is very
1439 important to unleash billions of dollars in private sector
1440 investment.

1441 Mr. {Genachowski.} Exactly. For us to lead the world
1442 in innovation, in my opinion, we need to have rules and a
1443 climate that drive billions of dollars of investment
1444 throughout the broadband economy to technology companies,

1445 early-stage startups and investors and also to our
1446 infrastructure, and I think in my opinion what we have
1447 accomplished here, and it is why there is a broad consensus
1448 in favor of this approach, is a framework in which there is
1449 certainty--

1450 Mr. {Markey.} I agree with you.

1451 Mr. {Genachowski.} --and investment is driven
1452 throughout the broadband economy.

1453 Mr. {Markey.} Does the FCC intend on following through
1454 on the law and launching a set-top box unbundling proceeding
1455 and all video proceeding? Are you intending on doing that?

1456 Mr. {Genachowski.} Well, that is something that is
1457 under consideration. We haven't announced a timetable for
1458 that but clearly people would like to see more innovation on
1459 their TV sets in their living.

1460 Mr. {Markey.} That is the language Mr. Bliley and I put
1461 in the 1996 Act, and I really urge you--I think there is
1462 100,000 new jobs that can be created if we give consumers
1463 access to new applications and new hardware out there in the
1464 marketplace.

1465 I thank you so much for all your good work. I think it
1466 was a very good decision that you made at the FCC.

1467 Mr. {Walden.} The gentleman's time is expired. We now
1468 go to the vice chair of the committee, Mr. Terry, for 5

1469 minutes.

1470 Mr. {Terry.} Thank you, Mr. Chairman.

1471 And let me just start with this observation, is that
1472 much of our side of this dais, our concern is that and what
1473 we are opposed to is an agency, whether it is FCC or EPA, sua
1474 sponte issuing a set of rules without Congressional authority
1475 or specific authority from this body, and in fact a majority
1476 of Congress in the past term under Democrat majority signed
1477 on to letters opposing this rule or this procedure. And I
1478 would like to for the record submit, unanimous consent to
1479 submit for the record the three letters dated October 15th,
1480 May 28th and November 19th.

1481 Mr. {Walden.} Without objection.

1482 [The information follows:]

1483 ***** COMMITTEE INSERT *****

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1484 Mr. {Terry.} I think the signatures on these objecting
1485 to the procedures are over 300 members but yet the FCC
1486 continued.

1487 Now, I want to get to another issue that has been hit on
1488 here about price regulation. At home and my campaign, I have
1489 Trend Micro to block all of the viruses and spyware, and I
1490 got as my monthly newsletter, e-mail newsletter from Trend
1491 Micro yesterday coincidentally, and I am just going to read
1492 one part of Trend Micro Trendsetter newsletter here under net
1493 neutrality sent to all of their customers. ``For consumers,
1494 deregulation'' which is what we are trying to on this side of
1495 the aisle evidently do ``of the Internet could mean higher
1496 Internet access prices as ISPs institute tiered models that
1497 offer speedier downloads to higher-paying customers.'' Some
1498 people also worry that allowing businesses to choose what
1499 content or sites they will be offer will result in the
1500 commoditization of a formally free and open environment akin
1501 to the evolution of television from an essentially free
1502 service to a highly fragmented and fairly expensive, and like
1503 Anna Eshoo said, we all agree on the blocking and we can get
1504 into the issue of the principle base that seem to be working
1505 but obviously Trend Micro thinks that you have the power now
1506 and they want to get their customers lobbying here to make

1507 sure that you have the power of price setting. Then under
1508 706, section--oh, and by the way, unanimous consent to
1509 submit--

1510 Mr. {Walden.} Without objection.

1511 Mr. {Terry.} --the Trend Micro e-newsletter on net
1512 neutrality.

1513 [The information follows:]

1514 ***** COMMITTEE INSERT *****

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1515 Mr. {Terry.} And in section 706(a) says that this is
1516 the basis for your authority and the order has stated that
1517 price cap regulation is part of this, so obviously if you are
1518 saying that section 706 is the basis for your authority, you
1519 have authority to regulate prices, and there are companies
1520 out there that are now manipulating this rule to see if they
1521 can get a price advantage from the FCC. This seems to me to
1522 be anticompetitive and creates an atmosphere of uncertainty
1523 to new entrants in business operations about what can the FCC
1524 do to them or for them, so I am going to ask Commissioner
1525 Baker, has the FCC in developing this rule made any
1526 conclusions about the cost effect of flattening a tier to a
1527 one-price system like Trend Micro is requesting and saying
1528 that you should be doing? Has that been thought through? Is
1529 there an economic analysis of how that will affect the
1530 marketplace?

1531 Ms. {Baker.} It is a good question and one of the
1532 biggest concerns that I have is where we are going with this
1533 in preserving the status quo of the Internet today where we
1534 are missing what the Internet may offer tomorrow, and so I
1535 think that through the special-interest groups as they push
1536 into tighten the regulations through wireless such as the
1537 Metro PCS complaint that has been mentioned or specialized

1538 services or prioritization eliminating these, they will
1539 eliminate what is going to fund our next generation of
1540 broadband networks. So I worry that we in the rush to put
1541 out net neutrality rules, we are missing--we are flattening
1542 to a one-size-fits-all broadband what may be the next
1543 generation of the Internet.

1544 Mr. {Walden.} The gentleman's time is expired. I now
1545 recognize the gentleman from Michigan, the chairman emeritus
1546 of the committee, Mr. Dingell, for 5 minutes.

1547 Mr. {Dingell.} Mr. Chairman, I thank you for your
1548 courtesy.

1549 To Chairman Genachowski, there is broad agreement that
1550 reform of the Universal Service Fund is necessary. I believe
1551 that if done properly, such reform can support broadband
1552 build-out and create jobs. Will you commit to completing
1553 proceedings to reform USF by the end of the year? Yes or no.

1554 Mr. {Genachowski.} Yes.

1555 Mr. {Dingell.} To the remaining commissioners, going
1556 across starting with you, Mr. Copps, do you support the idea
1557 that we should have a completed survey by the end of the
1558 year?

1559 Mr. {Copps.} A completed survey of?

1560 Mr. {Dingell.} Of the spectrum.

1561 Mr. {Copps.} Yes, I think it would be most helpful to

1562 have a spectrum, and it is a time-consuming process but the
1563 sooner we can get it, the better it will be.

1564 Mr. {Dingell.} Thank you.

1565 Mr. McDowell?

1566 Mr. {McDowell.} Yes.

1567 Mr. {Dingell.} Commissioner Clyburn?

1568 Ms. {Clyburn.} Yes, we have already started in that
1569 direction with the Spectrum Dashboard and other initiatives.

1570 Mr. {Dingell.} And the last of our commissioners?

1571 Ms. {Baker.} Yes, sir, absolutely.

1572 Mr. {Dingell.} Again, Chairman Genachowski, I
1573 understand that the Commission is completing a spectrum
1574 inventory. Is that true? Yes or no.

1575 Mr. {Genachowski.} Yes.

1576 Mr. {Dingell.} Again to Chairman Genachowski, when will
1577 the Commission have completed this inventory?

1578 Mr. {Genachowski.} Well, we have already completed the
1579 first phase. Our Spectrum Dashboard is up on our website.
1580 We will be proceeding the next phase relatively soon and we
1581 want to provide the public more and more information about
1582 how spectrum is actually being used.

1583 Mr. {Dingell.} Now, again, Mr. Chairman, will that
1584 inventory be as comprehensive as the one mandated last year
1585 in the House-passed Radio Spectrum Inventory Act? Yes or no.

1586 Mr. {Genachowski.} Yes, and we have been working with
1587 the committee on that.

1588 Mr. {Dingell.} Now, again, Mr. Chairman, similarly,
1589 will the results of the Commission's spectrum inventory be
1590 made available to the public? Yes or no.

1591 Mr. {Genachowski.} Yes, unless there is some compelling
1592 reason for a piece to not be, but yes.

1593 Mr. {Dingell.} Now, will the Commission also submit a
1594 report to the Congress concerning the inventory?

1595 Mr. {Genachowski.} Concerning the inventory?

1596 Mr. {Dingell.} Yes.

1597 Mr. {Genachowski.} We will make it public and we will
1598 provide Congress and the committee whatever reports it
1599 desires.

1600 Mr. {Dingell.} Good. Now again, Mr. Chairman, with
1601 respect to the spectrum auctions, I note the National
1602 Broadband Plan states on page 79 that the government's
1603 ability to reclaim clear and reauction spectrum is the
1604 ultimate backstop against market failure and is an
1605 appropriate tool when the voluntary process stalls entirely.
1606 Does this mean that the Commission will forcefully take
1607 spectrum from broadcasters if too few participate in
1608 voluntary spectrum auctions? Yes or no.

1609 Mr. {Genachowski.} Well, we haven't addressed the

1610 question. We have proposed a win-win-win incentive auction
1611 that will free up billions of dollars and bring market
1612 incentives into spectrum allocation, helping give this
1613 country what it needs, a lot more spectrum for mobile
1614 broadband.

1615 Mr. {Dingell.} Now, I am just a Polish lawyer from
1616 Detroit, and sometimes I have trouble understanding some of
1617 these things, but you are going to have a voluntary spectrum
1618 auction. How is it going to be voluntary if there is
1619 pressure which is placed on the holders of this spectrum by
1620 the Commission?

1621 Mr. {Genachowski.} Because the auctions themselves
1622 would rely on market incentives, allowing the market to set a
1623 price for existing owners of licenses to make the choice
1624 between continuing what they are doing or transferring the
1625 license in exchange for the offer from the auction.

1626 Mr. {Dingell.} Sounds kind of like a bank holdup to me.
1627 You hold a gun at the teller's head and say we know that you
1628 are going to voluntarily give me this money, and if you
1629 don't, I'm going to shoot you in the brains.

1630 Mr. {Genachowski.} Only if the free market is a bank
1631 holdup.

1632 Mr. {Dingell.} Well, I want you to know I have some
1633 dark suspicions on this matter.

1634 Now, Mr. Chairman, do you believe that a broadcaster who
1635 does not participate in voluntary incentive action should be
1636 forced to relinquish its current channel allocation and
1637 spectrum? Yes or no.

1638 Mr. {Genachowski.} Well, the first thing I would say is
1639 that broadcasting is a very important business in the country
1640 and everything we are doing--

1641 Mr. {Dingell.} No, no, no. Yes or no.

1642 Mr. {Genachowski.} --recognizes its importance. That
1643 is something we are looking at. It is something that
1644 actually Congress is looking at because--

1645 Mr. {Dingell.} Would you please go off, contemplate
1646 your navel and come back with us an answer yes or no to this
1647 question? And would the other members of the Commission
1648 please do the same thing because I am having a hard time
1649 understanding this.

1650 Now, to all commissioners, does the Commission possess
1651 the necessary authority with which to engage in voluntary
1652 incentive auctions of a spectrum? Yes or no.

1653 Mr. {Genachowski.} We would ask Congress for the
1654 authority.

1655 Mr. {Dingell.} I am sorry?

1656 Mr. {Genachowski.} We would ask Congress for the
1657 authority.

1658 Mr. {Dingell.} All right. Would each of the
1659 commissioners submit to me a yes or no on that?

1660 Mr. {Walden.} And then the gentleman's time is expired.

1661 Mr. {Dingell.} I sure would like to have an answer to
1662 this question.

1663 Mr. {Walden.} Yes, if the commissioners could go ahead
1664 and respond to the chairman emeritus's question.

1665 Mr. {Dingell.} I do have a few other useful questions
1666 that I would like to get the answer to. I will be submitting
1667 a letter to the Commission and I would ask that the
1668 Commission respond, and Mr. Chairman, I would ask your
1669 courtesy and that of my colleagues on the committee in giving
1670 me unanimous consent so that both my letter and the response
1671 may be inserted into the record.

1672 Mr. {Walden.} Absolutely, Mr. Chairman, and just for
1673 the record, Mr. Chairman, the committee is going to have a
1674 second round of questions here today if other conflicts in
1675 your schedule don't preclude you--

1676 Mr. {Dingell.} I don't want you to take my comments as
1677 critical of you. Thank you.

1678 Mr. {Walden.} No, we are fine.

1679 All right. With that, we will--did the other members of
1680 the Commission want to answer that question the chairman
1681 emeritus asked yes or no?

1682 Mr. {Copps.} I think the chairman's answer, we have
1683 asked Congress for that authority is correct.

1684 Mr. {McDowell.} I don't think we have the authority to
1685 do the incentive auctions as many proposals have outlined.

1686 Ms. {Clyburn.} Right now, no.

1687 Ms. {Baker.} To do voluntary authority, we need
1688 Congressional authority.

1689 Mr. {Walden.} Thank you.

1690 I am going to go now to Mr. Shimkus for 5 minutes.

1691 Mr. {Shimkus.} Thank you, Mr. Chairman. It is great to
1692 have the Commission before us. I appreciate all the time.
1693 Many of you have come by to talk in the office one on one,
1694 and that really is appreciated. I learned a new Latin word,
1695 sua sponte.

1696 Mr. Copps, I think via sua sponte maybe we can address
1697 the two-member rule and we will legislate and maybe we can do
1698 that. I just think it is ridiculous, and if there needs to
1699 be someone to lead that small change, we might be able to do
1700 small things in this Congress that don't get devolved into
1701 too much, but that is really silly, and you say it every time
1702 and many of agree with you, and we don't seem to do anything
1703 on it, so let me see if I can take that up as a challenge.

1704 You know, this net neutrality debate, one side says it
1705 is going to create jobs, the other says no, it is going to

1706 hurt jobs, and we are focused in this Congress on job
1707 creation. The public is confused who is right and who is
1708 wrong. It is he said, she said. I boil it down to the
1709 simplest folks in my district who, you know, if they can get
1710 broadband service--we don't still have it. High speed, that
1711 is mapping and all the other things. But they really do want
1712 jobs. You know, if we are not going to spend money, we are
1713 not going to borrow money in this Congress to try to create
1714 jobs, we think that failed in the last Congress, plus we are
1715 talking about debt and deficit and job creation.

1716 Mr. {Walden.} This is government control of the
1717 microphones.

1718 Mr. {Shimkus.} Government control. I am on again. So
1719 if we are going to create jobs without spending money, we
1720 have to ease the regulatory burden. I don't know how because
1721 that provides more certainty. Capital borrowing is lowered
1722 when you have more certainty, ease in regulatory burden. The
1723 President has agreed to that. I think, Mr. Genachowski, you
1724 sent out an e-mail asking your agency to look at ways where
1725 regulatory burden might impinge job creation.

1726 So let me ask Commissioner Baker, had we done a cost-
1727 benefit analysis, if we would have done a cost-benefit
1728 analysis on net neutrality job creation, do you think that
1729 would be something we want to get an answer to? What do you

1730 think we would have come up with?

1731 Ms. {Baker.} It is a good question. I think had we
1732 done a market analysis, certainly every government--every
1733 other government that has looked at this has come up with the
1734 fact that the hypothetical problem of net neutrality would be
1735 better served--if we are worried about on ramps to the
1736 Internet, the best way to solve that is to create more on
1737 ramps. So aside from the actual authority question, I think
1738 the policy would come up that the market benefit analysis
1739 would come out not in favor of this.

1740 Mr. {Shimkus.} This is just an interesting debate
1741 because we even heard, you know, Chairman Waxman make the
1742 statement, and I heard it yesterday in my Environment and
1743 Economy hearing that regulations create jobs, and they really
1744 believe it, that regulations create jobs. I guess he also
1745 said--I am not sure. But in a hearing yesterday, the EPA
1746 also in their statement said we are not going to look at job
1747 creation, we are not going to look at effects on the economy.
1748 So that is why we think there should always be at least an
1749 analysis of cost-benefit analysis, and had this been done
1750 prior to promulgation of movement toward net neutrality
1751 through the Commission, maybe there would be more certainty
1752 and their side would be pointing out to your analysis and we
1753 would be looking at that analysis and saying yes, it is legit

1754 or--but nothing. Commission Chairman, do you want to
1755 respond?

1756 Mr. {Genachowski.} As I said before, we did do a market
1757 analysis, and I disagree with my colleague very strongly. I
1758 think the pro-job, pro-investment outcomes of this balanced
1759 framework that we adopted very much outweigh the burdens
1760 which people either say are very small indeed or highly
1761 speculative.

1762 Mr. {Shimkus.} Let me just chime in because I have been
1763 on the committee for a long time and just like, you know, Mr.
1764 Markey can talk about going back to the breakup of the Bells,
1765 you know, I can talk when the cell phone was a mini brick
1766 when I got elected and you had to change the roaming when you
1767 got here to now really voice is really the throwaway service.
1768 It has been an unregulated environment that has moved faster
1769 than we can even get there now. And again, our concern is,
1770 if we are not doing cost-benefit analysis on regulations, the
1771 regulations may be important but the public needs to be able
1772 to make the decision based upon the impact on jobs versus
1773 benefits received, and that is our frustration.

1774 Let me ask one more question on this net neutrality
1775 debate, and it is not to pick on the chairman but recently
1776 you are offering applications to kind of spy on--`spy' is
1777 not a good word but to patrol the Internet to see if there is

1778 abuse of net neutrality, and prepare to fly the winner out
1779 here. Do you think that is a good use of taxpayers' dollars?

1780 Mr. {Genachowski.} Promoting transparency, opening up,
1781 giving to consumers and early-stage innovators better
1782 information about how the networks work, I think promoting
1783 transparency is a very important part of this.

1784 Mr. {Walden.} The gentleman's time is expired. I now
1785 turn to the gentleman from Pennsylvania, Mr. Doyle, for 5
1786 minutes.

1787 Mr. {Doyle.} Thank you, Mr. Chairman.

1788 Boy, I will tell you, there is probably not two words
1789 that have been more misused and confused than the words net
1790 neutrality, and I would venture to say if you asked the 453
1791 Members of Congress what their definition of net neutrality
1792 is, you would probably get 435 different answers. But let me
1793 tell you what it means to me. I have four kids. Now, my
1794 three boys, they were the first three kids we had all went to
1795 Penn State, my alma mater, but our youngest, who came 7 years
1796 after our youngest son, Allie, she is a free spirit and she
1797 decided to break tradition and go to the University of
1798 Dayton, where she is now finishing up her final semester.
1799 But one thing, you know, Allie growing up with three
1800 brothers, it was just obvious she was going to be a sports
1801 fan and she loves the Pittsburgh Steelers and she loves the

1802 Pittsburgh Penguins. Well, one of the things she discovered
1803 right away when she went to the University of Dayton is that
1804 she was being subjected to watching Cincinnati Bengal
1805 football and the Columbus Blue Jackets hockey team. I felt
1806 very badly for her.

1807 She came home one weekend and she had this little device
1808 in her hand, and she said dad, we have to hook up this device
1809 in the house, and I said what it is, and she said it is
1810 called a Slingbox. I didn't know what a Slingbox was so I
1811 said, you know, you have to be careful, your kids bring
1812 things home and you don't know what they are bringing home,
1813 and I said, Allie, what is it, and her eyes lit up. She says
1814 you are not going to believe this, you hook this to your
1815 cable and then you hook it to the Internet connection and
1816 then I can watch Pittsburgh Steelers and Pittsburgh Penguin
1817 games in Dayton, Ohio. And so we hooked it up and she gets
1818 to watch Pittsburgh Steelers and Pittsburgh Penguin games in
1819 Dayton, Ohio.

1820 So this is when I decided, this is what open Internet
1821 means to me. It means that one, my family can use any
1822 service on the Internet using any device we choose to use;
1823 two, we give innovators the ability to create new things for
1824 us so that we can use our Internet connections and new
1825 gadgets for us to use that we never dreamed possible; and

1826 then three, we provide a cop on the beat to make sure that
1827 all these promises of an open Internet are kept for us.

1828 Now, Mr. Chairman, that seems to me to roughly be what
1829 the FCC order is. Is that right?

1830 Mr. {Genachowski.} Well, in fact, Sling was one
1831 application that had been blocked and was an issue that gave
1832 rise to the concerns that led to our order.

1833 Mr. {Doyle.} So it seems to me that the rules that you
1834 promulgated, they are aimed to protect me, they are aimed to
1835 protect innovation, and I could quote from the companies, and
1836 I think we have heard them before, AT&T or Wall Street
1837 analysts from Bank of America, Merrill Lynch, Citi, Wells
1838 Fargo, Raymond James, who all called the ruling balanced or a
1839 light touch and no undue impact on carriers.

1840 I noticed that some of my friends on the other side of
1841 the aisle and I think also Commissioner Baker spoke to this,
1842 that they said that they believed the FCC should only issue
1843 rules when there is a market failure. I have to tell you, I
1844 think that is a bad model. That is like saying you can only
1845 create rules for mortgages when housing prices plummet or
1846 that you can't ensure new investors aren't being bilked until
1847 millions have lost their nest eggs.

1848 Mr. Chairman, do you think the FCC should only create
1849 rules when the Internet ceases to be useful as it is today or

1850 only when it won't do the things that our constituents expect
1851 it to do?

1852 Mr. {Genachowski.} No, of course not, and we heard from
1853 people who have been building all the content and services on
1854 the Internet that given the history, if we didn't adopt a
1855 sensible framework, we would see a decline in investment, a
1856 decline in new businesses starting, a decline in jobs being
1857 created. What I am proud of is that we were able to find a
1858 way to provide certainty and confidence to the entrepreneurs
1859 and companies building new businesses on the Internet and
1860 also give certainty and confidence to the infrastructure
1861 companies to increase their level of investment. I am proud
1862 of that. It took a lot of work.

1863 Mr. {Doyle.} Thank you.

1864 Commissioner Capps and Commissioner McDowell, and these
1865 are just some quick yes or no answers. One of the biggest
1866 areas of controversy in this Open Internet Order is the
1867 citation of FCC authority, but rather than debating whether a
1868 specific provisions of the Communications Act grants FCC
1869 direct or indirect authority to regulate broadband providers,
1870 which is now going to be up to the courts to decide, I want
1871 to ask you a few questions about the way Congress has
1872 approached broadband.

1873 In 2008 Farm Bill, Congress directed the FCC to submit a

1874 comprehensive rural broadband strategy with recommendations
1875 for the rapid build-out of broadband in rural areas. Are you
1876 both familiar with that legislation?

1877 Mr. {Copps.} I was the acting chairman of the
1878 Commission at the time that helped produce the report.

1879 Mr. {Doyle.} Thank you. In that same year, Congress
1880 also passed the Broadband Data Improvement Act to improve
1881 FCC's data collection process and promote the deployment of
1882 affordable broadband services to all parts of the Nation.
1883 Have you both heard of that bill?

1884 Mr. {Copps.} Yes.

1885 Mr. {McDowell.} Yes.

1886 Mr. {Doyle.} And in 2009, Congress passed the Recovery
1887 and Reinvestment Act directing the FCC to produce a National
1888 Broadband Plan with a detailed strategy for achieving
1889 affordability of such service and maximum utilization of
1890 broadband infrastructure and service by the public. I know
1891 you are both familiar with that legislation. So given the
1892 number of laws that Congress has passed on broadband that
1893 directly involve the FCC, doesn't it seem logical to you that
1894 Congress assumed the agency would have the ability and the
1895 authority to implement and oversee our Nation's broadband
1896 policies?

1897 Mr. {Walden.} The gentleman's time has expired here. I

1898 want them to have an answer, but if we have a 5-minute
1899 answer, we could have issues.

1900 Mr. {Copps.} How about yes?

1901 Mr. {Doyle.} Thank you.

1902 Mr. {McDowell.} Congressman, you make a good point,
1903 which is Congress had a chance during each of those times to
1904 pass net neutrality legislation, and it did not.

1905 Mr. {Doyle.} Mr. Chairman?

1906 Mr. {Genachowski.} I would say yes as well. Congress
1907 has clearly given FCC the authority to look at competition
1908 issues involving voice and video. It is well accepted that
1909 the FCC has authority over Internet access providers, so I am
1910 quite confident in the legal basis of the decision and its
1911 constraints on the FCC.

1912 Mr. {Doyle.} Thank you, Mr. Chairman. I would yield
1913 back.

1914 Mr. {Walden.} Ms. Baker?

1915 Ms. {Baker.} Thank you. I have two quick points.

1916 Mr. {Walden.} Very quickly.

1917 Ms. {Baker.} The first is that the Slingbox, I am a big
1918 fan. I was one of the first adopters. The problem with
1919 Slingbox when it was blocked was because it was taking so
1920 much capacity on the wireless network that we needed to make
1921 it more efficient, which is why I promote entities like the

1922 BTAG, which is a non-governmental group of engineers who can
1923 work to make more efficient a lot of these problems that are
1924 coming up much faster than the government process can be.

1925 And the other point I would like to say is that
1926 certainly you gave us the broadband plan job to do, which was
1927 very important and a terrific landmark of our tenure at the
1928 FCC. Two hundred of those recommendations came forward.
1929 Sixty are those are within the FCC's jurisdiction. I think
1930 this is something that is going to be multi-jurisdictional
1931 and we need to all work together.

1932 Mr. {Walden.} Ms. Clyburn, do you have any quick
1933 additions?

1934 Ms. {Clyburn.} My colleagues have amply--

1935 Mr. {Walden.} Yes, they have. Thank you.

1936 The gentlelady from Tennessee is recognized.

1937 Mrs. {Blackburn.} Thank you, Mr. Chairman. Thank you
1938 all for being here. We indeed have looked forward to this.

1939 Chairman Genachowski, I want to start with you. We have
1940 tried to get together and visit on a few things, and I do
1941 have a couple of questions. Let us go to the Comcast/NBCU
1942 merger which I think was an overreach of power and a
1943 mismanagement of resources and it should have been a very
1944 simple straightforward vertically integrated merger, and it
1945 ended up becoming a forum for groups with complaints and

1946 grievances and then regulations and conditions and open
1947 Internet and net neutrality attachments to that merger. So I
1948 have got about three questions, and of course, you know we
1949 need to move quickly on this. Is this how you are going to
1950 approach mergers in the future?

1951 Mr. {Genachowski.} The Comcast/NBCU transaction was one
1952 of the biggest and most complex that ever came to the agency
1953 and we handled it in a way that was I think the most
1954 professional review process. Completing the process at about
1955 the time that people thought were on the earlier end and
1956 making sure that consumers and competition were protected.

1957 Mrs. {Blackburn.} Okay. Do you expect or is it the
1958 goal of the FCC as currently configured to legislate policy
1959 for every merger that comes before the Commission?

1960 Mr. {Genachowski.} We will continue to exercise the
1961 responsibilities that Congress gave us under the
1962 Communications Act to review mergers and determine that they
1963 are in the public interest.

1964 Mrs. {Blackburn.} Okay. Do you think that the review
1965 should have lasted for over a year?

1966 Mr. {Genachowski.} That was what the companies expected
1967 when they announced their decision. It was on the fast end
1968 for transactions of that size. It was done--

1969 Mrs. {Blackburn.} See, I think it was on the slow end

1970 because you get in the way of jobs creation. We are all
1971 about making certain--the interactive technology sector is
1972 one of the few sectors creating jobs.

1973 Commissioner McDowell, in light of how long the merger
1974 took, have we reached the point that we need to initiate a
1975 stop clock, put that in place to prevent needless dragging on
1976 which hampers job creation?

1977 Mr. {McDowell.} Of course, the FCC has an 180-day shot
1978 clock but enforcement of that would be helpful.

1979 Mrs. {Blackburn.} Thank you.

1980 Commissioner Baker, what would you like to have seen
1981 done differently in the merger reviews and what would you do
1982 differently in the future when you look at this merger?

1983 Ms. {Baker.} Well, I think it is clear that we need a
1984 comprehensive review but I agree that it can be timely, and
1985 our internal shot clock of 180 days is a good target and a
1986 good time frame that should be enforced. I think that the
1987 breadth, scope and duration of the restrictions placed on the
1988 merging companies shows sort of the extraordinary leverage
1989 that we held over the parties in front of us merging. I
1990 would like to see the merger conditions have a nexus to the
1991 actual merger.

1992 Mrs. {Blackburn.} Excellent. Thank you.

1993 Okay. Let us talk about peering and interconnectivity.

1994 We know that these arrangements have never been regulated,
1995 and the FCC net neutrality order says that the rules do not
1996 cover peering. So Mr. Chairman, do you believe the
1997 Commission's new net neutrality order and its underlying
1998 rules govern the level 3 Comcast dispute?

1999 Mr. {Genachowski.} Well, you said the order says that
2000 it doesn't change anything with respect to existing peering
2001 arrangements. It applies to Internet access service provided
2002 to consumers and small businesses. You are referring to a
2003 dispute that is occurring outside the Commission, a
2004 commercial dispute. I hope those parties settle it and
2005 resolve it but it is not something that we have facts and
2006 data on. I do think the order speaks for itself in the way
2007 that you suggest.

2008 Mrs. {Blackburn.} All right. Commissioner McDowell, do
2009 you believe the FCC has the authority it is claim to govern
2010 interconnectivity agreements?

2011 Mr. {McDowell.} Peering?

2012 Mrs. {Blackburn.} Yes.

2013 Mr. {McDowell.} No, ma'am.

2014 Mrs. {Blackburn.} Thank you, sir. I appreciate that.

2015 Commissioner Clyburn, thank you for coming in and
2016 visiting with me a few weeks ago. You and I discussed a
2017 little bit about market failure at that point, and you

2018 believe there has been, I believe there has not been. So why
2019 don't you tell me where you think the market failure lies and
2020 why the Internet is broken and why we need to look at these
2021 burdensome regulations? Because I am hearing every single
2022 day from innovators that are very concerned about the
2023 overreach that they see, what this might do and open the door
2024 for your Commission to regulate everything from set-top boxes
2025 to privacy to you name it.

2026 Ms. {Clyburn.} There have in fact been formal and
2027 informal complaints lodged at the Commission. There have
2028 been persons who have come to my office, who have called, who
2029 have e-mailed, when I go to different meetings and public
2030 forums, you know, they mention that there are issues, that
2031 these issues cause uncertainty in the market and cause them
2032 to have problems with financing. So there are issues. There
2033 have been formal complaints and a lot of these companies do
2034 not have the ability and technical know-how to come forward.

2035 Mrs. {Blackburn.} My time is expired. Mr. Chairman, I
2036 look forward to the second round.

2037 Mr. {Walden.} We will now go to the gentlewoman from
2038 California, Ms. Matsui, for 5 minutes.

2039 Ms. {Matsui.} Thank you, Mr. Chairman, and I thank the
2040 commissioners and chairman for being with us today. I
2041 support the FCC's Open Internet Order because it lays a

2042 foundation to create market certainty that both protects
2043 consumers and spurs innovation and investment in our economy,
2044 and I believe that any attempt to repeal this order should be
2045 characterized as stifling innovation and discouraging job
2046 growth in the technology sectors of our economy.

2047 Now, I am co-chair of the High Tech Caucus, and one of
2048 my priorities is to new innovative sectors like smart grid
2049 and health IT that offer great economic and job growth
2050 opportunities for our Nation. Technology companies are
2051 poised to deploy a range of new technologies to businesses
2052 and residential customers alike to ensure and increase energy
2053 efficiency efforts and modernize our health care system.

2054 Mr. Chairman, I believe broadband will play a key role
2055 in advancing smart grid technologies and health IT. How does
2056 the Open Internet Order promote the advancement of these
2057 sectors?

2058 Mr. {Genachowski.} Well, I agree that those are very
2059 important areas for dramatic private investment in the years
2060 ahead for the United States to build industries that provide
2061 real benefits to the public and devices and products and
2062 applications we can export to the rest of the world. What
2063 the Open Internet Order does is give entrepreneurs, companies
2064 thinking about innovating in that space the confidence that
2065 if they invest the resources and the time to innovate, they

2066 will have access to a free and open market, be able to reach
2067 customers and let consumers and the market pick winners and
2068 losers and so it is a great opportunity for those segments.

2069 Ms. {Matsui.} Okay. Thank you. And I believe one
2070 important way to move our economy forward is to increase
2071 access to affordable broadband service to more Americans, and
2072 that is why in the coming weeks I plan to reintroduce the
2073 Broadband Affordability Act to expand the Universal Service
2074 Fund lifeline linkup services for universal broadband
2075 adoption.

2076 Mr. Chairman, do you believe your Open Internet Order
2077 will further lay a foundation that helps increase broadband
2078 adoption rates in this country and further bridge our
2079 Nation's digital divide?

2080 Mr. {Genachowski.} I do, because it promotes a virtuous
2081 cycle of private investment throughout the broadband economy
2082 that will accelerate the opportunities and benefits of the
2083 Internet for all Americans.

2084 Ms. {Matsui.} Now, I want to follow up on Ranking
2085 Member Waxman's question earlier on market certainty because
2086 I believe this is an important point. Over the course of
2087 this debate, we kept hearing that industry wanted certainty
2088 so they could move forward with investment and their
2089 businesses. Now, it is widely known that a number of leading

2090 economists and financial institutions have stated that on
2091 balance, these rules represent a light touch that provides
2092 regulatory certainty that broadband providers and our tech
2093 community need to attract new investments and grow so that my
2094 sense is that any attempts to repeal in any form would create
2095 uncertainty for investors and the market, which puts American
2096 innovation investment and growth at risk. So again, what
2097 gives here? I mean, we need certainty, and this is sort of a
2098 light regulation and yet we are saying, the other side is
2099 saying that this is going to put a stranglehold on
2100 innovation. So any comments here?

2101 Mr. {Genachowski.} I am concerned about that. For
2102 years there has been a war in this space between the
2103 infrastructure companies on one side and the innovation
2104 technology companies on the other side. What we worked very
2105 hard to do over this process is to say hey, look, the gap
2106 isn't that large, let us resolve this in a sensible way with
2107 light-touch rules, move forward because we need all the
2108 companies in the broadband economy to work together to grow
2109 the broadband economy and to deal with the global competitive
2110 threats that we face. I believe we achieved that. I believe
2111 that injecting new uncertainty into it now will create more
2112 harm than good.

2113 Ms. {Matsui.} Okay. Any other comments on that?

2114 Ms. {Baker.} All of us would love, we would all love
2115 certainty. Unfortunately, I think the only certainty would
2116 actually be is if Congress would act to give us authority. I
2117 think unfortunately--well, I think the courts will turn this
2118 around. I think we have a complaint process set up in our
2119 rules, that we also have a declaratory ruling process set up
2120 in our rules. I think all of these leave inroads for
2121 changes, and I also think we have a 2-year review that is
2122 also set up to change the rules that exist. So I think that
2123 the certainty is actually more uncertainty with the rule we
2124 adopted.

2125 Ms. {Matsui.} Well, my time is running out but I would
2126 just like to say that this is a debate that continues to go
2127 on, and we understand we must have some regulations. We
2128 understand that. And we are hopeful that in this case, this
2129 light touch will spur innovation which I believe it will. So
2130 thank you very much.

2131 Mr. {Walden.} The gentlelady's time is now expired, and
2132 I will turn to the gentleman from Georgia, Mr. Gingrey.

2133 Dr. {Gingrey.} Mr. Chairman, thank you, and let me
2134 thank the chairman and the other four commissioners for being
2135 here today. I associate myself with Mr. Barton's comments
2136 earlier, the gentleman from Texas, in regard to the level of
2137 expertise that you bring.

2138 Obviously we spent a lot of time talking about this, and
2139 I would say that the members on this side of the aisle feel
2140 like this net neutrality ruling, this 3-2 spilt decision, was
2141 really unnecessary, a hammer in search of a nail, if you
2142 will, and our colleagues on the other side of the aisle feel
2143 like it is very much necessary. In fact, my good friend from
2144 Pennsylvania talked about the necessity, I think he put it as
2145 the need for a cop on the beat. I would suggest that if
2146 there is no history of crime on the beat, is it cost
2147 effective to put a cop there? In fact, he went on to talk
2148 about his daughter using the Slingbox. I never heard of the
2149 Slingbox but it sounded like a heck of a good innovation, and
2150 I guess that certainly came online at a time before this 3-2
2151 ruling.

2152 So with that in mind, I am going to ask my first
2153 question to the chairman. Chairman Genachowski, in the
2154 National Broadband Plan that was released by the Commission
2155 last March, page 5 stated that, and I quote ``The role of
2156 government is and should remain limited,'' yet I find the
2157 order delivered in the 3-2 vote by the Commission to
2158 contradict this very statement. You say in your testimony
2159 that the so-called open Internet rules will promote
2160 innovation, and maybe you can give me a yes or no answer on
2161 this. Has there been a lacking of innovation in the absence

2162 of government regulation over the Internet during the past
2163 decade?

2164 Mr. {Genachowski.} As I mentioned, there have been
2165 Internet protections in place since at least 2005, and so in
2166 the space people were operating on the assumption that
2167 Internet freedom was assured.

2168 Dr. {Gingrey.} Well, the question again, yes or no, has
2169 there been a lack of innovation?

2170 Mr. {Genachowski.} Let me see. There has not been a
2171 lack of innovation because there has been--

2172 Dr. {Gingrey.} I will take that as a no. And if there
2173 has not been a problem with innovation, then why, why is it
2174 necessary to promulgate regulations that may well stifle
2175 innovation at least according to a December 31, 2010, report
2176 from Anna-Marie Kovacs?

2177 Mr. {Genachowski.} What we heard from the innovator
2178 community was that in the absence of sensible rules of the
2179 road, they wouldn't have the confidence and certainty they
2180 need to invest their time and resources to raise capital in
2181 order to continue to innovate, and they felt very strongly
2182 about it.

2183 Dr. {Gingrey.} But yet, you know, the innovation that
2184 we hear about like the example of the Slingbox and other
2185 things, I mean, you know, this is sort of speculative, it

2186 would seem to me, and as a result of this order, despite the
2187 assurance of your testimony, will there not be a subsequent
2188 drop-off in innovation due to this unnecessary, as we see it,
2189 government regulation?

2190 Mr. {Genachowski.} I think this is a spur to innovation
2191 both at the edge and in the infrastructure, and I think the
2192 statements from most of the companies in the space analysts
2193 in the space are consistent with that.

2194 Dr. {Gingrey.} I don't see how then you can make that
2195 sort of assurance without the proper market analysis which
2196 the Commission today has admitted did not occur.

2197 Mr. {Genachowski.} With respect, we did do a market
2198 analysis in our order.

2199 Dr. {Gingrey.} Is my time expired?

2200 Mr. {Walden.} No, but you might want to ask the
2201 chairman if it is an OIRA standard market analysis as
2202 recommended by OMB, and if so, if you can make it available.

2203 Mr. {Genachowski.} We will obviously make it available.
2204 It is in the order, and we will get back to you on whether it
2205 is specifically OIRA compliant.

2206 Dr. {Gingrey.} Mr. Chairman, if I have--

2207 Mr. {Walden.} You actually have another minute.

2208 Dr. {Gingrey.} Thank you.

2209 I want to ask Commissioner McDowell, Commissioner, isn't

2210 this order full of double-speak? To me, certainly it is. It
2211 says to keep the Internet free, we need to regulate it. To
2212 ensure no one needs permission to innovate, everyone will
2213 need to ask the FCC for permission to innovate. And it goes
2214 on to say to create certainty, as few as three commissioners
2215 now can decide what types of business arrangements and
2216 traffic management techniques are reasonable. Does that make
2217 sense?

2218 Mr. {McDowell.} It doesn't make sense, and I think what
2219 we are hearing today from the chairman as well as in the
2220 order is that innovation only happens at the edge, and he has
2221 referred to several times about innovators and the technology
2222 companies at the edge and there is just infrastructure on the
2223 other side, the network operators. We want to have
2224 innovators everywhere. You have companies like Microsoft and
2225 Google as well as Verizon and AT&T who have thousands of
2226 miles of fiber, have servers and soft switches. They offer
2227 voice, video and data services of all kinds and all sorts of
2228 applications, and you don't want government tilting the
2229 scales while putting its thumb on the scale to try to distort
2230 that market. You want innovation at all layers, all levels
2231 of that environment.

2232 Mr. {Walden.} The gentleman's time has expired. I will
2233 recognize the gentleman from New Jersey, Mr. Pallone, for 5

2234 minutes.

2235 Mr. {Pallone.} Thank you, Chairman Walden. I do want
2236 to say I am pleased to see the FCC commissioners here today,
2237 and I want to touch on two topics with Chairman Genachowski,
2238 and again, I have to apologize because I know that some of
2239 this is repetitive. I will try not to be.

2240 The first is the follow-up to a letter I wrote to you
2241 last spring regarding the Title II framework you initially
2242 laid out regarding the Internet principles, and I wanted to
2243 reiterate my concerns regarding agency action. I was the
2244 chairman of the Subcommittee on Health, and I am still the
2245 ranking member, and in that capacity, I am increasingly
2246 sensitive about the tendency of government agencies and in
2247 particular independent agencies to arrogate to themselves
2248 policymaking authority that is properly exercised solely by
2249 Congress, in my opinion. Now, while questions involving an
2250 agency exceeding the authority granted to it by Congress are
2251 decided in the courts, I think an agency ought to be mindful
2252 of the limits on its authority. So far, two companies have
2253 questioned your authority and brought suit against you. Can
2254 you tell me--this is sort of repetitive, so I wanted to ask
2255 if you could tell me why you believe the agency has legal
2256 authority to implement network neutrality rules or provisions
2257 of the National Broadband Plan in the order being examined

2258 today? But let me say specifically, because you have gone
2259 into this, where you believe you have the authority, what
2260 would you cite, and why you think you are going to win in the
2261 court. I will say it that way.

2262 Mr. {Genachowski.} I am glad you asked the question
2263 because it allows me to try to clear up one issue. There
2264 were many Members of Congress who in the course of our
2265 proceeding urged us not to rely on Title II as a basis for
2266 any decision in the area, and after a lot of discussion and
2267 input, we listened to that, we heard that, and in fact we
2268 didn't rely on Title II in adopting a final decision, and
2269 instead we adopted a framework that is consistent with the
2270 framework that historically has had consensus in this space,
2271 the light-touch Title I framework tied to specific provisions
2272 in the Communications Act like those instructing us to
2273 promote competition. And so I do remember getting your
2274 letter and it was something that we paid careful attention to
2275 and that we believe we responded directly to in how we
2276 ultimately ruled in this matter.

2277 Mr. {Pallone.} And why do you think you are going to
2278 win?

2279 Mr. {Genachowski.} Well, we think we are going to win
2280 because we think that the theory we have laid out is very
2281 consistent with Supreme Court precedent in this area, and it

2282 is consistent with the D.C. Circuit decision. The D.C.
2283 Circuit was asked to rule that the FCC had no authority at
2284 all with respect to broadband, and it didn't do that. It set
2285 a standard that the FCC has to reach in order to adopt
2286 sensible rules in this area, and we believe we met that
2287 standard. It is in litigation now. Almost everything that
2288 the FCC does ends up in litigation. There are some areas in
2289 which the D.C. Circuit is in tension with the Supreme Court
2290 but we believe we meet the standard of the D.C. Circuit case
2291 and we are certain that we meet the standards set out by the
2292 Supreme Court in this area and that we are operating well
2293 within our authority under the Communications Act.

2294 Mr. {Pallone.} All right. Let me get to my second
2295 issue. This was an issue I raised last summer, or I should
2296 say last May. Congress learned that Google had gained access
2297 to personal WiFi and collected information about consumers'
2298 Internet activities and at the time I called on the FCC and
2299 the FTC to investigate out of concern for consumers' privacy.
2300 Now, the FTC investigation was dropped in October without
2301 providing sufficient answers, in my opinion, to how the
2302 privacy breach was allowed to take place and who was
2303 affected, but I understand that the FCC is also
2304 investigating. So could you comment on any progress with
2305 that investigation, whether the FCC is examining the data for

2306 itself, what steps are being taken to avoid situations like
2307 this in the future in today's technology age?

2308 Mr. {Genachowski.} I can't comment on an open
2309 investigation but I will say that we certainly heard you in
2310 that letter, and any uses of spectrum or technologies that
2311 are within the FCC's purview that violate the privacy statute
2312 and the FCC's privacy rules are actions that we would take
2313 very seriously.

2314 Mr. {Pallone.} Okay. As far as you can go, in other
2315 words. All right. Thank you.

2316 I yield back, Mr. Chairman. Thank you.

2317 Mr. {Walden.} I thank the gentleman for yielding back.
2318 I now go to the gentleman from Louisiana, Mr. Scalise, for 5
2319 minutes.

2320 Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate
2321 you hosting this hearing. I appreciate all of the FCC
2322 commissioners coming to talk about this important issue of
2323 net neutrality and its impact especially on the economy and
2324 our ability to continue to encourage the innovation and the
2325 job creation that I think has been one of the hallmarks of
2326 the Internet. I would actually agree with the commissioner
2327 back in 1999, Commissioner Kennard, who had talked about the
2328 innovations and also encouraged against the dangers of
2329 regulating the Internet, and this was President Clinton's FCC

2330 commissioner that talked about the dangers of regulating the
2331 Internet, especially in ways that it would stifle innovation.
2332 You know, when I look at what has been happening in the
2333 industry, I think one of the few real positive signs in a
2334 struggling economy that we have today has been the technology
2335 sector, especially the companies that do operate and innovate
2336 using the Internet and its capabilities to allow commerce, to
2337 allow connectivity of people, of ideas. You know, they are
2338 even talking about what is happening in Egypt being something
2339 that really in many ways came out of Facebook, and of course,
2340 these great innovations happened without net neutrality.
2341 These great innovations happened because there was a
2342 certainty and an ability for industry to go out there and
2343 invest, as I think it was Commissioner Baker who pointed out
2344 over \$500 billion of private investment--this isn't federal
2345 government with stimulus but private investment coming out
2346 over the last 10 years of the private sector to encourage
2347 this innovation. This was again without net neutrality,
2348 without the big hand of the federal government or the big
2349 hammer, as you might want to call it.

2350 And so you can see why there is a big concern by many of
2351 us about this imposition of net neutrality, and this is not
2352 just a Republican issue. I know some on the other side have
2353 kind of inferred that this is the way it should be. I was a

2354 little bit surprised to hear the three Democrat commissioners
2355 saying that they don't think that this Congress should pass a
2356 resolution of disapproval because when I go back to the
2357 Constitution, which is of course our overarching document
2358 that lays out the structure, it is article 1, section 1 that
2359 talks about the legislative branch deciding policy, with all
2360 due respect, not the FCC, not the EPA, not all of these
2361 bureaucratic agencies that seem to think that their will is
2362 better than those of us who were actually elected by the
2363 people.

2364 And so with that, I want to at least try to get into
2365 this a little bit more, and Chairman Genachowski, starting
2366 with you. When we look at the private sector innovation that
2367 has come with the ability to innovate and then of course the
2368 business models that are built around the things that
2369 encourage private investment, do you have any concern that by
2370 changing the rules, by imposing net neutrality and in some
2371 cases opening the door for retroactive changes, that you are
2372 going to discourage that kind of innovation and investment?

2373 Mr. {Genachowski.} Well, I actually agree with that
2374 Commissioner McDowell said a few minutes ago about the
2375 importance of the investment and innovation throughout the
2376 broadband economy, both early stage and technology companies
2377 and also our infrastructure companies, wireless and wired.

2378 It is a full broadband economy where innovation and
2379 investment in any part of it fuels investment throughout. We
2380 paid very careful attention to this as we worked on this
2381 item, and I believe this will be a spur to investment and
2382 innovation throughout the broadband economy and
2383 overwhelmingly the analysts who looked at what we did
2384 characterized it that way, as a light-touch action that
2385 increases certainty and will unleash investment.

2386 Mr. {Scalise.} And I guess we will disagree about
2387 whether it is a light touch and whether it increases
2388 certainty versus what many of us think that it actually
2389 decreases certainty.

2390 I will ask Commissioner Baker, because you did make
2391 those comments about the \$500 billion of private investment,
2392 if you can just answer that same question and what effects it
2393 would have on future investments.

2394 Ms. {Baker.} So I think it is important what has
2395 brought us here but I also think what it is important to take
2396 us to the new generation, so updating the networks by 2015,
2397 the number is going to be \$182 billion. I think the network
2398 providers are going to have to have a return on that
2399 investment. It is a very tight capital market. I think
2400 things like network management, prioritization, specialized
2401 services have been turned into bad words as opposed to

2402 engineering marvels, and I think that we need to allow--I
2403 think the term is called wealth transfer and so what we are
2404 doing is taking away revenue streams from the providers how
2405 are building these networks. They need to have as much
2406 incentive as possible to have a return on their investment,
2407 which will then in turn allow all of the edge applications to
2408 innovate and continue this terrific ecosystem.

2409 Mr. {Scalise.} And we heard some concerns in a previous
2410 hearing last week about that in relation to the stimulus bill
2411 where the federal government was using taxpayer money to in
2412 essence other companies to compete against private companies
2413 who already made an investment of billions of dollars, hiring
2414 thousands of people, creating good jobs that now will not
2415 have that same ability to make those investments in the
2416 future.

2417 So again, we have seen those regulations killing jobs
2418 and that is a big concern. I know we will get into more of
2419 it in the second round. I appreciate it, and I yield back.

2420 Mr. {Walden.} The gentleman's time is expired. The
2421 Chair now recognizes the gentleman from Illinois, Mr. Rush,
2422 for 5 minutes.

2423 Mr. {Rush.} Thank you, Mr. Chairman, and I want to
2424 welcome the commissioners here again. I want to begin by
2425 saying I agree with you, Chairman Genachowski, I think in

2426 essence you said, your statement was that regulations don't
2427 create incentives, they create certainty, and certainty is a
2428 catalyst for investment and innovation, and I certainly
2429 concur with those sentiments. When the FCC decided to issue
2430 a balanced set of open Internet rules, I for one urged
2431 industry not to challenge these rules in court. These rules
2432 largely track an agreement that this committee helped to
2433 negotiate among parties on all sides of the issue. Now that
2434 some of these companies have decided to take the court route,
2435 the question of the FCC's authority to adopt rules affecting
2436 broadband service providers will unfortunately be left in the
2437 hands of the federal appellate court, and to me, I would have
2438 liked to avoid that. And I would sincerely hope that after
2439 today that we in Congress will move on and move ahead to help
2440 you, the FCC, and our Nation tackle more immediate problems
2441 including our looming spectrum crunch and financing the
2442 build-out of and national interoperable public safety
2443 network, reforming universal service and designing all
2444 auctions and licensing opportunities to ensure that minority
2445 and small businesses have just as good a chance as the large
2446 fat cats, the large corporations, the big boys to become real
2447 participants and players in the communications and technology
2448 sector.

2449 As you know, Mr. Chairman, Chairman Genachowski, the

2450 President recently announced that he supports reallocation of
2451 the 700 megahertz D block to public safety. Further, both
2452 Senator Rockefeller and Representative King have reintroduced
2453 bills this year that will reallocate the D block to public
2454 safety. Last year, you testified in front of this
2455 subcommittee that you believe the plan to auction the D block
2456 recommended by the National Broadband Plan provides the best
2457 strategy going forward.

2458 Now, I want to ask each one of you, and I only have a
2459 few more minutes, so if you would quickly answer this
2460 question with a yes or no answer. Do you still support the
2461 recommendations auctioning the D block as laid out by the
2462 National Broadband Plan?

2463 Mr. {Genachowski.} Yes, and we need to get a mobile
2464 broadband public safety network built and funded.

2465 Mr. {Rush.} Commissioner Copps?

2466 Mr. {Copps.} Well, I think that is a viable proposal.
2467 I think we also need to hear from Congress. The central
2468 question to me is which of the options out there are going to
2469 provide money to actually build this infrastructure, and we
2470 need to identify where that is, and I think that will be the
2471 route to go.

2472 Mr. {McDowell.} I think this issue is more one of
2473 public safety needing more money rather than more spectrum.

2474 I would like to see the D block auctioned off cleanly but we
2475 need Congress's help to fund that build-out.

2476 Ms. {Clyburn.} I look forward to a Congressional
2477 engagement. At the bottom of this, at the core of all this
2478 is, we need the pathway for a truly interoperable public
2479 safety network. I think that is what we all want, and the
2480 best way to get that. I look forward to engagement from you.

2481 Ms. {Baker.} I think I agree with all my fellow
2482 commissioners and chairman. Last year we testified that an
2483 auction was a terrific way forward. It seems to me that some
2484 other ideas have surfaced from other places, and I think if
2485 we are going to look at reallocation too as a viable
2486 alternative, I think the important is to get the public
2487 safety interoperability network built as soon as possible and
2488 we will look to you as to how to do that best.

2489 Mr. {Rush.} My next question, when FCC auctioned 52
2490 megahertz of spectrum in 2008, one of your predecessors,
2491 Chairman Genachowski, said it is also appalling that women
2492 and minorities were virtually shut out of this auction with
2493 women-owned bidders winning no licenses and minority-owned
2494 businesses winning less than 1 percent. We clearly failed to
2495 meet our statutory obligations in 309(j) to expand diversity
2496 and the provision of special base services. In 2008, we
2497 raised about \$20 million for the U.S. Treasury. Much of that

2498 spectrum has been now deployed to make 4G services a reality,
2499 giving subscribers faster broadband speeds, supporting more
2500 and more apps and more and more video. Many critics of the
2501 auction contend, however, that the FCC's auction design did
2502 not do enough to allow women, minority and rural phone
2503 companies to win any of the spectrum licenses. If you
2504 decide to auction the D block, what design improvements can
2505 FCC make to ensure that these types of bidders are more
2506 successful this time around?

2507 Mr. {Genachowski.} Well, you raise an important issue,
2508 and we would look at all possibilities to address those
2509 issues in any auction design that we take up our next auction
2510 design, and in connection with the topic of the day, I will
2511 say that one of the challenges in that area is the amount of
2512 capital that is required to build and launch a wireless
2513 business is very high and it is what makes the issue
2514 difficult. On the online area, the capital requirements to
2515 start a business are much lower and so the new opportunities
2516 for new entrants, diverse entrants on the Internet is
2517 something that I think is a promising opportunity.

2518 Mr. {Walden.} The gentleman's time has expired. Now I
2519 would like to go the gentleman from Ohio, Mr. Latta, for 5
2520 minutes.

2521 Mr. {Latta.} Well, thank you, Mr. Chairman. I

2522 appreciate the opportunity. I want to also thank all of you
2523 for being here with us today. It is very, very enlightening,
2524 and what I would like to kind of do is maybe just kind of
2525 start off with, I really believe that we have got to keep
2526 government out as much as we possibly can because if we want
2527 to see an invasion of growth, it is not going to happen.

2528 One of the things, Mr. Chairman, I would like to submit
2529 for the record is a letter from a company doing business in
2530 my district from Amplatz Internet, if I could ask unanimous
2531 consent that that be included in the record.

2532 Mr. {Walden.} Without objection.

2533 [The information follows:]

2534 ***** COMMITTEE INSERT *****

|
2535 Mr. {Latta.} I appreciate that, Mr. Chairman.

2536 And one of the things that--and just real quickly about
2537 this company. It is in a village in my district and they
2538 have 2,100 household and businesses they supply service to
2539 and they employ eight people and they have added three new
2540 employees in the last year, which is how we grow things in
2541 America, small businesses and they grow large.

2542 But in his letter, it is interesting because he states a
2543 couple of things that I think that he might have been in your
2544 own meeting rooms because this letter is dated December 15th
2545 of last year, and he says in the letter, ``The Internet has
2546 grown incredibly rapidly without significant government
2547 regulation and continues to do so. There is no pressing
2548 reason for the government to act at this time.'' He goes on
2549 to say, ``In the limited number of cases to date involving
2550 questionable behavior, the existing consumer protection laws
2551 have been sufficient to address the issue,'' and I find that
2552 interesting because a lot of times I think we--I would like
2553 to ask this question. You know, we have been kind of talking
2554 at the 30,000-foot level here today. What we need to do is
2555 talk to the people back home on main Street. These are the
2556 folks that have got to do this.

2557 And starting with Commissioner McDowell, I think that he

2558 must have been in your computer because when I am looking at
2559 your statement, you said it on December 21, 2010. You state
2560 on page 6, ``And my dissent is based on four primary
2561 concerns. Nothing is broken in the Internet access market
2562 that needs fixing, and existing law and Internet governance
2563 structure provide ample consumer protection in the event a
2564 systematic market failure occurs.'' Those two letters are
2565 just 6 days off but this is somebody from Main Street, again,
2566 somebody that is out there trying to live with this.

2567 And I guess I would like to read something that
2568 Commissioner Baker, you have written in your testimony,
2569 saying again that--you are pretty much saying that our
2570 surveys revealed that 93 percent of subscribers are happy
2571 with their broadband service, and you go into that we need
2572 broadband competition, we need private capital and that the
2573 Internet is open without the need of affirmative government
2574 regulation.

2575 So I guess if I could just start with Commissioner
2576 McDowell, what do I tell the folks back home? How do I
2577 explain what we do here in Washington that affects them right
2578 off the bat? Again, we are looking at--you know, we do
2579 things at 30,000 feet but we are talking about people right
2580 at ground level, ground zero.

2581 Mr. {McDowell.} Well, I think you have touched on an

2582 important point which is that we have had wonderful
2583 innovation at the edge. The Twitters, the Facebooks, the
2584 eBays, the Amazons have all developed under the current
2585 environment, that there is no systemic market failure, that
2586 nothing is broken, and when you look around the globe it is
2587 not private sector mischief with the Internet that is the
2588 problem, it is state control of the Internet, and that is the
2589 concern here.

2590 But also I would like to sort of take issue with the
2591 notion that has been aired several times, that the December
2592 21st order was somehow some active consensus because Comcast
2593 and AT&T and NCTA, Comcast Trade Association signed onto it.
2594 Comcast was very vulnerable, had a large merger before the
2595 Commission at that time. AT&T, it ended up was being on
2596 Qualcomm 700 megahertz spectrum and was going to need FCC
2597 approval of that. And of course, those two entities are
2598 going to want to comply as best as possible. When you read
2599 their statements, they aren't ringing endorsements, and as we
2600 have seen debate over this peering issue as to whether or not
2601 the FCC is going to claim jurisdiction to regulate peering,
2602 NCTA and AT&T have submitted a joint letter to the Commission
2603 expressing grave doubts and feeling there is a bit of a bait
2604 and switch here.

2605 So, you know, there is not great consensus here, and

2606 Wall Street analysts aren't part of that as well. Back in
2607 October, October 1, 2009, we convened a workshop at the FCC
2608 on investment and broadband, and back when Title I was being
2609 discussed and not just Title II, and we had analyst after
2610 analyst and investor after investor of various stripes and
2611 sizes cautioning us against net neutrality regulation. Then
2612 Title II, the specter of Title II was aired last year in the
2613 middle of the year. I think what you saw from Wall Street in
2614 December was more of a sign of relief that it was not an
2615 overt or an explicit Title II reclassification. In reality,
2616 what it is, it is Title II with a Title I disguise, as I have
2617 said in my dissent. So that sign of relief doesn't
2618 necessarily equate to Wall Street's endorsement of what the
2619 FCC did.

2620 Mr. {Walden.} The gentleman's time is expired.

2621 Mr. {Latta.} I thank you, and yield back.

2622 Mr. {Walden.} The Chair now recognizes the gentlewoman
2623 from California, Ms. Harman, for 5 minutes.

2624 Ms. {Harman.} Thank you, Mr. Chairman, and thank you to
2625 the subcommittee for years of friendship and partnership. I
2626 will miss this subcommittee very much and had been looking
2627 forward to my return here. I will also miss this Commission
2628 very much. Rob McDowell, thank you for your comments.
2629 Others of you, thank you for your notes, some of them quite

2630 blunt and humorous, which I shall treasure. But I want you
2631 to know that the set of issues that we are addressing this
2632 morning are a centerpiece for what will or won't keep our
2633 country safe, innovative and free--I do like that word--in
2634 the future.

2635 And so let me just turn to my top priority for this
2636 subcommittee and the Commission, and I have decided that
2637 since you all want to give me a parting gift, you will act on
2638 my top priority, which Michael Copps said he wanted to act on
2639 this year, that is, to build out in some efficient way a
2640 national interoperable communications network for first
2641 responders, and oh, by the way, while you are at it, I hope
2642 you will also consider some brilliant legislation that Mr.
2643 Shimkus and I introduced last year and that I hope he will
2644 take the lead on reintroducing this year called the Next
2645 Generation Public Safety Device Act, the point of which is to
2646 create a real competition for devices to use in this
2647 emergency space that will provide the users with much better
2648 performance at a much more competitive price.

2649 So having said that, I would like to ask the
2650 commissioners each of you whether you are ready to give me
2651 these wonderful and important national gifts as I depart the
2652 Congress.

2653 Mr. {Genachowski.} Well, we are--if I may, we really

2654 are going to miss your leadership on this committee and in
2655 Congress, particularly on these issues. Getting a mobile
2656 broadband public safety network built, it should be one of
2657 the country's top priorities. Now, it will require funding
2658 to build it and so we are ready as a Commission, I think this
2659 is true of all of us, to work on a bipartisan basis with
2660 everyone to support whatever legislation is necessary to move
2661 forward. We have begun to move forward on the
2662 interoperability piece. We want to be ready. But you are
2663 absolutely right that this is a major challenge for the
2664 country.

2665 Ms. {Harman.} Well, let me just add, Mr. Chairman, that
2666 I tend to favor the auction concept because I think it will
2667 generate funding and it will also push innovation. I think
2668 that the private sector has marvelous ideas to offer the
2669 public safety sector.

2670 Mr. {Genachowski.} I would just say, there are several
2671 different ideas that are now in circulation, in debate. They
2672 should be discussed, resolved quickly--

2673 Ms. {Harman.} Hear, hear.

2674 Mr. {Genachowski.} --so we can focus on what gets a
2675 mobile broadband public safety built quickly.

2676 Ms. {Harman.} Mr. Copps?

2677 Mr. {Copps.} Well, first of all, thank you very much

2678 for the opportunity to respond. Your leadership on this--you
2679 and I go back a long way in fighting for this issue, and I
2680 think maybe the time is nigh when we are actually going to
2681 get something done. I just sense that there is a willingness
2682 to move ahead. We have to be practical and pragmatic how we
2683 do that, but I think this is the year in a bipartisan because
2684 it is not a bipartisan issue to get done. As my old boss,
2685 Senator Fritz Hollings, reminded me many, many times, the
2686 safety of the people is always the first obligation of the
2687 public servant, and you have certainly met that obligation
2688 often and well, and I certainly will miss your leadership on
2689 this and a whole range of other issues but certainly look
2690 forward to the great work you will do at the Wilson Center
2691 and to continuing our friendship after you leave these
2692 hallowed halls.

2693 Ms. {Harman.} Thank you so much.

2694 Mr. McDowell?

2695 Mr. {McDowell.} I think an auction is the best way to
2696 raise the maximum amount of revenue for the Treasury to help
2697 fund this. In the meantime, the FCC has granted waivers to
2698 20 jurisdiction so the L.A. area, the D.C. area, for
2699 instance, are covered in that regard but great swaths of the
2700 country are not.

2701 Ms. {Harman.} Well, let me just, If I might, on those

2702 waivers, while I favor that and thank you very much, I worry
2703 that we may be building regional interoperable networks that
2704 will not be interoperable nationally and so it is critical, I
2705 think, to have some common rules of the road and also to
2706 focus on the devices that are used in these regions.

2707 Mr. {Genachowski.} And if I may, we share that concern
2708 and it is why we are working together on interoperability and
2709 why we are moving in that proceeding to make sure that we
2710 don't end up with that problem.

2711 Ms. {Harman.} Thank you.

2712 Mr. Chairman, can the last two witnesses answer my
2713 question?

2714 Mr. {Walden.} Absolutely, yes. Of course.

2715 Ms. {Clyburn.} Again, thank you for your service and I
2716 look forward to more and better to come in your new capacity.

2717 I too, you know, being from a State that is very
2718 vulnerable from a weather perspective, I too think that this
2719 is way overdue, long time coming. While I know you have some
2720 concerns about those waivers, those waivers give us a better
2721 pathway forward. They let us know in very small, relatively
2722 small footprint some of the challenges that will lie ahead.
2723 So that type of flexibility does have its advantages and I am
2724 looking forward to a better and more robust interoperable
2725 system.

2726 Ms. {Baker.} I agree with all my colleagues about the
2727 comments on your leadership and your advocacy, and I very
2728 much hope that your legacy is that we will get this done in
2729 the window of opportunity that we have right now while 4G
2730 networks are being built out, so thank you.

2731 Ms. {Harman.} Thank you very much. I yield back, Mr.
2732 Chairman, but I will look forward to this giant gift of a
2733 national interoperable network and a competitive system to
2734 develop devices all wrapped up with a bow by December 2011.
2735 Would that be all right with you?

2736 Mr. {Walden.} As long as you stay here on the
2737 committee. I appreciate your service on the committee, Ms.
2738 Harman, and your service on the Intelligence Committee too.
2739 You have been a real leader and we will miss you.

2740 Ms. {Eshoo.} If I might, I hope it will be by the
2741 anniversary and not December but by September 2011.

2742 Mr. {Walden.} We will have some further discussion
2743 about D block and broadband plans and money and the access
2744 and where we go from there before this committee at some
2745 point in the not too distant future but we are going to try
2746 and stay on net neutrality today for the most part.

2747 Mr. Kinzinger, we recognize you now for 5 minutes.

2748 Mr. {Kinzinger.} Thank you, Mr. Chairman, and thanks
2749 for coming out to see us and all the patience you are having

2750 to put in. I know it is not always overly enjoyable to sit
2751 there for 2-1/2 hours or more and answer questions. Some of
2752 them are the same.

2753 Let me just ask a few, kind of express a few concerns I
2754 have, ask a couple of questions and then we will move because
2755 I don't want to rehash a lot of the old stuff. But let me
2756 just say, in 2003 I think it was 15 percent of Americans had
2757 access to broadband technology. As of 2010, it is 95
2758 percent. So as I look over the stretch of just 7 years, I
2759 see an extreme flourishing of what we see in technology today
2760 in just one decade. I mean, when you even look through
2761 history, you are going to see that this--I mean, this is a
2762 relatively short period of time. I am glad--you know, I
2763 often wonder if I could go back 15 years or 10 years or
2764 whatever to the FCC commissioners and ask them what do you
2765 foresee as challenges and how can you respond to that right
2766 now because of these potential challenges that are coming. I
2767 actually fear what they might come up with as solutions for
2768 what they could potentially see as a challenge that doesn't
2769 fully exist yet.

2770 That is what I see when I look at the net neutrality
2771 issue is, okay, well, we see potentially what could happen so
2772 let us preemptively pass this law without really not passing
2773 a law because Congress isn't even approving of this, and it

2774 is that. I mean, look, I am a pilot. That was my job before
2775 this. I still love flying airplanes. I love the idea that
2776 some day we may have flying cars. I think that would be
2777 great. We could get around all this traffic. But I don't
2778 think it is appropriate for the transportation department to
2779 now take a look at when we have flying cars and go ahead and
2780 implement rules for when that is going to happen. That is a
2781 concern I have.

2782 And, you know, beyond the issue, beyond the merits of
2783 the issue and all that, where we have a lot of heartburn and
2784 where again a supermajority of Congressmen in the last
2785 Congress, the 111th, not even this one, which significantly
2786 looks different now, but when a supermajority basically stand
2787 up and say we don't want this or we have concerns about this,
2788 where I think the heartburn is not so much in the rule, we
2789 can talk about the rule, you know, I disagree and all that,
2790 but is the fact that three of the five commissioners felt
2791 that you had the authority to go around Congress implementing
2792 this rule, knowing very well if you think it exists on its
2793 merits, there can be an effort to talk to all of us about the
2794 importance of net neutrality and we will be sold on these
2795 great merits and we may pass it out of the House of
2796 Representatives and you can do whatever you want, but that
2797 didn't happen. In fact, I have heard from a few concerned

2798 that well, we think it is going to hold up in court. Okay.
2799 You ought to be real sure. ``We are pretty sure we have the
2800 authority to do this.'' You ought to be real sure you have
2801 the authority, and if you don't have the authority to do it
2802 or you are even questioning whether you have the authority,
2803 why not come to the people's house and ask for it? If it can
2804 stand on its merits, we will give it to you. So that is my
2805 thoughts.

2806 Let me ask, and this will be basically my final question
2807 so I may give you all mercy and not to have to stay here the
2808 whole 5 minutes of my questioning. But as I look through
2809 these concerns, and right now on the Floor of the House of
2810 Representatives and for a few weeks going forward we are
2811 going to talk about--actually a few years going forward we
2812 are going to talk about budget issues. We are going to talk
2813 about how much money this government spent that it doesn't
2814 have. You are seeing amendments talking about where we can't
2815 spend money and all this. That is a very big concern.

2816 My question is, how much money--and, Chairman, I will
2817 ask you this. You may not have the number. I would love to
2818 get it if you do eventually. How much money has this already
2819 broke government spent in the Comcast v. FCC case and how
2820 much do you see that you will potentially spend in defending
2821 the Verizon appeal? I will just ask that, if you have a

2822 number of how much money that the government spent that we
2823 don't have in defending something that frankly has been
2824 implemented without the authority of Congress.

2825 Mr. {Genachowski.} I don't have a number but we will
2826 work on answering your question, and to your larger point,
2827 which I completely respect, we continue to be available as a
2828 resource to work with Congress on legislation that would
2829 provide certainty and address issues around broadband, and so
2830 that is our job and we look forward to being a resource to
2831 Congress.

2832 Mr. {Kinzinger.} And I hope as new issues come up and
2833 new concerns you have, if you are questioning whether or not
2834 you really do have the explicit authority that you would take
2835 that route, and I think all of us on this subcommittee would
2836 be happy to work with you in discussing the pros and cons.

2837 So at that, I will yield back and I thank you for your
2838 time.

2839 Mr. {Walden.} The gentleman yields back his time. We
2840 go now to Mr. Towns for 5 minutes.

2841 Mr. {Towns.} Thank you very much, Mr. Chairman and the
2842 ranking member, for holding this hearing.

2843 Also, let me say to my colleague, Ms. Harman, we are
2844 definitely going to miss her, and I have taken this sort of
2845 somewhat personal because I returned to the committee and you

2846 leave the committee, but we will miss you, and it has been
2847 great working with you over the years.

2848 Let me say first of all, Commissioner Genachowski, I
2849 heard your opening statement and you mentioned jobs, and I
2850 think that one thing today more than anything else is that we
2851 need to focus on jobs. I mean, people are unemployed. Many
2852 of them attended the most prestigious universities in this
2853 country but now have no jobs. So let me ask you, how can we
2854 bridge the digital divide and encourage greater access to
2855 technology and economically disadvantaged areas where it is
2856 lacking? With the speed in which technology is developing,
2857 what action has the agency taken or planned to take in the
2858 future to make sure those left behind by our economy are part
2859 of this innovation generation?

2860 Mr. {Genachowski.} This is a very significant issue.
2861 There are 24 million Americans who don't have any broadband
2862 infrastructure at all and then there are hundred million
2863 Americans, about 33 percent of the population, who haven't
2864 adopted broadband and the number of Americans who don't have
2865 basic digital tools and skills and literacy to participate in
2866 a digital economy is way too high. There is no silver bullet
2867 to solve this. We are working on a series of initiatives,
2868 some together with other agencies, some looking at our
2869 programs that have addressed similar issues in the telephone

2870 era. It is an area where I think there is great opportunity
2871 for public-private partnerships because every new subscriber
2872 benefits these broadband goals and also benefits the
2873 infrastructure companies that are signing people up, so I
2874 acknowledge the importance of this issue and look forward to
2875 working with you on it.

2876 Mr. {Towns.} Thank you very much, because when we leave
2877 people behind, it does not make us more competitive.

2878 Commissioner Copps?

2879 Mr. {Copps.} Thank you very much for your question.
2880 You know, there was a time, historically speaking, when one-
2881 third of the Nation was ill-housed and ill-clad and ill-
2882 nourished when Franklin D. Roosevelt was President of the
2883 United States and we all were very concerned about that. Now
2884 we have a situation where one-third of the country are not
2885 having access or to being able to take advantage of access to
2886 this liberating technology. That should certainly put this
2887 whole problem at the top of our list or close to the top of
2888 our list of national priorities and making sure it goes to
2889 every American no matter who they are, where they live, the
2890 particular circumstances of their individual lives, white or
2891 black, rich or poor, city or country. That has got to be the
2892 policy. That the universal service policy we need to design.

2893 Mr. {Towns.} Thank you very much.

2894 Mr. McDowell, Commissioner McDowell?

2895 Mr. {McDowell.} Yes, sir. Actually in our work since
2896 the chairmanship of Michael Powell on the unlicensed use of
2897 the television white space is one area where this can be
2898 particularly helpful, and Chairman Genachowski deserves great
2899 credit for continuing to move that ball down the field. But
2900 unlicensed use of this fabulous spectrum will really speed
2901 deployment and make things more affordable. Also, it will
2902 help, a release valve should there ever be sort of
2903 anticompetitive behavior in the last mile, and this is an
2904 antidote to the concerns that net neutrality proponents have.

2905 But as with WiFi, nobody had heard of WiFi on Friday but
2906 Monday it was everywhere practically. So I think with white
2907 spaces, that is going to help tremendously for affordability,
2908 access and adoption.

2909 Mr. {Towns.} Is there anything here we need to do on
2910 this side of the aisle, as Members of Congress to help move
2911 this forward?

2912 Mr. {McDowell.} White spaces in particular?

2913 Mr. {Towns.} Yes.

2914 Mr. {McDowell.} Well, I think we are good on that as
2915 long as we can move forward. I think the spectrum
2916 reallocation legislation is causing some concern. I was just
2917 telling Congresswoman Eshoo, I was just in Silicon Valley in

2918 her district a few weeks ago and until we know whether or not
2919 the incentive auction legislation is going to pass and become
2920 law, chip makers and software designers are withholding their
2921 work until they can know how to innovate and how the spectrum
2922 is actually going to be used. So the sooner Congress can
2923 have resolution one way or the other on the incentive auction
2924 idea, I think that would be fabulously helpful.

2925 Mr. {Towns.} Commissioner Clyburn?

2926 Ms. {Clyburn.} Thank you, Congressman. I think about
2927 this. I wrote down three things that came to mind:
2928 affordability, availability and education. You touched on
2929 those. One thing that was great about the National Broadband
2930 Plan is that it has forced us to concentrate on those
2931 challenges, the challenge of that 5 percent was mentioned
2932 that is not served right now, the challenge of literacy
2933 issues which translate into digital literacy issues that you
2934 asked how possibly Congress could help. When things get
2935 better--I know things are a little tight budgetarily now--we
2936 put forward--well, the National Broadband Plan talked about a
2937 digital literacy core. That is something that these digital
2938 navigators could come in these communities to help educate
2939 and augment the experiences of people. Availability and
2940 affordability--I know time is short. Those go hand and hand,
2941 and there are a number of things happening. We talked about

2942 a major transaction that just took place. There are a couple
2943 of things that are being offered that I hope are replicated:
2944 affordable, under \$10 a month, high-speed Internet access.
2945 That is coming, that is possible, can be replicated. Support
2946 for equipment, which is another barrier to entry, that is an
2947 important barrier to entry, affordability from that
2948 perspective. That is coming. That can be replicated. And
2949 availability in terms of the infrastructure, the things that
2950 we could put forward to encourage infrastructure development,
2951 that is here now and we look forward to working more with you
2952 to encourage that to continue.

2953 Mr. {Towns.} I know my time is expired, but being I am
2954 new to the committee, can Ms. Baker answer as well?

2955 Mr. {Walden.} We will go ahead and do that.

2956 Ms. {Baker.} I agree with everything that my fellow
2957 commissioners have said. We have done relatively well in
2958 deployment. We want faster, broader, bigger, better networks
2959 to be built but some of the focus we really need to do is on
2960 adoption. The only thing I would add is that we figured how
2961 to reach consumers for the first time during the digital
2962 television transition, and I think if we could revisit some
2963 of those public-private partnerships to focus since it is not
2964 a one-size-fits-all problem that we can really use those
2965 partnerships to focus on bringing more people to the Internet

2966 as it becomes very much critical infrastructure.

2967 Mr. {Towns.} Thank you, Mr. Chairman, for your
2968 generosity.

2969 Mr. {Walden.} You are welcome, Mr. Towns.

2970 Now we go to Mr. Rogers from Michigan for 5 minutes.

2971 Mr. {Rogers.} Thank you, Mr. Chairman. Good morning,
2972 and thank you for your time today.

2973 Mr. Chairman, we all know that the Internet regulation
2974 in your order regulates Internet service providers, but how
2975 does this impact content providers from discriminatory
2976 actions?

2977 Mr. {Genachowski.} Are you asking about intellectual
2978 property issues?

2979 Mr. {Rogers.} Well, companies like Google and Skype and
2980 other companies are not impacted by your order. I am just
2981 curious if you believe that the ISPs are conducting some
2982 discriminatory action, which you claim they are not. Is that
2983 correct?

2984 Mr. {Genachowski.} There have been instances of
2985 discriminatory conduct.

2986 Mr. {Rogers.} Okay. So how do you prevent in this
2987 order discriminatory conduct for content providers?

2988 Mr. {Genachowski.} Historically, this issue, the open
2989 Internet protections that have been in place since 2005 have

2990 been focused on the Internet service providers, and that is
2991 good reason. That is fundamentally where the Communications
2992 Act points us to companies that--

2993 Mr. {Rogers.} I understand, but this particular order
2994 does not impact content providers.

2995 Mr. {Genachowski.} Correct.

2996 Mr. {Rogers.} Yes? That is correct?

2997 Mr. {Genachowski.} Yes.

2998 Mr. {Rogers.} In your December 21st press release, you
2999 describe, and I quote, ``The Internet has thrived because of
3000 its freedom and openness, the absence of any gatekeeper
3001 blocking lawful uses of the network or picking winners and
3002 losers online.'' But I am curious. When I read the order,
3003 aren't you merely making the government the gatekeeper in
3004 this particular case?

3005 Mr. {Genachowski.} Not at all. With respect, I don't
3006 think that is what we are doing. We are simply saying that
3007 certain conduct by the companies that do control access to
3008 the Internet aren't consistent with Internet freedom and
3009 shouldn't be permitted, and companies have--

3010 Mr. {Rogers.} Which means you are the gatekeeper
3011 because you are the sole determinant of that.

3012 Mr. McDowell, you wrote a dissenting opinion that
3013 basically, I don't think you used the word ``gatekeeper'' but

3014 can you help me understand? I clearly believe the government
3015 is going to make those decisions about who is and who is not
3016 on access.

3017 Mr. {McDowell.} It all boils down to the word
3018 ``reasonable'' and how three FCC commissioners will define
3019 that term on a case-by-case basis. So when we talk about
3020 price tiering, for instance, there are some advocacy groups
3021 who have pushed for net neutrality rules who are worried
3022 about price tiering as somehow being discriminatory, and it
3023 is discriminatory but not in a bad sense. What this actually
3024 does, it allows low-income users, for instance, to have a
3025 price they can afford for, let us say, wireless services
3026 provided by Metro PCS. But is that reasonable? That is
3027 going to be determined by three FCC commissioners.

3028 Mr. {Rogers.} It certainly opens the standard. They
3029 were talking about applications and the next generation of
3030 Facebook, but just because nobody wants to buy my particular
3031 product or app, I find it unreasonable that I don't have some
3032 unusual access to the Internet. Could I bring a case like
3033 that to the Commission?

3034 Mr. {McDowell.} I think under the logic put forward in
3035 the order, the Commission has boundless authority and you
3036 could bring such cases. The Commission basically says it has
3037 authority for direct economic and indirect economic

3038 regulation but is choosing not to go to certain places, but
3039 it could, it said in the order.

3040 Mr. {Rogers.} I have met no inventor of any application
3041 that didn't think that this was the one that should make it.
3042 That is why we have thousands and thousands of applications,
3043 and I am stunned by these very polite terms of ``light
3044 touch,'' of regulation, but what we are doing is creating the
3045 government as the gatekeeper for the Internet for the first
3046 time in its history after it has exploded with innovation,
3047 and you use Facebook as your term for the future but Facebook
3048 was there before you got there and so was Netscape and so was
3049 Google and so was YouTube and it explodes and it is
3050 fantastic, and for the government to step in and get the keys
3051 to the gate scares me to death.

3052 I will ask you this, Mr. McDowell. Was this a
3053 controversial order, I mean, given the sense that 300 Members
3054 of Congress, yes or no?

3055 Mr. {McDowell.} Yes.

3056 Mr. {Rogers.} Have you ever seen in your time--well,
3057 actually I am going to ask Mr. Copps. You have been there 10
3058 years. Have you ever done such a controversial order the
3059 week before Christmas at the change of a Congress where there
3060 was going to be a power switch in the body? I mean, a lot
3061 going on, a lot of chaos. This is major. It is

3062 controversial. Have you ever seen that in your 10 years on
3063 the Commission?

3064 Mr. {Copps.} Yes, I have.

3065 Mr. {Rogers.} Oh, really?

3066 Mr. {Copps.} I have seen it a couple of times with
3067 regard to media ownership, the newspaper broadcast cross-
3068 ownership, a number of other things where--

3069 Mr. {Rogers.} Where we were in such a hurry that you
3070 didn't feel you needed a full market survey?

3071 Mr. {Copps.} Yes, sir.

3072 Mr. {Rogers.} Wow. Interesting.

3073 Ms. Baker, you described that the market surveys before,
3074 the European Union, not known for its bashfulness about
3075 regulating anything if it moves, what was their determination
3076 on regulation of the Internet in relation to this?

3077 Ms. {Baker.} The European Union took a look at this and
3078 actually said what we need to do is have a transparency, a
3079 very consumer-friendly transparency approach so that if there
3080 is a problem there, we would be able to address it. So in
3081 some regards, we took a much more regulatory approach than
3082 the European Union.

3083 Mr. {Rogers.} So the French even argued that we have
3084 gone too far. Interesting.

3085 Mr. {Walden.} The gentleman's--

3086 Mr. {Rogers.} I see my time is expired. I look forward
3087 to another round of questions, Mr. Chairman.

3088 Mr. {Walden.} I now turn to the gentleman from
3089 Washington, Mr. Inslee, for 5 minutes.

3090 Mr. {Inslee.} Thank you, and thank you, Mr. Chair and
3091 Ranking Member Eshoo, to allow me to participate in this. I
3092 think this is very important and I appreciate the
3093 Commission's work on this effort because I really do believe
3094 the Internet does run a risk of becoming the Outernet if we
3095 don't protect Americans' access to it, and I say ``Outernet''
3096 because you will be out of luck if your service provider
3097 decides that they want you to go to their content provider
3098 that they have struck a deal with or they have struck a
3099 merger with rather than what you want to go to on the
3100 Internet. And anyone who doesn't understand that threat
3101 doesn't understand the enormous commercial interests in
3102 cornering lanes of this freeway.

3103 Now, everyone has a metaphor. I will just tell you how
3104 I look at it, and that this is a freeway, and the risk we
3105 face is that individual entrepreneurs out of commercial
3106 instinct will and do the control the on lanes to the freeway.
3107 Now, I don't know how my Republican colleagues think about it
3108 but I will tell you, if some commercial entity today put down
3109 gates on I-5 on the Mercer Street entrance to Interstate 5 in

3110 Seattle, Washington, and said you couldn't go past that gate
3111 unless you agreed to go to my favorite shopping center, I
3112 will just pick Walmart for a minute, not that there is
3113 anything bad about Walmart, instead of Costco, which my
3114 competitor has a deal with, and that is the risk we face. We
3115 face people putting gates on this freeway if you don't go to
3116 my favorite shopping center that I have struck a deal with as
3117 a service provider.

3118 And I want to thank you for your work on this, but I do
3119 want to ask you about some concerns because I think there are
3120 some things we need to continue to explore, and one of them I
3121 have a principal interest in is how we prevent this from
3122 happening in the wireless space because we know so much is
3123 going to the wireless space, and I guess I do have a concern
3124 that we have acted in the wired space which you can think of
3125 a little bit as yesterday but not in the wireless space,
3126 which I think of as tomorrow, which is going to be the future
3127 of this thing. I hate to think we did the right thing in the
3128 wired space but not in the wireless. I just wondered, Mr.
3129 Copps and Mr. Chairman, and if you could both address that
3130 concern, what the options may be for us, I would appreciate
3131 it.

3132 Mr. {Copps.} Well, for my part, I would agree and
3133 express some concern about that because in many ways I think

3134 wireless is now too where lots of people are cutting their
3135 lines and taking the wireless and accessing broadband that
3136 way too. I understand that there are differences, and when
3137 you implement a network neutrality rule, you have to be
3138 cognizant and sensitive to those differences in how you
3139 proceed but I think the principle should apply and the rule
3140 generally should have applied.

3141 If I can just say one more thing real quickly, I really
3142 appreciated your illustration of the I-5 example that you
3143 used because I was sitting here thinking during much of the
3144 discussion, the last great infrastructure build-out that this
3145 country was the interstate highway system, and we made darn
3146 sure there were on ramps and they were open, and all this
3147 talk about oh, it is prospective and all, we put safety
3148 precautions on there prospectively. We put speed limits on
3149 there prospectively. There is nothing wrong with doing
3150 things prospectively, particularly when you are talking about
3151 safeguarding such a transformative infrastructure as we are
3152 talking about here.

3153 Mr. {Genachowski.} Well, I would just add that I agree
3154 that the importance of mobile access to the Internet is
3155 growing every day. In the order we adopted, we did take
3156 steps to promote Internet freedom, the transparency
3157 provisions, no blocking. We also wanted to be cognizant

3158 about some of the differences between wireless and fixed and
3159 it is something that we will continue to pay attention to and
3160 do what we can to make sure that Internet freedom is
3161 protected on mobile Internet access as well as fixed.

3162 Mr. {Inslee.} Well, there may be some challenges in
3163 wireless but I hope you all will consider them because we
3164 hate to create a safety system for the horse-and-buggy day
3165 but not for the car day, and I think that is kind of the
3166 transition we are in.

3167 Any of the other commissioners, if you would like to
3168 comment, feel free.

3169 Ms. {Clyburn.} Yes, Congressman. I too do not want the
3170 development of two separate worlds, one wired and one
3171 wireless. Increasingly, individuals cutting the cord, as my
3172 colleague said, is approaching 30 percent, especially in
3173 communities that might have economic challenges that have to
3174 choose which direction to go, and interestingly enough,
3175 certain communities only access the Internet because this is
3176 the only affordable means with these mobile devices. So it
3177 is important that their experience is as robust as those in
3178 the wired world, and I share your concerns and again, there
3179 is no presumption that these open Internet rules do not
3180 apply. They do apply in this space.

3181 Mr. {Walden.} The gentleman's time is--go ahead and

3182 finish.

3183 Ms. {Baker.} I was going to say that this isn't really
3184 a question of politics or philosophy, it is actually a
3185 question of physics, and then there are actual technical
3186 parameters that justify this decision. None of us want--you
3187 know, consumers are the ones that don't benefit if their
3188 phones don't work. I got into a cab the other day. He was
3189 streaming CNN on his iPhone, which I thought was really
3190 great, and then I thought actually you are the reason why I
3191 can't make a phone call. So I think there are technical
3192 parameters that we need to work with that actually exist in
3193 the wireless world that justify this distinction.

3194 Mr. {Inslee.} Thank you.

3195 Mr. {Walden.} The gentleman's time is expired. We will
3196 now go to the gentleman from New Hampshire, Mr. Bass, for 5
3197 minutes.

3198 Mr. {Bass.} Thank you very much, Mr. Chairman. I had
3199 the honor of serving in this body for 12 years, and on this
3200 committee for six, and now as a returning Member of Congress,
3201 I am learning a lot as a new freshman. One thing I learned
3202 today is don't be late to the beginning of a subcommittee
3203 hearing. We are hitting exactly 3 hours now, and to the
3204 credit of the chair of the committee and the subcommittee
3205 chair, that is without opening statements.

3206 It is a very interesting debate that we are having here
3207 today. My ancestors lived in southern New Hampshire for
3208 many, many generations. We have correspondence between my
3209 great-grandmother and the Keene Coal Company trying to figure
3210 out a way to run an electric line and a phone line actually
3211 later from Keene over to Peterborough. There was nothing
3212 there. And so when we developed the utilities that we have
3213 today, they were done because there was no other way for that
3214 build-out to occur. We did not get rotary dial in my
3215 hometown until 1964, and you had to sneak another phone into
3216 your house hoping that somehow Ma Bell wouldn't be able to
3217 tell that you were doing this. This was a world of enormous
3218 regulation and there was good justification for that.

3219 And I understand that the nature of this debate
3220 basically surrounds the issue of free markets and differing
3221 definitions of what freedom is and what context it belongs,
3222 and I am solidly on the side of those who believe that is a
3223 dangerous precedent to begin a whole new round of regulation
3224 for very different reasons, in my opinion, from those which
3225 we had in early days when the utility business was just
3226 getting established: rail, electricity and
3227 telecommunications.

3228 Now, having said that, Mr. Chairman, if I could ask for
3229 unanimous consent to add to the record a paper I have here by

3230 former Solicitor General Seth Waxman stating that Internet
3231 access service was never regulated as a telecommunications
3232 service.

3233 Mr. {Walden.} Without objection.

3234 Mr. {Bass.} Thank you.

3235 [The information follows:]

3236 ***** COMMITTEE INSERT *****

|
3237 Mr. {Bass.} Commissioner McDowell, by the way, thank
3238 you for coming to visit me, and also Commissioner Clyburn,
3239 and I believe one of the other ones if you came as well but I
3240 was not here and I am most apologetic for that, and I welcome
3241 you all to come.

3242 Commissioner McDowell, some individuals continue to
3243 claim that the retail provision of Internet access service
3244 was once regulated as a telecommunications service. My
3245 understanding is that the FCC has never regulated such
3246 service. Wasn't this the genius that led to the explosive
3247 growth in the Internet as Chairman Kennard pointed out when
3248 he led the Commission?

3249 Mr. {McDowell.} Absolutely. In fact, if you look at
3250 the back of my dissent, you will see a letter that I filed
3251 with this committee last spring outlining sort of the history
3252 of the regulation of Internet access services and broadband
3253 in particular, and it has never been regulated as a phone
3254 company under Title II.

3255 Mr. {Bass.} Commissioner McDowell, the order that we
3256 have been debating this morning claims that network
3257 neutrality is needed to protect small upstart Internet
3258 companies, but aren't smart upstarts precisely the companies
3259 that might want to enter into specialized business

3260 arrangements with broadband providers so that they can
3261 compete against the great content providers--we know who they
3262 are--and ironically, is it possible that this order might
3263 protect the web incumbents in the end?

3264 Mr. {McDowell.} It could. I think this order creates a
3265 lot of confusion in the marketplace and we are seeing the
3266 market respond in a lot of confusing ways.

3267 Mr. {Bass.} And lastly, Commissioner McDowell, the
3268 Commission's jurisdiction seems to be evolving. While the
3269 Commission has deregulated in certain areas--unbundling, cam
3270 armus reporting, cable price regulation--the agency has at
3271 least proposed regulations in new areas which we debated this
3272 morning--network neutrality, all vid, data roaming. What do
3273 you view as the Commission's core responsibilities? And I
3274 know this is a leading question. Has in your view the
3275 Commission strayed from those core responsibilities?

3276 Mr. {McDowell.} Well, our core responsibility by
3277 statute is given to us by Congress, and that is to protect
3278 the public interest, and I think the public interest is best
3279 served through competition, so as Commissioner Baker pointed
3280 out earlier, the best antidote to regulation is to have more
3281 competition for broadband services, and in my 4-1/2 years on
3282 the Commission, that is what I have worked toward, whether it
3283 is making easier to get competitive fiber on the ground,

3284 freeing up more of the airwaves for either licensed or
3285 unlicensed use, etc., let us have more competition and that
3286 obviates the need for regulation.

3287 Mr. {Bass.} Thank you. I yield back, Mr. Chairman.

3288 Mr. {Walden.} The gentleman's time is expired. We will
3289 go into round two now, and I will lead with that.

3290 Chairman Genachowski, did you or any of your staff or
3291 any senior FCC officials explicitly or implicitly indicate to
3292 any members of industry that if they opposed your order, the
3293 FCC might move back to Title II approach or decide other
3294 proceedings of interest to them differently?

3295 Mr. {Genachowski.} No.

3296 Mr. {Walden.} Okay. Chairman, have you adopted
3297 industry-wide-- you have adopted industry-wide net neutrality
3298 rules. Why was it appropriate to add network neutrality
3299 conditions to the Comcast/NBC Universal order, and if you are
3300 so confident of your authority, which we question obviously,
3301 why was it necessary to make those conditions continue to
3302 apply even if the network neutrality decision is overturned
3303 in court?

3304 Mr. {Genachowski.} All the conditions in the Comcast
3305 case, particularly that one, were transaction-specific. That
3306 particular transaction involved the country's largest
3307 Internet service provider combining with a very large content

3308 company. We certainly had a lot of information in the record
3309 of that transaction about the incentives to favor their own
3310 online content and disfavor others, and so having a condition
3311 relating to open Internet was a transaction-specific
3312 condition that I personally felt was very important.

3313 Mr. {Walden.} So I go back to something that the
3314 chairman emeritus, Mr. Dingell, referenced, his words,
3315 speaking of bank holdup methods. Look, I was a licensee for
3316 22 years. The last thing you ever want to do is poke any of
3317 you in the eye because you might have another proceeding
3318 coming, and I have spoken to most of you directly about my
3319 concern about agencies that use that opportunity to effect
3320 policy over which they don't have, we believe, authority, and
3321 I find it interesting too that on the D block discussion, you
3322 have chosen to back off on doing what the law explicitly
3323 calls on you to do, which is auction the D block, because
3324 Senator Rockefeller and others have expressed concern. In
3325 this area, roughly 300 Members of the House said we don't
3326 think you have the authority but you chose move forward on
3327 that rather expeditiously at the closure of the year, so that
3328 is a subject that will continue to be of concern and focus
3329 on.

3330 I want to go back to the section 706 issue upon which is
3331 my understanding you based the decision to move forward with

3332 the net neutrality rules, and in 706(b) in the inquiry
3333 portion of that, the question arises, if the Commission shall
3334 determine whether advanced telecommunication capability is
3335 being deployed to all Americans in a reasonable and timely
3336 fashion, and I suppose the debate here is, what is reasonable
3337 and what is timely. In the FCC broadband plan that you put
3338 forward, you indicate that 95 percent of Americans have
3339 access to the Internet. The President now calls for 98
3340 percent. And two-thirds of Americans choose to subscribe,
3341 and we have gone from 8 million subscribers to 200 million
3342 subscribers in 10 years. I can't think of a service in
3343 America that has ever exploded with growth quite like that,
3344 and that would seem to be both timely and reasonable to me.
3345 Why isn't it timely and reasonable to you all?

3346 Mr. {Genachowski.} Well, I think this is an important
3347 question. I am glad you asked it. There are 24 million
3348 Americans who don't have any access to Internet because there
3349 is no infrastructure in their areas, and as you mentioned,
3350 there are about 100 million Americans who don't subscribe for
3351 various reasons. Our rankings internationally are not where
3352 they should be. There is debate about what exactly the
3353 number--

3354 Mr. {Walden.} Right, but we are building out wireless
3355 and we are ahead of some countries on that.

3356 Mr. {Genachowski.} But I would say I respectfully
3357 disagree on this. I don't think the country is where it
3358 should be when it comes to broadband, and we have a lot of
3359 work to do to make sure our broadband infrastructure and
3360 adoption is globally competitive.

3361 Mr. {Walden.} But the issue that arises as a result of
3362 making that finding that we are not moving reasonably and in
3363 a timely manner, that is the predicate then that allowed you
3364 to trigger 706 and use that as the crutch to get the
3365 authority to move forward with the regulation of net
3366 neutrality in part.

3367 Mr. {Genachowski.} Yes. There are other provisions
3368 that we relied on that I would be happy to address.

3369 Mr. {Walden.} But the it leads to the discussion
3370 because in 706(a) it does talk about allowing State
3371 commissions to actually set price caps and all that. Now, I
3372 have heard today, I believe--correct me if I am wrong--that
3373 your order does not get into setting rates or controlling
3374 rates on the Internet.

3375 Mr. {Genachowski.} Right.

3376 Mr. {Walden.} And yet on page 39, number 67, and on
3377 page 43, number 76, you do contemplate rate control by saying
3378 that you can't pay for priority. Isn't that a form of rate
3379 control?

3380 Mr. {Genachowski.} I don't see it that way and I don't
3381 think that is how people in the industry see it, but it is
3382 the case that that kind of prioritization is something that
3383 the order said was disfavored.

3384 Mr. {Walden.} So if you say it is disfavored, that says
3385 you believe you have the authority to control rates on the
3386 Internet, correct?

3387 Mr. {Genachowski.} I really don't see it that way.

3388 Mr. {Walden.} Then how could you find that it is--

3389 Mr. {Genachowski.} I think it is fair to say that any
3390 order in this area that finds certain conduct inconsistent
3391 with Internet freedom principles would have the effect of
3392 saying particular transactions aren't permitted, and one
3393 could look at that and say well, you are saying that
3394 transaction--

3395 Mr. {Walden.} But you are saying a rate of zero. A
3396 rate of zero is the rate.

3397 Mr. {Genachowski.} Yes. That has been the history of
3398 Internet.

3399 Mr. {Walden.} And another commission could come back
3400 and say well, we think because all this has been found in
3401 part linked to 706(b) that indeed you have 706(a) authority
3402 to set caps, couldn't they? I mean, you don't have that
3403 plan, you tell us, but--

3404 Mr. {Genachowski.} If I could make a couple points, one
3405 is, the basis for this decision was both in 706, other
3406 sections of the statute working together and so we didn't
3407 address the question of whether 706 alone would be sufficient
3408 authority, and we didn't address some of the questions that
3409 you are raising because we didn't have to in the context of
3410 this proceeding.

3411 Mr. {Walden.} And the ranking member explained to me I
3412 am over my time, so I will stop with that even though I have
3413 let other members go over their time to get your responses.
3414 I will now turn to the ranking member, my friend from
3415 California.

3416 Ms. {Eshoo.} You are a gentleman, and I think that I am
3417 going to have to really stay within my time for having
3418 whispered that to you.

3419 First of all, the term ``cops on the beat'' has been
3420 used several times, and I think the best cop on the best is
3421 Commissioner Capps. He has been there for the American
3422 people and the consumer and in the deepest, broadest way
3423 understanding the democratization of the Internet and
3424 protecting the American people from forces that would chip
3425 away at it, so I salute you, sir.

3426 I want to make a couple of observations because now we
3427 have just about concluded the hearing. There are some

3428 curious things that have been advanced during this hearing.
3429 My Republican friends are questioning having any kind of
3430 framework. I think it is a light framework. That has been
3431 questioned, but that is my view. I think it is a light
3432 touch. And they don't want any of that, in fact, I think are
3433 going to be introducing the Congressional Review Act so that
3434 there is nothing so that it is just a flat earth without any
3435 on it whatsoever. But they are in denial about the past.
3436 There is a record from the past. There is a record from the
3437 past, and there is a timeline. It goes from 2005 to this
3438 year, to 2011, starting with the Madison River Communications
3439 blocking VoIP on its DSL network, settled by FCC consent
3440 decree that included a \$15,000 payment, to 2006 where
3441 Cingular blocked PayPal, 2007-2008, Comcast actually denied
3442 imbedded midst after FCC complaint filed that it blocked
3443 peer-to-peer traffic, 2008, issues in a study finding
3444 significant blocking of BitTorrent in the United States
3445 including across Comcast and Cox.

3446 So you can go through the record. These things actually
3447 occurred. This is not in the ether. This is not something
3448 that has been fabricated. There is a record of violations,
3449 and you know who those violations against? All of us. All
3450 of us and our constituents. So our first obligation is to
3451 the public, and if there is some misplay including any

3452 company that is in my district, you know what? There has to
3453 be a cop on the beat, not someone that takes out their stick
3454 and clubs someone but there has to be rules to the road.
3455 Now, if you ignore the past, then you don't have a roadmap
3456 for the future, and I think that it is very important to have
3457 these rules.

3458 Now, another curiosity of mine is about our--and you
3459 know how respect and regard I have for you, Commissioners
3460 McDowell and Baker, had the opportunity to remove the open
3461 Internet conditions on the Comcast merger before they voted
3462 but they chose not to dissent or object as far as I know.

3463 Mr. {McDowell.} Can I clarify that?

3464 Ms. {Eshoo.} Just a minute. Let me finish. I am going
3465 to use my time. So you essentially voted against them before
3466 voting for them, which is a real curiosity to me.

3467 Now, there is a lot of talk about markets and companies
3468 and whatever here today. A good number of them are my
3469 constituents. I want to ask for a unanimous consent request
3470 that all of these letters representing the companies, the
3471 interests, the very interest that are a part of this decision
3472 that have weighed in and support these rules, and they are
3473 also opposed to the CRA, and in this packet, which I love,
3474 the first one is from the United States Conference of
3475 Catholic Bishops. They even quote the pope. So I might for

3476 the record say I think we are on the side of the angels here.
3477 So Mr. Chairman, with all seriousness, I would really like to
3478 ask for a unanimous consent request that all of these letters
3479 be placed in the record. They are Internet companies, they
3480 are small, they are large, they are in between, and they have
3481 weighed in. No one has forced them to come forward and
3482 express any given view. They have offered this, and I think
3483 it is an eloquent statement about how they view it and that
3484 this is something that they agree with, so if you would grant
3485 that request?

3486 Mr. {Walden.} Without objection.

3487 [The information follows:]

3488 ***** COMMITTEE INSERT *****

|
3489 Ms. {Eshoo.} And then I have--I think I have run out of
3490 time, so I can't ask any questions, but--

3491 Mr. {Walden.} But if you want to allow Mr. McDowell to
3492 respond--

3493 Ms. {Eshoo.} --comments remain for the record, and I am
3494 so glad that we are on the side of the angels, and I thank
3495 the Catholic Conference of Bishops along with all the
3496 companies. Thank you.

3497 Mr. {Walden.} Do you want to allow Mr. McDowell to
3498 respond?

3499 Ms. {Eshoo.} Sure.

3500 Mr. {McDowell.} Thank you, Congresswoman.

3501 Ms. {Eshoo.} Why did you vote that way?

3502 Mr. {McDowell.} We didn't vote for the conditions.
3503 Actually net neutrality is not a condition in the merger.

3504 They are part of a side agreement. They are commitments in
3505 the side agreement between the chairman's office--

3506 Ms. {Eshoo.} Well, aren't there open Internet rules as
3507 part of the merger?

3508 Mr. {McDowell.} They are not merger conditions, no,
3509 ma'am.

3510 Ms. {Eshoo.} But they were voluntary. You could have
3511 objected to them--

3512 Ms. {Baker.} There is a--

3513 Ms. {Eshoo.} --if you thought they were so onerous.

3514 Mr. {McDowell.} They are in a separate side agreement
3515 between Comcast and the FCC.

3516 Ms. {Eshoo.} Did you ever ask them why they would,
3517 since you find them to be onerous, why they would find the to
3518 be acceptable? Did you ever question it?

3519 Mr. {McDowell.} Absolutely. I think they were
3520 desperate to get their merger done and they would have agreed
3521 to almost anything.

3522 Ms. {Eshoo.} But did you ask them--

3523 Mr. {McDowell.} Yes.

3524 Ms. {Eshoo.} --why they were--and are you quoting them?

3525 Mr. {McDowell.} That is pretty much the answer I got.
3526 They were desperate to get their merger done.

3527 Ms. {Eshoo.} Are you quoting them?

3528 Mr. {McDowell.} That is a paraphrase.

3529 Ms. {Eshoo.} Well, I think there is a difference, with
3530 all due respect, because I don't think that--that is not the
3531 way it was presented to me. Yes, Commissioner Baker?

3532 Ms. {Baker.} I think that there are--well, there are
3533 absolutely serious legal differences between conditions to
3534 the merger and voluntary commitments that a company can make.
3535 There is a package of voluntary commitments. Some of them

3536 have to do with diversity. This one is a voluntary
3537 commitment that a company can make without regard to what he
3538 FCC has jurisdiction over so by their commitment, it doesn't
3539 imply anything to our statutory authority over net
3540 neutrality.

3541 Mr. {Walden.} I am going to have to--

3542 Ms. {Eshoo.} Thank you.

3543 Mr. {Walden.} Well, we are 2-1/2 minutes over. Let us
3544 go now to the chairman of the oversight committee and the
3545 former chairman of this committee, Mr. Stearns.

3546 Mr. {Stearns.} Thank you, Mr. Chairman, and I regret I
3547 was prevented from being here. We were chairing an Oversight
3548 Committee looking into Obamacare, and so I just have a
3549 question. I would like to start with the chairman and just
3550 go down the line, if I could.

3551 Mr. Chairman, you obviously succeeded in putting net
3552 neutrality into Title I, but as I understand, the proceedings
3553 are still open for Title II. Is that correct?

3554 Mr. {Genachowski.} There is a proceeding that is open
3555 that looks at the effect of the Comcast decision on our
3556 authority.

3557 Mr. {Stearns.} Okay. But I think in the industry, the
3558 perception is that the proceedings to do this in Title II is
3559 still there, and so my question is, do you think it should be

3560 closed down, this proceeding that you have open in Title II?

3561 Just yes or no.

3562 Mr. {Genachowski.} I don't think there is any confusion
3563 about where we are. It is Title I--

3564 Mr. {Stearns.} No, I mean in your opinion do you want
3565 to--do you think it should remain open or not?

3566 Mr. {Genachowski.} I think a proceeding to continue to
3567 have input our authority is a healthy thing and could
3568 benefit--

3569 Mr. {Stearns.} Mr. Copps, Commissioner Copps, do you
3570 think it should be continued to have the proceedings open for
3571 Title II?

3572 Mr. {Copps.} Yes, I do.

3573 Mr. {Stearns.} Okay. Mr. McDowell?

3574 Mr. {McDowell.} I think it should be closed because I
3575 think the fact that it is open creates some certainty and
3576 shows that perhaps the Commission wants to move to a full
3577 explicit Title II reclassification.

3578 Mr. {Stearns.} Commissioner Clyburn?

3579 Ms. {Clyburn.} I think that we should stay on this
3580 pathway and that there is certainty with the decision that we
3581 made.

3582 Mr. {Stearns.} Commissioner Baker?

3583 Ms. {Baker.} If the chairman is serious that we are

3584 going to stay with Title I, then he should close Title II
3585 proceedings.

3586 Mr. {Stearns.} Well, I think that is my point, Mr.
3587 Chairman. I think, as you will agree with me, by keeping
3588 this open, it is sort of a veiled threat for industry and
3589 creates uncertainty and gives angst to them because, you
3590 know, things could change in this proceeding and still open.
3591 So I think certainly my position is, if you have made your
3592 case for Title I, then the proceedings should be closed for
3593 Title II, and I just think a lot of us are a little concerned
3594 that it is creating angst in the business environment.

3595 Commissioner McDowell, I think in terms of when they
3596 were talking about issuing it in Title I, there was some
3597 language that we don't want to get involved with regulating
3598 coffee shops and bookstores. But if you actually implement a
3599 net neutrality, aren't you in effect regulating the Internet
3600 in Starbucks by doing that?

3601 Mr. {McDowell.} Well, as I said before earlier today,
3602 there doesn't seem to be any limiting principle to the FCC's
3603 authority under its rule, under its order from December 21st.
3604 So if there is no limit to its authority, there is no limit
3605 to its authority.

3606 Mr. {Stearns.} So they could be in bookstores, they
3607 could be in coffee shops, anywhere there is WiFi. Wouldn't

3608 you agree?

3609 So let me just go back to this Title II. The chairman
3610 has indicated that this D.C. Circuit ruling in the Comcast
3611 case. Mr. Chairman, is it possible--I mean, you have
3612 indicated that you want to keep it open because of the
3613 Comcast case ruling. You might want to elaborate. I will
3614 give you a chance to elaborate on that to give it more
3615 justification because you see the two Republicans that say we
3616 should close it down. In my opinion, you are creating
3617 uncertainty. If you went ahead and did it in Title I, there
3618 is no reason to continue to go forward. In fact, I think the
3619 chairman of this committee would like you to let this
3620 committee have the jurisdiction instead of you unilaterally
3621 doing it, and I think you have indicated to me you would like
3622 to see us provide that direction. Is that true?

3623 Mr. {Genachowski.} Yes. The single best way to have
3624 clarity and certainty here would be for Congress to look at
3625 the statute, update it in a way that was appropriate. There
3626 are issues that have been raised. We certainly would be a
3627 resource to that. We were supportive of efforts that have
3628 occurred over time to cause that to happen, and I would
3629 continue to work with that.

3630 Mr. {Stearns.} So under what circumstances would you
3631 close down the open proceedings under Title II?

3632 Mr. {Genachowski.} I have to think about that and get
3633 back to you, but let me explain. It is not a Title II
3634 proceeding. It was a neutral proceeding that was launched
3635 after the Comcast decision to ask questions about our
3636 authority and different directions that could be gone, all
3637 presented in a neutral way. As the authority issue continues
3638 to be debated, having a proceeding open that is a vehicle for
3639 comment seems to me to make sense. I would be happy to agree
3640 to stop debating the authority issue and put that off to one
3641 side. But again, I think we have made our position very
3642 clear. I made my position very clear in the order in this
3643 case that our basis for moving forward under Title I is
3644 strong and that is a preferable way to proceed.

3645 Mr. {Stearns.} Would any of the other commissioners
3646 like to comment on this? Mr. Copps?

3647 Mr. {Copps.} Yes. I would like to keep that proceeding
3648 open while there is uncertainty and there is uncertainty
3649 right now with how the courts are going to decide, so I don't
3650 see any reason why that should be closed. I want to keep it
3651 open because I think there is probably a more solid
3652 foundation which you and I would disagree you on Title II.

3653 The third thing I want to say is, address this issue
3654 that a bunch of bureaucrats has end-run the wishes of the
3655 Congress. I worked in the United States Senate for 15 years.

3656 I am kind of a creature of the Congress. I take great pride
3657 in the service that I had here. I voted as I did on all
3658 these things because I think I am upholding and implementing
3659 the laws that Congress passed, and I passionately believe in
3660 what I have said here today, but I don't want to leave any
3661 impression that I am at odds with the wishes to Congress or
3662 at least how I see the wishes of Congress.

3663 Mr. {Walden.} The gentleman's time--

3664 Mr. {Stearns.} Thank you, Mr. Chairman. Unless any one
3665 of the commissioners wants to add something, I am done.
3666 Thank you for your time.

3667 Mr. {McDowell.} I would just like to add that I think
3668 the Title II docket, call it what you will, given the context
3669 of when it was opened in June of last year in the wake of the
3670 Comcast court case and given the so-called, the announcement
3671 of the so-called third wave proposal, which was a Title II
3672 proposal, that it remains open, it seems, as a contingency
3673 plan should the courts, or in my view, when the courts strike
3674 down the FCC's December 21st order under Title I. And so
3675 there was plenty of certainty in this marketplace until the
3676 FCC started examining regulating it.

3677 Mr. {Walden.} The gentleman's time is expired. Let us
3678 go now to the gentleman from Pennsylvania, Mr. Doyle, for 5
3679 minutes.

3680 Mr. {Doyle.} Thanks, Mr. Chairman.

3681 Commissioner McDowell, I just wanted to revisit
3682 something that you said at the end of your comment when we
3683 talked about the stimulus bill and you said if Congress
3684 wanted us to implement these rules, we should have acted, and
3685 you know, in fact, we did in the Recovery Act actually
3686 require that. I just wanted to read a section from it. It
3687 says that ``pursuant to this section, the Assistant Secretary
3688 shall in coordination with the Commission publish non-
3689 discrimination and network interconnection obligations that
3690 shall be contractual conditions of the grants awarded under
3691 this section including at a minimum adherence to the
3692 principles contained in the Commission's broadband policy
3693 statement.'' So I think at some point Congress did indicate
3694 that we wanted you to move in that direction.

3695 But I want to ask Chairman Genachowski, now, we have
3696 heard a lot of our colleagues on the Republican side of the
3697 aisle suggest that the process that you used in the merger
3698 and also in this open Internet proceeding were unusual and
3699 perhaps inappropriate, and I want to give you the opportunity
3700 to share your thoughts on those suggestions. How did the
3701 process you used differ from past proceedings?

3702 Mr. {Genachowski.} Well, I think in both of those
3703 proceedings, we met or exceeded best practices in the area,

3704 and so to start with our open Internet proceeding, we
3705 launched with a notice last year that published the rules,
3706 which was a positive departure from prior precedent. We
3707 received over 200,000 commenters. We held public workshops
3708 available offline and online that a number of commissioners,
3709 including those who disagreed with the direction participated
3710 in to make it open. We issued requests for further comment
3711 as we drilled down on particular issues and ultimately we
3712 exercised our judgment and interpreted the will of Congress
3713 and made a decision.

3714 With respect to the Comcast order, we inherited a
3715 situation where in past transactions there were just enormous
3716 complaints about length of time far longer than this took
3717 about a proceeding that was, well, let me just say it in a
3718 positive way. We ran a proceeding that was professional,
3719 that was focused, that specified the issues that we were
3720 concerned about coming out of a complex and large
3721 transaction, and for those who say that the parties acted a
3722 certain way in advance, which I don't believe, and they
3723 participated in proceedings up here in Congress and said
3724 similar things and so did other parties. After the
3725 transaction was over and they could have said anything they
3726 wanted, they praised the proceeding as fair, timely and
3727 thorough.

3728 Mr. {Doyle.} And we heard that two of the commissioners
3729 didn't get the order until 24 hours before. Tell me, how
3730 does a typical FCC order move forward? Are dissenting
3731 commissioners part of the negotiation process and when did
3732 Commissioners McDowell and Baker tell you they would dissent?

3733 Mr. {Genachowski.} Well, consistent with our practice,
3734 which is also a best practice, 3 weeks in advance of a
3735 Commission meeting, we circulate a draft of an order to be
3736 voted on, and that kicks off a process of deliberation among
3737 commissioners, and certainly it is my hope in that setting
3738 that everyone will reserve judgment until there was a chance
3739 for full discussion. In this case, unfortunately, I think
3740 two of the commissioners decided within 12 hours that there
3741 was nothing to deliberate about or talk about and announced
3742 that they would dissent. But there continued to be ongoing
3743 discussions. There were further drafts circulated. As we
3744 got closer to the meeting, obviously we needed to circulate a
3745 draft that had the support of three members. I would have
3746 been happy, as I think all of us would have been, to
3747 circulate that as soon as there was agreement of at least
3748 three members. That agreement occurred on the Monday, the
3749 day before the meeting, and as quickly as possible after
3750 that, we circulated that to the full Commission. We took
3751 steps to make sure that if there were any prejudice from

3752 that, perfecting a dissent, for example, that the
3753 commissioners would have the time that they needed to address
3754 any issues that came up, but there weren't material
3755 differences between what was circulated then and what had
3756 been circulated earlier.

3757 Mr. {Doyle.} Thank you. I don't have any other
3758 questions, Mr. Chairman. Thank you.

3759 Mr. {Walden.} I would go then to the gentleman from
3760 Texas, the chairman emeritus, Mr. Barton, for 5 minutes.

3761 Mr. {Barton.} Thank you. I said earlier I was
3762 impressed with the intellect of the Commission. I must also
3763 add too, I am impressed with their bladders. I think you all
3764 have been here for 3-1/2 hours continuously, so that is quite
3765 a compliment.

3766 I want to look at the Title II issue a little bit in
3767 this round. My understanding is that Title II regulates
3768 hard-line, monopolistic phone services like we had back in
3769 the 1930s through the 1960s. I am puzzled why we think that
3770 that model would be applied to the Internet where we have
3771 multiple providers. We obviously have a market that
3772 functions. We have multiple options for individuals to
3773 choose. The courts have ruled that it is an information
3774 service. I just don't see the connection.

3775 Commissioner Baker, can you enlighten me on how I am

3776 wrong when I look at Title II and I see a different system
3777 entirely than what we have in terms of the Internet?

3778 Ms. {Baker.} No, Mr. Chairman, I think you are entirely
3779 right. I think it was a contrived way to construe that we
3780 might have greater authority, which we don't have.

3781 Mr. {Barton.} What about you, Mr. McDowell, or
3782 Commissioner McDowell, I should say?

3783 Mr. {McDowell.} As you point out, this was created in
3784 1934 with the old circuit switched analog voice Ma Bell
3785 monopoly, and actually those rules were taken from the 19th
3786 century railroad monopoly regulations. So I don't think it
3787 fits the architecture of the Internet which really defies
3788 top-down authoritarian control, so I think it would be a
3789 mismatch.

3790 Mr. {Barton.} Well, to be fair, I should give the
3791 chairman an opportunity here. Chairman Genachowski, what is
3792 wrong with my analysis of Title II?

3793 Mr. {Genachowski.} Well, as you know, we decided, and I
3794 believe that proceeding under Title I was the right way to
3795 go. The only note that I would make in this discussion is
3796 that no one at the Commission had suggested a full-blown
3797 Title II approach. There was an approach--

3798 Mr. {Barton.} The gentleman to your left said--

3799 Mr. {Genachowski.} Let me--some suggested that the

3800 Title II mechanism that was used and is used for mobile voice
3801 could make sense but we listened, we looked at the record, we
3802 got input from Congress and others and decided to pursue a
3803 Title I direction.

3804 Mr. {Barton.} And I am not going to ask Commissioner
3805 Copps because he has already pointed out, he spent 15 years
3806 in the Senate and he could certainly filibuster that question
3807 for the next 2 minutes of my time but I will give him an
3808 opportunity in writing to respond.

3809 I want to go to Commissioner Baker for my last question.
3810 This is a question that the staff has prepared. It just goes
3811 to show that sometimes I can take direction here.
3812 Commissioner Baker, the order that we are discussing today,
3813 the net neutrality order, relies on section 706 for
3814 authority. Isn't section 706 about removing barriers to
3815 infrastructure investment and won't network neutrality rules
3816 deter investment, and hasn't the FCC in the past said that
3817 section 706 is not an independent grant of authority?

3818 Ms. {Baker.} Well done. Yes, Mr. Chairman--

3819 Mr. {Barton.} I can read.

3820 Ms. {Baker.} Yes. I think that this is an attempt to
3821 twist a 14-year-old deregulatory policy statement into a
3822 direct grant of authority, and 706 does not constitute an
3823 independent grant of authority. Section 706 is about

3824 broadband deployment, and the FCC has no authority to erect
3825 obstacles in the name of removing them, so I think that we
3826 have completely misguided basing our authority here on 706.
3827 You have to keep in mind that section 706 is really the
3828 centerpiece of all broadband and Internet regulation going
3829 forward. It was actually a footnote in the 1996 Act. So
3830 this is an odd place for us to hang our hat on such an
3831 important and intrusive regulatory change.

3832 Mr. {Walden.} Mr. Chairman?

3833 Mr. {Barton.} I am going to yield the time to the
3834 distinguished--

3835 Mr. {Walden.} You are kind. I don't know if this even
3836 requires unanimous consent but I will ask for it. We have a
3837 vote on the Floor, and what I was thinking was, if we did
3838 two, two and two, we have three members here, we could get
3839 everyone in who has stayed around. If you can do less than
3840 that, do it.

3841 Mr. {Terry.} One minute for a question and one minute
3842 for an answer, I was thinking.

3843 Mr. {Walden.} Make it 20 seconds on the question. I
3844 recognize the vice chair.

3845 Mr. {Terry.} All right. And I am going to read it, but
3846 I actually wrote this question.

3847 Today, the broadband provider's business model offers

3848 tiers based on speed and size, for example, 7 megabits is
3849 less costly than the 10-, 15- or 20-megabit package or tier.
3850 So the question is, is a tiered system of size and speed
3851 unreasonable discrimination?

3852 Mr. {Genachowski.} The answer is no. We said so in the
3853 order and it was one of the ways that we brought certainty to
3854 the area and will boost investment in infrastructure.

3855 Mr. {Terry.} Does anyone else want to comment on that?

3856 Mr. {McDowell.} I think it is contradicted in the order
3857 by the ban on paid prioritization, so if you are consumer and
3858 you want a burst of speed to download a movie, you don't want
3859 to pay 24 by 7 for a big, fat broadband pipe, right? It is
3860 not cost-effective. Would that order prohibit that? Is that
3861 a form of tiering, paid prioritization? It gets confusing
3862 very quickly.

3863 Mr. {Terry.} Okay. Thank you.

3864 Ms. {Baker.} I would agree. Our regulation was kind of
3865 clear as mud on that, so why don't you bring a declaratory
3866 ruling proceed to the FCC and we can decide. I am being
3867 sarcastic but--

3868 Mr. {Terry.} Micro Trend--

3869 Ms. {Baker.} --an awful lot of applications, what is
3870 the Kindle, what is the Garmin, what is Google voice and the
3871 next generation of the Facebook, what are these items, are

3872 they okay. I think the answer from our ruling is that you
3873 can either bring a complaint process or you can bring a
3874 declaratory ruling and we can tell you whether it is okay.

3875 Mr. {Walden.} We are going down to the gentlewoman from
3876 Tennessee for no more than 2 minutes.

3877 Mrs. {Blackburn.} Thank you, Mr. Chairman.

3878 And I just want to go back to where I was with Ms.
3879 Clyburn in the first round. It is frustrating to us when you
3880 all mention that you have done market analysis but then there
3881 is not market analysis that would meet the OMB standards.
3882 You cannot point to a market failure. And that is
3883 frustrating, so if there is analysis that you want to submit
3884 to show how you came to these conclusions, I think that it
3885 would be important to do so.

3886 Chairman Genachowski--

3887 Ms. {Clyburn.} The chairman has committed to do that.

3888 Mrs. {Blackburn.} Okay. Thank you.

3889 And I apologize. We have had multiple hearings going on
3890 this morning. Mr. Chairman, you and I were out at CES last
3891 month, and I know you walked the same floor I walked. You
3892 talked to a lot of those innovators and a lot of those guys
3893 were out of Tennessee. They are working on health IT. They
3894 are working on digital music platforms. They are working on
3895 content distribution. AOL is moving their content

3896 headquarters into Nashville. Now, what I am hearing from a
3897 lot of these innovators at home and when I am out and about
3898 is hey, what is this business about having to seek permission
3899 from the FCC, are we going to have to go to them before we
3900 innovate, what is the chairman expecting us to do, are they
3901 going to tie our hands, what is this about anybody can
3902 object, they can go file a complaint while we are in the
3903 innovative process. This is the type uncertainty that stifle
3904 job creation.

3905 And Mr. Chairman, I don't know if anybody has submitted
3906 this Phoenix study for the record but I think it is
3907 excellent. When we talk about--

3908 Mr. {Walden.} Without objection.

3909 [The information follows:]

3910 ***** COMMITTEE INSERT *****

|
3911 Mrs. {Blackburn.} --models that show how many jobs are
3912 created, indirect job losses, 327,600 jobs. This is serious
3913 because we want to get busy with jobs.

3914 I would like for you, Mr. Chairman, to outline for me
3915 and submit for the record what do our innovators expect? What
3916 is this asking permission process going to be? Are they
3917 going to have to file? You can submit it in writing. I know
3918 we are short on time.

3919 Mr. {Walden.} Yes, we want to get to--

3920 Mrs. {Blackburn.} And just submit it for the record as
3921 a written statement, and I appreciate that you all have come
3922 and come prepared.

3923 Mr. {Genachowski.} Thank you. May I have 10 seconds to
3924 reply to that?

3925 Mr. {Walden.} Yes.

3926 Mr. {Genachowski.} Very quickly, just to be clear to
3927 the audience, the purpose of the order is to protect
3928 innovation without permission, and so no one has to come to
3929 the FCC for permission, and the Consumer Electronics
3930 Association supported open Internet and supported our order,
3931 and I look forward to continuing this dialog with you because
3932 it is very important.

3933 Mr. {Walden.} Now we go to Mr. Scalise for no more than

3934 two.

3935 Mr. {Scalise.} Thank you, Mr. Chairman. We will hit
3936 the lightning round.

3937 Chairman Genachowski, on the Open Internet Order, the
3938 FCC stated for a number of reasons these rules apply only to
3939 the provision of broadband Internet access service and not to
3940 edge provider activities. Are there no concerns about search
3941 engines or online video provider contents that they are doing
3942 anything improperly?

3943 Mr. {Genachowski.} Well, the history of this issue has
3944 been focused on Internet service providers, and that makes
3945 sense, particularly given the Communications Act, which
3946 focuses our authority on companies that are providing
3947 communication services by wire or spectrum.

3948 Mr. {Scalise.} Right, but we have seen, you know, there
3949 are real examples that have been reported widely in the
3950 media, for example, Google Street View where major privacy
3951 violations occurred, and yet they are exempted from this, and
3952 you know, it gives the impression that people feel like you
3953 all are picking winners and losers, and that is another whole
3954 set of problems that--

3955 Mr. {Genachowski.} I would say that with respect to any
3956 company like that that uses spectrum or infrastructure that
3957 is in our oversight purview, we will investigate, we will act

3958 regardless of company. The point of the proceeding was to
3959 make sure that the market and consumers pick winners and
3960 losers.

3961 Mr. {Scalise.} Commissioner McDowell, when it comes to
3962 these language provisions that were put in prohibiting
3963 providers from taking ``reasonable efforts'' to address
3964 things like--or nothing prohibits providers from taking
3965 reasonable efforts to address copyright infringements or
3966 other unlawful activity. A lot of people are expressing
3967 concern that there is no real definition of reasonable effort
3968 and there may be some concern that as these broadband
3969 providers try to protect their network from things like cyber
3970 attacks that they might also be concerned that the FCC is
3971 going to come behind and fine them because this reasonable
3972 effort is undescribed. Can you address that?

3973 Mr. {McDowell.} Again, that would have to be addressed
3974 through litigation, and that is part of the concern. The
3975 word ``reasonable'' is perhaps the most litigated word in
3976 American history, so that will be determined by three votes.

3977 Mr. {Scalise.} And I know that creates a lot of
3978 uncertainty, and as we talk about the things that we want to
3979 see to encourage investment, to encourage job creation, it is
3980 those exact types of uncertainty that make it hard for people
3981 to make that investment.

3982 And Mr. Chairman, if I can close on this. I know a lot
3983 of us have conversations about whether or not network
3984 neutrality is good. I think if you at the American people, a
3985 bipartisan majority of Congress has said that they don't want
3986 this government intrusion and government takeover of the
3987 Internet and so I would hope you all would go back and look
3988 at that because ultimately innovation--

3989 Mr. {Walden.} The gentleman's--

3990 Mr. {Scalise.} --is the great equalizer, and you know,
3991 when you look at today's college dropout can be tomorrow's
3992 billionaire and the dropout of today is able to compete and
3993 in many cases--

3994 Mr. {Walden.} The gentleman's time has expired.

3995 Mr. {Scalise.} --the big phone company or that other
3996 big company that out there that you all seem to have some
3997 concern about. So I would just--

3998 Mr. {Walden.} The gentleman's time--

3999 Mr. {Scalise.} --ask that you keep that in mind, and I
4000 would yield back the balance of my time--

4001 Mr. {Walden.} --is expired.

4002 Mr. {Scalise.} --whatever that balance is.

4003 Ms. {Eshoo.} I seek unanimous consent to enter into the
4004 record an editorial by David J. Farber, grandfather of the
4005 Internet, arguing the Internet neutrality rules are bad

4006 because everyone would game the regulations rather than
4007 innovate. We have a couple of other documents that have been
4008 pre-cleared with the minority to also enter those in the
4009 record without objection.

4010 Mr. {Walden.} Without objection.

4011 [The information follows:]

4012 ***** COMMITTEE INSERT *****

|
4013 Ms. {Eshoo.} I think the pope trumps it myself.

4014 Mr. {Walden.} I would also say as a final closing
4015 comment, at least speaking for some of us on this side of the
4016 aisle, the only entity more skeptical than our side of the
4017 aisle on these net neutrality rules may indeed be the D.C.
4018 Circuit Court.

4019 And finally in conclusion, I would like to thank all the
4020 witnesses and members that participated in today's hearing.
4021 I remind members they have 10 business days to submit
4022 questions for the record, and I ask that the witnesses all
4023 agree to respond promptly to these questions, which I know
4024 you will

4025 With that, we do appreciate your counsel, your insight
4026 and your hard work, and this hearing stands adjourned.

4027 [Whereupon, at 1:12 p.m., the Subcommittee was
4028 adjourned.]