

**Testimony of
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on
“The Uncertain Future of the Internet”
before the
House Energy & Commerce Committee
Subcommittee on Communications and Technology
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Chairman Walden, Ranking Member Eshoo, other distinguished members of the subcommittee. I very much appreciate the committee’s invitation to return to these familiar surroundings and share with you my thoughts on the best way to preserve network neutrality.

From the time of our first debates on this issue a decade ago, I have been an outspoken advocate and strong supporter of net neutrality principles and worked with Senator Markey, Congresswoman Eshoo and others to enshrine those principles in statute.

I believed then, as I believe now, that ensuring an open network is essential to maintaining the Internet as a vibrant medium of commerce and free expression, of education and healthcare delivery. The Internet is the most versatile and efficient communications medium yet devised, and it opens the door for instant information and entertainment availability.

To keep it that way, I’m here today to urge the committee to develop a narrow bipartisan legislative measure that gives statutory permanence and an assured legal foundation to network neutrality.

I recognize the attraction to many of Federal Communications Commission (FCC) Chairman Wheeler's statement that his regulatory proposal provides a stronger legal foundation for network neutrality requirements than the 2010 FCC Open Internet Order which was largely

invalidated by the US Court of Appeals. However, I'm concerned that the path that has now been chosen by the FCC will inevitably lead to years of continued uncertainty. I am concerned that either through successful court challenges or through actions of a future FCC with a different partisan majority than the current FCC, all network neutrality protections may be lost.

The timeline for the litigation that followed promulgation of the FCC's 2010 Open Internet Order is instructive. The US Court of Appeals decided the case more than three years after the FCC issued the rules. If that same timeline applies to the inevitable litigation which will challenge the rules the FCC's will adopt tomorrow, a court decision will not be made until well into the next Presidential Administration.

If a Republican wins the 2016 presidential election, the new Administration would be unlikely to support a writ of certiorari to the U.S. Supreme Court if the rules are struck down by a U.S. Court of Appeals. It would be unlikely that in such an event the FCC in a Republican administration would initiate a new network neutrality proceeding. In fact it is probable that an FCC with a Republican majority would, as an early order of business, undertake a reversal of the reclassification order that will be approved tomorrow.

For these reasons, the network neutrality assurances of tomorrow's reclassification order rest on a tenuous foundation. They are at risk of being lost. Legislation is, therefore, a superior solution. It would be virtually impenetrable from a judicial challenge, and would resolve this debate with a statutory permanence and degree of certainty not available through the regulatory process.

Chairmen Upton and Walden, along with Senate Commerce Committee Chairman Thune, have circulated a legislative draft and invited a bipartisan discussion with Democratic colleagues

on its provisions. Given the decade-long history of the debate on this measure, with which most of us are familiar, the Republican offer of passing legislation that contains strong network neutrality principles is a major development. In essence, the committee leadership is now offering the kinds of network neutrality assurances Democrats have been seeking for the past decade.

The legislation is based on the provisions of the FCC's 2010 Open Internet Order. It would codify transparency requirements and prohibitions against blocking, throttling, and paid prioritization. The legislation would provide a strong legal foundation for network neutrality principles. Nothing can provide greater legal certainty than specific requirements imposed by Congress under a new provision of law.

In addition to ensuring strong network neutrality guarantees, the legislation should also maintain the light regulatory touch that broadband has received as a Title I information service. The current regulatory structure for broadband has opened the door for investment and produced in the United States the world's most capable Internet infrastructure and ecosystem.

I know that committee members have expressed concerns about specific provisions of the draft legislation. These matters can be the subject of bipartisan discussion and resolution. In the end, what matters is that network neutrality principles along the lines of the 2010 Open Internet Order receive statutory protection and the Internet remains an information service lightly regulated under the provisions of Title I. All other provisions should be seen as negotiable.

I know that all members are committed to ensuring the vibrancy of the Internet. After more than a decade of wrangling about the proper regulatory classification of broadband services and the scope of the FCC's authority, it is time for Congress to provide the certainty that

consumers and industry need. This subcommittee has worked on a bi-partisan basis to produce dozens of laws that have shaped the communications sector, fostering innovation, economic growth, and job creation. I hope that it will do so again now when the assurance of an open Internet is at stake.