PREPARED STATEMENT OF

COMMISSIONER TERRELL P. McSWEENY

FEDERAL TRADE COMMISSION

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Statement of Commissioner Terrell McSweeny
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Good afternoon, I want to thank Chairman Goodlatte and Ranking Member Conyers for having me here today to speak about the role enforcement agencies, like the Federal Trade Commission, play in protecting consumers and competition.

Before beginning my testimony, I must stress that I am speaking only for myself and not on behalf of the Commission or my colleagues.

For 100 years, the FTC has worked to ensure that American consumers and the entrepreneurs who bring new and exciting products to the marketplace are free from anticompetitive, deceptive, and unfair practices that threaten to harm them. The FTC's role as a consumer protection and antitrust enforcer has evolved along with the economy – adapting to the interconnectedness of our 21st century lives to protect consumers online and on mobile platforms. In the last decade, the FTC has brought more than 100 cases involving consumer data security and privacy. We have cracked down on emerging issues such as cramming and unauthorized in-app purchases by children – winning millions of dollars in redress for consumers harmed by these practices.

The FTC also plays an important role promoting innovation by advocating for the competition that can be introduced by disruptive entrants. In the last few years, the FTC has urged that cities and taxicab authorities not impede competition from new ride-sharing platforms such as those offered by Uber and Lyft. FTC officials have publicly criticized as "bad policy" state laws designed to protect the automobile dealership model from competition from Tesla's direct-to-consumer sales strategy. The FTC also investigates and prosecutes anticompetitive practices across a wide variety of industries. The Commission's competition enforcement is guided by antitrust principles. While antitrust enforcement is vital to protecting a competitive marketplace, it is not always the most effective way to address policy issues in the economy.

Sometimes the public interest is best protected through a combination of antitrust enforcement and well-designed regulation. Protecting the "virtuous cycle" of the open Internet is one of these instances.

The open Internet raises a host of complicated issues, including public policy issues that go beyond the scope of antitrust and consumer protection enforcement. The FCC has spent years studying the open Internet issue, informed by data and input from market participants, academics, and the views of nearly four million commenters. On the basis of that record, the FCC concluded that Internet openness promotes a "virtuous cycle" in which innovation by providers of new content, applications, and services generates increased consumer broadband demand. This increases broadband demand, which increases broadband infrastructure investment, which, in turn, spurs new innovation from content producers.[1] The D.C. Circuit has

[1] *See* FCC Open Internet Order ¶ 7 (Mar. 12, 2015).

upheld the FCC's findings with respect to this "virtuous cycle"[2] – findings based on the FCC's sector-specific mandate and specialized expertise in the area of telecommunications.

Ex post, case-by-case antitrust enforcement is unable to offer the same protections to innovators in the content space as clear, *ex ante* rules. Under the Open Internet Order, innovators who seek to provide new content, applications, and services can have confidence that discriminatory network access will not threaten their chances for competitive success. Antitrust enforcement, on the other hand, would require detection, investigation, and a potentially lengthy "rule of reason" analysis.

The FCC also considered First Amendment interests such as free expression, diversity of political discourse, and cultural development as part of its Open Internet proceeding. These are non-economic values that are not generally protected by the antitrust laws.

There is not an either-or choice that must be made between FCC regulation and FTC enforcement as it relates to an open Internet. Both are different tools with different features and both have a role to play when it comes to protecting consumers and ensuring an Internet that continues to foster competition and innovation.

Consumers benefit when there is robust competition for existing and new products and services, and when consumers can make choices dictated by their own preferences. The optimum outcome for consumers is Open Internet coupled with repeal of the common carrier exemption that may hinder the FTC from protecting consumers against unfair and deceptive common carrier activities. The FTC has decades of experience, and specific statutory tools such as consumer redress, that complement FCC oversight of common carriers. We have a long history of successfully working together with the FCC and look forward to continuing that tradition of shared jurisdiction.

I'll conclude by pointing out that the status quo in the United States is, overwhelmingly, that of an open Internet. It is almost out of date to refer to the Internet as its own sector, somehow detached from the rest of the economy. The Internet has truly become "The Internet of Everything." It is the medium that we use to carry on friendships, file our taxes, book vacations, speak to our doctors, watch movies, manage businesses, and, increasingly, coordinate our lives from the time we get up to the time we go to bed. We have already witnessed the tremendous spillover effects and positive externalities that an open Internet has provided. Ensuring that the Internet remains a fountain of innovation and disruption is at the heart of open Internet policy. This is not a situation where the FCC's Open Internet Order threatens to usher in some new and unproven market reality. Rather, it is the *elimination* of the open Internet in this country that would put us in uncharted territory.

Thank you again for holding this hearing and having me here. I look forward to your questions.

[2] *See Verizon v. FCC*, 740 F.3d 623, 659 (D.C. Cir. 2014).