

**Statement of
Chairman Tom Wheeler
Federal Communications Commission**

**Hearing on
“Wrecking the Internet to Save It? The FCC’s Open Internet Rule”
Before the
Committee on the Judiciary
U.S. House of Representatives**

March 25, 2015

Chairman Goodlatte, Ranking Member Conyers, and distinguished members of the Committee, I appreciate the opportunity to discuss the FCC’s Open Internet Order from the perspective of a business person. I did not go to law school, but I have built companies, met payrolls, and created jobs. It is from that perspective that I’d like to address the issues today.

Widespread use of the Internet exists because of decisions of the FCC decades ago that restrained the power of the dominant telecommunications network operator. To take one example that was important in my education as an entrepreneur, FCC regulations enabled open access for the modems that powered the early use of the Internet. There would have been no AOL without the FCC’s openness mandate.

The whole Open Internet debate burst into the public consciousness when a Republican-led FCC took action against Comcast for degrading the delivery of content. That decision was disallowed by the court.

That led to the 2010 Open Internet rules. These, too, were challenged and the court remanded them to the agency because the Commission imposed common carrier-like requirements on activities previously characterized as “information services.” Nonetheless, the court upheld the Commission’s power to protect the Open Internet and observed: “Broadband providers represent a threat to Internet openness.”

This observation is not academic theory. It was my real-life experience as an entrepreneur.

I was part of a new pay-per-view video service. When we’d seek to get on a cable system the first question the cable operator would ask was “what’s our cut?” Access had to be purchased. Likewise, when I was a venture capitalist in the early days of mobile data, the only way a wireless carrier would let an application provider on its network was for a cut of the revenue. Again, access had to be purchased. When Internet Protocol allowed consumers to leap these walled gardens, the ISPs sought to use their position as network gateways to their advantage.

Congressional leaders such as Representatives Walden and Upton and Senator Thune, as the chairs of the FCC’s authorizing committees, introduced legislation banning blocking, throttling and paid prioritization. Our Order has a similar ban, as well as establishing that in the future ISPs cannot act to hurt consumers or innovators; a determination the FCC would make on a case-by-case basis, not by broad prescriptive regulations.

We took a business-like approach in our Report and Order. It was patterned on the regulation the wireless industry asked for in 1993 and which has proven so successful: Title II status and forbearance from old parts of Title II that don't apply to the new circumstances. And it is an approach that worked. When, for instance, the big wireless carriers refused to let the voice customers of smaller carriers roam on to their networks, it was a Republican-led FCC that in 2007 invoked Title II to mandate open access.

Finally, allow me to quickly reflect on the allegation that our Order creates business-threatening uncertainty. When Title II was applied to broadband DSL in the late '90s and early 2000's, it didn't chill investment: the network industry invested more than it had before or since. Similarly, during the four years the 2010 Open Internet rules were in place, broadband capital investment increased steadily, topping out at almost \$70 billion annually.¹

No wonder Sprint,² T-Mobile,³ Frontier Communications,⁴ Google Fiber,⁵ Cablevision,⁶ along with hundreds of small rural phone companies,⁷ and the small competitive wireless companies⁸ all say they can build their businesses within Title II. Even behemoths like Comcast, AT&T and Verizon who oppose what we did continued to invest in their networks even knowing the rule was coming. In fact, AT&T and Verizon did so very dramatically in the AWS-3 auction.

There would be, however, a serious casualty of uncertainty were no Open Internet rules in place: the innovators who need to know they will be able to get on the networks owned by Comcast, AT&T and Verizon. Openness without fear of pay-to-play is the key to innovation. Similarly, if investors believe their capital will be siphoned off by the big network providers, or worse, their companies won't be able to reach consumers, investment capital will dry up.

I recognize the propensity to dance on the head of legal pins on this issue. In reality, however, this issue is simply about whether those who operate networks will be the rule-makers, or whether consumers and innovators will have the security of knowing that the network operators will not be able to misuse their positions.

Thank you again for this opportunity to testify. I welcome your questions.

¹ See USTelecom, *Historical Broadband Provider Capex*, <http://www.ustelecom.org/broadband-industry-stats/investment/historical-broadband-provider-capex>.

² Letter from Stephen Brye, Chief Technology Officer, Sprint to Marlene H. Dortch, FCC at 1 (filed Jan. 15, 2015) (“Sprint does not believe that a light touch application of Title II, including appropriate forbearance would harm the continued investment in, and deployment of, mobile broadband services.”).

³ Thomas Gryta, *T-Mobile Joins Sprint in Downplaying FCC’s Broadband Reclassification*, Wall Street Journal (Feb. 19, 2015) (quoting T-Mobile COO Mike Sievert, “There is nothing in there that gives us deep concern about our ability to continue executing our strategy.”), <http://blogs.wsj.com/corporate-intelligence/2015/02/19/t-mobile-joins-sprint-in-downplaying-fccs-broadband-reclassification/>.

⁴ Sean Buckley, *Frontier’s Wilderottter is Comfortable with Title II Reclassification*, FierceTelecom (Feb. 9, 2015) (Title II “does not affect our basic business”), <http://www.fiercetelecom.com/story/frontiers-wilderottter-comfortable-title-ii-reclassification/2015-02-09>.

⁵ Brian Fung, *Google: Strong Net Neutrality Rules Won’t Hurt the Future Rollout of Google Fiber*, Washington Post (Jan. 27, 2015) (quoting Google spokesman “The sort of open Internet rules that the [FCC] is currently discussing aren’t an impediment to those plans . . . and they didn’t impact our decision to invest in Fiber.”), <http://www.washingtonpost.com/blogs/the-switch/wp/2015/01/27/google-strong-net-neutrality-rules-wont-hurt-the-future-rollout-of-google-fiber/>.

⁶ Shalini Ramachandran & Michael Calia, *Cablevision CEO Plays Down Business Effect of FCC Proposal*, Wall Street Journal (Feb. 25, 2015) (quoting Cablevision CEO James Dolan, “we don’t see at least what the Chairman has been discussing as having any real effect on our business”), <http://www.wsj.com/articles/cablevision-net-neutrality-fcc-proposal-earnings-subscribers-1424872198>.

⁷ Shirley Bloomfield, CEO, NTCA—The Rural Broadband Association, *Net Neutrality: Looking Back and Getting Ready for Many Months Ahead* (Feb. 25, 2015) (“So, as the track records of RLECs make clear, Title II can provide a useful framework and does not need to be an impediment to investment in and ongoing operation of broadband networks”), <http://www.ntca.org/2015-press-releases/net-neutrality-looking-back-and-getting-ready-for-many-months-ahead.html>.

⁸ Steven Berry, CEO, CCA, *Statement on Net Neutrality* (Feb. 26, 2015) (“CCA supports an open Internet for competitive carriers and consumers alike. As long as the FCC [allows network management flexibility and preserves universal service mechanisms], CCA will not object.”), <http://competitivecarriers.org/press/rca-press-releases/cca-statement-on-net-neutrality/9117115>.