
Appendix B

Jocelyn Frye

From: Stephanie Weiner
Sent: Monday, November 17, 2014 10:26 AM
To: Nese Guendelsberger; Matthew DelNero
Cc: Mindel DeLaTorre
Subject: RE: Open Internet Points for International Audience

Hi Nese,

I have suggested edits to the TPs below. (I emailed with Kathy last week because I couldn't open the word document she sent for some reason.) Matt, if you have a chance to review these, please weigh in if you would suggest further revisions.

On the Q&A, I already asked OMR for it twice last week. I'll ask again this morning.

- On May 15, 2014, the Federal Communications Commission (FCC) adopted a Notice of Proposed Rulemaking (Notice) that proposes rules to protect an Open Internet (also referred to as net neutrality). It is important to understand that the Notice contains PROPOSALS, not final rules. The FCC sought input from the public on these rules, and received nearly 4 million comments. The FCC will issue final rules after considering all the input.
- The Notice is in response to a court decision early this year that concluded the FCC has jurisdiction to adopt rules to protect a free and open Internet, but that some of the specific rules the FCC adopted in 2010 were not consistent with FCC precedent.
- As a result of the court decision, the Notice seeks comment on different approaches to ensure the Internet remains an open platform for innovation and expression, while protecting certainty and predictability in the marketplace.
- The president's announcement was a significant development. We welcome comment on it and how it proposes to use Title II of the Communications Act.
- As an independent agency, the FCC believes the Internet must remain an open platform for free expression, innovation, and economic growth. We are not departing from the Open Internet concepts of transparency, no blocking, and no harmful discrimination adopted by the Commission in 2010.
- The goal of our proceeding is to determine the best approach to preserving the Open Internet consistent with U.S. law. Given the significant issues involved, we must ensure that whatever approach is taken, it can withstand any legal challenges it may face.

Thanks,
Stephanie

From: Nese Guendelsberger
Sent: Monday, November 17, 2014 9:57 AM
To: Stephanie Weiner; Matthew DelNero
Cc: Mindel DeLaTorre
Subject: RE: Open Internet Points for International Audience
Importance: High

Stephanie and Matt,

Can you please confirm that the bullets below are fine as talking points for an International audience. Mindel is at a conference in Porte Rico now, and she needs these ASAP. Also, can you please send the Q and A that has been put together for folks?

- On May 15, 2014, the Federal Communications Commission (FCC) adopted a Notice of Proposed Rulemaking (Notice) that proposes rules to protect an Open Internet (also referred to as net neutrality). It is important to understand that the Notice contains PROPOSALS, not final rules. The FCC sought input from the public on these rules, and received nearly 4 million comments. The FCC will issue final rules after considering all the input.
- The Notice is in response to a court decision early this year that concluded the FCC has jurisdiction to adopt rules to protect a free and open Internet, but that some of the specific rules the FCC adopted in 2010 were not consistent with FCC precedent.
- As a result of the court decision, the Notice seeks comment on different approaches to ensure the Internet remains an open platform for innovation and expression, while protecting certainty and predictability in the marketplace.
- The FCC is not departing from the Open Internet concepts of transparency, no blocking, and no discrimination adopted by the Commission in 2010. Rather, the Notice proposes the reinstatement of the 2010 Open Internet concepts in a manner that is consistent with U.S. law to address the legal authority issues raised by the court.

Thank you.
Nese

From: Mindel DeLaTorre
Sent: Sunday, November 16, 2014 10:23 PM
To: Stephanie Weiner; Nese Guendelsberger; Matthew DelNero
Cc: Olga Madruga-Forti; Kathryn OBrien
Subject: RE: Open Internet Points for International Audience

Did you all get a chance to review? I just was at a dinner and, of course, all the questions were about our Open Internet proceeding (and President Obama's announcement on net neutrality).

-----Original Message-----

From: Stephanie Weiner
Sent: Wednesday, November 12, 2014 09:46 PM Eastern Standard Time
To: Mindel DeLaTorre; Nese Guendelsberger; Matthew DelNero
Cc: Olga Madruga-Forti; Kathryn OBrien
Subject: RE: Open Internet Points for International Audience

Hi Mindel and Nese,

Yes - we'd be happy to take a look at your talking points in light of recent developments. I believe there is also a Q & A that has been put together for folks - so we will see if we can track that down for you as well.

Best,
Stephanie

From: Mindel DeLaTorre
Sent: Wednesday, November 12, 2014 9:29 PM
To: Nese Guendelsberger; Stephanie Weiner; Matthew DelNero
Cc: Olga Madruga-Forti; Kathryn OBrien
Subject: RE: Open Internet Points for International Audience

Actually, since things have heated up so much this week, I would love to have someone review the international talking points we already have (Matt, you reviewed them before Commissioner Clyburn went to Turkey) to see how relevant they still are. I will be at a Latin American regulator's meeting next week and I know that

everyone will be grilling me with questions so any help would be appreciated.

Nese or Kathy - can one of the two of you send the points to Stephanie and Matt tomorrow AM for them to look at?

Thanks - Mindel

-----Original Message-----

From: Nese Guendelsberger

Sent: Wednesday, November 12, 2014 04:41 PM Eastern Standard Time

To: Stephanie Weiner; Matthew DelNero

Cc: Olga Madruga-Forti; Kathryn OBrien

Subject: Open Internet Points for International Audience

Stephanie and Matt,

In light of the recent developments, we need assistance from OGC, WCB, and the Chairman's office on clarifying our International talking points/strategies concerning issues involving net neutrality and Internet governance.

Stephanie, is it possible to set up a meeting sometime next week with the relevant Open Internet Steering Committee members to discuss the issues with respect to our international (US Trade and Telecom Policy) messaging points on "regulating" Internet? We would like to come up with a strategy, as soon as possible, and a constructive and consistent way to handle questions internationally.

To give you a bit more context, below, I have included a blog raising some of the international policy implications of treating the "Internet" as "telecommunications" service.

Please let me know if you have any questions.

Nese

Heartland Blog

The Federal Communications Congress?

- *by Scott Cleland*
- *November 10, 2014*

Apparently Congress has an aspiring legislative rival in the Federal Communications Commission. The FCC is considering administratively bypassing Congress and unilaterally reversing longstanding U.S. Internet policy in law with an administrative maneuver that could have sweeping and unintended negative consequences for U.S. trade and foreign policy.

To implement the FCC's most recent redefinition of net neutrality, the FCC is seriously considering its net neutrality "nuclear option." That would reverse administratively the legal status of the Internet from a lightly regulated "information service" to a utility price-regulated "Title II telecommunications" service, per Wall Street Journal reporting.

Rather than asking Congress for Internet authority that the FCC knows that it does not have, it apparently is scheming to creatively combine existing legal authorities, in ways in which they were never intended, in order to ban a two-sided free market for the Internet from developing.

The FCC covets a legal theory that would allow it to administratively dictate a permanent, zero-price subsidy for all downstream Internet traffic from cloud servers at Internet consumers' expense.

Essentially, the FCC would be banning a two-sided free market where senders and receivers may negotiate payments, in favor of a permanent receiving-party-pays Internet economic model.

Some background here is important in order to understand the sweeping implications of this for U.S. trade and foreign policy.

In 1994, the Clinton administration privatized the Internet backbone. Its peering-arrangements were market-negotiated. That's because the FCC legally treated Internet traffic as unregulated "enhanced" data services under the FCC's 1980 Computer Inquiry II precedent, and not "Title II," common-carrier-regulated "telecommunications."

In 1996, the bipartisan Telecommunications Act also did not treat the Internet as "telecommunications." To the contrary, that law explicitly stated: "It is the policy of the United States... to preserve the vibrant and competitive free market that presently exists for the Internet... unfettered by Federal or State regulation." Since 1996, the United States government has convinced international trading partners to not treat Internet traffic as "telecommunications" in order to ensure the development of a free and open global electronic marketplace, and to promote democratic discourse.

This purposeful consensus to not saddle the Internet with "telecommunications" price regulation has been integral to creating the free and open global Internet we know today.

Thus the world's leading trading partners ensured that the Internet would not fall under the legal jurisdiction of the United Nations' International Telecommunications Union (ITU).

International "telecommunications" legally falls under the UN-ITU equivalent of a trade treaty. Specifically, ITU agreement: ITU-T D.50 recognizes the sovereign right of each state to regulate "telecommunications" as that state determines.

The ITU's "telecommunications" settlements regime operates under a sending-party-pays economic model, the exact opposite of the FCC's desired receiving-party-pays economic model.

This allows each nation to set their own tariff on incoming traffic or information imports. In the past many nations set their telecommunications tariffs on incoming calls very high to generate large net trade payments from the U.S.

Now back to the FCC.

According to news reports, the FCC is responding to Silicon Valley pressure for a formalized American industrial policy that would protect and favor Silicon Valley's cloud-based, client-server economic model, where the selling server-side never pays for delivery of its downstream traffic to the buying client-side.

Silicon Valley's cloud client-server model — of ad-serving, video streaming, software on demand, and cloud-computing services — involves sending vastly more downstream traffic to American and international users than those users send upstream to Silicon Valley.

Now, one can understand why the FCC formally reversing the legal status of the Internet from un-tariffed Internet trade to tariffed "telecommunications" trade, where Silicon Valley would pay for its exceptionally disproportionate net downstream traffic under a sending-party-pays model internationally, would be a profound change in U.S. trade and foreign policy.

It gets worse.

The new secretary general of the ITU is Chinese, and China, Russia, Iran and the Arab states have convinced the vast majority of UN ITU member nations, which are heavily autocratic and have Internet censorship aspirations, to support eventual ITU governance and economic regulation of the Internet.

Edward Snowden's leaks that the NSA has been near-universally surveilling foreign use of the Internet has only catalyzed and accelerated the UN-ITU's Internet power grab plans.

It is in this international "telecommunications" tinderbox that the FCC is playing with matches by signaling to the world its likely plan to change the legal status of the Internet to price (and tariff) regulated "telecommunications."

This is not an "administrative" call of three unelected FCC commissioners. This is a big-time congressional trade and foreign policy call that should involve the congressional leadership and the committees of jurisdiction

responsible for trade and foreign policy, in addition to the FCC's traditional congressional overseers for domestic matters.

And within the executive branch, the foundational legal status of the Internet should be a trade and foreign policy matter driven by the authorized Departments of state, treasury, defense, commerce and the USTR — not the FCC, a domestic regulatory agency with no lead trade or foreign policy authority from Congress.

Will the constitutionally empowered legislative and executive branches of government allow a mere administrative agency like the FCC to unilaterally reverse longstanding, successful, bipartisan, trade and foreign policy by acting like a self-appointed Federal Communications Congress?

Will the real Congress please stand up?

<http://blog.heartland.org/2014/11/the-federal-communications-congress/>

Message

From: Claude Aiken [REDACTED]
Sent: 11/17/2014 8:09:48 PM
To: Kristine Fargotstein [REDACTED]
Subject: RE: Interconnection Paragraph
Attachments: OI Public Notice Outline_Interconnection ca.docx

Thanks for putting this out there, and for offering to draft something that may very well be cut. I made some edits. If these look good, please plug them into the draft.

From: Kristine Fargotstein
Sent: Monday, November 17, 2014 12:55 PM
To: Claude Aiken
Subject: Interconnection Paragraph

Claude – Attached for your review is my splicing of Scott Jordan’s questions. I struggled with the second paragraph trying to discuss both discriminatory practices (without saying discrimination) and transparency issues. Please let me know if you would like me to add anything else.

Kristine Fargotstein
Attorney Advisor
Wireline Competition Bureau – CPD
Federal Communications Commission
[REDACTED]

WIRELINE COMPETITION BUREAU AND WIRELESS TELECOMMUNICATIONS BUREAU
SEEK ADDITIONAL COMMENT IN THE OPEN INTERNET AND FRAMEWORK FOR
BROADBAND INTERNET SERVICE DOCKETS

GN Docket Nos. 10-127, 14-28

Comment Date: [[30 days after FR Publication]], 2014

[[Intro para]]

[[Regulated services paragraphs focusing on regulated service, framing as classification/reclassification question]]

[[Edge service classification issue]]

[[Mobile classification issue (reclassify vs. hybrid)]]

[[CMRS definition issue (reclassify vs. hybrid)]]

[[Broad forbearance paragraphs]]

[[Mobile-specific forbearance para/sentence]]

[[Mobile policy – transparency & RNM]]

[[Specialized services]]

[[Interconnection]]

Interconnection. In the *NPRM*, the Commission sought comment on its tentative conclusion not “to expand the scope of the open Internet rules in any fashion to regulate traffic exchange.”¹ The Commission also sought comment on whether it should view transit, CDN, or other providers engaged in Internet traffic exchange as a class of persons whose interests are similar to those of edge providers.² The record in response to the *NPRM* has brought to light additional issues that warrant further comment. For example, if the Commission were to reclassify of broadband Internet access service or classify a separate edge-facing service, should traffic exchange fall within the scope of either service? What action, if any, should the Commission take to address failure to upgrade capacity at traffic exchange points? How should the transparency rule apply to traffic exchange? For example, should the Commission require disclosure of characteristics of performance across traffic exchange points? And, if so, what metrics should be used for this? Should the Commission require disclosure of peering policies or interconnection agreements? If so, what should providers be required to disclose, and to whom?

Pursuant to sections 1.415 and 1.419 of the Commission’s rules,³ interested parties may file comments and reply comments on or before the respective dates indicated on the first page of this Notice.

¹ *Open Internet NPRM*, 29 FCC Rcd at 5591, para. 83.

² *Open Internet NPRM*, 29 FCC Rcd at 5589, para. 76.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Public Notice references shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information regarding this proceeding, contact Kristine Fargotstein, Wireline Competition Bureau, at [REDACTED]

-FCC-

Message

From: Daniel Ball [REDACTED]
Sent: 12/2/2014 6:25:07 PM
To: Michael Janson [REDACTED]
CC: Jim Schlichting [REDACTED] Joel Taubenblatt [REDACTED]
Subject: RE: QA on PN
Attachments: Phoenix Center Policy Bulletin No. 35.pdf; 14-28 10-29-2014 Verizon 60000976910.pdf

Michael--

Re 332 ex partes, please see attached filings by The Phoenix Center and Verizon.

Dan

From: Michael Janson
Sent: Tuesday, December 02, 2014 12:33 PM
To: Daniel Ball
Cc: Jim Schlichting; Joel Taubenblatt
Subject: FW: QA on PN

Dan --Attached is a list of OI mobile filings from the past two months. According to this document, it looks like CTIA, PK, and NAF/OTI have engaged section 332 arguments in the record recently. If you know of any others, please let me know. Thanks.

CTIA

<http://apps.fcc.gov/ecfs/document/view?id=60000974095>

PK

<http://apps.fcc.gov/ecfs/document/view?id=60000975807>

NAF/OTI

<http://apps.fcc.gov/ecfs/document/view?id=60000985962>

NAF/OTI as part of a large group

<http://apps.fcc.gov/ecfs/document/view?id=60000983522>

From: Roger Sherman
Sent: Monday, December 01, 2014 2:17 PM
To: Michael Janson
Cc: Jim Schlichting; Joel Taubenblatt
Subject: Fw: QA on PN

Please see below. Can we pull recent ex partes on mobile issue that I can share with Kim per her request? Thanks, Roger. I know we say NAF and TMO. But we're there others?

From: Kim Hart [REDACTED]@fcc.gov>

Sent: Monday, December 1, 2014 1:29 PM
To: Jonathan Sallet; Ruth Milkman
Cc: Shannon Gilson; Stephanie Weiner; Roger Sherman; Julie Veach
Subject: RE: QA on PN

Hi all,

I have a couple of questions, so looping in Roger and Julie.

I am still getting asked on a daily basis when we will be putting out a PN asking for further comment. I can start to soften the ground with these reporters to reduce the expectation that there will be one. In that vein, have there been additional comments filed since early November that address some of the outstanding questions, i.e., mobile and forbearance? It would be very helpful to point out some substantive comments submitted in the past few weeks that could negate the need for a PN, especially ahead of next week's hearing. Happy to put together a quick meeting to discuss if that's preferable.

Thanks,
Kim

From: Jonathan Sallet
Sent: Sunday, November 23, 2014 1:34 PM
To: Kim Hart; Ruth Milkman
Cc: Shannon Gilson; Stephanie Weiner
Subject: RE: QA on PN

Some thoughts below. Happy to discuss tomorrow.

From: Kim Hart
Sent: Friday, November 21, 2014 5:10 PM
To: Jonathan Sallet; Ruth Milkman
Cc: Shannon Gilson
Subject: QA on PN

Jon, Ruth,

I've already received a couple of questions from reporters this afternoon on the possibility of a PN or FN and timing. Eggerton apparently heard that a PN is ready to go and could be released imminently (to which I declined to comment). Knowing that we'll get questions about this over the next couple of weeks, I'd appreciate any input you have on the following answers to questions about why we didn't formally ask for more input on specific questions.

Q: You indicated that there were unanswered questions related to Title II, such as implications for privacy, universal service, the FTC and mobile. How can you suddenly have all the information you need?

A: We said we needed more time to examine the issues raised as we weighted options. We are taking that time to give these complex issues the attention they deserve. The record is extensive, spanning back to 2010. It takes time to make sure we have taken everything into account. [We are continuing our investigation as the following ex partes illustrate [examples to come]. We continue this consultation. [Kim, do you feel you need more on this?]

Q: You indicated that parts of the record were thin and needed to be beefed up. The Chairman also said at the last press conference that he wants to make sure he has a fulsome record to support whatever rules he puts forward. Are you now saying you don't need more comment in the record?

A: We of course welcome all comments and feedback from all parties on this important issue. [NEED MORE ON WHY WE NO LONGER THINK RECORD IS THIN IN SOME PLACES – I think you want to point to recent ex partes and potentially we should consider whether some group meetings would be helpful]

Q: I hear staff has been calling some outside parties asking them to submit more comment on specific question. That seems like you're hand-selecting the comments you need to bolster the case for the rules you plan to propose. Why didn't you pose those questions for everyone to provide feedback?

A: The ex parte process is helpful, of course; the staff is also taking meetings that are requested by outside parties to discuss substantive issues.

Q: You have repeatedly said you need more time to make sure you have answered all your questions and developed a robust record to help your defense in court when you are inevitably sued. If you're not formally asking for more comment, why are you delaying a vote on rules? If you have all the information you need, why don't you move forward now?

A: As you know, this is an incredibly complex issue with many layers. We have two goals and we do not believe they are in conflict. We will move with dispatch. And we will construct an order that is legally-sustainable. To try to trade off one against the other would be a mistake.

Thanks,
Kim

From: [Jonathan Sallet](#)
To: [Stephanie Weiner](#)
Subject: FW: Open Internet "My Story"
Date: Saturday, December 06, 2014 11:06:07 AM
Attachments: [NABU Open Internet v3.docx](#)

To discuss tomorrow.

-----Original Message-----

From: TW
Sent: Friday, December 05, 2014 03:50 PM Eastern Standard Time
To: Ruth Milkman; Philip Verveer; Jonathan Sallet; Shannon Gilson; Gigi Sohn
Subject: Open Internet "My Story"

Attached is "My Story" on OI. It reaches back to 1984 and my personal experience, as well as tries to capture some of the recent Damascus Road experience.

I'm not sure what to do with it, but at least it exists if we ever need something like it.

T

Tom Wheeler
Chairman
Federal Communications Commission


An Open Internet with Competitive Choices

The importance of an open Internet was exemplified by an exchange that occurred long before the term Net Neutrality was ever conceived.

"Didn't you used to be president of NABU," Steve Case asked me one day in his AOL office. "We used to worry about you a lot."

"We looked down our noses at you," I replied. "And now look where we are!"

At the heart of that conversation is why the Internet worked and why we must fight to keep the Internet open.

In 1984 the personal computer revolution was dawning. I was CEO of NABU: The Home Computer Network. Steve Case was CEO of Quantum Computing, another start-up just a few blocks away. My company was using new technology to deliver high-speed data to home computers over cable television lines. Steve's company (which went on to become AOL) was delivering its service over dial-up telephone lines.

Wikipedia's description of NABU cites the international electronic engineers' organization description as "the Internet 10 years ahead of its time." We were delivering service to consumers at the then-blazing speed of 1.5 megabits per second – hundreds of times *faster* than Steve Case's company.

Steve went on to build a hugely successful company. NABU went broke and closed. Within the autopsy of NABU lies the importance of an open Internet.

Steve Case was not only a brilliant entrepreneur, but he also had access to an unlimited number of customers nationwide who only had to attach a modem to their telephone to receive his service. NABU, while able to deliver better service than those

phone lines, had to depend on cable television operators granting access to their systems. The phone network was open, the cable network was closed – end of story.

But that open phone network didn't happen by accident. Simply put, there would have been no AOL – and arguably, no Internet – absent decisions by the Federal Communications Commission (FCC) that broke the phone company's monopoly grip on who could use their network.

The modem that allows computers to talk to each other over an analog line was developed by AT&T and its early use was controlled by AT&T. Until the FCC acted, however, the phone company prohibited anyone from attaching non-AT&T equipment to their network. Thus while the modem could be built by others it was against the law (yes, that's right, against the law!) to attach such "alien equipment" to the telephone network. As a result, AT&T controlled the future of online computing.

Two seemingly unrelated FCC decisions – both of which AT&T sued to stop – opened the door to the Internet by allowing "foreign attachments" to the AT&T network. While neither decision anticipated the Internet (they were simply about allowing the use of non-AT&T equipment), they allowed for the birth in the 1980s of the privately produced smart modem that allowed anyone to connect their computer to a telephone line and thence to a computer at the other end.

AOL grew because consumers had open access to a national network. Consumers in Alexandria, or Boston, or Los Angeles all had the same open access to Steve Case's innovation – all they had to do was plug a modem into their phone line. NABU, on the other hand, required the greater bandwidth available only on closed cable networks. Unlike Case, we had to go cable system to cable system to seek permission to serve their subscribers - and cable operators just weren't interested in the brave new world of connected computing.

The wonders of the Internet come down to a simple proposition: there is no need to get permission to innovate. It is that concept that makes the idea of Net Neutrality so important. Who knew that a bedroom-sharing app like AirBnb would take off? Who would have guessed that a smartphone-based app like Uber would rival conventional taxi and limo services?

In an open network it is the *consumer* who decides what they want rather than some network gatekeeper. By piecing together scraps of subscribers in one city with a few subscribers in other cities AOL was able to scale up. It is the same concept that allowed an idea such as Facebook to grow organically. Imagine if Mark Zuckerberg had been forced to go to each network operator and one-by-one convince them why something he started in a dorm room called Pig Book made sense for them to offer customers.

The challenge we face today is how to protect that openness going forward? As Internet video expands its competition with cable TV will the cable broadband provider be able to resist subtly (or explicitly) favoring its content over that of Netflix, for instance? As traditional telephone service migrates to being digital voice over Internet Protocol (VoIP) will the telephone broadband provider be able to resist the urge to prioritize the quality of service for their offering at the expense of their online competitor? The history of network behavior - let alone of human nature - suggests that even the most well-intentioned network operators have a hard time resisting the opportunity for leveraging the fact they control access to the consumer.

This is a challenge as old as networks themselves. We've seen how it has been dealt with in the past; now we need a solution for the Internet era. We need to encourage the building of new Internet infrastructure while also recognizing that what made the Internet what it is today was its openness. The Open Internet rulemaking of the FCC, thus, is a perpetuation of those earlier instances when the FCC refused to let the phone company control who gets to use the network.

It is clear that those who operate last-mile Internet services – the cable and telephone company Internet Service Providers (ISPs) – have an incentive not to have an open

Internet. We have seen **blocking** of services by ISPs; and when the FCC acted to prevent this, the ISP sued to prevent the FCC's action. That ultimately led to the 2010 Open Internet rules where, again, an ISP sued to stop the rules from going into effect. During the trial the ISP explicitly told the court that one of the reasons they were suing was because they wanted to sell **paid prioritization**, a "fast lane" available to those willing to pay for it. And during the period when there were no rules in place we have seen the attempted **throttling** of applications for low revenue customers, but not for higher revenue customers.

The court decision that overturned the 2010 Open Internet rules there was ample evidence on the record that ISPs have both the technical capability and the economic incentive to block, throttle and prioritize services to their benefit, and not to the benefit of consumers and innovators. Unfortunately, that decision disallowed the manner in which the FCC chose to address that issue. The current debate is not over whether Open Internet rules should exist, but how best to write them.

Beyond how to write the rules there is also the question of the scope of what they should cover. Previous attempts at Open Internet rules for the most part exempted wireless networks. In September I told the mobile industry's annual gathering that they can't carry 55 percent of the Internet's traffic and hope to be exempt from Open Internet responsibilities. Mobile is a full participant in the Internet ecosystem and, like everybody else, has full responsibilities subject to reasonable network management.

While the mobile industry is pushing back mightily on the inclusion of their networks, there really is little debate over prohibiting blocking of legal sites, throttling of applications, or paid prioritization. All the major ISPs have recently stood up and said they are against such practices. Their television and newspaper advertisements proclaim their support of Net Neutrality. We should give them credit, while it is the record of their activities that brought us to this point, who would want to be pro-blocking, pro-throttling, and pro-paid prioritization?

So, let's take those networks at their word. What is the best way to institutionalize those agreed-to priorities? In that regard, I have always said that everything is on the table. We at the FCC have multiple tools in our tool box.

{ PAGE * MERGEFORMAT }

My first approach to assuring an Open Internet was to use Section 706 of the Telecommunications Act. It is a very powerful tool that the court explained as the power of the FCC to protect the virtuous circle of innovation driving infrastructure, driving innovation, etc. In the ensuing debate, however, I learned two key things. First, the “commercial reasonableness” standard the court referenced was widely understood to refer to the reasonableness of private interests, not whether a practice actually would advance the general public interest. Second, the use of a stand-alone “commercially reasonable” standard invited case-by-case legal challenges that would further draw-out the ultimate implementation of comprehensive Open Internet rules.

The “just and reasonable” standard of Title II of the Communications Act is very attractive in overcoming these concerns. Title II, of course, has long been understood as a test of the broader public interest. As such, in these circumstances, it lines up quite well with the court’s explanation of the virtuous circle. Moreover, the public interest will be served by the ability of Title II to establish bright-line limits on paid prioritization, blocking and throttling. While derided as a “1930’s rule,” when well structured, Title II has been very successful in the regulation of 21st century networks. The shining example is its application to the wireless industry, and how under carefully chosen Title II rules the mobile industry has attracted hundreds of billions of private investment to become an American success story and the envy of the world.

So when we look at all the tools in the toolbox I see the opportunity of using both Section 706 and Title II. This is different from the so-called “hybrid” approach first proposed by Prof. Tim Wu, the father of the term “Net Neutrality.” That proposal broke ISP activities in two: the sender side, and the consumer side, each with separate rules. Under the “all the tools” approach, however, the FCC has the ability to apply all statutory powers to all aspects of assuring an Open Internet. In this regard, “all the tools” provides even more protection than that which was proposed by President Obama.

This approach is also different from simply taking a forklift and applying all of Title II to broadband world. There are 48 sections to Title II. Very few of them are relevant to Open Internet issues. One of the provisions of Title II from which I believe the

{ PAGE * MERGEFORMAT }

FCC should forbear, for instance, is retail rate regulation. Unlike other nations that have made the decision to invest public dollars in the construction of Internet infrastructure, the United States has relied on private companies to do so. And, since the only basis for investment in competitive broadband choices for consumers is the expectation of a reasonable return, this means freedom to set consumer rates.

Thirty years ago this nation began the process of moving from monopoly telecommunications to competitive services in which consumers had choices. If we are to continue to expand the competitive broadband market, then we must assure there is incentive for competitive infrastructure to be constructed. While some want to regulate broadband as a monopoly utility, I do not. We should not reverse 30 years of telecommunications policy that has painfully moved us from monopoly toward competition. The construction of competitive choice for consumers continues as a work in progress, we must encourage that progress and not return to monopolies.

The FCC's decision on an Open Internet rule is the 21st century equivalent of the Commission's earlier decisions that opened up the telephone networks. The FCC now has the opportunity to repeat that broad policy and, in the process, perpetuate the innovation that accompanies openness. At the same time we must also stimulate the competitive investment that creates consumer choice. We will not shirk from those opportunities.

To: Travis LeBlanc [REDACTED] Martha Heller [REDACTED] Stephen Ruckman [REDACTED] Gregory Simon [REDACTED]
Cc: Christopher Killion [REDACTED] Rosemary McEnergy [REDACTED]
From: Paula Blizzard
Sent: Mon 11/10/2014 4:02:32 PM
Subject: OI - Obama says make it title II

Chris and Rosemary just alerted me to breaking news – Obama says to make it Title II:

President Obama has come out in support of reclassifying internet service as a utility, a move that would allow the Federal Communications Commission to enforce more robust regulations and protect net neutrality. **"To put these protections in place, I'm asking the FCC to reclassifying internet service under Title II** of a law known as the Telecommunications Act," Obama says in a statement this morning. "In plain English, I'm asking [the FCC] to recognize that for most Americans, the internet has become an essential part of everyday communication and everyday life."

<http://www.theverge.com/2014/11/10/7185933/fcc-should-reclassify-internet-as-utility-obama-says>

Not sure how this will affect the current draft and schedule – but I suspect substantially.....

Thomas Parisi

From: Thomas Parisi
Sent: Monday, November 10, 2014 9:49 AM
To: Kristine Fargotstein
Subject: RE: Technology Breaking News

It might indeed.

From: Kristine Fargotstein
Sent: Monday, November 10, 2014 9:48 AM
To: Thomas Parisi
Subject: RE: Technology Breaking News

Yes. This might explain our delay.

From: Thomas Parisi
Sent: Monday, November 10, 2014 9:48 AM
To: Kristine Fargotstein
Subject: RE: Technology Breaking News

Did you mean to send it just to me? But yeah that was interesting. Politico pro breaking news alerts are the best!

From: Kristine Fargotstein
Sent: Monday, November 10, 2014 9:46 AM
To: Thomas Parisi
Subject: FW: Technology Breaking News

FYI

From: POLITICO Pro [REDACTED]@politico.com]
Sent: Monday, November 10, 2014 9:39 AM
To: Kristine Fargotstein
Subject: Technology Breaking News

President Barack Obama waded directly into the debate over net neutrality today, calling for stronger regulation of open Internet rules.

"So the time has come for the FCC to recognize that broadband service is of the same importance and must carry the same obligations as so many of the other vital services do," Obama said in a statement carried on the White House website. "To do that, I believe the FCC should reclassify consumer broadband service under Title II of the Telecommunications Act — while at the same time forbearing from rate regulation and other provisions less relevant to broadband services."

"This is a basic acknowledgment of the services ISPs provide to American homes and businesses, and the straightforward obligations necessary to ensure the network works for everyone — not just one or two companies," Obama said.

Obama also called for an "explicit ban" on so-called paid prioritization, or Internet fast lanes.

To change your alert settings, please go to <https://www.politicopro.com/member/?webaction=viewAlerts>.

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To: Thomas Paris [REDACTED]
From: Kristine Fargotstein
Sent: Mon 11/10/2014 2:47:49 PM
Subject: RE: Technology Breaking News

Yes. This might explain our delay.

From: Thomas Parisi
Sent: Monday, November 10, 2014 9:48 AM
To: Kristine Fargotstein
Subject: RE: Technology Breaking News

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Message

From: Kristine Fargotstein [REDACTED]
Sent: 11/10/2014 1:50:10 PM
To: Claude Aiken [REDACTED]
Subject: RE: FCC Daily News Briefing for Monday, November 10, 2014

At least the delays in edits from above now makes sense...

From: Claude Aiken
Sent: Monday, November 10, 2014 8:50 AM
To: Melissa Droller Kirkel; Kristine Fargotstein; Thomas Parisi; Zachary Ross
Subject: RE: FCC Daily News Briefing for Monday, November 10, 2014

I saw. Will try to get to the bottom of this this morning.

*** Non-Public: For Internal Use Only ***

-----Original Message-----

From: Melissa Droller Kirkel
Sent: Monday, November 10, 2014 07:57 AM Eastern Standard Time
To: Claude Aiken; Kristine Fargotstein; Thomas Parisi; Zachary Ross
Subject: FW: FCC Daily News Briefing for Monday, November 10, 2014

There is also an article about delaying the item in the Wall Street journal but I don't have access to the full article.

Sent with Good (www.good.com)

-----Original Message-----

From: FCC Office of Media Relations
Sent: Monday, November 10, 2014 07:52 AM Eastern Standard Time
To: OMR Clips Distro
Subject: FW: FCC Daily News Briefing for Monday, November 10, 2014

From: Bulletin Intelligence
Sent: Monday, November 10, 2014 7:50:54 AM (UTC-05:00) Eastern Time (US & Canada)
To: FCC Office of Media Relations
Subject: FCC Daily News Briefing for Monday, November 10, 2014
Federal Communications Commission News Briefing

DATE: MONDAY, NOVEMBER 10, 2014 8:00 AM EST

Holiday Message. In observance of the federal Veterans Day holiday, we will not publish on Tuesday, November 11,

Message

From: Kristine Fargotstein [REDACTED]
Sent: 11/10/2014 1:50:10 PM
To: Claude Aiken [REDACTED]
Subject: RE: FCC Daily News Briefing for Monday, November 10, 2014
Flag: Follow up

At least the delays in edits from above now makes sense...

From: Claude Aiken
Sent: Monday, November 10, 2014 8:50 AM
To: Melissa Droller Kirkel; Kristine Fargotstein; Thomas Parisi; Zachary Ross
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To: Travis LeBlanc [REDACTED] Martha Heller [REDACTED] Stephen Ruckman [REDACTED] Gregory Simon [REDACTED]
Cc: Christopher Killion [REDACTED] Rosemary McEnergy [REDACTED]
From: Paula Blizzard
Sent: Mon 11/10/2014 4:02:32 PM
Subject: OI - Obama says make it title II

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President Obama has come out in support of reclassifying internet service as a utility, a move that would allow the Federal Communications Commission to enforce more robust regulations and protect net neutrality. **"To put these protections in place, I'm asking the FCC to reclassifying internet service under Title II** of a law known as the Telecommunications Act," Obama says in a statement this morning. "In plain English, I'm asking [the FCC] to recognize that for most Americans, the internet has become an essential part of everyday communication and everyday life."

<http://www.theverge.com/2014/11/10/7185933/fcc-should-reclassify-internet-as-utility-obama-says>

Not sure how this will affect the current draft and schedule – but I suspect substantially.....

To: Scott Jordan [REDACTED]@fcc.gov; Eric Feigenbaum [REDACTED]
Cc: Stephanie Weiner [REDACTED]
From: Matthew DelNero
Sent: Sun 11/2/2014 10:21:40 PM
Subject: RE: FCBA Peering CLE

Scott, I don't see a concern with it -- particularly given that you'd be in the moderator role only (so wouldn't be called upon to give opinions) and could make clear that you're not speaking in any representative capacity. I'm looping in Stephanie as well just in case she has anything to add. Thanks.

-----Original Message-----

From: Scott Jordan
Sent: Saturday, November 01, 2014 12:12 PM Eastern Standard Time
To: Matthew DelNero; Eric Feigenbaum
Subject: FW: FCBA Peering CLE

Sean Conway in WCB asked if I would moderate a FCBA panel on interconnection. Given that it would be on 11/19 (a day before circulation of OI) and it mentions OI in the description, would this be a bad idea?

From: Sean Conway
Sent: Wednesday, October 29, 2014 3:16 PM
To: Scott Jordan
Subject: FCBA Peering CLE

Scott,

Great speaking with you this afternoon. Attached is a blurb on the Peering CLE that the FCBA Wireline Committee is hosting on November 19. Feel free to let me know if you have any additional questions.

Message

From: Kristine Fargotstein [REDACTED]
Sent: 11/7/2014 10:04:09 PM
To: Zachary Ross [REDACTED] Claude Aiken [REDACTED] Thomas Parisi [REDACTED]
CC: Melissa Droller Kirkel [REDACTED]
Subject: RE: OI Team Availability

Claude – I just reviewed the procedural history. Please use the 11-07-14 version instead. Kristine

From: Zachary Ross
Sent: Friday, November 07, 2014 3:54 PM
To: Claude Aiken; Kristine Fargotstein; Thomas Parisi
Cc: Melissa Droller Kirkel
Subject: RE: OI Team Availability

The background section is up to date and incorporates Marcus's comments (on the K: drive dated 11.6) but I'm not sure if someone on the team has reviewed and made additional comments since then.

From: Claude Aiken
Sent: Friday, November 07, 2014 3:35 PM
To: Kristine Fargotstein; Thomas Parisi
Cc: Melissa Droller Kirkel; Zachary Ross
Subject: RE: OI Team Availability

A link is more than sufficient for me at this time.

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-----Original Message-----

From: Kristine Fargotstein
Sent: Friday, November 07, 2014 03:34 PM Eastern Standard Time
To: Thomas Parisi; Claude Aiken
Cc: Melissa Droller Kirkel; Zachary Ross
Subject: RE: OI Team Availability

Another option would be instead of assembling and un-assembling, if we want to send Claude a link to our current drafts location on the K Drive by COB? That way he can make edits to the current drafts?

From: Thomas Parisi
Sent: Friday, November 07, 2014 3:17 PM
To: Claude Aiken; Kristine Fargotstein
Cc: Melissa Droller Kirkel; Zachary Ross
Subject: RE: OI Team Availability

Sounds like a plan! And I am happy to reassemble PPD's newest sections into the full draft of the item so that you can see where we are now. If that would be helpful. I don't mind staying a little late for that, so if folks send along like by 5 or 5:30 I can start putting the pieces back together.

From: Claude Aiken
Sent: Friday, November 07, 2014 3:15 PM
To: Thomas Parisi; Kristine Fargotstein
Cc: Melissa Droller Kirkel; Zachary Ross
Subject: RE: OI Team Availability

That is fine, Thom. I may look at the draft over the weekend as well, so would you all mind giving me a status of your sections at the end of the day? I want to finally have a chance to read the full draft other than at a flat out spring and see how everything fits.

*** Non-Public: For Internal Use Only ***

-----Original Message-----

From: Thomas Parisi
Sent: Friday, November 07, 2014 03:09 PM Eastern Standard Time
To: Claude Aiken; Kristine Fargotstein
Cc: Melissa Droller Kirkel; Zachary Ross
Subject: RE: OI Team Availability
Claude,

Can we still use a couple hours over the weekend to catch up on some of the edits to our sections if we want? I think that would put me in a better place to be more helpful on Monday, as I have been spending time with my PPD issues today, and I haven't turned to working on the edits to my section yet. Wasn't sure if we could use some of those hours for that purpose. I definitely don't see needing 16, but I could put a few in.

Thom

From: Claude Aiken
Sent: Friday, November 07, 2014 2:07 PM
To: Kristine Fargotstein
Cc: Melissa Droller Kirkel; Thomas Parisi; Zachary Ross
Subject: RE: OI Team Availability

Thanks all! I put my availability down below as well. After talking to Matt it looks like we won't have stuff to do this weekend, but we should standby in case we get edits to put in (looks like Jon is reviewing, but not entirely clear at what pace). We're still going to try to get something to OCH on Monday, but folks understand that we can't address everything if we just get edits Monday morning. Stay tuned, this may change.

Like Julie said, thanks for your hard work and sorry for all of the crazy whiplash associated with this project. You guys are doing an awesome job!

From: Kristine Fargotstein
Sent: Friday, November 07, 2014 11:14 AM
To: Claude Aiken

Cc: Melissa Droller Kirkel; Thomas Parisi; Zachary Ross
Subject: RE: OI Team Availability

Should have clarified, these are just the times we are not available. Other than that, folks are around.

From: Kristine Fargotstein
Sent: Friday, November 07, 2014 11:13 AM
To: Claude Aiken
Cc: Melissa Droller Kirkel; Thomas Parisi; Zachary Ross
Subject: OI Team Availability

Claude – Here is the team’s availability for the next several days.

	Melissa	Kristine	Thom	Zach	Claude
Saturday		Offline 11am-5pm			Offline 8am-1pm; 3pm-8pm
Sunday					Offline 8am-1pm; 3pm-8pm
Monday				On Leave (but can work if necessary)	
Tuesday	Offline all day		Offline in the evening	Offline after 3pm	

Melissa: [REDACTED]

Kristine: [REDACTED] available to come into the office if anything needs to be done in person

Thom: [REDACTED]

Zach: [REDACTED]

Claude: [REDACTED]

Kristine Fargotstein
Attorney Advisor
Wireline Competition Bureau – CPD
Federal Communications Commission
[REDACTED]

Message

From: Claude Aiken [/O=FCC/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CLAUDE.AIKEN]
Sent: 11/6/2014 6:20:16 PM
To: Aaron Garza [REDACTED]; Andrew Erber [REDACTED]; Christopher Killion [REDACTED]; Claude Aiken [REDACTED]; Daniel Ball [REDACTED]; Gregory Simon [REDACTED]; Jennifer Salhus [REDACTED]; Jerusha Burnett [REDACTED]; Jim Schlichting [REDACTED]; Joel Taubenblatt [REDACTED]; John B. Adams [REDACTED]; Kristine Fargotstein [REDACTED]; Kurt Schroeder [REDACTED]; Marcus Maher [REDACTED]; Mark Stone [REDACTED]; Martha Heller [REDACTED]; Matthew DelNero [REDACTED]; Melissa Droller Kirkel [REDACTED]; Michael Janson [REDACTED]; Nese Guendelsberger [REDACTED]; Paula Blizzard [REDACTED]; Randy Clarke [REDACTED]; Richard Smith [REDACTED]; Stephanie Weiner [REDACTED]; Stephen Ruckman [REDACTED]; Thomas Parisi [REDACTED]; Zachary Ross [REDACTED]
Subject: OI Draft Style Sheet Update
Attachments: OI Style Sheet.docx

OI Drafting Team,

Thank you all for your great work so far, the draft is really shaping up and looking great. In order to keep it looking good as we start to compile edits from different people, we wanted to re-send the OI Style Sheet and also make a few additional requests for style which should help streamline the editing process.

- 1) **Cross Referencing:** When cross-referencing material throughout the document, please refer to the section or paragraph by name or with text and not numbers. As the document is edited, what is now paragraph 100 or footnote 201 might change.
- 2) **Unfinished Material:** For material that needs to be followed up on, please use double brackets [[XX]] rather than single brackets.
- 3) **Track Changes & Comment Bubbles:** We need to know which changes come from which reviewer. Before starting to make track changes or insert comments, please check to make sure that the identification information is still turned on in the draft. To do this, Open Word → Click on File and select Options. → From Word Options screen, select Trust Center. → Click on Trust Center Settings. → Click on Privacy Options. → Uncheck: Remove personal information from file properties on save → Click OK and OK one more time.
- 4) **Template:** Please be sure that you are always working in the correct Paragraphs by TOC template. To do this, Open Word → Click on File and select Options. → From Word Options screen, select Add Ins. → Go down to bottom where there is a drop down box for "Manage" → Drop down options to select "Template" and then hit the "Go button" → Select Orders TOC by Paragraph Template (located on the M Drive under OS Process folder) → check "Automatically update document styles" → click "Attach" button" → click OK.

Thanks for your continued work on this item, and feel free to ask any questions you may have. And, if someone on your team has inadvertently been left off this list, please forward this to them and let me know so I can add them.

Thanks,
Claude

Message

From: Zachary Ross [REDACTED]
Sent: 11/6/2014 6:05:07 PM
To: Thomas Parisi [REDACTED]; Melissa Droller Kirkel [REDACTED]; Claude Aiken [REDACTED]; Kristine Fargotstein [REDACTED]
Subject: RE: rolling OI comments

Great thanks. The background section has been updated to incorporate Marcus's comments, and saved in K: with today's date.

From: Thomas Parisi
Sent: Thursday, November 06, 2014 12:53 PM
To: Zachary Ross; Melissa Droller Kirkel; Claude Aiken; Kristine Fargotstein
Subject: RE: rolling OI comments

That works for me Zach. We can just cut and paste whatever you do into the same document. My two sections are also saved on the K drive in their respective folders. (exec summary/ need for rules).

From: Zachary Ross
Sent: Thursday, November 06, 2014 12:17 PM
To: Melissa Droller Kirkel; Claude Aiken; Kristine Fargotstein; Thomas Parisi
Subject: RE: rolling OI comments

Thanks Melissa. Thom let me know how you want to coordinate putting in edits -- I'm fine working off a local copy and then inserting changes onto the K: drive sometime tomorrow if that works for you.

From: Melissa Droller Kirkel
Sent: Thursday, November 06, 2014 12:11 PM
To: Claude Aiken; Kristine Fargotstein; Thomas Parisi; Zachary Ross
Subject: RE: rolling OI comments

Attached are the ELS section and Scope sections of yesterday draft, including Marcus's comments. Scope includes everything except the forbearance order and specialized services, so Zack and Thom you will probably need to take turns inputting your changes (or you can create a separate doc, Thom). Please note that these include the WTB inserts, but do not include my comments on those from yesterday. I am assuming that we are not reviewing those yet.

These are saved on the K: drive.

Thanks!
Melissa

From: Claude Aiken
Sent: Thursday, November 06, 2014 9:58 AM
To: Melissa Droller Kirkel; Kristine Fargotstein; Thomas Parisi; Zachary Ross
Subject: FW: rolling OI comments

All,

Here are the first set of Ad Law comments on this one. Let's work on implementing Marcus's suggestions.

Also, I think it would be helpful to read and maybe provide comments/proposed edits on other WCB sections, since up to this point we've been so in the weeds that we haven't had a chance to look at the whole draft. Let's try to do this by Friday as well, understanding that other things may take priority. I'll assign sections, but please let me know if something doesn't work for you.

Melissa – Need for the Rules, No Blocking, Specialized Services

Kristine – Procedural History, Enforceable Legal Standard

Thom – BSAS

Zach – BIAS, Traffic Exchange, Reasonable Network Management

Let me know if you have any questions, and thanks again for all your hard work on this!

Thanks,
Claude

From: Marcus Maher

Sent: Thursday, November 06, 2014 9:32 AM

To: Claude Aiken

Cc: Stephanie Weiner

Subject: rolling OI comments

Claude,

It won't come as a surprise since you've seen the other side of things that the comments being put together on the OI item haven't fully kept pace with the turn-around of revised drafts, but Stephanie thought it would make sense for me to pass along to you the comments I had on the initial draft from last Friday. Given the timing and stage of the process, this just focused on any big issues or things that jumped out at me, rather than reflecting a close line-by-line read. I know the draft has continued to evolve (and I'll now turn to the latest version), but hopefully getting comments on Friday's draft won't prove too difficult. Note also that these comments are just my own, and haven't been reviewed by others.

Thanks,

Marcus

*** Non-Public: For Internal Use Only ***

Message

From: Kristine Fargotstein [REDACTED]
Sent: 11/8/2014 1:06:23 AM
To: Claude Aiker [REDACTED]
Subject: RE: more edits from me, mostly to RNM

I can start reviewing the RNM section tomorrow night and will let you know on Sunday if anything is problematic... Also, I'll send the OI briefing sheet through then too.

-----Original Message-----

From: Claude Aiken
Sent: Friday, November 07, 2014 07:53 PM Eastern Standard Time
To: Melissa Droller Kirkel; Kristine Fargotstein; Thomas Parisi; Zachary Ross
Subject: FW: more edits from me, mostly to RNM
FYI, Scott's edits. These don't look objectionable to me, though let me know if you disagree.

From: Scott Jordan
Sent: Friday, November 07, 2014 6:22 PM
To: Claude Aiken
Cc: Matthew DelNero; Stephanie Weiner; Jim Schlichting
Subject: more edits from me, mostly to RNM

Attached are some edits I'm suggesting, almost all of which are in the reasonable network management section. If they look ok, I'd like them put into the version that will go to the Chairman on Monday.

In addition, I've sent some suggested edits for the mobile reasonable network management section to WTB, and they are deciding whether to include them as they prepare a further revision to that section.

Thanks,

-Scott

Message

From: Claude Aiken [REDACTED]
Sent: 11/10/2014 9:28:09 PM
To: Denise Coca [REDACTED]
CC: Kristine Fargotstein [REDACTED]; Melissa Droller Kirkel [REDACTED]; Pam Megna [REDACTED]
Subject: RE: Paragraph from OI Order

Denise,

Thanks for the helpful feedback, much appreciated. Now we'll just see where we end up on both of our items!

Claude

From: Denise Coca
Sent: Monday, November 10, 2014 10:41 AM
To: Claude Aiken
Cc: Kristine Fargotstein; Melissa Droller Kirkel; Pam Megna
Subject: RE: Paragraph from OI Order

Hi all, some thoughts from Pam and I on this. Very substantial paragraph.

We just use "usage allowances" throughout 2014 Report.

From: Claude Aiken
Sent: Saturday, November 08, 2014 2:16 PM
To: Denise Coca
Cc: Kristine Fargotstein; Melissa Droller Kirkel
Subject: Paragraph from OI Order

Denise,

Wanted to make sure the following paragraph on data caps was consistent with, or at least not contrary to, language in the current BPR draft:

1. The record also reflects concerns over some broadband providers' practices with respect to data caps, data allowances, and usage-based pricing.^[1] Data caps place limits on the volume of data downloaded by the end user during

^[1] See, e.g., CWA/NAACP Comments at 18-19; Consumer Federation of America Comments at 38 (expressing concern regarding Comcast's exemption of Xfinity online video app on Xbox and TiVo from data caps in 2012); Consumers Union Comments at 8; NPR Comments at 11; Nokia Comments at 8-9 (stating that "existence of data caps impacts content and OTT companies because these entities see a decline in traffic to their websites, applications, and other service platforms as the month progresses due to rationing by the consumer"); Public Knowledge/Benton Foundation Comments at 48-60; Roku Comments at 8; Telecommunications for the Deaf and Hard of Hearing et al Comments at iii, 15 (urging the Commission to consider the disproportionate impact of data caps on people who are deaf or hard of hearing, who depend on data-intensive applications for basic communications); Public Knowledge Comments at 50-51 (asserting that usage-based billing could enable broadband providers to create metered and unmetered lanes, supposedly no different than the fast and slow lanes feared with paid prioritization); Writers Guild of America East and AFL-CIO Comments at 25; Tumblr Reply at 2.

a fixed period. Once a fixed download cap has been reached, the speed at which the end-user can access the Internet may be throttled to a slower speed, or the end-user may be charged for excess data.^[2] Data caps, data allowances, and usage-based pricing plans can potentially be used by broadband providers to disadvantage competing over-the-top providers, particularly with regard to video.^[3] Video delivery requires substantially more bandwidth than other data services and over-the-top providers sell content directly to consumers by delivering it to IP-enabled devices. Data caps and usage-based pricing plans imposed by broadband providers may deter consumers from utilizing these over-the-top services that often compete with broadband provider-affiliated services. We will review such practices subject to case-by-case enforcement under the enforceable legal standard, and will closely scrutinize the imposition of caps, allowances, and usage-based pricing plans by fixed broadband providers that appear motivated to deter over-the-top competition.

Thanks,
Claude

*** Non-Public: For Internal Use Only ***

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.....

^[2] For purposes of this Order, the distinction between a “cap” and an “allowance” is what happens when the user exceeds the stated threshold. By cap, we refer to those arrangements where the user will be throttled, while by allowance, we refer to those arrangements where additional charges will be imposed. We note that in this proceeding, the term “cap” is sometimes used to refer to any plan that sets a limit on the amount of data that the user can consume as part of the monthly subscription fee.

^[3] See, e.g., Public Knowledge/Benton Foundation Comments at 51-52; Consumer’s Union Reply at 5 (arguing that if the largest wireless carriers exempt certain uses from their data caps, the effect is to push consumers to watch affiliated content out of fear that doing otherwise will count against their monthly caps).

Message

From: Claude Aiken [REDACTED]
Sent: 11/10/2014 9:28:09 PM
To: Denise Coca [REDACTED]
CC: Kristine Fargotstein [REDACTED]; Melissa Droller Kirkel [REDACTED]; Pam Megna [REDACTED]
Subject: RE: Paragraph from OI Order

Denise,

Thanks for the helpful feedback, much appreciated. Now we'll just see where we end up on both of our items!

Claude

From: Denise Coca
Sent: Monday, November 10, 2014 10:41 AM
To: Claude Aiken
Cc: Kristine Fargotstein; Melissa Droller Kirkel; Pam Megna
Subject: RE: Paragraph from OI Order

Hi all, some thoughts from Pam and I on this. Very substantial paragraph.

We just use "usage allowances" throughout 2014 Report.

From: Claude Aiken
Sent: Saturday, November 08, 2014 2:16 PM
To: Denise Coca
Cc: Kristine Fargotstein; Melissa Droller Kirkel
Subject: Paragraph from OI Order

Denise,

Wanted to make sure the following paragraph on data caps was consistent with, or at least not contrary to, language in the current BPR draft:

1. The record also reflects concerns over some broadband providers' practices with respect to data caps, data allowances, and usage-based pricing.^[1] Data caps place limits on the volume of data downloaded by the end user during

^[1] See, e.g., CWA/NAACP Comments at 18-19; Consumer Federation of America Comments at 38 (expressing concern regarding Comcast's exemption of Xfinity online video app on Xbox and TiVo from data caps in 2012); Consumers Union Comments at 8; NPR Comments at 11; Nokia Comments at 8-9 (stating that "existence of data caps impacts content and OTT companies because these entities see a decline in traffic to their websites, applications, and other service platforms as the month progresses due to rationing by the consumer"); Public Knowledge/Benton Foundation Comments at 48-60; Roku Comments at 8; Telecommunications for the Deaf and Hard of Hearing et al Comments at iii, 15 (urging the Commission to consider the disproportionate impact of data caps on people who are deaf or hard of hearing, who depend on data-intensive applications for basic communications); Public Knowledge Comments at 50-51 (asserting that usage-based billing could enable broadband providers to create metered and unmetered lanes, supposedly no different than the fast and slow lanes feared with paid prioritization); Writers Guild of America East and AFL-CIO Comments at 25; Tumblr Reply at 2.

a fixed period. Once a fixed download cap has been reached, the speed at which the end-user can access the Internet may be throttled to a slower speed, or the end-user may be charged for excess data.^[2] Data caps, data allowances, and usage-based pricing plans can potentially be used by broadband providers to disadvantage competing over-the-top providers, particularly with regard to video.^[3] Video delivery requires substantially more bandwidth than other data services and over-the-top providers sell content directly to consumers by delivering it to IP-enabled devices. Data caps and usage-based pricing plans imposed by broadband providers may deter consumers from utilizing these over-the-top services that often compete with broadband provider-affiliated services. We will review such practices subject to case-by-case enforcement under the enforceable legal standard, and will closely scrutinize the imposition of caps, allowances, and usage-based pricing plans by fixed broadband providers that appear motivated to deter over-the-top competition.

Thanks,
Claude

*** Non-Public: For Internal Use Only ***

.....

.....

.....

^[2] For purposes of this Order, the distinction between a “cap” and an “allowance” is what happens when the user exceeds the stated threshold. By cap, we refer to those arrangements where the user will be throttled, while by allowance, we refer to those arrangements where additional charges will be imposed. We note that in this proceeding, the term “cap” is sometimes used to refer to any plan that sets a limit on the amount of data that the user can consume as part of the monthly subscription fee.

^[3] See, e.g., Public Knowledge/Benton Foundation Comments at 51-52; Consumer’s Union Reply at 5 (arguing that if the largest wireless carriers exempt certain uses from their data caps, the effect is to push consumers to watch affiliated content out of fear that doing otherwise will count against their monthly caps).

From: [TW](#)
To: [Shannon Gilson](#); [Jonathan Sallet](#); [Philip Verveer](#); [Ruth Milkman](#)
Cc: [Kim Hart](#)
Subject: RE: Draft QA
Date: Sunday, November 09, 2014 9:17:39 PM
Attachments: [OI QADraft tw.docx](#)

Thank you. Attached are my comments and suggestions

T

From: Shannon Gilson
Sent: Sunday, November 09, 2014 8:36 PM
To: TW; Jonathan Sallet; Philip Verveer; Ruth Milkman
Cc: Kim Hart
Subject: Draft QA

Attached is the draft QA for review. Jon, we need your assistance on a few questions.

Thank you,

Shannon and Kim

QA - TW

Q. When and how did the Chairman find out about the POTUS' letter?

A. The Chairman was informed Thursday evening in the broadest possible terms. He did not know the specific substance of the President's letter until he read the public document.

Q. Did the President call the Chairman directly?

A. No. He was informed by (Jeff Zients) one of the President's senior advisors and the appropriate ex parte submission filed.

Q. Has there been discussions between the WH and the FCC leading up to this rollout?

A. The FCC informed the WH it was working on a hybrid approach combining Title II and Sec. 706

Q. What's the impact of the letter?

A. We welcome the President's point of view. The FCC is an independent regulatory agency and any Open Internet proposals will be voted on by the five FCC commissioners.

Q. Are we going to put the President's position formally out for comment?

A. We have just seen the substance of the President's statement. Right now we are analyzing it. As the Chairman said, it will be entered into the record and we welcome comment on it.

If yes:

Q. How is the President's position different than what we've already sought comment on?

A. JON

Q. Where does it go in the record? Does it go into ECFS?

A. The President's Open Letter/We the People response will be entered into the official record for this proceeding.

Q. Does the President's letter affect the timing of the rules? Previously you said you'd have rules by the end of the year.

A. No. The Chairman said he hoped to put in place by the end of the year, but there is no formal deadline. As has previously been reported, we have recently come to the conclusion that more work will be needed on these complex issues, including possibly additional public comment.

Q. When do you expect to issue formal rules?

A. The goal is to get rules in place as soon as possible since the Court struck down rules in January. As a result, there are currently no rules in place to prevent ISPs from blocking and discriminating against online content. However, we need to

ensure that any rules can withstand any legal challenges. The Chairman intends to circulate rules in 2015.

Q. The WSJ reported that the record was thin and you would seek additional comment? Is that true and how do you need to beef up the record?

A. Yes. The Commission has been examining a number of legal options, including a hybrid approach and Title II reclassification. Over the past few weeks, a number substantive questions have been raised and it has become clear that Commission staff need more time to study the legal and policy implications of different legal theories and that the Commission record needs to be beefed up to in multiple areas, including whether the FCC has the authority to cover mobile under Title II. (Can we provide an additional example of an area that needs to be beefed up?) SEE STATEMENT FOR LIST

Q. Is the Chairman's hybrid plan in jeopardy now that the President has made his views known?

A. As the Chairman has said, all legal options are on the table. The goal is to arrive at the strongest legal theory to support new rules to protect an open Internet.

Q. The statement raises various policy issues if you go Title II. How does the President's proposal raise privacy issues or implications for USF?

A. The goal is not to rush to judgment. Since the use of Title II would prohibit the FTC from engaging in privacy activities relative to covered ISPs, it will be necessary for the FCC to determine the rules it will use to deal with privacy issues. Insofar as USF is concerned, the basis of the assessment of fees, as well as state taxes, is that the service is a Telecommunications Service (i.e., a Title II service). CHECK WHETHER THEN STATUTE IS UNFLEXIBLE ON THE ASSESSMENT OF USF FEES AGAINST ANY TITLE II CARRIER.

Q. How does Title II affect the FCC's ability to apply Open Internet rules to mobile?

A. This legal theory raises questions that are less than fully developed in the record, specifically whether current laws and regulation give the FCC jurisdiction over mobile IP under Title II. It's a critical question – 55 percent of Internet traffic is from mobile devices.

Q. Some are saying that the President decided to step in because news reports surrounding the hybrid proposal were so negative. What's your reaction?

A. Any question regarding the POTUS' timing/motivation, I refer you to the White House. We do, however, encourage you to read the NYT editorial on the hybrid approach, "A Promising Approach to Internet Rules."

Q. The Chairman says he shares the same position as the President, but POTUS is calling for Title II and the Chairman has called for 706 and a hybrid approach. So how can they share the same position if they are calling for different legal solutions?

A. The Chairman and the President share the same goals – keeping the Internet open as platform for innovation, expression and economic growth. The Chairman has often said he is opposed to Internet fast lanes and to accomplish that all options are on the table and no final decision has been made.

Q. The President has been clear that he believes that paid prioritization should be banned, but the Chairman's initial proposal allowed for fast lanes. How can you say they share the same point of view?

A. The Chairman has been clear that he is against any sort of paid prioritization that would harm consumers, innovation or competition. The Commission's proposal seeks comment on whether paid prioritization can be banned outright.

Q. The President has been clear that he believes that paid prioritization should be banned, but the Chairman's draft order only calls for a rebuttable presumption – not a ban – against fast lanes. How can you say they share the same point of view?

A. This is not a matter of difference in goals – the Chairman and POTUS share the same goal of no paid prioritization – but of the best legal approach to achieve that goal under existing statute.

Q. How much more time do you need? Are you just kicking the can down the road due to all of the opposition to your proposals?

A. After a decade, we want to adopt rules that can withstand any legal challenges. There have been substantive legal questions raised by a number of the approaches we are contemplating. FCC lawyers, litigators and technical experts need additional time to analyze the legal theories under review.

Q. If you do not offer final rules until 2015, how does the change the political dynamic given the change of hands in Congress?

A. Our goal is to find the best possible legal approach that will instate strong consumer protections while also withstand possible legal challenges. This is about getting it right, not political calculations.

Q. Do you plan on a Further Notice to strengthen the record?

A. It's one of the options we are currently considering to develop a strong legal record.

From: [Kim Hart](#)
To: [Shannon Gilson](#)
Subject: RE: Draft
Date: Sunday, November 09, 2014 7:43:29 PM
Attachments: [QADraft+ k.docx](#)

From: Shannon Gilson
Sent: Sunday, November 09, 2014 6:29 PM
To: Kim Hart
Subject: Draft

QA

Q. When and how did the Chairman find out about the POTUS' letter?

A. The Chairman was informed Thursday evening.

Q. Did the President call the Chairman directly?

A. No. He was informed by (Jeff Zients) one of the President's senior advisors.

Q. Has there been discussions between the WH and the FCC leading up to this rollout?

A. The FCC kept the WH apprised of the process thus far, but there have not been substantive discussions. (IS THIS RIGHT?)

Q. What's the impact of the letter?

A. We welcome the President's point of view. The FCC is an independent regulatory agency and any Open Internet proposals will be voted on by the five FCC commissioners.

Q. Are we going to put the President's position formally out for comment?

A. JON?

If yes:

Q. How is the President's position different than what we've already sought comment on?

A. JON

Q. Where does it go in the record? Does it go into ECFS?

A. The President's Open Letter/We the People response will be entered into the official record for this proceeding.

Q. Does the President's letter affect the timing of the rules? Previously you said you'd have rules by the end of the year.

A. No.

Q. When do you expect to issue formal rules?

A. The goal is to get rules in place as soon as possible since the Court struck down rules in January. As a result, there are currently no rules in place to prevent ISPs from blocking and discriminating against online content. However, we need to ensure that any rules can withstand any legal challenges. The Chairman intends to circulate rules in 2015.

Q. The WSJ reported that the record was thin and you would seek additional comment? Is that true and how do you need to beef up the record?

A. Yes. The Commission has been examining a number of legal options, including a hybrid approach and Title II reclassification. Over the past few weeks, a number

substantive questions have been raised and it has become clear that Commission staff need more time to study the legal and policy implications of different legal theories and that the Commission record needs to be beefed up to in multiple areas, including whether the FCC has the authority to cover mobile under Title II. (Can we provide an additional example of an area that needs to be beefed up?)

Q. Is the Chairman's hybrid plan in jeopardy now that the President has made his views known?

A. As the Chairman has said, all legal options are on the table. The goal is to arrive at the strongest legal theory to support new rules to protect an open Internet.

Q. The statement raises various policy issues if you go Title II. How does the President's proposal raise privacy issues or implications for USF?

A. JON

Q. How does Title II affect the FCC's ability to apply Open Internet rules to mobile?

A. This legal theory raises questions that are less than fully developed in the record, specifically whether current laws and regulation give the FCC jurisdiction over mobile IP under Title II. It's a critical question – 55 percent of Internet traffic is from mobile devices.

Q. Some are saying that the President decided to step in because news reports surrounding the hybrid proposal were so negative. What's your reaction?

A. Any question regarding the POTUS' timing/motivation, I refer you to the White House.

Q. The Chairman says he shares the same position as the President, but POTUS is calling for Title II and the Chairman has called for 706 and a hybrid approach. So how can they share the same position if they are calling for different legal solutions?

A. The Chairman and the President share the same goals – keeping the Internet open as platform for innovation, expression and economic growth. The Chairman has said all options are on the table and no final decision has been made.

Q. The President has been clear that he believes that paid prioritization should be banned, but the Chairman's initial proposal allowed for fast lanes. How can you say they share the same point of view?

A.

Q. The President has been clear that he believes that paid prioritization should be banned, but the Chairman's draft order only calls for a rebuttable presumption – not a ban – against fast lanes. How can you say they share the same point of view?

A.

Q. How much more time do you need? Are you just kicking the can down the road due to all of the opposition to your proposals?

A. After a decade, we want to adopt rules that can withstand any legal challenges. There have been substantive legal questions raised by a number of the approaches we are contemplating. FCC lawyers, litigators and technical experts need additional time to analyze the legal theories under review.

Q. If you do not offer final rules until 2015, how does the change the political dynamic given the change of hands in Congress?

A. Our goal is to find the best possible legal approach that will instate strong consumer protections while also withstand possible legal challenges. This is about getting it right, not political calculations.

From: Jonathan Sallet
To: Kim Hart; TW; Shannon Gilson; Philip Verveer; Ruth Milkman
Subject: Re: Revised statement
Date: Sunday, November 09, 2014 6:07:40 PM

I recognize the issue about mainstream reporters but there are other audiences for whom those references have relevance.

From: Kim Hart
Sent: Sunday, November 9, 2014 5:38 PM
To: Jonathan Sallet; TW; Shannon Gilson; Philip Verveer; Ruth Milkman
Subject: RE: Revised statement

Here is my stab at tightening this paragraph to preserve two tangible concerns (privacy and mobile) while not going into wonkier references like universal service and forbearance, which I fear could raise more questions for mainstream reporters who are not well-versed in FCC lingo. This also eliminates one timing reference, so it is only raised once in the paragraph.

Just a thought. I tried to make the change in the attached, but my mac is not allowing me to show changes correctly.

The more deeply we examined the issues around the various legal options, the more it has become plain that there is more work to do. The approaches before us raise substantive legal questions. Engaging Title II, for instance, brings with it policy and legal issues that require closer review—such as privacy implications and the ability of Title II to cover mobile services. As a result, we have been exploring whether it is necessary to extend our inquiry to ensure that whatever approach is taken can withstand any legal challenges it may face. [KJ1]

From: Jonathan Sallet
Sent: Sunday, November 09, 2014 5:34 PM
To: TW; Shannon Gilson; Philip Verveer; Ruth Milkman
Cc: Kim Hart
Subject: RE: Revised statement

Just wondering if it serves TW's views and assuages any of Shannon's concerns if the changes in red were made. a

The more deeply we examined the issues around the various legal options, the more it has become plain that there is more work to do. All of the leading approaches before us raise substantive legal questions. We found we would [S1] need more time t[T2] o examine and ensure that whatever approach is taken, it can withstand any legal challenges it may face. Engaging Title II[T3], for instance, brings with it policy issues that run the gamut from privacy, to universal service, to the ability of federal agencies to protect consumers[T4]. Examples of legal issues that are similarly raised range from the ability of Title II to cover mobile services, to the concept of applying forbearance on services under Title I[S5] I[T6]. My goal is to fill the record with the facts and legal analysis necessary to build an unshakeable foundation for whichever legal approach the Commission ultimately chooses. ~~It is for this reason that we have been exploring whether it will be necessary to extend our inquiry[T7]:~~

From: TW
Sent: Sunday, November 09, 2014 4:34 PM
To: Shannon Gilson; Jonathan Sallet; Philip Verveer; Ruth Milkman
Cc: Kim Hart
Subject: RE: Revised statement

Thanks for your efforts Shannon. I have some pretty strong feelings about some of the things you raised.

Comments attached

T

From: Shannon Gilson
Sent: Sunday, November 09, 2014 3:54 PM
To: TW; Jonathan Sallet; Philip Verveer; Ruth Milkman
Cc: Kim Hart
Subject: Revised statement

Adding Kim, and apologies for the version control, but I am on BlackBerry and can't make changes on top of Jon's. As you will see, most of our concerns are in paragraph five. I will be back in front on my computer in an hour.

[S1]Are we saying we have decided we need more time? We could say "We continue to need time to examine..." so it feel more organic.

[T2]You are the one who added this language. My original language had the exploring statement. I then raised the question about timing being twice in the same sentence which seemed to be flagging a special message. You spent a lot of effort to let people know we were slowing down. I believe "exploring" is still the best appriach

[T3]I think the message here is that we have agreed with others that we'd say this. We need this to give credibility to the reason for then complexity of issues that cause the delay as well to be people of our word.

[T4]Upon second read, while this feels less provocative, it still feels like we are trying to shoot holes into POTUS' proposal and taking a swing at Title II, which will inflame some folks. We could do this on background by saying commenters have raised specific concerns and we could point to filings. If you want to keep it, I would suggest you include questions that hybrid proposals raise as well as issues with a 706-only approach.

[S5]Kim and I recommend that you strike these two sentences. At the very least, we should get a gut check from gigi in the morning.

[T6]See above. I disagree. This is a statement that is explaining OUR position and what we've been doing. The fact that the WH mischaracterizes that doesn't mean we should roll over. AS I SAID EARLIER, THERE IS NO DAYLIGHT ON THE EFFECTS OF THIS BETWEEN ME AND POTUS, THE ISSUE IS THE COMPLEX APPLICATION OF THE COMMUNICATIONS ACT WHERE

OUR RESPONSIBILITIES ARE GREATER THAN EVEN SOME OTHERS.

[17] We have now said this twice in the same paragraph

From: [Ruth Milkman](#)
To: [Kim Hart](#); [Jonathan Sallet](#); [TW](#); [Shannon Gilson](#); [Philip Verveer](#)
Subject: RE: Revised statement
Date: Sunday, November 09, 2014 6:04:32 PM

here's a non-substantive comment. If you delete the paragraph about the Court decision and the May proposal, then the antecedent for the paragraph (formerly 4th, now 3rd) that begins "The purpose of the proposal" is unclear.

Ruth Milkman
Chief of Staff
Federal Communications Commission
445 12th Street, SW
Washington DC 20554
[REDACTED]

-----Original Message-----

From: Kim Hart
Sent: Sunday, November 09, 2014 05:38 PM Eastern Standard Time
To: Jonathan Sallet; TW; Shannon Gilson; Philip Verveer; Ruth Milkman
Subject: RE: Revised statement

Here is my stab at tightening this paragraph to preserve two tangible concerns (privacy and mobile) while not going into wankier references like universal service and forbearance, which I fear could raise more questions for mainstream reporters who are not well-versed in FCC lingo. This also eliminates one timing reference, so it is only raised once in the paragraph.

Just a thought. I tried to make the change in the attached, but my mac is not allowing me to show changes correctly.

<!--[if !supportAnnotations]--><!--[endif]-->

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!supportAnnotations]-->[\[KJI\]](#)<!--[endif]-->

<!--[if !supportAnnotations]-->

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<!--[if !supportAnnotations]-->

<!--[endif]-->

From: Jonathan Sallet
Sent: Sunday, November 09, 2014 5:34 PM
To: TW; Shannon Gilson; Philip Verveer; Ruth Milkman
Cc: Kim Hart
Subject: RE: Revised statement

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From: TW
Sent: Sunday, November 09, 2014 4:34 PM
To: Shannon Gilson; Jonathan Sallet; Philip Verweer; Ruth Milkman
Cc: Kim Hart
Subject: RE: Revised statement

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Comments attached

T

From: Shannon Gilson
Sent: Sunday, November 09, 2014 3:54 PM
To: TW; Jonathan Sallet; Philip Verweer; Ruth Milkman
Cc: Kim Hart
Subject: Revised statement

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[T7] We have now said this twice in the same paragraph

To: Claude Aiken [REDACTED]
From: Alexis Johns
Sent: Mon 11/10/2014 7:42:08 PM
Subject: RE: Sbux run, anyone?

I thought you'd be doing cartwheels down the hall, frankly!

Randy may be in; I'm going to grab my purse, see who else is in need, and I'll come find you on the way.

From: Claude Aiken
Sent: Monday, November 10, 2014 2:35 PM
To: Alexis Johns
Subject: RE: Sbux run, anyone?

I'm in. I have to have something to keep me going now that Open Internet is on pause.

From: Alexis Johns
Sent: Monday, November 10, 2014 2:32 PM
To: Randy Clarke; Kristine Fargotstein; John Visclosky; Bakari Middleton; Megan Capasso; Daniel Kahn; Claude Aiken
Subject: Sbux run, anyone?

My caffeine level has dipped a bit too low for me to properly deal with CPD BS this afternoon ...

Message

From: Jonathan Sallet [REDACTED]
[REDACTED]
Sent: 12/2/2014 6:39:57 PM
To: TW [REDACTED]; Ruth Milkman [REDACTED]; Philip Verveer [REDACTED]
Subject: FW: Draft Outline for TW

Per our morning conversation and as a basis for discussing possible written testimony, please see below.

-----Original Message-----

From: Jonathan Sallet
Sent: Friday, November 21, 2014 11:06 AM
To: Philip Verveer
Subject: Draft Outline for TW

Draft for internal use only

I. The Goals of an Open Internet

-- America needs bigger, better broadband that is open for consumers and competition.
-- There is not enough broadband competition. At 25/3, which is table stakes for the 21st Century, 75 percent of homes have zero or only one choice. We need more broadband to be deployed and better performing broadband, both fixed and mobile. (And we are taking steps to incent more competition).
-- But networks, even advanced networks, are not enough. Those last-mile networks need to be open -- open to consumers to use as they wish, open to innovation. With bright line rules stopping paid prioritization, stopping blocking and stopping throttling. On these fundamental goals, the president and I agree.

II. Legally-Enforceable Rules Sustainable in Court

-- it's been a long road since 2004 when Chairman Powell first endorsed Open Internet principles. The Commission acted once, Comcast filed suit and actions taken by Chairman Martin were struck down by the DC Circuit. Fast forward to 2010; once again the Commission acted to protect the Open Internet, this time through a new set of rules. This time Verizon sued and, once again, the DC Circuit struck down the Commission's work.
-- Third time must be a charm.
-- I have looked at all of the sources of legal authority, including Section 706 and Title II.
-- As you know, I began by focusing on Section 706.
-- But as comments came in and we studied the legal issues, it became increasingly apparent that the strongest legal argument would use both Section 706 and Title II. The logic goes both ways. Section 706's commercial reasonableness test could, by itself, lead to endless litigation, delay and a detrimental impact on fast-moving innovation. The history of Title II is focused on whether specialized products are available to similarly-situated customers, not whether they can be created at all. But together, Section 706 and Title II may be the best way to get the job done, once and for all.
-- Of course, that leaves the question: what form of Title II? As you know, I have looked carefully all options. One is the so-called Sender Side approach suggested by Professor Tim Wu. Another, favored by the President and supported by many public interest groups, is so-called Full Title II, which would re-classify retail broadband access as a Title II service.
-- Any approach we take will be Title II Lite. We will rule out retail rate regulation. We will forebear from sections of Title II that have no place in the dynamic ecosystem of Internet investment and innovation. No tariffs. No keeping special accounting schedules. No old-style monopoly regulation.

III. Investment and Innovation

-- I've been a businessman for a long time, including as a venture capitalist before I came to the Commission. I know that risk must find reward, that innovation requires investment, and that networks, are the core vehicle for the Internet Revolution. Let me tell you two lessons that I've learned.
-- First, market power in last-mile investments can deter investment (personal story about cable)
-- Second, we now have convincing proof that the application of Title II need not deter future investment. (aftermath of president's statement)
-- To me this shows us that it is possible to have strong rules that are legally-sustainable and that end the the long quest for enforceable rules without deterring broadband investment while ensuring that the Internet is open and remains open.

To: Matthew DelNero [REDACTED]
From: Stephanie Weiner
Sent: Wed 11/12/2014 3:55:26 PM
Subject: RE: FNPRM

BTW – I am not sure Jon is going. But we should still talk – in fact maybe you and I can get a few minutes to chat before or after digital reasoning?

From: Matthew DelNero
Sent: Wednesday, November 12, 2014 10:55 AM
To: Jim Schlichting; Joel Taubenblatt
Cc: Stephanie Weiner; Claude Aiken; Michael Janson
Subject: RE: FNPRM

Great. Thanks very much!

From: Jim Schlichting
Sent: Wednesday, November 12, 2014 10:10 AM
To: Matthew DelNero; Joel Taubenblatt
Cc: Stephanie Weiner; Claude Aiken; Michael Janson
Subject: RE: FNPRM

Thanks, Matt.

Roger has already “suggested” that Joel, Michael Janson, and I attend the 3 pm meeting. So, yes, we would like to attend!

(Joel is teleworking today. We can call him directly if there otherwise no need for a bridge.)

And we would plan to have some preliminary thoughts on issues by the end of the day – exactly who would have had an opportunity for input by then remains unclear.

Jim

From: Matthew DeI Nero
Sent: Wednesday, November 12, 2014 9:45 AM
To: Jim Schlichting; Joel Taubenblatt
Cc: Stephanie Weiner; Claude Aiken
Subject: FNPRM

Jim and Joel,

OCH has asked for an identification of the issues that might be covered in an FNPRM on Open Internet. Jon S. has suggested we consider listing the issues in three buckets:

1. Those areas where there is a serious APA notice problem with substantial litigation risk
2. Those areas where we would expect to have to argue that our actions were a logical outgrowth of the NPRM
3. Areas where we are confident that we have adequate notice but would be better informed by more targeted comment

I imagine that the CMRS definition issue fits into the first bucket. In any event, would it be plausible for you to let us know by the end of the day what issues WTB would like to identify, and in which buckets you'd like to put them?

Also, we are planning to talk at 3 pm with Jon. Would you like to join in that meeting?

Thanks,

Matt

Message

From: Matthew DelNero [REDACTED]
Sent: 11/12/2014 2:50:03 PM
To: Claude Aiken [REDACTED]
Subject: FW: FNPRM

Claude, here's my initial thinking on issues. Do you have different views, or other suggestions? They would be most welcome!

1. Those areas where there is a serious APA notice problem with substantial litigation risk
 - Application of Title II to mobile, including especially the CMRS re-definition
2. Those areas where we would expect to have to argue that our actions were a logical outgrowth of the NPRM
 - Application of Title II to interconnection
 - Any rules for interconnection (if we went that way)
 - Forbearance for application of Title II mobile broadband
3. Areas where we are confident that we have adequate notice but would be better informed by more targeted comment
 - Meaning of "reasonable network management" in mobile context
 - Forbearance for application of Title II to fixed broadband. (We already have the 2010 docket and, per the May NPRM, WCB has refreshed the record in that docket. So I don't see it as a legal notice issue.)
 - Impact on privacy of Title II application

From: Matthew DelNero
Sent: Wednesday, November 12, 2014 9:45 AM
To: Jim Schlichting; Joel Taubenblatt
Cc: Stephanie Weiner; Claude Aiken
Subject: FNPRM

Jim and Joel,

OCH has asked for an identification of the issues that might be covered in an FNPRM on Open Internet. Jon S. has suggested we consider listing the issues in three buckets:

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I imagine that the CMRS definition issue fits into the first bucket. In any event, would it be plausible for you to let us know by the end of the day what issues WTB would like to identify, and in which buckets you'd like to put them?

Also, we are planning to talk at 3 pm with Jon. Would you like to join in that meeting?

Thanks,
Matt

Message

From: Jonathan Sallet [REDACTED]
Sent: 11/12/2014 9:03:19 PM
To: Scott Jordan [REDACTED]
CC: Stephanie Weiner [REDACTED]; Matthew DelNero [REDACTED]; Philip Verveer [REDACTED]
Subject: Re: Notice and record on specialized services

This is great, thanks.

From: Scott Jordan
Sent: Wednesday, November 12, 2014 3:59 PM
To: Jonathan Sallet
Cc: Stephanie Weiner; Matthew DelNero; Philip Verveer
Subject: Notice and record on specialized services

Jon-

Stephanie asked if I see any gaps in the OI notice or record. We should consider whether to ask for additional record on specialized services. Attached is a first draft of a summary of the notice and the record on specialized services.

I break the issues into three sets: (1) definition of specialized services, (2) conduct (either rules on specialized services or parity between specialized services and BIAS services), and (3) transparency of specialized services.

-Scott

P.S. I'll try to do a similar summary for Internet traffic exchange.

Message

From: Jennifer Salhus [REDACTED]
Sent: 11/13/2014 4:20:56 PM
To: Peter Trachtenberg [REDACTED]
Subject: RE: FCC CHAIRMAN TOM WHEELER'S STATEMENT ON PRESIDENT BARACK OBAMA'S STATEMENT REGARDING OPEN INTERNET

Yes, please see below.

From: Peter Trachtenberg
Sent: Thursday, November 13, 2014 11:19 AM
To: Jennifer Salhus
Subject: RE: FCC CHAIRMAN TOM WHEELER'S STATEMENT ON PRESIDENT BARACK OBAMA'S STATEMENT REGARDING OPEN INTERNET

Ok, thanks. Could you forward me the email?

-Peter

From: Jennifer Salhus
Sent: Thursday, November 13, 2014 8:46 AM
To: Peter Trachtenberg
Subject: FW: FCC CHAIRMAN TOM WHEELER'S STATEMENT ON PRESIDENT BARACK OBAMA'S STATEMENT REGARDING OPEN INTERNET

Sorry, Peter, I responded to Joel yesterday separately, should have copied you. Basically, I think we need to ask how the CMRS definition could be interpreted to include broadband Internet access or subscriber access service, including whether the Commission should update the definition of public switched network to include networks that don't use NANP numbers, i.e, the Internet. Alternatively, we need to seek comment on whether we can conclude that those services are the "functional equivalent" of CMRS.

From: Jennifer Salhus
Sent: Wednesday, November 12, 2014 2:21 PM
To: Joel Taubenblatt
Subject: RE: FCC CHAIRMAN TOM WHEELER'S STATEMENT ON PRESIDENT BARACK OBAMA'S STATEMENT REGARDING OPEN INTERNET

Generally we would want to seek comment on whether the Commission could interpret the definition of commercial mobile service to apply to either mobile wireless broadband Internet access service or the mobile edge facing service. We would want to seek further comment on changing the definition of "public switched network," including proposing a revised definition that would expand the term to refer to broadband Internet access networks. We would also want to seek further comment about whether wireless broadband Internet access services (or the mobile edge facing service if we go that route) may be viewed as the functional equivalent of CMRS.

Other possible items to seek comment on- a proposal for reasonable network management for mobile and proposed transparency requirements.

From: Joel Taubenblatt

Sent: Monday, November 10, 2014 3:58 PM

To: Jennifer Salhus; Daniel Ball; Peter Trachtenberg; Ziad Sleem; Sara Mechanic; Gloria Sheu; Chris Helzer; Michael Janson

Subject: RE: FCC CHAIRMAN TOM WHEELER'S STATEMENT ON PRESIDENT BARACK OBAMA'S STATEMENT REGARDING OPEN INTERNET

Next step will be to think about which issues we would like to see further development on the record. Can you send me your thoughts by email (can be short) by tomorrow? Thanks.

From: Joel Taubenblatt

Sent: Monday, November 10, 2014 11:51 AM

To: Jennifer Salhus; Daniel Ball; Peter Trachtenberg; Ziad Sleem; Sara Mechanic; Gloria Sheu; Chris Helzer; Michael Janson

Subject: FW: FCC CHAIRMAN TOM WHEELER'S STATEMENT ON PRESIDENT BARACK OBAMA'S STATEMENT REGARDING OPEN INTERNET

Chairman Wheeler – “We must take the time to get the job done correctly” – no R&O on December agenda. We'll regroup later today.

From: Kim Hart [REDACTED]

Sent: Monday, November 10, 2014 10:45 AM

To: press

Reply To: Kim Hart

Subject: FCC CHAIRMAN TOM WHEELER'S STATEMENT ON PRESIDENT BARACK OBAMA'S STATEMENT REGARDING OPEN INTERNET

FCC CHAIRMAN TOM WHEELER'S STATEMENT ON PRESIDENT BARACK OBAMA'S STATEMENT REGARDING OPEN INTERNET

The President's statement is an important and welcome addition to the record of the Open Internet proceeding. Like the President, I believe that the Internet must remain an open platform for free expression, innovation, and economic growth. We both oppose Internet fast lanes. The Internet must not advantage some to the detriment of others. We cannot allow broadband networks to cut special deals to prioritize Internet traffic and harm consumers, competition and innovation.

As an independent regulatory agency we will incorporate the President's submission into the record of the Open Internet proceeding. We welcome comment on it and how it proposes to use Title II of the Communications Act.

In January, a federal court struck down rules that prevented Internet Service Providers from blocking and discriminating against online content. In May, the Commission sought comment on how to best reinstate these rules to protect consumers and innovators online while remaining within the parameters of the legal roadmap the court established. The goal was simple: to reach the outcomes sought by the 2010 rules. We sought comment on using Section 706 of the Telecommunications Act, as discussed by the court to protect what the court described as the “virtuous circle” of innovation that fosters broadband deployment and protects consumers.

The purpose of the Commission's Notice of Proposed Rulemaking proposal was to elicit comments. In the past several months, we've heard from millions of Americans from across the country. From the beginning I have pledged to finally bring to an end the years-long quest for rules that are upheld in court. In May we sought comment on both Section 706 and Title II and I promised that in this process all options would be on the table in order to identify the best legal approach to keeping the Internet open. That includes both the Section 706 option and the Title II reclassification. Recently, the Commission staff began exploring "hybrid" approaches, proposed by some members of Congress and leading advocates of net neutrality, which would combine the use of both Title II and Section 706.

The more deeply we examined the issues around the various legal options, the more it has become plain that there is more work to do. The reclassification and hybrid approaches before us raise substantive legal questions. We found we would need more time to examine these to ensure that whatever approach is taken, it can withstand any legal challenges it may face. For instance, whether in the context of a hybrid or reclassification approach, Title II brings with it policy issues that run the gamut from privacy to universal service to the ability of federal agencies to protect consumers, as well as legal issues ranging from the ability of Title II to cover mobile services to the concept of applying forbearance on services under Title II.

I am grateful for the input of the President and look forward to continuing to receive input from all stakeholders, including the public, members of Congress of both parties, including the leadership of the Senate and House committees, and my fellow commissioners. Ten years have passed since the Commission started down the road towards enforceable Open Internet rules. We must take the time to get the job done correctly, once and for all, in order to successfully protect consumers and innovators online.

- FCC -

Kim Hart

Press Secretary

Federal Communications Commission

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Message

From: Scott Jordan [REDACTED]
[REDACTED]
Sent: 11/17/2014 8:16:57 PM
To: Robert Cannon [REDACTED]@fcc.gov]
Subject: FW: Notice and record on traffic exchange
Attachments: traffic exchange notice and record.docx

From: Scott Jordan
Sent: Thursday, November 13, 2014 11:13 AM
To: Jonathan Sallet
Cc: Stephanie Weiner; Matthew DelNero; Philip Verveer
Subject: RE: Notice and record on traffic exchange

Jon-

Attached is a draft of a summary of the notice and record on Internet traffic exchange. (This updates the file I sent last night. As with the summary I sent on specialized services, there is additional record of parties opposing any changes that is not included in the summary.)

I break the issues into two sets: (1) transparency of traffic exchange, and (2) discriminatory practices, refusals to upgrade capacity, and access fees.

Regarding transparency, the notice asked general but not specific questions. It could be strengthened if we want to. The record looks ok to me to justify the transparency provisions that I have proposed.

Regarding discriminatory practices, refusals to upgrade capacity, and access fees, the notice is fairly poor, consisting mainly of a single general question. Despite that, the record is substantial since many commenters remarked on the Netflix difficulties.

-Scott

To: Jonathan Sallet [REDACTED]@fcc.gov]; Julie Veach [REDACTED]@fcc.gov]; Stephanie Weiner [REDACTED]@fcc.gov]
From: Matthew DelNero
Sent: Wed 11/12/2014 3:59:12 PM
Subject: RE: Forbearance

Jon, I believe Julie is tied up for a bit longer this morning. Not sure if you need this right away. But just in case, my two cents are (1) forbearance for mobile generally –e.g., does it differ from fixed, and (2) forbearance for re/classification of a service that reaches interconnection.

I think we're in better shape on the record for fixed BIAS (minus interconnection). We have the 2010 record on reclassification of fixed BIAS, which we expressly refreshed in connection with the May NPRM.

From: Jonathan Sallet
Sent: Wednesday, November 12, 2014 10:55 AM
To: Julie Veach; Matthew DelNero; Stephanie Weiner
Subject: Forbearance

Julie, if I needed to cite some forbearance issues that likely need more comment in the record to use in meetings today, what would be the best example? Thanks Jon

Message

From: Melissa Droller Kinkel [REDACTED]@fcc.gov]
Sent: 11/17/2014 1:36:02 PM
To: Claude Aiken [REDACTED]@fcc.gov]
Subject: FW: Forbearance Public notice section 11-14-14.docx
Attachments: Forbearance Public notice section 11-14-14.docx

I am working on this now. Here is his in case you want to see the original. I am revising and shortening it. Trying to harmonize mine and Zach's first. I'm hoping it won't take much more than an hour and then you can let us know what else needs to be included.

Melissa Droller Kinkel
Attorney Advisor
Wireline Competition Bureau
[REDACTED]

*** Non-Public: For Internal Use Only ***

From: Thomas Parisi
Sent: Friday, November 14, 2014 5:17 PM
To: Melissa Droller Kinkel
Subject: Forbearance Public notice section 11-14-14.docx

Hi Melissa,

Here is my first shot at the paragraph. I kept it brief as per our discussion. I welcome any thoughts you have on improving it. I hope you have a wonderful weekend.

Best,

Thom

A. Forbearance

1. If the Commission were to reclassify broadband Internet access service or classify a separate broadband service provided to edge providers as a “telecommunications service,” such services would then be subject to all of the requirements of the Act and Commission rules that flow from the classification of a service as a telecommunications service or common carrier service. In the *Open Internet NPRM*, we sought comment on the extent to which forbearance from certain provisions of the Act or our rules would be justified in order to strike the right balance between minimizing the regulatory burden on providers and ensuring that the public interest is served.¹ We now seek additional comment on forbearance, including for mobile broadband services, where we seek comment on the extent to which forbearance should apply if the Commission were to classify mobile broadband Internet access service as a CMRS service subject to Title II. We are also specifically interested in additional information on forbearance related to issues such as privacy and CPNI, E911, and disabilities access. We also welcome commenters to list and explain any additional provisions that should be exempt from or receive forbearance in order to protect and promote Internet openness.

¹ 2014 *Open Internet NPRM*, 29 FCC Rcd at 5615-16, paras. 153-55.

Message

From: Claude Aiken [REDACTED]
Sent: 11/17/2014 8:09:48 PM
To: Kristine Fargotstein [REDACTED]
Subject: RE: Interconnection Paragraph
Attachments: OI Public Notice Outline_Interconnection ca.docx

Thanks for putting this out there, and for offering to draft something that may very well be cut. I made some edits. If these look good, please plug them into the draft.

From: Kristine Fargotstein
Sent: Monday, November 17, 2014 12:55 PM
To: Claude Aiken
Subject: Interconnection Paragraph

Claude – Attached for your review is my splicing of Scott Jordan’s questions. I struggled with the second paragraph trying to discuss both discriminatory practices (without saying discrimination) and transparency issues. Please let me know if you would like me to add anything else.

Kristine Fargotstein
Attorney Advisor
Wireline Competition Bureau – CPD
Federal Communications Commission
[REDACTED]

WIRELINE COMPETITION BUREAU AND WIRELESS TELECOMMUNICATIONS BUREAU
SEEK ADDITIONAL COMMENT IN THE OPEN INTERNET AND FRAMEWORK FOR
BROADBAND INTERNET SERVICE DOCKETS

GN Docket Nos. 10-127, 14-28

Comment Date: [[30 days after FR Publication]], 2014

[[Intro para]]

[[Regulated services paragraphs focusing on regulated service, framing as classification/reclassification question]]

[[Edge service classification issue]]

[[Mobile classification issue (reclassify vs. hybrid)]]

[[CMRS definition issue (reclassify vs. hybrid)]]

[[Broad forbearance paragraphs]]

[[Mobile-specific forbearance para/sentence]]

[[Mobile policy – transparency & RNM]]

[[Specialized services]]

[[Interconnection]]

Interconnection. In the *NPRM*, the Commission sought comment on its tentative conclusion not “to expand the scope of the open Internet rules in any fashion to regulate traffic exchange.”¹ The Commission also sought comment on whether it should view transit, CDN, or other providers engaged in Internet traffic exchange as a class of persons whose interests are similar to those of edge providers.² The record in response to the *NPRM* has brought to light additional issues that warrant further comment. For example, if the Commission were to reclassify of broadband Internet access service or classify a separate edge-facing service, should traffic exchange fall within the scope of either service? What action, if any, should the Commission take to address failure to upgrade capacity at traffic exchange points? How should the transparency rule apply to traffic exchange? For example, should the Commission require disclosure of characteristics of performance across traffic exchange points? And, if so, what metrics should be used for this? Should the Commission require disclosure of peering policies or interconnection agreements? If so, what should providers be required to disclose, and to whom?

Pursuant to sections 1.415 and 1.419 of the Commission’s rules,³ interested parties may file comments and reply comments on or before the respective dates indicated on the first page of this Notice.

¹ *Open Internet NPRM*, 29 FCC Rcd at 5591, para. 83.

² *Open Internet NPRM*, 29 FCC Rcd at 5589, para. 76.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Public Notice references shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information regarding this proceeding, contact Kristine Fargotstein, Wireline Competition Bureau, at [REDACTED]

-FCC-

Message

From: Joel Taubenblatt [REDACTED]@fcc.gov]
Sent: 11/17/2014 10:23:01 PM
To: Jennifer Salhus [REDACTED]@fcc.gov]
Subject: Re: Draft OI PN

OK

From: Jennifer Salhus
Sent: Monday, November 17, 2014 5:19 PM
To: Joel Taubenblatt
Subject: RE: Draft OI PN

Found the New America ex parte Jim was thinking of, it stresses going with functional equivalent approach but does include some discussion of updating the definition of public switched network. I can add a reference to this in the next round ...

From: Joel Taubenblatt
Sent: Monday, November 17, 2014 4:57 PM
To: Jennifer Salhus
Subject: RE: Draft OI PN

Thanks!

From: Jennifer Salhus
Sent: Monday, November 17, 2014 4:55 PM
To: Claude Aiken
Cc: Melissa Droller Kirkel; Kristine Fargotstein; Thomas Parisi; Zachary Ross; Joel Taubenblatt; Daniel Ball
Subject: RE: Draft OI PN

We are sorry for the delay, here are the mobile sections, added to the version of the draft you sent us earlier.

From: Joel Taubenblatt
Sent: Monday, November 17, 2014 2:46 PM
To: Claude Aiken; Daniel Ball; Jennifer Salhus
Cc: Melissa Droller Kirkel; Kristine Fargotstein; Thomas Parisi; Zachary Ross
Subject: RE: Draft OI PN

Yes, please include Jim and Roger in the review chain. At this point, it looks like we'll have one version to send you this afternoon . . .

From: Claude Aiken
Sent: Monday, November 17, 2014 2:26 PM
To: Joel Taubenblatt; Daniel Ball; Jennifer Salhus
Cc: Melissa Droller Kirkel; Kristine Fargotstein; Thomas Parisi; Zachary Ross
Subject: RE: Draft OI PN

We'll probably compile around 4:30pm, if that works for you. I assume you'd like us to include Jim/Roger on the review chain as well.

From: Joel Taubenblatt
Sent: Monday, November 17, 2014 11:44 AM
To: Claude Aiken; Daniel Ball; Jennifer Salhus
Cc: Melissa Droller Kirkel; Kristine Fargotstein; Thomas Parisi; Zachary Ross
Subject: RE: Draft OI PN

Thanks, Claude. We should have something to share with you early afternoon. We'll likely have a revised version later this afternoon – what time will you be compiling the draft for the B/O Chiefs? Thanks.

From: Claude Aiken
Sent: Monday, November 17, 2014 11:14 AM
To: Joel Taubenblatt; Daniel Ball; Jennifer Salhus
Cc: Melissa Droller Kirkel; Kristine Fargotstein; Thomas Parisi; Zachary Ross
Subject: Draft OI PN

Joel, Dan, and Jennifer,

I've attached a rough draft of the OI PN that we're sending to Matt & Julie today, so you can see what sort of direction we're taking on this. Please let me know if you have any questions.

Thanks,
Claude

*** Non-Public: For Internal Use Only ***

WCB Weekly Planning as of 9/29/2015

Item Information					Drafting			8 th floor				Outreach			Notes
Proceeding	Lead Div	Other Div/ B/O	Item	Release Type ¹	Date for Cuts (FO/OCH)	Date to FO	Date to Julie	Date to OCH	Beyond OCH ²	Release Date	Agenda Meeting	Need	Date to Julie	Date to OCH	
[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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Open Internet Order	CPD		R&O	Mtg	9/5/14	10/15/14	10/23/14	12/31/15	12/31/15	12/31/15	12/31/15	Yes	12/31/15	12/31/15	Reply comment period closed. OI team is currently drafting. Outreach document TBD in coordination with OMR
[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

¹ Commission level items include Mtg, Circ or Circ/Mtg (meaning Circ with Mtg as a backstop.) Bureau level includes 48 hrs and WCB. You may also use TBD.

² For Commission-level items, "Beyond OCH" is the date an item is circulated or white copied. For Bureau-level items, "Beyond OCH" is the date an item is put on 48-hours notice (if required) or released (if 48-hours notice is not required).

Item Information					Drafting			8 th floor				Outreach			Notes
Proceeding	Lead Div	Other Div/B/O	Item	Release Type ¹	Date for Cuts (FO/OCH)	Date to FO	Date to Julie	Date to OCH	Beyond OCH ²	Release Date	Agenda Meeting	Need	Date to Julie	Date to OCH	
[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
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Item Information					Drafting			8 th floor				Outreach			Notes
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Item Information					Drafting			8 th floor				Outreach			Notes
Proceeding	Lead Div	Other Div/B/O	Item	Release Type ¹	Date for Cuts (FO/OCH)	Date to FO	Date to Julie	Date to OCH	Beyond OCH ²	Release Date	Agenda Meeting	Need	Date to Julie	Date to OCH	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]				[REDACTED]
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Released

Proceeding	Lead Div	Other Div/ B/O	Item	Release Type ³	Adopted	Released
Rural Call Completion Petitions for Recon	CPD		Order	Circ		
ACA Model AFR Order	TAPD		Order	Circ		
UST Forbearance Petition initial PN	CPD	PPD/TAPD	PN (DA-1585)	WCB		11/5/2014
UST Forbearance Petition initial Protective Order	CPD	PPD/TAPD	Order (DA 14-1586)	WCB	11/5/14	11/5/14
[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]		[REDACTED]
CAF Adoption of Broadband Comparability Benchmark Order	IATD	TAPD	Order	48 hrs		10/29/14

³ Commission level items include Mtg, Circ or Circ/Mtg (meaning Circ with Mtg as a backstop.) Bureau level includes 48 hrs and WCB. You may also use TBD.

Message

From: Kristine Fargotstein [REDACTED]
Sent: 11/14/2014 7:23:05 PM
To: Zachary Ross [REDACTED]
CC: Claude Aiken [REDACTED]
Subject: RE: Potential Federal Register Item Thanksgiving Week

That, or at least you'll have a drumstick to beat in frustration ☺ I just spoke with our OFR liaison, Thomas Butler, and he will take us down to OSEC next week so we can alert them that this is coming and start the process for expedited treatment.

From: Zachary Ross
Sent: Friday, November 14, 2014 2:11 PM
To: Kristine Fargotstein
Cc: Claude Aiken
Subject: RE: Potential Federal Register Item Thanksgiving Week

Sounds good! Nothing makes the turkey go down like a side of administrative procedure.

From: Kristine Fargotstein
Sent: Friday, November 14, 2014 2:09 PM
To: Zachary Ross
Cc: Claude Aiken
Subject: FW: Potential Federal Register Item Thanksgiving Week

Get excited -- I can teach you the Federal Register process with the OI PN! I'll take the lead on it, but I'll copy you and have you shadow me this time so you can add this to the list of new FCC skills!

From: Kristine Fargotstein
Sent: Friday, November 14, 2014 2:07 PM
To: Thomas Butler; Michael Jacobs
Cc: Claude Aiken; Zachary Ross
Subject: Potential Federal Register Item Thanksgiving Week

Hi Thomas and Mike,

We wanted to flag a potential federal register release that will need to go to the Office of the Federal Register sometime the week of Thanksgiving. As of now, the plan is to release an item on Friday, Nov. 21. Zach and I will prepare it for Fed Reg review so we can share it with OSEC first thing Monday, Nov. 24 and hopefully get their edits by Tuesday, Nov. 25 so we can implement them and send it to the OFR on Wednesday, Nov. 26 before we all go enjoy turkey day!

Thomas – Can we put an advance request in with OSEC that we have an item coming down the pike that will require expedited review?

Thanks!

Kristine Fargotstein
Attorney Advisor

Message

From: Kim Hart [REDACTED]
Sent: 11/18/2014 10:28:44 PM
To: Daniel Alvarez [REDACTED]; Renee Gregory [REDACTED]; Maria Kirby [REDACTED];
Diane Cornell [REDACTED]; Patrick Halley [REDACTED]; Jon Wilkins [REDACTED];
Jonathan Sallet [REDACTED]; Stephanie Weiner [REDACTED]; Jennifer Tatel
[REDACTED]
CC: Shannon Gilson [REDACTED]
Subject: Press Prep draft
Attachments: Press Prep Nov Mtg 11_18_14.docx

All,

Attached is the draft of the press prep Q&A for Friday's press conference. We are missing a few pieces that will be filled in tomorrow:

Sara: STELA/Hill questions

Jennifer: Plane/IMSI catcher questions

If I've missed any hot topics that should be added, please add to this. Please provide feedback to me by 10:30 tomorrow morning.

Thanks

Kim

Press Prep
November Open Meeting

OPEN INTERNET

Q: When and how did you find out about the POTUS' letter?

A: I was informed Thursday afternoon of the President's general approach.

Q: Did the President call you directly?

A: No. I had a discussion with Jeff Zients, one of the President's senior advisors. An ex parte submission has been filed.

Q: There have been reports that Zients was less than straightforward with you about the announcement. Is that the case?

A: No. Jeff laid out the President's general approach.

Q: Did you push back or argue for your hybrid approach?

A: I am not going to get into the details of the meeting. I refer you to the ex parte.

Q: You held a number of stakeholder meetings last week. Are reports that you are dug into the hybrid approach accurate?

A: No. Unfortunately, I think some of those conversations were taken out of context. I made clear in every meeting no decision has been made and all options were on the table.

Q: So you aren't going to stick to your guns on the hybrid approach?

A: I've never said it's my way or the highway. My priority is finding the right way—the right way to protect consumers and innovators online and ensure we have rules that can stand up in court.

Q: Multiple sources reported that you criticized Title II as the best approach. How can you say all options are on the table?

A: All options are on table. I was asked what some of the concerns are with using Title II. Some of these concerns with Title II come up in both a hybrid approach and a full reclassification, which is one of the reasons we will require some additional time before arriving at a decision that's legally sustainable.

Q: Have there been discussions between the WH and the FCC leading up to this rollout?

A: We informed the WH we were working on a hybrid approach combining both legal theories. We also briefed Hill staff on various legal options and scheduled a series of meetings this week for the purpose of reviewing the hybrid approach with congressional staff, as well as other legal options.

Q: What's the impact of the letter?

A: We welcome the President's point of view. The FCC is an independent regulatory agency and any Open Internet proposals will be voted on by the five FCC commissioners.

Q: Where does it go in the record? Does it go into ECFS?

A: The President's Open Letter has been entered into the official record for this proceeding. You can find it in ECFS.

Q: Does the President's letter affect the timing of the rules? Previously you said you'd have rules by the end of the year.

A: I said I hoped to put rules in place by the end of the year, but there is no formal deadline. As has been reported previously, we have recently come to the conclusion that more work will be needed on these complex issues, including possibly additional public comment.

Q: What sorts of questions have arisen that will require additional public comment?

A: There are a number of substantive issues that would benefit from more public comment. Questions regarding forbearance and the application of Open Internet rules to mobile, for example.

Q: You have received 4 million comments on this and it seems pretty clear how the public feels. How can you say you need more comment?

A: If we don't do their bidding, Comcast, Verizon and AT&T have made it very clear that they intend sue. I take them at their word. So I want to be fully prepared to fight any legal challenge to open internet rules in court.

Q: Some argue that you already have plenty of information in the record and you should move forward immediately rather than delaying new rules. Why don't you just act?

A: Look, if this were a simple issue, a decision would have been made months ago—in fact, years ago. Advocates outside the agency don't have to worry about litigating new rules in court. That's the FCC's job. I have no interest in going to court and losing. My priority is getting this done right.

Q: How much more time do you need? Are you just kicking the can down the road due to all of the opposition to your proposals?

A: After a decade, we want to adopt rules that can withstand any legal challenges. There have been substantive legal questions raised by a number of the approaches we are contemplating. FCC lawyers, litigators and technical experts need additional time to analyze the legal theories under review. I have no interest in going to court and losing.

Q: If you do not offer final rules until 2015, how does the change the political dynamic given the change of hands in Congress?

A: Our goal is to find the best possible legal approach that will instate strong consumer protections while also withstand possible legal challenges. This is about getting it right, not political calculations.

Q: Do you plan on a Further Notice to strengthen the record?

A: It's definitely one of the options we are currently considering to develop a strong legal record.

Q: If you ultimately decide that a hybrid approach is the best way to structure strong and legally sustainable rules, will you defy the President's wishes and keep full Title II reclassification from getting a Commission vote?

A: The FCC is an independent agency. We welcome the President's input in this matter. At the end of the day, the five Commissioners will decide which rules are adopted. But let me be clear—the President and I both want the same end result here—no blocking, no discrimination, no throttling and no paid prioritization.

Q: Have there been discussions with congressional leaders recently?

A: I spoke with Senator Thune on Friday, and will meet with all three leaders next week to discuss the Open Internet.

Q: When do you expect to issue formal rules?

A: As you know, there are currently NO rules in place to prevent ISPs from blocking and discrimination against online content. The goal is to get rules in place as soon as possible—but there is no set timeline. However, we need to ensure that any rules can withstand legal challenges that we know are coming.

Q: The WSJ reported that the record was thin and you would seek additional comment? Is that true and how do you need to beef up the record?

A: Yes. The Commission has been examining a number of legal options, including a hybrid approach and Title II reclassification. Over the past few weeks, a number of substantive questions have been raised and it has become clear that Commission staff need more time to study the legal, technical and policy implications of different legal theories and that the Commission record needs to be beefed up in multiple areas, including whether the FCC has the current authority to cover mobile under Title II.

Q: Is your hybrid plan in jeopardy now that the President has made his views known?

A: As I've said, all legal options are on the table, including reclassification. My job is to make sure we are acting in the best interests of consumers, competition and innovation—and that won't happen if whatever rules we adopt are struck down in court. The goal is to arrive at the strongest legal basis that can withstand legal challenge and protect an open Internet.

Q: The statement raises various policy issues if you go Title II. How does the President's proposal raise privacy issues or implications for USF?

A: The use of Title II raises important issues about how its provisions, including those dealing with privacy and universal service, would be applied. This is tied up in the so-called forbearance issue. There is also an argument that reclassification would deprive the FTC of jurisdiction because it cannot take action against common carriers.

Q: One of your fellow Commissioners this week said publically that Title II reclassification will lead to an immediate increase in the amount consumers pay for internet access, amounting to a major tax increase. Is this true, and is this additional USF revenue the way you plan to pay for programs like E-rate and Lifeline moving forward?

A: Under either a hybrid approach that uses Title II in some fashion or a full Title II reclassification, important questions regarding forbearance are raised. The question of USF contributions is one such issue.

Let me clear, my e-rate proposal assumes no change in the contributions system.

Q: How does Title II affect the FCC's ability to apply Open Internet rules to mobile? Do you plan to expand net neutrality rules to mobile carriers?

A: The use of Title II authority, whether on its own or as part of a hybrid approach, raises questions that are less than fully developed in the record, specifically whether current laws and regulation give the FCC jurisdiction over mobile IP under Title II. It's a critical question – 55 percent of Internet traffic is from mobile devices.

The 2010 open Internet rules that were struck down in January do not include mobile networks. That means those rules, if they were still in place today, would effectively ignore 55 percent of the internet traffic. I'm not interested in protecting only 45 percent of the Internet. We are going to protect 100 percent of the internet.

Q: Some are saying that the President decided to step in because news reports surrounding the hybrid proposal were so negative. What's your reaction?

A: I can't speak for the President, so I refer you to the WH.

Q: Some are saying that the President's comments were meant to give you political cover to reclassify. Does his statement make it easier for you to get the three votes you need for reclassification?

A: I can't speak for the President, so I refer you to the WH. Once we arrive at a new proposal for strong, legally sustainable rules, the other Commissioners will have the opportunity to offer their input, and ultimately decide whether to support it.

Q: You say you share the same position as the President, but POTUS is calling for Title II and you've been on record calling for 706 and a hybrid approach. So how can you share the same position if you are calling for different legal solutions?

A: We share the same goals – keeping the Internet open as platform for innovation, expression and economic growth. The challenge at hand is finding the most legally sustainable solution. That’s what we’re working on, and no decision has been made.

Q: The President has been clear that he believes that paid prioritization should be banned, but your initial proposal allowed for fast lanes. Your hybrid proposal also allowed for fast lanes. How can you say they share the same point of view?

A: The President and I are not in a tug of war. We are both pulling in the same direction here. I’ve been clear that I am against any sort of paid prioritization that would harm consumers, innovation or competition. The Commission’s proposal seeks comment on whether paid prioritization can be banned outright under Title II.

Q: The President has been clear that he believes that paid prioritization should be banned, but the your draft order only calls for a rebuttable presumption – not a ban – against fast lanes. How can you say you share the same point of view?

A: We are in violent agreement that fast lanes should be illegal. However, we are working within the confines of existing statute, which always permits companies to ask for waivers. Our job is to find the best, sustainable legal approach. This is an example of an area where we will benefit from additional comment in the record.

Q: What is the latest OI comment tally?

A: About 3.9 million comments.

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Message

From: Joel Taubenblatt [REDACTED]
Sent: 11/19/2014 3:39:23 AM
To: Jennifer Salhus [REDACTED] Daniel Ball [REDACTED]
CC: Peter Trachtenberg [REDACTED]
Subject: Re: OI PN

Thanks to both of you, and apologies for being out of pocket much of this afternoon at meetings. Though it is not 100 percent clear, my sense is that the scope of this PN is going to be narrowed substantially, potentially to include solely the 332 CMRS definition issue. I can give you more of the "atmospherics" in the morning.

From: Jennifer Salhus
Sent: Tuesday, November 18, 2014 3:16 PM
To: Daniel Ball; Joel Taubenblatt
Subject: RE: OI PN

I am headed out in a few minutes and wanted to send what Dan and I put together incorporating the edits from today. Attached version incorporates edits from Dan and I and Chris and Jim. I looked through Ziad's edits, I did not incorporate most of them because I thought it was too much detail for the PN. My sense is that there will be further changes, but wanted to send this in case we needed to send anything back to WCB.

From: Daniel Ball
Sent: Tuesday, November 18, 2014 2:46 PM
To: Joel Taubenblatt
Cc: Jennifer Salhus
Subject: FW: OI PN

Joel—

Would you like me to get Chris's input on Ziad's edits?

Dan

From: Ziad Sleem
Sent: Tuesday, November 18, 2014 12:30 PM
To: Joel Taubenblatt; Daniel Ball
Subject: RE: OI PN

Kindly see my suggestions on top of Chris's. Thanks,

Ziad

From: Joel Taubenblatt
Sent: Tuesday, November 18, 2014 10:54 AM
To: Ziad Sleem; Daniel Ball
Subject: RE: OI PN

Thanks. Light touch – it's still very much in flux.

From: Ziad Sleem
Sent: Tuesday, November 18, 2014 10:53 AM
To: Joel Taubenblatt; Daniel Ball
Subject: RE: OI PN

Thanks Joel,

I'm working on it now.

Ziad

From: Joel Taubenblatt
Sent: Tuesday, November 18, 2014 10:53 AM
To: Daniel Ball; Ziad Sleem
Subject: FW: OI PN

From: Chris Helzer
Sent: Tuesday, November 18, 2014 9:08 AM
To: Joel Taubenblatt; Jennifer Salhus; Ziad Sleem; Gloria Sheu; Michael Janson
Cc: Jim Schlichting; Roger Sherman
Subject: RE: OI PN

Joel, all,

Here are some comments on the PN.

Thanks!
-Chis

From: Joel Taubenblatt
Sent: Monday, November 17, 2014 5:27 PM
To: Jennifer Salhus; Chris Helzer; Ziad Sleem; Gloria Sheu; Michael Janson
Cc: Jim Schlichting
Subject: Fw: OI PN

From: Claude Aiken <[REDACTED]>
Sent: Monday, November 17, 2014 5:25 PM
To: Julie Veach; Matthew DelNero; Roger Sherman; Jim Schlichting
Cc: Randy Clarke; Melissa Droller Kirkel; Kristine Fargotstein; Zachary Ross; Thomas Parisi; Joel Taubenblatt; Daniel Ball
Subject: OI PN

Julie, Matt, Roger, and Jim,

Thanks to the quick work of the WCB and WTB OI teams, here is the short draft PN that is due to go to OCH on 11/19. Please let us know if you have any questions or comments on the draft. We look forward to your edits.

Thanks,
Claude

*** Non-Public: For Internal Use Only ***

Message

From: Nuala O'Connor [REDACTED]
Sent: 11/26/2014 2:39:12 PM
To: Jonathan Sallet [REDACTED]; Erik **Erik Stallman** [REDACTED]
CC: Nuala O'Connor [REDACTED] Stephanie Weiner [REDACTED] Richard Williams [REDACTED]
[REDACTED] Jennifer Tatel [REDACTED] Chris Calabrese [REDACTED]
Subject: Re: OI Meeting
Flag: Follow up

Looking forward! And as promised, sending you to Erik Stallman, our new OI director and general counsel at CDT!

Nuala O'Connor

President & CEO

Center for Democracy & Technology

[REDACTED]
[REDACTED]

On Nov 26, 2014, at 8:58 AM, Jonathan Sallet [REDACTED]@fcc.gov> wrote:

Nuala: It was good to talk with you the other day. It would be great if CDT staff could come in to meet with Stephanie on OI issues, as we discussed, and Rich will reach out to your office to find a time when we can have coffee or lunch before the Christmas break. Thanks Jon

To: Marvin Ammori [REDACTED]
Cc: Stephanie Weiner [REDACTED]; Jennifer Tatal [REDACTED]
From: Jonathan Sallet
Sent: Tue 11/11/2014 3:04:11 PM
Subject: Re-connecting

Marvin: Would you be able to come in to see us next week to talk about how the Commission might move forward on its Open Internet proceeding? Thanks, Jon

To: Marvin Ammori [REDACTED]
Cc: Jennifer Tatel [REDACTED]; Stephanie Weiner [REDACTED];
Jonathan Sallet [REDACTED]; Sarah Morris [REDACTED]
From: Alan Davidson
Sent: Fri 11/14/2014 10:26:05 PM
Subject: Re: Re-connecting

Hi Jennifer -

Per Marvin's note, I think OTI is fine to join the conversation at 4:15.

It would be most helpful if you folks were able to share a list of questions you'd like to cover in our conversation, or some other sort of agenda. That way we could make efficient use of your time.

Have a great weekend,
Alan

Alan Davidson
Director, Open Technology Institute
Vice President, New America

On Fri, Nov 14, 2014 at 4:21 PM, Marvin Ammori [REDACTED] > wrote:

That works for us. See you then

On Fri, Nov 14, 2014 at 8:24 AM Jennifer Tatel [REDACTED] > wrote:

Marvin and Alan,

Jon and Stephanie are scheduled to meet with Harold Feld next Monday at 4:15. Any chance you are available to join that meeting?

Thanks,
Jennifer

From: [Marvin Ammori](#) [mailto:[REDACTED]] **On Behalf Of** Marvin Ammori
Sent: Thursday, November 13, 2014 9:30 PM
To: Jonathan Sallet; Alan Davidson
Cc: Stephanie Weiner; Jennifer Tatel
Subject: Re: Re-connecting

Hi Jonathan,

I'd love to.

I think Alan Davidson may have emailed about a group meeting. So cc'ing him.

Sadly, Monday is the only day that works well for me--I fly to China on Thursday and also travel to debate one of the FTC Commissioners on Tuesday, so they're things I can't easily move.

If Monday doesn't work, I can provide written thoughts on the questions you'd like to discuss, when you share them.

Again sorry about my schedule next week, and hope it works.

On Tue, Nov 11, 2014 at 10:04 AM, Jonathan Sallet <[REDACTED]> wrote:

Marvin: Would you be able to come in to see us next week to talk about how the Commission might move forward on its Open Internet proceeding? Thanks, Jon

Message

From: Michael Janson [REDACTED]
Sent: 12/2/2014 6:36:14 PM
To: Jennifer Salhus [REDACTED]; Daniel Ball [REDACTED]
CC: Joel Taubenblatt [REDACTED]; Jim Schlichting [REDACTED]
Subject: RE: QA on PN

Got it – Nice find. Thanks.

From: Jennifer Salhus
Sent: Tuesday, December 02, 2014 1:34 PM
To: Michael Janson; Daniel Ball
Cc: Joel Taubenblatt; Jim Schlichting
Subject: RE: QA on PN

Also Marvin Ammori, see link:

<http://appsint.fcc.gov/ecfs/document/view?id=60000981387>

From: Michael Janson
Sent: Tuesday, December 02, 2014 1:26 PM
To: Daniel Ball; Jennifer Salhus
Cc: Joel Taubenblatt; Jim Schlichting
Subject: RE: QA on PN

Thanks very much.

From: Daniel Ball
Sent: Tuesday, December 02, 2014 1:26 PM
To: Jennifer Salhus
Cc: Michael Janson; Joel Taubenblatt; Jim Schlichting
Subject: FW: QA on PN

[adding Jennifer]

From: Daniel Ball
Sent: Tuesday, December 02, 2014 1:25 PM
To: Michael Janson
Cc: Jim Schlichting; Joel Taubenblatt
Subject: RE: QA on PN
Michael--

Re 332 ex partes, please see attached filings by The Phoenix Center and Verizon.

Dan

From: Michael Janson
Sent: Tuesday, December 02, 2014 12:33 PM
To: Daniel Ball

Cc: Jim Schlichting; Joel Taubenblatt

Subject: FW: QA on PN

Dan –Attached is a list of OI mobile filings from the past two months. According to this document, it looks like CTIA, PK, and NAF/OTI have engaged section 332 arguments in the record recently. If you know of any others, please let me know. Thanks.

CTIA

<http://apps.fcc.gov/ecfs/document/view?id=60000974095>

PK

<http://apps.fcc.gov/ecfs/document/view?id=60000975807>

NAF/OTI

<http://apps.fcc.gov/ecfs/document/view?id=60000985962>

NAF/OTI as part of a large group

<http://apps.fcc.gov/ecfs/document/view?id=60000983522>

From: Roger Sherman

Sent: Monday, December 01, 2014 2:17 PM

To: Michael Janson

Cc: Jim Schlichting; Joel Taubenblatt

Subject: Fw: QA on PN

Please see below. Can we pull recent ex partes on mobile issue that I can share with Kim per her request? Thanks, Roger. I know we say NAF and TMO. But we're there others?

From: Kim Hart [REDACTED]

Sent: Monday, December 1, 2014 1:29 PM

To: Jonathan Sallet; Ruth Milkman

Cc: Shannon Gilson; Stephanie Weiner; Roger Sherman; Julie Veach

Subject: RE: QA on PN

Hi all,

I have a couple of questions, so looping in Roger and Julie.

I am still getting asked on a daily basis when we will be putting out a PN asking for further comment. I can start to soften the ground with these reporters to reduce the expectation that there will be one. In that vein, have there been additional comments filed since early November that address some of the outstanding questions, i.e., mobile and forbearance? It would be very helpful to point out some substantive comments submitted in the past few weeks that could negate the need for a PN, especially ahead of next week's hearing. Happy to put together a quick meeting to discuss if that's preferable.

Thanks,

Kim

From: Jonathan Sallet
Sent: Sunday, November 23, 2014 1:34 PM
To: Kim Hart; Ruth Milkman
Cc: Shannon Gilson; Stephanie Weiner
Subject: RE: QA on PN

Some thoughts below. Happy to discuss tomorrow.

From: Kim Hart
Sent: Friday, November 21, 2014 5:10 PM
To: Jonathan Sallet; Ruth Milkman
Cc: Shannon Gilson
Subject: QA on PN

Jon, Ruth,

I've already received a couple of questions from reporters this afternoon on the possibility of a PN or FN and timing. Eggerton apparently heard that a PN is ready to go and could be released imminently (to which I declined to comment). Knowing that we'll get questions about this over the next couple of weeks, I'd appreciate any input you have on the following answers to questions about why we didn't formally ask for more input on specific questions.

Q: You indicated that there were unanswered questions related to Title II, such as implications for privacy, universal service, the FTC and mobile. How can you suddenly have all the information you need?

A: We said we needed more time to examine the issues raised as we weighted options. We are taking that time to give these complex issues the attention they deserve. The record is extensive, spanning back to 2010. It takes time to make sure we have taken everything into account. [We are continuing our investigation as the following ex partes illustrate [examples to come]. We continue this consultation. [Kim, do you feel you need more on this?]

Q: You indicated that parts of the record were thin and needed to be beefed up. The Chairman also said at the last press conference that he wants to make sure he has a fulsome record to support whatever rules he puts forward. Are you now saying you don't need more comment in the record?

A: We of course welcome all comments and feedback from all parties on this important issue. [NEED MORE ON WHY WE NO LONGER THINK RECORD IS THIN IN SOME PLACES – I think you want to point to recent ex partes and potentially we should consider whether some group meetings would be helpful]

Q: I hear staff has been calling some outside parties asking them to submit more comment on specific question. That seems like you're hand-selecting the comments you need to bolster the case for the rules you plan to propose. Why didn't you pose those questions for everyone to provide feedback?

A: The ex parte process is helpful, of course; the staff is also taking meetings that are requested by outside parties to discuss substantive issues.

Q: You have repeatedly said you need more time to make sure you have answered all your questions and developed a robust record to help your defense in court when you are inevitably sued. If you're not formally asking for more

comment, why are you delaying a vote on rules? If you have all the information you need, why don't you move forward now?

A: As you know, this is an incredibly complex issue with many layers. We have two goals and we do not believe they are in conflict. We will move with dispatch. And we will construct an order that is legally-sustainable. To try to trade off one against the other would be a mistake.

Thanks,

Kim

To: Richard Williams [REDACTED]
From: Jonathan Sallet
Sent: Thur 11/6/2014 11:47:07 AM
Subject: FW: OI Draft
Open Internet Order 11-5-2014 to Julie.docx

Please make a hard copy of this. Thanks Jon

From: Claude Aiken
Sent: Wednesday, November 05, 2014 10:35 PM
To: Jonathan Sallet; Julie Veach; Roger Sherman
Cc: Stephanie Weiner; Matthew DelNero; Jim Schlichting; Paula Blizzard; Martha Heller; Mark Stone; Randy Clarke; Melissa Droller Kinkel; Kristine Fargotstein; Thomas Parisi; Zachary Ross
Subject: OI Draft

Jon, Julie, and Roger,

Thanks to the continued amazing team effort by staff from WCB, WTB, CGB, OGC, and EB, here is an updated version of the OI draft that includes all of the outstanding component parts. While still a work in progress, this is the most comprehensive and complete draft to date.

Please let us know if you have any questions; we look forward to receiving your feedback.

Thanks,
Claude

*** Non-Public: For Internal Use Only ***

To: Joel Taubenblatt [REDACTED]
Cc: Jennifer Salhus [REDACTED]
From: Daniel Ball
Sent: Fri 11/7/2014 10:06:13 PM
Subject: OI Draft

Good afternoon, Joel—

Are we still on for delivery of a draft to WCB by COB today, or will we have until Monday, as you mentioned in your email of noon today? Peter is reviewing/editing, and the current draft also reflects Jennifer's and my additional edits (including implementing Scott Jordan's most recent edits to RNM).

Also, who would you like to review the draft before it goes to WCB?

Thank you.

Daniel R. Ball ■ Spectrum & Competition Policy Division ■ Wireless Telecommunications Bureau ■ Federal Communications Commission ■ 445 12th St SW ■ Washington, DC 20554
[REDACTED]

To: Jim Schlichting [REDACTED]
Cc: Joel Taubenblatt [REDACTED]
From: Gloria Sheu
Sent: Mon 11/3/2014 2:32:24 PM
Subject: RE: OI Draft

Thanks!

From: Jim Schlichting
Sent: Monday, November 03, 2014 9:27 AM
To: Gloria Sheu
Cc: Joel Taubenblatt
Subject: FW: OI Draft

Gloria,

This includes significant revisions to the non-mobile portions of the OI Order.

Jim

From: Roger Sherman
Sent: Friday, October 31, 2014 10:51 PM
To: Joel Taubenblatt; Jim Schlichting
Subject: Fw: OI Draft

From: Claude Aiken [REDACTED]

Sent: Friday, October 31, 2014 9:44 PM

To: Jonathan Sallet; Julie Veach; Roger Sherman

Cc: Matthew DeINero; Stephanie Weiner; Kristine Fargotstein; Melissa Droller Kinkel; Zachary Ross;

Thomas Parisi

Subject: OI Draft

Jon, Julie, and Roger,

With apologies for delays attributable to trick-or-treating, and many thanks to the hard work of all who helped put it together, here is a copy of the OI Draft (minus Legal Authority, the Ombudsperson section, and various mobile pieces). As you will see, it is very much a work in progress, but we hope it is sufficiently far along to give you the opportunity to react to what is in it.

We look forward to your comments.

Thanks,
Claude

Claude Aiken

Acting Deputy Division Chief

Competition Policy Division

Wireline Competition Bureau

Federal Communications Commission

██████████

*** Non-Public: For Internal Use Only ***

Message

From: Thomas Parisi [REDACTED]
[REDACTED]
Sent: 11/5/2014 10:14:30 PM
To: Claude Aiken [REDACTED]
Subject: Open Internet Order - Compare 10-31 to 11-5.docx
Attachments: Open Internet Order - Compare 10-31 to 11-5.docx

Here you are!

Message

From: Claude Aiken [REDACTED]
Sent: 11/17/2014 8:09:48 PM
To: Kristine Fargotstein [REDACTED]
Subject: RE: Interconnection Paragraph
Attachments: OI Public Notice Outline_Interconnection ca.docx

Thanks for putting this out there, and for offering to draft something that may very well be cut. I made some edits. If these look good, please plug them into the draft.

From: Kristine Fargotstein
Sent: Monday, November 17, 2014 12:55 PM
To: Claude Aiken
Subject: Interconnection Paragraph

Claude – Attached for your review is my splicing of Scott Jordan’s questions. I struggled with the second paragraph trying to discuss both discriminatory practices (without saying discrimination) and transparency issues. Please let me know if you would like me to add anything else.

Kristine Fargotstein
Attorney Advisor
Wireline Competition Bureau – CPD
Federal Communications Commission
[REDACTED]

WIRELINE COMPETITION BUREAU AND WIRELESS TELECOMMUNICATIONS BUREAU
SEEK ADDITIONAL COMMENT IN THE OPEN INTERNET AND FRAMEWORK FOR
BROADBAND INTERNET SERVICE DOCKETS

GN Docket Nos. 10-127, 14-28

Comment Date: [[30 days after FR Publication]], 2014

[[Intro para]]

[[Regulated services paragraphs focusing on regulated service, framing as classification/reclassification question]]

[[Edge service classification issue]]

[[Mobile classification issue (reclassify vs. hybrid)]]

[[CMRS definition issue (reclassify vs. hybrid)]]

[[Broad forbearance paragraphs]]

[[Mobile-specific forbearance para/sentence]]

[[Mobile policy – transparency & RNM]]

[[Specialized services]]

[[Interconnection]]

Interconnection. In the *NPRM*, the Commission sought comment on its tentative conclusion not “to expand the scope of the open Internet rules in any fashion to regulate traffic exchange.”¹ The Commission also sought comment on whether it should view transit, CDN, or other providers engaged in Internet traffic exchange as a class of persons whose interests are similar to those of edge providers.² The record in response to the *NPRM* has brought to light additional issues that warrant further comment. For example, if the Commission were to reclassify of broadband Internet access service or classify a separate edge-facing service, should traffic exchange fall within the scope of either service? What action, if any, should the Commission take to address failure to upgrade capacity at traffic exchange points? How should the transparency rule apply to traffic exchange? For example, should the Commission require disclosure of characteristics of performance across traffic exchange points? And, if so, what metrics should be used for this? Should the Commission require disclosure of peering policies or interconnection agreements? If so, what should providers be required to disclose, and to whom?

Pursuant to sections 1.415 and 1.419 of the Commission’s rules,³ interested parties may file comments and reply comments on or before the respective dates indicated on the first page of this Notice.

¹ *Open Internet NPRM*, 29 FCC Rcd at 5591, para. 83.

² *Open Internet NPRM*, 29 FCC Rcd at 5589, para. 76.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Public Notice references shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information regarding this proceeding, contact Kristine Fargotstein, Wireline Competition Bureau, at [REDACTED]

-FCC-

Message

From: Melissa Droller Kirkel [REDACTED]
Sent: 11/17/2014 1:36:02 PM
To: Claude Aiken [REDACTED]
Subject: FW: Forbearance Public notice section 11-14-14.docx
Attachments: Forbearance Public notice section 11-14-14.docx

I am working on this now. Here is his in case you want to see the original. I am revising and shortening it. Trying to harmonize mine and Zach's first. I'm hoping it won't take much more than an hour and then you can let us know what else needs to be included.

Melissa Droller Kirkel
Attorney Advisor
Wireline Competition Bureau
[REDACTED]

*** Non-Public: For Internal Use Only ***

From: Thomas Parisi
Sent: Friday, November 14, 2014 5:17 PM
To: Melissa Droller Kirkel
Subject: Forbearance Public notice section 11-14-14.docx

Hi Melissa,

Here is my first shot at the paragraph. I kept it brief as per our discussion. I welcome any thoughts you have on improving it. I hope you have a wonderful weekend.

Best,

Thom

A. Forbearance

1. If the Commission were to reclassify broadband Internet access service or classify a separate broadband service provided to edge providers as a “telecommunications service,” such services would then be subject to all of the requirements of the Act and Commission rules that flow from the classification of a service as a telecommunications service or common carrier service. In the *Open Internet NPRM*, we sought comment on the extent to which forbearance from certain provisions of the Act or our rules would be justified in order to strike the right balance between minimizing the regulatory burden on providers and ensuring that the public interest is served.¹ We now seek additional comment on forbearance, including for mobile broadband services, where we seek comment on the extent to which forbearance should apply if the Commission were to classify mobile broadband Internet access service as a CMRS service subject to Title II. We are also specifically interested in additional information on forbearance related to issues such as privacy and CPNI, E911, and disabilities access. We also welcome commenters to list and explain any additional provisions that should be exempt from or receive forbearance in order to protect and promote Internet openness.

¹ 2014 *Open Internet NPRM*, 29 FCC Rcd at 5615-16, paras. 153-55.

Message

From: Claude Aiken [REDACTED]
Sent: 11/17/2014 10:25:24 PM
To: Julie Veach [REDACTED]; Matthew DelNero [REDACTED]; Roger Sherman [REDACTED]; Jim Schlichting [REDACTED]
CC: Randy Clarke [REDACTED]; Melissa Droller Kinkel [REDACTED]; Kristine Fargotstein [REDACTED]; Zachary Ross [REDACTED]; Thomas Parisi [REDACTED]; Joel Taubenblatt [REDACTED]; Daniel Ball [REDACTED]
Subject: OI PN
Attachments: OI Public Notice (11 17 14) to FO.docx

Julie, Matt, Roger, and Jim,

Thanks to the quick work of the WCB and WTB OI teams, here is the short draft PN that is due to go to OCH on 11/19. Please let us know if you have any questions or comments on the draft. We look forward to your edits.

Thanks,
Claude

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Message

From: Stephanie Weiner [REDACTED]
Sent: 11/19/2014 5:54:16 PM
To: Erickson, Markham [REDACTED]
Subject: Re: Quick Chat

Sure. I could do 2:30 or 5pm. Either work for you?

From: Erickson, Markham
Sent: Wednesday, November 19, 2014 11:13 AM
To: Stephanie Weiner
Subject: Quick Chat

Stephanie,

Do you have a few minutes for a quick telephone chat re process on OI going forward?

Markham

Markham C. Erickson
Partner
[REDACTED]@steptoe.com

Steptoe

Steptoe & Johnson LLP | 1330 Connecticut Avenue, NW | Washington, DC 20036
[REDACTED] | [REDACTED] | www.steptoe.com

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To: 'Goyal, Praveen [REDACTED]@hoganlovells.com]; Claude Aiken [REDACTED]@fcc.gov]
Cc: Broderson, Deborah K. [REDACTED]@hoganlovells.com]
From: Matthew DelNero
Sent: Wed 11/12/2014 9:54:51 PM
Subject: RE: meeting with Vodafone tomorrow

Praveen,

That sounds fine to me. So long as no presentation is being made on the merits of the pending proceeding, no ex parte is necessary. We look forward to seeing you all tomorrow.

Thanks,

Matt

From: Goyal, Praveen [REDACTED]@hoganlovells.com]
Sent: Wednesday, November 12, 2014 11:27 AM
To: Matthew DelNero; Claude Aiken
Cc: Broderson, Deborah K.
Subject: meeting with Vodafone tomorrow

Matt and Claude,

We're looking forward to Vodafone's meeting with WCB tomorrow at 1:30pm. I wanted to give a heads up about Vodafone's plan for the meeting.

Vodafone is interested in sharing its experiences in Europe on competition issues including net neutrality, and comparing with the US experience. Vodafone views the purpose of the meeting as more directed at information sharing about the European experience and learning for Vodafone about the US experience, rather than advocacy in the FCC's pending open Internet proceeding. We don't plan to raise advocacy directed at the outcome of the pending open Internet proceeding, and similarly don't plan to file an ex parte notice for the meeting. Given all the activity in the open Internet proceeding, we wanted to clarify Vodafone's expectations up

front and make sure they matched WCB's expectations for the meeting.

Please let me know if that sounds reasonable, and feel free to get in touch by phone as well if I can answer any questions or assist further. Thank you both.

Best,

Praveen

Praveen Goyal

Counsel

Hogan Lovells US LLP
Columbia Square

555 Thirteenth Street, NW

Washington, DC 20004



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Message

From: Kim Hart [REDACTED]
Sent: 11/19/2014 9:24:34 PM
To: Philip Verveer [REDACTED]@fcc.gov; Jonathan Sallet [REDACTED]@fcc.gov; Ruth Milkman [REDACTED]@fcc.gov; Shannon Gilson [REDACTED]@fcc.gov
Subject: Re: Why were there no ex parte filings made at the FCC....

It seems Brooks is arguing that it's hard to believe no agency business came up in other meetings/visits. Are ex partes reserved for clear "advocacy" versus other discussions?

From: Philip Verveer
Sent: Wednesday, November 19, 2014 4:22 PM
To: Kim Hart; Jonathan Sallet; Ruth Milkman; Shannon Gilson
Subject: RE: Why were there no ex parte filings made at the FCC....

I assume the answer is that there literally was no advocacy until JZ visited and described the WH's preference just in advance of the President's public statements.

From: Kim Hart
Sent: Wednesday, November 19, 2014 4:04 PM
To: Jonathan Sallet; Ruth Milkman; Philip Verveer; Shannon Gilson
Subject: Fw: Why were there no ex parte filings made at the FCC....

Hi team,

Brooks is asking why there weren't ex partes filed for all the meetings TW had at the WH on a number of things. What are the rules about that? Obviously the meeting with JZ was ex parte'd.

Kim

From: Brooks Boliek <[REDACTED]@politico.com>
Sent: Wednesday, November 19, 2014 2:41 PM
To: Kim Hart
Subject: Why were there no ex parte filings made at the FCC....

... when Wheeler met with the White House staff?

If the FCC has given a proceeding a docket number in a 'permit but disclose' proceeding, it seems like there should be an ex parte filing at the FCC.

Wheeler met at the White House at least a dozen times over the past year. It's hard to believe that they didn't discuss anything in the FCC docket.

Hope all is well.

bb

From: TW
To: "David Edelman" <[REDACTED]@who.eop.gov">
Subject: Fw: NYT story is wrong
Date: Wednesday, April 23, 2014 10:24:01 PM

David -

Sorry, should have had you on the first one

T

----- Original Message -----

From: TW

Sent: Wednesday, April 23, 2014 10:15 PM

To: [REDACTED] <[REDACTED]@who.eop.gov> [REDACTED] <[REDACTED]@who.eop.gov> [REDACTED] <[REDACTED]@cea.eop.gov> [REDACTED] <[REDACTED]@cea.eop.gov>; [REDACTED] <[REDACTED]@ostp.eop.gov> [REDACTED] <[REDACTED]@ostp.eop.gov>

Subject: NYT story is wrong

The NYT is moving a story that the FCC is gutting the Open Internet rule. It is flat out wrong. Unfortunately, it has been picked up by various outlets without checking.

Tomorrow we will circulate to the Commission a new Open Internet proposal that will restore (and in in the case of transparency which was allowed to stand by the court, expand) the concepts in the original Net Neutrality Order in a manner consistent with the court's ruling in January.

There is no "turnaround in policy." We are implementing the same policies in a manner that will pass court scrutiny. We have told the NYT they have it wrong.

The same rules will apply to all Internet content. As with the original Open Internet rules, and consistent with the court's decision, behavior that harms consumers or competition will not be permitted.

We are moving a statement containing these points to the media right now.

Please call me if you have any questions. [REDACTED] is my mobile.

T

From: TW
To: Tom Wheeler
Subject: Fw: CNET: Calm down: FCC's position on Net neutrality hasn't changed
Date: Sunday, April 27, 2014 11:21:47 AM

From: TW
Sent: Thursday, April 24, 2014 06:17 PM
To: Jeff Zients @who.eop.gov; Jeffrey Zients @who.eop.gov; John Podesta @who.eop.gov; John Podesta @who.eop.gov; Jason Furman @cea.eop.gov; Jason Furman @cea.eop.gov; Tom Power @ostp.eop.gov; Tom Power @ostp.eop.gov; David Edelman @who.eop.gov; David Edelman @who.eop.gov
Subject: Fw: CNET: Calm down: FCC's position on Net neutrality hasn't changed

Gentlemen -

This is the most thoughtful explanation of what has been going on with the Open Internet. I thought you'd want to see it. She is exactly right.

We have been spending the day with congressional calls, and editorial board and reporter calls.

I just wanted you to have this so you'd see a realistic analysis of what's really going on.

T

From: Meribeth McCarrick
Sent: Thursday, April 24, 2014 05:52 PM
To: Gigi Sohn; TW; Shannon Gilson; Neil Grace; Mark Wigfield; Sara Morris; Jonathan Sallet; Maria Kirby; Renee Gregory; Daniel Alvarez; Ruth Milkman; Stephanie Weiner; Rochelle Cohen; Julie Veach
Subject: CNET: Calm down: FCC's position on Net neutrality hasn't changed

Calm down: FCC's position on Net neutrality hasn't changed

There's been a lot of confusion about what the FCC is or is not proposing for its rewrite of its Open Internet rules. CNET's Marguerite Reardon breaks it down.

by Marguerite Reardon

April 24, 2014 2:10 PM PDT

<http://www.cnet.com/news/fccs-position-on-net-neutrality-hasnt-changed/>

When it comes to discussing the FCC's recent proposal for rewriting its Net neutrality rules, everyone needs to take a deep breath, slow down and check their facts, according to FCC chairman Tom Wheeler, whose agency seems to have a knack for inadvertently exciting the public over its proposed policy plans.

And I couldn't agree more.

The Internet got itself worked into a tizzy Thursday evening when the Wall Street Journal and New York Times published stories in which they suggested that the FCC had changed its position on certain aspects of the Open Internet rules that it has been reworking since January when a federal appeals court struck down regulation the FCC had adopted in 2010.

Blogs were ablaze with headlines about the "Death of Net neutrality" and claims that the FCC was offering its approval to broadband providers who want to create so-called fast lanes on the Internet. The backlash was reminiscent of a media firestorm in November over the FCC's planned vote to lift technical restrictions on cell phones in flight. Frequent air travelers took to the media and Internet sites to complain that they didn't want to sit next to a jabbering passenger on transcontinental flights. To calm the public, the chairman was forced to broker a deal with the Department of Transportation, which has set rules that could still ban in-flight calls.

Like with the misunderstanding over the in-flight cell phone ban, the reality of what the FCC is actually proposing in terms of Net neutrality is far less dramatic than what has been reported. In a blog post on Thursday, Wheeler tried to clear up the misunderstanding. And his staff offered even more clarification to reporters on a press-only conference call.

FCC Chairman Tom Wheeler CNET/Marguerite Reardon

In short, the FCC has not drastically changed its position on Net neutrality nor has it proposed creating a "fast lane" for broadband providers seeking to increase profits. Wheeler stated the FCC is merely trying to re-establish the 2010 rules that the FCC adopted and that the latest court ruling in January struck down.

The Chairman is not proposing new rules that would replace the ones the FCC already adopted. But he said he will try to strengthen these rules to ensure they protect consumers and entrepreneurs, as well as, stand up to legal challenges. This last point is an important one, considering that the FCC has lost twice already in court first defending Open Internet "principles" and again a few years later, defending actual Open Internet regulation.

But this time, Wheeler thinks the agency will get it right. In the federal Court of Appeals decision in January, the justices agreed that the FCC has the authority to regulate the openness of the Internet. But they did not agree on the FCC's legal basis for establishing those rules. So the court sent the FCC back to the drawing board to write new rules. And the court also provided a kind of legal blueprint for the agency to use in crafting these new rules.

Wheeler says the FCC's new proposal is an attempt to maintain the spirit of the 2010 rules, while ensuring that these new rules will be able to withstand future legal challenges. Specifically, Wheeler said the new rules, will not "change the underlying goals of transparency, no blocking of lawful content, and no unreasonable discrimination among users established by the 2010 Rule."

A big misunderstanding

Much of the recent kerfuffle with regard to the FCC's proposal has to do with the third rule established by the 2010 Open Internet rules, which deals with prohibiting "unreasonable discrimination" among users.

Critics say the FCC has changed its position and is welcoming broadband providers to create so-called fast lanes that they could sell to the highest bidders. The fear is that broadband providers like

Comcast or Verizon could create HOV-type lanes on the information super-highway, and content companies like Netflix or Amazon could pay for access to that priority lane so that their traffic would arrive more quickly and with better quality to their end users. Consumer advocates fear such offers from broadband providers would also mean that services that didn't pay for priority would be relegated to the Internet slow lanes, resulting in poor experiences for their customers.

The other worry is that if Netflix or Amazon are paying for the fast lane, they will pass those costs onto consumers, and indirectly, consumers, who are already paying for higher speed broadband, will pay even more for certain service subscriptions.

I can't say one way or another if these fears would ever play out or even if this scenario did play out whether it would harm consumers. One could easily argue that customers of streaming video services might appreciate better quality of service. This would likely mean less buffering and better quality video during peak times of Internet usage. It could also be easily argued that services like Netflix and Amazon are already raising prices on their services, and will likely continue to do so, regardless of whether they pay for priority access on broadband networks or not.

I'll say it again. The FCC has not changed its position.

But the issue as it pertains to the FCC and the Net neutrality debate is that the FCC has never actually said that such business models would be prohibited under any of its regulation. Some consumer advocates, blogs and news outlets, which have accused the FCC of changing its position on this issue, have simply been confused about the FCC's previous stance when it comes to how Internet traffic should be treated.

The reality is that the FCC has never supported the idea nor has it ever established rules that would prohibit any and all network discrimination. In fact, when the Open Internet rules were first established in 2010, there was great concern about the wording of the non-discrimination rule and some critics feared that broadband providers would establish so-called Internet fast lanes.

Then Democratic FCC commissioner Michael Copps at the time the rules were adopted, said he was concerned that broadband providers might force Internet companies to "pay for prioritization." But Copps, when he voted in favor of the rules, acknowledged that stipulating that there could be "no unreasonable discrimination" would protect consumers against such abuses.

Wheeler agrees wholeheartedly with former Commissioner Copps.

"The Court of Appeals made it clear that the FCC could stop harmful conduct if it were found to not be 'commercially reasonable,'" he said. And he went on to explain that "even Title II regulation (which many have sought and which remains a clear alternative) only bans 'unjust and unreasonable discrimination.'"

Wheeler said that the FCC is proposing rules that will establish a high bar for what is considered "commercially reasonable." And he believes that by defining what sorts of network discrimination is acceptable and what practices are not will protect consumers and entrepreneurs and their access to

an open Internet.

"The allegation that it will result in anti-competitive price increases for consumers is also unfounded," he said. "That is exactly what the 'commercially unreasonable' test will protect against: harm to competition and consumers stemming from abusive market activity."

So far the FCC has not said how it defines what is reasonable and what is not. A spokesman for the agency said on a call with reporters that this is why the FCC is asking for public comment on the proposal. The FCC will also ask how this provision should be applied to wireless networks. According to the 2010 Open Internet rules, the rule forbidding unreasonable discrimination of traffic does not apply to wireless networks.

"The FCC wants to provide an opportunity for the public to comment before decisions are made," the spokesman said. "The idea is to ask first and answer those specific questions later once we've gathered more information. That's the responsible way to do this."

What about 'peering' arrangements?

What the proposal will not address are commercial peering arrangements between broadband providers and content providers or any other network operators looking to connect to broadband networks. This is an issue that surfaced recently from Netflix, which has claimed the FCC needs to adopt "strong" Net neutrality to ensure that companies, such as Netflix, can get access to broadband networks without payment.

But the truth is that such commercial arrangements between content companies and among network operators has never been considered as part of the Net neutrality issue. And an FCC spokesman acknowledged that this is not an issue addressed in the current Open Internet proposal. But he did not elaborate on whether the FCC would consider opening a different proceeding to look into regulating these commercial deals.

Instead, he emphasized that the proposal that the chairman shared with his fellow commissioners Thursday and on which the FCC will vote on in May, does not outline any new concepts for Net neutrality. The proposal essentially rewrites the old rules from 2010 and provides a legal basis for establishing the previously adopted regulation. He also noted that the chairman's goal in getting these rewritten rules on the books is to ensure that everyone is playing by the same rules of the road when it comes to the Internet.

"There is a gap right now in regulation" he said. "And the chairman is working quickly and aggressively to close that gap before the end of the year to protect consumers and entrepreneurs."

From: TW
To: "Jeff Zients" <@who.eop.gov>; "Jason Furman" <@cea.eop.gov>
Subject: Fw: FINAL NCTA
Date: Tuesday, April 29, 2014 4:38:00 PM
Attachments: OI blog 4 29 FINAL FOR POSTING.docx

As per our discussion: this is this afternoon's blog post on the Open Internet NPRM.

All options on the table...we are seeking comments and input...following the court's blueprint.

T

From: Shannon Gilson
Sent: Tuesday, April 29, 2014 03:10 PM
To: TW; Ruth Milkman; Philip Verveer; Jonathan Sallet; Gigi Sohn; Daniel Alvarez; Julie Veach; Daniel Alvarez; Sara Morris
Subject: RE: FINAL NCTA

Final blog post attached.

From: TW
Sent: Tuesday, April 29, 2014 3:08 PM
To: Ruth Milkman; Philip Verveer; Jonathan Sallet; Gigi Sohn; Shannon Gilson; Daniel Alvarez; Julie Veach; Daniel Alvarez; Sara Morris
Subject: FINAL NCTA

Joanne Wall

From: TW
Sent: Tuesday, April 29, 2014 7:52 PM
To: 'Jeff Zientz'; 'Jason Furman'; 'Tom Power'; 'John D. Podesta'
Subject: Open Internet update
Attachments: NCTA Final4-29.docx

Gentlemen -

Below is the link to today's blog further explaining the Open Internet NPRM. The press reaction has been what we'd hoped, that I have clarified previous misconceptions about how the proposal would somehow gut the Open Internet.

Attached is my speech to NCTA tomorrow. The first two pages are about Open Internet - a message delivered to the broadband providers as to what will be expected.

Message in both: (1) it is a proposal on which we seek comment, (2) all options are on the table, including Title II, and (3) I have flat out expressed skepticism that we'd find "commercial reasonableness" to be a route to exceptions to the rule for special deals and prioritization.

As I have said since February, the proposal is designed to deliver on the goals of the 2010 Open Internet Order (which, you'll recall, included a reasonableness test) and to do so in a manner that follows the D.C. Circuit's roadmap (and hopefully thus avoids litigation).

The President has supported the Open Internet and anti-discrimination. Just like he supported the 2010 order with its reasonableness test there is no need to no change with this proposal. I believe he can say that we are using current law to its fullest (and in a manner that was prescribed by the court) to assure an Open Internet and anti-discrimination. The next step is to change the law, even Title II has a "just and reasonable" test.

Hope this is helpful.

The initial coverage has been helpful and the feedback from the public interest groups better. I'll send you some clips in a moment.

T

-----Original Message-----

From: Shannon Gilson
Sent: Tuesday, April 29, 2014 07:10 PM Eastern Standard Time
To: TW
Subject: Speech and blog link

<http://www.fcc.gov/blog/finding-best-path-forward-protect-open-internet>