
Appendix C

Exhibit 1

RON JOHNSON, WISCONSIN, CHAIRMAN

JOHN McCAIN, ARIZONA
ROB PORTMAN, OHIO
RAND PAUL, KENTUCKY
JAMES LANKFORD, OKLAHOMA
MICHAEL B. ENZI, WYOMING
KELLY AYOTTE, NEW HAMPSHIRE
JONI ERNST, IOWA
BEN SASSE, NEBRASKA

THOMAS R. CARPER, DELAWARE
CLAIRE McCASKILL, MISSOURI
JON TESTER, MONTANA
TAMMY BALDWIN, WISCONSIN
HEIDI HEITKAMP, NORTH DAKOTA
CORY A. BOOKER, NEW JERSEY
GARY C. PETERS, MICHIGAN

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

February 9, 2015

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Wheeler:

The Committee on Homeland Security and Governmental Affairs is examining the Federal Communications Commission's (FCC) proposal regarding broadband Internet access. According to the *Wall Street Journal*, the White House may have inappropriately influenced the FCC decision to regulate broadband like a public utility.¹ I request your assistance in better understanding whether the White House and the FCC respected the proper boundaries established by Congress between the Executive Branch and independent agencies.

The FCC has been grappling with the issue of "net neutrality" for some time. In 2005, the FCC adopted a policy statement that consumers were entitled to: access their choice of legal Internet content, use services and run applications of their choosing, and have competition among network, application, service and content providers.² In April 2010, when the FCC tried to enforce that policy statement on a company for an alleged violation, its efforts were struck down by the D.C. Circuit in *Comcast v. FCC*.³

Lacking any evidence of a problem, the FCC spent the rest of 2010 working towards an order that would impose affirmative rules on broadband providers. In December 2010 the FCC adopted, on a party-line 3-2 vote, its "Open Internet Order."⁴ In this order, the FCC carefully weighed whether or not to reclassify broadband services as a "Title II" utility. In the end, the FCC applied a light touch regulatory framework for fixed services, recognized the technical and competitive differences of wireless, and did not touch interconnection agreements. The order specifically required broadband providers to disclose their network management practices and barred them from blocking legal traffic on their networks. The rules also prohibited fixed broadband providers from unreasonably discriminating against Internet traffic, but did not apply this prohibition to wireless broadband providers.

¹ Gautham Nagesh & Brody Mullins, *How White House Thwarted FCC Chief on Internet Rules*, WALL ST. J., Feb. 4, 2015.

² Fed. Communications Comm'n, *New Principles Preserve and Promote the Open and Interconnected Nature of Public Internet* (Aug. 5, 2005).

³ 600 F.3d 642 (D.C. Cir. 2010).

⁴ Fed. Communications Comm'n, *Report and Order, In re: Preserving the Open Internet Broadband Industry Practices* (Dec. 21, 2010).

On January 14, 2014, the D.C. Circuit upheld the FCC's transparency rule but struck down the portions of the 2010 rule that barred broadband providers from blocking content or unreasonable discrimination on their networks.⁵ The court reasoned that the FCC had chosen not to classify broadband providers as common carriers, and therefore could not impose common carrier obligations. At the same time, the court provided the FCC with a road map on how to apply very similar rules under the same authority as its 2010 order (i.e. using Section 706 of the Telecommunications Act of 1996). You appeared to accept this direction and in February 2014 announced that the FCC would pursue a new rulemaking based on this road map.⁶ Specifically, you proposed that broadband providers may charge companies different prices for different services on their networks provided that such deals were "commercially reasonable."

One year later, your views on net neutrality have apparently "evolved." On February 4, 2015, plans were revealed to regulate broadband as a Title II utility service, treat wireless the same as fixed broadband, and assert jurisdiction over Internet interconnection agreements for the first time. Not only is this a monumental shift from the 2010 FCC order, but it is a very large deviation from the previous proposal as well as the light regulatory touch applied to broadband services since the Clinton administration.

In your *Wired* op-ed you explain that this evolution occurred because you became concerned that a commercially reasonable standard might, down the road, be interpreted to mean only what is reasonable for commercial interests, not consumers.⁷ But I am concerned that undue outside pressures may have led you to this decision. In particular, my concern is the apparent pressure exerted on you and your agency by the White House.

In November 2014, the president directly weighed into the debate over net neutrality, stating, "I believe the FCC should reclassify consumer broadband service under Title II of the Telecommunications Act."⁸ Reports that week indicated that at that time you were prepared to circulate a draft proposal at odds with the president's views, but quickly pulled it back and canceled an anticipated vote on a net neutrality order in December.⁹

Building up to the president's announcement, the *Wall Street Journal* reported "unusual, secretive efforts inside the White House, led by two aides . . . built a case for the principle known as 'net neutrality' through dozens of meetings with online activists, Web startups and traditional telecommunications companies."¹⁰ This group reportedly acted as a "parallel version of the FCC itself."¹¹ Since the FCC is an *independent* agency that derives its authority from Congress and not the White House, it is highly concerning that the White House would seek to take on this

⁵ Verizon v. Fed. Communications Comm'n, 740 F.3d 623 (D.C. Cir. 2014).

⁶ Fed. Communications Comm'n, Statement by FCC Chairman Tom Wheeler on the FCC's Open Internet Rules (Feb. 19, 2014).

⁷ Tom Wheeler, *This is how we will ensure net neutrality*, WIRED, Feb. 4, 2015.

⁸ The White House, Net Neutrality: President Obama's Plan for a Free and Open Internet, <http://www.whitehouse.gov/net-neutrality> (last visited Feb. 6, 2015).

⁹ Brian Fung, *How Obama's net neutrality comments undid weeks of FCC work*, Wash. Post, Nov. 14, 2014.

¹⁰ Nagesh & Mullins, *supra* note 1.

¹¹ *Id.*

level of involvement in the regulatory process of the FCC, or attempt to supplant completely the agency's decision-making apparatus.

Not only was this inappropriate from a constitutional standpoint, but it also is improper from an Administrative Procedure Act perspective. The FCC must obey the notice-and-comment rulemaking procedure and all *ex parte* requirements whenever a meeting is conducted. The point of these rules is to bring transparency and accountability into the regulatory process. The White House has no such requirements and apparently told participants not to discuss the process openly.¹²

To assist the Committee in better understanding the regulatory process by which the FCC has arrived at its broadband access proposal, I ask that you please provide the following information and material:

1. Please explain what new factors or developments in the telecommunications industry have led you to conclude that the commercially reasonable standard, which you supported in 2014, is no longer appropriate.
2. Please explain why you pulled back a draft proposal on a net neutrality order in 2014 and the timing of your decision.
3. Please produce the draft proposal on net neutrality you planned to circulate in or around late November and early December 2014.
4. Have you or any other FCC employees had communications with employees or officials of the Executive Office of the President referring or relating to net neutrality, or other aspects of broadband service or service provider regulation? Please list these communications and provide the dates, the individuals involved, and the subject matters, and provide all phone logs of any oral communications, along with a list of the participants, including communications on mobile devices.
5. Was the FCC aware of the "unusual, secretive effort inside the White House" relating to net neutrality? Please explain.
6. Did any FCC employees participate in the meetings with White House officials relating to net neutrality or broadband regulation? Please provide the names of these employees, and the dates of the meetings they attended.
7. Please produce all documents and communications between or among any employee of the FCC and employees of the Executive Office of the President referring or relating to net neutrality or broadband regulation for the period November 3, 2013, to the present.

¹² See Nagesh & Mullins, *supra* note 1.

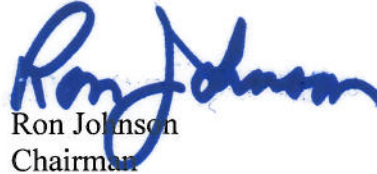
The Honorable Tom Wheeler
February 9, 2015
Page 4

Please provide this material as soon as possible, but no later than 5:00 p.m. on February 23, 2015.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”¹³ Additionally, S. Res. 253 (113th Congress) authorizes the Committee to examine “the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs.”¹⁴

For purposes of this request, please refer to the definitions and instructions in the enclosure.” If you have any questions about this request, please contact Brooke Ericson of the Committee staff at (202) 224-4751. Thank you for your attention to this matter.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Minority Member

Enclosure

¹³ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

¹⁴ S. Res. 253 § 12, 113th Cong. (2013).

Exhibit 2



Federal Communications Commission
Washington, D.C. 20554

March 16, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Chairman Johnson:

As I discussed with your staff today, please find enclosed a disc containing approximately 1600 pages of documents that are responsive to your February 9, 2015, request for information relating to the process followed by the Federal Communications Commission (FCC) to develop the Open Internet Order. The documents contained on this disc are unredacted versions of documents the Commission has provided to a series of Freedom of Information Act (FOIA) requesters who have made requests for information similar to yours. More detailed descriptions of these requests are provided below. The copies of these documents that the FOIA requesters received contained numerous redactions consistent with the FOIA exemptions. The FCC provided a small portion of these documents (nine pages, to be exact) to you on February 24, 2015.

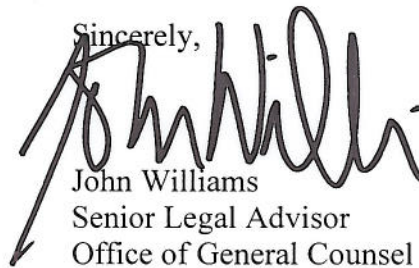
The documents we are providing today were gathered and produced (with redactions) to comply with the following FOIA requests:

- A request by journalist Jason Leopold for all records referring to “Net Neutrality/Network Neutrality/Open Internet” between February 1 and May 15, 2014 (**HSGAC-OI-000423 – HSGAC-OI-000686, HSGAC-OI-001064 – HSGAC-OI-001529**).
- A request by journalist Nicholas Rizzuto for e-mails of the five FCC Commissioners regarding “Protecting and Promoting Open Internet” proposals between January 2013, and May 19, 2014 (**HSGAC-OI-000687 – HSGAC-001063, HSGAC-OI-001530 – HSGAC-OI-001750**).
- A request by Matthew Kownacki of Judicial Watch for FCC e-mails related to President Obama’s “Statement on Keeping the Internet Open and Free” between September 27, 2014, and December 8, 2014 (**HSGAC-OI-000166 – HSGAC-OI-000422**).
- A request by Todd Shields of Bloomberg for Chairman Wheeler’s calendar and telephone logs from February 15, 2014, through May 15, 2014 (**HSGAC-OI-001751 – HSGAC-OI-001765**).

While the documents we are providing today contain materials that the FCC has consistently withheld from public disclosure, in this instance Chairman Wheeler has decided to provide them to you without redactions as an accommodation and as a demonstration of the FCC's commitment to working with you and your staff. Notwithstanding the production of these documents, the FCC reserves its right to protect deliberative materials in future productions.

These documents are, in the unredacted form in which you are receiving them, non-public, confidential Commission documents that fall within the coverage of Senate Rule 29.5. Because of their confidential nature, we request that you consult with the FCC before you share any of these documents with outside parties. We also request that you redact the Commissioners' internal FCC e-mail addresses and other sensitive personal information if and when you share them with outside parties.

Sincerely,

A handwritten signature in black ink, appearing to read "John Williams", is written over the typed name and title. The signature is fluid and cursive, with a long, sweeping underline that extends to the left and then curves back under the name.

John Williams
Senior Legal Advisor
Office of General Counsel

cc: The Honorable Thomas R. Carper
Ranking Member
Committee on Homeland Security and Governmental Affairs

Exhibit 3



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

April 8, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Johnson:

Attached please find an additional response to the letter you sent me on February 9, 2015, requesting information and documents related to the Federal Communications Commission's (FCC) Open Internet Order. I sent you an initial response on February 24, 2015, that answered Interrogatory No. 1 of your letter. In addition, on February 25, 2015, and on March 16, 2015, the FCC produced to your Committee approximately 1,600 pages of responsive e-mails. Today's response addresses Interrogatories No. 2 through No. 7, but explains that some answers will remain incomplete until the FCC has collected and reviewed additional documents that may be responsive to your request and a similar request I have received from Chairman Chaffetz of the House Oversight and Government Reform Committee. I appreciate your patience as the FCC works to gather and produce these documents to you.

As you will see when you review the enclosed materials, I am providing to you as part of today's response an unredacted copy of my official calendar for the period between November 3, 2013 (my first day as FCC Chairman) and February 9, 2015. In the unredacted form in which you are receiving it, my calendar is a non-public, confidential Commission document that falls within the coverage of Senate Rule 29.5.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Wheeler", written over a horizontal line.

Tom Wheeler

Enclosures

cc: The Honorable Thomas Carper
Ranking Member

- 1. Please explain what new factors or developments in the telecommunications industry have led you to conclude that the commercially reasonable standard, which you supported in 2014, is no longer appropriate.**

[answer previously submitted to the Committee on 2/24/15] I am proud of the process the Commission has run in developing the Open Internet Order that will be voted on by the Commission this week. It is one of the most open and transparent in Commission history, and the public's participation was unprecedented. This is in no small part thanks to the fact that the Commission adhered to the mandates of the Administrative Procedure Act, which, due to the wisdom of Congress, has ensured transparent and open rulemakings for close to 70 years.

After most of the 2010 Open Internet rules were struck down in court last January, we were faced with a significant challenge: putting in place Open Internet rules that are legally sustainable and ensure the Internet remains a platform for innovation, expression, and economic growth.

We started that process last April when I circulated a draft Notice of Proposed Rulemaking (NPRM) that included a set of Open Internet protections and also asked an extensive series of questions about the best way to achieve an Open Internet. You are correct that the Open Internet NPRM proposed a solution based on Section 706 of the Telecommunications Act. It also specifically asked whether Title II of the Communications Act would be a better solution. As I hope has been noticed, all of the NPRMs during my chairmanship contain a specific proposal to flag key concepts for commenters' attention. I believe this is an important part of an open and transparent rulemaking process, but let's be clear, it is tentative, not a final conclusion, and the purpose of the comment period is to fully test the concept. In this instance, as in others, it worked as desired to focus the debate.

The process of the Open Internet rulemaking was the most open and expansive process the FCC has ever run. Stakeholders – like start-ups, public interest groups, tech companies, think-tanks, and ISPs – weighed in like never before. Moreover, the Commission held a series of six public roundtables to explore the legal, technical, and economic facets of Open Internet protections. We heard from over 140 Members of Congress. We heard from the Administration. Most significantly, we heard from over four million Americans, who overwhelmingly spoke in favor of preserving a free and open Internet.

We listened, and we learned. And on the basis of this tremendous public record, I'm proud to say we adjusted our proposal along the way.

My initial proposal sought to reinstate the 2010 rules. The tentative conclusion put forth in the NPRM suggested the FCC could assure Internet openness by applying a "commercial reasonableness" test under Section 706 of the Telecommunications Act to determine appropriate behavior of ISPs. As the process continued, I listened to countless consumers and innovators around the country. I also reviewed many of the submissions in the record and became concerned that the relatively untested "commercially reasonable" standard might be subsequently interpreted to mean what was reasonable for ISPs' commercial arrangements, not what was

reasonable for consumers. That, of course, would be the wrong conclusion. It was an outcome that was unacceptable.

That's why, over the summer, I began exploring how to utilize Title II and its well-established "just and reasonable" standard. As previously indicated, this was an approach on which we had sought comment in the NPRM and about which I had specifically spoken, saying that all approaches, including Title II, were fully on the table for consideration.

As I considered Title II, it became apparent that it was not a monolith; the record contained multiple approaches to its use. I was also reminded how it was not necessary to invoke all 48 sections of Title II. In this regard, I reviewed the substantial success of wireless voice industry after it was deemed a Title II carrier pursuant to Section 332 of the Communications Act. In applying Title II, but limiting its applicable provisions, the Congress and the Commission crafted a wireless voice business with hundreds of billions of dollars of investment and a record of innovation that made it the best in the world. It is the model for the ultimate recommendation I put forward to my colleagues.

There were other industry data points that informed my thinking and the Commission's analysis. One was our informal inquiry into interconnection agreements. Another was my letter to Verizon Wireless (and its ultimate reversal of policy) about its announcement to limit "unlimited" data customers if the subscriber went over a certain amount of data use in a month. Of particular note was the active bidding (and ultimately overwhelming success) of the AWS-3 spectrum auction, which showed that investment in networks – even in the face of classification of mobile Internet access under Title II – continued to flourish. Other industry data points included the work of Wall Street analysts, and the support of ISPs themselves, including Sprint, T-Mobile, for Title II and the voluntary adoption of Title II by hundreds of small rural carriers, along with the statement of Frontier Communications CEO that pending Title II did not discourage its decision to acquire even more telecommunications customers.

Ultimately, the collective input of all these data points influenced the evolution of my thinking and the final conclusion that the use of modern, light-touch Title II reclassification provides the strongest legal foundation for the Open Internet, and does it in a manner that continues network investment.

2. Please explain why you pulled back a draft proposal on a net neutrality order in 2014 and the timing of your decision.

As I explained in my response to #1 above and in recent Congressional testimony, during the summer and early fall of 2014, I began to think that Title II's "just and reasonable" standard needed to be part of our approach to protecting Internet openness, in addition to the FCC's authority under Section 706. The fact that I was considering Title II was not a secret. In a number of different public venues, I made it clear that Title II was "on the table." For example, when I testified before the House Small Business Committee on September 17, 2014, I provided the following response to a question about the potential use of Title II in the Open Internet Order:

So, what the court said was that the way in which the 2010 rules were implemented was inappropriate, but that the Commission had authority to deal with anything that interfered with what they called the virtuous cycle – that new applications drive better bandwidth which drives new applications, and you have this virtuous cycle. Activities like you named – blocking, choosing one player over another, degrading service, fast lanes, this sort of thing – I believe all interfere with the virtuous cycle. A question then becomes: do we use the 706 authority that the court pointed to, or do we use Title II? And in our Notice of Proposed Rulemaking, we have specifically asked for input on the Title II question. Title II is very much on the table. And that comment period just closed this week. I look forward to moving forward on that as well, but I will assure you that Title II is very much a topic of conversation and on the table, and something that we specifically asked for comment on in the proceeding.¹

In a speech I gave to the Mid-Atlantic Venture Association on November 4, 2014, I made the following statement:

I have repeatedly stated that all proposals, including different methods of applying Title II of the Communications Act, are on the table. Our Notice of Proposed Rulemaking was expansive in the alternatives on which it sought input. Included in that input are a series of proposals from a diverse set of groups that an Open Internet rule should use both Title II and Section 706 of the Communications Act to stop paid prioritization from harming an Open Internet through a “double-barreled” approach.²

The key question at this point in the rulemaking was how these separate sources of legal authority could be combined to develop rules that would strike the right balance between preserving the open Internet and promoting network investment. Blogs posted by senior FCC staff in September and October of 2014 summarized the various proposals that stakeholders had submitted into the rulemaking record, many of which were discussed and debated at the six public roundtables the FCC held between September 16 and October 7, 2014.³ The blogs linked to comments in the record that reflected the broad range of policy approaches that had been proposed to the FCC:

- Use only 706 authority to prohibit paid prioritization (AT&T),
- Reclassify broadband service as a title II telecommunications service (Etsy),

¹ *Is the FCC Responding to the Needs of Small Business and America?: Hearing Before the U.S. House Committee on Small Business* (Sept. 17, 2014).

² Remarks of Tom Wheeler, Chairman, Federal Communications Commission, Mid-Atlantic Venture Association, Washington, D.C. (Nov. 4, 2014) *available at* <http://www.fcc.gov/document/tom-wheeler-chairman-fcc-mid-atlantic-venture-association>.

³ Julie Veach, *Exploring New Ideas for Protecting and Promoting the Open Internet*, FCC Blog (Sept. 22, 2014) *available at* <http://www.fcc.gov/blog/exploring-new-ideas-protecting-and-promoting-open-internet>; Jon Sallet, Roger Sherman, and Julie Veach, *Looking for the Best Approach to Preserve the Open Internet*, FCC Blog (Oct. 27, 2014) *available at* <http://www.fcc.gov/blog/looking-best-approach-preserve-open-internet>.

- Adopt a “hybrid” approach that reclassifies broadband service as a telecommunications service, but uses Section 706 for bright-line rules (AOL and Representative Henry Waxman), or
- Adopt a “hybrid” approach that classifies the service network operators provide to edge providers as a Title II telecommunications service (Mozilla, Professor Tim Wu, and the Center for Democracy and Technology).

Media stories published in late October accurately reported that at that time, I was focusing on the so-called “sender-side” Title II/Section 706 hybrid approach (the Mozilla/Wu/CDT approach described above), but that this approach was “one of the four possibilities that the F.C.C. is considering as it seeks to draw up a net neutrality framework that, unlike its last two attempts, will hold up in court.”⁴ At this time, I had not yet made a final decision about whether this particular combination of Title II and Section 706 was a viable approach to take to the Commission for consideration. News reports that there was no final draft I had approved for distribution to my fellow Commissioners were therefore accurate.⁵ While I had hoped to have a plan ready for the Commission to consider at our December Open Meeting, by late October I realized that “action might be pushed to first quarter of next year.”⁶

3. Please produce the draft proposal on net neutrality you planned to circulate in or around late November and early December.

As I explain in my answer to #2 above, there was not a draft net neutrality proposal that was finalized for circulation to my fellow Commissioners in late November or early December. I had not made a final decision about which Section 706/Title II proposal I would present to the Commission.

4. Have you or any other FCC employees had communications with employees or officials of the Executive Office of the President referring or relating to net neutrality, or other aspects of broadband service or service provider regulation? Please list these communications and provide the dates, the individuals involved, and the subject matters, and provide all phone logs or any oral communications, along with a list of the participants, including communications on mobile devices.

Yes. The FCC has already shared with your Committee e-mails I sent to White House officials in April 2014 after the publication of media reports that incorrectly described the draft Open Internet Notice of Proposed Rulemaking. In response to your information request in #7 below and a similar request from the House Oversight and Government Reform Committee, the FCC is in the process of gathering any other e-mails that document communications between FCC employees and the Executive Office of the President.

⁴ *F.C.C. Considering Hybrid Regulatory Approach to Net Neutrality*, New York Times (Oct. 31, 2014).

⁵ *See FCC ‘Net Neutrality’ Plan Calls for More Power Over Broadband*, Wall Street Journal (Oct. 30, 2014).

⁶ *F.C.C. Considering Hybrid Regulatory Approach to Net Neutrality*, New York Times (Oct. 31, 2014).

As for telephone calls with White House officials, my calendar indicates that I have had approximately 16 calls with various White House officials between the time I became FCC Chairman and February 9, 2015. As a point of comparison, my calendar indicates that I had approximately 50 calls with Members of Congress during the same period.

My calendar does not generally note the topic of these phone calls, but it is likely that some of my calls with Congress and the White House included conversations about net neutrality. My White House calls also likely included discussions about topics of mutual interest to the FCC and the Administration, including e-Rate and other efforts to bring broadband to more Americans, spectrum management, trade, and national security issues.

My complete calendar is attached as an exhibit to this response, along with tables listing my calls with the White House and Congress.

5. Was the FCC aware of the “unusual, secretive effort inside the White House” relating to net neutrality? Please explain.

It is not much of a secret that the Obama Administration is very interested in Internet policy. President Obama supported Internet openness during his first presidential campaign and has made many public statements about it since he has been President. I was generally aware that the White House was working to develop an Administration policy on the Open Internet, but I was not part of their process.

It does not strike me as surprising or unusual that the White House was working to develop an Administration position on an important policy matter like Internet openness. One of the Executive Office of the President’s roles is to lead and coordinate executive branch policies on the President’s priority issues. The White House’s work on Internet-related economic policy is ongoing. In March 2015, for example, President Obama created a new Broadband Opportunity Council – co-chaired by the Secretaries of Agriculture and Commerce – to support and promote broadband competition, deployment, and adoption.⁷

6. Did any FCC employees participate in the meetings with White House officials relating to net neutrality or broadband regulation? Please provide the names of these employees, and the dates of the meetings they attended.

As discussed in #4 above, I have included my official calendar as an exhibit to this response. My calendar indicates that I have met with White House personnel approximately 25 times since the date I became Chairman and February 9, 2015. As a point of comparison, my calendar indicates that I had approximately 50 in-person meetings with Members of Congress during the same

⁷ White House Fact Sheet: Next Steps in Delivering Fast, Affordable Broadband (Mar. 23, 2015) available at <https://www.whitehouse.gov/the-press-office/2015/03/23/fact-sheet-next-steps-delivering-fast-affordable-broadband>.

period. Please note that one of these Congressional meetings was a meeting I had with you on June 16, 2014.

My calendar does not generally note the topic of these meetings, but it is likely that some of my Congressional and White House meetings included conversations about net neutrality. Some of my visits to the White House were for widely-attended events, while others were small-group meetings to discuss topics of mutual interest to the FCC and the Administration, including e-Rate and other efforts to bring broadband to more Americans, spectrum management, trade, and national security issues.

Tables listing my meetings with the White House and Congress are attached as exhibits to this response.

In response to your information request in #7 below and a similar request from the House Oversight and Government Reform Committee, the FCC is in the process of gathering any other materials that document meetings between FCC employees and White House officials relating to net neutrality or broadband regulation.

- 7. Please produce all documents and communications between or among any employee of the FCC and employees of the Executive Office of the President referring or relating to net neutrality or broadband regulation for the period November 3, 2013, to the present.**

The FCC has already produced to you approximately 1,600 e-mails that are responsive to this request, and, as discussed above, is in the process of gathering and reviewing more materials that are potentially responsive to this request. My understanding is that FCC staff is keeping your Committee staff updated on this process.

	Exh 3 - Chairman Wheeler's Congressional Meetings - 11/3/13-2/9/15 (Source: FCC Official Calendar)					
	DATE	CALENDAR DESCRIPTION				
	11/14/2013	Rep. John Dingell				
	11/18/2013	Cong. Waxman				
	11/19/2013	Senator Dean Heller				
	11/20/2013	Dinner w/Sen. Mark Pryor				
	12/3/2013	Mr. Upton				
	12/3/2013	Mr. Walden				
	12/4/2013	Dinner w/Cong Anna Eshoo				
	12/12/2013	Energy & Commerce Oversight hearing				
	12/17/2013	Senator Markey				
	12/17/2013	Senator Udall				
	1/14/2014	Rep. Crenshaw				
	1/14/2014	Senator Rockefeller				
	1/14/2014	Dinner w/Rep. Eshoo and Committee Members				
	1/29/2014	Senator Sessions				
	2/3/2014	Congressional Meet and Greet				
	2/6/2014	Senator Thune				
	3/5/2014	Congressman Serrano				
	3/5/2014	Senator Schumer				
	3/13/2014	Representative Diaz-Balart				
	3/13/2014	Leader Pelosi				
	3/13/2014	Congressman Don Young				
	3/25/2014	Chairman Hal Rogers				
	3/25/2014	House Approps Hearing				
	3/27/2014	Senate Approps Hearing				
	4/3/2014	Breakfast Meeting w/Rural Telecom Working Group Members				
	4/7/2014	Representative Amodei				
	5/1/2014	Breakfast with Senator Johanns				
	5/1/2014	Representative Doyle				
	5/1/2014	Senator Booker				
	5/5/2014	Senator Nelson				

	5/6/2014	Senator Wicker				
	5/6/2014	Senator Heidi Heitkamp				
	5/20/2014	Energy & Commerce Oversight hearing				
	6/2/2014	Senator Angus King				
	6/16/2014	Senator Ron Johnson				
	7/17/2014	Senator Pryor				
	7/17/2014	Congressman Bobby Rush				
	7/22/2014	Senator Tester (w/Senator Walsh)				
	7/23/2014	Senators Mikulski and Schumer re: Broadcasters				
	7/31/2014	Senator Blumenthal				
	9/11/2014	Congressman Graves				
	9/17/2014	Chat w/Congressman Cardenas re: Dodgers				
	9/17/2014	House Small Business Testimony				
	11/12/2014	Congressman Waxman				
	11/12/2014	Meeting w/Sen. Markey				
	11/19/2014	Congressional Meeting w/Thune, Walden, Upton				
	11/20/2014	Meeting w/Senator King				
	12/8/2014	Lunch w/Senator Nelson				
	12/10/2014	Breakfast w/Anna Eshoo				
	12/12/2014	Breakfast w/Cong. Peter Welch				
	1/27/2015	Senator Brian Schatz				
	1/30/2015	Coffee with Hill staff				

Exh 4 - Chairman Wheeler's Congressional Calls - 11/3/13-12/9/15 (Source: FCC Official Calendar)

DATE	CALENDAR DESCRIPTION			
11/12/2013	Gary Andres will call			
12/11/2013	Rep. Mark Meadows will call re: inmate calling rates decision			
12/19/2013	Senator Baldwin will call			
12/19/2013	Sen. Rockefeller will call			
1/17/2014	Call Rep. Welch re: Rural Telecom Working Group Invitation			
1/17/2014	Senator Markey will call			
1/23/2014	Sen. Warner will call you			
1/24/2014	Call Sen. Rockefeller			
1/24/2014	Call Sen. Markey			
2/18/2014	Senator Markey will call			
2/18/2014	Senator Rockefeller will call			
2/18/2014	Call Senator Pryor			
2/18/2014	Cong. Eshoo will call			
2/20/2014	Senator Thune will call			
2/28/2014	Senator Begich will call			
3/26/2014	Call Senator Menendez			
4/16/2014	Senator Begich will call			
4/24/2014	Call Leader Pelosi			
4/24/2014	Call w/Cong. Eshoo			
4/24/2014	Call Cong Waxman			
5/7/2014	Call Rep. Lujan			
6/9/2014	Mr. Dingell will call			
7/29/2014	Call Cong. Tony Cardenas			
7/30/2014	Call Congressman Sherman			
9/12/2014	Sen. King will call you			
9/23/2014	Congressman Sherman will call			
10/28/2014	Call w/Senator Wyden			
10/29/2014	Senator Markey will call			
11/7/2014	Senator Thune will call			
11/14/2014	Rep. Walden will call			

	11/20/2014	Call Rep. Eshoo			
	11/20/2014	Call Rep. Pallone			
	11/21/2014	Call Senator Nelson			
	12/2/2014	Senator Booker will call			
	12/8/2014	Sen Wyden will call			
	12/23/2014	Call Rep. Pallone			
	12/23/2014	Call Sen. Thune			
	12/23/2014	Chmn. Upton will call			
	12/23/2014	Sen. Nelson will call			
	1/5/2015	Senator Durbin will call			
	1/12/2015	Call Rep. Welch			
	1/14/2015	Rep. Matsui will call			
	1/16/2015	Sen. Markey will call			
	1/16/2015	Call Sen. Nelson			
	1/22/2015	Call Rep. Eshoo			
	1/22/2015	Call Senator Schatz			
	1/22/2015	Call Rep. Welch			
	1/23/2015	Call Rep. Pallone			
	1/27/2015	Senator Cory Booker (D-NJ) will call			
	1/28/2015	Congressman Bobby Rush will call			
	1/29/2015	Senator Klobuchar will call			

Exhibit 4



Federal Communications Commission
Washington, D.C. 20554

May 29, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Government Affairs
United States Senate
Washington, DC 20510

Dear Chairman Johnson:

Please find enclosed a disc containing approximately 4,000 pages of e-mails and other documents that are responsive to your February 9, 2015, request for information about how the Federal Communications Commission (FCC) developed the Open Internet Order. The documents are formatted consistent with the document production instructions you provided.

Please note that today's production contains a large number of non-public, confidential Commission documents that fall within the coverage of Senate Rule 29.5. As in past productions, Chairman Wheeler is providing them to you as an accommodation and as a demonstration of the FCC's commitment to working with you and your staff. Because public disclosure of these documents could impact ongoing Commission litigation and enforcement activities, we request that you consult with the FCC before you share them with outside parties or make their content public. Notwithstanding the production of these documents, the FCC reserves its right to protect deliberative materials in future productions.

The Commission continues to devote significant time and resources to respond to your request. All of the information and documents the FCC has produced to your Committee related to the Open Internet proceeding have been compiled under the close supervision of the Office of General Counsel (OGC), pursuant to instructions from the Office of the Chairman.¹ We have endeavored to implement your Committee's instructions regarding document preservation, briefings, search terms, personal e-mails, date ranges, custodians, and other matters. An important part of our efforts has been to ensure that we apply your instructions consistently and thoroughly across the numerous FCC bureaus and offices that worked on the Open Internet Order. The information we have collected and provided you to date represent OGC's best efforts – on behalf of the agency – to execute your instructions.

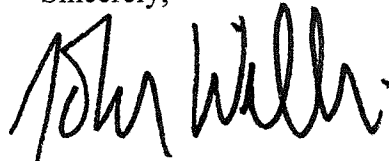
Notwithstanding our efforts to execute your Committee's instructions in a consistent manner throughout the agency, senior staff in the Office of Commissioner Ajit Pai recently informed me that Commissioner Pai will not permit OGC to collect, review and produce

¹ Section 5 of the Communications Act of 1934 vests in the Chairman of the Commission the exclusive authority to exercise the executive and administrative functions of the agency, including the responsibility to represent the Commission "in all matters relating to legislation..." 47 U.S.C. 155(a). The Chairman has instructed OGC to respond to your information request pursuant to this authority.

responsive documents that are in his custody or in the custody of his staff. Commissioner Pai's staff informed me that your Committee staff authorized a separate process for producing documents to your Committee. Your Committee staff did not confirm that the Committee had agreed to this separate production process in lieu of the Commission-wide production, but confirmed that the Committee expects to receive documents directly from Commissioner Pai's office.

Whether or not there is an agreement to produce documents separately, if the Office of Commissioner Pai continues to refuse to use the agency-wide production process, then, of course, OGC will not be able to assure you that his office has preserved documents, conducted searches, or produced documents to you in a manner that complies with your Committee's instructions.

Sincerely,

A handwritten signature in black ink, appearing to read "John Williams". The signature is written in a cursive, slightly slanted style.

John Williams
Senior Legal Advisor
Office of General Counsel

cc: The Honorable Thomas R. Carper
Ranking Member

Exhibit 5



Federal Communications Commission
Washington, D.C. 20554

July 23, 2015

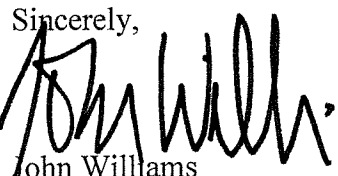
The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Government Affairs
United States Senate
Washington, DC 20510

Dear Chairman Johnson:

Please find enclosed a disc containing a replacement production for the documents previously produced to you on May 7, 2015 and May 29, 2015. The FCC is retransmitting those productions with new Bates numbers due to a processing error made by our document review tool vendor. As described in a June 18, 2015, letter to you, the vendor incorrectly blacked out some information within those productions. Please note that although the reproduction contains approximately 1,000 pages fewer pages than the original productions, no documents were removed from the set. Rather, the lower page count is a result of the fact that when the original productions were imaged, the inadvertent black-outs pushed any text below farther down the page, resulting in documents becoming longer than they would have been without the processing error. The result of correcting the issue is that the reproduction is now shorter than original set.

Please note that today's reproduction contains a large number of non-public, confidential Commission documents that fall within the coverage of Senate Rule 29.5. Some of these documents may also contain sensitive personal information. As in past productions, Chairman Wheeler is providing them to you as an accommodation and as a demonstration of the FCC's commitment to working with you and your staff. Because public disclosure of these documents could impact ongoing Commission litigation and enforcement activities, we request that you consult with the FCC before you share them with outside parties or make their content public. Neither this reproduction nor earlier FCC productions contain non-final drafts of official Commission actions, such as notices of proposed rulemaking, orders, public notices, or Commissioner statements. Notwithstanding the reproduction of these documents, the FCC reserves its right to protect deliberative materials in future productions.

We are continue to review communications dated between November 1, 2014, and December 15, 2014, and expect to produce additional responsive documents to you in the coming weeks.

Sincerely,

John Williams
Senior Legal Advisor
Office of General Counsel

cc: The Honorable Thomas R. Carper
Ranking Member

Exhibit 6



Federal Communications Commission
Washington, D.C. 20554

August 11, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Government Affairs
United States Senate
Washington, DC 20510

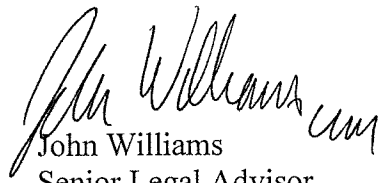
Dear Chairman Johnson:

Please find enclosed a disc containing approximately 3,400 pages of e-mails and other documents that are responsive to your February 6, 2015, request for information about how the Federal Communications Commission (FCC) developed the Open Internet Order. The documents are formatted consistent with the document production instructions you provided.

Please note that today's production contains a large number of non-public, confidential Commission documents that fall within the coverage of Senate Rule 29.5. Some of these documents may also contain sensitive personal information. As in past productions, Chairman Wheeler is providing them to you as an accommodation and as a demonstration of the FCC's commitment to working with you and your staff. Because public disclosure of these documents could impact ongoing Commission litigation and enforcement activities, we request that you consult with the FCC before you share them with outside parties or make their content public. Neither this production nor earlier FCC productions contain non-final drafts of official Commission actions, such as notices of proposed rulemaking, orders, public notices, or Commissioner statements. Notwithstanding the production of these documents, the FCC reserves its right to protect deliberative materials in future productions.

We are continue to review communications dated between November 1, 2014, and December 15, 2014, and expect to produce additional responsive documents to you in the coming weeks.

Sincerely,


John Williams
Senior Legal Advisor
Office of General Counsel

cc: The Honorable Thomas R. Carper
Ranking Member

Exhibit 7



Federal Communications Commission
Washington, D.C. 20554

December 7, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Government Affairs
United States Senate
Washington, DC 20510

Dear Chairman Johnson:

Please find enclosed a disc containing approximately 7,800 pages of e-mails and other documents that are responsive to your February 9, 2015, request for information about how the Federal Communications Commission ("FCC") developed the Open Internet Order. The documents are formatted consistent with the document production instructions you provided.

Please note that today's production contains a large number of non-public, confidential Commission documents that fall within the coverage of Senate Rule 29.5. Similar to past productions, Chairman Wheeler is providing these documents to you as an accommodation and as a demonstration of the FCC's commitment to working with you and your staff. Because public disclosure of documents included in this production could impact ongoing Commission litigation and enforcement activities, or may contain sensitive personal information, we request that you consult with the FCC before you share or publicly disclose any documents in this production. Notwithstanding the production of these documents, the FCC reserves its right to protect its deliberative materials in any future productions.

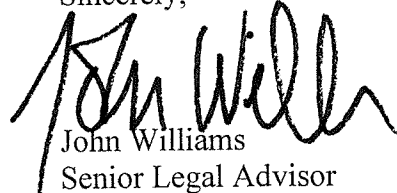
As noted in my previous letters, neither this production nor earlier FCC productions contain non-final drafts of official Commission actions, such as notices of proposed rulemaking, orders, public notices, or Commissioner statements. In addition, the FCC has withheld a small number of internal documents that relate to the FCC's core decision-making process.

Today's production also includes responsive documents that contain information unrelated to the development of the Open Internet Order. In some instances, the non-responsive information contained in these documents is non-public, confidential, or law enforcement sensitive. We have redacted a limited amount of information from the produced documents on these grounds, with the basis for each redaction clearly marked on the face of the document. As we have explained to you in earlier letters, the FCC has not redacted any information responsive to your request.

The Honorable Ron Johnson
Page 2

With this production, the FCC has reviewed, pursuant to an agreement made with your staff, all emails and attachments collected from the office of the Chairman and the Bureaus dated between November 1, 2014, and December 15, 2014, that hit upon one or more of the agreed upon search terms. Including this production, the Commission has now produced 31,807 pages of e-mails and attachments to your Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "John Williams". The signature is written in a cursive, slightly slanted style.

John Williams
Senior Legal Advisor
Office of General Counsel

cc: The Honorable Thomas R. Carper
Ranking Member