

**Remarks of the Honorable Greg Walden  
Chairman, Subcommittee on Communications and Technology  
at the AEI Center on Internet, Communications, and Technology Policy  
March 2, 2015**

*(As Prepared for Delivery)*

Thank you, Shane, and thank you to AEI for the invitation to speak at this event. It's a pleasure to be here. Today I want to give you a preview of our agenda for the coming months and ask for your support as we move into the next phase of the CommActUpdate.

No discussion of communications policy could ignore the events of the last week. The commission's most recent actions step well beyond its authority in recasting the Internet as a public utility and supplanting the decisions of state and local elected officials whether to invest tax dollars in broadband with the FCC's central economic planning. I am deeply troubled by both.

Let's start with net neutrality. Last Thursday, as most of you know, the FCC voted to adopt rules to reclassify broadband as a telecommunications service and apply Depression-era utility regulation to the vibrant Internet economy. This is the latest chapter in a decade long fight between Internet regulation advocates and the free market. Last May, the FCC issued an NPRM at Chairman Wheeler's instruction seeking input on how to put net neutrality protections into place relying on Section 706 for authority, consistent with the D.C. Circuit's ruling in *Verizon v. FCC* – the court case that invalidated the FCC's 2010 rules.

Despite the chairman's expressed preference to follow the roadmap laid out by the D.C. Circuit's opinion, sometime between May and early 2015, Chairman Wheeler's tune changed.

In the midst of this discussion I met with Chairman Wheeler late last November. I reiterated congressional Republicans' concerns with Title II and with regulating the most successful economic and regulatory experiment in U.S. history. And in that meeting, Chairman Wheeler assured me that he was committed to net neutrality without reclassification of broadband.

This stands in stark contrast to press reports of Chairman Wheeler's "summer epiphany" and decision to impose net neutrality through reclassification as a telecommunications service. I would say that this action was curiously timed just after President Obama announced his support for Title II, but thanks to an article in the *Wall Street Journal* and the FOIA requests of *Vice News*, we know that this was far from coincidental. We also know that by late November, Chairman Wheeler was well aware that the White House had already decided the fate of broadband.

Taking the Title II path that the president decided upon is a mistake, something that we explored thoroughly in my subcommittee's hearing last Wednesday and one that I truly believe will ultimately harm the Silicon Valley companies that celebrated this step backward for U.S. Internet policy. Title II will only lead to increased uncertainty, depressed investment, and decreased innovation. As someone who represents a rural district that is still waiting for robust and widespread broadband coverage, any disincentive to greater broadband build-out is extremely troubling. I can't stress enough the damage that I believe this Title II approach will have on our country's broadband speed and deployment—this may truly be the end of the Internet we know and love, if these rules withstand a court challenge.

In large part due to these grave concerns about FCC overreach, Chairman Upton, Chairman Thune, and I worked together to draft a bill that would put into law the protections that net neutrality proponents have sought for years without the caustic, investment killing uncertainty of Title II. The bill prohibits blocking, throttling, and paid prioritization, and requires that ISPs be transparent in their network management practices and prices. We cover both fixed and mobile broadband, and we provide enforcement mechanisms that allow the FCC to address complaints from consumers as well as raise investigations of its own accord.

In conjunction with our first net neutrality hearing this year, we released the draft that aimed to thread the needle by protecting consumers without unnecessarily harming our broadband economy. The draft legislation was crafted in large part by drawing on net neutrality proposals from Democrats both on the Hill and at the Commission, ranging from former FCC Chairman Genachowski to former Energy and Commerce Ranking Member Henry Waxman. Given Democrats long-standing support for this language, I was disappointed at the complete lack of engagement by my Democratic colleagues. We have reached out repeatedly to members and staff, in an attempt to at the very least begin a dialogue on the potential for compromise, but to date, our efforts have gone unanswered. I am at a loss for how to make my plea any clearer to my colleagues; please work with us to draft a bill—what the FCC did last week is ill-advised, illogical, and illegal. And while there are other tools at Congress's disposal to express our displeasure with this action, I remain firmly committed to a bipartisan legislative solution.

We have done a great deal of outreach to ISPs, edge providers, public interest groups, and many, many others on ways to improve our bill and will continue to do so. All along, we have been open-minded about the appropriate way to codify these rules, and we have made a genuine and sincere effort to reach a compromise that is palatable to both sides of the aisle.

There is no question that this is the role Congress is meant to play: crafting narrow legislation that achieves policy goals with certainty and stability. While we may disagree on the exact contours of good net neutrality policy, there are few people who argue that the uncertainty arising from protracted litigation benefits anyone, except perhaps the lawyers. The legislation we've put forward gives consumers the protections they deserve, industry the certainty it needs, and puts an end to the legal gymnastics taking place that the FCC as they again attempt to shoehorn the policy they want into the statutory authority they actually have.

Forcing modern technology into decades old regulatory schemes is unacceptable, and is in some ways a symptom of a much larger weakness at the FCC. The FCC has a clear problem with an outdated statute, outmoded agency processes, and an agency culture that eschews independence and expert analysis in favor of click-bait driven comment filing and White House fiat.

As many of you know, in December 2013 Chairman Fred Upton and I began a multi-year process to gather information on how to update the Communications Act to reflect the modern communications marketplace. To that end, Committee staff has issued six white papers, reviewed thousands of pages of responses, and taken countless meetings with interested parties. The response was impressive, and the suggestions for improvement were many. After more than a year of work on this issue, we've reached one inescapable conclusion: you can't reform regulation without reforming the regulator.

For too long, the FCC has been left to its own devices. This has resulted in sloppy bookkeeping, shoddy process, and a complete abandonment of the notion of independence. That's why for the first part of the CommActUpdate's legislative process, we will undertake to reauthorize the FCC. Put simply, we'll start with Title I. If we're going to put modern laws into place, there must be a modern agency to implement them.

It has been 24 years since the FCC was last reauthorized by Congress. When you think of the almost uncountable ways the communications and technology industries have changed, how can the agency still be reliant on a budget and an authorization that was passed before the advent of smartphones or the rise of the commercial Internet? My subcommittee has spent a great deal of time over the past 15 months examining the ways in which the Communications Act needs to be updated. One of the most common themes noted by commenters is the problem of the agency that implements the laws. The FCC is a child of Congress, and it is high time that we return to the good government practice of having the authorizing committee take a hard look at the agency before Congress hands over another appropriation.

Let me tell you a little about the magnitude by which the FCC's budget has changed over the past 24 years: their requested 2016 auction budget is larger than the entire FCC budget was when we last reauthorized the agency. Now obviously there are many factors that contribute to this growth, and an

increase over that time period could be expected. I share this fact primarily to illustrate just how drastically the world of the agency has transformed since that 1990 reauthorization legislation was passed. Throughout my time as chairman of the subcommittee, I've made it a priority to do everything we could to improve the FCC and hold the agency accountable for its actions, its process, and its spending and management. In the 113th Congress alone, we talked to the managing director and the Inspector General about the agency's budget and management. We brought all five commissioners up more than once to talk about a wide range of policy issues, from net neutrality to spectrum auctions to media ownership. We talked to bureau chiefs about their regulatory agendas, and spoke with countless outside experts about the rules proposed and put forward by the agency. On Wednesday of this week, the managing director of the agency will again testify before us again to answer questions about a number of issues about which we are concerned. And then in two weeks, all five FCC Commissioners will appear before the Subcommittee. Each of these hearings has raised matters that either the FCC needed to address, or that the Congress needed to legislate. This extensive examination of the FCC has only reaffirmed to me that there is more that needs to be done.

Every year, the FCC is appropriated a great deal of money. That money ultimately comes from U.S. communications consumers and it is essential that we hold the commission accountable for the money they extract from the American public. By returning to periodic reauthorization of the FCC, the committee will be able to ensure that money is being used in the most effective and efficient way possible, and that resources are being utilized appropriately. This is our Congressional responsibility to our constituents. Moreover, regular reauthorizations lend integrity to the work of the agency and provide the public with the confidence in their government that is so often lacking.

In addition to concerns with the commission's spending, we have devoted many hearings and several pieces of legislation to improving the processes at the FCC, an issue I have long felt very strongly about – likely due in no small part to my experiences as an FCC licensee. I believe that good laws come from good process, and that transparency and accountability are what we all owe those we govern. These principles have driven my work as chairman of the subcommittee, and I expect the FCC to do no less. Unfortunately, even with the appointment of a special counsel on process reform at the FCC, we've continued to see evidence of major process failures. These failures have reached such a serious extent, I joined Chairman Upton and Oversight and Investigations Chairman Tim Murphy in opening an investigation into commission process failures. These developments only serve to confirm my suspicion that the FCC's operations are in serious need of a thorough evaluation.

One process ripe for reform is the FCC's lack of a formalized cost-benefit analysis before the adoption of regulations. This is something I have been pushing for since my earliest drafts of process reform legislation, and is a concept that has support in a 2011 Presidential Memorandum. Unfortunately, while the president saw fit to eviscerate the FCC's independence when it suited his preferred policy outcome, the memorandum applying fiscal responsibility in rulemaking didn't apply to independent agencies. However the idea is a good one, and it should be embraced whenever new regulations are considered. By looking at consumer harm, and conducting economic, market, and cost-benefit analyses, the agency will better address the needs of the consumers it protects and reflect the reality of the industry it regulates, particularly small businesses that may be disproportionately affected.

One would imagine that the FCC's system, like other Federal agencies and departments would include a check on the commission itself in the form of an inspector general. While the FCC does have an IG, a major dysfunction within the agency's structure has long been of concern to me: the lack of an independent Inspector General. The FCC's Inspector General is somewhat unique in the fact that, unlike most IGs, he is not confirmed by the Senate and in fact serves at the pleasure of the chairman. It is hard to imagine that the fact that he could be fired by the chairman doesn't factor into the IG's decision-making process. Anything that calls into question the integrity and independence of an inspector general is harmful to the agency and to good government, regardless of the validity of those concerns. There should be no question as to whether the IG is able to make an independent evaluation of agency action or initiate an investigation when needed, without fear of retribution or intimidation from the chairman. Having an independent watchdog improves the agency's credibility, increases public confidence, and reduces opportunity for mischief at all levels. I'm not aiming at any specific action or a particular IG, in fact, Mr.

Hunt seems by all accounts to be an honest and humble public servant, rather I am looking to remedy a deeply-rooted flaw in the design of the agency.

While reauthorization is a helpful tool for keeping any agency on track, it lends itself particularly well to the FCC, an agency tasked with regulating an ever-evolving industry. By periodically reviewing the utility of regulations, the agency is forced to take a hard look at their operations and management and determine whether they are doing the best possible job for both the industry they regulate and the consumers they protect. Think of it as a yearly review - many employees are required to take a look at their progress and performance over the prior year and delineate their goals for the upcoming year, typically consulting with their superiors, who provide constructive criticism. Applying this same practice to the FCC will allow for a candid assessment of things the agency is doing well, and areas where they need improvement or change.

The goal of reauthorization is not to tie the hands of the FCC, and it surely is not to create uncertainty for those regulated by the agency. Instead, we hope to start a useful and productive dialogue about the state of the commission, what they need us to do to make their jobs easier, and what Congress needs the agency to do in order to continue meeting its statutory mandates. This exercise can and should be beneficial to all involved parties. As we continue down our path to modernizing the laws governing the communications sector, it only makes sense to begin with the agency at the heart of implementing and enforcing those laws.

But the CommActUpdate is a complicated and massive undertaking. While we are starting with the commission itself, our legislative work to update the Communications Act is just beginning. Whether it's the fictions forced by a statute born of single-use networks, market assumptions that discount or completely ignore the existence of the Internet, or the regulatory vestiges of a world where Ma Bell ran a monopoly, we must make the changes needed to bring the Communications Act and the Commission into the 21st century. Thank you again for the invitation to speak today and I look forward to working together to enact smart policies that foster our role as the nation leading the information age.

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