

**Opening Statement of the Honorable Greg Walden
Subcommittee on Communications and Technology
Markup of “A Bill to Affirm the Policy of the United States Regarding Internet
Governance”
April 11, 2013**

(As Prepared for Delivery)

There still appears to be a misunderstanding about what this legislation does. Ironically, that might be good news, since further clarification may be a path towards agreement.

What I heard Ranking Members Waxman and Eshoo and their colleagues say in their opening statements yesterday is that this legislation would require the FCC to strike down its network neutrality regulations. I respectfully disagree. We know how to draft legislation requiring the FCC to strike the network neutrality regulations. We drafted and passed through the House last Congress a resolution of disapproval to do just that.

This legislation does not require the FCC to strike its network neutrality regulations. As a matter of law, a statement of policy does not impose statutorily mandated responsibilities on an agency, and this legislation neither requires nor authorizes the FCC to take any action with respect to its network neutrality regulations or any other rules. The FCC knows this well. It is the reason the D.C. Circuit threw out the Commission’s attempt to sanction Comcast for its network management of Internet traffic. The FCC had claimed it was authorized to do so by another policy statement already in the Communications Act. The appeals court disagreed. And just as a policy statement cannot authorize the FCC to adopt network neutrality regulations, it cannot require the FCC to strike them if the agency otherwise has authority to impose them in the first place as the FCC claims in the current appeal of its rules.

For the same reason, I also disagree that this legislation might have the unintended consequences of preventing U.S. government entities from enforcing intellectual property law, from taking action against child pornography, or from otherwise prohibiting or penalizing any number of other illegal acts. Let me say it again: a statement of policy does not impose statutorily mandated obligations on an agency, and so cannot require or prohibit any agency action. Our staffs have met numerous times to discuss these points in the two months since the hearing on this bill, including with the State Department and the FCC. As I have also explained, there is a very big difference between government control of the management and operation of the Internet, and punishing use of it to commit illegal acts.

I am also concerned that adding a savings clause is not only unnecessary, but could be harmful. First, if we start adding caveats, we undermine our ability to argue against authoritarian regimes that will wrap their repressive goals in their own, similarly worded caveats. We saw this in Dubai and will likely see it again. Second, implying that an agency would otherwise be bound to do or not do something absent the savings clause would undercut the precedent that a policy statement does not impose statutorily mandated obligations. Moreover, we would need to include in the savings clause every conceivably affected regulation and every conceivably affected agency to avoid implying that we do intend to affect anything we omit from the savings cause. It is far better to simply rely on the precedent that a policy statement does not create statutorily mandated obligations.

I am also concerned that merely passing the same resolution as last year is insufficient. That resolution made sense when we were simply asking the U.S. delegation at a specific negotiation to oppose particular treaty proposals. Those proposals have now been adopted by a number of nations and efforts to drag the Internet within the jurisdiction of international regulatory bodies are only going to increase. Opponents of Internet freedom have ensconced in treaty their view that government control of the Internet is acceptable; it is therefore more than warranted for us to codify in law our contrary view.

We developed together and unanimously passed the language about “promot[ing] a global Internet free from government control.” If we meant what we said I see no reason not to make that very language

official U.S. policy. Americans for Tax Reform, AT&T, CTIA, Google, the Internet Association, NCTA, US Telecom, and Verizon have all issued statements of support. I seek unanimous consent to enter those statements into the record.

Nonetheless, never let it be said that I am unwilling to sit down and further discuss matters in the hopes of reaching an amicable resolution. I am told that Ranking Members Waxman and Eshoo are prepared to vote this bill out today if we will commit to having our staffs sit down again in good faith between now and the full committee markup to see if we can come to an agreement. Nothing will be off the table. Nothing. If we reach agreement, terrific. If we do not, we can pick up again at full committee where we leave off today. This is something I am willing to agree to if Ranking Members Waxman and Eshoo will, too.

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