

**PRESERVING AN OPEN INTERNET:
RULES TO PROMOTE COMPETITION
AND PROTECT MAIN STREET CONSUMERS**

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TUESDAY, JULY 1, 2014,

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:07 a.m., at Davis Center at the University of Vermont, 590 Main Street, Burlington, Vermont, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senator Leahy.

Also Present: Representative Welch.

**OPENING STATEMENT OF HON. PATRICK J. LEAHY,
A U.S. SENATOR FROM THE STATE OF VERMONT**

Chairman LEAHY. Good morning, everybody. I was telling some of the staff from Washington who had come up for this hearing that I am sure they are happy to come up to nice cool weather and get out of Washington and suddenly realized that it is almost as hot here, but it is nicer. The air is clearer.

As somebody once came up from Washington with me from Department of Agriculture and was sitting on the front lawn of my home in Middlesex, where Congressman Welch has been before, and beautiful, clear day and look out across the mountains and I said, "Isn't this nice?" He said, "Nope." I said, "What do you mean?" He said, "I don't like it." I said, "What's the matter?" He said, "I don't like air I can't see."

[Laughter.]

Chairman LEAHY. So we are different in Vermont. But this is a great week in Vermont and all across the country. It is so nice for us all to be home and I know that Congressman Welch and Senator Sanders and I look forward to this. We are going to gather with friends and families, we will be at barbecues and parades and parties, celebrating the vision our founders put in motion over 200 years ago.

Americans and especially we Vermonters hold these core freedoms dear to us that were established all those years ago. But I have always felt, and I was brought up in a family where this was true, that chief among these freedoms are free expression and a free and open marketplace where competition would drive innovation.

Now, in the 21st century, these freedoms have been enhanced by one of the greatest tools ever created—the Internet. It has flourished into a central force in so many of our lives, because it does reflect the founders’ vision. It is founded on the principles of openness and competition.

It has been the ultimate marketplace of ideas. Everybody has a voice, and products or services will succeed or fail based on their merits. It is a great success story.

It is also a great gift to the world. Think of what it has done and its potential to spread freedom and democracy to every corner of the globe, and more and more totalitarian governments have found that they cannot silence voices. While they can close off one aspect of the Internet, it will open up somewhere else.

But our country is protected by a Bill of Rights that guarantees that basic freedom. I think the Internet needs basic rules of the road to ensure that it remains open. I think open Internet principles are the Bill of Rights for the online world.

I know many of you, I have talked to you in the past, you shared my dismay when the D.C. Court of Appeals struck down the Federal Communication Commission’s 2010 open Internet rules. Those rules represent a basic level of protection for consumers online and in light of the court’s decision, the FCC is now considering how to restore open Internet protections.

The debate that is happening today in Washington over net neutrality is critically important, but it should not be just in Washington. The reason I am holding this hearing here, this will become part of the record for the Senate Judiciary Committee in Washington. A lot of you could not come to Washington to take part in it, but you can be here and your voices will be heard.

The outcome of the debate is going to have a huge effect on small businesses, community institutions, and consumers. So it is crucial that we get this right.

I do not want to see an Internet that is divided into the haves and the have-nots. I do not want to see an Internet where those who can afford to pay can muffle the voices of those who cannot. An online world that is split into fast lanes and slow lanes, where pay-to-play deals dictate who can reach consumers, is contrary to every single principle that I felt the Internet was based on.

Last month I joined with Congresswoman Doris Matsui of California, a senior Member of the House, introducing legislation requiring the FCC to ban pay-to-play deals online. I am not going to endorse any effort to do otherwise, and your voices should be so heard.

I have heard from thousands of Vermonters. Our little State has spoken very clearly and you have not minced words. I am delighted that you do not want to see the Internet dominated by a few large corporations.

We have an excellent panel of witnesses who are going to testify firsthand, whether you are an expert like Commissioner Copps—and we were talking about how we spent time together on a trip with Hubert Humphrey and Fritz Hollings and Hugh Scott, the Republican Leader, and others where I got to celebrate my 35th birthday—or you are an operator of a small business like Mr. Orton and

Ms. Groeneveld, or a librarian like Ms. Reid, who knows how I care a great deal about libraries. It touches all of you.

So I am also especially pleased that Congressman Welch is joining me here today and Haley Pero from Senator Sanders' office is in the audience.

Peter, why don't I yield to you for any comments you might want to make and then we will start with Mr. Copps?

**STATEMENT OF HON. PETER WELCH, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF VERMONT**

Representative WELCH. Thank you very much, Senator Leahy.

By the way, thanks so much for introducing that legislation and you got it out right after that court decision, and I think you gave a lot of people hope that we are going to keep the Internet open and accessible.

One of the interests that I have is representing a rural State, there is an enormous economic, absolute urgency to us having an open Internet. Senator Leahy spoke about the First Amendment rights and access and we all share that urgency, but in a rural State—and by the way, I serve on the Energy and Commerce Committee that has jurisdiction over this and I created a rural caucus—there are 10 Republicans and 10 Democrats—because a lot of us—even though there are enormous divisions on ideology between the parties down in Washington, there is a lot of common interest from those of us who represent rural areas.

We are not going to have an economy in Vermont if we do not have an accessible Internet. We have got entrepreneurs here and we have got a couple in the audience who have shown what can be done in a small state far removed from markets if they have access to the quality tools that are necessary to put their creative energies to work and also tap into the real skills and talents that people in a rural state have.

So I see this as absolutely essential to the future of Vermont's economy, as well as rural America, and I happen to think rural America is a pretty good place.

So that is another reason, Senator Leahy, I think this hearing is so timely. We have got folks here on the front lines whose access to the Internet is crucial to the jobs that they have created, the good jobs that we have in Vermont.

So I look forward to their testimony and I look forward to working with you and Representative Matsui and try to make certain we keep this open.

Chairman LEAHY. I know how important it is. At our farmhouse in Middlesex, we live on a dead-end dirt road, but I can also sit there and be communicating with my office in Washington and I can be reading the Irish Times in Dublin. I just happen to mention that.

Representative WELCH. That is the paper of record in the Leahy household.

[Laughter.]

Chairman LEAHY. So Michael Copps served as a member of the Federal Communications Commission from 2001 to 2011. He currently is Special Adviser to the Media and Democracy Reform Initiative of Common Cause. We first met when he was Chief of Staff

to Senator Fritz Hollings, one of my mentors in the Senate, and then Assistant Secretary of Commerce. He also serves on the Board of Directors of Free Press and Public Knowledge.

Mr. Copps, please go ahead.

STATEMENT OF HON. MICHAEL COPPS, FORMER COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION, SPECIAL ADVISER TO THE MEDIA AND DEMOCRACY REFORM INITIATIVE, COMMON CAUSE, WASHINGTON, DC

Mr. COPPS. Chairman Leahy, Congressman Welch, good morning, and thank you, Mr. Chairman, for the invitation to address this hearing on the crucial issue of how to guarantee an open Internet.

Traveling outside of the Washington, DC, Beltway to hear from citizens who must live with the policies that are crafted in Washington, DC, is essential. I made it my priority to do that when I served as a Commissioner at the FCC. I wish the Presidency would do the same thing and come to Vermont on this issue.

And I especially commend you, Mr. Chairman, for introducing that bill on keeping the Internet open by introducing legislation to prevent paid prioritization on the Internet.

More and more people now understand that the Internet is the most opportunity-creating tool of our time. It is increasingly the door to jobs, education, health care, equal opportunity, and to the news and information that we need to sustain our civic dialogue.

But the question now is opportunity for whom. Is the Net going to be the tool of the many that helps us all live better or will it become the playground of the privileged few that only widens the many divides that are creating stratified and unequal Americans?

Are we heading toward an online future with fast lanes for the 1 percent and slow lanes for the 99 percent?

Well, it is decision time and it is decision time now, because the Federal Communications Commission is considering rules that would permit giant Internet service providers like Comcast, Verizon and AT&T to create fast lanes for their business partners and friends who can afford to pay what will inevitably be very heavy freight while startups and innovators and potential competitors are priced off the express lane.

The fate of the Internet will be decided in the next few months and what is decided in those few months might be very, very difficult or impossible to undo. So this is the time now for concerned citizens to be speaking out.

When gatekeeper control partitions the Internet, everyone other than the gatekeeper suffers. Consider what a tremendous engine the Internet could be for small business growth. You know that right here in Vermont, we have got Vermont Country Store who is going to testify this morning, we have all heard about Potlicker Kitchen and the delicious and delectable jams and jellies they sell online.

Expensive fast lanes for the few could really jeopardize and ruin the entrepreneurial opportunities that companies like this have developed for themselves.

Extend that across the country and you begin to see the enormous economic opportunity costs that gatekeeping entails.

The same gatekeeping forces will be able to throttle innovation in other areas by foreclosing new developments, for example, in distance learning that would grant rural schools of Vermont's Northeast Kingdom access to state-of-the-art lectures from the university here in Burlington.

We cannot build thousands of new needed businesses, we cannot have top-notch education for our kids, we cannot get America out of the economic rut it is in when the one tool that can help make it all happen is controlled by a handful of communications and media giants whose main concern is the bottom line of the company's quarterly report.

How did we get here? For openness, public policy has too often worked against the Internet. First, we witnessed years of telecommunications and media consolidation, wherein a few giant companies gobbled up small competitors and built monopoly markets across the Nation. They wielded armies of lobbyists and wheelbarrows filled with money to win government approval of these mergers and acquisitions, and the FCC almost always acquiesced.

Second, the FCC consciously decided against meaningful public oversight of broadband and the Internet. In one of the strangest decisions ever made by a Federal agency, the Commission decided over a decade ago that the broadband infrastructure on which the Internet rides was not communications at all and was there outside all the consumer protections and common carriage requirements that are integral parts of the traditional telephone service that we all grew up with.

Those protections were part of Title 2 of the Telecommunications Act, where they refused to put broadband, but that is where broadband telecommunications belongs and until the FCC puts them there, clearly and strongly, we are not going to have an open Internet.

Title 2 classification is the prerequisite of an open Internet. It is the essential first step—it is not the guarantor of Internet freedom, it is the first step. There is no clever other new way to get this done might the FCC contemplate all sorts of new and novel ways.

Once we classify broadband, then we have to go on from there to deal with other challenges to the open Internet, such as the interconnection and peering arrangements that determine how content accesses and gets distributed across the Net, because discrimination and blocking can take place upstream just as easily as in that last mile between the Internet service provider and your house, and I do not think consumers really care too much where that discrimination occurs. If it occurs, it costs them.

Then, of course, and this goes back to my passion at the FCC, we have to find our way back to a more competitive broadband environment by saying no to the endless torrent of mergers and acquisitions that is distorting not just our communications, but our democracy. These combinations are a major reason why your country and mine has gone from broadband leader 15 years ago to broadband laggard today, number 15 in the world, according to the OECD. Some other rankings that measure different things like speed and price have us in the 20s and 30s, the 40s. I saw one the other day, 55th.

And now these telecom titans are proposing more mergers to further stifle competition, ration their broadband, and extract monopoly rents from consumers.

In the end, this all comes back to democracy. Free expression and democratic engagement suffer in a gated Internet. Consigning alternative, nonprofit and dissenting voices to slow lanes makes it harder for users to access different kinds of information.

Moreover, since we now use broadband to both consume and produce, paid prioritization schemes hinder the ability of citizens to speak out and really have their voices heard.

An Internet controlled and managed for the benefit of the haves discriminates against our rights not just as consumers, but more importantly, as citizens. Allowing powerful ISPs or giant Internet companies to control what we see and share on the Internet is inimical to the health of our Nation.

If an ISP can slow down or block those sites who refuse to play the game, if they can decide that some good cause or advocacy group they disagree with should be voted off the Net, then we have starved the nourishing potential of this technology and truncated the rights of citizens to share in a communications revolution that should be more about we the people than it is the privileged few.

I want an Internet where B.T. Digger and its deep dive investigative journalism can get to me just as quickly as some huge corporation's info team and Babble.

Yes, I feel strongly about this.

[Applause]

Chairman LEAHY. I think that comes through. Go ahead.

Mr. COPPS. And that is why I am criss-crossing the country on behalf of Common Cause and our allies in the public interest community to encourage citizens to speak up now to demand that the FCC ensure real Internet freedom.

Millions have done so already, but millions more are needed for the battle.

Whose Internet is it anyway and whose democracy is it?

Thank you, Mr. Chairman, and I look forward to your comments, and Representative King, and your questions.

[The prepared statement of Hon. Michael Copps appears as a submission for the record.]

Chairman LEAHY. Thank you. What we are going to do is have each of the witnesses testify and then Congressman Welch and I will ask questions.

Martha Reid is the State Librarian of Vermont, a position she has held since 2008. She has heard me say how I had my first library card at the Kellogg Hubbard Library in Montpelier when I was 4 years old and I think the world of libraries and librarians.

In her role, she focuses on library technology and the expansion of broadband for public libraries, something we would not have had any concept of when I had that library card. But she has spent more than 30 years working at public libraries.

She is President of the Vermont Public Library Foundation, is a member of the Executive Board, Chief Officers of State Library Agencies.

Ms. Reid, we are delighted you could be here. Please, go ahead.

**STATEMENT OF MS. MARTHA REID, STATE LIBRARIAN, STATE
OF VERMONT, DEPARTMENT OF LIBRARIES, MONTPELIER,
VERMONT**

Ms. REID. It is a privilege to be here and hearing your remarks, we are in Common Cause.

Thank you for inviting me to testify today and recognizing that libraries are partners of small business and entrepreneurs, particularly in rural areas in Vermont and across the country.

I am joined today in this room by members of the Vermont library community—they are sitting here in the front row—from our academic, school and public libraries. We are united in our belief that an open Internet is essential to our Nation's freedom of speech, educational achievement, economic vitality, and equal access to information.

An open Internet is fundamental for libraries to fulfill their mission to provide students, teachers and faculty and the general public, citizens of all ages and background equal access to information and to the wide variety of opportunities and resources made available via the Internet.

It has always been and it remains today a core value of libraries to preserve the free flow of information. Intellectual freedom, the right of citizens to have access to information, and that includes information that may be controversial, is a hallmark of our democracy, and of libraries.

Currently, the Internet is freely and equitably accessible to all and it needs to stay that way.

Vermont is a state of small rural communities. We have 183 public libraries, more libraries per capita than any other state. Public libraries are often the only place in town to offer free Internet access and they are the go-to places for jobseekers, independent learners, researchers, and local entrepreneurs.

Nearly all public libraries in this country offer free Internet access and public wi-fi.

In Vermont, citizens can use their personal public library card to log on from any computer device to the statewide Vermont online library, a collection of licensed, subscription-based resources, including full text articles from magazines and newspapers, I think including the Dublin Times, health information, and online tools for creating resumes and business plans, and all Vermonters have access via their library card to over 500 online classes in a program called Universal Class, self-paced learning with live remote instructors on topics that range from digital photography and knitting to astronomy, bookkeeping and business writing.

Our libraries provide this no-fee access, leveling the playing field for citizens and entrepreneurs who need these learning and training opportunities.

Technologies now permit our libraries and individuals to create and disseminate their own information online. We are not just providers or consumers of information, but we are creators as well. This is another aspect of the Internet necessitating network neutrality so that all voices can be heard and that the benefits of the Internet can be realized by all, not just those who can pay.

In Vermont, 53 public libraries have high-speed fiber broadband thanks to a Federal BTOP grant. In Readsboro, with a population

of 814, a local entrepreneur with a home-based business has started doing his work at the public library because the fiber connection is so fast and efficient.

National studies show that citizens often choose to use public library Internet and wi-fi even if they have it at home.

And in the past year, 14 Vermont public libraries—and I would like to note that the Kellogg Hubbard and the Hartland Public Library are among those 14—have launched free community videoconferencing. These libraries have hosted no-fee online distance interactive business seminars, distance job interviews for individuals, and online meetings and trainings.

This is a Web-based service, so unimpeded Internet access is critical.

Internet resources must be both affordable for libraries and freely accessible to those we serve. Without the open Internet, there is a danger that libraries will face higher service charges for so-called premium online information services, and this would, in turn, place limitations on the amount or the quality of information that libraries can provide to their users.

There simply cannot be a system of tiered Internet access in this country that would set limits on bandwidth or speed because of paid prioritized transmission.

Such a scheme would only increase the gap that already exists between the haves and the have-nots and would create friction and, in some cases, insurmountable obstacles for citizens to get the information they need.

Bowing to powerful corporate interests that would take control of the Internet pipes would put libraries and the millions of citizens they serve at risk. Imagine the consequences. Libraries would be forced to just turn off access to vital information for those who need it most.

We cannot afford a society where information is available to only those who have deep pockets.

I have spent my entire professional life working in libraries to ensure that information resources are freely available to all citizens on an equal basis. All Americans, including the most disenfranchised citizens, those who would have no way to access the Internet without the library, need to be able to use Internet resources on an equal footing.

Here is the bottom line. We need legally enforceable rules that will protect the open Internet. I am addressing this to all the Senators on the Judiciary Committee. Senators, you have an opportunity to do the right thing for America. You have a choice—to advance the work of our libraries and other learning institutions and to protect citizen access to the Internet or to take that right away and to give these opportunities only to those citizens or entities which can pay.

As a representative of the State of Vermont who works with libraries statewide and with other state librarians across the country and as an American citizen, I expect you, the Members of this Committee, to make the decision that is best for all of us and which strengthens our country.

Please champion net neutrality and do all you can to support an open Internet. Americans everywhere will thank you for your vision and your steadfast defense of our most cherished freedoms.

And I want to thank you, Senator Leahy, for your leadership on this issue and your introduction with Congresswoman Matsui of the Online Competition and Consumer Choice Act of 2014. It takes us in the right direction and I applaud you for your stance on supporting the open Internet.

Thank you.

[Applause]

[The prepared statement of Martha Reid appears as a submission for the record.]

Chairman LEAHY. Thank you. Both Congressman Welch and I want to keep an open Internet. So thank you so much for your testimony.

Cabot Orton is proprietor of the Vermont Country Store, which the Orton family has run entirely from Vermont for generations. He has heard me tell about coming there as a child with my parents. It was a little bit different then. You had a small mail order business and you would mail out catalogs, and it is a little bit different today.

Vermont Country Store bills itself as the purveyors of the practical and hard-to-find. It has its two retail stores, but it has customers all around the world because of its website.

So, Mr. Orton, please go ahead, sir.

STATEMENT OF CABOT ORTON, PROPRIETOR, THE VERMONT COUNTRY STORE, MANCHESTER CENTER, VERMONT

Mr. ORTON. Thank you and good morning. Thanks, Senator Leahy, for creating a public forum of extraordinary importance to discuss a free and equal Internet for businesses of all sizes.

As Vermont business owners, my family and I deeply appreciate the opportunity to share our perspective on a vital national issue. We are honored by the Senator's invitation to support the interests of small companies here in Vermont and all across America.

For over 70 years, our family business, the Vermont Country Store, has delighted generations of customers by selling hard-to-find products through the mail. Following in the footsteps of our dad, Lyman, my brothers, Gardner, Eliot and I are the third generation of our family to run the business started by our grandparents, Vrest and Mildred.

In the fall of 1945, Vrest printed our very first run of catalogs on the printing press in his garage and Mildred mailed them out to folks on her Christmas card list.

The following spring, Vrest opened our now famous retail store in Weston. He added the Bryant House Restaurant in 1959, a second store in Rockingham in 1968. Today we are known as the purveyors of the practical and hard-to-find, delighting countless customers of all ages with memories of earlier, simpler times.

For most of our history as storekeepers, we have relied on the mail to do business with our customers. Mail was affordable, dependable and available on the same terms to everyone in America.

Over 100 years ago, rural free delivery brought mail and packages to rural farm families, transforming the U.S. Postal Service as

an engine of commerce that enabled the fastest growth of free enterprise in human history.

With the later commitment to rural electrification and the development of the interstate highway system, a spectacular new opportunity was created for every citizen, no matter where they lived, and for every business, no matter how prosperous or politically connected.

Contrary to conventional wisdom, these public systems worked to the betterment of private enterprise by connecting people in unprecedented ways while creating a level playing field for all.

Thanks in no small part to this remarkable infrastructure, the Vermont Country Store was able to grow and thrive, all while remaining based in the tiny rural village of Weston, Vermont.

To this day, our entire company is based solely here in Vermont, from which we answer every call and mail every package.

Between our two stores, our office in Manchester, and our distribution center in North Clarendon, every one of our 450 employees works here in the Green Mountain State.

Today our business depends dearly on the Internet. We rely on the Web to display our merchandise to customers, to connect with new audiences, and to transact a large portion of our sales.

Just 10 years ago, we received upwards of 60,000 handwritten letters a year from customers who would write us looking for hard-to-find items or just to share stories and memories.

Chairman LEAHY. No wonder you need 450 employees.

[Laughter.]

Mr. ORTON. It is a lot of reading. Nowadays, most of that comes in the form of e-mail and it is largely from customers who placed their orders with us over the Internet. We are no strangers to technology nor do we wish to escape the forces of change. In fact, Internet sales have grown to represent 40 percent of our business.

We have all become accustomed to using the Internet for just about everything and we take it for granted, just like mail, electricity and highways.

In reality, the Internet, as we know it today, is a recent development and it is relied upon universally by companies and consumers as a public resource.

Fully one-third of our employees are involved in supporting customer transactions made over the Internet not only because it drives sales, but because so many of our customers, young and old, use the Internet as their primary means of doing business with us.

Most of our customers still receive catalogs from us in the mail. Many of them still place their orders over the phone or even on a paper form. But more folks than ever connected with us for the very first time on the Internet, never having received a catalog at all, apparently unaware we have two marvelous stores right here in Vermont.

We know this demand will only grow over time. If we want to continue to prosper as a Vermont-based company, we must keep pace with our customers' need and desire to do business with us over the Internet.

Our success depends on providing an exceptional online experience our customers enjoy and trust.

We believe that the new rules proposed by the Federal Communications Commission will change all this for the Vermont Country Store and for countless small businesses. We do not want to imagine an America with two Internets, a fast one for giant corporations, a slow one for everybody else.

We do not want to imagine being held for ransom by telecom and cable monopolies just to reach our customers with the same speed and convenience as international conglomerates.

In our view, the proposed FCC rule changes would turn what is now a level playing field for businesses of all sizes into one where the biggest companies with the deepest pockets can get their Website content to customers faster than everyone else.

Worse, we know from our own experience that in the hearts and minds of our customers, a slower marginalized Website may not exist at all.

A small business Website that is no longer protected from giant Internet tollkeepers would have one choice—pay to play. Failing that, a company becomes the proverbial tree falling in a forest with no one there to hear it.

We would be hard-pressed to imagine a freer, more open Internet than the one we all depend upon today. You cannot make it much more equal than it already is.

This is why rules creating different standards of Internet access would jeopardize that equality. It is not hard to imagine small businesses forced to suffer demolition by neglect in the Internet slow lane or to endure ruinous costs to squeeze into the Internet fast lane with the big guys. That is a lose-lose proposition that would push small businesses, increasingly dependent on the Internet, to close up shop for good.

If consumer spending represents 70 percent of the American economy and two-thirds of our economy consists of small businesses that ultimately depend on the Internet, it is not much of a stretch to think of the Internet as a vital public resource.

Fair and equal access to the Internet is subsequently paramount to the strength of our economy. Perhaps more troubling is the prospect of stifling innovation and creativity, which are the lifeblood of small businesses in Vermont and everywhere in America. My grandparents started the Vermont Country Store with a dream, a printing press, and a Post Office.

That fledgling enterprise became vastly more than Vrest and Mildred ever anticipated. In so many ways, the Internet has transformed our daily lives. It has enabled even the smallest home-based businesses to reach virtually unlimited audiences.

Even the largest Internet companies are a testament to magnificent possibilities that would never have materialized had the Internet at its inception been subject to the FCC rules now being contemplated.

To safeguard Internet commerce from a troubling future, to guarantee that every person with an idea and real perseverance has a fair shake at achieving the American dream, we support Senator Leahy's legislation.

When enacted, it will keep the biggest corporations from gaming the system and seizing unfair access to Internet fast lanes simply because they have the money to buy them.

This legislation will let small businesses on Main Street, USA continue to reach customers anywhere in America on the same terms as the Fortune 500, just as we could over the phone and through the mail for more than a century.

Let us be clear. We are not asking for special treatment or for incentives or for subsidies. All the small business community asks is simply to preserve and protect Internet commerce as it exists today, which we think has served all businesses remarkably well.

We all know how change happens—gradually, then suddenly. We embrace change wholeheartedly. After all, folks who miss the things that change leaves behind tend to be some of our best customers. But we also know that disruptive changes like those proposed by the FCC almost always have unintended consequences.

We are asking those who serve us in government to pause, consider the repercussions and enact legislation that protects the interests of all businesses, great and small. Time and again, uniquely American phenomenon of equal access to public resources like the Internet has empowered entrepreneurs to advance the Nation.

Just keep the playing field level and let free enterprise do what it does best—enrich the human condition.

[Applause]

[The prepared statement of Cabot Orton appears as a submission for the record.]

Chairman LEAHY. Thank you very much, Mr. Orton. Thank you very much.

I would note that in Washington, we hold hearings, we have to maintain a no applause rule, but I know Congressman Welch will not object if I do not use that rule here where we are back home in Vermont.

Representative WELCH. No. I notice you are under the table clapping.

[Laughter.]

Chairman LEAHY. He caught me.

Our next witness is Lisa Groeneveld. She is the co-owner and chief operating officer of Logic Supply, a Vermont-based designer and manufacturer of industrial computers, that has a global customer base.

I would also note she is a Vermont native, with years of experience in the IT industry.

Ms. Groeneveld, please go ahead, and then we will open it up to questions.

STATEMENT OF MS. LISA GROENEVELD, CHIEF OPERATING OFFICER AND CO-OWNER, LOGIC SUPPLY, INC., SOUTH BURLINGTON, VERMONT

Ms. GROENEVELD. Thank you, Senator Leahy.

Logic Supply would like to thank the Committee for inviting us to testify today, as well as everyone who has taken the time to be here today. Thank you all for attending.

At Logic Supply, we design and manufacture industrial computers. Because we market and sell them online, our Website serves as the basis for our entire revenue stream, 100 percent of our revenue, every penny.

Our ultra-reliable computers resist dust, heat and vibration. They can be found in manufacturing environments, in the mining industry, in security and surveillance systems, and even in NASA robots.

Our headquarters are in South Burlington, Vermont and we have offices in the Netherlands and Taiwan. We have customers on every continent, including Antarctica, and we have been business for 11 years.

We currently have 60 employees worldwide and we continue to grow. Over 10 years ago, unlike most business-to-business hardware companies, we started our company purely online.

We knew our customers needed a new way to find, configure and purchase their hardware solutions, and the Internet provided the easiest, most effective means to do so because it was open and fair and equally accessible.

Our vision has met with substantial success. We have grown at a rate of 25 percent per year and we are currently breaking ground on a 20,000-square foot addition to our headquarters. And over the past year, we have had nearly one million visits to our Websites.

Logic Supply's Internet strategy has been the key to our success. It has allowed a small Vermont company to reach global markets and become an industry leader serving Fortune 500 companies and competing against Fortune 500 companies.

We are here today because we feel that the open and fair Internet infrastructure that we have relied on is under threat. As Logic Supply's co-owner and COO, I am here to speak out for Net neutrality and specifically against paid prioritization, also known as fast lanes.

We are concerned that infrastructure providers are changing the rules and abandoning the practices that have allowed Logic Supply and many other companies in Vermont and the United States to thrive.

As a company, Logic Supply is informed by our four core values—open, fair, independent and innovative. Based on our current knowledge of fast lanes, we feel they are neither open nor fair, and so we are publicly stating our opposition to them today.

We know the following. Because we are geeks, we know these things.

[Laughter.]

Ms. GROENEVELD. A fast lane will not slow other traffic down, but speed is relative.

Certain traffic will feel slower if other traffic is going faster.

Fast Websites rank higher than slow Websites in search engine results, Google, Yahoo, Bing, all of those are search engines.

No one looks past the first page of Google results, no one.

Customers expect Websites to be fast and efficient. If a Website feels slow, again, speed is relative, customers bounce, purchases are abandoned, and revenue is lost.

Given the above, we see fast lanes giving certain players a distinct advantage, but an advantage not based on their superior product or services, but on their ability or willingness to pay.

Furthermore, established companies like Logic Supply could pay to gain access to the fast lane. We certainly could. But that does not necessarily make it right. Many early stage companies cannot.

Is that an Internet infrastructure that rewards innovation? Paying for fast lanes would mean shifting funds away from genuinely value-creating activities like research and developing and hiring. It would increase the cost of doing business, in our opinion, without any real improvement in efficiencies or competitiveness, and no particular value-add to our customers.

Perhaps most importantly, fast lanes seem to fundamentally violate two of our core values, open and fair, which is simply a level playing field for everyone.

Without an open and fair Internet based on equal access, our business might not even exist today. We started Logic Supply with the money in our checking account. We used that money to buy motherboards, not preferential treatment for our Website traffic.

In conclusion, we appear today to express our deep interest in ensuring an open and fair Internet based on equal access, an Internet where all companies and organizations have an opportunity to compete on the merit of their products, services, knowledge base, and talents.

We, therefore, support any efforts that prohibit fast lanes.

Thank you.

[Applause]

[The prepared statement of Lisa Groeneveld appears as a submission for the record.]

Chairman LEAHY. I am struck by the fact that both you and Mr. Orton, in so many words, while your companies could afford to pay for fast lane, you are opposed to that. You want it to be fair to everybody.

Commissioner Copps, you talked, of course, about fast lanes and it is obvious how you feel about them. Do you believe the—well, we talked about the legislation that Congresswoman Matsui and I and others have to prevent this.

Do you believe the FCC has the authority to ban those kinds of agreements, fast lane agreements?

Mr. COPPS. Yes. I do believe the FCC has the authority to do that. I think in order to accomplish that, it is going to have to find the strongest foundation within the telecommunications law upon which to rest that authority. That authority, to my mind and many others, exists in Title 2 of the Telecommunications Act.

Without getting in the weeds, and you can get in the weeds very quickly on this subject, what happened back in 2002 when Chairman Powell was Chairman of the Commission, his majority decided that cable modem and, a couple of years later, the telephone service, too, was an information service, but not a telecommunications service. So they took it out of Title 2.

Title 2 is where generations of advocates have worked to build privacy protections, consumer protections, the assurance of reasonably comparable services in rural areas to urban areas, to make sure that every American had access to telecommunications, and instead they put it in this never never land where there was no sound basis.

When the D.C. Court of Appeals recently upended or refused to sanction or approve the FCC's Net neutrality rules, which were not all that great in the first place, but at least there was something, they said if you are going to try to put these consumer protections

on things in the broadband, you should have put it under Title 2, basically. It was almost an invitation.

Chairman LEAHY. But you are saying it can be done.

Mr. COPPS. It can be done and should be done and must be done.

Chairman LEAHY. Ms. Reid, you and I have talked about libraries before and I think there is no greater thrill than watching not only my grandchildren, but young people coming into libraries and being exposed to everything that is there, far more than we had when I was a kid. I even volunteered one day at the reading hour for 4- and 5- and 6-year-olds at the Kellogg Hubbard on Saturday morning and got stumped on the question, but it was helpful because I was able to pick up my phone, call for help, and the door opens, in walked Batman.

Now, you should have seen the eyes on those children. Michael, I will explain that to you later. A lot of the Vermonters know where this all came from. Probably the best part was he thanked them for their help on the way out and they all said, "You're welcome, Mr. Batman."

But you think of rural areas, the town I lived in had 1,600 people. There are some a lot smaller. You can talk about Readsboro and so on.

Who do you think stands to lose the most if we have a two-tiered system?

Ms. REID. I would say citizens all across the board and that is citizens that own small businesses, citizens who have ideas about innovation or creating businesses. It is people that are involved in instruction, instruction design. It is students.

I think we are all the losers in this. I think we all use the term "level playing field" and that really says it. I think that this value that libraries have had way before the Internet ever came into our midst or even into our thoughts, the premise remains the same. It is equal access to information and to all that the Internet gives us.

The fact that now we are able to create our own content and upload it to the Internet and share it with the world is quite astounding that we can do that in a keystroke, and that is, I think, a core piece of a healthy economy, of a diverse and engaged citizenry.

So I think we would all be the losers.

Chairman LEAHY. I often walk across the street in Washington to the Library of Congress. I love going in there. But I also think that if I am using a computer in the Library of Congress or if I am using a computer in Readsboro or at the Kellogg Hubbard, I can access the same things just as quickly. That is worth keeping.

Ms. REID. Absolutely.

Chairman LEAHY. Thank you.

Ms. REID. It is vital. And I would say—you talked about rural areas in Vermont and this is true for rural areas all across the country, that is vital to have that speed and capacity, and, also, in our urban areas, those little neighborhood libraries are also really critical for what happens in those communities and neighborhoods.

Chairman LEAHY. Mr. Orton, your e-commerce site, it was pretty small when you started. I think you might have wished for it to turn out as well as it has, but I think that you never really knew

at that point that it might become this great. Is that a fair statement?

Mr. ORTON. That is a fair statement. It is.

Chairman LEAHY. Now, let me ask you then this follow-up. Would you have been handicapped in starting out if it was a pay-to-play kind of procedure where large companies could, in effect, keep you out because they can afford the extra costs, but you might not have been able to at that time?

Mr. ORTON. We would have been unquestionably handicapped. At the end of the day, everything we do has to be centered around a value proposition to our customers. That is it. If we are not doing that, we do not really have a reason to exist.

And their expectations change faster than we can keep pace with because large companies are able to do things and command systems that we have to struggle to access. And so none of us really operate in a vacuum anymore and if we cannot deliver content to our customers every bit as fast and with as much convenience as gigantic retailers, they will have very negative feelings about our ability to provide them with the service.

Chairman LEAHY. Ms. Groeneveld, you are reaching customers all over the world. You understand your business far better than I or anybody else here, but would it also be fair to say that if even your customers were facing a two-tier system, you would be handicapped in carrying out your own business. Is that a fair statement?

Ms. GROENEVELD. We would be. As I mentioned during my testimony, Logic Supply would absolutely pay to join the fast lanes, but we would not do so willingly. It would force us to reallocate our investment money and every company only has limited funds available for investment away from other real value-creating activities.

Chairman LEAHY. But those other companies, too, are going to be at a disadvantage.

Ms. GROENEVELD. Our largest competitors are Taiwanese. They are \$20 billion companies. It would not put them at a disadvantage for anything.

Chairman LEAHY. They are not going to be, but new ones would be.

Ms. GROENEVELD. Yes. New ones would be.

Chairman LEAHY. But that \$20 billion company, you say they are willing to play by the same rules if everybody is equal.

Ms. GROENEVELD. They are Taiwanese. They would happily buy fast lanes if they could into the United States. It would definitely disadvantage smaller companies.

Chairman LEAHY. Thank you.

Congressman Welch.

Representative WELCH. Thank you, Senator Leahy.

This is a great panel. I think being able to testify in air you cannot see I think is probably better, coming from Washington.

Chairman LEAHY. And this is going to be part of the record of the Senate Judiciary Committee and I am already thinking, in my mind, the summary and report I am going to give to each Member of the Judiciary Committee in both parties. And one of the advantages of being Chairman, they actually will read it.

[Laughter.]

Representative WELCH. And we will share that with Congresswoman Matsui, with whom I serve on the Telecom Subcommittee.

Mr. Orton, you made an analogy that I thought was so terrific. It was about rural free delivery, the rural electrification, and interstate highways. These are all public goods.

None of these would have been built without every one of us as taxpayers paying for it.

The case was made against rural free delivery, against rural electrification, and, to some extent, against the interstate highways, that why are you spending so much money to get that last mile of interstate, that last electrical line to the most rural community in Readsboro or Hartland or why are you putting a post office in a remote community.

The reason we did it was because we are all in it together. We are all citizens. And if we are going to have enterprise that is going to, in your words, enrich the human condition, then the tool that is necessary to do that has to be available to anyone who wants to give that a shot. And actually, that sounds to me like a really good analogy, Senator Leahy, about what is at stake here.

So I just want to thank you all, but I thought that was really, for me a very compelling sort of framework.

Now, I will ask each of you a question. Mr. Copps, thank you for your testimony. On a practical level, what I heard you say is you think the FCC made a mistake in the Powell era in not putting this in Title 2.

That is going to be a challenge. Mr. Wheeler, when he was in our committee, indicated that even though he is opening up this rule, he is solidly in support of Net neutrality, as we would define it.

But the question is, there are some folks who do not like regulation for bad reasons, some who do not like—with regulation, you can overdo it.

The issue that they are starting to raise is whether or not it would absolutely be necessary as a condition of maintaining that neutrality that it be in Title 2, where there is some potential in the minds of some that that would actually stifle some innovation.

So the goal here is Net neutrality. Are there different ways in which that could be achieved?

Mr. COPPS. Well, let us keep in mind, first of all, that right now, the way things stand since the D.C. court threw out the Net neutrality rules, there is nothing, zero regulation to prevent any large provider from blocking, degrading or speeding up its affiliates Internet transmission.

So we start out not overly regulated. We start off with no regulation. Yes, it is not, in my mind, so much a question of how we are going to regulate it, but whether we are going to regulate it, and I think the only way you get to, yes, we are is through Title 2, because that is the only one on the final analysis, I think, that has a chance of withstanding court scrutiny.

Once we have that weather, then, yes, of course, we can look at—if you want to call it late touch Title 2 regulation or whatever. Nobody is saying that your computer is the same as an old crank telephone in plain old telephone service days back in the 1930s or the 1940s. Of course, this is different.

But we have the authority under Title 2 to forebear us from many of those regulations of plain old telephone service or to craft new regulations that are precisely aimed at this high tech.

Representative WELCH. Or could there just be legislation that made it—prohibited a deviation from Net neutrality, maintaining access for rural as well as small users, rural users as well as—

Mr. COPPS. Well, I think legislation always helps, but I think the action right now, although I think the Congress can have a tremendous impact on the FCC through its oversight responsibilities, but the action is between now and the end of the year at the FCC and what Mr. Wheeler and whatever majority he can cobble together vote. It is going to be mighty hard to undo 2, 3, 4 years down the line once these gatekeepers have further consolidated their power and further enhance their gatekeeping authority.

Representative WELCH. Thank you.

Ms. Reid, has the access and availability of high-speed Internet in our libraries increased the traffic of young people, in particular, to our libraries?

Ms. REID. It is interesting. It can be hard to track that. Where we can track the number of books that get checked out of the library, the number of people that walk through the door, the number of people that are logging on or downloading content, like an e-book or an e-audio book is a little bit harder to track or the number of people that are using wi-fi. That number is really increasing.

We see lots of people bringing in their tablets or laptops to use that wi-fi connection and the numbers are tough to come by.

Young people, I think, for sure, I think the more services that we can put on mobile devices, the more attraction we will have for young people. Public libraries are doing programming for teens in libraries using Wiis and all kinds of technology.

The maker space movement in libraries is a big deal these days, so that people are coming in, using libraries for learning opportunities that—where there is not even a book around. It is all technology.

Representative WELCH. They just had a maker space event at the White House I think about a week or 2 weeks ago.

Ms. REID. I had not heard that. That is great.

Representative WELCH. Well, thank you.

And I am going to ask you, Ms. Groeneveld, you had said something that indicated that even if the second tier speed was pretty good, consumers notice the difference. So it is not a question of whether you are pretty good, pretty good is not good enough. Is that more or less what you are saying, that the perception of the user of the Internet is to go for the higher speed if you comparatively are slower, even though it is really fast, that is not good enough.

So I just want you to elaborate on that, because that seems to be the very practical challenge that a business would face, and you have got the experience.

Ms. GROENEVELD. I will use the analogy of the highway and it is almost as if you are driving down that two-lane highway and everyone is going 55, you feel pretty happy until someone builds their own lane and they can go 100.

You are not going any slower. You cannot get into the lane going 100. It feels slower. That speed is relative. People will leave your site if it just feels slower to them in relation to another site that might feel faster, and that is the inequity that Logic Supply wants to avoid with fast lanes.

Representative WELCH. So you are willing to compete on your product and then, of course, there is the whole thing about designing your Website to make it user-friendly. That is your burden. But you want, when you are on the Internet, your speed to be as fast as your \$20 billion competitor.

Ms. GROENEVELD. Right. If you do not want your customer to be making judgments about the value of your product or service in a realm outside of your control.

Of course, as I mentioned earlier to Senator Leahy, Logic Supply would absolutely, under duress, pay for fast lanes, but it would pervert the—it would pervert our ability to give value-added services to our customer.

Representative WELCH. Let me ask about that, too. You would if you had to because it is a survival issue and you do not have any choice.

Ms. GROENEVELD. Yes.

Representative WELCH. So you would do that. But then you are just put in a squeeze in that situation. I mean, you are paying because you have to, not because you are getting more value.

Ms. GROENEVELD. Certainly not the business and certainly not the consumer. No one benefits from it. Practically and technically speaking, no one really benefits from it.

Representative WELCH. Mr. Orton, the story of Vermont Country Store, it has no business existing, right? You are in tiny little Weston. But you had the Post Office, you had electricity, and you had the interstate, and now you have the Internet.

All those were public goods, publicly created, and then you had your grandparents, parents, and you with your brothers, and you are making it work, which is a pretty astonishing story.

But just the same question I had for Lisa. What would happen to you if there was a fast lane/slow lane situation?

Mr. ORTON. On the surface, it sounds reasonable and logical that you pay more, you get faster service. When it is formalized, it becomes a gameable, leverageable opportunity for the biggest players. And what really concerns us is that incremental rates of speed are always relative, from the customers' perspective, from all of our perspective. And we are spending a lot of time talking about desktop Websites here, but so far nobody has mentioned mobile.

For retailers like us, that is the future. Mobile devices are even more of a limited window into the Internet from the customer's perspective than desktop. Speed is even more of a critical component of their experience.

So every fractional delay in downloading a site or downloading content between two choices always, always means that the customer will wind up going with the faster, easier choice.

Put another way, abandonment is death for a small Website. I will relate an anecdote, because it is still strikes me as so—it is emblematic of everything about change in the Web, the technology.

A few years ago we noticed something really odd. There was a huge purchasing spike taking place at 10 at night and it was coming from customers with iPads and they were buying the kinds of things that normally would be purchased by customers who would use the catalog or even write in a mail form, a paper form. It was odd. And we realized that it is all our mothers and grandmothers who got an iPad for Christmas.

[Laughter.]

Mr. ORTON. It was their first computer ever, their first e-mail ever, the first time they ever shared photos of their grandkids on Facebook, and they were in bed, 10 at night with the iPad instead of the book next to the bed or a stack of catalogs, and the world changed.

Representative WELCH. Well, thank you all very much. Thank you.

Chairman LEAHY. I want to thank you all, too. This actually has been fascinating, more so than—usually, the hearings we have in Washington, every Member of the Committee is supposed to be on four different committees, as Commissioner Copps remembers from his days in the Senate, and so you cannot pay attention.

This has actually been enjoyable and not all hearings are. I do not ever let that word get out. But I thank you all.

I will keep the record open for a week for further testimony, and you will get copies of your testimony if you wanted to add to it or subtract from it, you can.

I also want to thank the University of Vermont for hosting this hearing—it is nice to have a nice place like this for it—and Jeff Couture from the Vermont Tech Alliance for the input he and his members gave me in putting this hearing together, my staff from both Vermont and Washington who worked hard on this, Champlain College with insights its faculty provided, and I especially want to thank my good friend, Peter Welch, for taking the time to be here, because it is interesting coming from a state like ours, people actually will listen, and your testimony has helped.

So, Peter, thank you. And all of you, thank you very much. We will stand in recess.

[Whereupon, at 11:10 a.m., the hearing was concluded.]

[Additional material submitted for the record follows.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

“Preserving an Open Internet: Rules to Promote Competition and Protect Main Street
Consumers”

Tuesday, July 1, 2014
Davis Center at the University of Vermont
590 Main St., Burlington, VT 05405
10:00 a.m.

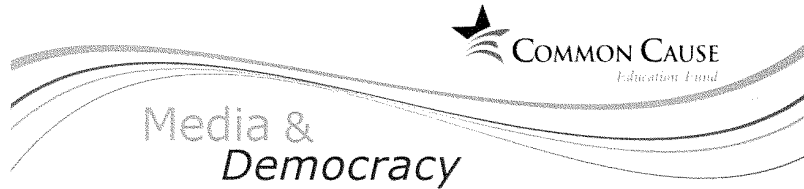
The Honorable Michael Copps
Former Commissioner, Federal Communications Commission
Special Adviser to the Media and Democracy Reform Initiative, Common Cause
Washington, D.C.

Martha Reid
State Librarian
State of Vermont, Department of Libraries
Montpelier, Vermont

Cabot Orton
Proprietor
The Vermont Country Store
Manchester Center, Vermont

Lisa Groeneveld
Chief Operating Officer and Co-Owner
Logic Supply, Inc.
South Burlington, Vermont

PREPARED STATEMENT OF HON. MICHAEL COPPS



TESTIMONY OF HON. MICHAEL J. COPPS
SENATE JUDICIARY COMMITTEE FIELD HEARING
“PRESERVING AN OPEN INTERNET: RULES TO PROMOTE COMPETITION
AND PROTECT MAIN STREET CONSUMERS”
BURLINGTON, VT
JULY 1, 2014

Thank you, Chairman Leahy, for the invitation to address this hearing on the crucial issue of how to guarantee an Open Internet. Traveling outside of the Washington, D.C. Beltway to hear from citizens who must live with the policies those of us in Washington create is essential. I made it my priority to do that as a Commissioner at the Federal Communications Commission, I wish the present FCC would do the same on this issue, and I especially commend you for doing so as Chairman of the Judiciary Committee. I would also like to recognize your leadership on keeping the Internet Open by introducing legislation to prevent paid-prioritization of online content.

More and more people now understand the Internet to be the most opportunity-creating tool of our time. It is, increasingly, the door to jobs, education, healthcare, equal opportunity, and to the news and information we need to sustain our civic dialogue. But the question now is: opportunity for whom? Is the Net going to be the tool of the many that helps us all live better—or will it become the playground of the privileged few that only widens the many divides that are creating a stratified and unequal America? Are we heading toward an online future with fast lanes for the 1% and slow lanes for the 99%?

Well, it's decision time. Now. The Federal Communications Commission is considering rules that would allow giant Internet Service Providers (ISPs) like Comcast, Verizon and AT&T to create fast lanes for their business partners and friends who can afford to pay what will inevitably be very heavy freight, while start-ups, innovators, and

potential competitors are priced out of the express lane. The fate of the Internet will be decided in the next few months, so this is the time for concerned citizens to speak out.

When gatekeeper control partitions the Internet, everyone other than the gatekeeper suffers. Consider what a tremendous engine the Internet can be for small business growth; you know about that right here in Vermont. Thanks to the Open Internet, consumers across the country can purchase the delicious homemade jams and jellies that Potlicker Kitchen sells online. Expensive fast lanes for the few could ruin the entrepreneurial opportunity Potlicker has created for itself. Extend that across the country and you begin to see the enormous economic opportunity costs gatekeeping entails. The same gatekeeping forces will be able to throttle innovation in other areas – by for example, foreclosing new developments in distance learning that would grant rural schools in Vermont’s Northeast Kingdom access to state of the art lectures from the University here in Burlington. We can’t build thousands of needed new businesses, we can’t have top-notch education for our kids, we can’t get America out of the economic rut it is in, when the one tool that can help make it all happen is controlled by a handful of communications and media giants whose only concern is the bottom line on the company’s quarterly report.

How did we get here? For openers, public policy has too often worked against the Internet. First, we witnessed years of telecommunications and media consolidation wherein a few giant companies gobbled up small competitors and built monopoly markets across the nation. They wielded armies of lobbyists and wheelbarrows filled with money to win government approval of these mergers and acquisitions. Second, the FCC consciously decided against meaningful public oversight of broadband and the Internet. In one of the strangest decisions ever made by a federal agency, the Commission decided over a decade ago that the broadband infrastructure on which the Internet rides wasn’t telecommunications at all and was therefore outside the consumer protection and common carriage requirements that are integral parts of the traditional

telephone service we grew up with. Those protections were part of Title II of the Telecommunications Act. ***That's where broadband telecommunications belong, too. And until the FCC puts them there, clearly and strongly, we are not going to have an Open Internet.***

Which is why the FCC's tentative plan to allow paid prioritization on "commercially reasonable" terms, provided a "minimum level of service" is so problematic. "Commercially reasonable" is an inherently subjective standard, and invites years of litigation between parties, a process which, even in the best case, would always favor incumbents with legal resources over upstarts. There are many legal reasons to fear that this approach would be thrown out just as the 2010 Order was. Many have questioned the legal viability of any Title 1 proposal – a troubling portent, since incumbent providers will surely litigate any weak plan. So we could very well find ourselves debating these issues again in another 3 or 4 years.

Additionally, the Commission's proposed minimum level of service standard is impossible to quantify. How fast is "minimum"? How would an edge provider demonstrate that its service is too slow to satisfy the minimum level of service standard? A minimum level of service for all consumers and edge providers requesting service is arguably an impermissible common carrier requirement that cannot be imposed under Title I. Just as worrying are the economic impacts – the years of litigating to resolve the legal issues will deny entrepreneurs the regulatory certainty they need to invest and innovate. But direst of all are the community and social consequences. We must not place the 21st century town square of democracy on so shoddy a foundation.

I understand the appeal of the Commission's plan – problematic as it is, the politics may appear easier at first blush; the path of least resistance often seems best in the short term. But history shows that the well-intentioned compromise hurts the public interest – that is real people – in the end.

Returning to the issue of merger madness, consider the patchwork of regulation-by-acquisition we now have. Consider how, in 2011, the Commission approved Comcast's takeover of NBC over my lone dissent. It was the marriage of content and carriage, medium and message, broadcast and broadband. Rather than stand up to industry, the Commission accepted Comcast's weak "voluntary concessions" – the centerpiece was a few years of net neutrality protection – as enough to shoehorn the merger into a good deal for consumers. We now have a patchwork of regulation by acquisition. Comcast consumers have weak net neutrality protections and others have none at all. Note, too, that the monopolists behind each of the major mergers currently under discussion has generously offered to extend the weak 2010 proposal to their users, if only we grant them ever more gatekeeper control over our informational ecosystem. Internet freedom is not a matter of *noblesse oblige*, it's a fundamental right of all broadband users.

Another seemingly positive, though ultimately problematic proposal comes from T-Mobile, which recently announced that some music apps would not count against its monthly data threshold. As a result, users would experience no throttling while using a specific set of popular music apps. Eventually, according to press reports, consumers will be able to vote for their favorite apps – those with a critical mass win exemption from throttling. Who doesn't like the sound of that?

And yet, this is a consumer-unfriendly development that undermines the fundamental Open Internet principle of non-discrimination. However well-intentioned, this privileges existing applications with a large installed base over new market entrants. Similarly, it privileges popular over alternative or minority interests. So while market leader Pandora benefits, the independent station WEQX from Manchester will never be so popular as to reap the benefits of zero-rated data for its streaming application.

Title II classification is the prerequisite of an Open Internet. It is the essential first step. There is no clever new way to get this done. After properly classifying

broadband, we must go on to deal with other challenges to the Open Internet, such as the interconnection and peering arrangements that determine how content accesses and gets distributed across the Net. And, of course, we must find our way back to a more competitive broadband environment by saying “No!” to the endless torrent of mergers and acquisitions that is distorting not just our communications, but our democracy. Additionally, we need to preempt nearly 20 state laws that limit or prohibit communities from building their own broadband instead of relying on ISPs that cherry-pick the country deciding where it profits them to build or not build. If the big guys are not going to build, why let them foreclose communities from building their own broadband? This is one reason, among several, why your country and mine has gone from broadband leader 15 years ago to broadband laggard today—Number 15 in the world according to the OECD, and far worse in other respected rankings when it comes to ubiquity of service, speed, and the prices consumers pay. And now these telecom titans are proposing more mergers to further stifle competition, ration their broadband, extract monopoly rents from consumers, and exacerbate gatekeeper control.

In the end, this all comes back to democracy. Free expression and democratic engagement suffer in a gated Internet. Consigning alternative, non-profit, and dissenting voices to the slow lane makes it harder for users to access diverse kinds of information. Moreover, since we now use broadband to both consume and produce, paid-prioritization schemes hinder the ability of citizens to speak out and truly have their voices heard. An Internet controlled and managed for the benefit of the “haves” discriminates against our rights not just as consumers but, more importantly, as citizens. Allowing powerful ISPs or giant Internet companies to control what we see and share on the Net is inimical to the health of our nation. If an ISP can slow down or block those sites who refuse to play the game, if they can decide that some good cause or advocacy group they disagree with can be voted off the Net, then we have starved the nourishing potential of this technology and truncated the rights of citizens to share in a

communications revolution that should be more about We, the People than it is about the privileged few.

Yes, I feel strongly about this. It is why I am crisscrossing the country on behalf of Common Cause and our allies in the public interest community to encourage citizens to speak up now to demand that the FCC ensure real Internet freedom. Millions have already signed on, but millions more are needed to win this battle. Whose Internet is it anyway? And whose democracy is it?

Thank you, Mr. Chairman, and I look forward to your comments and questions.

PREPARED STATEMENT OF MARTHA REID



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Agency of Administration

**To: Senator Patrick Leahy,
Chairman, Senate Committee on the Judiciary**

From: Martha Reid, Vermont State Librarian

Date: July 1, 2014

Subject: Testimony for Committee Hearing "Preserving an Open Internet: Rules to Promote Competition and Protect Main Street Consumers." University of Vermont, Burlington, VT

Senator Leahy and members of the Senate Committee on the Judiciary,

Thank you for your invitation to testify today on behalf of libraries and an Open Internet. I am joined today in this room by members of the Vermont library community from academic, school and public libraries. We are united in our belief that an open and innovative Internet is essential to our nation's freedom of speech, educational achievement, economic vitality, and equal access to information. An Open Internet is fundamental for libraries to fulfill their mission to provide students, government employees, teachers and faculty and the general public – citizens of all ages and backgrounds – equal access to information and to the wide variety of digital resources and opportunities made available via the Internet.

It has always been and remains today a core value of libraries to preserve the free flow of information. It doesn't matter whether that information comes in print or audio-visual or digital format. Intellectual Freedom – the right of citizens to have access to information, including that which may be controversial, is a hallmark of our democracy and of libraries. In my 30 years of work in public libraries, I have seen firsthand why no-fee access to information – including a wide range of viewpoints and opinions – is so critical to an informed and engaged citizenry. The Internet is a significant part of today's library of knowledge and opinion, and whether the information needed at any particular moment by any particular individual is about jobs, schoolwork, entrepreneurship, healthcare, personal finance, e-commerce or the agenda for next week's local school board meeting – it's all vital to the end user. Currently, this information – as well as the opportunity for citizens to create and distribute their own content -- is open and freely accessible on the Internet. And it needs to stay that way.

Today's technologies permit libraries – and individuals – to create and disseminate their own information. We are not just providers and consumers of information, but creators as well. Libraries collect, organize and make available unique combinations of online resources for our users: local history, resources for job-seekers, consumer information, subject-area research tools and homework help for students. And we know that users also benefit from being able to create their own information, use their own voices – and to be seen and heard on the Internet. This is another aspect of the Internet necessitating network neutrality so that all voices can be heard, that the First Amendment can apply to the Internet and that the great capacities and benefits of the Internet can be realized by all – not just those who are able to pay.

The Internet provides all of us with a platform for the open exchange of information and ideas, intellectual discourse, civic engagement, research, innovation, teaching and learning. Access to the Internet has revolutionized libraries and the services that we provide to our users. This is true for libraries of all types, but in this testimony I want to focus on how the Internet is used in our public libraries – and why the Internet functions best when it is open to everyone on an equal basis, without interference or restriction by Internet providers.

Vermont is a small state with a population of just under 631,000. We have 183 public libraries, more libraries per capita than any other state. Only 17% of these libraries serve populations greater than 5,000, and only two libraries serve populations greater than 20,000. We are a state of small, rural communities and our public libraries – like libraries across the country – are often the only place in town for free Internet access. Public libraries are the “go-to” places for job-seekers, independent learners, researchers and local entrepreneurs. Nearly all public libraries in this country offer free public computers with Internet access and public WiFi. How else are local residents who have no computer or Internet access at home going to locate job openings – or file the online job applications that are now required by so many employers? How will they be able to access e-government services? Last year Vermont libraries reported 3.6 million visits and 4.5 million items checked out. But this does not fully reflect the increasing demand for library technology – both inside the library building and remotely from home, school and office via the Internet. In addition to computers and Internet access, libraries offer e-books and other e-resources for free download to laptops, mobile tablets and smartphones.

In Vermont citizens can use their personal public library card to logon from any computer device to the statewide Vermont Online Library, a collection of licensed subscription-based resources, including thousands of full-text articles from magazines and newspapers, car repair videos, reliable health and medical information, interactive language learning, tools for creating resumes and business plans and rich content on science and current affairs. In addition, the Department of Libraries provides every Vermonter no-fee access – via their library card barcode – to over 500 online classes in a program called Universal Class: self-paced learning with live remote instructors on topics that range from digital photography and knitting to astronomy, bookkeeping and business writing. Our libraries provide the access – levelling the playing field for citizens and entrepreneurs who need these learning and training opportunities. Recently I was approached by the custodian in a small library who thanked me for providing this service in his town – he had used his home computer to complete five different history classes, his personal interest and passion.

In Vermont, 53 public libraries have high speed, high-capacity fiber broadband, thanks to a federal BTOP grant. In Readsboro (population 814), a local entrepreneur who operates a home-based business has started doing his work at the public library because the fiber connection is so fast and efficient. National studies show that citizens often choose to use public library Internet and Wi-Fi – even if they have it at home. Why? It may be because the connection is faster, but people also like the library environment, the connection with their local community, easy access to other library resources, and the assistance of a trained librarian, when needed.

In Arlington (Vermont) the public library serves a population of about 3800 with a new high-speed fiber connection. They have used laptops and a scanner to put their local history online, including a collection of wonderful historic photographs of surrounding towns. Arlington is also one of 14 Vermont public libraries that last year launched free community videoconferencing. Using high-quality microphones, cameras and large screen monitors, these libraries have hosted no-fee online long-distance interactive business seminars, long-distance job-interviews

for individuals and online meetings and trainings – sometimes with viewers tuning in from multiple library sites. This is all web-based so unimpeded Internet access is critical.

Library patrons use the Internet to stream audio and video and to Skype distant family and friends. They also upload content – and that reflects the evolving role of libraries as places for content creation. Local authors, innovators and entrepreneurs use the public library Internet to upload and share their unique content with the rest of the world. This promotes collaboration in learning, in research and in business development. In addition to purchasing licensed subscription resources for their users, libraries are creating their own content for the Internet. Public libraries are following the lead of our school and academic libraries which create MOOCs and other online instructional resources and post student projects and interactive learning via the Internet, and we are seeing development of unique online content in even our smallest public libraries.

Internet resources must be both affordable for libraries and freely accessible to those we serve. Without the Open Internet there is a danger that libraries will face higher service charges for so-called “premium” online information services. This could result in fast access to for-profit higher education or other commercial educational entities over local community colleges, or quick results leading to Disney services to children over access to quality children’s literature. This would clearly place limitations on the amount or quality of information libraries can provide to their users. There simply cannot be a system of tiered Internet access in this country that would set limits on bandwidth or speed because of paid prioritized transmission. Such a scheme would only increase the gap that already exists between the “haves” and the “have nots” and would create friction and, in some cases, insurmountable obstacles for citizens to get the information they need. Bowing to powerful corporate interests that would take control of the Internet pipes would put libraries and the millions of citizens they serve at risk. Imagine the consequences: libraries would be forced to just turn off access to vital information for those who need it most. We cannot afford a society where information is available to only those who have deep pockets.

I have spent my entire professional life working in libraries to ensure that information resources are freely available to all citizens on an equal basis. All Americans -- including the most disenfranchised citizens, those who would have no way to access the Internet without the library -- the unemployed and underemployed, those who are in need of good health information or e-government services, New Americans struggling to adapt to their new country, those who cannot afford home Internet service or who lack the skills to use computers, and those who may want to create and share their own information -- need to be able to use Internet resources on an equal footing.

Americans depend on ready and equal access to all that the Internet -- the amazing and mind-boggling range of Internet content and resources -- offers to them to live their daily lives, to improve their education and job skills, to find employment and to contribute to the local economy. An Internet that is anything but open and providing equal access for every citizen is simply not an option. An Open Internet is not a privilege for the affluent; it is a right for every one of us. The bottom line is this: we need legally enforceable rules that will protect the Open Internet. We cannot simply “trust” that Internet Service Providers will do the right thing.

Senators, you have an opportunity to do the right thing for America. You have a choice – to advance the work of our libraries and other learning institutions and to protect citizen access to the Internet – or to take that right away and to give these opportunities only to those citizens or entities which can pay. As a representative of the State of Vermont who works with libraries statewide and with other state librarians across the country, and as an American citizen, I

expect you to make the decision that is best for all of us and which strengthens our country. Please champion Net Neutrality and do all you can to support an Open Internet. Americans everywhere will thank you for your vision and your steadfast defense of our most cherished freedoms.

I want to thank you, Senator Leahy, for your leadership on this issue and for scheduling today's hearing. Your introduction, with Congresswoman Matsui, of the "Online Competition and Consumer Choice Act of 2014" takes us in the right direction and I applaud you for your strong stance for an Open Internet. Thank you.

Please share these talking points with your fellow Senators:

- **The Internet must remain open on an equal basis to all citizens -- and to libraries.**
Millions of Americans rely on libraries to deliver web-based resources and online communication tools and to permit users to create and disseminate their own content.
- **Those who work in and use America's libraries believe that Broadband and Internet Service Providers should operate their networks in a neutral manner** without interfering with the transmission, services, applications or content of Internet communications.
- **Preserving an open Internet is essential to our nation's freedom of speech, educational achievement and economic vitality.**
- **Libraries are seeing an increase in both the downloading of Internet content and the uploading and sharing of one's own creative and innovative information.**
- **Prohibit Paid Prioritization on the Internet.**
- **Libraries both generate and subscribe to digital content services. There is a danger that libraries could face higher service charges for so-called "premium" online information and services. This would, in turn, place limitations on the amount or quality of information libraries can provide to their users.**
- **We need legally enforceable rules that will protect the Open Internet.**

PREPARED STATEMENT OF CABOT ORTON

Cabot Orton Testimony
Senate Judiciary Field Hearing
July 1, 2014

Good morning! I would like to thank Sen. Leahy for creating a public forum on the extraordinary importance of an open Internet environment for businesses of all sizes. As Vermont business owners my family and I deeply appreciate this opportunity to share our perspective on a vital national issue, and we are honored by the Senator's invitation to support the interests of small companies here in Vermont and all across America.

For over 70 years, our family business, The Vermont Country Store, has delighted generations of customers by selling hard-to-find products through the mail. Following in the footsteps of our dad Lyman, my brothers Gardner, Eliot and I are the third generation of our family to run the business started by our grandparents, Vrest and Mildred Orton. In the Fall of 1945, Vrest printed our very first run of catalogs on the printing press in his garage, and Mildred mailed them to the folks on her Christmas card list. Orders came quickly, and they were in business. The following spring, Vrest created our now-famous retail store in Weston, adding a restaurant in 1959 and a second store in Rockingham in 1968. Today we are known as "The Purveyors of the Practical and Hard To Find", delighting countless customers of all ages with memories of earlier, simpler times.

For most of our history as storekeepers, we have relied on the Mail to do business with our customers. It was affordable, dependable and available on the same terms to everyone in America. Over a hundred years ago, Rural Free Delivery brought mail and packages to rural farm families, transforming the US Postal Service as an engine of commerce that enabled the fastest growth of free enterprise in human history. With the later commitment to Rural Electrification and the development of the Interstate Highway System, spectacular new opportunity was created for every citizen, no matter where they lived, and for every business, no matter how prosperous or politically connected. Contrary to conventional wisdom, these public systems worked to the betterment of private enterprise by connecting people in unprecedented ways, while creating a level playing field for all participants.

Thanks in no small part to this remarkable infrastructure, The Vermont Country Store was able to grow and thrive, all while remaining based in the rural village of Weston, Vermont. To this day, our entire company is based solely in Vermont, from which we answer every call and mail every package. Between our two stores, our Office in Manchester, and our Operations Center in North Clarendon, every one of our 450 employees works here in the Green Mountain State.

Today, our business depends dearly on the Internet. We rely on the Web to display our merchandise to customers, to connect with new audiences and to transact a large portion of our sales. Just 10 years ago, we received upwards of 60,000 handwritten letters a year from customers who would write us looking for a long-lost item, or to share stories and memories. Of course, times have changed. We receive fewer letters and lots of e-mail, much of it from customers who place their orders on our website.

We are no strangers to technology, nor do we wish to escape the forces of change. In fact, Internet sales have grown to represent 40% of our business. We have all become accustomed to using the Internet for just about everything, and take it for granted- just like mail service, electricity and highways. In reality, the Internet as we know it today is a recent development, and it's relied upon universally by companies and consumers as a public resource.

Fully one-third of our employees are involved in supporting customer transactions made over the Internet. Needless to say we are fully committed to Internet commerce, not only because it drives sales, but because so many of our customers- young and old- use the Internet as their primary way of doing business with us. Most of our customers still receive catalogs from us in the mail. Many still place their orders over the phone or by mailing a paper form. But more folks than ever encounter us for the very first time on the Internet, having never received a catalog, unaware that we have two marvelous retail stores right here in Vermont. We know this demand will only grow over time. If we want to continue to prosper as a Vermont-based company, we must keep pace with our customers' need and desire to do business with us over the Internet. Our success depends on providing an exceptional online experience our customers enjoy and trust.

We believe that the new rules proposed by the Federal Communications Commission will change all that for The Vermont Country Store and for countless small businesses. We don't want to imagine an America with two Internets: a fast one for giant corporations and a slow one for everybody else. We don't want to imagine being held for ransom by telecom behemoths and cable monopolies just to reach our customers with the same speed and convenience that global conglomerates enjoy. In our view, the proposed FCC rule changes would turn what is now a level playing field for businesses of all sizes into one where the biggest companies with the deepest pockets can get their website content to customers faster than everyone else. Worse, we know from our own experience that, in the hearts and minds of our customers, a slow or marginalized website may as well not exist. A small business website that is no longer protected from giant Internet toll-keepers would have one choice: pay to play. Failing that, a company becomes the proverbial tree falling in the forest with no one there to hear it.

We would be hard-pressed to imagine a freer, more open Internet than the one we all depend upon today. You can't make it much more equal than it already is! This is why rules creating different standards of Internet access can only jeopardize that equality. It's not hard to imagine small businesses forced to suffer demolition by neglect in the Internet slow lane, or to endure ruinous costs to squeeze into the Internet fast lane with the big guys. That's a lose-lose proposition that would push small businesses, increasingly dependent on Internet sales, to close up shop for good. If consumer spending represents 70 percent of the American economy, and two-thirds of our economy consists of small businesses that ultimately depend on the Internet, it's not much of a stretch to think of the Internet as a vital public resource, to which fair and equal access for everyone is paramount to the strength of our economy.

Perhaps more troubling is the prospect of stifling innovation and creativity, which are the lifeblood of small businesses in Vermont and everywhere in America. My grandparents started The Vermont Country Store with a dream, a printing press, and a Post Office. That fledgling enterprise became vastly more than Vrest and Mildred anticipated. In so many ways, the Internet has transformed our daily lives and enabled even the smallest home-based businesses to reach virtually unlimited audiences. The breathtaking growth of the largest Internet companies is a testament to magnificent possibilities that would never have materialized had the Internet at its inception been subject to the FCC rules now being contemplated.

To safeguard Internet commerce from a troubling future; to guarantee that every person with an idea and real perseverance has a fair shake at achieving the American Dream, we support Senator Leahy's legislation. When enacted, it will keep the biggest corporations from gaming the system and seizing unfair access to internet fast lanes, simply because they have the money to buy them. This legislation will let small businesses on Main Street USA continue to reach customers anywhere in America on the same terms as the Fortune 500, just as we could over the phone or through the mail for more than a century.

Let's be clear, we're not asking for special treatment, incentives or subsidies. All the small business community asks is simply to preserve and protect Internet commerce as it exists today, which has served *all* businesses remarkably well.

We all know how change happens: gradually, then suddenly. We embrace this wholeheartedly. After all, folks who miss the things change leaves behind tend to be some of our best customers! But we also know that disruptive changes like those proposed by the FCC almost always have unintended consequences. We are asking those who serve us in government to pause, consider the repercussions, and enact legislation that protects the interests of *all* businesses great and small. Time and again, the uniquely American phenomenon of equal access to public resources, like the Internet, has empowered entrepreneurs and advanced the nation. Just keep the playing field level and let free enterprise do what it does best — enrich the human condition.

PREPARED STATEMENT OF LISA GROENEVELD

July 1, 2014

**Lisa Groeneveld U.S. Senate Judiciary Committee Testimony
*Preserving an Open Internet: Rules to Promote Competition and
Protect Main Street Consumers***

Logic Supply's website forms the basis for our entire revenue stream, every penny. At logicsupply.com our customers can configure their own computers and make online purchases. Our website serves as a quick, reliable and easy-to-access knowledge center.

Over the past year we've had nearly a million online sessions on our website.

Logic Supply designs and manufactures industrial computers for our global customers. Our Headquarters are in South Burlington Vermont and we have offices in The Netherlands and Taiwan. We've been in business for 11 years; and we have 60 employees worldwide.

Our rugged and reliable computers can be found in a wide array of applications, such as law enforcement vehicles, digital signs and extreme manufacturing environments. Our customers are small businesses, Fortune 500 companies as well as municipalities, States, and the Federal Government.

> Examples: Computers for extreme environments such as mining, systems for communication of emergency services, etc.

As Logic Supply's co-owner and Chief Operating Officer, I am pleased to present our perspective on Net Neutrality, and specifically Paid Prioritization also known as Fast Lanes.

We are concerned about Net Neutrality's possible impact on our business. We are well aware, as life-long geeks, that technology changes quickly, unexpectedly and in ways both beneficial and detrimental to businesses and society. Based on our current knowledge and our Company Core Values of Open and Fair; we are publically stating our opposition to Paid Prioritization.

We'd like to share our specific concerns:

- It is true that search engines prefer faster sites over slower sites in returning organic search results
- It is also true that receiving digital information quickly, impacts what sites you visit, and what retailers you will buy from. We've all had the impulse to throw our computer out the window when a site isn't operating as expected.
- Perceived slowness can result in customers giving up during the check-out process, causing lost revenue.
- Any knowledge-based website delivering streaming media or large data files is negatively impacted by perceived latency or slowness. It's not just streaming media companies, like Netflix, who deliver video content; many websites rely on high bandwidth media to provide customer-oriented marketing content.
- Paid internet advertising, including ads run on Google or Yahoo, is expensive and needs constant active management. Switching between paid online ad platforms in order to

benefit from Fast Lane agreements is complex and time consuming for small Search Engine Marketing teams.

- Social Media can be used to engage customers where they live online. Different social media outlets appeal to different demographics. Favoring one Social Media outlet over another, can potentially disadvantage our customers' preferred outlets and therefore impact our own marketing activities and costs.
- Though it might feel like a stretch, what is the impact on American competitiveness in the global economy if we tamper with our Internet infrastructure?
- Creating a Fast Lane won't slow other traffic down per se. But speed is relative. Traffic will feel slower if someone else is going faster. This impacts customer expectations. And in the absence of equal access, Logic Supply is at a disadvantage in the marketplace.
- Even if Logic Supply could benefit from Fast Lanes we are strongly opposed to them since it would require re-allocating funds to Marketing, and away from technical Research and hiring.
- Finally, technologically speaking, it is not an overstatement to suggest that future innovation around the Internet of Things, for example, might be impeded if some data is favored over other data.

We know there are many technological, legislative and policy solutions to the challenges we face. But without an Open and Fair Internet based on equal access, our business wouldn't even exist today. We started Logic Supply with the money in our checking account and used it to buy motherboards, not preferred treatment for our website traffic.

In conclusion, we appear today to express our deep interest in ensuring an Open and Fair Internet based on equal access. An Internet where all companies and organizations have an opportunity to compete on the merit of their products, services, knowledge base and talents.

We, therefore, assert that Fast lanes are not Open or Fair.

SUBMISSION FOR THE RECORD



June 30, 2014

We at Vermont Realtors® would like to express our opinion on the new Open Internet rules as we feel this would eliminate Net Neutrality and create a serious hardship for our hard working Realtors®. Increasingly our business is conducted over the Internet. Streaming video, Voice over Internet Protocol, and mobile applications are commonly used technologies in our members' businesses today. In the future, new technologies like virtual reality and telepresence, among others will be available that will no doubt require open Internet access unencumbered by technical or financial discrimination.

The Internet has been a driving force for innovation for decades and our members, their customers, and local communities are benefiting from this innovation every day. The economic growth and job creation fueled by the open Internet is unprecedented in American economic history. This growth has been fostered by the Federal Communications Commission (FCC) under both Republican and Democrat administrations, for over a decade.

The FCC has recently proposed and is seeking comment on new Open Internet rules that would permit Internet service providers to discriminate technically against and impose new tolls on American businesses that operate on the Internet. Permitting these actions would be disruptive to our member businesses that have come to rely on an open Internet. Moreover, these actions would be especially harmful for small businesses and start-ups competing against larger companies that can afford such tolls. In order to continue the economic boom enabled by Internet innovation, we support and will urge the FCC instead to adopt open Internet rules that will protect against blocking, discrimination, access charges, and paid prioritization.

The benefits of broadband Internet for innovation and economic development are unparalleled. But we'll lose those tremendous benefits if the Internet does not remain an open platform, where Americans can innovate without permission and with low barriers to launching small businesses and creating jobs. We ask that you stand with Main Street businesses across this nation and join us in calling for the preservation of a free and open Internet that allows innovation to continue unencumbered.

Sincerely,

Donna Cusson

Donna Cusson
2014 President

SUBMISSION FOR THE RECORD



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July 1, 2014

The Honorable Patrick J. Leahy
 Chairman
 Committee on the Judiciary
 United States Senate

The Honorable Charles Grassley
 Ranking Member
 Committee on the Judiciary
 United States Senate

Chairman Leahy and Ranking Member Grassley:

Thank you for the opportunity to submit this letter for the record of today's committee hearing on "Preserving an Open Internet: Rules to Promote Competition and Protect Main Street Consumers."

The basic idea of net neutrality was formulated in the early days of the Internet as an engineering concept often called the "end-to-end" principle. This principle holds that the intelligence (i.e., functionality) of the Internet should be at the ends of the network, where transmissions originate and are received. In between should be only "dumb pipes" that transmit data without any modification or prioritizing. The principle is a useful tool in many ways. However, it was never meant to be inviolable. As explained in a seminal 1981 article,

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the end-to-end argument was "not an absolute rule, but rather a guideline that helps in application and protocol design analysis."¹

Importantly, net neutrality has never before been enshrined into law or regulation. In fact cable firms, whose cable modem service is the most common means of accessing the Internet, have never been subject to broad controls on how they manage traffic.

The political debate over neutrality regulation has gone on at least since 2005, when the Federal Communications Commission issued a "non-binding" statement of principles regarding the matter. A subsequent FCC enforcement action against Comcast based on that statement was thrown out by the D.C. Circuit Court in 2010. The FCC, in response, issued new regulations later the same year. These were also overturned by the D.C. Circuit in a case earlier this year. The FCC is now taking third bite at the apple; with proposed new rules currently out for public comment.

Most recently, discussion has focused on one part of net neutrality, the ability of an ISP to charge differing amounts for different quality of service or transmission speeds. Proponents of heavy regulation argue that allowing such "paid prioritization" would leave web users who don't pay the premium with inferior service and smaller businesses at a competitive disadvantage to their bigger rivals.

But banning such prioritization would make little sense. Almost every economic market offers some level of differentiated service at discount and premium rates. Airline passengers can fly coach or first class, sports fans choose between box seats or grandstand benches, cable service can be basic or enhanced tier. The mere fact that paying more – or less – for a product or service determines the quality and quantity received is not a sign of an unfair marketplace. Rather, it can be a sign of a healthy, diverse marketplace.

¹ J. H. Salzer, D. P. Reed, and D. D. Clark, "End-to-End Arguments in System Design," *ACM Transactions on Computer Systems*, Vol. 2, Issue 4 (November 1984), p. 277, as quoted in Yoo, "Would Mandating Broadband Network Neutrality Help or Hurt Competition?" p. 44.

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Nor do premium service offerings endanger competition. Priority services are not purchased just by the big players in a marketplace. In fact, they can be of more help to a new entrant trying to win customers from a dominant firm than to an already entrenched firm.

Rather than degrade service for non-premium customers, regulatory limits on paid prioritization would make a deterioration of service more likely. Broadband network owners invest tens of billions into broadband Internet infrastructure each year, maintaining and expanding their broadband networks. In fact, the biggest sources of capital investment in the U.S. economy in 2012 were AT&T and Verizon, which invested \$19.5 and \$15 billion respectively.² Regulations – such as the proposed net neutrality rules – that limit revenue and thus discourage such investment are the real threat to businesses and individual who rely on robust broadband service.

Prohibition of differentiated service agreements could also hurt consumers in the pocketbook. A case in point: AT&T's "sponsored data" program. The idea is simple – in exchange for a fee, AT&T will exempt customers of that content provider from the wireless data charges they otherwise would incur. Thus, for example, ESPN would pay a premium to AT&T, in exchange for which individuals watching ESPN programming would be exempted from AT&T wireless usage fees for that programming. It a clear win for consumers, who can enjoy more content without fear of charges from their wireless carrier. But to some neutrality regulation advocates, the plan is a form of paid prioritization, to be banned because not all firms can afford the same deal.

This turns the marketplace on its head, restricting pro-consumer offerings simply because they are better than what the competition can provide.

This is not to say that there can never be competition problems in the broadband marketplace. But any legitimate complaints can be handled by the antitrust authorities who

² Diana G. Carew and Michael Mandel, "U.S. Investment Heroes of 2013: The Companies Betting on America's Future," Progressive Policy Institute, September 2013, http://www.progressivepolicy.org/wp-content/uploads/2013/09/2013.09-Carew-Mandel_US-Investment-Heroes-of-2013.pdf

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examine such issues for almost every other sector of the economy. While far from perfect, existing antitrust laws are based on over a hundred years of precedent and analysis of precisely these sorts of issues. And their focus on consumer welfare is far preferable to the FCC's malleable "public interest" standard.

Proposed new net neutrality rules are not needed by – but rather present a threat to – Internet broadband service and its users. I urge you to leave the Internet alone.

Again, thank you for the opportunity to offer these comments.

Sincerely,

James L. Gattuso
Senior Research Fellow in Regulatory Policy
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