Consumer Federation of America
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Chairmen Walden and Upton, Ranking Members Waxman and Eshoo,

The Consumer Federation of America is pleased to submit the results of a recent national public opinion poll on Internet access to aid the Committee in its deliberation on H.J.Res. 3, a Resolution of Disapproval to reverse the FCC's rules. The results of this poll show that the public is deeply concerned about network management practices that impede access to the Internet, web sites, applications and content. The public wants policymakers to adopt policies to ensure access because it appreciates the importance of the Internet and the value of unimpeded access to it.

> **The passage of H. J. Res. 3 would be harmful to consumers and disastrous for the Internet because it would undermine the ability of the FCC to prevent discriminatory, anticompetitive and anti-consumer behavior on the broadband Internet**.

There are seven reasons the Energy and Commerce Committee should not vote this resolution out to the floor and the House should not pass it if it gets to the floor – history, technology, law, policy, economics, public opinion and widespread support for the FCC order. The FCC order has garnered widespread support because it is a "light-handed, carefully crafted, approach" [1] that "strikes a balance between Internet service providers' desire to pursue innovative business models and consumers', ability to access legal sites and service without interference from their ISPs." [2]

The survey findings affirm the long standing commitment of the Consumer Federation of America to an open communications network. With extensive involvement in universal service policy after the breakup of AT&T,[3] the Consumer Federation of America became involved in Internet policy in the late 1980s,[4] when the Internet moved out of the Universities and national laboratories and began to penetrate into society at large. Based on the belief that ubiquitous, open communications networks are vital for both commerce and democratic discourse,[5] the Consumer

[1] "Network Neutrality, Back in Court," *New York Times,* March 6, 2011
[2] "The FCC's Neutral Net," Los Angeles Times, March 3, 2011.
[3] An early examples include: Mark Cooper, "In the Matter of the Petition of the State of Michigan Concerning the Effects of Certain Federal Decisions on Local Telephone Service," before the Federal Communications Commission, CC Docket No. 83-788, September 26, 1983
[4] Early examples include: Mark Cooper, Expanding the Information Age for the 1990s: A Pragmatic Consumer Analysis, January 11, 1990; Developing the Information Age in the 1990s: A Pragmatic Consumer View, June 8, 1992; The Meaning of the Word Infrastructure, June 30, 1994;
[5] Mark Cooper, "The Role Of Technology And Public Policy In Preserving An Open Broadband Internet," The Policy Implications Of End-To-End, Stanford Law School, December 1, 2000; "Open Access To The Broadband Internet: Technical And Economic Discrimination In Closed, Proprietary Networks," University of Colorado Law Review, Vol.

Federation of America fought against repeated telephone and cable company[6] efforts to undermine these most fundamental cornerstones of communications policy in the U.S.

Over two decades ago, the Consumer Federation of American recognized that it was the decentralized decision making of individual consumers that would drive the dynamic development of the Internet and create a consumer-friendly and citizen-friendly communications environment. CFA argued that allowing network owners to reassert centralized control

> could set the information age development back by undermining the diversified, innovative process of the current decentralized approach… The fact that a great deal of the necessary intelligence is currently located on the periphery of the information age network has led to a pragmatic, decentralized pattern of development.
>
> Pragmatic: Most of these new innovative services have close substitutes. Why not give individuals maximum flexibility in the choice of equipment and services allowing them to develop applications at the periphery of the network?
>
> Decentralized: Decentralized decisions will select the most cost effective technologies for specific applications.
>
> Periphery: Intelligence is more concentrated in homes and businesses and on the premises of service providers who connect their services through a local transmission network.
>
> Applications: Specific applications will be required to be cost-effective. There will be successes and failures, but the process of trial and error driven by the profit motive will generate lowest cost and minimize public cost risks of network applications.
>
> Individualized: Costs are more highly individualized, borne by those who develop the applications and those who choose to subscribe to them, either through or around the public network.[7]

Notwithstanding the prodigious efforts of the communications companies, until last year they had failed to reverse the policy that prevented discrimination. The ruling by the Court of Appeals for the District of Columbia in the Comcast BitTorrent case could undermine the FCC's authority to prevent discrimination and to promote universal service and access to telecommunications for people with disabilities, as well as implement policies to protect consumers, privacy and public safety.

69, Fall 2000; "Open Communications Platforms: They Physical Infrastructure as the Bedrock of Innovation and Democratic Discourse in the Internet Age, *Journal on High Technology Law,* 2(1) , 2003; *Open Architecture as Communications Policy* (Stanford Law School, Center for Internet and Society: 2004) "The Importance of Open Networks in Sustaining the Digital Revolution," in Thomas M. Lenard and Randolph J. May (Eds.) Net Neutrality or Net Neutering (New York, Springer, 2006)

[6] Early examples include, "Reply Comments Of The Consumer Federation Of America And Consumers Union," before The Federal Communications Commission. In The Matter Of Deployment Of Wireline Services Offering Advanced Telecommunications Capability, Etc., CC Docket Nos. 98-147, 98-11 98-26, 98-32, 98-78, 98-91, CCB/CPD Docket N. 98-15 RM 9244, October 16, 1998. "Petition to Deny of consumers Union, Consumer Federation of America and Office of Communications, Inc. of the United Church of Christ," *In the Matter of Joint Application of AT&T Corporation and Tele-Communications, Inc. for Approval of a Transfer of Control of Commission Licenses and Authorizations,* CS Docket No. 98-178, October 29, 1998;

[7] Expanding the Information age for the 1990s, pp.ES-5, 6. 12.

The FCC reacted swiftly and appropriately in sounding the alarm. Its analysis in the National Broadband Plan had already demonstrated that the goals of the Communications Act in the broadband era have not been achieved. It recommended a host of policies necessary to make progress toward those goals. The National Broadband Plan affirms the urgent need for policy. The network neutrality order clarifies the FCC's authority to pursue the goals.

Our reading of the Federal Communications Commission order in the Broadband Industry Practices Docket (the network neutrality order) leads us to conclude that it provides a platform for preserving the open Internet and pursuing the broader goals of the Communications Act. We believe that under this order, the Commission, the public and those parts of the industry that are committed to preserving the Open Internet have tools that are more than adequate to do so. At the same time, the communications companies have the flexibility to continue to grow and manage the networks that carry high speed data. It is this balance that has created the widespread support that the FCC network neutrality order enjoys.

Widespread Support for the FCC Order

I begin with the widespread support that the FCC order has garnered because it rests on a unique, hard fought compromise. The overwhelming majority of Americans want policymakers in Washington to collaborate and cooperate to implement policies that advance the interest of the nation. This compromise is a perfect example of how to accomplish that goal.

The fact that AT&T's General Council, James Cicconi will testify in support of the FCC order is noteworthy. This is the first time that CFA has been on the same side as AT&T and the cable operators on this issue and we are glad they have seen the light. CFA has been battling to preserve the open Internet for almost a quarter of a century. We opposed the effort of the Baby Bells to reassert centralized control over the Internet in the late 1980s and published our first major analysis of Internet policy in January1990. When cable operators entered the Internet access business, we opposed their efforts to engage in discriminatory practices.

Consensus and compromise are not easy. There were tough negotiations and compromises were made. The vast majority of Internet access providers believe they can do business under this framework and we believe the consumer interests are protected. We will certainly have to gain experience with and make adjustments in this framework, but we are convinced that the approach taken by the FCC is flexible, consumer-friendly, technology-neutral and pro-competitive.

Furthermore any time the Congress wants to modify the FCC's approach to nondiscrimination, it can do so by passing a law that improves the framework. Simply stripping the authority of the Commission, as this resolution does, makes no sense whatsoever. It will leave the public and the economy at the mercy of the communications companies who have shown time and again, through accident or intent, they are willing to abandon the principle of nondiscrimination.

Public Concern about Practices that Impede Internet Access and Supports for Policies that Ensure Access

Our recent public opinion poll shows that the public overwhelmingly takes a dim view of network management practices that impede their access to the Internet, web sites, applications or content. They want policymakers to adopt policies to ensure access. By a margin of 3 to 1 the public says practices like tiering, paid prioritization, degrading and blocking websites, content and applications are problematic.

The respondents prefer the FCC to take action and the one thing they don't want is for Congress to stop the FCC from taking action. This support for policies to ensure access exists cross all demographic categories and political orientations. Even a majority of respondents who say they are or lean Republican support FCC action.

The three-quarters of respondents, who say the Internet is important to them, expressed the greatest concern about network management practices that impede access and the highest level of support for policies to ensure access. Among respondents who say the Internet is important,

- 78% of the respondents said consumer tiering is problematic (68%=severe problem) in contrast to only 12% who said it is not a bother (9%=not really a bother).
- 70% of the respondents said paid prioritization is problematic (53%=severe problem) in contrast to only 15% who said it is not (12%=not really a bother).
- 62% of the respondents said service degrading is problematic (48%=severe problem) in contrast to only 22% who said it is not (16%=not really a bother).
- 71% of respondents said that blocking service is problematic (58%=severe problem) in contrast to 14% it is not (9% not really a bother).

With respect to policies to ensure access, among the respondents who say the Internet is important

- 59% of respondents agree (42% strongly) with the statement that the FCC should adopt policies to ensure access and only 18% disagree (10% strongly).
- 54% of respondents agree (41% strongly) with the statement that the Congress should adopt policies to ensure access, while 24% disagree (17% strongly)
- In contrast, 45% disagree with the statement that Congress should stop the FCC from adopting policies to ensure access, while only 28% think that Congress should stop the FCC.
- Application of one set of policies to both wireless and wireline consistently receives the highest level of agreement (63% overall, 51% strong).

History

The principle of nondiscriminatory access to the means of communications has always been the cornerstone of the communications networks on which our great continental economy was built. It came over with the very first settlers in the common law tradition they brought with them from England, where it had been the law of the land for centuries. In the late 19th and early 20th centuries, as huge corporations came to dominate the means of communications, the principle was enshrined in legislation – first in 1886 in the Interstate Commerce Act, which codified the principle

for railroads and other physical means of communications, and then in 1910 when the Mann Elkins Act extended the principle to electronic communications. The obligation became the centerpiece of the Communications Act of 1934 in sections 201 and 202.

In 1968 as the Federal Communications Commission was confronted with the rapid growth of data transmission over the nation's telecommunications network, it relied on its Title I authority to ensure that the principle of nondiscrimination applied to data communications This was the first of a series of orders, known as the Computer Inquiries, that kept data communications open to the public on a nondiscriminatory basis. In the same year the FCC required the telecommunications companies to allow consumers to attach their own devices to the network. This is known as the Carterphone decision.

These two decisions to ensure an open communications network for data were the cornerstones on which the Internet was built. The 1996 Telecommunications Act adopted and codified the definitional and regulatory approach that the FCC had taken. For the first thirty years of its existence, the data that traversed the Internet and reached the public in the U.S. was carried on a network that was required by regulation to operate in a nondiscriminatory manner and delivered to devices that regulation had required the telecommunications companies to allow to be attached to the network.

As communications and commerce merge in the digital information age, the principle of nondiscriminatory access to communications becomes even more important to the health of our economy and democracy than it has been throughout the nation's history.

Technology

From the point of view of technology, the distinction between the Internet and the communications network that transported data traffic was central to the regulatory approach that enabled the Internet to thrive. It was a distinction that was easy to make. The FCC had made just such a distinction for over three decades under the Computer Inquiries. The telephone companies had no difficulty making high-speed data transmission available on a stand-alone basis, primarily to the enterprise market. In the years after the cable modem order hundreds of small telephone companies offered plain vanilla high speed data transmission services to their mass market customers for a fee separate from applications and content. It is hard to argue that the much larger network operators, many of whom had plenty of practice, could not figure out how to make high-speed transmission service available to the mass market on a standalone basis.

In the context of conditions in a merger decree, AT&T agreed to network neutrality provisions that rested on a technological definition that it could easily implement. Indeed, as part of its agreement, it distinguished specific services for which it wanted the ability to prioritize traffic, thereby affirming the distinction between the underlying transmission of data and the service. Comcast has recently agreed to full implementation of the network neutrality order in a merger consent decree, regardless of what happens in the Congress or the Courts.

In the BitTorrent case Comcast demonstrated the ability to distinguish transmission from applications, by singling out a specific application for discriminatory treatment and, when pressed, quickly came up with a nondiscriminatory alternative. Independent third party provision of functionalities that the FCC argued were "inextricably intertwined," with transmission, like IP address assignment, DNS, caching, etc. is readily available on a stand-alone basis.

Consumers fully understand the difference between data transmission and services, even with respect to the services that the Commission once claimed had to be bundled with data transmission. Thus, the majority of e-mail accounts are with independent service provides who do not bundle transmission and e-mail. Web sites of the top high-speed data transmission service providers are nowhere to be found in the top twenty web sites in general or for specific types of content like news. Even, if we look at the top video web sites, we find that Comcast, the largest broadband ISP ranks 12th and AOL (owned by Time Warner) ranks 13th. Comcast and AOL account for about 2 percent of video views on the web, but they account for close to one-third of all broadband subscribers. Consumers clearly take the data transmission service and use separate applications and content services from independent ISPs. The claim of an integrated bundle was never a technological issue. It is not even a marketing reality. Cable operators routinely market separate services.

Thus, the distinction between data transmission and the Internet are clear. Requiring nondiscrimination transmission of data on communications networks does not involve regulating the Internet.

Law

While the Commission's authority to regulate high speed data transmission under Title II of the Act was hotly debated for about a decade after the passage of the Telecommunications Act of 1996, its authority to do so under its Title I ancillary authority was never in doubt. Whether or not the FCC could or should regulate high speed transmission as a Title II service was a close call. That it could require nondiscrimination under Title I was settled for over thirty years as a matter of law and practice.

After 30 years of settled practice under the computer inquiries, the issue was litigated new before the Ninth Circuit Court of Appeals in 1999, in Portland v. AT&T, when Portland attempted to impose conditions of nondiscrimination on cable modem service. The court concluded that the underlying service was a telecommunications service, which should be subject to the nondiscrimination provisions of the Act. Later that year, the Federal Trade Commission imposed open access requirements on Time Warner as a condition of approving the AOL-Time Warner merger. In 2002, the FCC issued it Cable Modem declaratory ruling, which declared it an information service, in contradiction to the Ninth Circuit decision. Brand X, a small, non-facilities based Internet Service Provider (ISP), appealed the decision to the Ninth Circuit, which affirmed its earlier conclusion that the high-speed data transmission is a telecommunications component of the service.

Beyond the debate over title II authority, both of the orders that classified mass market, high-speed data transmission service as information services presumed that the FCC had ancillary under Title I of the Act to implement the policies necessary to carry out the purposes of the Act. Both orders affirmed that policy was necessary, although they devoted less attention to those issues than they should have. While the Supreme Court review of Brand X v. AT&T was pending, the FCC engaged in two acts that seemed intended to quiet fears that classifying high-speed data transmission would undermine the principle of nondiscrimination in telecommunications.

First, Chairman Michael Powell, a vigorous defender of the information service classification, declared that there were four Internet freedoms that should be preserved. These were later turned into a policy statement of the Commission and were proposed as part of a new Open Internet rule. Second, the FCC brought an enforcement action against a small telephone company for blocking Voice over Internet Protocol, an Internet application that competed with its voice service. In the consent decree, Title II authority was invoked twice – section 201 (a) in the introduction and section 208, in the body of the consent decree. In other words, three weeks before the oral argument in the Brand X case and less than four months before the ruling, the FCC was using its Title II authority to prevent undue discrimination in access to the telecommunications network. Two years later, the FCC found a cable operator had violated the nondiscrimination policy of the Commission, under its Title I Authority.

At every key point in the regulatory and judicial process, the FCC asserted that it needed and had the authority to implement policies to promote the Communications Act goals under both Titles I and Title II. The assumption, repeatedly made by the Commission, that it would be able to exercise substantial "ancillary" authority under Title I to accomplish the goals provided for in Titles II and III has been called into question by the Comcast-BitTorrent case..

However, when the D.C. Appeals Court overturned the FCC order in the Comcast-BitTorrent case, it made it clear that the legal standard for Title I ancillary authority is well settled. There are half a dozen rulings, some that granted ancillary authority, some that did not, which outline the necessary analysis precisely. The fact the some exercises of ancillary authority were upheld and some denied does not mean that the law is murky. On the contrary, if there is a consistent pattern of what makes for a winning case versus a losing case, it means that the path to winning ancillary authority is straight forward. The D.C. Appeals Court ruling drew the roadmap.

The agency must (1) identify the Congressional policy that governs the FCC action; (2) cite specific authorities elsewhere in the Act that are the nexus for ancillary authority; and (3) explain why the new technology, not covered by the Communications Act, threatens to frustrate the FCC's ability to implement the authorities in the Act. (4) As a natural outgrowth of the second and third steps, the ancillary authority claimed and exercised must be narrowly tailored to the underlying authority and the specific threat of the new technology. If the FCC makes these four showings, it can assert ancillary authority tailored to the stated purpose.

The D.C. Circuit Appeals court ruling works carefully through the steps of an ancillary authority showing in the Comcast case. It (1) accepted the validity of the Congressional policy goals identified by the FCC, and (2) found the new technology argument plausible; but (3) it noted that the FCC had not identified any specific authority elsewhere in the statute to which the Title I authority would be ancillary. Therefore, the claim for ancillary authority looked like an effort to make a claim that was overly broad. The D.C. Circuit denied ancillary authority as an illegal expansion of FCC authority.

It is interesting to recall that the D.C. Appeals Court noted that the FCC's argument "places particular emphasis on the Computer Inquiries." This is important for four reasons.

First, the Computer Inquiries established the regime of nondiscriminatory interconnection for data transmission that allowed the Internet to grow under Title I, putting the lie to the claim that network neutrality hurts the Internet. Second, the Computer Inquiries validate the principle that voice and video can be invoked to reach the transmission of data. Third, the Broadband Wireline Order, which was the basis for the Comcast complaint, relied on the same theory of ancillary jurisdiction on which the Computer Inquiries were built, but it merely sought to replace the regulatory scheme of the Computer Inquiries with a lighter-handed "Internet Policy Statement." Fourth, perhaps the clearest statement of the legal standard for ancillary jurisdiction made by the D.C. Circuit is with regard the Computer Inquiries, which reaffirmed the long pedigree of Title I ancillary authority.

> The crux of our decision in CCIA was that in its Computer II Order the Commission had linked its exercise of ancillary authority to its Title II responsibility over common carrier rates – just the kind of connection to statutory missing here… In other words, we viewed the Commission's Computer II Order – like the Supreme Court viewed the regulations at issue in Southwestern Cable – as regulation of service otherwise beyond the Commission's authority in order to prevent frustration of a regulatory scheme expressly authorized by the statute.

Responding to the D.C. Appeals Court ruling, the recent FCC order provides the missing pieces and reinforces the argument with respect to the goals of the Act by citing several sections of the Act.

- Sections 151, 152, 230, 254 and 706.

The FCC could cite these and many other candidates for the missing piece of specific authority to provide the nexus for ancillary authority because of the policy adopted in the Communications Act.

Policy

As a practical matter, there are many candidate sections of the Act as the basis for Title I ancillary authority nexus because of convergence of communications onto broadband. The expression triple play, so commonly applied to broadband services, refers to voice, video and data. Voice and video (broadband and cable) are the services to which Titles II, III and VI apply. The

FCC's ability to implement the Communications Act policies in the 21st century will be frustrated unless ancillary authority exists. As a legal matter, each of the authorities now identified by the FCC is tied directly to an aspect of the order, which tailors them narrowly, and many of them are tied directly to issues raised in the rulemaking, which makes them directly relevant.

Throughout the regulatory and judicial review of the classification decision, the full implications for all of the goals of the Act were never fully vetted (as demonstrated in the following table). Each of the major orders acknowledged that there might be implications for universal service, consume protection, public safety, people with disabilities, etc. Each initiated inquiries and notices to investigate those implications, after the fact. The proceedings to investigate the full implications were not completed, which is why each order required another round of proceedings.

The National Broadband Plan, a major report ordered by Congress, filled that gap and affirmed that the goals of the Act have not been achieved with respect to Broadband. The FCC's network neutrality order restores the authority to address these issues and it is moving swiftly to do so in a series of orders. The National Broadband Plan supersedes the Universal Service (Stevens) Report. The National Broadband Report establishes a firm evidentiary basis for immediate implementation of policies to accomplish the goals of the Act, but the uncertainty about FCC authority hampers its ability to do so. Weakening the tools available to achieve these goals would be contrary to clear Congressional intent.

Economics

The focal point of public policy concern about digital connectivity provided by Congress in requiring the National Broadband Plan reflects the growing importance of broadband technology. The concern about simple access as framed in the initial digital divide debate – households not being connected to the Internet – has been replaced by a concern about much more than the availability and affordability of service. As digital, broadband communications become the focal point of innovation and move to the center of economic, social and political life, broadband adoption also considers how the technology is used by the households that have it. The broader concept – digital inclusion – considers the impact of the technology on individuals and society. Success is no longer measured by the counting of the number of households that are passed by the technology, or even whether they choose to subscribe to Internet service, but rather the inquiry goes deeper into the nature and degree of uses of the technology.

The reason that the definition of success has expanded with the penetration of broadband is that digital information and communications technologies (ICTs) have proven to be transformative technologies. Digital technology fundamentally alters the conditions for success across a wide range of economic, social and civic activities at both the individual and societal levels. Simply put, in the 21st century it is extremely difficult for households or societies to thrive without adoption and utilization of broadband to the maximum extent possible.

THE HISTORY AND POLICY IMPLICATIONS OF A CLOSE CALL

Year	Event	Policy Implication
1998	Stevens Report	Ambiguous on Classification
1998	Public Interest Groups Petition for Title II Classification	Need for Nondiscrimination demonstrated
2000	Portland v. AT&T Cable: 9th Circuit Court of Appeals finds cable modem service involves telecommunications is subject to Title II	Title II Classification asserted
2000	FTC imposes commercial access condition on AOL-Time Warner	Concern about bottleneck provider expressed
2002	FCC issues Cable Modem Declaratory Order classifying Cable modem service as an information (not telecommunications)service.	Classified Information Service; Title I Authority Asserted, Need to address Communications Act principles affirmed
2003	Brand X v. FCC – 9th Circuit Court of Appeals affirms its in Portland v. AT&T and overturns Cable Modem order	Information Service rejected; telecommunications affirmed
2004	Chairman Powell declares Four Internet Freedoms	Importance of Non-discrimination, Consumer protection affirmed
2005	FCC uses Title II authority to investigate undue discrimination by Madison River	Importance of Non-discrimination affirmed
2005	Supreme Court reverses 9th Circuit (6-3) on procedural grounds and upholds FCC information service classification	Information service upheld, Justices debate Title I authority
2005	FCC extends the Information service definition to mass market, high-speed data transmission services offered by telephone companies.	Title I authority claimed; Need to address Communications Act principles affirmed
2005	FCC turns Four Internet Freedoms into a policy statement	Importance of Non-discrimination, Consumer protection affirmed
2006	AT&T agrees to network neutrality Bell South merger condition	Ability to distinguish service demonstrated
2007	FCC finds Comcast illegally discriminated against peer-to-peer applications.	Need for non-discrimination affirmed Technical ability to offer separate services demonstrated
2010	Open Internet Proceeding initiated	Need for Non-discrimination stated, Title I authority asserted
2010	National Broadband Plan	Importance of Communications Act principles affirmed Failure to achieve Communications Act goals documented
2010	D.C. Appeals Court overturns FCC action against Comcast	Title I authority questioned
2010	Broadband Internet Access Notice of Inquiry	Recognizes important of all Communications Act principles Documents failure to achieve goals of the Act.
2010	Network Neutrality Order Adopted	Establishes “Light-Handed” approach to nondiscrimination, Asserts Title I authority

Recognizing the impact that utilization has on individuals and society leads to the broader concept of digital inclusion. Adoption and use of technology by individuals has benefits at the societal level through network effects and feedback loops creating a virtuous circle of development. The empirical evidence overwhelmingly supports Congress' view that maximum utilization of broadband infrastructure can deliver benefits to households and the nation – consumer welfare, economic growth, worker training, civic participation, e-government services, education, training, community development, ability/disability, and maximum utilization. For at least the last decade, the evidence has overwhelmingly supported the proposition that using digital ITC has a positive effect on a wide range of factors generally associated with economic success at both the individual and societal levels.

For individuals the benefits have been documented for educational attainment, worker productivity, skill, compensation levels, autonomy, and entrepreneurship, especially among women, as well as social development. Being networked is immensely valuable and communications. Differences in usage with broadband compared to dial-up are dramatic. Broadband users are able to accomplish more online and are more active and creative with their online activities than narrowband users. The earlier one adopts, the greater the benefit.

Consumer Sovereignty and Citizen Empowerment and the Success of the Internet

Network management practices that impede access reduce utilization and impose costs on users and society. The engine of economic growth that the Internet provides is driven by the explosion of competition in applications and uses at the edge of network and the freedom that the Internet provides to innovate. Allowing the heavy hand of network operators to stifle competition and innovation with discriminatory practices by stripping the FCC of the authority to prevent discrimination will destroy the essential ingredient for the success of the Internet and slow its engine of growth.

With this background on history, technology, law, policy, and economics, it is clear that those who say the network neutrality order adopted by the FCC is a new form of regulation imposed on the Internet are either ignorant of the history or wearing ideological blinders that will not allow them to see the facts. For over a century, the central thrust and core principle of communications policy in the United States has been to increase the ability of consumers and citizens to speak on an open communications networks. With the convergence of communication and commerce, this principle is more important than ever. This is the worst possible moment to turn our back on that principle.

Therefore, this Committee should reject the Resolution of Disapproval and turn its attention to developing positive policies that will ensure the openness and strength of the communications network that is vital to the continued expansion of the digital information age. We look forward to working with the Committee and the Congress on this vitally important, positive agenda.