Oral Testimony of

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H.J. Res 37
Disapproving the Rule Submitted by the Federal Communications Commission With Respect to Regulating the Internet and Broadband Industry Practices

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Thank you for giving me an opportunity to speak. I am happy to share my views with you. Please understand, I do not work for anyone, neither firm nor advocate. I come as a professional economist who has had privilege to study and write about the commercial Internet access market, and almost since its inception.

From the standpoint of its economics there are great potential risks from disposing of the Open Internet Access Order, and the gains from continuity are high. The order looks like a good innovation policy and good economic policy.

If we want to create a prosperous commercial Internet in the next fifteen years, think about how well the Internet works today. Now think about all the ways that could have gone wrong. My advice boils down to: avoid the same problems we avoided in the past.

How to do that? Keep transactions costs low for entrepreneurs. The United States commercial Internet functions well today because it avoids a number of industry practices that would raise the transactions costs of innovation, that would introduce hassles, delays, and haggling. Instead, today any entrepreneur can enter without worrying about gaining the permission of any gateway firms.

If the US government commits to no regulatory intervention in Internet access markets, would that invite problems? The experience of the last fifteen years suggests there is a risk it will and a chance it will not. It is hard to tell. Until recently, regulatory restraints prevented all carriers from taking certain actions, so there is little experience from which to forecast how carriers would behave in the absence of restraint.

One central concern arises due the commercial activities in one line of business – for example, broadband service – affecting the prospects in another – for example, telephony, or video entertainment. If carriers act on their economic incentives, we would expect carriers to help all their businesses, deliberately become less transparent to rivals, block some content of rivals, or give low priority to the traffic from erstwhile competitors. Concentrated supply of access in some locations of the United States also heightens the incentives to act this way.

A balanced view would also note that other factors push in the other direction. National standardization processes generate transparency. User tendencies to substitute to alternative carriers in some markets also reduce incentives to block traffic. Reasonable people can differ on the relative importance of these forces, and that is an additional reason why forecasting is hard to make.

The dangers would be costly. Any movement towards less transparency and more blocking and more discrimination of traffic introduces hassles and delays for entrepreneurs, software innovators, server companies around the globe, even juniors at Harvard with ambitions to unseat Mark Zuckerberg. Overall, taking away regulatory oversight risks the emergence of a very undesirable consequence, less commercial innovation and its child, less economic growth.

Policies that tend towards continuity are the most desirable. Continuity here is a regime of continued regulatory presence, with occasional and consistent action.

It is my view, as it is of many others, that the FCC's policy represents continuity. Frankly, I think broadband firms can live with this rule because it really does not change much of what they do. Entrepreneurs can thrive under this rule, because it lets them innovate and start business as easily tomorrow as they did in the past, and raises the certainty that no additional hassles will emerge in the near term. Moreover, the rule includes important and appropriate exceptions – for reasonable network management and the complications of wireless applications.

In sum, the potential risks of disproving the rule are great, and the gains from continuity are high. The order looks like a good innovation policy and good economic policy.

Thank you for your attention, and thank you for allowing me to testify.