TECHFREEDOM
TechFreedom
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Operator: Good day, everyone and welcome to today's program. At this time all participants are in a listen only mode. Later you'll have the opportunity to ask questions during the question and answer session. You may register to ask a question at any time by pressing * and 1 on your touchtone phone. You may withdraw yourself from the queue by pressing the # key. Please note, this call may be recorded. I'll be standing by should you need any assistance. It is now my pleasure to turn the conference over to Mr. Berin Szoka. Please go ahead, sir.

Berin Szoka: Well, thanks everyone for joining. I'll just give you a brief overview of TechFreedom and Don't Break the Net, and talk about today's internet slowdown. Walk you through the dangers of Title II and what we're proposing as an alternative and then take your questions. So just for those that don't know, TechFreedom's been around for nearly four years. We're a tax exempt 501C3 non-profit. We're supported by a big tent of companies including major firms on both sides of the net neutrality debate, both Google and Facebook as well as broadband providers. This is one of many issues we cover. We also work on surveillance and privacy and consumer protection issues and we debate common cause with many of the organizations that you'll hear from today pushing the internet slowdown, but we're here today to talk about our Don't Break the Net campaign, which is our attempt to really distill the downsides of Title II, present the myths that have been assumed by many people about how Title II works, and to explain what we think is a positive alternative. So today's a great day to talk about this. As you know, many sites today are presenting their own campaign pushing for Title II, trying to suggest that

those sites would be slowed down without Title II protections, which we think really misses the point. If there's anything that would actually slow down the internet, it would be going to Title II. So let me walk you through Title II and then take your questions.

So to start with, the number one point we're trying to get across to people about Title II is that it doesn't even do what those pushing it say it would do. Many of the sites we hear from today are saying that the FCC needs to ban paid prioritization or websites will wind up in so-called slow lanes, but legally speaking, that's not possible even under Title II. The essence of commentary regulation, as was developed in the 1880s for railroads and was imposed on Ma Bell's monopoly network back in the 1934 Communications Act, is precisely that you can charge different prices for different levels of speed. You just have to charge similar prices to similarly situated parties. So the one thing that the FCC can't do is require that no price be charged or that all traffic be delivered at equal speeds. In fact as a practical matter, Title II would probably make paid prioritization a lot more likely. If you're in the United States Title II would, if it were implemented, would force broadband providers to find new revenue streams and would transform paid prioritization from something that isn't happening today and something that's likely only to be a niche service in the future into a potential revenue source that broadband companies would need to turn to make up for the regulatory burdens of Title II and the price controls could be imposed under it. In Europe, ironically, Title II style regimes at telecom rules actually mean sender pays. In fact, you get the precisely opposite outcome in Europe from what people want here in the United States. So that's the basic myth that Title II would solve some problem, would do something that it can't in fact do. What Title II would do is shatter 16 years of bipartisan consensus against treating the internet

the way that we regulated the monopoly telephone network. It's easy to portray this issue as a partisan one, but in fact, it's not Republicans who started building a wall against Title II. It was the new Democrats under Bill Clinton. Bill Canard, who was Bill Clinton's SEC Chairman, had to grapple with the mess of the 1996 Telecom Act and he understood that interpreting the basic definitions to make any part of the internet subject to Title II would be a disaster. He called Title II a morass and he instead chose a path that was based on trying to drive competition among competing networks, and that's worked. We've had over $1 trillion of investment from private companies in broadband and the US has had, contrary to what people often say, much more deployment, much more investment, more fiber to the home, and faster speeds than in Europe where many European countries, because of Title II like approaches, have essentially a single monopoly network, which is precisely what Title II style regulation is designed to deal with and designed to cement in place instead of having competing networks. It's worth pointing out that back in 1998, John Kerry, Ron Wyden opposed Title II and urged Bill Canard to go forward in walling off the internet from it and as late as 2010 when the FCC floated the idea of Title II even Title II light, 74 House Democrats opposed the idea unequivocally. So that's the second myth.

The third myth is because even this site, even the possibility of reclassification. In fact, that's not how this works. The SEC's only option is to reinterpret those basic definitions to undo the approach that Bill Canard took and once you start reinterpreting those definitions, there's no more clear line that can be drawn between Title II and the internet. The legal issue here - happy to talk about this more later - it's subtle but basically once you start saying that there's a transmission component inside broadband, it's very difficult to stop the FCC from saying that

there's a transmission component inside other web services. That's why Jeff Pulver, who is the founder of Vonage and a pioneer of VOIP services who got the SEC to say back in 2004 that VOIP was not a Title II service - Jeff Pulver's put it best. He said that the only other line you can draw exists in the mind of the FCC Chairman. There's no way to make it predictable especially for start ups and small companies going forward. So that's why we say on Don't Break the Net that you can't have just a little bit of Title II anymore than you can be just a little bit pregnant. It's also why it's worth noting that Google and Facebook haven't been pushing for Title II. The companies pushing for it are small companies that frankly, don't understand telecom law and are being misled by activists who are pushing for Title II.

Next myth is the myth of forbearance. Most of those who are pushing Title II acknowledge that it has problems, acknowledge that rules developed for the monopoly telephone network are probably not a good fit for the internet, but say the FCC can simply waive away those problems. That's an illusion. It's just not going to happen. As a legal matter, the FCC has made forbearance very difficult to justify legally. It's not clear the FCC can actually walk away from that approach legally but even if it could, it certainly unrealistic to expect that it would. On the one hand, if the FCC could make forbearance easy, Republican FCC commissioners in the future could use that power to gut much of the act. It's hard to see this FCC opening a door to that. Second, those that are pushing for Title II today and it's saying that they'll support forbearance, it's impossible to see them actually supporting forbearance given their very pessimistic views of the market place. So really, we're talking about all or nothing. Title II or not and not just for broadband but for the entire internet.

I would also note the dangerous international implications of re-opening Title II. The US has spent the last 15 years insisting to the rest of the world that the internet shouldn't be regulated under traditional telecom rules. In Europe, I've already mentioned what that would actually mean would be sender pay rules, the very opposite of net neutrality. European companies that provide broadband charge American web companies to deliver their content, but it would also - Title II - play into the hands of the alliance that those European carriers had made which repressive governments around the world to try to transfer control of the internet to a body that they can control, the ITU, and that would be based on international acceptance of treating the internet like a telecom network and taking a hard line edge on net neutrality here through Title II would also jeopardize the zero rating plans that Facebook and Google and Twitter and others around the world have used to help get people online by offering them an affordable way to start using the internet. So in summary, Title II has been rejected by four chairmen of both parties, by leading congressional democrats, by leading web firms, and by the entire broadband industry. It's a bad idea. It's something the SEC should avoid.

Unfortunately, the FCC has several alternatives, any of which would be better than Title II. So I'll walk through those briefly and then take the questions. So number one, the chairman has proposed using the other source of legal authority that the FCC had identified under Section 706. We would certainly say that that's a better basis for regulating net neutrality. The FCC in fact wouldn't even have to issue rules. If they wanted, it could take Bill Canard's approach of vigilant restraint and wait to bring enforcement actions until real behavior became a problem.

Number two, if the FCC did use this approach, Section 706, they would in fact have very much the same authority as they would have under Title II which is not the authority to ban paid prioritization, but to deal with many of the most problematic practices. For example, banning exclusive deals with affiliates. That's something that can be addressed through Section 706. Now, we have our own concerns about Section 706 and it's over breadth, but basing net neutrality rules on 706 isn't going to make the problem any worse. Someone said that 706 is dangerous and we agree that that's true, but going to Title II doesn't solve that problem in any way. It leaves the FCC with all the powers that it could claim under Section 706 which could be much broader than net neutrality but also gives the FCC a broad source of power over Title II. So it's a myth that that would simply solve the problems. So we see two alternatives that we would prefer although we'd like for the FCC to avoid Title II under any circumstance. The first would be a multi-stakeholder process. That's what the FCC has started to use in other areas, the Obama Administration has embraced those across the board as being more flexible and capable of dealing with technological change. The FCC could enforce the results of that sort of code through Section 706 and the Federal Trade Commission could enforce the results of that process through its own authority and there's already broad agreement among carriers on the basic core of net neutrality concerns, so we think that is in fact a workable option but ideally, the best option - and I'll close here - is with congress. Congress can solve all these problems about the FCC's legal authority by providing appropriately narrow authority over core net neutrality concerns. That could be a standalone bill. It could be part of a full Communications Act update that we're going to see coming next year from the house - energy in congress committee, but the key thing is on the one hand, clarifying about net neutrality while on the other hand, doing what really should be the focus

here, which is making competition easier. It's crazy for example, if Google Fiber has to opt in to Title II and all of the regulations that come under it just to make deployment easy. Right now, the way the 1996 Act was written, Google Fiber doesn't get the same pole attachment rights, which is a critical part of the cost of deploying Google Fiber unless it's a Title II carrier. That's just crazy and congress can fix that problem. Congress can also deal with a host of other barriers that local governments have put up to deploying private networks that have made it hard for small companies like sonic.net to deploy even in San Francisco. Congress can work with States on promoting smarter infrastructure policy at all levels of government to make deployment easy. That means conduits under streets that anybody can use to lower the cost of deployment and building better poles that can carry fiber networks around the country. All of those things could make it easier to build a third or a fourth pipe to the home and allay concerns about net neutrality.

So in summary Title II really is a polarizing distraction from what we should actually be focusing on which is a simple, clear solution on net neutrality and making completion easier across the board. So I'll stop there and take any questions that you have about the details of Title II or about our Don't Break the Net campaign and why we're trying to educate people on the dangers of Title II and the positive alternative.

Operator: At this time if you'd like to ask a question, please press * and 1 on your touchtone phone. If you find your question has already been asked, you can press the # key to withdraw your question. Once again, that's * and 1 on your touchtone phone and I will pause momentarily to allow questions to queue. Our first question comes from Timothy Lee of Vox. Your line is open.

Timothy Lee: Hey, Berin. I was interested in you were saying that it's hard to draw. If you go to Title II, it'll be hard to draw a new line that would distinguish between broadband providers and other types of online services and obviously, I think nobody wants like every internet start up to be subject tot Title II. Can you talk a little bit about Justice Scalia had a pretty blistering dissent in the brand x case where he seemed to think there was some kind of distinction in congress withdrawing on the required broadband services to be in Title II. Do you think that's evidence that there is in fact - at least Justice Scalia would say that there is a clear line you could draw and if so, was he just mistaken about that?

Berin Szoka: Well, thanks for your question, Tim. So first of all, worth noting two things. Justice Scalia was of course in the monitory and second, Justice Scalia wasn't saying that there was a clear line to be drawn. Justice Scalia was saying that in his view, the better reading of the Telecom Act was to subject broadband to Title II. He didn't say anything about this problem of who else gets subjected to Title II. So the decision that Tim is referring to, and he's right to ask this question, is brand X, which was a challenge to the FCC's decision that started by Bill Canard and completed by Michael Powell to make sure that broadband providers were treated under Title I and not Title II. The FCC essentially said in 2002 that it considered broadband to be a single integrated service that included some information service components like email that you get with your broadband account, but also the DNS routing service that goes on in the background that users don't see. So Michael Powell said to the FCC in 2002 finished what Bill Canard's FCC, the democrat FCC started by saying that they found that that combined bundle was a single unified information service regulated under Title I. Justice Scalia, in his dissent, said he thought that the better

reading would be to say that there was a Title II service that could be pulled out of that bundle. So some people today are saying that Justice Scalia was right, that the facts have changed, that fewer people use email services provided by their broadband provider. Google makes a DNS service now available and they're now saying that it'd be better to adopt the Justice Scalia view. So there are really two questions here. There's a legal question: Is Justice Scalia right? Can that be drawn out and would that be a better reading of the Communications Act? What I'm saying first and foremost is even if you agree with him as a legal matter, thought that the FCC should have the discretion to revisit those decisions about the classification of broadband, Justice Scalia didn't address the much more important question which is, "Where does that approach leave you? What is the logical conclusion of taking that road?" The logical conclusion is as Jeff Pulver and others have pointed out, basically Scalia was saying you can pick out a transmission component and subject that to Title II and I'm saying that once you start doing that, it's hard to see where you stop. It's hard to see why YouTube or Netflix or in particular VOIP, the thing that Jeff Pulver fought to defend from Title II, wouldn't also be subject by the same logic to Title II. You don't have to take my word for this. I think it speaks volumes that Google and Facebook have not come out in support of Title II and you should just ask yourself why you think that is. I would submit that it's because those firms have telecom lawyers that are smart enough to understand that they won't be able to have the ear of the chairman forever and if a different chairman takes a different approach, they could wind up on the short end of the stick, and that's something that small companies and activists just don't have the internal telecom know-how to think through or frankly, the incentive to really care about. So Tim, does that answer your question or do you want to chat about it further?

Operator: Our next question…

Berin Szoka: Go ahead.

Operator: Our next question comes from Lyn Stanton of Telecommunications Reports.

Lyn Stanton: I just wanted some clarification on the things you listed as alternatives. First of all, on the multi-stakeholder option, it sounded as though you are agnostic as to whether it would be enforced by the FTC, in which case I assume you mean it's a voluntary thing that could only be enforced against companies that sign on to it. The agnostic between that and the FCC enforcing it in which case I would assume have to be a negotiated rule making? Secondarily, you listed the multi-stakeholder approach first, but it sounded to me, and maybe I misunderstood, that you actually preferred a congressional approach? Thank you.

Berin Szoka: Both great questions, Lyn. Let me take the second one first. So our preference in order would be congressional solution, which might actually include a multi-stakeholder process. You can imagine the same process of sitting down to hammer out code being something that informs legislation or legislation could actually work through multi-stakeholder process the way that the Children's Online Privacy Protection Act gave the FTC the authority to regulate children's privacy but left much of the hard work of how to implement that to safe harbors that would be developed by industry and consumer advocates. So ideal matter what we'd like to see happen in the world, we do think that congress ought to revisit much of the 1996 Act, ought to clear barriers to deployment, but it could be very narrow. It could be as simple as saying, "Here's the package on net neutrality, here's

clarifying what we meant with Section 706, and then here's some things we could do to make deployment easier." It doesn't have to be a full rewrite of the act. That would be our preferred solution. As a practical matter, we expect the FCC is going to do what Chairman Wheeler said he was going to do after the Verizon decision earlier this year, which is to use Section 706 as the basis for rules and again, that would allow him to do what he's proposed. It allows him to deal with concerns about fast lanes, but not ban them much as Title II would. It allows him to deal with the potential for discrimination. That is realistically what we expect to happen and at a minimum, we hope that that would be a bridge to having congress revisit these issues and provide a clear source of authority that addresses the concerns that I mentioned. So that's my answer to your sectioned question.

On the first question about how multi-stakeholder process would work - so I just want to start by reminding everybody how little disagreement there actually is among broadband providers on the core issues at stake here. I don't think it's unrealistic to expect that if you sat them down in a room, with civil society groups that you could actually get a compromise that could be implemented today. My point about enforcement was that anything like that would be directly enforceable by the Federal Trade Commission with no questions about legal authority. I think that Section 706 as a basis for the FCC to enforce the products of that code itself. When you're questioned about the negotiated role making is a good legal question but as first cut, I don't think the SEC would be required to do anything more than use Section 706 authority to enforce the results of that code just as they - to enforce the transparency mandate. It would be very similar products.

Lyn Stanton: Okay. Thank you very much, Berin.

Operator: Once again, that's *1 if you have a question. We have another question from Timothy Lee from Vox. Your line is open.

Timothy Lee: Hi again. Sorry, I didn't know I had to hit the *1 thing again. I guess I've two somewhat related questions, follow up questions to my first one. One is that it seems clear that congress thought something would be in that Title I bucket and it seems like you're almost saying that Comcast and AT&T are in Title II then like everything is, which seems like it's probably not what congress meant. The other thing, it seems to me you could draw a pretty clear line based on consumer broadband has a physical pipe that connects to consumers' homes in a way that YouTube or Netflix or any of these other services don't. It seems like you could draw a line based on whether it's proving physical connectivity to users or simply data over someone else's connectivity. What do you think about that?

Berin Szoka: Great question, Tim. So on the second question, the way that the Act is structured - remember, this is all about the complicated definitions in the act which are vague and unclear. The way that the act is structured is all about the keyword transmission. So you're essentially pointing out that broadband providers offer a transmission service to users, but once you start picking apart an integrated information service under Title I, many of those in fact do involve transmission. If not the user directly, then throughout the back end of the network. So what is the content delivery network or the back end of Google and Facebook and Netflix in service but a transmission component that carries information around the back end of the internet? Those are transmission services. Every service in the internet does involve - or every one of those does involve some degree of

transmission. So my point is not that I want those companies to be regulated and it's not that I'm making an argument that they deserved to be dragged down if broadband is as well. I'm simply saying as a legal matter, the way that congress wrote the act, the way the word transmission is used, there isn't another clear line to be drawn. Again, I think you have to ask why Goggle and Facebook aren't supporting Title II. If you can think of another explanation besides their own concern about being sucked into the act, I'd love to hear it but certainly the people who've been through this like Jeff Pulver have made it pretty clear that they worry very much that the only other line would be whatever the chairman decides at any given point in time. So on your other question, forgive me, Tim, would you repeat your question?

Timothy Lee: Sure. The question was if Title I includes all those [crosstalk] then that means that absolutely everything is Title I or there's still things [crosstalk]?

Berin Szoka: Yes. So in a way, that's a continuation of the first question. It's hard to say. Nobody really knows exactly where the line would be drawn. That's really the point here. It's probably true that many web services would not be sucked into Title II, so I don't mean to suggest that this is an all or nothing approach, but certainly, many of them, especially those that include the transmission on the back end like we would - VOIP and video are the obvious examples of services that would likely get sucked into Title II. As to your point thought, simply saying, "Well, congress didn't intend for the internet to be sucked into Title II. Congress thought that some parts of the internet would be Title I services," is not going to stop the slippery slope. That's a good policy argument, but as a legal matter, it's hard to see how that provides a clear stopping point for drawing the

line as to what constitutes transmission. So again, I just would encourage everyone to step back into 1998 and think about this from the perspective of Bill Canard who had the very difficult task of trying to figure out what to do with the mess that congress created. The 1996 Act is not the way that you would write a Communications Act if you had the internet in mind and it creates a host of unanswered questions. He provided - he started to provide - Michael Powell finished the process of providing a clear bright line; a set of interpretations that avoided subjecting the internet to Title II and that's really what's at stake today - are we going to displace that for a set of regulatory rules that don't even do what those pushing it think that it would do? I think the answer to that is a pretty clear no. If you're not happy with the SEC's alternatives under Section 706, if you don't like the idea of multi-stakeholder process, you should really be calling for legislation which could address all of these problems. Do we have any other questions?

Operator: Our next question will be coming from John Quain with The New York Times.

John Quain: Yes. I wanted to just ask. T here are a lot of people that have pointed end sources of these companies will point out that the reason Google and Facebook aren't behind or - and publicly behind the Title II classification for this is because they're already ahead, and so the situation that's being described where there might be two tier system or whatever is a system in which they would advance and prevent startups and competition from encroaching upon their established gains. What do you say to that?

Berin Szoka: Well first of all, what you're implying is that they think that Title II would actually help to preserve their regulatory advantages.

John Quain: No. The opposite. The opposite. That Title II might harm their gains. With startups it would make it more easier for startups to come in/ competition to come in under Title II, but if that doesn't happen as a two tiered system - so the argument goes - it would preserve their lead in the market and make it so that basically it would be impossible for someone else to enter into that space.

Berin Szoka: Okay. Netflix - it's a fair question and thank you for asking it. So it's worth pointing out that Netflix has been very aggressively pushing for Title II. They imagine - in their case, that there's - either they don't really understand what is involved because of course they wouldn't get anything for free even under Title II for the same reasons I've been mentioning why the FCC can't band paid prioritization, but if they understand anything about Title II, it's that they have to be subject to Title II to get any benefit from it in terms of interconnection. So they see some advantages to a Title II regime and they're pushing for it. So if you're suggesting that big incumbents are going to win in a world without Title II, Netflix certainly seems to feel differently, but I'll just get back to the two core options here. One: Title II doesn't mean what people who keep talking about it think it means. The premise of your question is that Title II will allow FCC to ban fast lanes and that somehow that would actually hurt Google and Facebook, but that's just not even true. As the chairman has pointed out several times, the FCC can't ban paid prioritization under Title II. They would have marginally more power that differs in a fairly subtle ways from what they've claimed under Section 706, so it's hard to see how that would give Google or Facebook a regulatory advantage. I think Google and Facebook are looking out for, of course, their own bottom line, but that means making sure that they themselves aren't subject to Title II and

also making sure that we don't disrupt the bipartisan consensus that's made the internet such a success. It's built the networks that they ride on. They, more than anybody, would suffer if Title II regulation slowed down internet investment and then finally on Google, I'll just point out that Google's actually now learning about what it means to build broadband networks and in the areas where they've deployed Google Fiber, they've deployed a broadband service - Title I, a cable television - Title VI, and they specifically chose not to deploy a voice service because that's the thing that's regulated by Title II. I think that's an instructive lesson for all of us. Does that answer your question, John?

John Quain: It does, but just to kind of follow up on another issue too that you mentioned near the end. You mentioned paid prioritization, which is kind of not a technical term. So there's a lot of different things that could come underneath that umbrella technically, but to the competition issue you mentioned - opposed is making difficult for a Sonic or someone to come into the market and we need to make that easier, but if there isn't some kind of regulation banning or regulating those fees, doesn't that make it almost impossible for us not to come in because they essentially have to attach that backbone and aren't they going to have to pay more and if those prices are too high or high enough, there really won't effectively be any competition?

Berin Szoka: Well on the first part of your question, you're certainly right that there's a lot of confusion about what paid prioritization actually means and I don't think there's a clear consensus on that. That's the problem. Just to illustrate briefly, back in 2011 Metro PCS thought it was doing a great thing by offering a package to unreserved users to try to get them online that included very limited data plan but unlimited YouTube. They thought

that would be a great way to get people to buy smart phones and then ultimately upgrade to using the full internet and that was probably legal under the FCC's 2010 rules, but they were so demonized by hardliners that they abandoned the program and ultimately decided that if they didn't have a way to reach out to users that needed to get online and to create a niche for themselves in the wireless market, they just weren't going to cut it as the number five carrier. So they abandoned the market, merged with T-Mobil, and that option just disappeared. That's an example of interpreting a non-mutual program in a very hard line way; ultimately hurting both consumers and competition and it's an example of why it's really important where you draw the lines. So I would say that where you draw the lines on prioritization also really matters. It's not paid prioritization isn't happening today. There are prioritized services like VOIP. There are ways that those could be good for users. There are ways they could be bad or users. Nobody's saying that there isn't a potential for anti-competitive behavior here. The question is, "How do you write the rules such that you don't end up discouraging the Metro PCS kind of solutions?" but you do end up with real harms - the FCC's proposed ways to do that under Section 706 for example, by creating a presumption that exclusive deals with affiliates are problematic. That's a reasonable way to perceive. That's the kind of thing they can do short of banning whatever that term means - paid prioritization - across the board. That's a better solution.

To your point about sonic.net and deployment, what I'm talking about here, the real costs for deploying new networks aren't attaching to existing networks. The transit market that connects ISPs to each other is incredibly competitive. Prices have plummeted by a factor of I think something like 8,000 since 1996. Nobody would contest that market has plenty of

competition. What sonic.net needs to deploy in San Francisco is for the city to clear the red tape for them not to allow every block to boycott and protest and block sonic.net from installing a cabinet on the sidewalk. They need a rational licensing systems to that sonic.net doesn't have to get a permit for every single block. They need it to be cheaper to get access to the conduits and the poles that are owned by the city and utilities and ideally, what they really need - what would really make deployment easier would be if cities, when they dug up roads, installed and dig one's conduit that the city would own and then lease out to private broadband providers. That would be a way for cities to help promote deployment and lower costs without getting cities into the messy business of actually running broadband networks. None of those things have anything to do with Title II except that right now the 1996 Act only gives you those pole attachment rights if you're a Title II or a Title VI cable provider and as I said, that's just nuts. That's the sort of thing that congress could fix with the stroke of a pen.

John Quain: Well, just to follow up on hooking up to the backbone issue and the price of internet connectivity coming down in order to do that, it's come down and is low because of regulations that we had these battles in the '80s. So what's sort of being proposed here is whatever from different groups and different sites, some kind of change in the regulations, right? So if there's some change in the regulations, that will no longer be the case potentially. Okay. So it won't be so inexpensive. So the argument goes what people are worried about in some of these groups is, "Well, if you change those rules about connecting it, I can charge what I want." Not very good for completion online and that's sort of - so we don't know what could be happening. I'm just saying that comparing the existing situation, which is

pretty heavily regulated against something we don't know what's going to happen and that's what I guess people are worried about, aren't they?

Berin Szoka: I'm glad you asked that question. That's a very common misperception. So the way that that market works - what we're talking about here is ISPs connecting on the back end and all the stuff that goes on the internet behind the retail connection. That market is a Title I lightly regulated market. That's the legacy of Bill Canard, was making sure precisely that the internet did not get regulated at that level. It's not a heavily regulated market. In fact, the only regulation of that market today occurs under the anti-trust laws, which I think there's never been an anti-trust suit that I'm aware of and importantly, that market does not look like the market of the 1980s which was regulation of how telephone networks interconnected with each other. The back end market of internet interconnection is fundamentally different both technologically and legally. What imposing Title II would do, at a minimum, to get back to Tim's question - at a minimum, reopening Title II would mean subjecting that market for the first time to telephone style regulation, which was disaster. I think this is what you're referring to, John. The FCC did try. Had spent years grappling with essentially how to control prices in the slightly parallel market to what we've been talking about which is the market for telephone companies to connect for calls and that ended up with a decade of litigation about how to do unbundling that I don't think served anybody except for lawyers that benefited from it. Meanwhile, the internet interconnection market was thriving - and just to the point about what legislation could look like, if you're worried about that market, the model for regulating that market smartly beyond what's already being done through anti-trusts laws is what my former think tank proposed when it can either a broad bipartisan group of experts back in 2005 which was to

say, "Sure. Theoretically, there could be concerns in that market and we believe and stipulate the anti-trust law might not work fast enough," so they proposed back in the Digital Age Communications Act model, the DACA, to give the FCC power over that market, but only through the analytical lens of anti-trust. So if you identified that that could be a problem with a certain kind of behavior, the FCC could deal with that problem without having to go through an anti-trust lawsuit. I would support that so that we have a flexible toolkit to deal with problems if they arise but right now, there are no problems in that market. Imposing Title II on that market could create a host of problems if the FCC gets the prices wrong or mucks up that market, that could actually be the single biggest problem for companies like Google and Facebook by causing an undersupply of capacity that's needed to do video streaming in particular. Does that answer your question?

John Quain: Yes and I just wanted a clarification - I wasn't referring to the interconnect to. I was referring to the sort of hardware issues where they're exactly the same as they are today that were post that and the whole concern was we'll have a lot of dark fiber and we'll have this and going through that whole process and those regulations which do affect this directly. [Crosstalk]

Berin Szoka: Are you referring to open access mandates?

John Quain: No. With all the negotiations that went on, once everything was unbundled and companies were negotiating between each other, "Okay. So what should I pay for - to get across country?" but that's fine. I think you've addressed those issues.

Berin Szoka: Okay. Well, let me just briefly say so what you're pointing out is there was an effort to take the telephone approach to internet services, and this is precisely what Bill Canard started to walk away from. It's called unbundling open access mandates. That's the idea that the only way you're going to get completion is to have the government mandate that broadband companies make their networks available for resale and then that gets you into what you're describing, which was all the battles over how to set prices. So that's one model of deployment. That's something that - Europe, many European countries have done. That model gets you a monopoly network. It makes it very difficult for anybody to actually build out a competing facilities based network because you just decided you're going to have competition only for reselling the different flavors of the monopoly service. Bill Canard, his number one legacy wasn't even really that Title II. It was about realizing that that wasn't a good model. That broadband is not a natural monopoly where we're only going to have one network like electricity. He realized that we could have two competing networks and that we'd be better off with them dunking it out and I'm saying that we should defend that model and if anything, we should take his lesson to the next level and make sure that for the third network and for wireless, that government isn't standing in the way of making those networks as good as they could be. If Google Fiber has laid out a number of things that cities and the federal government could be doing to promote deployment precisely so that we don't have those artificial resellers. We don't rely only on them to provide a comparative broadband service. We actual have competing pipes to the home and Title II would make that much more difficult, if not kill that entirely.

Operator: Our next question will come from Julian Hattem with The Hill Newspaper.

Julian Hattem: Hi. Thank you guys for doing this and apologies if this has already been answered. I hopped on a bit late. I'm just trying to get a sense. I'm curious whether you think a lot of this public pressure on the commission is getting to them? Some pretty big names have come out in terms of Title II. You've mentioned [unintelligible], Nancy Pelosi, and some other big folks as well as basically the passion today, the large amount of public comments which have not all been in favor to Title II, but certainly many of them have been critical of the chairman proposal. How much do you think that affects what the commission is to do?

Berin Szoka: So I'll take that in two parts. So first of all, of course there are many people who've come out in favor of Title II, but I don't know of anybody who's come out in favor of Title II that really has both skin in the game and the subject matter expertise to understand what they're talking about. So Google and Facebook have both. They haven't come out in favor of Title II. The people that have - some of them are investors, some of them are entrepreneurs - I think that they're mistaken. They're misinformed about how Title II would actually wok and the clearest example of this is they run around repeating the myth that Title II would allow the FCC to ban paid prioritization or fast lanes, whatever those terms mean, which is just not true and that really should tell you something about how likely it is that that push is really leading us off a cliff. People who are driving the train there really don't understand the details of what they're talking about and those that do are being much more circumspect and are holding their tongues on Title II. As for congress, it's certainly true that we've seen a reversal where in 2010 you had 74 House Democrats opposing Title II and today you have people like Nancy Pelosi coming out in favor of it and I would simply say frankly, this is another example of congress kicking the can down the road. It's very easy for congress to say, "Oh, the FCC

should just do something," because that means that congress doesn't actually have to step up tot eh plate and deal with this issue itself. Congress essentially has no skin in the game. They don't have anything to lose here. They don't have any credibility on the line because nobody holds them to what they claim the law says or doesn't say. What I think they should be doing, what would be a mature response to this is if they're not happy with Section 706, if they have particular idea about how to write net neutrality rules, they should draft legislation. They would work on a compromise. This happened back in 2010. Chairman at the time proposed legislation on The Hill and unfortunately, he was attacked for the whole thing and the people who - many of those were pushing Title II now - demonized him just as they are today demonizing Chairman Wheeler and they really killed the incentive for the current chairman to try to get a legislative solution. Unfortunately, this issue's been so polarized that people on both sides of the hill frankly - republicans included - have reduced this issue to sound bytes. Nobody's really talking about the details anymore. So I would prefer that we actually talk about substance of Title II and think carefully about what it really involves.

As to your larger point about the politics of this issue - it's certainly true that over the last few months the politics has shifted. It certainly seems to be the case that pillars of the Democratic Party are trying to pressure head of independent agency to take a particular course. I wouldn't assume though that the FCC is going to reopen Title II. Tom Wheeler is a smart telecom lawyer. His colleagues are very smart. They understand the problems with Title II. I think they're probably going to be looking for ways to avoid Title II while still making the public outrage - or still being able to respond to that. So this is a descriptive matter I thin much more likely than Title II, you're probably going to see the FCC using its Section

706 authority and then doing other things like this mini-broadband preemption or heavily condition or even blocking the mergers that are facing the agency or using other tools to make the rules sound more aggressive to present a package that plays better but I think really at this point, it's largely about optics and that's unfortunate.

Julian Hattem: Thank you.

Operator: Once again, if you have a question, it is * and 1 on your touchtone phone. I will pause momentarily to allow questions to queue.

Berin Szoka: While we're paused, I'll just encourage all of you to just read through the text on Don't Break the Net carefully. We really tried hard to distill this messaging into a form that people can actually understand and that's a difficult battle because we don't have a simple slogan. We actually have to educate, but I think it would benefit all of your readers to get the details right and to ask some of these questions that frankly, aren't being asked at all about Title II

Operator: At this time there are no further questions in the queue.

Berin Szoka: Okay. Well on that note, I will thank all of you for calling. I'd be happy to speak further with anybody after the call about the details of what we've discussed today. Again, I encourage you to check out Don't Break the Net. We're going to be pushing this over the next few days. We're trying to build awareness of all of these concerns, but I'd also encourage you to look at the highlights of our comments. We've filed the longest set of comments with the FCC on net neutrality and we've responded to a number of these concerns in more detail and Tim for example, his

questions about the slippery slope, all of those are addressed in our FCC comments where we also explain in more detail what I think is the most important takeaway from today, which is that the FCC can't in fact ban paid prioritization under Title II. We lay all this out there. We also develop, to some degree, our own preferred alternatives. Please take a look. Please let me know if you have any questions and otherwise, I look forward to seeing you all in future TechFreedom events or chatting with you at your convenience. So thank you for calling in today.

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