

CHAIRMAN'S OPENING STATEMENT – FCC HEARING

We are here today to examine the FCC's rulemaking process and the agency's commitment to transparency. Three weeks ago, the FCC approved new rules that will dramatically increase regulation of the internet. The problem is Americans only got a chance to read them last week.

Last month, Chairman Wheeler told Members of Congress that releasing the preliminary discussion draft ran contrary to "decades of precedent" at the Commission. In reality, the current process for making changes to internet rules is far less transparent than what occurred with the equally controversial media ownership rule changes in 2007.

In 2007, then-Senator Obama, "strongly requested" the FCC "put out any changes that they intend to vote on in a new notice of proposed rulemaking." Sen. Obama believed doing otherwise would be "irresponsible."

Then-Chairman Kevin Martin responded to these concerns by releasing the draft text of the rule changes and inviting a four-week public comment period.

In making the text public, Chairman Martin explained, "Because of the intensely controversial nature of the . . . proceeding and my desire for an open and transparent process, I wanted to ensure that Members of Congress and the public had the opportunity to review my proposal prior to any Commission action."

That didn't happen in this case so to suggest that there is no precedent for this... that's just not true.

Chairman Martin went even further, and in December 2007, testified before Congress – more than once – about the rule changes. And yet we invited Commissioner Wheeler to come before us and he refused. He didn't have any problem meeting at the White House, but did have a problem coming before Congress.

In today's case Chairman Wheeler did quite the opposite and failed to provide this type of transparency.

Chairman Wheeler did not make the open internet rule public, did not invite public comment, and declined to appear before this Committee. We find that wholly unacceptable.

Further, it appears the FCC is concealing certain communications from the public without legal basis. Organizations that hold our government accountable depend on the FOIA process to gain insight into agency decision-making. The FCC's track record in responding to FOIA requests is weak, at best.

At the outset, the FCC denies more than 40 percent of all FOIA requests. The documents FCC does produce, however, contain a number of redactions, including some that black out entire pages of text.

This Committee has received 1600 pages of *unredacted* email traffic previously provided in a highly *redacted* form through FOIA requests to various organizations including VICE.com. Today we will compare these communications to understand what legal justification Mr. Wheeler's agency used to prevent this information from becoming public.

In addition, we will examine the series of events resulting in the highly controversial vote to use Title II to regulate the Internet like a public utility.

In May 2014, the FCC issued a Notice of Proposed Rulemaking concerning internet regulation that indicated broadband and mobile services would remain classified under Title I. Public statements made by Chairman Wheeler, and communications received by this Committee, demonstrate that this was the Chairman's intent during this time period.

In October 2014 - and after the FCC's public comment period ended - media reports indicate that Chairman Wheeler intended to finalize a hybrid approach that continued to classify broadband and mobile Internet services under Title I.

Just days later, President Obama appeared in a YouTube video calling for a radically different proposal - full Title II reclassification, similar to a utility or telephone company.

Emails provided to the Committee by the FCC suggest that this came as a major surprise to FCC staff, including Mr. Wheeler.

On January 7th Chairman Wheeler announced the FCC would radically alter course and reclassify broadband and mobile services under Title II. I'm sure much will be made about the 4 million comments that were made. But they were not made in the context of fully changing this to Title II.

The FCC adopted the rule change on February 26 in a 3 to 2 vote.

The lack of transparency surrounding the open Internet rulemaking process leaves us with a lot of questions.

This is a fact-finding hearing. This Committee remains committed to ensuring full transparency across the government. I look forward to learning more from Chairman Wheeler today.