

Andrea Kearney

From: Jennifer Tatal
Sent: Wednesday, April 30, 2014 12:49 PM
To: Stephanie Weiner; Jonathan Sallet
Subject: RE: OI-Cost benefit analysis
Attachments: Blackburn Letter to Chairman Wheeler.pdf

Here is a copy of the inquiry from Blackurn.

From: Stephanie Weiner
Sent: Tuesday, April 29, 2014 6:05 PM
To: Jennifer Tatal; Jonathan Sallet
Subject: RE: OI-Cost benefit analysis

Sorry -- I misread your email. Nor did we do one in the 2009 NPRM.

From: Stephanie Weiner
Sent: Tuesday, April 29, 2014 6:03 PM
To: Jennifer Tatal; Jonathan Sallet
Subject: RE: OI-Cost benefit analysis

We have not done a cost/benefit analysis for the NPRM. Would we need typically do this for an NPRM?

The 2010 Order included the following discussion:

A. The Benefits of Protecting the Internet's Openness Exceed the Costs

38. Widespread interference with the Internet's openness would likely slow or even break the virtuous cycle of innovation that the Internet enables, and would likely cause harms that may be irreversible or very costly to undo.¹⁹ For example, edge providers could make investments in reliance upon exclusive preferential arrangements with broadband providers, and network management technologies may not be easy to change.²⁰ If the next revolutionary technology or business is not developed because broadband provider practices chill entry and innovation by edge providers, the missed opportunity may be significant,²¹ and lost innovation, investment, and competition may be impossible to restore after the fact.¹⁹ Moreover, because of the Internet's role as a general purpose technology, erosion of Internet openness threatens to harm innovation, investment in the core and at the edge of the network, and competition in many sectors, with a disproportionate effect on small, entering, and non-commercial edge providers that drive much of the innovation on the Internet.²¹ Although harmful practices are not certain to become widespread, there are powerful reasons for immediate concern, as broadband providers have interfered with the open Internet in the past and have incentives and an increasing ability to do so in the future. Effective open Internet rules can prevent or reduce the risk of these harms, while helping to assure Americans unfettered access to diverse sources of news, information, and entertainment, as well as an array of technologies and devices that enhance health, education, and the environment.

39. By comparison to the benefits of these prophylactic measures, the costs associated with the open Internet rules adopted here are likely small.²¹ Broadband providers generally endorse openness norms—including the transparency and no blocking principles—as beneficial and in line with current and planned business practices (though they do not uniformly support rules making them enforceable).²² Even to the extent rules require some additional disclosure of broadband providers' practices, the costs of compliance should be modest.²³ In addition, the high-level rules we adopt carefully balance preserving the open Internet against avoiding unduly burdensome regulation. Our rules against blocking and unreasonable discrimination are subject to reasonable network management, and our rules do not prevent broadband providers from offering specialized services such as facilities-based VoIP.²⁴ In short, rules that reinforce the openness

1

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that has supported the growth of the Internet, and do not substantially change this highly successful status quo, should not entail significant compliance costs.

40. Some commenters contend that open Internet rules are likely to reduce investment in broadband deployment.¹¹² We disagree. There is no evidence that prior open Internet obligations have discouraged investment,¹¹¹ and numerous commenters explain that, by preserving the virtuous circle of innovation, open Internet rules will increase incentives to invest in broadband infrastructure.¹¹⁷ Moreover, if permitted to deny access, or charge edge providers for prioritized access to end users, broadband providers may have incentives to allow congestion rather than invest in expanding network capacity.¹¹³ And as described in Part III, below, our rules allow broadband providers sufficient flexibility to address legitimate congestion concerns and other network management considerations. Nor is there any persuasive reason to believe that in the absence of open Internet rules broadband providers would lower charges to broadband end users,¹¹⁴ or otherwise change their practices in ways that benefit innovation, investment, competition, or end users.¹¹⁵

41. The magnitude and character of the risks we identify make it appropriate to adopt prophylactic rules now to preserve the openness of the Internet, rather than waiting for substantial, pervasive, and potentially irreversible harms to occur before taking any action.¹¹⁶ The Supreme Court has recognized that even if the Commission cannot “predict with certainty” the future course of a regulated market, it may “plan in advance of foreseeable events, instead of waiting to react to them.”¹¹⁷ Moreover, as the Commission found in another context, “[e]xclusive reliance on a series of individual complaints,” without underlying rules, “would prevent the Commission from obtaining a clear picture of the evolving structure of the entire market, and addressing competitive concerns as they arise. . . . Therefore, if the Commission exclusively relied on individual complaints, it would only become aware of specific . . . problems if and when the individual complainant’s interests coincided with those of the interest of the overall ‘public.’”¹¹⁸

42. Finally, we note that there is currently significant uncertainty regarding the future enforcement of open Internet principles and what constitutes appropriate network management, particularly in the wake of the court of appeals’ vacatur of the *Comcast Network Management Practices Order*. A number of commenters, including leading broadband providers, recognize the benefits of greater predictability regarding open Internet protections.¹¹⁹ Broadband providers benefit from increased certainty that they can reasonably manage their networks and innovate with respect to network technologies and business models.¹²⁰ For those who communicate and innovate on the Internet,¹²¹ and for investors in edge technologies,¹²² there is great value in having confidence that the Internet will remain open, and that there will be a forum available to bring complaints about violations of open Internet standards.¹²³ End users also stand to benefit from assurances that services on which they depend “won’t suddenly be pulled out from under them, held ransom to extra payments either from the sites or from them.”¹²⁴ Providing clear yet flexible rules of the road that enable the Internet to continue to flourish is the central goal of the action we take today.¹²⁵

From: Jennifer Tatal
Sent: Tuesday, April 29, 2014 5:49 PM
To: Jonathan Sallet
Cc: Stephanie Weiner
Subject: Re: OI-Cost benefit analysis

I don't know but I doubt it. The Executive Orders on the subject hadn't issued and we weren't focused on the issue at that time.

From: Jonathan Sallet
Sent: Tuesday, April 29, 2014 05:06 PM
To: Jennifer Tatal
Cc: Stephanie Weiner
Subject: Fw: OI-Cost benefit analysis

Was there cost/benefit done in the 2009 NPRM?

(b) (5)

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Sent: Tuesday, April 29, 2014 05:06 PM
To: Jennifer Tatal
Cc: Stephanie Weiner
Subject: Fw: OI-Cost benefit analysis

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From: Tim Brennan
Sent: Tuesday, April 29, 2014 05:02 PM
To: Chuck Needy; Jennifer Tatal
Cc: Stephanie Weiner; Jonathan Sallet
Subject: RE: OI-Cost benefit analysis

The short answer, and perhaps the long answer, is no. The closest thing is that information is being sought on the costs of conforming to minimum quality standards or the costs of providing higher quality service. I don't think there's anything that quantifies benefits in terms of enhanced competition, consumer welfare, innovation, etc. The relevant legal test (if I can practice law without a license) is whether a policy advances telecommunications deployment. Stephanie Weiner, who shepherded the draft through the process, may remember something I don't.

For what it may be worth, my impression is that policies designed to make markets more competitive rarely are subjected to cost-benefit tests, whether it's here, at the Antitrust Division, or the FTC.

I also copied Jon Sallet on this in case he hasn't seen Rep. Blackburn's request. If it isn't obvious, don't send this as a response to the Representative.

Tim

From: Chuck Needy
Sent: Tuesday, April 29, 2014 4:30 PM
To: Jennifer Tatal
Cc: Tim Brennan
Subject: RE: OI-Cost benefit analysis

No, I will ask Tim if he knows of any FCC economist doing CBA on that item -- Chuck

From: Jennifer Tatal
Sent: Tuesday, April 29, 2014 4:28 PM
To: Chuck Needy
Subject: Fw: OI-Cost benefit analysis

Chuck, please see below. Did you do any CBA work with respect to the Open Internet NPRM currently on circulation?

Thanks,
Jennifer

From: David Toomey
Sent: Tuesday, April 29, 2014 04:16 PM
To: Jennifer Tatal
Subject: OI-Cost benefit analysis

Jennifer,

As I think you know, Rep. Blackburn wrote to us on Open Internet. Among other things, she wants a cost/benefit analysis. I was told I should ask you about this. Can you please give me a buzz when you're free? Thanks.

Dave

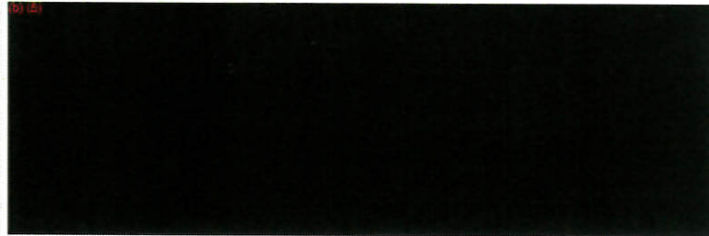
David Toomey

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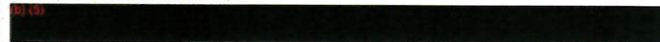
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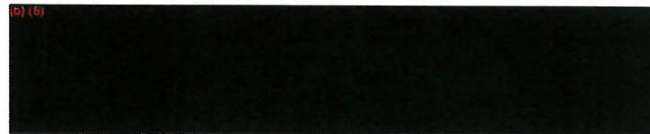
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(b) (5)



David Toomey

3

Amy Bender

From: Mike O'Rielly
Sent: Tuesday, May 13, 2014 2:29 PM
To: Courtney Reinhard; Amy Bender
Subject: RE: fyi

Blackburn letter.

http://blackburn.house.gov/uploadedfiles/blackburn_letter_to_chairman_wheeler.pdf

From: Courtney Reinhard
Sent: Tuesday, May 13, 2014 2:14 PM
To: Mike O'Rielly; Amy Bender
Subject: RE: fyi

They are on notice now.

From: Mike O'Rielly
Sent: Tuesday, May 13, 2014 2:13 PM
To: Courtney Reinhard; Amy Bender
Subject: fyi

Marsha Blackburn [REDACTED]

[REDACTED] Will [REDACTED] conduct a cost benefit analysis for #FCCNetNeutrality?
<http://blackburn.house.gov/news/documentsingle.aspx?DocumentID=377412...>

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Amy Bender

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