

Andrea Kearney

From: Sara Morris
Sent: Tuesday, May 13, 2014 3:37 PM
To: Philip Verveer
Cc: Stephanie Weiner, Ruth Milkman
Subject: Fw: Severability clauses & fallback provisions
Attachments: Elliott & Tyler (2013) - Administrative Severability Clauses.pdf; EPA - 77 FR 555 (2012).pdf

Importance: High

Sara W. Morris
Director
Office of Legislative Affairs
Federal Communications Commission

sara.morris

From: Sara Morris
Sent: Thursday, May 08, 2014 07:40 PM
To: Ruth Milkman; Jonathan Sallet; Philip Verveer; Stephanie Weiner; Daniel Alvarez
Cc: Gigi Sohn
Subject: FW: Severability clauses & fallback provisions

Passing this along for this group's information. This follows up a discussion Gigi and I had w/ Shawn Chang, who raised the notion of our crafting the OI rules with a "fallback" approach, wherein Section 706 is the first line of defense, followed by an almost automatic triggering of Title II should those rules get struck down. I've not had the follow-on discussion with Shawn yet (may raise core legal issues such as due process; politically, we get all the political heat for Title II and none of its immediate benefit) but for now want to let you see what they're thinking. As you see, it's possible Rep. Waxman may raise this directly with TW, and he may need to be prepared for that conversation prior to the May 20th hearing.

Sara

From: Chang, Shawn
Sent: Thursday, May 08, 2014 4:26 PM
To: Sara Morris; Gigi Sohn
Subject: FW: Severability clauses & fallback provisions
Importance: High

Please hold this very close. But we think there is a good case for the FCC here to create a framework whereby the Commission would prohibit paid-prioritization under the Section 706 "commercially reasonable" standard, but fallback to a Title II approach automatically if Title I rules are struck down. As I described to Sara, Henry can send a somewhat personal letter to Chairman Wheeler prior to the hearing on the 20th restating his support of the Chairman's proposal.

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HOGR-OI-001411

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(b) (5)
[Redacted content]

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Andrea Kearney

From: Daniel Alvarez
Sent: Wednesday, May 14, 2014 2:00 PM
To: Sara Morris; Jonathan Sallet; Stephanie Weiner; Gigi Sohn; Ruth Milkman; David Toomey
Subject: RE: Severability clauses & fallback provisions

Any update on this? Did the call happen? I'm getting questions about whether the item is going to be changed any more

Thanks

From: Sara Morris
Sent: Tuesday, May 13, 2014 8:39 PM
To: Jonathan Sallet; Stephanie Weiner; Daniel Alvarez; Gigi Sohn; Ruth Milkman; David Toomey
Subject: RE: Severability clauses & fallback provisions

I've set up the call with Shawn Chang for tomorrow morning at 9:45 with Jon and Stephanie. Phil Barnett (Waxman CoS) may participate, although he'll be out of the office to attend a funeral.

Shawn told me that Waxman will definitely be sending a letter to the Chairman on this first thing tomorrow morning (text below). While it does not say anything about including their proposal in the NPRM, that is what they want, and they'll press us on this point tomorrow. I've indicated the concern about the item being locked down, delicacy of 8th floor situation, but that was not persuasive. They feel they have really gone to bat for TW on this and don't see how including this in the Notice would do harm given expanded discussion of Title II generally. Shawn also understands the "getting the worst of both worlds" point Phil made, but doesn't believe it should preclude inclusion of a paragraph citing their letter (and the similar Wu proposal). While he is on a mission to do this, plain and simple, I think they can be persuaded but I think it will have to be based on this harming chances of TW getting MC or JR votes.

Fuller discussion of this proposal is at the bottom of this email.

Sara

CLOSE HOLD

May XX, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

We spoke last month about the importance of network neutrality and my support for strong, enforceable rules of the road to protect the free and open Internet. I appreciate your commitment to reinstate open Internet rules based on a solid legal framework that preserves innovation, competition, and consumer choice online. And I support your decision to ask the Commissioners of the Federal Communications Commission to vote on these proposed rules on May 15, 2014.

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HOCR-OI-001475

Andrea Kearney

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To: Sara Morris; Jonathan Sallet; Stephanie Weiner; Gigi Sohn; Ruth Milkman; David Toomey
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