



Computer & Communications Industry Association

35th Annual Washington Caucus Congressional Recap:

Policies & Positions of Members and Administration Officials

Guest Speakers

Sen. Ron Wyden

Budget and Finance Committees

Rep. Anna Eshoo

Energy & Commerce Committee
Telecommunications & the Internet
Subcommittee

Permanent Select Committee on Intelligence

Rep. Chris Cannon

Judiciary Committee
Commercial & Administrative Law
Subcommittee, Ranking Member
Courts, the Internet, & Intellectual Property
Subcommittee

Rep. Debbie Wasserman Schultz

Chief Deputy Majority Whip
Appropriations Committee
Financial Services Subcommittee
Judiciary Committee

Sen. Sheldon Whitehouse

Budget and Judiciary Committees
Select Committee on Intelligence

Sen. Byron Dorgan

Appropriations Committee
Commerce, Science & Transportation
Committee
Interstate Commerce, Trade & Tourism
Subcommittee, Chair

At the Washington Caucus May 6, tech executives had the chance to engage in a dialogue and to get an update on tech measures, including several which have been stalled in Congress this session. Sixteen officials and members of Congress shared their insights on issues from patent reform to trade, FISA legislation, net neutrality, and broadband deployment, among others. While this report focuses on what CCIA members and guests heard from our distinguished presenters, the format offered frequent opportunities for CCIA's views to be presented, and for comments, questions, and feedback from all those attending.

Several lawmakers expressed frustration that some of their colleagues still don't understand what's at stake in the debate over preserving principles that have been part of the Internet's success – net neutrality and fair use. They said the economic interests of some shouldn't be put above operating principles that allowed innovators to found companies that could compete from the start against those with similar business models.

Many also mentioned the need for a national broadband policy to spur both competition and deployment, which they linked to innovation. **FCC Commissioner Jonathan Adelstein** said broadband plays a role in all the big issues the nation is facing – the economy, global competitiveness, energy and the environment.

Sen. Tom Coburn

Homeland Security & Government Affairs
and Judiciary Committees

Sen. Arlen Specter

Appropriations Committee
Judiciary Committee, Ranking Member

Rep. Wally Herger

Ways & Means Committee
Trade Subcommittee, Ranking Member

Rep. Mike Doyle

Energy & Commerce Committee
Telecommunications & the Internet
Subcommittee

Commissioner Jonathan Adelstein

Federal Communications Commission

Sen. John Cornyn

Budget Committee
Judiciary Committee
Immigration, Refugees & Border Security
Subcommittee, Ranking Member
Terrorism, Technology & Homeland
Security Subcommittee

Rep. Zoe Lofgren

Judiciary Committee
Immigration, Citizenship, Refugees,
Border Security and International Law
Subcommittee, Chair
Courts, the Internet, & Intellectual Property
Subcommittee
Homeland Security Committee

Rep. Earl Blumenauer

Budget Committee
Ways & Means Committee
Trade Subcommittee

Chairman Bill Kovacic

Federal Trade Commission

Another issue raised by both Democratic and Republican lawmakers was the lack of antitrust oversight in recent years. **Sen. Byron Dorgan**, D-N.D., said he sees little evidence the scores of antitrust lawyers at the Department of Justice are working.

There were also bipartisan admissions that trade issues have become too politicized and that Congress needed to pass the Colombia trade agreement. **Sen. John Cornyn**, R-Texas, said he hopes Congress can ultimately have a trade policy debate without the need to score political points.

Sen. Arlen Specter, R-Penn., who gave the lunch keynote despite undergoing chemotherapy, walked through the U-shaped table where executives asked questions and engaged in the discussion. Specter outlined the obstacles remaining on the patent reform bill. He also vowed to continue his fight against retroactive immunity for telecom companies in the FISA legislation, saying the lawsuits were needed to provide judicial oversight over the actions of the companies and the administration.

In the afternoon, buses took executives to the Folger Shakespeare Library where two members of Congress as well as an incoming member spoke. The new **FTC Chairman William Kovacic** gave an energetic breakfast speech Wednesday morning on his goals during his tenure.

Lawmakers thanked CCIA and its members for their voice on issues like trade and patent reform and for standing up for consumers on telecom issues, saying it helped sway colleagues to do the right thing. But one also said more must be done to counter the views of opponents, whose lobbying operations have been around longer and spend more. "It's like baseball, when only one team shows up, the other forfeits," **Rep. Mike Doyle**, D-Penn. said.

Sen. Wyden

Sen. Ron Wyden, D-Ore., opened the Caucus saying the debate on net neutrality is at a fork in the road with the future of the Internet at stake. He warned the consequences of unraveling the current principles of giving content equal treatment are huge and would be felt by every Internet user, family business and entrepreneur.

Wyden said the Internet has developed because individuals can access content without interference from Internet service providers. It worked and it made sense then, and it makes sense now, he said, adding that censorship or interference from service providers was not envisioned.

He lamented that Internet service providers had consolidated into gatekeepers and announced plans to levy tolls, offering special deals for faster service to some preferred customers.

Wyden said he has historically fought to protect the open and neutral nature of the Internet by extending the Internet tax moratorium for a reason and that preserving freedom on the Internet now is a matter of being consistent.

He warned Internet service providers that the “sword cuts both ways” – that they may think they can charge new fees. But he warned they do so at the risk of losing immunity protections under Section 230 of the Communications Act and the Internet Tax Freedom Act, which give the ISPs some protection from liability on the content flowing through their lines. Wyden said if ISPs do create separate toll lanes based on content that “they will be undermining the philosophic underpinnings we’ve been fighting for for 15 years.”

Wyden vowed to fight with “every ounce of his strength” to ensure the Internet continues to be content neutral and various bits and bytes are given equal treatment as they always have had.

Rep. Eshoo

Rep. Anna Eshoo, D-Calif., thanked CCIA for weighing in on issues like net neutrality and telecom immunity within the FISA bill, including the “eloquent” letter to members from Ed Black, which she said changed the debate on the Hill. “No one understands better than this organization why the Internet is what it is today,” Eshoo said.

She advocated changing broadband policy to bring more competition, including the WIN Act, which would open up spectrum for public access. She said improving broadband deployment should be the number one priority and that would help with the net neutrality concerns. She said the United States cannot be a competitive nation unless it is an innovative nation. Promoting innovation means 21st Century patent protocols, more H-1B visas and green cards for highly skilled workers, and more funding for basic science research.

Eshoo commended the effectiveness of the Internet service providers’ public relations campaign against net neutrality as that has confused people about the real issues. But she warned, “the Capitol would fall down around members’ ears if the opposition were successful.”

Eshoo suggested bringing the House Commerce and Judiciary Committees together for a workshop on competition policy, as she said all the issues the tech industry faces are connected under broader innovation and competition issues. She said it is easy to miss the big picture in dealing with the separate issues.

Eshoo said she would not support plans being discussed to have the IRS get involved as both the tax collector and tax preparer – essentially just sending some taxpayers a bill.

Rep. Cannon

Rep. Chris Cannon, R-Utah, said his generation fundamentally believes that information should be free, and that government is going to need to do better keeping up with technology.

He said that while the federal code of regulations is on paper, it isn't searchable online.

Cannon suggested following the example of the Obama presidential campaign and using searchable databases for government information. He likened it to the power of Wikipedia. Cannon said that with that kind of transparency in government, it would be easy to find what does and doesn't work. We can transform the way we govern ourselves.

Cannon noted that innovation is unpredictable and joked that if government knew what was coming, it may very well suppress it. He said the world is waiting for the United States to lead on IP issues, but said most members of Congress don't understand IP. He said the exceptions were Sen. Wyden, and Reps. Zoe Lofgren, D-Calif., Eshoo, and Rick Boucher D-Va.

Cannon criticized large companies for warehousing spectrum, and playing games with technology to protect business models. He predicted more attention next year to antitrust issues and more oversight on competition issues.

Rep. Wasserman Schultz

Rep. Debbie Wasserman Schultz, D-Fla., who chairs the Women's High Tech Coalition, said she supports Speaker Nancy Pelosi's innovation agenda and that the current patent reform legislation would be a significant advance for innovation industries.

Wasserman Schultz said she supports keeping networks open and cracking down on child exploitation and noted they are not mutually exclusive. She said net neutrality makes sense, but it should never shield unlawful activity. She said ISPs should be encouraged to be socially responsible.

She is working closely with Rep. Adam Schiff, D-Calif., on the cybersecurity bill H.R. 2290. She also expressed frustration that law enforcement says cracking down on child exploitation fueled by the Internet is a priority, but they don't allocate resources to it. She said there are 500,000 traffickers of child porn, only 2% of which are investigated, but there are 242 investigators for that compared to 2,000 plus for white collar crimes.

Her legislation HR 3845 to direct more resources for DOJ investigations of child porn is matched by Sen. Joseph Biden, D-Del., and supported by Yahoo, Microsoft and AOL. Google put in a supportive statement on the Senate side. Wasserman Schultz is also asking to create a Special Counsel in DOJ to elevate the issue.

Sen. Whitehouse

Sen. Sheldon Whitehouse, D-R.I., talked about his health IT initiatives and said they would be needed to deal with his colleagues have described as a “tsunami of health care costs.” He said 16 percent of GDP is spent on health care costs, but that moving to electronic records could help save \$346 billion a year.

Whitehouse acknowledged privacy issues were a major stumbling block, and that network operators refuse to guard privacy. He said other problems are that doctors are not experts on IT and are afraid of making the wrong choice – like buying a Betamax just before everyone switches to VHS as the standard. Also doctors don’t have the time to mess with the office workflow during the switchover. He asked CCIA members for help with building momentum for health IT.

Whitehouse agreed open standards should be used when building out health IT infrastructure.

On patent reform, he referred to the current impasse as a hiccup and said patent reform was long overdue. He expects to renew the campaign for patent legislation next year.

Whitehouse was more optimistic about the Senate working out its differences on FISA legislation. He said there is already a very clear structure to deal with domestic spying issues.

When asked about copyright issues, Whitehouse said the United States lagged behind others on enforcement.

Sen. Dorgan

Sen. Byron Dorgan, D-N.D. expressed his appreciation and amazement at the latest technology and research, talking about monkeys, teraflops and petaflops. By contrast to this latest technology, he lamented the snails pace of Internet access in the United States versus Asia where customers can get ten times the bandwidth for one-third the cost.

Dorgan called for an aggressive national broadband policy with specific goals and build out plans, including public/private partnerships. He said we need an FCC that promotes competition rather than consolidation and mergers of media and network operators. He predicted substantial changes at the FCC next year, regardless of who is elected President.

Dorgan also advocated more antitrust enforcement at the Department of Justice and Federal Trade Commission. He said there are scores of antitrust lawyers at DOJ, but he sees “no evidence they are working.” “I have threatened to put their pictures on milk cartons,” Dorgan said.

From there, he talked about Internet freedom/net neutrality and how the Internet grew up under rules of non-discrimination. But he said all that could change now that the FCC has defined the Internet an information service, which stripped away previous anti-discrimination rules on applications and content.

Dorgan said it is critical to re-impose those rules. He said the public needs a completely open Internet. Dorgan added he doesn't want an ISP to tell him he can't access something. He also noted 11 years ago Google would not have been able to pay AT&T what they want.

Dorgan said he wants to preserve Internet freedom for the next Larry and Sergey, referring to the founders of Google, so that they will be on a level playing field to compete with existing businesses. "The public interest needs to be served here and this issue is not going to go away," Dorgan said.

Dorgan also said the government needs to drive the broadband deployment process by defining the goals. He said it is urgent the country mobilize on this goal and he hopes "we can wake up the FCC."

Sen. Coburn

Sen. Tom Coburn, R-Okla., opened by describing the impact of the federal deficit and the problem businesses will face if Congress continues thinking in the short term.

He said the best allocation of resources comes from free markets. But he said when it comes to health care, a transparent vibrant market is lacking.

Coburn said the government should spend more money on the census. He said it is unfortunate the next census can't be done partially online. It will be the same way we did the 1810 census and he worries the Bureau won't be able to get an accurate count. "Bureaucracies never do what is right when they can do what's safe," Coburn said.

On patent reform, Coburn said patent fees should go to patents – not diverted for other things. He said that the current wait to get a patent is too long and this could help. Coburn said government is incompetent if it can't protect intellectual property. He believes the patent bill is not dead yet. "We need to get balance, and I'm not sure it's there," he said. Coburn expressed concern over doing harm the way it's written now.

While Coburn said he believes in less government policy and more markets, he said also believes in strong antitrust provisions.

Sen. Specter

Sen. Arlen Specter, R-Penn., said patent law reform was of gigantic importance, noting that one-fifth of the nation's productivity is tied up in patents. He said that the Judiciary Committee has

made “significant progress on damages, but we’re still not there.”

On FISA, Specter offered a solution to substitute the federal government for telecom companies in the pending lawsuits, as he believes that going forward the telecoms should be protected for doing their patriotic duty. But he said “it’s a little hard to grant retroactive immunity when we don’t know what they (telecom companies) have done.” He said it was important that courts be kept open as a check on executive power. Specter also took aim at fellow Republicans who have run ads claiming Democrats were opposing immunity to support court cases for their trial lawyer cronies.

“When people say it’s a boon for trial lawyers, it really isn’t true,” Specter said. “There are people willing to take on these civil liberty issues – pro bono.”

The ranking member of the Senate Judiciary committee also said antitrust policy should be given attention. He said this administration has given a large range to mergers and acquisitions and there has been very little antitrust enforcement. He is sponsoring a bill with Sen. Herbert Kohl, D-Wis., to bring OPEC under the antitrust law and also looking at the NFL.

Asked whether the IRS should simplify the tax system by collecting taxes and preparing them too, Specter said he would not like to see the IRS expand into tax preparation. He said the quality of their current work does not lead him to want to expand their role.

Rep. Herger

Rep. Wally Herger, R-Calif., said in these economic times job creation depends on competitiveness. He said America’s research and development advantage is absolutely critical to competitiveness, and that his state is the largest user of the R&D tax credit which should be renewed. Herger said raising the number of visas for highly skilled workers is necessary to keep high tech employers from moving operations overseas.

Herger noted the United States now has the 2nd highest corporate tax rate. He said we need to be on an equal tax footing with other countries in order to compete. Ireland’s tax rate is 12.5 percent to our 35 percent, he said. We need to take a hard look at our corporate tax structure and make it more attractive to foreign investment.

He also spoke of the need for full access to overseas markets and said recent talk by some lawmakers and candidates about taking a timeout on new trade agreements concerns him. Herger said FTAs are being made the scapegoat for every job loss and the problem is trade doesn’t stand still just because Congress is in gridlock.

Herger said Colombia and Korea should be no-brainers and asked what example does it set for other countries if those agreements are not approved. In response to a question from CCIA President & CEO Ed Black about how trade became so politicized, Herger said he couldn’t agree more that trade shouldn’t be used as a campaign issue. He acknowledged even Republicans are

running against trade, and said more needs to be done to combat misinformation on trade.

Rep. Doyle

Competition policy was also on the mind of Rep. Mike Doyle, D-Penn. Doyle said the areas where the United States has fallen behind like broadband, are areas where the policies failed to promote real competition. He said the nation has failed to promote real competition in telecom and broadband.

Doyle said net neutrality and fair use is what makes the Internet work. He said good ideas can come from anywhere and user generated content is growing. Fair use supports 11 million jobs, according to Doyle.

Doyle suggested the need to explain how every Congressional district has people who make their living online. He supports Markey's H.R. 5353, which provides "rules of the road" including basic principles of non-discrimination. "Just because a company owns a wire doesn't mean they should get control over what a consumer or business does," Doyle said.

He said part of the problem is opponents' lobbyists have had the money to get what they want and said groups like CCIA need to be more vocal and those who depend on a free Internet need to get involved too.

"Most new companies want to stay as far away from Washington as possible and I can't blame them. But other voices have been around awhile. It's like baseball, when only one team shows up, the other forfeits," Doyle said.

Commissioner Adelstein

FCC Commissioner Jonathan Adelstein said there is huge domination by those who have power and thanked CCIA for standing up for consumers.

Adelstein said competition is what drives innovation, and innovation drives the economy. He said all the big issues involve broadband – the economy, global competitiveness, energy and the environment – and more needs to be done to promote competition in broadband. He predicted the FCC will have a proposed order on the M2Z plan by August, and lamented the lost "golden opportunity" of the 700MHz auction to create a third pipeline connection to the Internet.

Adelstein said it is critical to preserve and promote the open and interconnected nature of the Internet. "The auction did make progress on open rules," he said. "We need to make sure that openness remains at the top of our agenda."

This is the great infrastructure challenge of our day and we need a national broadband policy, Adelstein said. He said keeping up with global competitors is important. He said better data to know where there really is and isn't broadband competition will be useful.

“We need to do more to get spectrum in the hands of innovators,” Adelstein said. He likes secondary uses of licensed spectrum, as well as unlicensed use of white spaces. He also pointed out there is a lot of unused spectrum out there. He said the FCC should look at existing license holders who aren’t building out. “If they don’t build out in a year, then someone else can,” Adelstein said.

Sen. Cornyn

Sen. John Cornyn (R-Texas) opened saying he believes in trade and believes the Colombia trade agreement can still come up for a vote this year. “Free trade is the hallmark of a confident nation,” Cornyn said.

On the politicization of trade, Cornyn added that it would be nice to discuss policy and not politics – “but that is not the world we live in.” He said the current atmosphere is “a hyper-political environment” and he hopes that is temporary. “I hope we can have a policy debate without the need to score points,” Cornyn said.

Cornyn said the federal government has an obligation to protect intellectual property and lawmakers are giving them additional tools on anti-piracy and anti-counterfeiting with the IP Enforcement Act of 2007 sponsored by Sen. Leahy.

Cornyn also said that an IP czar at DOJ holds little appeal for him. Cornyn said a new title isn’t needed. “We need to get the job done,” Cornyn said. He said the United States also needs to make sure that our trading partners respect U.S. IP rights.

On cybersecurity, Cornyn said most agencies don’t score well on FISMA, and Congress needed to make sure the government protects valuable personal information.

Cornyn also spoke of the need for more highly skilled workers, calling the H-1B situation “a self-inflicted wound.” He said the visas are not about taking American jobs and hiring foreign workers at a reduced salary. He noted the H-1B fees pay for training and scholarships for Americans. Cornyn said his Global Competitiveness Act (S. 2839) provides temporary relief with more visas for highly skilled workers. He acknowledged comprehensive immigration reform remains a challenge.

He ended speaking about the patent reform legislation which he championed that is stalled in the Senate.

Folger Shakespeare Library Reception

Rep. Zoe Lofgren, D-Calif., said she hasn’t given up on patent reform. She said adjustments will be needed on damages to reach an agreement that can reach the floor for a vote. Lofgren expressed skepticism that telecom immunity should be added to the FISA legislation, saying there already is existing immunity under FISA for telecom companies. She explained passing immigration reform measures are a challenge with just 12 Republicans willing to support the

concept. *Rep. Earl Blumenauer*, D-Ore., said people were more interested in scoring political points than passing the Colombia trade agreement and he has concerns about GOFA, which he described as overly broad.

Donna Edwards, who recently won the Democratic primary for Maryland's fourth Congressional district, is expected to join Congress after a special election for Rep. Albert Wynn's seat. Edwards lives in Ft. Washington, Md., and said she is still using dial up to get on the Internet because there is no broadband in her neighborhood – despite what the FCC thinks. She is an example of a person who FCC data shows has broadband because someone in her zip code has access to that service. She raised net neutrality as a main campaign platform issue and said she had no trouble translating the term to peoples' lives when she put it in terms of access to the Internet.

Special Encore Breakfast

FTC Chairman Kovacic

FTC Chairman William Kovacic outlined his goals and priorities during what he acknowledged may be a short time as chairman. The FTC will celebrate its 100th birthday in 2014. He would like to mark that anniversary with what he described as an “FTC at 100” report. He said that this report should examine what characteristics make an effective agency effective and how to bring the FTC closer to that ideal.

He said currently the FTC is evaluated mostly on enforcement and specifically on the number of cases it brings. While he said enforcement is important, he added, “a really good report can move policy in a direction every bit as important as doing a good case.”

One that has received attention was the patent study, “To Promote Innovation.” Kovacic said it has been five years since that FTC report, and it would be useful to have a process that looks at what the fruits of that product have been. He said the nation also could use an assessment of what we need to be doing now.

Kovacic said policy fragmentation is a problem and there are many voices – DOJ, FTC, FCC, and FERC. He said cross-agency cooperation is imperfect and the changing statutory framework makes it difficult. He suggested a forum to come together and discuss issues of common concern.

He said the zone of operations for private rights of action is shrinking because the Supreme Court has a fundamental distrust of private litigants and juries of lay people making decisions on complicated areas of antitrust law. Therefore, he said, the role of public agencies is becoming more important.

Kovacic said the FTC's interest in high-tech is particularly intense and that the Commission is allocating a large amount of resources to the intersection of IP and competition. But he said the pace of technology puts a great strain on institutions.

On intellectual property issues, Kovacic asked at what point protection becomes too much. He said it is important to weigh what makes the most contribution – competition or property right protection – and decide on the right mix. “It’s an issue you can’t come back to often enough,” Kovacic said.

He said the IP system has often created a right that should not be protected, leading to the use of competition laws to push back against IP regulation. He cited a European example. He said IP laws and antitrust laws often serve as checks and balances to one another.

Kovacic also described how antitrust defendants have pointed to changed market circumstances to argue against the Commission’s remedies. He offered the seminal antitrust case of Standard Oil as an example, pointing out how the defendant’s main argument against being broken up was that the Commission was looking at the oil market from the past and not at the current market conditions.

He said North America graduate institutions have an unparalleled competence in the economics and law of competition policy and that he would like to work more closely with universities so they know what issues interest the FTC and the FTC knows what issues are being examined by academics. Kovacic also suggested an annual conference with economists on IP issues.