



37th Annual Washington Caucus Congressional Recap:

Policies & Positions of Key Government Officials

Ed Black

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Rep. Rick Boucher (D - VA)

Energy & Commerce Committee
Communications, Technology and
the Internet Subcommittee, Chair
Judiciary Committee
Courts and Competition Policy Subcommittee

Sen. Byron Dorgan (D - ND)

Commerce Committee
Communications, Technology and
the Internet Subcommittee
Competitiveness, Innovation, and Export
Promotion Subcommittee
Appropriations Committee

Rep. Anna Eshoo (D - CA)

Energy & Commerce Committee
Communications, Technology &
the Internet Subcommittee
Permanent Select Committee on Intelligence

Assistant Secretary Gregory Schaffer

Tech executives met in Washington May 13, 2010, for a candid update from a dozen members of Congress and administration officials on pending trade agreements, privacy, net neutrality, patent legislation and other issues that impact innovation and competition at the Computer & Communications Industry Association's 37th Annual Washington Caucus. 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 spoke of the need to preserve principles that have been part of the Internet's success – open Internet principles and fair use. They also voiced support of light touch rules from the FCC to preserve neutral access to the Internet.

Many also addressed the need for better innovation policy and the threats to innovation, including poor competition and patent policy.

Another issue raised by lawmakers was privacy concerns and the need to develop policy that ensures Internet user confidence. Those speaking on the issue said they favor opt-out policies for most information and opt-in for sensitive personal information, like medical information.

The Anti-Counterfeiting Trade Agreement (ACTA) was also addressed, particularly concerns that ACTA would export parts of U.S. copyright law without the necessary protections like fair use. Ambassador Sapiro said that the United States Trade Representative (USTR) does want to preserve the balanced copyright policies in the U.S. within ACTA, and referenced a meeting in which CCIA expressed concerns that the current language does not do that.

Sapiro, who gave the luncheon keynote, said she would be

Cybersecurity & Communications
Department of Homeland Security

Blair Levin

Former Director of the Broadband Task Force
Federal Communications Commission

Ambassador Miriam Sapiro

Deputy U.S. Trade Representative

Rep. Mike Honda (D - CA)

House Democratic Senior Whip
Appropriations Committee

Sen. Amy Klobuchar (D - MN)

Judiciary Committee
Antitrust, Competition Policy and
Consumer Rights Subcommittee
Commerce Committee
Competitiveness, Innovation and Export
Promotion Subcommittee, Chair
Communications, Technology and
the Internet Subcommittee

Commissioner J. Thomas Rosch

Federal Trade Commission

Under Secretary Robert Hormats

Economic, Energy & Agricultural Affairs
Department of State

Senator Mark Begich (D - AK)

Commerce Committee
Communications, Technology and
the Internet Subcommittee
Competitiveness, Innovation, and Export
Promotion Subcommittee
Budget Committee

Jessica Rich

Deputy Director
Bureau of Consumer Protection
Federal Trade Commission

interested in hearing more about the scope of how companies, including those using the Internet for advertising, have been harmed by Internet censorship in China and other nations. She also called China's indigenous innovation policy "troubling."

Lawmakers thanked CCIA and its members for their voice on issues including Internet freedom, trade, patent reform and competition policy.

*Morning keynote: REP. RICK BOUCHER, D-VA
CHAIRMAN, HOUSE COMMERCE SUBCOMMITTEE
ON COMMUNICATIONS, TECHNOLOGY AND THE
INTERNET*

Boucher opened the Caucus with his goals on privacy in his recently released discussion draft of online privacy provisions for interest-based advertising and also his thoughts on the future of broadband and the FCC's recent plan to maintain non-discriminatory access to an open Internet.

He said the goal of his privacy legislation would be to encourage best business practices – not limit business. Boucher said most transactions under the bill would be opt-out (business-friendly). It will be opt-in for sensitive information (medical condition, financial information, government identifiers, geographically specific location). Information on adolescents and children is already opt-in under COPPA. Sharing information with unrelated third parties would also be subject to opt-in requirements.

Boucher said Congress is asking advertising networks to provide the opportunity for website users to opt-out of information sharing. The FTC has the authority to enforce and preempt state action.

Finally, Boucher spoke on the need to ensure an open Internet and stated that the FCC has done a good job since releasing its open Internet principles. He said Congress does not want heavy-handed regulation that inhibits innovation, but called the FCC approach "light touch." He said treating the transmission component of broadband as a Title II need not involve application of more than six sections out of 48.

*SEN. BYRON L. DORGAN, D-N.D.,
CHAIRMAN, SENATE DEMOCRATIC POLICY
COMMITTEE*

Dorgan indicated support for FCC Chairman Genachowski's National Broadband Plan and urged that broadband penetration take place all over the country.

On open Internet principles, Dorgan said the big lie is that this is a government takeover of the Internet. He said the FCC plan simply restores the prevention of access discrimination. “We want an open free architecture with no gatekeepers. Let’s find a way to come together and establish a principle of Internet freedom and build on it,” Dorgan said.

Dorgan, who is retiring from the Senate, noted that “you only invite controversy if you’re moving forward,” adding that “Chairman Genachowski is moving forward.”

*REP. ANNA G. ESHOO, D-CA
HOUSE ENERGY & COMMERCE COMMITTEE*

Eshoo called Genachowski’s plan for a free and open Internet “music to my ears.”

“I’m extremely pleased with the chairman’s approach to answering the court’s concerns about the case Comcast vs. the FCC, because I think his decision really moves us decisively to foster broadband growth and to preserve Internet freedom, or as most people call it, net neutrality,” Eshoo said. “It is a targeted light regulatory touch.”

Eshoo said she also supported the National Broadband Plan. “It is the centerpiece of last mile buildout. A free public wireless broadband network is important. The Telecom Subcommittee has held three hearings already with a fourth today,” she said.

She said a goal of Congress will be to ensure that no one is left out of high speed broadband, but she noted that implementation will take time.

Eshoo also spoke about the need for better cybersecurity as she said the nation’s reliance on the Internet is a vulnerability. She said most networks are under private control, but that the government had 5 percent of the networks and it needed to better secure them. She said the Comprehensive National Cybersecurity Initiative (CNCI) reduces the government point of presence and increases security at gateways.

Eshoo applauded Google for reporting the hacking done by some in China. “If we’re going to ask industry to report cybersecurity incidents to the government we need to establish a very clear process to do so. Companies won’t report (incidents) if they’re going to be bombarded by dozens of government agencies, each wanting to investigate the incident,” she said.

She also spoke about the need to share cyber threat information with the private sector, calling the private sector “a necessary partner.”

*ASSISTANT SECRETARY FOR CYBERSECURITY & COMMUNICATIONS GREGORY SCHAFFER
DEPARTMENT OF HOMELAND SECURITY*

Schaffer spoke about cyber attacks and Homeland Security efforts to protect the Internet. He said that the problem is sophisticated and growing -- according to Symantec, 75 percent of companies had cyber attacks in 2009. It is now a horizontal problem. He said the cost of breaches continues to rise. It costs an average of \$6.75 million to address a breach, including regulatory cost penalties.

Schaffer said the pace of growth in the amount of malware is tremendous: 40,000 malicious codes per day; 34 million samples of malware. On trusted access providers, 12 of 21 systems have deployed. The amount of activity that needs to be looked at is significant.

He said MTIPS will ultimately protect 100 connections. Einstein 3 is in the pilot program phase. FS-ISAC looks at financial services data across government and industry.

For the future, he said better security requires broader dialogue, not just with security people. He said a new facility will look at a broad range of risks in one place. “We’ve created something called the National Cyber Security and Communications Integration Center which really takes the operational pieces of the NCS, which is the National Communications System, which is the NCC Watch, the National Coordinating Center for Communications, the US-CERT operations, the Industrial Control CERT (ph) operations, and puts them all in a single facility, along with the National Cyber Security Center and some resources from our Intelligence and Analysis Division at DHS.”

BLAIR LEVIN

FORMER FCC DIRECTOR OF THE NATIONAL BROADBAND PLAN; ASPEN INSTITUTE

Levin joked that none of those writing and commenting on the National Broadband Plan had read the lengthy document. He told tech executives the National Broadband Plan was not a complete map, and that it was necessary for 3 reasons: 1) To accelerate movement of the economy. Current politics hamper it; 2) In sectors where the government is the major buyer or supplier, it turns out the current practices of government are actually barriers to the transformation, making the delivery of healthcare, education, public safety and other government-affected services more costly and ineffective than they should be; and 3) The U.S. must accelerate its transformation into a digital economy. The country has not embraced broadband the way it should.

He said an obstacle is an inability to abandon old business models. He added that past leadership threatens future innovation.

Levin said, “The single biggest way the government can screw up your business in 10 years is by not having a good spectrum policy.” He added that spectrum is the single largest investment by government in broadband. “There need to be incentives to put spectrum on auction,” he said.

“If we don’t get a significant amount of new spectrum into the ecosystem, we will have a spectrum crunch. So if we really want to have private investment, we need to have more spectrum. If we don’t use our spectrum more efficiently than other countries, our businesses and consumers will pay more for service, discouraging investment across the economy. It’s a huge government lever, and we have to ask if we’re doing it right, and we’re really not,” stated Levin.

“We also want a mobile broadband system that welcomes innovation of new business models,” Levin said. He added that right now, most of the activity involves spectrum for which there are exclusive licenses. But other business models may emerge either through sharing arrangements, secondary uses or through unlicensed or opportunistic use.

“When government allocates spectrum on the basis of history rather than markets, it substantially reduces the private investment that follows,” Levin said. He went on to say that a solution would be that the FCC have the ability to offer current holders of spectrum, both in the private sector and in the government incentives to put their spectrum into an auction so it can be used for a different purpose when consumer demands in the market change.

Luncheon keynote: AMBASSADOR MIRIAM SAPIRO

DEPUTY U.S. TRADE REPRESENTATIVE

Sapiro spoke about USTR goals:

- Enforce our rights in a rules-based trade system and work for a balanced result to the Doha Round of negotiations.

- Address non-tariff trade barriers and push for transparency in government procurement.
- The TransPacific Partnership is a critical link to trade in Asia.
- Pass the pending FTAs.
- Engaging with the Brazil, Russia, India and China emerging markets.
- Ensure U.S. companies are able to participate fully in telecom markets in FTA partner countries, with addressing foreign equity limits as a priority.
- The concept of technology neutrality is included in FTAs. This is important in an age of wireless technologies and overlapping global broadband networks.
- Reaching out to partners to come up with principles for ICT development.
- Promote the free flow of information. However, countries want to have some oversight. We need to reconcile these. Blocking access may be anticompetitive in certain cases like VoIP.

Sapiro also said that intellectual property rights are being challenged by broadband networks and noted that USTR recognizes diverse views on IP.

In response to questions about the ACTA treaty, which exports U.S. digital copyright law without the balance and protections like fair use, Sapiro said that the USTR is working to make sure ACTA supports balanced copyright policy.

REP. MIKE HONDA, D-CA
HOUSE APPROPRIATIONS COMMITTEE

Honda spoke about the need to elevate science, technology, engineering and math education within the Department of Education. He said a deputy secretary should be responsible for it, and there should be reserved grants available to share.

Honda also expressed concern about saving energy, saying the smart use of electronics (not keeping things plugged in all the time) is low hanging fruit in terms of increasing energy efficiency.

On principles to preserve an open Internet with a light regulatory touch, Honda said, “It seems to me that if we don’t have something like that, then the esophagus of our country is going to be choked off.”

SEN. AMY KLOBUCHAR, D – MN
SENATE JUDICIARY AND COMMERCE COMMITTEES

Klobuchar has taken over as Chair of what was the Interstate Commerce, Trade, and Tourism Subcommittee and renamed it the Competitiveness, Innovation, and Export Promotion Subcommittee. She said innovation leads to competitiveness, and issues such as trade and visas are critical to innovation.

She told tech executives that more needed to be done on cybersecurity and to expand broadband. She stated that she favors the FCC moving forward on a national broadband policy.

She noted there is a lot of interest in patent reform and she supports the patent reform compromise offered in the Senate. Later during Q&A she asked if tech companies thought it was worse than the current law, and Caucus attendees told her it was.

In response to a question about ACTA creating secondary liability issues and exporting enforcement without the necessary exceptions, she promised to look into it.

COMMISSIONER J. THOMAS ROSCH

FEDERAL TRADE COMMISSION

Rosch noted that technological progress in the last ten years has been at warp speed. He attributes this to global marketing, education and quickening innovation.

More specifically he said there has also been better use of trade secrets (patentability). He asserted that patents help commercialize innovation and attract more venture capital. He continued by stating that innovation is threatened by illegal acquisition of inventions through monopoly power and the illegal maintenance of monopoly power by engaging in practices that crush rivals. But he said a threat to innovation is bad patent policy. Rosch said that another threat is “that there may be an illegal acquisition of monopoly power through an illegal acquisition of the invention or the power of invention.”

Rosch warned that threats to the Internet include malware practices, disparate national standards and laws, and online privacy protection flaws. On privacy he said privacy notices are buried in legalese and that there is a lack of competition among privacy notices.

As for opt-in or opt-out, Rosch said he favors opt-in for information like SSN, passport numbers, driver’s license information, financial information, sexual orientation, and ethnicity. He favors opt-out for such information as shopper profiles and only if consumers are properly warned about the sharing of information, and only if use of the data is permissible.

He also wondered what constitutes a material change to the use of data and expressed concern about opt-in/opt-out policy lobbying. “Should opt-in ever be used as a sword by an entrenched monopoly power?” he asked.

UNDER SECRETARY FOR ECONOMIC, ENERGY AND AGRICULTURAL AFFAIRS ROBER HORMATS DEPARTMENT OF STATE

Hormats said the State Department has a role in fostering innovation. He said that Secretary Clinton has called connectivity “the fifth freedom” of global human rights, noting that information is a valuable resource. The National Export Initiative will have an impact on export-oriented companies by enabling more firms to be more efficient.

The Under Secretary also said IP protection is the lifeblood of a knowledge-driven global economy. He noted that theft is far easier than it was a decade ago and source code is more lucrative.

Hormats said his department opposes national policies like Indigenous Innovation that picks winners and losers. He told tech executives that the State Department is working to suspend the accreditation process for it and added that there is growing understanding in China about our position.

He also spoke of the need to preserve an open, interoperable and reliable Internet.

“The cyber threat is one of the most serious economic threats,” he said. He continued by highlighting that the Internet is linked globally and demands a concerted effort by governments. He said that the State Department’s focus is on capacity building and that the protection of national networks must be a priority. “We are looking to the private sector for help,” he said.

On privacy protection, Hormats called for a “flexible forward-looking policy regime that respects privacy standards” that doesn’t impede efficiency.

He also mentioned a March 4th meeting between stakeholders and the State Department on Internet freedom.

He said, like CCIA, they strongly support GNI. “We are coordinating with countries with similar views,” which includes EU, Japan, and Korea, for example.

SEN. MARK BEGICH, D-AK
SENATE COMMERCE COMMITTEE

Begich spoke of the opportunity of the Internet to connect people in rural areas. He noted that in Alaska, there are 200 communities that are only accessible by riverboat, float plane or snow machine. He said his state needs education and medical technology through high speed broadband.

Begich said when it comes to expanding broadband, government’s role is to seed it, partner with the private sector, and get out of the way.

He also expressed concerns about privacy online and noted that the Alaska state constitution has a right to privacy embedded in it. He said he has concerns about the information people offer on Facebook and how that information is used.

JESSICA RICH, DEPUTY DIRECTOR OF THE CONSUMER PROTECTION BUREAU
FEDERAL TRADE COMMISSION

Rich told tech executives that the FTC has filed close to 30 cases on data security since 2001. She said too many companies weren’t investing in securing sensitive data.

She also spoke about privacy concerns, saying that behavioral advertising is invisible to consumers. We need: (1) transparency and consumer control; (2) reasonable security; (3) affirmative expressed consent for different uses; and (4) affirmative expressed consent for children.

Rich said her department is working on conceptual privacy protection frameworks.

She said, “Notice and choice is not working. We need more emphasis on enforcement for tangible harms (harm-based model). Do they address new business models?”

So far, she said they have concluded that: (1) there is agreement that notice & choice is not working as a protection tool; (2) people do care about privacy; (3) different types of protection raise different concerns, and we need to distinguish between practices that raise concerns and those that don’t; (4) we need to simplify things; and (5) we need to preserve flexibility for innovation. We will report this for public comment.

As for the future, she said they are reviewing the COPPA rule and will hold a workshop on June 2. She also said they are examining the privacy implications of cloud computing and increased access to data.