

Senate Commerce Committee Chairman John Thune
National Journal Conversation
At the Newseum, Washington, D.C.
Thursday, February 26, 2015 – 9:00 AM ET

Good morning. Let me begin by thanking National Journal for putting a spotlight on the work of the Senate Commerce, Science, and Transportation Committee through both the special issue published this week and by asking me to join you today.

It is a distinct honor to chair the Commerce Committee at a time when job creation and the economy are front and center of the Senate's new agenda. Senator Bill Nelson of Florida, the committee's ranking member, and I are both very proud of the committee's bipartisan tradition and are committed to working together to set a collegial tone that helps the committee get its work done. This will be especially important due to the broad jurisdiction of the Committee.

Much of my early focus at the Committee this year has been on Internet and technology policy - it is certainly an area where individual Senators have differences of opinion. As I stand here before you today, Washington is abuzz about a group of five unelected officials who will meet shortly to vote on the most controversial agenda item in the Federal Communication Commission's modern history. The text of the actual proposal has not been subject to public circulation and likely won't be fully shared for days or even weeks.

As the FCC Chairman presses ahead, I want to announce today that the Senate Commerce Committee will hold an oversight hearing with all five Commissioners on March 18th. The hearing will have a broad scope covering every aspect of the agency, and it will allow me and my colleagues to directly question the Chairman about his overreaching broadband reclassification Order, which is fraught with controversy. I am deeply concerned that Chairman Wheeler's regulations will spawn years of uncertainty that discourages Internet innovation and investment that would otherwise benefit consumers. I am also disturbed by reports about the highly partisan nature of Chairman Wheeler's process and by reports indicating the FCC has attempted to gloss over the influence of White House officials on that process.

This has undermined the agency's credibility as a truly independent regulator and created a perception that its decisions have less to do with objective evidence and more to do with politics. This dynamic ultimately increases the likelihood that a future commission will overturn the Open Internet Order that will be passed on a 3-2 party line vote later today -- that is, of course, if the courts don't strike it down first.

Many observers are shaking their heads and wondering how we ended up here. During his confirmation before the Commerce Committee in 2013, Chairman Wheeler committed to me that he would return to Congress if the court struck down the FCC's net neutrality rules. Even when he failed to do that after the D.C. Circuit struck them down last spring, most observers still expected him to use tools other than Title II.

Maybe British comedian John Oliver can claim credit for Chairman Wheeler's about-face after Oliver labeled Wheeler a cable industry "Dingo" because he was not embracing radical calls for the controversial Title II reclassification approach to regulating the Internet under the monopoly-era Communications Act of 1934. Or, maybe it was the activists who camped out in front of Wheeler's driveway. But we know Chairman Wheeler's public capitulation came only after President Obama publicly called on him to change course a few days after the November elections.

Perhaps one of the pending congressional document demands or maybe even a Freedom of Information Act request will shed light on what really happened.

Amidst this reversal, the real shame for Internet innovators and consumers is the missed opportunity to craft bipartisan rules that would bring true regulatory certainty to the Internet.

Even as members of Congress, like House Energy and Commerce Committee Chairman Fred Upton and I, have tried to reach out to find a bipartisan solution, we have not found a willing partner in the FCC or the White House, despite the president's proclaimed interest in working with any Republican to find areas of agreement. That is truly amazing, particularly since both of us serve as the respective chairman of the Committees in the House and Senate with direct jurisdiction regarding the FCC and our nation's communication laws.

From healthcare to immigration, this administration faces perils and court challenges on much of its agenda because administration officials have taken action on an entirely partisan basis. One might think they would have leapt at the chance to forge a legacy on Internet policy buttressed by support from both the left and the right. But that has not been the case so far. I hope it is not an omen of how this administration intends to deal with Congress over its final 22 months.

Despite my Scandinavian descent, I am optimistic that my Senate colleagues on the other side of the aisle are more interested in finding a bipartisan legislative solution than an administration that will never be on a ballot again. Why am I optimistic? Three reasons.

First, our legislative approach makes sense for the vast majority of online consumers and stakeholders who want assurances that they will not face barriers or interference on the Internet.

Second, as stakeholders and lawmakers alike see the FCC proposal mired by legal challenges, it will become increasingly clear that a legislative proposal is the ONLY way to ensure that protections go into effect quickly and will survive any legal challenge.

Third, unlike the administration, my Democrat colleagues have been willing to sit down and discuss real solutions. We are in dialogue with them, we are open to their ideas, and the case for legislation is fundamentally stronger than anything the FCC Chairman or the President has

articulated. Already, we have had success in getting support for pursuing a legislative solution from diverse voices like Amazon, the *Washington Post* editorial board, and columnists like Timothy Lee of *Vox*.

I could spend my entire remarks today talking about this one issue and other aspects of the Committee's technology agenda. In fact, I have already delivered two such speeches this year -- covering everything from updating our nation's communication laws to planning for the future of wireless spectrum policy. But I want to talk about some other issues facing the Commerce Committee this Congress.

Although I am passionate about technology policy, I have a fairly strong background when it comes to transportation infrastructure and railroads in particular. Before being elected to Congress, I previously served as the Railroad Director for the State of South Dakota under Governor George Mickelson. But long before this chapter in my public service, railroads have had a much more profound influence on my life and that of my family.

Like the Internet today, the great economic transformations of the railroad era saw America brought closer together through the cutting-edge technology of the time. The Golden Spike that connected the first transcontinental railroad and the advent of the Sears catalog about twenty years later were transformative events of not only railroad commerce, but our nation's history.

Changes brought by the railroad also had profound local and regional impact. In 1906, an extension of the Milwaukee Railroad crossed the Missouri river and toward an area known by the name of the Scottish immigrant cattleman Murdo MacKenzie, who grazed cattle on the land. Fueled by news of the railroad's approach, the new city of "Murdo," South Dakota, sprang up in only weeks at a site the railroad would use as a hub for regional construction. The city quickly boasted five restaurants, three drug stores, a furniture store, the Murdo State Bank, a lumber yard, two newspapers, and was officially established on July 12th 1906.

My grandfather, Nick, an immigrant from Norway, found work on the South Dakota railroads, which first brought him to Murdo. He would start a hardware store – his eventual hometown would become my father's hometown and then mine.

My history and perspective on living the American dream is deeply intertwined with the history of the railroad and it gives me a particular connection to the businesses, agricultural producers, workers, and railway employees themselves who depend on this system for their livelihood. For the Commerce Committee, the public safety of our transportation network is a focus area I can relate to as someone with a relative who lost his life while working for a railroad that helped usher in a new era over a century ago.

Recently, there has been an increase in rail related accidents, including the crude oil unit train that derailed in West Virginia a few weeks ago. Although railroads are already the second most efficient and safest way of transporting bulk commodities, the Department of Transportation is

moving forward with new tanker car safety rules, which have the *potential* to bring about greater protections when moving certain hazardous commodities. The rules can also give railroads and shippers the direction they need to invest in safer, more modern tank cars that better position our country to maximize the economic benefits of our new oil boom -- benefits that have certainly played a part in the lower gas prices Americans are paying at the pump.

Department overreach on tanker car rules, however, would break the momentum of a forming consensus and be counterproductive to the goal of increasing safety. We need to be smart about how we move forward.

Americans bring oil out of our ground because we need energy – especially in the form of gasoline and diesel fuel. Every gallon we take out of North Dakota or Texas is a gallon that someone isn't paying to Vladimir Putin or some regime in the Middle East or South America.

Over the past year and a half, we have already witnessed the impacts that railroad over-capacity can have when it comes not only to the movement of crude oil but also the agricultural, intermodal, and passenger rail service that our nation depends upon. Ill-considered regulations that impose short-sighted restrictions on train speeds or cause shortages of needed tanker cars will exacerbate such issues and create more new safety problems than they fix.

Improving standards of tanker cars is important for safety, but so are things like improvements in track inspections and infrastructure improvements to reduce congestion. The last thing we want to do is enact overreaching regulations that push oil related transport off of rails and onto our highways. Keep in mind, while the transport of crude by rail has risen dramatically in recent years – now accounting for the movement of ELEVEN percent of domestic production – it still represents only TWO percent of overall train movements. My point is that, if done *incorrectly*, new oil tanker car rules could cause unintended havoc to our nation's rail system.

My hope is the new DOT tanker car rule will avoid the kind of regulatory quagmire the Committee is already working to address regarding the unattainable December 2015 Positive Train Control mandate.

Positive Train Control is an important advancement in railway safety that uses remote and automated systems to prevent train-to-train collisions, excessive speeds, and unintended incursions by trains on tracks that are under repair or otherwise restricted.

Unfortunately, we are again getting a lesson in what happens when the federal government tries to mandate innovative technology with guesstimates about implementation deadlines. We all saw the disastrous result of corner cutting and running past warnings when the Administration refused to budge on the launch date for HealthCare.gov.

The independent Government Accountability Office and others, including the DOT's very own Federal Railroad Administration, have looked at Positive Train Control and have come to the conclusion that extensions are in fact needed. We want railroads to work diligently toward

implementing this new, complicated technology, but an unrealistic government mandate does not benefit public safety. Barring another solution, the Commerce Committee will take up legislation this year that offers a sensible extension of the implementation of the Positive Train Control deadline so that we make sure we get this right. I also look forward to seeing the Committee act upon the Surface Transportation Board reform measure that former Chairman Rockefeller and I worked on last fall.

Like railroads, I also expect safety to be the primary concern when the Commerce Committee takes up the surface transportation reauthorization bill this year.

There is sometimes significant confusion about how four Senate committees share jurisdiction over the highway bill. Simply explained, my colleague Chairman Inhofe at the Environment & Public Works Committee focuses on how we allocate and improve the manner in which the Federal Highway Administration disburses federal user-fees for construction of our highways and bridges; my colleague Chairman Hatch at the Finance Committee looks at funding sources like the current gasoline and diesel taxes that are the mainstay of the Highway Trust Fund, to figure out how we pay for our nation's infrastructure needs; the Banking Committee is responsible for the transit title of the reauthorization bill which covers bus and mass transit systems across the country that have benefited from the roughly 20 percent of user-fees that are collected; and at the Commerce Committee, we are focused on the authorizations of the various agencies that are primarily focused on safety – such as the Federal Motor Carrier Safety Administration, the National Highway Traffic Safety Administration and rail related programs – as well as programs in the Secretary of Transportation's office, all of which play an important part of our truly nationwide transportation system.

My goal on the transportation reauthorization bill is to make sure that congressionally directed safety policies reflect a broad outlook. Looking too narrowly at any one issue can have the unintended consequence of changing behavior that makes our overall transportation system less safe.

Ultimately, many of the toughest decisions with the transportation bill will happen in other Committees. Working on a bipartisan basis, I want to make sure the Commerce Committee takes an efficient approach that does not hold-up an agreement on what I hope will be a multi-year reauthorization bill.

Speaking of transportation, in our Committee's aviation jurisdiction, no later than this summer, we will take up a must-pass reauthorization of the Federal Aviation Administration and related programs. Safety will, again, be a top concern of the committee and I expect we will have some new discussions, particularly about unmanned aircraft systems, or "drones."

Overall, there is a great deal of work that still needs to be done at the FAA on establishing safety standards for commercial use of unmanned aircraft. The FAA is charged with finding the best procedures for unmanned aircraft to operate under, all without jeopardizing the safety of existing civil or military airspace users who have seen an increasing number of near misses.

What we need is an innovation-friendly regulatory structure to set rules for our skies. Before I jump out to criticize certain restrictions proposed recently by the FAA, or get into privacy concerns, I want the FAA and other federal officials to have an opportunity to take questions and explain their reasoning in a public forum.

To that end, I will bring top officials before the Committee to testify on the FAA's new proposed rules for unmanned systems next month. I expect this hearing will shed light on the FAA's decision-making and on how our committee will approach the issue when we take up the larger reauthorization bill.

I also expect to examine key issues related to the FAA's progress on implementation of its NextGen satellite based navigation system, improvements to the certification process for new aircraft, infrastructure financing, and perhaps even structural reforms of how air traffic is managed as part of the discussion on the reauthorization bill.

Finally, one of my goals as Chairman is to vigorously pursue an oversight agenda that prioritizes both consumer welfare and a watchdog role over agency waste and mismanagement. There is a missed opportunity when the focus is exclusively on failures of the private sector or failures of government. From the BP oil spill to deadly defects we've witnessed with lapses at General Motors, there are plenty of examples of shared failure by both corporations and agency regulators.

Already this Congress, we have taken steps to assert this oversight role. Ranking Member Nelson and I recently sent a document request to the National Science Foundation after the agency's inspector general identified continued financial management failures by the agency in projects that totaled over a billion dollars.

After this morning's event, I will be headed straight to the Commerce Committee's first legislative business meeting where we will approve the Motor Vehicle Safety Whistleblower Act that Senator Nelson and I initially introduced last Congress. This bill is directly related to serious safety situations involving General Motors and Takata, a company that has been a subject of our oversight after a number of injuries and deaths related to defective airbags.

Accountability, policies that promote innovation, and enhancing safety are all areas where the Commerce Committee can play a leading role in job creation, especially for the middle class. So far, our Committee has held twelve official hearings and business meetings. The turnout among Committee members has been impressive, and underscores the strong desire by both sides of the dais to delve into issues that are front and center for our economy. Our Committee's six subcommittee chairs and I are all eager for the chance voters have given us to get Congress back to work.

Thank you for this opportunity.