INSIDE THE FCC©®

Special Edition *Commentary & Analysis* *Winter 2017*

Whither Net Neutrality?

Informed Perspectives

The Pros and Cons of Internet Regulation

INSIDE THE FCC©®

Special Edition *Commentary & Analysis* *Winter 2017*

Whither Net Neutrality?

Informed Perspectives on Internet Regulation

Net neutrality, like politics, race and religion, is an issue to be broached gingerly. Informed or not, everyone has an opinion on how the government should regulate the Internet, or whether it should be regulated at all. To some, the world as we know it, will come to an end if net neutrality is changed. To others, net neutrality is a solution in search of a problem. In Washington, the net neutrality debate divides along two well-entrenched fault lines, whose twain rarely, if ever, meet—pro-Title II and anti-Title II. This edition presents a selected listing of those opinions which have attempted to shape the debate.

There are Three Basic Questions Facing Policymakers on Net Neutrality

Whether it is called the "Open Internet", "Net Neutrality" or "Internet Freedom", three core questions remain:

(1) Is broadband Internet a "telecommunications" service or an "information service"?

(2) How much should the federal government regulate broadband Internet services?

(3) Under what legal, statutory authority should that happen?

These simple policy issues have plagued the Federal Communications Commission (FCC) for well over a decade, during which there have been numerous rulemakings, court challenges, and millions of comments filed by the public and interested parties.

INSIDE THE FCC©®

Special Edition *Commentary & Analysis* *Winter 2017*

Contents

What is Net Neutrality, Anyway?

At Least One Definition

The concept that all data on the internet should be treated equally by corporations, such as internet service providers, and governments, regardless of content, user, platform, application or device. Network neutrality requires all Internet service providers (ISPs) to provide the same level of data access and speed to all traffic, and that traffic to one service or website cannot be blocked or degraded. ISPs are also not to create special arrangements with services or websites, in which companies providing them are given improved network access or speed.

In Context

The term "network neutrality" was introduced in 2002. The concept was floated in response to efforts by the Federal Communications Commission (FCC), a United States regulator body, to require broadband providers to share their infrastructure with competing firms. The Supreme Court struck down the FCC regulation in 2005. The sticking point for regulation had been whether broadband service providers were considered information services, which allows users to publish and store information on the Internet, or telecommunication services. In 2015, under the Obama Administration, Net Neutrality rules were approved. Those rules, in part, barred internet service providers like AT&T and Comcast from deliberately speeding up or slowing down traffic to or from specific websites based on demand or business preferences. On November 21, 2017, Ajit Pai, the Chairman of the FCC appointed by President Trump, unveiled a plan to roll back the rules set forth by the prior administration.* See: Net Neutrality Definition | Investopedia https://www.investopedia.com/terms/n/net-neutrality.asp#ixzz50t41n2cW

Essentially, net neutrality – or the open Internet—is the view that internet service providers (ISPs) should treat all data that flows over the Internet equally. ISPs are those companies that provide us access to the Internet—AT&T, Century Link, Charter, Comcast, and Verizon, among others. Net neutrality means that these providers must not differentiate between the data transmitted by a small business or individual user, for example, from the data transmitted by a big company such as Netflix. Content providers, on the other hand, are those companies like Amazon, Apple, Google, Hulu and Netflix that send movies, music, information, services and other "content" over the Internet, using the ISPs. Their content creates some of the heaviest flow of traffic on the Internet.

Restoring Internet Freedom Order — December 2017

The FCC is poised to approve the Restoring Internet Freedom Order, a new regulation that will overturn President Obama's 2015 Open Internet Order. By re-opening the record on Net Neutrality, Chairman Ajit Pai resurrected the enemies and wounds of the past, including a well-organized media campaign in support of Title II, led by consumer groups, and funded by deep-pocketed edge providers from Silicon Valley. Their slogans painted an overly-simple picture in starkly misleading tones—Title II regulation gives life to the Internet—anything else leads to its death. In addition, the Net Neutrality proponents unleased a vicious personal attack on Chairman Pai, replete with racial epithets aimed at him and his very young children. It has taken the policy debate from the political to the personal, and has been an ugly chapter in this continuum.

At the heart of this ongoing debate is the authority of the FCC to regulate broadband Internet service under the 1996 Communications Act. Upon its passage, both Clinton and Congress agreed the law was intended to promote competition and reduce regulation. Despite the drama being drummed up by net neutrality supporters, the Internet world will not end after this week's vote. In

fact, the new rule is a return to a net neutrality precedent first established under President Clinton and a Democratic FCC.

In 1998, a bipartisan group of key United States Senators wrote to then FCC Chairman William E. Kennard, noting that: "[nothing in the 1996 Act or its legislative history suggests that Congress intended to alter the current classification of Internet and other information services or to expand traditional telephone regulation to new and advanced services." Senators Ashcroft, Ford, Kerry, Abraham and Wyden further warned that if the FCC "subject[ed] some or all information service providers to telephone regulation, it seriously would chill the growth and development of advanced services to the detriment of our economic and educational well-being."

When the Obama FCC adopted the Open Internet order in 2015, it established three core principles of net neutrality: (1) no blocking; (2) no discrimination, and (3) no paid prioritization of Internet traffic. With an allowance for "reasonable network management", the government mandated that ISPs do nothing to disfavor small users, and nothing to favor heavy users, of the Internet. The Open Internet Order also established that the FCC could regulate the Internet by virtue of its authority under Title II of the Communications Act.

All About Broadband

Broadband is worth billions of dollars to big companies like Amazon, Apple, AT&T, Charter, Comcast, Facebook, Google, Hulu, LinkedIn, Microsoft, Netflix, Twitter, Verizon and Uber, among others. That explains the intensity of the politics and parlance surrounding the debate on Net Neutrality, and the latest campaign to "save the Internet". While tailor-made for late-night talk show, this dramatic line is historically untrue. The Internet was born, grew up and thrived for many, many years without Title II regulation. Moreover, it seems like the cable and telecom companies have accepted, albeit grudgingly, the three key principles of net neutrality. Their main gripe has been with Title II regulation, which according to most legal experts, allows the government to regulate rates for broadband Internet service in the future, despite its non-binding dicta of forbearance.

The Battle Lines Are Clear : Keep Net Neutrality Regulation Under Title II

Advocates for network neutrality suggest that by not allowing ISPs to determine the speed at which consumers can access specific websites or services, smaller companies will be more likely to enter the market and create new services. This is because smaller companies may not be able to afford to pay for "fast lane" access, while larger, more established companies can. For example, several well-established social network websites were created without much seed capital. Had they been forced to pay extra in order to be accessed at the same speed as competitors, they may never have become successful. Advocates view net neutrality as a cornerstone of open internet, and propose that it be mandated by law in the U.S. to prevent broadband providers from practicing data discrimination as a competitive tactic. Proponents of net neutrality include human rights organizations, consumer rights advocates and software companies, who believe that open internet is critical for the democratic exchange of ideas and free speech, fair business competition and technological innovation. They argue that cable companies should be classified as "common carriers," like public utility companies or public transportation providers, who are forbidden by law from discriminating among their users. They advocate the principle of a "dumb pipe," maintaining that intelligence should be located only the ends of a network, and the network ("pipe") itself should remain neutral ("dumb"). Advocates of net neutrality see municipal broadband as a possible solution.*

Or Change Net Neutrality Regulation Not Using Title II

Critics of network neutrality suggest that by forcing ISPs to treat all traffic equally the government will ultimately discourage the investment in new infrastructure, and will also create a disincentive for ISPs to innovate. The up-front costs associated with laying down fiber optic wire, for example, can be very expensive, and critics argue that not being to charge more for that level of access will make the investment more difficult to pay off. Opponents of open internet include conservative think-tanks, hardware companies and major telecommunication providers. The providers argue that they must be allowed to charge tiered prices for access in order to remain competitive and generate funds needed for further innovation and expansion of broadband networks, as well as to recoup the costs already invested in broadband.* Read more: Net Neutrality Definition | Investopedia https://www.investopedia.com/terms/n/net-neutrality.asp#ixzz50t41n2cW

Today, after millions of comments filed by proponents and opponents in the *Restoring Internet Freedom* docket, the FCC will take another step toward clarity and common sense on this important issue of our day. Of course, both Congress and the Courts could play key roles on this issue, and the speculation will begin anew once the gavel is dropped on the passage of the Restoring Internet Freedom Order.

****

Informed Perspectives on Net Neutrality

Net Neutrality:

How Did We Get Here and Where Are We Going?

Richard T. Kaplar

It's hard to imagine an issue in today's media/telecom policy universe that has sparked more controversy or inspired more passion than the innocuous-sounding Net Neutrality. How could such a seemingly simple concept – that Internet access should be open to everyone and that services should be provided on a neutral basis without discrimination by type, price, speed, or quality – create such a firestorm?

One need look no further than the cover of this edition of Inside the FCC for the answer, or at least a major clue: "The Pros and Cons of Internet Regulation." Many advocates of Net Neutrality believe this goal cannot be achieved without the regulatory hand of government exerting its grip on the Internet – and the more forcefully, the better. In contrast, other advocates of Net Neutrality believe it is a goal best achieved through the workings of the marketplace, and point to the successful operation of the Internet for years prior to any regulation.

Net Neutrality, then, is one of those issues that is hard to oppose in principle until the details creep in. It would be easy to frame this issue in classic policy terms of government regulation v. the marketplace. It would also be easy to frame it as a struggle to protect the average consumer from the excesses of big companies that control Internet access. And, of course, it is all too easy to characterize this as yet another attempt by the Trump Administration to throw out a policy engineered by the Obama Administration – especially since the Federal Communications Commission (FCC) under Chairman Ajit Pai is in the midst of a proceeding aimed at reversing the heavy-handed Title II regulatory approach. But Net Neutrality has become more nuanced than any one of these simple formulas.

The articles that follow will look at Net Neutrality – and Internet regulation – from a variety of perspectives. First, however, it might be helpful to offer a bit of background and context on some of the elements in this debate.

How Did We Get Here? We might begin by trying to identify the justification for imposing government regulation on the Internet. In other words, what was the problem that needed to be solved? It turns out there wasn't much of a problem after all. In the United States, a handful of instances were identified involving Internet service providers (ISPs) slowing transmission speeds

("throttling") or limiting access to competitors' services, but those cases were resolved through existing means by the FCC or the courts. Regulating the Internet to achieve Net Neutrality had become a solution in search of a problem.

The FCC, however, was undaunted at the prospect of extending its regulatory grasp to yet another electronic realm. In its 2010 Open Internet Order, the Commission claimed authority to regulate ISPs under Section 706 of the Telecommunications Act of 1996, and used this authority to establish no-blocking and no-unreasonable-discrimination rules. The U.S. Court of Appeals for the D.C. Circuit vacated those rules in 2014, but upheld the FCC's regulatory authority over broadband ISPs under Section 706. The precedent set in 2010 giving the FCC authority to regulate the Internet had now been affirmed by the judiciary – and there would be no turning back.

The FCC had for many years, going back to its Computer Inquiries of 1966, drawn a distinction between basic services (common carrier transmission services) and "enhanced services," which involved computer applications. Basic services were subject to heavy common carrier regulation under Title II of the Communications Act of 1934, while enhanced services, the Commission determined, "should not be regulated under the Act." That distinction and policy approach (now including the Internet as an enhanced service) was affirmed in the Telecommunications Act of 1996 and restated in a number of FCC orders pertaining to wireline and wireless services in the early to mid-2000s. To its credit, the FCC in its 2010 Open Internet Order eschewed regulating ISPs as common carriers under Title II, sticking to its longstanding and oft-repeated position that the Internet was an information service. The Commission opted for a "light touch" approach by asserting its regulatory authority under Section 706. However, once the D.C. Circuit affirmed the FCC's regulatory authority over ISPs in 2014, the leap to Title II would prove to be a short one.

Then-FCC Chairman Tom Wheeler proposed another "light touch" approach in late 2014, again relying on Section 706. However, he ran headlong into President Barack Obama in November 2014, who urged the Commission to "reclassify consumer broadband service under Title II of the Telecommunications Act." Wheeler turned on his heels and acceded to the president. In February 2015, the FCC adopted the Title II Order.

One of the intriguing aspects of all this has been the remarkable army of Internet companies, public interest groups, liberal philanthropists, and foundations that have enlisted in the fight to push the Title II agenda. The advocacy groups have been the most predictable: Free Press, Media Access Project, Public Knowledge, Media Matters, New America's Open Technology Institute, and like-minded leftist groups. Also predictable: foundations like Ford, Knight, and MacArthur. And could philanthropist George Soros and his Open Society Institute be far behind? The liberal agenda of taking power away from corporations under the guise of protecting the "little guy" has been much in evidence, and of course an issue that lends itself to populist sound bites is good for advocacy-group fundraising. However, some critics have wondered if there were a more sinister agenda in play.

Writing in April 2015, Media Institute President Patrick Maines offered an unsettling insight: "It should now be clear, even to those who weren't paying attention earlier, that the primary interest these groups had, and have, in net neutrality is their desire to insinuate government in the regulation of speech on the Internet." He quoted remarks published in The Hill by the policy counsel of the Open Technology Institute, who said: "A net neutrality regime that relies solely on antitrust analysis … cannot address the non-economic goals of net neutrality such as free speech, political participation, and viewpoint diversity." One can only hope that future Commissions remember the FCC has no mandate to pursue such goals through Net Neutrality regulation.

Puzzling to some (yet utterly predictable to others) has been the support for Title II regulation among major players in Silicon Valley. Organizers of a pro-Title II "Day of Action" in July 2017 numbered among their participants Google, Facebook, Netflix, and Amazon. One can assume that these companies, which are not ISPs and thus not subject to Title II regulation, would like to make sure their ISP brethren are restrained from conduct that could impact the delivery of their services. But as Bret Swanson asked last July, do these tech giants really want to invite Washington to get more involved in the technology business? Especially when it is tech giants like these, rather than the ISPs, that have been charged with some of the most blatant non-neutral business behaviors? As Swanson noted:

"As the issue was politicized over the past 15 years, Google and the others radicalized their own employees, their fan-boys, and the Democratic base against a phantom menace. Although there wasn't an actual problem to solve, it became a partisan cause and a successful fundraising tool…. So Silicon Valley finds itself backing a partisan mob who cheer a policy – Title II – which they don't understand and the firms never contemplated."

According to financial analysts, the switch to Title II regulation has had a significant negative impact on telecom investment. Economist George S. Ford studied investment data from 2011 to 2015, by which time fears of Title II reclassification had been factored into most investment decisions. During this five-year period, actual investment averaged $126 billion annually – but would have been about $160 billion annually if Title II reclassification had not occurred, Ford estimated. "That is, over the interval 2011 to 2015, another $150-$200 billion in additional investment would have been made 'but for' the regulatory revival at the FCC," Ford said. He also estimated that the telecom sector lost approximately 100,000 jobs between 2010 and 2016 because of this "regulatory revival" of the Obama Administration.

Financial analyst Anna-Maria Kovacs has cited figures from CTIA showing that annual capital investment in wireless increased every year from $24.9 billion in 2010 to $33.1 billion in 2013, decreased slightly in 2014 and 2015, and then fell sharply to $26.4 billion in 2016. "[F]or the mobile broadband industry, this period encompassed radical regulatory change, with the industry moving from light-touch regulation in 2010 to the threat of and then imposition of Title II common carrier regulation in 2014-2015," she stated.

One of the main reasons Title II regulation is such an onerous factor in management and investment decisions is that it leaves open the possibility of rate regulation and other intrusive actions by government. Title II was never intended to regulate information services, and thus "the Commission found it necessary to forbear from enforcing the 'vast majority of rules adopted under Title II,' including '30 statutory provisions[,] and render over 700 codified rules inapplicable,'" the FCC itself has noted. But that doesn't mean the Commission couldn't enforce some of these provisions – like rate regulation – in the future. Telecom investment becomes a much riskier proposition given this level of uncertainty.

Where Are We Going? The FCC announced a change of direction on May 18, 2017, when it opened a proceeding titled "Restoring Internet Freedom." Chairman Ajit Pai, a longtime believer that less regulation can benefit investment and innovation, had this to say in a statement:

"Today, we propose to repeal utility-style regulation of the Internet. We propose to return to the Clinton-era light-touch framework that has proven to be successful. And we propose to put technologists, rather than lawyers and accountants, at the center of the online world."

Chairman Pai's Republican colleague, Commissioner Michael O'Rielly, also supported the action:

"[T]he prior Commission changed course so abruptly that it did not take the time to sufficiently examine the law and record and did not adequately respond to opposing viewpoints and alternative proposals…. Now the Commission presents the case that it previously ignored – that the text of the Act, Commission precedent, and public policy support classification of broadband Internet service as an information service."

The Commission's proceeding sparked a predictable outcry from Title II supporters and led to a "Day of Action" on July 12, 2017, where tech titans and liberal advocacy groups urged citizens to contact the FCC and complain about the proposed rollback. What was missing in most of the rhetoric, however, was the distinction between the goal of net neutrality and the means of achieving that goal. The FCC was not proposing an outright abandonment of Net Neutrality regulation – just a lighter framework without Title II as the centerpiece. But one would never know that from the doomsday predictions.

Is a light-touch approach the best way to go? Title II supporters think not, obviously. Those of us who favor marketplace solutions (where problems actually exist, that is) would like to see Internet regulation totally repealed. However, that is unlikely at best, as the FCC has never been good at giving up regulatory authority once asserted.

Another option might involve Congress. Both AT&T and Verizon have suggested that open Internet principles should be codified into law as a way of providing continuity and protecting against regulatory flip-flops. As Verizon's Will Johnson put it: "The Internet is too important to have policies that change with each election." AT&T would favor the codification of rules that

ensure transparency while prohibiting blocking, discriminatory throttling, and censorship. But again the prospects for a legislative outcome are murky, given the current state of Congress.

One thing is certain: Net Neutrality is not going away any time soon. (For an instructive precedent, just think of the FCC's newspaper/broadcast cross ownership rules.) The debate in this edition of Inside the FCC is not the first, but it will prove far from the last you encounter on this topic.

Richard T. Kaplar is Executive Director of The Media Institute in Arlington, VA.

A Brief History of Net Neutrality

1966

Long before the commercialization of the Internet, federal law drew a line between the heavily regulated common carrier services and more lightly regulated services that went beyond mere transmission. Starting in 1966, the Federal Communications Commission initiated the *Computer Inquiries*,[5] which created a dichotomy between basic and enhanced services.[6] Basic services offered "pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information"[7] and were "regulated under Title II of the [Communications] Act."[8] Enhanced services were "any offering over the telecommunications network which is more than a basic transmission service. In an enhanced service, for example, computer processing applications are used to act on the content, code, protocol, and other aspects of the subscriber's information."[9] Unlike basic services, the Commission found that "enhanced services should not be regulated under the Act."[10]

1982

In 1982, the federal courts drew a similar line in resolving the government's antitrust case against AT&T. The Modification of Final Judgment (MFJ) of 1982 distinguished between "telecommunications services," which Bell Operating Companies (BOCs) could offer when "actually regulated by tariff,"[11] and "information services," including "data processing and other computer-related services"[12] and "electronic publishing services,"[13] which Bell Operating Companies were prohibited from offering entirely.[14]

1996

In the Telecommunications Act of 1996, intended to "promote competition and reduce regulation,"[15] President Clinton and Congress drew a line between lightly regulated "information services" and more heavily regulated "telecommunications services."[16] They also found that the "Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation"[17] and declared it the policy of the United States to "promote the continued development of the Internet and other interactive computer services and other interactive media" and "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."[18] The 1996 Act went on to define "interactive computer service" to include "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet . . . ."[19]

1998

Congress weighed in again two years later. Five Senators—John Ashcroft, Wendell Ford, John F. Kerry, Spencer Abraham, and Ron Wyden—wrote the Commission that "[n]othing in the 1996 Act or its legislative history suggests that Congress intended to alter the current classification of Internet and other information services or to expand traditional telephone regulation to new and advanced services."[20] These five members further warned that if the Commission "subject[ed] some or all information service providers to telephone regulation, it seriously would chill the growth and development of advanced services to the detriment of our economic and educational well-being."[21]

1998—2014

For the next 16 years, the Commission repeatedly followed their advice, opting for a light-touch approach to the Internet that favored discrete and targeted actions over traditional pre-emptive, sweeping regulation of Internet service providers. In the 1998 *Stevens Report*, the Commission comprehensively reviewed the Act's definitions as they applied to the emerging technology of the Internet and concluded

A Brief History of Net Neutrality

that Internet access service was properly classified as an information service.[22] The *Stevens Report* exhaustively reviewed the text and legislative history of the Telecommunications Act, along with the agency's own administrative precedent and the courts' administration of antitrust law.[23] Looking to the Act's text, the Commission concluded that "Internet access providers do not offer a pure transmission path; they combine computer processing, information provision, and other computer-mediated offerings with data transport,"[24] and it "recognize[d] the unique qualities of the Internet, and [did] not presume that legacy regulatory frameworks are appropriately applied to it."[25]

Further, even "address[ing] the classification of Internet access service *de novo*" the *Stevens Report* reached the same conclusion: Internet access service is an information service according to the statute.[26] The *Stevens Report* also found that subjecting Internet service providers and other information service providers to "the broad range of Title II constraints," would "seriously curtail the regulatory freedom that the Commission concluded in *Computer II* was important to the healthy and competitive development of the enhanced-services industry."[27]

2002

In the 2002 *Cable Modem Order*, the Commission classified broadband Internet access service over cable systems as an "interstate information service."[28] The Commission did so based on the "functions that cable modem service makes available to its end users,"[29] on the fact that the "telecommunications component is not, however, separable from the data-processing capabilities of the service,"[30] and is an information service "regardless of whether subscribers use all of the functions provided as part of the service, such as e-mail or web-hosting, and regardless of whether every cable modem service provider offers each function that could be included in the service."[31] The Commission was also guided by its belief that "broadband services should exist in a minimal regulatory environment that promotes investment and innovation in a competitive market,"[32] and the knowledge that regulatory uncertainty "may discourage investment and innovation."[33]

2002—2005

In June 2005, the Supreme Court decisively upheld the Commission's 2002 classification of broadband Internet access service over cable systems as a lightly-regulated Title I information service.[34]

In 2004, then FCC-Chairman Michael Powell announced four principles for Internet freedom to further ensure that the Internet would remain a place for free and open innovation with minimal regulation.[35] These four "Internet freedoms" include the freedom to access lawful content, the freedom to use applications, the freedom to attach personal devices to the network, and the freedom to obtain service plan information.[36]

In the 2005 *Wireline Broadband Classification Order*, the Commission classified broadband Internet access service over wireline facilities as an information service.[37] In reaching this conclusion, the Commission relied on the plain text of the Act, finding that "providers of wireline broadband Internet access service offer subscribers the ability to run a variety of applications that fit under the characteristics stated in the information service definition,"[38] and that users of wireline broadband Internet access service were provided "more than [a] pure transmission path" whenever they accessed the Internet.[39]

In 2005, the Commission also unanimously endorsed the four Internet freedoms in the *Internet Policy Statement*.[40] The *Internet Policy Statement* announced the Commission's intent to "incorporate [these] principles into its ongoing policymaking activities" in order to "foster creation, adoption and use of Internet broadband content, applications, services and attachments, and to ensure consumers benefit from the innovation that comes from competition."[41]

2006

In the 2006 *BPL-Enabled Broadband Order*, the Commission concluded that broadband Internet access service over power lines was properly classified as an information service.[42] This decision established "a minimal regulatory environment" which promoted "ubiquitous availability of broadband to all Americans."[43] The Commission noted that broadband-powerline-enabled Internet access service "combines computer processing, information provision, and computer interactivity with data transport, [which] enable[es] end users to run a variety of applications,"[44] and concluded that classification as an information service "encourage[es] the deployment of broadband Internet access services."[45]

2007

In the 2007 *Wireless Broadband Internet Access Order*, the Commission classified wireless broadband Internet access service as an information service, again recognizing the "minimal regulatory environment" that promoted the "ubiquitous availability of broadband to all Americans."[46] Consistent with its prior interpretations, the Commission concluded that "wireless broadband Internet access service offers a single, integrated service to end users, Internet access, that inextricably combines the transmission of data with computer processing, information provision, and computer interactivity, for the purpose of enabling end users to run a variety of applications."[47] The Commission also found that "mobile wireless broadband Internet access service is not a 'commercial mobile radio service' as that term is defined in the Act and implemented in the Commission's rules."[48]

2008—2010

In the 2008 *Comcast-Bit Torrent Order*, the Commission sought to directly enforce federal Internet policy consistent with the *Internet Policy Statement*, finding Comcast's actions "contravene[d] . . . federal policy" by "significantly imped[ing] consumers' ability to access the content and use the applications of their choice."[49] In 2010, the U.S. Court of Appeals for the D.C. Circuit rejected the Commission's action, holding that the Commission had not justified its action as a valid exercise of ancillary authority.[50]

In response, the Commission adopted the 2010 *Open Internet Order*, where once again the Commission specifically rejected more heavy-handed regulation of broadband Internet access service.[51] Instead, the *Open Internet Order* relied on, among other things, newly-claimed regulatory authority under section 706 of the Telecommunications Act to establish no-blocking and no-unreasonable-discrimination rules as well as a requirement that broadband Internet access service providers "publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services."[52] In doing so, the Commission distinguished between fixed and mobile broadband Internet access services, reasoning that the latter "presents special considerations that suggest differences in how and when open Internet protections should apply."[53]

2014-2015

In 2014, the D.C. Circuit vacated the no-blocking and no-unreasonable-discrimination rules adopted in the *Open Internet Order*, finding that the rules impermissibly regulated broadband Internet access service providers as common carriers,[54] in conflict with the Commission's prior determination that broadband Internet access service was not a telecommunications service and that mobile broadband Internet access service was not a commercial mobile service.[55] The D.C. Circuit nonetheless upheld the transparency rule,[56] claimed the Commission had authority to regulate broadband Internet access service providers under section 706 of the Telecommunications Act, and suggested that no-blocking and no-unreasonable-discrimination rules might be permissible if Internet service providers could engage in individualized bargaining.[57]

Later that year, the Commission embarked yet again down the path of rulemaking, proposing to rely on section 706 of the Telecommunications Act to adopt enforceable rules using the court's "roadmap."[58]

In November 2014, then-President Obama called on the FCC to "reclassify consumer broadband service under Title II of the Telecommunications Act."[59] Three months later, the Commission adopted the *Title II Order*, reclassifying broadband Internet access services from information services to telecommunications services.[60] In doing so, the Commission found it necessary to forbear from enforcing the "vast majority of rules adopted under Title II," including "30 statutory provisions[,] and render over 700 codified rules inapplicable."[61] The Commission adopted no-blocking, no-throttling, and no-paid-prioritization rules, as well as a general Internet conduct standard and "enhancements" to the transparency rule.[62] In 2016, a divided panel of the D.C. Circuit Court of Appeals upheld the *Title II Order* in *United States Telecom Ass'n v. FCC*.[63] Petitioners have sought a rehearing of the case *en banc*.[64]

Notes

5. *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services*, Notice of Inquiry, 7 FCC 2d 11 (1966).

6. *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Docket No. 20828, Final Decision, 77 FCC 2d 384, 420, para. 97 (1980).

7. *Id.* at 420, para. 96.

8. *Id.* at 428, para. 114.

9. *Id.* at 420, para. 97.

10. *Id.* at 428, para. 114.

11. *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 228–29 (D.D.C. 1982).

12. *Id*. at 178.

13. *Id*. at 180.

14. *Id.* at 228.

15. Preamble, Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (describing the purpose of the 1996 Act as "[a]n Act [t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies").

16. 47 U.S.C. § 153(24), (53).

17. 47 U.S.C. § 230(a)(4).

18. 47 U.S.C. § 230(b)(1), (2).

19. 47 U.S.C. § 230(f)(2).

20. Letter from Senators John Ashcroft, Wendell Ford, John Kerry, Spencer Abraham, and Ron Wyden to the Honorable William E. Kennard, Chairman, FCC, at 1 (Mar. 23, 1998) (Five Senators Letter), *available at* http://apps.fcc.gov/ecfs/document/view?id=2038710001.

21. Id.

22. *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, 11536, para. 73 (1998) (*Stevens Report*).

23. *See, e.g.*, *id.*, 13 FCC Rcd at 11513, 11520, 11536–37, paras. 27, 39, 74–75. The *Stevens Report* also noted that "[s]ince *Computer II*, we have made it clear that offerings by non-facilities-based providers combining communications and computing components should always be deemed enhanced," while "the matter is more complicated when it comes to offerings by facilities-based providers." *Id*. at 11530, para. 60.

24. *Id*. at 11536, para. 73.

25. *Id*. at 11540, para. 82.

26. *See, e.g.*, *id*.

27. *Id*. at 11524, para. 46.

28. *See Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4802, para. 7 (2002) (*Cable Modem Order*).

29. *Id.* at 4821, para. 35.

30. *Id.* at 4823, para. 39.

31. *Id.* at 4822–23, para. 38 (footnote omitted).
32. *Id*. at para. 5.

33. *Id*.

34. *Nat'l Cable & Telecoms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005) (*Brand X*).

35. Michael K. Powell, Chairman, Federal Communications Commission, Preserving Internet Freedom: Guiding Principles for the Industry, Remarks at the Silicon Flatirons Symposium (Feb. 8, 2004), https://apps.fcc.gov/edocs_public/attachmatch/DOC-243556A1.pdf.

36. *Id*.

37. *See Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al*., CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (*Wireline Broadband Classification Order*).

38. *Id*. at 14860, para. 9.

39. *Id*. at 14864, para. 15.

40. *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities et al.*, GN Docket No. 00-185, CC Docket Nos. 02-33, 01-33, 98-10, 95-20, CS Docket No. 02-52, Policy Statement, 20 FCC Rcd 14986 (2005) (*Internet Policy Statement*).
41. *Internet Policy Statement*, 20 FCC Rcd at 14988, para 5. The Commission did this, for example, by incorporating such principles in its rules governing certain wireless spectrum. *See Service Rules For the 698-746, 747-762 and 777-792 MHz Bands*, *et al.*, WT 06-150 et al., Second Report and Order, 22 FCC Rcd. 15289, 15361, 15365, paras. 194, 206 (2007).

42. *See United Power Line Council's Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, 21 FCC Rcd 13281 (2006) (*BPL-Enabled Broadband Order*).

43. *Id*. at 13281, para. 2.

44. *Id*. at 13826, para. 9.

45. *Id*. at 13827, para. 10.

46. *See Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901, 5902, para. 2 (2007) (*Wireless Broadband Internet Access Order*).

47. *Id*. at 5910, para. 26.

48. *Id.* at 5916, para. 41

49. *Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices; Petition of Free Press et al. for Declaratory Ruling that Degrading an Internet Application Violates the FCC's Internet Policy Statement and Does Not Meet an Exception for "Reasonable Network Management,"* File No. EB-08-IH-1518, WC Docket No. 07-52, Memorandum Opinion and Order, 23 FCC Rcd 13028, 13054, 13057, paras. 44, 49 (2008) (*Comcast-Bit Torrent Order*).

50. *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010). Among other things, the court held that section 706 of the 1996 Act could not serve as the source of direct authority to which the Commission's action was ancillary because the Commis-

sion was bound in *Comcast* by a prior Commission determination that section 706 did not constitute a direct grant of authority. *Id.* at 658–59.

51. *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905, 17972–80, 17981, paras. 124–35, 137 (2010) (*Open Internet Order*).

52. *Id.* at 17992 (Appendix A).

53. *Id.* at 17956, para. 94.

54. *Verizon v. FCC*, 740 F.3d 623, 655-58 (D.C. Cir. 2014) (*Verizon*) (vacating the Commission's rule prohibiting "unreasonable discrimination" by fixed broadband providers on the theory that it "so limited broadband providers' control over edge providers' transmissions that [it] constitute[d] common carriage *per se*" and finding that the no-blocking rules "would appear on their face" to impose common carrier obligations on fixed and mobile broadband providers).

55. *Id.* at 650.

56. *Id.* at 635–42.

57. *See, e.g.*, *id.* at 657 (quoting *Cellco Partnership v. FCC*, 700 F.3d 534, 549 (D.C. Cir. 2012)).
58. *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Notice of Proposed Rulemaking, 29 FCC Rcd 5561 (2014) (*2014 Notice*).

59. President Obama, Statement on Net Neutrality (Nov. 10, 2014), https://obamawhitehouse.archives.gov/the-press-office/2014/11/10/statement-president-net-neutrality.

60. *In the Matter of Protecting and Promoting the Open Internet,* Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) (*Title II Order*).

61. *Id.* at 5616, para. 51.

62. *Id*. at 5607-09, paras. 15–24.

63. *United States Telecom Ass'n v. FCC*, 825 F.3d 674 (D.C. Cir 2016) (*US Telecom*), pets. for reh'g pending.

64. *See* Joint Petition of US Telecom and CenturyLink for Rehearing En Banc, *United States Telecom Ass'n v. FCC*, (D.C. Cir. filed Jul. 29, 2016).

Informed Perspectives on Net Neutrality

Selected References

Net neutrality has become one of the most polarizing issues in recent history. Millions of comments have been filed in the public docket over the years, and countless reports, articles and commentaries have been published widely both online and offline. The references that appear here is our effort to refresh the record with the recent perspectives on net neutrality. We have attempted to highlight both pro and con perspectives on Net Neutrality, recognizing that there are many, many more which could have been included.

****

How Ditching Net Neutrality Will Give Consumers More and Better Options
Georgi Boorman | December 11, 2017 | The Federalist

Internet Pioneers Plead with Congress to Preserve Net Neutrality
Brian Heater | December 11, 2017 | Tech Crunch

Events Constantly Outstrip Washington's Ability to Regulate Technology
Bret Swanson | December 11, 2017 | AEIdeas

FCC to Vote on Obama Era Net Neutrality Rules This Week
NBC Nightly News | December 10, 2017

The FCC Plans to Repeal Net Neutrality this Week—And it Can Ruin the Internet
Steve Kovach | December 10, 2017 | Business Insider

> The FCC will vote to repeal its net neutrality rules on December 14. The outcome is a foregone conclusion. The repeal of the rules likely won't mean broadband providers will block your access to Google or slow Netflix so it's unwatchable. But the move likely will mean the providers will charge internet companies tolls to be able to send their content or services to you. Big companies like Amazon, Google, Facebook, and Netflix will be able to afford those tolls. But smaller internet companies could be boxed out.

The Case for Net Neutrality Repeal
Motley Fool | December 9, 2017

> Net neutrality presents a wrinkle on the free-rider paradox. The current billing structure of the internet is mostly an all-you-can-eat approach. While there are still wireless plans that charge data by the gigabyte, the industry is moving to unlimited data plans -- home service broadly shares this billing construct. Therefore, all customers pay the same or a similar amount regardless of whether they occasionally check email or binge on data-hungry streaming video from Netflix all day long. As such, the value-capture mechanism is decoupled from demand, and ISPs are unable to optimize monetization for their networks. This is a consumer-friendly billing structure, but it presents an underinvestment problem. A Morgan Stanley research report notes wireless service providers are not investing as much in lightning-fast 5G technology in part because the $275 billion collectively spent on 4G has yet to produce significant returns. Without effective monetization, underinvestment is essentially guaranteed. Net neutrality hampers the ability of ISPs to charge consumers more for data-intensive usage, which leaves ISPs unable to create faster internet across the board.

A Decisive Battle for Net Neutrality Looms Ahead
Andrew McBride | December 7, 2017 | Law 360

> The unique, politically charged and tortured regulatory history of net neutrality, combined with the gathering storm clouds over Chevron and Auer could create a seminal moment in administrative law. Appeal of the Pai order to the D.C. Circuit is a foregone conclusion. The national importance of the underlying issue, the participation of the solicitor general and the intense debate over the proper scope of judicial review of agency action give the case all the earmarks of a blockbuster on the Supreme Court's calendar for October Term 2018.

The Sky is Not Falling: FCC plan to Free the Internet will Foster Needed Investment and Innovation
Alison Cheperdak | December 5, 2017 | Washington Examiner

> While some FCC items primarily concern policy wonks, net neutrality is one of the most controversial matters before the commission, engendering fierce national debate and a record 22 million comments filed with the agency. Unfortunately, net neutrality-related conversations are often marred with inaccuracies. The main inaccuracy is that the FCC is "killing" net neutrality — that now websites and streaming services will be discriminated against by internet service providers.

Why Concerns About Net Neutrality Are Overblown
Ken Engelhart | December 4, 2017 | New York Times

> The Federal Communications Commission is planning to jettison its network neutrality rules, and many Americans are distraught. Such a move, the Electronic Frontier Foundation warned, "invites a future where only the largest internet, cable and telephone companies survive, while every start-up, small business and new innovator is crowded out — and the voices of nonprofits and ordinary individuals are suppressed." Critics worry that getting rid of neutrality

regulation will lead to a "two-tier" internet: Internet service providers will start charging fees to websites and apps, and slow down or block the sites that don't pay up. As a result, users will have unfettered access to only part of the internet, with the rest either inaccessible or slow. Those fears are vastly overblown.

Ajit Pai is Right on Big Tech's Threat to an Open Internet
Scott Greer | December 1, 2017 | The Daily Caller

The folks warning of corporate tyranny are apparently missing the fact that Big Tech companies are the major powers enthusiastically backing net neutrality. Pretty much every segment of Big Tech — Google, Facebook, Twitter, Amazon — is in favor of the policy, which kind of undermines the notion only corporate fat cats would oppose net neutrality. Tech giants aren't exactly scrappy rebels fighting the man. They are the man. Not only that, but these companies have shown in the past few months that they are not quite as committed to a free and open internet as they claim to be.

Reports of the Internet's Impending Death are Grossly Exaggerated
Bob Quinn | AT&T Public Policy Blog | November 30, 2017

Over the past week, there has been a lot written about what happens to the internet assuming the FCC adopts the proposed order, circulated last Wednesday, at its next scheduled open meeting. I would suggest that most of what has been written falls in the category of misinformation and rhetorical excess. I thought I might try something different and attempt to limit us to a discussion of facts. The short answer is, of course, that there will be no change in how your internet works after the order is adopted.

No, the FCC is not killing the Internet
Commissioner Brendan Carr | Washington Post | November 30, 2017

Americans cherish a free and open Internet — and rightly so. It has revolutionized nearly every aspect of our lives. So, it's no surprise that the recent announcement that the Federal Communications Commission will vote Dec. 14 to restore Internet freedom has been met with strong (and colorful) reactions.

Debunking Chairman Pai's Claims About Net Neutrality
FCC Commissioner Mignon Clyburn | November 30, 2017 | FCC Blog

As an unwavering champion of net neutrality, FCC Commissioner Mignon Clyburn believes in setting the record straight. Chairman Pai made a number of claims and predictions in his dissent from the FCC's 2015 Open Internet Order.

The People Who Police the Internet Are Changing
John D. McKinnon | Wall Street Journal | November 29, 2017

> The federal cop that polices much of the internet is about to shift, a move that could lead to a fundamental reshaping of the online economy.

The FCC Should Not Give Broadband Providers the Keys to Your Internet Freedom
FCC Commissioner Mignon Clyburn | November 29, 2017 | FCC Blog

> Commonly referred to as "net neutrality," what is at stake is the ability of consumers and businesses to reach the online applications and services of their choosing without interference from their broadband provider. This has been a bipartisan bedrock principle for more than a decade, it was upheld in court last year, and has existed all while investment by broadband providers grows.

Will Ideology Block Opportunity? Regulatory Reform in the Infrastructure Industries
John Mayo | Georgetown Center for Business & Public Policy | November 29, 2017

> Notwithstanding the nation's ideological differences, a number of practical opportunities for policymakers to improve economic welfare have emerged and for which there is considerable agreement, if not complete political consensus, that will allow policy progress. These opportunities create the potential for practicality to forge agreement even in the face of more widespread ideological discord across our society.

The economic case that net neutrality was always fundamentally bad for the internet
Dan Kopf | Quartz | November 29, 2017

> Net neutrality may be over. The Federal Communications Commission chairman Ajit Pai recently proposed getting rid of regulations that stop internet service providers from charging fees to content providers for faster connections. The FCC votes on Dec. 14, and the proposal is likely to pass.

Net Neutrality Hits a Nerve, Eliciting Intense Reactions
Cecilia Kang | November 28, 2017 | New York Times

> Hundreds of thousands of comments have been registered since the FCC announced its intention to revise the rules on net neutrality in December. Many of these comments are suspicious because they have originated from dubious or unknown sources, which may have been manufactured by Chairman Pai's opponents.

Van Schewick's Alternate History of the Internet
Richard Bennett | High Tech Forum Blog | November 28, 2017

> Professor Barbara van Schewick is as dedicated to the cause of net neutrality than anyone you'll ever meet. While the Wheeler FCC worked on the 2015 Open Internet Order, she was all over the process: While teaching a full load at Stanford, [van Schewick] flew to Washington almost monthly and had more than 150 meetings at Congress, the FCC, and the White House. No one individual met more often with the White House or FCC on the issue, according to public records.

Net neutrality: A primer
Daniel Lyons | AEI Blog | November 28, 2017

> If you went online this Thanksgiving holiday weekend, you probably encountered a post (or 20) about net neutrality. Prompted by the Federal Communications Commission's (FCC) proposal to repeal its 2015 Open Internet Order, social media was inundated with alarmist screeds lamenting the demise of "the internet as we know it."

FCC Chairman Pai Remarks on Restoring Internet Freedom
Chairman Ajit Pai | November 28, 2017

> The Internet is the greatest free-market innovation in history. It's allowed us to live, play, work, learn, and speak in ways that were inconceivable a generation ago. But it didn't have to be that way. Its success is due in part to regulatory restraint. Democrats and Republicans decided in the 1990s that this new digital world wouldn't be centrally planned like a slow-moving utility. Instead, they chose Internet freedom. The results speak for themselves.

Putting the FTC Cop Back on the Beat
Chairwoman Maureen Ohlhausen | November 28, 2017

> I'm very pleased to be here today to talk about how the FCC's Restoring Internet Freedom proposal revives and even enhances the FTC's ability to protect broadband consumers. Back in 2014, I warned that regulating broadband providers as Title II common carriers would create an enormous consumer protection gap, cutting out not just the FTC's active privacy enforcement but also removing our ability to challenge any deceptive or unfair practice by broadband providers. For consumers' sake, I am pleased that the proposed order would return to broadband customers the FTC protections they had before 2015.

Comm. O'Rielly Remarks at the Future of Internet Freedom Event
Commissioner Michael O'Rielly | November 28, 2017

> It is so great to be here, and I am thankful for the opportunity to express my views and strong support for the actions the Commission will take in a few short weeks. After the painful and demoralizing 2015 decision to insert government regulations into the middle of the greatest man-made invention of our time, I was never quite sure that this day would come.

Commissioner Carr Remarks at Future of Internet Freedom Symposium
Commissioner Brendan Carr | November 28, 2017

> This is a great moment for consumers, for innovation, and for freedom. Last week, as you know, FCC Chairman Pai circulated a proposed order that will restore Internet freedom by reversing the Obama-era FCC's unprecedented decision to apply Title II regulations to the Internet. Reversing this 2015 decision—this massive regulatory overreach—has my full support

Like Y2K, the Net neutrality crisis is way overhyped
Hiawatha Bray | The Boston Globe | November 28, 2017

> As the Federal Communications Commission nears a fateful decision on network neutrality, it's beginning to feel a lot like Y2K all over again.

The Legal Road Ahead for Net Neutrality and the Restoring Internet Freedom Order
Gus Hurwitz | November 27, 2017 | AEIdeas

> The response to the RIFO has also been, in broad strokes, as anticipated, with pro–net neutrality voices taking to the media with proclamations of the internet's impending death. Further responses have come from pro–net neutrality legal commentators providing assurances that the RIFO will be overturned in court. These assurances — and the arguments provided to support them — have also largely been as one would expect: the Commission's change in policies is arbitrary and capricious, the classification decision isn't a permissible reading of the statute, and the Commission lacks factual support for the Order. The interesting thing about these arguments is how familiar they sound: They are largely the same as the arguments made on the other side against the 2010 and 2015 OIOs. Needless to say, it is nice that net neutrality proponents are finally embracing the arguments that those of us who have been critical of the FCC's Open Internet efforts have been making for nearly the past decade. This newfound concurrence, however, does raise interesting questions about how the inevitable legal challenge to the RIFO will proceed.

Net neutrality is on death row — Why we should let it die
David Nelson | Yahoo! Finance | November 27, 2017

> Net Neutrality is on death row. With a 3 to 2 vote all but certain don't expect a call from the governor saving the Obama administration's utility style approach to broadband. Chairman of the Federal Communications Commission Ajit Pai's push for change has set the internet on fire with frightening soundbites being tossed like political hand grenades.

Dear Aunt Sadie, Please Step Back From The Net Neutrality Ledge
Larry Downes | Forbes | November 27, 2017

> In the 25 years I've been toiling in the mines of tech policy, I've developed what I call the Aunt Sadie test. Most of the issues I research and write about are woefully technical, legal,

economic and boring; of interest to more and more people here in Silicon Valley as the information economy increasingly becomes the economy, but, still, relatively obscure.

The Internet Had Already Lost Its Neutrality
Megan McArdle | Bloomberg View | November 21, 2017

> When President Donald Trump's critics have demanded to know what his supporters got in exchange for voting for the genital-grabber-in-chief, thus far those supporters have had only one concrete achievement they could really point to: the appointment of Neil Gorsuch to the Supreme Court. Now it looks like they will have another: the end of the Federal Communications Commission's push into "net neutrality."

The Great Social Media Freakout
Richard Bennett | November 14, 2017 | High Tech Forum

> Senator Al Franken got Silicon Valley's attention by proposing to apply net neutrality regulations to mega-gatekeepers Google, Facebook, Twitter, et al. Writing in The Guardian, the senator correctly observed that "these companies have unprecedented power to guide Americans' access to information and potentially shape the future of journalism."

Revisiting Net Neutrality — Perspectives from FSF Scholars
Daniel Lyons | November 10, 2017 | Free State Foundation

> One of the Title II Order's biggest flaws is its failure to appreciate the possibility that some – perhaps many – forms of prioritization may in fact benefit consumers. Though the 2015 order acknowledges that "some forms of paid prioritization could be beneficial," it nonetheless finds that "the threat of harm is overwhelming" and "simply too great" to allow experimentation. The order's per se prohibition on paid prioritization is thus a policy choice to block potentially consumer-welfare-enhancing business models because of an overwhelming fear of anticompetitive abuse. In this way, the net neutrality rules are even more stringent than the requirements that Title II placed on the old Bell Telephone monopoly, which could offer different tiers of service as long as each tier was available at tariffed rates.

Net Neutrality and the Role of Antitrust
U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Regulatory Reform, Commercial and Antitrust Law | November 1, 2017 | Congressional hearing.

Depressing Investment Figures
Richard Bennett | November 1, 2017

> Figures released by US Telecom on Tuesday showed reduced spending on broadband infrastructure for the second year in a row. While 2014 was the best year for broadband investment since the fiber bubble of 1999-2001, the decline that began in 2015 has continued. This is the only non-recession decline in broadband investment the US has ever seen.

The Enduring Threat of Net Neutrality
Patrick Maines | October 10, 2017 | The Daily Caller

> No regulatory issue in memory has been quite like that of "net neutrality." A solution in search of a problem, bankrolled and of early and particular economic benefit to two companies, and a regulation that threatens to give government sway over an industry where it had none before, network neutrality by regulation defies logic, history, and the way the world works. Other than that it's one terrific idea. Net neutrality was conjured up by an alliance of left-wing activists, Democratic commissioners of the FCC, and certain Internet companies and their trade associations. The regulations that followed have been on a devolutionary path, such that what was merely bad (net neutrality under Title I) became, in 2015, very much worse – net neutrality under Title II.

Regulating the Internet Like 1930s Landline Telephone is Bad Policy
Adonis Hoffman | The Hill | July 12, 2017

CASE Analysis: Net Neutrality Comments Favor Repeal of 2015 Order
Consumer Action for a Strong Economy | June 25, 2017

> Of the total comments in the docket, approximately 65% (3,237,916) support repealing the 2015 Open Internet Order and roughly 35% (1,752,084) oppose the proposed repeal. The sentiment was determined based on the clear language indicated in the form letters we tracked on both sides of the debate , which comprise the majority of the docket . We also used key terms indicating support for or against the current Title II-based rules based, including the language encouraged by John Oliver.

Net Neutrality 2.0 : Perspectives on FCC Regulation of Internet Service Providers
Stuart N. Brotman | May 16, 2017 | Brookings Institution | Articles and commentary on Title II regulation of the Internet.

There is a Middle Ground in the Net Neutrality Debate
Adonis Hoffman | The Hill | May 15, 2017

How "Title II" Net Neutrality Undermines 5G
Peter Rysavy | Rysavy Research | April 19, 2017

Title II In Regulatory And Economic Context: Why The FCC's Recent "Net Neutrality" Moves Will Harm, Not Help, America's Internet Future
Kirk Arner | Hudson Institute | August 11, 2016

Wither U.S. net neutrality regulation?
Michael Katz | May 15, 2016

Assessing the Economic Benefits and Costs of the FCC's Imposition of Title II Regulation
John W. Mayo, Larry Downes, Ev Ehrlich, Gerald R. Faulhaber, Robert E. Litan, Jeffrey T. Macher, Michael Mandel, Bruce Owen, James E. Prieger, Robert J. Shapiro, Hal J. Singer, Lawrence J. White, Glenn A. Woroch | Georgetown Center for Business and Public Policy | August 2015

Regulation and Investment: A Note on Policy Evaluation under Uncertainty, With an Application to FCC Title II Regulation of the Internet
Kevin Hassett and Rob Shapiro | Georgetown Center for Business and Public Policy | July 2015

Impact of "Title II" Regulation on Communications Investment
Fred Campbell | Internet Innovation Alliance | March 6, 2015

What's New in the Network Neutrality Debate
Rob Frieden | Pennsylvania State University | February 2015

Net Neutrality and Title II of the Communications Act
Bruce Owen | Stanford Institute for Economic Policy Research | January 2015

How the FCC Can Preserve the Open Internet & Net Neutrality Through Title II Reclassification
Arthur Neill | California Western School of Law | January 2015

Outdated Regulations Will Make Consumers Pay More for Broadband
Robert Litan and Hal Singer | Progressive Policy Institute | December 2014

The Impact of Title II Regulation on Internet Providers On Their Capital Investments
Kevin Hassett and Rob Shapiro | Sonecon | November 2014

Why the Public Utility Model is the Wrong Approach for Internet Regulation
Larry Downes | Harvard Business Review | November 11, 2014

The Impact of Title II Regulation on Internet Providers On Their Capital Investments
Kevin Hassett and Rob Shapiro | Sonecon | November 2014

Are We Really Saving the Open Internet?
David Farber and Gerald Faulhaber | MIT Technology Review | October 21, 2014

Tariffing Internet Termination: Pricing Implications of Classifying Broadband as a Title II Telecommunications Service
George Ford and Larry Spiwak | Phoenix Center | September 24, 2014

Economic Repercussions of Applying Title II to Internet Services
Christian Dippon and Jonathan Falk | NERA | September 9, 2014

Free Press Builds Definitive Case for Net Neutrality
FCC Filing | July 18, 2014 | FCC Docket

Comments of Center for Democracy and Technology
FCC Filing | July 2014 | FCC Docket

Regulating Internet Access as a Public Utility A Boomerang on Tech If It Happens
Bob Litan | Brookings Institution | June 2014

Network Neutrality and Quality of Service: What a Non-Discrimination Rule Should Look Like
Barbara van Schewick | Stanford Law School | June 2014

The Rise of Quasi-Common Carriers and Conduit Convergence
Rob Frieden | Pennsylvania State University | March 2014

Is the U.S. Government's Internet Policy Broken?: A Review of *Captive Audience* by Susan Crawford
Robert Hahn and Hal Singer | Georgetown Center for Business and Public Policy | January 2013

The Seven Deadly Sins of Title II Reclassification
Larry Downes | Progress & Freedom Foundation | August 2010

Benchmarking Policy in a Global Telecommunications Industry: The Case of Net Neutrality
John W. Mayo, Bruce Owen, Marius Schwartz, Robert Shapiro, Lawrence J. White, and Glenn Woroch | Georgetown Center for Business and Public Policy | April 2010

Addressing the Next Wave of Internet Regulation: The Case for Equal Opportunity
Robert Hahn, Robert Litan, and Hal Singer | Georgetown Center for Business and Public Policy | January 2010

The Open Internet: A Customer-Centric Framework
David Farber and Gerald Faulhaber | AT&T | January 2010

Off the Hook: Communications Networks
Kevin Werbach | University of Pennsylvania Wharton School | April 2009

The Economics of 'Wireless Net Neutrality'
Robert Hahn, Robert Litan, Hal Singer | AEI-Brookings Joint Center | April 2007

Network Neutrality, Broadband Discrimination
Tim Wu | Columbia University | June 2003

****

As Seen by The Wall Street Journal *

What is net neutrality?

Net neutrality is the idea that companies that sell internet service—like cable provider Comcast Corp. or wireless carrier AT&T Inc.—shouldn't be allowed to dictate what content flows over the network, or deliberately slow down or speed up the connections to certain websites. That means if you want to watch a video on Facebook, it should load just as fast as if you want to watch a video on YouTube. The rules, as generally outlined since 2005, had several main elements: no blocking (meaning internet providers can't block access to a website); no throttling (meaning internet providers can't deliberately slow down the website's connection or make it buffer); no paid prioritization (meaning a website like YouTube can't pay an internet provider to ensure consistently fast loading times); and transparency (meaning internet providers have to disclose how they manage internet speeds).

Why do people care about internet providers doing this?

Most Americans only have one or two options for high-speed internet service at home, which gives internet providers a lot of control. The four national wireless carriers haven't always been subject to the rules, but they have since 2015.

Who benefits most from the status quo?

Websites that produce a lot of video, like Netflix and YouTube, make up a huge percentage of internet traffic, and they make a lot of money off advertising and subscriptions. Internet providers have been frustrated by that—they have to invest billions of dollars to make fatter pipes to carry all that data but have a more difficult time monetizing the increasing web traffic.

Wasn't this already decided?

Most of the fight over net neutrality has been about the Federal Communications Commission's authority to have rules like this at all. Internet providers successfully sued twice to get them thrown out. In 2015, under the Obama administration, the FCC reclassified the internet as a utility, which courts ultimately agreed gave it the authority to enforce net neutrality rules.

Who wants to see things changed?

Internet providers like Verizon, Comcast and AT&T say they aren't going to block or throttle content. But they were pushing hard to lift the utility style rules adopted in 2015.

So, why are we talking about it now?

FCC chairman, Ajit Pai, believes net neutrality and the utility classification stifle innovation and investment. He has decided to throw out the rules altogether. His proposal will be voted on by FCC commissioners on Dec. 14, and it will likely pass along party lines.

* "Sorry, What is Net Neutrality Again? A Handy Q & A", Ryan Knutson, November 22, 2017.

What will the internet look like without the rules?

It's hard to say. But internet providers will now be free to negotiate payment deals with websites. In one scenario, your internet provider might speed up Netflix while slowing down Hulu because Netflix has agreed to pay. Chairman Pai says companies will be free to create new business models that could lower costs for consumers or deliver more reliable connections for online services people want.

Will this change how much I pay for broadband?

Broadband companies in theory could start to charge for different packages of websites, much as they do for cable tv packages. But none have announced any such plans. For the most part, they have been pushing faster broadband connections (and higher prices) as internet usage, particularly video streaming, surges. Chairman Pai said he believes prices could fall because internet companies could get money from websites rather than consumers.

Will anyone police this behavior?

The FCC will require internet providers to disclose any websites they throttle, block or have paid prioritization deals with. The FCC said the Federal Trade Commission will watch out for unfair business practices or anticompetitive behavior.

Is this the last we'll hear about net neutrality?

Nope. The FCC move could be subject to a legal challenge. And if Democrats take control of Washington and the FCC, they'll likely reverse Mr. Pai's decision. The only thing that would help settle this is if Congress passed a law.

****

INSIDE THE FCC©®

Special Edition *Commentary & Analysis* *Winter 2017*

About Us

The FCC has emerged as one of the most important independent regulatory agencies in the U.S. government, and perhaps in the world. With statutory authority to regulate the nation's communications systems, devices and apparatus, the FCC holds the power to approve or deny mergers; assess liability; levy fines and penalties; bring suit; award licenses and contracts; allocate spectrum; conduct hearings and inquiries; promulgate and interpret rules; establish standards and codes, and exercise a wide range of regulatory actions affecting television, radio, telephone, wireless, mobile, Internet, cable, satellite and international telecom services in the multibillion dollar telecom, media and technology (TMT) sector.

Controversial rulings on **media ownership, net neutrality, spectrum auctions, television and cable service, telephone services and pricing, video options, privacy and many other issues,** have brought intense scrutiny and criticism from outside and inside the agency. At stake are billions of dollars in investment capital and consumer services, often hinging on a single decision by the FCC. While the FCC continues to deliberate the fates of entire industries, there is more to its actions than meets the eye. For every item, rule or notice under consideration, there are behind-the-scenes policies, practices and personalities at play, in addition to intense lobbying by some of the most powerful and well-connected industries. As a result of the Internet, even the average American has become more aware of, more interested in, and more affected by federal communications policies. If there ever was a question, all doubts were put to rest when over 4 million Americans, and a popular television talk show host, forced the policymakers to make an about-face on their approach to regulating the Internet.

Although the FCC is governed by an arcane set of rules, practices and procedures developed over the decades, there are usually signs as to how it will act, often which defy logic or rationality. For outsiders, discerning these signs is difficult. Yet for those who work and practice on the inside—in the inner sanctum of the vaulted "eighth floor"—the FCC can be an open book. Inside the FCC provides readers with an insider's perspective on the policies, practices and personalities that drive important decisions in the communications, media and technology world today, and insights on the emerging issues we are likely to face tomorrow. Every issue of Inside the FCC features a stellar lineup of contributors, including current and former policymakers, legal and communications specialists, business leaders, and a host of today's top experts, including Analysts, Broadcasters, CEOs, Entrepreneurs, and Journalists. These contributors provide insightful commentary and analysis of today's most pressing communications policy issues. Inside the FCC has been embraced by a growing group of influential thought leaders, including Members of Congress and the Executive Branch, the media, think tanks, law firms, corporate executives and financial analysts. Our readership tracks similar general market demographics of the leading communications blogs and top industry trade magazines.

INSIDE THE FCC©®

Special Edition *Commentary & Analysis* *Winter 2017*

Whither Net Neutrality?

Informed Perspectives

The Pros and Cons of Internet Regulation