



## **FCC should stand for 'fanatical control of communications'**

By Tom Schatz, March 31, 2015

On Feb. 26, 2015, the Federal Communications Commission (FCC) voted by a 3-2 margin to take control of the Internet. That is not hyperbole. By turning the Internet into a public utility, the FCC has overturned everything positive about the world's most important communications system and started down the path of making it stodgy, boring and uncreative, like the dial-up phones of the last century.

The FCC released the full 400-page, 1,777-footnote Report and Order on Remand, Declaratory Ruling, and Order in the matter of Protecting the Open Internet (GN Docket No. 14-28) on March 15. It would be hard to find a bigger misnomer for the title of a federal regulatory decision.

The Internet is open precisely because it has not been "protected," which in Washington means "regulated" (i.e., overregulated). It has been successful because everyone, until now, has adhered to the admonition in the Telecommunications Act of 1996 to keep the Internet a "vibrant and competitive free market ... unfettered by Federal or State regulation."

The FCC's opus of regulatory rigor is full of lame explanations for why the three Democratic commissioners felt it was imperative to reclassify and regulate terrestrial and mobile broadband Internet under a strict regime dating back to the Communications Act of 1934. The most frequent excuse to impose Title II of the act over the Internet was the ridiculous claim that Internet Service Providers (ISPs) have the technology available to harm the Internet's ecosphere.

The order would apply the same regulatory standards to wireless broadband and terrestrial broadband, even though the FCC and Congress previously determined that the two services operated differently and should not be classified in the same manner.

Despite imposing Title II on the Internet, the FCC claims it will forbear from rate regulation and many other provisions of Title II "at this time." In other words, the day after the order goes into effect, or the week or month thereafter, the FCC can regulate rates on ISPs. When industries are regulated, as occurred with telephones and the airlines, prices go up and competition goes down. Of course, when the telephone and airline industries were deregulated, prices went down and competition went up. The Internet is highly competitive and costs are constantly going down due to both competition and innovation. The FCC's order would take everything in the opposite direction.

As another example of how the FCC will control communications, the agency's Enforcement Bureau will now have the authority to provide advisory opinions to service providers regarding their network management, technological improvements or other innovations. However, there is no obligation to provide these advisory opinions in a timely manner. In the FCC's game of "Mother-may-I," the answer will inevitably be "I'll think about it." There would be no reason for ISPs to spend billions of dollars on innovation and service improvements knowing that a bunch of bureaucrats could arbitrarily say "no."

The bureau's increased role also strips the Federal Trade Commission (FTC) of its consumer protection enforcement role and privacy protections for the Internet. The FCC is ill-equipped to manage these tasks, which have always been under the purview of the FTC. In fact, the president's 2016 budget request includes \$505 million for the FCC, a whopping 49 percent increase of \$165 million above the 2015 level, some of which will be used to beef up the Enforcement Bureau.

The commissioners who voted for the Open Internet Order apparently believe that private sector ISPs are inherently evil. That helps to explain, but does not excuse, their bizarre decision that the only way to save the Internet is for the FCC to take control of and "provide" what everyone can access on the Internet. The commissioners' level of distrust in those who invest billions to build the networks that have enabled the Internet to be so successful is also heavily apparent in the new rules. In an era where a smaller, more nimble government is needed, big government has won out.

The effect on innovation will not occur overnight; but down the road, our children and grandchildren will feel the full brunt of the FCC's decision, as investments in new technologies dwindle, costs to consumers increase and companies that previously took risks in capital expenditures decide to travel the safer path for fear that the next great innovation will not have a snowman's chance in hell of ever being approved by the big government bureaucrats at the FCC.

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