



Permanently Securing Net Neutrality

- **Some believe that an open Internet was safely secured** by the FCC's new net neutrality rules that now treat broadband Internet access service as a public utility under Title II of the 1934 Communications Act.
- Yet, in choosing to impose rules designed to regulate the original telephone monopolies on the nation's dynamic Internet economy, **the FCC now faces the real threat that its monopoly-era approach will be reversed either by a court or through the election of a Republican President that would alter the Commission's leadership in 2017.**
- While Democrats and Republicans have fought for the past decade over the adoption of rules that assure network neutrality, Republicans now appear ready to engage in a real and thoughtful discussion about preserving an open Internet. They have moved a great distance from their traditional position. If Democrats are willing, **Congress can once and for all create legal permanence** for the network neutrality principles Democrats have long sought with rules of the road that **preserve Internet openness** and **restore the light-touch regulatory approach** that has **promoted the exponential growth of the Internet.**

Legal Infirmities of FCC's Net Neutrality Rules

The FCC's action reversed decades of Commission, Court and Congressional precedent to promote investment and innovation in computer technologies.

The FCC's decision to reclassify broadband Internet access service as a telecommunications service+subject to Title II common carrier regulation is contrary to all FCC and U.S. communications policy since computer technology issues emerged nearly 50 years ago.

- The FCC first began grappling with the intersection of computing and communications infrastructure in the mid-1960s, ultimately opening the first *Computer Inquiry* proceeding in 1966. The Commission recognized that the growing convergence and interdependence of communication and data processing technologies+threatened to strain its existing interpretations of Title II.
- In its 1980 *Computer II* decision, the FCC **identified what they termed "enhanced" services and said that these services, although "offered over a telecom network," are not subject to Title II "no matter how extensive their communications components."** The Commission further said that any attempt to regulate enhanced services "would restrict innovation in a fast-moving and competitive market.+"
- Building on those decisions, the **Federal District Court** overseeing the 1982 break-up of the Bell system, distinguished between "telecom services" and "information services", **which were essentially identical to the enhanced services defined in the FCC's**



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Computer II decision. As part of the divestiture, however, the court restricted the regional Bell companies from providing information services after determining that services providing gateways to enhanced or information services were themselves information services. Ultimately, the court, and later the FCC, lifted this restriction specifically to encourage companies to invest in enhanced and information services.

- In 1996, Congress codified the pre-existing **basic/telecom service and enhanced/information service dichotomy into the 1996 Telecommunications Act, thereby**, making clear that information services . including **Internet access service — were to remain free of Title II regulation**. In Section 230 (f)(1) of the Act, Congress defined the term **interactive computer service** to mean **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** and such systems operated or services offered by libraries or educational institutions.
- Since 1996, in multiple decisions, the FCC has consistently found that **Internet access service** is an information service and therefore the agency **has no authority to impose upon it Title II regulation**.
 - The statutory definition of an **information service** includes any offering that provides the **capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications**.
 - Internet access meets that definition since it offers consumers the capability to **acquire and retrieve information from websites, to store information in the cloud, to transform and process information by translating plain English commands into protocols understood by computers, to utilize information through computer interaction with stored data, and to generate and make available information to other users by setting up their own web pages or engaging in file sharing**.

The FCC Failed to Legally and Factually Justify Its Policy Decision that Abruptly Reversed Course.

- The Commission justifies its abrupt reversal in course on the increased use of web services, such as email, that are provided by parties other than the party that provides the Internet access, as well as increased advertisement by Internet access providers of transmission speeds. These considerations are legally irrelevant. These changes in the marketplace do not affect the fundamental capabilities offered by Internet access and do not provide a basis to ignore the clear and broad statutory definition of an information service that Congress provided and the FCC has repeatedly adopted.