The Real Story of the Open Internet

To accelerate its development, the FCC classified broadband internet service as an 'information service' under Title I of the Communications Act. Under this light-touch regime, the internet grew and flourished.

Yet, during a brief period from 2015 until early 2018, regulation of the broadband internet switched to Title II of the Act. Under these 1930s telephone-monopoly-style rules, investment suffered, and deployments of broadband were delayed.[1]

Since these rules were repealed and the original, bipartisan consensus has been restored, we've once again seen investment rise.

Further, the FCC's Title I authority and Section 706 of the Communications Act provide ample jurisdiction to enforce any violations of the rules on an open internet.

So, with one brief exception, every time the FCC has examined this issue, it has concluded that maintaining a light-touch regulatory regime is the best policy to promote both rapid broadband deployments and competition between providers and between technologies.

Policies that increase private sector investment in broadband networks are even more critical now to begin the transition to ever faster and more versatile 5G networks.

The Open Internet Timeline
1996 – 2019

1996 **Congress passes and President Clinton signs Telecommunications Act of 1996,** designed to modernize the country's laws on telecommunications and promote rapid deployment of advanced telecommunications services, and "promote competition and reduce regulation" in telecommunications. **The Act set U.S. policy 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."** The 'information service' category was established for the light-touch regulatory treatment of interactive computer services such as internet access. These principles will guide Congress and the FCC for the next twenty years.

1998 **"Stevens Report," issued under FCC Chairman William Kennard,** concludes that Congress intended light regulation of internet services.[2]

2002 Consistent with the Telecommunications Act and the findings in the Stevens Report, and to spur rapid broadband deployments, **the FCC under Chairman Powell classifies wireless broadband internet access as a Title I "interstate information service"** ("Cable Modem Order").[3]

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2005

U.S. Supreme Court upholds FCC's classification of broadband as an information service (Brand X).[4]

FCC's Internet Policy Statement sets forth four principles to "encourage broadband deployment and preserve and promote the open and interconnected nature of the internet."[5] The principles state that subject to "reasonable network management," consumers may access the lawful internet content of their choice, run applications and use services of their choice (subject to the needs of law enforcement), connect legal devices that do not harm the network, and benefit from "competition among network providers, application and service providers, and content providers."

In the wake of the Supreme Court's Brand X decision, the FCC under Chairman Martin classifies wireline broadband access as an information service[6] to ensure parity between wireless and wireline access and promote competition between technologies.

2006

FCC reaffirms its classification of wireline internet access as an information service.[7]

2008

FCC enforces Internet Policy Statement against Comcast's interference with BitTorrent, using its **Title I (information service)** authority.

2010

FCC under Chairman Genachowski preserves classification of broadband internet access as Title I information service and uses its Title I authority to adopt the Open Internet Order,[8] including provisions on disclosure of network management practices; no blocking of lawful content, applications, or services, except for reasonable network management; no unreasonable discrimination based on content, except for reasonable network management. **FCC rejects calls to reclassify broadband internet access under Title II.** U.S. Circuit Court later upholds FCC's use of authority under Section 706 of the Act to require transparency in disclosure of network management practices.

2015

Sharply divided FCC under Chairman Wheeler reclassifies broadband internet access as Title II telephone service. Investment in broadband networks falls. Even under this regime, however, the FCC's order provided an exception for reasonable network management to its "no blocking" and "no throttling" rules. FCC continues the tradition of preemption of contrary state or local rules.

2017

FCC restores original Title I classification of broadband internet access after determining that Title II classification has deterred investment and innovation and harmed small rural Internet Service Providers and that restoration of Title I classification will help close the digital divide.[9] Order goes into effect in early 2018. FCC also reaffirms preemption of contrary state or local rules. Order also restores the FTC's authority over consumer protection in broadband.

1. https://www.ustelecom.org/blog/broadband-investment-dropped-2016
2. https://transition.fcc.gov/Bureaus/Common_Carrier/Reports/fcc98067.pdf
3. https://transition.fcc.gov/Bureaus/Cable/News_Releases/2002/nrcb0201.html
4. 545 U.S. 967 (2005); https://www.law.cornell.edu/supct/html/04-277.ZS.html
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