

The Federal Communication Commission's proposal to rely on Section 706 of the Communications Act as authority for Net Neutrality rules is a clear and present danger to the Open Internet.

Congress carefully laid out the powers of the FCC by creating distinct regulations for different types of services.

- Telecommunication services, such as providing Internet access, could and should be regulated under Title II. This would **limit** the FCC to oversight of the infrastructure and broadband networks that transmit our information, but keep the agency away from regulating the Internet content and services that use these wires -- just as Congress intended.
- By creating new regulatory powers through Section 706 over what are called "information services" -- a category that includes websites and apps -- the FCC would unilaterally ignore these distinct categories that Congress set up.
- In other words, using Title II would allow the FCC to prevent blocking and discrimination on Internet access lines, as it always has. But using Section 706 actually **would** allow for the sort of "regulation of the Internet" that everyone agrees should be outside of the FCC's jurisdiction.

Using Section 706 would subject thriving private markets with low barriers to entry to unnecessary regulation.

- The January court decision said that the Commission's authority under Section 706 was limited *only* to "the boundaries of the Commission's subject matter jurisdiction and the requirement that any regulation be tailored to the specific statutory goal of accelerating broadband deployment." Phone and cable companies quickly **pointed out** the expansive oversight powers this language affords the FCC to regulate Internet content and websites.
- For example, Time Warner Cable recently told the FCC "the Commission has clear authority under Section 706 to adopt rules that prevent edge providers as well as ISPs from interfering with Internet openness."¹ The American Cable Association (ACA) similarly told the FCC that the agency's "broad authority to protect Internet openness under Section 706 permits, if not compels,

¹ Comments of Time Warner Cable Inc., July 15, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7521480407>.



the Commission to reach the behavior of Internet edge providers.” The ACA subsequently requested “that the Commission not only explicitly acknowledge that it has as much regulatory authority over Internet edge providers as information service providers under Section 706, but that it exercise such authority in this proceeding.”²

Such a development would be a disaster.

As a result of these calls to regulate the Internet, the largest content companies including Disney, FOX and CBS have filed with the FCC urging it to focus any rules on the phone and cable companies where clear legal authority exists.³

When the FCC was considering reclassifying phone companies’ Internet service as Title I services, Comcast warned the Commission to be “extremely cautious in exercising its Title I powers.”⁴ As Comcast said:

“To take services out from Title II regulation and then craft similar, but different, requirements under Title I would be a departure from past practice and of questionable legality; it would allow the Commission to expand, contract, or otherwise alter the requirements and limitations that Congress carefully established. In addition, it would not show the proper respect to Congress for the Commission to use Title I as a basis to “freelance,” establishing requirements without regard for the judgments reflected in the Telecommunications Act of 1996.”

² Comments of the American Cable Association, July 17, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7521683230>.

³ Reply Comments of The Walt Disney Company, 21st Century Fox, Inc. Time Warner Inc., CBS Corporation, Scripps Networks Interactive, Inc., and Viacom Inc., Sept. 15, 2014, available at <http://apps.fcc.gov/ecfs/document/view?id=7522671735>.

⁴ Reply Comments of Comcast Corp., July 1, 2002, available at <http://apps.fcc.gov/ecfs/document/view?id=6513200317>.

