

Clarifying common misconceptions about open Internet rules

Myth: Rules to protect the open Internet are actually a government takeover of the Internet filled with burdensome regulations.

Reality: Rules to protect the open Internet would only make certain the Internet continues to work the way it always has. Technological advances have given ISPs more power than ever before to inspect the data traveling on their networks and to manage that traffic in new ways, including speeding up traffic from some websites or applications and slowing down others. Open Internet rules would merely ensure that the principle that all traffic should be treated equally – a feature of the Internet since its inception – remains in place. These rules are key for protecting market access for all end users, including “edge providers” that rely on the Internet to serve consumers, and for preventing ISPs from controlling the speech and content their customers post and access online. Any company that uses the web to interact with its customers online is, regardless of whether they realize it, dependent upon an open Internet.

Myth: Reclassifying broadband as a Title II service will lead to chaotic state-level regulation and rate regulation.

Reality: Proponents of reclassifying Internet access service have explicitly called on the FCC not to impose rate regulation and oppose state-level regulation of consumer Internet access services. Wireless voice is an example of a Title II service that is not subject to state regulation or rate regulation. Sections 253 and 332 of Title II allow the FCC to preempt state regulation of “interstate” services like broadband. Section 706, which the ISPs favor, is actually the approach that provides state commissions with authority to impose state-level regulation of broadband access services.

Myth: Classifying broadband and wireless networks as common carriers will slow innovation by requiring every new app to be approved by a slow, bureaucratic process at the FCC.

Reality: Reclassifying broadband providers under Title II will not give the FCC any authority over Internet content, websites, or applications. Title II clearly limits the FCC to oversight of the infrastructure and broadband networks that transmit information and will keep the agency away from regulating the content that travels over these networks. Title II forecloses any FCC regulation of Internet content, just as it prevents the FCC from regulating the content of telephone conversations. [Using Section 706, as the ISPs propose, would give the FCC much greater flexibility to regulate Internet content.](#)



Myth: There is no market failure that necessitates open Internet rules. ISPs have not discriminated against, throttled, or blocked Internet traffic.

Reality: There is, rather, no “market” for ISPs. Most Americans have only two choices for home broadband, and for higher speeds above 25 Mbps over 80 percent of Americans have only one choice. [Also, there are many documented instances of ISPs violating the principles of the open Internet.](#) Comcast famously slowed down services its customers used for lawful file sharing and favors its own streaming video service over competitors like Netflix, Hulu, and Amazon Prime; AT&T limited Skype calls on the iPhone for years and crippled Apple’s FaceTime video calling service because they competed with AT&T’s products; and the dominant wireless carriers blocked Google’s mobile payments product to prevent competition to their own proprietary product. With regards to paid prioritization, [Verizon has asserted in federal court that without open Internet rules it would pursue paid prioritization deals.](#) These deals already exist internationally and there is a clear economic incentive for carriers to import them to the U.S.

Myth: Reclassifying broadband as a Title II service would remove incentives for ISPs to invest in infrastructure; modernize; and improve service, including expanding broadband access.

Reality: There is no data that ISPs can provide to support this myth. [In fact, telephone and cable companies invested in broadband at higher rates pre-2005, before Internet access was classified as a Title I service. ISP executives regularly tell Wall Street that regulatory classification decisions don’t determine their investment decisions.](#) The reality is that market factors like competition and access to capital are the key drivers of investment – a fact that is routinely conveyed by cable and telephone executives to stock analysts and investors. For example, when Google deployed Fiber in Kansas City, Time Warner Cable invested to upgrade its networks to stay competitive, and AT&T did the same in Austin, TX.

Myth: Rules relying on Section 706 authority are sufficient. Title II reclassification is government overreach.

Reality: [The FCC’s legal authority under Section 706 is insufficient to preserve an open Internet.](#) The U.S. Court of Appeals for the DC Circuit explicitly struck down the FCC’s 2010 open Internet rules because the Commission relied on Section 706 for its legal authority. The DC Circuit explained that any rules relying on Section 706 must allow for ISPs to discriminate against websites and content providers and allow for paid prioritization arrangements. [The FCC cannot adopt rules to prevent discrimination and paid prioritization – the very rules that would protect small businesses – unless the rules rest on Title II.](#)



Myth: Broadband providers have made clear they will not challenge open Internet rules based on the FCC's Section 706 authority. Why isn't that good enough?

Reality: Because the FCC cannot ban discrimination or paid prioritization using Section 706. The DC Circuit overturned rules relying on Section 706 in January 2014. Even if they do not challenge the rules facially on day one, broadband providers that disagree with any aspect of the implementation, enforcement, or requirements of rules relying on Section 706 will be certain of their ability to nullify those rules in court.

Myth: The FCC will be hauled back into court if it reclassifies broadband as a Title II service. Litigation will paralyze the agency.

Reality: The FCC will be sued over any new open Internet rules regardless of the substance of the rules and legal authority used to support them. The choice the FCC has is whether to reclassify broadband as a Title II service and win in court or avoid reclassification again and lose in court for a third time by relying on weak and compromised legal theories. Strong, enforceable rules that will survive a legal challenge will provide needed certainty for both broadband providers and businesses that use the Internet to reach consumers. Since 2013 the Commission has participated in more than a dozen lawsuits challenging its rules. Yet, business at the agency continues.

Myth: By reclassifying broadband as a Title II service, the FCC will use regulatory powers to begin charging fees (taxes) to consumers as they do for standard telephone and cable service.

Reality: The FCC can forbear from or waive Universal Service Fund (USF) contribution requirements from Title II services such as reclassified broadband access services. USF contributions from broadband access services are not a goal of those seeking to protect the open Internet.

Myth: Imposing open Internet rules will undermine U.S. efforts to prevent other countries from censoring the Internet.

Reality: The opposite is true. If we permit American ISPs to discriminate and charge websites to reach users, then foreign ISPs and governments will follow suit and discriminate against American sites and charge them.

Myth: The FCC's focus on open Internet rules is hampering the agency's ability to address other priorities.

Reality: Protecting the open Internet is a top priority because businesses of all shapes and sizes now interact with their customers online. Clearly, there is massive public interest, as [small businesses](#) and [investors](#) express concerns. By utilizing Title II, the Commission can finally put this issue to rest. Additionally, the FCC can walk and chew gum at the same time. The FCC is concurrently working on the important IP transition, wireless spectrum incentive auction, E-Rate, the open Internet docket, and more.

