



Consumer Federation of America

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THE FCC ACTS TO PROTECT CONSUMERS AND PROMOTE COMPETITION IN BROADBAND INTERNET ACCESS

ADAPTING FCC REGULATIONS TO THE ERA OF DIGITAL COMMUNICATIONS IS ESSENTIAL TO THE FAIR AND OPEN USE OF THE INTERNET

Washington DC -- Yesterday the Federal Communications Commission adopted two orders that will serve broadband consumers and the public interest well. First, it established rules to ensure non-discriminatory access to the digital communications network and, second, it removed one of the largest barriers to increasing competition in Broadband Internet Access Service.

Now that the Network Neutrality issue has passed from the rulemaking phase to the judicial review phase, it is important to move beyond the political rhetoric that was intended to influence the Commission. It was convenient for both sides to euphemize and dysphemize what the FCC was contemplating as imposing “public utility” regulation on the Internet. Now that we have a concrete proposal on the table, it is clear that this description is factually incorrect on two fundamental levels.

First, the FCC regulated the telecommunications network on which Internet data flowed for about thirty years (from the first Computer Inquiry in 1968) until the advent of broadband. It did so under Title I authority, which was deemed to be ancillary to Title II. It never regulated the Internet and the Open Internet order does not propose to do so now.

Second, to the extent that the Open Internet Rules restore regulation of the communications network on which the Internet rides, it bears little resemblance to “public utility” regulation.

In his preface to the second edition of Alfred Kahn’s, *The Economic of Regulation: Principles and Institutions* (1988), Paul Joskow described the “two volume treatise” as “a classic in the literature of the economics of regulation.” On page 3 of volume I, Kahn clearly defines “public utility” regulation as follows:

“There are four principle components of this regulation that in combination distinguish the public utility from other sectors of the economy: control of entry, price

fixing, prescription of quality and conditions of service, and the imposition of an obligation to serve all applicants under reasonable conditions.”

The approach taken by the two orders voted out yesterday does not fit this definition by any stretch of the imagination.

- It seeks to encourage entry, not discourage it.
- It has eschewed all forms of price regulation.
- It has narrowly asserted authority over two conditions of service – non-discriminatory access and consumer privacy, but with the exception of three banned practices, blocking, throttling and pay for play, it will not prescribe the quality or conditions of service.
- It has affirmed its authority to adopt policies to promote universal service (section 254 and 255), but it has not asserted the authority to impose a duty to serve.

As part of the network neutrality debate, many on both sides have recognized the need to modernize and update regulation to fit the conditions of digital communications era. Once we get past the political labels, it is clear that this is exactly what the FCC orders have endeavored to do.

The Consumer Federation of America is a nonprofit association of more than 250 consumer groups that was established in 1968 to advance the consumer interest through research, advocacy, and education.