



International Center
for Law & Economics

ICLE and TechFreedom File Joint Comments in Defense of a Free Internet
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[Geoffrey A. Manne](#)

The International Center for Law & Economics (ICLE) and TechFreedom filed two joint comments with the FCC today, explaining why the FCC has no sound legal basis for micromanaging the Internet and why “net neutrality” regulation would actually prove counter-productive for consumers.

The Policy Comments are available [here](#), and the Legal Comments are [here](#). See our previous post, [Net Neutrality Regulation Is Bad for Consumers and Probably Illegal](#), for a distillation of many of the key points made in the comments.

New regulation is unnecessary. “An open Internet and the idea that companies can make special deals for faster access are not mutually exclusive,” said Geoffrey Manne, Executive Director of ICLE. “If the Internet really is ‘open,’ shouldn’t all companies be free to experiment with new technologies, business models and partnerships?”

“The media frenzy around this issue assumes that no one, apart from broadband companies, could possibly question the need for more regulation,” said Berin Szoka, President of TechFreedom. “In fact, increased regulation of the Internet will incite endless litigation, which will slow both investment and innovation, thus harming consumers and edge providers.”

Title II would be a disaster. The FCC has proposed re-interpreting the Communications Act to classify broadband ISPs under Title II as common carriers. But reinterpretation might unintentionally ensnare edge providers, weighing them down with onerous regulations. “So-called reclassification risks catching other Internet services in the crossfire,” explained Szoka. “The FCC can’t easily forbear from Title II’s most onerous rules because the agency has set a high bar for justifying forbearance. Rationalizing a changed approach would be legally and politically difficult. The FCC would have to simultaneously find the broadband market competitive enough to forbear, yet fragile enough to require net neutrality rules. It would take years to sort out this mess — essentially hitting the pause button on better broadband.”

Section 706 is not a viable option. In 2010, the FCC claimed Section 706 as an independent grant of authority to regulate any form of “communications” not directly barred by the Act, provided only that the Commission assert that regulation would somehow promote broadband. “This is an absurd interpretation,” said Szoka. “This could allow the FCC to essentially invent a new Communications Act as it goes, regulating not just

broadband, but edge companies like Google and Facebook, too, and not just neutrality but copyright, cybersecurity and more. The courts will eventually strike down this theory.”

A better approach. “The best policy would be to maintain the ‘Hands off the Net’ approach that has otherwise prevailed for 20 years,” said Manne. “That means a general presumption that innovative business models and other forms of ‘prioritization’ are legal. Innovation could thrive, and regulators could still keep a watchful eye, intervening only where there is clear evidence of actual harm, not just abstract fears.” “If the FCC thinks it can justify regulating the Internet, it should ask Congress to grant such authority through legislation,” added Szoka. “A new communications act is long overdue anyway. The FCC could also convene a multistakeholder process to produce a code enforceable by the Federal Trade Commission,” he continued, noting that the White House has endorsed such processes for setting Internet policy in general.

Manne concluded: “The FCC should focus on doing what Section 706 actually commands: clearing barriers to broadband deployment. Unleashing more investment and competition, not writing more regulation, is the best way to keep the Internet open, innovative and free.”

For some of our other work on net neutrality, see:

“Understanding Net(flix) Neutrality,” an [op-ed by Geoffrey Manne](#) in the Detroit News on Netflix’s strategy to confuse interconnection costs with neutrality issues.

“The Feds Lost on Net Neutrality, But Won Control of the Internet,” an [op-ed by Berin Szoka and Geoffrey Manne](#) in Wired.com.

“That startup investors’ letter on net neutrality is a revealing look at what the debate is really about,” [a post by Geoffrey Manne](#) in Truth on the Market.

“[Bipartisan Consensus: Rewrite of ‘96 Telecom Act is Long Overdue](#),” a post on TF’s blog highlighting the key points from TechFreedom and ICLE’s [joint comments](#) on updating the Communications Act.

The Net Neutrality Comments are available here:

[ICLE/TF Net Neutrality Policy Comments](#)

[TF/ICLE Net Neutrality Legal Comments](#)

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