

The Internet may potentially become more expensive as companies start paying network operators to get to their subscribers. Meanwhile, new service and content providers might get squeezed out by bigger, more established companies before the startups have a chance to succeed.

The U.S. Court of Appeals for the District of Columbia has very subtly hinted it might look favorably on reclassification, and it basically transforms broadband providers from the untouchable companies they currently are into the kind of telecommunications companies the FCC regulates without question all the time, such as wireless operators.

Retaining the Internet classification as a series of information services is unjustified. The internet is a communication network, often "used" to obtain information. But the Internet is much more than just an information resource, it is used for communication and commerce. Would you say that since it is used for commerce that the Commerce Commission regulate it? Of course not, since the Internet is really a communication network, like phones used to for communication and commerce also, and the Commerce Commission doesn't regulate phone networks.

Title II, the part of the Telecommunications Act that gives the agency its authority to regulate telecom services, is the Title that should be used to regulate ISP's.

Title I covers what are called "information services," a loosely defined term should NOT be the Title under which ISP's are regulated since information is just a part of the Internet functionality, along with communications, commerce, instruction, and education, and online programs of wordprocessing, spreadsheet creation, publication generation, etc.

In the FCC's 2002 explanation "When an entity offers transmission incorporating the capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information, ?it offers an ?information service? even though it uses telecommunications to do so."

Even though the court agreed that the FCC should be free to regulate broadband in general, and even supported the idea of net neutrality regulations in particular, it has forbidden the agency from slapping ISPs with Title II obligations specifically since the FCC classified ISP's as Title I's. I think the Title I classification was done in error, ignorance or perhaps from persuasion, or some combination of the former. And, with apparently no thought of a user-friendly classification.

The FCC should set its sights and goal on the right job ? preserving innovation and competition.

If the FCC were really determined to push net neutrality, it could try to redefine broadband companies as Title II common carriers, much like the telecom companies. This would give the FCC much wider latitude to implement its net neutrality rules. An earlier court ruling seemed to leave that possibility open.

"The court essentially invited the FCC ('remand the case for further proceedings') to try to better articulate" the FCC's regulatory authority on broadband, said Jeffrey Silva, a policy analyst at Medley Global Advisors.

Reclassification would be legally very simple; the FCC is allowed to classify technologies however it wants. In the case of broadband providers, the agency would merely need to explain why it was wrong about the way it had previously defined ISPs.

"The fact that the FCC said one thing, one day, doesn't create a higher burden to say something different another day," said John Bergmayer, a senior staff attorney at the pro-net neutrality group Public Knowledge.

You have an opportunity, Chairman Tom Wheeler, in promoting and making a decision
Page 1

7521800575.txt

that private companies should serve the general interest of the user public.

The FCC risks becoming a marginalized agency if it doesn't find a significant way to weigh in on broadband and in the public's interest. For self-preservation reasons alone, the FCC will need to address ISPs sooner or later, according to Tim Wu, the Columbia law professor who first coined the term "net neutrality."

If ISP's don't like the Title II classification regulation, they can bow out, but I don't think they will since there will still be honest money to be rightfully earned.