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FCC's New Regulations Threaten Broadband Investment

by

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Digital technologies and broadband internet connectivity have transformed the communications marketplace. Today, the broadband market is more competitive than ever. But broadband's bright future may be severely dimmed by a pair of new regulatory schemes to be voted on by the Federal Communications Commission (FCC) on or before its Oct. 27 meeting.

The FCC is proposing price controls that will sap future investment in business broadband infrastructure. It's also planning to impose onerous and lopsided privacy restrictions that will harm innovation and consumer choice in online services. These harmful FCC regulatory proposals should be halted.

Business data services (BDS) are one of the FCC's regulatory targets. BDS involves broadband network facilities that are specially engineered to serve business enterprises with high-volume data needs. These broadband services are typically procured by negotiated contracts. Many years ago, BDS used to be provided to a given primarily by a single telephone company in a monopolistic environment. But due to growing competition, the FCC eased up on its rate controls in 1999. Also, certain advanced facilities were exempted from legacy regulations as a way to encourage investment in next-generation networks.

The FCC's deregulatory policy has been a success. Incumbent providers have invested in fiber-optic networks and ethernet capabilities to deliver improved quality and higher volume services. Just as important, cable operators entered the market, offering business enterprises competitive choices among BDS providers.

But now, the FCC aims to impose new rate controls on the BDS market. The FCC intends to require that BDS providers lease their facilities at below-market prices to competing providers in areas where those competitors have no facilities of their own.

However, mandating access to rivals' facilities at below-market prices discourages competitors from building their own facilities. Rate controls that deny BDS providers the ability to seek full returns on their investments obviously discourage new facilities investments. And price regulated providers stand to lose revenues that would otherwise be spent in facilities upgrades that are needed to satisfy increasing volume demands, including future 5G wireless backhaul traffic.

For several years, some market competitors have demanded access to their rivals' facilities at prices set by government, not the market. Persistent lobbying at the FCC appears to be paying off. Certain market competitors, such as Sprint, have sold off significant BDS facilities over the past several years. Such competitors now stand to gain a government-bestowed price discount to use facilities that they previously decided to part with.

Online privacy is another FCC target for unduly harsh and inequitable regulation. The FCC is aiming to impose a set of privacy restriction on broadband service providers, but not other online "edge" services like Google or Amazon. It has proposed onerous "opt in" requirements for broadband service providers' collection of non-sensitive data. These requirements would discourage broadband providers from offering targeted marketing deals or to sell advertisements for personally designed consumer experiences.

Also, the FCC is considering banning providers from offering services or applications for free or at a discount in exchange for personally identifiable information. Such a ban would amount to onerous form of price control. And consumers would be deprived of valuable choices. A ban mistakenly presumes consumers aren't competent to decide whether they prefer money or information as their form of payment for services.

The FCC seeks to impose a set of rigid prescriptive rules on broadband providers' data privacy practices. By contrast, the Federal Trade Commission (FTC) typically conducts case-by-case evaluations of online privacy practices using a set of guiding principles. Indeed, the FTC is nation's foremost privacy agency, with a long track record of protecting consumers through case-by-case enforcement. The FTC's approach is more attuned to how data collection can enable innovative and customized services and applications that benefit consumers with new choices.

The FCC is now displacing FTC authority. But the better approach to protecting consumer data privacy on the internet is to allow the FTC to enforce a set of common standards against all online providers.

At the very least, the FCC's approach to privacy should be harmonized with that of the FTC. The FCC is mistaken to assume consumers want different privacy protections depending upon whether they are using Comcast's services or Netflix.

Nor is there reason to think consumers prefer more stringent requirements for broadband firms, which collect less data from consumers than edge providers. Yet the FCC's proposed privacy rules embody such irrational thinking.

The FCC's BDS and privacy regulatory proposals should be stopped. No market power problems or consumer harm exists to warrant them. And in neither instance has the FCC calculated the likely high financial costs of its proposed rules. Investment in broadband infrastructure and promotion of online consumer choice should be encouraged under a free-market policy.

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