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Endless Craving for Internet Control

by

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Broadband Internet is the 21st century's dynamic medium for free speech in a free market. If a federal agency gets its way, though, government will increasingly become both regulator and owner of broadband Internet networks.

For the past five years, the Federal Communications Commission (FCC) has sought greater government controls over the Internet. A pair of federal court rulings voided its prior Internet regulation plans. Now the agency is doubling down. In addition to imposing government regulation over how broadband Internet networks operate, the FCC is also urging government ownership of broadband networks.

The Internet has flourished under a pro-freedom, pro-market federal policy. Beginning in 2002, the FCC declared that broadband would be treated as lightly regulated "information services" under Title I of the Communications Act. Broadband was freed from restrictive Title II "telecommunications services" that governed 20th-century telephone monopolies. The U.S. Supreme Court upheld the FCC's light-touch policy in *NCTA v. Brand X* (2005).

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This pro-freedom, pro-market policy toward broadband Internet provided critical assurances to private marketplace innovators and investors. The FCC wisely decided against heavy government controls on broadband technologies or prices, lest such controls weigh down entrepreneurial ventures for financing and developing dynamic broadband Internet services. State regulation of broadband was also precluded.

Availability and performance of broadband Internet networks has flourished under the light-touch policy. Between 2004 and 2013, U.S. broadband providers made \$675 billion in capital expenditures. Few consumers now choose dial-up Internet service compared with 2004. Most broadband Internet consumers can choose between broadband services offered by traditional cable providers (such as Comcast, Charter and Cox) and traditional telephone carriers (such as AT&T, Verizon, CenturyLink and Frontier). More recently, wireless broadband services (including AT&T, Verizon, T-Mobile and Sprint) have catapulted into existence, offering extra consumer choices. According to FCC statistics, as of October 2012, 91.6 percent of the population are served by three or more wireless broadband providers, and 82 percent are served by four or more

However, the pro-freedom, pro-market policy is on the rocks. At the FCC, a pro-regulation, pro-government policy is being primed to take its place.

First, the FCC is looking to impose a burdensome thicket of regulatory controls over broadband Internet services. Increasingly, the agency appears inclined toward reversing its light-touch policy. Reclassifying broadband as a last-century monopoly-style Title II service would pave the way for new controls over broadband network engineering, service options and prices.

Rapid changes and competitive conditions in the broadband market make such a dramatically pro-regulatory policy shift unjustifiable and unwise. Despite the FCC's incessant marketplace monitoring, it has offered no evidence of broadband market failure. The agency has no evidence that broadband Internet providers are immune from competitive pressures or could impose substantial price hikes above going market rates. Market-power problems are particularly unlikely, given the growth of wireless broadband, an increasingly plausible alternative to cable or wireline broadband.

Likewise, the FCC has offered no evidence of actual harm to consumers. According to pro-regulatory advocates, new "sponsored" or "zero-rating" pricing plans should be prohibited by new Title II regulations. Those plans simply offer extra choices to consumers, though. Sponsored data plans make popular mobile data apps available to wireless customers at no extra cost. By agreement with wireless carriers, mobile data app providers essentially subsidize wireless customers' use of their data services. Zero-rating plans allow unlimited, at-no-extra-cost access to certain popular social-networking, music or other data services. Such plans have particular appeal to cost-conscious and low-income consumers. FCC prohibitions would unjustifiably restrict marketplace freedom and consumer choice.

Second, the FCC is seeking to effectively grant local governments the power to own and operate broadband Internet networks. Approximately 20 states have laws that prohibit or restrict their local governments from going into the broadband Internet business. Yet FCC Chairman Tom

Wheeler has declared his intent to pre-empt those state laws and encourage more local government ownership of broadband Internet networks.

Pre-emption of state laws restricting local governments from owning broadband networks turns federalism on its head. The Constitution's text, structure and history recognize state sovereignty, not local government sovereignty. States create local governments. How could a federal agency effectively grant to political subdivisions powers that their states denied them? Nothing in the Communications Act gives the FCC that authority.

When government acts as both a regulator of private broadband Internet providers and as their competitor, inherent conflicts of interest arise. There is risk of government-owned networks gaining favoritism over private providers in bureaucratic permitting and licensing processes. Private competitors fear being disadvantaged by government wielding powers unfairly. Government ownership thereby discourages private investment in broadband networks.

Local government-owned networks are often subsidized by taxpayers or backed by government bonds. Many have failed financially, leaving local taxpayers paying for bailouts.

The Internet supplies the medium for much of today's civic, cultural, social and economic life. Unless the FCC backs down, or unless Congress or courts intervene, the Internet will be increasingly regulated by government and owned by government. This would undermine the conditions for private marketplace innovation and investment that have enabled the past decade of broadband progress. The pro-freedom, pro-market federal policy toward broadband must be preserved.

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