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Net Neutrality Is Dead, and the Internet Is Much Better Off for It

by

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On Oct. 27, the Federal Communications Commission voted to maintain its free market policy for broadband internet services. In the nearly three years since it adopted that policy, internet access and speeds have increased while per-megabit prices have decreased. By sticking with this successful policy of less regulation, more people will be more quickly connected to 5G wireless, gigabit-speed fiber, and other next-generation broadband services.

The FCC's January 2018 Restoring Internet Freedom Order reclassified broadband internet access services as lightly regulated "information services" under Title I of the Communications Act. It repealed the Obama FCC's onerous Title II "net neutrality" rules that subjected broadband internet service providers to public utility-like regulation. The Trump FCC found no instances of actual consumer harm that would justify public utility regulatory restrictions such as those that had been applied to the monopolistic Ma Bell telephone system. Rather, Title II restrictions likely reduced ISP network investment in 2015 and 2016. The FCC predicted that its removal of Title II rules would boost private market investment and consumer access to advanced services.

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The record of the last three years vindicates the FCC's prediction. According to CTIA, wireless industry investment for 2019 grew to \$29.1 billion, up from \$25.6 billion in 2017. About 46,000 new cell sites were activated in 2019, more than in the prior three years combined. USTelecom reports that fixed wireline broadband ISPs invested \$80 billion in infrastructure in 2018, up more than \$3.1 billion from 2017. And fixed wireline investment surely increased further in 2019, and the FCC's 2020 Broadband Deployment Report indicates that fiber broadband networks reached 6.5 million more homes in 2019, the largest single-year increase.

Indeed, many more people now have access to broadband internet access services and at higher speeds. According to USTelecom, gigabit internet service is available to at least 85% of homes in the United States, compared to only 6% of U.S. homes 3 1/2 years ago. In his Oct. 5 blog post, FCC Chairman Ajit Pai observed that "average download speeds for fixed broadband in the United States have doubled, increasing by over 99%" since the Restoring Internet Freedom Order was adopted. According to Ookla Speedtests, mobile wireless speeds similarly show significant gains, climbing to 47.13/10.15 Mbps in September 2020 compared to 27.33/8.63 Mbps in the first half of 2018.

Prior to the Restoring Internet Freedom Order, there were no deployments of commercial 5G wireless services. Today, T-Mobile, AT&T, and Verizon offer 5G services nationwide. Xfinity Mobile and other smaller wireless providers also are initiating 5G offerings. This rapid deployment is momentous because 5G networks can be optimized for speeds 10 times faster than 4G and peak speeds up to 100 times faster. And now on the horizon is the cable broadband "10G" platform, which promises speeds of up to 10 Gbps downstream and greater reliability using existing cable infrastructure.

This three-year track record of strong investment and explosive output has improved the value of broadband services for consumers. A September 2020 study released by USTelecom found that the cost per megabit of connection speed declined almost 38% for the most popular service and declined over 56% for the highest speed service between 2015 and 2020.

COVID-19-related lockdowns in 2020 bring into sharper focus the benefits to consumers from strong investment in broadband infrastructure. U.S. networks have been widely recognized for their handling of lockdown-related spikes in traffic. A study cited in the FCC's October 2020 order showed that "out of the ten countries with the highest populations in the world, the United States was the only country to not experience any download speed degradation in April 2020." The FCC observed that "unlike the European Union, which takes a utility-style approach to broadband regulation and has had to request that bandwidth intensive services such as Netflix reduce video quality in order to ease stress on its network infrastructure, the United States has not had to take similar steps, despite similar surges in Internet traffic."

While there was a plethora of "horror" stories conjured up regarding what would happen if "net neutrality" regulations were repealed, the scary scenarios never materialized. Wild claims – that the removal of Title II rules would lead to "the end of the internet as we know it" and shuffle consumers into internet "slow lanes" – amounted to nothing. This is hardly surprising. Any attempt by an ISP to block, throttle, or engage in network discrimination that harms consumers would backfire and cause the provider to lose subscribers to its competitors. And as the FCC

recognized in its October 2020 order: "All major ISPs have made written commitments not to engage in practices considered to violate open Internet principles, including blocking and throttling." ISP promises to customers to refrain from those activities are legally enforceable by the Federal Trade Commission.

The enormous benefits to the economy and consumers from 5G, 10G, and other advanced services depend on continued massive private sector investment. By wisely voting to stay the course on its free market and light-touch policy, the FCC has primed the U.S. for supercharged growth in broadband deployment, access, and capabilities.

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