



Perspectives from FSF Scholars
September 21, 2023
Vol. 18, No. 39

Reimposing Burdensome Net Neutrality Mandates Will Harm Consumers

by

Randolph J. May *

[Washington Examiner](#)
September 21, 2023

Now that the [Senate](#) has confirmed Anna Gomez as the fifth member of the [Federal Communications Commission](#), Democrats finally have a long-awaited 3-2 majority. It's widely anticipated that FCC Chairwoman Jessica Rosenworcel will initiate a rulemaking proceeding proposing to reimpose "net neutrality" mandates on Internet service providers such as AT&T, Comcast, T-Mobile, and dozens of others.

This would be a serious mistake, one likely to harm not only ISPs but, more importantly, America's [consumers](#) who depend on reliable, high-speed Internet service.

"Net neutrality," like other political slogans, may have a certain sweet-sounding appeal. But don't be fooled! Its real-world implications are dour, if not sour, for in practice, the FCC's rules would result in ISPs being regulated in a heavy-handed fashion as public utilities. This invariably includes some form of government rate-setting, a core feature of public utility regulation, along with a prohibition against differentiation with respect to the delivery of Internet traffic.

The Free State Foundation
P.O. Box 60680, Potomac, MD 20859
info@freestatefoundation.org
www.freestatefoundation.org

The Internet is not like the paradigmatic public utilities subject to regulation — think the dominant railroads in the 19th century, monopolistic Ma Bell telephone companies in the 20th century, or today's water or electric companies. The markets in which these firms provided services all share an important characteristic: the lack of effective marketplace competition to protect consumers. The current technologically dynamic, competitive Internet services marketplace is far different than the staid markets in which those monopolistic companies have operated.

There are serious questions regarding the FCC's legal authority to reimpose utility regulation on ISPs. But here, I want to focus on the policy reasons why the agency should not consider adopting new utility mandates.

First and foremost, no problem has been identified that would justify establishing a new regulatory regime.

Justifying new regulation is usually tied closely to whether convincing evidence exists of a nontransitory market failure indicating market forces are inadequate to protect consumers and produce socially beneficial outcomes. In this instance, there is no such evidence, whether attributable to market failure or otherwise.

Recall that net neutrality advocates (or, in some cases, doomsday fanatics) direly warned throughout 2017 that if the Trump FCC jettisoned the Obama-era public utility mandates, this would mean, as a [scary CNN headline](#) put it, "the end of the Internet as we know it."

Of course, it wasn't. Indeed, there were no adverse consequences. Since the adoption of the Trump-era [Restoring Internet Freedom Order](#), which rescinded Obama's net neutrality mandates, there have been virtually no claims that consumers have been harmed by any ISP actions that would have been prohibited by the eliminated regulations. Even today, at most, net neutrality advocates only conjecture that, absent regulation, there *could* or *might potentially* be harmful actions in the future.

Since 2017, consumers have continued to benefit from increasing competition among ISPs, with more private investment leading to ever faster networks and ongoing innovation leading to a dizzying array of new services and applications. According to USTelecom | The Broadband Association, the [most recent available figures](#) show that America's ISPs invested \$86 billion in private capital in 2021 building out broadband networks, a 20-year high. And rebutting any market failure suggestion, ISPs offer high-speed broadband Internet services over several different technological platforms — fiber, cable, wireless, fixed wireless, satellite, or a hybrid mix of these. Delivery of Internet traffic over these different platforms enables competitive offerings and the differentiation of services upon which competition is based.

According to the [latest FCC figures](#), more than 98% of Americans enjoy access to a fixed connection at broadband speeds, and a sizable majority have a choice of fixed line providers. Moreover, almost all mobile service customers in the U.S. have available high-speed broadband service. Already, 93% of Americans have access to super-fast 5G service.

So, the evidence is clear that no problem presently exists that would justify reimposing intrusive utility mandates.

In the past two years alone, calculated conservatively, Congress has appropriated more than \$100 billion in subsidies to be used for further broadband buildouts, especially in areas currently unserved, and to support further adoption by low-income persons. The Biden administration, including the Commerce Department's National Telecommunications and Information Administration, which alone is responsible for disbursing \$42.5 billion to support deployment, and the FCC, which is responsible for disbursing billions more, should devote their resources to ensuring that all these taxpayer funds are disbursed and used in the most efficient and effective manner while preventing waste, fraud, and abuse.

Just because the Democrats finally have a majority at the FCC does not mean they have a license to adopt a costly, burdensome regulatory regime that almost certainly will depress private sector broadband investment, as it did the last time onerous net neutrality mandates were in place, and chill innovation. That's a steep price for consumers to pay for the government to address a nonexistent problem in the name of what's now become little more than a political slogan.

* Randolph J. May is President of the Free State Foundation, a free market-oriented think tank in Rockville, MD. The views expressed in this *Perspectives* do not necessarily reflect the views of others on the staff of the Free State Foundation or those affiliated with it. *Reimposing Burdensome Net Neutrality Mandates Will Harm Consumers* was published in the *Washington Examiner* on September 21, 2023.