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OPINION | COMMENTARY

# How the FCC Can Save the Open Internet

We should undo the Obama administration's rules that regulate the web like a 1930s utility.

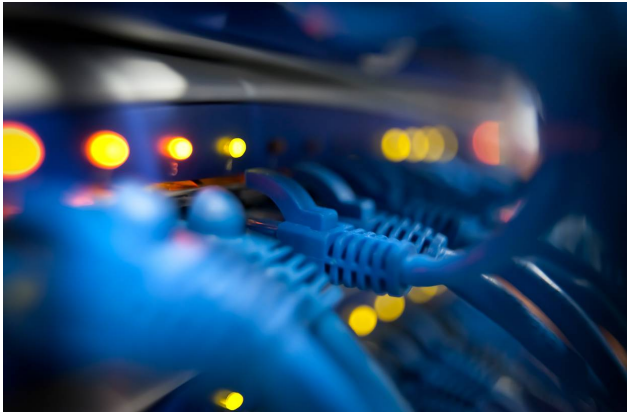


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*By Ajit Pai*

Nov. 21, 2017 11:18 a.m. ET

As millions flocked to the web for the first time in the 1990s, President Clinton and a Republican Congress decided “to preserve the vibrant and competitive free market that presently exists for the Internet.” In the Telecommunications Act of 1996, the government called for an internet “unfettered by Federal or State regulation.” The result of that fateful decision was the greatest free-market success story in history.

Encouraged by light-touch regulation, private companies invested over \$1.5 trillion in nearly two decades to build out American communications networks. Without having to ask anyone's permission, innovators everywhere used the internet's open platform to start companies that have transformed how billions of people live and work.

But that changed in 2014. Just days after a poor midterm election result, President Obama publicly pressured the Federal Communications Commission to reject the longstanding consensus on a market-based approach to the internet. He instead urged the agency to impose upon internet service providers a creaky regulatory framework called “Title II,” which was designed in the 1930s to tame

the Ma Bell telephone monopoly. A few months later, the FCC followed President Obama's instructions on a party-line vote. I voted "no," but the agency's majority chose micromanagement over markets.

This burdensome regulation has failed consumers and businesses alike. In the two years after the FCC's decision, broadband network investment dropped more than 5.6%—the first time a decline has happened outside of a recession. If the current rules are left in place, millions of Americans who are on the wrong side of the digital divide would have to wait years to get more broadband.

The effect has been particularly serious for smaller internet service providers. They don't have the time, money or lawyers to cut through a thicket of complex rules. The Wireless Internet Service Providers Association, which represents small fixed wireless companies that generally operate in rural America, found that more than 80% of its members "incurred additional expense in complying with the Title II rules, had delayed or reduced network expansion, had delayed or reduced services and had allocated budget to comply with the rules." They aren't alone. Other small companies have told the FCC that these regulations have forced them to cancel, delay or curtail upgrades to their fiber networks.

The uncertainty surrounding the FCC's onerous rules has also slowed the introduction of new services. One major company reported that it put on hold a project to build out its out-of-home Wi-Fi network partly because it wasn't sure if the FCC would approve of its business model. Nineteen municipal internet service providers—that is, city-owned nonprofits—told the this past May that they "often delay or hold off from rolling out a new feature or service because we cannot afford to deal with a potential complaint and enforcement action."

This is why I'm proposing today that my colleagues at the Federal Communications Commission repeal President Obama's heavy-handed internet regulations. Instead the FCC simply would require internet service providers to be transparent so that consumers can buy the plan that's best for them. And entrepreneurs and other small businesses would have the technical information they need to innovate. The Federal Trade Commission would police ISPs, protect consumers and promote competition, just as it did before 2015. Instead of being flyspecked by lawyers and bureaucrats, the internet would once again thrive under engineers and entrepreneurs.

The FCC will vote on this proposal on Dec. 14. If it passes, Washington will return to the bipartisan approach that made the internet what it is today. Consumers will benefit from greater investment in digital infrastructure, which will create jobs, increase competition, and lead to better, faster, and cheaper internet access—especially in rural

America.

In the next few weeks, anti-market ideologues are going to try to scare the American people. They'll argue that government control is the only way to assure a free and open internet. They'll assert that repealing utility-style regulation will destroy the internet as we know it and harm innovation. They'll allege that free speech online is at risk. Don't fall for the fearmongering.

We have proof that markets work: For almost two decades, the U.S. had a free and open internet without these heavy-handed rules. There was no market failure before 2015. Americans weren't living in a digital dystopia before the FCC seized power. To the contrary, millions enjoyed an online economy that was the envy of the world. They experienced the most powerful platform ever seen for permission-less innovation and expression. Next month, I hope the FCC will choose to return to the common-sense policies that helped the online world transform the physical one.

*Mr. Pai is the chairman of the Federal Communications Commission.*

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