

Comments on the FCC's Notice of Proposed Rulemaking on Title II

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Important Disclaimer: This document contains responses generated by ChatTPI to specific questions in the FCC's Notice of Proposed Rulemaking on Title II. While ChatTPI derives its responses from TPI's research, they do not necessarily represent the positions or viewpoints of any individual at TPI. Instead, they are the AI's interpretations and syntheses of the materials it has analyzed.

The sections below are the chatbot's response to the query, "How would you respond to the argument that reclassifying broadband under Title II is necessary in order to ..." The executive summary is ChatTPI's response to the request to "generate an executive summary based on the following text" and pasting in its own answers.

We have edited only the citations to make them more human-friendly, but otherwise we have left the responses as-is, including most of ChatTPI's grammatical mistakes.

The AI's responses here are a bit redundant, not always well-written, and not written in a consistent style. Additionally, because ChatTPI is a tool to synthesize TPI's work, it is trained on research only by TPI's scholars, does not know other perspectives, and therefore does not present a balanced view. Like all AIs, it only knows its training data.

Nevertheless, this document shows how AI can help with policy by synthesizing a large body of literature to write coherent responses to questions asked by regulators and others.



Source: Image generated by DALL-E 3 by pasting in this entire document and asking it to create an image that captures its essence.

Executive Summary

The FCC's Notice of Proposed Rulemaking on the reclassification of Broadband Internet Access Service (BIAS) as a Title II service has generated significant discourse. The essential nature of broadband, especially underscored during the pandemic, prompts consideration of BIAS as a public utility. However, sources like Lenard, Wallsten, and others caution that this could lead to excessive regulation, potentially stifling innovation and investment critical for broadband development.

The debate extends to internet openness, with concerns that Title II may grant the FCC excessive authority over pricing and quality of service, creating regulatory unpredictability. Historical contexts where similar regulations have failed in other sectors are highlighted, indicating potential adverse outcomes for broadband. Notably, a recurring argument is the lack of clear justification for this shift, suggesting it's more preemptive rather than a response to specific market failures.

In terms of national security, while reclassification could enhance the FCC's legal enforcement capabilities, experts warn it could also inadvertently harm innovation and investment in cybersecurity. The application of Title II has historically shown inefficiencies and has potentially discouraged the advent of new, more secure technologies.

On consumer privacy and data security, a broad regulatory approach could limit ISPs' capacity to innovate with new business models. The potential for increased regulatory burdens and uncertainties could further impede this innovation, ultimately affecting consumer welfare and market competition.

Regarding broadband access, there's apprehension that Title II classification could negatively impact the industry's investment incentives, subsequently slowing infrastructure development essential for wider broadband access. This stance is supported by past industry growth under a more lenient regulatory approach.

Finally, while the RIF Order's policy rationales might not fully justify the broadband service's reclassification, analysts argue that ISP investments are more influenced by broader economic conditions than by regulatory classifications. There's a consensus that the RIF Order allowed for significant improvements and innovation, suggesting that a Title I classification may be more conducive to the industry's sustainable growth.

In conclusion, the comprehensive analysis suggests a cautious approach towards reclassifying broadband as a Title II service. The potential for unintended consequences on investment, innovation, and consumer welfare underscores the need for a balanced regulatory framework that fosters growth and service improvement in the broadband industry.

Broadband Internet Access Service is Essential¹

The pandemic certainly underscored the essential nature of broadband and highlighted the gaps in coverage and adoption. The FCC should be aware that considering broadband a public utility could lead to more regulation, similar to electricity or water services, which could potentially stifle innovation.²

Regarding how consumers' usage and views of BIAS have changed, Lenard and Wallsten (2017)³ shows a contrast in philosophical beliefs regarding regulation. Some individuals believe in preemptive regulations to prevent potential harms, while others feel regulations should only address specific problems or market failures. Hence, it's crucial to carefully consider any regulatory implementations on BIAS.

While the FCC sees the increasing importance of BIAS due to the pandemic as a reason to consider it a standalone telecommunications service, one should also consider the potential consequences of changing the classification. For instance, Brennan (2016),⁴ as summarized by

¹ NPRM, page 20, beginning ¶ 17

² Wallsten, Scott. "Is Broadband a Public Utility? Let's Hope Not." 2020.

³ [Lenard, Tom and Scott Wallsten. "Comments on the Restoring Internet Freedom Notice of Proposed Rulemaking." 17 July 2017.](#)

⁴ [Brennan, Tim. The Post-Internet Order Broadband Sector: Lessons from the Pre-Open Internet Order Experience. May 5, 2016.](#)

Romzek and Wallsten (2017),⁵ warns about potential negative impacts on investment in the broadband sector if this change occurs.

Lastly, consideration should be given to third-party services and devices that utilize BIAS. As pointed out in Wallsten and Riso (2010),⁶ even if BIAS services have evolved significantly, the changes observed in consumers' usage can not only be attributed to BIAS standalone but also to third-party services and their demand for fixed and mobile BIAS.

Ensuring internet openness⁷

Overall, sources generally suggest that Title II classification and a possible return to net neutrality guidelines might go beyond the necessary measures to protect internet openness. They argue for a balanced, light-handed approach that avoids potentially stifling regulation while still protecting consumers and market competition:

1. Overreach in "Price and Quality of service" regulation in the future: Lenard and Wallsten (2017)⁸ note that Title II classification gives the FCC broad authority to regulate prices and the quality of service, which can become problematic as future commissions may wield this power unpredictably.
2. Romzek and Wallsten (2017)⁹ and Lenard (2016)¹⁰ argue that there is a risk of decreased investment due to potential regulatory burdens and uncertainties.
3. Inappropriate Application of Title II: Lenard (2010)¹¹ argued that Title II was never intended to be applied to information services like broadband, and warned that this overreach of regulation would adversely affect innovation, investment, and consumer welfare.
4. Regulatory Failures: Wallsten (2015)¹² brings up past failures when Title II regulations were applied to other industries, expressing skepticism that implementing such regulations for broadband would lead to desirable outcomes.

⁵ Romzek, Wallis G and Scott Wallsten. "The Post-Internet Order Broadband - Lessons From the Pre-Open Internet Order Experience. Net Neutrality Special Issue Blog #4. 5 July, 2017.

⁶ Wallsten, Scott and James Riso. "Residential and Business Broadband Prices Part 2: International Comparisons, Data Appendix." 2010.

⁷ NPRM, beginning ¶ 23

⁸ Lenard, Tom and Scott Wallsten. "Comments on the Restoring Internet Freedom Notice of Proposed Rulemaking." 17 July 2017.

⁹ Romzek, Wallis G. and Scott Wallsten. "The Effect of Regulation on Broadband: Evaluating the Empirical Evidence in the FCC's 2015 Open Internet Order." Net Neutrality Special Issue Blog #5. 18 July 2017.

¹⁰ Lenard, Thomas. "Trump FCC Can't Repeal Rules Quickly, But Can Enforce How it Wants." The Hill. 29 Nov. 2016.

¹¹ Lenard, Thomas M. "Lenard Files Comments with the FCC in the Matter of Preserving the Open Internet Broadband Industry Practices." March 2, 2010.

¹² Wallsten, Scott. "FCC Effort to Regulate Internet Ignores History of Past Failures." The Conversation, 25 February, 2015.

5. Unclear Justification: Lenard (2014)¹³ questions the clear economic or consumer welfare justification for Title II reclassification and suggest the regulation seems to be preemptive rather than a response to an existing problem or market failure.

Safeguarding National Security and Preserving Public Safety¹⁴

Scott Wallsten and other documents argue that the reclassification of broadband as a Title II service under the guise of "Safeguarding National Security and Preserving Public Safety" could potentially have negative impacts on innovation and investment, which may ultimately affect national security and public safety in a variety of ways.

In terms of cybersecurity, Wallsten and Lenard (2017)¹⁵ caution that giving the FCC broad authority over cybersecurity, quality of service, and price may deter investment, and could potentially lead to unpredictable regulatory changes, creating an unstable environment for ISPs and tech companies who may be hesitant to invest in the necessary infrastructure and technologies for improving cybersecurity.

Wallsten (2015)¹⁶ states that Title II classification and the resulting regulatory burdens could potentially reduce investment in ISP services and infrastructure, which could impact the development of more secure and efficient services.

Moreover, Wallsten (2015)¹⁷ states that Title II-like regulation historically has been found to be inefficient and detrimental to innovation, factors which are vital for ensuring robust cybersecurity and public safety.

Importantly, the categorization of broadband as a Title II service could act as a deterrent for innovation. In the comments filed with the federal commission, Lenard notes that Title II regulation could discourage innovation within the broadband industry, which could indirectly impact the sector's ability to develop new and more secure technologies.

Lenard (2014)¹⁸ argues that the proposal to subject the broadband industry to public utility regulations runs the risk of killing innovation, a foundational element to maintaining cybersecurity and safeguarding national security.

Overall, while Title II reclassification may enhance the legal ability of the FCC to enforce cybersecurity and public safety measures, these sources suggest that it might have an unintentional impact on investment and innovation in broadband services, potentially leading to less secure and efficient broadband infrastructure in the long term.

¹³ Lenard, Thomas M. "The FCC Tries Yet Again." 19 Feb. 2014

¹⁴ NPRM, beginning ¶ 25

¹⁵ Lenard, Tom and Scott Wallsten. "Comments on the Restoring Internet Freedom Notice of Proposed Rulemaking." 17 July 2017.

¹⁶ [Wallsten, Scott. "Will Title II Reduce Investment? Who's Asking?" The Hill, 6 Jan. 2015.](#)

¹⁷ [Wallsten, Scott. "FCC Effort to Regulate Internet Ignores History of Past Failures." The Conversation, 25 Feb. 2015.](#)

¹⁸ [TPI. "Statement of Thomas Lenard on Title II Announcement." 10 Nov. 2014. Press Release.](#)

Protecting Consumers' Privacy and Data Security¹⁹

1. Unintended Consequences: TPI (2016)²⁰ argues that broad regulation of data sensitivity and the requirement of opt-in consent for almost all information may stifle ISPs' ability to experiment with business models and limit options for consumers.
2. Uncertainty and Regulatory Burdens: Lenard (2016)²¹ supports a more rational approach to data privacy enforcement. He mentions financial incentive plans; however, he argues that the possibility of ISPs needing FCC approval for such plans may reduce innovation and potentially introduce further regulatory uncertainty.
3. Expense of Consumer Welfare: Lenard (2010)²² emphasizes that Title II can harm innovation, investment, and consumer welfare, and can potentially undermine the FCC's goal of enhancing broadband penetration.
4. Impact on Competition and Pricing: Lenard (2014)²³ warns that detailed disclosure of broadband provider operations, including pricing, may discourage price competition and increase the possibility of anti-competitive behavior.

Supporting Access to Broadband Internet Access Service²⁴

Wallsten suggests that a more balanced approach, favoring less prescriptive regulation and more market-driven solutions, might be more beneficial for investment, innovation, and overall consumer economic welfare. This includes being cautious of forcing telecommunications regulation such as Title II onto ISPs without a clear demonstration of net benefits beyond the status quo. Scott Wallsten questions whether Title II classification would indeed enhance access to Broadband Internet Access Service (BIAS). He expresses concerns that Title II classification might actually hinder the desired outcome due to potential negative impacts on incentives for innovation and investment.

Wallsten (2015)²⁵ argues that telecommunications regulations under Title II can adversely affect investment in the industry, which can impact infrastructure development necessary for supporting better broadband access.

¹⁹ NPRM, beginning ¶ 40

²⁰ Benjamin Ashley "FCC Privacy Order Improvements Illusory." 17 Oct. 2016. Press Release.

²¹ Lenard, Thomas. "Trump FCC Can't Repeal Rules Quickly, But Can Enforce How it Wants." The Hill, 29 Nov. 2016.

²² Lenard, Thomas M. "Lenard Files Comments with FCC on Preserving the Open Internet Notice of Proposed Rulemaking." 13 Jan. 2010.

²³ Lenard, Thomas M. "Welcome to the Roadkill Cafe." The Hill, 29 July 2014.

²⁴ NPRM, beginning ¶ 46

²⁵ Wallsten, Scott. "Will Title II Reduce Investment? Who's Asking?" The Hill, 6 Jan. 2015.

Lenard (2010)²⁶ states that classifying broadband as a Title II service might have "serious adverse effects on investment and innovation in the Internet infrastructure over time." This could lead to less development of broadband infrastructure, which would be counterproductive to the goal of extending broadband access.

Furthermore, Lenard (2014)²⁷ suggests that the broadband market has thrived under a light-handed regulatory regime

Conclusion

In conclusion, while Wallsten and colleagues (2020)²⁸ agree that it's difficult to make definitive claims about the effects of the OIO or the RIF Order, they lean towards the view that RIF has allowed more rapid improvements, fewer consumer complaints, and innovation in public safety communications .

²⁶ Lenard, Thomas M. "Lenard Files Comments with FCC on Preserving the Open Internet Notice of Proposed Rulemaking." 13 Jan. 2010.

²⁷ Lenard, Thomas M. "Welcome to the Roadkill Cafe." The Hill, 29 July 2014.

²⁸ Wallsten, Scott. Comments Before the Federal Communications Commission in the Matter of Restoring Internet Freedom, Bridging the Digital Divide for Low-Income, Lifeline and Link Up Reform and Modernization: Comments of Scott Wallsten. 20 April 2020.