

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Restoring Internet Freedom)	WC Docket No. 17-108
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To: The Federal Communications Commission
Date: July 17, 2017

the internet to evolve from a collection of websites to what it is today: an indispensable resource where consumers can learn, shop, read the news, communicate, stream video and enjoy many other conveniences of modern life. Indeed, the internet is no longer a novelty, as it was when Congress passed the Telecommunications Act of 1996,⁴ but an always-on, perpetually connected ambient system vital to almost every activity in which we engage.

The internet is not

Even in markets where people have a choice between providers, competition may still be limited by the significant cost of switching between providers.⁶

challenges to its authority over common carriers. The second is that ISPs are free to change their terms of service regarding nondiscrimination on their networks. Z L W K R X W Y L R O D W L Q J W ban on deception so long as they provide clear notice of changes. If these disclosures are truthful, there is no deception for the FTC to police. Furthermore, because the vast majority of consumers have little or no choice in providers, competitive pressure cannot be counted on either to push ISPs to offer consumers better contract terms or quality of service or limit discriminatory conduct.

The NPRM also asks whether existing competition law is sufficient to protect the open internet.¹¹ There are significant shortcomings to relying only on antitrust law enforcement to S U R W H F W F R Q W H Q W n e s e d . R i s t , t h e a b i l i t y o f c o n s u m e r s t o a c c e s s t h e W K H lawful content of their choosing and express themselves on the internet is at the heart of the open internet policy. Determining whether to allow ISPs to block or interfere with consumer expression and speech requires consideration of non-economic factors that antitrust law may not take into account.

Second, *ex ante* rules provide innovators with confidence that discriminatory network access will not threaten their chances for competitive success. A system that relies solely on backward-looking

harm to the excluded rival or to the competitive evolution of the marketplace. An up-front rule, by contrast, would be more likely to prevent the harm in the first place.

It is well established that appropriately tailored regulation can complement antitrust law in highly concentrated markets † particularly when vertically integrated incumbents have incentives to harm competitors. For example, FTC staff submitted a comment to the Federal Energy Regulatory Commission earlier this year,

Internet Order relied on an extensive evidentiary record to reach the conclusion that broadband providers (including mobile broadband providers) have the economic incentives and technical ability to engage in practices that pose a threat to Internet openness by harming other network providers, edge providers, and end users.¹⁵ In the near term, there is a hypothetical danger that ISPs, which supply connections to both the internet and video programming, could act to hinder new online

Rather than roll back protections, we should augment them with renewed FCC vigor and a change to anachronistic barriers to FTC enforcement.