



Insight

The FCC Changes the Definition of Broadband

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Last week, the Federal Communications Commission (FCC) increased [the technical threshold](#) for broadband from 4 Mbps to 25 Mbps. While the agency is right to increase the definition from time to time to reflect changes in the vibrant broadband market, the move is completely divorced from the market and creates a double standard within the agency. With this confusing move, the Chairman has shown his long game: he is expanding agency power and opening up new opportunities for regulation, all of which will harm consumers.

Some have mistakenly claimed that the FCC is making broadband faster; not so. Instead, under the amended Communications Act, the FCC is required to issue a report that determines whether broadband is being deployed to all Americans in a reasonable and timely fashion. With the new, faster definition of broadband, the Commission has determined that advanced Internet under 25 Mbps download and 3 Mbps upload doesn't satisfy the criterion.

Some have suggested that this move reflects market changes, but the numbers don't support this kind of assessment. The last time the FCC set a broadband standard was in 2012, and from then to today, the actual broadband market saw a robust increase in average speeds of nearly 80 percent. Few other technologies can claim this sort of real world advancements in just a short time. However, the change the FCC just undertook represents a 525 percent increase in those same 3 years. Clearly, this move is divorced from market realities.

Moreover, the FCC's own [analysis](#), which dates from just a couple months back, supports a 10 Mbps standard:

“However, the performance increase diminishes beyond about 10 Mbps, as latency and other factors begin to dominate. For these high speed tiers, consumers are unlikely to experience much if any improvement in basic web browsing from increased speed—i.e., moving from a 10 Mbps broadband offering to a 25 Mbps offering.”

The most striking part of this proposal is the disparity that will now exist within the Commission. While this report and all those that follow subjects Internet to a 25 Mbps floor, the FCC just weeks ago [upped the own lower](#) bound of broadband to 10 Mbps for the Connect America Fund, which helps connect rural homes to the Internet. So, [the \\$1.8 billion](#) that the agency spends each year for rural broadband now doesn't meet the agency's new threshold.

But the most important development is the new definition's interaction with regulation. In the past, the FCC specifically declined to make the definition of regulatory significance because the law was intended and interpreted to be deregulatory.) In this case an activist agency has turned this section's intent on its head in an attempt to garner more power over the Internet.

Specifically, the language in the FCC's [official notice](#), called for “innovative ideas” to increase broadband deployment. At first glance, the language seems innocuous. However, the Chairman [has said](#) he wants to expand

FCC power, and just last year, the courts gave the commission new power to do that. As [AAF explained](#) when this case broke, the court decision gave the FCC power far beyond what Congress intended.

What will this proposal immediately change? For one, this new market definition could change the calculus for mergers. As [we outlined previously](#), the FCC has historically employed an *ad hoc* and unjustified market analysis when looking at mergers, which is further complicated with this change. Sinking mergers could be seriously harmful to consumers in the long run. Note, however, that for the Comcast-TWC merger, this change shouldn't be a concern since the two companies don't compete in any relevant market. This move is also another signal that current administration is myopic in their view of broadband by skipping over the millions of Americans that are young, non-white, or with relatively low income and primarily use smart phones to connect to the Internet.

This speed change is a harbinger of further regulations to come. As even the [Electronic Frontier Foundation lamented](#) years ago, the regulatory changes undertaken by the FCC currently might well be “remembered as the Trojan Horse that allowed the FCC take over the Internet.” For everyone's sake, let's hope the FCC doesn't win this war.