



Insight

Title II Reclassification is a Bad Software Patch

WILL RINEHART | FEBRUARY 12, 2015

At the end of February, the Federal Communications Commission (FCC) will vote to reclassify the Internet as a common carrier with the goal of preserving Internet freedom. Sadly, what the FCC is planning to do is exactly what is wrong with the American regulatory system today. Instead of fresh thinking or Congressional approval, the Commission will issue Internet regulations using a set of rules that have their genesis in 1930s, further entrenching these outdated laws. If Internet regulation were a computer program, the new patch that the FCC plans to install will be buggy, will add a huge layer of complexity, and will surely to slow down the entire experience.

Steven M. Teles, a professor of Political Science, believes that the computing metaphor actually describes the American system of regulation especially well, dubbing it [a kludgeocracy](#) after a programming term. A kludge is inelegant patch in a computer program that solves an unexpected problem while also being backwards-compatible with the rest of the system. Add up enough of these kludges and you get software that is difficult to understand, hard to rewrite, and is prone to crashing. As Teles quips, “Any user of Microsoft Windows will immediately grasp the concept.” To see this in action, you needn’t look any further than the complexity of the health-care system.

Title II reclassification is a kludge.

Until recently, reclassification was never considered a viable policy option. The last time it was discussed, it was called the “nuclear option” because it ran afoul of 30 years of history. Beginning first with an official inquiry in 1980 and continuing throughout successive Democratic and Republican Commissions, the FCC has long kept Internet services regulated lightly and distinct from telephone services. This distinction acted as a guiding principle for the 1996 Telecommunications Act, which codified the current light touch Title I and common carrier Title II contrast, and helped to make the Internet into the important economic, social and political technology we enjoy today. This is all due to change.

To make the leap, the FCC has promised simple rules. Yet, the order [tops out at 332 pages](#), over 70 percent longer than the order introduced in 2010. Because this authority is a stretch for the FCC, it is proposing a grab bag of various sections of the Communications Act to achieve its ends. While just a few sections are needed to enforce the new rules, the plan is to [include](#) Sections 201, 202, 206-209, 216, 217, 222, 224, 225, 255, and parts of Section 254.

Even those who have supported reclassification recognize that many sections of Title II don’t make sense for the Internet because they are simply too onerous. However, nothing limits the next FCC administration from applying the worst kinds of regulation onto the Internet, nor is there anything to stop the current Chairman from changing his mind in the future. This is, of course, an FCC administration that has completely flipped its position on how it plans to regulate the Internet. And the agency is run by the same Tom Wheeler who said he would consult Congress before new rules, even though he now openly defies that legislative process. To be sure, this is also the same Chairman who now plans to regulate the physical interconnection between networks even

though he believed less than a year ago that it “is a different matter that is better addressed separately.”

What the FCC plans to do is sadly representative of the rest of government regulation. Even though Congress wants to overhaul communications law to bring it into the 21st century, the FCC is shoddily patching up its current power. What will come of this effort will be a regime that reflects the worst computer programs: hard to rewrite, prone to crashing, and a nuisance that everyone will want to uninstall.