

The FCC's repeal of Net Neutrality rules leaves internet users unprotected from ISP discrimination. According to recent polls, **86% oppose that repeal: 82% of Republicans and 90% of Democrats.**

Broadband internet access service providers like AT&T, Comcast and Verizon still try to justify the repeal by rewriting the history of Net Neutrality and the legal framework for it in Title II of the Communications Act.

Restoring the rules and legal framework with the CRA is the right move. Here's the truth on ISPs' claims.

ISPs claim the FCC merely repealed a small number of rules, based on "outdated" Title II authority.

This FCC eliminated the only Net Neutrality rules we had in place, and repealed the only Net Neutrality rules that had been upheld in court – those adopted by the prior FCC in 2015. And those rules were working.

By abandoning Title II, the FCC abandoned its legal authority to protect the open internet. Title II is neither an untested legal theory tried for the first time in 2015, nor an "outdated" framework from a bygone era. The FCC used Title II authority to regulate residential broadband provided by telephone companies between 1996 and 2005, when investment hit a record peak.

Title II rules have also always applied to mobile voice and rural DSL too, as well as business-grade broadband (so successfully in that case that AT&T called it an "unqualified regulatory success story"). The law provides a light-touch framework for competitive telecom sectors, preserving nondiscrimination rights like those in the repealed rules but without any of the supposed "utility" law burdens ISPs often mention.

ISPs claim that for 20 years prior to the Title II's restoration in 2015, the internet was open and protected without Title II.

The FCC applied Title II to DSL between 1996 (when Congress overhauled Title II) and 2005, and continued to apply Title II after 2005 too as noted above. But replacement rules crafted in 2005 didn't work.

Until Title II's full restoration in 2015, the FCC wrongly classified broadband as a Title I information service, putting broadband transmission into the same legal category as websites, applications, and content.

During that time, ISPs strayed from principles that had always governed the internet. Comcast blocked streaming video sites. ISPs blocked Google Wallet to protect a competing payment app that ISPs had helped to develop. AT&T repeatedly blocked voice and video chat apps like Skype and FaceTime.

But we did have principles in place that whole time. The FCC tried to ground Net Neutrality rules on Title I, but courts struck those rules down twice: first in a suit brought by Comcast in 2010; then one by Verizon in 2014, with the DC Circuit holding that real Net Neutrality rules couldn't be enforced under Title I.

ISPs claim that the FCC's decision to scrap Net Neutrality rules doesn't leave consumers without protection, it merely restores light-touch oversight by both the FCC and FTC.

Title I can't prevent abuses by ISPs. The 2014 *Verizon* case said any rules based on Title I would have to allow discrimination. That's why internet users demanded real Net Neutrality rules based on Title II.

Any claim that the FTC can fill the void is not true. AT&T is trying to strip away FTC jurisdiction over the company's broadband services in the Supreme Court right now. Even if AT&T loses, the FTC can only prosecute ISP violations of their own terms of service – if customers are even able to detect any violations after the fact. But if ISPs removed Net Neutrality from their terms of service, the FTC would be toothless.

ISPs claim they won't block and throttle content or create internet fast-lanes because anti-competitive behavior is illegal and consumer backlash will prevent it.

ISPs suggest that not all kinds of blocking, throttling, or fast-lanes would be anti-competitive under antitrust law, nor violate consumer protection law; then they claim these laws can prevent any truly bad behavior. **But degrading users' access is always harmful.** And ISPs' claims are chilling. In its 2014 case, Verizon said it had a right to exercise “editorial discretion” over the internet and to seek tolls from content providers.

Antitrust enforcement is difficult and expensive, but not all discrimination would be illegal under antitrust doctrine anyway. For example, cable TV tiers aren't antitrust violations. But letting ISPs act like cable companies – deciding what to carry online, and who can see it – would be a radical departure from how the internet works. Consumer backlash is not enough because people have few or no other broadband options.

ISPs claim that eliminating Title II rules will spur competition, spur deployment, or lower prices.

Without Title II, the FCC will be powerless to stop ISPs' exploitative business practices – including even fraudulent billing practices. And ISPs are already hiking prices, much as they do every year, even after the FCC's repeal of Net Neutrality and Title II allegedly lowered ISPs' costs and “burdens.”

Suggesting that protections against discrimination and price-gouging make deployment more expensive isn't just immoral, it's also not true. Eliminating protections won't spur buildout in rural or low-income areas.

Title II and strong Net Neutrality rules did not harm broadband investment or deployment. During the two years with Title II back in place, ISPs deployed next-generation networks at a faster pace. Rising demand for broadband meant ISPs thrived and grew their networks. ISPs may falsely suggest they can only offer service in poor and rural areas, where they have long refused to upgrade, in exchange for regulatory goodies that have nothing to do with the economics of serving such areas. Don't believe them.

ISPs claim that consumer privacy, deployment, and universal service are still protected.

In addition to protecting Net Neutrality, the prior FCC used Title II to fulfill other mandates too. It expanded the Lifeline program to subsidize internet access for low-income families and it enacted strong broadband privacy rules. Congress struck down those immensely popular privacy rules last year, and Lifeline's fate is now uncertain too as the FCC continues its assault on poor folks and people of color. Abandoning Title II means abandoning the FCC's mandate and its best authority for these goals.

ISPs claim that the FCC's decision to preempt state authority on Net Neutrality will protect consumers from having to navigate a confusing patchwork of different laws across states.

It's hypocritical to bemoan a “confusing patchwork” of state laws protecting Net Neutrality while lobbying to tear down the successful federal framework we had until the FCC's repeal – all while supporting the creation of an even more confusing “patchwork” of constantly shifting voluntary commitments made by various ISPs. In reality, ISPs don't really care whether Net Neutrality rules are uniform or if they vary from state to state as long as any protections are as weak as possible.