Attachment—Additional Questions for the Record

Subcommittee on Communications and Technology
Hearing on
"Checks and Balances: Oversight of the Federal Communications Commission"
June 21, 2023

The Honorable Nathan Simington, Commissioner, Federal Communications Commission

The Honorable Russ Fulcher

1. When it comes to the issue of Net Neutrality, there has been some back and forth between reclassifying broadband Internet access as a Title II telecommunications service with the potential for a "public utilities style" regulation versus keeping the current "light-touch" approach to regulation under Title I of the Communications Act. Could you discuss the benefits of the current "light-touch" approach and whether the imposition of Title II could give the FCC to additional regulatory authority over rates?

    RESPONSE: Net neutrality is really two different debates. The first is whether there should be rules that internet providers have to follow with regards to fair and nondiscriminatory routing of end-consumer traffic. I think that at least at some level of generality, there is bipartisan support for such rules.

    The second question is whether the FCC should assert Title II jurisdiction over broadband providers, the only way it could plausibly impose net neutrality rules without congressional action. I think this is a bad idea that would open the internet to unnecessary and unending bureaucratic meddling. Title II is a comprehensive regulatory framework designed for the telephone system. It is highly prescriptive and limiting. The United States has the most vibrant and successful broadband industry in the world, something it has achieved with relatively light regulation, and suddenly applying this regulatory straitjacket to it would threaten that. Title II is also a rate regulation regime. The possibility of price controls is the death knell for private investment, and their imposition by a future FCC becomes much more likely if this FCC brings the broadband industry under Title II.

    The legal case for Title II regulation of broadband is also dubious. Because Title II was designed first and foremost for telephone service, the 2015 Open Internet Order was only able to reclassify broadband as a Title II service by forbearing from almost the entirety of Title II. The Commission essentially crossed out every part of the law except for a handful of common carriage provisions. Even though this order, since rescinded, was upheld, federal courts have recently become much more skeptical of such creative administrative rulemaking. I am not so confident that a reclassification of internet as a Title II service would be upheld today. I believe new legislation is the only sure way to impose net neutrality rules.

2. When it comes to the Universal Service Fund, I have heard a mix of discussions around the contribution base and what we should continue to fund. I understand the FCC released a report last August on the "future of the USF," but could you give me some sense of the challenges faced here?

RESPONSE: The Universal Service Fund (USF) is currently funded through mandatory contributions made by voice and interconnected VoIP providers, based on those providers interstate voice service revenues. These contributions are assessed on consumers and passed through by providers, which essentially makes them a tax. With the advent of internet-based voice and messaging apps, interstate telephone service revenues have decreased substantially. Meanwhile, the demands on the fund continue to grow, as it pays for programs that subsidize the deployment of high-speed internet to expensive-to-serve areas, and other programs that subsidize the purchase of phone and internet services for various groups, like lower-income families, rural hospitals, and schools. The result is that the contribution factor, i.e., the tax rate, has risen dramatically. Two decades ago, the contribution factor was about six percent. Now it hovers around thirty percent, fluctuating quarter to quarter. Without reform, I only expect it to continue to grow, having increasingly distortionary effects on the market for telephone services.

I believe that the best way forward is to require internet content and application companies, “Big Tech,” to contribute to the fund since they have been the primary beneficiaries of it. These are now among the most valuable companies in the history of the world, in large part because broadband providers have been so successful, with the help of USF, at hooking up millions of American consumers with affordable, high-speed internet service. As soon as they get connected, those consumers spend voluminous amounts on online shopping, video streaming, and other internet services, as well as patronizing advertising-supported websites. It only makes sense that these companies, who owe so much of their value to nationwide internet deployment and affordability, should pay into USF.