Business Roundtable

Business Roundtable Position on Regulation of Consumer Broadband Service under Title II of the Communications Act

Regulation remains a top concern of America's business leaders. According to the most recent Business Roundtable (BRT) CEO Economic Outlook Survey, nearly 40% of our members listed regulations as the greatest cost pressure facing their businesses — making regulation the top cost pressure for the third year in a row.[i] Moreover, nearly half of CEOs cited regulatory issues as a top factor holding back the pace of U.S. investment spending.[ii] This is why BRT is a strong advocate of smart regulation that promotes economic growth and job creation, while achieving societal goals.

This fundamental principle of smart regulation has also long and widely been recognized, for example in executive orders:[iii]

- Regulation should be justified by a compelling public need, such as demonstrated market failure.
- Regulatory decisions should be based on the best available information, not speculation.
- Regulatory choices should maximize certainty and minimize burdens, so as to promote investment, innovation and competitiveness.

Last month, President Obama issued a statement urging the FCC to reclassify consumer broadband service under Title II of the Communications Act.[iv] Doing so would violate the principles of smart regulation for the reasons outlined below:

- Private markets have not failed; to the contrary, the basic elements of an open Internet have evolved and persisted voluntarily within the Internet ecosystem.
- Arguments to reclassify consumer broadband service under Title II are based primarily on speculation, not empirical data and historical experience.
- Title II would substantially burden consumer broadband service and create profound uncertainty for Internet service providers (ISPs). Innovation, investment, and consumers would all suffer.

The last point bears further emphasis. Consumer broadband currently operates in an environment in which all participants are free to innovate in response to changes in consumer demand, technology, or other market features. Under Title II, virtually any action by an ISP that potentially affects consumer broadband service would require FCC approval — a time-consuming, costly and unpredictable process.

Reclassification under Title II will result in increased consumer fees at the federal, state and local levels. According to a recent analysis conducted by economists Robert Litan and Hal Singer of the Progressive Policy Institute, reclassification under Title II could result in $17 billion in new consumer fees, including $15 billion in state and local fees and $2 billion in fees for the federal Universal Service Fund.[v] This $17 billion in additional fees equates to approximately $67 per year per wireline broadband connection and $72 per year per wireless broadband connection.[vi] To put these figures in context, consider that the average wireline broadband connection currently costs consumers roughly $537 per year and the average wireless broadband connection currently costs consumers $585 per year.[vii] In short, if broadband services are reclassified and regulated under Title II, the average consumer's annual internet bill could increase by more than 12% due to new fees at the federal, state and local levels. In addition to higher consumer costs, reclassification under Title II would contribute to heightened market uncertainty. High levels of uncertainty are harmful to capital spending in any industry, but the long-lived investments made by telecommunications firms should be especially sensitive to it. This would greatly hamper ISPs' ability to innovate, and could potentially reduce innovation throughout the broader economy and place the United States at a competitive disadvantage vis-à-vis other countries in the allocation of global capital.

Finally, reclassification under Title II is also likely to reduce ISPs' extraordinary level of capital investment in faster and more widely-available broadband services. For instance, according to Hassett and Shapiro (2014), applying Title II regulation to ISPs is projected to reduce total capital investment in the telecommunications industry by $28-$45 billion over a five-year period — a decline of approximately 13-21% compared to the status quo.[1] Importantly, even if the FCC can successfully exercise its powers to forebear from applying certain aspects of Title II in the near term (which is not a foregone conclusion), the prospect that future administrations or Commissions will reverse course, could have a chilling effect on industry investment.

Ironically, in the call to regulate ISPs under Title II is that there is already broad agreement regarding the principles outlined in the FCC's current Open Internet proposal:

- Transparency on the part of ISPs regarding the policies that govern their networks;
- No blocking of legal content; and
- No commercially unreasonable discrimination, including favoring traffic from affiliated entities.[2]

Further, it is not at all clear that Title II would actually authorize the FCC to impose the kinds of bright-line prohibitions that the President seeks.

BRT believes that there are smarter ways to implement these principles, as an example under Section 706 of the Telecommunications Act of 1996 or with new, more targeted legislation. We remain firmly opposed to attempting to do so by reclassifying consumer broadband service under Title II because it will not fuel the American economy but, rather, burden it.

For further information, please contact Liz Gasster of Business Roundtable at (202) 496-3274 or lgasster@brt.org.

About Business Roundtable

[1] Kevin A. Hassett and Robert Shapiro, *The Impact of Title II Regulation of Internet Providers on Their Capital Investments* (November 2014), available at http://www.sonecon.com/docs/studies/Impact_of_Title_II_Reg_on_Investment-Hassett-Shapiro-Nov-14-2014.pdf.
[2] http://www.fcc.gov/guides/open-internet.

Business Roundtable's CEO members lead companies with $7.2 trillion in annual revenues and nearly 16 million employees. BRT member companies comprise more than a quarter of the total market capitalization of U.S. stock markets and invest $190 billion annually in research and development – equal to 70 percent of U.S. private R&D spending. Our companies pay more than $230 billion in dividends to shareholders and generate more than $470 billion in sales for small and medium-sized businesses annually. BRT companies also make more than $3 billion a year in charitable contributions.

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[i] Business Roundtable, *CEO Economic Outlook Survey Q4 2014* (December 2014), available at http://businessroundtable.org/resources/ceo-survey/2014-Q4.

[ii] *Id*.

[iii] *See, e.g.*, E.O. 13563, "Improving Regulation and Regulatory Review," 76 Fed. Reg. 3821 (Jan. 18, 2011); E.O. 13579, "Regulation and Independent Regulatory Agencies," 76 Fed. Reg. 41587 (July 14, 2011).

[iv] http://www.whitehouse.gov/the-press-office/2014/11/10/statement-president-net-neutrality.

[v] Robert Litan and Hal Singer, *Outdated Regulation Will Make Consumers Pay More for Broadband* (December 2014), available at http://www.progressivepolicy.org/wp-content/uploads/2014/12/2014.12-Litan-Singer_Outdated-Regulations-Will-Make-Consumers-Pay-More-for-Broadband.pdf.

[vi] *Id*.

[vii] *Id*.