



6 MYTHS ABOUT NET NEUTRALITY

The internet is an unparalleled engine for economic growth, innovation, and free expression. Part of this success has been the principle of treating internet traffic equally, which some have called “net neutrality.” Currently most consumers have a choice of just one or two companies to access the internet. Some companies have asked the FCC, the Federal agency that oversees networks, to make it easier for them to decide where consumers can go on the internet and how much they’ll charge to access certain websites. This issue has been debated for decades, but in 2015 the FCC passed its *Open Internet Order*, using its authority called “Title II,” to prevent ISPs from blocking, throttling, or discriminating against online content. Last year, a Federal Appeals Court approved those rules, yet the new FCC chairman wants to roll them back. So far, over 15 million people have voiced their opinions, but there has been a lot of misinformation, and several myths about net neutrality have persisted.

Myth: “Net neutrality harms innovation.”

- ▶ **Fact:** The *Open Internet Order* sets basic rules of the road that help online investment and innovation. One example of thriving competition after the 2015 Open Internet Order is the growth of different video streaming options. Despite their opposition to the net neutrality rules, AT&T and Comcast have rolled out their own streaming services. The reason they can do this is that the 2015 rules prevent AT&T from discriminating against Comcast’s streaming offerings and vice versa.

Myth: “The Open Internet Order caused a significant decline in broadband investment.”

- ▶ **Fact:** Broadband investment has not declined due to the *Open Internet Order*. This view is way too simplistic. First, despite claims from the biggest ISPs, Comcast, Charter, and Frontier actually increased their investments significantly since the Open Internet Order in 2015. The real story is that despite the FCC’s deregulatory actions since 2002, broadband investment has never been even close to the \$110 Billion heights in 2000 and 2001. Second, companies make investment decisions years in advance based on a myriad of factors from where they can place cell phone towers to interest rates – not just hypothetical regulations. Third, legal certainty is important for emerging technologies and the marketplace as a whole. While it’s unclear how the FCC thinks businesses make investment decisions, any business owner wants certainty.

Myth: “This is a new, Big Government regulation of the internet.”

- ▶ **Fact:** The internet actually used to be regulated under Title II. When the commercial internet developed in the ‘90s, consumers primarily used dial-up modems to connect to the “World Wide Web.” In 1998, the FCC classified the internet, provided over phone lines or DSL, under Title II, which gives the FCC stronger authority to protect consumers and the marketplace. It wasn’t until a few years later that the FCC started reclassifying, putting other types of internet access, like cable modems, wireline, and wireless, under its weaker Title I authority.

Fact: The *Open Internet Order* prevents big ISPs from having the default power to regulate and control the internet. Actually, in the 2015 *Open Internet Order*, the FCC decided that it wanted to regulate as little as possible, so it chose not to apply most rules that were typically applied to telephone service. In FCC talk, this authority is called “forebearance.”



Myth: *"The FCC is using an old, outdated law that shouldn't be applied to broadband networks."*

- ▶ **Fact:** The FCC was chartered by Congress to oversee communications networks and protect consumers' access to communications tools like the internet, but the principles of these old laws are still critical today. The FCC was created by the 1934 Communications Act. That law contains Title II, but it was updated in 1996. ISPs would prefer to be regulated by the FTC. The FTC was created in 1914 by the FTC Act in response to the monopolies of the day, Standard Oil and American Tobacco. The FTC enforces the Clayton Antitrust Act, also passed in 1914, which built on the Sherman Antitrust Act of 1890. The Constitution, the supreme law of the land, was adopted in 1789.

Myth: *"The FCC is just letting the traditional consumer protection regulator, the Federal Trade Commission (FTC), be the cop on the beat."*

- ▶ **Fact:** The FTC doesn't have the same ability as the FCC to make rules to protect consumers. The FTC and FCC have differences beyond the one letter in the middle of their names. The FTC is mostly an enforcement agency that looks at antitrust and unfair or deceptive practices. It can punish wrongdoing *after the fact*, but that's often just by issuing fines. The FCC, on the other hand, is the agency charged by Congress with overseeing communications networks. In Title II, Congress gave the FCC the authority to write proactive, baseline rules to ensure that network providers behave fairly. Title I, the preference of the Big ISPs, does not give the FCC those capabilities.

Myth: *"The Big ISPs now claim they support net neutrality rules – just not Title II."*

- ▶ **Fact:** This is the latest misleading strategy to weaken net neutrality protections. Previously they've sued the FCC whenever it has tried to protect the open Internet. The same Federal Appeals Court has looked at this issue three different times in six years. Just last year it said that the 2015 *Open Internet Order*, relying on Title II, provided the FCC with the strongest legal footing for no blocking, no throttling, and nondiscrimination rules. That court several years ago ruled against using Title I as a previous FCC tried to do. The FCC's proposal revisiting Title I would inevitably send this case back to the Federal Appeals Court for an unnecessary addition to this trilogy.

ABOUT CCIA

The Computer & Communications Industry Association is an international not-for-profit membership organization dedicated to innovation and enhancing society's access to information and communications. CCIA promotes open markets, open systems, open networks and full, fair and open competition in the computer, telecommunications and Internet industries.