



Carr Fact-Checks President Biden’s Myth-Filled Plan For Expanding Government Control of the Internet

WASHINGTON, DC, April 11, 2024—FCC Commissioner Carr issued the following statement:

Later this month, on April 25, the FCC will vote on President Biden’s 435-page [plan](#) for further expanding government control of the Internet. It will do so by implementing President Biden’s [call](#) for the FCC to apply the freewheeling powers contained in Title II of the Communications Act of 1934 to the Internet, including utility-style “net neutrality” regulations. The free and open Internet has flourished precisely because it has been unfettered by these types of command and control regulations and bureaucratic micromanagement. Indeed, while the FCC first applied Title II to high-speed Internet back in 2015 at President Obama’s direction, we quickly ended that failed experiment in 2017.

This time around, the FCC offers up a mélange of reasons why Title II regulation is necessary that are nothing more than pretext. None of them withstand even casual scrutiny. The only reason for applying Title II is to expand government control of the Internet.

Myth: Title II is necessary to ensure a free and open Internet.

Fact: This myth debunks itself. Americans’ own experiences have demonstrated that Title II is a solution that doesn’t work to a problem that doesn’t exist.

Six years ago, Americans lived through one of the greatest hoaxes in regulatory history. In 2017, when the FCC overturned the Obama Administration’s failed, two-year experiment with Title II regulation, proponents predicted “[the end of the Internet as we know it](#)” and that “[you’ll get the Internet one word at a time](#).” None of the Apocalyptic predictions came to pass. Instead, Americans benefited from lower prices, faster speeds, increased competition, and accelerated Internet builds. The FCC’s latest set of claims fare no better than those trotted out back then. That’s why it invents so many new justifications. They are throwing everything they can think of against the wall—but none of it sticks.

ISPs are not the ones limiting a free and open Internet, Big Tech companies are doing that. Yet the FCC’s Title II approach only enhances Big Tech’s power.

Myth: Title II is necessary because “there has been no federal oversight over this vital service” since the FCC’s 2017 decision.

Fact: President Biden’s plan for expanding government control rests on the false claim that there is no federal oversight of broadband today. This is an easily disprovable claim. Right now, the federal government oversees and regulates broadband providers. Indeed, the Federal Trade Commission has jurisdiction over ISPs today and enforces federal consumer protection laws against them. Moreover, the FCC itself has asserted broad oversight and regulatory authority over ISPs without Title II, including the “digital equity” order it adopted just last year—an FCC decision that expressly regulates throttling and other issue areas raised by the FCC in the Title II order. There are already multiple cops on the beat.

Myth: Title II is necessary for consumer privacy.

Fact: The FTC already regulates ISPs and their privacy practices. Indeed, at this very moment, broadband consumers benefit from the same set of federal privacy rules that protect consumers across the economy. But those federal rules go away with respect to broadband if the FCC votes for Title II. That is because, by law, the FTC loses 100% of its authority over any service that is regulated by the FCC under Title II. In turn, the FCC's Title II decision would leave broadband consumers with no federal privacy rules to protect them because Congress prohibited the FCC from applying its own privacy rules or any substantially similar ones to ISPs back in 2017. While the FCC claims that there would still be some residual Section 222 statutory privacy provisions that could apply to ISPs, that assertion is dubious at best given the 2017 law. So, far from filling a gap in consumer privacy rules, an FCC decision to apply Title II to broadband would create one.

Myth: Title II is necessary for national security.

Fact: The FCC has identified no gap in national security that Title II is necessary to fill. Rather, the FCC record makes clear that Congress has already empowered agencies with national security expertise—including DHS, DOJ, Commerce, and Treasury—to address these issues in the communications sector. Indeed, the Biden Administration's own filing in the FCC proceeding confirms this point. It states that the federal government's national security agencies already have and “exercise substantial authorities with respect to the information and communications sectors.” And its filing concludes by asking the FCC to stick with its existing approach of deferring to the expert national security agencies and the government's existing process.

Myth: Title II is necessary so the FCC can use Section 214 to revoke the authorizations of certain entities controlled by the CCP.

Fact: The Biden Administration already has the authority to prohibit those entities from continuing to operate in the U.S. Indeed, the Commerce Department codified one such set of authorities back in 2021 at 15 C.F.R. § 7. The government can prevent them from operating today. So Title II fills no gap in authority. Indeed, as to those specific CCP-aligned companies, the FCC's own [database](#) of broadband providers shows that they are not offering any broadband services that would be subject to Title II or Section 214 even after reclassification. If the FCC is serious about this issue, it should do what I [called](#) for over two years ago and prohibit the entities that we do regulate from interconnecting with those CCP-aligned providers. Or the Biden Administration should act now under its existing authorities.

Myth: Title II is necessary for law enforcement.

Fact: The federal government already has ample authority to advance its law enforcement goals without Title II. The DOJ and FBI have authority over ISPs through the Foreign Surveillance Intelligence Act, the Electronic Communications Privacy Act, the Wiretap Act, and many other authorities. For the FCC's part, the agency applied the Communications Assistance for Law Enforcement Act to broadband providers long ago without Title II regulation. Ensuring that law enforcement has the tools they need does not necessitate Title II.

Myth: Title II is necessary for cybersecurity.

Fact: As with the FCC's invocation of national security, the agency makes no serious attempt to argue that Title II is necessary to promote cybersecurity. For one, Congress and the Executive Branch have already formulated a comprehensive cybersecurity regime that is solidly grounded in existing law. That effort is led, not by the FCC, but by the Cybersecurity & Infrastructure Security Agency, which is part of DHS. Nothing in Title II gives the FCC any additional authorities when it comes to participating in the federal government's CISA-led process. For another, Title II does not authorize the FCC to adopt

national cybersecurity standards. Indeed, even under the FCC’s reading, Title II does not even apply to the vast range of cyber targets, like cloud providers and tech platforms, further undermining any claim that Title II is necessary to ensure America’s cybersecurity.

Myth: Title II is necessary for public safety.

Fact: The FCC rests this claim on a single event that, it turns out, has nothing to do with the FCC’s Title II net neutrality rules. In that 2018 incident, a fire department purchased a data-limited plan that cost less than an unlimited data plan. When the fire department hit that pre-specified limit, the service experienced a speed reduction as outlined in its plan before the provider made an exception and lifted the reduction. The FCC invokes this incident in a way that leaves one with the impression that this violated net neutrality. But it did not, as the FCC’s own rulemaking record makes clear. For one, the FCC’s Title II rules do not apply to data plans marketed only to government users like public safety agencies. For another, the Obama-era Title II rules expressly allowed providers to offer those types of data-limited plans. Indeed, the FCC’s Title II plan notes all of these points and does not disagree with them. That is why the FCC studiously avoids stating that this type of issue would be prevented by Title II despite the agency’s consistent invocation of the event.

Myth: Title II is necessary for outage reports and network resiliency.

Fact: Here, too, the FCC makes no coherent case for Title II advancing any of these interests. For one, the FCC already collects outage reports, operational status, and restoration information from broadband service providers. For another, America’s broadband networks are more robust and resilient than those in country’s with far more heavy-handed or Title II-like regulatory regimes. Just look at Europe. When COVID-19 hit and Internet traffic levels suddenly surged to unprecedented levels, median network speeds in America exceeded those in the Old World by 83%. And with respect to 911 in particular, the FCC already has specific rules in place today that address outages that impact this public safety service.

Myth: Title II is good for promoting additional broadband builds.

Fact: The record cuts the other way on this one. After the FCC imposed Title II rules on the Internet back in 2015, many broadband providers reduced their investments and halted the expansion of their networks. Indeed, it was the only period of time outside of a recession where broadband investment declined. And after the FCC repealed those rules in 2017, broadband providers set new records for building out Internet infrastructure. This makes sense because a regulatory onslaught from Washington and new compliance costs are not actions that free up more capital for constructing networks.

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