

Why HR 3458 is the Most Extreme Version of Net Neutrality Yet

It is a completely unworkable framework.

- It imposes a **beyond-all-reason, effective absolute ban on prioritization** of data traffic, essentially eliminating current essential network management flexibility to: protect networks from attack or malware; ensure quality of service; manage congestion, latency, and jitter; and handle unforeseen or emergency situations. *Sections: 12(b)(5), 12(b)(6)*
- For all practical purposes, it **destroys most any private sector incentive or benefit from competing or investing in broadband** by outlawing any pricing/business model differentiation/innovation beyond commodity end user pricing. *Section 12(b)(2)*
- In effect, it **creates near unlimited liability** for ISPs (legal, regulatory & financial), because all current broadband networks and business models are not designed to be operated without prioritization and historical reasonable network management. Few if any investors or bondholders would agree to be subject to this all risk -- no reward regime. *Sections: 12(b)(2), (4), (5), (6); 12(c)(3); 12(g)(1) & (2)*
- It mandates ISPs provide an **open-ended, un-funded "ever-increasing level of Internet access service to end users"** with no consideration of need or cost recovery. *Sections: 12(c)(3); 12(g)(1) & (2)*
- It torpedoes successful competition policy by ensuring it becomes unworkable; it mandates simultaneous pursuit of practically opposing goals -- maximizing facilities-based competition and resale competition at the same time. In the late 1990's, the FCC proved that maximizing resale competition destroyed incentives for facilities-based competition and investment. *Section 12(g)(3)*
- It essentially forces all "*private transmission capacity services*" to be operated largely as public Internet services. *Sections 12(g)(4), (5), (6), & (7)*

It is more regulatory than strictest monopoly regulation of the last 75 years. *Sect.12(b)(1)*

- Even the most strict monopoly regulation (section 202) did not prohibit common carriers from discrimination, preferences or advantaging in rates and practices, only from "**unjust or unreasonable discrimination**" or "**undue or unreasonable preferences... prejudice or disadvantage.**" [bold added]
- This bill is based on absolute unrealistic strictures which totally ignore that communications law has always allowed the practical flexibility for *just, reasonable* and *due* discrimination and preferences.

It would torpedo private-sector investment in universal broadband deployment/access.

- Ultimately this bill would thrust the entire burden of ongoing broadband investment onto the American taxpayer and add to the U.S. Federal budget deficit.
- The underlying intent of this bill is to ultimately transform broadband into a government-run utility service like roads or electricity. *Section 2(2)*

It would spawn incapacitating sector-wide uncertainty.

- The cumulative effect of the whole bill is to effectively replace the FCC purpose of promoting competition with the purpose of promoting net neutrality.
- By setting a new national broadband policy of net neutrality in Title I that is radically different than current law and policy, the bill would severely whipsaw and force the telecom, cable, wireless, broadcast, and DBS industries to completely retrofit their networks/business models to net neutrality.
- Moreover, none of the central concepts of the bill are defined -- "*net neutrality*," "*open*," "*reasonable network management*," or "*private transmission capacity services*" – meaning it would take years for the FCC to define and for the courts to settle them.

It casts competition/property ownership as source of the Internet's problems. *Section 2(10)*

- Inexplicably, the bill totally ignores the real, most-pressing, and obvious Internet problems endangering everyday Internet users: lack of cyber-security, online safety, and privacy.

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