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January 20, 2015

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Late last week, Sen. John Thune (R-S.D.) and Rep. Fred Upton (R-Mich.), the chairmen respectively of the Senate and House Commerce Committees, circulated draft legislation aimed at ending once and for all messy political wrangling over the FCC's proposed open Internet rules, sometimes known as "net neutrality." Hearings on the bill will take place in both chambers Wednesday.

The proposed law is short and sweet. It grants the FCC authority to enforce tough new limits on how ISPs manage network traffic, directly addressing the kinds of practices both the agency and the White House have argued could, if implemented by ISPs in the future, threaten the continued success of the U.S. Internet. At the same time, it would cleanly resolve the long-running conflict between the agency and the federal courts, who have rejected two earlier net neutrality efforts from the FCC on the ground that Congress never delegated oversight of broadband ISPs to the agency.

The bill authorizes the FCC to enforce prohibitions against wired and mobile ISPs from blocking users' access to lawful content and devices. It would prohibit future "paid prioritization" deals in which content providers pay to have their traffic delivered to consumers ahead of competitors and ban intentional degradation or slowing of traffic ("throttling"). And it would require detailed disclosure of network management practices.

Whether the bill can gain enough support from Republicans and Democrats to pass remains to be seen. Sen. Bill Nelson (D-Fla.), the ranking Democrat on Thune's committee, said earlier this month that he and Thune had have "talked extensively" about the bill for "several weeks." The Internet Association, a leading trade group of major content providers, was quick to praise the bill. But advocates who have long pushed for regulation of the Internet as a public utility such as water and power companies were predictably critical of Congressional efforts to resolve the current crisis.

Here are the top eight reasons why passage of the bill would most benefit consumers:

1. It grants clear authority – While the need for specific new network management

Philadelphia Inquirer **Editorial: A good beginning** ***Harrisburg Patriot-News*** **Editorial: To Gov. Tom Wolf, welcome. To Gov. Tom Corbett, thank you.**	regulations has long been debated (the FCC itself, in its last bite at the apple in 2010, referred to them over a dozen times as "prophylactic" rules), the values of an open Internet, in which users can access the content of their choice, have never been seriously debated. For most Congressional Republicans and Democrats who objected to the FCC's earlier and current efforts, the real problem all along has been the agency's lack of legal authority. Since the early days of the commercial Internet, the bipartisan decision of policy makers starting with the Clinton administration has long been to encourage a vibrant broadband ecosystem through a "light touch" regulatory approach. The wisdom of that policy can be seen in the 20 years of explosive growth and investment in Internet-related businesses, technologies, and infrastructure that followed. Still, the new law acknowledges concerns over future network management behaviors expressed by many stakeholders and consumers over the last decade, and authorizes the FCC to police all of the potentially harmful practices identified. But by limiting the FCC's new power, it does so without risking future investment and innovation from ISPs and content providers alike. 2. Avoids legal limb0 – By granting FCC new authority through an act of Congress, the bill removes the most contentious aspect of multiple failed efforts by the FCC to appoint itself as the broadband police department: Congress's intentional decision not to give the agency that power. In both 2010 and 2014, a D.C. appellate court rejected the FCC's imaginative efforts to find that authority in obscure sections of federal communications law. Having failed to win with its eyebrow-raising legal theories, the FCC is left in the current rulemaking with two legally unsound last resorts, including a dangerous maneuver to "reclassify" the Internet as a telephone service and subject it to public utility rules that date to the 1930's. Chairman Wheeler had until recently strongly resisted pursuing that course, in part because it was certain to put the new rules into legal limbo that could take a year or more to resolve in the courts. Now, with growing pressure from the president, he appears to have painted himself into the public utility corner. Implementing the rules by an act of Congress rescues the agency from limbo, avoiding the need for any more costly and time-consuming legal gymnastics in federal court. 3. Checks the power of future FCC chairmen – If the courts accepted the FCC's now-likely attempt at reclassification, the agency would have had nearly limitless power over the Internet, including the ability to set prices and approve service offerings, regulate business practices of content and service providers, share their power with every state regulator, and insert itself into traffic management negotiations deep in the core of the Internet. Though Chairman Wheeler has promised to avoid using that authority beyond the enforcement of the specific rules covered in the proposed bill, there would be nothing to stop him or a future FCC chairman from changing their mind. The bill forecloses that possibility by underscoring Congress's original and wise decision to keep the Internet safe from the old public utility regime. 4. Adds consumer protections well beyond the earlier FCC efforts – The bill puts on a firm legal foundation all of the rules of the FCC's most recent net neutrality effort in 2010 and those proposed last year. And then some. For example, the FCC's rules largely exempted mobile broadband on the understanding that active network management is more difficult for mobile ISPS given limited capacity and fast-growing demand. Some advocates complained about the exceptions, however. For better or worse, the proposed bill applies the same rules to both. The bill also responds to criticism of the FCC's previous and current efforts that neither was specific enough about the kinds of network management technologies they considered harmful. It replaces a general prohibition of "unreasonable discrimination" with specific bans on paid prioritization and throttling, the practices advocates and the White House singled out as insufficiently covered in 2010. By explicitly banning paid prioritization and throttling, the bill addresses precisely the demands made by the most vocal advocates in the on-going rulemaking. Passage of the bill would give the chairman, the president and consumer groups exactly what they said they wanted, and do it without legal risk. 5. Flexible enforcement – The bill directs the FCC to enforce its new powers through

case-by-case proceedings using its existing administrative courts and judges. That approach is always preferable when, as here, the goal of legal rules is to future-proof them as much as possible against unknown new technologies and network management imperatives yet to come. That's because case-by-case proceedings are more flexible and adaptable than passing more rules, which quickly grow obsolete and complicated. The FCC's 2010 rules, for example, exempted over a dozen then-existing network management techniques, including content delivery networks, limited access through game consoles, and co-locating servers with the most frequently requested content, especially video. These technologies were acknowledged to be non-neutral, but also essential to consumers. Flexible enforcement will better protect future innovations certain to come.

6. Recognizes the Internet as a global network – Transforming the Internet into a public utility, even if only to enforce rules the FCC otherwise could not legally sustain, would seriously threaten U.S. credibility in global Internet governance. In international forums including the United Nations, the United States has been strongly and appropriately critical of interference with the free and open development of broadband Internet by other countries. These include repressive regimes such as China, Russia and Iran, who severely limit access to content and use by their own citizens, and protectionist countries, notably Brazil and the E.U., who try to restrict U.S. content providers or otherwise subsidize local alternatives. The public utility approach would provide opponents of a free and open Internet ample opportunity to call out U.S. efforts as hypocritical, unnecessarily undermining our authority. Instead, the bill would install specific and largely uncontroversial new limits on network management practices without the need for public utility treatment. The bill sets an example. The FCC's approach establishes a double standard.

7. Preserves a role for the Federal Trade Commission – Under longstanding federal law, companies treated as "common carriers" are exempt from antitrust law. By passing the rules through the proposed bill and closing any potential public utility loophole for the future, the bill preserves the ability of the Federal Trade Commission to continue its active campaign of policing ISP practices, including consumer privacy protections, under antitrust and related law. If, on the other hand, the FCC proceeds with a rulemaking under its public utility theory, the FTC would be explicitly and permanently out of the picture. Indeed, the existence of these laws and the active engagement of the FTC to enforce them has long been the strongest argument against the need for more specific open Internet rules from the FCC, reflecting a long-running turf battle between the agencies.

8. Ends the endless debate – Bipartisan passage of the bill would resolve a decade-long debate about the open Internet that has, once again, engulfed the FCC and distracted the agency from more urgent business, including finalizing the long-delayed plans for auctions of badly-needed radio spectrum currently used for broadcast TV. Passage of the bill, at the same time, would allow the Commerce committees to turn their attention back to its review of needed updates and reforms to U.S. communications law started last year. Those who have already condemned the bill will, no doubt, continue advocating for an FCC that is deeply involved in the inner workings of the broadband ecosystem. For many self-styled consumer advocacy groups, that has been their stated goal all along.

The rallying cry of "net neutrality," however, resonated emotionally with Internet users who don't necessarily understand the ins and outs of federal regulatory machinations, and has served as an effective wedge to keep the pressure on lawmakers and regulators alike. If the bill passes and the net neutrality problem is at last resolved, perhaps we can have a genuine discussion about the merits of the remarkable success of U.S. bipartisan Internet policy since the 1990's. This time, however, the debate can be on the merits, not manipulative slogans. – ***Washington Post***

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