

Prepared Statement of the Federal Trade Commission

on

“Net Neutrality and the Role of Antitrust”

Before the Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
Of the Judiciary Committee
United States House of Representatives

November 1, 2017

Chairman Marino, Ranking Member Cicilline, and members of the Subcommittee, I am Maureen K. Ohlhausen, Acting Chairman of the Federal Trade Commission (“FTC” or “Commission”), and I appreciate this opportunity to appear before you today alongside my colleague Commissioner Terrell McSweeney to discuss network neutrality and the role of antitrust.¹

I. FTC Background

The FTC is a highly productive, bipartisan independent agency with a broad mission. It is the only federal agency with jurisdiction to both protect consumers and maintain competition in most sectors of the economy. The agency enforces laws that prohibit business practices that are unfair or deceptive to consumers, or anticompetitive, and seeks to do so without impeding legitimate business activity.² The FTC also educates consumers and businesses to encourage informed consumer choices, compliance with the law, and public understanding of the competitive process. Through its research, advocacy, education, and policy work, the FTC promotes consumer protection and competitive markets in the United States.

II. The Net Neutrality Debate

For more than a decade, policymakers and other stakeholders have debated whether and how to address certain existing or potential practices of Internet Service Providers through “net neutrality” regulation. Net neutrality is a broad concept that relates to how ISPs might treat internet traffic that travels over their networks to and from their subscribers. Supporters of net neutrality regulation raise concerns about (1) blocking, degradation, and prioritization of content

¹ This written statement presents the views of the Federal Trade Commission. Acting Chairman Ohlhausen’s and Commissioner McSweeney’s individual oral testimony and responses to questions reflect their respective individual views.

² The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, and enforces a wide variety of other laws ranging from the Clayton Act to the Fair Credit Reporting Act. In total, the Commission has enforcement or administrative responsibilities under more than 70 laws. *See* <http://www.ftc.gov/ogc/stats.shtm>.

and applications; (2) vertical integration by ISPs and other network operators into content and applications; (3) effects on innovation at the “edges” of the network (that is, by content and applications providers); (4) the amount of competition in “last-mile” broadband Internet access markets; (5) remaining legal and regulatory uncertainty in the area of Internet access; and (6) the diminution of political and other expression on the Internet.³ Many of these concerns raise competition and consumer protection issues.

Most of the debate is over what the Federal Communications Commission (“FCC”) should do to address these concerns. The FCC has acted in a variety of ways over the years. It has issued principles, brought an enforcement action, and adopted two sets of rules, the first of which was largely invalidated in federal court.

The more recent set of rules was adopted in 2015 and was upheld by the D.C. Circuit. Those 2015 rules relied on the FCC reclassifying “broadband internet access service” from a Title I information service to a Title II common carrier service. Because the FTC does not have authority over common carrier activities, the 2015 FCC reclassification removed the provision of broadband internet access service from FTC jurisdiction.

III. FTC Participation in the Debate

While the debate has centered on the FCC, the FTC has expertise in antitrust and consumer protection enforcement and policy. In 2007, the FTC authorized staff to issue a report examining broadband Internet connectivity in general and network neutrality in particular.⁴ That report laid out the historical and technical background of the Internet, discussed the legal and regulatory issues, and summarized arguments for and against net neutrality regulation. It also discussed discrimination, blocking, vertical integration, and data prioritization practices;

³ FED. TRADE COMM’N, BROADBAND CONNECTIVITY COMPETITION POLICY 52 (2007), <http://www.ftc.gov/reports/broadband/v070000report.pdf>.

⁴ *Id.*

examined the then-current and likely future state of broadband competition; analyzed ISP practices under antitrust and consumer protection laws; reviewed proposed net neutrality solutions; and suggested guiding principles.

The FTC has also commented in two FCC proceedings related to net neutrality. In 2016, the FCC proposed to subject broadband Internet access service providers to certain privacy rules. FTC staff commented on those proposed rules, applauding the goals but offering some criticisms of the approach. In 2017, the FCC, under a new Chairman, proposed returning broadband to a Title I, non-common carrier classification. The FTC's three Bureaus -Consumer Protection, Competition, and Economics - jointly filed a comment supporting the return of broadband to Title I. Acting Chairman Maureen K. Ohlhausen filed a separate comment also supporting the return of broadband to Title I. Commissioner Terrell McSweeney filed a comment opposing the proposal. The matter remains pending before the FCC.

IV. Conclusion

The Federal Trade Commission is grateful to the Subcommittee for inviting it to speak on these important matters. Thank you.