

# Texas Public Policy Foundation

Deborah Taylor Tate  
Former FCC Commissioner  
Free State Foundation Distinguished  
Fellow

Change the dialogue from  
"free and open" to

**SAFE**  
and  
**SECURE**

# What do Americans think?

- A recent Rasmussen poll finds 53 percent of surveyed Americans do not wish to see the FCC regulate Internet in the same way it currently manages telephones and radios.
- 85% concerned about child online risks



# Is Net Neutrality Dead? Comcast Beats FCC In Key Court Ruling

*Today, the concept of net  
neutrality has taken a  
mammoth hit.*

# President Obama

- *"I will take a back seat to no one in my commitment to network neutrality."*
- *At Google Headquarters*

**Google's Quarterly Lobbying  
Expenditures Top \$1 Million  
For First Time**



# New FCC Chairman

- **Obama picks Net neutrality backer as FCC chief**
- **New FCC Chief Julius Genachowski A Google Net Neutrality Shill?**

# Susan Crawford, "Internet Czar"

- The government's first move to control internet service comes with the release of \$7.2 billion in the stimulus money.
- *"This is just a down payment on the government's investment in the internet," she said.*
- *Crawford resigned*



# FCC Chairman

- Mr. Genachowski is a long-time advocate of government action to require that all Web traffic be treated the same by providers. "I am convinced that there are few goals more essential in the communications landscape than preserving and maintaining an open and robust Internet," Mr. Genachowski said in his speech Monday at the Brookings Institution, a Washington think tank.
- He proposed putting teeth into current guidelines on so-called net neutrality by making them full-fledged rules, and extending them to wireless carriers. (FCC opened "new neutrality rulemaking and is in comment period)

# New FCC Commissioner Clyburn - - The Next Net Neutrality Hero?

"These words, I believe, should apply directly to the Internet as well. "



# Commissioner Clyburn:

- the fact that a court tossed out a network management order
- doesn't change the importance of an "open Internet."



# Chairman Ed Markey

- The deal has implications for net neutrality policy, author of a bill on net neutrality
- "I want to ensure that the combination of a major network operator and a large content owner does not open the door to discrimination on the Internet to the detriment of users," he said.

# Chairman Rockefeller, Senate Commerce

- S. 773 will give the President complete control of the Internet to preserve cybersecurity in case of "emergency." Here's an excerpt from the bill:
- **The President ... may declare a cybersecurity emergency and order the limitation or shutdown of Internet traffic to and from any compromised Federal Government or United States critical infrastructure information system or network....**



THE ECONOMIC EVIDENCE DOES  
NOT SUPPORT A FINDING OF  
SYSTEMATIC MARKET FAILURE

Regulation Is Not Justified on the  
Basis of Market Power



## 20 Foremost Economists:

- No empirical harm
- Regs. unsupported by any empirical data
- No market failure/No market power
- IF Potential harm: existing doctrines
- STRONG evidence: inhibit efficiency/  
reduce competition, innovation,  
investment and *ultimately reduce  
consumer welfare.*

# Wall Street Journal on FCC loss:

- The victory is likely to spark efforts by the FCC and Congress to impose new rules on Comcast and other Internet providers.
- The decision may also prompt Congress to get involved and debate legislation that was introduced last year that would give the FCC authority to regulate Internet providers.



4 FCC Principles: Lawful content  
NY TIMES:

"BitTorrent, which is used to  
exchange very large video files,  
MOST OFTEN PIRATED  
copies of movies"



# CASE-BY-CASE USE OF EXISTING STANDARDS = BEST APPROACH

- The Reasonable Network Management and “Managed Services” Criteria Would Not Protect Consumer Welfare
- Enacting the Proposed Regulations Would Raise Regulatory Risk and Harm Investment and Innovation

# Commissioner of "YES"

- Case by case
- Real complaint by real citizens
- Traditional antitrust (FTC\*DOJ\*AG)
- Consumer protection (FTC/State/FCC?)
- Creation of Technical Advisory Committee
- Mediation/ADR-"Rocket Docket"
- Promote Competition (ie auction spectrum)



# Even the NYTimes says:

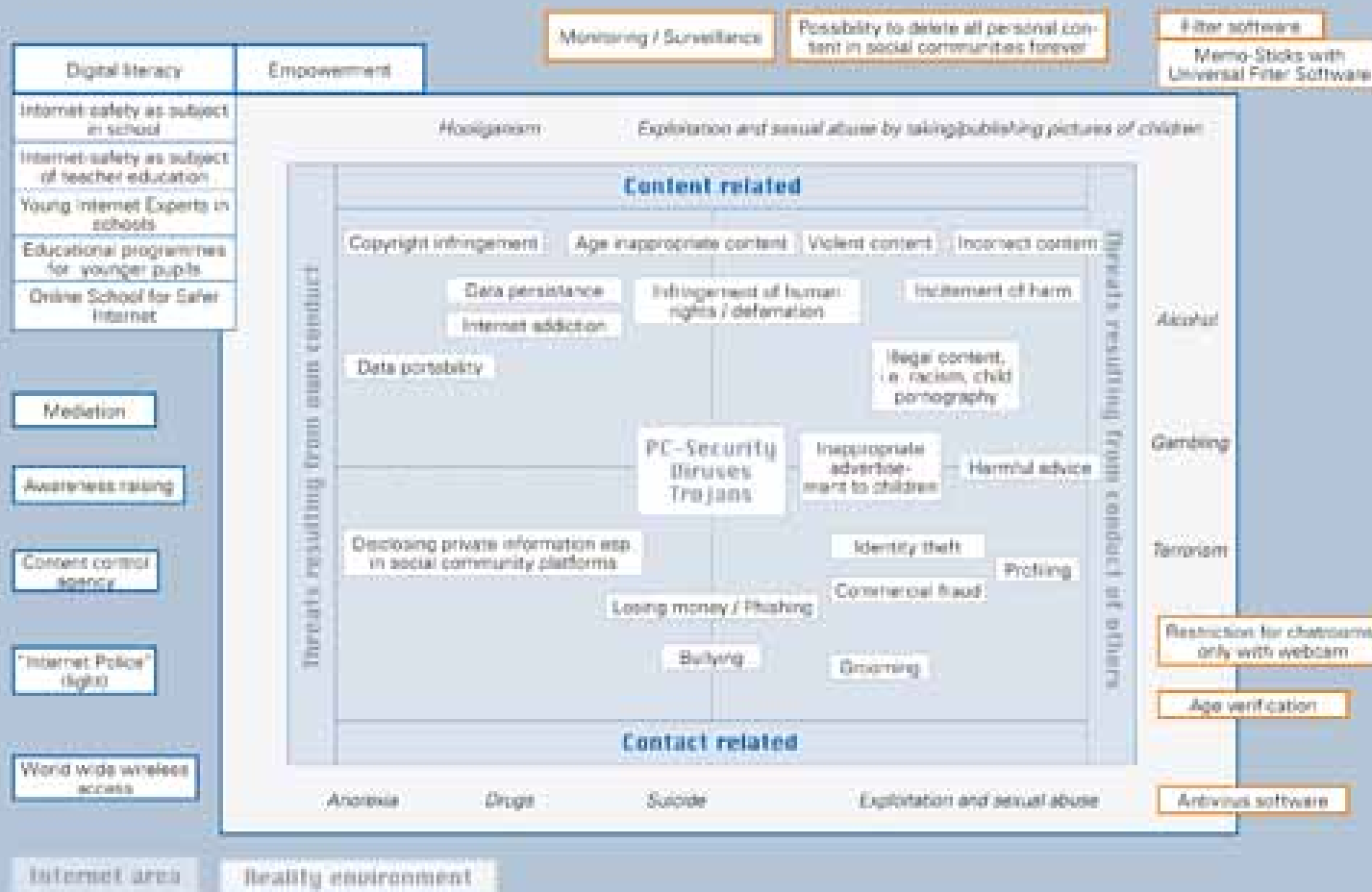
- ..."a service called BitTorrent, which is used to exchange large video files, most often pirated copies of movies. "

# Verizon

- Verizon is also witnessing 5 billion attempted security breaches a day on the network
- U. S. is the leader in areas like choice, utilization, as well as network quality.



# Matrix of risks and threats



# Marketplace Indicators

- RealNetworks Completes Rhapsody Spin;  
Now \$10/Month (down \$15)
- More competition = Lower prices



"The Commission may exercise this "ancillary" authority only if it demonstrates that its action -- "reasonably ancillary to the . . . effective performance of its statutorily mandated responsibilities," the court said. "The Commission has failed to make that showing.

# Comcast Appeal??





# Free and open sounds great...

- Providing internet access for all residents would be a first--government didn't ensure every citizen had a radio during World War II, or televisions in the 1950s or even cable in the 1980s.
- New rules would kill the free-market economy and turn away any incentive for online entrepreneurs to start up new businesses.
- Government's rationale in tying the use of cell phones--the most competitive of all technologies into internet regulation.
- Providers like AT&T and Verizon don't see the need for additional regulation and contend the added regulation could slow their service and lead to more taxes.

# Glenn Beck :

- "the net neutrality issue fits in with President Obama's agenda to regulate free speech on radio, TV, and the Internet"



# Commissioner Robert McDowell ®

- The Fairness Doctrine could be intertwined with the net neutrality battle. The result might end with the government regulating content on the Web, (who was against reprimanding Comcast with Commissioner Tate), said the net neutrality effort could win the support of "a few isolated conservatives" who may not fully realize the long-term effects of government regulation."
- I think the fear is that somehow large corporations will censor their content, their points of view-the bigger concern for them should be if you have government dictating content policy, which by the way would have a big First Amendment problem."



# SAFE and SECURE

- Financial markets and personal finances
- National Security
- Our personal data
- Military and Public Safety
- Content (economic impact of piracy)

# Former FERC Commissioner Kelly re: Smart Grid (and Google)

- Smart Grid grants have only funded a quarter of the Smart Grid projects,  
(funded by up to 50%-Department of Energy awards/American Recovery and Reinvestment Act of 2009)
- **Broad Privacy Issues** in the handling of Smart Grid data that could be used for **commercial purposes** as needing to be worked out..... because there is **no federal law** on this topic.
- The Smart Grid can bring efficiencies to the industry but has lots of **policy and legal issues**

# Safe and Secure

- About ½ of all Americans 12+ have a social networking profile
- "Social networking has become a part of mainstream media behavior"



# SAFE and SECURE

- Our children
  - Fastest growing wireless 8-12 year olds
  - 50% cyberbullying
  - Negative impact on grades/school
  - Child obesity
  - Mental and physical health issues

# Safe and Secure: 40 States Cyberbullying/Harrassment Laws

- [http://www.nasbe.org/healthy\\_schools/hs/bytopics.php?topicid=3131&catExpand=a\\_cdnbtm\\_catC](http://www.nasbe.org/healthy_schools/hs/bytopics.php?topicid=3131&catExpand=a_cdnbtm_catC)
- Class B misdemeanors
- Suspension/Expulsion
- On or off school property
- Many have not updated to include cyber-
- Many broader/not school specific



# Safe and Secure: Common Sense Media

- Rated Top non commercial content
- 10 Million video streams
- Parents #1 concern
- Marketplace response to child empowerment and education
- Ratings TV, movies, utube ?apps??



# Safe and Secure: Internet scams



# \$\$Millions spent on net neutrality VS.

- Incent investment=JOBS JOBS JOBS
- Reform USF system -15% phone tax
- Auction of much needed spectrum
- Education/awareness of Cybersecurity risk
- Incenting efficient use of spectrum
- Forebearance in competitive markets
- White spaces



# Now its gone International!

- Comm Daily: There's no clear distinction in Europe between the different definitions of network neutrality

The lesson that the FCC overstepped its jurisdiction applies in Europe

ARCEP plans a day-long conference



# Adam Thierer: 10 Reasons Not to Regulate-Net Neutrality

- <http://www.cato.org/pubs/pas/pa-507es.html>
- No real harm has occurred which requires regulation (3 filings at FCC)
- No constitutional right to internet, high speed or any application, etc. (\$7.2 billion)
- EXCELLENT reasons "FOR" reasonable network management: piracy, child porn, theft of service, upgrades to technology, innovation, investment, 5% use 95%, etc.

# 10 Reasons (cont'd)

- Markets still developing-mix of open and closed networks (child safety); not a "dumb pipe"=very sophisticated!
- Market power balanced with competition/choice (now wireless competition)



# 10 Reasons...

- Freedom of contract (personal decision)
- Property rights of infrastructure (\$30 billion + broadband + upgrades + private invst)
- Future innovation (at core not just on "edges" as Google, etc. desire)
- "Gaming the regulatory system" (Microsoft-Xbox)
- Old rules do not apply to new wires!  
(Telecom/common carrier/utility regulations)

# Consumer protection


- File complaint: [www.fcc.gov](http://www.fcc.gov)  
(<http://esupport.fcc.gov/complaints.htm>)
- FTC: for issues regarding advertising  
([www.ftc.gov](http://www.ftc.gov))



# FCC Consumer call center

- **PHONE:** Our Consumer & Mediation Specialists are available Monday through Friday, 8 a.m. to 5:30 p.m. ET to answer your questions and assist you in filing a complaint. Call toll-free at 1-888-CALL-FCC (1-888-225-5322) voice or 1-888-TELL-FCC (1-888-835-5322) TTY.

# Electronic filing easy!

- Electronic Comment Filing System
- To file a comment, click on one of the proceedings listed below.
- You can also click on the  button to get more information about a proceeding.
- If the docket you're looking for is not listed, [click here](#) to manually enter your docket number on the upload page.
- <http://fjallfoss.fcc.gov/ecfs/hotdocket/list>