

Broadband Cable Association of Pennsylvania
Testimony before Lower Makefield Township Board of Supervisors
May 16, 2018



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Good evening. I am Brian Barno, Vice President of Government Affairs, for the Broadband Cable Association of Pennsylvania, or BCAP. We are proud to represent fifteen-member companies including two in Bucks County – Comcast and Service Electric Cable TV – that have rolled out broadband service throughout Pennsylvania, where our industry began seventy years ago.

BCAP members alone have invested over \$8 billion in risk capital since the 1996 Telecommunications Act to build the Commonwealth's most robust broadband infrastructure. Our cable company members grow and thrive with regulatory certainty – we had that with the FCC treating broadband as an information service until 2015 – which dovetailed with the massive investment in and expansion of residential broadband.

The FCC's 2015 order upended this certainty by classifying Internet Service Providers, or ISPs, as common carriers under a Title II regulatory regime...appropriate for 1950s-era incumbent wireline telephone companies, but certainly not appropriate in 2018.

Our members adhere to the policies of what is labeled net neutrality. It's in our customer service agreements, and just a part of our effort to ensure customers receive ongoing superior service.

What happens when a local municipality passes an ordinance like the one we're addressing this evening? If Nockamixon Township passes a net neutrality ordinance, what does it mean for Service Electric regarding billing, customer notification, reporting practices, etc? What if ten percent of municipalities passed different ordinances on net neutrality? What signal does a patchwork of local ordinances give to providers weighing where to invest risk capital?

Now I'm not an attorney, but this testimony from Daniel Lyons – a telecom / Internet law professor at Boston College Law School – seemed to make a lot of sense even to a legalese novice like me:

“The recent restoring Internet Freedom Order expressly pre-empts any state or local measures that would effectively impose rules or requirements that the order repeal, or rules that would otherwise be inconsistent with the federal deregulatory approach taken in the order. The purpose of the commission's order was to repeal the agency's earlier net neutrality provisions, and to restore the classification of broadband providers as information services under the Communications Act.

For over 20 years, the FCC has consistently said that information services should not be unregulated but should be affirmatively deregulated. And that approach has support in the Communications Act itself. I suspect the pre-emption provision is likely to be upheld.”

Will a prohibition on contracting with networks that prioritize traffic jeopardize your local Emergency Services and 9-1-1 professionals from participating in First Net?

The FCC's recent order simply restored the law that was in place as of 2015 – the law under which the Internet flourished. No more, no less. Anti-trust laws protect consumers from the harms that net neutrality advocates fear.

ISPs, like Comcast and Service Electric, are voluntarily adopting net neutrality principles in their terms of service. It's fine for states to hold ISPs accountable for the service terms in their contracts. However, a township resolution requiring broadband providers to provide a no blocking, no throttling, no prioritization promise conflicts with the FCC deregulatory approach.

Anti-trust law in the Federal Trade Commission and Department of Justice has always had the ability to stop networks from engaging in practices that harm consumers. One of the downsides of the reclassification from information services to telecommunications services is that it stripped the FTC of its authority to enforce anti-trust law – because the FTC can't enforce laws against common carriers. The FCC recent order restores the FTC to the “cop on the beat.”

Notwithstanding the intent of the resolution's authors to protect consumers, Resolution 2364 is unnecessary. Anti-trust law is already in place to guard against the anti-competitive abuses that supporters fear.

Thank you for the opportunity to speak with you. I look forward to your questions.