

# Is the FCC Delaying A Digitally-Connected America?

By [Barry Umansky, J.D.](#), [The Digital Policy Institute](#)

September 12, 2012

Federal regulators have largely resisted regulatory imposition on the Internet - whether via wireless or wired connections. And approaching the Internet ecosystem with regulatory restraint has proven to be a prescient strategy. The exploding digital economy has been a tremendous boon for both consumers of Internet-based services and technologies, and for the businesses that invest in building the networks that make the Internet economy possible. Consumers are demanding more and faster broadband connections and broadband providers appear to be heeding their call. But will federal policies impacting broadband providers ultimately help or hinder progress towards a digitally-connected America?

Part of the answer arrived on August 22<sup>nd</sup> when the Federal Communications Commission (FCC) in Washington DC voted on party lines (3-2) to [issue an order](#) that placed a hold on the ability of telephone firms to obtain relief from “special access” regulations when they showed that there was competition for these services within a specific market. FCC Chairman Julius Genachowski said, "Based on the record and the undisputed finding that legacy regulations are not working as intended, we temporarily suspend outdated rules that not only allow incumbent carriers to raise prices in the absence of competition but also deny them the flexibility to lower prices in the presence of competition. We do this as we determine what permanent rules would best promote a healthy competitive marketplace."

Special access services, often referred to as the “middle mile” of the Internet, have traditionally consisted of legacy, copper-based DS-1/DS-3 facilities used by businesses and mobile carriers for backhaul connection to the Web. However, in the digital era, that special access market is in rapid transition, and a number of competitors, including wireless carriers such as T-Mobile and Sprint, have [stated](#) that by the end of next year they will no longer rely on copper-based DS-1/DS-3 facilities to satisfy their backhaul needs.

One has to question the timing of this initiative when both the market participants and the FCC note that the industry is rapidly embracing the migration to fiber-based facilities, which are unregulated. How the FCC decides to pursue long-term resolution of “special access” issues gives us pause as to whether this agency has its sights set on moving quickly into the future, or whether its focus is on the past at the expense of a digitally connected future for us all.

How is this relatively arcane issue relevant to anyone other than the lawyers that have been working on it for years? Consider the following. According to a [study](#) late last year that reviewed data from the Centers for Disease Control, more than 30% of Americans are cutting the cord and opting for wireless broadband as their preferred on-ramp to the Internet. However, as noted industry analyst [Roger Entner](#) recently observed, reverting to a pre-1999 approach to special access won't have a positive impact upon consumer

welfare. Yet at the same time, some competitors are urging the FCC to take this new approach on special access so they can “game” the system, wasting competitors’ capital on obsolete technology while they build their own state-of-the-art, unregulated infrastructure.

In plain English, this means that the regulatory approach on special access this FCC is undertaking would be ineffective in reducing costs to consumers of wireless broadband. Moreover it would do nothing to hasten the investment in and buildout of next-generation wireless (or wired) broadband infrastructure. What then would be the upside of pursuing the path this FCC appears to favor? There does not seem to be a ready explanation.

If the FCC is serious about helping to achieve President Obama’s national goal of extending wireless broadband to more than 98 percent of the population by 2015, the Commission needs to signal very clearly that there is no tolerance for adopting or retaining federal policies that not only fail to further this goal, but may well delay achieving it.

--

*Barry Umansky is a senior research fellow for the Digital Policy Institute at Ball State University, and a professor of telecommunications since 2003. His professional background includes over thirty years as a communications attorney in Washington, D.C. The Digital Policy Institute is an independent, interdisciplinary research and policy development organization and has served as a catalyst for research and education on digital media issues since 2004.*

[DigitalPolicyInstitute.org](http://DigitalPolicyInstitute.org)

@Digital\_Policy

Facebook.com/DigitalPolicyInstitute

For further information contact: [bdumansky@bsu.edu](mailto:bdumansky@bsu.edu)

###