FCC OPEN INTERNET ORDER 2017

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CANTO AGM, Trinidad, February 6, 2018

2015 Open Internet Rules

- No throttling
- No blocking
- No paid prioritisation

Net neutrality rules established framework for OTTs/ edge providers/ on-line platforms to use ISP networks without paying for what they use both in the US and in the Caribbean.

2015 Rules Driven by Following Cases

- Vonage complained that Madison River and other small ISPs had blocked their VoIP service.

- Comcast throttling of BitTorrent: half of BitTorrent's stream. Commission issued cease and desist order to Comcast. Court eventually overturned the FCC's ruling and found in favour of Comcast; that is that Comcast had practiced reasonable network management.

- AT&T in 2012 limited some customers on certain data plans from accessing Face Time. AT&T cited network management. Application developers complained about restriction on consumer choice. AT&T reversed its decision.

2017 Open Internet Rules

Major difference is ability of ISPs to offer paid prioritisation. What does this mean ? We'll get to that in a bit.

2017 Internet Rules Driven By:

- Lack of network investment by ISP threatening the expansion of Universal Service and the viability of the delivery of the content of the very OTT networks who must use ISP networks.

2017 Internet Rules Driven By:

- **Cox Comments** ("If anything, for providers like Cox, large edge providers that exercise substantial control over their network traffic (and transit providers that carry such traffic) have the upper hand in negotiating traffic-exchange arrangements, illustrating the problems with a one-sided regulatory regime applicable only to [ISPs].

-**Frontier Comments** "[T]he real issue is that the few largest edge providers have sought to avoid paying anything for the infrastructure upgrades required to accommodate their traffic . . . . In practice, these rules gave edge providers a green light to continue to drive greater and greater network traffic at no costs, resulting in a direct drain on infrastructure investment in areas where it is needed most, including in rural areas."

2017 Internet Rules Driven By:

- Increased Consumer Choice

- 2015 Rules limit consumer choice because telecom companies cannot offer different tiers of service, for example. Internet service companies cannot experiment with new business models that could help them compete with online businesses like Netflix, Google and Facebook.

Objectives 2017 Rule

- Intended to promote innovation and investment .
- Promote broadband deployment in rural America.
- Promote infrastructure investment
- Foster innovation in network and at the edge (OTTs/ Online platforms)

Response of OTTs/Edge Providers/ Online Platforms to 2017 Rules

- Rolling back the rules could make the telecom companies powerful gatekeepers to information and entertainment.

- Small online companies believe the proposal would hurt innovation, because telecom companies could force them to pay more for the faster connections.

- consumers, the online companies say, may see their costs go up if, for example, they want high-quality access to popular websites like Netflix, a company that depends on fast connections for its streaming videos.

FCC Response to OTTs/Edge Providers/ Online Platforms

- Many economic factors support an Open Internet.
- 2015 Decision relied on a few cases and speculation
- Edge providers have been able to disrupt a multitude of markets—finance, transportation, education, music, video distribution, social media, health and fitness, and many more—through innovation , all without the 2015 Decision.

FCC Response to OTTs/Edge Providers/ Online Platforms

OTTs are Powerful

- Large edge providers, such as Amazon, Facebook, Google and Microsoft, have countervailing market power that would reduce the prospect of inefficient outcomes due to ISP market power.
- The market capitalization of the smallest of these five companies, Amazon, is more than twice that of the largest ISP, Comcast, and **the market capitalization of Google alone is greater than every cable company in America combined.**

FCC Response to OTTs/Edge Providers/ Online Platforms

OTTs are Powerful

- It is unlikely that any ISP, except the very largest, could exercise market power in negotiations with Google or Netflix, but almost certainly no small wireless ISP, or a larger but still small rural cable company or incumbent LEC, could do so.

FCC Response to OTTs/Edge Providers/ Online Platforms

OTTs are Powerful

- Major edge providers, including Netflix, YouTube, and other large OVDs, are some of the "most-loved" brands in the world.

- Their reputations and the importance of reputation to their business and brand gives them significant incentive to inform consumers and work to shape consumer perceptions in the event of any dispute with ISPs.

- This incentive mitigates potential concerns that consumers lack the knowledge and ability to hold their ISPs accountable for interconnection disputes.

FCC Response to OTTs/Edge Providers/ Online Platforms

Regulatory Asymmetry Hurts Investment

- Many ISPs are a tiny fraction of the size of upstream middle mile and transit networks or content and edge providers.

- <u>The record reflects that the asymmetric regulation reduced incentives to share costs</u>.

- Eliminating one-sided regulation of Internet traffic exchange and restoring regulatory parity among sophisticated commercial entities will allow the parties to more efficiently allocate the costs arising from increased demands on the network.

FCC Response to OTTs/Edge Providers/ Online Platforms

Both Networks and Platforms Incentivized to Invest

- Incentive for both ISPs and edge providers (OTTS/ on-line platforms - such as Amazon, Facebook, Google and Microsoft) to innovate. Otherwise imbalance results in collapse of ecosystem.

- Regulation must be evaluated to account for its impacts on ISPs’ capacity to drive virtuous cycle, as well as edge providers.

- Edge provider innovation drives consumer adoption of Internet access and platform upgrades.

- In maximizing profit, a platform provider sets prices and invests in network extension and innovation to maximize the gain subscribers (and potential subscribers) on both sides of the market obtain in interacting across the platform, subject to costs and competitive conditions.

Caribbean Focus... GLOBAL PERSPECTIVE

FCC Response to OTTs/Edge Providers/ Online Platforms

Both Networks and Platforms Incentivized to Invest

- Innovation by ISPs may take the form of reduced costs, network extension, increased reliability, responsiveness, throughput, ease of installation, and portability. These types of innovations are as likely to drive additional broadband adoption as are services of edge providers

FCC Response to OTTs/Edge Providers/ Online Platforms

Consumer Welfare

- Eliminating the ban on paid prioritization arrangements could lead to lower prices for consumers for broadband Internet access service, as ISPs may be able to recoup some of their costs from edge providers. 2015 rules means that higher prices are charged to all end users—regardless of whether or not the end user subscribes to the content service that causes the congestion .

- Closing the digital divide: Paid prioritization can also be a tool in helping close the digital divide by reducing broadband Internet access service prices for consumers.

FCC Response to OTTs/Edge Providers/ Online Platforms

Consumer Welfare

- Federal Trade Commission to police Privacy Practices of Internet Services Providers (ISPs).

- ISPs to disclose network management practices, performance and commercial terms of service:
  - Enables customers to choose
  - Provides technical information to entrepreneurs and innovators

FCC Response to OTTs/Edge Providers/ Online Platforms

Consumer Welfare

- Paid prioritization causes ISPs to invest more in network capacity, reducing congestion and thereby inducing congestion-sensitive edge providers to enter the market.
- The increased ISP investment occurs for two reasons:

- incremental investment is more profitable because the ISP can now charge edge providers in addition to subscribers, and paid prioritization allows more edge providers who need a high quality of service to enter the market.

- Stimulate entry of new ISPs and encourage current providers to expand their networks by making it easier for ISPs to recoup their investment.

FCC Response to OTTs/Edge Providers/ Online Platforms

Consumer Welfare

- Applications such as Netflix, in the first half of 2016 generated more than a third of all North American Internet traffic.
- Without paid prioritization, ISPs must recover these costs solely from end users.
- Consumers who do not cause these costs must pay for them, and end users who do cause these costs to some degree free-ride.

FCC Response to OTTs/Edge Providers/ Online Platforms

Consumer Welfare

- Paid prioritization signals to edge providers the costs their content or applications drives.
- Edge providers can undertake actions that would improve the efficiency of the market:
- For example, they could invest in compression technologies if those come at a lower cost than paid prioritization, enhancing efficiency, or, if they have a pricing relationship with their end users, they could directly charge the end user for priority, leading those end users to adjust their usage if the value does not exceed the service's cost, again enhancing economic efficiency.

Response of Caribbean Policymakers

- FCC 2017 Decision vindicates Caribbean Operators who have been for years sounding the alarm that network investment is threatened and undermined by freeloading OTTs/ Edge providers/ on-line platforms.

- QoS issues will be intractable once OTTs are allowed to continue to use up the capacity that Caribbean operators invest in both their fixed and mobile networks.

Response of Caribbean Policymakers

- Most of the regulators in the Caribbean adopted formally or informally the ‘bright line’ rules adopted by the FCC in 2015 – no blocking, no throttling, no paid prioritisation.
- ECTEL(Dominica, Grenada, St.Kitts & Nevis, St.Lucia, St. Vincent & the Grenadines) has issued press release early last week that they will not be adopting FCC 2017 Order notwithstanding adopting principles of 2015 Order.
- Minister Wheatley from Jamaica has taken a similar stance as ECTEL.

Response of Caribbean Policymakers

- Reckless positions in view of:

\- The FCC saw clearly that without incentivising domestic US operators to invest in their network, no online or edge services can be sustainably provided.

\- There will be limited investment in networks if providers cannot recover on their investment.

Response of Caribbean Policymakers

Every investment in network capacity made by domestic Caribbean operators is whisked away by edge providers/ OTTs/ online platforms who fill any new network capacity with their content because they don’t have to pay for it.

Over the years regulators have been saying, what’s the big deal, just charge your customers more. This is indicative of failure in the market where customers end up paying more for their data services while OTTs pay nothing to use networks. This is outrageous.

And the question is how much can Caribbean consumers actually pay?

Response of Caribbean Policymakers

Are the objectives of 2017 FCC Order not relevant to the Caribbean. These are:

-Promote innovation and investment

-Promote broadband deployment in rural America.

-Promote infrastructure investment

-Foster innovation in network and at the edge (OTTs/ Online platforms)

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Response of Caribbean Policymakers

Are the objectives of 2017 FCC Order not relevant to the Caribbean?

Surely they are.

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Open Internet

Questions?