CDT Files Reply Comments in FCC Neutrality Proceeding

by David Sohn [1]
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CDT filed extensive reply comments [2] yesterday in the FCC's ongoing Open Internet proceeding -- also known as the Internet neutrality rulemaking. CDT continues to support the adoption of rules to ensure that the Internet remains an open, "innovation without permission" environment, rather than one in which network operators exert creeping gatekeeper control. Responding to a variety of arguments offered in the initial comment round in January, CDT said that opponents paint an exaggerated picture of the rules' reach and restrictive impact. Perhaps most egregious: opponents criticize what they (wrongly) say is a move to "regulate the Internet," and then proceed to urge the FCC to extend any rules to the entire Internet ecosystem -- to do, in other words, the very thing they say is so harmful. By contrast, CDT's comments recommend some clarifications and modifications to make clear that FCC rules in this area must focus exclusively on the provision of the "on ramps" to the Internet. "Regulating the Internet" more broadly, in the sense of regulating the myriad communications and activities that ride on the Internet, are properly outside the FCC's reach.

Of course, one significant development since CDT filed its initial comments [3] in January is that a federal court ruled that the FCC lacked authority to issue its 2008 order against Comcast's interference with BitTorrent (CDT's reaction to the court decision is here [4]). This has raised serious questions about whether and how the FCC can claim the authority to adopt open Internet rules. But CDT's January comments already told the FCC that it needed to "go back to square one" on jurisdiction. The court decision affirms that the FCC cannot assert unbounded authority. CDT believes it should be possible to develop a limited approach to the agency's jurisdiction that does not open the door to regulating the content of Internet communications or the behavior of any entity that does not provide actual transmission capabilities. Then, with a little more guidance and a few modifications to the FCC's original proposed rules, it should be possible to adopt some meaningful safeguards for Internet openness and innovation, without producing the various harms that opponents alleged in their comments.

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