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INFORMATION AGE

The Great Internet Power Grab

We've come a long way from Steve Jobs as 'phone phreak' to Tom Wheeler as ruler of the Internet.

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By L. GORDON CROVITZ
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The era of open innovation can be dated to 1971, when teenager Steve Jobs and his engineer friend Steve Wozniak became "phone phreaks." They sold kits to create routing tones spoofing government-regulated phones into making free long-distance calls. Evading the absurdly high prices that federal regulators set for AT&T calls felt like civil disobedience. The same spirit of disruptive innovation led them to found Apple.

Last week Washington abandoned open innovation when the chairman of the Federal Communications Commission yielded to President Obama's demands and moved to regulate the freewheeling Internet under the same laws that applied to the Ma Bell monopoly. Unless these reactionary regulations are stopped, they spell the end of the permissionless innovation that built today's Internet.

Until now, anyone could launch new websites, apps and mobile devices without having to lobby a regulator for permission. That was thanks to a Clinton-era

bipartisan consensus that the Internet shouldn't be treated as a public utility. Congress and the White House under both parties kept the FCC from applying the hoary regulations that micromanaged the phone system, which would have frozen innovation online.

Last week's announcement from FCC Chairman Tom Wheeler rejects 20 years of open innovation by submitting the Internet to Title II of the Communications Act of 1934. Once Mr. Wheeler and the commission's Democratic majority vote this month to apply Title II, the regulations will give them staggering control. Any Internet "charges" and "practices" that the bureaucrats find "unjust or unreasonable is declared to be unlawful."

This is an open invitation to entrenched companies challenged by new technologies. The Internet has been a source of creative destruction, upending industries from music, movies and newspapers to retail, travel and banking. History teaches that companies threatened by competition will hire as many lawyers as necessary to get regulators to protect them.

Under Title II, regulators will have the power to invalidate many Internet practices that deliver enormous value to consumers. Today, Amazon has a deal with Sprint enabling Kindle's rapid downloads of e-books, which competing e-book sellers could claim was "unjust." The WhatsApp messaging system acquired by Facebook lets people text for free, which traditional mobile phone companies might well consider "unreasonable." Netflix will regret lobbying for Title II if its competitors object to its special deals that enable its smooth delivery of bandwidth-intensive video.

Under Title II, almost all Web operations will be subject to bureaucratic control. In 2005, the U.S. Supreme Court warned that if the FCC treated the Internet as a telecommunications service, it "would subject to mandatory common carrier regulation all information service providers that use telecommunications as an input to provide information service to the public"—in other words, almost all websites and apps would be subject to regulation.

This means the FCC will be able to decide the "reasonableness" of many websites and services: Regulators could micromanage Google search results on the ground that the company uses "telecommunications" to link to other sites. The FCC could oversee news publishers that link to other news sites or have online advertisements connecting to advertiser websites. Social media such as

Facebook and Twitter involve telecommunication services, as do email services from Google and Yahoo .

In anticipation of Title II, BlackBerry is already lobbying the FCC to force Netflix and Apple to offer apps for its phones, which have a small market share.

Mr. Wheeler has promised to "forbear" from some regulations, but once regulators get power, they use it. And if there is any forbearance, there will be litigation from companies seeking to burden their competitors with regulation.

President Obama claims that Title II would boost broadband, but the opposite is true. Today, Google Fiber is the main threat to the phone and cable broadband duopoly. Under Title II, cable and telecom lawyers will be able to press the FCC to declare Google's business model "unjust or unreasonable." They can object to Google serving only certain areas. They can say it's unfair that Google can charge consumers less because it benefits from advertising.

The FCC claims that it is supporting "net neutrality," but Title II was not designed to keep the Internet free of content discrimination. It actually enforces non-neutrality and fast lanes so long as bureaucrats deem them "reasonable."

It likely will take the courts into the next presidency to litigate the enormity of this FCC power grab, but the sooner we return to the national consensus against heavy regulation, the better. The culture of American innovation and the freedom of the Internet hang in the balance.

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