

Why the Markey Net Neutrality Bill Would Regulate the Internet

H.R.5353 would alter the FCC's priorities to put Internet regulation ahead of competition

Where the Markey Bill explicitly would regulate the Internet:

- **“Adopting and enforcing...protections” = regulation:** H.R.5353, *Sec. 12. Broadband Policy*. “*It is the policy of the United States:*” (4) “*To safeguard the open marketplace of ideas on the **Internet** by adopting and enforcing baseline protections to guard against unreasonable discriminatory favoritism for, or degradation of, content by network operators based upon its source, ownership or destination on the **Internet**.*” [Underline and bold emphasis added]
 - “*adopting and enforcing baseline protections*” is the functional equivalent of “regulation.”
 - This Broadband Policy sentence refers to “*the Internet*” twice.

How proponents are misrepresenting the Markey Bill's regulatory impact:

- **Not the whole truth and nothing but the truth:** Upon introducing H.R.5353 House Telecom Chairman Ed Markey unequivocally stated in his press release that: “*The bill contains no requirements for regulations on the Internet whatsoever.*”
 - By amending Title I of the Communications Act (which lays out the FCC's regulatory authorities, purposes, priorities, and procedures) with a new superseding U.S. policy priority to adopt and enforce Internet protections -- effectively mandates new regulation of the Internet.
- **Ignores cause-effect:** Legally and constitutionally, the FCC/Courts must harmonize and update past FCC regulations/court precedents to comply with new superseding U.S. policy set by Congress; thus this bill would legally require new regulations of all the competitive and de-regulated information service (Internet) technologies: telecom, cable, wireless, BPL, broadcast and satellite.
 - It is grossly misleading to imply that establishing a new U.S. Broadband Policy priority for the FCC, which references the Internet five times, would not require new Internet regulations.

How the Markey Bill is deceptive about its purpose and impact:

- **Study is a smokescreen:** Characterizing the legislation as “an FCC study bill” distracts Members from its real impact: that H.R.5353 radically alters the FCC's core regulatory mission/priorities.
- **Silent on reversing Government Free-Market Internet policy:** This bill would override current U.S. policy of the United States “*to preserve the vibrant and competitive free market that presently exists for the Internet...unfettered by Federal or State regulation*” with non-free-market, net neutrality regulation “*to preserve and promote the open and interconnected nature of broadband networks...*”
- **Silent on reordering of longstanding and popular policy priorities:** Bill proponents are not up front about how this bill would make the highly-controversial issue of net neutrality the country's #1 communications priority, overriding the longstanding bipartisan consensus policy priorities of promoting: competition, universal broadband deployment, public safety, and access for the disabled.
- **Spawn massive uncertainty:** “To establish broadband policy” without defining the core regulatory/legal terms: “broadband,” “open,” “interference,” “content” or “discriminatory favoritism” would beg lawsuits and even more regulatory/legal/investment uncertainty than the 1996 Telecom Act.