Title II vs. Section 706

Patrick W. Gilmore, Chief Technology Officer
Markley Cloud Services / Markley Group

Title II For Everyone!!

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Agenda

- What just happened?
- What does that mean?
- What do we know, and what don’t we know?
- When will we know it?
- What does that mean for Peering on the Internet?

Disclaimer / Caveats

These are my personal opinions, not anyone else's

- These are not the opinions of Markley Cloud Services, LINX, SIX, PeeringDB, NANOG, my mother, or you
- But they should be!

This is going to be ***very*** high level due to time constraints

Questions are welcome and encouraged

I Am Not A Lawyer

- In fact, I Am Not An Isp…

Thanks Obama!

On November 10, 2014, President Obama asked the FCC to re-classify “internet [sic] service under Title II”

https://www.youtube.com/watch?v=uKcjQPVwfDk

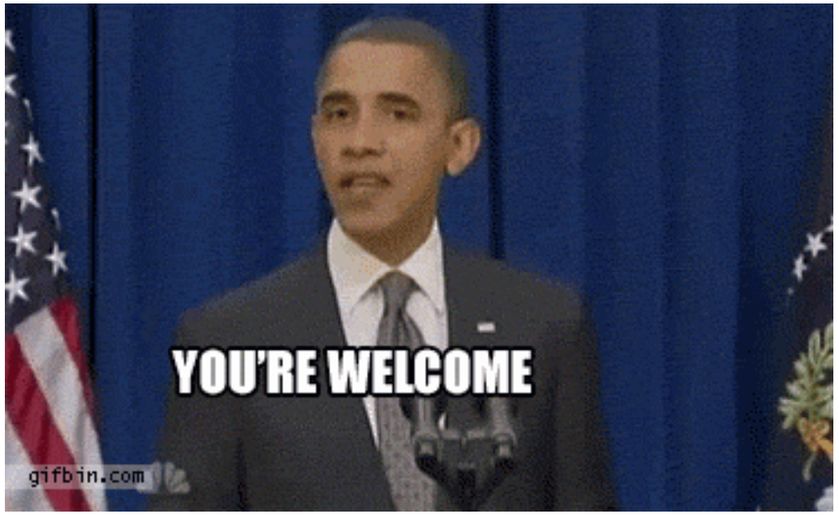
While the FCC is an independent agency, most said it was impossible for the FCC to ignore this request

Some said it was inappropriate to make the request

Thanks Wheeler!

On February 4th, Tom Wheeler, Chairman of the FCC, announced he had chosen Title II by posting to Wired

- Yes, the FCC chair wrote a blog on wired.com



http://www.wired.com/2015/02/fcc-chairman-wheeler-net-neutrality/

In this blog, Wheeler specifically spells out why he picked Title II over Section 706, despite the appellate court essentially telling him to use Section 706

FCC Picks Consumers over Commercial Interests

Wheeler's reasoning for eschewing Section 706:

> **[…] I became concerned that this relatively new concept might, down the road, be interpreted to mean what is reasonable for commercial interests, not consumers.**

Honestly, my response when reading that was "Wow!"

So much for being (like?) a dingo…

https://www.youtube.com/watch?v=hkjkQ-wCZ5A

Bad timing for NANOG On The Road

Unfortunately, the FCC will not vote on the Chairman's proposal for … 2 whole days

That's right – the FCC is having a meeting on:

Thursday, February 26, 2015 at 09:30 AM EST

to discuss and vote

You can view the meeting live:

http://www.fcc.gov/events/open-commission-meeting-february-2015

This Just In!

The two Republican FCC members asked the Chair to delay the vote

They are requesting the Chairman release the entire order, and give the public 30 days to comment

- Does not seem like a ridiculous request

This literally came in Monday (the day before NANOG OTR)

Title II, Title III, Section 706, …

Wheeler believes the FCC has the authority to reclassify Broadband based on Title II, Title III, *and* Section 706

- "Section 706" is just part of Title VII

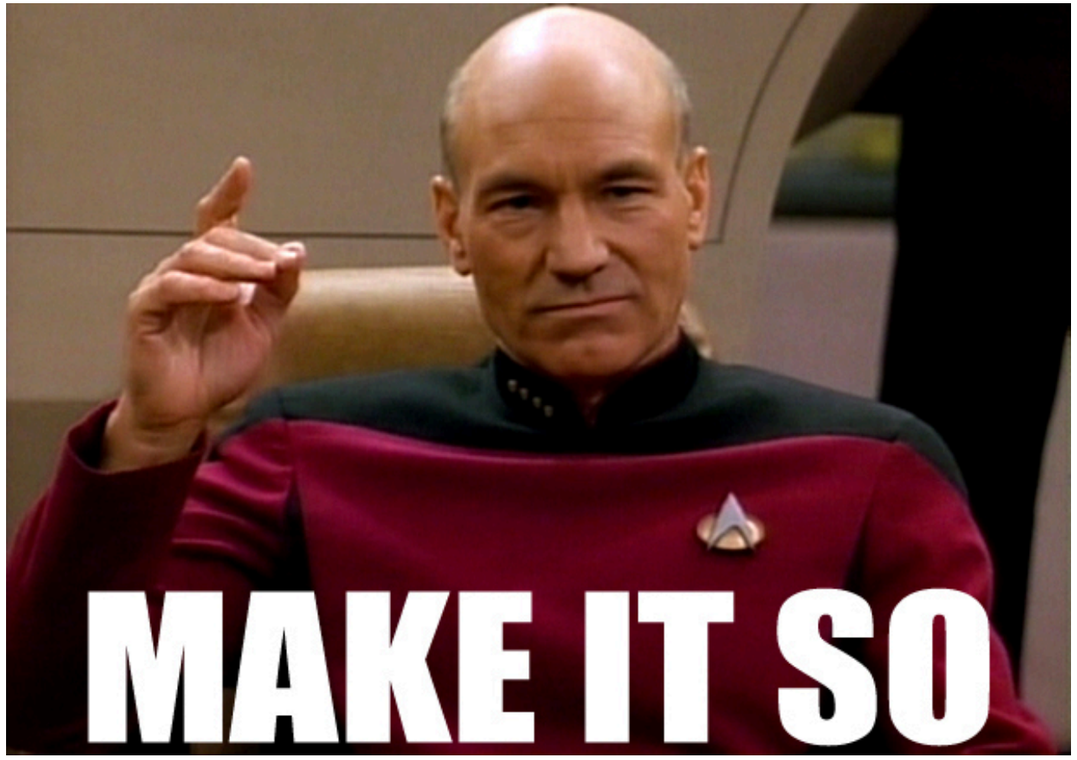
Do not be confused that the FCC mentions all these Sections & Titles when justifying their decision

The FCC may "draw authority from" all three, however Broadband is being classified as a telecommunication service under Title II

Will Title II pass?

Just because the Chairman says it does not make it so

- Obligatory Star Trek reference at a tech conference



However, this is almost certainly going to pass

The FCC is 5 members:

- Two from each major party
- Chair from the President's party

One Democratic member has already stated she will vote with the Chairman for Title II

What does that *mean?*

Title II is a very voluminous section of dense legalese pretending to be telecommunications vocabulary

- Whatever you think that means, it is worse
- There are ASCII, PDF, and WordPerfect versions of the entire Telecommunications Act of 1996 here:

http://transition.fcc.gov/telecom.html

Warning, it is 128 pages long

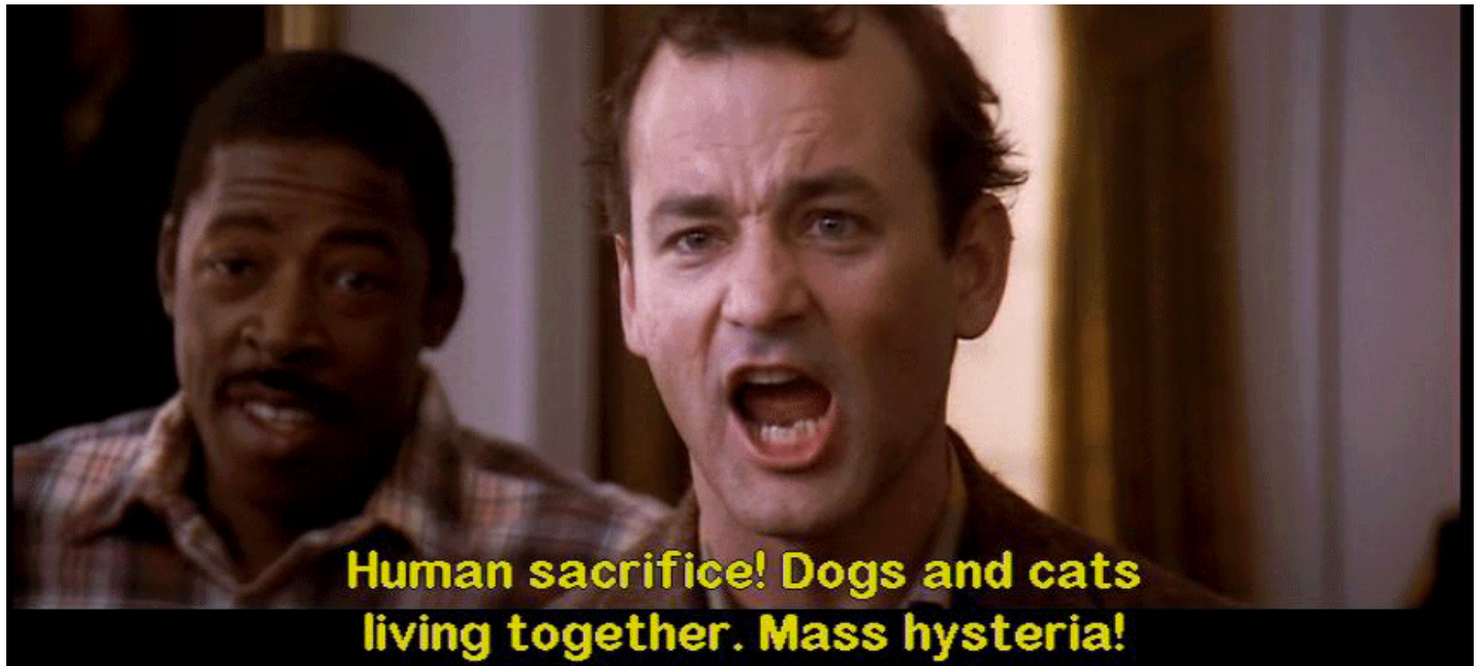
- And before you ask, yes, WordPerfect format

So … What does that *mean?*

In layman's terms, "Title II" turns the Internet into a utility

Which means:

- Massive paperwork
- Full Government control of *everything*
- Dogs and Cats Living Together!

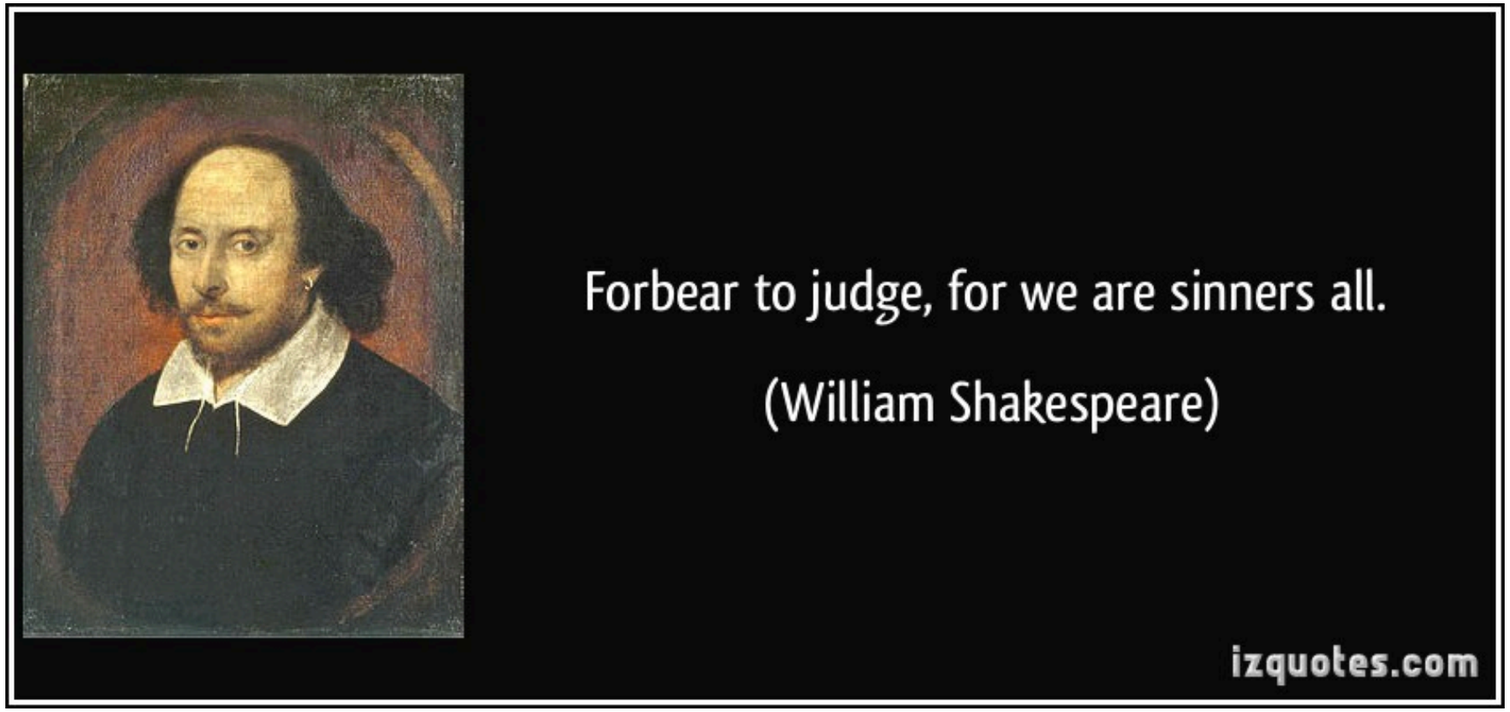


Or maybe not?

More seriously, Title II includes many things nearly everyone would like to avoid

The FCC plans to “forbear” implementing certain rules

- This is how mobile networks have operated for decades



Forbearance

Major provisions of Title II not being enforced on Broadband:

Rate regulation

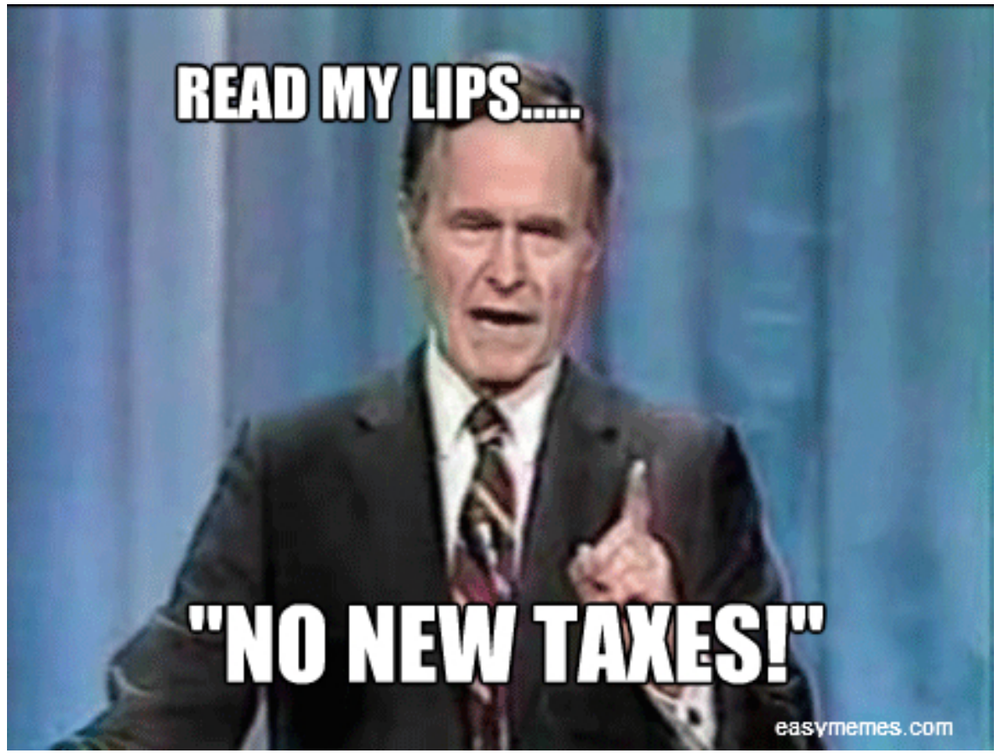
- Tariffs will not be applied to broadband connections
- I.e. ISPs can charge anything without asking the FCC for permission

Universal Service

- ISPs will not contribute to the USF

No New Taxes

- Because that worked out so well last time…



Then what *is* the FCC doing?

Unfortunately, the full text of the proposal is not known yet

There is a four page “fact sheet” (FAQ?) put out by the FCC, which you can find at this trivially memorable URL:

http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0204/DOC-331869A1.pdf

But since the proposal has not been published, we cannot know if the rules actually say what the FCC says the rules will say

Then what does the FCC *say* it is doing?

Wheeler's Wired blog and the FAQ set out a few goals:

- Ban Paid Prioritization
- Ban blocking of "lawful content and services"
- Ban throttling of "lawful content and services"
- Enhance transparency rules
- Homogenize rules for mobile and fixed-line broadband

This essentially enshrines the core of "Network Neutrality" that the mainstream has been lobbying for

Banning Paid Prioritization, Blocking, & Throttling

Let’s be clear what each of these mean:

Paid Prioritization is QoS for a fee

- Good or bad? Discuss

Blocking is DoS’ing 3rd party services

- Hard to argue blocking is good
- Let’s ignore things like spam / abuse / etc.

Throttling is slowing down specific applications or users

- Allows ISPs to pick “winners and losers”

What don’t we know?

It may seem like everything has been explained, but there is much more unknown than known

First and foremost, all we have is what the Chairman claims the proposed rules would say, not the rules themselves

So take everything you learned in this presentation so far with a very large grain of salt

What else don’t we know?

Probably the most important ambiguous item to this audience is Interconnection

- This is what we call “Peering”

The FAQ claims the FCC will have the ability to take “take appropriate enforcement action if necessary” if Broadband providers are not being “just and reasonable”

And that is nearly the entire text on the subject in the FAQ

- There is a total of one sentence on Interconnection

Just and Reasonable

The definition of “Just and Reasonable” was well defined

- When a CLEC wanted to connect to an ILEC
- In the 1990s

Obviously content sending traffic to eyeballs in 2015 is slightly different

Just as obviously, the FCC understands these are very different things

- Question is, how deeply do they understand?

Appropriate Enforcement Action

Even more concerning than “just and reasonable” is “appropriate enforcement action”

This has literally zero context or justification from the FCC other than mentioning issues between “broadband providers” and “edge providers”

Step in the right direction

The new proposal addresses a glaring error in the previous Notice of Proposed Rulemaking (NPRM)

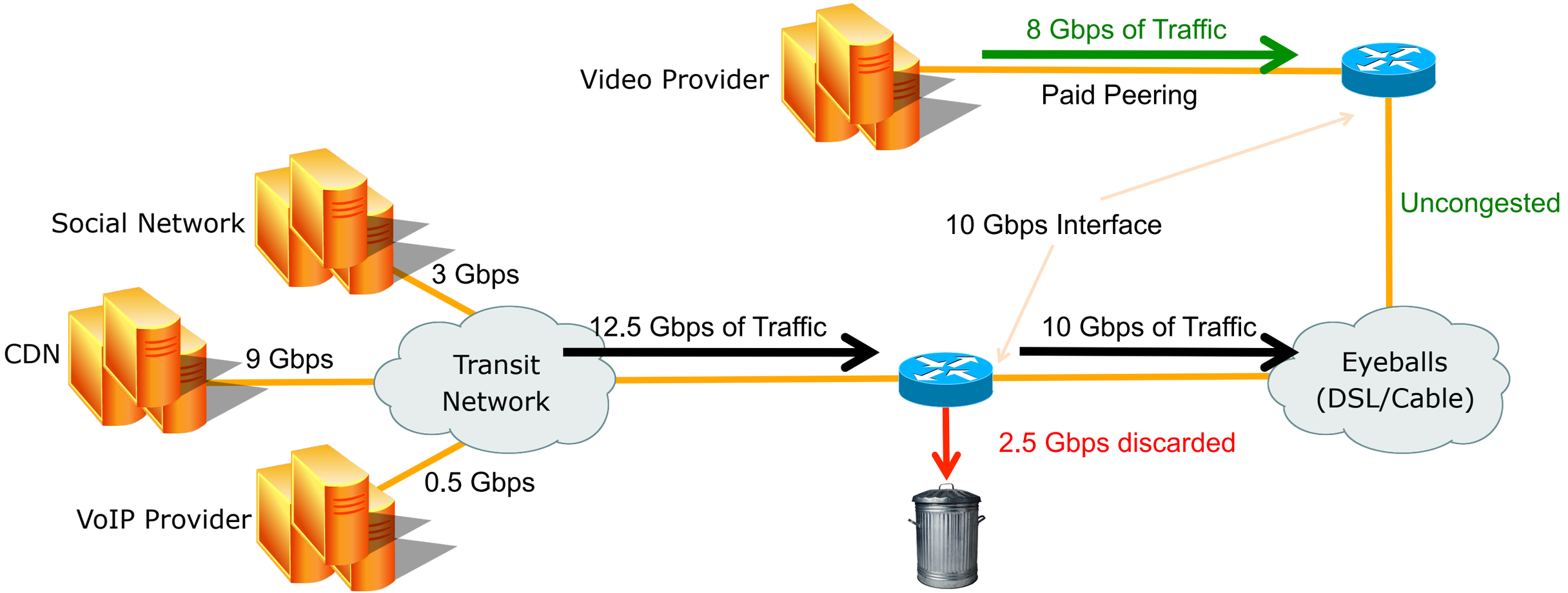
Originally, the NPRM addressed ***only*** QoS on the last mile

Unfortunately, the last mile is not where connectivity problems were happening

More importantly, QoS on the last mile had nothing to do with the reasons some content providers agreed to pay some broadband providers

Paid Peering and the Fast Lane

How a content provider can buy a “fast lane” (sort of) into a broadband provider without QoS on the last mile



Conclusions

Will the new rules help or hurt our industry?

The FCC clearly believes competition on the Internet will be helped by enforcing these rules

- But they are concentrating on **users** on the Internet
- Almost no mention is made of **operators** of the Internet

Without the actual rules, it is difficult to tell if there are loopholes or other problems

- The Law of Unintended Consequences is waiting with baited breath

Conclusions v2.0

Most importantly, the underlying root cause – lack of competition in the last mile – is completely unaddressed

- In some ways it is exacerbated, such as guaranteeing ISPs full pricing autonomy

So… Will this help?

- Left as an exercise for the reader

Questions?

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