IN THE MATTER OF PROTECTING AND PROMOTING THE OPEN INTERNET, REPORT AND ORDER ON REMAND, DECLARATORY RULING AND ORDER, FCC 15-24 (FEB. 26, 2015)

The Federal Communications Commission ("Commission") recognized the importance of communications networks, beginning with its decision in *Carterfone*[1] in 1968. In 2004, then Chairman Michael Powell issued the *Internet Policy Statement*,[2] which provided guidance for broadband deployment. In 2010 the Commission took a further step by adopting the *Open Internet Order*,[3] which implemented new rules to govern the Internet. The three rules that the Commission adopted were: (1) no blocking, (2) no unreasonable discrimination, and (3) transparency. The Commission justified these rules under Title I section 706 of the Communications Act. In 2014, the D.C. Circuit struck down these rules, with the exception of transparency, because the Commission lacked authority under section 706.[4]

In an effort to protect and promote the innovation and openness of the Internet, the Commission now issues new rules in its Report and Order. The Commission notes that since its *2010 Open Internet Order* the Internet has flourished and seen a large increase in broadband infrastructure investment by Internet Service Providers ("ISPs"), and a substantial growth in the digital economy.

The scope of the new rules, outlined in the *Protecting and Preserving the Open Internet* Report and Order,[5] is encompassed in the Commission's defini-

1 *In the Matter of Use of the Carterfone Device in Message Toll Telephone Service*, 13 FCC 2d 420 (1968).

2 Michael Powell, Chairman, Fed. Comm. Comm'n, Preserving Internet Freedom: Guiding Principles for the Industry 3, Remarks at the Silicon Flatirons Symposium (Feb. 8, 2004), *available at* http://appas.fcc.gov/edocs_public/attachments/DOC-243556A1.pdf.

3 *In the Matter of Preserving the Open Internet Broadband Industry Practices*, Report and Order, GN Docket 09-191,WC Docket 07-52 25 FCC Rcd 17905 (Dec. 21, 2010) (2010 Open Internet Order).

4 Verizon v. FCC, 740 F.3d 623 (D.C. Cir. 2014).

5 *In the Matter of Protecting and Promoting the Open Internet*, Report and Order on

tion of "broadband internet access service" ("BIAS") and "mass market." BIAS is defined as:

> A mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this Part.[6]

Mass market is defined as "a service marketed and sold on a standardized basis to residential customers, small businesses and other end-user customers such as schools and libraries." This includes BIAS purchased with the support of the E-rate and Rural Healthcare programs, as well as BIAS "offered using networks supported by the Connect America Fund (CAF)." The Commission further excluded from the rules, interconnection with a BIAS provider's network as well as interconnection with Content Delivery Networks ("CDNs").

The Report and Order adopts three bright-line rules that apply to both fixed and mobile broadband providers on a case-by-case basis. The three bright-line rules are: (1) no blocking, (2) no throttling, and (3) no paid prioritization. The Commission also set forth a new standard applicable to fixed and mobile broadband providers, the "No Unreasonable Interference/Disadvantage Standard" ("standard" or "interference standard"). The standard evaluates current and future policies and practices by ISPs that are not covered by the rules.

The Commission also adopts greater transparency requirements applicable to both fixed and mobile broadband providers in addition to those that were upheld in *Verizon*.[7]

The first rule adopted is no blocking. The Commission defined this rule as "[a] person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not block lawful content, applications, services or non-harmful devices, subject to reasonable network management."[8] The rule applies only to lawful content and to any and all lawful devices used by the end users so long as the device does not harm the network. Additionally, the rule prevents ISPs from charging edge providers a fee for not blocking their content to the end user. The Commission declined to adopt the minimum level of access standard from its 2014 NPRM because it would not allow for the flexibility provided by the rule adopted and jeopardized innovation.

Remand, Declaratory Ruling and Order, FCC 15-24, GN Docket No. 14-28, para. 25, 187 (Feb. 26, 2015) (2015 Net Neutrality Order).

6 *Id.*

7 Verizon v. FCC, 740 F.3d 623, 659 (D.C. Cir. 2014).

8 2015 Net Neutrality Order, para 15.

The second rule adopted is no throttling. The Commission defined no throttling as: "A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or use of a non-harmful device, subject to reasonable network management."[9] This ban only applies to lawful content and includes ISP conduct "that impairs, degrades, slows down, or renders effectively unusable particular content, services, applications, or devices, that is not reasonable network management."

The third rule that the Commission adopted is a ban on paid prioritization. The Commission defined the rule as:

> A person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not engage in paid prioritization. "Paid prioritization" refers to the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either (a) in exchange for consideration (monetary or otherwise) from a third party, or (b) to benefit an affiliated entity.[10]

The Commission notes that paid prioritization is now widespread and has even been acknowledged by the D.C. Circuit Court for its potential harm. Additionally, the ban does not restrict the ability of ISPs and CDN to interconnect. Addressing this issue, the Commission imposes an *ex ante* ban on the practice under the Commission's wavier rule. However, the Commission adopts a balancing test for a wavier of the ban. The balancing test is: "[T]he Commission may waive the ban on paid prioritization only if the petitioner demonstrates that the practice would provide some significant public interest benefit and would not harm the open nature of the Internet."[11] The practices included in the balancing test are those that don't materially degrade or threaten access to the general public, hinder consumer choice, impede expression, or impair competition, innovation, consumer demand or investment.

In addition to the three rules the Commission also declined to adopt its commercially reasonable standard that it proposed in the 2014 NPRM on the basis of its potential to be ineffective. Instead, the Commission adopted an unreasonable interference standard for broadband providers.

The no unreasonable interference or unreasonable disadvantage standard ("unreasonable interference standard") prevents conduct from ISPs that unreasonably interfere with or unreasonably disadvantage the ability of consumers to reach content, services, or applications, of their choosing, or edge providers' access to end users. The standard adopted in the 2015 Net Neutrality Order is

9 *Id.* para 16.
10 *Id.* para. 18.
11 *Id.* para. 130.

defined as:

> Any person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not unreasonably interfere with or unreasonably disadvantage (i) end users' ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers' ability to make lawful content, applications, services, or devices available to end users. Reasonable network management shall not be considered a violation of this rule.[12]

The Commission finds this unreasonable interference standard to be in the context of § 201 and 202 of Title II.

Applying this unreasonable interference standard on a case-by-case basis to both mobile and fixed broadband, the Commission looks to several factors for determining if a broadband provider has violated the standard. These factors are: end user control, competitive effects, consumer protection effects on innovation, investment or broadband deployment, free expression, application agnostic, and standard practices. The Commission acknowledges that due to the heavily factual nature of a case-by-case approach additional factors may be considered when evaluating the unreasonable interference standard's application. Finally, the Commission declines to address the issue over data caps as independent and instead now addresses them under the scrutiny of the unreasonable interference standard.

The Commission builds off of the current transparency rule from the *2010 Open Internet Order*, adding more safeguards and enhancing transparency from ISPs. The enhanced rule also adds a safe harbor provision for certain ISPs permitting nondisclosure. The first change that the Commission makes to the current rule is an exception to the disclosure of typical frequency of congestion. The second change is that all disclosures by ISPs must be accurate and current. ISPs must now disclose: commercial terms including price, other fees, and data caps. ISPs must disclose their actual network performance, including speed, latency, packet loss, and performance over time. The Commission declines to address any issue of congestion, because it may originate beyond the ISPs network. Additionally, under the rule, ISPs are now required to disclose network practices that are applied to, or associated with, a particular user or user group. Further, in an effort to take into account the smaller ISPs, the Commission adopts a temporary exemption to the new enhanced transparency rule, still to be subject to the 2010 rule for ISPs, both fixed and mobile, that serve 100,000 or fewer end users. The Commission delegates the Consumer & Government Affairs Bureau to determine whether to maintain the exemption and if so, at what level by December 15, 2015. Finally, the Commission has

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12 *Id.* para. 21.

adopted a voluntary safe harbor for the format and nature of the required disclosure to consumers by ISPs so long as they provide a consumer focused, stand-alone disclosure. The Consumer Advisory Committee is delegated to establish a disclosure format by October 31, 2015.

In adopting the no blocking no throttling rules and the no unreasonable interference/disadvantage standard, the Commission also adopts a reasonable network management exception for those rules. The Commission defines Reasonable Network Management ("RNM") as:

> A network management practice is a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.[13]

The Commission now required that RNM practices be motivated by a technical not business reason to be used as justification for an ISP to block, throttle or unreasonably interfere with content, service and applications. However, this exception does not apply to the paid prioritization rule. The Commission notes that there is no exception to the paid prioritization rule. Further, the RNM will be evaluated on a case-by-case basis and will be found reasonable if it is transparent and allows either end user control or is application agnostic. Further, the Commission notes that factors to be considered when evaluating network congestion are whether the practice is triggered only during times of congestion, and whether it is based on a user's demand during the period of congestion.

Additionally, the Commission retained its emergency communications and safety and security authorities rule from the *2010 Open Internet Order*.[14] It also retained the copyright infringement rule.[15] The Commission further adopts a process for complaints that provides for more legal certainty, flexibility, and provides for effective dispute resolution.

The Commission grounds these new rules in the legal authority under section 706, Title II, and Title III of the Communications Act. Section 706(a) gives the Commission the authority to encourage the deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis. This section also gives the Commission the authority to take measures to adopt regulations, promote competition, and forbear from certain regulations in the public interest. Section 706(b) gives the Commission the authority to remove the barriers that hamper competition in order to promote it. For support,

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13 *Id.* para. 32.

14 *In the Matter of Preserving the Open Internet Broadband Industry Practices*, Report and Order, GN Docket 09-191,WC Docket 07-52 25 FCC Rcd 17905, para. 107 (Dec. 21, 2010) (2010 Open Internet Order).

15 *Id.* para. 111.

the Commission noted the D.C. Circuit's decision in *Verizon*, upholding the Commission's interpretation of section 706(a), and its authority under section 706 to encourage broadband deployment under section 706(b). The Commission reads section 706(a) and section 706(b) as complementary, giving the Commission subject matter jurisdiction over "interstate and foreign communications by wire and radio."

Subsequently, the Commission looks to Title III with respect to mobile broadband. The Commission refers to § 303(b) for authority to regulate mobile broadband, because this section gives the Commission authority to proscribe the nature of the services to be rendered by licensed entities. In this case, the Commission exercises that authority to proscribe that mobile broadband service may not harm the virtuous circle of innovation of an open Internet. Additionally, § 303(r) and § 316 give the Commission authority to adopt new rules for existing licenses in the public interest.

Ultimately, the Commission reclassifies BIAS as a telecommunications service and adopts Title II authority to regulate BIAS as a telecommunications service. In making its determination to reclassify BIAS as a telecommunications service the Commission refers to the Supreme Court's decision in *National Cable and Telecommunications Association v. Brand X Internet Services*.[16] The Commission looks to the Court's discussion and application of *Chevron* deference to support its authority to reclassify BIAS under Title II. Further, the Commission notes that the reclassification is not only a question of ISPs but also edge providers because "a two-sided market exists and that the beneficiaries of the non-consumer side either are or potentially could be all edge providers."[17] The Commission finds that "to the extent that it is necessary to examine a separate edge service, that service is simply derivative of BIAS, constitutes the same traffic, and, in any event, fits comfortably within the command…'in connection with' a Title II service that must themselves be just and reasonable."[18] The Commission notes that the issue turns on the service that the ISPs provide to edge providers, whether they are a retail service under Title II. The Commission now determines that they are a retail service within the scope of Title II authority. In contrast, the Commission held that BIAS does not include virtual private networks ("VPN") and CDN.

Moreover, the Commission notes the practical concerns within the market today as a justification for the need to reclassify under Title II. It looks to the rapid growth in the digital economy and the increased use of and demand in both fixed and mobile markets for broadband, as compared to when the 2010

16 Nat'l Cable & Telecomms. Ass'n. v. Brand X Internet Servs., 545 U.S. 967 (2005).
17 2015 Net Neutrality Order, para. 338.
18 *Id.* para. 339.

rules were adopted to demonstrate a need for BIAS. The Commission finds that Title II promotes competition and creates incentives for broadband infrastructure investment and innovation. The Commission also finds that BIAS in both the fixed and mobile market is seen as offering two distinct things, "both high-speed access to the Internet and other applications and functions."[19] Here the Commission distinguishes telecommunications services from information services, finding that BIAS is not an information service. Drawing a further distinction the Commission finds that the term "points specified by the user" is ambiguous and finds that under Title II it is geographically irrelevant.

Distinguishing an information service, the Commission finds that the capabilities of an ISP from the statutory definition of an information service, "either fall within the telecommunications systems management exception or are separate offerings that are not inextricably integrated with broadband Internet access service, or both."[20] For example, the Commission found that services such as email and cloud storage services are information services under Title I.

However, the Commission in applying a light regulatory touch, acts upon its authority to forbear from the majority of Title II regulation. The Commission determines that the basis for Title II authority in promoting the public interest lies in § 201 and 202. The Commission determines that it will forbear from all provisions of Title II with the exception of: 201, 202, 208, 222, 224, 225, 255, 251(a), 254, and 214(c).[21] Sections 201 and 202 are the core of Title II that safeguard against unjust or unreasonable practices or discrimination. Section 208 along with its related provisions allows for investigations of consumer complaints. Section 222 protects consumer privacy. Section 224 ensures fair access to poles and conduits, promoting network deployment. Section 225 and 255 protects people with disabilities. Section 254 applies directly to the Universal Service Fund and its application and support for broadband. Section 214(c) gives the Commission the authority to issue certificates of necessity and convenience in promoting the public interest.

The Commission draws its forbearance authority from section 10 of the Communications Act, and section 706. Section 10 provides that the Commission shall forbear so long as (i) enforcement of regulations is not necessary to ensure that services are just and reasonable and are not unjustly or unreasonably discriminatory, (ii) enforcement is not necessary for the protection of consumers, and (iii) forbearance is consistent with the public interest.[22] The Com-

19 *Id.* para. 356.
20 *Id.* para. 365.
21 The Commission declines to forbear from § 208 and all of its related enforcement provisions, 206, 207, 209, 216, 217, and the associated complaint procedures.
22 47 U.S.C. § 160(a) (2012).

mission's Report and Order provides the latest guidance in looking for legal authority in an industry that is constantly evolving.

Summarized by Alessandro S. Pacheco

THE PERMANENT INTERNET TAX FREEDOM ACT, H.R. 3086, 113TH CONGRESS (2014)

The Permanent Internet Tax Freedom Act (PITFA) was introduced in September of 2013 to extend the original Internet Tax Freedom Act (ITFA) passed in 1998. Representative Bob Goodlatte (R-VA) introduced PITFA, and proposed "a permanent moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce."[1] The Act would amend § 1101(a) of the ITFA by striking the language "during the period beginning November 1, 2003, and ending November 1, 2014," making the moratorium on taxation permanent. On November 1, 2014, the temporary moratorium on state and local taxation of Internet access would have expired.

I. LEGISLATIVE HISTORY

In 1998, Congress passed ITFA to temporarily ban state and local governments from taxing Internet access or placing multiple or discriminatory taxes on Internet commerce. ITFA was extended five times, in 2001, 2003, 2007, and twice in 2014, with the most recent extension expiring on October 1, 2015. The 1998 ITFA initially expired on October 21, 2001. On November 28, 2001, Congress passed the Internet Tax Nondiscrimination Act, extending ITFA for two additional years through November 1, 2003. IFTA was then extended again for another four years through November 1, 2007. The extension passed again in 2007, expiring on November 1, 2014. The House of Representatives passed PITFA by voice vote on July 15, 2014. PITFA has received significant bipartisan support. PITFA would modify the current Act to place a permanent ban by striking the 2014 end date language. Because of deliberation, PITFA lapsed on November 1, 2014 and the Act received a brief extension until December 2014. However, deliberations in the Senate in October and November delayed its passage because of a push to merge the Marketplace Fairness Act ("MFA") with ITFA. ITFA was passed alone in December 2014 as part of the Consolidated and Further Continuing Appropriations Act of 2015, which merely extended the ITFA tax moratorium until October 1, 2015.[2]

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1 160 CONG. REC. H6228 (daily ed. July 15, 2014) (statement of Rep. Goodlatte).

2 Lamar Whitman, *Permanent Internet Tax Freedom Act introduced in the House*, TECHAMERICA (Jan. 12, 2015), https://www.techamerica.org/internet-tax-freedom-act-extended.

II. BACKGROUND

Congress first passed ITFA on October 21, 1998, as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act.[3] ITFA initially placed a three year temporary moratorium to prevent state and local governments from imposing new taxes on Internet access, or imposing any multiple or discriminatory taxes on electronic commerce.

The multiple tax issue would have become a problem for taxpayers if, for example, a Virginia resident were to download a movie based in Seattle, while waiting at an airport in Chicago. The taxpayer would be subject to multiple taxes if each state claimed the right to tax the movie. PITFA would require credits so that the taxpayer would not be subject to multiple taxes.[4] Additionally, a discriminatory tax on Internet commerce would have posed an issue if, for example, the government tried to separately categorize Internet Service Providers ("ISPs") in order to pose higher taxes on certain services.[5] ITFA additionally grandfathered certain states that had already imposed taxes prior to October 1, 1998, including Hawaii, New Mexico, North Dakota, Ohio, South Dakota, Texas, and Wisconsin.[6]

While previous extensions made significant alterations to the original ITFA moratorium, which clarified specific elements in accordance with technological advancements, PITFA instead strikes the end date language of the current moratorium making ITFA permanent, but also forces previously grandfathered states to adopt the moratorium, a point of much controversy. While the Bill received positive support amongst most legislators in Congress, some have been reluctant to approve the Bill citing lost revenue to grandfathered states, the loss in opportunity for state and local governments to tax in the future, and that the Bill is supported on the premise the Internet needs the same protection it needed when it was in its infancy in 1998.

III. SUPPORT FOR PITFA

If the moratorium is not extended, legislators favoring PITFA say the Bill would prevent an immediate tax increase on Internet access once the end date for ITFA expires. For example, Montana law states that should ITFA's morato-

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3 Omnibus Consolidated and Emergency Supplemental Appropriations Act, Pub. L. No. 105-277, 47 U.S.C. § 1101 (1998).

4 STAFF OF H. COMM. ON THE JUDICIARY, 113TH CONG., PERMANENT INTERNET TAX FREEDOM ACT 3 (Comm. Print 2014).

5 *Id.*

6 Erik Cederwall, *Internet Tax Freedom Act Extended in the Omnibus Spending Bill*, TAXFOUNDATION.ORG (Dec. 16, 2014), http://taxfoundation.org/blog/internet-tax-freedom-act-extended-omnibus-spending-bill.

rium on Internet taxation expire, Internet access would be then taxed at 3.75%.[7] Legislators in support of PITFA attribute the growth in Internet as a result of 1998's ITFA, which has led to productivity, economic development, and increased incomes between 1995 and 2007, when ITFA was extended again. ITFA improved access to scientific, economic, and educational opportunities, and resulted in technological advancement. American citizens over the years have used the Internet as part of their daily lives and in their work for education, to communicate with others, and have provided opportunities for job creation. Without affordable Internet access, supporters say, the Internet would not have become the expansive forum it is today; raising taxes for access to the Internet would place a burden on those who could not otherwise afford access, creating socioeconomic inequality in Internet access. Legislators also do not want to discourage citizens from accessing the Internet due to increased taxes. Supporters hope to keep what has become an essential part of Americans' lives tax-free. Supporters also cite an economic reason. They argue that passing PITFA would support the online marketplace by preventing state and local governments from enacting taxes that would bar access to economic growth. Supporters lastly contend that taxing Internet access is contrary to American values as the failure to pass PITFA would allow governments to tax forums for free speech and expression. Citizens who could not afford Internet access or are deterred from paying higher taxes would not have access to the platform that many Americans already use to share ideas and transcend cultural, geographic, and lingual barriers. Once the moratorium expires, state and local governments would then have the immediate power to implement or raise taxes on Internet use on all Americans.

IV. BACKLASH AND CONCERNS IN PASSING PITFA

Legislators opposed to PITFA have concerns in permanently extending a tax moratorium on Internet access. They contend that legislation should be focusing on ways to help state and local governments, taxpayers, and local retailers, collectively, by addressing the remote sales tax issue through the Marketplace Fairness Act ("MFA"), which incentivizes remote sellers to collect and remit sales taxes, and requires states to simplify several procedures that would benefit retailers. This would lead state and local governments to collect an estimated $23 billion or more in uncollected sales tax each year. This measure would also help level the playing field for local retailers who must collect sales taxes when they compete with out of state businesses that would not otherwise collect these taxes. Retailers should be able to compete fairly with their Internet

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7 STAFF OF H. COMM. ON THE JUDICIARY, 113TH CONG., PERMANENT INTERNET TAX FREEDOM ACT 8 (Comm. Print 2014).

counterparts with respect to sales tax policy.[8] After the passage of PITFA in the House in July 2014, the Senate deliberated to join MFA with PITFA.

Opponents of PITFA contend that a permanent extension would impede the ability of state and local governments to make their own taxing decisions that are suitable for their municipalities. State and local governments do not want to close the door on future taxation opportunities. Representative Judy Chu (D-CA) argued this point when she supported another temporary extension, but not a permanent moratorium for taxes on Internet access.[9]

PITFA is also criticized for the impact on revenues of states, which are grandfathered under the original 1998 Act and include the states of Hawaii, New Mexico, North Dakota, Ohio, South Dakota, Texas, and Wisconsin. These states could lose at least $500 million in revenue annually. Moreover, because this Bill would become effective during the mid-cycle for the grandfathered states, they would have to balance their state budgets by either cutting spending or raising taxes on residents anyway. However, supporters of PITFA argue that giving the grandfathered states the exception in 1998 from the moratorium was originally intended to be temporary, so those grandfathered states had time to transition to other sources of revenue. Supporters of PITFA say that sixteen years was enough time for those grandfathered states to change their tax codes.[10]

Lastly, opponents of PITFA say that the original 1998 ITFA Bill was intended to be temporary to ensure that Congress, industry, and state and local governments would be able to accommodate new technologies when the Internet was in its infancy.[11] Times have changed and the Internet has become a vastly different phenomenon from its 1998 inception. Today, opponents of PITFA say that the Internet of 2014 is unrecognizable from its 1998 form.[12]

V. PITFA AS IT STANDS CURRENTLY IN 2015

In January 2015, PITFA legislation was revived once again. The Senate did not pass PITFA in 2014 because it attempted to combine it with the controversial MFA Bill, which would grant states the power to tax purchases from out-of-state online retailers.[13] While the moratorium extension exists until October

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8 160 CONG. REC. H6229 (daily ed. July 15, 2014) (statement of Rep. Conyers).

9 *Id.*

10 STAFF OF H. COMM. ON THE JUDICIARY, 113TH CONG., PERMANENT INTERNET TAX FREEDOM ACT 9 (Comm. Print 2014).

11 *Id.*

12 *Id.*

13 Dustin Volz, *House Lawmakers Introduce Bill to Ban Internet Taxes Forever*, NAT'L J. (Jan. 9, 2015), http://www.nationaljournal.com/tech/house-lawmakers-introduce-bill-to-ban-internet-taxes-forever-20150109.

1, 2015, and while there is still overwhelming bipartisan support for PITFA, Congress is still unable to resolve the original points at issue previously discussed involving ceasing the ITFA exception to grandfathered states, removing future taxation opportunities from state and local governments in Internet access, and resolving the contrasting views between MFA and ITFA.

Summarized by Jeremy Bui