

# AICOA'S THIRD ITERATION IMPOSES RESTRICTIONS ON POPULAR PRODUCTS AND SERVICES WHILE GIVING SPECIAL TREATMENT TO CERTAIN SECTORS

This revised legislation concedes all of the bill's problems but solves none of them. The bill still fails to address the deep concerns raised by senators on both sides of the aisle during January's markup. Despite promises to senators to improve the legislation, the bill still singles out a handful of companies; in fact, the latest draft goes far beyond the last iteration in carving out exceptions for certain sectors.

## Senators voiced their concerns about AICOA in January:

### **Sen. Mike Lee**

"The bill results, as drafted, in the removal of popular products and services that have benefited consumers. How will the interoperability requirements impact cybersecurity and privacy? Will judges interpret the bill to protect consumers – or individual competitors? It's an important question given that U.S. antitrust law, our competition policies in this country, have always focused, to our great benefit, on protecting competition itself. Protecting competition, with an eye towards the consumer. The minute we start focusing on competitors rather than competition and consumers, is the minute we could really end up with a very different product and we really have to be careful about doing that."

### **Sen. Dianne Feinstein**

"I'm very concerned about the bill this committee is considering. It's not really the type of legislation that we usually consider, where the rules are laid out and everyone is expected to comply. Instead, it's specifically designed to target a small group of companies, most of which are headquartered in my home state of California. If the conduct this bill seeks to prevent is unfair and improper, I believe that conduct should be prevented from anyone who engages in it, not only a small handful of companies. Instead of updating antitrust law for our modern online economy as it aims to do, this bill will create two separate legal standards."

## Does the third draft of the bill manager's amendment address any of these concerns?

**No.** The bill still hinges on arbitrary market-capitalization and user thresholds so that it only applies to a few companies, effectively choosing winners and losers in the market. It goes beyond the previous iteration of the bill by specifically carving out exceptions for monopoly broadband providers ("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."). It also removes "payment" providers from coverage. This special treatment for large, monopoly telecom providers with a documented history of engaging in broadband discrimination and payments companies, showing the influence of corporate lobbying on the drafters of the bill.

See more here.