

NET NEUTRALITY REGULATIONS

WHAT IS NETWORK NEUTRALITY?

Network or “Net” Neutrality regulations ban Internet Service Providers (ISPs), such as Comcast and Verizon, from managing their networks by prioritizing certain web traffic. The main issue lies in whether or not ISPs should be permitted to exercise data management – when an ISP interferes with a certain kind of internet traffic, also known as “traffic shaping” (2).

For example, Comcast has received scrutiny for slowing or preventing file sharing among subscribers (3). However, company officials have explained that file sharing and video streaming traffic—which together constitutes over 50 percent of overall U.S. Internet traffic—is mostly conducted by a small number of subscribers, swallowing up bandwidth and impeding Internet usage for everyone else. Under net neutrality rules, ISPs like Comcast would be required to treat all kinds of Internet traffic equally and wouldn’t have the option of intervening in Internet traffic. The regulation comes in the name of protecting U.S. consumers, but it imposes costs by limiting the freedom of ISPs and Internet subscribers to figure out the best way to shape Internet traffic through voluntary transactions. This would allow Washington bureaucrats to use their regulations in place of common sense and competition in the free market.

NET NEUTRALITY RULES TAKE EFFECT

On a party-line vote in December 2010, three of the five FCC Commissioners sparked controversy, including within the FCC. These new rules issued a proposed rule to adopt “open Internet principles,” a move that would:

- 1) Require that Internet Service Providers (ISPs) disclose all management and terms information,
- 2) Prohibit ISPs from blocking any lawful Internet service, and
- 3) Prohibit ISPs from practicing “unreasonable” discrimination of Internet traffic (4).

The rules directly contradict the U.S. Judiciary and the bipartisan will of Congress, as demonstrated by multiple court rulings and hundreds of letters from Democrat and Republican legislators, not to mention the sound defeat of Representative Ed Markey’s (D-MA) 2009 Internet Freedom Preservation Act (5). The House even voted to overturn the FCC’s rule in the spring of 2011, but the Senate failed in a similar attempt a few months later after President Obama made it clear that he would veto any attempt to overturn the rule if it reached his desk (6). The rules took effect on November 20, 2011.

NET NEUTRALITY REGULATION LIMITS COMPETITION AND INNOVATION

The Internet is a crucial component of the American economy, and was one of the few areas where the federal government still had limited control. With this freedom, the Internet exploded in popularity and is widely used as a tool for everything from communicating news and information to shopping. Our economy runs more efficiently with these innovations.

QUICK FACTS

- A 2010 Rasmussen poll reports that only 21 percent of Americans support federal Internet regulation (1).
- In January 2016 the D.C. Circuit Court of Appeals upheld the FCC’s net neutrality rules.

NOTABLE & QUOTABLE

“This ‘agreement’ has been extracted in defiance of not only the courts, but a large, bipartisan majority of Congress as well. Both have admonished the FCC not to reach beyond its statutory powers to regulate Internet access. By choosing this highly interventionist course, the Commission is ignoring the will of the elected representatives of the American people.”

- **FCC Commissioner Robert McDowell**, in response to the adoption of internet regulations

Former FCC Commissioner Meredith Atwell Baker objected to the FCC's net neutrality rules on several counts—the complete disregard for the wishes of U.S. citizens and their representatives in Congress, but also the violation of free market principles and the harmful future ramifications for web development. “The genius of the Internet,” she wrote, “is that there is no central command, no unitary authority to dictate how innovation is to occur. The Commission has now inserted itself into the role of judging how the Internet and broadband networks will evolve” (7).

Consumer demand, private investment, and competition have been the driving forces of web development since the Internet's beginning. Federal regulation merely gets in the way.

Investments in Internet infrastructure also help grow our economy. Currently, private capital on the order of billions of dollars is being invested in broadband deployment, which estimates show will add 1.2 million jobs and \$500 billion to the American economy (8). However, net neutrality impedes this process through federal regulation and court oversight that will deter infrastructure investment and stall efforts to modernize the Internet so it can keep up with its surging growth. Government may react to this underinvestment in Internet infrastructure by adopting hefty subsidies and attach plenty of strings to allow government management of the Internet (9).

Net neutrality proponents argue that more regulation is needed to protect consumers, but thus far cases of consumer abuse have remained merely hypothetical. Effective consumer protections are already on the books. Three major enforcement agencies—FCC, FTC, and the Department of Justice—are constantly protecting consumers from discrimination through anti-trust and competition policies. Their authority is derived from current laws such as the Communications Act of 1934, the U.S. Supreme Court's Brand X decision, and the Federal Trade Commission Act of 1914 (10). The implementation of more regulation is unjustified, is at odds with President Obama's proposed “commonsense test,” and could be seen as another anti-business ploy (11).

CONCLUSION

The FCC's new rules demonstrate the agency's commitment to net neutrality despite overwhelming opposition from the courts, the citizenry, and even the nation's elected officials. If in one sweeping motion a federal agency can usurp control over an entire sector of the economy, Americans should wonder what will prevent the FCC and other government agencies from expanding in similar ways. Consumer demand, private investment, and competition have been the driving forces of web development since the Internet's beginning. Federal control over the Internet merely leads to new restrictions and regulations instead of a path to a truly “open Internet.”

Endnotes:

1. RASMUSSEN REPORTS, Just 21% Want FCC to Regulate Internet (Dec. 28, 2010).
2. FEDERAL COMMUNICATIONS COMMISSION, Statement of Commissioner Robert M. McDowell (Dec. 1, 2010).
3. Peter Svensson, Comcast Blocks Some Internet Traffic, WASHINGTON POST (Oct. 19, 2007).
4. FEDERAL COMMUNICATIONS COMMISSION, Open Internet (online at <http://www.fcc.gov/guides/open-internet>).
5. Robert McDowell, The FCC's Threat to Internet Freedom, WALL STREET JOURNAL (Dec. 20, 2010).
6. Gautham Nagesh et al., Senate in Party-Line Vote Rejects Measure to Overturn FCC Net-Neutrality Rules, THE HILL (Nov. 10, 2011).
7. FEDERAL COMMUNICATIONS COMMISSION, Statement of FCC Commissioner Meredith Atwell Baker (Feb. 16, 2011).
8. Wayne T. Brough, State Economies Can Benefit from Broadband Deployment, CSE FREEDOM WORKS FOUNDATION, Issue Analysis (Dec. 1, 2003).
9. Phil Kerpen, Beware of New Network Neutrality Push, FORBES.COM (Mar. 5, 2008).
10. INTERNET FREEDOM COALITION, Reply Comments in the Matter of Framework for Broadband Service Before the Federal Communications Commission, FCC Docket No. 10-114 (Aug. 2010).
11. THE WHITE HOUSE, Address by the President to a Joint Session of Congress (Sept. 8, 2011).

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