

COMMON SENSE ABOUT NETWORK NEUTRALITY

The Internet needs a makeover. Unfortunately, well-intentioned Congressional initiatives, aimed at preserving the best of the old Internet, threaten to stifle the emergence of the new one.

The current Internet supports many popular and valuable services. But experts agree that an updated Internet could offer a wide range of new and improved services, including better security against viruses, worms, denial-of-service attacks, and zombie computers; services that require high levels of reliability, such as medical monitoring; and services that cannot tolerate network delays, such as voice and streaming video. To provide these new services, both the architecture of the Internet and the business models through which Internet services are delivered may have to change.

Congress is considering several initiatives (known collectively under the banner of “network neutrality”) aimed at promoting continuing Internet innovation by restricting network owners’ ability to give traffic priority based on the content or application being carried or on the sender’s willingness to pay. The problem is that some of the practices that network neutrality would prohibit could increase the value of the Internet for customers.

Traffic management is a prime example. When traffic surges beyond the ability of the network to carry it, something is going to be delayed. When choosing what gets delayed, it makes sense to allow a network to favor traffic from a patient’s heart monitor over traffic delivering a music download. It also makes sense to allow network operators to restrict traffic that is downright harmful, such as viruses, worms, and spam.

Pricing raises similar issues. To date, Internet pricing has been relatively simple. Based on experience in other similar markets, we expect that, if left alone, pricing and services models would likely evolve. For example, new services with guaranteed delivery quality might emerge to support applications such as medical monitoring, which require higher levels of reliability than the current Internet can guarantee. Suppliers can be expected to charge higher prices for these premium services. Blocking premium pricing in the name of neutrality may have the unintended effect of blocking the premium services from which customers would have benefited. No one would propose that the US Postal Service not be permitted to offer Express Mail because a “fast lane” mail service is “undemocratic,” yet some current proposals would do exactly this for Internet services. For this reason, foreclosing the emergence of alternative pricing regimes for innovative services would be ill advised.

We are not saying that all discrimination is good. Some forms of discrimination can be harmful, especially when service providers have market power. For example, if a network operator were to block competition in another market in which it offers service, such as when a local telephone company that is the sole provider of broadband service to a particular community blocks its subscribers from using Internet telephony, then public policy should intervene if this anticompetitive action can reliably be identified and the cure will not be worse than the disease.

The central policy principle should be to prevent anticompetitive actions and reduce associated harms without impeding the Internet’s evolution. Current proposals would affect all broadband

providers regardless of whether they wield monopoly power and without any analysis of whether the challenged practice actually harms competition. In the process, they threaten to restrict a wide range of innovative services without providing compensating customer benefits. The problem is that it can be difficult, if not impossible, to determine in advance whether a particular practice would promote or harm competition. Current antitrust law solves this problem by blocking practices only when those who oppose them can demonstrate actual harm to competition. We believe that such a case-by-case approach that focuses on actual, rather than potential, harm to competition represents the best way to protect consumers while giving the Internet the breathing room it needs to move forward. Blanket regulation, which some network neutrality initiatives support, is not a good policy choice.

Public policy toward the Internet should evolve to meet our future needs. To accomplish this, policymakers should frame the issues in terms of how to make customers better off, rather than focusing on the impact on particular traffic or particular competitors. This framing would highlight the potential benefits to customers that shifting away from the current architecture of the Internet could yield. It would also ensure that any regulatory intervention would be tailored to the precise scope of the anticompetitive harm.

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