



Why We Aren't 'Neutral' About the Net, by Tom Giovanetti

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Here's a proposed solution to the current debate over new network-neutrality regulations: How about let's do nothing — at least not now?

The net-neutrality debate started off with a great name and a good premise — namely, that a user should have the ability to connect and use any device over the Internet. But today net neutrality has morphed into a set of proposed restrictions designed to limit significantly the ability of Internet service providers to enter into private contracts with content owners and to prioritize traffic over their networks. And the proposed regulations have been grafted onto an otherwise useful bill designed to remove regulatory barriers so that telecom companies can more easily introduce video services.

Why are such regulations being proposed? The fear is that network owners will leverage their control over the “pipes” in order to restrict consumer choice and competition.

Here's an imagined worst-case scenario: Let's say that a major broadband provider like AT&T decides to go into the business of selling music online. The problem, from AT&T's standpoint, would be formidable established competitors such as Apple's iTunes Music Store.

Since AT&T controls its own pipes, and thus access to customers, might it go to Apple and say, “If you won't pay us, we'll block our customers' access to iTunes”? Or at least slow down iTunes' traffic and guarantee faster access to AT&Tunes?

But even net-neutrality supporters don't agree on the right response to this imagined threat. Some advocates wanted to see much more restrictive language in the bill that passed out of the House Commerce Committee last week, which is scheduled for a floor vote in the House tomorrow. And they'll probably try to get more net-neutrality restrictions through floor amendments. But others worried that the language in the bill is actually worse than nothing because at least under the status quo the Federal Communications Commission has fairly broad authority to field complaints and take action should a broadband provider behave in an abusive manner. And, of course, broadband providers want no restriction at all on their ability to enter freely into contracts with content providers. And they have a point. Onerous restrictions would quite likely preclude new business models designed to give consumers new products and services. And if we're not careful we could end up with net-neutrality regulations that are actually harmful.

For instance, if broadband companies are legally precluded from prioritizing Internet traffic, might we someday read the horror story of fire and police departments not being able to get through on their voice over Internet protocol phones because too much traffic was being tied up by men downloading the Victoria's Secret fashion show?

Don't laugh — as more and more critical communication moves to the Internet it will be absolutely necessary for broadband providers to prioritize traffic. First responders, hospitals and other key infrastructure elements will need access to the equivalent of HOV lanes on the Internet, to ensure that urgent communications get where they need to go as quickly as possible.

So, at this point in the broadband rollout, where we don't even know if such regulations are going to be necessary, what's wrong with doing nothing — at least not now? After all, it's likely that these companies know that their customers will not tolerate practices that discriminate against customer choice.

It seems reasonable to take a go-slow approach to net neutrality, rather than legislating a solution in search of a problem. This is the also the model we used on Internet taxation. When the Internet was still young, there were calls to allow Internet transactions to be taxed. The concern was that brick-and-mortar businesses were going to be devastated by online competition unfairly favored by a lack of sales taxes and that state revenues would plummet. But Congress wisely decided to hold off on such taxation and observe the development of the Internet without burdening it.

And the feared damage has simply not occurred. Brick-and-mortar businesses have adapted to compete with online competition, and states are flush with revenue.

It seems reasonable to adopt a similar “first, do no harm” model for net neutrality as well. Without net-neutrality regulations, government doesn't go away. It just doesn't get in the way.

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