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A “Third Way” on Network Neutrality

The current state of the network neutrality debate, like many polarized issues, denies the reasonable concerns articulated by each side and obscures the contours of a sensible solution.

The aspect of network neutrality that currently attracts the lion’s share of attention is the question of tiering: whether broadband providers should have the right to charge application and content providers for higher quality of service to access their networks and whether they can provide higher quality of service guarantees for their own applications than for rival ones. The current legislative debate features a contrast of two extreme approaches—one allowing an unfettered right of broadband providers to prioritize traffic on their networks and one prohibiting any prioritization of traffic. What is missing from this debate is a “third way” solution—one that allows broadband providers to provide and charge for enhanced network services while providing for some form of regulatory oversight to address the plausible risk that the current broadband providers will abuse their market power in this market, while also assuring that a reasonably sized, open and unmanaged Internet is available.

Consequently, policymakers should develop a targeted regulatory regime—i.e., carefully crafted so as not to interfere with pro-consumer and reasonable network management policies but also to also ensure that today’s broadband incumbents do not abuse their market power. In short, we propose a three-part, “third-way” solution:

- Congress should require broadband providers to state their broadband access and usage policies in clear terms. These terms should specify the level of bandwidth, amount of latency (delay), and any limitations on the ability of consumers to access the content or services of their choice. The FCC should monitor such behavior and take action against those firms that fail to comply with them. In addition, any firm selling “broadband Internet access” must make available a basic and growing level of open, unmanaged Internet access. Firms that do not meet this FCC-defined requirement would be prohibited from calling any of their services “broadband.”
- In order to ensure that broadband providers do not abuse their market power, Congress should charge the FCC with the responsibility of overseeing the use of discriminatory access arrangements to make sure that any such arrangements do not harm competition (and consumers). This “antitrust-like” approach would require that the FCC manage all relevant proceedings on an expedited basis and under an adjudicative model (as opposed to a legislative-like one).
- Congress should provide financial incentives to companies investing in broadband networks (allowing first-year expensing of broadband investments and exempting broadband services from federal, state, and local taxation), but only if broadband providers provide a best-efforts, open Internet data pipe to their customers with average speeds at least as fast as an evolving FCC definition.

For more information see Robert D. Atkinson and Philip J. Weiser, “A ‘Third Way’ on Network Neutrality” Information Technology and Innovation Foundation, www.innovationpolicy.org/netneutrality.pdf