



POLICY BRIEF

“Net Neutrality”

Government Regulation and Takeover of the Internet

Net Neutrality would permit the federal government to regulate how Internet service providers (ISPs) manage content and data that travels across their networks. Proponents claim such regulation will ensure all online data is treated equally, but the policy will result in decreased investment in broadband expansion and adoption, increased congestion on the Internet, and will effectively turn our nation’s Internet into a public utility; a network of government-run “dumb pipes.”

A Brief History of Net Neutrality

If enacted, Net Neutrality would be the first time in history that the Internet would be subject to regulation by the Federal Communications Commission (FCC). The Internet has long been treated as an unregulated “information service” by the FCC under Title I of the Communications Act of 1934.

In April 2010, the Federal Court of Appeals for the District of Columbia struck down the FCC’s attempt to enforce Net Neutrality, stating the Commission was attempting to “shatter” the bounds of their legal authority by regulating the Internet.ⁱ

In response, the FCC has proposed reclassifying the Internet as a Title II “telecommunications service” to apply regulations designed for monopoly telephone carriers in the pre-World War II era.ⁱⁱ Known as the “third way” proposal, this would allow the FCC to enact Net Neutrality, but the overly broad law would bring many more burdensome regulations as well.

The Consequences of Net Neutrality

The telecom and technology industry represents roughly one-sixth of the U.S. economy. Since 2005, telecommunications companies have invested \$576 billion into

building out infrastructure.ⁱⁱⁱ Regulating the Internet under antiquated laws to achieve Net Neutrality will stifle investment and innovation of the Internet.

Many reports have found that Net Neutrality will have a severe impact on the economy, with one study projecting as many as 500,000 to 700,000 jobs lost and a GDP decrease of \$62 to \$80 billion over the next 5 years.^{iv} This has brought opposition from free-market think tanks and labor unions alike. Another study found consumer bills could rise by as much as \$55 per month.^v Ironically, this would mean severe curtailment of broadband expansion and adoption, which was one of the primary goals of the FCC’s National Broadband Plan.^{vi}

After the FCC’s “third way” plan was merely announced, stocks for cable providers dropped between 4 and 6 percent, affecting millions who save and invest in stocks and mutual funds.^{vii}

The idea proponents espouse that all data should be treated equally online may sound good, but would also result in congestion and would dramatically slow Internet speeds. Currently, ISPs organize Internet “traffic” at an instantaneous pace to prevent congestion. Net Neutrality is akin to letting all cars and trucks on the road enter a one-lane tunnel at the same time.

Additionally, by applying an outdated and heavy regulatory law to the Internet, the FCC’s chosen regulatory path invites the government to set rates for Internet service. It also means possible elimination of tiered pricing for services, which would likely end cheaper subscription options for broadband. The Commission has promised (through a process called “forbearance”) that they won’t set prices, but the legal maneuvering required makes this

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claim dubious or temporary at best. There is also significant concern that it opens the door to content monitoring or even censorship of online content.

Finally, imposing such Internet regulations would go against multiple court, FCC, and Congressional decisions to keep the Internet unregulated, almost ensuring a lengthy and costly legal challenge, which some FCC Commissioners have expressly acknowledged.

Internet Regulation has Broad Opposition

There is strong bipartisan opposition to Net Neutrality and the FCC's Internet regulation scheme. For years, the U.S. Congress, U.S. Supreme Court, and even the FCC itself have all determined that the Internet should be an unregulated service. A Rasmussen Reports poll in April 2010 found that Americans agree and overwhelmingly oppose regulating the Internet 53 percent to 27 percent.^{viii}

Since the FCC announced its Internet regulation plan, virtually all Congressional Republicans and 77 House and Senate Democrats – together a vast majority in Congress – have sent letters to the FCC in opposition. Additionally, a growing number of state legislatures are unanimously passing bipartisan resolutions against the FCC's plan. The Clinton administration and former Democratic FCC Chairman Bill Kennard also

worked to keep the Internet unregulated when crafting the 1996 Telecommunications Act.

Who Supports Net Neutrality?

The two most prominent supporters of Internet regulation are the special interest groups Free Press and Public Knowledge. Both have a long record of advocating for enormous government intervention in the telecom and media industries, including turning the Internet into a public utility. Free Press founder Robert McChesney, a pronounced neo-Marxist, has gone so far to say that we must “remove brick by brick the capitalist system itself, rebuilding the entire society on socialist principles.”^{ix}

A Government Takeover

Some argue that Net Neutrality is merely the government setting rules for the Internet road. However, a more appropriate description would be a government takeover. It's not that the government will now own or have nationalized the industry – though that is what proponents such as Free Press desire. Under the FCC's Net Neutrality regulations, the industry becomes a pawn of the government, with bureaucrats approving or denying how the private sector operates the products and service they create. Further, it does so in a way that opens the door to heavy price controls, content monitoring, and other government meddling that is both unwarranted and onerous.

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ⁱ Comcast v. FCC, No. 08-1291, D.C. Cir. (2010).

ⁱⁱ Genachowski, Julius. Federal Communications Commission, “The Third Way: A Narrowly Tailored Broadband Framework.” May 6, 2010. <<http://www.broadband.gov/the-third-way-narrowly-tailored-broadband-framework-chairman-julius-genachowski.html>>

ⁱⁱⁱ Davidson, Charles and Bret Swanson. “Net Neutrality, Investment & Jobs: Assessing the Potential Impacts of the FCC's Proposed Net Neutrality Rules on the Broadband Ecosystem.” The Advanced Communications Law & Policy Institute, New York Law School, June 2010. <http://www.nyls.edu/user_files/1/3/4/30/83/Davidson%20&%20Swanson%20-%20NN%20Economic%20Impact%20Paper%20-%20FINAL.pdf>

^{iv} Ibid.

^v Stratcast. “Net Neutrality: Impact on the Consumer and Economic Growth.” Consumer Communication Services (CCS) Volume 4, Number 13. May 2010. <http://internetinnovation.org/files/special-reports/Impact_of_Net_Neutrality_on_Consumers_and_Economic_Growth.pdf>

^{vi} Federal Communications Commission, “Connecting America: A National Broadband Plan,” Executive Summary, pg. xiii. <<http://www.broadband.gov/download-plan>>

^{vii} Americans for Tax Reform calculations. See also Cobb, Kelly William. “How the FCC is Destroying Investment in the Internet.” May 18, 2010. <<http://www.atr.org/fcc-destroying-investment-internet-a4946>>

^{viii} Rasmussen Reports. “53% Oppose FCC Regulation of the Internet.” April 9, 2010.

<http://www.rasmussenreports.com/public_content/business/general_business/april_2010/53_oppose_fcc_regulation_of_the_internet>

^{ix} Butler, Christopher. “In their own words...Why does the left want ‘net neutrality’ regulation of the Internet?” November 2, 2009. <<http://www.atr.org/their-own-wordswhy-left-want-net-a4130>>