

Net Neutrality: Past, Present, and Future

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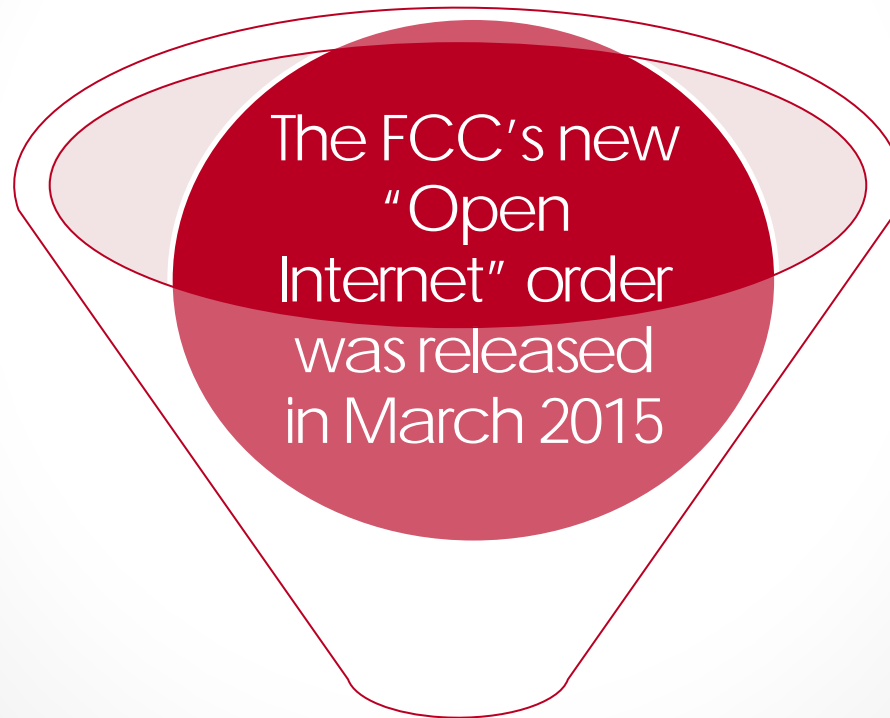
What Is “Network Neutrality”?



Concept that has evolved over time

Essentially means that any Internet service provider (ISP) that provides high-speed (or “broadband”) service may not favor or disfavor particular online content or applications, except as needed to make the access service work

The FCC'S New Policy



The FCC:

- Overturned prior precedent and declared for the first time that broadband Internet access service is a "telecommunications service" (akin to regulation as a utility service) rather than an "information service" (much lighter regulation)
- Established new rules imposing significant obligations on ISPs that provide broadband
- Extended its regulatory authority to include arrangements between ISPs and websites/content providers (e.g., "peering" arrangements between an ISP and Netflix)

The New Rules



The following new rules took effect on June 12, 2015:

- No blocking (subject to reasonable network management)
- No throttling (subject to reasonable network management)
- No "paid prioritization" (i.e., "fast lanes")
- No "unreasonable" interference with or "unreasonable" disadvantage to end users or content providers (subject to reasonable network management)
- No separate, more lenient rules for wireless broadband

The rules only apply to mass-market broadband service – **not enterprise** (big business) access service or most **public Wi-Fi** services (coffee shops, hotels)

Also – beefed up existing obligations on ISPs to disclose their network management practices

New Rules Go Beyond Past Efforts:



FCC says it will consider disputes over terms of agreements between ISPs and content providers such as Netflix or Facebook

- Major change from prior regime

FCC expressly recognizes rights and interests of these websites/content providers (known as “edge providers”) – the new “general conduct” standard will apply

- Prior efforts had focused nearly exclusively on rights and concerns of end users/consumers

Wireless Internet (e.g., ability to access Internet over a smartphone) subject to the same rules that apply to landline ISPs such as cable companies

- Previously, FCC had said wireless Internet is different and should be subject to more relaxed rules

Some history...



Before the *Open Internet Order*, FCC rulings had said that broadband is an “information service,” not a “telecommunications service”

- 2002 Cable Modem ruling
 - Sustained by a divided Supreme Court in *Brand X* case in 2005
- 2005 DSL ruling
- 2006 Broadband over power lines
- 2007 Wireless broadband ruling

Prior FCC Efforts to Enact Net Neutrality



The FCC has long struggled to establish enforceable net neutrality rules:

- 2005** Internet Policy Statement (non-binding “principles”)
- 2008** Comcast/BitTorrent order (finds that Comcast violated Internet Policy Statement by allegedly blocking/slowing traffic on peer-to-peer file-sharing service)
- 2010** DC Circuit vacates FCC’s Comcast/BitTorrent order (FCC lacks jurisdiction)
- 2010** First *Open Internet Order* FCC (enacts net neutrality rules)
- 2014** DC Circuit mostly overturns order (FCC cannot regulate while broadband still classified as an information service)
- 2015** Second *Open Internet Order* (FCC reclassifies broadband as telecommunications service)

Lawsuits Filed



March 23, 2015

11 days after
Order is
released:

- U.S. Telecom Association (D.C. Circuit)
- Alamo Broadband (5th Circuit)
- Judicial Lottery Consolidates Cases in the D.C. Circuit Under Case No. 15-1063

Beginning April
13, 2015 – The
day the Order is
published in the
Federal Register

- U.S. Telecom Association, Alamo Broadband, NCTA, CTIA, AT&T, Inc., American Cable Association, CenturyLink, Wireless Internet Service Providers Association, & Daniel Berninger Each File Separate Petitions Challenging the Order
- D.C. Circuit Consolidates Challenges – Case No. 15-1063
- 5th Circuit Transfers Second Alamo Broadband Petition to D.C. Circuit to be consolidated with Case No. 15-1063



24 Intervenors line up in support of the Commission:

AdHoc Telecommunications Users Committee, Akamai Technologies, Inc., COMPTEL, Center for Democracy & Technology, Cogent Communications, Inc., ColorOfChange.org, Credo Mobil, Inc., DISH Network Corporation, Demand Progress, Etsy, Inc., Fight For The Future, Inc., Free Press, Kickstarter, inc., Level 3 Communications, LLC, Meetup, Inc., NARUC, NASUCA, Netflix, Inc., New America's Open Technology Institute, Public Knowledge, Tumblr, Inc., Union Square Ventures, LLC, Vimeo, Inc., & Vonage Holdings Corporation

Independent Telephone & Telecommunications Alliance has Intervened in support of Petitioners

TechFreedom, CARI.net, Jeff Pulver, Scott Banister, Charles Giancarlo, Wendell Brown, and David Frankel (collectively calling themselves the "Internet Independence Intervenors")

Meanwhile in the Third Circuit...



- April 23, 2015 – A group of telecommunications services filed a lawsuit, arguing the FCC did not go far enough in regulating broadband.
 - Full Service Network, TruConnect Mobile, Sage Telecommunications LLC, & Telescopia Communications, Inc.
- May 26, 2015 – U.S. Telecom Association and its fellow petitioners (save Alamo Broadband) intervene on the FCC's behalf for the limited purpose of opposing the Full Service Network group.

Stay Requests



May 8, 2015 –
FCC Denied
Petitioners’
Request to
Stay the
Order

May 13, 2015 –
Petitioners File
Joint Motion
with the D.C.
Circuit Seeking a
Stay of the
Order – or
alternatively
expedited
consideration of
the merits

May 22, 2015 –
FCC & Intervenors
File Oppositions to
Motion for Stay –
but agree to
expedited
treatment

May 28, 2015 –
Petitioners File
Reply In Support of
Motion for Stay

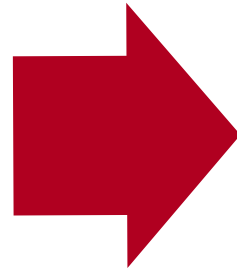
June 11, 2015 –
Stay denied.

New Focus on “Edge providers”



Defined as

- Providers of content, applications or services over the Internet
- Providers of a device used for accessing any of the above



Examples

- Websites (Amazon, Facebook)
- Online content services (Netflix, Hulu)
- OTT applications (Skype, WhatsApp)

Catch-All Rule



No unreasonable interference or disadvantage

- Concern over “gatekeeper power”
- No unreasonable interference with ability to access or make available content, applications, services or devices

Traffic management allowed

Applies to retail broadband Internet access



Negotiating Access to ISP network

- Edge providers seeking access to ISP network to “exchange Internet traffic”
- ISPs charge OTTs for higher capacity connections to ISP’s network

“Just & reasonable” terms

FCC to hear complaints

Impact



Tiered service plans

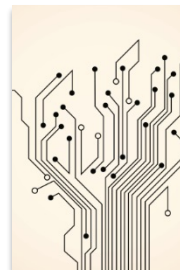


Mobile

- Zero rating
- Data caps



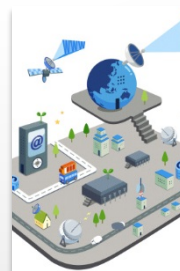
VoIP/Cable
TV/Specialized
Services



Peering/transit



CDNs



M2M / devices

