

There are 3 steps to reaching the Commission's desired conclusion:

- People want Net Neutrality
- Net Neutrality is under attack
- Government regulation is the solution

So let's look at each step.

People want Net Neutrality

Much of this Proceeding has been a poll to determine if people want Net Neutrality. Of course they do. Everyone wants Net Neutrality.

Like a magician who makes a big show of letting an audience member inspect the magic box before the trick, this is misdirection to focus attention away from the flimsy evidence for the next two steps.

Net Neutrality is under attack

Similar to a political "push poll", asking whether the Internet should be kept open implies there are two choices, open or not, and if nothing is done the Internet will cease to be open.

But where is the evidence of Net Neutrality violations? Where are the problems that are not being resolved by market forces or with current regulatory authority? Comcast interfered with Bit Torrent back in 2007, and was forced to stop. Then there was a paid peering dispute between Netflix and Comcast, which was resolved through negotiation between the two companies. Is this the sum total of bad behavior threatening the Open Internet? Where are the WMDs?

The threat we always hear about is *fast lanes and slow lanes*. Do these exist in the real world, or are they a hypothetical threat – a bogeyman used to scare us that Net Neutrality is under attack?

If the sole example is the Netflix/Comcast dispute, was that really about Net Neutrality, or even fast and slow lanes? Or a dispute between two companies over who would pay for an infrastructure upgrade?

I compare it to a town that is getting a big new manufacturing plant or outlet mall, that will double the traffic entering and exiting the highway. The town may want the owner to pay for stoplights and turn lanes, maybe even a full interchange, to handle the traffic. The owner may feel the town should pay because it will benefit from jobs and taxes. Who should pay? It is not clear, but market forces usually work this out.

In any case, the stoplights and turn lanes are just to handle getting the increased traffic on and off the highway. Once the vehicles are on the highway, there are only lanes – all vehicles are treated the same. The reason for the infrastructure upgrade is to avoid a backup in the parking lot trying to get onto the highway.

The claim is these hypothetical fast and slow lanes hurt small startups. But there is no need for a small startup to have their own highway interchange, until they grow quite large and successful. Their employees and customers get on the highway and are indistinguishable from any other traffic. Everyone

uses the same lanes once they are on the highway. Small startups already have access to the same lanes as the big company, who is the one being asked to pay more.

The other term thrown around is *paid prioritization*. But in the real world, this is hard to find, the closest real examples are sponsored data and zero rated traffic. So a content provider wants to pay for a mobile customer's data so it doesn't count against their usage cap. Or T-Mobile doesn't count music streaming against data usage. Do customers see this as a Net Neutrality violation, a threat to the Open Internet? No, they probably like it. And how is it different from a store paying for a customer's parking, or Amazon Prime having free shipping?

Government regulation is the solution

Average citizens have been asked to submit their comments on whether they want an Open Internet. Not surprisingly, millions have said they do.

What if they were asked if they like government regulation and want more of it? Wouldn't almost everyone say no, that even with the best of intentions, government regulation inevitably leads to bureaucracy, higher costs, inefficiency, waste, unintended consequences and collateral damage? That more regulation should be a last choice, only to remedy serious bad behavior that cannot be corrected through market forces or existing regulatory authority?

So where is this serious bad behavior that justifies regulation of the Internet under Title II? Where are these fast and slow lanes? Where is this paid prioritization? Are they just hypothetical threats? Have the few actual cases been unsolvable without additional regulatory powers?

The one thing that seems clear is that neither the Commission, nor the President, nor the Supreme Court has a clue how Congress in 1934 or 1996 or 2009 wanted the Internet regulated, or what powers they intended to grant to the FCC to accomplish this (other than to collect data and issue reports).

The Commission is proposing to greatly increase its authority over the Internet by reclassifying it as a Telecommunications Service. The Chairman has then proposed to forbear from the vast majority of these new powers. If the Internet is really a Telecommunications Service, and ISPs are really common carriers, why is such extensive forbearance needed? Does this not demonstrate that the Commission is grasping at straws in the absence of clear direction from Congress? And how will future Commissioners decide which rules merit forbearance and which do not?

If no one knows what Congress wants, it is time to ask Congress. There is no immediate, real threat to the Open Internet that requires emergency action. The Commission should back away from claiming new regulatory powers, and wait for Congress to issue clear directions.

I hope someone reads this, in which case, I thank you for your patience and consideration.

Sincerely,

Ken Hohhof