

# Why the FCC Is Being So Vague About Net Neutrality

The agency wants flexible rules to police Internet service providers. Flexible enough they can be easily ignored under future Presidents

Federal regulators are trying to leave themselves plenty of power to oversee the Internet—they're just not willing to get too specific about what they plan to do with it.

The Federal Communications Commission is moving ahead with a net-neutrality proposal, but no one knows exactly what business practices it would ban. And for the FCC, that's all part of the strategy.

The commission wants a vague standard to allow Internet companies to experiment with new business models, while giving the agency authority to step in when it sees abuses.

A senior FCC official argued that "putting rigid rules in place" would not let the Internet "evolve in a natural way." We need rigid rules though that are strong and enforceable and can survive judicial scrutiny.

But the official added that "the government has to be in a position to oversee the Internet and intervene if it needs to."

FCC Chairman Tom Wheeler has repeatedly extolled the virtues of enforcing net-neutrality rules on a "case-by-case basis."

Under his proposal, Internet service providers would be required to handle traffic in a "commercially reasonable" way. The commission has done little to explain what "commercially reasonable" means.

The regulators fear that they can't anticipate how the Internet will change over the coming years.

New business models could emerge that allow companies to improve the quality of certain services, while not harming the overall Internet. Locking the market in place now with detailed rules could freeze future innovation, they fear. But the FCC also wants to ensure it has the weapons it needs to fight broadband providers who try to manipulate the Internet in ways that would ultimately be bad for consumers.

That ambiguity has frustrated congressional Democrats and liberal advocacy groups who want assurances that the FCC will enact strong net-neutrality regulations. Advocates of net neutrality argue that broadband providers like Comcast shouldn't be allowed to interfere with Internet traffic or control what sites consumers visit.

Vague rules could allow future FCC chairmen (especially Republicans) to be lax on enforcement, letting Internet providers get away with a host of abuses. The next administration could essentially ignore net neutrality if the regulations don't specify which particular business practices are illegal.

Net-neutrality advocates don't want the rules for the Internet to change with each president.

Lawmakers tried to press Wheeler for details about his proposal at a House hearing on Tuesday, but only came away frustrated.

Rep. Anna Eshoo, the top Democrat on the House Communications and Technology Subcommittee, demanded that Wheeler say whether he will allow broadband providers to prioritize traffic for websites that pay special fees.

"I don't believe there ought to be haves and have-nots," Wheeler began before Eshoo cut him off. "No, no—just answer my question. Just tell me."

Wheeler explained that the FCC will block any practices that hurt consumers or competition. The details of what that means are still murky.

The "commercially reasonable" standard allows some negotiations between Internet providers and websites for faster service. But the FCC could still block "fast lane" deals for a range of reasons.

For example, the proposal "tentatively concludes" that it would be illegal for a broadband provider to favor traffic from an affiliated website. So Comcast, which owns NBC, wouldn't be allowed to create a special fast lane for NBC videos.

For most other situations, though, the FCC would remain agnostic until it's presented with a particular deal or complaint.

Harold Feld, a senior vice president for the consumer advocacy group Public Knowledge, argued that clearer rules would give consumers and companies a better sense of what to expect.

"When you have the actual conduct spelled out, people generally follow it. There's a level of certainty you get," Feld said. "The more fuzzy the rules, the less clear the guidance, and the more litigation you have to have to define what is and is not acceptable behavior."

Feld argued that the rules should explicitly ban paid prioritization, which he claimed would distort the Internet in favor of the largest corporations.

Advocates of so-called fast lanes argue that they can—at least in some cases—make some services better, while not necessarily degrading other content.

The FCC voted last week to make its proposal public and begin accepting comment. It will have to vote again in several months to finalize the regulations.