

Dear FCC Commissioners,

I am writing in response to NPRM 14-28, "Protecting and Promoting the Open Internet." While I intend to briefly comment on most points of Proceeding 14-28, as generally outlined in the FCC's "FACT SHEET: Protecting and Promoting the Open Internet" [1], I urge the FCC to re-classify broadband as a Title II common carrier. I write as a professional web developer (and one who has owned his own small business, the core function of which was Internet based), an Internet user, and a United States citizen.

Internet traffic should be treated the same as current telephone traffic is treated, the same as electricity, and the same as water. All of which is to say that broadband traffic should receive no treatment at all when in route, that all Internet traffic should be treated equally without respect to type, that it be delivered without hindrance and without preferencing some traffic over any other, and that the United States government should monitor ISPs to ensure this impartiality.

Indeed, I consider broadband an essential utility more important today than traditional telephone services. Having moved a number of times since the advent of broadband, I have personally discovered that I need only three services, minimally, coming into my home: water, electricity, and the Internet. During those times that I have not had access to traditional, landline telephone services, I have been able to rely on a cellphone or an Internet-based telecom service, aka VOIP, for my telephone services. I strongly suspect I am not alone in deeming Internet access more essential than in-home telephone service, yet the latter is deemed as a Title II common carrier by the FCC while the former is not.

The alternative is - as the FCC appears to be leaning - to engender and create an environment where Internet fast lanes are possible, with some content being treated preferentially by ISPs. Unfortunately, as you all know, this has already happened. Barely more than a month after the DC federal appeals court struck down the FCC's net neutrality rules in January 2014, Comcast brokered a deal with Netflix to provide faster (i.e. preferred) transmission of Netflix's video streaming content to Comcast's broadband customers. It has gone little remarked on that Comcast quite evidently had spare bandwidth to "sell" to Netflix even though Comcast's arguments in favor of managing Internet traffic have often claimed Netflix's traffic slowed and otherwise clogged the Internet at peak times. For the right price - paid by Netflix - Comcast could, and did, rectify this.

The implications of the Comcast/Netflix agreement are significant. (Disclosure: I am a Comcast customer, but I am not a Netflix customer.) For starters, Netflix subscribers who are also Comcast broadband customers will, in some ways, have to pay twice for the Netflix content: once as part of their bill to Comcast for base internet service and again as part of their monthly Netflix subscription fee, which will increase because Netflix will have to distribute the costs of its deal with Comcast to its customers. In fact, /all/ Netflix customers will likely have to pay extra, with many Netflix subscribers subsidizing the content delivery for Comcast customers. Comcast's revenues increase (all without adding one new piece of infrastructure); Netflix at worse breaks even (though, if the company distributes the cost of the Comcast deal across all of its customers, Netflix could be in a position to benefit financially from this deal if most of its customer base are not Comcast customers); and the consumer - the Average American Citizen -

will pay more, and is disadvantaged as a result.

And the above is just one example. The implications of this deal must be understood more broadly. Will Hulu broker a deal (and raise its costs)? Free-market competition rules would suggest that if Netflix brokers a deal for its content to be delivered faster to the consumer, then Hulu will have to also just to remain competitive. Ditto for Amazon. And so would follow other video media outlets. Will Google broker a deal? If so, rest assured that a number of other companies will also follow suit. Every time one of those deals is created, then the consumer faces the very real prospect of having his or her fees raised to offset the costs of the deal. Good for the stockholders; bad for the Average American Citizen. In short, it's not just "one deal," but the beginning of a new era of deal making.

And, if all of these deals are concluded, where will all the bandwidth needed to support these new "fast lane" deals come from? Given the relative wealth of broadband companies as it stands, it seems unlikely they will invest the revenues from these "fast lane" deals to build out their networks, which are insufficient as it is (until, that is, a content company is willing to pay an ISP to deliver its traffic faster).

Are the current FCC proposals bad for small business? Would they, if fully implemented, disadvantage startups and Internet entrepreneurs? Yes and yes. In short, the FCC proposals would result in increasing not just the rate of pay-to-play instances, but also the starting amount. When a business has to worry about how it is going to pay the ISP so that its content is delivered in the same light as its competitors, you can be certain that the current FCC proposal will stifle small business, startups, and entrepreneurs. Add to those hurdles the regulatory burden, perhaps, of having to argue Internet traffic discrimination before a tribunal of FCC representatives, something big companies have legions of employees to do.

Raising costs on the American citizenry aside, the added burdens to small business and startups aside, permitting ISPs to preference some traffic over others (depending on a variety of conditions) establishes a situation virtually limitless in potential abuse. For example, say I use Company X for VOIP services, for which, of course, I require a broadband connection. Nearly all broadband providers today offer some kind of VOIP service. Comcast and Time Warner, for just two examples, provide phone service and it is basically VOIP. But a number of other companies (not affiliated in any way with broadband ISPs) also offer VOIP services, for which you sign an agreement and must purchase a piece of hardware that you plug into your cable modem or network router. Suddenly, it is in Comcast's financial interest to preference its VOIP traffic (which, by comparison, results in poorer service of Company X's product/service, who perhaps cannot afford it for whatever reason). Comcast might have its VOIP division pay its broadband division (assuming they are distinct) just to make sure it is all "aboveboard." To look at another example, when broadband ISPs also become media content owners, such is the case when a traditional cable company owns news, sports, and/or sports channels, does that not also set up a potentially abusive scenario? What happens when broadband Company A has particular political leanings? Sure, it might be "illegal" to refuse to transmit content that Company A does not politically agree with, but is it "illegal" for Company A to price the content producer out of the fast lane? Likely not. Suddenly, we have a situation whereby ISPs can take advantage by hiding behind technicalities, or capitalizing on byzantine regulations, in order to exploit

loopholes that are essentially first amendment violations.

To combat such limitless abuses, the FCC has asked for comment about greater ISP transparency and appointing an ombudsman, along with a few other measures, designed to safeguard the "fairness" of its allow-Internet-fast-lane proposal. If - /if/ - the FCC is determined to allow "fast lanes," then literally everything the FCC can think of to ensure fairness, or the review thereof, is welcome. But - and this is an important "but" - what the FCC is proposing in order to protect "fairness" is, at the heart, bureaucracy that would be better spent monitoring that ISPs are acting as responsible Title II common carriers. In fact, it is unlikely these few measures would even be enough to monitor this activity sufficiently. Also, based on so many instances of politicizing issues and agencies being chronically underfunded (if not specific positions within agencies), I am deeply skeptical the solutions in the current FCC proposal - ombudsmen, additional staff for dispute resolution, additional reporting mechanisms - are strong enough to weather US politics in the years to come. Yet, the management of telecommunication services as Title II common carriers provides the framework for regulating ISPs under the same rule, and it has the benefit of being tried, true (for the most part), and tested. Why does the FCC see the need to create separate processes to safeguard against bad behavior when it has a model already? Does the FCC recognize, as evidenced by the very measures it has proposed to take to ensure "fairness," that the need for transparency and safeguards are themselves a form of recognition by the FCC that the agency itself understands the rife potential for abuse? If the FCC wants to ensure a fair and "open internet," has Title II somehow failed in the past of delivering just that level of service and fairness to the telecom industry?

At the heart of this issue - the source of all of the FCC's handwringing, the source of multiple lawsuits (already) - is the FCC's past decision and continued reluctance to classify broadband as a telecommunication service. Now, the FCC is attempting to defy logic by allowing for "fast lanes" while maintaining that this is not the same thing as creating a "slow lane" (it is, effectively), all because the FCC does not want anyone's Internet service negatively affected but it wants to appease the ISPs. In order to support this position, the FCC is proposing a whole set of regulatory items to ensure fairness and transparency. To be sure, some of the example abuses above might, on the surface, appear outlandish (no one expects anyone's First Amendment rights to be abused), but they are also so very easily avoided.

And the solution is relatively simple. Naturally, the FCC should discontinue its efforts to find a policy solution that keeps broadband classified as an information service while allowing for "fast lanes." But, more importantly, the FCC should simply re-classify broadband service as a Title II common carrier. As a telecommunication service, the FCC has all, or at least most, of the regulatory framework in place to monitor ISPs behavior. It also puts the onus on the ISPs to build better networks, with bigger pipes. There is no incentive for the ISPs to do this under the current FCC proposal. For the ISPs, the current proposal is a ticket to charge a new class of customers for access to its (excess) infrastructure, an action that will enrich the ISPs at the expense of other companies and consumers. More broadly, it is a proposal that will dampen entrepreneurial spirit and establish a regulatory situation primed for abuse, including, potentially, constitutional ones.

I believe the FCC is sincerely interested in finding the best possible solution for all. That

solution is to re-classify broadband as a Title II common carrier: guarantee a level playing field, protect the American consumer from absolutely avoidable increased costs, and eschew a situation rife for abuse.

Respectfully submitted,

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Washington, DC

[1] <http://www.fcc.gov/document/fact-sheet-protecting-and-promoting-open-internet>