

Internet Architecture and Innovation

by Barbara van Schewick

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The FCC changed course on network neutrality. Here is why you should care.

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Wednesday's press reports of the new network neutrality rules proposed by FCC Chairman Wheeler have been met with anger and confusion. According to the [Wall Street Journal](#), "[r]egulators are proposing new rules on Internet traffic that would allow broadband providers to charge companies a premium for access to their fastest lanes. [...] [T]he proposal would [...] allow providers to give preferential treatment to traffic from some content providers, as long as such arrangements are available on 'commercially reasonable' terms for all interested content companies. Whether the terms are commercially reasonable would be decided by the FCC on a case-by-case basis."

The press, public interest groups and network neutrality proponents responded immediately: ["FCC proposal would destroy net neutrality"](#) (The Verge); ["FCC Proposal for a Payola Internet Would End Net Neutrality"](#) (Free Press); ["Goodbye, Net Neutrality; Hello, Net Discrimination"](#) (Tim Wu); ["This is not net neutrality."](#) (Public Knowledge).

Yet, in a [blog post](#) yesterday, Chairman Wheeler explained that accounts "that the earlier policies of the Commission have been abandoned" are "incorrect."

Who is right? Do the proposed rules abandon earlier FCC policies on access fees? And if yes, should we care? This blog post answers these questions.

It makes four points:

1. Allowing access fees is a significant reversal from the FCC's earlier policies as set forth in the Open Internet Order.
2. Section 706 of the Telecommunications Act requires the FCC to allow access fees.
3. Allowing access fees is bad policy.
4. If the FCC is serious about protecting the Open Internet, it needs to start asking real questions about reclassification in its upcoming Notice of Proposed Rulemaking.

1. Allowing pay-to-play access fees is a significant reversal from earlier policies

Access fees are fees that an Internet service provider imposes on application and content providers who are not its Internet service customers. Access fees come in two variants:

In the first variant, an Internet service provider charges application or content providers for the right to access the network provider's Internet service customers. Applications whose providers do not pay the access fee cannot be used on the network provider's access network.

In the second variant, sometimes called "paid prioritization" or "third-party-paid prioritization," an Internet service provider charges application providers for prioritized or otherwise enhanced access to the network provider's Internet service customers. For example, if an application provider has paid such an access fee, the application's data packets may receive a better type of service (e.g., travel faster) on the Internet service provider's access network or may not count against a user's monthly bandwidth cap.

The Open Internet Order strongly opposed access fees



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be heard or to find an audience for their creative works. Today, individuals and non-profits can put their content online at low cost, and when it travels across the network, that content receives the same service from the network as commercial content. By contrast, access fees would create two classes of speakers – those who can pay to receive better treatment (e.g., large, established companies or wealthy individuals) and those who cannot afford to do so – often individuals and groups with unpopular or new viewpoints, like activists and artists. But if the videos produced by public interest groups to educate the public or the online classes offered by universities count against users' bandwidth caps or stutter because these entities were unable to pay for better treatment, while commercial content does not count against users' bandwidth caps or loads smoothly even during times of congestion, non-commercial content will become relatively less attractive, making it more difficult to find an audience.

[My Opening Statement at the FCC Workshop on Approaches to Preserving the Open Internet in Seattle in April 2010](#) explains the impact of access fees on application innovation and the importance of low-cost innovators in more detail, using stories from the history of the Internet – including the story of two then-unknown graduate students, Larry Page and Sergey Brin.

4. What the FCC should do next

Network neutrality is not dead. The rules proposed by the Chairman, which rightly

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