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Hold Off On Net Neutrality

By David Farber and Michael Katz

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The Internet needs a makeover. Unfortunately, congressional initiatives aimed at preserving the best of the old Internet threaten to stifle the emergence of the new one.

The current Internet supports many popular and valuable services. But experts agree that an updated Internet could offer a wide range of new and improved services, including better security against viruses, worms, denial-of-service attacks and zombie computers; services that require high levels of reliability, such as medical monitoring; and those that cannot tolerate network delays, such as voice and streaming video. To provide these services, both the architecture of the Internet and the business models through which services are delivered will probably have to change.

Congress failed to pass legislation amid rancorous debate last summer, but last week a group of senators reintroduced several initiatives under the banner of "network neutrality."

Network neutrality is supposed to promote continuing Internet innovation by restricting the ability of network owners to give certain traffic priority based on the content or application being carried or on the sender's willingness to pay. The problem is that these restrictions would prohibit practices that could increase the value of the Internet for customers.

Traffic management is a prime example. When traffic surges beyond the ability of the network to carry it, something is going to be delayed. When choosing what gets delayed, it makes sense to allow a network to favor traffic from, say, a patient's heart monitor over traffic delivering a music download. It also makes sense to allow network operators to restrict traffic that is downright harmful, such as viruses, worms and spam.

Pricing raises similar issues. To date, Internet pricing has been relatively simple. Based on experience in similar markets, we expect that, if left alone, pricing and service models will probably evolve. For example, new services with guaranteed delivery quality might emerge to support applications such as medical monitoring that require higher levels of reliability than the current Internet can guarantee. Suppliers could be expected to charge higher prices for these premium services.

Blocking premium pricing in the name of neutrality might have the unintended effect of blocking the premium services from which customers would benefit. No one would propose that the U.S. Postal Service be prohibited from offering Express Mail because a "fast lane" mail service is "undemocratic." Yet some current proposals would do exactly this for Internet services.

We're not saying that all discrimination is good or that the market always gets it right. Some forms of discrimination can be harmful, especially when service providers have market power. For example, if a local telephone company that is a monopoly provider of both broadband access and plain old telephone service for a community blocks its broadband subscribers from using an Internet phone service offered by a rival company, this discrimination can harm both competition and consumers.

Public policy should intervene where anti-competitive actions can be identified and the cure will not be worse than the disease. Policymakers must tread carefully, however, because it can be difficult, if not impossible, to determine in advance whether a particular practice promotes or harms competition. Antitrust law generally takes a case-by-case approach under which private parties or public agencies can challenge business practices and the courts require proof of harm to competition before declaring a practice illegal. This is a sound approach that has served our economy well.

The legislative proposals debated in the 109th Congress take a very different approach. They would impose far-reaching prohibitions affecting all broadband providers, regardless of whether they wielded monopoly power and without any analysis of whether the challenged practice actually harmed competition. If enacted, these proposals would threaten to restrict a wide range of innovative services without providing any compensating customer benefits.

Does this mean we believe that we should place all our trust in the market and the current providers? No. But it does mean we should wait until there is a problem before rushing to enact solutions.

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