

COMMON SENSE ABOUT NETWORK NEUTRALITY

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 services that cannot tolerate network delays, such as voice and streaming video. To provide these new services, both the architecture of the Internet and the business models through which Internet services are delivered will very likely have to change.

When Congress returns from recess in September, lawmakers are expected to revisit several initiatives (collectively known under the banner of “network neutrality”) aimed at promoting continuing Internet innovation by restricting network owners’ ability to give traffic priority based on the content or application being carried or on the sender’s willingness to pay. The problem is that network neutrality 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 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 other similar markets, we expect that, if left alone, pricing and service models would likely evolve. For example, new services with guaranteed delivery quality might emerge to support applications such as medical monitoring, which require higher levels of reliability than the current Internet can guarantee. Suppliers can be expected to charge higher prices for these premium services. Blocking premium pricing in the name of neutrality may have the unintended effect of blocking the premium services from which customers would have benefited. No one would propose that the US Postal Service not be permitted to offer Express Mail because a “fast lane” mail service is “undemocratic,” yet some current proposals would do exactly this for Internet services.

We are 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 the monopoly provider of both broadband access and plain old telephone service for a community blocks its broadband subscribers from using an Internet telephone service offered by a rival company, then this discrimination may harm both competition and consumers.

Public policy should intervene where anticompetitive actions can reliably be identified and the cure will not be worse than the disease. Policy makers must tread carefully, however, because it can be difficult, if not impossible, to determine in advance whether a particular practice promotes or harm competition. Current antitrust law generally solves this problem by taking 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 defeated this spring but likely to reappear this fall take a very different approach. They would impose sweeping 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 that we should wait until there is a problem before rushing to enact new solutions. Proponents of network neutrality regulation have provided no evidence that there exists a widespread problem today that cannot be adequately handled by existing antitrust and regulatory policies. We believe current policies are up to the task and legislation at this point would be premature and unwise.

If problems arise in the future, then Congress may have to revisit the issue. If it does, the central question should be how to make customers better off, not how to protect particular competitors. This framing would highlight the potential customer benefits that shifting away from the Internet's current design could yield. It would also ensure that any regulatory intervention would be tailored to the precise scope of the anticompetitive harm.

David Farber, Distinguished Career Professor of Computer Science and Public Policy, Carnegie Mellon University.

Gerald Faulhaber, Professor of Business and Public Policy, Wharton School, and Professor of Law, University of Pennsylvania.

Michael L. Katz, Sarin Chair in Strategy and Leadership, Haas School of Business, and Professor of Economics, University of California, Berkeley.

Christopher S. Yoo, Professor of Law and Director, Technology & Entertainment Law Program, Vanderbilt University.