



# **Network Neutrality And Tiered Broadband Services**

*A rational examination of the unintended  
consequences and detrimental effects  
of Network Neutrality legislation to  
prevent tiered broadband services*

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**Formed in 1994**, the US Internet Industry Association is the primary trade association for companies engaged in Internet commerce, content and connectivity. USIIA serves its members through legislative advocacy and professional services. The association is headquartered in Washington, DC.

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## **Executive Summary**

**Network Neutrality is a solution in search of a problem – a hypothetical issue that cannot occur because of the stated commitments of industry, the Federal Communications Commission and the Congress to prevent any such harm.**

**Proponents of Network Neutrality legislation base their position on the possibility that the creation of enhanced service levels will in some way prove harmful to consumers. Yet no evidence or supporting facts are provided to validate this position.**

**The issue is further complicated by the constantly mutating definition of “network neutrality.” The definition appears to change constantly, as does the hypothetical threat the definition is intended to cover. The only common thread among these mutations is that the definitions ignore the ways in which the Internet works today, or directly conflict with established business models already in use for the Internet and elsewhere.**

**The Internet is and has always been an ecosystem in which the management, transmission of data and costs are shared by the members of the network. Each part of the Internet ecosystem is dependent on the health of the others – with ISPs generating revenue by delivering varied and vibrant content, while content providers generate revenue by making use of these modern and healthy networks**

**There are also major problems with unintended consequences. Legislation banning tiered or selective services plans would eliminate Christian-focused Internet services offered by Christianbroadband.com, TrueVine.net and FamilySafeViewing.net, forcing these ISPs out of business. It would also force out of business the network providers who serve children with filtered, no-porn Internet, including ZKidNetwork, SonMedia.net, KiddoNet and the Children’s Safe Internet project in Chicago. This would have the practical effect of forcing families to accept pornography into their homes whether they want it or not, in the name of “Network Neutrality.”**

**In the final analysis, no dire plans have been implemented, no consumers have been injured, and none of the parties have announced efforts to enter into any program that would be to the detriment of the nation or its consumers. The Congress should not address, regulate or legislate the issue of “Network Neutrality,” instead leaving the resolution of any problems that may occur in the future to the industries involved to jointly resolve.**

**Should an issue emerge that is beyond the capabilities of industry or the Federal agencies to manage, there will be adequate time for consumers to voice their dissatisfaction directly to the companies involved – or, if necessary, elevate their concerns to the Congress. That situation does not exist today, and does not need to be addressed by the Congress.**

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## **Network Neutrality and Tiered Broadband Services**

### **Introduction**

For the past four months, in spite of steadfast commitments to the contrary by the Federal Communications Commission and by key Network Service Providers (NSPs) in the broadband industry, the news media and select pundits have claimed that the NSPs are planning to in some way harm consumers by closing off access to parts of the Internet. Media reports on this issue have touched off a firestorm of criticism, speculation, doom saying, fear, loathing, and calls for legislation in the name of “Network Neutrality.”

It is difficult to assess the merits of such a complaint given that no such actions have taken place or have been announced by the network providers. Media hype, the lack of supporting data for these complaints and deliberate disinformation promulgated by some of the complaining parties has served to further obscure the issue.

The US Internet Industry Association (USIIA) has spent nearly four years tracking and assessing the issue of Network Neutrality, and notes that 1) no documented harm has occurred to any consumers; 2) no factual data exists to support the claims advanced by advocates of Network Neutrality legislation; 3) that such legislation would have a detrimental impact on services already in place that are used and valued by consumers; and 3) that an industry-supported mechanism is already in place at the Federal Communications Commission to deal with any consumer issues that may arise.

### **What is “Network Neutrality?”**

The exact roots of the concept of “Network Neutrality” are unknown, but generally are agreed to refer to the principle that “(1) to maximize human welfare, information networks ought be as neutral as possible between various uses or applications, and (2) if necessary, government ought to intervene to promote or preserve the neutrality of the network. Underlying the theory of the benefits of network

neutrality is a belief that a neutral network promotes Schumpeterian, or evolutionary innovation of information technology.”<sup>1</sup>

First commonly used beginning in 2002, the principle was embodied by the High Tech Broadband Coalition in a filing that year with the Federal Communications Commission. In 2004, they were endorsed by then FCC Chairman Michael Powell, and were subsequently expanded upon by the US Internet Industry Association in a 2005 white paper.<sup>2</sup> That white paper, “Principles for Broadband and IP Services,” specifically notes that in addition to the rights of consumers, the rights of network service providers should be considered, and in particular the rights of those service providers to offer enhanced tiers of broadband services that would provide consumers with better, faster and more stable Internet experiences.

On August 4, 2005, the Federal Communications Commission adopted a policy statement that endorses four principles as a policy platform to encourage broadband deployment and preserve and promote the open and interconnected nature of public Internet.

These four included, (1) consumers are entitled to access the lawful Internet content of their choice; (2) consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement; (3) consumers are entitled to connect their choice of legal devices that do not harm the network; and (4) consumers are entitled to competition among network providers, application and service providers, and content providers.

It is critical to note that these principles were not generated by the Congress or by the FCC in response to a problem. Rather, they were crafted by industry – by coalitions and groups that represent the interests of both content providers and network services providers – as a form of “best practices” that could help to frame the growth of broadband as a consumer experience.

The core philosophy behind the FCC’s connectivity principles is not that consumers should have access to all of the content of the Internet all of the time, but rather that they should have unrestricted access to the Internet content of their choice.

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<sup>1</sup> Wikipedia definition for “Network Neutrality” at [http://en.wikipedia.org/wiki/Network\\_neutrality](http://en.wikipedia.org/wiki/Network_neutrality)

<sup>2</sup> “Principles for Broadband and IP Services, January, 2005, at <http://www.usiia.org>

This distinction is important in that the dispute over network neutrality now centers on plans by some Network Service Providers to offer tiered levels of services to consumers that will deliver some content to them in a faster, more secure and more consistent manner. The concept that consumers should have unrestricted access to content *of their own choosing* is not inconsistent with a model of tiered services, and in fact implicitly supports such a tiered model of delivery for that content. Nor is the issue of shared costs between the NSPs and content providers a new concept – in the cellular communication industry, mechanisms and contracts are already in place for content owners to pay for premium positions on the broadband networks operated by cell phone companies.

### **Constantly Mutating Definition**

The nature of the Network Neutrality has changed over the past four years, mutating as necessary so that the whole concept of network neutrality now means different things to different people, in response to differing hypothetical threats.

The original definition was designed to ensure that new services and technologies would not be banned over such concerns as digital rights management. When the Madison River Communications case came before the FCC, the definition was shifted to include the concept that VoIP and other IP-based services should not be blocked. When it was suggested that content companies should share some of the cost of the distribution of their products to consumers, the definition again shifted to incorporate resistance to this idea. And more recently, it has shifted again to reject the idea of tiered levels of service over the Internet – even though such tiers already exist and have been embraced by consumers.

To date, six widely disparate statements have been used to suggest that Network neutrality legislation is necessary.

On close examination, the statements tend to fall into two categories – either representing ignorance of how the Internet and other distribution channels work in free and competitive markets; and speculative but unsupported fears of what might come to pass if the Internet continues to evolve in the manner of other industries.

None of the six makes a compelling argument for the imposition of new regulatory regimes on the Internet:

- **Content companies should not have to pay to have their content distributed to consumers over the Internet.** This argument is based on the concept that the Internet was created or is owned by the consuming public and operates as a free service. In fact, the public Internet is a network of privately-owned systems, each of which is operated at a cost. The concept that the Internet is a public conveyance for information died with the introduction of electronic commerce and the emergence of information as a commodity product. While some adjustments may be made in order to more efficiently deliver information and digital products to consumers, that delivery has a cost and that cost must in some manner be paid.

The Internet is and has always been an ecosystem in which the management, transmission of data and costs are shared by the members of the network. Each part of the Internet ecosystem is dependent on the health of the others – with ISPs generating revenue by delivering varied and vibrant content, while content providers generate revenue by making use of these modern and healthy networks

This ecosystem works because a free market is capable of coming to terms with the appropriate cost/fee ratios, and to managing the distribution of content over the networks through commercial contracts. In the event that an abuse of the free market occurs, both laws and procedures are in place to deal with these on an individual basis.

- **Consumers already pay for the transportation of content over the Internet in their monthly or periodic subscription fees.** While consumers do pay a fee to access the Internet, that fee covers only some of the cost of the Internet as it exists today. Telephone, satellite, cable and wireless companies have invested billions of dollars in the expansion of that network – and will spend as much as \$1 trillion more to enhance the broadband networks to fiber in the years ahead. These telecommunications companies stand ready to make that investment, but

must be able show a return on that investment for their shareholders. Legislative forces that eliminate the introduction of new services, or which attempt to keep the Internet as it was a decade ago, make such investments impossible.

And these investments are critical to the continued emergence of advanced services for e-government, e-commerce, health, education and entertainment. As the services expand, so must the networks that make them possible -- John Chambers, CEO of Cisco Systems, estimates that Internet traffic over the networks will increase by 500 percent per year in the years ahead.<sup>3</sup> The network must increase its capacity accordingly.

The bottom line is this: unless network service providers are able to develop alternative revenue streams that are palatable to consumers, the advanced networks consumers want and need can never be built and the full potential of the Internet in terms of e-commerce, e-education, e-health, and e-government cannot be realized.

- **The introduction of tiered services represents a marked departure from the public Internet as it has previously existed, and will lead to the end of the open Internet as consumers have experienced it in the past.** This statement makes little sense to anyone who truly knows and understands the Internet. To begin with, the TCP/IP protocol that governs the transmission of information packets across the Internet is based on moving each packet along the most efficient network to reach its final destination. That is, the Internet itself prioritizes traffic and moves it along different segments of the network to achieve effective control of transmissions. That's why it is called Transmission Control Protocol and Internet Protocol.

Some executives of broadband companies have expressed a desire to explore tiered network offerings based on price, speed and quality of service. Companies that elect to partner with the broadband company, and to assure consumers a specific level of service, would get an enhancement of their services – in the same manner that some people pay more for an airline seat in business class than in coach.

The benefits could be significant – an online gaming service, for example, could guarantee its customers a better quality Internet experience through a partnership with a broadband

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<sup>3</sup> <http://www.tmcnet.com/usubmit/2006/02/03/1341611.htm>

company. On the non-revenue side, service guarantees could be provided for health, education, disabled access and government service web sites, benefiting the larger population.

In fact, what is being considered is simply to take the successful model used by companies like Google and apply it to other parts of the Internet. Google's business model is built around basic price differentiation – that is, people who pay for better placement on the Google search engine get it. That model has been in place for years, with no visible harm to consumers and no media backlash.

The fact that Google is leading some of the opposition to tiered services – and calling for legislation to prevent it – smacks of hypocrisy. After all, if true network neutrality were legislated for all elements of the network, Google would lose a substantial chunk of revenue because it would no longer be permitted to give priority ranking in search results to companies that advertise. Google and other content company don't want true network neutrality – they are merely “gaming the system” in an effort to gain legislation that protects them while harming other Internet companies.

The idea that tiered services among NSPs and ISPs are new is also highly inaccurate. For nearly the entire existence of the Internet, some ISPs have offered services that block some sites on the Internet. Consumers are able to sign up for these services with a full understanding that they are electing to receive some but not all of the content of the Internet, consistent with the FCC principle that consumers should be able to access the content *of their choice*.

Legislation banning such tiered or selective services would eliminate Christian-focused tiers offered by Christianbroadband.com, TrueVine.net and FamilySAFEVIEWING.net, forcing these fine ISPs out of business. It would also force out of business the network providers who serve children with filtered, no-porn Internet, including ZKidNetwork, SonMedia.net, KiddoNet and the Children's Safe Internet project in Chicago. This would have the practical effect of forcing families to accept pornography into their homes whether they want it or not, in the name of “Network Neutrality.”

Equally important, some service providers offer access only to adult content and specialized interests – such as the Usenet services that offer tiers of access only to the Alt.Binaries content. These also would be forced to shut down their offers of consumer choice.

- **The introduction of tiered services will in some way block, restrict or retard access to content or sites on the Internet that are not covered by Quality of Service (QoS) agreements or that are not included in the enhanced service tiers.** None of the NSPs have suggested that they will block access to any part of the Internet. In fact, the current FCC commitment to the four principles of interconnectivity and the industry's own commitment to those principles would prevent any such blockage. As an indication of the high regard in which the FCC holds these principles, they were included as provisions in the Verizon merger with MCI<sup>4</sup> and the SBC acquisition of AT&T.

In the entire history of the Internet, there has been only one instance where regulatory intervention was warranted to address a US network provider allegedly blocking access to an Internet site or service -- the case of Madison River Communications in March of 2005. In that case, the FCC moved swiftly to halt correct the problem and assess a fine<sup>5</sup> -- further proof that the system is working, and that additional regulation or legislation is unwarranted.

Tiered services are a part of nearly every industry, where they serve an important role in both speeding some customers through their desired tasks and permitting the normal flow of commerce in the basic or non-tiered services. The existence of business class does not slow the flight for those who buy airline or train seats in coach. Overnight delivery of letters by UPS or FedEx does not slow the deliveries by the US Postal Service. Even 15-items-only grocery lines do not slow consumers who have more items. In fact, these premium tiers tend to reduce congestion for other consumers, lessening the load for them.

- **That the creation of service tiers will require monitoring of consumer Internet habits, and/or the collection and retention of vast amounts of personal data that will be exposed, abused or mined by the NSPs.** This contention also indicates a lack of understanding of how

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<sup>4</sup> See FCC Memorandum Order and Order at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-05-184A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-184A1.pdf)

the Internet works. In the event that an NSP would offer a tiered service that includes guarantees of faster, more secure or better transmission of requests to and from web sites that desire such a service, the information used to determine what packets of information qualify will be the addressing information for the transmission. This does not require, and would not include, any monitoring, storage or use of the content of that packet.

To put it in simpler terms, the US Postal Service does not need to open and examine each letter in order to deliver that letter. They do not need to open the letter in order to deliver it by priority mail. Likewise, NSPs will need only to look at the address information to prioritize packets, and can thus maintain their traditional support for the privacy rights of their subscribers.

There are, of course, other arguments and complaints that have been put forth in support of legislation for Network Neutrality. Some advocates are determined that broadband must be restricted to the same “common carrier” requires as the century-old telephone system, though there seems no cogent argument for doing so. Others argue that any regulatory schema that benefits corporations must automatically damage consumers, though there is no empirical evidence to support such a conclusion.

### **Research To Date**

Empirical evidence is the most solid and helpful in determining public policy for broadband. That’s one of the reasons that FCC Chairman Kevin Martin announced this year that the Commission would wait until it actually received a complaint from a consumer before acting on potential abuses by NSPs.<sup>6</sup> But because Network Neutrality is supported by virtually every Internet company and NSP, little quantitative research has been done until recently. And in the two studies that have been done, the conclusions vary widely.

A recent study by the American Consumer Institute directly addresses the topic and indicates overwhelming consumer support for tiered broadband services. In response to the question, “In addition to continuing to offer standard Internet service, do you think that Internet companies should

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<sup>5</sup> See FCC Consent Decree at <http://www.fcc.gov/eb/Orders/2005/DA-05-543A2.html>

<sup>6</sup> “FCC Chair Vows “Unfettered” Internet Access, at <http://itmanagement.earthweb.com/article.php/3578191>

also offer consumers premium services that are faster, safer and more reliable?” 84 percent of respondents said they wanted the premium services to be available.

Consumer advocates that include the Consumer Union and the Consumer Federation of America (CFA) have widely promoted a different study they purport shows consumers reject the concept of “tiered” service levels.

There are three major problems with their study. The first is that the survey doesn’t address the proposed tiered services, but rather asks respondents whether they would favor a scheme to block content on the Internet. Second, the survey is deeply flawed by bias, misleading questions and unreal assumptions. And third, the survey is inconsistent both with how consumers have purchased services in the past and other research on the topic.

The CU/CFA survey precedes each question with a lengthy statement of “facts” in order to solicit a desired response. The questions included such statements as, “How would you feel if. . . The company that connects you to the Internet required you to pay for an Internet service provider you did not want?” The question is moot, because in a broadband world the company that connects you to the Internet is the Internet Service Provider. The situation described simply doesn’t exist.

### **Unintended Consequences**

Critics of the FCC principles note that since they are not inculcated in law, they have no real legal standing – the Madison River Communications case notwithstanding. While this is technically accurate, it is unclear that the interests of consumers would be better served by legislation mandating any form of “Network Neutrality.” In any form such legislation might take, it would lead to numerous unintended consequences:

- It would substantially alter the way the Internet works today – ending the “Internet as we know it” forever by forcing out of business those tiered services that offer consumers a choice of what parts of the Internet they wish to view.
- It would result in families being forced to accept adult content and pornography as part of their service packages, whether they wish it or not.

- It would force cable companies – which qualify as NSPs with their broadband offerings – to eliminate the tiered service levels that bring consumers premium channels and pay per view.
- It would eliminate consumer choice in selection of the service levels they desire.
- It would eliminate the ability of NSPs to invest in the next generation of Internet services, maintaining all future Internet offerings at today’s limited, slow and inefficient levels.

### **Conclusions**

It is the conclusion of the US Internet Industry Association that Network Neutrality today is a solution in search of a problem.

No plans have been announced or enumerated, no consumers have been injured, and none of the parties have engaged in activities to the detriment of the nation or its consumers. The Congress should not address, regulate or legislate the issue of “Network Neutrality,” instead leaving the resolution of any problems that may occur in the future to the industries involved.

Should an issue emerge that is beyond the capabilities of industry or the Federal agencies to manage, there will be adequate time for consumers to voice their dissatisfaction directly to the companies involved – or, if necessary, elevate their concerns to the Congress. That situation does not exist today, and does not need to be addressed in new and unnecessary legislation by the Congress.