

Net Neutrality Consensus Has A Long Way To Go

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Dennis D. McDonald in FCC, Innovation, Internet, Policy, Politics, Regulation, Strategy, Technology, Telecommunications, Transparency

By ***Dennis D. McDonald, Ph.D.***



I attended a session about “net neutrality” called **Preserving the Open Internet: Is a Consensus Emerging?** convened on February 23, 2010 in Washington DC by the Information Technology and Innovation Foundation (ITIF). Representatives of ITIF, Google, Verizon, Amazon, the Federal Communications Commission (FCC) and the Association for Competitive Technology (ACT) spoke.

I don’t think I heard what I would call a “consensus,” and a review of **news reports** of recent FCC filings on net neutrality bears this out. What I did hear at the ITIF meeting was willingness to discuss complex issues where there continues to be meaningful disagreement about scope, terminology, and even fundamental goals. Here are some key points from my own meeting notes:

1. **Terminology.** Use of the term “discrimination” causes problems. Sometimes it’s used in the context of pricing, e.g., “price discrimination” referring to pricing different levels of service differently. Sometimes it’s interpreted in social or legal terms, e.g., “This service discriminates against people without X.” Since the concept of “neutrality” seems antithetical to the concept of “discrimination” these two uses of the term become confusing after a while. Another term being used is “ecosystem” in analogous reference to the different systems and processes that need to work together in order for the Internet to work. I admit to having a hard time with this analogy since I think it fuzzes up the distinctions across people, processes, technologies, and the institutions involved in management and regulation. I’d rather see a discussion of the actual components and functions relevant to net neutrality, not confusing analogies.
2. **Regulation vs. Innovation.** Given the fast pace of technology, one school of thought says, the last thing you want is regulation that discourages innovation and experimentation. Another school of thought says that ensuring existence of a “level playing field” is the best way to foster innovation, especially innovation by smaller vendors. My opinion: one of the biggest threats to ensuring a “level playing field” is growing cross-ownership by large corporations of both content creation and content distribution. This gets us into the messy area of antitrust law.
3. **Reasonable Network Management.** What is “reasonable network management”? When does “reasonable network management” become “unreasonable” and veer into what some might see as “throttling” of traffic? When does standard differentiation via pricing of different levels and types of services (e.g., different treatment of voice vs. data packets) become “discriminatory”?
4. **Pre- vs. post-regulation.** Do you establish regulations in order to forestall hypothetical problems that might occur in the future, or do you wait till the problems arise and then adjudicate them — after the damage is done? If as the Verizon representative says, we’re doing pretty well with current market based web access, why rock the boat? That’s a strong argument, I must admit; my natural reaction against government regulation when market forces are really allowed to

operate would seem to come into play here. The problem is, this assumes transparency in how the system operates. In the context of “net neutrality,” transparency would mean that the public would be able to tell whether or not certain types of internet uses or users are being controlled based on private business agreements that may favor one group over the other. This need for “transparency” on the surface seems to be an item of consensus, but as we’ve seen with the current Administration’s moves toward greater transparency, the “devil is in the details.”

5. Scope. I learned early on that failure to agree on the scope of a project before starting is a recipe for failure. For example, not including wireless systems when discussing definitions of net neutrality, given the increasing role of mobile computing in internet access, seems a major oversight. I understand why wireless companies want to avoid regulation, but excluding a major part of the access and delivery systems that are increasingly important in providing web access seems self defeating.
6. Use A Lot, Pay A Lot. There does seem to be some agreement that heavy users should in general pay more than light users since they get more. I have a hard time arguing with that. I also personally like blanket pricing schemes where you don’t get nickle-and-dimed to death, something which many online subscription services learned long ago. Problem is, tiered pricing schemes might create two classes, haves and have nots, where much of the “good stuff” gets put out of reach of the general public. I’d hate to see the end result of tiered pricing on the web be something like what has happened with tiered pricing of television cable programming. There the deals that occur behind closed doors for creating service tiers end up creating basic tiers with lots of useless programming selected by someone else along with resistance to *a la carte* pricing. I hope that’s not where we’re headed.
7. Regulation soup. Not only is there uncertainty about what the FCC’s enforcement responsibilities are, there’s also a lack of clarity about where the Federal Trade Commission comes in in regulating the Internet. Add to this a suggestion that an industry-based “Technology Advisory Group” be established to provide a forum for open discussion of technical issues and I smell a muddying of the waters.

Viewed from my own perspective as a heavy Internet user who is reasonably knowledgeable about the Internet’s supporting technologies, I have to wonder whether it will ever be possible to generate a consensus on such a complex issue as “net neutrality.” There are some very major philosophical issues and concepts at play here. We live, after all, in a society where we depend on market forces to provide us with the basics of living and we have evolved systems of government regulation that attempt to balance sometimes competing demands of profitability and the common good. As a Federal Trade Commission staffer said at the ITIF meeting, we’ve had over 100 years to establish rules and precedents around monopolies and anti-trust law. The Internet, on the other hand, is newer and continues to evolve rapidly.

One area where this confluence of public policy and private initiative arises relates to improvements in public access to broadband services. The advantages of improved speed and bandwidth to all citizens is being argued very strongly by the Obama administration via stimulus-related and other policy initiatives. One question is what the border is between the responsibility of the the public to pay for public communication infrastructure and the responsibility of the private sector to pay — and charge for — value added services that are made available via that broadband infrastructure. Do I necessarily want my tax dollars subsidizing high speed access to nightly episodes of **Access Hollywood**? No. But if my dear departed mother were still alive, given her addiction to old fashioned movie magazines, she might very well say “yes.”

Another question that came to my mind at the ITIF meeting was to compare the ongoing wranglings about “net neutrality” with the current national healthcare reform debate. You could argue that they are of comparable size and complexity. We’ve seen what happens when complex and expensive

issues of grave national importance, like healthcare reform, are debated in the U.S. Congress. Is it a good thing or a bad thing that so much of the “net neutrality” debate has occurred without as much public media scrutiny? What do *you* think?

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