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Position Paper: Net Neutrality and the Open Internet

What it is, what it isn't, and why it's important for consumers

Net neutrality: Although the term has been around for more than 14 years, the mention of it still triggers a debate filled with jargon and strong emotions. And though the Federal Communications Commission (FCC) finally passed working, court-approved net neutrality rules in 2015, the issue is back in the headlines because the new FCC Chair, Ajit Pai, plans to repeal them.

Understanding the Internet

Net neutrality, and the rules that support it, is pretty straightforward. Think about how the internet has worked for the last 20 or so years. The millions upon millions of websites, applications, and services that consumers enjoy are like traffic driving down a road—a massive, infinite, global amount of traffic delivering packets of data. Whether a consumer is reading an email, streaming music, checking headlines, or sharing photos, it's just a transmission of bytes being sent and received that makes it possible.

In the two decades that we've been doing all of this digital sharing, consumers have become accustomed to a free and open internet. Whether using the internet at home or on a mobile device, we can shop at any website we want, find the news we like to read, and hook up the devices we prefer to use. All of the packets of information traveling back and forth across the internet have been treated the same way. Consumers expect that legal sites or apps won't be blocked or slowed down (a practice known as "throttling"). Consumers expect that the fee they pay their internet service provider (ISP) every month means they can access *all* the websites and apps they want to visit and use, not just some chosen by the ISP.

What Net Neutrality Rules Do

Enshrining these basic principles into a rule that preserves a free and open internet has been the goal of the FCC, under both Republican and Democratic chairmen, for more than a decade. The FCC's *2015 Open Internet Order*, which was upheld by a federal appeals court in 2016, contains the net neutrality rules consumers enjoy today. Here's what it does:

- **NO BLOCKING.** ISPs are not allowed to block access to any legal website, app, service or the ability to connect a non-harmful device to the internet.
- **NO THROTTLING.** ISPs cannot slow down or degrade the quality of access to any legal website, app, service, or connected device.
- **NO PAID PRIORITIZATION.** ISPs cannot favor or speed up traffic to a website, app, service, or connected device in exchange for a fee (paid either by the consumer or the website). When people talk about internet "fast lanes" and paying for them, this is what they're talking about.
- **TRANSPARENCY.** ISPs are required to disclose fees, broadband speeds, promotional rates, data caps and allowances, network management practices, and related information to consumers.
- **INTERNET CONDUCT RULE.** In a nutshell, this rule is applied by the FCC on a case-by-case basis to ensure that ISPs cannot "unreasonably interfere with or unreasonably disadvantage" consumers' access to legal online content or websites' ability to create it.

Unfortunately, in the past, ISPs have been caught doing the very things these rules now prohibit. For example, Comcast blocked access to file-sharing applications in 2005. AT&T is currently in litigation for allegedly throttling the speed of some of its wireless customers by as much as 90 percent. And Verizon stated in federal court that,

absent net neutrality rules, it “would be exploring” paid prioritization plans. In all cases, an internet where blocking, throttling, and discrimination are allowed would look and feel very different than today’s open internet.

Why Get Rid of Net Neutrality?

The ISPs and other critics of the *2015 Open Internet Order* charge that net neutrality rules are an attempt to regulate the internet. Regulating the entire internet sounds pretty ominous, and it likely would be. However, the net neutrality rules don’t change the internet, but instead preserve its openness to all users. The rules govern access to the internet—access provided by ISPs who serve as powerful portals. ISPs didn’t create the internet and they don’t own it. By ensuring ISPs serve as impartial conduits instead of paid gatekeepers, consumers retain the power to enjoy all that the internet has to offer.

The ISPs also argue that the net neutrality rules regulate them like a utility—that is, like electricity or phone service. They counter that only “light touch” regulation is necessary because the free market will ensure that consumers choose the provider offering the best product. However, the FCC’s 2015 Order explicitly chose *not* to impose some of the more traditional forms of regulation on ISPs, like rate regulation, price caps, or requirements to share their networks with competitors. Further, most consumers still have little or no choice of ISP, giving them no alternative if their ISP engages in blocking or paid prioritization.

Finally, opponents of the net neutrality rules contend that since the passage of the *2015 Open Internet Order*, the incentives for ISPs to invest in infrastructure to expand and deploy high-speed internet (broadband) service have been chilled, and thus, investment has declined. But the facts suggest just the opposite. Recent economic studies and news articles reveal that the largest publicly traded ISPs *increased* broadband investment overall, some by very large amounts.¹ Furthermore, solely focusing on ISP investment ignores the larger investments made by other companies large and small, from Amazon to a local start-up launching a new app, who rely upon an open internet to build their businesses.

Net Neutrality Rules Are Good for Consumers and Consumers Union Opposes Their Repeal

Consumers are not clamoring for the repeal of net neutrality; in fact, evidence suggests that the majority of Americans support net neutrality rules. In May, Consumer Reports conducted a phone survey of more than 1000 people asking consumers how they would react if an ISP offered paid prioritization deals, in which it would provide the fastest, best delivery of content to those companies willing and able to pay it. 62% didn’t think this practice should be allowed. And 67% believed ISPs shouldn’t not be allowed to block the content of a competitor.

Maintaining an open internet with strong net neutrality rules is vital to consumers’ everyday experience. Our connected world is how we work, learn, interact, play and even save lives—all because of a wide open internet kept free from interference. Preserving the FCC’s *2015 Open Internet Order* means preserving the internet as we know it today, where a tiny blog can reach readers just as well as Facebook or Google. Consumers benefit when the internet is a level playing field and not a place where ISPs can pick winners and losers by charging websites and services extra for access, or blocking those who won’t agree to pay. For those reasons and more, Consumers Union **strongly opposes** any repeal of the FCC’s net neutrality rules.

A word about us. Consumers Union is the policy and mobilization arm of Consumer Reports. We are an independent, nonpartisan, nonprofit organization. We are not funded by corporations. Like our publication, we deal with facts and evidence to determine what is best for consumers.

¹ Free Press, a nonprofit organization based in Washington, DC released an economic study that shows most publicly-held ISPs have increased investment since adoption of the *2015 Open Internet Order*. The study can be found at <https://www.freepress.net/resource/108078/free-press-report-highlights-investment-title-ii-era>. The Internet Association, a trade association of leading internet companies, also released a white paper (go to <https://internetassociation.org/reports/principles-to-preserve-protect-an-open-internet/>) that highlights further research demonstrating investment is up. See also <http://www.sfchronicle.com/business/article/Bay-Area-Internet-providers-thriving-in-the-era-11200806.php> and <https://consumerist.com/2017/02/28/fcc-chair-claims-broadband-investment-at-historic-low-level-because-of-net-neutrality-thats-not-what-the-numbers-say/>