



FCC Net Neutrality Rules and Efficiency

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By Thomas W. Hazlett

The US Federal Communications Commission, seeing the internet as a fragile ecosystem under threat from opportunistic internet service providers, issued its “network neutrality” order on December 23. By January 10 it had received its first complaint – against an upstart wireless competitor providing innovative services, advanced technologies and new options for low-income consumers.

The targeting of socially valuable entrepreneurship is not an accident. The regulatory effort – “preserving the open internet” – as the FCC labels its regime, mistakes the benefits of market competition for designs of market planners.

The FCC sees danger lurking in the broadband ISP. It will steer you to websites it prefers, pocketing extra fees, either by flat-out blocking your path to others, or by “covertly blocking or degrading internet traffic” to rival sites. Special delivery deals – some sites working better than others – are seen as barriers for new, small-scale players in content and applications. “The harms that could result from threats to openness are significant and likely irreversible,” intones the FCC.

Regulation is to the rescue. ISPs will not be allowed to block access to (legal) websites, or unreasonably discriminate in the way traffic flows. Customers choose. ISPs are open. The network is neutral. What’s not to like?

On January 10 2011, we found out. MetroPCS, hit with its first formal complaint, is an upstart wireless network offering low prices and short-term contracts. As part of their \$40 a month “all you can eat” voice, text and data plan, they slipped in a bonus: free, unlimited YouTube videos, customised to run fast and clear.

Activist groups, led by Free Press, went ballistic. Their petition to the FCC declared that the mobile provider was favouring YouTube over other video sites, creating just the sort of “walled garden” that would destroy the internet. “The new service plans offered by MetroPCS give a preview of the future in a world without adequate protections for mobile broadband users,” they wrote.

The complaint performs a great public service, revealing just how net neutrality would “adequately protect mobile broadband users”. In fact, MetroPCS advances the interests of consumers by supporting enhanced access to the applications most popular with users. Such arrangements do not sabotage internet development, but drive it.

MetroPCS possesses no market power. With 8m customers, it is the country's fifth largest mobile operator, less than one-tenth the size of Verizon. Under no theory could it force customers to patronise certain websites. It couldn't extract monopoly cash if it tried to.

Indeed, low-cost prepaid plans of MetroPCS are popular with users who want to avoid long-term contracts and are price sensitive. Half its customers are 'cord cutters', subscribers whose only phone is wireless and usage is intense. Voice minutes per month average about 2,000, more than double that of larger carriers.

The \$40 plan is cheap because it's inexpensively delivered using 2G technology. It is not broadband (topping out, in third party reviews, at just 100 kbps), and has software and capacity issues. In general, voice over internet is not supported by the handsets and video streaming is not available on the network. The carrier deals with those limitations in three ways.

First, the \$40 per month price tag extends a fat discount. Unlimited everything can cost \$120 on faster networks. Second, it has also deployed new 4G technology, offering both a \$40 tier similar to the 2G product (no video streaming), but also a pumped up version with video streaming, VoIP and everything else – without data caps – for \$60 a month. Of course, this network has far larger capacity and is much zippier (reliable at 700 kbps). PC World rated the full-blown 4G service “dirt cheap”.

Third, to upgrade the cheaper-than-dirt 2G experience, MetroPCS got Google – owner of YouTube – to compress their videos for delivery over the older network. This allowed the mobile carrier to extend unlimited wildly popular YouTube content to its lowest tier subscribers.

Busted! Favouring YouTube is said to violate neutrality. The business plan contains differences that “lack any engineering merit”, and the option for consumers to access more content for a higher price irrelevant. Free Press asks, “What if that \$60 unlimited plan were \$100? What about \$600?”

The carrier responds that its customers really like YouTube and that they have no financial interest in the matter by making their subscribers happier.

The FCC has already erred. Innovators such as MetroPCS and Google should need no defence in supplying customers' superior choices. Neither consumers nor the internet are “protected” by rules hostile to co-operative efforts – even if money were to pass between firms – that expand outputs and lower prices. If the FCC is to take such ill-targeted attacks on competitive rivalry seriously, it will do far more to deter the open internet than to preserve it.

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