|  | <!DOCTYPE html> |
| --- | --- |
|  | <html> |
|  | <head> |
|  | <title>Net Neutrality 2.14.15</title> |
|  | <link rel="stylesheet" type="text/css" href="[CommentsStylesheet.css](http://k-band.us/CommentsStylesheet.css)"> |
|  | </head> |
|  |  |
|  | <body> |
|  | <header></header> |
|  |  |
|  | <main> |
|  | <article> |
|  |  |
|  | <h3 id="title">What the FCC's "net neutrality" rules mean for startups</h3> |
|  | <p id="author">Lauren Saine, February 14, 2015</p> |
|  |  |
|  | <p>The FCC wants to regulate internet service providers (ISPs), and its <a href="<http://www.fcc.gov/document/chairman-wheeler-proposes-new-rules-protecting-open-internet>"> proposed new rules</a> would help tech startups by insuring a better user experience for their customers. But the new rules don't mean the cost of connectivity will go down anytime soon.</p> |
|  |  |
|  | <p class="heading">Proposed rules</p> |
|  | <p>The FCC would impose regulations on ISPs by classifying them as <a href="<http://www.law.cornell.edu/uscode/text/47/201>"> common carriers</a> under <a href="<http://www.law.cornell.edu/uscode/text/47/chapter-5/subchapter-II>"> Title II</a> of the Telecommunications Act. The proposed regulations include open access to content and applications for end-user retail customers, and transparency of network management practices.</p> |
|  |  |
|  | <p>The open access rules include: no blocking or slowing of content or applications; no paid prioritization for ISPs' own content and applications; and no preference for ISPs' own private managed non-internet data services.....</p> |
|  |  |
|  | <p>with two huge loopholes--no blocking or slowing, <em> except </em>for "reasonable network management," and no paid prioritization <em> except</em> that zero-rating is allowed. Further, while the rules do not impose federal surcharges on internet bills, they open the door to that possibility.</p> |
|  |  |
|  | <p>And the new rules fail to regulate critical aspects of internet access at all:</p> |
|  | <ul> |
|  | <li>No price regulation</li> |
|  | <li>No right of competitors to lease "last mile" lines into homes and businesses</li> |
|  | <li>No rules for interconnection agreements</li> |
|  | <li>No rules for pole attachments</li> |
|  | </ul> |
|  |  |
|  | <!--The proposed regulations include transparency for ISP network management practices and open access to content and applications for end-user retail customers: 1) No blocking or slowing content or applications (loophole: reasonable network management allowed), 2) No paid prioritization for ISPs' own content and applications (loophole: zero-rating allowed), 3) No preference for ISPs' own private managed non-internet data services. However the new rules fail to regulate critical aspects of internet access: |
|  |  |
|  | --> |
|  |  |
|  |  |
|  | <p class="heading">Open access</p> |
|  | <p>Last year, a Silicon Valley investor laid out <a href="<http://avc.com/2014/01/vc-pitches-in-a-year-or-two/>"> what would happen</a> to startups without open internet rules. A San Francisco founder <a href="<http://www.sfgate.com/news/article/FCC-s-net-neutrality-plan-a-win-for-startups-6063187.php>"> says</a> his streaming video company will now have a better chance of competing against big players like YouTube who can pay ISPs to not slow their service to consumers; another online business <a href="<http://www.wsj.com/articles/how-white-house-thwarted-fcc-chief-on-internet-rules-1423097522>"> says</a> now their ability to compete won't depend on their ability to negotiate preferable treatment with an ISP.</p> |
|  |  |
|  | <p>Especially vulnerable to blocking and throttling have been small businesses that directly compete with the ISPs' own retail services. <a href="<https://www.sandvine.com/general/campaigns/deep-packet-inspection.html?gclid=CjwKEAiAmOymBRD0_evS4aTh2hUSJAB7FkhyRvgqkv-PckV2wTL5NET1hrQKW4MbcOh8E_NXEuy3RBoCPTzw_wcB>">Deep packet inspection</a> allows ISPs like AT&T and Comcast to see into IP packet data, so they can identify and slow competing services--even if the bits are delivered to them via a third party such as Level 3 or Cogent.</p> |
|  |  |
|  | <p>The rules don't address zero-rating (sponsored data, or reverse prioritization), and ISPs and other infrastructure owners are jumping on this. Google is <a href="<https://gigaom.com/2015/02/13/report-google-following-facebook-down-the-zero-rate-rabbit-hole/>">reportedly</a> discussing zero rating of Android apps on their Android One phones.</p> |
|  |  |
|  | <p class="heading">Transparency</p> |
|  | <p>Requirements will allow startups to determine whether degraded service is due to legitimate network management needs.</p> |
|  |  |
|  | <p class="heading">Cost of connection</p> |
|  | <p>Price regulation is not on the table. Price discipline is supposed to come from a competitive market, but the new rules won't much help competitor ISPs to enter the marketplace. Without interconnection and infrastructure sharing requirements, small ISPs such as Webpass, MonkeyBrains, and <a href="<http://www.telecompetitor.com/sonic-net-gigabit-plans-not-limited-california/>"> Sonic.net</a> will still have to lay their own fiber in order to reach customer homes and businesses. So most customers will still have no choice but to pay the price AT&T or Comcast demand for their data connections.</p> |
|  |  |
|  | <p class="heading">No last mile sharing</p> |
|  | <p>Back in 2002, the FCC declared that ISPs were not common carriers. A small competitor ISP called Brand X wanted to use privately-owned cable company lines (which use public rights of way) to reach customers, but the Supreme Court <a href="<http://www.law.cornell.edu/supct/pdf/04-277P.ZO>"> sided with the FCC.</a> The current FCC Chair himself <a href="<http://www.wired.com/2015/02/fcc-chairman-wheeler-net-neutrality/>"> ran</a> a network startup that went broke when it couldn't get access to cable company lines.</p> |
|  |  |
|  | <p>The new rules are not public utility\* regulation. In a public utility regime, infrastructure owners have to give access at reasonable prices to competitors wishing to lease their infrastructure. For example, the British <a href="<http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1563&context=fclj>"> structural separation</a> model of public utility regulation requires British Telecom (BT) to give its retail affiliate access and wholesale services on the same terms it gives the affiliate's retail competitors. That is not happening here in the U.S.</p> |
|  |  |
|  | <p class="heading">Interconnection agreements</p> |
|  | <p>There are no requirements for interconnection agreements, only a general "just and reasonable" standard that would allow aggrieved parties to petition for FCC review.</p> |
|  |  |
|  | <p>Level 3 <a href="<http://blog.level3.com/open-internet/observations-internet-middleman/>"> describes</a> the importance of good interconnects and how congested interconnection points, when peers fail to upgrade their ports, threaten the customer experience. In a <a href="<http://www.telecompetitor.com/behind-the-level-3-comcast-peering-settlement/>"> peering dispute</a> involving Nexflix content, Level 3 famously agreed to pay the price extracted by Comcast to reach its customers. <a href="<http://apps.fcc.gov/ecfs/document/view?id=7522726645>"> Access bottlenecks</a> are a continuing source of contention.</p> |
|  |  |
|  | <p>The proposed rules don't directly address colocation, but locally, Webpass and Sonic.net <a href="<https://ams-ix.net/connected_parties>"> are using</a> the new <a href="<https://gigaom.com/2015/02/04/amsterdam-internet-exchange-broadens-its-foothold-in-the-us/>"> AMX-IX Bay Area,</a> a nonprofit member-coop on the European model, which offers lower prices than traditional IXPs.</p> |
|  |  |
|  | <p class="heading">Pole attachments</p> |
|  | <p>Although competitors would have the right to "fair access" to poles and conduits under the new Title II regime, no specific rules have been proposed.</p> |
|  |  |
|  | <p class="heading">Surcharges</p> |
|  | <p>Finally, the proposal would not subject internet connections to <a href="<https://apps.fcc.gov/edocs_public/attachmatch/DOC-330829A1.pdf>"> universal service surcharges</a> like those on telephone bills. However, the universal service fund now supports broadband, and putting ISPs under Title II makes surcharges a real threat.</p> |
|  |  |
|  | <p class="heading">\*Background: <a href="<http://www.fclj.org/wp-content/uploads/2013/01/Cherry_v59i3_forum.pdf>"> common carrier v public utility</a></p> |
|  | <p>Common carrier law can be traced back to old England, when courts imposed special responsibilities on certain types of businesses. Those businesses had a special duty of care to customers because of their unique opportunity to do harm, as custodians of people and goods--passenger carriage, shipping, trucking, innkeeping, and so on--and they had special importance as engines of economic activity. They were required to serve all customers, at the same price and under the same conditions.</p> |
|  |  |
|  | <p>Public utility law developed in modern times through state law. Public utilities are "public" in that they require high up-front infrastructure investments and are thus natural monopolies, and they are "utilities" in that their services are essential to people's everyday lives. Public utility regulation requires those companies to serve all customers in their territories and serve them at reasonable prices, with certain quality of service and consumer protection requirements.</p> |
|  |  |
|  | <p>Common carrier law protects access by end-users in retail markets; public utility law also protects access by competitors in wholesale markets. Companies that are neither common carriers nor public utilities deal with customers and each other by contract. This is currently how long-haul internet transport owners <a href="<http://www.corp.att.com/peering/>"> peer</a> with each other to form the global IP network.</p> |
|  |  |
|  | <p id="update">Updated February 26, 2015: The FCC voted to approve the new rules on February 26, 2015. As Steve Lohr of the New York Times <a href="<http://www.nytimes.com/2015/02/26/technology/limited-high-speed-internet-choices-underlie-net-neutrality-rules.html?_r=1>">points out, </a> the new rules will not bring competition to the marketplace--they are intended to prevent the dominant internet suppliers from abusing their market power."</p> |
|  |  |
|  | </article> |
|  | </main> |
|  | </body> |
|  | </html> |