



Net Neutrality Rules Taking a New Path

CYBR 4400 / 5400: Principles of Internet Policy, Lecture 3-2

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Today's Lecture (cont'd)

- ❖ Complete History of Net Neutrality Lecture
- ❖ Net Neutrality Rules Taking a New Path Lecture



“Modern” Title II



- ❖ Forbearance of over 700 rules
- ❖ No unbundling of last-mile facilities
- ❖ No tariffing
- ❖ No rate regulation
- ❖ No cost accounting rules
- ❖ Application of Sections 201, 202, and 208 of Communications Act

Section 201 of Title II

- ❖ Requires common carriers to furnish communications services “upon reasonable request”
- ❖ Carriers must establish physical connections with other carriers where the Commission finds it to be in the public interest
- ❖ Charges shall be just and reasonable

Section 202/208 of Title II

- ❖ Section 202: Unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services
- ❖ Section 208: provides complaint process for enforcement of applicable provisions of the rules (establishing any person/entity can file)

Exceptions to Forbearance

- ❖ Section 222: Protecting consumer privacy
- ❖ Sections 225 / 255 / 251(a)(2): Ensuring disabilities access
- ❖ Section 224: Ensuring Infrastructure Access (pole attachments)
- ❖ Section 254: Promoting universal broadband



Restoring Internet Freedom Rules

“We eliminate burdensome regulation that stifles innovation and deters investment, and empower Americans to choose the broadband Internet access service that best fits their needs.”

Problems New Rules Address

- ❖ Government control of the Internet
- ❖ Decline in investment
- ❖ Loss of employment
- ❖ Weakened online privacy
- ❖ Increasing Digital Divide

Policy Objectives

- ❖ End utility-style regulation and restore market-based policy approach to preserve Internet freedom
- ❖ Require ISPs to be transparent
- ❖ Eliminate Internet conduct rules and other ex ante regulations
- ❖ Promote infrastructure investment throughout America
- ❖ Promote innovation and consumer choice among ISP and edge provider services
- ❖ Promote broadband deployment in rural America with goal to eliminate Digital Divide

Policy Changes

1. Reinstating classification of BIAS as information service

- ❖ ISPs offer BIAS users “capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”
- ❖ Not “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received,”
- ❖ Light-touch application of Title II framework indicates unsuitability
- ❖ Internet traffic exchange, premised on privately negotiated agreements or case-by-case basis, not a telecommunications service

Policy Changes (cont'd)

2. Reinstating classification of mobile BIAS as private mobile service

- ❖ Classify all fixed and mobile BIAS as information services
- ❖ Categories of wireless telephone licenses
 - ❖ Commercial Mobile Radio Services (CMRS): Common carriers - any mobile service provided for profit, interconnected to the PSTN, and provided to the public
 - ❖ Private Mobile Service: Not CMRS nor common carriers - dispatch-oriented service independent of PSTN

Policy Changes (cont'd)

3. Returning broadband privacy authority to the Federal Trade Commission (FTC)

- ❖ History of policing online company's privacy practices
- ❖ Title II order had created role for FCC to regulate ISP privacy
- ❖ Consumers to be “treated consistently across the Internet ecosystem”

Policy Changes (cont'd)

4. Lite-Touch Regulatory Framework

- ❖ Believes *ex ante* regulatory intervention in market is unnecessary versus *ex post* enforcement
- ❖ Eliminating the Internet conduct standard
- ❖ No need for no-blocking rule
- ❖ No need for no-throttling rule
- ❖ No need for no-prioritization rule
- ❖ Need for the transparency rule

New Transparency Rule

- Retain 2010 transparency rule, stated as (para 215):

“Any person providing broadband Internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient to enable consumers to make informed choices regarding the purchase and use of such services and entrepreneurs and other small businesses to develop, market, and maintain Internet offerings. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.”

New Transparency Rule (cont'd)

- ❖ Increases likelihood ISPs will abide by open Internet principles
- ❖ Network management practices to disclose
 - ❖ From 2010: congestion management, application-specific behavior, device attachment rules, and security practices
 - ❖ New: any blocking, throttling, affiliated prioritization, paid prioritization in which they engage

New Transparency Rule (cont'd)

- ❖ “Reasonable network management” (para 220)

a practice “appropriate and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.”

New Transparency Rule (cont'd)

- ❖ Performance Characteristics (para 221) disclosures
 - ❖ Service description including service technology, expected and actual access speed and latency, and suitability of the service for real-time applications
 - ❖ Impact of non-BIAS data services on system capacity and performance of BIAS
- ❖ Commercial terms: price, privacy policies, and redress options

New Transparency Rule (cont'd)

- ❖ Eliminated disclosures from 2015
 - ❖ Packet loss
 - ❖ Geographically-specific disclosures
 - ❖ Performance at peak usage times
- ❖ Eliminated small provider exemption

Reaction to Rules

- ❖ Fight to Save Net Neutrality
- ❖ Burger King on Net Neutrality!?!
- ❖ How to tell if your provider is throttling your internet



Timeline Summary

- ❖ Computer Inquiry II established 2 service types
 - ❖ Basic (subject to Title II common carrier regulation of 1934 Act) or Enhanced (ill-defined Title I rules) services
- ❖ Telecom Act of 1996 defined two entities
 - ❖ Telecommunications carriers (Title II) or Information service providers (Title I unregulated)
- ❖ FCC classified DSL as a telecommunications service (1998)
- ❖ FCC classified cable broadband as an information service (2002)

Timeline Summary (cont'd)

- ❖ FCC classified DSL (2005) and wireless (2007) broadband as information services
- ❖ FCC ordered Comcast to new network management approach and transparency based on “ancillary jurisdiction” (2008)
 - ❖ Vacated because FCC failed to identify statutory authority that was reasonable ancillary
- ❖ FCC’s Preserving the Open Internet rules based upon same theory of ancillary jurisdiction (2010)

Timeline Summary (cont'd)

- ❖ FCC sought comment on reclassification of broadband Internet services in 2010, but adopted Open Internet rules instead
- ❖ Also in 2010, FCC concluded “broadband deployment to all Americans is not reasonable and timely” in Sixth Broadband Deployment Report
- ❖ U.S. Court of Appeals rules in *Verizon v. FCC* (2014) vacates portions of Open Internet Order (2010) that could only be applied to common carriers
- ❖ FCC’s Protecting and Promoting the Open Internet rules based upon Title II statutory authority (2015)
- ❖ FCC’s Restoring Internet Freedom rules eliminating Title II statutory authority and reclassifying BIAS as information service (2018)