Net neutrality: Life in the fast lane?

By Jenny L. Holmes and Karina Puttieva

Internet users of today may be facing a rude awakening. Many of us take for granted that when we go on the Internet, we will be connected to whatever website we desire without having to worry about connection speed or blocked content. For years, net neutrality has protected just that.

In 2015, the Federal Communications Commission (FCC) adopted the 2015 Open Internet Order and established net neutrality rules that kept the Internet free and without interference. Under these rules, Internet service providers (ISPs) were classified as common carriers under Title II of the 1996 Communications Act. This classification prevented ISPs from giving certain websites and services priority over others and moving their data faster.

However, on December 14, 2017, the FCC voted 3–2 to repeal the 2015 Open Internet Order and replaced it with the Restoring Internet Freedom Order. This order reclassified broadband Internet access service as a private mobile service governed by Title I of the Communications Act and removed the limitations placed by Title II. ISPs can now adjust the speed of access to certain content and block others.

How will it work?

A joint Memorandum of Understanding from the FCC and the Federal Trade Commission (FTC) outlined the nature of the agencies’ collaboration in regulating ISPs following the new order.

The FCC will monitor broadband market entry barriers and review complaints it receives from consumers. This appears to address net neutrality advocates’ concern about the potential for creating a monopoly for certain companies at the expense of smaller players, stifling the prospect of innovation. The FCC will also be able to take action against companies that do not inform the public properly of any throttling, blocking or prioritization practices. This means that companies such as Comcast and Verizon will have to disclose to their users whether they plan to block or slow down certain sites, and the FCC will be tasked with overseeing their transparency.

In turn, the FTC will be able to take action if a company’s disclosures to consumers about prioritizing certain websites services are not accurate. Furthermore, the FTC will still be able to take action against ISPs that engage in any marketing, advertising or promotional activities deemed deceptive, unfair or unlawful pursuant to § 5 of the Federal Trade Commission Act 15 U.S.C. § 45.
Additionally, to prevent duplicative or conflicting actions, both the FCC and the FTC will meet regularly to discuss any investigations against ISPs. The agencies will also share legal and technical expertise when necessary, collaborate in consumer outreach and education, and securely share consumer complaints. Each agency will establish Designated Liaison Officers specifically to collaborate in this matter.

**What this means for the consumer**

Consumer advocacy groups fear that the new order gives free rein to broadband providers to block or throttle broadband services, as long as they inform users first. Advocates for net neutrality worry that the FTC and FCC will only intervene when an ISP is deceiving the public.

Further, consumer advocacy groups believe this order infringes on freedom of speech and expression because ISPs can censor content. There are no regulations to prevent an ISP from prohibiting access to a blog, news source or even another business if there is content the ISP does not agree with.

Additionally, when net neutrality was in place, ISPs could not raise prices on services based on speed and all Internet users had a relatively even playing field. Without net neutrality, ISPs can charge more for increased speed.

However, supporters of the new order have lauded it as a move to reduce unnecessary government regulation and allow healthy competition to flourish, bringing consumers only the best the market has to offer. ISPs are permitted to charge more for increased data consumption and, therefore, will have funds to improve their infrastructure.

**What’s next**

Representative Marsha Blackburn (R-TN) has introduced a bill in response to the repeal of net neutrality. The Open Internet Preservation Act would prevent blocking or lowering the quality of legal web traffic, but it would also ban the FCC from making rules that go beyond those two requirements. The act would override any state net neutrality law and defines broadband as an Internet service and not a common carrier.

Concurrently, Senate minority leader Chuck Schumer (D-NY) has said that he will force a vote to nullify the repeal with a Congressional Resolution of Disapproval. This, however, would be vulnerable to a veto by the president.

While many experts say that consumers will not see immediate changes in their Internet usage, one thing is clear: This debate is far from over.

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