

# THE DENVER POST

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## Net neutrality: How it might affect consumers, startups and Level 3

By Andy Vuong

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CBS is broadcasting Sunday's Denver Broncos playoff game and also streaming it live over the Internet for viewers without access to a TV. Imagine a scenario where CenturyLink broadband subscribers receive an uninterrupted stream of the game on their Web browser while customers of Comcast, owner of rival network NBC, are intentionally stuck with choppy Internet footage.

The situation can now play out after a [federal appeals court last week threw out rules](#) that prevented Internet service providers such as Comcast and CenturyLink from favoring or discriminating against online content and services.

In other words, broadband providers can now allow a Netflix movie, for example, to stream perfectly to their subscriber's home while blocking a YouTube video based on financial deals they cut with individual companies.

It is the chief, but not the only, concern that consumer advocates and others have about the appeals-court panel striking down the Federal Communications Commission's so-called [network-neutrality rules](#).

Colorado technology leaders fear that the decision could hurt the state's growing startup ecosystem because it opens the door for Internet service providers, or ISPs, to offer preferential treatment to deep-pocketed and established companies that pay a premium.

"The ruling allows the cable and telecommunications gatekeepers to block any website or app they want and to give preference for 'high-speed lanes' to firms that they own or to firms willing to pay more," said Danny Katz, director of the Colorado Public Interest Research Group.

ISPs say they support an open Internet but also want the ability to recoup the costs of sweeping network build-outs and upgrades. CenturyLink, which acquired Denver-based Qwest in 2011, said it is urging the FCC to limit government regulations that impede such investment and innovation.

In a prepared statement, Comcast said it has not blocked, and will not block, a subscriber's "ability to access lawful Internet content, applications, or services."

"Comcast's customers want an open and vibrant Internet, and we are absolutely committed to deliver that experience," the company said.

### **FCC's next step unclear**

In the ruling issued last week, the appeals court in Washington, D.C., said the FCC doesn't have authority to regulate ISPs because of the way their service has been classified.

The FCC, which adopted the net-neutrality rules in 2010, doesn't consider broadband as a common-carrier service, the classification for regulated telephone service.

Tom Wheeler, who took over as FCC chairman in November, [said last week that the agency](#) "is not going to ignore the historic reality that when a new network transitions to become an economic force that economic incentives begin to affect the public interest."

Besides reclassifying broadband as a common-carrier service or redrafting the rules, the FCC can also appeal the appellate court's decision. Wheeler didn't specify what the agency would do next.

Jim Harper, director of information-policy studies for the libertarian think tank Cato Institute, expects the FCC to reclassify broadband and treat it like a public utility.

He wrote [in a blog post](#) that net neutrality "is a good engineering principle, but it shouldn't be a legal mandate."

"Companies that experiment with network management, pricing, internal subsidy and so on can find the configurations that serve widely varying consumers and their differing Internet needs the best," Harper said.

### **Startups could suffer**

The topic is drawing attention within Colorado's budding tech and startup community.

In 2013, 118 Colorado startups launched and 122 tech companies raised \$461 million in funding, according to a recent report released by Built in Colorado. With help from public and private dollars, the community [now ranks among the nation's leaders](#) in high-tech startup density.

That momentum could be curtailed if a class system is created for the Internet, officials say.

"The biggest risk is it can stifle innovation," said Erik Mitisek, CEO of the Colorado Technology Association. "It can truly stifle the growth of some of the most innovative products because they could be refused access to what is today an open network inside the home."

Mitisek said a walled-garden approach to the Internet could hurt fast-growing startups such as Denver-based Craftsyt, which offers online quilting and sewing classes.

"It's not out of the scope of view that Craftsyt would have to pay to deliver that content over specific networks, which would increase their costs and decrease their competitiveness," Mitisek said.

In another wrinkle to the debate, Broomfield-based Internet network operator Level 3 Communications says it already struggles to deliver content to subscribers of certain ISPs.

Level 3 carries data from the likes of Net-flix, Fox and Major League Baseball to ISPs, which then deliver that content to home subscribers.

"We're trying to send them Internet traffic, and the interface between our network and their network is congested," said Mike Mooney, Level 3's general counsel. "We have said we need you to make that interconnection point larger — and they have said, 'Not unless you pay us essentially a tax to access our network.' "

While such intercarrier deals were outside the scope of the FCC's 2010 net-neutrality rules, Level 3 is pushing the agency to reconsider in the wake of the appeals court's decision.

ISPs have argued that Level 3 is simply trying to deliver more data, as it lands new deals with content creators, and not pay for the costs associated with the increased load.

Level 3 settled its [high-profile dispute](#) with Comcast last year but is continuing its battle with other broadband providers. Details of the Comcast deal weren't released.

Mooney said end users are ultimately affected by a poor connection between ISPs and other network operators.

"You ever watch a YouTube movie and sometimes the playback catches up to the little playbar at the bottom? That can be caused because the interconnection point between the YouTube server and your ISP is congested," Mooney said. "People experience this stuff all the time. They might just not know why."