

# The Journal Times

## **Tom Still: Net neutrality debate not as cut and dried as many believe**

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By any standard, the internet ranks as one of the leading innovations of our time. It has revolutionized everything from commerce to medicine to entertainment, all within the confines of a generation.

For the first 25 years or so, the internet grew largely without government regulation. That's one reason the Federal Communications Commission voted this week to reverse an Obama-era rule that some say turned back the clock to 1930s rules written when all telephones were black, hard-wired and hung on a wall.

After Obama urged that high-speed internet service providers should be regulated through “the strongest possible rules to protect net neutrality,” the FCC in 2015 adopted an approach that required internet service providers such as Verizon, Comcast and AT&T to treat all web traffic equally and not charge data-heavy content providers for better access.

Although the FCC appeared on course to adopt a hybrid rule to charge broadband “hogs” while protecting small users, the adopted rule took a new – or, more accurately, old – regulatory approach. It reclassified ISPs as common carriers under Title II of the 1934 Telecommunications Act, treating the service as a public utility.

This is the same overly broad approach to regulation that spawned the old Ma Bell oligarchy and stifled telecom innovation for generations – until the internet basically changed everything by coloring outside the lines.

“Net neutrality” is one of those buzzwords that inspires populist support, but it's not as simple as the big guys conspiring to shove mom-and-pop websites into the internet's slow lane.

Behind the scenes, it's also about a small handful of heavy users – the internet's so-called “lane hogs” – hoping to avoid paying for the right to dominate available capacity.

Internet capacity today is being driven by video in its many forms, not voice, text or website traffic. Video consumes huge amounts of internet capacity and ISPs contend they are struggling to keep up through investments in wireless networks and other backbone services.

There are internet corporate elephants on both sides of the debate, of course, and entrepreneurs are rightfully worried about not getting trampled in the tall grass. If the internet had not been free and relatively open over the past 20-plus years, entrepreneurs may well have been deterred from creating a wide array of services and products. That kind of innovation has transformed the economy and created millions of jobs.

The FCC's rule won't take effect for 60 days. Meanwhile, some state attorneys general are lining up to file suit, largely on jurisdictional and free-speech questions that may merit further study. Questions about cybersecurity and piracy, which critics say increased with the Obama rule, should also be addressed.

In the meantime, many internet safeguards remain in place. Much internet governance is restricted to a nonprofit, multinational body based in California. The Internet Corporation for Assigned Names and Numbers maintains a host of technical standards, which allows traffic to flow throughout the global communications network. ICANN is a private organization with an international board of directors, but there is already some oversight by Washington because it's a U.S.-based corporation.

Given past decisions, it seems unlikely the FCC will turn its back on internet openness – even with the commission's 3-2 party-line vote to repeal the Obama rule.

As one observer noted, just because ISPs may be able to charge more in the future, there's no reason to think such moves are automatic.

“If the internet was not a terrible dystopia in 2014, there's not a ton of reasons to think that companies are going to do any of these awful things that they didn't seem to have any reason to do before,” Julian Sanchez of the libertarian Cato Institute told Wisconsin Public Radio last month. Sanchez is a former editor for Ars Technica, a technology news site.

Rather, Sanchez predicted, ISPs and others may experiment with several approaches and settle on those consumers like.

Tim Wu, the Columbia University professor who came up with the phrase “net neutrality” 15 years ago, has always set the issue in perspective. “Absent evidence of harm to the local network or the interests of other users, broadband carriers should not be allowed to discriminate in how they treat traffic on their broadband network on the basis of internet criteria,” he wrote.

In other words, broadband ISPs should be able to throttle bandwidth hogs.

The internet is one of the uniquely American innovations of the last quarter century. It had previously functioned well with light-touch regulation and self-policing functions. At the same time, free speech and innovation can't be held hostage to unbridled pricing. Let's hope for common ground that protects consumers while allowing the internet not to slow to a crawl.