

New 'net neutrality' rules don't go far enough

January 3 2011, By Troy Wolverton

Federal regulators last week put the force of law behind net neutrality. But the new rules don't do enough to protect consumers and small companies on the Net. And thanks to the regulators' timidity, they may not last very long.

Net neutrality is an arcane term that basically means consumers should be able to access any site or service they want on the Internet. It also means publishers of information or developers of applications or services can distribute their data to any Internet user without having to pay a toll to the users' network provider.

That's basically how the Internet functions now. Generally, consumers don't have to worry about their Internet providers blocking them from accessing particular websites or slowing down their access to certain sites. But rules guaranteeing net neutrality are needed because of the lack of competition among Internet service providers and the growing power they wield.

Today most consumers have - at best - two choices for broadband Internet access: the cable company and the phone company. And those providers have incentives to control what their customers can access on the Internet because they charge for proprietary services such as television programming and phone calling that consumers can get more cheaply over the open Internet.

On the surface, the Federal Communications Commission's new rules - at least as they've been described by the commission - would put in place

the major elements needed to guarantee net neutrality. They would require Internet providers to make public how they are managing their networks and would bar them from blocking any service, site or application.

They would also prohibit landline providers such as Comcast from "unreasonably" discriminating against particular traffic or applications. And the commission indicated it would frown on arrangements where some sites or services pay Internet providers to have their data treated preferentially above those of other sites and service.

But the FCC has yet to make public the actual rules it passed. That's one big red flag because the wording of the rules will largely determine their effect.

One potentially big loophole is how the commission will define what is "unreasonable" in terms of service providers managing their networks. Depending on how the rules are written, they could allow Comcast and other providers to throttle down Internet speeds to provide more bandwidth for their other services, such as television programming or phone calls.

The commission should encourage service providers to make their data pipes bigger rather than give them latitude to fill the current pipes with their own proprietary services.

Worse, the rules would allow providers of wireless Internet access such as Verizon Wireless and Sprint to discriminate against particular Internet sites, services and applications in favor of their own services or those of paying partners.

With the explosive growth of smartphones, tablets and laptops with 3G data cards, the way consumers connect to the Internet is quickly being

transformed. In the near future, the Internet that most consumers will know will be the one they connect to wirelessly. And what that experience will look like shouldn't be left up to the wireless service providers.

We've already been there. Before the iPhone came along, the types of data services consumers could access on their phones were largely determined by the cell phone companies. Companies with cool apps or Web services had to pay the wireless companies to have them listed on their devices.

No thanks. I don't want to go back to those days, and you don't either.

But the biggest problem with the new rules is that they rest on a weak foundation. Under the Bush administration, the FCC essentially deregulated broadband Internet service providers. The move came back to bite the FCC when it tried to crack down - in the interest of net neutrality - on Comcast for throttling customers' access to BitTorrent, a file-sharing network. Last year, a court ruled that the FCC had no power to regulate what Comcast was doing, precisely because the FCC had deregulated broadband.

Consumer advocates have urged the FCC to reverse course and re-regulate broadband [Internet access](#). But in the face of intense industry lobbying, the FCC has demurred.

Instead, it based its new rules on a recent ruling it made determining that broadband services aren't being adequately deployed to all Americans. That ruling gave it the legal authority to promote competition in broadband access that would lead to wider availability and adoption. The commission argues [net neutrality](#) would help foster that competition by encouraging the development of new Net services and applications that will attract new users and greater demand for bandwidth. That demand,

in turn, will encourage new investment to build out the broadband networks.

You better believe, though, that assertion will be tested in court. And if the Comcast ruling is any indication, the courts will frown on such mushy reasoning. So the new rules, as weak as they are, could soon be struck down in a court ruling.

It's too bad the FCC couldn't find the courage to take a stronger stand. The cost may well be the demise of the [Internet](#) as we've known and loved it.

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