

# New rules could kill Net neutrality and the Internet as we've known it

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When a lobbyist is named head of the agency that regulates the industry he represented, perhaps we shouldn't be surprised if he acts in the best interests of his former employers.

That seems to be the lesson coming out of the Federal Communications Commission. Tom Wheeler, a onetime cable industry lobbyist who took over as chairman of the agency last fall, is showing more sympathy for the big telecommunications companies than for consumers when it comes to Net neutrality, the notion that all Internet traffic should be treated the same.

Under the guise of restoring rules governing Net neutrality, Wheeler appears to be gutting them - much to the benefit of the big broadband providers.

Wheeler has proposed rules that would allow the Internet providers to create fast lanes and toll roads for particular websites and services. Those new toll roads would be great for the broadband companies, allowing them to thwart competition and bring in new revenue. But they'd be terrible for consumers, who would face increased costs and potentially fewer choices for Web content.

"The rules that we hoped would enshrine Net neutrality would solidify a nonneutral Internet instead," said John Bergmayer, a senior staff attorney at Public Knowledge, a consumer interest group.

Also known as open Internet rules, Net neutrality is the principle that Internet service providers should treat all legal data on their wires equally without showing preference. The intent of such rules is to bar providers from blocking or slowing access to certain websites or services - or providing priority access to them.

Whether consumers and Internet companies would continue to enjoy the protections of Net neutrality has been in question since January, when a federal appeals court threw out the FCC's open Internet rules. The court ruled the FCC could impose the rules on Internet providers only if it considered them to be "common carriers" like railroads or telegraph operators, something the agency, in a fit of deregulatory fervor in the early 2000s, had declared they weren't.

In the wake of the court decision, the FCC had three basic options: It could appeal the decision to the Supreme Court, go back and reclassify Internet service providers as common carriers, or try to rewrite the rules so they somehow still protected Net neutrality but no longer looked like common carrier regulations. Of these, the only certain path to guaranteeing Net neutrality was reclassifying the Internet service providers as common carriers.

That was the path the court had endorsed, and the one that made sense to most supporters of Net neutrality. Broadband providers are in the business of transporting data, just like railroads are in the business of transporting goods, and ought to be treated similarly.

But Wheeler has resisted that course and rejected out of hand appealing the court's decision. Instead, he chose the path that simultaneously offers consumers the least protection, is on the least stable legal foundation, and offers the biggest upside to the big telecommunications providers.

The proposed new rules, which Wheeler began circulating to his fellow

commissioners this week, look a lot like the ones the court struck down. But instead of barring providers from discriminating against particular websites or services, the new rules would allow them to do just that if it were "commercially reasonable."

As several public interest groups noted, there's good reason to worry about that new phrase. In its ruling, the court said that under a "commercially reasonable" standard, broadband providers would be able to charge certain websites or services for "high-speed, priority access" to their customers. That's something they couldn't do under the former open Internet rules.

Those kinds of fast lanes would be great for broadband providers. They could use them to make their own services compare favorably to those of competitors or use them to gain a new source of revenue by charging companies like Netflix or Hulu for better throughput.

But for everyone else, those fast lanes would be awful. The fast lanes would probably be affordable only for the biggest companies and not for potential upstarts, a situation that would limit competition and innovation. And any extra costs that Netflix or Hulu might incur from the toll lanes almost certainly would be passed on to consumers.

In a blog post, Wheeler tried to dismiss such concerns, arguing that the change to a "commercially reasonable" standard is merely semantic. As before, the new rules would give the FCC the power to bar [broadband providers](#) from taking steps that are anti-consumer or anti-competitive, he said.

If the new rules are merely an example of a distinction without a difference, they are likely to be thrown out just like the earlier ones, and we'll be back at square one yet again. But if the proposed rules are enacted and upheld, Net neutrality is dead - and so too is the Internet as

we've known it.

**More information:** *Troy Wolverton is a technology columnist for the San Jose Mercury News.*

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