

Time for FCC to clean up its net neutrality mess

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When it comes to promoting "net neutrality," the principle that all traffic on the Internet should essentially be treated equally, the Federal Communications Commission has created a muddled mess.

On Thursday, the agency released its long-expected new proposal to revive [net neutrality](#) rules that a federal appeals court struck down earlier this year. As had been previously leaked, the agency recommends that [broadband providers](#) be allowed to create paid fast lanes on the Internet and that providers continue to be lightly regulated.

But the proposal throws open the possibility of doing the exact opposite. It seeks comment from the public on whether the agency ought instead to ban all such fast lanes. And contrary to the plan of Chairman Tom Wheeler, it opens the possibility of reclassifying Internet providers as "common carriers," which would subject the companies to far more regulatory scrutiny.

It's as if the agency is of two minds about the direction forward - that, or it doesn't have the courage to fully embrace its own recommendations.

That's troubling, because it leaves the future of net neutrality and the Internet itself in question. An Internet that allows rich companies to pay for fast lanes to consumers while relegating all other traffic to congested slow lanes remains a distinct possibility.

A decision may not come soon. The FCC has opened the proposal up for

a four-month public comment period. It then could embrace the fast-lane proposal, reject it or do something in between. Or it could scrap the proposal and start all over again. For now, it is unclear what the agency will do.

But the vacillation and uncertainty is also a sign of progress.

Last month, Wheeler appeared set to propose a new neutrality rule that would unambiguously endorse the idea of Internet fast lanes and reject tougher regulation of Internet providers. But over the last several weeks, that initial proposal has been the target of intense criticism.

Internet companies, public interest groups and plain old common citizens by the thousands signed petitions or sent letters to Wheeler and his fellow commissioners protesting the toll-lane plan. Congressmen and senators joined in, urging the FCC to go a different direction.

In reaction, Wheeler rewrote the proposal. While he didn't ditch his original idea, he did incorporate many of the suggestions from his critics, offering them as alternatives to his recommended plan. The result is the wishy-washy, "we think we should do this, but we could also do that" proposal released Thursday.

That proposal represents the latest attempt by the FCC to enshrine some notion of net neutrality, also known as the "Open Internet."

The principle of net neutrality, which would bar broadband providers from blocking or slowing access to particular Internet apps, sites or services, has informally governed the Internet since its foundation, and is related to similar rules that governed phone calls, the transmission of telegrams and postal service. Although net neutrality was formally embraced by the FCC early last decade, it has been in and out of legal limbo for the last four years.

That's because twice over that time, a [federal appeals court](#) has struck down the FCC's Open Internet rules, arguing that the agency hadn't shown that it has the authority to mandate them. The most recent ruling came in February, when the court said that the rules treated broadband providers like common carriers, something that wasn't allowed because the agency had explicitly stated years before that such companies weren't actually common carriers, such as railroads and the Postal Service, which are required to treat all customers equally.

That ruling explicitly said that one of the ways the Open Internet rules treated providers like common carriers was that it prohibited them from selling fast lanes to individual websites or services.

The February ruling left the FCC with two basic options if it wanted to reinstate some form of net neutrality. It could recraft its rules to allow for Internet fast lanes, or it could reclassify broadband providers as common carriers.

Wheeler has been reluctant to go down the reclassification route. But that's the path that his critics think is necessary to guarantee net neutrality going forward.

My view is that it's time to make some more noise. It's time for the FCC to clear up its mess, reject the fast lanes and endorse real net neutrality.

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