Battle for net neutrality isn't over

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Credit: Wikipedia

If you thought the fight over net neutrality ended when the Federal

Communications Commission issued its strong new "Open Internet" rules last year, think again.

The new rules are under attack. Internet providers are challenging them in the courts and are trying to evade them with new kinds of business plans. Even if they survive the legal challenge - and I think they will - they could still be undermined by broadband providers like Comcast and AT&T.

Either way, the threat to the open nature of the Internet remains worrisome and real.

"The really big move is turning the Internet into the equivalent of a cable system, where it's a managed network," said Susan Crawford, a professor at Harvard Law School and an outspoken critic of the big broadband providers. "If Comcast and these guys get away with this, other carriers around the world will try to do the same thing."

Net neutrality is the principle that Internet providers ought to treat all network traffic the same - they shouldn't block or throttle access to certain sites, apps or services nor, alternatively, give preferential treatment to them. The idea dates back to the early days of the Internet, and the FCC has been trying for the last decade to make it legally enforceable.

Last year, it looked like the agency had finally done just that. With its Open Internet Order, the FCC gave net neutrality the strong legal foundation it previously lacked.

The broadband industry is challenging the new rules, but there's good reason to believe the courts will uphold them. In crafting the new rules, the FCC basically followed a blueprint provided by the same court that's now evaluating them.

Even if the rules pass muster with the courts, the principle of net neutrality faces a potentially bigger and more dangerous problem, a set of business plans known collectively as "zero rating."

Zero rating is the practice by broadband providers of offering customers access to particular apps, sites or services for free or without tapping into customers' limited monthly allocations of bandwidth. Examples include Facebook Zero, which offers consumers in developing countries free access to the social network; AT&T's Sponsored Data service, which the company pitches as a kind of 1-800 service for the Internet; and T-Mobile's new Binge On service, which allows users to stream video from certain providers without that data counting against their monthly caps.

On their face, the zero-rating plans sound consumer-friendly and broadband providers tout them as such. Who doesn't want to get something for free or be able to access the Internet without having to tap into any of your precious data bits? But they actually have the potential to be pretty pernicious.

That's because zero-rating programs can also profoundly influence consumer behavior. Think about it: Which site are you more likely to visit - the one that's free or the one that costs you money or taps into your data allotment?

Because of those incentives, zero-rating programs put broadband providers in the position of picking winners and losers on the Internet. They allow providers to tilt the Internet not in favor of companies that make the best apps or services, but toward their own apps and services; toward those who can afford to pay for preferential treatment; or toward those who have the time, money and resources to jump through the hoops needed to participate in them. Almost by definition, such programs put nonprofits, independent artists and startup companies at a disadvantage.

And zero-rating programs also give broadband providers an incentive to further tilt the market in favor of their own services or those of preferred partners. If you have a large enough data bucket or the price of data is relatively low, it likely won't matter much that you can access some sites without tapping into your monthly allotment. But if data is expensive or your usage caps are low, you're much more likely to use those free services.

That dynamic gives providers an incentive to charge more for data or keep their data caps low, not based on their economic costs, but to promote their zero-rated services. And in fact, that's exactly what's happened in European countries that allowed zero rating and didn't have net neutrality rules in place, said Barbara van Schewick, a professor at Stanford Law School.

Despite being asked to do so, the FCC didn't ban zero-rating programs in its net neutrality rules. However, it tacitly acknowledged that they could violate the spirit of net neutrality and vowed to keep an eye on them. Reportedly, the agency is studying the issue.

It's time for the FCC to take a bolder stance and ban them outright. Zero-rating plans may sound good, but they're bad for the Internet and consumers in the long run.

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