Fast lanes may be coming to web: End of net neutrality could bring new fees for speed, reliability

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With federal regulators poised to repeal net neutrality rules this week, your internet service provider would be allowed to speed up delivery of some online content to your home or phone.

Whether those fast lanes are coming, and what they ultimately deliver for Americans, is unclear.

The concept, known as paid prioritization, involves a telecommunications company charging an additional fee to transport a video stream or other content at a higher speed through its network.

The fee would most likely come from deals struck with websites such as Netflix that are willing to pay for a competitive advantage over an online rival. Or the fee could be charged to a company providing services that require reliably fast connections, such as self-driving vehicles or remote health monitoring of people with serious illnesses.

But it's possible consumers could be charged extra if, for example, they want to be able to stream the games of their favorite sports teams without worrying about balky video caused by network congestion.

Supporters of fast lanes say they would encourage the development of innovative new services, as well as investments in expanding and improving wireless and fiber networks that would increase internet access and overall data speeds.

"By ending the outright ban on paid prioritization, we hope to make it easier for consumers to benefit from services that need prioritization—such as latency-sensitive telemedicine," Federal Communications Commission Chairman Ajit Pai, who is leading the push to repeal the net neutrality rules, said in a recent speech.

But opponents warned that what they call toll lanes would alter the open nature of the internet, squeezing out start-ups and small companies that lack the money to pay for faster content delivery.

FCC Commissioner Jessica Rosenworcel, who voted for the rules and their utility-like oversight in 2015, said in a Times opinion column last month that "your broadband provider could carve internet access into fast and slow lanes, favoring the traffic of online platforms that have made special payments and consigning all others to a bumpy road."

The desire by telecommunications companies to have the ability to offer paid prioritization appears to be a key driver behind the effort by telecommunications companies and Republicans to repeal the Obama-era online traffic rules.

"I don't think anybody who has followed this debate closely for the last decade has ever believed they didn't want to do paid prioritization," said Gigi Sohn, who served as senior advisor to former FCC Chairman Tom Wheeler. "That was always the thing that was driving this debate."

The regulations, pushed by Wheeler and approved on a party-line vote by the then-Democratic FCC majority, banned cable companies and other broadband providers from selling faster delivery of certain data, slowing speeds for specific video streams and other content, and blocking or otherwise discriminating against any legal online material.

To enforce the rules, the FCC classified broadband as a more highly regulated utility-like service under Title 2 of federal telecommunications law.

The repeal of the rules includes a provision simply requiring companies to disclose any such practices. Any anti-competitive abuses would be policed by the Federal Trade Commission.

After President Trump's election, the FCC has a 3-2 Republican majority. Trump tapped Pai to take over as the agency's chairman and his proposal is expected to be approved on a party-line vote Thursday.

Although internet service providers said they have no plans to offer paid prioritization, some have been laying the groundwork for it in recent months.

Broadband for America, a coalition of telecommunications industry groups and companies such as AT&T Inc., Charter Communications Inc. and Comcast Corp., ran a full-page ad in the Washington Post that made commitments to customers to practices it said would preserve an "open internet."

Those included "no blocking of legal content," "not throttling" data speeds and "no unfair discrimination—but did not mention paid prioritization.

From 2014 until this spring, Comcast had a net neutrality web page that included among the company's commitments that "Comcast doesn't prioritize internet traffic or create paid fast lanes."

That specific promise disappeared April 26, according to snapshots of the page stored on the Internet Archive. That was the same day Pai unveiled his plan to repeal net neutrality rules.

"With regards to paid prioritization, any reports that we are preparing to offer paid prioritization are false and inaccurate," Comcast spokeswoman Sena Fitzmaurice said this week.

But in the company's official comments on net neutrality filed with the FCC this summer, Comcast said the agency "should bear in mind that a more flexible approach to prioritization may be warranted and may be beneficial to the public."

Theodore Bolema, a senior fellow at the Free State Foundation, a free-market think tank, said that paid prioritization practices have benefited consumers in other markets. He cited optional highway toll lanes for motorists that generate more revenue for road construction and first-class airline seats that help offset costs for coach fliers.

"If we're creating more economic benefits that should support more investment" in broadband infrastructure, he said.

Opponents of the net neutrality regulations said they have reduced investment in their network. Pai has pointed to an outside study that said the nation's 12 largest internet service providers reduced their domestic capital investment by $3.6 billion, or 5.6 percent, in 2016 compared with 2014.

But Free Press, a digital rights group that supports the rules, said in a report this spring that total capital investments at publicly traded internet service providers increased by 5 percent in the two years after enactment of the regulations compared with the two years before.

Frank Louthan, a telecom analyst with financial services firm Raymond James, said in a research report last month that he expected "paid prioritization products to emerge" after the rules are repealed, boosting investment and telecom company revenues.

As an example, he suggested a $5 monthly fee that would allow faster delivery of college sporting events to fans.

"The technology invested to make these products a reality should benefit all consumers on the network, just as casual email users have gradually benefited by network upgrades to allow better streaming," Louthan said.

But net neutrality supporters disputed that view of consumer benefits.

Sohn pointed out that the 2015 rules specifically allow for prioritization of specialized services, such as heart monitors and automobile vehicle monitoring, that serve limited purposes and do not broadly offer internet access. Those services would travel on a separate internet channel, similar to a virtual private network, that would not be affected by general internet traffic.

"What if all of a sudden the network got congested and your (autonomous) car goes off the road?" she said. "You need a more reliable connection."

Sohn and other net neutrality supporters said internet service providers really want to be able to negotiate prioritization fees with streaming services and other websites.

The Internet Assn., a trade group representing Amazon, Facebook, Google and other online companies, said in an FCC filing that fast lanes would lead to the "cable-ization" of the internet because online content providers would have to negotiate deals with internet service providers to reach customers effectively.

"Paid prioritization would severely harm perhaps the most beneficial aspect of the internet, the fact that as an open and neutral platform it allows any start-up with a good idea to compete based on the quality of its idea and the service it provides, and to reach consumers across the nation," the group said.