

Internet neutrality

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The chair of the [US Federal Communications Commission \(FCC\)](#) recently outlined plans to bury the internet rules promulgated under the Obama administration that required internet service providers (ISPs) to treat all web traffic equally. Those rules, among other things, limit the ability of ISPs to favour content or customers and to block or slow down the online services that they provide. Under the proposed changes, ISPs (wired and wireless) would be allowed to offer web-based services at different speeds and differing service quality. In addition, they could enable more favourable speed or quality, or both, for websites that pay a fee – as long as that relationship was disclosed.

Over the years, a lively and heated debate over the nature and extent of regulation needed to protect consumers without stifling innovation has continued. Proponents of eliminating the rules claim that allowing the market to create different financial and performance models will spur investment and the development of technology, while critics argue that consumer prices would increase and so would barriers to entry and start-up costs for new companies. Critics point to the airline industry (where the FCC net neutrality rules have never applied) as an example of the potential for harm – one US air carrier provides easy access to one online video service which has paid the airline for such priority status, while others are not enabled with the same speed or quality.

Under the previous administration, the Internet and ISPs (both wired and wireless) were treated as utilities, virtually excluding them from regulatory oversight by the [Federal Trade Commission \(FTC\)](#), whose fact-based, case-by-case, analytical approach to regulation is generally perceived as more suitable (and friendly) for emerging technology and evolving markets. Based on Chair Ajit Pai's remarks, in another reversal of the prior administration's approach, it appears the FCC is now willing to share oversight with the FTC and have the FTC be responsible for:

- monitoring ISP disclosures;
- determining whether consumers are being harmed; and
- determining whether these firms are engaging in anti-competitive or unfair trade practices.

The FCC has indicated that it plans to enact the new rules early in 2018. Stay tuned.

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