

Access to Broadband Networks: The Net Neutrality Debate

Summary

As congressional policymakers continue to debate telecommunications reform, a major point of contention is the question of whether action is needed to ensure unfettered access to the Internet. The move to place restrictions on the owners of the networks that compose and provide access to the Internet, to ensure equal access and non-discriminatory treatment, is referred to as "net neutrality." While there is no single accepted definition of "net neutrality," most agree that any such definition should include the general principles that owners of the networks that compose and provide access to the Internet should not control how consumers lawfully use that network, and they should not be able to discriminate against content provider access to that network.

A major focus in the debate is concern over whether it is necessary for policymakers to take steps to ensure access to the Internet for content, services, and applications providers, as well as consumers, and if so, what these steps should be. Some policymakers contend that more specific regulatory guidelines may be necessary to protect the marketplace from potential abuses which could threaten the net neutrality concept. Others contend that existing laws and Federal Communications Commission (FCC) policies are sufficient to deal with potential anti-competitive behavior and that additional regulations would have negative effects on the expansion and future development of the Internet. An April 2010 court ruling in *FCC v. Comcast* that vacated the FCC's application of its Internet principles in an order against Comcast has focused attention on the issue. Although most concede that networks have and will always need some management, the use of prioritization tools, such as deep packet inspection, as well as the initiation of metered/consumption-based billing practices have further fueled the debate.

A consensus on this issue has not yet formed, but one stand-alone measure (H.R. 3458) that comprehensively addresses the net neutrality debate has been introduced in the 111th Congress to date. Two bills (S. 1836, H.R. 3924) to prohibit, with some exceptions, the FCC from proposing, promulgating, or issuing any further regulations regarding the Internet or IP-enabled services, were introduced in response to the adoption, by the FCC, of a notice of proposed rulemaking (NPR) seeking comment on proposed rules to, among other things, codify and expand on rules to "preserve the open Internet." Another measure, H.R. 5257, addresses the possible reclassification of broadband service and would require, among other provisions, that the FCC prove the existence of a "market failure" before regulating information services or Internet access services. Still another, S. 3624, contains provisions that require the FCC to prove consumers are being substantially harmed by a lack of marketplace choice before imposing new regulations and must weigh the potential cost of action against any benefits to consumers or competition. The net neutrality issue has also been narrowly addressed within the context of the American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5). Provisions require the National Telecommunications and Information Administration (NTIA), in consultation with the FCC, to establish "nondiscrimination and network interconnection obligations" as a requirement for grant participants in the Broadband Technology Opportunities Program (BTOP). These obligations were released, July 1, 2009, in conjunction with the issuance of a notice of funds availability soliciting applications. The ARRA also required the FCC to submit a report, containing a national broadband plan, to both the House and Senate Commerce Committees; it was released on March 16, 2010. Furthermore, legislation (H.R. 2902) authorizing the Federal Trade Commission, in consultation with the FCC, to review volume usage service plans offered by broadband providers was introduced June 16, 2009.

This report will be updated as events warrant.