



Smart Data Pricing: The Net Neutrality Test

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Overview

- ❑ Describe FCC Goals
- ❑ Summarize FCC Order, February 26, 2015
- ❑ Give General Assessment
- ❑ Offer Assessment of rules as they relate to SDP

FCC Goals

- Focus is on Internet retail services
- Regulation to promote consumer freedom and maximize customer choice

FCC Order, February 26, 2015 Summary

- Based FCC's legal right to regulate retail Internet services on 706 and Title II (light)
 - 706 – gives FCC authority to promote broadband
 - Title II – gives FCC the right to treat Internet service as a common carrier service
- Confirmed 2010 Open Internet Order and uses Title II to justify no-blocking and anti-discrimination rules struck down by D.C. Court in 2014

FCC Order, February 26, 2015 Summary (cont'd)

- Focus on “light touch” regulation
 - No Blocking of content, applications, services, or non-harmful devices subject to reasonable network management
 - No Throttling of lawful Internet content on the basis of Internet content, application, or service, or use of non-harmful devices subject to reasonable network management

FCC Order, February 26, 2015 Summary (cont'd)

- Focus on “light touch” regulation (cont.)
 - No Paid Prioritization where the broadband provider accepts payments to manage its network in a way that benefits particular content, applications, services or devices. No fast lanes.
 - Paid prioritization refers to directly or indirectly favoring some traffic over other traffic using such techniques as traffic shaping, prioritization, resource reservation or other forms of traffic management either in exchange for consideration (monetary or otherwise) or to benefit an affiliated entity.
 - No room for exceptions where customer permission is buried in a service plan (FCC response to AT&T)

FCC Order, February 26, 2015

Summary (cont'd 1)

- Focus on “light touch” regulation (cont.)
 - Enhanced transparency to assure a Broadband Internet Access Service (BIAS) publicly disclose network management practices, performance, and commercial terms so that customers can make informed decisions.

Exemption for small providers with fewer than 100K customers.
 - Reasonable Network Management encompasses practices that achieve legitimate network management processes (meaning?)

Cutting speed of heavy users to push them into higher priced plans is not legitimate

FCC Order, February 26, 2015

Summary (cont'd 2)

- Regulation limited to BIAS defined as a mass-market retail service by wire or radio.
 - FCC defines BIAS as a telecommunications service under 201, 202, and 208 (enforcement)
 - FCC excludes enterprise services, virtual private network services, hosting or data storage services, or to premises operators. (Suggests FCC is ok when customer classes demand different types of arrangements.)
 - Also excluded are facilities based services such as VoIP or cable services that do not travel over BIAS. (Again, customer choice is involved.)

FCC Order, February 26, 2015

Summary (cont'd 3)

- Legitimate BIAS offerings focus on customer freedom and choice
 - Any person engaged in the provision of BIAS shall not unreasonably disadvantage [an] end user's ability to select, access, and use broadband service or lawful Internet applications, services, or devices of their choice. (par. 136)
 - End user control is consistent with promoting consumer choice (par. 139)
- Interconnection is not covered by the Order because of lack of historical record.

General Assessment

- ❑ Consumer freedom and choice the main objectives
- ❑ Issues:
 - Freedom depends on objective, clearly presented information
 - Choice has current and dynamic elements that are influenced by externalities

Assessment of Rules as they related to SDP

- Seems to pass muster with intent of the Order
 - Passes customer freedom and choice goals
 - End users know they are trading off cost savings for time shifting content (Transparency)
 - Allows Network providers to manage capacity efficiently
 - A broadband provider may offer data plans with different speed tiers (par. 122)
 - Any data selected plan with reduced speeds must comply with the transparency rule (par. 122), which it does

Assessment of Rules as they related to SDP (cont'd)

- ❑ However, it is not what I say; it is what you hear
- ❑ Consider potential conflicts that may arise associated with
 - SDP by its nature makes pricing less transparent to the end user
 - SDP will complicate bills and add to billing disputes
 - Not sure if slow performance is due to time shifting or choking throughput
 - If data caps still in place, what would happen when demand is stimulated in off-peak hours?

Assessment of Rules as they related to SDP (cont'd 1)

- The FCC has two tests for improper prioritization and throttling
 - Paid prioritization can cause prices not to reflect efficient cost recovery (ok)
 - Or alter consumer choices for content and edge providers (par. 103) (iffy)
- SDP should be economically efficient, but could violate the no-throttling rule

Assessment of Rules as they related to SDP (cont'd 2)

- Focus on choices for content
 - Application Providers may claim targeted application slowdown during busy hours and in the long term slow network capacity growth
 - Add 1-800 like rebates and it gets even more complicated. From a competitor's perspective, is this rebate the equivalent to paid prioritization or a sponsored data plan?
 - The FCC said it will review these plans on a case by case basis (par. 152)
 - Time shifting may produce a new John Oliver chart showing how streaming video gets pushed to late-late night

Conclusion

- ❑ SDP should pass the FCC's network neutrality screens
- ❑ However, it may be criticized for complexity and systematic shifting of heavy bandwidth applications