Net Neutrality Memo

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To: John “Jay” Rockefeller (D-W.Va.)

*Net neutrality* is a term used to describe various rules or proposed rules that would restrict Internet Service Providers (ISPs) and other owners of IP-based networks considered to be part of the public Internet from blocking, restricting, or otherwise degrading the traffic which travels over those networks.

## Proponents

Internet Companies: Google, Amazon, Free Press, Public Knowledge, Larry Lessig

## Opponents

Big ISPs: AT&T, Comcast, Verizon

## Arguments for net neutrality

* Protect freedom of expression online
* Allows upstart companies to compete; equal playing field
* Prevents ISPs from charging both ends of the network; seeking additional rents
* “Reasonable network management practices” still allowed
* ISPs form a duopoly in most regions
* Otherwise ISPs would favor their own vertically interested services

## Arguments against net neutrality:

* Peering and transit contracts have always been privately negotiated/unregulated
* May prevent new IP multicast solutions which could make it easier to stream video online
* May prevent CDNs from paying to be deployed deep within an ISPs network, slowing internet traffic and adding a greater burden of overall traffic
* No current market failure
* Would disincentives investment in additional broadband
* Is an uncompensated taking

In 2011, the FCC issued its final report and order codifying net neutrality. The FCC has been writing rules on net neutrality since its initial 4 freedoms policy statement in 2006. The rules were written with the inclusion of industry over the last several years.

The FCC issued the rules under its Title 1 ancillary authority to regulate information services. The distinction originally comes from when you used a phone in a special cradle to call a specific service (like LexisNexis). When you wanted to reach a different service, you would hang up and dial that service. The phone call was a *telecommunications service* like normal, while the service you called was an *information service*. Soon information services grew to include ISPs which allowed you to visit any site on the network of services called the Internet. There were 1000s of dial up ISPs of which you could call any of them with your phone. When DSL came out, which used unused frequencies of the phone line, the FCC required that phone companies lease the lines to upstart companies, as part of deregulation. However, cable internet, and now fiber internet access has always been seen as an information service and has been by-and-large unregulated.

## Recent Court Case

Verizon sued to prevent the net neutrality rules from being applied, arguing the FCC did not have the authority to issue these rules. The Court ruled today that the FCC does not have the authority under Title I to pass these rules.

## Moving Forward

### Reclassification

Moving forward, the FCC can choose to reclassify broadband internet from an *information service* to a *telecommunications service*. This would give the FCC clear authority to impose the rules, but it would also bring all of the other Title II rules (such as *common carriage* and *open access*) to broadband internet access. In addition, many think the courts would strike down this reclassification as capricious because it is contrary to the regulatory history of the FCC over the last 20 years.

### Congress’s Role

Congress could also pass a law giving the FCC explicit authority to impose net neutrality rules. This is likely the best option, as it would allow the FCC to cleanly ensure net neutrality happens and to not saddle the Internet with unnecessary regulation. In fact, you could use this argument to try to persuade your GOP colleagues – that this would preserve freedom online while avoiding burdening the Internet in regulation.

## Talking Points

* Net neutrality is important for freedom of speech online and to allow small businesses to compete
* We are disappointed the Court overturned net neutrality
* I will be working with my colleagues in the Senate to pass a law giving the FCC clear authority to pass these net neutrality rules
* We want to avoid the FCC adding more burdensome regulations to the Internet by reclassifying it as a Title II service

1. This paper contains content from my group report on Net Neutrality for STS.011 for Fall 2011 <http://minisites.theplaz.com/netneutrality/> [↑](#footnote-ref-1)