



Insight

Four Missing Pieces To The John Oliver Bit On Net Neutrality

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This week John Oliver again waded into the topic of network neutrality. For those that haven't followed the minutia of this discussion, the last time Oliver ran a bit on the subject, he was instrumental in changing the momentum at the Federal Communications Commission (FCC) towards Title II. But the policy of network neutrality shouldn't be driven by 20 minute comedy bits. Here are four things missing from the most recent segment.

Missing Piece 1: Only Congress Can Solve The Issue

The network neutrality debate has never been about the openness of the Internet. It is about the authority of the FCC to publish rules. Because Congress never gave the FCC the specific authority for network neutrality rules, the agency has been engaged in over a decade of rules and courts cases. Indeed, when the 1996 Telecommunications Act was ramping up in Congress, [calls for this kind of authority](#) were rejected. Congress alone should solve this problem.

And yet, in the piece, Oliver suggests that Congress cannot be trusted, even though leaders in both the House and the Senate [are willing to support legislation](#) enshrining network neutrality into law. Moreover, Oliver suggests that you should call your Senators and Representatives. Given that the FCC is an executive agency, how effective will that really be?

Missing Piece 2: Title II Isn't The Only Legal Footing

If you were to watch the John Oliver bit, you would think Title II reclassification is the only legal footing that the FCC has to undergird network neutrality rules. This is simply not true. Oliver was correct that a 2014 case, known as *Verizon v. FCC*, did provide a guide for the FCC to push the rules. But the courts gave the agency another, less egregious, option.

Under pressure from the White House, and from the fervor that the 2014 Oliver bit riled up, the FCC didn't take the road that was expected and went with Title II.

As AAF has explained before, there are [countless options](#) to ensure the Internet is kept open and free. Title II reclassification was especially worrying because of all the opportunities it gave the agency to expand their power beyond what Congress gave them, to push privacy rules that had never been approved, to determine the contour of interconnection agreements, to regulate consumer broadband service rates, and to wade into cybersecurity regulation. Berin Szoka, an attorney and intervenor in the case against the FCC, summed it up when he quoted playwright Anton Chekhov: "If in the first act you have hung a pistol on the wall, then in the following one it should be fired."

Missing Piece 3: The Google Wallet Kerfuffle Was Solved

As evidence of a network neutrality violation, Oliver reminds us of the 2011 spat between Google's Wallet mobile payment service and the wireless carriers Verizon, T-Mobile, and AT&T that were working on their own mobile payments network named Isis.. But this example isn't a great representation of a network neutrality violation because it dealt with a part of the carrier network that was arguably exempt from the 2015 rules.

Similar to Apple Pay, Wallet is a mobile payments system that uses near field communication to quickly transfer funds. But to securely transfer monies, access to a [secure element](#) is needed, which was found at the time either as a standalone chip or on the [SIM card](#) provided by the network operator. The carriers balked at giving Google access to this part of their network, and at the time many suggested that the rival ISIS network was the cause. Importantly, however, the 2015 FCC rules carved out "reasonable network management," so this case was far from a slam dunk.

So what ever happened to Google Wallet and ISIS? Well, Google was able to route around the problem by creating its own secure element in the cloud. Then, Google absorbed the ISIS network into Wallet. It might have taken some time, but the issue was solved.

Missing Piece 4: Open Internet Violations Are Extremely Rare

The simple fact of the matter is that violations of the open Internet are rare, which the FCC [freely admits](#). For the better part of a decade, the FCC has been unable to point to a [single example of a clear violation](#) of the four rules. Instead of waiting for problems to arise, the FCC in tandem with advocates, has pressed for a hard ban on anything new. In the UK, [PlusNet launched](#) dedicated servers for gamers, allowing for quicker game play, but this service doesn't exist in the US because of the inflexible rules.

There's much more to the network neutrality discussion. John Oliver fans should take some time to read up.