Insight

Why Netflix's Recent Admission Matters for the Open Internet Debate

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In an official statement, Netflix admitted that it has been throttling traffic for wireless AT&T and Verizon customers for some time, in order to keep those consumers below their data caps and allow them to consume more video. While the practice doesn't violate the contentious Open Internet Order (OIO) released by the Federal Communications Commission (FCC), it has already been denounced by some as violating "the spirit of network neutrality." The admission undermines two of the core assumptions of network neutrality: that broadband providers have all the power and that consumers are always harmed by differing data schemes. On top of these flimsy pillars, the FCC has built a set of unworkable laws. Netflix's admission is yet another reminder of just how far afield the FCC regulatory system has been thrown to satisfy a political agenda.

When the FCC established new rules for the Internet last year, the driving cause was made clear near the beginning: "The record reflects that broadband providers hold all the tools necessary to deceive consumers, degrade content, or disfavor the content that they don't like." Supported by a chorus from the Obama Administration, the record that the FCC chose to adopt was an incomplete one at best. Netflix's admission stands in contrast to this record. But it has long been known to computer engineers, economists, and even a former General Counsel of the Federal Trade Commission (FTC) that much is missing. Simply put, the networks connecting online content and delivery are dynamic, and the power dynamics are far more complex than either the cable or the telephone system.

As AAF has repeatedly pointed out, the FCC never did its due diligence for this rulemaking, and consistently misdiagnosed the problem. Instead of being an expert agency by consulting economists, engineers, and the FTC, it made policy to appease the Obama Administration and network neutrality advocates. Why does this matter? The agency's unwavering fixation

on principles blinded them from creating flexible and working policy.

To make this concrete, it's helpful to compare T-Mobile's Binge On program with Netflix's recent admission. Binge On allows T-Mobile users to watch videos from a select number of providers without it counting against their data plans, but in return, video quality is slightly reduced. Admittedly, T-Mobile has been far more transparent about the program, but the effect on consumers is likely the same. In both cases, consumers are able to watch more video content, even though they cannot often distinguish the lower video quality, which puts less stress on the network. Consumers clearly benefit from Binge On, but it didn't stop headlines proclaiming that "T-Mobile's Unlimited Video Raises Net Neutrality Concerns." How did the FCC react to T-Mobile? They were hauled in front of the Commission for some questions. Lo and behold, T-Mobile soon changed the program. It seems strange that a government agency and consumer advocates would want to regulate away free data, but that is the world created by network neutrality because the rules only apply to broadband providers and not content providers.

The rules are a classic case of regulatory asymmetry. The same kind of action results in differing policing actions. There is broad agreement that the Internet needs to be open, but the most vocal in this debate have themselves not kept an open mind. Tech policy needs to let go of this principled obsession with network neutrality and substitute in a more nuanced representation of the world centered on actual consumer harm. It is unfortunate to see so many in this space, especially at the FCC, forget that this entire debate is about protecting consumers, not restricting companies.