

Rethink Possible



Net Neutrality Background



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Basic services

- Pure transmission capability
- Common carrier offering

Enhanced services

- Anything more than pure transmission
 - Computer processing; interaction with stored data; act on format, content, code, protocol, etc.
 - Not subject to common carrier regulation

➤ Categories mutually exclusive

➤ Facilities-based common carriers required to provide underlying transmission as a basic service



1996 Act

Incorporated key definitions

- Telecommunications
- Telecommunications service
- Information service

FCC addressed comprehensively in 1998 Report to Congress (Stevens Report)

- Definitions track basic/enhanced dichotomy
 - Telecommunications services and information services mutually exclusive
- “Mixed” or “hybrid” services constitute information services
- Internet access treated as an information service
 - Expressly declined to address applicability to cable operators



Subsequent History

2002 Cable Modem Order

- Cable modem service classified as an information service
- No obligation on cable providers to separately offer telecommunications component
- Upheld by Supreme Court in 2005

2005 Wireline Reclassification

- Eliminated requirement that telephone companies offer DSL transmission on a common carrier basis
- Later extended to wireless, satellite and BPL



Net Neutrality

Michael Powell's Four freedoms (2004)

- Content, applications, devices, and transparency

FCC adopted Four principles along with wireline reclassification

- Content, applications, devices, and competition
- All subject to "reasonable network management"

Principles incorporated in various merger commitments

- VZ/MCI
- SBC/ATT
- ATT/BS
 - Added a commitment regarding sale of certain services to "Internet content, application, or service providers"

2007 NOI



ISP Conduct

Lots of smoke, not much fire

- The Internet has been on the verge of “dying” since at least 2002 (according to net neutrality proponents)
- Numerous false alarms
- Two instances where issue has gone to the FCC
 - Madison River (2005)
 - Comcast/BitTorrent (2008)



Where are we now?

Pending NPRM

- Would codify four principles and add two more
 - Nondiscrimination and transparency

Sidetracked by success of Comcast's appeal

- FCC chairman appears to have concluded that legal basis for proposed rules is lacking

"Third-way" proposal to revisit classification decisions

- Would appear to open door to "hybrid" services being treated as both information and telecom services
- FCC would later try to adopt net neutrality rules

Industry now pursuing legislative solution



Some open questions about net neutrality

Definition of “managed or specialized services”

▶ What (if any) regulations?

Scope of “reasonable network management”

Strict “nondiscrimination” or allowance for reasonable discrimination

