



## SENATE I

### Net Neutrality

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#### Introduction

The internet has revolutionized the way people communicate, learn, research, receive news, and socialize. With the internet's explosive popularity and seemingly endless growth, a natural question arises: who, if anyone, has the right to control the internet? Over the past few years, the issue of internet neutrality has developed as a contentious issue. A state of internet neutrality would suggest that users are in control of the content they view and the applications they use while surfing the internet. Additionally, net neutrality maintains that users would not be able to receive preferential internet capabilities by paying additional fees. In short, net neutrality is concerned with the principle of equal access to the Internet. Internet neutrality can be compared with phone company policy. In the same way that a telephone company cannot dictate to its users who they can call or what they can talk about over the phone, under a principle of net neutrality **broadband internet** carriers would also not be allowed to control the online activity of its users.

A state of internet neutrality can be identified by three main pillars. First, net neutrality would assume no discrimination against lawful content. This is a simple yet often taken for granted privilege. It means that any internet user has the right to both access lawful websites and post lawful content without being discriminated against in any way by network providers. Discrimination could appear in the form of blocking or slowing down specific content.

The second distinguishing factor of internet neutrality is the concept of equal access at equal prices. Due to the fact that internet access is only accessible through one or two providers in many areas, net neutrality would not allow these providers to give preferential treatment to their own sites and services. This preferential treatment could come in the form of slowing down access to popular competing sites, or charging higher premiums for services competing with their own.

The third and last way to identify net neutrality is the ability of consumers to choose their preferred network equipment, or even to make it themselves and attach it to a network. For example, consumers would be able to choose what cable box to use when converting television signals. Under net neutrality, providers are unable to make certain equipments incompatible with their gateway.

This seems relatively simple at first, but in reality things are much more complicated. From the perspective of large telecommunication and cable companies who have spent significant amounts of money

**Broadband internet**—*Broadband internet access generally refers to high-speed internet access, and is typically compared with slower internet access such as dial-up or modem. Broadband technologies function at roughly twice the speed of dial-up, and do not disrupt telephone use.*

on infrastructures, it is desirable to receive a larger share of internet revenue. This is achieved by charging more money to web-based companies who are prepared and willing to pay extra, basically creating a “fast lane” one can enter through a tollbooth. Because of this, carriers have begun to implement **Quality of Service (QoS)** features that prioritize different types of traffic, thus charging for the higher priority service. For example, service providers might charge more for high-priority video content on YouTube, and charge less for access to a little-used online database.

While many interest groups feel that this practice would turn the formerly populist internet into an elitist technology, the larger telecommunications and cable companies who advocate for this premium charge argue that this is not their intention, nor will it be the result of their desired policies. They simply contest that because they have invested so much money in high **bandwidth** services needed to run more intensive applications such as streaming videos, they should be allowed to cash in on their investment by charging extra for these services.

## Explanation of the Problem

The principle of net neutrality originates at least as far back as 1860, specifically during the time of the telegram. Similar to the way modern day telephone interaction takes place, telegrams were routed equally, without any discrimination regarding their content or adjustments for various applications. This network status is referred to as “end-to-end neutral.” Though telegrams are now practically obsolete, the underlying principles of the telegram system built many aspects of modern day communication systems.

The internet was created and developed under clear Net Neutrality protections derived from Title II of the Communications Act of 1934. This section established and granted the **Federal Communications Commission (FCC)** the authority to regulate telephone companies as common carriers. As computer technology developed, data first began to flow over telephone lines, commonly known as dial-up services. In the 1970’s and 1980’s, the FCC maintained that network providers should provide equal access for data transmissions just like other communications services. In 2002, however, large telecommunications and cable companies began attempting to persuade the FCC to reclassify cable modem services as unprotected information services as opposed to the former protected communications services, an act that would essentially abandon the prior customer protections. By 2005, the large telecommunication and cable companies prevailed.

The Supreme Court case *NCTA (National Cable and Telecommunications Association) v. Brand X* faced the question of whether Broadband should be classified as an information service or a communi-

**Quality of Service**—ability to provide different priority to different applications, users, or data flows, or to guarantee a certain level of performance to a data flow

**Bandwidth**—measure of the capacity of data that can be moved between two points in a given period of time.

**Federal Communications Commission**—United States government agency that supervises, licenses and controls electronic and electromagnetic transmission standards.

cations service (like the telephone service). Brand X was an Internet Service Provider that sought to interconnect with cable broadband internet providers by purchasing access at low rates. The Supreme Court for the first time ruled that broadband internet access should be classified as an information service, which makes the larger service provides not subject to discrimination restrictions. A major ramification of this case was that broadband cable providers were no longer required to share their facilities with their competitors, which some argue would have fostered competition.

## Recent Developments

Currently, the phone network is considered a telecommunications service and categorized as a “common carrier” by US law, thus making it subject to fair pricing and equal access regulations. Cable modem internet access, however, is deemed an information service, and is subsequently not subject to common carrier regulations. Alternatively, **DSL** access across the phone network was characterized as a telecommunications service and subject to common carrier regulations until August 5<sup>th</sup>, 2005. On this date, the FCC reclassified DSL as information services, and former common carrier requirements were replaced by less restrictive net neutrality principles.

This initiated a debate over whether Internet Service Providers should be able to discriminate between different service providers by offering higher network priority to higher paying companies and companies. This would ultimately allow some services to operate at a higher level regarding speed and reliability for a certain set of users. This practiced is commonly referred to as a “two – tiered model.”

With this tiered access, telecommunications providers would exert control over how fast or slow content from different entities is delivered. They could feasibly charge consumers higher fees to access certain sites quickly, give preferential treatment to their own media, or have other content providers pay them for faster access. Telecoms such as AT&T have been lobbying for legislation that would allow the creation of tiered internet service in recent years. Those who support the establishment of tiered internet service argue that such services will foster the quick and effective delivery of content. Other companies, such as Yahoo and Google, oppose such laws, fearing that they will give telecoms too much power over internet content. Internet advocacy groups also tend to be against tiered service, fearing such moves will have a negative effect on consumer choice and could effectively marginalize smaller content providers.

**DSL**—*family of digital telecommunications protocols designed to allow high speed data communication over the existing copper telephone lines between the end-users and the telephone companies.*

## Congressional Action

### *Communications Act of 1934*

The Communications Act of 1934 was a US federal law that, among other things, transferred regulation of interstate telephone services from the Interstate Commerce Commission to the FCC. The act included provisions relation to not only telephone services but also radio, and the FCC was placed in charge of enforcing the provisions of the act. Its purpose was to regulate interstate and foreign commerce in communication by wire and radio to make rapid and efficient communication available nationwide at reasonable prices. At the time it was passed, it did not stir up too much public controversy. Thus, this act remained the status quo until its first major revision in 1996.

### *Telecommunications Act of 1996*

This Act amended or repealed sections of the prior Act of 1934. It made a significant distinction between providers of telecommunications services and providers of information services. A carrier providing information services is not a ‘telecommunications carrier’ under the act. For example, a carrier is not a ‘telecommunications carrier’ when it is selling broadband Internet access. This distinction becomes particularly important because the act enforces specific regulations against ‘telecommunications carriers’ but not against carriers providing information services. With the convergence of telephone, cable, and internet providers, this distinction has created much controversy.

### *Internet Freedom Preservation Act*

The Internet Freedom Preservation Act, also known as the **Snowe-Dorgan Bill**, was first introduced January 9<sup>th</sup>, 2007 by Republican Senator Olympia Snowe and Democratic Senator Byron Dorgan, and was ultimately presented twice to the Senate Committee on Commerce, Science, and Transportation. The bill proposes to amend the Communications Act of 1934, introducing a ban on the blocking/degradation of lawful content and on deals between network providers and specific content providers. It does, however, still allow the prioritizing of content that originates from the provider’s own network. Lastly, the bill places the FCC accountable for enforcing complaints and conducting reports on the state of the broadband market. Co-signers of this bill included then-Senator Barack Obama and Senators Hillary Clinton and John Kerry.

**Snowe-Dorgan Bill**—  
*one of the most important bills in favor of net neutrality.*

### *Internet Freedom Preservation Act of 2008*

This bill was first introduced February 12, 2008 to the House Energy and Commerce Committee by Reps. Ed Markey and Chip Pickering. The purpose of this Bill was to establish broadband policy

and direct the Federal Communications Commission to conduct a proceeding and public broadband summits. The purpose of the proceeding and summits would include the assessment of competition, consumer protection, and consumer choice issues relating to broadband Internet access services. For example, the Commission would have to determine whether broadband network providers refrain from unreasonably interfering with the ability of consumers to access, send, receive, and use applications and services of their choice. Also, the Commission would assess whether providers were charging for certain internet applications, and if these charges were in line with policy regulations.

### Focus of Debate

Though this issue does not strictly divide along party lines, Democrats tend to be openists, whereas Republicans tend to be deregulators.

#### *Openists*

Individuals who are in favor of internet neutrality are recently referred to as “Openists”. Openists who argue for net neutrality because they want to foster competition amongst providers. From an economic perspective, a lack of competition creates barriers to entry for new companies, which ultimately can only be battled through expensive and time-consuming **anti-trust litigation**. What does this mean for the consumer? It results in few provider and product choices. Openists fall back on the historical end-to-end structure of the telegram, placing a heavy emphasis on the freedom to choose and the ability to innovate.

The argument for innovation can be seen clearly in the example of widely popular internet sites such as Wikipedia, Google, or popular personal blogs. Under a model of net neutrality, small independent sites have the ability to start from nothing and end up attracting large audiences by creating a consumer valuable site. An alternative two-tiered model that incurs various fees takes away the level playing field, giving a distinct advantage to large, corporately owned sites. These sites, rather than the many consumers of internet service, would hold the power to decide who is successful in the cyber world.

For these reasons, Openists support government control over the Internet in order to ensure that large commercial websites cannot dominate the market. They support a government agency that would prevent companies from eliminating competition by controlling key points on the Internet transmission network. Prominent Openists include: **Competitive Local Exchange Carriers** (CLECs ) and their associations, content providers such as Amazon.com, Disney, eBay, Google, Microsoft, Yahoo!, and **Voice over Internet Protocol** (VoIP) companies such as Skype.

**Anti-trust litigation**—*laws prohibiting agreements or practices that restrict free trading and competition between business entities.*

**Competitive Local Exchange Carriers**—*a telecommunications provider company (sometimes called a "carrier") that competes with other, already established carriers*

**Voice over Internet Protocol**—*general term for a family of transmission technologies for delivery of voice communications over the Internet.*

### *Deregulators*

Individuals who are against internet neutrality are commonly referred to as “**Deregulators**”, and are often incumbent telecommunication companies, or “**telecoms**”. These telecoms are in search of the best return of their investment and as a result, they focus on who can pay how much, thus **stratifying** their service and eliminating the prospect of equal access. While openists may argue that precedent is net neutrality (reverting back to the telegram example), current deregulators argue that the market is already divided between users. At this stage, internet users have the option of either using slower dial-up internet service, or paying a premium to be a part of the faster broadband network.

Telecoms propose that to divide the market not only among the users but also among site owners, internet companies would be able to offer even more amenities such as internet-based cable TV programming and video at competitive rates. They maintain that legislation protecting Net neutrality would itself be a barrier to innovation. Support for this argument can be found in the fact that while communications technology has experienced extreme growth, phone and cable providers that are heavily regulated have been slower to improve services. Deregulators also argue that the Internet is not in fact public property, but that because companies have spent billions of dollars on infrastructure, the government does not have the right to regulate how they run these networks.

Opponents of net neutrality include: cable television companies such as Cable Vision and Time Warner Cable, incumbent telecommunications companies such as Verizon and AT&T, and equipment vendors such as Cisco. These opponents argue that true net neutrality is an unrealistic goal. In response to the Openists’ desire for government control, deregulators counter that government control over the Internet’s basic network would only lead to increased censorship and an invasion of privacy.

### *Presidential Perspective*

President Obama is strongly in favor of net neutrality. In June of 2006, then-Senator Obama addressed constituents via podcast, and expressed strong interest in maintaining net neutrality. Hello, this is Senator Barack Obama and today is Thursday, June 8th, 2006. He stated, “The internet today is an open platform where the demand for websites and services dictates success. But the big telephone and cable companies want to change the internet as we know it....Allowing the Bells and cable companies to act as gatekeepers with control over internet access would make the internet...a producer-driven market with barriers to entry for website creators and preferential treatment for specific sites based not on merit, the number of hits, but on relationships with the corporate gatekeeper. So here’s my view. We can’t have a situation in which

**Deregulators**—*those who are not in support of net neutrality*

**Telecoms**—*an abbreviation for Telecommunications companies.*

**Stratifying**—*creating different levels.*

the corporate duopoly dictates the future of the internet and that's why I'm supporting what is called net neutrality." Obama and Vice President Joe Biden also specified during their campaign that they strongly supported net neutrality to allow for open competition on the internet.

## Interest Group Perspectives

### *American Civil Liberties Union (ACLU)*

The American Civil Liberties Union is an organization strongly in favor of preserving “the individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States.” This group most frequently works through litigation, legislation, and community education. It also engages in lobbying and political activism. The ACLU is without a doubt in favor of Internet Neutrality, maintaining the opinion that without Net Neutrality, network providers are free to discriminate. The fear is that telecoms and cable companies would be able to screen internet email traffic, block whatever they classify as inappropriate content, or price other users out of the marketplace. The ACLU also argues that the dynamic growth and innovation of the internet can be at least partly attributed to the initial protections granted by Net Neutrality. After the Supreme Court ruling in the *NAFTA v. Brand X* case, the manipulation of the Internet space has been taken over by a small group of profit-driven telecoms and cable companies with clear incentive to discriminate within the market. The ACLU contends that the initial principles of Net Neutrality must be restored to the internet to protect basic freedoms and to foster innovation.

### *Cato Institute*

The Cato Institute is a libertarian think-tank headquartered in Washington, D.C. that supports limited government, individual liberty, free markets, and peace. The Cato Institute argues that the desires for regulation are preemptive and unjustified, maintaining that there is no evidence of the unfair blockage of websites or online services by network providers. Additionally, the Institute sees no reason to expect providers to do so in the future. The broadband marketplace is deemed by the Cato Institute as a “competitive free-for-all”, and thus is in no need of government regulation at this point in time. The Cato Institute also challenges that network operators have property rights in their systems that a standard of net neutrality would neither acknowledge nor honor. Overall, the Institute views enhanced FCC regulation of the Internet and broadband markets as a negative possible development.

### *Center for Digital Democracy*

The **Center for Digital Democracy (CDD)** is a national non-profit group based in Washington, DC, devoted to ensuring that the pub-

**Center for Digital Democracy**—non profit organization dedicated to ensuring that the public interest is a fundamental part of the new digital communications landscape.

lic interest is a fundamental part of the new digital communications landscape. The CDD supports net neutrality, and is of the opinion that with it, the power to discriminate would be given to large internet providers such as Verizon or AT&T. The CDD fears that entities such as blogs, controversial websites, and small businesses run the risk of having their sites take a back seat to those of larger companies.

## Questions for Policymakers

When drafting legislation, it is imperative that you take into consideration the many different angles and nuances relating to the concept of internet neutrality. Consider whether government regulation to achieve internet neutrality is a feasible and reasonable answer. Does it benefit the public at large, the private companies, neither or both? Is the internet even truly a public domain? Are there specific aspects of net neutrality that are more legitimate than others, and if so, how will your legislation differentiate between these different sectors. Determine how much, if any, authority and discretion should be given to the **Federal Communications Commission (FCC)** regarding the regulation of discrimination and equality. If internet neutrality is not the desired state, consider a two-tiered model and its effect on consumers and providers. Does the possibility of premium pricing encourage or discourage competition and innovation, and who should be allowed to charge whom? Should there be a price ceiling?

**Federal Communications Commission**—*United States government agency that supervises, licenses and controls electronic and electromagnetic transmission standards.*

## Possible Solutions

If internet neutrality is not the direction in which you decide internet should be heading, an official two-tiered model is a possibility. Legislation that allows a premium price to be charged for faster and preferred internet service is a possibility, with regulation by the FCC. If net neutrality is the desired goal, then government regulation and oversight of telecommunication and cable companies is an alternate possibility, again with the inclusion of the FCC. A compromise that allows preferential treatment certain to certain internet services such as video streaming over other services such as simple email, but doesn't discriminate against the provider is also a possibility.

## Conclusion

The debate over internet neutrality has many facets, and a clear correct answer is certainly not apparent. It is up to you, as Senators of the United States, to sort through the various aspects of net neutrality and come up with a decision that truly benefits the American people.

Consider issues such as content discrimination, price discrimination, and consumer rights when drafting your bills. Because net neutrality is not necessarily charged by political parties, a compromise between democrats and republicans is not a remote possibility. Work with your fellow senators to reach an agreement that will tackle the current issues with out internet landscape. The internet reaches far and wide, connecting users from all of the country and all over the world. Do not let them down; work quickly to improve our situation and resolve this issue.

## Guide to Further Research

The topic of net neutrality is one that has recently developed and with the increasing use and popularity of the internet is constantly changing. Use the following resources to stay up to date on the current issues regarding this topic, and feel free to do further research to strengthen your knowledge base as your prepare for the conference.

- <http://www.aclu.org/freespeech/internet/26816res20060925.html>

**The American Civil Liberties Union** is a non-profit organization that focuses on litigation and advocacy for individual rights. The ACLU provides legal assistance in cases where civil liberties may be at risk, and when it does not provide direct legal representation, often submit *amicus curiae* briefs to the Supreme Court, which are considered expert testimony. In the case of net neutrality, the ACLU will be an invaluable resource in preserving internet freedom and innovation. The ACLU website offers explains why net neutrality protections are important, where consumers are vulnerable to violations of internet freedom, and how to restore net-neutrality protections. In considering liberal vs. conservative sides of the debate on net neutrality, the ACLU website should certainly be one viewpoint to consider.

**American Civil Liberties Union**—a non-profit organization that focuses on litigation and advocacy for individual rights

- <http://googlepublicpolicy.blogspot.com/2007/06/what-do-we-mean-by-net-neutrality.html>

As one of the world's largest companies and as what is arguably the biggest power on the internet, Google has a strong opinion on the topic of net neutrality. On Google's public policy blog, you can find the company's position that the internet must be free and open to all users. The blog explains the complexities of why net neutrality must be maintained, and does so in easily accessible language. This website is also interesting because it provides a corporate perspective on net neutrality.

- <http://www.openinternetcoalition.org>  
The Open Internet Coalition (OIC) is a group that represents consumers, grassroots organizations, and businesses who agree that the internet must remain free and open to all Americans. Not only does the OIC believe in net neutrality, but they also advocate for universal access to high-speed internet. They are explicit in speaking out against large phone and cable companies who want to limit internet connections. This website clearly lays the basics for why an open internet is beneficial to all Americans, and also has expert testimony from prominent internet and corporate executives. The Resources part of the website may prove particularly useful, as it includes the perspectives of some renowned individuals in testimony before Congress.

## Bibliography

“A Guide to Net Neutrality for Google Users”. Google Help Center. July 3, 2008. <<http://www.google.com/help/netneutrality.html>>

Gentry, Josh. “NCTA v. Brand X”. July 8<sup>th</sup>, 2008. <[http://www.cicsworld.org/blogs/jjgentry2/2006/11/ncta\\_vs\\_brand\\_x.html](http://www.cicsworld.org/blogs/jjgentry2/2006/11/ncta_vs_brand_x.html)>

Greenfield, Rich. “The Net Neutrality Debate: The Basics”. Educause. July 8, 2008. <<http://connect.educause.edu/Library/EDUCAUSE+Review/TheNetNeutralityDebateThe/40636?time=1215892044>>

Korzeniowski, Paul. “The Net Neutrality Debate: Still Sizzling”. Ecommerce Times. July 12, 2008. <<http://www.ecommercetimes.com/story/The-Net-Neutrality-Debate-Still-Sizzling-63649.html?welcome=1215893564>>

“Net Neutrality: Can the Internet Remain Neutral?”. Information World Review. July 10, 2008. <<http://www.iwr.co.uk/information-world-review/features/2160382/internet-remain-neutral>>

“Network Neutrality”. Center for Democratic Democracy. July 10, 2008. <[http://www.democraticmedia.org/current\\_projects/net\\_neutrality](http://www.democraticmedia.org/current_projects/net_neutrality)>

Pollick, Michael. “What is Net Neutrality”. Wisegeek. July 10, 2008. <<http://www.wisegeek.com/what-is-net-neutrality.htm>>

“Reconsidering Our Communications Laws: Ensuring Competition and Innovation”. United States Senate Committee on the Judiciary. July 8,

2008. <<http://judiciary.senate.gov/hearing.cfm?id=1937>>

“The One Minute Case Against Net Neutrality”. The One Minute Case.  
<<http://oneminute.rationalmind.net/net-neutrality/>>