



Myth vs. Fact in the Net Neutrality Debate – HB 4155

The Federal Communications Commission's (FCC's) December 2017 "Restoring Internet Freedom Order" grants internet service providers (ISPs) unmitigated freedom to violate net neutrality principles, severely infringing upon our right to fair internet access. The order killed net neutrality. Some ISPs claim net neutrality laws are unnecessary because ISPs will voluntarily treat consumers fairly. History and the law say otherwise.

Because we have heard from our colleagues in other states about misleading information being communicated to legislators in their statehouses, we have prepared this fact sheet with the hope that it will proactively dispel any myths before they take root here in Oregon.

FACT: Net neutrality has been dismantled.

***Myth:** "Net Neutrality isn't going away. The FCC voted to repeal a small number of net neutrality rules that had been in place only two years. These rules were based on Title II, an outdated regulation designed for "public utilities" and not on today's competitive landscape. But net neutrality itself – the basic principle that prohibits ISPs from blocking, slowing or otherwise harmfully discriminating against internet content – will continue to be enforced by the Federal Trade Commission (FTC). This is the same agency that addresses other concerns about harms to consumers or competition."*

The reality: The claim that net neutrality rules had "been in place only two years" is flat out wrong. The FCC adopted an Open Internet Order (OIO) in 2010, which was net neutrality under Title I. Verizon sued the FCC and got the OIO struck down in 2014. Then, in recognition of the central role the internet plays in modern life, the FCC reclassified broadband as a utility under Title II and adopted net neutrality in 2015. Some version of net neutrality has been in place since 2010. Before then, there was substantially less video on the internet, so the impact of not having net neutrality was far less significant.

The claim that net neutrality "will continue to be enforced by the [FTC]" is incorrect. Former Verizon employee and current FCC chairman Ajit Pai has also made this erroneous claim, but the reality is that the FCC has no control over the extent to which the FTC will enforce net neutrality type rules. The FTC is focused on consumer protection and unfair and deceptive business practices, and most of what net neutrality protected was not based on consumer protection or unfair or deceptive practices. For example, an ISP could announce tomorrow that it will throttle

certain content, and as long as it discloses that to consumers, there will be no consumer protection or unfair or deceptive practices angle for the FTC (or state attorneys general) to enforce.

FACT: We need net neutrality to protect the open internet.

Myth: *“For 20 years prior to 2015, the internet was open and protected without Title II. The FCC’s 2017 Order simply means that the internet will no longer be subject to the kind of heavy-handed government regulations reserved for “public utility services” (as it was only from 2015-2017), and instead it will once be again subject to targeted, light-touch oversight by the FTC and FCC.”*

The reality: Before Title II protections were established in 2015, the FCC sought to regulate ISPs through a range of methods. After facing stiff resistance for years, it became clear that the only way the FCC could meaningfully regulate ISPs was through Title II authority. Because the 2017 FCC order dissolved net neutrality and reverted ISPs to Title I status, ISPs will be able to block, throttle, and implement paid prioritization. **There will not be light-touch oversight; there will be no oversight.**

Furthermore, the internet twenty years ago, in the pre-Open Internet Order era, was a totally different creature than today’s high-speed, video-heavy internet. During that era, there was barely any video or live streaming, making the absence of net neutrality rules less significant.

FACT: Net neutrality fosters innovation, and consumers need its protections.

Myth: *“The FCC’s recent actions rescind rules that were only in effect for less than two years and restores rules by which the internet was governed for more than two decades. Returning to an era of less federal control of the internet will lead to increased competition and innovation. Both the FCC and FTC will continue to protect consumers from unfair or anti-competitive practices by ISPs.”*

The reality: The FCC’s recent actions will plunge us into a new age of unprecedented deregulation. Though the current FCC asserts that less federal control will promote competition, the reality is that the industry is heavily monopolized. **The majority of Americans only have one viable choice for high-speed internet access of 100 mbps and up. As a result, many consumers are unable to take their business elsewhere in the event that ISPs engage in blocking, throttling, or paid prioritization.**

The claim that the dissolution of the net neutrality rules “will lead to increased competition and more innovation” is flat out wrong. **Net neutrality’s ban on paid prioritization protects a strong innovation economy, by ensuring an equal playing field for small companies.** If start-up companies enter the marketplace at a disadvantage to large firms that can pay to deliver their

content at higher speeds, their services may never get off the ground.¹ **For states like Oregon, the economic consequences of this anti-competitive deregulation could be severe.**

Additionally, **ISPs' track records suggest that they will *not* act in a fair way that promotes competition.** In 2012, AT&T restricted access to Facetime for all consumers except those who purchased their new, more expensive data plans. The company later admitted that it “was using [this blockage] as a lever to get users to switch over to the new plans which charge for data usage in tiers.”² Also in 2012, Comcast charged customers for using competitors' streaming services in an effort to gain more viewership on its own streaming services. In 2007, Comcast interfered with traffic and hindered customers' ability to download.³

There are just a few examples of ISPs violating net neutrality principles in the absence of binding regulation to enforce them through federal regulation. **There is no reason to believe the ISPs will be on better behavior now that the FCC has killed the net neutrality rules.**

FACT: Existing law is insufficient to protect consumers and the open internet.

Myth: *“It is illegal under existing competition, consumer protection and antitrust laws for broadband providers to engage in behavior that harms competition or consumers. Any ISP that engages in illegal behavior that harms the open internet will immediately face fierce consumer backlash and an FTC enforcement action.”*

The reality: As outlined above, ISPs have blocked and throttled content in the past, and there is no reason to believe they will stop now. Some ISPs claim that consumer backlash and FTC enforcement action are capable of serving as effective oversight mechanisms; this is false. As established above, **in the event that an ISP blocks, throttles, or implements paid prioritization on a consumer's internet connection, there are in many cases insufficient alternative ISP options for consumers to turn to in protest.** Further, although the current FCC Chairman, former Verizon lawyer Ajit Pai, claims the FTC can prevent and punish abuse, the FTC can only take action when an ISP has deceived consumers. In other words, as long as an ISP does not promise its customers it won't block, throttle, or implement paid prioritization, the ISP may do any of these things without fear of facing FTC (or state attorney general) action. The current FCC plans to require ISPs to disclose their actions so that the FTC can take action against deceptive practices is wholly

¹ Martin Giles, “The Demise of Net Neutrality Will Harm Innovation in America,” December 7, 2017, MIT Technology Review. <https://www.technologyreview.com/s/609594/the-demise-of-net-neutrality-will-harm-innovation-in-america/>.

² Electronic Frontier Foundation, Letter to California Legislature Re: Federal Communications Commission's December 14, 2017 decision to end oversight over ISP industry and its impact on privacy and network neutrality, January 11, 2018. <https://www.eff.org/document/eff-letter-california-legislature-isp-privacy-and-network-neutrality>.

³ Ibid.

insufficient to protect the open internet, because it does not prohibit exploitative behavior as long as the behavior is not represented in a deceptive manner.

In short, **the FTC cannot do anything to prevent ISPs from engaging in violations of net neutrality principles**; it may only take on specific cases after an ISP has engaged in such behavior, and *only if the action constitutes a deceptive business practice*. Because the FTC's actions are reactive and not preventative, the FTC cannot sufficiently protect consumers. Additionally, even in the few cases in which it may intervene, the FTC's power is curtailed by its severely limited resources, and may be further restricted.

FACT: The death of the net neutrality regulations is bad for consumers.

Myth: *“The new order aims to encourage competition and expand consumer choice—both of which will allow companies to provide consumers with the services they want, and not overcharge for services they don’t want.”*

The reality: As discussed above, ISPs have a clear history of charging consumers more to use certain features (e.g. AT&T and FaceTime) and placing additional charges on their competitors' services (e.g. Comcast). Due to the 2017 FCC Order, ISPs are no longer legally prohibited from engaging in this activity. Despite claims from ISPs, **consumers want strong net neutrality rules—not vague promises from an industry that has demonstrated it is not worthy of our trust.**⁴

FACT: Net neutrality helped low-income and rural communities.

Myth: *“Excess regulation that makes deployment more expensive hits rural and low-income communities the hardest. A return to light-touch approach will encourage broadband deployment in those communities.”*

The reality: Without net neutrality, ISPs can charge users more for access to certain websites and services. The **increased costs will undoubtedly disproportionately affect economically disadvantaged consumers, harm innovation in rural America, and discourage infrastructure investment.**⁵

39 percent of rural Americans don't have access to quality broadband. The “rural digital divide” keeps people in rural communities from participating in the digital economy. Farmers, for example, rely on fast internet connections to run machinery in the field; track weather, insects,

⁴ James Willcox, “Survey: Consumers Favor Strong Net Neutrality Rules; Majority of respondents think internet providers should be barred from discriminating against lawful content,” September 27, 2017, Consumer Reports. <https://www.consumerreports.org/net-neutrality/most-consumers-still-want-strong-net-neutrality-rules/>.

⁵ Matt Dunne, “Eliminating net neutrality would hurt rural America,” December 12, 2017, the Hill. <http://thehill.com/opinion/technology/364417-eliminating-net-neutrality-would-hurt-rural-america>.

and diseases; and keep informed about market prices for their crops. Farming families also rely on the internet for news, communication with friends and family, educational opportunities, and more. Though some fortunate farmers and rural Americans have internet access, it can be unreliable. **Strong net neutrality protections are critical to ensure ISPs don't make rural broadband connections even less reliable by blocking or slow down websites, applications and services.**

FACT: The states have a role to play in protecting the open internet.

Myth: *"The Internet is inherently interstate and international. It can't be regulated state-by-state, with users in one state accessing content in another, via a company in yet a third. The only way to address the internet is with a national broadband policy. The FCC Order protects both consumers and internet entrepreneurs from having to navigate a confusing patchwork of state-by-state internet guidelines."*

The reality: ISPs worked diligently to eradicate federal net neutrality and privacy regulations under Title II. Now they are turning to the states and warning that these are federal matters and the states should stay out of the way.

In absence of state level action, consumers in Oregon are left totally unprotected. The current federal regulations on both net neutrality and ISP privacy are woefully inadequate to protect an open internet and consumer privacy rights. The current rules leave also internet entrepreneurs extremely vulnerable due to the barriers that they will inevitably face in their attempts to enter a monopolized market, where paid prioritization is legal.

HB 4155 is a carefully crafted and narrowly tailored approach to protecting net neutrality in Oregon that avoids some of the messy questions about what the state can and cannot regulate due to federal preemption.

Oregon lawmakers must act, where possible, to protect net neutrality and consumer internet privacy. HB 4155 provides a timely opportunity to do just that.