



**PHOENIX CENTER FOR ADVANCED LEGAL
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LEGISLATING NET NEUTRALITY — NECESSARY?

The “network neutrality” has begun to resemble a sectarian religious debate that pits “Internet freedom” advocates against “big network businesses.” Yet, utterly absent from this debate is discussion of the costs and benefits of proposed approaches to legislating on the topic.

Congress needs to recognize that the FCC has already shown that it can and will act swiftly when egregious actions are taken by network firms. For example, network operators who seek to sabotage competitive VoIP providers must be punished, given that we are rapidly moving to a world where Voice Internet Protocol (VoIP) supplants traditional telephone service. For example, the FCC took aggressive steps to stop such conduct (in last year’s *Madison River* case) and it also articulated four principles of network neutrality in a landmark 2005 *Internet Policy Statement*. Significantly, as the expert agency for matters dealing with telecommunications, media and broadband deployment, the FCC recognized that it is more prudent adopt a case-by-case approach to these complex issues because there is a potential cost to “bright line” network neutrality rules—namely, the possibility that such rules would dis-incent broadband network construction.

That said, there is a huge analytical leap from this measured, case-by-case response to patently anticompetitive behavior to rushing through legislation that effectively tells network operators how to manage and operate their networks in the name of “network neutrality” without understanding the potential consequences. In some instances, proposals that prohibit a network operator from prioritizing bits based on content for a fee puts the government in the role of a network engineer and would engender a radical change to the way the Internet is built and operated today.

While anticompetitive conduct in any market is undesirable, Phoenix Center research shows that proposals to “commoditize” the Internet in response to anticompetitive fears may present serious competition problems. PHOENIX CENTER POLICY PAPER NO. 24 demonstrates that these “commoditization” proposals would limit the prospects for competitive entry into the broadband market because they would prevent network firms from differentiating their products. Economic theory indicates that allowing product differentiation among networks not only will allow more firms to survive but would also promote more investment and innovation (while discouraging collusion). Proponents of network neutrality have testified that legislation is needed because of a lack of competition in the broadband Internet market, but our research shows that the very legislative remedies which these network neutrality proponents seek would make the problem of high industry concentration substantially worse and, perhaps, intractable.

“Bright line” network neutrality rules also present the risk that efficient network designs will be prohibited. This mandate will force network engineers to adopt costlier and less-efficient solutions to important broadband applications (like streaming IP video, which is bandwidth intensive and largely one way). Research shows that if IP video services increase in popularity, a “stupid” network could cost \$300 to \$400 per month more than the “intelligent” network that network neutrality legislation would ban (thus bringing broadband deployment to a screeching halt). While technological advances (encapsulated in Moore’s Law) may eventually bring these costs down, those advances also may not occur in time to be relevant.

As David Farber, the highly respected former technology chief of the FCC during the Clinton/Gore Administration, recently noted: “The thought of Congress legislating without understanding this issue scares me.” Well, it scares the Phoenix Center too.

For further information, please see:

- *Network Neutrality and Industry Structure*, PHOENIX CENTER POLICY PAPER NO. 24 (April 2006) (available at: <http://www.phoenix-center.org/RoycroftRespPCPP24.pdf>); and
- *The Efficiency Risk of Network Neutrality Rules*, PHOENIX CENTER POLICY BULLETIN NO. 16 (May 2006) (available at: <http://www.phoenix-center.org/PolicyBulletin/PCPB16Final.pdf>).