



Consumer Federation of America

Why Consumers Demand Internet Freedom

Network Neutrality: Fact vs. Fiction

Ben Scott, Free Press

Mark Cooper, Consumer Federation of America

Jeannine Kenney, Consumers Union

May 2006



Table of Contents

Executive Summary	3
Introduction	6
FACT #1: Network Neutrality protections have existed for the entire history of the Internet.	7
FACT #2: Network discrimination through a “tiered Internet” will severely curtail consumer choice, giving consumer control over the Internet to the network owners.	9
FACT #3: Network discrimination through a “tiered Internet” will undermine innovation, investment, and competition.	10
FACT #4: Network discrimination through a “tiered Internet” will fundamentally alter the consumer’s online experience by creating fast and slow lanes for Internet content.	11
FACT #5: No one has a “free ride” on the Internet. Network operators have the revenue streams to support infrastructure development.	12
FACT #6: Telephone companies have received billions of dollars in public subsidies over the years to support network build-out.	14
FACT #7: There is little competition in the broadband market, certainly not enough to punish anti-competitive behavior.	16
FACT #8: Consumers will bear the costs for network infrastructure regardless of whether there is Network Neutrality or not.	17
FACT #9: Investing in increased bandwidth is the most efficient way to solve network congestion problems; discrimination creates an incentive to maintain scarcity.	18
FACT #10: Network owners have explicitly stated their intent to scrap Network Neutrality guarantees and build business models based on network discrimination.	19
FACT #11: The House and Senate telecom bills will not deter discrimination, and even tie the hands of the FCC from ever preventing it.	20
FACT #12: The organizations supporting Network Neutrality represent a broad, nonpartisan, coalition that joins right and left, commercial and noncommercial.	22
Notes	23



Executive Summary

American Consumers — the most important voices in the debate over Network Neutrality — have gone largely unheard in Washington. Why haven't they been part of this crucial debate over the policies that will shape the future of the Internet? Quite simply, their interests have been drowned out by a noisy industry propaganda campaign that surely ranks among the most expensive in telecom policy history.

By some estimates, the telephone companies alone have been spending \$1 million a week on inside-the-Beltway TV advertising, to say nothing of their wall-to-wall lobbying presence on Capitol Hill. Add to that the dozens of fake grassroots (a.k.a. "Astroturf") groups like "Hands Off the Internet," which pretend to represent consumers. In a debate where the facts are against them, the phone companies and their hired guns have every incentive to hide behind slogans and propaganda.

It's time for consumers to set the record straight. This report — written by Free Press, Consumers Union and the Consumer Federation of America — offers a point-by-point rebuttal of each of the major arguments made by opponents of Network Neutrality:

- **FACT 1: Network Neutrality protections have existed for the entire history of the Internet.** Opponents of Internet freedom pretend that Network Neutrality protections would mean new, onerous government regulations. But advocates of Network Neutrality are not promoting new regulations. We are preserving tried and tested consumer protections and network operating principles that have made the Internet the greatest engine of economic growth and democratic communication in modern memory.
- **FACT 2: Network discrimination through a "tiered Internet" will severely curtail consumer choice.** Network owners say discrimination will benefit consumers with higher-quality services. But winners and losers in the content marketplace should be chosen based on the merits of a Web site or service, not the whims of the network owners. Without Network Neutrality, telephone and cable companies will have a strong financial incentive to distort the free market in favor of their own content and services.
- **FACT 3: Network discrimination will undermine innovation, investment and competition.** The genius of the Internet is that it always has allowed "innovation without permission."¹ It has been a free marketplace of ideas where innovators and entrepreneurs rise and fall on their own merits. But on a "tiered Internet" without Network Neutrality, the upstarts and little guys will be at the mercy of the network owners to decide who can succeed or fail.



- **FACT 4: Network discrimination will fundamentally alter the consumer's online experience by creating fast and slow lanes for Internet content.** Up to this point, the consumer has been the ultimate decision-maker online; the network owners simply transmitted data over the wires, regardless of its content. The network owners claim they won't harm or degrade anybody else's content in a world without Network Neutrality. But network prioritization is a zero-sum game. The fact is that every time one Web site is sped up, another must be slowed down.

- **FACT 5: No one gets a "free ride" on the Internet.** The network operators allege that if Network Neutrality is preserved, they won't be able to build new, high-speed networks. This is a myth. With Network Neutrality, they'll continue to generate revenues in the billions from monthly subscription fees, access rates from content producers (who already pay a fortune to get onto the network), and by competing in the free market with their own content and applications. Getting rid of Network Neutrality is just an attempt to extract monopoly rents from a new revenue stream.

- **FACT 6: Telephone companies have received billion of dollars in public subsidies and private incentives to support network build-out.** The phone companies say they should be able to do as they like with "their pipes." But they ignore the billions of dollars in public subsidies and incentives they've received over the years that allow them to dig up public rights-of-way, build rural networks, and write off the depreciation of their wires. If they gave back even a fraction of the public money they've received, we could build fiber to every home in America.

- **FACT 7: There is little competition in the broadband market.** Network owners argue that Network Neutrality is unnecessary because there is plenty of competition for broadband access to deter bad behavior. But cable and DSL now dominate 98 percent of the broadband market (and a significant portion of the country has only a single broadband provider or none at all). If both the cable and phone companies are using their networks to discriminate, the consumer is trapped. There is nowhere else to go.

- **FACT 8: Consumers will bear the costs for network infrastructure regardless of whether there is Network Neutrality.** The network owners claim consumers will save money without Network Neutrality, because content providers will bear more of the delivery costs. But those costs will simply be passed on to consumers in the form of higher prices for consumer goods and Internet services. And with less competition on a "tiered Internet," the network owners will be able to raise their own prices with impunity. Higher prices, fewer choices and less competition are bad for consumers.



- **FACT 9: Investing in increased bandwidth is the most efficient way to solve network congestion problems.** There is more traffic flowing over the Internet every day. To avoid “traffic jams,” network operators have two choices. They can increase the bandwidth to accommodate all content providers on an equal basis; or they can maintain scarcity and charge providers for the privilege of getting through the bottlenecks. Without Network Neutrality, phone and cable companies have an economic incentive not to relieve the congestion.
- **FACT 10: Network owners have explicitly stated their intent to build business models based on discrimination.** The Astroturf groups set up by the industry repeatedly claim that Network Neutrality is a solution in search of a problem. But consumer advocates aren’t imagining a doomsday scenario. In fact, the top executives of nearly every major telephone company have stated clearly in the pages of *Business Week*, the *Wall Street Journal* and the *Washington Post* that they intend to discriminate or degrade the content and services of their competitors who don’t pay for a spot in the fast lane.
- **FACT 11: The House and Senate telecom bills will not deter discrimination and even tie the hands of the FCC from ever preventing it.** Neither of the telecom bills in the House (COPE Act, HR 5252) or the Senate (ATOR Act, S 2686) protects meaningful, enforceable network neutrality. If Congress passes the House bill or the Senate bill as it was reported out of the Commerce Committee, there will be no laws guaranteeing consumers’ right to the online content of their choice for the first time in the history of the Internet. Instead, network owners will be able to set up “tiers” that discriminate between different Internet content and services – they will be permitted to decide for consumers what content they select and services they will use.
- **FACT 12: Supporters of Network Neutrality represent a broad, nonpartisan coalition that joins right and left, commercial and noncommercial interests.** The campaign to preserve Network Neutrality protections is perhaps the most diverse set of public and private interests backing any single issue in Washington today. Hundreds of groups and hundreds of thousands of individuals from across the political spectrum are joining together to save this cornerstone principle of consumer choice and Internet freedom.



Introduction

The issue of Network Neutrality now before Congress is, at its base, a decision about who will control the Internet — consumers and producers in a competitive marketplace, or network owners in an anti-competitive marketplace. The destruction of meaningful Network Neutrality would mean fundamental, negative changes to the Internet as we know it. That's why every major consumer organization in the nation is publicly committed to meaningful, enforceable Network Neutrality.

Consumer advocates have argued for well over a decade that the baseline protection of Network Neutrality must be preserved to guarantee a free and competitive online marketplace.² In 1990, consumer groups battled to preserve Network Neutrality against telephone company efforts to assert control over the Internet when it was just beginning to emerge as an important communications platform of ordinary people.³ Eight years ago, consumers again took up the fight to preserve Network Neutrality, asking the Federal Communications Commission to extend this policy to cable modem service.⁴

Together, Free Press, Consumers Union, and the Consumer Federation of America represent hundreds of thousands of individual members, partner with hundreds of local and state consumer protection organizations and community groups, and deliver information and advice about consumer issues week in and week out to millions of Americans. Not a dollar of corporate money funds these efforts.

We encourage policymakers to consider carefully the case that true consumer and public interest representatives make about Network Neutrality before accepting the coin-operated claims of special-interest lobbies. No amount of lobbying dollars and ad-buys can purchase the truth. On the following pages, we provide a point-by-point rebuttal of each of the major arguments made by opponents of Network Neutrality, in order to demonstrate the bankruptcy of their case. We urge lawmakers to handle the future of the Internet just like the birth of the Internet — by protecting Network Neutrality and maximizing consumer choice.



FACT #1: Network Neutrality protections have existed for the entire history of the Internet.

Fiction: Network Neutrality is “new regulation.”

The Internet has proven to be the greatest engine of economic growth and democratic communication in modern memory. It didn't happen by accident. It happened with the help of sound public policies like Network Neutrality.

Consumers take it for granted that every Web site and application on the Internet is treated equally. That's because it has always been that way. We've had fundamental protections in the law that guarantee nondiscrimination since the birth of the Internet. Nondiscrimination is a basic obligation of all network operators under Title II of the Communications Act.

Almost 40 years ago, the Federal Communications Commission was confronted with the question of how to handle the transmission of data over the telephone network. In a series of proceedings beginning in 1968 known as the *Computer Inquiries*, the FCC decided that the companies providing communications services would not be allowed to interfere with or discriminate against information services.⁵

When a federal court broke up Ma Bell in 1982, it required the Baby Bells to provide nondiscriminatory interconnection and access to their networks.⁶ These decisions to require the communications network to treat information service in a nondiscriminatory manner established one of the key building blocks of the Internet.

The idea is simple. Under the law, the physical wires over which data and information flow are treated differently than the data and information themselves. The number of physical networks to transmit data and information is very small and non-competitive (at best, most consumers have a choice of only cable or DSL). Public policy keeps the owners of these networks from using their monopoly (or duopoly) market power over the wires to discriminate against the information providers on their networks.

If the network owners can't mess with the content, the content market remains free and vigorously competitive. The separation of the physical communications layer from the content and applications layers is a cornerstone of telecommunications law. It established an “end-to-end” network, putting control of the Internet in the hands of the users at the edges.⁷

But in the summer of 2005, the FCC removed the cornerstone. This decision was the culmination of several years of litigation. After years of bombardment by lobbyists and lawyers



from the cable and telephone giants, the FCC first tried to take away nondiscrimination protections in 2002. The courts reversed them. But the cable companies and the FCC kept appealing, and eventually the Supreme Court heard the matter in July 2005. In the case of *NCTA v. Brand X*, the Court ruled simply that the FCC had the authority to make the decision, good or bad. They did not rule on the merits. So it happened that last August, in the midst of the Internet revolution, the FCC handed total control over to the telephone and cable companies to do as they please.⁸

In the months since then, these network owners have openly declared that they intend to build a business model based on discrimination, extorting money from every online content and applications provider. This plan violates the fundamental principle of nondiscrimination that has been law for generations and which gave us the Internet. It would have been illegal less than a year ago. It threatens to end the Internet as we know it.

Advocates of Network Neutrality are not promoting new regulations. We are preserving tried and tested consumer protections and network operating principles that ensure Internet freedom.



FACT #2: Network discrimination through a “tiered Internet” will severely curtail consumer choice, giving consumer control over the Internet to the network owners.

Fiction: Network discrimination will benefit consumers with higher-quality services.

The idea of a discriminatory or “tiered” Internet is based on a simple concept: the network owner intervenes between the consumer and the content provider to charge fees for delivery. Under the old neutrality rules, the network owners could charge the customer for communications services, and any application or content that would work within that level of service had to be allowed to flow — no questions (or additional fees) asked.

The network operators could charge other Internet service providers or application developers to hook up to the network, but they had to offer the nondiscriminatory rates, terms and conditions to everyone. The network operator had nothing to say about the transaction between customers and the service providers. Customers made their own choices, and application developers got a fair chance to win the customer without interference from the network operator.

Without Network Neutrality, the network operator has total control. Different fees can be charged based on the type of service (voice, video or data); different fees can be charged based on the type of provider (individual, small business or big business); different fees can be charged based on the affiliation of the provider with the network operator; different fees can be charged to guarantee delivery at a particular rate of speed or quality; different fees can be charged based on political affiliation or the day of the week. In fact, without neutrality rules, the network owners can charge whatever they want to whomever they want for any reason they choose.

They can create “fast lanes” and “slow lanes” and decide who gets to be in each. There is nothing to stop AT&T from pushing content providers into exclusive deals denied to Comcast or Time Warner subscribers. There is nothing to stop Verizon from slowing down Web sites they dislike and speeding up others with impunity. There is no reason why BellSouth couldn’t make a deal with Amazon to make it the only online book retailer on its network. There is nothing to stop discrimination for social, economic or political reasons. This has been dubbed the “Tony Soprano” business model: Stand between content and consumers; demand a cut from strangers; let your friends go for free.

Network Neutrality keeps telephone companies off of consumers’ backs and out of our wallets. Consumers should choose winners and losers in the content marketplace based on the merits of a Web site or service; network owners with strong financial incentive to distort the free market should be prevented from doing so.

FACT #3: Network discrimination through a “tiered Internet” will undermine innovation, investment, and competition.

Fiction: Network discrimination will favor the “little guy” over large companies.

In the words of Internet architect Vint Cerf, the Internet allows “innovation without permission.” This genius of the network has proven to be a wonderland for entrepreneurs. It is critical to remember that the Internet’s name brands of today were just “good ideas in garages” a decade ago. College kids created Google. A hobbyist conceived the idea for eBay. A teenager wrote the code for Instant Messaging. Some of the most popular sites on the Internet right now — MySpace, FaceBook, and YouTube — didn’t exist three years ago. This technological revolution keeps turning because the Internet is an unrestricted free marketplace of ideas where innovators rise and fall on their merits.

The laws that protect this free market are Network Neutrality rules. Without the rules, innovators are at the mercy of the network owners saying who can and cannot succeed. We are stuck back in the Tony Soprano model, where building a new online business requires paying protection money to the boss. If you haven’t got the money to make the deal, if you won’t sell a portion of your new company, or if the network operator simply isn’t interested — you’re out of luck.

Think about the repercussions of simply raising money from investors in a world without Network Neutrality. How many venture capitalists will embrace a business plan if the first line reads: “Strike a favorable deal with AT&T”? It is simply a non-starter for entrepreneurs that will stifle innovation. The best ideas do not always come from those with the deepest pockets.

Or assume that a new business does beat the odds and get a foothold in the online marketplace. What happens when it begins to compete with a service that is partially owned by the network operator? What happens when the fees for the fast lane are tripled? What happens when service is degraded at a prime time for business like the holiday shopping season? Will investors continue to sink money into a company with these kinds of market uncertainties?

This scenario is hardly hypothetical. Hardware manufacturers currently advertise routers that have the ability to investigate the packets flowing onto a network to determine the origin of the content or application. If the content comes from a “preferred” provider that has made a deal with the network, it is guaranteed quality of service.⁹ If the content is from an unaffiliated source, the router can de-prioritize the content and degrade the service. Network operators are already planning to manage bandwidth to maximize revenue streams through discriminatory deals with third-party providers. This distorts the market, undermines competition, and smothers innovation.



FACT #4: Network discrimination through a “tiered Internet” will fundamentally alter the consumer’s online experience by creating fast and slow lanes for Internet content.

Fiction: Discriminatory “tiers” of service will not harm or degrade any other content.

Up to this point, the consumer has been the ultimate decision-maker on the network. The network owner simply transmitted data over wires, regardless of the source of that content. A “tiered Internet” requires the network owner to act as the gatekeeper of Internet content and applications. Someone will decide what content goes into which tier and what quality of service is associated with that tier. Introducing “tiers of service” will spell the end of the Internet as we know it.

Without Network Neutrality, consumers will face the prospect that their favorite Web sites and online services will not be in the fast lane. What will that mean? It could mean service may be unreliable or blocked. It could mean service is the same as before, but other sites are much faster. It could mean that service is erratic — that some things download and others don’t. The networks claim they would never interfere with content. Yet they don’t want to see interference made illegal. Nor do they want to establish a process whereby a consumer can complain about poor service. If they aren’t going to block or degrade, why should they care?

The process of network prioritization is a zero-sum game. The fact is that every time one Web site or service is sped up, another must be slowed down. Who will be in the slow lane? Anyone without the cash or the connections to negotiate fast lane deals with every network operator in the country (each of which has their own regional fiefdoms). Basically, anyone that lacks deep pockets or high volume will be relegated to the slow lane, while the big corporate Web sites will gain premium treatment, capturing a larger percentage of users by virtue of their higher quality of service.

The Internet will begin to look more and more like cable TV. The owner of the network will pick content from a handful of other corporate media producers, and those will make up a limited menu of featured services with guaranteed quality. Everyone else will be a second-class citizen on the Internet.

***FACT #5: No one has a “free ride” on the Internet.
Network operators have the revenue streams to support
infrastructure development.***

Fiction: If Network Neutrality is preserved, telephone companies will not build their networks.

Network operators will build out their high-speed networks whether there are Network Neutrality rules or not. The cable companies have largely built out their networks already. One way or another, telephone companies will upgrade their copper wires to compete with cable. They would have done so even if they had lost the *Brand X* case and the nondiscrimination rules still existed. The only reason they are claiming they need discriminatory pricing is because they see an opportunity to extract monopoly rents from a new source.

There is no economic reason why nondiscrimination must be sacrificed to develop infrastructure. As Professor Robert Reich, the former Labor Secretary, says: “The pipe companies claim that unless they can start charging, they won't be able to invest in the next generation of networks. Well that’s ridiculous. They’re already making lots of money off consumers connected to the Internet. They just figure they can make more money charging the big content providers for the best service.”¹⁰

The pipe companies will generate the revenue to build networks in the same way they always have — from three sources. First, they will continue to receive billions of dollars every year from the monthly subscription fees paid by retail and enterprise consumers. Second, they will continue to receive billions of dollars every year from the access charges they receive from Internet content producers whose goods and services travel over their networks. (That’s right — Internet companies *already* pay big bucks to be on the Internet. Any network operator who feels shortchanged can raise the rates, provided they do so a nondiscriminatory basis.) Finally, network operators will generate revenues by entering the content and applications market and competing for consumer dollars the old-fashioned way — earning them in the free market.

It is worth noting that the recent financial history of the large telephone companies suggests they have not been particularly serious about infrastructure investment. Since 2000, the annual reports of SBC and Verizon indicate that they have depreciated billions of dollars more than they have spent on their networks.¹¹ Instead of building, they have laid out capital to purchase other telephone companies — reducing competition and increasing market power.

In effect, these companies have been *disinvesting* in their infrastructure. If they now project increases in infrastructure spending, that reflects the fact that they are working from years of



deficit. AT&T, which is making the most noise about charging discriminatory fees, has the worst track record of investment, having taken \$9 billion more in depreciation expenses than it has laid out in capital expenditures in the past four years.¹²

Approaching the situation through a slightly different lens, AT&T's path back to Ma Bell status involved the conglomeration of SBC, Ameritech, PacBell, SNET, and AT&T Wireless, at a cost of roughly \$140 billion. In the process, their market capitalization increased only \$40 billion. Ironically, the \$100 billion that disappeared is roughly what it would cost to run fiber to every American household.¹³

Now AT&T is lining up to spend another \$67 billion on BellSouth, while Verizon has a \$38 billion offer on the table to buy out its partner in Verizon Wireless. And yet they expect consumers to believe that they are short on capital and cannot afford to build their network without the elimination of consumer protection rules. Even in a world of Enron accounting, the idea that there is no revenue in the industry to upgrade the networks is a tall tale.

FACT #6: Telephone companies have received billions of dollars in public subsidies over the years to support network build-out.

Fiction: Telephone companies “own” the Internet.

Ed Whitacre, the CEO of AT&T, is fond of referring to the Internet as “my pipes.”¹⁴ How dare the consumer, the government or other businesses tell him what he can do? Whitacre appears to have forgotten the billions of dollars of public subsidies and incentives the telephone companies have received over the years.

Let’s start with rights-of-way. The phone companies own less than 2 percent of the property where they have laid or strung their wires.¹⁵ What do they pay to use the other 98%? Basically nothing relative to its real value, because it’s public land. Phone companies are permitted to use the public rights-of-way because, in theory, they are delivering a public service. By contrast, the cable companies pay up to 5 percent of their gross revenues to local governments for the use of the public lands they occupy (more than \$20 billion over the past 10 years).¹⁶ If the telephone companies would like to scuttle Network Neutrality, consumer protections, and public service, it seems they should be required to pay full price for their use of public lands.¹⁷

Next let’s take the Universal Service Fund. Most consumers will vaguely recall that a line item on their monthly bill says “USF fee.” That’s a fee that consumers pay to subsidize the networks that bring phone service to rural and low-income households. The money comes out of consumers’ pockets, and it goes into the coffers of the phone companies. The principles behind this program are laudable and its results important. But it is a massive subsidy. Over the past 5 years, the four Bell companies have received more than \$15 billion in subsidies to sustain their rural networks.¹⁸

How about other assets we’ve handed to them over the years? Let’s take the public airwaves. Most of the major telephone companies also own mobile phone companies. Though today big companies pay billions of dollars for the licenses to use the public airwaves (or spectrum) that carry mobile phone signals, it wasn’t always that way. Back before 1994, the phone companies cleaned up on spectrum. The government just handed it over for free. The spectrum they received is now worth many billions of dollars.

The list of public subsidies is very long, and it includes tax breaks and complex accounting procedures that have been permitted over the years by federal law. Among the most important of these is “accelerated depreciation.” The basic idea is to fess with tax law so that a phone company can write off billions from their taxes every year. That’s how giant corporations like



AT&T and Verizon end up paying so little in taxes. How little? That's another little gift—they are not required to tell us. We can only estimate.

But all of this estimation is plenty of evidence to make this point. If anyone is getting a free ride in the marketplace, it's the phone companies. If they gave back even a fraction of the money and assets they've received *gratis* from the public, we could build fiber to every home in America.

FACT #7: There is little competition in the broadband market, certainly not enough to punish anti-competitive behavior.

Fiction: There is plenty of competition in the broadband market.

The network owners have argued that Network Neutrality is an unnecessary protection because there is sufficient competition in the broadband market to deter bad behavior. Put simply, they argue that if Verizon degraded access to a site or created a discriminatory “fast lane” that consumers didn’t like, they would lose customers to the other network operators in the area. Consumers must have robust competition and multiple choices for of broadband providers for this theory to work.

Such competition does not exist, and it isn’t likely to exist in the foreseeable future. Most Americans have access to two broadband providers — cable and DSL. That’s it. These two systems dominate, holding over 98 percent of the broadband market. The share of the market held by all the other broadband technologies combined — satellite, fixed wireless, mobile wireless, and broadband over power lines — actually *decreased* over the last few years.¹⁹

A significant chunk of the country has only one broadband provider, and around 10 percent of households have none at all.²⁰ This is hardly a competitive market. Certainly there is insufficient competition between different technologies to produce any kind of deterrent. If both the local cable and telephone companies are using their networks to discriminate, the consumer is trapped. There is nowhere else to go.

That’s why nondiscrimination through Network Neutrality is so critical for the content and application layer of the Internet. Without Network Neutrality, the telephone and cable duopoly will leverage its market power over the network to gain control over the content and application markets, establishing a handful of wireline companies as the gatekeepers of the Internet.

***FACT #8: Consumers will bear the costs
for network infrastructure regardless of whether there is
Network Neutrality or not.***

Fiction: Network discrimination will save consumers money.

The network operators are fond of telling consumers that by stripping consumer protections like Network Neutrality, they will be saving money on their monthly bills. The reason: Networks will begin slapping hefty fees on Internet content and service providers for guaranteed delivery. They argue that consumers will pay the same (or less!) and get better service from the selected content providers that choose to buy their way into the fast lane. What a deal!

Economics 101 suggests a different storyline. In reality, consumers will pay the tab, one way or another — either through higher monthly rates for access (with net neutrality left on the books), or high prices for consumer goods and Internet services (with net neutrality stripped out). Moreover, to the extent that the network operators are successful in undermining their competition, they will be able to raise prices.

Popular Internet content providers like Google, Amazon, Yahoo, and eBay are not going to simply swallow those extra costs levied on them by AT&T and Verizon. They will pass them along to consumers one way or another. Companies (like Google and Yahoo) that have built their franchise on free services supported by ad revenue will simply raise their advertising rates. Higher advertising rates will result in higher consumer prices on all the goods that advertise on these sites. Other companies (from Amazon to eBay vendors) who sell goods and services online will have to raise their rates to account for the extra charges. In other words, Amazon, eBay, and every small business that sells on the Web will have to charge more. iTunes and all the pay-per-download content sites will have to charge higher rates as well, just to send their cut to AT&T and Verizon. Content sites like YouTube, MySpace and video blogs may have to start charging for access to sustain their quality of service.

Consumers are going to get hit in the wallet either way. But they're likely to do better in a competitive market with unlimited choices than in hoping AT&T, Verizon or Comcast will keep their promises.

FACT #9: Investing in increased bandwidth is the most efficient way to solve network congestion problems; discrimination creates an incentive to maintain scarcity.

Fiction: Congestion on the Internet requires discrimination.

It is true that there is more and more information flowing over the Internet. To accommodate the traffic, network owners have two options. Option one is to use the scarcity of bandwidth at Internet bottlenecks to charge content providers for the privilege of reaching their subscribers, rationing the available bandwidth on a “tiered” basis to the highest bidder. Option two is to increase the bandwidth in the network to accommodate all providers on an equal basis.

Absent Network Neutrality protections, rationing will be the preferred option. It creates a market for selling privileged access through the bottleneck. Perversely, it also creates an economic incentive to maintain the bottleneck. If network owners are earning significant revenue from this bottleneck, why would they choose to build more capacity and relieve the congestion?

This is a recipe for disaster for our national broadband infrastructure. Right now, our networks are slower and more expensive than the world leaders by a wide margin. We have dropped from 3rd in the world to 16th in the world in broadband penetration in the past five years, according to the International Telecommunications Union. Stripping away Network Neutrality and permitting this sort of “bottleneck exploitation” will only serve to worsen our situation.

The engineers who designed and built Internet2, a network that connects research universities using high-capacity fiber lines, faced this same problem a few years ago. They studied the alternatives: rationing the pipes or building more capacity. The builders of Internet2 concluded that economically, the most practical and the most efficient solution was to expand the size of the pipe.²¹

Good public policy must guide commercial network owners to the same solution, rather than allowing them to reap private profit from public misfortune. If our ultimate policy goal is universal, affordable, high-capacity broadband, we need meaningful Network Neutrality.

FACT #10: Network owners have explicitly stated their intent to scrap Network Neutrality guarantees and build business models based on network discrimination.

Fiction: Network Neutrality is a solution in search of a problem.

The constant refrain of the Astroturf groups supporting the Bell companies is that Network Neutrality is a solution in search of a problem. They cite the absence of numerous demonstrated examples of blocking or degradation to back this argument. This is a red herring.

There are multiple real-world instances of blocking and impairment. But there are good reasons why we haven't yet witnessed an epidemic. For starters, network discrimination has only been legal for 9 months — since FCC lifted the last of the rules. And the largest phone companies (AT&T and Verizon) are currently under conditions of pending mergers that nominally and temporarily prohibit violations of Network Neutrality for another year.²² Moreover, why would a network operator commence discriminating in the midst of a hotly contested legislative debate? On the contrary, they are on their best behavior until Congress settles the issue in their favor.

By far the most significant evidence regarding the network owners' plans to discriminate is their stated intent to do so. Network Neutrality advocates are not imagining a doomsday scenario. We are listening to what CEOs are telling the *Wall Street Journal*, the *Washington Post* and *Business Week*:

- **Edward Whitacre, AT&T CEO:** "Now what they would like to do is use my pipes free, but I ain't going to let them do that because we have spent this capital and we have to have a return on it. So there's going to have to be some mechanism for these people who use these pipes to pay for the portion they're using. Why should they be allowed to use my pipes? The Internet can't be free in that sense, because we and the cable companies have made an investment and for a Google or Yahoo! or Vonage or anybody to expect to use these pipes [for] free is nuts!"²³
- **William Smith, BellSouth CTO:** "[Smith] told reporters and analysts that an Internet service provider such as his firm should be able, for example, to charge Yahoo Inc. for the opportunity to have its search site load faster than that of Google Inc. Or, Smith said, his company should be allowed to charge a rival voice-over-Internet firm so that its service can operate with the same quality as BellSouth's offering."²⁴
- **Ivan Seidenberg, Verizon CEO:** "We have to make sure they don't sit on our network and chew up our capacity. We need to pay for the pipe."²⁵

FACT #11: The House and Senate telecom bills will not deter discrimination and even tie the hands of the FCC from ever preventing it.

Fiction: The House and Senate bills already protect Network Neutrality.

Neither the telecom bill in the House (COPE Act, HR 5252) nor the Senate (ATOR Act, S 2686) protect meaningful, enforceable network neutrality. If Congress passes the House bill, or the Senate bill as it was reported out of the Commerce Committee, there will be no laws guaranteeing consumers' right to the online content of their choice for the first time in the history of the Internet. Instead, network owners will be permitted set up "tiers" that discriminate between different Internet content and services and decide for consumers what content they select and which services they will use.

Both bills appear to protect Network Neutrality. But both explicitly fail to address the most important issue: nondiscrimination. The Network Neutrality provision of the COPE Act limits the FCC to the enforcement of four "policy principles" — concepts that were never designed to be codified into regulation. The principles read as follows:

- Consumers are entitled to access the lawful Internet content of their choice.
- Consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement.
- Consumers are entitled to connect their choice of legal devices that do not harm the network.
- Consumers are entitled to competition among network providers, application and service providers, and content providers.²⁶

They sound good, but the interpretation and implementation of these broad concepts will be very difficult. FCC Chairman Kevin Martin has already indicated publicly that he does not believe these principles prohibit a network owner from setting up "tiers" and creating fast and slow lanes of service.²⁷ These principles do not say anything about how and whether a network owner must disclose to its subscribers that discriminatory terms of service have been established on the network. And nowhere in the policy statement does the word "nondiscrimination" appear. Nondiscrimination is the core of Network Neutrality. Without it, the provision is toothless. Even worse, the COPE Act specifically revokes the FCC's authority to write rules that expand these four bullet points to prevent the violation of Network Neutrality.

In short, the COPE Act's Network Neutrality provisions fail to protect the free and open Internet, deliberately impeding clear enforcement mechanisms, and leaving the network operators free to discriminate against consumers and content producers on the Internet.



In the Senate bill, the ATOR Act, the Net Neutrality provision is similar to the House bill in its effect, though different in form. The ATOR Act creates a “Consumer Bill of Rights” that prevents blocking of sites and protects the right to access and run sites and services of choice. Yet, once again, the bill notably lacks protection against discrimination by the network providers, allowing them to favor some sites over others by setting up discriminatory tiers. The bill fails, most clearly, to protect the principle of non-discrimination online and would allow the transition of the open Internet to a controlled model with a gatekeeper that decides which sites and services are privileged. The Consumer Bill of Rights should not be mistaken for Network Neutrality: It would allow for a discriminatory, pay-for-play network and forever change the architecture of the Internet.

Alternative legislation, such as the “Internet Freedom Preservation Act” introduced by Senators Snowe and Dorgan, or a similar bill offered by Representative Markey in the House, offers simple, clean corrections to these problems.

First, these Net Neutrality measures codify consumer protections to prohibit any network owner from blocking or degrading Internet content sent or received from the network. They guarantee unimpaired access to all Web sites and services. Second, the bills prohibit the network owners from setting up pay-for-play fast lanes that would relegate the vast majority of Web sites to the slow lane. Third, they guarantee that consumers can attach any legal device they choose to the network without discrimination.

These bills do *not* interfere with a cable or telephone company’s ability to offer multi-channel video or “cable services” in any way. They also allow network operators to manage content for the purposes of security and traffic flow, as long as it is in a nondiscriminatory manner. They permit parental controls and content filters to be set up by consumers. There is no restriction on offering different levels of service to consumers at different prices (just as we have today). Short of outright discrimination, network owners can use their systems any way they choose to maximize the return on their investment.

In short, true network neutrality in federal law will effectively preserve the Internet as we have always known it — a nondiscriminatory platform of fantastic innovation and democratic communication. Nondiscrimination protections prohibit gatekeepers on the Internet and maintain choice in the hands of consumers. They strike the right balance between consumers, content providers, and network operators, allowing all of them to thrive in the marketplace.



FACT #12: The organizations supporting Network Neutrality represent a broad, nonpartisan, coalition that joins right and left, commercial and noncommercial.

Fiction: Network Neutrality is backed by a left-wing cabal financed by Google.

The telephone companies and their Astroturf groups have attempted to smear the public outcry on the issue of Internet freedom as a partisan effort orchestrated by MoveOn.org and a grand left-wing conspiracy. This nonsense doesn't pass the laugh test.

The Save the Internet.com Coalition (www.savetheinternet.com) includes nearly 700 organizations, from small community groups to large national organizations. Banded together in this strange-bedfellows coalition are the Gun Owners of America, Feminist Majority, Parents Television Council, American Library Association, Consumers Union, and Educause. Network Neutrality is also supported by AARP, the ACLU, the Christian Coalition and the National Religious Broadcasters.

So far, more than 700,000 individuals have signed a petition to Congress demanding Internet freedom through meaningful Network Neutrality. Thousands of bloggers of all political stripes and interests, from Daily Kos and Instapundit to video gamers, musicians and food writers, have championed the issue and encouraged public involvement in the campaign. The world's most renowned experts on Internet technology, law, and policy — including Internet founder Vint Cerf and Tim Berners-Lee, the developer of the World Wide Web — have written prominently on the issue. Joining them are the best legal and policy minds in the country on Internet issues, including Professors Lawrence Lessig of Stanford University and Tim Wu of Columbia University.

This massive civic coalition stands next to a similarly large and unprecedented coalition in the commercial sector, joining together the Internet content and technology industries. Google, Amazon, Intel, Microsoft and eBay are joined by hundreds of smaller online retailers and technology firms. Network Neutrality brings together the next great innovators as well as today's biggest Internet brand names.

The campaign to preserve Network Neutrality protections is perhaps the most diverse set of public and private interests backing any single issue in Washington today. Hundreds of groups and hundreds of thousands of individuals from across the political spectrum are joining together to save this cornerstone principle of consumer choice and Internet freedom.



Consumer Federation of America

- ¹ "Prepared Statement of Vinton G. Cerf, Vice President and Chief Internet Evangelist Google Inc.," U.S. Senate Committee on Commerce, Science, and Transportation Hearing on "Network Neutrality," Feb. 7, 2006.
- ² The Public Interest in Open Communications Networks (Consumer Federation of America, July 2004)
- ³ *Expanding the Information Age for the 1990s: A Pragmatic Consumer Analysis* (Consumer Federation of America and American Association of Retired Persons, January 11, 1990); *Developing the Information Age in the 1990s: A Pragmatic Consumer View* (Consumer Federation of America and Consumers Union, June 8, 1992)
- ⁴ "Petition to Deny of Consumers Union, Consumer Federation of America, and Office of Communications, Inc. of the United Church of Christ," Federal Communications Commission CS Docket No. 98-178, October 29, 1998; "Reply Comments of Center for Media Education, Office of Communications, Inc., United Church of Christ, Minority Media and Telecommunications Council, Civil Right Forum, and Consumer Federation of America, Federal Communications Commission, CC Docket No. 98-146, October 10, 1998.
- ⁵ See Earl Comstock and John W. Butler, "Access Denied" in Mark Cooper (Ed.), *Open Architecture as Communications Policy* (Stanford: Center For Internet and Society, 2004).
- ⁶ "Modification of Final Judgement," *United States of America v. Western Electric Company and American Telephone and Telegraph Company*, Civil Action No. 82-019, August 24, 1982.
- ⁷ See: 47 U.S.C. § 202; Steven Aronowitz, "Brand X Internet Services vs FCC: The Case of the Missing Policy Argument," *Berkeley Technology Law Journal*, Annual Review 2005; See also *AT&T v. City of Portland*, (9th Cir. 2000).
- ⁸ "FCC Eliminates Mandated Sharing on Incumbents' Wireline Broadband Internet Access Services," Federal Communications Commission, August 5, 2005. See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260433A1.pdf
- ⁹ These technologies and their implications are discussed in Mark Cooper, "Open Access To The Broadband Internet: Technical And Economic Discrimination In Closed, Proprietary Networks," *University of Colorado Law Review*, Vol. 69, Fall 2000.
- ¹⁰ Robert Reich, interviewed by Scott Jagow, on "Market Place," Public Radio International, May 10, 2006, <http://marketplace.publicradio.org/shows/2006/05/10/AM200605101.html>
- ¹¹ Company annual reports.
- ¹² Company annual reports.
- ¹³ See the comments of Daniel Berninger, Senior Analyst at Tier1 Research, "Why Even Bells Need Net Neutrality," May 9, 2006, <http://gigaom.com/2006/05/09/why-even-bells-need-net-neutrality/>
- ¹⁴ "At SBC, It's All About 'Scale and Scope'," BusinessWeek Online, November 7, 2005.
- ¹⁵ See the comments of Daniel Berninger, Senior Analyst at Tier1 Research, "Why Even Bells Need Net Neutrality," May 9, 2006, <http://gigaom.com/2006/05/09/why-even-bells-need-net-neutrality/>
- ¹⁶ Ibid. See also: National Cable & Telecommunications Association, *2004 Year-End Industry*, page 30, http://i.ncta.com/ncta_com/PDFs/CableYear-EndOverview04.pdf
- ¹⁷ Ibid.
- ¹⁸ See "Trends in Telephone Service", Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, reports from 2002, 2003, 2004, 2005. Available at <http://www.fcc.gov/wcb/iatd/trends.html>. Also, "High Cost Support Projected by State - 1Q2006", Universal Service Administrative Company. Available at <http://www.universalservice.org/about/governance/fcc-filings/2006/quarter1/default.aspx>.
- ¹⁹ High-Speed Services for Internet Access: Status as of June 30, 2005. Industry Analysis and Technology Division, Wireline Competition Bureau, April 2006.
- ²⁰ See: S. Derek Turner, "Broadband Reality Check," August 2005, http://www.freepress.net/docs/broadband_report.pdf; GAO, "Broadband Deployment is Extensive Throughout the United States, but It is Difficult to Assess the Extent of Deployment Gaps in Rural Areas," May 2006; "High-Speed Services for Internet Access: Status as of June 30, 2005," Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, April 2006, at Table 4 (Residential Advanced Services Lines).
- ²¹ Net Neutrality: Hearing before the United States Senate Committee on Commerce, Science and Transportation, 109th Cong. (2005). Testimony of Gary R. Bachula, Internet2. February 7, 2006. Retrieved from <http://commerce.senate.gov/pdf/bachula-020706.pdf>
- ²² "FCC Approves SBC/AT&T and Verizon/MCI Mergers," Federal Communications Commission, Oct. 31, 2005. See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-261936A1.pdf
- ²³ "At SBC, It's All About 'Scale and Scope'," BusinessWeek Online, November 7, 2005.
- ²⁴ Jonathan Krim, "Executive Wants to Charge for Web Speed," Washington Post, December 1, 2005,
- ²⁵ Dionne Searcey and Amy Schatz, "Phone Companies Set Off a Battle Over Internet Fees," January 6, 2006
- ²⁶ "FCC Adopts Policy Statement," Federal Communications Commission, Aug. 5, 2005. See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260435A1.pdf
- ²⁷ Paul Kapustka, "Martin Says FCC Has Authority to Enforce Net Neutrality," Networking Pipeline, March 21, 2006. See <http://www.networkingpipeline.com/news/183701554>