



## **“Net Neutrality” and Community Transportation**

*December 2017*

On December 14, the Federal Communications Commission (FCC) is expected to meet and vote on a proposal to reverse its February 2015 order on “net neutrality.” This is a highly charged issue in many quarters, just as it was when the FCC issued the net neutrality order two years ago. While the FCC’s proposal doesn’t directly attack the viability of community transportation services, it does introduce an element of uncertainty that many transit managers already are finding worrisome.

### **What is Net Neutrality?**

At the risk of over-simplifying a challenging topic, the question of “net neutrality” basically is whether Internet service providers can control the content they provide their customers, including charging customers more money to access some content, slowing down the transmission speed of some content, or completely blocking some otherwise lawful content from their customers. Those practices are not considered neutral. In contrast, the concept of net neutrality suggests that Internet service providers make all lawful content equally available to their customers, without charging additional fees or transmitting some content to their customers at slower speeds than other content.

Before 2015, the FCC generally held that Internet providers had pretty wide latitude to control the nature and flow of content through their servers and over their lines. To use a very loose analogy, the FCC was treating Internet providers in ways similar to cable or satellite television services, in that the provider could control the availability and pricing of the information and entertainment services being offered to customers. In February 2015, the FCC changed course, and adopted the principles of net neutrality, determining that Internet services would be treated as a “common carrier” utility service, so that all content had to be made equally available to customers. In a way, this decision put Internet services in the same regulatory category as landline telephone service, in which the Internet provider could not discriminate or favor the delivery of content over other content.

Soon after he assumed office in January 2017, FCC Chair Ajit Pai pushed for a removal of the agency’s net neutrality rules. That decision on whether to return broadband Internet

services to the lightly regulated category of “information services” is what will come before the FCC at its December 14, 2017, meeting.

### **How Does Net Neutrality Relate to Community Transportation?**

If, as expected, the FCC decides to reverse its net neutrality rules this month, it's possible that community transportation providers will see gradual but still significant change in their Internet services, but it's also possible that transportation providers will not notice much change from their current Internet environment. Here are some issues to watch, both in the FCC's official meeting on the matter this month and also in the months and years ahead, as any decision from the FCC becomes implemented by Internet service providers and federal government agencies.

- **What's the federal government responsibility in the use of broadband Internet for the operation of businesses and public sector services?**

When it first proposed the reversal of net neutrality rules earlier this year, the FCC issued a lengthy proposal that recognized two core functions of the Internet: (a) as a provider of entertainment and information services to individual households (which may be why the FCC commissioner has pushed to treat Internet services in the same regulatory fashion as cable television), and (b) as a medium for on-line retail activities (which may be why the FCC is proposing that all consumer regulation of Internet activity be handled by the Federal Trade Commission). If the FCC was aware of the extent to which small and large businesses alike depend on broadband Internet to carry out their internal business operations, or if it was aware of how state and local governments depend on Internet services to carry out important public sector functions, that awareness did not materialize in their May 2017 proposal.

- **Who's responsible for looking after consumers' interests?**

The current FCC chair has stated he feels that the FCC is not suited to be responding to and investigating consumer complaints about Internet services. In its proposed reversal of the net neutrality rules, the FCC would delegate all consumer protection issues to the Federal Trade Commission. Whether this is a constructive move can be debated by experts in the consumer protection arena, but it is interesting to note that the major instances that led to the consideration of net neutrality in the first place were investigations and legal proceedings launched by the FCC itself, such as a 2004 action against a local telephone company that had blocked voice-over-internet phone services from its Internet customers, and a 2008 action against a nationwide cable carrier that had “throttled down” the transmission rate when its customers used some data streaming services.

- **What happens in rural areas and other markets?**

Although the current regime of net neutrality does not require universal broadband Internet service, nor does it guarantee the availability of affordable Internet service in rural areas or other places that may not be seen as lucrative for Internet service providers to do business, the common-carrier status conferred under these rules is regarded by many activists as an inducement for Internet providers to make their services more widely and affordably available than was the case before the net neutrality rules took effect in 2015. Indeed, it's possible that returning to a lightly regulated "free market" approach to Internet services may affect where Internet service providers do business, and may affect the nature of the services these providers offer their customers in some markets. However, it's hard to predict specific outcomes from returning to a pre-2015 market-based approach to the provision of Internet service in rural areas or other places.

- **What about wireless?**

When the FCC adopted its net neutrality rules, these rules focused on high-speed Internet services using coaxial cables, copper wires, and fiber-optic cables. For the most part, wireless Internet services were not included in net neutrality, except when wireless services were bundled with wire-based Internet (such as some offerings from AT&T and through Verizon's partial ownership of Verizon Wireless). In fact, many wireless-based Internet service providers were among the first to comment to the FCC when the reversal of net neutrality was formally proposed this year, where they pointed out that the net neutrality rules subjected them to internally contradictory sets of rules. In proposing to reverse the net neutrality rules, the FCC has made a point of emphasizing it continues to maintain and honor its responsibility to regulate radio frequency spectrum assignments, including the frequencies assigned to wireless Internet services, and that no changes are being contemplated that would affect FCC's regulation of how carriers are using their assigned frequencies.

## **What Happens Next?**

The FCC has scheduled a meeting for December 14, 2017, at which the commissioners are likely to be asked to reverse their order of February 2015, and return the regulatory treatment of high-speed Internet as an "information service" instead of treating these as common-carrier utilities regulated under Title II of the Telecommunications Act of 1934. During the public comment period, which began on May 23, 2017, and ended on August 16, the FCC received millions of comments on its proposed reversal; it's likely that some of these comments will shape the final actions taken later this month, but it's far too premature what changes to the FCC proposal are in store, or how they specifically may affect the delivery of public and community transportation services across the US.