

Yesterday Tom Wheeler wrote that he "won't hesitate" to declare ISPs common carriers. Well, it's time to stop saying it, and just do it: his list of what-ifs are all problems we face right now.

1. He wrote, "If we get to a situation where arrival of the 'next Google' or the 'next Amazon' is being delayed or deterred, we will act as necessary using the full panoply of our authority." The FCC will never be able to identify that, because under your vision the "next Google" or "next Amazon" (or more appropriately, the "next Netflix" - or even the "current Netflix" - will never be allowed to grow to the point where it's important enough to be noticeable. Internet innovation in America will come to a crawl, leaving us an internet backwater.
2. "Something that harms consumers is not commercially reasonable. For instance, degrading service in order to create a new 'fast lane' would be shut down." Service is already artificially degraded or purposely not improved, with "up to" advertised speeds, arbitrarily low data caps, and outdated equipment despite 95% profit margins and government grants for improvement. With no competition they have no incentive to improve.
3. "Something that harms competition is not commercially reasonable. For instance, degrading overall service so as to force consumers and content companies to a higher priced tier would be shut down." AT&T, Verizon, and Comcast just did exactly this to Netflix. EXACTLY this. And the result was extracting unnecessary fees, double-dipping, and raising costs to their customers. As a customer, I'm already paying them to access the internet, and Netflix in particular. As an internet company, Netflix is already paying their ISP for access. Everyone has paid. Charging them again is a naked money grab. Charging them for sending more data than they are receiving is nonsense; my ISP sends me far, far more data than they receive from me, so by that logic they should be paying me for service, and yet I'm not even allowed to send more data than I receive by the terms of my contract with them.
4. "Providing exclusive, prioritized service to an affiliate is not commercially reasonable. For instance, a broadband provider that also owns a sports network should not be able to give a commercial advantage to that network over another competitive sports network wishing to reach viewers over the Internet." This already happens. Every cable company also has video-on-demand that uses the same technology as cable internet but doesn't count towards data caps and isn't hampered by congestion. Meanwhile, Comcast's Xfinity is meant as a direct Netflix competitor for viewing video on PCs, and it explicitly gets a "prioritized" "fast lane" that doesn't count towards data caps.

When Mr. Wheeler said he "won't hesitate" to declare ISPs common carriers, but every one of his warning signs has already been met and he's still just talking, the FCC loses all credibility. All of the potential harms have already come to pass, but they are waved off because peering is "outside the scope" of what is being talked about. That's absurd: it's caused direct and immediate harm to consumers both in price increases and degraded service. It may be hidden behind obscure technical jargon, but it's at the heart of the issue: large ISPs are now and have been deliberately slowing down the internet in order to extort more money out of their customers.

We're already ranked 33rd in the world in internet speeds, behind such innovation and economic powerhouses as Lithuania, Andorra, Latvia, Moldova, and Bulgaria. Our established system of ISP monopolies and duopolies, with no effective competition or consumer choice have left us with far slower speeds and poorer service than we deserve as Americans, while prices keep going up. Meanwhile, local attempts to improve matters with municipal fiber systems are fought in the courts by the established powers that enjoy the lack of competition. Giving them carte blanche to treat internet service as unimportant instead of the necessary utility it is today will only make matters worse.

High-speed internet is as necessary in America today as electricity and clean water, and it's well past time it gets treated as such. It's time to declare internet

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service providers common carriers so they can no longer abuse Americans with their monopolistic anti-competitive and anti-consumer behavior. With internet as a utility, we would finally be able to have a vibrant and competitive ISP landscape.

Thank you.