

Why the Markey Net Neutrality Bill Would Regulate the Internet *H.R.5353 would alter the FCC's priorities to put Internet regulation ahead of competition*

Where the Markey Bill explicitly would regulate the Internet:

- **“Adopting and enforcing...protections” = regulation:** H.R.5353, *Sec. 12. Broadband Policy*. “*It is the policy of the United States:*” (4) “*To safeguard the open marketplace of ideas on the **Internet** by adopting and enforcing baseline protections to guard against unreasonable discriminatory favoritism for, or degradation of, content by network operators based upon its source, ownership or destination on the **Internet**.*” [Underline and bold emphasis added]
 - “*adopting and enforcing baseline protections*” is the functional equivalent of “regulation.”
 - This Broadband Policy sentence refers to “*the Internet*” twice.

How proponents are misrepresenting the Markey Bill's regulatory impact:

- **Not the whole truth and nothing but the truth:** Upon introducing H.R.5353 House Telecom Chairman Ed Markey unequivocally stated in his press release that: “*The bill contains no requirements for regulations on the Internet whatsoever.*”
 - By amending Title I of the Communications Act (which lays out the FCC's regulatory authorities, purposes, priorities, and procedures) with a new superseding U.S. policy priority to adopt and enforce Internet protections -- effectively mandates new regulation of the Internet.
- **Ignores cause-effect:** Legally and constitutionally, the FCC/Courts must harmonize and update past FCC regulations/court precedents to comply with new superseding U.S. policy set by Congress; thus this bill would legally require new regulations of all the competitive and de-regulated information service (Internet) technologies: telecom, cable, wireless, BPL, broadcast and satellite.
 - It is grossly misleading to imply that establishing a new U.S. Broadband Policy priority for the FCC, which references the Internet five times, would not require new Internet regulations.

How the Markey Bill is deceptive about its purpose and impact:

- **Study is a smokescreen:** Characterizing the legislation as “an FCC study bill” distracts Members from its real impact: that H.R.5353 radically alters the FCC's core regulatory mission/priorities.
- **Silent on reversing Government Free-Market Internet policy:** This bill would override current U.S. policy of the United States “*to preserve the vibrant and competitive free market that presently exists for the Internet...unfettered by Federal or State regulation*” with non-free-market, net neutrality regulation “*to preserve and promote the open and interconnected nature of broadband networks...*”
- **Silent on reordering of longstanding and popular policy priorities:** Bill proponents are not up front about how this bill would make the highly-controversial issue of net neutrality the country's #1 communications priority, overriding the longstanding bipartisan consensus policy priorities of promoting: competition, universal broadband deployment, public safety, and access for the disabled.
- **Spawn massive uncertainty:** “To establish broadband policy” without defining the core regulatory/legal terms: “broadband,” “open,” “interference,” “content” or “discriminatory favoritism” would beg lawsuits and even more regulatory/legal/investment uncertainty than the 1996 Telecom Act.

Politicizing the Internet

Fabricating a Free Speech Threat to Justify Regulating the Internet and An "Information Commons"

American ISPs are facilitating an unprecedented explosion of free speech.

- More people use the Internet in the U.S. than any other country, ~211 million, per World Internet Stats.
- The number of blogs is exploding ~50% annually, with 175,000 new blogs created daily per Technorati.
- The number of active Internet websites grew ~38% in 2007, per Netcraft's 2007 Web Server Survey.
- The evidence is overwhelming that ISPs are active facilitators and champions of free speech, facilitating more people to speak to more people in more ways than any time in human history.

A key net neutrality proponent admits only one alleged Internet free speech violation.

- "We didn't expect the first violation to be so blatant" said Marvin Ammori, General Counsel of Free Press to the AP 10-31-07, in claiming that Comcast's network management violated free speech.
- After trillions of Internet communications handled by over 2000 broadband ISPs, one of the most informed net neutrality proponents admitted they knew of *only one* alleged free speech violation.
- Preemptive regulation of the Internet to address an infinitesimal threat would do more harm than good.

Net neutrality activists admit to politicizing Internet free speech to advance their agenda.

- "The whole net neutrality issue is really about a power struggle" said Professor Tim Wu, who coined the term "net neutrality" to CNET, 11-5-07.
- "This is about framing an issue that would have been an obscure policy in terms of bad faith and free speech," blogger Matt Stoller of OpenLeft in a conference call with reporters 11-8-07.

If net neutrality was really about free speech, the legislation would be about free speech.

- All net neutrality legislation has been about mandating common carrier-like, nondiscrimination regulation of Internet service providers, not about advancing constitutionally-protected free speech.
- If it was truly about protecting free speech, the Save-The-Internet coalition would not have opposed the explicit free speech protections below that were supported by the broadband industry in 2006:
 - "SEC. 904. APPLICATION OF THE FIRST AMENDMENT. Consistent with the First Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment to the United States Constitution – (1) no Federal, State, or local government may limit, restrict, ban, prohibit, or otherwise regulate content on the Internet because of the religious views, political views, or any other views expressed in such content unless specifically authorized by law; and (2) no Internet service provider engaged in interstate commerce may limit, restrict, ban, prohibit, or otherwise regulate content on the Internet because of the religious views, political views, or any other views expressed in such content unless specifically authorized by law." (From H.R.5252 Amendment proposed in Senate 6-06.)

Free speech is a smokescreen hiding the real "information commons" political agenda.

- Net neutrality legislation, wireless open access regulation, and overturning copyright are signature goals of the information commons, wealth redistribution movement, which believes that all Internet infrastructure and Internet-produced-content should be required to be public not private property.
 - See "Saving the Information Commons" produced by the New America Foundation and Public Knowledge in May 2002. http://www.newamerica.net/files/archive/Pub_File_866_1.pdf

Net Neutrality vs. Reasonable Network Management

Net Neutrality has an inherent bias against network management.

- **Infinite Bandwidth Assumption:** The core tension here is that net neutrality proponents consider network management unnecessary because adding bandwidth could cure all network congestion ills.
- **Fault Capital Efficiency:** Another tension is the financial reality of capital efficiency, meaning networks are designed to accommodate average usage, not maximal spike usage, because it is too costly.
- **Free Lunch Assumption:** Yet another tension is that net neutrality proponents believe that the cost burden of adding additional bandwidth capacity to enable video should be paid by others, not them.
- **Not Technology Neutral:** Columbia Law professor Tim Wu, who coined the term “net neutrality,” said it “*is best defined as a network design principle.*” At core, net neutrality is about government permanently mandating one 30-year-old network design over all other competing network designs.
- **Bans Network Intelligence:** Technically, net neutrality is about whether the government restricts broadband networks to being “neutral” or “dumb” with “intelligence” limited to the network edge, or allows networks the freedom to be “smart” with “intelligence” inside the network.

Network Neutrality defines network management as discrimination.

- **Assumed Guilty:** By overstating that all Internet bits are equal, which is untrue, net neutrality assumes any differentiation of traffic is per se malevolent discrimination, not legitimate management.
- **One Size Does Not Fit All:** The Internet’s most defining characteristic is its diversity not its equality. People have vastly different needs, wants, means, preferences and priorities, which the Internet can and does meet. Applications also have diverse requirements for bandwidth, latency, quality of service, etc.
- **Management is Legitimate.** *Prioritizing* or *scheduling* multiple tasks, or *managing* scarce resources are not per se discrimination, they are essential and legitimate everyday management functions.

Net Neutrality is not a “practical” principle; the word “reasonable” exists for a reason.

- **Work in Progress:** The Internet is not a finished product or a perfect self-sustaining system. The Internet is a complex evolution of thousands of diverse private networks, hundreds of diverse technologies, and tens of thousands of network managers with diverse resources and approaches.
- **Not a Perfect World:** No one has perfect foresight. Internet networks must have the management latitude and flexibility to efficiently respond to unforeseen developments, problems and threats. Rigid network management rules would hamstring the Internet’s efficiency, reliability, and resiliency.
- **Policy by Exception?** The Internet has long handled billions of communications every day without incident. Net Neutrality proponents irresponsibly propose to apply regulations to 100% of Internet communications because of unproven allegations with .0000000001% of Internet traffic.
- **What “Reasonable” Means:** rational; endowed with reason; within the bounds of common sense; not excessive or extreme; marked by sound judgment. Managing network congestion to maintain quality of service expectations is the quintessential practical definition of “reasonable.”

Why Net Neutrality is Not a Mainstream Issue

It's not a Democratic vs. Republican issue; it's a fringe vs. mainstream issue.

Net Neutrality is a fringe issue and a factional business dispute.

- **Legislating Network Design?** Columbia Law Professor Tim Wu, who coined the term “net neutrality,” said it “*is best defined as a network design principle.*” Why would Congress want to pass a permanent law that freezes in place a 30-year-old network design and effectively forecloses future network design innovation and the emergence of a new next-generation Internet?
- **Dumb or Smart Network?** Technically, net neutrality is about whether the Government dictates that broadband networks must be “neutral” or “dumb” with “intelligence” limited to the network edge, or allows networks to be “smart” with “intelligence” included in the network.
- **Silicon Valley Factions:** Cisco states: “*Innovation inside the network is just as important as innovation in services and devices connected to the Internet.*” Google & eBay seek network neutrality regulations that proactively favor “edge” innovation in services and devices.
- **Online-Broadband Factions:** Online business interests believe Internet consumers should shoulder the cost of maintaining/upgrading the Internet; broadband interests believe online producers should help consumers shoulder the cost of maintaining/upgrading the Internet.

Net Neutrality is not sound Democratic policy.

- **Highly-Regressive:** A neutral or “one-tier” Internet would be highly-regressive because lower-income, low-bandwidth-usage consumers would be forced to subsidize the spiraling costs caused by the highest-bandwidth users and the biggest most-profitable online companies.
- **Abandons Key Priorities:** A neutral Internet would disallow “prioritization” of traffic for key Democratic priorities: *emphasizing and helping* public safety, first responders, the disabled community, schools, libraries, telemedicine, and rural/underserved areas.
- **Slows Universal Broadband Adoption:** Internet regulation of access prices, terms and conditions, would discourage necessary infrastructure investment and destroy incentives to rapidly deploy broadband to all Americans, especially in rural and under-served areas.
- **Corporate Welfare:** The online companies, which use the most bandwidth and benefit the most from the Internet, would pay the least under a neutral one-tier Internet. In a one-tier neutral Internet, consumers increasingly subsidize the spiraling usage of online companies.

Net neutrality is not sound Republican policy.

- **Internet Regulation:** Net neutrality would reverse Congressional policy: “*to preserve the vibrant and competitive free market that presently exists for the Internet...unfettered by Federal or state regulation.*” Net neutrality would also reverse the competition purpose of the 1996 Telecom Act “*to promote competition and reduce regulation...to encourage the rapid deployment of telecommunications technologies.*”
- **Industrial Policy:** Net neutrality would have Government second-guess markets and consumers in determining market winners and losers, demand for new products and services, and deciding which innovation and standards would be encouraged or disallowed.

Q&A One-Pager on Net Neutrality

Doesn't the Internet already have tiers?

- Yes. Consumers have long been able to choose from a variety of Internet access tiers: dial-up, the “slow lane;” different speeds and prices of broadband, the “fast lanes;” or WiFi access, the often “free” lane.
- Internet backbone businesses have long “peered” differently with tiers based on size and bandwidth.

Are all bits treated equally on the Internet today?

- No. For a variety of legitimate reasons internet traffic is treated differently. *Economics/competition:* People pay for different speeds based on their individual needs and means. *Law enforcement/public safety:* Need to be able to treat bits differently to prioritize for 911 and first responders. *Network security/quality of service:* Networks block spam and viruses; manage bandwidth to guarantee service.

Are all websites treated equally today?

- No. It is common industry practice for search engines to give preferential treatment in search results to websites or “sponsored links” that pay them the most money for top placement. That’s competition.

Is there sufficient broadband competition?

- Yes. Competition is flourishing and increasing. In addition to cable modems, DSL, WiFi and satellite broadband, there are increasingly, 3-5 wireless broadband options and broadband over power lines.
- Faster/cheaper microchips continue to drive the increasing number of broadband access alternatives.

Is net neutrality -- neutral?

- No. There’s nothing neutral about the government: dictating one and only one way to design networks; creating an innovation double standard where innovation *at the edge* of the network is encouraged but discouraged *inside* the network; or rigging the game by picking winners before the game is played.

Would net neutrality discourage innovation?

- Yes. In truly Orwellian logic, net neutrality proposes that the only way to protect innovation is to restrict it. Innovation is all about being different, the freedom to be different. Net neutrality mandates sameness.

Would net neutrality reverse current Congressional policy toward the Internet?

- Yes, Congress’s current policy for the Internet is “*to preserve the vibrant and competitive free market that presently exists for the Internet...unfettered by Federal or state regulation.*”

Would net neutrality reverse the competition purpose of the 1996 Telecom Act?

- Yes. In choosing regulation to promote technology innovation at the edge of the network, net neutrality would reverse the successful purpose of the 1996 Telecom Act which is: “*to promote competition and reduce regulation...to encourage the rapid deployment of telecommunications technologies.*”

Are there potential unintended consequences from net neutrality?

- Yes. Sweeping and rigid net neutrality legislation could: hinder public safety and homeland security; complicate protecting Americans privacy; erode the quality and responsiveness of the Internet; limit consumers’ competitive choices; and discourage investment in broadband deployment to all Americans.

NETCompetition.org is an e-forum to promote a rigorous debate on the merits of net neutrality legislation. It is funded by a wide range of broadband telecom, cable and wireless companies who believe that the best way to guard a free and open Internet is free and open competition, not more government control of the Internet. Please see www.netcompetition.org for more information.

Why Net Neutrality is Anti-Consumer

Why should websites get special government treatment better than everyone else?

- Everyone else, consumers, businesses, broadband providers, and the government have to pay the competitive price for the bandwidth they use and for additional features like mobility. All Internet backbone companies “peer” at different commercially-negotiated rates based on bandwidth and quality.
- Website interests, ecommerce-sellers and bloggers, want special government treatment -- just for them - one government-set broadband price, with special terms and conditions that consumers don’t get.
 - Net neutrality is classic special-interest legislation – elaborately dressed-up in pro-consumer, pro-free speech garb -- to make it sound less self-serving.

Why is net neutrality not in consumers’ interests?

- Net neutrality promotes the interests of *sellers* by lowering *their* costs of distribution. Consumers are *buyers* with different interests, to save money, and not be inundated with spam and endless junk e-mail.
- At its core net neutrality is a clever lobbying ploy by website interests to shift normal business distribution costs to the consumer. Net neutrality is effectively pro-junk-e-mail legislation, because under net neutrality *consumers pay for most all the cost* of the junk-email they receive not the spammer.

Why should consumers have to foot the entire broadband bill when they don’t have to?

- Consumers don’t have to pay for the cost of search or pay for broadcast TV or radio – advertisers do.
 - Advertising-supported models are a proven way to reduce the cost burden on consumers.
- Net neutrality would ban alternative business models for broadband, like advertising, that could reduce the consumers’ costs and provide consumers with more diversity of broadband service choices.

If net neutrality is anti-consumer, why are consumer groups backing it?

- Consumer groups apparently have made the tactical political judgment that “the enemy of their enemy is their friend.” However, they may be mistaken that being lobbying allies in their longtime battle against telecom and cable de-regulation does not necessarily make net-neutrality a pro-consumer policy.

Why is net neutrality a losing trade-off for consumers?

- Net neutrality may offer the *potential benefit* of protecting some websites, not consumers, against *potential* anti-competitive harms, which haven’t happened, but might happen in the future.
- However, this would come at the *real cost* of: a slower and less responsive Internet; higher broadband prices and taxes for consumers; less diversity in the broadband market; slower broadband deployment to all Americans; and less privacy for all because net neutrality would require more government monitoring and surveillance of Internet traffic to enforce unequal commercial treatment.

Why is net neutrality not the Internet’s “First Amendment?”

- Net neutrality advocates have mischaracterized the First Amendment’s protection of freedom of speech by implying it is analogous to the need for net neutrality regulation of *private companies*. The founding fathers feared and restricted the *government’s* ability to limit the people’s freedom of speech.
- What is a bigger threat to Americans’ freedom of speech? The increasing diversity of private sector competition? Or encouraging government to limit commercial freedoms and conduct monitoring and surveillance of Internet traffic to ensure that all Internet bits are treated commercially equal?

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Net Neutrality Fact Sheet

The Internet is not “public property.”

- The Internet is a network of private networks enabled by many *universally-accepted, consensus standards* that no one entity can control or change and that do not require network neutrality:
 - Internet transmission protocol (IP) is *universally-accepted* and enables all types of communications technologies to fully inter-operate and function as one network;
 - Domain Name System (DNS) administered by ICANN, an international non-profit corporation, provides a *universally-accepted* address system for Internet devices; and
 - World Wide Web (www) is a *universally-accepted* standard that makes text, graphics, sound and animation on HTTP Internet servers accessible to Internet users with a point and a click.
- All these *private* networks have *freely and openly* accepted these universal Internet standards, because it is *in their economic self-interest* to do so *and in the interests of their users*, not because it is required.
- While government and academic funds created and funded the original Internet, the U.S. Government *commercialized* the Internet from 1991 to 1995 and it has been *operated privately* ever since.

Net neutrality is not a *universal* operating “principle” of the Internet today.

- Unlike the *universally-accepted consensus standards* discussed above, it is obvious from the extreme controversy that net neutrality is neither universally-accepted nor consensus Internet practice.
- For example, the *~20 million* American cable broadband users have *never* had network neutrality; and *~200 million* American cell phone users also have managed just fine without network neutrality.
- Far from a *consensus* “principle,” net neutrality is a highly-contentious political clash over *network design theory and preference*; where “edge” Internet companies are trying to get the government to *permanently* impose their end-to end network *design* on competitive “network” Internet companies.

Coercing net neutrality would destroy the Internet’s essence: a mutual self-interest to cooperate.

- Forcing a non-consensus design principle on all the private networks that comprise the Internet could rip apart the *consensus-of-self-interest* and cooperation that keeps the Internet *universally-accepted* today.
- Net neutrality could “kill the proverbial goose that laid the golden egg.” Government coercion did not make the Internet what it is today; it was *free and open mutual-self-interest* and industry *cooperation*.
- Making it *illegal* for broadband companies to differentiate and offer consumers a diversity of choices would permanently disadvantage broadband provider’s vis-à-vis tech and ecommerce giants, and destroy most economic incentives to continue to invest in Internet bandwidth, quality and security.

Increasing competition and innovation make net neutrality regulation obsolete.

- *Without* competition/technological innovation, network neutrality was necessary monopoly regulation.
- In 1993, Congress passed a law that network neutrality was unnecessary for competitive wireless.
- In 1996, the Telecom Act promoted competition and de-regulation, setting up the phase-out of net neutrality regulation as real competition emerged. That’s why net neutrality was never imposed on cable modems and why the FCC decided August 2005 to phase out net neutrality for DSL.

Net neutrality is a “Socialized-Internet” not the law’s vision of free and open competition.

- Net neutrality is a debate over what *type* of democracy the Internet will be. A hallmark of American democracy has been strong respect for the rights of individuals, property owners and the minority.
- The Markey and Snowe-Dorgan net neutrality bills would price regulate *competitive and even free* communications for the first time -- before any evidence of the hypothetical problems has emerged.
- Why a free-market Internet is superior to the Government micro-management of a “Socialized-Internet” is that property owners have the *economic and design freedom* and the *mutual economic self-interest* to solve problems, innovate, meet new consumer needs and earn a return on their investment.

Net Neutrality is Regressive, Not Progressive Policy

Net Neutrality Envisions a “Socialized-Internet”

Net neutrality is modern-day “Internet Luddism” -- opposition to technological change.

- Neutrality-Luddites are the Internet’s version of the 19th century Luddites, the British workers who rioted and destroyed labor-saving technology they feared would diminish employment.
- Just like the original unsuccessful Luddites, neutrality-Luddites are driven by fear of technology change, competition and progress, because it threatens their status quo advantages.
- Neutrality-Luddites seek government protection to insulate them from the technological change that enables more broadband competition and broadband convergence into ecommerce.
- Net neutrality is “converge-aphobia” – an irrational fear of convergence and competition.

Net Neutrality is backward-looking, old-fashioned industrial policy.

- Neutrality-ites are regressing back in time to the *pre*-Internet-era to look for *Internet* policy answers. Is the Internet really like every other business and technology that came before it?
- NN is a stealth Depression-era technology model, based on the outdated and discredited approach that Government can better manage technology/economic tradeoffs than markets.
- America abandoned industrial policy failures in the 1980s in favor of market forces -- to better promote economic growth, productivity, innovation, and international competitiveness.

Net Neutrality would block, degrade, and impair America’s technological progress:

- Block innovation in smart networks and more diversity of broadband choices for consumers;
- Degrade the average speed and responsiveness of the Internet for everyone, by destroying any economic incentive to invest to meet exploding demand for bandwidth; and
- Impair America’s economic growth, productivity, and international competitiveness by regulating away the market’s natural ability to respond efficiently to new demands and risks.

Net neutrality would interfere with the Internet’s consensus and universal acceptance.

- NN would effectively re-impose pre-1995 Government control over Internet operations, breaking down the private sector cooperation and consensus that’s fueled the Internet’s growth.
- NN’s heavy-handed regulatory coercion would be antithetical to a “free and open” Internet.
- The Internet’s not broken, but NN would break the Internet’s system of mutual-self-interest.

Net Neutrality would discriminate against *network* innovation for *ecommerce* innovation.

- NN would enshrine the current “dumb network,” Internet engineering approach into law and effectively outlaw future “smart” network experimentation, innovation and improvement.
- NN would appoint the Government as “Internet decider,” not consumers, of what technologies would gain acceptance and which companies would win and lose in the market.

Non-discrimination in a *competitive* market would promote an indiscriminate Internet.

- Competition continuously improves the Internet; regulation would impede its improvement.
- NN would impede customization, personalization, and tiering of products/services to satisfy consumers’ very different needs, wants, and means -- creating an “indiscriminate” Internet that would be more: unselective, haphazard, random, confused and chaotic.

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Debunking “The Net is Neutral” Myth

The term “Net Neutrality” is misleading because it insinuates the Net is neutral today; in fact, it is not neutral. Imposing Net Neutrality would not maintain the status quo, but force big changes in the Internet’s operation.

Net traffic treatment is not neutral:

- The Internet engineering community has long recognized a passive (neutral) Internet is a dysfunctional Internet; it’s been developing “active queuing” (prioritization) to avoid service degradation or “Internet meltdown.” See *Internet Society, April 1998, RFC 2309*: [ftp://ftp.rfc-editor.org/in-notes/rfc2309.txt](http://ftp.rfc-editor.org/in-notes/rfc2309.txt)
- Keynote[®], the Internet’s Performance Authority, tracks how Internet connection speed varies among carriers and how performance (jitter & latency) varies between routes, among other Internet differences.
- Internet transmission has never been “neutral” or a “level playing field.” Large entities that invest more in infrastructure and pay more than smaller operators or bloggers, routinely get better Internet service:
 - Akamai’s caching services, provides advantage of faster, more reliable downloads of large files;
 - Owning high capacity “fat pipes” tied to peering exchanges provides a performance advantage;
 - Employing additional QOS services (quality of service) affords a performance advantage; and
 - Hosting in multiple strategically-located, high-end data centers provides superior performance.
- Google’s massive server farms give Google a big Net performance advantage over other search engines.

Internet backbone peering is not neutral:

- The Internet backbone has long been tiered, based on amounts of traffic exchanged. Peering, the *voluntary* interconnection of networks, is unequal and thus tiered based on the *reach* of a network.
- Internet backbone Tier 1 networks sell to, or peer with, every network, but *do not pay* for transit. Tier 2 networks peer, but *pay for some* transit over the Internet. Tier 3 networks *must pay* to reach the Internet.
- Internet backbone peering has never been regulated and most Internet traffic is in fact *privately* peered.

Net access pricing is not neutral:

- Internet access price differentiation is the norm. Consumers can choose from a wide variety of Internet price/speed tiers: *Dial-up* (free to ~\$20 monthly), *DSL* (~\$15 to \$60+), *Cable* is (~\$20-60+), *Satellite broadband* (~\$50-100+), *WiFi* (free to ~\$30+) *Wireless broadband/Wimax* (~\$50-80+).
- Prices differ greatly depending on which bundled products/services one buys and for what time period.

Net usage is not neutral:

- Internet use is not equal. A small slice of users consume most of the Internet’s bandwidth because they use highly-bandwidth-intensive applications like peer2peer video-file-sharing/gaming, high definition video. The most commonly-used applications require relatively little bandwidth i.e. email, web surfing.
- **5% of Net users use 51% of the bandwidth and 25% use 85% overall**, per Time Warner Cable.
- Net neutrality average pricing is reverse Robin Hood: average users must subsidize bandwidth hogs.

Net regulatory/legal precedent is not neutral:

- 30+ million cable modem and satellite broadband users have *never* been subject to net neutrality.
- In 1993, Congress ruled wireless competitive, meaning *no* net neutrality for 210 million wireless users.
- In 2005, FCC decided to not apply net neutrality to DSL -- ruling it competitive and unregulated.
- Snowe-Dorgan would create new one-size-fits-all regulation for *all* broadband providers even free ones.

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Debunking “The Broadband Market Failure” Myth

Net Neutrality proponents justify their call for new regulation by claiming insufficient broadband competition. Broadband is a young, fast-growing, and dynamic eight-year-old market replacing monopoly dial-up service. The facts prove a competitive market: choice is expanding, real prices are falling & supply is increasing.

Choice of broadband providers is expanding rapidly: According to the most recent FCC data*:

- 81% of U.S. zip codes offer **3 or more broadband choices**, up from 61% in 2003, and 32% in 2000.
- 53% of U.S. zip codes offer **5 or more broadband choices**, up from 35% in 2003, and 15% in 2000.
- Zip codes with **10 or more broadband choices** have exploded nine-fold since 2000 from 2% to 21%.
 - * http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd0705.pdf

Real Prices for broadband are falling!

- **Real DSL prices have fallen ~50%** as speeds have roughly doubled over the last 2 years; introductory DSL prices have fallen ~70% in ~3 years; average monthly DSL prices fell ~15% from 2004-2005.
- **Real cable modem prices have fallen ~70%** as speeds have increased from 1.5Mbps to 5+Mbps over the last two years with no price increase. Cable modem prices as part of a bundle have also fallen.
- The real price of broadband satellite service has fallen substantially through rebates/promotions.

Supply of new broadband competitors continues to increase.

- Wireless broadband is the fastest growing broadband option:
 - Verizon, Sprint and AT&T now offer wireless broadband service in most of the country.
 - T-Mobile broadband service offers 8,000 WiFi hotspots with coverage in all fifty states.
 - McCaw’s Clearwire-Intel WiMax offering is in 30 cities with plans to go more national.
- Several hundred U.S municipalities are in the process of installing city-wide WiFi networks.
- Broadband over Powerlines (BPL) is now a feasible third wire to the home; ~99% of cost of BPL is already paid for to supply electricity. Google-backed Current Technology is rolling out BPL in Dallas.

Net Neutrality is a smokescreen hiding an anti-competition policy bias.

- The proof that net neutrality proponents pessimistically do not believe in competition policy, is none of the pro-net neutrality bills include any sunset provisions for when sufficient competition develops.
 - Snowe-Dorgan S.2917, Markey Bill HR.5273, Sensenbrenner bill, HR.5417 are all permanent.
- A reason they offer no sunset language is that any objective measure of competition would show that sufficient broadband competition already exists for most all Americans, and is increasing every day.
- Snowe-Dorgan would impose new and highly-intrusive regulation on cable, satellite, wireless, WiFi, WiMax, and BPL -- all broadband technologies, which have never had net neutrality regulation before.

Broadband duopoly allegation is a gross misrepresentation of this dynamic marketplace.

- Those who allege a telco-cable duopoly *egregiously omit the factual context* that they both *used to be* monopolies and that bipartisan competition policy has successfully de-monopolized these markets.
 - As the data in the first section prove, competition has been increasing steadily for several years.
- Broadband is a young eight-year-old market characterized by falling prices, increasing supply of competitors, faster speeds, heavy investment/new deployments, differentiated offerings, and innovation.
- Fact: Satellite broadband is most widely available broadband technology, not DSL/cable per FCC data*.
- Fact: 35% of the latest new broadband adds were wireless, not DSL or cable modem, per FCC data*.

Debunking the “Broadband Competition Can’t Work” Myth

Unfounded pessimism and fear about the future of broadband competition is behind the call for Net Neutrality. Huge demand, declining costs, vibrant innovation & exploding spectrum availability fuels future competition. No entity has the means to control convergence bypass or inter-modal competition to restrict supply long term.

Demand is huge – rewarding new suppliers with huge growth opportunities.

- Broadband creates mainstream and “Long Tail” niche demand by enabling: convenience and productivity; functional utility; lower prices; more portability; new features/applications; customization; personalization; increased quality; and more diversity of choice in content and entertainment.
- Demand is driving everything analog to digital, everything communications to IP broadband and mobile
- Evidence of this exploding demand is overwhelming – for example:
 - ~50 million Americans have upgraded to broadband Internet access; ~190 million to digital wireless; ~100 million to mobile handsets with web access; ~60 million to digital TV; ~30 million to HDTV; and over 50% of all PCs sold are laptops, of which 95% are WiFi enabled.

Declining costs are lowering the cost of market entry and challenging incumbents.

- The rapidly declining cost of the core input in digital communications, microchip processing power, continues to fall per Moore’s Law -- i.e. that processing performance ~doubles about every 24 months.
 - Moore’s Law has held true for ~35 years and recent breakthroughs in bridging photonics and silicon (i.e. lasers in silicon chips) suggest Moore’s Law can continue for decades more.
- Moore’s Law efficiencies in performance/cost have been the single biggest enabler of competition:
 - Lower modem and electronics costs drove down the cost of DSL to enable \$15-20 pricing.
 - Wireless broadband models used to be uneconomic, like Winstar/Teligent, however they are now profitable: Verizon Wireless, Sprint, AT&T/Cingular, T-Mobile-WiFi, Clearwire-WiMax.
 - The formerly intractable interference problems of transmitting over electrical power lines (BPL) have been overcome by cheap powerful OFDM modems capable of bypassing interference.

Vibrant innovation rewards competitors with growth from new products, services and content.

- The three major dimensions of convergence: digital, mobility and IP combine to create exponential permutations of potential features, functions, uses, and innovations for products, services and content.
- IP convergence with discrete addresses for everything rewards mass customization/personalization.

Exploding spectrum availability enables more competitors and more competitive applications.

- Compression/OFDM technologies continue to multiply the capacity/efficiency of existing spectrum for licensed/unlicensed wireless spectrum; and for physical media: copper, coax, electrical, and fiber lines.
- Cable and telcos are pushing fiber closer to the home multiplying the capacity of existing plant.
 - The U.S. is the only country with a nationally-built-out cable infrastructure to the home.
- Previously under-utilized spectrum like MMDS, UWB and others is being put to more and better uses.
- FCC just completed its biggest spectrum auction ever; FCC will auction extremely powerful analog TV spectrum in 2008, and FCC is exploring expanded use of “White Spaces,” WiFi, and WiMax spectrum.

Convergence fuels competitive bypass undermining potential bottlenecks or gatekeepers.

- Digital and IP convergence (any-to-any connectivity) increasingly enable, encourage and force broad-based, inter-modal and vertical competition for broadband products, services and content.
- The bypass of potential bottlenecks/gatekeepers continues to get easier because of: Moore’s Law declining costs; the self-healing and re-routing nature of the Internet; multiplying IP-enabled broadband technologies; exploding availability of spectrum; and flourishing inter-modal competition.