

Net Neutrality: Common Objections and Responses

“Net neutrality is a federal issue, and shouldn’t be subject to a patchwork of state regulations.”

The sponsors of HB 4155 would love to see net neutrality restored at a federal level, but in the absence of any meaningful movement in that direction the states have an important role to play in protecting the internet for their citizens. As long as the FCC is controlled by the same former telecom lobbyists who gutted the previous net neutrality rules in the face of overwhelming public objection, it is unlikely that we will see any sort of meaningful regulations imposed on large internet service providers. There are letters on the record from Senator Wyden and Senator Merkley supporting HB 4155 and outlining the challenges of relying on the federal government to regulate net neutrality.

“This is a solution in search of a problem; there is no evidence that ISPs have engaged in any of this behavior, and all this bill does is establish unnecessary regulations over an industry that has thus far been successfully self-regulating.”

There is *copious* evidence that ISPs have engaged in the behavior prohibited by HB 4155. Despite their claims to the contrary at the public hearing, Electronic Frontier Foundation was able to cite a number of instances in which ISPs took example of the previous lack of clarity in the rules to engage in exactly the behaviors HB 4155 is attempting to prevent. The ACLU published a report in 2010 detailing many of these abuses, which we are happy to provide to members. Indeed, as soon as the FCC revoked previous Net Neutrality protections, Comcast immediately pulled a promise to provide net neutral service from its website.¹

Even if such evidence did not exist, net neutrality is an important issue to our constituents. Now that the federal government has abdicated responsibility for enforcing net neutrality, the citizens of Oregon deserve to have the peace of mind of knowing that their state government is willing to put reasonable protections around their internet service.

“This problem should be solved by the market. Competition will force Internet Service Providers to provide net-neutral service or risk losing business to those who do.”

Buying internet is not like buying a hamburger; if you don’t like how one restaurant prepares it, you can’t just leave and go to the one across the street. Fewer than 50% of Americans have more than one choice of broadband internet service provider.² Renters rarely have any meaningful choice of provider, and are generally forced to go with whatever provider is already hooked up to their building. Even for those fortunate enough to have access to two or more providers, the reality has been that larger ISPs are generally in lockstep with each other when it comes to their aversion to regulation, and so it is unlikely that any of those choices would provide net-neutral service.

Furthermore, an individual citizen would have no way of knowing whether or not their internet is being throttled or otherwise interfered with by an internet service provider, and even if they somehow were able to detect a problem and make a complaint, contracts for internet service often

¹ <https://arstechnica.com/tech-policy/2017/11/comcast-deleted-net-neutrality-pledge-the-same-day-fcc-announced-repeal/>

² <https://arstechnica.com/information-technology/2016/08/us-broadband-still-no-isp-choice-for-many-especially-at-higher-speeds/>

include industry-friendly arbitration clauses preventing consumers from pursuing their rights in court. HB 4155 will make sure the necessary information is available to consumers to know how their ISPs are treating them.

“Federal regulations pre-empt any state regulation on this issue. Any rules that we make will be struck down as an unconstitutional overreach.”

Whether or not some level of state regulation of ISPs is pre-empted by current federal regulations is an open question under current law. However, it is clear under the law that a state has the right to make decisions about who it will and will not do business with. HB 4155 does not regulate ISPs; it simply uses the state of Oregon’s power as a consumer to advance an issue overwhelmingly supported by its citizens.

“But doesn’t this bill make the Public Utility Commission the regulator for ISPs?”

No. The Public Utility Commission has expertise, experience, and processes necessary to develop rules and make determinations. The bill calls for the PUC to develop rules and make determinations only on the certain topics specified under the bill. The bill does *not* require the PUC to pre-clear government contracts or impose utility-style regulation on ISPs.

Under HB 4155, public bodies themselves will ensure that their contracting partners meet or attest that they meet the requirements of HB 4155. The PUC will not be directly regulating this contracting process or ISPs as a result of this legislation.

“This bill will be particularly hard on small rural ISPs, who rely on numerous “middle-mile” providers to connect them to the larger grid and will not be able to control whether those providers conform with net neutrality.”

Under HB 4155, they don’t have to. HB 4155 specifically mandates that the state will only contract with ISPs that don’t engage in non-net neutral behavior themselves. If a “last-mile” provider does not engage in any of the outlined behaviors, but one of its intermediary “middle-mile” providers does, the last-mile provider will not be punished for the bad acts of its fellow ISP. If anything, HB 4155 will empower smaller ISPs by giving them a mechanism with which to force the larger companies they work with to play fair. There is a memo in the record from Ernesto Falcon of the Electronic Frontier Foundation rebutting this argument in more detail.

“Rural public entities who only have one option for internet service will be unable to conform with this law if that option refuses to provide net-neutral service.”

The bill contains an exemption for an ISP that “is the sole provider of fixed broadband Internet access service to the geographic location subject to the contract.”

“This bill could potentially interfere with important public safety functions such as the FirstNet system by preventing necessary prioritization of data.”

The bill contains an exemption for an ISP that “Engages in any of the activities described... in the process of addressing the needs of emergency communications, law enforcement, public safety or national security authorities.”