

# FCC Chairman Sparks Debate On Internet Neutrality and Two-Sided Markets

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The new FCC Chairman, Tom Wheeler, [raised some eyebrows](#) [2] this week when, at a [public event](#) [3], he simultaneously expressed strong support for the FCC's Open Internet rules and for the development of "two-sided markets" - in other words, paid prioritization. Paid prioritization on the Internet - ISPs picking winners and losers among online services is a big part of what the Open Internet rules aim to prevent. So it's no surprise that CDT and [other](#) [4] [neutrality advocates](#) [5] are wondering, what gives?

The Chairman's statement came in a Q&A discussion, so it's hard to know how much to read into it. This was an extemporaneous remark in a high-level conversation, not any kind of official policy announcement. But if the remark reflects a view that the Open Internet rules only bar ISPs from blocking Internet traffic, while leaving them free to discriminate for commercial purposes, that would be a serious problem. Creating two-sided markets for Internet access and discriminating accordingly among Internet traffic would fundamentally undermine the Internet's capacity for innovation and free expression. It would be bad for Internet users and online innovators alike. (CDT has explained why in detail before; see page 7 of [these comments](#) [6] from January 2010).

On the other hand, the Open Internet rules don't necessarily bar two-sided market arrangements in all contexts. The rules allow for experimentation in the form of specialized services: services that are not Internet access, and to which the Open Internet rules therefore don't apply. So if a content provider and an ISP want to work out a special arrangement for the delivery of certain content with specified attributes such as quality guarantees, they have a path to do so under the rules - they just need to do it as a separate service that does not impair the delivery of Internet access or require favoritism among Internet traffic. Thus, to the extent the FCC Chairman just meant that he expects some development of two-sided arrangements in the marketplace at large - which presumably includes the marketplace for specialized services - his remark could be consistent with the Open Internet rules.

The bottom line is that Internet access service should carry a basic expectation of nondiscrimination among traffic. You can't square that with two-sided markets. But Internet access services aren't the only services a provider may offer. In a well-functioning marketplace, there may be room both for an open and nondiscriminatory Internet access service, and for other types of services that involve special deals, so long as the one doesn't swallow the other. Let's hope that's what Chairman Wheeler meant.

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- [specialized services](#)
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[2] <http://arstechnica.com/tech-policy/2013/12/fcc-chair-isps-should-be-able-to-charge-netflix-for-internet-fast-lane/>

[3] <http://www.osu.edu/features/2013/ohio-state-live.html>

[4] <http://publicknowledge.org/blog/did-fcc-chairman-just-endorse-pay-play-intern>

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[6] [https://www.cdt.org/files/pdfs/2010\\_CDT\\_openness\\_comments.pdf](https://www.cdt.org/files/pdfs/2010_CDT_openness_comments.pdf)