Commentary: California's net neutrality law just cost AT&T wireless customers a free streaming perk. That's a good thing

19 March 2021, by Jon Healey

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Having survived an initial court challenge, California's net neutrality law is having its first tangible effects on consumers and their internet service providers. But those consumers may not be so pleased with the results.

AT&T informed its nationwide cellphone customers on Wednesday that it was ending a program that allowed websites and services to buy their way around AT&T's data caps. In particular, the "Data Free TV" program enabled customers to stream video from selected services, including AT&T's own HBO Max, without using up their monthly data allowances.

But under California's law, internet providers can't charge sites and services for that sort of thing. They can exempt applications from data caps (a practice known as "zero rating"), but only if they do so for every application at no charge to the provider.

So from now on, AT&T customers hoping to stream HBO Max's "Justice League" on their phones will have to do so at the expense of their monthly data allotment unless they can find a Wi-Fi connection. That's easy enough to do at home; not so easy while, say, waiting in line at the mobile vaccination site.

In truth, AT&T's move could pinch some mobile users who are active streamers. Nevertheless, it's a good thing, and it helps demonstrate the value of the state's net neutrality law in promoting a free and open internet.

For the record, AT&T insists that it supports an open, competitive internet. And I don't think zero rating is inherently evil. But in practice, it's hard to do a version of zero rating like AT&T's "sponsored data" program in an evenhanded way. In fact, it may be impossible for a major cable or phone company to do it without tilting the competitive landscape, which is when zero rating becomes a net neutrality problem. That's because all of those companies own streaming video services that compete with the ones they're charging to circumvent their data caps.

AT&T, for example, owns DirecTV and WarnerMedia, along with the streaming services they operate. I'm sure AT&T could charge its subsidiaries the same amount for its sponsored data service as it charged the likes of Hulu and Netflix, but moving money from the left corporate pocket to the right is hardly the same as collecting cash from a competitor.

And it should go without saying that the sites not paying to be exempted from the data caps are at a huge disadvantage relative to AT&T's services and its partners' offerings. After all, no smartphone user wants to hit the data cap in mid-month.

More important, as professor Barbara van

Schewick of Stanford Law School observed in an interview, "Zero-rating only works when you have a low data cap. That creates an incentive for ISPs to keep low data caps and keep unlimited plans expensive. For example, in the European Union, ISPs that don't zero-rate video give subscribers eight times more data for the same price than ISPs that zero-rate video."

Mobile phone companies defend data caps as a tool that helps keep individuals from using disproportionate amounts of data and slowing down the network. But the caps also restrain usage in ways that can inhibit the development of new, bandwidth-intensive services while also delaying investment in more network capacity.

(Interestingly, AT&T turned off its Data Free TV program nationwide, saying the California law left it no choice given the way its network is structured. But van Schewick pointed out that the company had let customers opt out of Data Free TV. If it has the ability to turn it off on a customer-by-customer basis, it should be able to turn it off just for the customers in one state.)

The idea behind net neutrality rules is that broadband providers shouldn't put their thumbs on the scale of competition online among sites, apps and services. That's one of the founding principles of the internet—that there should be no barriers to entering the market, connecting with others and competing for an audience.

AT&T's sponsored data service might have looked like a benefit for customers, but it carried an unacceptable price to competition and innovation. As van Schewick put it, "People should be free to choose which videos they want to watch—whether that's Netflix, Twitch or their local church's Sunday service, without the company they pay to get online trying to influence their choices."

APA citation: Commentary: California's net neutrality law just cost AT&T wireless customers a free streaming perk. That's a good thing (2021, March 19) retrieved 5 December 2021 from https://techxplore.com/news/2021-03-commentary-california-net-neutrality-law.html