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California's Net Neutrality Law Threatens Veterans' Telehealth

by

Randolph May & Seth Cooper *

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With the war on the pandemic still not won, California's veterans are at risk of losing access to a mobile Internet app, called VA Video Connect, that enables veterans to receive telehealth services without incurring data usage charges. This is a consequence of [California's newly effective "net neutrality" law](#) that flatly prohibits Internet service providers from offering consumers so-called "free data" plans, sometimes also called "sponsored data" or "zero-rated" offerings, unless an entire "category" of supposedly similar services receives the same treatment.

While government-imposed "net neutrality" mandates may sound superficially appealing in theory, in reality they often harm consumers. In this instance, those harmed may include our veterans.

With free data offerings, access to various Internet content, such as the VA's telehealth application, is subsidized by the wireless broadband providers or by third party websites and applications. As a result, consumers receive a price break or avoid potential data usage charges.

The Free State Foundation
P.O. Box 60680, Potomac, MD 20859
info@freestatefoundation.org
www.freestatefoundation.org

Not surprisingly, the free data programs are popular with consumers, and low-income persons naturally stand to benefit the most.

For now, California's net neutrality law is the most overreaching in the nation. Its threatened harmful effects should be a cautionary tale, not only for other states, but for the Federal Communications Commission, which likely is considering adopting similar new prohibitions governing Internet service provider offerings.

According to a March 24 report in [Politico](#), “officials at the Department of Veterans Affairs are privately sounding the alarm that California's new net neutrality law could cut off veterans nationwide from a key telehealth app.” The reason California’s ban on free data offerings likely will impact vets and consumers across the nation is that, unlike traditional voice telephone calls in last century’s analog era, it is highly impractical and burdensome, and in some instances impossible, to segregate interstate and intrastate Internet traffic. Thus, Internet providers, such as AT&T, T-Mobile, Tracfone, and Verizon, that offer the VA Video Connect app, almost always implement uniform nationwide protocols.

Why would California threaten to make it more costly – and, therefore, more difficult – for vets to take advantage of an innovative telehealth program by banning the wireless carriers’ free data programs? Simply put, because of an overly rigid ideological view of what “net neutrality” means. The most rabid net neutrality proponents, including Big Tech companies, persuaded California's legislature that it's somehow wrong for Internet service providers to allow certain content websites and applications, such as the VA’s in this case, to bear some small portion of the massive costs of constructing and operating broadband networks, rather than having consumers bear the entire costs.

In this view, popular free data offerings supposedly constitute an invidious form of non-neutral “discrimination.” According to this theory, there could be an adverse impact on websites and applications that don’t themselves offer free data programs. An outright ban on these offerings supposedly protects hypothetical competitors from hypothetical injury from hypothetical discrimination.

If banning free data apps is a core “net neutrality” principle, then it's one that deserves to be jettisoned. In the technologically dynamic, rapidly evolving, competitive Internet ecosystem, Internet service provider practices should not be categorically restricted based on hypothetical harms. In the real world, free data programs are popular and benefit consumers. The VA Video Connect app is a prime example of such a consumer benefit.

In light of the embarrassment caused to California by the potential take-down of the VA’s telehealth app, it will not be surprising if the state’s officials reach some interpretative accommodation that creates a “free data” exemption for certain applications, say, those relating to government-provided telehealth applications or “telehealth” sites more generally. That will be good for veterans and perhaps others.

But the uncertainty that already has been created just serves to illustrate the harm all too likely to ensue when government diktats put Internet service providers into straight jackets that require regulatory contortions to remedy the consumer harm the diktats create in the first place. A

regime that requires the government to define and approve specific categories of acceptable websites and apps invites arbitrariness, manipulation, and favoritism.

The far better course is for Congress, the FCC, and the states to adhere to a policy grounded in Internet freedom that presumptively permits innovative services such as VA Video Connect and other free data offerings. In the event any specific claims are raised that consumers and competition are being harmed, those concerns can be addressed on a case-by-case basis by the Federal Trade Commission or Department of Justice.

* Randolph May is President of the Free State Foundation, a think tank in Rockville, Maryland, and Seth Cooper is a Senior Fellow. They are co-editors of the book, *A Reader on Net Neutrality and Restoring Internet Freedom. California's Net Neutrality Law Threatens Veterans' Telehealth* was published in *Real Clear Markets* on March 30, 2021.