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Please ignore the net neutrality sideshow haunting Comcast's BitTorrent bust

By [Cade Metz in San Francisco](#)

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Comment According to narrow-minded ideologues on both sides of the increasingly childish debate over net neutrality, Comcast's infamous BitTorrent throttling is all about, well, net neutrality. But it's not. It's about Comcast lying to its consumers, the press, the FCC, and everyone else with even a passing interest in getting what they pay for.

In November, after *The Associated Press* [confirmed](#) (http://www.theregister.co.uk/2007/10/20/comcast_denies_bittorrent_busting_again/) reports that the big-name American ISP was blocking certain peer-to-peer file sharing traffic, two net-neutrality-loving watchdogs - Free Press and Public Knowledge - went running to the FCC. Soon, Pro Net Neuts and Anti Net Neuts the world over were [bickering](#) (http://www.theregister.co.uk/2007/11/06/richard_bennett_comcastle/) like Hatfields and McCoys, each ignoring any facts that might conflict with their particular version of the truth. The Pro camp said that ISPs can't discriminate against individual applications. And the Anti camp said that sometimes discrimination is the best way to avoid some serious network congestion.

This farcical squabble even extended to the [FCC itself](#) (http://www.theregister.co.uk/2008/08/04/fcc_neutrality_analysis/), with fellow commissioners making a right mess of government policy by issuing an order that some of them didn't have time to read.

After a split vote, the FCC [officially censured](#) (http://www.theregister.co.uk/2007/10/20/comcast_denies_bittorrent_busting_again/) Comcast, saying the big-name ISP ran afoul of "federal policies that protect the vibrant and open nature of the internet." The Pro Net Neuts are pleased. And the Anti Net Neuts are peeved. But in the epic tale of Comcast and its BitTorrent choke hold, net neutrality is a red herring.

Whether you believe in a neutral net or not, the company broke the law. And even if the FCC has erred in rejecting Comcast's claims to reasonable network management, the commission has given the ISP just the punishment it deserves.

Topolski with a side of interstate fraud

Independent networking guru Robb Topolski first noticed Comcast's BitTorrent throttling in early 2007, and when word of his P2P tests first hit the tech press that August, Comcast flatly denied the practice. Then, when the FCC came calling, the company

admitted to managing peer-to-peer traffic - though it insisted this only occurred "during periods of heavy network traffic."

But after nearly a year of scrutiny - including a pair of public FCC hearings - Comcast finally acknowledged its throttling had nothing to do with periods of heavy network traffic. As Topolski's tests showed, it was blocking BitTorrents round the clock.

"Comcast's current P2P management is triggered when the number of P2P uploads in a given area for a particular P2P protocol reaches a certain, pre-determined level, regardless of the level of overall network traffic at that time, and regardless of the time of day when the applicable P2P protocol threshold is reached," the company said in a recent [FCC filing](http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520033822) (http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520033822).

Yes, Comcast has a right to manage traffic on its network. But it's also obligated to give customers what they're buying.

"These are issues of consumer fraud," says Jonathan Kramer, a telecoms-savvy attorney with the Los Angeles-based [Kramer Telecom Law Firm](http://www.telecomlawfirm.com/) (http://www.telecomlawfirm.com/). "They took money from people and said they were going to deliver something. But in the end, they didn't."

Comcast is already facing [multiple class action lawsuits](http://www.theregister.co.uk/2008/06/05/comcast_blacklists/) (http://www.theregister.co.uk/2008/06/05/comcast_blacklists/) accusing the ISP of "deceiving and misleading" consumers. And that's why, all you [Cnet](http://news.yahoo.com/s/cnet/20080802/tc_cnet/83011078731000535060) (http://news.yahoo.com/s/cnet/20080802/tc_cnet/83011078731000535060) readers, the FCC's punishment has some teeth.

The FCC ordered Comcast to "disclose the details of its network management practices." And that's the last thing the company wants. "If they disclose their practices, they'll basically provide the evidence that proves exactly what those class action suits claim," Kramer says. "And they'll be revealing it in detail. The issue won't be 'Did you screw the people?' It will be 'What damages are we going to extract from you because of it?'"

We may even see a suit from state attorneys general. "They may step in for all the other people affected by this - which could be considered interstate fraud," Kramer continued.

So, yes, Comcast will challenge the FCC's ruling in federal court. But contrary to yet another [blinkered Cnet commentary](http://news.cnet.com/8301-13578_3-10000821-38.html) (http://news.cnet.com/8301-13578_3-10000821-38.html), the FCC will have the upper hand. You can deride the commission's views on network management, but there's no doubt it has the power to sanction. "Congress has delegated its authority to set the rules that regulate interstate telecommunications, and the internet is interstate telecommunications," Kramer explains. "The FCC is simply following the direction Congress gave it in the Telecom Act of 96."

After a long legal battle, the court will uphold the FCC's ruling. The Pro Net Neuts will be pleased. The Anti Net Neuts will be peeved. And they'll continue to bicker about whether the ruling will prevent American ISPs from controlling congestion on their networks. But Comcast will get its comeuppance. ®

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