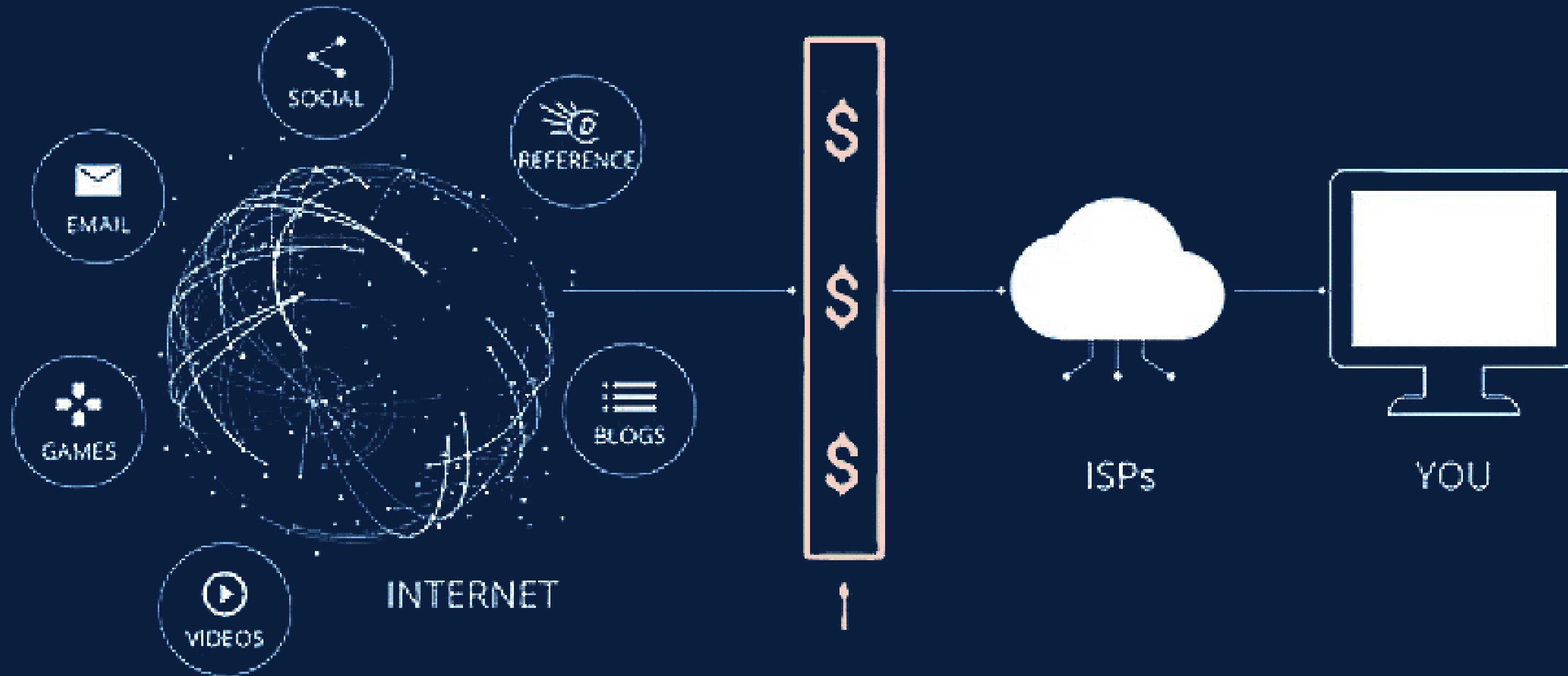




# Understanding Net Neutrality

# Net Neutrality

The concepts that an internet service provider (ISP) should provide access to online content regardless of its source or destination.



Without net neutrality, ISPs could demand that individual websites pay to have their sites shown to customers.



# Case Study And Pending Lawsuits In Net Neutrality



NO BLOCKING  
NO THROTTLING  
NO PAID PRIORITIZATION

# ● ● ● National Cable & Telecommunications Ass. v Brand X Internet Services

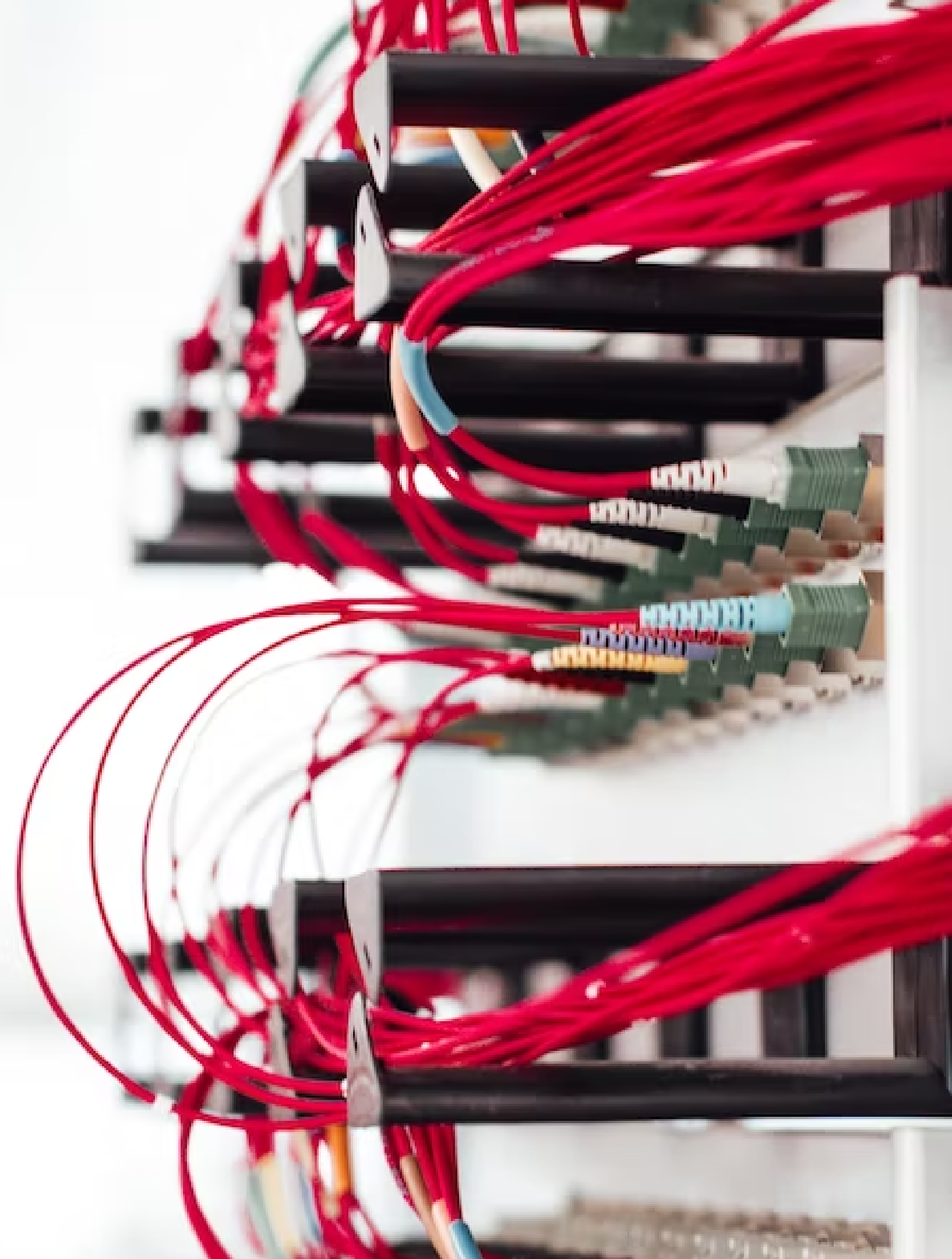
- The FCC had declared internet access as an 'information service' in 2002 which meant that telephone companies could give their own internet pricing at a discount over a competitor ISP who would be charged double the rate to have access to the high-speed internet access services on the same line.
- Telephone companies such as AT&T also required that customers of third-party ISPs purchase AT&T-branded landline services in order to provide DSL. Cable companies, on the other hand, offered no access at all to their data lines.
- This predatory pricing and unfair service conditions led Brand X and a number of other ISPs to dispute the FCC ruling defining Internet as an information service





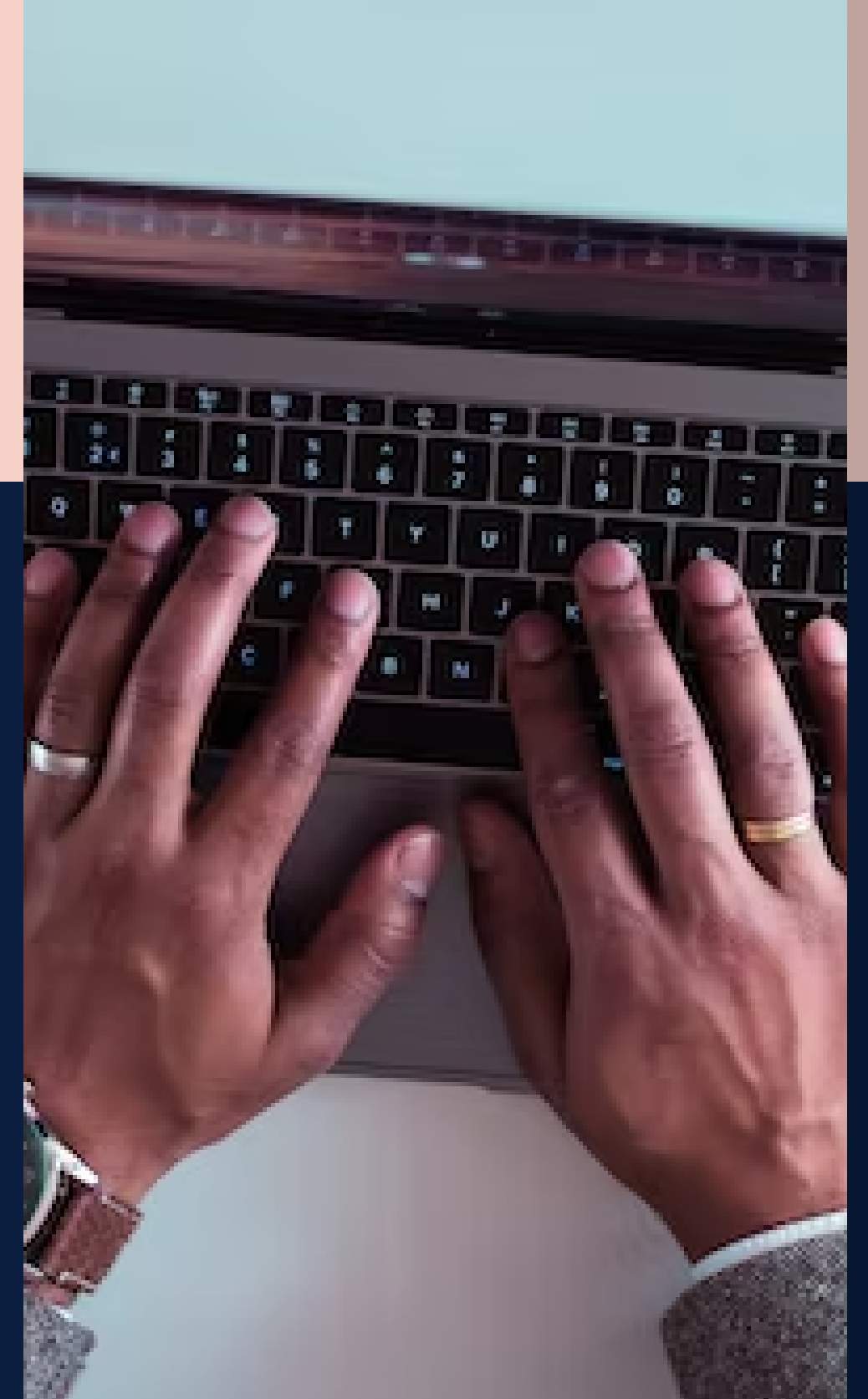
## National Cable & Telecommunications Ass. v Brand X Internet Services

- Ultimately, the courts decided via appeals that, yes, the FCC can classify internet service as either an information service or a telecommunications service. As a result, cable companies are free to refuse to share their networks with competing ISPs.
- This case was key case law in the debate of net neutrality in the USA. It established that the Federal Communications Commission (FCC) had the authority to classify Internet service as either an "information service or a 'telecommunications service'.



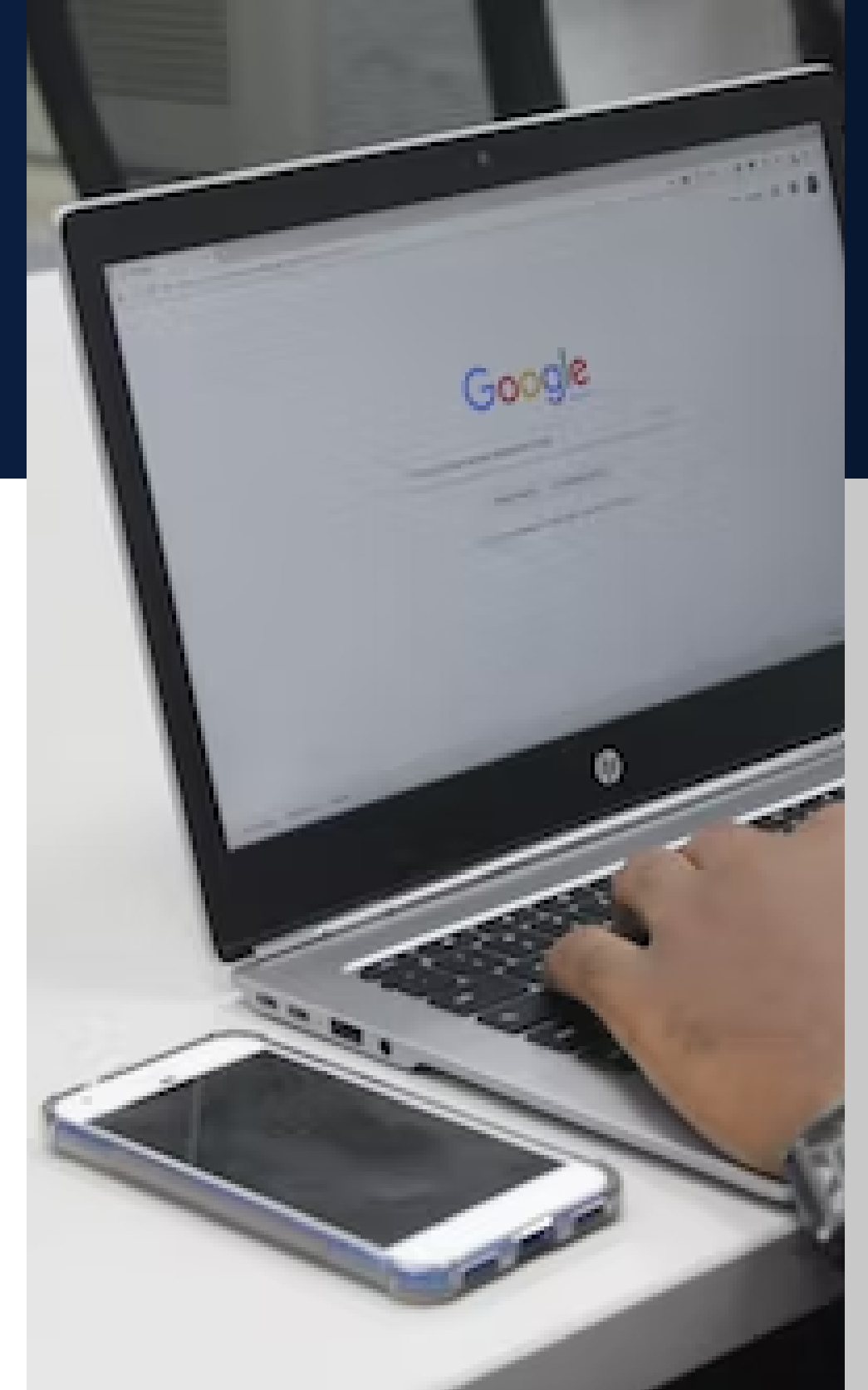
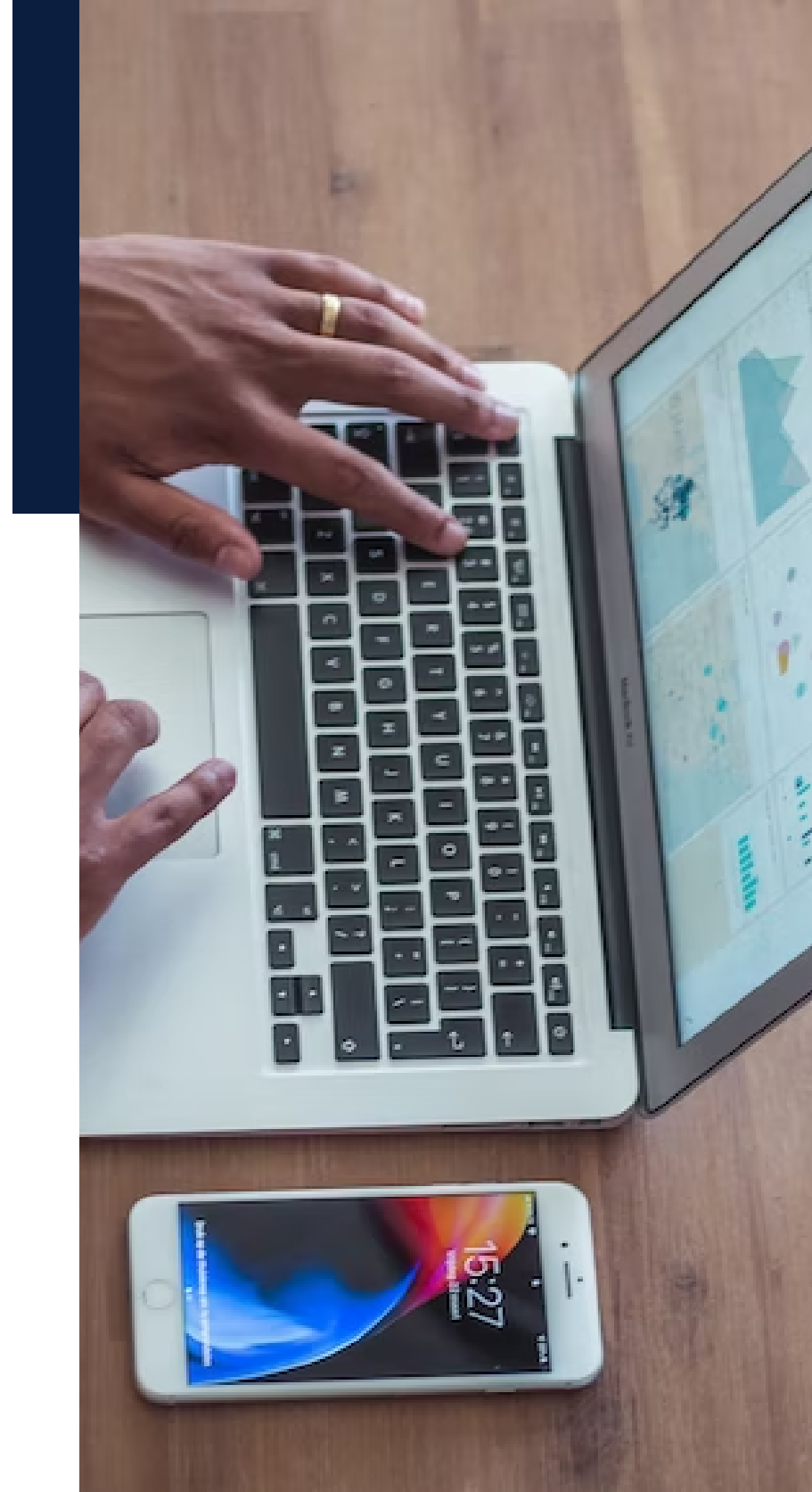
## Open Internet Order

- The FCC's 2010 Open Internet Order created principles of net neutrality that applied to Internet services, without reclassifying Internet services as 'common carriers', this was challenged by ISPs. In 2014, Verizon Communications Inc. v. FCC, the DC Circuit Court of Appeals ruled that the FCC had little power to regulate ISPs while they were still classified as information services.
- This led the FCC to pass the 2015 Open Internet Order, which reclassified ISPs as common carriers, giving it legal power to enact net neutrality protections. The FCC's 2015 Open Internet Order prohibited ISPs from blocking or throttling legal apps and websites. It also banned the prioritisation of paid content by ISPs.



## Open Internet Order

- It gave the FCC the authority to prevent ISPs from violating net neutrality protections at the point where data entered their network and outlawed behaviours considered unfair practices.
- With the changed administration after the 2016 election, the new members of the FCC reversed the prior 2015 Open Internet Order, reclassifying ISPs as information services and swearing off any authority whatsoever to regulate ISPs beyond requiring ISPs to be transparent about their practices. The courts added that since the FCC says it no longer has the power to oversee Internet service providers, it can't order the states not to pass their own laws. Mozilla v FCC





## California Net Neutrality Law

- California's 2018 law is the toughest in the country and was signed into law a year after the FCC repealed the federal Open Internet Order. The Department of Justice under former President Trump sued the state, arguing that the law was pre-empted by the FCC's 2017 repeal of the federal law. That lawsuit and other legal challenges prevented the California law from taking effect, but last year the DOJ dropped its lawsuit.
- The court ruled that the FCC "no longer has the authority" to regulate broadband internet services since the agency had reclassified them as information services, rather than telecommunications services. "The agency, therefore, cannot preempt state action."







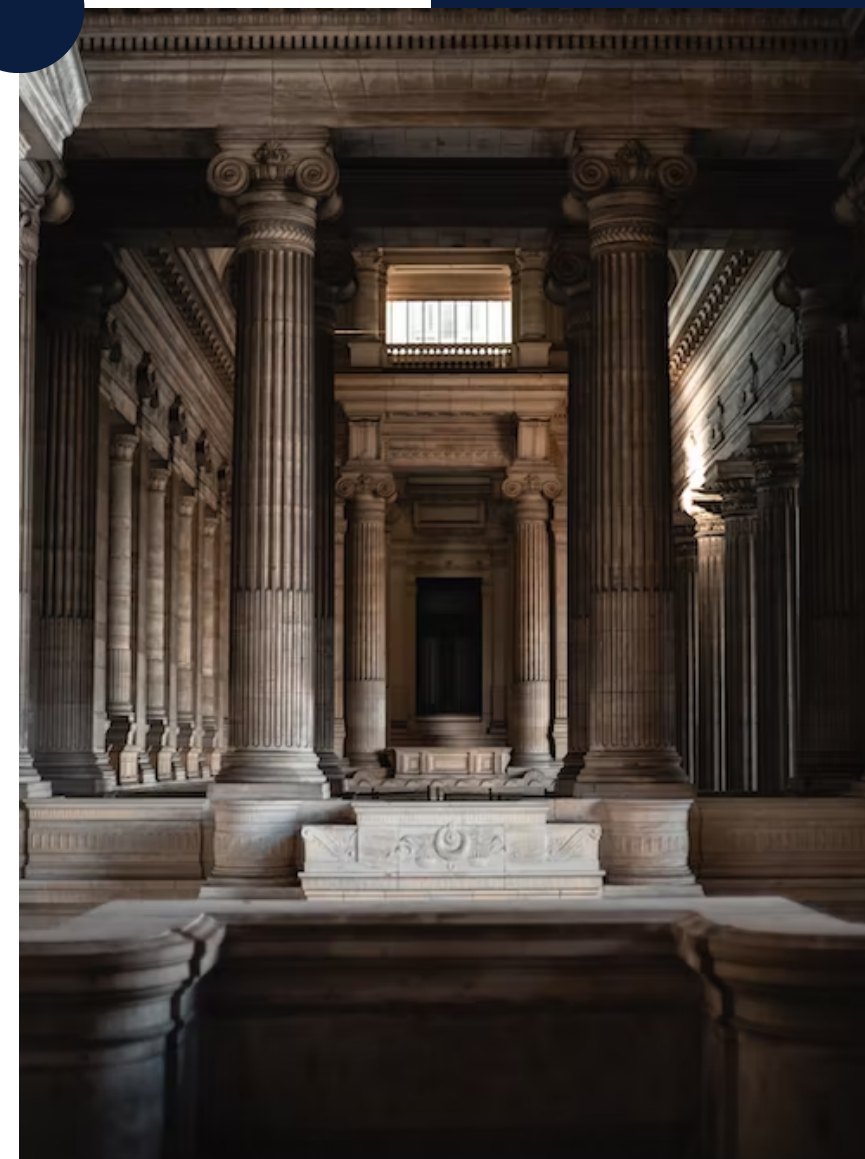
## Netflix Net Neutrality Cases

- Netflix v Comcast 2014 - Due to the volume of bandwidth that Netflix users, Comcast wants Netflix to pay for the interconnection for use of the internet. Netflix claims that its video streaming service has performed poorly over certain broadband networks, including Comcast and it just so happens that the networks that have seen poor performance are ones with which Netflix has had difficulty negotiating interconnection deals.
- Netflix in Korea - In 2020, Korea implemented the Telecommunication Business Act. The Act forces foreign content providers to pay network usage fees to local ISPs. Netflix sued SK Broadband, a Korean ISP for these network fees, claiming that it should not be liable to pay any fee for using the ISP network since the ISP consumers are already paying for the network services



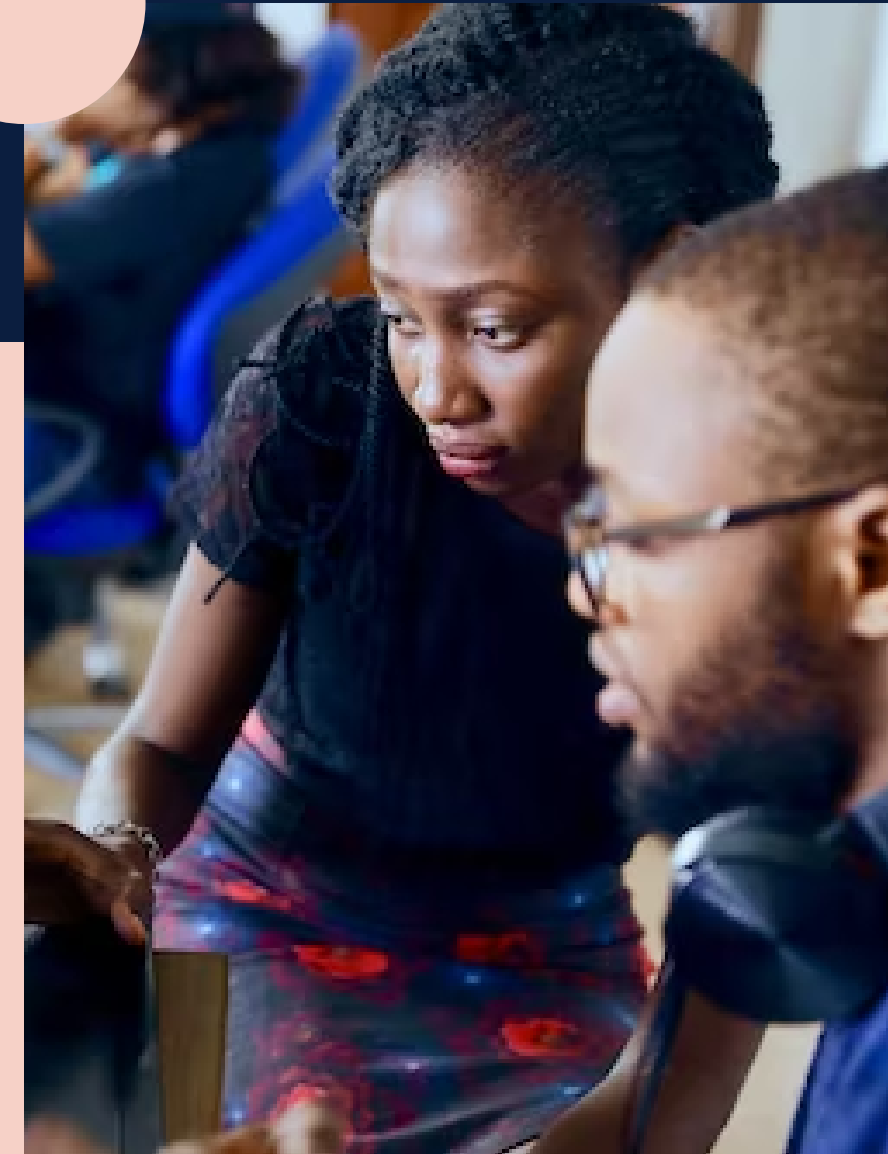
# Net Neutrality in Nigeria

- The absence of net neutrality laws almost led to the ban of Skype, Whatsapp and other OTT services. Telecom companies had lost a lot of money as a result of subscribers using web services to make international calls that they are considered blocking those subscribers to recoup 20 trillion Nigerian Naira.
- The argument made by telecommunications infrastructure providers is that they should be compensated by the OTT services using their networks to provide for free the same services the carriers are selling.



## Net Neutrality in Nigeria

- In 2013, carrier Airtel Nigeria launched a promotion with WhatsApp that saw customers receive a branded data plan that included unlimited usage of WhatsApp. Today these tactics are still used by other telecoms as well.
- This type of solution is counter to net neutrality principles that says all data should be treated equally. Airtel's pricing would encourage users to use Facebook's Messenger service for example instead of a competing messenger app like Google Hangouts, which creates unfair conditions in the marketplace.



# Net Neutrality in Nigeria

- The NCC has published the “Guidelines for the Provision of Internet Service” (the Guidelines) which applies to all ISPs. The Guidelines require all ISPs to comply with the Consumer Code of Practice Regulations 2007 (the Regulation) which provides a template for the minimum terms and conditions for the provision of telecommunications services and consumer practices in Nigeria.
- The NCC released Draft Internet Industry Code of Practice in 2017 which errs on the position of net neutrality and includes provisions for:
  - protect the right of internet users to an open internet;
  - provide clear guidelines to ISPs on the use of traffic management practices;
  - No lawful content, applications or services is to be blocked or made unavailable to users of Internet services





# FUTURE OF NET NEUTRALITY



## A lot of countries have implemented laws, rules or guidelines towards net neutrality

Despite the many debates around net neutrality, the trend worldwide is to support and protect net neutrality as evidenced by the several countries including the USA and EU that have put in place regulations, policies or laws to ensure open, unrestricted and nondiscriminatory access to the internet. Obviously, Nigeria is seeking conformity with international best practices has followed the global trend with the issuance of the Draft Code, which subject to the public inquiry will be adopted.

In the coming years, we hope to see more countries adopting the principles as it benefits outweigh the disadvantages.