

Fact Sheet: Chairman Wheeler Proposes New Rules for Protecting the Open Internet

Chairman Wheeler is proposing clear, sustainable, enforceable rules to preserve and protect the open Internet as a place for innovation and free expression. His common-sense proposal would replace, strengthen and supplement FCC rules struck down by the U.S. Court of Appeals for the District of Columbia Circuit more than one year ago. The draft Order supports these new rules with a firm legal foundation built to withstand future challenges. The Chairman's comprehensive proposal will be voted on the FCC's February 26 open meeting.

Consumers and Innovators Need an Open Internet

An open Internet allows consumers to access the legal content and applications that they choose online, without interference from their broadband network provider. It fosters innovation and competition by ensuring that new products and services developed by entrepreneurs aren't blocked or throttled by Internet service providers putting their own profits above the public interest. An open Internet allows free expression to blossom without fear of an Internet provider acting as a gatekeeper. And it gives innovators predictable rules of the road to deliver new products and services online.

Legal Authority: Reclassifying Broadband Internet Access under Title II

The Chairman's proposal provides the strongest legal foundation for the Open Internet rules by relying on multiple sources of authority: Title II of the Communications Act and Section 706 of the Telecommunications Act of 1996. In doing so, the proposal provides the broad legal certainty required for rules guaranteeing an open Internet, while refraining (or "forbearing") from enforcing provisions of Title II that are not relevant to modern broadband service. Together Title II and Section 706 support clear rules of the road, providing the certainty needed for innovators and investors, and the competitive choices and freedom demanded by consumers.

- First, the Chairman's proposal would reclassify "broadband Internet access service"—that's the retail broadband service Americans buy from cable, phone, and wireless providers—as a telecommunications service under Title II. We believe that this step addresses any limitations that past classification decisions placed on our ability to adopt strong Open Internet rules, as interpreted by the D.C. Circuit in the *Verizon* case last year. But just in case, we also make clear that *if* a court finds that it is necessary to classify the service that broadband providers make available to "edge providers," it too is a Title II telecommunications service. (To be clear, this is not a "hybrid"—both the service to the end user *and* to the edge provider are classified under Title II.)
- Second, the proposal finds further grounding in Section 706 of the Telecommunications Act of 1996. Notably, the *Verizon* court held that Section 706 is an independent grant of authority to the Commission that supports adoption of Open Internet rules. Using it here—without the limitations of the common carriage prohibition that flowed from earlier classification decisions—bolsters the Commission's authority.
- Third, provisions on mobile broadband also rest on Title III of the Communications Act. Among other things, the draft Order persuasively rebuts claims that Title III does not allow classification of mobile broadband as a telecommunications service.
- Finally, Title II's "just and reasonable" standard and the *Verizon* court's finding that Section 706 authorizes the FCC to protect the "virtuous circle" of network innovation and infrastructure development provide standards for the FCC to protect Internet openness against new tactics that would close the Internet.

New Rules to Protect an Open Internet

While the FCC's 2010 open Internet rules had limited applicability to mobile broadband, the new rules – in their entirety – would apply to mobile broadband, recognizing advances in technology and the growing significance of wireless broadband access in recent years. Today, 55 percent of Internet traffic is carried over wireless networks. This proposal extends protection to consumers no matter how they access the Internet, whether they on their desktop computer or their mobile devices.

Bright Line Rules: The first three rules would ban practices that are known to harm the Open Internet:

- **No Blocking:** broadband providers may not block access to legal content, applications, services, or non-harmful devices.
- **No Throttling:** broadband providers may not impair or degrade lawful Internet traffic on the basis of content, applications, services, or non-harmful devices.
- **No Paid Prioritization:** broadband providers may not favor some lawful Internet traffic over other lawful traffic in exchange for consideration – in other words, no “fast lanes.” This rule also bans ISPs from prioritizing content and services of their affiliates.

A Standard for Future Conduct: Because the Internet is always growing and changing, there must be a known standard by which to determine whether new practices are appropriate or not. Thus, the proposal would create a general Open Internet conduct standard that ISPs cannot harm consumers or edge providers.

Greater Transparency: The rules described above would restore the tools necessary to address specific conduct by broadband providers that might harm the Open Internet. But the Chairman's proposal also recognizes the critical role of transparency in a well-functioning broadband ecosystem. *The proposal enhances existing transparency rules, which were not struck down by the court.*

Reasonable Network Management: For the purposes of the rules, other than paid prioritization, an ISP may engage in reasonable network management. This recognizes the need of broadband providers to manage the technical and engineering aspects of their networks.

- In assessing reasonable network management, the Commission's proposed standard would take account of the particular engineering attributes of the technology involved—whether it be fiber, DSL, cable, unlicensed wireless, mobile, or another network medium.
- However, the network practice must be primarily used for and tailored to achieving a legitimate network management—and not commercial—purpose. For example, a provider can't cite reasonable network management to justify renegeing on its promise to supply a customer with “unlimited” data.

Broad Protection

Some data services do not go over the public Internet, and therefore are not “broadband Internet access” services subject to Title II oversight (VoIP from a cable system is an example, as is a dedicated heart-monitoring service). The Chairman's proposal will ensure these services do not undermine the effectiveness of the open Internet rules. Moreover, broadband providers' transparency disclosures will continue to cover any offering of such non-Internet data services —ensuring that the public and the Commission can keep a close eye on any tactics that could undermine the Open Internet rules.

Interconnection: New Authority to Address Complaints About ISPs' Practices

For the first time the Commission would have authority to hear complaints and take appropriate enforcement action if necessary, if it determines the interconnection activities of ISPs are not just and reasonable, thus allowing it to address issues that may arise in the exchange of traffic between mass-market broadband providers and edge providers.

Forbearance

Congress requires the FCC to refrain from enforcing – forbear from – provisions of the Communications Act that are not in the public interest. The proposed Order applies some key provisions of Title II, and forbears from most others. There is no need for any further proceedings before the forbearance is adopted. *The proposed Order would apply fewer sections of Title II than have applied to mobile voice networks for over twenty years.*

- ***Major Provisions of Title II that the Order WILL APPLY:***
 - The proposed Order applies “core” provisions of Title II: Sections 201 and 202 (e.g., no “unjust and unreasonable practices”)
 - Allows investigation of consumer complaints under section 208 and related enforcement provisions, specifically sections 206, 207, 209, 216 and 217
 - Protects consumer privacy under Section 222
 - Ensures fair access to poles and conduits under Section 224, which would boost the deployment of new broadband networks
 - Protects people with disabilities under Sections 225 and 255
 - Bolsters universal service fund support for broadband service in the future through partial application of Section 254.

- ***Major Provisions Subject to Forbearance:***
 - Rate regulation: the Order makes clear that broadband providers **shall not** be subject to tariffs or other form of rate approval, unbundling, or other forms of utility regulation
 - Universal Service Contributions: the Order **DOES NOT** require broadband providers to contribute to the Universal Service Fund under Section 254
 - The Order will **not impose, suggest or authorize** any new taxes or fees – there will be no automatic Universal Service fees applied and the congressional moratorium on Internet taxation applies to broadband.

Fostering Investment and Competition

All of this can be accomplished while encouraging investment in broadband networks. To preserve incentives for broadband operators to invest in their networks, Chairman Wheeler's proposal will modernize Title II, tailoring it for the 21st century, encouraging Internet Service Providers to invest in the networks American increasingly rely on.

The proposed order does not include utility-style rate regulation

- No rate regulation or tariffs
- No last-mile unbundling
- No burdensome administrative filing requirements or accounting standards.

A Case Study: Investment in the Wireless Industry

For 21 years the wireless industry has been governed by Title II-based rules that forbear from traditional phone company regulation. The wireless industry has invested over \$400 billion under similar rules, proving that modernized Title II regulation can support investment and competition. Fewer provisions will apply to ISPs than were applied to wireless carriers.

When Title II was first applied to mobile, voice was the predominant mobile service. During the period between 1993 and 2009, carriers invested heavily, including more than \$270 billion in building out their wireless networks, an increase of nearly 2,000%.

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