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Net Neutrality/Open Internet Order

Feb 26, 2015

Reading Time : **3 min**

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- *Bright Line Rules*. The order adopts bright line rules banning the following practices the FCC considers to be harmful to consumers: (i) blocking of access to legal content, applications, services or non-harmful devices; (ii) throttling of lawful Internet traffic on the basis of content, applications, services or non-harmful devices; and (iii) paid prioritization (i.e., no "pay for preference" fast lanes).
- *General Conduct Standard.* In addition to the bright line rules above, the new rules adopt a general standard that prohibits broadband ISPs from taking actions that would "unreasonably interfere with or unreasonably disadvantage" the ability of consumers to select, access and use the lawful content, applications, services or devices available to consumers. Adoption of this standard will allow the FCC to address questionable practices on a case-by-case basis, taking into consideration factors such as the impact a particular practice may have on competition. While prior approval of conduct is not required, there will be an optional process available to obtain FCC staff views (that are not binding on the FCC) in certain circumstances on the legality of proposed practices.
- *Enhanced Transparency.* The order enhances the FCC's existing transparency rule by requiring that broadband providers also disclose—in a consistent format—promotional rates, fees and surcharges, and data caps. Broadband providers also must disclose packet loss as a measure of network performance, and provide notice of network management practices that can affect service. In order to allow time for small broadband providers to comply with the new transparency requirements, the order grants a temporary exemption for providers with 100,000 or fewer subscribers.

- *Regulation of Interconnection.* For the first time, the FCC extends its open Internet regulatory authority to cover interconnection, that is, the exchange of traffic between broadband service providers and other networks and services. The FCC regulation of interconnection will be separate from the bright line rules and general conduct standard discussed above. Relying on authority from Sections 201 and 202 of the Communications Act, the order enables the FCC to hear complaints, address interconnection disputes and take enforcement action on a case-by-case basis, if it determines interconnection activities are not "just and reasonable." This approach allows the FCC to address practices with which it has less experience to formulate bright line rules, as compared to services provided to consumers.
- *Reasonable Network Management Permitted.* The order permits broadband service providers to conduct reasonable network management practices necessary to manage the technical and engineering aspects of their networks. In evaluating reasonable network management, the FCC's standard takes account of the particular engineering attributes of the technology involved. The management practices, however, must primarily be used for a legitimate network management objective, and not for an unrelated business purpose.
- *Legal Authority.* In adopting the new rules, the FCC relies on authority from Title II of the Communications Act, Section 706 of the Telecommunications Act of 1996 and Title III of the Communications Act with respect to the order's mobile broadband provisions. By adopting forbearance of certain Title II regulations, the FCC asserts that its reclassification of broadband service under Title II addresses any limitations on its ability to adopt strong open Internet rules without imposing unnecessarily burdensome regulations on broadband service providers.
- *Major Title II Provisions Applicable to Broadband Internet Services*. The major provisions of Title II that will apply under the open Internet rules are Sections 201 and 202 (e.g., no unjust or unreasonable practices or discrimination); Section 208 (investigation of consumer complaints) and related enforcement provisions (Sections 206, 207, 209, 216 and 217); Section 222 (consumer privacy); Section 224 (fair access to poles and conduits); Sections 225 and 255 (protections for people with disabilities); and partial application of Section 254 (universal service support for broadband services in the future).
- *Major Title II Provisions Subject to Forbearance.* The major Title II provisions subject to forbearance are utility-style rate regulation, including tariffs and last-mile unbundling; universal service contributions (issue is being considered in a separate

proceeding); and continued exemption from state and local taxation under the Internet Tax Freedom Act.

Before the vote adopting the order, the FCC's two Republican commissioners voiced strong opposition to the new rules. Commissioner Pai referred to the order as President Obama's plan to regulate the Internet, and argued that the new rules will harm consumers by raising prices, slowing broadband speeds and discouraging innovation. Commissioner O'Rielly also criticized the Democratic commissioners for adopting final rules that he called largely different from the rules originally proposed for public comment. Chairman Wheeler and the other two Democratic commissioners, in contrast, praised the order for its strong consumer protections and ensuring that the Internet remains an open platform for the exchange of ideas. Wheeler blogged, "Today is a red letter day both for an Open Internet, and for a broadband future of investment and expansion." He also called today the proudest day of his public policy life.

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