

[US] Planned reform of net neutrality by the Federal Communications Commission

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On 15 May 2014 the Federal Communications Commission (FCC) launched a rulemaking seeking comment on proposals for prohibiting Internet providers from blocking or degrading consumers' Internet access in light of a recent Federal Court ruling that struck down the FCC's Open Internet Order of 2010 (see also IRIS 2010-1/41 and IRIS 2012-1/43). The FCC preliminarily rejected reclassifying broadband service under Title II of the Communications Act pursuant to the authority granted to it by the Court. Instead, it proposed to refine its anti-blocking rules and prohibit only commercially unreasonable practices.

The FCC proposed adopting the text of the anti-blocking rule it had adopted in the Open Internet Order, which requires broadband providers to "furnish... access to their subscribers generally" while establishing "a lower limit on the forms that broadband providers' arrangements with edge providers can take." It also clarified that it will allow individualized bargaining and scrutinise these practices under a commercially reasonable rule.

While the FCC affirmed that it does not intend to impose per se common carriage requirements on broadband providers, it concluded that an enforceable legal standard for broadband provider practices is necessary to preserve Internet openness. To achieve this, it intends to prohibit only commercially unreasonable practices, as defined by a totality of the circumstances standard. The FCC also proposed several safe harbors to its commercial reasonableness rule, including not applying the rule to mobile broadband providers and applying it separately from its no-blocking rule.

FCC Chairman Wheeler explained that the proposed rules follow the Court's blueprint for how the FCC can ensure that there is "only one Internet" and clarified that it does not allow paid prioritization that would entail a fast-lane and slow-lane, as some of the critics have suggested. He explained that under his approach, "anything that is anti-competitive or anti-consumer is competitively unreasonable, and therefore can and should be blocked." The proposal was universally rejected by Republicans, who oppose any net neutrality regulation. However, it was also received with scepticism by some Democrats, who expressed concern that the plan could allow carriers to strike deals with companies like Netflix for faster delivery of their content by later FCC leadership. There was also opposition across party lines to treating broadband as a utility.

Federal Communications Commission document, Protecting and promoting open internet notice of proposed rulemaking, 15 May 2014

<http://www.fcc.gov/document/protecting-and-promoting-open-internet-nprm>

Statement of Chairman Tom Wheeler Re: Protecting and Promoting the Open Internet, GN Docket No. 14-28.

<http://www.fcc.gov/article/fcc-14-61a2>

