

[US] Net Neutrality challenged in lawsuits filed by Telecom and Alamo

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The FCC is set to face the first legal challenges to the Net Neutrality Order (“Order”) it passed on 12 March 2015. The Order, which imposed Title II utility regulations on the Internet and prohibited blocking and throttling traffic, was challenged in separate lawsuits filed by the United States Telecom Association (“US Telecom”), a trade group that represents some of the largest Internet providers, and Alamo Broadband (“Alamo”), a small broadband provider based in Texas.

US Telecom filed a “protective petition for review” with the U.S. Court of Appeals for the District of Columbia on 23 March 2015 alleging that the FCC’s “move to utility-style regulation” by “invoking Title II” utility regulations exceeded its legal authority. They made clear, however, that they are limiting their challenge to the authority of the FCC to impose Title II regulations on the Internet.

Alamo’s lawsuit, which was filed on 23 March 2015 in New Orleans, alleged that the Order’s prohibition on blocking or throttling traffic causes them harm.

The FCC announced its intention to seek to have both lawsuits dismissed on the grounds that they are premature. It explained that the lawsuits are not ripe for review because all challenges must be made within 60 days of publication in the federal register, which happened on 13 April 2015. US Telecom explained that it filed its petition as a precautionary move out of abundance of caution to preserve any procedural rights in challenging any “declaratory rulings” in the Order, which become ripe for review after publication on the FCC website. After the Order was subsequently published in the Federal Register, US Telecom filed a Supplemental Petition for Review with the D.C. Circuit Court on 13 April 2015.

If multiple challenges are filed by different parties in different circuits, the Judicial Panel on Multidistrict Litigation (JPML) selects one of those circuits to be the court that hears the appeal by lottery. To have an appeal entered into the lottery, the challenge must be filed with the court within 10 days after the Order’s publication in the Federal Register.

US Court of Appeal for District of Columbia Circuit, United States Telecom Association v. Federal Communications Commission and United States of America, Protective Petition for Review, 23 March 2015

<http://www.ustelecom.org/sites/default/files/documents/2015%2003%2023%20USTelecom%20Petition%20for%20Review%20%28No%20%2015-1063%29.pdf>

FCC, 47 CFR Parts 1, 8, and 20 - Protecting and Promoting the Open Internet

<http://www.gpo.gov/fdsys/pkg/FR-2015-04-13/pdf/2015-07841.pdf>

