



February 2015

Follow @Paul\_Hastings



## *FCC Releases Fact Sheet Detailing Proposal for Unprecedented Reclassification of Mobile and Wired Broadband Internet Service*

BY SHERRESE M. SMITH & MATTHEW L. GIBSON

During his keynote address at the Consumer Electronics Show last month, Federal Communications Commission (FCC) Chairman Tom Wheeler announced his intent to undertake an unprecedented regulatory reclassification of broadband internet service as a means of imposing network neutrality regulations on mobile and wireline broadband internet service providers (ISPs). In his remarks, however, Chairman Wheeler gave few meaningful details, which spawned a flurry of calls from Congress and the industry for more information about the scope of his proposal.

On February 4, the FCC released a [Fact Sheet](#) summarizing the key aspects of the Chairman's proposed order, which will reverse years of FCC policy and would reclassify broadband internet service as a "telecommunications service" subject to Title II of the Communications Act. While the release of the Fact Sheet is significant and provides a new level of detail about the Chairman's proposal, specific issues are still subject to revision as the five FCC Commissioners consider the Chairman's proposed text, which is slated for a vote on February 26.

### **A Broad Reclassification**

As stated in his announcement in January, Chairman Wheeler proposes to reclassify "broadband internet access service" as a telecommunications service in order to bolster the FCC's regulatory authority over ISPs. The Fact Sheet makes clear that this reclassification would be expansive in scope: it would apply to broadband internet service provided to end users and edge providers, and it would apply to both mobile and wireline broadband services

### **Déjà vu: Application of Bright Line Open Internet Rules and Reasonable Network Management**

With the added authority created by the reclassification, the draft order would implement three bright line rules that have been a part of the FCC's prior attempts at open internet regulations:

- **No Blocking** of access to legal content, applications, services or non-harmful devices,
- **No Throttling** of lawful traffic on the basis of content, applications, services, or non-harmful devices, and
- **No Paid Prioritization** that would create "fast lanes" by favoring traffic from certain sources.

And, as in prior iterations of the FCC's approach to open internet regulations, the Chairman has proposed to provide a mechanism to permit ISPs to engage in "reasonable network management." According to the Fact Sheet, the draft order would account for differences in broadband technologies, but it would emphasize that network management practices must be tailored to technical requirements and not commercial purposes.

## **New Enforcement Authority over ISPs**

Through the Chairman's proposed reclassification, the Commission will also gain the authority – for the first time – to hear and address individual complaints about ISP conduct in the context of exchanging traffic with edge providers.

While not trumpeted in the Fact Sheet, the proposed order may serve to underscore the FCC's recent efforts to expand its ability to impose privacy and data security regulations on companies subject to Title II regulation. At the very least, the Fact Sheet indicates that the Section 222 consumer privacy protections will be applied in the context of broadband internet services. Further, the FCC's decision to apply Section 201 to broadband internet service could also build on an order that the FCC issued last October in which it found, for the first time, that a telecommunications service provider's failure (a) to use reasonable security measures to protect consumer privacy and (b) to notify consumers of security breaches constituted "unjust and unreasonable practices" that violated core Title II obligations.

## **Clarification of Applicability of Other Provisions of the Communications Act**

The Fact Sheet addresses the extent to which the draft order will – or will not – use the FCC's forbearance authority to exempt ISPs various obligations that Congress has imposed on telecommunications providers in the Communications Act. The Fact Sheet notes that certain portions of the Communications Act **will** apply to broadband internet service:

- Certain "core" statutory provisions prohibiting "unjust and unreasonable practices"
- Provisions granting the FCC authority to hear consumer complaints
- Protections for consumer privacy
- Provisions relating to pole attachments
- Protections for individuals with disabilities
- Provisions that will allow universal service fund support to be used for future deployment of broadband networks

At the same time, the Fact Sheet makes clear that the draft **does not** propose the following:

- Any form of rate regulation (including tariffs, rate approval, or unbundling of services)
- Any requirement that providers of broadband internet service contribute to the universal service fund
- Any other form of FCC-imposed tax or fees.

While the Fact Sheet significantly fleshes out many key points in Chairman Wheeler's draft order, it must be noted that the Fact Sheet is a high level summary of a draft order that is subject to further negotiation among the five FCC Commissioners prior to the February 26 vote.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Washington D.C. lawyers:*

Sherrese M. Smith  
1.202.551.1965

[sherresesmith@paulhastings.com](mailto:sherresesmith@paulhastings.com)

Matthew L. Gibson  
1.202.551.1793

[matthewgibson@paulhastings.com](mailto:matthewgibson@paulhastings.com)

---

#### Paul Hastings LLP

StayCurrent is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2015 Paul Hastings LLP.