



May 2017

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FCC Votes to Revisit Net Neutrality Rules

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Today, the Federal Communications Commission (“FCC”), in a 2-1 vote, adopted a Notice of Proposed Rulemaking (the “NPRM”) proposing significant changes to the legal classification of broadband Internet access services and the rules governing them.¹ The NPRM opens a new docket, titled “Restoring Internet Freedom,” through which the FCC will re-examine large portions of the FCC’s 2015 Open Internet Order (the “2015 Order”), which classified broadband as a common carriage service and instituted rules aimed at protecting an open Internet—commonly known as “net neutrality.”²

The NPRM proposes to reverse a number of legal conclusions central to the 2015 Order and seeks comment on the appropriate regulatory environment to preserve the future of internet freedom, encourage infrastructure investment, and promote consumer choice. Specifically, the NPRM proposes to address the following issues:

- **Classification of Broadband:** The NPRM seeks comment on reversing the FCC’s classification of broadband as a Title II telecommunications service and proposes a return to classifying broadband as a Title I information service, which would not be subject to common carrier requirements.
- **Classification of Mobile Broadband:** The NPRM also proposes revisiting the classification of mobile broadband under Section 332 of the Communications Act, which separately provides a regulatory framework for mobile wireless services. The NPRM proposes to reinstate the determination that mobile broadband is not a commercial mobile service, but a private mobile service (which like an information service is not subject to common carrier regulation).
- **Internet Conduct Standard:** Separate from, but related to, the classification issues raised above, the NPRM also seeks comment on the rules that were codified in the 2015 Order. The NPRM proposes eliminating the “Internet conduct standard” which prohibited broadband providers from unreasonably interfering with or unreasonably disadvantaging the ability of consumers to access and use content, applications, services, and devices of their choosing or of edge providers to make such lawful content, applications, services, or devices available to consumers.
- **Bright-Line Rules:** The 2015 Order had also adopted three bright-line rules prohibiting blocking, throttling, and paid prioritization. The NPRM seeks comment on whether the FCC should keep, modify, or eliminate these bright-line rules, but the NPRM does not provide any tentative conclusions on which rules should be retained or replaced. Regardless, a return to



classifying broadband as a Title I information service would place meaningful limits on the FCC's authority to impose "common carrier" regulations under existing judicial precedent.

In evaluating the record to be developed in this proceeding, Chairman Pai promised both transparency and a focus on consumer harm. Chairman Pai pledged to continue his practice of releasing draft items to the public ahead of consideration at FCC open meetings. The Chairman has also committed to rigorously weigh the costs and benefits of regulating broadband providers. Undoubtedly, such a cost/benefit examination will likely rely heavily on economic analysis to be conducted by the FCC's new Office of Economics and Data, which was announced earlier this year.

The NPRM kicks off a rulemaking process with broad potential implications for ISPs, consumers, and edge providers. We will be following up with additional analyses on the import of these proposed changes for industry, as the rulemaking proceeding develops. To learn more about the FCC's proposal do not hesitate to contact Sherrese Smith, whose contact information appears below.

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

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¹ See Press Release, *FCC Proposes Ending Utility-Style Regulation of the Internet: First Step Toward Restoring Internet Freedom, Promoting Investment, Innovation, & Choice* (May 18, 2017), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0518/DOC-344948A1.pdf.

² For additional background on the 2015 Order, please see our previous article *FCC Releases Order Subjecting Broadband Internet Access Services to Greater FCC Oversight* (March 18, 2015), available at <https://www.paulhastings.com/publications-items/details/?id=26d7e369-2334-6428-811c-ff00004cbded>.

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