

Client Update: **Open Internet Rules – Net Neutrality**

Date: **March 2, 2015**

Summary: On February 26, 2015, the FCC reclassified broadband as a telecommunications service under Title II of the Telecommunications Act of 1996. This reclassification expands the FCC’s ability to regulate broadband service and broadband service providers. In turn, the FCC adopted so called “Open Internet” or “Net Neutrality” rules. These Net Neutrality rules require Internet Service Providers (“ISPs”) to disclose certain information to consumers and prohibit blocking, throttling, or prioritizing broadband traffic in exchange for compensation. The purpose of this client update is to help you understand how the reclassification of broadband as a telecommunications service and the FCC’s new Net Neutrality rules may impact your business.

The full text of the FCC order and the new Net Neutrality rules are not yet publically available. We will provide additional updates as more information becomes available.

1. **Which services and service providers are covered by the Net Neutrality rules?**

- The Net Neutrality rules apply to fixed and mobile broadband Internet access services. The rules will cover mobile and fixed broadband ISPs who provide service to end users or to so-called “edge providers” (defined by the FCC to include smaller content providers such as bloggers, Facebook users, and app developers).

2. **What exactly will the new Net Neutrality rules require?**

- The new Net Neutrality rules will expand on the FCC’s existing Net Neutrality rules. For example, ISPs are required to provide end users with transparency about their services. Among other transparency requirements, ISPs must continue disclosure of their individual network management practices, service performance characteristics, and the terms and conditions of their broadband services. These disclosures must include information relating to the following: Congestion Management, Application-Specific Behavior, Device Attachment Rules, Security, Service Description, Impact for Specialized Services, Pricing, Privacy Policies, and Redress Options.
- In addition to existing transparency requirements, the FCC’s new Net Neutrality rules will require the following disclosures:
 - Promotional Rates: Identify any promotional rates, fees, and surcharges.
 - Data Caps: Amount of data included in the broadband plan and rates for overages.

- The FCC indicates it will provide a safe harbor format and process for disclosure of the information described, above. We will provide additional updates as more information becomes available.
- The new Net Neutrality rules also require ISPs to protect confidentiality of end user customer proprietary network information (CPNI), in the same manner currently required for voice telecommunications services.

3. **What activities will the Net Neutrality rules prohibit?**

- No Blocking: ISPs are not permitted to block access to *legal* content, applications, services or non-harmful devices.
- No Throttling: ISPs are not permitted to impair or degrade *lawful* traffic on the basis of content, applications, services, or non-harmful devices.
- No Paid Prioritization: ISPs are not permitted to favor certain *lawful* traffic over others in exchange for compensation. Additionally, ISPs are not permitted to prioritize the content and services of their affiliates.

4. **Are there any exceptions?**

- ISPs with fewer than 100,000 subscribers are temporarily exempt from the transparency disclosures identified in Section 2, above. The term of this exemption has not yet been defined.
- The Net Neutrality rules only protect the transmission of *lawful* content.
- Broadband providers were previously free to prioritize communication from emergency responders. We anticipate additional information on permitted prioritization will be forthcoming.
- ISPs are permitted to engage in reasonable network management in relation to the technical and engineering aspects of their network. When assessing what qualifies as reasonable network management, the FCC will consider the particular engineering attributes of the technology involved (ex: fiber, DSL, cable, unlicensed wireless, mobile, or another network medium). Any practices imposed by an ISP must be primarily tailored to achieve legitimate network management, rather than commercial purposes.

5. **Who enforces Net Neutrality?**

- The Net Neutrality rules will be enforced by the FCC.
- Because broadband has been reclassified as a telecommunications service, the FCC will be able to accept and investigate consumer complaints.
- The FCC will also have the authority to judge whether ISPs offer fair terms for accepting web traffic and take enforcement action for violations.
- The FCC also intends to issue advisory opinions and designate an ombudsman to provide guidance for the imposition of Net Neutrality rules.

6. **What happens if my company doesn't comply?**

- Consumers will have the ability to lodge complaints with the FCC, file suit, and if successful, may be awarded damages and attorneys' fees as provided in the Telecommunications Act.

7. **Will the FCC impose all Title II regulations on broadband providers?**

- Not at this time. The FCC indicates that it will forbear from enforcement of certain Title II regulations on ISPs, including: the filing of service tariffs, requirements to contribute to the Universal Service Fund, or the imposition of other new common carrier taxes or fees on broadband at this time.

8. **What is the purpose of the Net Neutrality Rules?**

- The Net Neutrality rules seek to prevent ISPs from “playing favorites” among content providers, large and small, or acting to disadvantage end users from reaching lawful content.
- The FCC was concerned that broadband providers would tailor their networks to provide preferential access to certain content providers over others, such as by providing differential access speeds, or impeding access to certain sites in favor of others.
- An ISP is required to be a neutral gateway to internet content, not a gatekeeper deciding to vary loading speeds or imposing fees for faster service.

9. **What steps should my company take next?**

- Review and tailor your company's Service Agreements, Point of Sale Disclosures, and Acceptable Use Policies to conform to the rules and disclose terms of use, network management practices, and pricing.
- As long you are not providing preferential network treatment to certain content providers over others, charging so-called “edge providers” a premium, or restricting any access speeds, you should be in compliance with the new Net Neutrality rules in relation to the blocking, throttling and paid preference provisions.
- If you are providing preferential treatment or varying access speeds, you should discuss those policies with your attorney to determine what adjustments, if any, are needed to conform with the new Net Neutrality rules.

10. **Who may I contact if I have questions?**

If you have additional questions concerning this client update, please contact:

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