



MEMORANDUM

THE FCC'S 2015 OPEN INTERNET ORDER AND IMPLICATIONS FOR BROADBAND INTERNET ACCESS SERVICE PROVIDERS

Introduction

On March 12, 2015, the Federal Communications Commission ("FCC" or "Commission") released its highly anticipated "Net Neutrality" Order. The 2015 Order follows two decisions by the Court of Appeals for the D.C. Circuit striking down most of the FCC's Open Internet rules adopted in 2010, with the exception of certain transparency requirements. Following this decision, the FCC initiated a Notice of Proposed Rulemaking ("NPRM") seeking comments on proposed rules for the regulation of the network management practices of broadband Internet access service ("BIAS") providers. Among other issues, the FCC sought comment on whether to reclassify BIAS as a "telecommunications service" under Title II of the Communications Act ("the Act").

The Order has sweeping implications for providers of broadband Internet access services (offering a fixed or mobile "mass market" retail broadband connection to the Internet). First, the Commission adopted bright-line rules to promote an open Internet (collectively referred to herein as the "Open Internet rules"). Specifically, the rules ban blocking and throttling of Internet traffic (subject to "reasonable network management"), and prohibit paid prioritization (subject to a narrow waiver process), as well as create a forward-looking "no unreasonable interference/disadvantage" standard by which the FCC will evaluate other practices not expressly prohibited by these three bright line rules. The Commission also adopted rules to enhance its existing requirements (adopted under its 2010 Open Internet Order) to ensure transparency for network management practices. In addition, the FCC modified its existing rules related to the filing of informal and formal complaints, to streamline filing procedures. Moreover, the Commission adopted an "advisory" process whereby parties can seek prospective guidance on the application of the Open Internet rules to their service offerings.

Second, the Commission reclassified broadband Internet access service as a "telecommunications service" under Title II of the Act. The FCC further redefined the term "public switch network," thereby finding that mobile BIAS qualifies as a Commercial Mobile Radio Service ("CMRS"). The Commission adopted a "light touch" regulatory approach by exercising its forbearance authority to refrain from applying 27 provisions of Title II of the Act, and over 700 Commission rules and regulations (including immediate contribution obligations to all Title II funding mechanisms, including the Universal Service Fund ("USF")). The Commission, however, preserved its authority to revisit a number of these forbearance decisions, through open proceedings (such as evaluating the contribution obligations of BIAS providers in its ongoing USF Contribution Reform proceeding) or by initiating new matters (such as considering new rules, specific to BIAS providers, to protect Customer Proprietary Network Information ("CPNI")).