

## **FACT SHEET: Protecting and Promoting the Open Internet** **May 15, 2014**

The Internet is a vital platform for innovation, economic growth and free expression in America. And yet, despite two prior FCC attempts, there are no rules on the books to prevent broadband providers from limiting Internet openness by blocking content or discriminating against consumers and entrepreneurs online. The “Protecting and Promoting the Open Internet” Notice of Proposed Rulemaking (NPRM) begins the process of closing that gap, which was created in January 2014 when the D.C. Circuit struck down key FCC Open Internet rules.

This Notice seeks public comment on the benefits of applying Section 706 of the Telecommunications Act of 1996 and Title II of the Communications Act, including the benefits of one approach over the other, to ensure the Internet remains an open platform for innovation and expression. While the Notice reflects a tentative conclusion that Section 706 presents the quickest and most resilient path forward per the court's guidance, it also makes clear that Title II remains a viable alternative and asks specifically which approach is better. In addition, the proposal asks whether paid prioritization arrangements, or "fast lanes," can be banned outright.

### **We Are Listening: An Extended Four-Month Public Comment Period is Open**

Since February, tens of thousands of Americans have [offered their views](#) to the Commission on how to protect an Open Internet. The proposal reflects the substantial public input we have received. The Commission wants to continue to hear from Americans across the country throughout this process. An extended four-month public comment period on the Commission's proposal will be opened on May 15 – 60 days (until July 15) to submit initial comments and another 57 days (until September 10) for reply comments.

The NPRM seeks comment on a number of questions designed to:

### **Develop the Strongest Legal Framework for Enforceable Rules of the Road**

- Reflects the [principles](#) that Chairman Wheeler outlined in February, including using the Section 706 blueprint for restoring the Open Internet rules offered by the D.C. Circuit in its decision in *Verizon v. FCC*, which relies on the FCC's legal authority under Section 706 of the Telecommunications Act of 1996. At the same time, the Commission will seriously consider the use of Title II of the Communications Act as the basis for legal authority.
- Seeks comment on the benefits of both Section 706 and Title II, including the benefits of one approach over the other to ensure the Internet remains an open platform for innovation and expression.
- Explores other available sources of legal authority, including also Title III for wireless services. The Commission seeks comment on the best ways to define, prevent, expose and punish the practices that threaten an Open Internet.

### **Ensure choices for consumers and opportunity for innovators**

- Proposes a requirement that all users must have access to fast and robust service: Broadband consumers must have access to the content, services and applications they desire. Innovators and edge providers must have access to end-users so they can offer new products and services.
- Considers ensuring that these standards of service evolve to keep pace with of innovation.

## **Prevent practices that can threaten the Open Internet**

- Asks if paid prioritization should be banned outright.
- Promises clear rules of the road and aggressive enforcement to prevent unfair treatment of consumers, edge providers and innovators.
- Includes a rebuttable presumption\* that exclusive contracts that prioritize service to broadband affiliates are unlawful.

*(\*Rebuttable presumption is a presumption that is taken to be true unless someone comes forward to contest it and proves otherwise)*

## **Expand transparency**

- Enhance the transparency rules to provide increased and specific information about broadband providers' practices for edge providers, consumers.
- Asks whether broadband providers should be required to disclose specific network practices, performance characteristics (e.g., effective upload and download speeds, latency and packet loss) and/or terms and conditions of service to end users (e.g., data caps).
- Tentatively concludes that broadband providers should disclose "meaningful information" about the service, including (1) tailored disclosures to end users, (2) congestion that may adversely impact the experience of end users, including at interconnection points, and (3) information about new practices, like any paid prioritization, to the extent that it is otherwise permitted.

## **Protect consumers, innovators and startups through new rules and effective enforcement**

- Proposes the creation of an ombudsperson with significant enforcement authority to serve as a watchdog and advocate for start-ups, small businesses and consumers.
- Seeks comment on how to ensure that all parties, and especially small businesses and start-ups, have effective access to the Commission's dispute resolution and enforcement processes.
- Considers allowing anonymous reporting of violations to alleviate fears by start-ups of retribution from broadband providers.

## **Consider the Impact on the Digital Divide: Ensuring access for all communities**

- Considers the impact of the proposals on groups who disproportionately use mobile broadband service.
- Asks whether any parts of the nation are being left behind in the deployment of new broadband networks, including rural America and parts of urban America.

Link to Chairman Wheeler's February Open Internet framework:

<http://www.fcc.gov/document/statement-fcc-chairman-tom-wheeler-fccs-open-internet-rules>

Comment on the Open Internet proposals: <http://www.fcc.gov/comments>