

## telecommunications, media, and technology lawflash

February 26, 2015

### FCC Adopts Open Internet (Net Neutrality) Rules

*The order classifies broadband Internet access as a telecommunications service.*

The Federal Communications Commission (FCC or Commission) today voted, by a 3-2 margin, to adopt rules designed to promote an open Internet relying on its statutory authority under Title II of the Telecommunications Act of 1996 that governs common carriers. The rules would reinstate, with some changes, the rules vacated by the U.S. Court of Appeals for the D.C. Circuit in January 2014. In response to the D.C. Circuit's opinion that the FCC's 2010 order adopting open Internet rules failed to show that the Commission had the statutory authority to treat broadband Internet access providers as common/telecommunications carriers, the FCC took the further step of reclassifying broadband services as telecommunications services rather than information services as they were classified dating back to the FCC's 2002 Cable Modem Order.

FCC Chairman Tom Wheeler previously released a fact sheet outlining the key details of the order, which are summarized briefly below. The order's full text has not yet been released, and we will analyze these issues in more detail when the order is released:

- Reclassify broadband as a telecommunications service, but also rely on section 706, section 201's prohibition against unjust and unreasonable practices, and Title III by classifying mobile wireless service as a Commercial Mobile Radio Service
- Reinstate the bright-line rules that the D.C. Circuit vacated and apply them equally to mobile broadband:
  - No blocking
  - No throttling
- Bar Paid Prioritization
- Enhance the 2010 Transparency Rule (with a temporary exemption for small entities)
- Adopt a standard for case-by-case analysis of future practices:
  - Providers may not unreasonably interfere or unreasonably disadvantage the ability of consumers and edge providers to reach each other over the Internet
- Rules are subject to Reasonable Network Management (other than paid prioritization) that recognizes differing needs for wireless and wireline networks
- Specialized Services exception—covering “managed” services not carried over the public Internet portion of broadband providers' networks
- Interconnection—the FCC will allow edge providers to bring complaints if Internet service provider interconnection activities are not just and reasonable
- Define broadband Internet to include a provider's promise to transmit traffic between lawful Internet end points
- Forbearance—the FCC will apply core provisions of Title II:
  - Section 201 (requiring just and reasonable practices)
  - Section 202 (barring unreasonable discrimination)
  - Section 206, 207, and 208 (allowing complaints and giving courts jurisdiction to hear disputes)

# Morgan Lewis

- Section 209, 216, and 217 (regarding FCC enforcement power)
- Section 222 (protecting consumer privacy)
- Section 224 (pole attachments)
- Section 225 and 255 (disability access)
- Section 254 (universal service)
- Provisions of Title II that will not apply include provisions regarding rate regulation, such as tariffs, rate approval, and unbundling:
  - Universal Service Fund contributions not required
  - Prohibits imposition of new taxes or fees
  - No burdensome filing or accounting requirements

We will provide further details on the order once it is released.

## Contacts

If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis lawyers:

### Washington, D.C.

Andrew D. Lipman

+1.202.373.6033

[andrew.lipman@morganlewis.com](mailto:andrew.lipman@morganlewis.com)

William B. Wilhelm, Jr.

+1.202.373.6027

[william.wilhelm@morganlewis.com](mailto:william.wilhelm@morganlewis.com)

Joshua M. Bobeck

+1.202.373.6010

[joshua.bobeck@morganlewis.com](mailto:joshua.bobeck@morganlewis.com)

## About Morgan, Lewis & Bockius LLP

Founded in 1873, Morgan Lewis offers 725 partners and nearly 2,000 lawyers—as well as scores of patent agents, benefits advisers, regulatory scientists, and other specialists—in 28 offices across North America, Europe, Asia, and the Middle East. The firm provides comprehensive litigation, corporate, transactional, regulatory, intellectual property, and labor and employment legal services to clients of all sizes—from globally established industry leaders to just-conceived start-ups. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some jurisdictions. Please note that the prior results discussed in the material do not guarantee similar outcomes. Links provided from outside sources are subject to expiration or change. © 2015 Morgan, Lewis & Bockius LLP. All Rights Reserved.