

FCC Net Neutrality Repeal Published in Federal Register, Triggering Deadlines for Challengers

February 26, 2018

On Thursday, February 22, 2018, the Federal Communications Commission (FCC or Commission) published the Restoring Internet Freedom Order (the Order) in the Federal Register.

As we [previously discussed](#), the Order effectively reverses the Commission's [2015 Open Internet Order](#), reclassifying broadband Internet access service as a lightly regulated Title I "information service" and eliminating the 2015 Order's open Internet rules (while retaining a modified version of the transparency requirement).

The Order will not go into effect until after the Office of Management and Budget completes its Paperwork Reduction Act review, which could take several months. However, last Thursday's publication is significant because it triggers deadlines for challenges to the Order, both in the courts and in Congress.

The Federal Register publication gives litigants ten days to file petitions for review in federal courts of appeals if they would like to be included in a court lottery to determine the venue for consolidating the Order's challenges. The following petitions have already been filed:

- New York District Attorney General Eric Schneiderman announced he and 22 other Democratic attorneys general filed a petition for review at the U.S. Court of Appeals for the D.C. Circuit;
- Public Knowledge, Mozilla, Vimeo, National Hispanic Media Coalition, and New America's Open Technology Institute each filed petitions for review in the D.C. Circuit;
- The California Public Utilities Commission and Santa Clara County each filed appeals in the Ninth Circuit;

Several other parties, including the Internet Association (representing Google, Microsoft, and Amazon, among others), INCOMPAS, the Computer & Communications Industry Association (CCIA), and Free Press are expected to file petitions for review in the near term.

Federal Register publication also allows lawmakers to formally introduce a Congressional Review Act (CRA) resolution of disapproval, which would reverse the Order and prevent the Commission from subsequently introducing a substantially similar Order. While CRA resolutions are a powerful tool in the hands of the majority – as we saw with the [rollback](#) of the Broadband Privacy Order earlier this year – as the minority party, the Democrats are at a significant disadvantage. Senator Ed Markey, D-MA, and House Communications Subcommittee ranking member Mike Doyle, D-PA, have led the Democrat's effort to draft a CRA resolution to nullify the Order. At the time of this blog post, the CRA resolution had 50 Senator co-sponsors, including all 49 Democratic senators and Senator Susan

Collins, R-ME. President Trump is not expected to support the CRA resolution, even if the measure passed both chambers of Congress.

In addition to activities in federal court and in Congress, 26 states are considering net neutrality legislation, and five state governors have issued executive orders regarding net neutrality following the Commissioners' December 2017 vote.

We will follow up this blog post with a more comprehensive review of the Restoring Internet Freedom Order soon. In the meantime, contact any of the authors of this blog post for more information on the proceeding.