

Federal Register Publication Marks Beginning of Net Neutrality Litigation

September 23, 2011

One long march is finally over, another one begins. After [OMB approval of the rules](#) was announced earlier this week, today, the FCC published the [Net Neutrality Order](#) in the *Federal Register*. The 44 page summary is available [here](#). With this notice today, the next stage in the net neutrality saga finally begins.

First, and most likely, with the publication today, appeals of the rules may finally begin. Multiple appeals will be filed, most likely in multiple circuit courts of appeals. The question will be where the appeals will be heard. On one side, [Verizon Wireless has argued that the appeal must be heard in the DC Circuit because it is a "licensing" decision](#). Others have argued that the general appeal provision applies, so venue is proper in any of the circuits. If this latter view is correct, a lottery will be held among the circuits with appeals filed in the first 10 days to determine which circuit will hear the case.

Second, the publication triggers the effective date of the new rules. With publication today, the new rules will take effect on November 20th unless stayed by the court. It is important to recall that [Commissioner McDowell wrote a dissent](#) that essentially argued that the rules will create irreparable harm, which is the primary factor examined in determining whether a stay is proper.

Watch this blog for more updates. We expect today to mark the beginning of a busy litigation period over the new rules.