

# Net Neutrality Update

July 1, 2011

After months of waiting for the FCC to publish its [Net Neutrality Order](#) in the *Federal Register*, the FCC has finally . . . released a clarification of the disclosure rules that will eventually apply. The action does not indicate when *Federal Register* publication will occur, but, buried in the clarification is an announcement that the FCC will release results of its own broadband performance measurements *before* the new rules become effective. So, we may have at least one more Public Notice before *Federal Register* publication (or perhaps simply a notice between publication and effectiveness).

For more on the clarification, see below

In the Net Neutrality Order, the FCC adopted the following rule requiring disclosure of network management practices:

A person engaged in the provision of broadband Internet access service shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.

Cable and local telco trade associations filed comments on the Paperwork Reduction Act implications of the new disclosure rule, which prompted the FCC clarification yesterday. Specifically, in a [Public Notice](#), the FCC's Enforcement Bureau and General Counsel issued guidance in five specific areas of the new disclosure rules.

**Point of Sale Disclosures.** The Guidance Notice states that broadband providers may comply with the point-of-sale disclosure requirement by directing consumers "orally and/or prominently in writing" to a web address containing detailed disclosures. The Guidance Notice states that at brick and mortar outlets, broadband providers "should" make available a computer (or tablet or smartphone!) through which consumers can access the disclosures.

**Service Description.** The Guidance Notice clarifies that broadband providers who have participated in the FCC's measurement project may disclose mean upload and download speeds or mean roundtrip latency using the methodology used in the FCC's project. (Measurements should be for the "busy hour" between 7 pm and 11 pm weeknights). Mobile providers may disclose results of their own or third party testing or await further FCC clarification.

**Additional Disclosures.** Clarifying a statement that the required disclosure topics are "not necessarily exhaustive," the Guidance Notice states that compliance with the listed information will suffice "at this time."

**Disclosure to Edge Providers.** The Guidance Notice states that the FCC "anticipates" that the end user disclosure will suffice for notifying content and application developers as well. In other words, for now at least, edge providers will not receive more detailed information than will be available to

the general public.

**Security Measures.** The Guidance Notice clarified that broadband providers will not be required to disclose all security measures. Instead, providers should make disclosure only of measures that are likely to affect the consumer's ability to access content or applications of his or her choice.