

Wheeler Seeks to Resurrect and Revamp Net Neutrality Rules in Response to Verizon v. FCC

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After dropping hints for the past two weeks, FCC Chairman Wheeler announced several measures Wednesday to respond to the DC Circuit's decision in *Verizon v. Federal Communications Commission*, ___ F.3d ___ (D.C. Cir. 2014) ("Verizon Net Neutrality Order"), which we summarized in an earlier [blog post](#). Chairman [Wheeler](#) seeks to "enhance" the transparency rule that was affirmed by the court, while recasting the anti-blocking and non-discrimination "goals" of the Open Internet Order in a way that their objectives could be fulfilled despite the court's decision. The FCC also opened a new docket, [GN Dkt. No. 14-28](#), in which parties may offer comments on how the FCC should proceed in light of the court decision. These actions and Commissioners [Pai](#) and [O'Rielly's](#) statements appear to set the stage for yet another clash between Democratic and Republican Commissioners on this issue.

In the *Verizon Net Neutrality Order*, the Court deferred to the FCC's understanding of its authority with respect to Internet access providers, and affirmed the agency's finding that Section 706 of the 1996 Telecommunications Act vests the FCC with certain authority to regulate how broadband providers treat edge providers of content and applications. Today's announcement by Chairman Wheeler invited the Commission to build on this authority by proposing new enforceable rules "that will meet the court's test for preventing improper blocking of and discrimination among Internet traffic." Chairman Wheeler also said the Commission will consider how Section 706 can be used to further non-discrimination, including setting an enforceable legal standard, evaluating individual cases to determine whether that standard has been met, and identifying undesirable broadband provider behavior.

In newly-created Docket 14-28, the FCC solicits comments on the conduct of the *Verizon Net Neutrality Order's* remand, specifically "what actions the Commission should take, consistent with our authority under section 706 and all other available sources of Commission authority, in light of the court's decision." The Public Notice sets no comments timeline, but states that comments filed within the next thirty days (March 21, 2014) "will be especially helpful." And, while the Public Notice seeks comments on authority in addition to the Commission's authority under Section 706, Chairman Wheeler's statement today appears to reserve judgment on reclassifying Internet access service as a telecommunication service, stating that "the Commission has the ability to utilize it if warranted."

Finally, in light of the new docket and proposed rules, Chairman Wheeler indicated that the Commission would forgo seeking further judicial review of the *Verizon Net Neutrality Order*, but the agency would hold "major internet service providers" to their commitments to honor the safeguards

in the 2010 Open Internet Order during formulation of the new proposed rules.

Not surprisingly, in response to the opening of the new docket, the two Republican Commissioners registered their dismay in separate statements, each voicing a concern that Open Internet rules are a solution in search of a problem. Commissioner Ajit Pai voiced his concern that the Commission did not first seek guidance from Congress before proceeding and “the specter of Title II reclassification hovers ominously in the background.” Commissioner Michael O’Rielly expressed his fear that adoption of further net neutrality rules under authority of Section 706 could “be used not just to regulate broadband providers, but eventually edge providers.”