Appeals Court Strikes Down Net Neutrality Rules

Andrew Berg

A D.C. Circuit Court of Appeals today struck down the FCC's Open Internet rules. The rules were aimed at ensuring that large Internet Service Providers (ISPs) couldn't discriminate against the types of traffic carried over their networks.

At issue for the courts was how the FCC categorized Internet Service Providers. Under previous chairman Julius Genachowski, the commission classified broadband providers in such a way that they were exempted from treatment as common carriers. As such, the Communications Act prohibits the FCC from regulating them as such.

"Because the Commission has failed to establish that the anti-discrimination and anti-blocking rules do not impose per se common carrier obligations, we vacate those portions of the Open Internet Order," the ruling stated.

The ruling opens the door for ISP to favor certain types of content. For instance, Verizon could opt to give preferential bandwidth to its Redbox Instant Streaming service, while slowing or outright blocking a competing service like Netflix.

The Court's ruling established that the power to create rules for the web are entirely under the power of the FCC. Public Knowledge was an intervenor on behalf of the FCC on this case to help preserve its power in creating rules to ensure an open internet.

Harold Feld, senior vice president of consumer advocacy group Public Knowledge, expressed disappointment at the decision.

"The Court has taken away important FCC flexibility, and its opinion could complicate FCC efforts to transition the phone network to IP technology, promote broadband buildout, and other matters," Feld said.

Feld noted that the court did uphold broad Commission authority to regulate broadband.

"To exercise that authority, the FCC must craft open internet protection that are not full fledged common carrier rules," Feld said. "Alternatively, if the FCC needs broader authority it can classify broadband as a title 2 common carrier service."

At the end of the day, Feld said that today's verdict wasn't really a win for anyone.

"No one got what they wanted out of this decision, and confusion over the proper role of the FCC is greater than eve. In the coming days, all parties (including Public Knowledge) will need to consider whether or not to appeal this decision," Feld said.

The Open Internet rules didn't apply to wireless networks, but CTIA chimed in on today's decision, saying it was still reviewing the text of the opinion.

The Wireless Association President and CEO Steve Largent, urged caution going forward, especially with regards to mobile broadband.

"Policymakers should exercise caution before adding any additional regulation to this area, particularly given the fundamental technical and operational challenges facing mobile broadband providers and the robust competition to attract and retain customers."

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