

The fight for network neutrality continues, despite disappointing court ruling

On October 1, 2019, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit delivered a long-awaited and complex ruling on whether the Federal Communications Commission (FCC) had the authority to eliminate Obama-era network neutrality protections that required all Internet traffic to be treated equally and prohibited blocking or prioritizing traffic in any way. The issue hinges in part on the reclassification of broadband as a telecommunications service, which would have made Internet service providers subject to stricter regulations. The judges ruled in favor of the FCC, saying it does have the authority to determine how the Internet is regulated (or not, in this case). At the same time, the court also determined the FCC still has work to do, remanding parts of the order back for further proceedings and, most importantly, rejecting the FCC's attempts to prevent states from passing their own net neutrality rules.

Far from resolving the issue, the court effectively forced net neutrality back to the FCC for further proceedings (which may yet result in its so-called "Restoring Internet Freedom Order" being reversed or vacated) and legitimized options for protecting net neutrality in the states. So far, 30 states have proposed or enacted legislation to protect net neutrality.

Consumer groups, state attorneys general, and other interested parties like ALA will be parsing and considering the implications of

the D.C. Court's ruling for some time. But in the meantime, what does this mean?

First, either side may appeal the decision in the courts. The D.C. Circuit court rejected some of the FCC's key arguments, giving consumer advocates a foothold to appeal to a higher authority. But the judges did indicate they felt bound by a Supreme Court precedent, which showed deference to the FCC's decision. On the other hand, broadband providers may be worried about the part of the decision that keeps the FCC from preempting certain state broadband rules.

Next, many states may continue to work at addressing net neutrality with their own rules. According to the court's decision, to preempt those state laws, the FCC would need to actually have rules on the books about broadband that conflict with state laws—and it does not have any yet. California and New York, in particular, seem poised to test the FCC here.

Other federal agencies may be implicated. In that case, the FCC argued that antitrust law and consumer protection agencies like the Federal Trade Commission could take over for the FCC in ensuring that broadband consumers were protected. And the FCC will probably need to open up new proceedings to address the questions the court found lacking.

Finally, Congress is likely to get in on the act. There is broad consensus on both sides that Congress should act to address net neutrality. The House has already passed the "Save the Internet Act," and the Senate could consider it very soon. ALA will continue to be on the frontlines for our patrons and our communities. Whatever the next steps, one thing is clear: in the words of ALA President Wanda Brown, "ALA and the nearly 120,000 libraries across the country will not stop until we have restored net neutrality protections—whether in the states, Congress, or in the courts." 

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