

'Net neutrality' rules for fair internet access win in court (Update)

June 14 2016, by Sam Hananel And Tali Arbel



In this May 14, 2014 file photo, an AT&T logo is seen on a store in Dedham, Mass. In a big win for the Obama administration, a federal appeals court on Tuesday upheld the government's "net neutrality" rules that require internet providers to treat all web traffic equally. (AP Photo/Steven Senne, File)

A federal appeals court on Tuesday upheld the government's "net neutrality" rules, preserving regulations that force internet providers such as Comcast and AT&T to treat all online traffic—everything from Netflix and cat videos to games and downloads—equally.

The 2-1 ruling is a sweeping victory for the Obama administration and

the consumer groups and internet companies that have pushed net neutrality for years. The Federal Communications Commission's rules block internet service providers from favoring their own services and disadvantaging others; blocking other sites and apps; and creating "fast lanes" for video and other data services that pay for the privilege.

On technical grounds, the ruling upholds the FCC's authority to regulate broadband service as a utility, much like phone service, and to forbid what it considers unreasonable practices. It applies equally to wired broadband providers like cable companies and mobile ones such as Verizon.

TOUGHER REGULATION DOWN THE ROAD

The net neutrality rules have been in effect since June, and the court's decision isn't going to change how the internet works tomorrow. But the FCC has already been taking some steps that would change how broadband providers act. The ruling could pave the way for tougher restrictions on cable and phone companies that affect what services they offer, which consumer data they can use and how, and what they can charge.

The providers who filed the lawsuit say they'll appeal.

"This decision is huge for the FCC's authority," said Marvin Ammori, a longtime net-neutrality advocate. "We won big on everything." That sets the stage for what Ammori and several analysts see as the next big battle. That will likely involve "zero rating"—the practice of exempting preferred video services from customer data caps.

Comcast, for example, lets you can watch video at home with its Stream service with no danger of bumping against your data cap (if you have one). T-Mobile's Binge On program lets you watch any video you want

from Netflix and many other providers without counting it as data use. Net-neutrality advocates say these types of practices are unfair and tilt the market toward certain favored providers.

Other consequences are more difficult to gauge. Christopher Yoo, a professor of law, engineering and communications at the University of Pennsylvania, said the ruling could mean higher prices for some services, while providers might drop others altogether.



In this April 7, 2013 file photo, the Verizon studio booth at MetLife Stadium in East Rutherford, N.J. In a big win for the Obama administration, a federal appeals court on Tuesday upheld the government's "net neutrality" rules that require internet providers to treat all web traffic equally. a (AP Photo/Mel Evans, File)

NET NEUTRALITY'S LONG SLOG

"I think everyone has to be shocked at the magnitude of the FCC victory," said MoffettNathanson analyst Craig Moffett. But it was a long time coming.

The U.S. Court of Appeals for the District of Columbia Circuit had previously struck down similar rules from the FCC—twice—although at the time the FCC based them on a different and more tenuous claim of legal authority.

The FCC shifted tactics and moved to treat broadband as a utility after President Barack Obama publicly urged the commission to protect consumers by doing so. Providers like Comcast, Verizon and AT&T said the resulting rules threaten innovation and undermine investment in broadband infrastructure.

The telecom industry made its case mainly on technical grounds. It argued that broadband is an "information service" and not a utility, because providers offer both internet access and services such as email. Under current law, information services are also exempt from net-neutrality regulation.

But the same court ruled that the FCC was justified in reclassifying broadband as a telecom utility because consumers see broadband as a pipe for internet service and a way to get online to use "third-party" services like Gmail and Netflix.

A SLAP AT BROADBAND PROVIDERS

"Given the tremendous impact third-party internet content has had on our society, it would be hard to deny its dominance in the broadband experience," Judges David Tatel and Sri Srinivasan wrote in a 115-page majority opinion that denied all challenges to the rules.

"Over the past two decades, this content has transformed nearly every aspect of our lives, from profound actions like choosing a leader, building a career, and falling in love to more quotidian ones like hailing a cab and watching a movie," the judges said. "The same assuredly cannot be said for broadband providers' own add-on applications."



In this Dec. 3, 2009 file photo, a sign outside the Comcast Center is seen in Philadelphia. A federal appeals court has upheld the government's "net neutrality" rules that require internet providers to treat all web traffic equally. Providers like Comcast, Verizon and AT&T say the rules threaten innovation and undermine investment in broadband infrastructure. (AP Photo/Matt Rourke, File)

In a lengthy dissent, Judge Stephen Williams wrote that the FCC "fails to offer a reasoned basis" for its view that giving preferential treatment to customers who pay for faster service is a problem. By regulating

broadband service like "natural monopolies," Williams said the FCC provides "little economic space for new firms seeking market entry or relatively small firms seeking expansion through innovations."

Tatel and Srinivasan were appointed by Democratic presidents—Bill Clinton and Barack Obama, respectively. Williams was appointed by Ronald Reagan.

WHAT HAPPENS NEXT

Opponents of the ruling are already calling on Congress to restrict its reach, but experts say it's unlikely such a law would pass before the election.

"We have always expected this issue to be decided by the Supreme Court, and we look forward to participating in that appeal," said David McAtee, AT&T senior executive vice president and general counsel, in a statement posted on the company's website.

FCC Chairman Tom Wheeler praised the ruling as an affirmation of the government's power to keep the internet open for all consumers.

"After a decade of debate and legal battles, today's ruling affirms the commission's ability to enforce the strongest possible internet protections —both on fixed and mobile networks—that will ensure the internet remains open, now and in the future," Wheeler said.

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