

US court strikes down 'Net Neutrality' rule (Update)

14 January 2014, by Rob Lever



A US appeals court struck down as unconstitutional a "Net Neutrality" rule that bars broadband Internet providers from blocking or playing favorites for online services.

A US appeals court on Tuesday struck down as unconstitutional a "Net Neutrality" rule that bars broadband Internet providers from blocking or playing favorites for online services.

The court ruled that the Federal Communications Commission lacks authority to impose the rule requiring high-speed Internet firms to treat all traffic equally.

The case brought by US telecom giant Verizon has divided some of the biggest players in the tech sector in a key test of what is officially called "Open Internet" rules.

Backers of Net Neutrality say the case could give the big telecom operators the power to block or degrade services like Netflix or YouTube, while promoting services of their own partners.

The appellate panel in Washington said in its

81-page ruling that the FCC cannot regulate the broadband firms as "common carriers" that are barred from discriminating against different online services.

"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 court said.

But the ruling did back some FCC ability to regulate these Internet firms.

The ruling said "the Telecommunications Act of 1996 vests (the FCC) with affirmative authority to enact measures encouraging the deployment of broadband infrastructure (and)... to promulgate rules governing broadband providers' treatment of Internet traffic."

But it added that "even though the Commission has general authority to regulate in this arena, it may not impose requirements that contravene express statutory mandates."

Verizon and its allies have argued that the FCC lacks authority to interfere with their business, and that Congress never decided these companies were regulated utilities or "common carriers."

Others say that overturning the rule could give a handful of companies that dominate broadband the ability to control services, and limit innovative online services.

FCC chairman Tom Wheeler said the court "correctly held" that the agency can regulate broadband firms but said the FCC would "consider all available options, including those for appeal, to ensure that these networks on which the Internet depends continue to provide a free and open platform for innovation and expression."

Verizon executive vice president Randal Milch said the ruling "will not change consumers' ability to access and use the Internet as they do now."

He added that the ruling "will allow more room for innovation, and consumers will have more choices to determine for themselves how they access and experience the Internet."

"Verizon has been and remains committed to the open Internet which provides consumers with competitive choices and unblocked access to lawful websites and content when, where, and how they want," he said.

But Barbara Stripling, president of the American Library Association, said the ruling "gives commercial companies the astounding legal authority to block Internet traffic, give preferential treatment to certain Internet services or applications, and steer users to or away from certain websites based on their own commercial interests."

The activist group Free Press, meanwhile, said the decision means "companies like Verizon will now be able to block or slow down any website, application or service they like. And they'll be able to create tiered pricing structures with fast lanes for those who can afford the tolls and slow lanes for everyone else."

However, Scott Cleland of the research and consulting firm Precursor LLC and a former White House telecom policy adviser, said the ruling was "an unusual win-win outcome... that enabled each party to win on their respective and different must-win issues."

Cleland said the FCC won its "general authority to regulate" and Verizon "avoided common carrier regulation of broadband."

He said if both sides let the ruling stand, they "effectively could settle into a de facto net neutrality peace."

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