

# What to Look for in this Week's Network Neutrality Announcement

By Barbara van Schewick

February 2, 2015

<https://cyberlaw.stanford.edu/blog/2015/02/what-look-weeks-network-neutrality-announcement>

This week, FCC Chairman Tom Wheeler will circulate a draft of the Open Internet rules to his fellow Commissioners. According to **news reports**, the Chairman will propose to reclassify Internet access as a “telecommunications service” and adopt network neutrality rules under Title II of the Communications Act. If true, this is excellent news and a vital step in the right direction. After the D.C. Circuit’s decision last January, this is the only way to adopt meaningful network neutrality rules that will be upheld in court. The FCC will vote on the proposal on February 26th.

Now that we are in the home stretch, it is critically important to get the details right. While we may not learn all the details of the proposed rules this week, here’s what I will be looking for:

## **No blocking**

The FCC should adopt a rule that:

- (1) prohibits providers of Internet access (ISPs) from blocking Internet applications, content, services or uses (“applications”)
- (2) subject to reasonable network management.

## **No application-specific discrimination**

The FCC should adopt a bright-line rule nondiscrimination rule that:

- (1) applies to any forms of differential treatment that falls short of blocking (including zero-rating and application-specific pricing), NOT just to technical forms of differential treatment and
- (2) bans discrimination based on sender, receiver, application or class of application (“application-specific discrimination”), NOT just to discrimination based on application,
- (3) subject to reasonable network management.

### **Reasonable network management**

The exception for reasonable network management should require network management to be:

- (1) appropriate and tailored (i.e. only used during times of congestion),
- (2) as application-agnostic as possible (this requirement is key), and
- (3) only apply to the rules against blocking and discrimination.

### **No access fees**

The FCC should adopt:

- (1) a bright-line ban (NOT a presumptive ban or, even worse, unstructured case-by-case analysis)
- (2) on all forms of access fees, i.e. fees charged to edge providers for
  - access to users, and for
  - any form of preferential treatment (including prioritization, guaranteed bandwidth, and zero-rating) that gives an edge provider that pays an advantage over edge providers that don't pay, NOT just a ban that is restricted to fees for prioritization (as the Republican network neutrality discussion draft) or to technical forms of preferential treatment.
- (3) This ban should not be subject to the exception for reasonable network management.

### **Equal protections for mobile and fixed networks**

The rules should apply equally to mobile and fixed networks.

### **No access fees for interconnection with last-mile networks**

Any meaningful network neutrality regime must include interconnection. The FCC should adopt a rule that prohibits providers of Internet access services from charging interconnecting networks, application providers and content delivery networks for interconnection.

## **Specialized services**

The FCC should:

- (1) adopt a narrow definition of specialized services and
- (2) ensure that specialized services
  - cannot be used to circumvent the Open Internet rules,
  - do not interfere with or retard the growth of the capacity available for Internet access, and
  - are not offered in a way that distorts competition among applications or classes of applications or interferes with user choice.

These are the rules I think the FCC should adopt. If these details are not already in the order, I hope we can work toward them in the next three weeks before the FCC's vote.

### **Further reading:**

The case for network neutrality:

<http://www.theatlantic.com/technology/archive/2014/05/the-case-for-rebooting-the-network-neutrality-debate/361809/>

Shorter blog post evaluating the Republican bill:

<http://cyberlaw.stanford.edu/blog/2015/01/seven-reasons-new-gop-bill-will-not-give-us-net-neutrality>

Longer analysis of the Republican bill:

<http://www.stanfordlawreview.org/online/new-republican-bill-is-network-neutrality-in-name-only>