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Net Neutrality Developments

The "Net Neutrality" debate is now in full swing, with new FCC rules expected this month. "Net neutrality" allows consumers to make their own choices about Internet applications, services, and lawful content.   The ongoing and seemingly never-ending "net neutrality" debate is critical because it impacts Internet delivery: consumer-friendly net neutrality that allows users to gain to access to any Internet site for one fee versus higher fees for faster or more popular Internet sites. But even though all branches of the federal government are weighing in on this critical issue, the outcome is far from certain and the final FCC rules expected this month may be mired in more litigation.

To recap, on December 23, 2010, the FCC released the *Open Internet Order,* which required transparency and it prohibited blocking and unreasonable discrimination to protect Internet openness. On January 14, 2014, the United States Court of Appeals for the District of Columbia Circuit upheld the transparency rule, but it vacated the no-blocking and no-unreasonable-discrimination rules. The court also invited the FCC to act to preserve a free and open Internet.
In response, the FCC on May 15 launched a rulemaking seeking public comment on how best to protect and promote an open Internet. Late last year President Obama called for "the strongest possible rules to protect" the open Internet, and he opposed cable and telecom companies' efforts to create fast lanes for the web.   Specifically, President Obama supported no blocking of consumer requests to access legal content on a website, no Internet service provider "throttling" down of some content speed up of others, increased transparency to eliminate network abuses, and no paid prioritization or higher fees for faster service. The FCC is expected to vote on the latest version of Net Neutrality rules on February 26, 2015.

Not to be outdone, on January 16th the GOP introduced a bill to promote net neutrality. While the stated purpose of the GOP bill is encouraging, it lacks critical details that are necessary to

promote Net Neutrality. For example, the bills' ban on "throttling" narrowly applies to technical discrimination ("selectively slowing, speeding, degrading or enhancing Internet traffic based on source, destination or content") but not to economic differential treatment, such as application-specific pricing. The bill bans the prohibition of the use of "non-harmful devices", subject to "reasonable network management" but it doesn't define those terms. The bill also limits regulators' ability to enforce the bill's net neutrality provisions by removing any "grant of authority" to the FCC or a State commission, and it restricts enforcement of the bill's "Internet Openness" provisions to the adjudication of complaints.

The GOP bill raises many questions, and it underscores the need for clear and comprehensive Net Neutrality rules. The House Bill is available at http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/114/BILLS-114hr-PIH-OpenInternet.pdf. The Senate Bill is available at http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=7a90bcad-41c9-4f11-b341-9e4c14dac91c.

We look forward to reviewing, and we welcome your thoughts on, the FCC's new Net Neutrality rules expected this month.   If you have questions, please feel free to contact us.