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FCC Prepares to Launch New Net Neutrality Rulemaking

By [Sherrese Smith](#) & [John Gasparini](#)

Earlier this week, the Chairwoman of the Federal Communications Commission (“FCC”) shared long-expected plans to revisit net neutrality regulation, marking a new chapter in the long-running debate over whether and how to regulate broadband providers’ networks and business practices. The Chairwoman will ask her fellow Commissioners to vote on October 19 to begin the process of considering new rules “re-establishing the FCC’s oversight over broadband and restoring uniform, nationwide net neutrality.” Net Neutrality—the principle that broadband providers should not block or give preferential treatment to any particular content, instead providing access to all sites, content, and applications at the same speeds and under the same conditions—has been a major topic of debate in the telecommunications sector for nearly two decades.

This latest proposal would once again classify broadband as a Title II telecommunications service, a step first taken in 2015, and subsequently reversed by later FCC rulemaking in 2018. Under Title II, the FCC believes it has broad authority to regulate network management practices such as blocking and throttling. The FCC proposal will include forbearance from other portions of Title II, including rate regulation and network unbundling requirements, which have long been major concerns for the broadband industry. In sum, the FCC describes the new proposal as an effort to “largely return to the successful rules the Commission implemented in 2015.”

While the full text of the proposal is not yet public and will take some time to analyze, it is notable that the FCC’s announcement of the proposal emphasizes cybersecurity, outage monitoring, and national security benefits which may flow from Title II classification. This suggests that reclassification may bring new areas of FCC scrutiny on broadband provider practices in the future, particularly as the FCC has placed a strong focus on security and network integrity issues over the past several years, often on a bipartisan basis. It remains to be seen whether this latest proposal includes such provisions directly, however, or whether this is merely rhetoric to frame the debate and provide policy justification.

While some of the details are new, this is overall not a surprising move from the FCC’s leadership. It follows the recent confirmation and swearing-in of a fifth FCC Commissioner, making this the first time a full five-member FCC has been in place during the Biden administration. Reinstatement of Title II classification has been a priority for Democrats in Congress and the Biden administration for several years, and has been considered a matter of “when” rather than “if.”

Procedurally, any new rules are a long way from finalization. If the Chairwoman’s proposal is adopted on October 19, it will then be subject to public comment which will likely be extensive and heated, as

consumers, industry, investors, edge providers, and other parties bring an array of arguments to bear. If the rules are ultimately adopted (sometime in 2024, at the earliest), litigation is a near-certainty as well. Paul Hastings attorneys will closely monitor these developments as we support our clients across an array of impacted industries and sectors.

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If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings Washington, D.C. lawyers:

Sherrese M. Smith
1.202.551.1965
sherresesmith@paulhastings.com

John Gasparini
1.202.551.1925
johngasparini@paulhastings.com

Paul Hastings LLP

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