

**STATEMENT BY FCC CHAIRMAN TOM WHEELER ON
THE FCC'S OPEN INTERNET RULES
FEBRUARY 19, 2014**

In its *Verizon v. FCC* decision, the United States Court of Appeals for the District of Columbia Circuit invited the Commission to act to preserve a free and open Internet. I intend to accept that invitation by proposing rules that will meet the court's test for preventing improper blocking of and discrimination among Internet traffic, ensuring genuine transparency in how Internet Service Providers manage traffic, and enhancing competition. Preserving the Internet as an open platform for innovation and expression while providing certainty and predictability in the marketplace is an important responsibility of this agency.

The D.C. Circuit ruled that the FCC has the legal authority to issue enforceable rules of the road to preserve Internet freedom and openness. It affirmed that Section 706 of the Telecommunications Act of 1996 gives the FCC authority to encourage broadband deployment by, among other things, removing barriers to infrastructure deployment, encouraging innovation, and promoting competition. The court recognized the importance of ensuring that so-called "edge providers," those that use the network to deliver goods and services, can reach people who use the Internet. And it upheld the Commission's judgment that Internet freedom encourages broadband investment and that its absence could ultimately inhibit broadband deployment.

Recently in Los Angeles, I talked to start-up entrepreneurs who produce video to meet consumers' growing desire for programming. Their companies may succeed or they may fail depending on whether they are truly creative and innovative. But they and other innovators cannot be judged on their own merits if they are unfairly prevented from harnessing the full power of the Internet, which would harm the virtuous cycle of innovation that has benefitted consumers, edge providers, and broadband networks. This is why the FCC's exercise of its authority to protect an open Internet is important.

Today we initiate several steps to ensure that the Internet remains a platform for innovation, economic growth, and free expression.

1. Propose new rules. I intend to ask my fellow commissioners to:

- **Enforce and enhance the transparency rule.** The Court of Appeals has affirmed the Open Internet Order's transparency rule, which requires that network operators disclose how they manage Internet traffic. This is more significant than many people may realize. We should consider ways to make that rule even more effective. For example, an explicit purpose of the rule is to afford edge providers the technical information they need to create and maintain their products and services as well as to assess the risks and benefits of embarking on new projects.
- **Fulfill the "no blocking" goal.** The D.C. Circuit recognized the importance of the Open Internet Order's ban on blocking Internet traffic, but ruled that the Commission had not provided sufficient legal rationale for its existence. We will carefully consider how, consistent with the court opinion, we can ensure that edge providers are not unfairly blocked, explicitly or implicitly, from reaching consumers, as well as ensuring that consumers can continue to access any lawful content and services they choose.
- **Fulfill the goals of the non-discrimination rule.** We will carefully consider how Section 706 might be used to protect and promote an Open Internet consistent with the D.C. Circuit's opinion and its earlier affirmation of our Data Roaming Order. Thus, we will consider (1) setting an enforceable legal standard that provides guidance and predictability to edge providers, consumers, and broadband providers alike; (2) evaluating on a case-by-case basis whether that

standard is met; and (3) identifying key behaviors by broadband providers that the Commission would view with particular skepticism.

2. Keep Title II authority on the table. As the Court of Appeals noted, as long as Title II – with the ability to reclassify Internet access service as a telecommunications service – remains a part of the Communications Act, the Commission has the ability to utilize it if warranted. Accordingly, the Commission’s docket on Title II authority remains open.

3. Forgo judicial review of the *Verizon* decision. In light of the Court’s finding that the Commission has authority to issue new rules under Section 706 and the ongoing availability of Title II, the Commission will not initiate any further judicial action in connection with the *Verizon* decision.

4. Solicit public comment. A new docket is opened today called “Protecting and Promoting the Open Internet,” so that all public input on the court’s remand of the Open Internet decision will be collected and available. I will recommend to my fellow commissioners that the Commission seek comment through a formal rulemaking on the specific rules for preserving and protecting the open Internet. The focus of this docket will be on issues raised by the D.C. Circuit opinion.

5. Hold Internet Service Providers to their commitment. Major Internet service providers have indicated that they will continue to honor the safeguards articulated in the 2010 Open Internet Order. That’s the right and responsible thing to do, and we take them up on their commitment – which will continue to provide protection for the Open Internet until new rules are put in place.

6. Enhance competition. The Commission will look for opportunities to enhance Internet access competition. One obvious candidate for close examination was raised in Judge Silberman’s separate opinion, namely legal restrictions on the ability of cities and towns to offer broadband services to consumers in their communities.

When the earlier rules were adopted in 2010, some predicted that they would stifle investment and innovation. They were wrong. In fact, investment increased for both edge providers and in broadband networks. In particular, since 2009, nearly \$250 billion in private capital has been invested in U.S. wired and wireless broadband networks. The FCC must stand strongly behind its responsibility to oversee the public interest standard and ensure that the Internet remains open and fair. The Internet is and must remain the greatest engine of free expression, innovation, economic growth, and opportunity the world has ever known. We must preserve and promote the Internet.