



Written by [Raven Clabough](#) on January 5, 2015

FCC Net Neutrality Vote Expected in February, but Will Congress Beat Them to It?

The Federal Communications Commission announced on Friday it will be introducing and voting on new net neutrality rules in February. The proposals are sure to set off another storm of controversy as net neutrality has long been a contentious issue for those who believe in the free market and free speech.

According to an anonymous official, a draft proposal will be circulated internally this month with a goal of approving the measure in February. The rules are intended to prevent broadband providers such as Verizon and Comcast from accelerating or slowing the speech of some websites.



Currently, it is unclear what rules are being circulated amongst FCC officials, but the timing was expected, as the push for stronger regulations grew fiercer. The *Washington Post* writes, “Advocates of strong net neutrality, including President Obama, have urged the FCC to begin regulating Internet service providers using the same law it uses to oversee telephone companies — [Title II of the Communications Act](#).”

Policy experts expected new rules to be introduced in early January after the FCC missed its original December deadline.

In November, President Obama spoke in favor of the “strongest possible rules to protect net neutrality,” and endorsed a proposal to empower the FCC to require Internet service providers to treat all web traffic equally. “We cannot allow Internet service providers to restrict the best access or to pick winners and losers in the online marketplace for services and ideas,” Obama said in a [statement](#).

Under Obama’s plan, Internet Service Providers would be reclassified as common carriers under Title II of the Telecommunications Act, which would treat the service as a public entity. As such, it would be illegal “to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services.”

“If a consumer requests access to a website or service, and the content is legal, your ISP should not be permitted to block it,” Obama’s statement said. “Nor should ISPs be able to intentionally slow down some content or speed up others ... based on the type of service or your ISP’s preferences.”

Obama’s push undermines a ruling from a federal appeals court last January that struck down rules that barred companies from engaging in such behaviors. According to Judge David Tatel in his opinion written for the U.S. Court of Appeals for the District of Columbia, the net neutrality rules contradict a previous FCC decision that put broadband companies outside of its reach. “Given that the Commission has chosen to classify broadband providers in a manner that exempts them from treatment as common



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carriers,” Tatel wrote, “the Communications Act expressly prohibits the Commission from nonetheless regulating them as such.”

But while the three-judge panel did rule against the FCC, it did not address Verizon’s claims of a [First Amendment violation](#), made in its brief regarding its right to decide how it provides “edge services” such as Netflix as well as news websites to its customers: “Given our disposition of the latter issue, we have no need to address Verizon’s additional contentions that the Order violates the First Amendment and constitutes an uncompensated taking,” said Judge David S. Tatel.

However, even with broadband providers opposing aggressive net neutrality rules, some industry officials have said they were open to some of the ideas supported by Obama. Both Comcast and AT&T announced that it opposed the blocking or slowing of traffic to websites, revealing a potential opening for compromise.

Likewise, some Republicans have shown an interest in drafting legislation that would address net neutrality. Republican lawmakers are expected to introduce legislation in advance of any FCC rule this month. The legislation would prevent Internet providers from speeding up some websites over others. The intention is to preempt efforts by the FCC to create rules that would ultimately do the same thing. However, the Republican proposal goes about it a different way. The *Washington Post* reports,

One important piece of the proposed legislation would establish a new way for the FCC to regulate broadband providers by creating a separate provision of the Communications Act known as “Title X,” the people said. Title X would enshrine elements of the tough [net neutrality principles](#) called for by President Obama last month. For example, it would give FCC Chairman Tom Wheeler the authority to prevent broadband companies from blocking or slowing traffic to Web sites, or charging content companies such as Netflix for faster access to their subscribers — a tactic known as “paid prioritization.”

But those new powers would come with a trade-off, the people said. In exchange for Title X, the FCC would refrain from regulating net neutrality using Title II of the Communications Act — a step favored by many advocates of aggressive regulation, including the president, they said.

Ultimately, the goal is for net neutrality to be legislated by Congress, not regulated by the FCC.

However, not all Republicans are on board. Many of the most outspoken critics of the agency, such as Senator Ted Cruz (R-Texas) and Representative Marsha Blackburn (R-Tenn.), ardently oppose any new regulations on Internet providers. Last month, Ted Cruz took to his Twitter account to voice his opposition to Obama’s net neutrality. “‘Net Neutrality’ is Obamacare for the Internet; the Internet should not operate at the speed of government,” Cruz tweeted.

Cruz spokeswoman Amanda Carpenter [echoed the senator](#) in her own tweet, writing, “Net neutrality puts gov’t in charge of determining pricing, terms of service, and what products can be delivered. Sound like Obamacare much?”

Similar comparisons were made in a May *Wall Street Journal* opinion piece, wherein the writer noted, “Think of this as ObamaCare for the Web: enact an unworkable system and then get busy issuing waivers to prevent the new system from operating as designed.”

But if Republicans manage to gain enough bipartisan support, they could advance a bill to Obama’s desk before the FCC releases its own proposed rules.

Still, Democrats have stated that any legislation on net neutrality will have to include certain provisions



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in order to meet their approval. The bill, for example, cannot curb the FCC's existing regulatory powers under the Communications Act. It must include President Obama's provisions regarding the blocking or slowing of traffic, and must also apply to wireless carriers, which have thus far been largely exempt from FCC's previous net neutrality rules, according to Eschoo's senior tech policy adviser David Grossman.

If the bill does not meet all Obama's demands, it is likely he will veto it. However, with some perceiving the legislation as a compromise, it may not be politically smart for Obama to do so, especially if the bill meets the approval of industry officials.

And even if both parties manage to reach a compromise with the FCC, the constitutional violations that are inherent in net neutrality will remain wholly ignored.



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