

# FCC Law Blog

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## [FCC Approves Controversial Net Neutrality Rules](#)

On December 21, 2010, the FCC approved controversial net neutrality rules in a party-line vote. Democratic Commissioners Capps and Clyburn joined Chairman Genachowski in approving the Order, despite concerns that it did not go far enough. Republican Commissioners McDowell and Baker wrote lengthy dissents, arguing that the FCC had stepped far beyond its regulatory authority in approving Internet regulations.

According to the Order, the rules can be summarized as achieving three main objectives: (i) transparency; (ii) no blocking; and (iii) no unreasonable discrimination. More specifically, "fixed and mobile broadband providers must disclose network management practices, performance characteristics, and terms and conditions of their broadband services." Additionally, "[f]ixed broadband providers may not block lawful content, applications, services, or non-harmful devices; mobile broadband providers may not block lawful websites or block applications that compete with their voice or video telephony services." Finally, "[f]ixed broadband providers may not unreasonably discriminate in transmitting lawful network traffic."

The regulations have garnered much criticism. Those who believe the FCC has overstepped its regulatory authority have called for reversal either by Congress or the courts. Indeed, Hill Republicans have vowed to reverse the new FCC rules. Commissioners McDowell and Baker both expressed dismay at the FCC's attempt to regulate a sector of the economy that, in their view, needs no fixing, particularly in light of the D.C. Circuit's recent decision that enforcement of net neutrality principles is beyond the FCC's authority.

Those who believe the Order did not go far enough complain that the rules apply primarily to fixed broadband providers, leaving wireless providers largely exempted, and that the rules do not expressly prohibit "paid prioritization," which would allow content providers to pay for faster transmission of their data.

Chairman Genachowski has defended the new regulations, stating in an interview with Gary Shapiro, head of the Consumer Electronics Association, "Our hope is that there's an outcome here that preserves a free and open Internet [that will] promote innovation, protect the free flow of information ... and preserve and accelerate the kind of economic activity that we've seen out of this platform for the last several decades."

Whether the FCC's net neutrality rules can withstand judicial review and Congressional challenge remains to be seen.

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