

January 16, 2015

The House and Senate Republicans have released a draft of a network neutrality bill. On the whole, this bill would adopt the substantive rules proposed by the FCC in the spring, while rejecting Title II classification for broadband services and narrowing the power of the FCC and the states to adopt additional broadband rules.

These are the key elements of the bill:

1. Network neutrality requirements would be reinstated, largely following the outline of the rules proposed by the FCC last spring. These requirements would include transparency disclosures, non-discrimination, no blocking, no paid prioritization and throttling. They would apply to both landline and wireless services, and there would be exceptions for reasonable network management and specialized services. The bill also specifically does not prohibit "reasonable efforts" to address copyright infringement or other illegal activity.
2. Enforcement would be via complaints. It is not clear whether the FCC would have authority to impose forfeitures based on its own investigations or what remedies would be permitted in the complaint process. It also is not clear if the FCC would have the authority to address informal complaints or if complaints would have to follow formal complaint rules.
3. The bill prohibits the FCC from extending "Internet openness obligations" for broadband Internet access beyond the scope of the statutory language, but does not appear to prevent the FCC from adopting rules that interpret the statutory requirements. The FCC would be required to adopt rules to govern formal complaints.
4. Broadband Internet is to be treated as an information service. However, the bill would not affect obligations related to law enforcement or public safety.
5. The FCC and state regulators no longer would have the power to use Section 706 as a source of regulatory authority. It is important to note that the bill would not divest the FCC of authority to use its Title I powers or to adopt rules that address topics other than network neutrality. (For instance, the FCC could still seek to adopt network outage reporting rules for broadband services if it could justify them under Title I.)
6. The bill does not address Internet interconnection issues at all.

This bill is a significant concession on the part of the Republican leadership to the likelihood that network neutrality rules will be adopted by the FCC. It is unclear whether the bill is sufficient to obtain Democratic support in the Senate or to avoid a veto by the President. It is particularly uncertain whether there are enough votes to obtain cloture in the Senate, even if there is majority support for the bill. The speed with which Congressman Upton and Senator Thune prepared the bill suggests that they are hoping to head off the planned FCC vote in February, but it seems likely that Chairman Wheeler will move ahead with that vote unless there is a signal from the White House to wait or unless legislation acceptable to the President is passed before then.

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Key Contacts

J.G. Harrington Washington, DC	jgharrington@cooley.com +1 202 776 2818
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