



Summary of the FCC's 2015 Open Internet Order

(Source: FCC press release)

Legal Authority

Reclassifies “broadband Internet access service” as a telecommunications service under Title II of the Communications Act of 1934.

Finds further authority in Section 706 of the Telecommunications Act of 1996.

Provisions on mobile broadband rest on Title III of the Communications Act of 1934.

New Rules to Protect an Open Internet

While the FCC's 2010 open Internet rules had limited applicability to mobile broadband, the new rules would apply, in their entirety, to mobile broadband

The first three rules would ban:

1. Blocking -- broadband providers may not block access to legal content, applications, services, or non-harmful devices.
2. Throttling -- broadband providers may not impair or degrade lawful Internet traffic on the basis of content, applications, services, or non-harmful devices.
3. Paid Prioritization -- broadband providers may not favor some lawful Internet traffic over other lawful traffic in exchange for consideration – in other words, no “fast lanes.” This rule also bans ISPs from prioritizing content and services of their affiliates.

Standard for Future Conduct: Creates a general Open Internet conduct standard that ISPs cannot harm consumers or edge providers.

Transparency: Enhances existing transparency rules, which were not struck down by the court.

Reasonable Network Management: Other than paid prioritization, an ISP may engage in reasonable network management. The network practice must be primarily used for and tailored to achieving a legitimate network management—and not commercial—purpose.

Interconnection: For the first time the Commission would have authority to hear complaints and take enforcement action if it determines the interconnection activities of ISPs are not just and reasonable

Forbearance: Congress requires the FCC to refrain from enforcing – forbear from – provisions of the Communications Act that are not in the public interest. The proposed Order applies some key provisions of Title II, and forbears from others.

Major Provisions of Title II that the Order WILL APPLY:

Sections 201 and 202 (e.g., no “unjust and unreasonable practices”)

Investigation of consumer complaints under section 208 and related enforcement provisions, specifically sections 206, 207, 209, 216 and 217

Protects consumer privacy under Section 222

Ensures access to poles and conduits under Section 224

Protects people with disabilities under Sections 225 and 255

Bolsters universal service fund support for broadband service in the future through partial application of Section 254.

Major Provisions Subject to Forbearance:

Rate regulation: under the order broadband providers shall not be subject to tariffs or other form of rate approval, unbundling, or other forms of utility regulation

Universal Service Contributions: the Order does not require broadband providers to contribute to the Universal Service Fund under Section 254

The Order does not impose new taxes or fees.