



Written by [C. Mitchell Shaw](#) on April 22, 2015

## Net Neutrality Faces Legislative and Legal Challenges

When the FCC reclassified the Internet as a public utility under Title II of the 1934 Communications Act, Chairman Tom Wheeler considered Net Neutrality a done deal. But with the legislative and legal challenges the FCC order is facing, the issue is far from settled.



Mired in “governmentese” and steeped in double-talk, Net Neutrality has proven to be a tangled web of deceit. Now that the order has been entered into the *Federal Register*, the real battle for its fate begins.

After the order was entered in the *Federal Register* last week, almost immediately several lawsuits (which would have been considered premature before) were filed challenging the legality of the order.

So far, suits have been filed by the American Cable Association (ACA), AT&T, The Wireless Association (CTIA), the National Cable & Telecommunications Association (NCTA), and USTelecom. While the suits all have their own individual points and strategies, they share the basic argument that the Net Neutrality order violates existing laws and should be set aside by the courts.

This is the third time the FCC has attempted to enforce some version of Net Neutrality, and each time it has wound up in the courts. The first two cases were fairly short-lived, with the courts deciding that the FCC lacked the authority to enforce Net Neutrality; consequently, Chairman Wheeler began seeking a legal tool to make the third time a charm. When President Obama called on the FCC to reclassify the Internet as a public utility, Wheeler (who had originally opposed the idea) reversed his previous position and began pushing reclassification as the legal tool Net Neutrality advocates had been seeking.

It is likely that both Wheeler’s previous opposition to using Title II reclassification and President Obama’s heavy handed approach to rushing Net Neutrality through will play big parts in the legal challenges brought by Internet Service Providers (ISPs) and industry groups. ISPs and their trade associations will have both precedent and the facts on their side when they argue that Wheeler was going against his better judgment and doing Obama’s bidding.

AT&T’s petition was filed with the same court that had “vacated and remanded the Commission’s previous attempt at Internet regulation in *Verizon v. FCC*” and says that as a result of that ruling, the FCC “initiated a rulemaking proceeding and ultimately issued the Order under review.” The petition asks the court to review the order “on the grounds that it is arbitrary, capricious, and an abuse of discretion” and that it “violates federal law, including, but not limited to, the Constitution, the Communications Act of 1934, as amended, and Commission regulations promulgated thereunder,” and that it “conflicts with the comment and rulemaking requirements” of federal law, “and is otherwise contrary to law.” The petition “requests that this court hold unlawful, vacate, enjoin, and set aside the Order, and that it provide such additional relief as may be appropriate.”

The other petitions all use similar language and make similar arguments — many of which Chairman Wheeler himself made before reversing his position at the president’s insistence. Now that is likely to



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hurt his new position in court when he is called on to defend the order.

On the congressional front, Net Neutrality faces even more challenges. Republican Representatives Marsha Blackburn of Tennessee and Doug Collins of Georgia have both introduced measures to set aside the FCC rule.

Representative Blackburn's bill, H.R. 1212, the Internet Freedom Act, "would block the FCC's Net Neutrality rules by stating that they shall have no force or effect." In addition, it "prohibits the FCC from reissuing net Net Neutrality rules," according to her House website. In a statement on the site, Blackburn observes,

Once the federal government establishes a foothold into managing how Internet service providers run their networks they will essentially be deciding which content goes first, second, third, or not at all. My legislation will put the brakes on this FCC overreach and protect our innovators from these job-killing regulations.

Representative Blackburn explains that her bill is necessary to protect the Internet because the "vote by the FCC to regulate the Internet like a 1930s era public utility is further proof that the Obama Administration will stop at nothing in their efforts to control the Internet." The bill has 31 cosponsors — all Republicans.

Representative Collins has introduced a "Resolution of Disapproval" under the Congressional Review Act in an effort to set the Net Neutrality order aside. The resolution already has 14 cosponsors (again, all Republicans) and "would require only a simple Senate majority to pass under special procedural rules of the Congressional Review Act," Collins said in a statement. This "fast-track" option, which has had mixed success for Republicans in the past, if successful would allow Republicans to end any Democrat filibuster with only a simple majority rather than the super-majority usually required.

Whether or not Blackburn and Collins can garner enough support from the other side of the aisle remains to be seen. The FCC Net Neutrality order passed along strict party lines, and almost any vote in Congress is expected to follow that same pattern. Even if either Blackburn's bill or Collins' resolution passed through both houses, there is little chance that President Obama would do anything but veto it and send it back to Congress, where it would certainly lack the super-majority support needed to override a presidential veto.

The best hope for such a bill would be to wait for Obama to leave office and try again. There is some likelihood that a new president, even a Democrat, would be less willing to go out on a limb for such a radical agenda.

Even if Blackburn's bill and Collins' resolution both fail passage, they will provide an opportunity for more public debate and give more perspective to the courts hearing the cases. The fate of the Internet is likely to end up in the hands of the courts, which have ruled against Net Neutrality twice before.

Hopefully, the tangled web of Net Neutrality will soon come unraveled yet again.



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