Life in the Fast Lane: FCC Releases Final Rule Repealing Net Neutrality

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This week, the Federal Communications Commission (FCC) published the proposed final rule repealing “net neutrality,” the open internet rules that classified internet service providers (ISPs) as common carriers under Title II of the Communications Act of 1934 (the Act). Under net neutrality, previously enacted by the FCC through the Open Internet Order of 2015, ISPs were restricted from prioritizing, slowing, or blocking web traffic through their networks, including by implementing paid prioritization “fast lanes” that favored certain web traffic over others.

The new regulatory regime implemented by the FCC repeals the net neutrality restrictions, reinstating the prior classification of ISPs as less regulated “information services” under Title I of the Act (rather than common carriers) and eliminating the web traffic conduct rules imposed by the Open Internet Order. In place of net neutrality will be a new network management disclosure regime that requires ISPs to disclose information about network management practices, performance characteristics, and commercial terms of service.

Potential Impacts of the Net Neutrality Repeal

The repeal of net neutrality is set to potentially impact a vast number of businesses and industries that rely upon the internet to deliver content and services to customers. Internet-based startups and early-stage companies could be especially impacted, as they may not have the financial resources and leverage of industry incumbents to negotiate with or push back against ISPs.

For example, in the emerging telehealth industry, where providing a data-intensive service is entirely reliant upon internet access for both providers and patients, the repeal could force telehealth providers into more costly internet fast lanes, putting financial pressure on providers. As discussed in a recent Morgan Lewis Hospital Industry Viewpoint, telehealth providers may also be forced into agreeing to use internet fast lanes in order to comply with regulations that require telehealth providers to furnish the same standard of care as in-person providers.

Challenges to the Repeal

The net neutrality repeal has not come without challenges. Twenty-two states and the District of Columbia have joined legal challenges to reverse the repeal. Congressional Democrats may also attempt to rescind the new rules, an effort that probably faces long odds given Republican control of both chambers and the possibility of a presidential veto.

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