

# Federal Net Neutrality Reinstatement Denied by Court of Appeals; State-Level Laws Remain in Place

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The Net Neutrality rules aimed to protect open, free, and fast Internet for all, while opponents questioned federal agency authority and worried the rules stymied investment and innovation.

On January 2nd, 2025, the 6th Circuit Court of Appeals ruled that the Federal Communications Commission lacked sufficient legal authority to reinstate the 2015 Net Neutrality rules and regulations that were initially pulled back in 2017.

The Net Neutrality rules were introduced and implemented in 2015 and were designed to ensure that Internet service providers acted as neutral gateways and promoted a more open Internet. The 2015 Net Neutrality rules required Internet service providers to treat all Internet traffic equally—in terms of pricing, bandwidth, availability, etc. However, in 2017, under a new administration, the FCC voted to repeal and roll back the 2015 Net Neutrality rules.

With President Biden's administration taking over in 2020, the FCC voted on Net Neutrality again, this time, attempting to reinstate the original 2015 Net Neutrality rules. The 6<sup>th</sup> Circuit Court of Appeals, however, ruled that the FCC lacked proper authority to reinstate the rules.

With President Trump's administration—the original administration that rolled back the Net Neutrality rules in 2017—entering power, federal level Net Neutrality rules are no longer likely. Unless the Supreme Court reverses the 6<sup>th</sup> Circuit Court of Appeals, an act of Congress would likely be necessary to institute federal-level Net Neutrality rules.

Importantly, and despite the 2017 roll back of the federal Net Neutrality rules and the 6<sup>th</sup> Circuit Court of Appeals' rejection of their reinstatement, state-level Net Neutrality laws could stay in place. Many states, like California, have laws like the federal Net Neutrality rules in place.

With federal-level Net Neutrality rules no more, and unlikely to resurface any time soon, Internet service providers will have greater flexibility on how they price out and charge rates for different Internet or online activities in jurisdictions that do not have in place Net Neutrality principles. Proponents of Net Neutrality rules fear that Internet service providers will now institute discriminatory pricing to the disadvantage of certain categories of individuals and smaller businesses Internet that need but do not have the financial resources of larger businesses to afford faster, more reliable Internet access and service. Opponents of Net Neutrality rules fear that these rules inhibit further investment and innovation by preventing service providers from recouping the costs of such investment and innovation from those most able and willing to pay for enhanced access and service.

With state-level Net Neutrality rules remaining in place, it remains to be seen how the Internet service industry will respond and how customers and consumers will be impacted. Because many

Internet service providers operate on a national level, it may be more difficult for such services providers administratively to create different levels of services in different jurisdictions to accommodate varying rules and regulations, or to accommodate customers with locations in multiple jurisdictions with different rules and regulations.

In any event, Internet service providers should remain aware and up to date on state-level Net Neutrality rules and regulations.

### **Telecommunications Act & Common Carrier Regulations**

The Communications Act of 1934, amended by the Telecommunications Act of 1996, grants the FCC authority to regulate Internet service providers. Title II of the Act specifically sets forth regulations on common carriers, which had been understood to cover industries like telephone companies.

With the advent of the commercial Internet and the rise in its use, Internet service providers took hold providing businesses and consumers alike the service of Internet access. For many years, regulators only viewed Internet service providers as providers of information, not telecommunications. However, as consumers and businesses used the Internet more and more for services that emulated communications such as email and instant messaging, proponents pushed for Internet service providers to be viewed like providers of telecommunications, making them a category of “common carriers” under the Telecommunications Act, and subjecting them to the jurisdiction of the FTC and to the same regulations as are applicable to telecommunications carriers.

The 2015 Net Neutrality rules formalized this change and reclassified Internet service providers as common carriers, subjecting them to stricter regulations with respect to non-discrimination, reasonable pricing, and service quality.

The 2015 Net Neutrality rules also prohibited Internet service providers from: (1) blocking access to any lawful content, applications, services, or non-harmful devices; (2) impairing or degrading lawful Internet traffic on the basis of the content, application, service, or use of a non-harmful devices; or (3) creating faster levels of service or greater bandwidth at different pricing levels, or create different levels of access where lawful content could not be viewed unless higher subscription prices were paid.

### **6<sup>th</sup> Circuit Rejects Reinstatement**

The recent ruling by the 6<sup>th</sup> Circuit Court of Appeals is one of the first major challenges to a federal agency action after the Chevron Doctrine—which gave deference to federal agency decision-making and findings—was overturned in the landmark *Loper Bright Enterprises v. Raimondo* decision by the Supreme Court in June 2024.

In ruling against the FCC’s attempt to reinstate the Net Neutrality Rules, the court looked to the Communications Act (and the Telecommunications Act which added to and amended the original law) and the law’s policy statement, which states “[t]he Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation” and that the policy of the US is to preserve a “vibrant and competitive free market” in the Internet space, that is “unfettered by Federal or State Regulation” (see 47 U.S. § 230(a)(4)).

They also found that, despite the FCC's arguments to the contrary, Internet service providers only offer a conduit for users to access information.

Looking at the text of the Communications Act and the legislative history and text highlighting a need to favor an open market, the Court agreed with petitioners that the FCC could not regulate Internet service providers as common carriers. Therefore, the court set aside the new FCC Order reviving the Net Neutrality rules and refused to allow the rules to take effect.

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