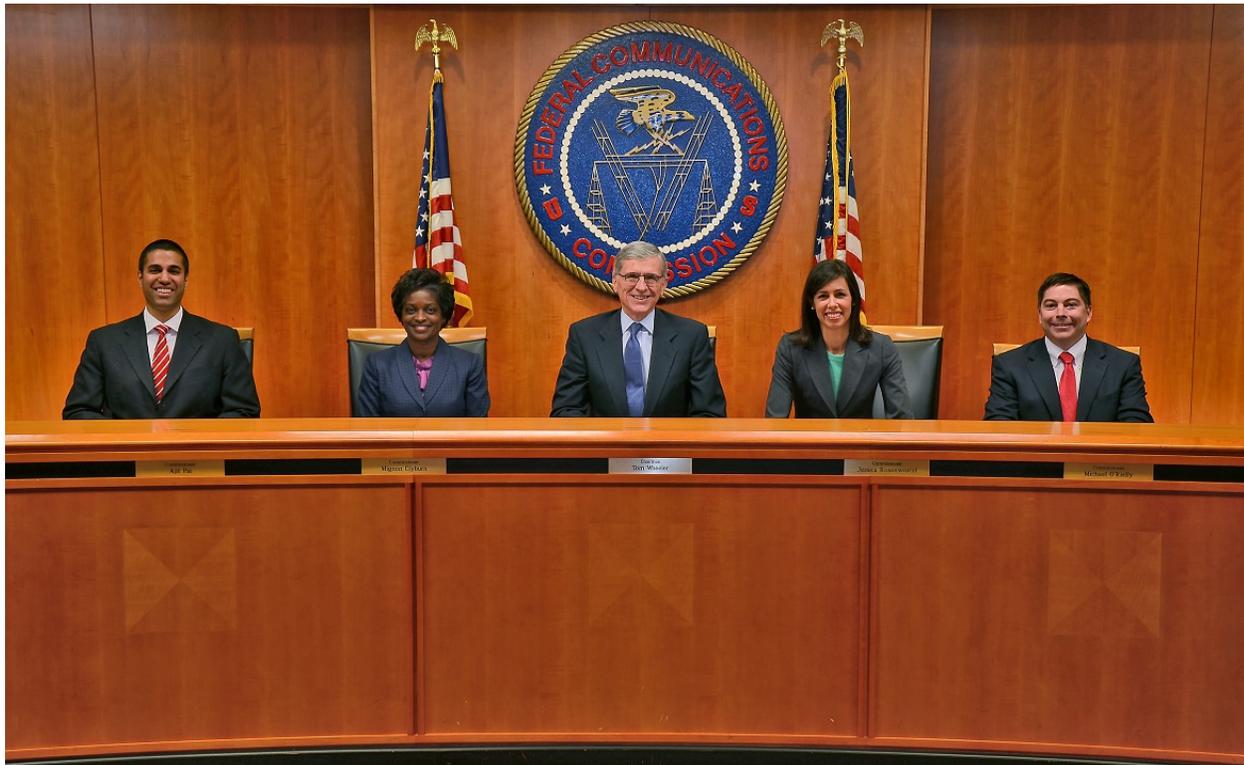


What Does the FCC's Authority on Net Neutrality Really Mean?

Brian Heaton | October 21, 2014



As the FCC debates how to regulate Internet traffic, two areas of legal doctrine have surfaced as the commission's potential authority to create and enforce open Internet rules — Title II of the Communications Act of 1934 and Section 706 of the Telecommunications Act of 1996.

But while millions have advocated for the approach they think best applies, the nuances of Title II and Section 706 often can be difficult to understand. *Government Technology* has summarized the impact of both options to cut through the clutter and clarify how they may affect Internet use in the future.

Title II of the Communications Act of 1934

Network neutrality advocates generally favor using Title II as a way for the FCC to reclassify Internet service providers (ISPs) as common carriers. The belief is that Title II classification would enable the FCC to regulate against any type of paid prioritization of the Internet, which essentially subverts net neutrality by enabling ISPs to discriminate Internet traffic by striking deals with content providers to deliver data through so-called "fast lanes."

Although using Title II may be a straight-ahead approach, critics of using it to regulate the Internet have noted that Title II is extremely outdated and was intended for earlier

communication options such as landline telephone service. While the Communications Act was updated in 1996, that was 18 years ago and well before the Internet was used in the manner it is today.

Section 706 of the Telecommunications Act of 1996

Section 706 potentially gives the FCC authority to regulate ISPs to stimulate and protect competition in the telecommunications arena and remove barriers to infrastructure investment. It's not clear, however, how the section would specifically tie into regulating content flow on the Internet.

FCC Chairman Tom Wheeler is said to favor a Section 706 approach to regulate the Internet because it may give broad regulatory authority to the commission and in some cases could enable paid prioritization lanes to be created. But Julie Veach, chief of the FCC's Wireline Competition Bureau, noted in a Sept. 22 [blog post](#) that it has been suggested by the telecommunications industry that any sort of fast lane may also be banned under this section.

(Section 706 is also under the spotlight in the municipal broadband arena. It has been suggested that the FCC can use its power under the act to vacate state laws that ban the creation or expansion of community broadband networks. The FCC is currently evaluating petitions from Wilson, N.C., and the Electric Power Board of Chattanooga, Tenn., to [nullify](#) such restrictions, which the cities claim stifle competition.)

Hybrid Approach

Nuala O'Connor, president of the Center for Democracy and Technology, says a [hybrid approach](#), combining elements of both Section 706 and Title II, might be the best option if a reclassification of broadband access service isn't appealing to FCC commissioners. The FCC could build an entirely new policy adapting the appropriate language from both to fit the modern Internet paradigm.

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What's Next

What is known is that the FCC conducted a final Open Internet Roundtable on Oct. 7 that focused on theories of legal authority and the basis for the construction of open Internet rules. But there's no timetable for the commission to release its final rulemaking on the issue.

In fact, the FCC could decline to make a final ruling on net neutrality, leaving the status of open Internet unanswered. But when contacted by *Government Technology* on Oct. 20, an FCC spokesperson said Wheeler wants to act quickly on the issue to protect consumers and there's been no indication that the commission won't make a ruling.

Moving fast may not be in the FCC's best interest, however. Sarah Morris, senior policy counsel for New America's Open Technology Institute, [told Government Technology](#)

last month that the commission's decision will likely trigger a lawsuit no matter what it bases its authority on. As a result, she thinks the FCC should take its time and adopt rules that are grounded in the soundest legal authority available.

"It's equally important for the commission to get the rules right and to ensure that any rules can survive a court challenge," Morris said.

<http://www.govtech.com/network/FCC-Authority-Net-Neutrality-Really-Means.html>