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Net Neutrality is Back: A Legal Perspective on the FCC's Recent Vote to Reinstate Neutrality

The Federal Communications Commission's (FCC) recent decision to reinstate net neutrality rules marks a pivotal moment in the ongoing battle for an "open" internet. The FCC's vote to restore regulations that prevent broadband providers from blocking or throttling internet traffic (or offering "fast lanes") is seen as a win for small companies (and consumers).

Net neutrality regulations, first implemented under the Obama administration, aimed to treat broadband as a utility-like service, akin to telephones and water. This classification is vital because it subjects broadband providers to stricter oversight, ensuring they cannot discriminate against specific data or create "pay-to-play" fast lanes. These rules were repealed during the Trump administration, and were seen at that time, as a win for internet service providers (ISPs) who could potentially charge higher rates to some customers.

The debate around net neutrality certainly has sparked a fierce political debate within the FCC, despite some polls reporting that approximately three-quarters of American consumers support net neutrality. The FCC's recent decision to reinstate net neutrality highlights its (current) belief that high-speed internet is a primary mode of communication for many Americans, reinforcing the need for it to be fast, open, and fair.

From a legal standpoint, the reclassification of broadband services carries several significant implications:

- **Increased FCC Oversight**: While the recent vote explicitly avoids rate regulation, internet providers remain concerned that this could pave the way for future rules regulating prices, particularly at the state level, as the order does not pre-empt

states from setting their own rules.

- **Corporate Transparency**: The rules are designed to protect consumers from unfair practices such as blocking or throttling content, thereby ensuring a level playing field. However, these rules do not prohibit providers from throttling internet service; throttling is permissible as long as the ISP is transparent about its policies and the action occurs without selectively targeting specific apps or websites. Providers must file public disclosures with the FCC if they implement fast lanes or throttle any type of traffic. This transparency aims to discourage ISPs from playing favorites.
- **Litigation and Legal Challenges**: ISPs are expected to challenge the reinstate rules. The battles will likely focus on the FCC's authority to regulate broadband under the Communications Act and the adequacy of the rulemaking process.
- **Entrepreneurial Opportunity**. Net neutrality is seen as a win for smaller, start-up businesses. In theory, net neutrality allows these businesses to better compete against larger corporations who have "deeper pockets" and who could otherwise pay for preferential internet access / speeds.

While the reinstatement of net neutrality is seen by many as a significant step towards a more transparent and fair internet access process, it also sets the stage for a complex legal saga that could reshape the landscape of internet governance in the U.S. As noted above, court challenges are expected. Accordingly, the permanent future of net neutrality remains uncertain.

This blog was drafted by Jack Amaral and Jon Farnsworth, technology and privacy attorneys in the Minneapolis, Minnesota office of Spencer Fane. For more information, please visit www.spencerfane.com.