



Insight

New Net Neutrality Bill Drops, Concerns Still Linger

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Early last month, the DC courts struck down two sections of the Open Internet Order, or so called Network Neutrality rules, because they ran against long established precedent at the Federal Communications Commission (FCC). (Find a complete breakdown of the *Verizon v. FCC* decision [here](#)) Earlier this week, the [Open Internet Preservation Act](#) was introduced to reinstate these rules until the FCC issues a final action, but the bill would only compound the legal problems facing the Commission.

The legislation faces an uphill battle. At least eight previous legislative attempts at network neutrality have failed in Congress, and the recent decision marks the second time courts have shot down the FCC's rules. In other words, both Congress and the Courts have been wary with the particulars of network neutrality. While there is broad support for an open and innovative Internet, Congress has been at odds with how to achieve this goal. Some activists have pushed for strict rules, like the Open Internet Order, that would outlaw entire classes of business arrangements. But, economists and antitrust lawyers have instead sought dynamic rules, preferring a case-by-case approach that deals with harms after they occur.

Since the court decision, FCC Chairman Wheeler has been [moving towards](#) this case-by-case approach, as it would avoid many of the pitfalls of the Open Internet Order. However, as TechFreedom's Berin Szoka [points out](#), the Open Internet Preservation Act, introduced by Representatives Henry Waxman and Anna Eshoo, and Senator Ed Markey in the Senate, creates a potential problem. Because it sunsets only when the FCC declares final action, a policy statement by Chairman to use his adjudication authority would probably not constitute a final action. So, the entire Open Internet Order would still be on the books, even as the Commission pursued a different course of action. Obviously, there are countless scenarios to be played out, but that is the new world created by the Verizon court decision. The FCC is in a legal morass, and this bill would only compound those problems.

As the debate heats up over the Open Internet Preservation Act, it would be wise for everyone to read Commissioner McDowell's [dissent](#) of the Open Internet Order and his path for a different way forward:

In lieu of new rules, which will be tied up in court for years, the FCC could create a new role for itself by partnering with already established, nongovernmental Internet governance groups, engineers, consumer groups, academics, economists, antitrust experts, consumer protection agencies, industry associations, and others to spotlight allegations of anticompetitive conduct in the broadband market, and work together to resolve them. Since it was privatized, Internet governance has always been based on a foundation of bottom-up collaboration and cooperation rather than top-down regulation. This truly "light touch" approach has created a near-perfect track record of resolving Internet management conflicts without government intervention.

There are numerous ways to keep the Internet free and innovative. That should be the goal of Congress and the public.