



## Press Release

# West Virginia v. EPA and the Future of Net Neutrality

PAULINA ENCK | AUGUST 23, 2022

The Supreme Court's decision in *West Virginia v. Environmental Protection Agency* solidified the legal theory known as the major questions doctrine, which limits deference reviewing courts will give to agencies on questions of major economic or political significance without clear authority from Congress. In a new insight, Director of Technology and Innovation Policy Jeffrey Westling discusses the impact of *West Virginia* on the future of the Federal Communication Commission's (FCC) capacity to implement net neutrality.

### Key points:

- The ruling could impact the FCC, which will likely pursue a net neutrality rulemaking that would reclassify broadband as a common carrier if the Senate confirms a fifth FCC commissioner.
- Network neutrality regulation that treats broadband Internet access service as a common carrier raises the exact types of economic and societal issues the Court focused on in *West Virginia*, meaning a future net neutrality rulemaking at the FCC could be in jeopardy.
- If Congress wants to regulate broadband as a common carrier, it may need to either clearly grant the FCC the authority to make such classification or design a new regulatory regime for broadband.

[Read the analysis](#)