

D.C. Circuit Vacates FCC “Net Neutrality” Rules

January 15, 2014

On January 14, 2014, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Federal Communications Commission's (FCC) anti-discrimination and anti-blocking rules for broadband internet access service providers. These “net neutrality” rules, which the FCC had adopted in December 2010, required fixed and mobile broadband providers to carry all Internet traffic regardless of its source.

In *Verizon v. FCC*, the D.C. Circuit held that the FCC’s “net neutrality” rules treated broadband providers as common carriers in violation of the Communications Act. “In requiring broadband providers to serve all edge providers without ‘unreasonable discrimination,’” the court held that the anti-discrimination rule compelled broadband providers “to hold themselves out ‘to serve the public indiscriminately.’” Slip Op. 56. The FCC’s “anti-discrimination rule mirrors, almost precisely, section 202’s language establishing the basic common carrier obligation not to ‘make any unjust or unreasonable discrimination.’” *Id.* at 59 (quoting 47 U.S.C. § 202). With respect to the FCC’s anti-blocking rules, which “establish a minimum level of service that broadband providers must furnish to all edge providers,” the court held that the rules “appear[ed] on their face to impose *per se* common carrier obligations with respect to that minimum level of service.” *Id.* at 60.

Wiley Rein partners Eve Klindera Reed and William S. Consovoy and associate Brett A. Shumate were part of the appellate team representing Verizon before the U.S. Court of Appeals for the D.C. Circuit.

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Read the opinion in *Verizon v. FCC*.

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