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Media Contact: Mark Chenoweth | mchenoweth@wlf.org | 202-588-0302

Federal Appeals Court Refuses to Vacate FCC's Controversial "Net Neutrality" Rules

(United States Telecom Association v. FCC)

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—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Earlier today, the U.S. Court of Appeals for the D.C. Circuit denied multiple petitions to vacate a Federal Communications Commission ("FCC") order giving the agency virtually unlimited power to regulate the Internet. The decision was a setback for Washington Legal Foundation and its client, former FCC Commissioner Harold Furchtgott-Roth, who together filed a brief in the case arguing that FCC vastly exceeded its authority by imposing burdensome regulations on broadband service providers without any congressional invitation or statutory mandate to do so.

The case arose from FCC's misleadingly named final March 12, 2015 order, *Protecting and Promoting the Open Internet* ("the Order"), which establishes new rules for providers of "broadband Internet access service." In addition to reclassifying broadband service as a Title II telecommunications service subject to common carrier regulation under the Communications Act of 1934, the Order imposes new "Open Internet Rules" that prohibit any and all broadband provider efforts to control or prioritize traffic over their networks, even if the practices would expand end users' access to Internet content or serve another legitimate purpose in meeting consumer demand.

In a 115-page opinion, the panel majority concluded that FCC acted within its statutory authority—and did not violate the First Amendment—when it reclassified Internet service providers as common carriers and imposed so-called net neutrality rules on the broadband industry. In a robust dissent, Judge Stephen F. Williams criticized the "watery thin and self-contradictory" nature of the agency's newfound justification for imposing common carriage laws on Internet providers. Because FCC's position in this litigation differs markedly from earlier positions it has taken in its own regulations, Judge Williams observed that the agency's regulatory about-face is undermined by the lack of any new factual findings that would justify eroding stakeholders' serious reliance interests.

Upon reviewing the decision, WLF issued this statement by Senior Litigation Counsel Cory Andrews: "Congress has steadfastly refused to regulate the Internet, and it is not up to the unelected Commissioners on the FCC—or the unelected judges on the DC Circuit—to rewrite laws Congress has duly enacted. FCC's brazen power grab is especially disturbing given the agency's lack of accountability to voters. The American people are the ones who will suffer from the slower Internet speeds and higher broadband prices the Commission's burdensome new rules will generate."

WLF is a free-market, public-interest law firm and policy center that fights for limited government by making federal agencies abide by statutory and constitutional constraints on their regulations.