

FCC Releases NPRM on Broadband ISPs and Net Neutrality Rules

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The **FCC** has [released](#) the **Notice of Proposed Rulemaking (“NPRM”)** on “Restoring Internet Freedom” that was adopted by a 2-1 vote at the Commission’s open meeting on May 18. The NPRM is substantively very similar to the [draft released by Chairman Pai](#) on April 27, and the comment deadlines remain the same: July 17 for initial comments and August 16 for reply comments.

Of possible relevance from a privacy perspective, the NPRM now asks about the jurisdictional effects of finding broadband to be an interstate information service. As he explained in his statement approving adoption of the NPRM, Commissioner O’Rielly had asked that this question be added to the NPRM, and he expressed the view that this finding should foreclose states and localities from regulating the privacy practices of ISPs (among other matters). Whether the FCC would attempt to make such a broad preemption finding remains to be seen.

The other changes in the final NPRM since the prior draft are references to litigation developments that occurred after the release of the draft: the D.C. Circuit’s denial of the petition for rehearing *en banc* of its decision upholding the 2015 *Title II* Order, and the Ninth Circuit’s [grant](#) of the petition for rehearing *en banc* of its decision regarding the scope of the common carrier exemption in Section 5 of the FTC Act. The NPRM also cites several comments received in response to the prior draft, and includes separate statements from Chairman Pai and Commissioner O’Rielly, and a dissenting statement from Commissioner Clyburn which expands upon the statement she provided at the May 18 meeting.

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