

# **Telecom Alert - Net Neutrality; FCC and FTC Memorandum of Understanding; FirstNet Update; CMRS Presumption Order; Twilight Towers - Vol. XIV, Issue 51**

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## **FCC Rolls Back Net Neutrality**

At the December 14<sup>th</sup> Open Meeting and as widely reported, the Commission adopted its *Restoring Internet Freedom Declaratory Ruling, Report and Order, and Order*. The final text has yet to be released, but the major points include the re-classification of high speed Internet access service as an information service. Last week's decision also effectively terminates the bright line rules that were central to the 2015 Order and broadly embraced by many – no blocking of lawful content, no throttling of lawful content and no paid prioritization for a given edge provider's content. In addition, the decision eliminates the "general conduct standard" that established comprehensive FCC oversight of the business practices of Internet Services Providers and confirms the role of the Federal Trade Commission in consumer protection matters (discussed below). The Commission split down party lines; last week's decision was adopted by the Republican majority over the Democratic Commissioners' objections, 3-2.

## **FCC and FTC Memorandum of Understanding**

In furtherance of the *Internet Freedom Order*, the FCC and FTC released a [draft Memorandum of Understanding](#) last week before the December 14 Open Meeting outlining how the agencies will coordinate online consumer protection efforts. The MOU provides that the FCC will monitor the broadband market and identify barriers to entry and take enforcement actions against ISPs that fail to comply with disclosure requirements, and the FTC will investigate and take enforcement against ISPs for unfair or deceptive acts or practices, including those related to the accuracy of disclosures. The MOU establishes a plan for the agencies to coordinate efforts to prevent duplicative or inconsistent actions, but also provides that neither agency is bound by the other's actions. The MOU will take

effect on the effective date of the *Restoring Internet Freedom Order*.

## FirstNet Update

Last week, Missouri, Wisconsin, and South Dakota opted-in to the FirstNet/AT&T system. This brings the total of “opt-in” states to 36. Nine states and DC have issued RFPs for alternatives to the FirstNet/AT&T plan, while five states have neither issued an RFP nor announced a decision to opt-in. In April, FirstNet and AT&T announced that public safety entities in “opt-in” states would have preemptive access to AT&T’s network by the end of the year ([Vol. XIV, Issue 15](#)). Last week, FirstNet and AT&T announced that they have implemented preemption, which meets their end of the year deadline.

## CMRS Presumption Order

At the Open Meeting, the Commission adopted the [CMRS Presumption Report and Order](#). Under current rules, certain frequency bands, including the Part 22 and AMTS bands, are regulated as commercial mobile radio services (CMRS), absent a showing by the licensee that they will be used for private mobile radio services (PMRS). The Order removes this presumption, and subjects a licensee to regulatory treatment based on how it uses its license, rather than what frequency band it is using. An important effect of the Order is that licensees will no longer need to submit additional filings and waiver requests to use certain bands for PMRS.

## Comment Sought on Twilight Towers

The Commission adopted a [Public Notice](#), which sets out a solution for Twilight Towers. Twilight Towers are towers whose construction commenced between March 16, 2001, and March 7, 2005, that either did not complete Section 106 review under the NHPA or cannot be documented to have completed such review. If adopted, the solution would exclude Twilight Towers from Section 106 review. The Commission seeks comment on the proposal, with Comments and Reply Comments due 30 days and 45 days, respectively, after publication in the Federal Register.

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