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Sixth Circuit Sets Aside FCC's Regulatory Power Grab Over The Internet

(In the Matter of Securing and Safeguarding the Open Internet)

“The court correctly determined that the best reading of the Communications Act precluded the FCC’s politically motivated interpretation.”

—Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—On January 2, 2025, the U.S. Court of Appeals for the Sixth Circuit held that the Federal Communications Commission’s (FCC) categorization of broadband as a heavily regulated common carrier service was contrary to the Communications Act of 1934. The decision was a victory for WLF, which joined TechFreedom on an amicus brief urging the court to overturn FCC’s Open Internet Order.

Besides reclassifying broadband service as a Title II telecommunications service subject to common carrier regulation under the Communications Act, the FCC’s Order imposed new rules that severely restrict broadband providers’ ability to control or prioritize traffic over their networks, even if the practice would expand end users’ access to Internet content or serve another legitimate purpose in meeting consumer demand.

In past cases involving Title II categorization, courts readily deferred to FCC’s interpretation of the statute. Following the Supreme Court’s direction in the 2024 *Loper Bright* decision that courts should determine a statute’s best reading, the Sixth Circuit examined the Communication Act’s plain language in the context of the law’s structure and history. The panel unanimously concluded that Internet Service Providers offer information, not telecommunication, services, and thus merit lighter-touch regulation under Title I.

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