

Industry and Congress Await the F.C.C. Chairman's Next Moves on Internet Rules



Tom Wheeler, the Federal Communications Commission chairman, said a court ruling affirmed the F.C.C.'s Internet authority. Daniel Rosenbaum for The New York Times

WASHINGTON — In his first 100 days as the chairman of the Federal Communications Commission, Tom Wheeler persuaded mobile phone companies to agree on rules about unlocking consumers' phones, cemented an effort to increase the reliability of calls to 911, [proposed tests](#) to do away with old-fashioned telephone networks and [freed \\$2 billion](#) to connect schools and libraries to the Internet.

Those were the easy tasks. In the coming days, the telecommunications, media and Internet industries will be watching to see how Mr. Wheeler responds to last month's

[federal appeals court decision](#) that invalidated the rules created by the F.C.C. in 2011 to maintain an open Internet.

Mr. Wheeler has said that he views the decision, which many people saw as a setback for the agency, as an opportunity. He contends he can use it to assert the commission's broad legal authority to enforce equality and access throughout the networks on which Internet traffic travels — a concept known as net neutrality.

Stressing the depth of his conviction, Mr. Wheeler answered a reporter's question at a recent news conference about how the F.C.C. would react by pounding the lectern, emphasizing each word: "We will preserve and protect the open Internet."

An open Internet means that the companies controlling the network through which digital traffic travels cannot determine who gets access to the network. An Internet company could not charge more for certain kinds of content, say a movie or breaking news, although the appeals court decision makes those kinds of practices possible.

Republican members of Congress have warned Mr. Wheeler that the federal court has twice told the F.C.C. it does not have that authority. In [a pointed statement](#) after the appeals court threw out the F.C.C.'s rules, Senator John Thune, a South Dakota Republican, reminded Mr. Wheeler that he had promised during confirmation that he would return to Congress "for more direction before attempting another iteration of network neutrality rules."

But in an interview Friday, Mr. Wheeler asserted that he was under no such obligation. "What I said was if the Open Internet Order was thrown out by the court, of course I would talk to Congress. But the Open Internet Order was not thrown out by the court," he said. "In fact, the court affirmed our authority."

How Mr. Wheeler navigates the issue represents a critical stage in his short tenure. Members of Congress on both sides of the aisle will be watching closely, largely because they are [staking out positions](#) for a rewriting of the laws governing the nation's

communications systems, which were last updated in 1996.

“His goal is to determine how the agency as an institution will develop and evolve in a more advanced technological arena,” said Phil Weiser, the dean of the University of Colorado law school.

If he feels pressure, Mr. Wheeler, a former businessman in both the cable and Internet industries, is not showing it. “These are issues I’ve been living with for a lifetime,” he said Friday. “My job is to be here representing American consumers.”

He has assembled a team of experienced telecom hands to guide him. Among them are Philip Verveer, the politically connected lawyer who headed a federal effort to prosecute AT&T that led to the breakup of the Bell phone monopoly; Gigi B. Sohn, former president of the advocacy group Public Knowledge; and Ruth Milkman, who has held senior positions in several F.C.C. departments.

“He has taken people with lots of different real-world experiences and perspective, and he has been clear about his goals,” said Karen Kornbluh, a telecommunications specialist who was a candidate for the F.C.C.’s top post.

Mr. Wheeler’s first 100 days have not proceeded without missteps — most notably, creating a firestorm with the impression that the F.C.C. was about to allow cellphone calls to be made on airplanes.

(The F.C.C. did say there remained no engineering reasons to maintain the prohibition, but it is the Federal Aviation Administration’s decision whether or not to do so.)

“I think, frankly, that I handled it clumsily in that I didn’t use terms that were not regulatory-ese,” Mr. Wheeler said. “I learned that the minute you put something on an agenda you need to be able to explain it in something other than regulator jargon.”

In fact, Mr. Wheeler rarely resorts to jargon; a 67-year-old Midwesterner, he seems to have a wry aphorism for every occasion.

In three months he has reminded listeners that this is “not my first rodeo” and that as chairman he did not intend to “sit around and suck eggs.” When a public interest group delivered a petition with more than one million signatures urging the F.C.C. to protect the open Internet, Mr. Wheeler said — without irony — “That’s boffo!”

But he has yet to speak plainly about his plans to overcome the net neutrality decision. Critics say that in doing so he has hidden just how much power the F.C.C. had gained from the decision.

In the case, *Verizon v. F.C.C.*, the United States Court of Appeals for the District of Columbia Circuit said that the commission was wrong in how it went about imposing rules on how broadband providers treat Internet traffic. But the decision embraced a view the F.C.C. itself had previously rejected — that the agency’s charge to promote the expansion of broadband gives it sway not only over Internet service providers but also over companies that offer Internet content, like Google, Facebook or Netflix.

“It gave the F.C.C. a lot more power to do anything it wants to a lot of Internet companies,” said Berin Szoka, a founder of TechFreedom, which promotes digital rights and privacy. “It means three unchecked bureaucrats at the F.C.C.,” the number required for a majority on the five-member commission, “get to regulate the Internet however they want without any oversight.”

Robert M. McDowell, a former F.C.C. commissioner who is now a visiting fellow at the Hudson Institute, said the decision “was clearly written in a way to give the F.C.C. the authority to do something.”

However, he added, “The court left open what that something is.”