



# Net Neutrality Ruling Gives States and Local Governments Some Flexibility

*Provided by Lisa Soronen, Executive Director of State & Local Legal Center*

The D.C. Circuit upheld most of the Federal Communications Commission's [2018 order](#) retreating from net neutrality, but the court struck down the portion of the order disallowing states and local governments from adopting measures preempting the order. Numerous states and local governments have challenged the legality of the order.

Net neutrality requires internet service providers to treat all Internet communications the same and not block, speed up, or slow down any content. Until the 2018 order, net neutrality was federal policy.

The technical legal question in [Mozilla Corporation v. FCC](#) was whether broadband Internet is a “telecommunications services” under Title II of the Telecommunications Act of 1934, or an “information services” under Title I. In the 2018 order the FCC classified broadband Internet as an “information service.” Title II entails common carrier status while Title I does not. Notably, Title II “declar[es] . . . unlawful” “any . . . charge, practice, classification or regulation that is unjust or unreasonable.”

The D.C. Circuit held that classifying broadband Internet access as an “information service” is a “a reasonable policy choice for the [Commission] to make.” The court relied on a 2005 Supreme Court decision, [National Cable & Telecommunications Association v. Brand X Internet Services](#), upholding the FCC’s refusal to classify cable broadband as a “telecommunications service.”



Likewise, the D.C. Circuit upheld the 2018 order’s classification of mobile broadband as a “private mobile service” not a “commercial mobile service” which is subject to common carrier status.

The states and local governments challenging the order didn’t entirely lose the case. The D.C. Circuit described the 2018 order’s Preemption Directive as “invalidat[ing] all state and local laws that the Commission deems to ‘interfere with federal regulatory objectives’ or that involve ‘any aspect of broadband service . . . address[ed]’ in the Order.” The court concluded the Directive exceeded the FCC’s statutory authority.

According to the [National Conference of State Legislatures](#), seven states—California, Colorado, Maine, New Jersey, Oregon, Vermont and Washington—have enacted legislation or adopted resolutions regarding net neutrality.

The D.C. Circuit also instructed the FCC to “adequately consider” the 2018 order’s impact on public safety, pole-attachment regulation, and the Lifeline Program.