

FCC set to reconsider broadband regulations

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The Federal Communications Commission is scheduled to vote Thursday to begin taking public comments on three different paths for regulating broadband. That includes a proposal by FCC Chairman Julius Genachowski, a Democrat, to define broadband access as a telecommunications service subject to "common carrier" obligations to treat all traffic equally.

Genachowski's proposal is a response to a federal appeals court ruling that has cast doubt on the agency's authority over broadband under its existing regulatory framework.

The plan has the backing of many big Internet companies, which say it would ensure the FCC can prevent phone and cable companies from using their control over broadband connections to determine what subscribers can do online.

"There is a real urgency to this because right now there are no rules of the road to protect consumers from even the most egregious discriminatory behavior by telephone and cable companies," said Markham Erickson, executive director of the Open Internet Coalition. The group's members include Google Inc., eBay Inc., Amazon.com Inc. and online calling service Skype Ltd.

But Genachowski's plan faces stiff resistance from the broadband providers themselves, including AT&T Inc. and Verizon Communications Inc. They say it opens the door to onerous and outdated regulations that would discourage them from upgrading their networks.

"This FCC proposal could call into question the business assumptions underlying multibillion-dollar broadband investments," said Howard Waltzman, a former Republican staffer on the House Commerce Committee who is now representing telephone companies as a partner with Mayer Brown LLP.

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Many Republicans and even some Democrats on Capitol Hill — as well as the two Republicans on the five-member FCC — oppose Genachowski's plan. At least one House Republican, Rep. John Culberson of Texas, has proposed blocking funding for the FCC if it pursues the plan.

The FCC currently defines broadband as a lightly regulated information service. But in April, the U.S. Court of Appeals for the District of Columbia ruled that this approach does not give the commission the authority it needs to adopt so-called "network neutrality" mandates, which would bar broadband providers from favoring or discriminating against traffic traveling over their networks.

Supporters of network neutrality say such rules are necessary to prevent phone and cable companies from blocking or degrading online calling services, Internet video and other applications that compete with their core businesses.

Indeed, the recent appeals court decision grew out of a challenge by Comcast Corp. to a 2008 FCC order directing the cable company to stop blocking subscribers from accessing an online file-sharing service. Comcast and other broadband providers insist they need flexibility to manage their networks and ensure that certain applications don't hog too much bandwidth.

The court ruling also undermines the FCC's ability to act on several key recommendations in its national broadband plan — another top priority for Genachowski — including a proposal to expand high-speed Internet access by tapping the federal program that subsidizes phone service in poor and rural areas.

Genachowski says his new regulatory framework would allow the FCC to move ahead on both fronts by placing broadband connections firmly within the agency's jurisdiction as a telecommunications service. At the same time, he has pledged to impose only narrow telecom rules on broadband providers, avoiding burdensome mandates such as rate regulations and network-sharing obligations. He has also stressed that his approach would not impose regulations on Internet content and services.

In outlining his proposal last month, Genachowski called it a "third way" that respects "investment and innovation" and protects consumers and Internet competition.

Thursday's vote will launch a proceeding to examine:

—Genachowski's proposal;

—the implications of leaving the existing regulatory framework in place;

—and the implications of imposing the full array of traditional telecommunications regulations on broadband providers.

If the FCC ultimately adopts Genachowski's plan, it will almost certainly draw legal challenges from phone and cable companies that fear any shift away from the

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current deregulatory approach adopted under the Bush administration. That approach was upheld by the Supreme Court in 2005 and a battle over any attempt to overturn it could go all the way back to the high court.

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