

FCC girds itself to navigate swamp where Web, phone, TV meet

October 22 2009, By Mike Zapler

The federal government this week is stepping squarely into a high-stakes technology battle with this seemingly straightforward question at its core: Should Internet providers such as Comcast and AT&T be allowed to control what you do online once you buy access to their networks?

If the answer seems obvious -- of course they shouldn't -- the debate hardly ends there. What if your activity online hogs so much bandwidth, like watching TV or downloading movies, that it slows your neighbor's Internet speed to a crawl?

Or what if the application you're using undercuts the Internet provider's business model? One example: Should AT&T be allowed to stop you from making free calls over the iPhone data network, bypassing the company's lucrative cell phone network?

Those are the kinds of vexing issues at play as the Federal Communications Commission assumes an enhanced role as Internet traffic cop. The goal, according to the commission's new chairman, Democrat Julius Genachowski, is to keep the Internet as open and accessible as possible for consumers and innovators.

"It's about fair rules of the road for companies that control access to the Internet," Genachowski said in a recent speech. "This is about preserving and maintaining something profoundly successful and ensuring that it's not distorted or undermined."

But in pursuing that aim, the FCC is thrusting itself into a real-world business clash between some of the nation's fastest-evolving industries, raising questions about the appropriate level of government regulation.

On Thursday, the five-member commission is expected to vote to take an initial step toward adopting so-called "[net neutrality](#)" rules, siding with top Silicon Valley content providers such as Google and Yahoo (which benefit from open, unnegotiated access to the Internet to promote their services) over telecommunications giants including AT&T and Verizon (which argue that they should maintain control over their networks after investing billions of dollars in them). In a significant shift, the rules would extend beyond wired broadband networks to the realm of wireless networks.

The debate reflects, in part, a philosophical divide over whether the Internet is predominantly a public forum or a commercial enterprise. Genachowski argues that it's the former, and he wants to put the legal onus on Internet service providers to defend any move to block access to an application in the name of keeping their networks unclogged.

The [FCC](#) in 2005 adopted four net neutrality principles. Genachowski's proposal would codify those principles, clarifying in much greater detail the types of behaviors that aren't allowed, and add two additional rules. One would prohibit Internet service providers from favoring some applications over others, while allowing them to "reasonably" manage their networks' Internet traffic. What constitutes reasonable is an open question and will likely be decided on a case-by-case basis.

The second new rule would force Internet service providers to disclose their network management practices to show they are not being discriminatory.

A few high-profile incidents have fueled the net neutrality debate. In

2007, Comcast was caught interfering with peer-to-peer transmissions of video and music over BitTorrent, a file-sharing application. The same year, Verizon rejected a request from the abortion-rights group NARAL to send text messages over its network. And in recent months, AT&T and Apple were criticized for prohibiting the use of free Internet calling services such as Skype on the iPhone.

In all three instances, the company flagged for alleged bad behavior reversed its stance within days or months. Critics of net neutrality say that demonstrates that public scrutiny and market forces are enough to correct any problems and that more government rules would invite excessive litigation and possibly stifle investment in broadband networks.

"Show me where the concerns are," said Chris Guttman-McCabe, vice president of regulatory affairs for the wireless industry's trade group, CTIA, "and I would argue they are being addressed."

"You'd have the federal government regulating virtually the entire Internet," added William McComas, a business attorney who specializes in technology issues. "That can't possibly go well."

But Genachowski and other net neutrality backers say clear rules are needed to prevent the relatively few number of Internet service providers from tilting the Web in their favor before it happens. Most ISPs also sell TV or voice service -- giving them an incentive to impede Web applications that compete with their own offerings, Genachowski said.

Others say technology entrepreneurs may have the most riding on the debate. Absent net neutrality rules, supporters say, innovators hoping to bring their applications to the Web could be forced to negotiate with telecommunications giants to secure adequate Internet access.

"If providers are allowed to block and discriminate," said S. Derek Turner, research director for the consumer advocacy group Free Press, "it's going to destroy investment by ... companies that we haven't even thought of."

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