FCC and the Internet

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The U.S. Court of Appeals in the District of Columbia recently ruled that the Federal Communications Commission has no authority to tell Internet service providers how to manage their networks.

The case stemmed from Comcast's move three years ago to slow the access of peer-to-peer users such as Gnutella whose large file transfers consumed lots of Comcast bandwidth. Public advocacy groups argued that Comcast was violating FCC rules. Comcast stopped the slowdown and changed how it managed its network.

But then the FCC ordered Comcast to disclose its new network management regime. Comcast went to court to challenge the FCC's basic right to intrude on how it operated its network.

The appellate court has now sided with Comcast, ruling that the FCC had "strained the outer limits" of its authority and, with the Comcast case, "seeks to shatter them entirely."

The judicial rebuke certainly hasn't fazed the FCC. It is determined to regulate the Internet.

FCC Chairman Julius Genachowski declared that the court decision "does not change our broadband policy goals, or the ultimate authority of the FCC to act to achieve those goals." The strategy, he said, is "to connect all Americans to broadband, unleash innovation and investment, enable job creation, and ensure a bright future of economic opportunity and prosperity."

We couldn't agree more with the goals. But the best way to achieve them is for the FCC to leave a good thing alone.

There was a time when the FCC knew that. The commission in 2002 recognized that fast-evolving Internet innovation could be strangled by regulation. Inflexible government rules lock in place the competitive landscape and make it hard for players to respond quickly to technological or market changes. The FCC determined that the Internet is an "information service" and would not come under its decades-old regulatory purview of "common carrier" providers of telephone and television service.

That hands-off attitude has helped the Internet to grow and thrive. Nearly every American has access to some form of broadband service now, and many have access to competing services. That competition helps to keep a lid on prices for Internet service. Telecom companies invested $50 billion in the last two years in broadband, according to the FCC. That money has flowed in largely because investors see the potential to profit.

Underlying the Comcast case is the company's brief attempt to slow access to services that made the heaviest use of its broadband. Internet providers want to keep the option to charge more for heavy use -- to price their own products. Proponents of so-called net neutrality argue that the government must command that everyone has the same access.

That heavy government thumb on the scale would discourage the investment that has allowed Internet use to mushroom.

The FCC could appeal the Comcast ruling to the U.S. Supreme Court. It could try to craft new rules in a way that doesn't violate the court ruling. It could revisit its 2002 decision and determine that Internet service providers are common carriers of telecommunication services, like telephone and cable television, and subject to the same regulation. Some members of Congress are tempted to step in.

Here's an idea: Regulators can stand aside and marvel with the rest of us as this incredible communications tool continues to expand and create jobs and foster investment and deliver more information to your home and office than you once ever dreamed possible.