

# FCC says it has compromise on key broadband rules (Update)

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Federal Communications Commission Chairman Julius Genachowski testifies before the Senate Commerce, Science and Transportation Committee in April 2010. Genachowski on Thursday laid out a new plan to prevent telecommunications firms from throttling fair access to high-speed broadband Internet.

(AP) -- The head of the Federal Communications Commission thinks he has come up with a way to salvage his ambitious national broadband plans without running into legal obstacles that have threatened to derail him.

FCC Chairman Julius Genachowski said Thursday that his agency has

crafted a compromise in how it regulates high-speed Internet access: It will apply only narrow rules to broadband companies. The FCC chairman, a Democrat, said this delicate dance will ensure the agency has adequate authority to govern broadband providers without being too "heavy-handed."

But his plan likely will hit legal challenges from the big phone and cable companies and already faces significant opposition from Republicans at the FCC and in Congress.

The FCC has been scrambling to develop a new regulatory framework since a federal appeals court last month cast doubt on its jurisdiction over broadband under existing rules.

The FCC needs that legal authority for the sweeping national broadband plan that it released in March. Among other things, the plan aims to give more Americans access to affordable high-speed Internet connections by revamping the federal program that subsidizes telephone service in poor and rural areas and using it to pay for broadband.

Genachowski also needs this authority for his proposal to adopt "network neutrality" rules prohibiting phone and cable companies from prioritizing or discriminating against Internet traffic traveling over their lines. Internet companies such as Google Inc. and Skype Ltd. say these rules are needed to prevent broadband providers from becoming online gatekeepers and blocking Internet phone calls, streaming video and other services that compete with their core businesses.

Genachowski said his new regulatory framework will let the FCC move ahead with its plans and "support policies that advance our global competitiveness and preserve the Internet as a powerful platform for innovation."

The FCC currently treats broadband as a lightly regulated "information service." It had maintained that this framework gave it ample authority to proceed with its broadband plan and to impose net neutrality rules. But the U.S. Court of Appeals for the District of Columbia rejected this argument.

So now Genachowski is seeking to redefine broadband as a telecommunications service subject to "common carrier" obligations to treat all traffic equally. Similar rules apply to other networks that serve the public, including roads, electrical grids and telephone lines. But Genachowski said he will refrain from imposing more burdensome mandates that also apply to traditional telecom companies. For instance he would avoid requiring the broadband companies to share their networks with competitors.

The proposal is intended to strike a balance that can satisfy both Internet service providers that oppose new regulations and public interest groups that are demanding greater consumer protections. FCC officials stressed that they intend to regulate only Internet connections, not the online services flowing through them.

The FCC will soon seek public comment on Genachowski's proposal. It would have to be approved by at least three of the FCC's five commissioners, and Genachowski is expected to have the support of his two fellow Democrats.

Several public interest groups and big Internet companies, including Google, Skype, eBay Inc. and Amazon.com Inc., praised the proposal. So did Rep. Edward Markey, D-Mass., who sits on the House Energy and Commerce Committee, which oversees the FCC. "With this decision, the FCC will ensure that the agency remains the `cop on the beat,' protecting consumers and competition on the World Wide Web," Markey said.

But Republicans lined up against the plan.

The two Republican FCC commissioners, Robert McDowell and Meredith Baker, said the proposal would "shatter the boundaries" of the agency's authority and discourage broadband providers from investing in their networks. McDowell and Baker said Genachowski's plan would impose "burdensome rules excavated from the early-Ma Bell-monopoly era onto 21st century networks."

House Republican Leader John Boehner of Ohio called the plan "a government takeover of the Internet."

The battle is likely to land in court if the big phone and cable companies decide to challenge the new framework. The companies already oppose Genachowski's network neutrality proposal, warning that restrictions on what they can do with their networks will discourage them from investing in their lines.

Shares of phone companies Verizon Communications Inc. and AT&T Inc. slipped 2 percent Thursday. Cable stocks tumbled even more - reflecting the fact that cable companies have a larger share of the broadband market and no wireless operations to fall back on. Shares of Comcast Corp., the nation's largest cable company, lost 6 percent, while Cablevision Systems Corp. fell 7 percent and Time Warner Cable dropped 8 percent.

Tom Tauke, Verizon's top Washington official, said Genachowski's new approach to regulation is "legally unsupported" and "could ultimately harm consumers and inhibit the innovation and investment he wants to encourage." AT&T echoed that point.

Comcast said that while it is disappointed with the FCC proposal, it is prepared to work with the agency. But Comcast may be more open to

compromise because it needs FCC approval for its plan to take a controlling stake in NBC Universal.

It was Comcast that helped set in motion the events leading to last month's court ruling.

The case centered on the company's behavior in 2007 when it interfered with subscribers using the online file-sharing service BitTorrent, which lets people swap movies and other big files. Comcast said the service was clogging its network, but public interest groups maintained that the company saw the swapping of video files as a threat to its cable business.

The FCC, then led by Republican Kevin Martin, ordered Comcast to stop blocking subscribers from using BitTorrent and based its decision on net neutrality principles it had adopted in 2005.

Comcast challenged the order in court. It argued that the order was illegal because the agency was seeking to enforce principles and not regulations or laws. That is one reason that Genachowski is now pushing the FCC to adopt formal net neutrality rules that would apply across the industry.

Comcast also had argued that the FCC lacked authority to mandate net neutrality because it had deregulated broadband by classifying it as an information service under the Bush administration. Now Genachowski's next move could reverse course on that approach.

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