

FCC votes to reconsider broadband regulations (Update 2)

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A Friday, March 12, 2010 file photo shows FCC Chairman Julius Genachowski in his office in Washington. FCC Chairman Julius Genachowski, has proposed to define broadband access as a telecommunications service subject to "common carrier" obligations to treat all traffic equally. (AP Photo/Jacquelyn Martin/file)

(AP) -- Federal regulators are reconsidering the rules that govern high-speed Internet connections - wading into a bitter policy dispute that could be tied up in court for years.

Over the objections of the agency's two Republican commissioners, the Federal Communications Commission voted 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 cast doubt on the agency's authority over broadband under its existing regulatory framework.

The chairman's 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.

Genachowski's plan faces 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providers themselves, including AT&T Inc. and Verizon Communications Inc. They say it opens the door to onerous and outdated regulations that would discourage them from upgrading their networks.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 representing telephone companies as a partner with Mayer Brown LLP.

Many Republicans and even some Democrats on Capitol Hill also

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 proceed with Genachowski's plan 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, including many big Web companies, 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 used to trade video and other big files.

Comcast and other broadband providers insist they need flexibility to manage their networks and ensure that certain applications don't hog too much bandwidth. They also fear that net neutrality mandates would prevent them from offering premium services over their networks to earn a healthy return on their investments.

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

Genachowski says his new regulatory framework would let the FCC 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 stressed that his approach would not impose regulations on Internet content and services.

Genachowski said Thursday that his plan rejects "both the extreme of applying extensive regulation to broadband and ... the extreme of eliminating FCC oversight of broadband." He said he seeks to restore "the status quo light-touch framework that existed prior to the court case."

Thursday's 3-to-2 vote launches 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 don't want an end to the current deregulatory approach. That was adopted under the Bush administration and upheld by the Supreme Court in 2005. A battle over any attempt to overturn it could go back to the high court.

Meredith Baker, one of the two Republican commissioners on the FCC, insisted Thursday that the agency has ample authority under the existing regulatory framework to pursue key priorities, including reforming the Universal Service Fund to subsidize high-speed Internet connections.

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