

FCC poised to adopt network neutrality rules (Update 2)

December 20 2010, By JOELLE TESSLER , AP Technology Writer

(AP) -- New rules aimed at prohibiting broadband providers from becoming gatekeepers of Internet traffic now have just enough votes to pass the Federal Communications Commission on Tuesday.

The rules would prohibit phone and cable companies from abusing their control over broadband connections to discriminate against rival content or services, such as Internet phone calls or online video, or play favorites with Web traffic.

FCC Chairman Julius Genachowski now has the three votes needed for approval, despite firm opposition from the two Republicans on the five-member commission. Genachowski's two fellow Democrats said Monday they will vote for the rules, even though they consider them too weak.

The outcome caps a nearly-16-month push by Genachowski to pass "network neutrality" rules and marks a key turning point in a policy dispute that began more than five years ago.

"The open Internet is a crucial American marketplace, and I believe that it is appropriate for the FCC to safeguard it by adopting an order that will establish clear rules to protect consumers' access," Commissioner Mignon Clyburn, a Democrat, said in a statement.

Yet many supporters of network neutrality are disappointed. Clyburn and the other Democrat, Michael Copps, both said the rules are not as

strong as they would like, even after Genachowski made some changes to address their concerns.

That sentiment was echoed by some public interest groups on Tuesday.

"The actions by the Federal Communications Commission fall far short of what they could have been," said Gigi Sohn, president of Public Knowledge. "Instead of strong, firm rules providing clear protections, the commission, created a vague and shifting landscape open to interpretation."

A number of big Internet companies, including Netflix Inc., Skype and Amazon.com Inc., have previously expressed reservations about the proposal as well.

Meanwhile, even the weakened rules are likely to face intense scrutiny as soon as the Republicans take over the House next year.

The chairman's proposal builds on an attempt at compromise crafted by outgoing House Commerce Committee Chairman Henry Waxman, D-Calif., as well as a set of broad net neutrality principles first established by the FCC under the previous administration in 2005.

The rules would require broadband providers to let subscribers access all legal online content, applications and services over their wired networks - including online calling services, Internet video and other Web applications that compete with their core businesses.

But the plan would give broadband providers flexibility to manage data on their systems to deal with problems such as network congestion and unwanted traffic like spam as long as they publicly disclose their network management practices.

Senior FCC officials stressed that unreasonable network discrimination would be prohibited.

They also noted that this category would most likely include services that favor traffic from the broadband providers themselves or traffic from business partners that can pay for priority. That language was added to help ease the concerns of Genachowski's two fellow Democrats.

The proposal would, however, leave the door open for broadband providers to experiment with routing traffic from specialized services such as smart grids and home security systems over dedicated networks as long as these services are separate from the public Internet.

Public interest groups fear that exception could lead to a two-tiered Internet with a fast lane for companies that can pay for priority and a slow lane for everyone else.

They are also worried that the proposal lacks strong protections for wireless networks as more Americans go online using mobile devices.

The plan would prohibit wireless carriers from blocking access to any websites or competing applications such as Internet calling services on mobile devices. It would require them to disclose their network management practices too.

But wireless companies would get more flexibility to manage data traffic as wireless systems have more bandwidth constraints than wired networks.

"Individuals who depend on wireless connections to the Internet can take no comfort in this half-measure," said Joel Kelsey, political advisor for the public interest group Free Press.

Republicans, meanwhile, warn that the new rules would impose unnecessary regulations on an industry that is one of the few bright spots in the current economy, with phone and cable companies spending billions to upgrade their networks for broadband.

Burdensome net neutrality rules, they warn, would discourage broadband providers from continuing those upgrades by making it difficult for them to earn a healthy return on their investments.

Still, Genachowski's proposal is likely to win the support of the big phone and cable companies because it leaves in place the FCC's current regulatory framework for broadband, which treats broadband as a lightly regulated "information service."

The agency had tried to come up with a new framework after a federal appeals court in April ruled that the FCC had overstepped its existing authority in sanctioning Comcast Corp. for discriminating against online file-sharing traffic on its network - violating the very net neutrality principles that underpin the new rules. Comcast argued that the service, which was used to trade movies and other big files over the Internet, was clogging its network.

To ensure that the commission would be on solid legal ground in adopting net neutrality rules and other broadband regulations following that decision, Genachowski had proposed redefining broadband as a telecommunications service subject to "common carrier" obligations to treat all traffic equally. But Genachowski backed down after strong opposition from the phone and cable companies, as well as many Republicans in Congress.

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Citation: FCC poised to adopt network neutrality rules (Update 2) (2010, December 20)
retrieved 6 May 2024 from <https://phys.org/news/2010-12-fcc-poised-network-neutrality.html>

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