

# Divided FCC adopts rules to protect Web traffic (Update)

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In this file photo made March 12, 2010, FCC Chairman Julius Genachowski is interviewed at his office in Washington. 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, Dec. 21, 2010. (AP Photo/Jacquelyn Martin, file)

(AP) -- Federal regulators adopted new rules Tuesday to keep the companies that control the Internet's pipelines from restricting what their customers do online or blocking competing services, including online calling applications and Web video.

The vote by the Federal Communications Commission was 3-2 and quickly came under attack from the commission's two Republicans, who said the rules would discourage investments in broadband. Prominent Republicans in Congress vowed to work to overturn them.

Meanwhile, critics at the other end of the political spectrum were disappointed that the new regulations don't do enough to safeguard the fastest-growing way that people access the Internet today - through wireless devices like smart phones and tablets.

The new rules have the backing of the White House and capped a year of efforts by FCC Chairman Julius Genachowski to find a compromise. They are intended to ensure that broadband providers cannot use their control of the Internet's on-ramps to dictate where their subscribers can go.

They will prohibit phone and cable companies from favoring or discriminating against Internet content and services that travel over their networks - including online calling services such as Skype, Internet video services such as Netflix and other applications that compete with their core businesses.

The prohibitions, known as "net neutrality," have been at the center of a Washington policy dispute for at least five years. The issue hit home with many Internet users in 2007, when Comcast Corp. slowed traffic from an Internet file-sharing service called BitTorrent. The cable giant argued that the service, which was used to trade movies and other big files over the Internet, was clogging its network.

The new FCC rules are intended to prevent that type of behavior.

They require broadband providers to let subscribers access all legal online content, applications and services over their wired networks. They

do give providers flexibility to manage data on their systems to deal with network congestion and unwanted traffic, including spam, as long as they publicly disclose how they manage the network.

"Today, for the first time, we are adopting rules to preserve basic Internet values," Genachowski said. "For the first time, we'll have enforceable rules of the road to preserve Internet freedom and openness."

On one level, the new rules probably won't mean big changes for Internet users. After Comcast's actions cast a spotlight on the issue - and drew a rebuke from the FCC - all of the major broadband providers have already pledged not to discriminate against Internet traffic on their wired networks.

Even Genachowski acknowledged Tuesday that a key goal of the new rules is to preserve the open Internet as it exists today.

Still, critics say the rules don't do enough to break the existing lock-hold that wireless carriers have over the online applications that subscribers can access through their systems.

The regulations prohibit wireless carriers from blocking access to any websites or competing services such as Internet calling applications on mobile devices, and they require carriers to disclose their network management practices, too. But wireless companies get more leeway to manage data traffic because wireless systems have less network bandwidth and can become overwhelmed with traffic more easily than wired lines.

That means that while wireless carriers must allow access to Internet calling services such as Skype, they could potentially still block online video applications, such as Sling.

The rules also wouldn't apply to phone makers, so Apple could still dictate which applications to accept or reject for the iPhone. Apple could choose to block Skype, for instance, even if AT&T, which provides wireless service for the iPhone, can't.

At a time when more and more people go online using smart phones and other mobile devices instead of computers, the rules leave wireless carriers with tremendous control over tomorrow's Internet, said Gigi Sohn, president of the public interest group Public Knowledge.

At the same time, Sen. Al Franken, D-Minn., fears the rules don't do enough to ensure that broadband providers cannot favor their own traffic or the traffic of business partners that can pay extra. Big websites such as Google Inc., for instance, could pay to have their content download more quickly than mom-and-pop sites - leading to what critics term a two-tiered Internet.

While the new rules prohibit unreasonable network discrimination - a category that FCC officials say would most likely include such "paid prioritization" - they do not explicitly bar the practice. What's more, they leave the door open for broadband providers to experiment with routing traffic from specialized services, such as home security systems, over dedicated networks as long as they're kept separate from the public Internet.

These concerns resonated with Genachowski's two Democratic colleagues at the FCC, who voted to approve the rules only reluctantly.

"Today's action could - and should - have gone further," said Michael Copps, one of the other two Democrats on the commission. But, he added, the regulations do represent some progress "to put consumers - not Big Phone or Big Cable - in control of their online experiences."

Republicans, meanwhile, said they worry the rules will discourage phone and cable companies from upgrading their networks because it will be more difficult for them to earn a healthy return on their investments. Republicans also said the regulations seek to fix a problem that doesn't exist because broadband providers have already pledged not to discriminate.

"The Internet will be no more open tomorrow than it is today," said Meredith Attwell Baker, one of the two FCC Republicans, in voting against the rules.

A number of prominent Republicans - including Kay Bailey Hutchison of Texas, the top Republican on the Senate Commerce Committee, and Fred Upton of Michigan, the incoming chairman of the House Commerce Committee - vowed to try to overturn the rules.

Robert McDowell, the FCC's other Republican, predicted that the FCC will face court challenges to its regulatory authority as well.

In April, a federal appeals court ruled that the agency had exceeded its existing authority in sanctioning Comcast for discriminating against online file-sharing traffic on its network - violating broad net neutrality principles first established by the FCC in 2005.

Those principles serve as a foundation for the formal rules adopted Tuesday.

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