



Written by [Alex Newman](#) on December 22, 2010

FCC Grants Itself Power Over Internet, Critics Attack

The U.S. Federal Communications Commission took a big step forward toward legislating government regulation of the Internet Tuesday with a bureaucratic vote in favor of so-called “net neutrality” rules, despite the past rejection of such measures by Congress and the courts, not to mention the prohibition on government meddling in speech and the press listed in the First Amendment to the Constitution.



Despite promises of “openness” from the Obama regime, the public was never given an opportunity to read the rules. In fact, even the commissioners did not have much time to look them over before the vote — the chairman of the commission submitted a revised draft the night before they were passed.

Approved in a 3-2 vote split down partisan lines, the new regulations purport to establish FCC jurisdiction over the Internet by giving it authority to dictate how Internet Service Providers (ISPs) do business and to punish companies that do not comply with the executive branch’s decrees. The “Order,” as the FCC regulations are being dubbed, also claims to allow FCC bureaucrats to get involved in disputes about how Internet firms are managing their networks.

Among other dictates, the new rules would [require](#) ISPs to be “transparent” about pricing and how they operate their networks. If somebody feels their service provider is not being transparent enough, the company could be reported to the FCC for an investigation.

Under the new rules, companies are also prohibited from “blocking” or slowing down lawful content to speed up other content. This would apply, for example, if an ISP slowed down access to downloading movies or file sharing so that people trying to read the news could access it more rapidly. In other words, the federal government will now be telling companies how to run their networks, limiting opportunities for innovation and consumer choice.

Finally, the new regulations also forbid “unreasonable discrimination” in network management. The prohibition would allow companies to prevent consumer access to “unreasonable” content such as sites suspected of spreading viruses or pornography, but not “reasonable” content. But importantly, it would regulate what ISPs could not “discriminate” against, such as bandwidth-heavy applications. This section would also stop companies from accepting money from other companies to prioritize their content, for example.

There are some differences in the rules for wireless providers, but essentially, this is the government’s first major foray into telling Internet companies how to conduct business. If it stands up in court and Congress does not retaliate, the order would cement FCC power over the Internet, too. The justification used to support the new rules is the idea that someday, some company might want to behave in a way



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the government does not condone.

Of course, in a free market, companies would suffer the consequences or reap the benefits of their actions based on the merits, leading to more innovation, variety, and choice. But the FCC wanted to stop such possibilities before they even got started.

Trying to present himself as a reasonable moderate in search of balance and harmony in regulating the internet, FCC Chairman Julius Genachowski, a Democrat, [said](#) he rejected “extremes” in favor of sensibility. “On one end of the spectrum, there are those who say government should do nothing at all. On the other end of the spectrum are those who would adopt a set of detailed and rigid regulations,” he said. “I reject both extremes in favor of a strong and sensible framework – one that protects Internet freedom and openness and promotes robust innovation and investment.”

And despite the rules having been rejected in the past by Congress and a federal court, Genachowski said he thought his rules would stand up to legal scrutiny. “We have a legal basis for the rules we adopted today that is very strong — that gives us the authority we need,” he [claimed](#) in a press conference after Tuesday’s commission hearing. “I am confident it will in court.” How much tax money he would be willing to spend defending his unconstitutional regulations was not disclosed.

Another democratic commissioner, Michael Copps, was upset that the regulations were not all-encompassing enough. “I had hoped we would move full throttle,” he [said](#), noting that he even thought about voting down the proposal because it didn’t go far enough. He decided to vote for the regulations because “the wheels of net neutrality would grind to a screeching halt for at least the next two years.” But in the end, the bureaucracy made “progress,” according to Copps.

But Republican members of the FCC commission blasted the move. Robert McDowell, who wrote a [scathing editorial](#) for the *Wall Street Journal* before the vote, explained that the move represented one of the “darkest days in recent FCC history.” He also pointed out that, in the American system of constitutional government, bureaucracies are not supposed to be legislating.

“The FCC is not Congress; we cannot make laws,” McDowell [explained](#). “The FCC has provocatively charted a collision course with the legislative branch.” He also noted that the democratic commissioners were trying to implement President Obama’s “misguided” campaign promises. “Litigation will supplant innovation,” he warned Tuesday, saying the regulations would probably not stand up in court. “Instead of investing in tomorrow’s technologies, precious capital will be diverted to pay lawyers’ fees.”

In his editorial before the vote, McDowell wrote that “Nothing is broken that needs fixing,” adding that Congress and the courts had already rejected the “net neutrality” argument. “[The Internet’s] nature as a diffuse and dynamic global network of networks defies top-down authority,” he said. “Ample laws to protect consumers already exist.” He also said the FCC has already been informed that the decrees “are likely to have the perverse effect of inhibiting capital investment, deterring innovation, raising operating costs, and ultimately increasing consumer prices.” He also cited analysts who say the rules will kill jobs. But the FCC didn’t listen.

The federal communications regime has not yet released all of its rules because it must first respond to the concerns of the two Republican commissioners’ “no” votes, so stake holders have so far been shy about offering definitive comments. But what is known now, while celebrated by some big-government enthusiasts as necessary and proper, is drawing fierce condemnation from critics.

“While it will take some time for us to analyze the FCC’s rules and the order once they are released, the



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FCC's decision apparently reaches far beyond the net neutrality rules it announced today," [said](#) Verizon public affairs Vice President Tom Tauke in a statement. "Based on today's announcement, the FCC appears to assert broad authority for sweeping new regulation of broadband wireline and wireless networks and the Internet itself. This assertion of authority without solid statutory underpinnings will yield continued uncertainty for industry, innovators, and investors. In the long run, that is harmful to consumers and the nation." News reports stated that the company may file a lawsuit about the rules.

Leftist groups and pro-regulation advocates, meanwhile, said the rules do not go far enough in telling companies how to do business. Some big-name ISPs, however, [said](#) that the rules would probably be OK, pending a detailed review once they are publicly released.

Numerous legislators were already planning to fight the dictates before they were even adopted. And some critics are actually [hoping](#) Congress will de-fund the FCC because of its overreaching power grab.

Senator Jim DeMint has been one of the most vocal opponents of the new rules and the FCC, vowing after the vote to rescind the regulations and reform the federal bureaucracy. "Proceeding on its own liberal whims rather than facts, this FCC has chosen to grant itself broad authority to limit how businesses can bring the internet to consumers in faster and more innovative ways," he said in a statement. "Americans loudly demanded a more limited federal government this November, but the Obama Administration has dedicated itself to expanding centralized government planning. Today, unelected bureaucrats rammed through an internet takeover, even after Congress and courts warned them not to."

DeMint also said that, to keep the Internet economy thriving, the FCC decision had to be undone. "Regulatory reform will be a top priority for Republicans in the next Congress, and I intend to prevent the FCC or any government agency from unilaterally burdening our recovering economy with baseless regulation," he said, promising to introduce some new bills in the next Congress to undo the damage.

In addition to the FCC, the Department of "Homeland Security" has also been clamping down on the Internet. It recently [seized and shut down](#) dozens of domains suspected of alleged "copyright infringement." But while the federal government tramples Internet freedom at the national level, [the United Nations is linking arms with some of its most oppressive member dictatorships to actually censor the web at the global level](#). Some of the countries pushing hardest for the measure include communist China, famous for its brutality and censorship, as well as a host of Islamic dictatorships including the regimes in Iran, Saudi Arabia, and Mauritania.

Photo: FCC Commissioner Robert M. McDowell



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