



TELECOMMUNICATIONS

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Federal Court Rules on Net Neutrality

Washington, DC: In 2007 several subscribers to Comcast's high-speed Internet service filed a complaint with the FCC challenging Comcast's interference with their use of peer-to-peer networking applications. Peer-to-peer programs allow users to share large files directly with one another without going through a central server, but such programs also consume significant amounts of bandwidth. Concluding that it had jurisdiction over Comcast's network management practices and that it could resolve the dispute through adjudication rather than through rulemaking, the FCC ruled that Comcast had "significantly impeded consumers' ability to access the content and use of the applications of their choice" and that its method of bandwidth management "contravened . . . federal policy." *In re Formal Compl. Of Free Press & Public Knowledge Against Comcast Corp. for Secretly Degrading Peer-to-Peer Applications*, 23 F.C.C.R. 13,028, 13052-54, ¶¶ 43, 44 (2008) ("Order").

Yesterday the U.S. Court of Appeals for the District of Columbia vacated the FCC's 2008 *Order* barring Comcast from interfering with its customers' use of peer-to-peer networking applications. Specifically, the Court ruled that the Communications Act "cannot support its [the FCC's] exercise of ancillary authority over Comcast's network." *Comcast Corporation v. Federal Communications Commission, et. al.*, No. 08-1291

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(D.C. Cir. April 6, 2010). The Court vacated the FCC's Order "[b]ecause the Commission has failed to tie its assertion of ancillary authority over Comcast's Internet service to any "statutorily mandated responsibility . . ." *Id.* at 36.

This decision has implications far beyond the FCC's efforts to adopt net neutrality regulations, and raises questions about the FCC's ability to regulate broadband. This ruling effectively means that FCC lacks the authority to force Internet service providers to keep their networks open to all forms of content. This decision also follows the FCC's recently-announced national broadband-expansion plan, and it could impact the FCC's plans to fund the deployment of broadband nationally. The decision also comes as Comcast is pursuing FCC approval of its proposed \$30 billion merger with NBC Universal, which would expand Comcast's control over a vast library of television and movie programming.

In light of this decision, the FCC may appeal it. It may also attempt to reclassify broadband from a relatively lightly regulated information service to a more heavily regulated telecommunications service. This decision could also prompt new legislation to broaden the FCC's ability to regulate Internet services.

Let us know what you think about these issues. Please join our interactive blog and share your thoughts.

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