

FCC's Genachowski Proclaims a "Third Way" to Apply Net Neutrality

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A month after the Court of Appeals [reversed the FCC's Comcast decision](#), FCC Chairman Genachowski announced a "third way" to regulate broadband transmission lawfully. The Chairman released [a statement](#) describing his "third way" along with [a memo from the General Counsel](#) asserting its legality. [Commissioner Copps](#), who publicly advocated reclassification of broadband internet access services to Title II, praised Genachowski's solution (though he still prefers reclassification). Meanwhile, [Commissioners McDowell and Baker](#), the two Republicans on the Commission, declared the proposal "disappointing" and "deeply concern[ing]."

The battle has only begun.

The key to Genachowski's view is to classify the transmission component of broadband internet access as a telecom service, while leaving the internet access functionalities unregulated. (This is similar to an approach I suggested in [my post](#) on the Comcast decision).

Genachowski proposes "light touch" regulation of the transmission component using Sections 201, 202, 208, 222, 254 and 255 of the Communications Act. Notably, these sections encompass most of the key obligations of telecom carriers, including non-discrimination, "just and reasonable" rates and practices, customer privacy (CPNI), universal service contributions and access by customers with disabilities. He also proposes to forbear from other obligations that might apply -- principally section 251 unbundling obligations.

In other reports, Genachowski is said to plan to present an order for Commission review within the next 30 days.