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F.C.C. Chief Would Bar Comcast From Imposing Web Restrictions

By SAUL HANSELL, Published: July 12, 2008

Federal regulators are prepared to take action against sellers of Internet access that want to restrict what their customers can do online.

Kevin J. Martin, chairman of the [Federal Communications Commission](#), said Friday that [Comcast](#), the nation's largest cable company, should be sanctioned because it had interfered with the Internet connections of users who were exchanging files with other people.

Mr. Martin's recommendation is a strong push for network neutrality, the idea that Internet access providers like Comcast should not be allowed to favor some uses of their networks over others. Internet companies like [Google](#) and free speech advocates have backed this approach.

The cable and phone companies that provide most of the nation's Internet service have argued that such rules were not needed. They have said that they should be free to run their networks as they see fit, and that there had been no cases of problems with such discrimination.

Comcast's practice of slowing the use of BitTorrent, a method of trading video, music and software files, provides such a case. The practice was intended to prevent frequent file-swappers from clogging up the company's network.

Under Mr. Martin's recommendation, which would need to be approved by the full commission, Comcast would not be fined. But it would be forced to change its practices and give the commission more details on what it did in the past.

Mr. Martin wants to set a standard that will make it difficult for an Internet provider to discriminate against users based on what they want to do online.

"The Internet is based upon the idea that consumers can go anywhere they want and access any content they want," Mr. Martin said in an interview. "When they show they are blocking access to some sort of content, they have the burden to show that what they are doing is reasonable."

Mr. Martin also said Comcast did not explain to its customers what it was doing. “If they are going to put limits on individual customers if you use a certain amount of bandwidth per month or per hour, they have to be willing to tell their customers more about how it works,” he said.

But Mr. Martin said the issue went beyond simple disclosure because Comcast’s approach was not tightly related to the problem it said it was trying to solve. For example, BitTorrent users who were not exchanging large files were also blocked.

Mr. Martin said that the commission wanted to protect legal activities, and that the rules would not apply to an Internet service that tried to block the unauthorized transmission of copyrighted material or child pornography.

Comcast argues that its approach is legitimate, and that the commission does not have the authority to impose any sanctions.

“We believe that the network management technique we chose at the time was reasonable,” said Sena Fitzmaurice, a Comcast spokeswoman. She added that Comcast had already said it planned to change its approach to dealing with heavy use. It is developing a system that will slow the Internet connections of people who are moving large amounts of data at busy times.

Ms. Fitzmaurice was nonetheless concerned about Mr. Martin’s approach. She asked: “Does this create some broader precedent or authority for the F.C.C. that would be asserted in other cases?”

She said that if the action was approved by the commission, the company would have to examine the order before deciding whether to appeal.

Spokesmen for [Time Warner Cable](#) and [Verizon](#), two other large providers of Internet access, concurred that their preferences would be for the commission to limit its scope to ensuring that providers properly disclose their practices to their customers.

Some advocates of network neutrality are hoping that the commission uses this case to establish a broader principle.

“The normative message is that it is wrong to block the Internet,” said Tim Wu, a professor at Columbia Law School who is the chairman of Free Press, an advocacy group that filed the complaint about Comcast for which Mr. Martin is proposing a resolution.

“The deeper message he’s sending here is that users are sovereign. If two people want to send a file between each other, the carriers are not to get in the way.”

Professor Wu said the issues at stake go back to the common-law concept of a common carrier, which defined certain businesses — from blacksmiths to ferries — as so essential to commerce that their owners could not discriminate against any paying customer.

These ancient concerns are increasingly relevant to the Internet as an ever-greater share of commerce is conducted online. Companies that sell products or offer content over the Internet have worried that without regulation, the Internet access providers might choose to offer better and faster service to some companies — perhaps those that pay for preferred treatment — than to others.

Many are particularly concerned that cable and phone companies, which are in the pay television business, will choose to inhibit the growth of free video over the Internet from sites like [YouTube](#), which is owned by Google.

“If it turned out that the system accidentally or deliberately discriminated against online television, that would be anticompetitive because online television competes with Comcast,” said Marvin Ammori, the general counsel of Free Press.

Other Internet experts say that Comcast is simply trying to compensate for the limited capacity of its network. On Internet connections delivered over cable systems, there is much more capacity for users to receive information than to send it, so uploading large files can quickly overwhelm the sending capacity.

Some are concerned that if Mr. Martin presses these rules, the Internet providers will move away from offering unlimited Internet service. Already [Time Warner](#) is testing a system that would impose significant caps on how much its users could download.

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