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US broadband plan in 'legal limbo' after court ruling

By Maggie Shiels

Technology reporter, BBC News, Silicon Valley

America's broadband plan is in "legal limbo" and on "life support" claim advocacy groups after a court ruling affecting net neutrality enforcement.



Broadband overdrive

The court said the Federal Communications Commission, FCC, had no authority to sanction Comcast for slowing internet traffic to some users.

The decision is regarded as a major blow to government plans to insist all web traffic is treated equally.

Similarly the FCC's broadband plan is seen as being under threat.

"The consequences of this decision are far reaching and has forced the FCC into an existential crisis," said Derek Turner of the Free Press, a nonpartisan organisation that campaigns for universal access to communications.

"I believe it has left the agency unable to protect consumers in the broadband market place and unable to implement the national broadband plan, which is clearly on life support as a result of the court's ruling," he said.

Just last month the FCC sent the plan to Congress. The aim is to provide every American in the country with high speed internet access by 2020.

'Two-tier internet'

The court case was prompted by Comcast's decision in 2007 to selectively slow down certain types of traffic where subscribers were downloading large files using peer-to-peer file-sharing services like BitTorrent.

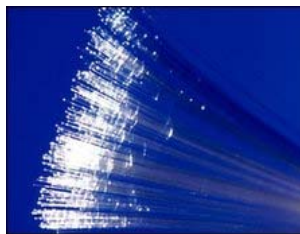
The FCC argued it had authority to police internet service providers, or ISPs, and stop them from blocking or slowing down this internet traffic.

While Comcast stopped the practice, it decided to challenge the FCC's decision.

The US Appeals Court for the District of Columbia sided with Comcast and ruled that Congress had not given the FCC the power to regulate an ISP's network management practices.

The advocacy group Public Knowledge said the court's decision means a "two-tier internet" is a distinct possibility.

"Right now the way the internet works, no one gets favoured. Companies don't get to say whose website should load faster, who gets faster email speed or who gets better quality of service. My email



The US ranks 15th in the world for providing access to high-speed internet

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to Public Knowledge comes just as fast as Time Warner's does," Gigi B Sohn, president of Public Knowledge told BBC News.

"Now cable and telephone companies have permission to charge you extra for a better quality of service or faster quality. This opens the door to an internet with a fast lane and a slow lane for whoever can pay."

'Free and open internet'

The court ruling now means the FCC has to go back to the drawing board and the agency has said it will look at other alternatives to promote net neutrality.

"The court in no way disagreed with the importance of preserving a free and open internet, " said FCC spokeswoman Jen Howard.

"Nor did it close the door to other methods for achieving this important end."

Some of those options include asking Congress to grant the agency direct jurisdiction. Another would be to redefine the internet as a telecommunications service which is seen as controversial because it would open the door to regulations that the carriers do not like.

"The FCC's "net neutrality" hopes are nothing more than public utility regulation for broadband," said Jim Harper, director of information policy studies at the Cato Institute.

" If they get that authority, your online experience will be a little more like dealing with the water company or the electric company and a little less like using the internet."

Network operators have long resisted stricter rules and warned they could stifle investment.

"The internet has thrived in an environment of minimal regulation, " said Verizon chief executive officer Ivan Seidenberg recently.

Comcast has said the company has no intentions of imposing new restrictions and "remains committed" to the FCC's broad goal of an open internet.

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