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## Better Prospects Ahead for Net Neutrality?

A new Congress prepares to take up an old issue. But a new administration and market factors could make this the year the advocates get the votes.

November 14, 2008

By Kenneth Corbin: [More stories by this author.](#)



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Net neutrality -- the idea that ISPs must give equal preference to all types of traffic on their networks -- is headed for another turn around the block in the upcoming Congress.

Speaking at a panel discussion yesterday in Washington, an aide to Sen. Byron Dorgan, D-N.D., said that Dorgan plans to reintroduce Net neutrality legislation in short order next year, reprising his failed effort to advance the issue in the current session.

Joining him as a co-sponsor will be Sen.

Olympia Snowe, R-Maine, *InternetNews.com* has learned. Snowe teamed with Dorgan on the original bill, becoming the lone Republican to attach her name to the legislation.

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Net neutrality efforts in both the House and the Senate have been consistently shot down on essentially party grounds. Snowe's hope is that this time it will be different. But will it?

"That's the million-dollar question," a Snowe aide told *InternetNews.com*. The staffer said that Snowe's office continues to discuss the issue with Dorgan's staff to recalibrate the original bill to deal with new market conditions, and to canvas support

from other members of the party. "Our hope would certainly be to find more bipartisan support."

In broad strokes, the debate pits ISPs and free-market advocates against a large

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class of Web companies and advocacy groups. Opponents warn that cumbersome laws restricting how providers can manage their networks would deter them from investing in the expansion of their networks, at a time when there is a nearly unanimous cry for greater broadband access in the country.

But Net neutrality supporters champion the open Internet as a wellspring of innovation, and foresee companies like AT&T (NYSE: T) and Comcast (NASDAQ: CMCSA) selectively blocking traffic from rival firms if left to their own devices.

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The issue came to a head in August, when a divided Federal Communications Commission [voted to rebuke](#) Comcast for throttling certain types of Internet traffic and failing to notify its customers. Net neutrality supporters crowed victory, and Comcast has since changed its traffic-management policy. But it has also sued to overturn the FCC ruling.

How the court finds could have a significant impact on the debate going forward, and lawmakers will be watching the outcome closely. If the court rules that the FCC exceeded its authority in censuring Comcast, Congress would be more likely to intervene with a law.

"If the Comcast decision at the FCC is reversed, I think all sides agree there would be immediate legislation," said Marvin Ammori, general counsel for Free Press, the media-reform group that first petitioned the FCC to look into the Comcast case. "It's just a question how far that legislation would go."

Jim Cicconi, executive vice president for regulatory affair for AT&T -- an ardent opponent of Net neutrality -- said as much at yesterday's panel, calling Comcast's decision to challenge the ruling a "mistake from many standpoints."

A spokesman for the National Cable and Telecom Association, the industry group that represents providers such as Comcast and AT&T and a vocal critic of any effort to enforce Net neutrality principles, declined to comment for this report.

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As the battle for net neutrality is played out in Congress, some may be left wondering: Who controls the pipes?

### Looking ahead to the next administration

But Net neutrality advocates have another ace up their sleeve. President-elect Obama is an outspoken supporter of the issue, declaring that he would "take a backseat to no one" on Net neutrality when he announced his technology agenda on the campaign trail at Google's headquarters.

Obama, who co-sponsored the original Dorgan-Snowe bill, made Net neutrality the first item on his technology plan. He has also pledged to create the position of technology czar, which presumably will take an active role in advancing the administration's agenda through Congress.

"I expect them to go totally all out on Net neutrality," Thomas Lipscomb, senior fellow at the Annenberg Center for the Digital Future, told *InternetNews.com*.

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But Lipscomb and others argue against the term, warning that it has gotten so bogged down as a cause célèbre among activist groups and Web firms that it actually undermines the primary goal they are trying to achieve.

"Net neutrality is dangerous in so far as it can cut off badly needed capital to build out the broadband backbone," he said. "I would argue that true Net neutrality is fully disclosed pricing for service that has to compete for consumers. There is no discrimination anywhere there and let the markets settle out what its consumers require competitively.

He added, "There are always too few competitors in the early stages. But if there is money to be made, competition won't take long to impact the market."

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### More religion than substance?

Lawrence Spiwak, a former FCC counsel and the president of the Phoenix Group, a Washington think tank, shares Lipscomb's concern that overzealous legislation may be problematic. For instance, it could hamstring the ability of ISPs to manage their own pricing structures, an unnecessary distraction that could divert efforts toward the most important objective.

"Putting aside the Net neutrality issue, everyone wants more broadband deployment, and people want more broadband adoption," Spiwak told *InternetNews.com*. Net neutrality "unfortunately has become more of religion than substance."

Part of the confusion stems from the evolution of the term's meaning. Originally, the debate focused on efforts to block broadband providers from charging a higher



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fee for more bandwidth. The less extreme version would seek to codify the requirement that ISPs do not single out and block any specific types of traffic, such as a competitor's service.

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To Lipscomb, that distinction has become dangerously blurred.

"Multiple pricing -- to the true-blue Net neutrality guys -- is discriminatory traffic," he said.

But Snowe's aide explained that the bill would be reconstituted in such a way as to ensure that providers retain the flexibility to adopt a tiered pricing

model, charging a higher fee for more bandwidth, which would make it more palatable to Republican opposition.

A structural change in the Senate could help the bill's chance, too. Dorgan is already one of the more senior members of the Senate Commerce Committee, and there is a rumor in Washington that the new session might see the revival of the Subcommittee on Telecommunications and the Internet, which was abolished when Ted Stevens, the Alaska Republican recently convicted of Senate ethics violations, chaired the full committee.

Stevens was up for reelection this year in a tight race where election officials are still counting ballots, but the most recent tally indicates that he will likely lose his seat to the Democratic challenger.

The commitment of Dorgan and Snowe, coupled with the president-elect's enthusiasm for the issue, gives Ammori and his group hope that they will score a victory in this Congress.

Everyone expects there to be some movement on this bill," Ammori told *InternetNews.com*. "It seems like this would be the year. This is the best opportunity of the last several years."

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