

May 2010

## FCC Chairman Announces “Third Way” Broadband Regulation Policy

On May 6, 2010, the Federal Communications Commission’s (“FCC”) Chairman announced his intent to regulate broadband internet access. Under the plan, referred to as the “Third Way” because it falls between unregulated Title I and fully regulated Title II regimes, the Commission would:

- Treat the transmission component of broadband access service as a telecommunications service subject to Title II regulation;
- Apply by consensus only specific Title II provisions:
  - Section 201 – Interconnection and reasonable rates;
  - Section 202 – Price or service discrimination;
  - Section 208 – FCC complaint process;
  - Section 222 – CPNI requirements (customer privacy);
  - Section 254 – Universal service fund (use for broadband); and
  - Section 255 – Access for disabled.
- Simultaneously forbear from particular sections of the Communications Act that the FCC deems inapplicable to broadband; and
- Put in place boundaries to guard against regulatory overreaching.

In announcing this plan, the Chairman stated that he favored this approach over two other options: (1) continuing to rely on the Commission’s Title I ancillary jurisdiction; or (2) reclassifying Internet communications as a telecommunications service. The FCC plans to seek comment on the legal foundation for its authority to regulate broadband internet services in this fashion.

This plan is intended to shore up the Commission’s ability to continue rapidly working on implementation of the National Broadband Plan in light of a recent court decision that struck down the ancillary authority of the FCC to regulate the provision of broadband access services. The Commission is simultaneously exploring with Congress possible legislative clarification of its authority by amending the Communications Act.

Commissioners McDowell and Baker issued a joint statement expressing concern about the Chairman’s plan, stating that it was not a “light-touch approach” and questioning the legitimacy of the approach.

The reclassification—even partial reclassification—of broadband services has serious and far-reaching ramifications not only for broadband providers but also for the communications industry as a whole.

If you have any questions, please contact any member of the firm’s [Communications Law Group](#).

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