Democrats sneak Net neutrality rules into 'stimulus' bill

The House Democrats' $825 billion legislation released on Thursday was supposedly intended to "stimulate" the economy. Backers claimed that speedy approval was vital because the nation is in "a crisis not seen since the Great Depression" and "the economy is shutting down."

That's the rhetoric. But in reality, Democrats are using the 258-page legislation to sneak Net neutrality rules in through the back door.

The so-called stimulus package hands out billions of dollars in grants for broadband and wireless development, primarily in what are called "unserved" and "underserved" areas. The U.S. Department of Commerce is charged with writing checks-with-many-zeros-on-them to eligible recipients, including telecommunications companies, local and state governments, and even construction companies and other businesses that might be interested.

The catch is that the federal largesse comes with Net neutrality strings attached. The Commerce Department must ensure that the recipients "adhere to" the Federal Communications Commission's 2005 broadband policy statement (PDF)—which the FCC said at the time was advisory and "not enforceable," and has become the subject of a lawsuit before a federal appeals court in Washington, D.C.

One interpretation of the "adhere to" requirement is that a company like AT&T, Verizon, or Comcast that takes "stimulus" dollars to deploy broadband in, say, Nebraska must abide by these rules nationwide. (It's rather like the state of Nebraska demanding that a broadband provider filter out porn nationwide in exchange for a lucrative government contract.)

In addition, recipients must operate broadband and high-speed wireless networks on an "open access basis." The FCC, soon to be under Democratic control, is charged with deciding what that means. Congress didn't see fit to include a definition.

The Bush administration has taken a dim view of Internet regulations in the form of Net neutrality rules, warning last year that they could "inefficiently skew investment, delay innovation, and diminish consumer welfare, and there is reason to believe that the kinds of broad marketplace restrictions proposed in the name of 'neutrality' would do just that, with respect to the Internet." A report from the Federal Trade Commission reached the same conclusion in 2007.

In addition, a recent study from the U.S. Chamber of Commerce says that the absence of Net neutrality laws or similar federally mandated regulations has spurred telecommunications companies to invest heavily in infrastructure, and changing the rules "would have a devastating effect on the U.S. economy, investment, and innovation."

Now, perhaps extensive Net neutrality regulations are wise. But enough people seem to have honest, deep-seated reservations about them to justify a sincere discussion of costs and benefits—rather than having the requirements stealthily injected into what supposed to be an emergency save-the-economy bill scheduled for a floor vote within a week or so.

Net neutrality requirements can, of course, always be imposed retroactively on broadband "stimulus" recipients. As recently as one day ago, a Democratic Senate aide was saving the topic would be addressed in the Judiciary Committee in the near future; there seems little reason to rush to lard up this particular legislation.

But it always seems to happen. Last fall's TARP bailout bill included IRS snooping. A port security bill included Internet gambling restrictions; the Real ID Act was glued onto a military spending and tsunami relief bill; a library filtering law was attached to a destined-to-be-enacted bill funding Congress itself.

It's enough to make you want to force our elected representatives to actually read the bills they pass.

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