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For the White House, a major win on net neutrality might come at a cost — scuttling everything else on Washington’s tech and telecom agenda next year.

The Federal Communications Commission is racing to write rules that require Internet service providers to treat all Web traffic equally, and many expect the agency will follow President Barack Obama’s call to treat broadband service like a utility. Telecom giants and Republican lawmakers say that will create burdensome new regulation — and the issue has already incited a lobbying frenzy, raised the specter of lawsuits and ignited new partisan fires on Capitol Hill.



Some GOP members are planning to use their soon-to-be majority status to knock down the FCC’s net neutrality actions, perhaps even before any rules are announced in early 2015. And the growing tensions threaten to spill over into larger policy debates, as Congress takes on the complex process of updating the nation’s central communications laws. “I don’t doubt there’s going to be a major confrontation if [the president] and the chairman of the FCC press ahead with rules as they have been described,” said Virginia GOP Rep. Bob Goodlatte, the chairman of the House Judiciary Committee, in an interview.

The FCC finds itself back at the drawing board on net neutrality after its previous set of rules, issued under former Chairman Julius Genachowski, drew a lawsuit from Verizon and ultimately was tossed by a federal court. It’s been left to current FCC Chairman Tom Wheeler to craft a new net

neutrality regime that can withstand another anticipated legal challenge from telecom companies while still satisfying Democrats and consumer groups, who pine for tough new protections. Wheeler stumbled with his early proposal — a draft that critics said would permit pay-for-play Internet ‘fast lanes’ — and he later seemed caught by surprise when Obama endorsed utility-style regulation of broadband, known as Title II.

Wheeler’s final offering, slated to arrive early next year, is expected to track closely with the president’s views on the matter — but a White House victory may prove short-lived. Republicans, who oppose any net neutrality rules at all, have already telegraphed their game plan heading into 2015. Sen. John Thune (R-S.D.), who’s set to take the helm of his chamber’s powerful Commerce Committee, has floated the idea of a bill that would

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pre-empt an FCC move to adopt Obama's favored approach.

The senator is "very interested in finding a legislative solution to protect the open Internet, especially if it means keeping the FCC from imposing public utility regulations," a spokeswoman told POLITICO. Thune's House counterpart — Rep. Greg Walden (R-Ore.), who leads his own telecom subcommittee — has pledged a net neutrality hearing early next year to focus attention on the issue. Goodlatte said his House Judiciary Committee is exploring legislation that would erode the FCC's net neutrality authority by shifting it to antitrust enforcers. And other Republicans have suggested cutting the agency's funding. "One of the things the telecommunications community has always taken pride in is that virtually all policy debates are relatively bipartisan," said Michael Powell, a former Republican FCC chairman who now heads the National Cable and Telecommunications Association.

Net neutrality is "the most dramatic policy issue that has collapsed into rigid partisanship," Powell said. "And it would immediately become the most dominant of telecommunications issues on the Hill." The GOP's onslaught faces clear hurdles: Obama surely could veto any legislative effort to weaken or overturn net neutrality rules. But the congressional hearings and political sniping on the horizon could delay deeper legislative work on other telecom reforms — namely, a planned overhaul of the core laws that govern the FCC and its regulation of cable, wireless and phone companies.

House Republicans have spent more than a year reviewing possible changes to the Communications Act, which was last updated in the mid-1990s, and the new Senate GOP majority is expected to begin a similar process in 2015. Already, there are signs the party is eager to transform the debate into a proxy war over net neutrality. "Each time it has tried to regulate the Internet, the FCC has been overruled by the courts because existing telecommunications laws were written decades ago for a completely different era," the Thune spokeswoman said. "The most straightforward approach would be for Congress to update and modernize those laws to take into account technological transformations while not discouraging the private-sector investment and innovation that is critical for consumers and our nation's modern economy."

Democrats vehemently argue the so-called Comm Act update and the fight over net neutrality should remain separate. "I don't think one should be part of the other," remarked Rep. Anna Eshoo (D-Calif.), who leads her party on the House's top telecom subcommittee. "If a party wants to be insistent on being ... anti-Internet equality, that's a bad place to be." To solidify that point, outgoing Senate Majority Leader Harry Reid led other Democrats in a letter urging Republicans to support strong net neutrality rules while decoupling it from any broader overhaul of the nation's telecommunications laws. A day earlier, roughly 40 Democrats — including Sens. Ed Markey and Elizabeth Warren of Massachusetts and Al Franken of Minnesota — encouraged the FCC to "act without delay to finalize rules that keep the Internet free and open for business."

But Republicans are pressuring the FCC to slow down. "Businesses and consumers deserve legal certainty and confidence in the marketplace. Forcing legacy regulations on providers and billions of dollars of taxes on middle-class Americans serves neither of these purposes," said Sen. Deb Fischer (R-Neb.), a member of her chamber's Commerce Committee. "The FCC would be well-advised to engage constructively with Congress instead of polarizing the issue of net neutrality further." In the meantime, the threat of new regulation has galvanized industry lobbying, prompting groups like Powell's NCTA to run digital ads around the Beltway slamming the Obama administration's proposal. The association has argued that net neutrality rules issued under Title II would prompt a spike in consumers' broadband bills. NCTA declined to say how much it is spending on the spots, which have run in POLITICO, The Washington Post and other outlets.

Net neutrality also has featured prominently in the FCC's review of two megamergers. Comcast, which is seeking regulatory approval for its \$45 billion purchase of Time Warner Cable, for months has touted that it's already bound by net neutrality rules. The cable

giant agreed to heed the FCC's previous open Internet order as a condition of its 2011 purchase of NBC Universal, though that commitment is set to expire in 2018. AT&T has promised it will adhere to the same rules for three years, if it gets the nod to acquire DirecTV for \$48.5 billion.

At the same time, Comcast, AT&T and Verizon have made it clear to the FCC that they overwhelmingly oppose any effort to treat broadband as a utility — and AT&T, for one, said in November it “would expect to participate in a legal challenge” if the government goes that route. The telecom giants did not comment for this story. The court challenges “probably will go longer than the Obama administration,” Powell said. “You can have a remand come back to a government that’s entirely new, and the whole thing could be up in the air again.” – *Politico*

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A bankruptcy judge said Aereo Inc. can auction its TV streaming technology after the company struck a deal with broadcasters over the sale process. Judge Sean Lane of the U.S. Bankruptcy Court in Manhattan Wednesday signed off on the rules governing Aereo's auction after company and broadcasters agreed to how and when the company can scrub its servers and how much time broadcasters will have to oppose any sale that could infringe their copyrights. Under the revamped auction rules, Aereo will also provide weekly updates on the status of the sale process and will allow the broadcasters to attend the auction.

Until June, Aereo provided customers with the ability to watch and record broadcast TV through the Internet and on mobile devices. That business model faltered after a U.S. Supreme Court ruling that found Aereo violated copyright laws. The litigation with broadcasters is now back in a lower court, which will determine how much money Aereo owes in damages, a number that could be in the tens of millions of dollars. The legal fight was one of the sticking points to an auction of Aereo's assets. The broadcasters—including CBS Corp., Walt Disney Co.'s ABC, Comcast Corp.'s NBC and 21st Century Fox Inc.'s Fox—want to be allowed to scrutinize Aereo's customers' activities before the company deletes its servers.

Aereo, founded in 2010, raised \$95.6 million in venture funding, including from Barry Diller's IAC and funds managed by Highland Capital. But much of that money has gone toward litigation expenses. Despite the cloud of litigation, there is interest in Aereo's technology. The company's bankruptcy lawyer, William Baldiga, told the court last week that the company is in talks with 17 prospective bidders. Bids will be due Feb. 20. If multiple bids are received, an auction will be held Feb. 24 at the New York office of Brown Rudnick, the law firm handling Aereo's Chapter 11 case. A hearing to approve the sale will take place March 11.

Aereo, which filed for Chapter 11 protection in November, is down to a dozen employees and \$3.6 million in cash, court documents show. The company isn't hoping to find a buyer for its broadcast streaming business, but it does hope to find buyers interested in its technology. It believes the technology could be used in ways that don't infringe broadcasters' copyrights, but the broadcasters have their doubts. The two-week period between the auction and sale hearing is longer than typical in big bankruptcy cases and will allow the broadcasters additional time to object to any deal.

Aereo hasn't made money since a U.S. Supreme Court ruling in June determined the company was unlawfully exploiting the copyrighted works of major broadcasters without permission or payment. Using individualized antennas, Aereo subscribers could stream local TV stations' signals through the company's cloud-based antenna and DVR services for as little as \$8 a month. In the wake of the Supreme Court's decision, which ruled that Aereo was “substantially similar” to a cable system and therefore needed broadcasters' permission to air their content, Aereo pushed for regulatory change that would offer it the benefits of being classified as a cable system. These included being able to qualify for a compulsory copyright license that would allow it to pay limited royalties for the rights to

broadcast content. The company had made some headway, though the timing of any potential regulatory changes is unknown. – *Wall Street Journal*



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