

Bad personnel decisions have haunted the Bush Administration, and one of the bigger disappointments is Federal Communications Commission Chairman Kevin Martin. In his last months as Master of the Media Universe, he seems poised to expand government regulation of the Internet.

The FCC is by all accounts planning this week to uphold a complaint against Comcast, the cable company accused of throttling attempts to trade movies and other high-bandwidth files on its network that slow down Internet service for everyone else. Comcast has maintained that its "terms of service" agreement allowed such network-management. In any case, earlier this year the cable company reached an agreement with BitTorrent, the popular file-sharing service being used on Comcast's network, and settled the matter. Or so we thought.



Kevin J. Martin

But Mr. Martin isn't satisfied with a private resolution of this technical dispute. Instead, he wants to make an example of Comcast in order to advance a "network neutrality" industrial policy being pushed by high-tech rivals like Google and pro-regulation advocacy groups like MoveOn.org, Consumers Union and Free Press. Net neutrality proponents want all Internet traffic treated "equally." They would prohibit Internet service providers from using price to address the ever-growing popularity of streaming video and other bandwidth-intensive programs that cause bottlenecks.

"I'm pleased that a majority has agreed that the commission both has the authority to and in fact will stop broadband service providers when they block or interfere with subscribers' access," said Mr. Martin earlier this week. By "majority" he means himself and the two Democrats on the five-member panel. To that regulatory end, he would force Comcast to change its network management model to his liking.

To the extent that Comcast and BitTorrent have worked out their differences, Mr. Martin is forcing a solution in search of a problem. But the bigger concern is that the chairman is taking a huge step toward putting in place a regulatory regime that would give the FCC, rather than Internet service providers, unprecedented control over how consumers use the Web. Mr. Martin is also greasing the skids for a potential Barack Obama Administration to take an Internet industrial policy who knows where.

It's also not clear that the FCC even has the authority to enforce net neutrality, because Congress has never passed a law establishing such a policy. Mr. Martin claims that Comcast has violated a "set of principles" adopted by the commission in 2005. But whether a nonbinding policy statement gives five -- or even just three -- unelected regulators in Washington control of the Internet might be something for a court to decide.

Those who would use Comcast's actions to argue for more Internet regulation have misidentified the Big Brother problem. It's not the private sector they should be worried about. There's no evidence that Comcast was trying to suppress a political view or favor one of its own services. By all appearances, the company's policies were motivated by nothing more than making sure a tiny percentage of bandwidth hogs didn't slow down Internet traffic for everyone else on the network.

Giving the government more say in network management, by contrast, introduces all kinds of potential for political mischief. Net neutrality is a slippery slope toward interventions of all kinds -- not merely over access but ultimately over content. Naturally, the most powerful lobbies will have the largest sway. Mr. Martin's decision in this case may well be driven by his own political hostility

to Comcast and the cable industry for resisting some of his other policy priorities.

Mr. Martin's bad instincts notwithstanding, the FCC's job is not to determine business models in the private sector. The community of Internet service and content providers has proven itself more than able to work out problems on its own as Web use has exploded. If there are bottlenecks in the future, some providers might choose to block file-sharing services at certain hours of the day. Others might opt for some kind of metered or tiered pricing. Banning these options will only reduce incentives to upgrade networks and launch new services.

Regulators would do better to focus on keeping the overall telecom marketplace competitive. If Comcast customers don't like the company's network management policies, they're free to take their business to Verizon, or AT&T, or some other Internet service provider. A World Wide Web run by Kevin Martin and his political friends will leave us with poorer quality and fewer options all around.