Turning the Tables

In recent years, telecom and tech companies have had to fend off the threat of new regulation. Now it's the regulators' turn to play defense. **By Eliza Krigman**

With a Democratic Congress, a Democratic president, and a Democratic chairman, the last two years have meant political cover for the regulatory ambition of the Federal Communications Commission. Chairman Julius Genachowski, appointed by President Obama, may have taken only incremental steps toward fulfilling the FCC's agenda, but he had political support from the highest public offices to go further.

All of that's about to change. Under Republican control of the House, the FCC will now answer to skeptics of government intervention in the market. GOP lawmakers can't tell Genachowski what to do, but they can still bully him to kill initiatives that the administration hoped to accomplish—foremost among them, Obama's campaign promise to enforce network neutrality. Republican gains in Congress will mean a "much more intensely focused commitment to the free-market perspective," said former FCC Chairman Michael Powell. "The burden of proof shifts: It's no longer industry having to prove why they shouldn't be regulated." Now it's the government officials who will have to prove why they *should* regulate.

Industry insiders agree. There will be "much more aggressive oversight of the FCC," said Howard Waltzman, former chief counsel on telecommunications and the Internet for the House Energy and Commerce Committee. Republicans will be "taking an inventory of what the FCC has been doing," Waltzman said, and evaluating whether it's "being responsive to [conservative] priorities."

By hauling Genachowski into hearings to berate him, voting not to fund commission initiatives, advancing legislation that tailors FCC authority to their preferences, and pressuring the agency through letter-writing campaigns, Republicans will have a variety of ways to coerce the commission. When Congress is divided, "you get called on the carpet for everything you do," Powell said.

Two House committees will be peering over Genachowski's shoulder: the powerful Oversight and Government Reform Committee and the Energy and Commerce Committee. Republicans on these panels will likely scrutinize issues such as the distribution of the broadband stimulus grants ($7 billion in Recovery Act money aimed at expanding broadband use); the administra-

Not so fast: Rep. Darrell Issa, R-Calif., could wield his oversight role to stymie the FCC.

tion's relationship with Google (which just sued over its exclusion from a bidding opportunity at the Interior Department); contact between the FCC and the White House; and any plans to regulate high-speed digital lines—referred to within the industry as "special access"—controlled by the nation's biggest carriers. "The Oversight Committee is a tool to crack down on the opposition and to advance the interest of corporate friends," said a former FCC staffer who now works in the industry.

The presumptive chairman of the Oversight panel, Rep. Darrell Issa, R-Calif., has a reputation as a strong critic of the Obama administration. If granted the gavel, Issa would seek to rein in federal information-technology inefficiencies. "Far too often, federal investments for IT improvements have run way over budget, or in the worst of scenarios, failed to meet their goals," said Issa spokesman Kurt Bardella.

Republicans will wait until January to name the leader of the Energy and Commerce panel, which has jurisdiction over the Internet and most other telecommunications issues, but there's already a spate of possible candidates. Lobbyists and industry analysts point to Rep. Fred Upton, R-Mich., as the top contender. "He's been a loyal soldier. He's done a lot of fundraising. I don't

see it going to anybody else but Fred," an industry lobbyist predicted. Upton has also held leadership positions on two of the panel's subcommittees.

Still, other candidates will vie for the post. Rep. Joe Barton, R-Texas, has more seniority than Upton, and he is known to want the job. But to get it he'd need a waiver from the Republican Steering Committee, because he has chaired the panel once and been ranking member twice. (Party insiders have said consistently that he is unlikely to get his waiver, but Barton recently told a TV interviewer that he is confident he'll get the job anyway.) And Rep. Cliff Stearns, R-Fla.—currently the ranking member on the Communications, Technology, and the Internet Subcommittee—also wants the post. In a recent interview with *National Journal*, Stearns said he would try to rewrite the outdated 1996 Telecommunications Act if he gets control of the committee. "I can get Democratic support for that," he added.

Wielding their new power, observers expect Republicans to home in on the net-neutrality agenda, the most radioactive issue in this portfolio. "Net neutrality is dead on the Hill," one industry lobbyist said. Genachowski and Democratic commissioners had wanted to reclassify broadband from an information service to a public utility, giving the agency more authority over it. But the GOP, which thinks the system works, uniformly rejects a regulatory approach. House Democrats failed to shepherd a bill through Congress in September (due to lack of Republican support) that would have codified some principles to protect the open Internet.

There are still telecom areas ripe for legislative action in the 112th Congress, including privacy and cybersecurity guarantees, and both parties have committed to draft legislation enshrining these ideas in law. Congressional leaders also want to auction off parts of the spectrum held by broadcasters, which could generate billions of dollars in revenue without raising taxes or cutting spending, though they haven't worked out the details yet.

With the new Congress, "aggressive GOP oversight" will "slow the FCC agenda," analyst Rebecca Arbogast of Stifel Nicolaus wrote in a report on Monday. And FCC officials will find *they're* the ones having to justify themselves, rather than the companies they regulated.