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A federal court declined to reconsider telecommunications companies' challenge to Obama-era net neutrality rules on Monday, setting the stage for a likely appeal to the Supreme Court.

The widely anticipated rejection came just days after Federal Communications Commission Chairman Ajit Pai **laid out his proposal** for rolling back the net neutrality rules, giving the industry a big win. But the telecom firms and their allies are still looking to the courts for backing in their opposition to the net neutrality regulations. That could give them more legal protection whenever Democrats retake power.

TechFreedom, a conservative advocacy group that had joined in the appeal, said the decision "clears the way for TechFreedom and other parties challenging the order to take their case to the Supreme Court." It said the case could become a vehicle for rolling back agencies' powers. But some legal experts question whether the high court will accept an appeal, given that the FCC is beginning its own rollback.

The FCC's **2015 net neutrality rules** were aimed at requiring internet service providers such as cable and wireless firms to treat all traffic equally. The carriers say they support basic net neutrality principles, but opposed the FCC's action as regulatory overreach. Many internet firms and consumer groups view the rules as vital for preserving competition on the internet.

On Monday, the U.S. Circuit Court of Appeals for the D.C. Circuit turned down a petition for rehearing of the telecom companies' appeal by all the judges. The rehearing petition followed a decision upholding the rules last year by a three-judge appeals panel. In a concurring statement on

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Allentown Morning Call
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Monday, two judges who sat on the panel, Judges Sri Srinivasan and David Tatel, said Mr. Pai's pending proposed rollback of the rules makes further consideration of the appeal "unwarranted."

But conservatives on the appeals court used Monday's announcement to plead for the high court to take the case and side with telecommunications firms. "Hopefully, there is a clearer view of the road back to a government of limited, enumerated power from One First Street," said Judge Janice Rogers Brown, referring to the Supreme Court's address in Washington.

Judge Brett Kavanaugh, who also dissented, said the FCC's 2015 rule lacked any basis in federal law, raising an issue that might hold interest for the high court—the question of how far regulatory agencies can go in implementing policy where Congress hasn't carved out clear authority.

In a statement, Mr. Pai said it was "not surprising" that the D.C. Circuit would decline the rehearing petition, in light of his rollback proposal last week. However, he added, he agrees with many of the points made by Judges Brown and Kavanaugh. Trade group USTelecom, which represents telecom companies, said in a statement that it will "continue to review our legal options going forward to fully protect our open internet, and to connect all Americans to the promise and potential of broadband."

A number of public interest advocacy groups, including the Center for Democracy and Technology, cheered the appeals court's action. "Net neutrality is essential to a vibrant internet ecosystem, and CDT will continue to defend the open internet in the days and years to come," said Lisa Hayes, the group's general counsel. – Wall Street Journal

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It's hard to put a positive spin on Dish's operating metrics from the first quarter. The only good news is that the company beat earnings-per-share expectations with an EPS number of $0.76, compared to analyst predictions of $0.69 for the period. Even so, the EPS number is still below where Dish was a year ago when it reported earnings of $0.86 per share. And the news only gets worse from there.

Dish Network LLC (Nasdaq: DISH)'s revenue dropped to $3.63 billion, well below its expected revenue of $3.78 billion. And the company lost 143,000 pay-TV subscribers in the quarter, a number that includes any customer gains from Dish's low-cost, over-the-top Sling TV service. Dish doesn't break out the Sling TV numbers, but a research note from analyst firm MoffettNathanson LLC estimates the company added around 177,000 Sling TV subs, which puts its total satellite TV customer losses at around 320,000.

Why does that matter? Because satellite TV subscribers bring in a lot more money than Sling TV subs. Dish points out that the cost of acquiring a Sling TV customer is also much less than the acquisition cost of a satellite TV customer, but that doesn't help with overall revenue. And despite a rise in average revenue per user last quarter, Dish's Q1 ARPU dropped to $86.55 from $87.94 a year ago. (See **Dish in 2016: ARPU Up, Video Subs Down**.)

The bottom line is that Dish's satellite TV business is declining rapidly, and that not only shines a light on how Sling TV is faring (estimates of Sling TV subs range from 1.3 million to 1.36 million), but also on Dish's plans for the expensive wireless spectrum it has collected over many years. With the satellite TV business tanking, there's increasing pressure on Dish to make money from its wireless assets; assets that include the $6.21 billion worth of spectrum that Dish just purchased in the 600Mhz auction. (See **T-Mobile, Dish & Comcast Big Winners in $19.8B 600MHz Auction** .)

Dish announced in March that it will build out a narrowband Internet-of-Things network using its wireless spectrum by March of 2020. That plan is in accordance with a requirement by the FCC that Dish not squat on spectrum rights, but it's not necessarily Dish's first-choice strategy for wireless profitability. Dish has indicated that it might prefer to sell its spectrum assets rather than operate a new network, but if that's the case, the company appears to be running out of time to make a deal. (See **Dish's 5G Plans Should Rouse Cablecos**.)

Dish Chairman Charlie Ergen addressed the issue of a sale on Dish's earnings call with investors. He reiterated a point he's made before that the company's focus is on building out the promised IoT network with or without a partnership or M&A deal. However, Ergen also spoke at length about how he sees the wireless industry changing and why he thinks a deal still holds value.

"We think the world of wireless can be materially different than [it is today]," said Ergen. "It can be different because there's a paradigm shift in technology; the way you build your radio, the way you're going to propagate your network... the ability to slice your network in different slices, the ability to let other people share your network. All those things are possible in the 5G world." And he added that if Dish can find a partner or buyer that shares that vision, the company could get very excited about a potential deal.

That certainly sounds like Dish is still on the lookout for M&A riches. But if it wants to find them, it will have to make sure its sustaining satellite TV business doesn't disappear first. – Light Reading

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Twitter announced a range of live-streaming video deals on Monday evening during a "NewFront" sales presentation its executives made to marketers in New York. The social network unveiled partnerships with companies such as BuzzFeed, Vox Media, MLB Advanced Media and Live Nation LYV 0.44% to produce or provide live-streaming content for the platform. BuzzFeed will create a news and current events show to be broadcast live on Twitter each morning, for example, while Vox Media will create a weekly live show dedicated to gadgets called Circuit Breaker, Twitter executives said.

In the sports arena, WNBA will live-stream 20 regular-season games via the platform, and MLBAM will produce a new 3-hour weekly MLB program featuring game "look-ins" and highlights. The announcements come as Twitter attempts to reposition itself as a venue for professionally-produced live video content and tap into advertising budgets typically reserved for TV.

Elsewhere in the news arena, Twitter is **joining with Bloomberg**, which will launch a 24/7 live-streaming channel with content produced solely for the social platform, The Wall Street Journal reported Sunday. Twitter said it streamed more than 800 hours of live video in the first quarter of 2017, compared with 600 hours the previous quarter.

Meanwhile, rival platform operators Snap Inc. and Facebook Inc. are also encouraging users to watch as much video as possible on their respective platforms, and are licensing both live and non-live video content to help fuel that consumption. Other live video content will be published on Twitter by Cheddar, Bloomberg Media, The Players Tribune and PGA Tour, Twitter said. – Wall Street Journal

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