

# INTERNET NEUTRALITY AND THE FEDERAL COMMUNICATIONS COMMISSION

*Kyle Jorstad '17*

*ABSTRACT: The Internet has become so central in the lives of Americans that it is difficult to imagine information ever becoming less accessible than it is currently. Around the world, anyone with unrestricted access to the Internet has worlds of information available with just a few taps of a screen or keyboard. Recently, however, the freedom of the Internet has come under question. Prompted by instances of restricted Internet access by specific ISPs (Internet Service Providers, such as Comcast, Time Warner, and Verizon), the FCC (Federal Communications Commission) and President Obama have vocally proclaimed the need for regulation of the Internet to ensure it remains a free and open medium. Supporters of Internet Neutrality argue the necessity of ISP regulation to maintain universal access to Internet content. Critics claim government oversight will only further restrict the freedom of the Internet, ultimately causing worse harm than already done by ISPs. This article will seek to analyze the fundamental workings of Internet Neutrality guidelines and to critically analyze the potential function FCC Internet regulation will play in modern American society.*

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\* Kyle Jorstad is senior political science major at Grove City College with minors in Spanish, economics, and philosophy. In addition to being a content editor for the Law Journal, Kyle is the President of the campus Law Society, a member of the GCC Debate Team, and a contributing writer for the Cornwall Alliance. Passionate for writing and educational discourse, Kyle plans on enrolling in law school following graduation.

## I. INTRODUCTION AND LEGAL FOUNDATIONS

New Internet neutrality regulations recently became active under the jurisdiction of the FCC, an independent US government agency tasked with the regulation of interstate communication channels. It is important to understand precisely what is meant by the phrase “Internet neutrality” (“net neutrality” for short). As a principle, Internet neutrality means that all Internet traffic is treated identically by ISPs. The new net neutrality regulations put in place by the FCC, effective June 12, 2015, contain several “bright line” rules which prohibit blocking, throttling, and paid prioritization.<sup>1</sup> “Blocking” occurs when providers restrict or prevent access to content or websites. ISPs engage in throttling when they intentionally slow or degrade Internet traffic on the basis of content or applications. Paid prioritization allows for paid fast-lanes whereby consumers may pay higher premiums for prioritized Internet access from ISPs. Notably, while new regulations prohibit these for legal Internet traffic, ISPs remain encouraged to actively block user access to illegal content. Regardless, net neutrality proponents argue that these regulations preserve an open Internet by preventing ISPs from controlling what content is available to whom through blocking, throttling, paid prioritization, and other control methods.

Efforts toward the maintenance of fair and open communication are neither new nor exclusive to the Internet.

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<sup>1</sup> Open Internet: Maintaining a Fast, Fair, and Open Internet, Fed. Comm. Commission (Oct. 29, 2015), <https://www.fcc.gov/general/openinternet>.

Within the Open Internet Order, which established the new 2015 Internet regulations, the FCC cites two sources of legal authority: Title II of the Communications Act of 1934, and Section 706 of the Telecommunications Act of 1996.<sup>2</sup> Title II pertains to how the FCC grants broadcast licenses—the terms of licenses, renewal processes, content restrictions, etc.<sup>3</sup> Title II additionally prohibits unreasonable discrimination in charges or services in connection with common carriers.<sup>4</sup> A common carrier is “a business or agency that is available to the public for transportation of persons, goods, or messages,” such as telephone lines, airlines, public transportation, and even amusement parks in certain states.<sup>5</sup> This definition, though originally applied exclusively to the transportation of physical goods and persons, has now been expanded to include digital services. The recent reclassification, which allows the FCC to apply common carrier principles to the Internet, specifies:

“It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject

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2 *Id.*

3 Communications Act of 1934, 47 U.S.C. § 307 (1982 & Supp. V 1987).

4 Communications Act of 1934, 47 U.S.C. § 202 (1982 & Supp. V 1987).

5 “Common Carrier,” Merriam-Webster.com, 2015, <http://www.merriam-webster.com/dictionary/common%20carrier>.

any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”<sup>6</sup>

Section 706 addresses the provision of advanced telecommunications capabilities for all Americans in a reasonable and timely fashion, granting the FCC authority to “take immediate action to accelerate deployment of capabilities and removal of barriers to infrastructure investment and by promoting competition in the telecommunications market.”<sup>7</sup> The Open Internet Order has reclassified the Internet from an information service to a telecommunications service, placing it firmly under the jurisdiction of Title II and Section 706.

The question of regulating the Internet has existed virtually as long as the Internet itself. Net Neutrality regulation received a boost following a 2007 scandal arising when Comcast inhibited Internet traffic accessing BitTorrent, a forum for peer-to-peer file transfers. While uploads were permitted, Comcast prevented any attempt by users to download content. Comcast initially denied any such blockage, stating only that “Comcast does not block access to any applications, including BitTorrent,” but later admitted to blocking user access to some content.<sup>8</sup> Although various legal authorities associated with Comcast suggested off the

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6 Communications Act of 1934, 47 U.S.C. § 202 (a) (1982 & Supp. V 1987).

7 Telecommunications Act of 1996, 7 U.S.C. § 706, 153 et seq. (1996).

8 Peter Svensson, Comcast Blocks Some Internet Traffic, The Washington Post (Oct. 19, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/19/AR2007101900842.html>.

record that the blockage was due to the website's tendency to distribute illegally pirated content, Comcast's official stance ultimately claimed the restrictions were to ensure Internet connections ran smoothly and to avoid excess bandwidth usage.

Prior to the Open Internet Order, Comcast was entitled as an independent provider of a service to restrict user access to content, but only on the condition that consumers were aware of restrictions prior to purchasing the service. Because Comcast failed in this respect to inform users of any restrictions, in January of 2008 the FCC opened an investigation in response to a Public Knowledge and Free Press complaint.<sup>9</sup> Despite an initial order by the FCC directing Comcast to cease discrimination against BitTorrent traffic, the D.C. Circuit Court of Appeals ultimately ruled in favor of Verizon, rejecting the FCC's authority regarding Internet regulation. Citing a lack of "statutorily mandated responsibilities," the court found that despite several policy precedents established within Congress granting the FCC a wide berth for rulemaking, the FCC lacked an explicit legislative mandate granting them authority to regulate ISPs.<sup>10</sup> Notably, the court did not disagree with the necessity of net neutrality protections, instead holding that the FCC lacked the proper legal foundations. In doing so, the court

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9 Ryan Paul, FCC to investigate Comcast BitTorrent blocking, arsTechnica (Jan 9, 2008), <http://arstechnica.com/tech-policy/2008/01/fcc-to-investigate-comcast-bittorrent-blocking>.

10 Comcast Corporation v. Fed. Comm. Commission & USFG, (D. C. Cir. 2010).

opened the door for and recognized the constitutionality of the regulations only recently instituted by the FCC.

## II. THE OPEN INTERNET ORDER: PRESENT LITIGATION AND CHALLENGES

Not surprisingly, immediately following the FCC's Open Internet Order, numerous major broadband trade associations, such as CTIA and NCTA, as well as various smaller cable providers represented through the American Cable Association, filed lawsuits against the FCC. Numerous other interest groups and organizations, such as Netflix, the Open Technology Institute, and Vimeo, have filed in support of the FCC and Internet regulation.

Oral arguments were heard in December 2015 in the D.C. Circuit, in which various challenges were brought against the FCC regarding the legality of the present restrictions.<sup>11</sup> Broadband providers asserted that ISPs do not fundamentally act as common carriers in terms of the services provided.<sup>12</sup> This definition will largely depend on the degree to which the court determines individual ISPs exert control over the private communication methods of Internet users, the fundamental element of a common carrier being control over communication capabilities. As the FCC's

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11 Brent Kendall, Appeals Court to Hear Arguments over FCC's Net-Neutrality Rules, Wall Street Journal (Aug. 3, 2015), <http://www.wsj.com/articles/appeals-court-to-hear-arguments-over-fccs-net-neutrality-rules-1438640757>.

12 Jonathan Keim, Recapping the Net Neutrality Oral Arguments, National Review (Dec. 6, 2015), <http://www.nationalreview.com/bench-memos/428102/recapping-net-neutrality-oral-arguments-jonathan-keim>.

regulations are strongly dependent on the classification of ISPs as common carriers, this argument could seriously undermine the foundations of net neutrality laws. The court was additionally concerned with procedural objections to the net neutrality order, questioning whether the FCC gave sufficient notice to ISPs and broadband providers regarding new policies.

Despite past losses to ISPs such as Verizon, the FCC is “confident the FCC’s new Open Internet rules will be upheld by the courts, ensuring enforceable protections for consumers and innovators online.”<sup>13</sup> Additionally, the court denied the petitioners’ request for a stay of the FCC Open Internet rules, meaning the regulations remain effective, pending a court ruling. Despite this refusal, the court’s grant of an expedited briefing process demonstrates the particular magnitude of the issue, necessitating quicker resolution for constitutional treatment of data and the Internet.

### III. PURSUIT OF THE OPEN INTERNET

As mentioned earlier, the ultimate pursuit of net neutrality legislation is the preservation of an “open Internet.” The report issued by the FCC in March of 2015 instituting the new regulations begins, “In the Matter of Protecting and Promoting the Open Internet.”<sup>14</sup> Even the

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13 Brooks Boliek, FCC Net Neutrality Rules Hit with New Telecom Lawsuits, Politico (April 14, 2015), <http://www.politico.com/story/2015/04/net-neutrality-lawsuit-ctia-116957>.

14 *Report and Order on Remand, Declaratory Ruling, and Order*, 3 U.S.C. § 290, 126 (2015).

President's November 2014 message on net neutrality urged the FCC to "implement the strongest possible rules to protect net neutrality." He asserted that the "open Internet is essential to the American economy, and increasingly to our very way of life."<sup>15</sup> The question which reasonably follows from this understanding is whether Internet regulation can realistically achieve an open Internet. The FCC defines an open Internet as meaning "consumers can go where they want, when they want."<sup>16</sup> While relatively congruous to the general understanding, this definition fails to identify the present problem. In addition, there is a lack of evidence to justify internet regulations because prior to net neutrality, the vast majority of Internet consumers did not find themselves restricted in their travels over the Web. Furthermore, this definition omits any allusion to a tangible standard by which Internet openness might be evaluated.

Therefore, for the purposes of this analysis, an open internet shall be defined as *where policies such as equal treatment of data and free web standards allow those on the Internet to easily communicate and conduct business without interference from third parties*. This definition not only identifies the source of present grievances (interference from a third party in the form of ISPs), but specifies several elements necessary for the existence of an open Internet (equal treatment of data and free web standards). Conversely,

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15 Net Neutrality: President Obama's Plan for a Free and Open Internet, White House, <https://www.whitehouse.gov/net-neutrality>.

16 Open Internet: Maintaining a Fast, Fair, and Open Internet, FCC, <https://www.fcc.gov/openinternet>.

a closed Internet may be defined as *where established third parties favor certain uses, and may institute restricted access to specific content or platforms, the degradation of particular services, and the explicit filtering of content*. Based upon this definition, it is clear that Comcast’s control of content violates the standard of an open Internet. The FCC argues that regulation will correct this problem and result in an open Internet.

#### IV. HISTORICAL CRITIQUE OF THE FCC

Despite claims by ISPs that the broad and subjective regulations pose a greater threat to Internet openness than before, it is unclear whether this is indeed the case. Under Title II, the conduct of ISPs is required to be “just and reasonable.”<sup>17</sup> As argued by Eve Nguyen with the Michigan Telecommunications and Technology Law Review, this wording grants the FCC seemingly insubstantial boundaries on what constitutes unreasonable behavior.<sup>18</sup> The FCC Open Internet Order itself states the following:

The unjust and unreasonable standards in sections 201 and 202 afford the Commission significant discretion to distinguish acceptable behavior from behavior that violates the Act. Indeed, the very terms “unjust” and “unreasonable” are broad, inviting the Commission to undertake the kind

<sup>17</sup> Telecommunications Act of 1996, 7 U.S.C. § 706, 153 et seq. (1996).

<sup>18</sup> Eve Nguyen, The Danger of “Just & Reasonable” Net Neutrality Rules: The Potential Toothlessness of the FCC’s New Rules, Michigan Telecommunications and Technology Law Review (April 15, 2015), <http://mttlr.org/2015/04/15/the-danger-of-just-reasonable-net-neutrality-rules-the-potential-toothlessness-of-the-fccs-new-rules>.

of line-drawing that is necessary to differentiate just and reasonable behavior on the one hand from unjust and unreasonable behavior on the other.<sup>19</sup>

The D.C. Circuit has supported this interpretation, stating “the Commission gives the standards meaning by defining practices that run afoul of carriers’ obligations, either by rulemaking or by case-by-case adjudication.”<sup>20</sup> Nguyen notes that the effectiveness of the new rules therefore ultimately resides in the FCC’s willingness to define and to declare specific practices illegal.

Historically, the FCC has proven more than willing to aggressively harness such grants of power as exemplified in its implementation of the Fairness Doctrine of 1949 (though the Fairness Doctrine existed in practice through the Federal Radio Commission as early as 1929).<sup>21</sup> The Fairness Doctrine required holders of broadcast licenses to present issues of public importance in manners which were, in the Commission’s view, “honest, equitable and balanced,” thus greatly curbing freedom of speech. Broadcasters who proffered political viewpoints or opinions were required to provide equal coverage of opposing viewpoints or risk

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19 *Report and Order on Remand, Declaratory Ruling, and Order*, 3 U.S.C. § 290, 126 (2015).

20 *Personal Communications Industry Association’s Broadband Personal Communications Services Alliance’s Petition for Forbearance et al.*, WT Docket No. 98-100, GN Docket No. 94-33, MSD-92-14, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, para. 15 (1998).

21 Donald P. Mullally, *The Fairness Doctrine: Benefits and Costs*, THE PUBLIC OPINION QUARTERLY, Winter, 1969-1970, at 577.

losing their license.<sup>22</sup> Issues of “public importance” were not limited to political campaigns; the FCC just as often required broadcasters to publicize events related to specific communities, such as the construction of a new school facility.<sup>23</sup> Further, the FCC was tasked with content-based regulation of TV and radio. This approach was upheld by the Supreme Court, which stated that the FCC could restrain radio and TV broadcasters on a content-neutral basis. However, the FCC was then allowed the discretion of deciding what constituted content-neutral. Through this open interpretation, the FCC was able to fine or even revoke the licenses of radio and TV stations it felt were not “fair and balanced” in their political views, resulting in many broadcasters avoiding politics entirely.<sup>24</sup>

Requiring fair coverage was ultimately viewed by many as a stifling of freedom of speech. Public outcry was one of the preeminent factors which led to the elimination of the Fairness Doctrine in 1987 by the FCC itself, following doubts as to its legitimacy and effectiveness. Requiring broadcasters to avoid expressing opinions was found to result in complete avoidance of discussing issues of public importance for fear of incurring penalties under the Fairness Doctrine.<sup>25</sup> Yet despite the loss of the Fairness Doctrine, the FCC never truly lost the desire to enforce fairness of

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22 *Id.* at 579.

23 Kathleen Anne Ruane, CONG. RESEARCH SERV., R40009, FAIRNESS DOCTRINE: HISTORY AND CONSTITUTIONAL ISSUES (2011).

24 *Id.* at 3.

25 *Id.* at 6.

coverage in the media. In April of 2013, the FCC initiated a study titled the “Multi-Market Study of Critical Information Needs,” tasked with conducting a media census to determine media coverage relative to eight “Critical Information Needs” (CINs), which included politics, the environment, and economic opportunity.<sup>26</sup> As stated by acting Chairwoman Mignon Clyburn, “The research design we announce today is an important next step in understanding what those needs are...and what barriers exist in our media ecologies in providing and accessing this information.”<sup>27</sup>

The study raised the concern that the FCC sought a back door to the Fairness Doctrine’s reinstatement. Eve Reed, a Federal Court Litigator challenging net neutrality standards, argued “the questions that the researchers will be asking suggest a renewed interest on the part of the FCC in the inner workings of station and newspaper editorial decision-making.”<sup>28</sup> FCC Commissioner Ajit Pai argued against the study as well, stating, “I continue to believe that this study should be halted [because] the government should neither enter the newsroom nor define what ‘critical information’ journalists should be covering.”<sup>29</sup> Due to

26 Eve K. Reed, FCC Releases Research Design for “Critical Information Needs” Study, Wiley (May 27, 2013), <http://www.wileyonmedia.com/2013/05/fcc-releases-research-design-for-critical-information-needs-study-to-be-used-in-quadrennial-review-and-market-barrier-section-257-proceedings>.

27 FCC, Statement by Acting Chairwoman Mignon Clyburn on the Release by the Office of Comm. Bus. Opportunities of the Res. Design for the Multi-Market Study, (2013), <https://www.fcc.gov/document/acting-chairwoman-clyburn-ocbos-critical-needs-research-design>.

28 Reed, *supra* note 26.

29 John Eggerton, FCC’s Pai: Critical Needs Study Should Still Be Halted, Business of Television: Broadcasting and Cable (2014), <http://www>.

doubts from litigators such as Reed and Pai, coupled with backlash from media outlets protesting what were deemed inappropriate questions of journalists and the potential for government content regulation, the Multi-Market Study was suspended by the FCC in February of 2014 and to date has not been resumed.<sup>30</sup>

The historical initiative demonstrated by the FCC to self-define the scope of their mandate, revealed through their interpretation of “content neutral” and the extensive application of the Fairness Doctrine, lends credence to concerns regarding the FCC’s newfound jurisdiction over the Internet realm. If allowed to once again define the scope of its mandate, the FCC is quite capable of amending the applications of “just and reasonable” to again pursue an agenda of subjective fairness. As the courts have upheld the right of the FCC to establish their own boundaries, it is likely the near future will yield answers regarding the FCC’s willingness to broadly define their scope of power.

If the FCC cannot be trusted to regulate the Internet responsibly, then what alternatives remain? Opponents of net neutrality argue in favor of the free market. The restriction of content access by certain ISPs will only result in other providers entering the market without similar restrictions. ISPs which follow Comcast’s example and fail to disclose to consumers restrictions of content access should certainly

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[broadcastingcable.com/news/washington/fccs-pai-critical-needs-study-should-still-be-halted/129316](http://broadcastingcable.com/news/washington/fccs-pai-critical-needs-study-should-still-be-halted/129316).

30 FCC, Statement on Critical Information Needs Study, (2014) [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-325852A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-325852A1.pdf).

be held accountable by consumers who ultimately control the market. If consumers become dissatisfied with service barriers, then market competition will give rise to better, preferred services. Regulation with price controls will ultimately serve only to entrench current providers, establishing a form of monopoly in which new entrants cannot hope to compete with established providers who can afford to charge lower premiums for identical service. However, free market proponents advocate that control over the Internet by numerous ISPs, and therefore by consumers themselves, is preferable to a five member commission with a history of curtailing freedom of speech through mentalities such as the Fairness Doctrine and content-neutrality.

## VI. THE FCC: JUSTIFYING INTERNET NEUTRALITY

Despite vocal opposition from ISPs and the two Republican members of the FCC, there has also been significant public support in favor of net neutrality regulations. John Oliver explained in detail net neutrality and its significance on the “Last Week Tonight” show. As a result, the comment section of the FCC website crashed as thousands of comments poured in supporting the regulation of ISPs.<sup>31</sup> The Sunlight Foundation, a nonpartisan, nonprofit organization advocating for open government, processed 800,959 comments and determined that “less than 1 percent

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31 Soraya Nadia McDonald, John Oliver’s Net Neutrality Rant May Have Caused FCC Site Crash, Washington Post (June 4, 2014) <http://www.washingtonpost.com/news/morning-mix/wp/2014/06/04/john-olivers-net-neutrality-rant-may-have-caused-fcc-site-crash>.

of comments were clearly opposed to net neutrality,” demonstrating overwhelming public support.<sup>32</sup>

Efforts for revision of the regulatory system restraining ISP actions are not confined to the FCC; there have also been motions within Congress to pass bills which would achieve similar effects. Representative Doris Matsui and Senator Patrick Leahy, both Democrats, proposed the Online Competition and Consumer Choice Act, a bicameral act of legislature which, if passed, would require the FCC to implement policies preventing paid prioritization and a two-tiered Internet system.<sup>33</sup> These efforts reflect a genuine desire to prevent telecom giants such as Comcast from solidifying their control into absolute monopolies.

Further, despite claims by ISPs that they are well within their rights to define the services they provide, such restrictions are a violation of what is now considered, by many, a human right. In 2011, the United Nations released a report declaring Internet access a human right, proclaiming any restrictions therein a violation of international law. The report “underscores the unique and transformative nature of the Internet not only to enable individuals to exercise their right to freedom of speech, but also a range of other human rights. Moreover, it promotes the progress of society as a

32 Andrew Pendleton and Bob Lannon, What can we learn from 800,000 public comments on the FCC’s net neutrality plan?, Sunlight Foundation (Sept. 9, 2014), <http://sunlightfoundation.com/blog/2014/09/02/what-can-we-learn-from-800000-public-comments-on-the-fccs-net-neutrality-plan/#change>.

33 Press Release, Doris Matsui, U.S. Representative, Senator Leahy and Congresswoman Matsui Reintroduce Landmark Net Neutrality Legislation (Jan. 7, 2015), <https://matsui.house.gov/press-releases/senator-leahy-and-congresswoman-matsui-reintroduce-landmark-net-neutrality-legislation>.

whole.”<sup>34</sup> In the absence of FCC regulations, ISPs remain free to take advantage of consumers for a service modern digital society has rendered essential.

Comcast blocking BitTorrent is only one of many examples of ISP actions restraining users. In 2011 Verizon blocked GoogleWallet as well as PayPal’s phone fingerprinting authorization app because it was developing its own payment option in cooperation with AT&T and T-Mobile. Verizon also blocked tethering, which turns phones into mobile hotspots, and charged extra for the service phones are built to perform. Although this was halted by the FCC in 2012, AT&T continues to restrict this ability to specific plans. For a time, AT&T also blocked video chatting apps because of their high data usage. Various ISPs, such as Comcast, throttled specific websites and content to harm their competition or decrease bandwidth usage.<sup>35</sup> While the FCC cannot prevent data caps for phones, FCC Chairman Tom Wheeler’s stance on net neutrality would prevent these abuses by ISPs.

Additionally, many argue that policies akin to the Fairness Doctrine are actually beneficial and necessary, especially in a society where the media is pervasively split down partisan lines. Under Reagan, the Fairness Doctrine was attacked as a violation of freedom of speech due to

<sup>34</sup> *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/HRC/17/27 (May 16, 2011).

<sup>35</sup> Jose Pagliery, 4 Bad Things Internet Companies Can’t do Anymore -- If the FCC Gets Its Way, CNN: Money, (Oct 29, 2015), <http://money.cnn.com/2015/02/05/technology/fcc-net-neutrality-cases/> (29 October 2015).

the degree of editorial control it afforded government. In fact, the U.S. Supreme Court ruled to the contrary in *Red Lion Broadcasting Co. v. FCC* of 1969, when it upheld the Fairness Doctrine. The Court held:

A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a...frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others.... It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.<sup>36</sup>

By this stance, it is reasonable for the government to require opposing views to be expressed, granted all opinions are allowed. Therefore, there are not only numerous practical arguments urging Internet neutrality, but also various constitutional and legal precedents justifying FCC regulatory control of ISPs.

## VII. CONCLUSIONS

Given the history of the FCC and governments' tendency towards the accumulation of regulatory authority, the FCC may pose a significantly greater 'clear and present danger' with regards to the establishment of a closed Internet as compared to an unregulated system of internet provision.

Keep in mind that, according to the definition of an open

36 *Red Lion Broad. Co. v. FCC* 395 U.S. 367, 388-389 (1969).

Internet adopted earlier, the government is just as capable of third party interference as ISPs. In fact, the FCC wields even greater potential control over Internet content to the extent that an individual ISP can only control the content it provides to its consumers; it can control neither content provided by competing ISPs, nor how many consumers opt to subscribe to its content. Where ISPs exercise only a limited sphere of Internet influence, the FCC maintains an absolute sphere of influence through the power to mandate ISPs to either provide or restrict any content it sees fit. ISP control is further diversified among the various ISPs, resulting in incongruous controls over content, if any. The FCC centralizes all control into five commissioners' hands, allowing for greater potential universal restrictions of Internet access.

On the other hand, the absence of regulation foreshadows the denial of what has come to be regarded as a basic human right essential for success and engagement within society. A rejection of FCC authority would result in the continuation of inconsistent and biased data policies which not only harm the individual, but also establish the right of service providers to arbitrarily limit their services and thereby force consumers to pay extra to receive quality service, practices which fundamentally undermine pursuits of social justice. Especially in light of other common carriers deemed essential enough to merit government regulation, such as public transportation and telephone services, there is both significant legal precedent and practical support for

regulation of the Internet. Notably, historical attacks on the FCC itself are merely arguments against the enforcing entity rather than objections to the policy, leaving open the option for alternative regulatory bodies to monitor the Internet. Without the ability to broadly reinterpret their mandate, the FCC as an enforcing body could prove effective at maintaining a level and legal playing field for all ISPs.

Regardless of which side of the issue one falls, the ongoing Internet Neutrality debate is one which holds enormous ramifications not only for ISPs, but also for every individual utilizing the Internet. Though current litigation regarding the Open Internet Order may not represent the final stages of the developing regulation of the Internet, it signifies our struggle for the pursuit of freedom of speech inherent in American society since our founding.

