Source: https://www.theverge.com/2024/10/31/24284435/fcc-net-neutrality-isp-sixth-circuit-oral-arguments

Net neutrality is a controversial topic, and it’s one where a great number of those arguing about it have an understanding of it only from face value. Net neutrality was enacted under President Obama, and the public was told its purpose was to “reclassify internet service providers as common carriers, barring them from selectively throttling web traffic.” Net neutrality was later repealed under President Trump, but then reinstated later under President Biden.

Their current status is “on hold” after the Sixth Circuit Court of Appeals ruled as such while the case is heard, and the conversation now revolves around whether the FCC has enforcement authority, given that two Supreme Court rulings have changed the way regulators can utilize it. The first was West Virginia v EPA in 2022, where the SC invoked the “major questions” doctrine, asserting that federal agencies require congressional authorization to make decisions with wide reaching economic and political significance. The other was Loper Bright Enterprises v Raimondo in 2024, where the decision effectively ended the Chevron deference, which was a legal principle that directed courts to defer to a federal agency’s interpretation of ambiguous statues it administers. This essentially limited the FCC’s interpretative authority, meaning the FCC would require congressional mandates to implement net neutrality rules.

On October 31, attorneys for the FCC and the broadband industry presented arguments to a panel of appeals court judges. Those arguing for the broadband industry like Jeffrey Wall took the approach of claiming the government wants to use net neutrality to put a strangle hold on the industry, governing it through over-reaching regulation towards the goal of an authoritarian level of censorship and restricting the flow of information and to what audiences that information reaches. On the other hand, the FCC’s Jacob Lewis took a different approach, trying to argue that “Congress intended to let the agency define what counts as a Title II telecommunications service..”

I believe the conversations being had by the public on this matter are very interesting. In my research, I’ve seen one side arguing that by Trump wanting to end net neutrality, it means that he wants to gain control over the flow of information on the internet and use that control to censor his opposition. They seem to believe this because of how net neutrality was sold to the public, which as I’ve already stated, was to “reclassify internet service providers as common carriers, barring them from selectively throttling web traffic.”

On the surface, it does sound pretty good, right? No one wants their access to be throttled, and many already get frustrated when cell phone carriers throttle their speeds after surpassing their data caps for the month. However, when considering the deeper implications of net neutrality, I feel I have to side with Trump on the matter.

You see, when the government gives itself regulatory powers over an industry, that doesn’t mean the government is protecting the rights of the people. More often than not, regulation is an impedance on the rights of the people. In this situation, let’s examine some potential outcomes which could take place as the result of the regulation that comes with net neutrality.

First, under net neutrality, ISPs are required to treat “lawful content” equally. But what is “lawful content” and who makes that determination? What happens if the government decided to define “lawful content” in a highly restrictive way? What if they determined that dissenting viewpoints or opposition content were unlawful? Through a simple definition, which would be a policy decision requiring \*no legislation\*, the FCC could completely upend the 1st Amendment and use net neutrality to silence political opposition online. Since we’ve just had an election where President Trump caused a massive upset with a sweeping red wave win, analysts from both sides of the aisle are frantically trying to figure out how it happened, with one of the prevailing theories I’ve seen being that the right wing built a news and information industry online and spread their messaging with far greater efficacy as a result than was possible for their legacy media counterparts. Those who are upset with the election results may see this as a point in favor of net neutrality, as its absence potentially led to a result which they don’t like. However, I would point out to them that if the shoe were on the other foot, would they still be so upset? Would they still believe net neutrality to be a positive? I doubt it.

Another outcome of net neutrality should be one that anyone in this class could predict, given everything we’ve learned so far. Our government has proven time and time again that where it sees an opportunity to gain power, it will do so. With net neutrality in place, new regulations could be crafted requiring ISPs to report certain types of data usage or traffic patterns while using language of “ensuring compliance” with net neutrality rules to keep the public blind to its new-found surveillance tool. This would allow the government to monitor the online activities of citizens much in the same way they routed internet traffic through a secret room at an AT&T building in California years ago.

But why should the government stop at silencing the opposition and monitoring citizens’ activities? Why not use net neutrality as a basis for granting exemptions to certain ISPs or allow (force) them to prioritize government-affiliated websites, news sources, and other propagandist content? And to pour salt into the wound, they could mandate other information sources be throttled or put behind a paywall.

Essentially, my argument is that while net neutrality sounds good on its surface, it’s riddled with opportunity for abuse, and especially in my last point, the entire principle of net neutrality could easily be undermined through regulations and mandates while appearing to the public to be upheld on paper. This is why I am not in favor of net neutrality and believe its implementation needs to be stopped at all costs to ensure the future of free speech online, otherwise we may never have a free and open internet again.

* “Power tends to corrupt, and absolute power corrupts absolutely.” – John Emerich Edward Dalberg-Acton, aka Lord Acton
* “That government is best which governs least.” – Henry David Thoreau
* "The freedom to express varying and often opposing ideas is essential to variety of conceptions of democracy. If democracy is viewed as essentially a process – a way in which collective decisions for a society are made – free expression is crucial to the openness of the process and to such characteristics as elections, representation of interests, and the like.” – Jonathan D. Casper
* “We are not afraid to entrust the American people with unpleasant facts, foreign ideas, alien philosophies, and competitive values. For a nation that is afraid to let its people judge the truth and falsehood in an open market is a nation that is afraid of its people.” – John F. Kennedy