

US appeals court strikes down “net neutrality” rules

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The Washington, DC Circuit federal Court of Appeals ruled 2-to-1 Tuesday that the Federal Communications Commission’s (FCC) 2010 Open Internet (OI) regulations were based on a wrong legal argument and are void.

The ruling represents a significant blow against “net neutrality.” Net neutrality principles forbid discrimination by Internet Service Providers (ISP) against their clients. Essentially, net neutrality asserts that the Internet is an example of “common carriage,” a legal concept which protects the right of the public to access basic services and infrastructure. The common carriage concept, which has existed for centuries, was developed to prevent companies that operate railroads, ferries, airplanes, telecommunications networks and other universally necessary infrastructures from giving privileged access to certain types of customers.

The regulations, declared legally invalid by Tuesday’s ruling, required Internet service providers to disclose information about “congestion management” practices on their systems. Centrally, the OI regulations prohibited the selective blocking or slowing of legal Internet content by the Internet providers, ensuring equal access to broadband for clients, and prohibited “unreasonable” discrimination against customers.

The majority opinion in the case, authored by US Circuit Judge David Tatel, argued that the FCC cannot use statutes regulating telecommunications to force broadband providers to abide by net neutrality. Tatel wrote that the FCC does have authority to regulate broadband providers, but that the current legal rationale for regulation was invalid.

“Given that the commission has chosen to classify broadband providers in a manner that exempts them from treatment as common carriers, the Communications Act expressly prohibits the

commission from nonetheless regulating them as such. Because the commission has failed to establish that the anti-discrimination and anti-blocking rules do not impose per se common carrier obligations, we vacate those portions of the Open Internet Order,” Tatel stated in the opinion.

Verizon initially launched its legal challenge to the FCC’s Open Internet regulations in 2011, claiming that the net neutrality rules violated its First Amendment rights.

In a 2010 report, the FCC wrote, under the heading “Broadband Providers Have the Incentive and Ability to Limit Internet Openness,” that “broadband providers may have economic incentives to block or otherwise disadvantage specific edge providers [deliverers of Internet content] or classes of edge providers, for example by controlling the transmission of network traffic over a broadband connection, including the price and quality of access to end users.”

Craig Aaron, CEO of the middle class watch-dog site *Free Press*, said of the ruling that “these companies can now block and discriminate against their customers’ communications at will.”

According to Aaron, the main ISPs will take advantage of the ruling to “establish fast lanes for the few giant companies that can afford to pay exorbitant tolls and reserve the slow lanes for everyone else.”

The corporations have in mind a “tiered” Internet that enables them to charge premiums for high-speed service while slowing down the web sites of business competitors and political adversaries, and forcing lower-income customers to accept slow, retrograde service. As the *Wall Street Journal* wrote in an article, “Court Tosses Rules of Road for Internet”: “For consumers, the ruling could usher in an era of tiered Internet service, in which they get some content at full speed

while other websites appear slower because their owners chose not to pay up.”

The 2010 regulations were themselves far from adequate, as the WSWS pointed out at the time. The WSWS wrote, “As an integral part of a political system geared towards the defense of big business and the financial elite, the FCC is no more capable of defending Internet freedom than Congress itself. There are moreover very real dangers to increased government control of the Internet. While the commercial maneuvers of competing technological sectors most certainly can have a detrimental effect on the end user, a more pernicious threat is represented in the form of government monitoring and censorship.”

The dismantling of existing net neutrality regulations—inadequate as they are themselves—will enable corporations such as Verizon to consolidate a stranglehold over the information superhighway. The potential for the transformation of the Internet into an instrument of totalitarian rule exists. The major communications companies are engaging in increasingly close collaborations with the military-intelligence bureaucracy. This summer, classified files leaked by Edward Snowden showed that Microsoft systematically transfers data created by its customers to the NSA for analysis.

Rather than showing the need for more stringent regulations within the existing social framework of capitalism, as liberal and middle class net neutrality activists argue, the implacable hostility of the ISPs to net neutrality only shows that private ownership of the Internet by profit-seeking corporations is incompatible with the existence of the Internet as a free and democratic platform. The communications infrastructure which sustains the Internet must be expropriated by the working class and socialized to provide truly equal access to the web.



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