

# / CONSTANT VIGILANCE / CONSTANT VIGILANCE /

According to the ACLU, Net Neutrality means "applying well-established "common carrier" rules to the internet in order to **preserve its freedom and openness.**"

Common carriage prohibits the owner of a network that holds itself out to all-comers from discriminating against information by halting, slowing, or otherwise tampering with the transfer of any data (except for legitimate network management purposes such as easing congestion or blocking spam)."



**The ideas underlying net neutrality have been present in telecommunications practice and regulation since we first using technology to communicate.**

Telegrams and the phone network have been considered common carriers under U.S. law since the Mann–Elkins Act of 1910; they were and are considered public utilities and specifically forbidden to give preferential treatment.

The Communications Act of 1934 created the Federal Communications Commission (FCC) to regulate the industry and ensure fair pricing + access. In the late 1980s the Internet became legally available for commercial use, but public access was limited. so the Internet was viewed more as a commercial service than a domestic and societal system.

Internet Service Providers **are only allowed to transfer the information sent over the internet, rather than analyze, control or otherwise influence it.**

Being business services, cable modem Internet access and high-speed data links, which make up the Internet's core, had always since their creation been categorized under U.S. law as an information service, unlike telephone services, and not as a telecommunications service, and thus had not been subject to common carrier regulations, as upheld in National Cable & Telecommunications Association v. Brand X Internet Services. However, by the late 1990s and early 2000s, the Internet started to become common in households and wider society.

## It is 2018.

We can all agree that the internet is a societal system; many job applications are online, often the easiest way to reach social services is online, and most education has an online component.

**Things change.**

**Laws should too.**

Verizon's lawyers have specifically stated otherwise in a court of law. During oral arguments in Verizon v. FCC in 2013, judges asked whether the phone giant would favor some preferred services, content or sites over others if the court overruled the agency's existing open internet rules. Verizon counsel Helgi Walker had this to say:

"I'm authorized to state from my client today that but for these rules we would be exploring those types of arrangements."

*ISPs are consistently trying to reassure the public that they would not have any interest in throttling access, censoring content or otherwise infringing on consumer rights*

### **what would motivate ISPs to throttle**

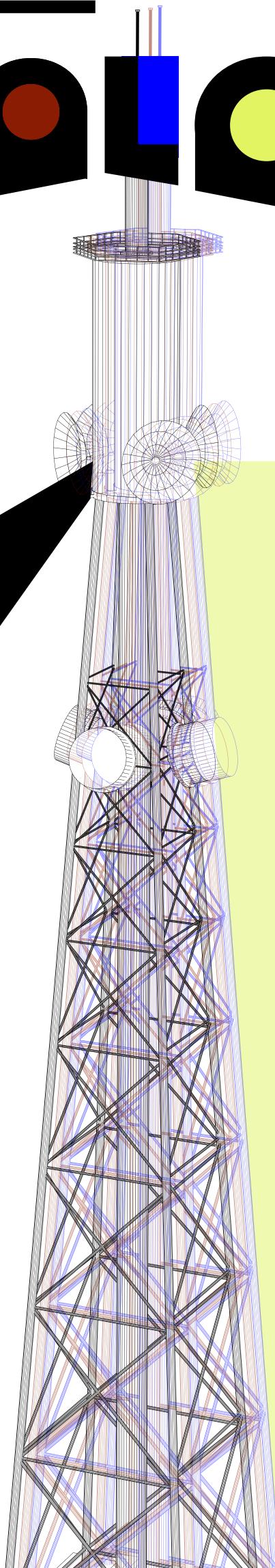
- + disagreeing with a political statement
- + advertising for a competing service
- + skew news about topics that affect their business
- + reduce access to services that threaten partnerships

A 2012 report from the Body of European Regulators for Electronic Communications found that violations of Net Neutrality affected at least one in five users in Europe. The report found that blocked or slowed connections to services like VOIP, peer-to-peer technologies, gaming applications and email were commonplace.

### SOURCES

<https://www.aclu.org/issues/free-speech/internet-speech/what-net-neutrality>

TECHNOLOGY



WILL MAKE

OR

BREAK US

JENNY HOLTZER



UNGLITCH

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# INFORMATION IS POWER



*but like all power, there are those who want to keep it for themselves.*

**Aaron Swartz**



*art + tech activist co-op*

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# THREATS TO DEMOCRACY

## 2005

In 2005, the Canadian telecom **Telus** was involved in a bitter labor dispute and blocked its internet subscribers from accessing a website run by the union that was on strike against Telus.

## 2007

During an August 2007 performance by the rock group Pearl Jam in Chicago, **AT&T** censored words from lead singer Eddie Vedder's performance. The ISP was responsible for streaming the concert and shut off the sound as Vedder sang, "George Bush, leave this world alone" etc. An AT&T spokesperson claimed that the words were censored to prevent youth visiting the website from being exposed to "excessive profanity." AT&T then blamed the censorship on an external Website contractor hired to screen the performance, calling it a mistake and pledging to restore the unedited version of Vedder's appearance online.

## 2007

**Comcast** used deep packet inspection to block file transfers from customers using popular peer-to-peer networks such as BitTorrent, eDonkey, and Gnutella. Comcast's actions, which were confirmed in nationwide congestion tests conducted by the Associated Press, were unrelated to network congestion. Comcast blocked applications that are often used to trade pirated content but also much content.

## 2007

**Verizon Wireless** cut off access to a text-messaging program by the pro-abortion-rights group NARAL that the group used to send messages to its supporters. Verizon stated it would not service programs from any group "that seeks to promote an agenda or distribute content that, in its discretion, may be seen as controversial or unsavory to any of our users." Verizon Wireless reversed its censorship of NARAL only after widespread public outrage.

## 2011

In 2011, **MetroPCS** announced plans to block streaming video over its 4G network from all sources except YouTube. MetroPCS then threw its weight behind Verizon's court challenge against the FCC's 2010 open internet ruling, hoping that rejection of the agency's authority would allow the company to continue its anti-consumer practices.

## 2011

Several small ISPs (including **Cavalier, Cogent, Frontier, Fuse, DirecPC, RCN and Wide Open West**) were redirecting search queries via the vendor Paxfire. Paxfire would intercept a person's search request at Bing and Yahoo and redirect it to another page. By skipping over the search service's results, the participating ISPs would collect referral fees for delivering users to select websites.

## 2011

**AT&T** announced that it would disable the FaceTime video-calling app on its customers' iPhones unless they subscribed to a more expensive text-and-voice plan. AT&T had one goal in mind: separating customers from more of their money by blocking alternatives to AT&T's own products.

## 2019

**AT&T, Sprint and Verizon** blocked Google Wallet, a mobile payment system that competed with a similar service called Isis, which all three companies had a stake in developing.

# S.B. 822

## CALIFORNIA

The legislation in California is important because California is a huge market and can't be ignored by providers. If they have to comply with one state's regulations, they will likely standardize their systems. It has been criticized for being "gutted" and voted on without public comment; it fails to prohibit ISPs from charging unreasonable "access fees" or congesting networks.

# H.B. 4155

## OREGON

A public body may not contract with a broadband Internet access service provider that, at any time on or after the operative date specified in section 3 of this 2018 Act:

(a) engages in paid prioritization (b) Blocks lawful content, applications or services or nonharmful devices; (c) Impairs or degrades lawful Internet traffic for the purpose of discriminating against or favoring certain Internet content, applications or services or the use of nonharmful devices ....

...Notwithstanding subsection (3) of this section, a public body may contract with a broadband Internet access service provider that:

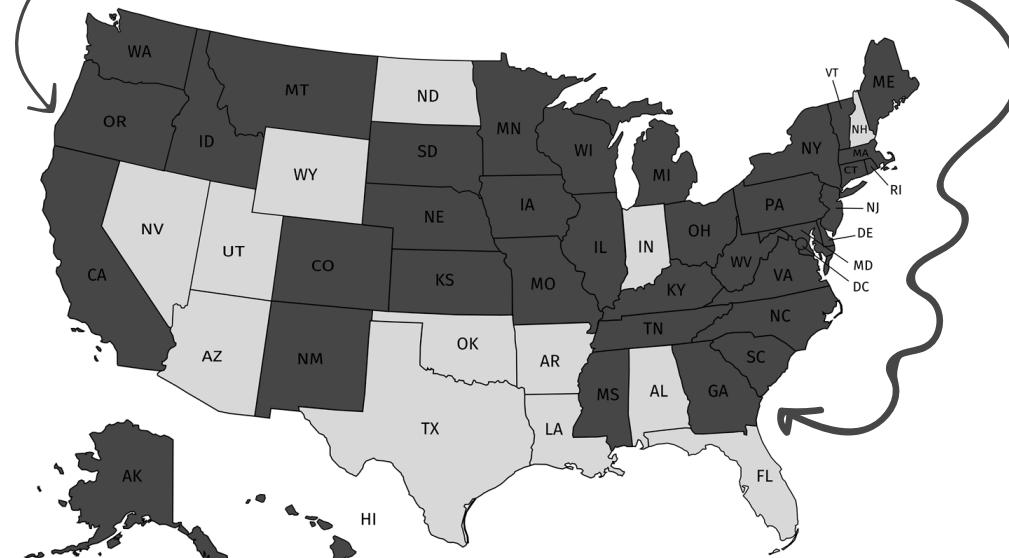
(a) Is the sole provider of fixed broadband Internet access service to the geographic location subject to the contract;

# H. B. 2282

## WASHINGTON

the first law where violations by all ISPs are enforceable, under Washington's Consumer Protection Act. The FCC prohibited state laws from contradicting the decision so it's very likely ISPs will sue Washington state over this new law to find out if the FCC does have the power to preempt the move.

## STATES FIGHTING LOCALLY



"THE FCC MIGHT BE WAITING FOR SOMEONE ELSE TO TAKE AN ACTION, LIKE A BROADBAND PROVIDER WHO MIGHT WANT TO CHALLENGE WASHINGTON STATE,"

MARC MARTIN, A TELECOM LAWYER FOR PERKINS COIE

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**When the  
most  
important  
decisions  
are made  
in secret, we lose  
our  
ability  
to check  
the powers  
that control.**

**laura poitras**



art + tech activist co-op