

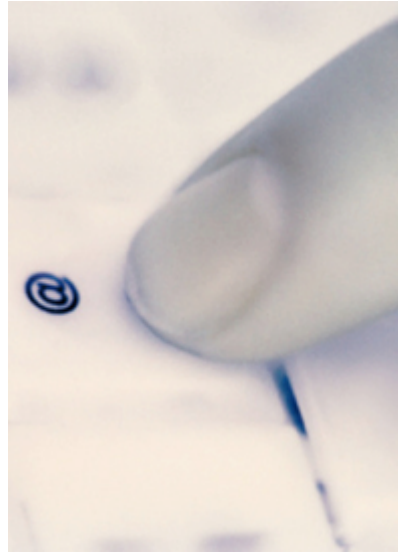


## Court Strikes Down FCC's "Net Neutrality"

In an important action defending freedom of speech on the Internet, the U.S. Court of Appeals has struck down an attempt by the Federal Communications Commission (FCC) to impose its will on the nation's largest Internet provider.

As reported in [an article](#) for the online edition of the *Washington Post*:

Comcast on Tuesday won its federal lawsuit against the Federal Communications Commission, in a ruling that undermines the agency's ability to regulate Internet service providers just as it unrolls a sweeping broadband agenda.



The decision also sparks pressing questions on how the agency will respond, with public interest groups advocating that the FCC attempt to move those services into a regulatory regime clearly under the agency's control.

The U.S. Court of Appeals for the District [sic] of Columbia, in a 3-0 decision, ruled that the FCC lacked the authority to require Comcast, the nation's biggest broadband services provider, to treat all Internet traffic equally on its network.

That decision — based on a 2008 ruling under former FCC Chairman Kevin Martin — addresses Comcast's argument that the agency didn't follow proper procedures and that it "failed to justify exercising jurisdiction" when it ruled Comcast violated broadband principles by blocking or slowing a peer-sharing Web site, Bit Torrent.

What was at stake in the case was the ability of a corporation to control a vital aspect of its own business. The FCC has been positioning to regulate Internet content and the Comcast case is a significant milestone in the struggle over the authority of the federal agency in this matter.

If the Comcast case were limited to the actual issues at hand, the simplest answer for those individuals or companies that do not agree with Comcast's policies is to use another Internet provider. The question is whether a federal agency may simply assume for itself — without even the authorization of specific legislation — to force Internet corporations to adhere to its definition of "neutrality."

The Electronic Frontier Foundation (EFF) has been warning for months about the dangers posed by the FCC's net neutrality policy. Thus Corynne McSherry wrote last October in "[Is Net Neutrality a FCC Trojan Horse?](#)":

But Congress has never given the FCC any authority to regulate the Internet for the purpose of ensuring net neutrality. In place of explicit congressional authority, we expect the FCC will rely on its "ancillary jurisdiction," a position that amounts to "we can regulate the Internet however we like without waiting for Congress to act." (See, e.g., the FCC's brief to a court earlier this year). That's a power grab that would leave the Internet subject to the regulatory whims of the



Written by [James Heiser](#) on April 6, 2010

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FCC long after Chairman Genachowski leaves his post.

Hence the danger. If “ancillary jurisdiction” is enough for net neutrality regulations (something we might like) today, it could just as easily be invoked tomorrow for any other Internet regulation that the FCC dreams up (including things we won’t like). For example, it doesn’t take much imagination to envision a future FCC “Internet Decency Statement.” After all, outgoing FCC Chairman Martin was a crusader against “indecentcy” on the airwaves and it was the FCC that punished Pacifica radio for playing George Carlin’s “seven dirty words” monologue, something you can easily find on the Internet. And it’s also too easy to imagine an FCC “Internet Lawful Use Policy,” created at the behest of the same entertainment lobby that has long been pressing the FCC to impose DRM on TV and radio, with ISPs required or encouraged to filter or otherwise monitor their users to ensure compliance.

The threat posed by a federal agency overseeing the content of the Internet is far worse than that which is posed by a lack of “net neutrality.” Although “net neutrality” may have the same sort of superficial appeal that is enjoyed by the “fairness doctrine,” the reality is that such federal regulation is rarely “neutral” or “fair.” The Internet may presently be far from the utopia desired by some, but the ruling in Comcast case provides an opportunity for more reasonable solutions rather than reliance on the regulatory whims of one agency.



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