



Corporate-Backed Net Neutrality ‘Day of Action’ Endorses Gov’t Power to Suppress Free Speech

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Today, a group of companies and nonprofit groups are holding a “Day of Action” in defense of Internet regulations issued by the Federal Communications Commission in 2015. Backed by big companies such as Amazon, Netflix, Facebook, and Google—and advocacy groups such as ACLU and Free Press—this “Day of Action” is aimed at rallying opposition to the FCC’s proposal to stop treating Internet service providers like public utilities under Title II of the Communications Act of 1934.

Although we at CEI share common ground with many of these companies and nonprofit groups on various regulatory and civil liberties matters, we will not be participating in the Day of Action. The FCC’s current regime denies Internet providers—and, in turn, their current and potential customers—the freedom to experiment with novel approaches to pricing and services. For example, as I explained in a recent CEI report that I co-authored with my colleague Jessica Melugin, the FCC’s Title II rules threaten sponsored data offerings, which let wireless subscribers enjoy certain apps on an unlimited basis, without any data caps or overage fees.

That’s why we were pleased when FCC Chairman Ajit Pai announced in April 2017 that the agency would begin the process of undoing its 2015 rules by launching the Restoring Internet Freedom proceeding. This process, which is still underway at the FCC, will hopefully conclude with the agency reversing its decision to treat Internet providers as common carriers. Instead, the agency should uphold the policy of the United States as outlined by Congress in the 1996 Telecommunications Act: to “preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”

It’s worth contrasting what today’s “Day of Action” is all about—*defending* federal regulation of the Internet—with the Internet blackout day that occurred on January 18, 2012, to protest the Stop Online Piracy Act (SOPA). Many have drawn parallels between these two days of focused advocacy, but the issue at stake in 2012 is very different than the current battle over Title II. CEI and other opponents of SOPA argued that the bill, in targeting websites dedicated to infringing copyrights and trademarks, was crafted such that it could have conceivably ensnared websites that expeditiously processed notice-and-takedown requests and thus were abiding by the Digital Millennium Copyright Act’s safe harbor provisions. That is, although SOPA sought to target a

legitimate problem—“rogue” websites—it created an unjustifiable risk that law-abiding websites would also suffer harsh consequences.

The SOPA protests thus highlighted the threat of suppression of free speech on the Internet by the U.S. government, given the powers and duties it would have conferred on the Department of Justice and federal courts. The Title II “Day of Action,” by contrast, seeks to defend a regulatory regime that ultimately facilitates the suppression of free speech by a federal agency: the FCC. As CEI explained in an amicus brief we filed in 2012 along with the Cato Institute, the Free State Foundation, and TechFreedom, the FCC’s rules in effect at the time unlawfully compelled Internet providers to transmit any and all speech—with the exception of several categories of speech that the agency deemed acceptable for providers to decline to carry. Although the U.S. Court of Appeals for the D.C. Circuit later vacated those rules on unrelated grounds, the FCC’s 2015 rules are actually more rigid than its previous rules, and thus pose an even greater threat to the First Amendment. For more on this matter, check out Judge Brett Kavanaugh’s discussion of the First Amendment in his recent dissent from the D.C. Circuit's denial of rehearing *en banc* in *U.S. Telecom Association v. FCC*.