

The origin of radio communication arose free and independent of government regulation in the United States. All persons had freedom to access the airwaves as government supervision was seen as a confluence of power and an assault on free speech.

With the proliferation of radio, interference began to plague the airwaves. Two parties could not broadcast on the same frequency at the same time and location without causing interference making it impossible to communicate.

Subsequently, Congress realized that guidelines were necessary for the prevention of interference and legislated spectrum and future technology with broad language and the source of all federal law, the constitution of the United States (1).

Wherefrom the airwaves are bound by Federal jurisdiction and all laws both ambiguous and specific in language must withstand abridging freedom of speech and balance public convenience, interest, or necessity(2).

In so doing, the FRC guaranteed the right to free speech when legislating the airwaves as public convenience, interest, or necessity requires. The Radio Act of 1927, Section 29 reads:

Nothing in this Act shall be understood or construed to give the licensing authority the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the licensing authority which shall interfere with the right of free speech by means of radio communications. [emphasis added]

Section 9 amended by Section 5 in March 1928 provides equality for people of all zones in spectrum allocation, frequency, and station power with the following:

'It is hereby declared that the people of all the zones established by section 82 (2) of this chapter are entitled to equality of radio broadcasting service, both of transmission and of reception, and in order to provide said equality the licensing authority shall as nearly as possible make and maintain an equal allocation of broadcasting licenses, of bands of frequency or wave lengths, of periods of time for operation, and of station power, to each of said zones when and in so far as there are applications therefor; and shall make a fair and equitable allocation of licenses, wave lengths, time for operation, and station power to each of the States, the District of Columbia, the Territories and possessions of the United States within each zone, according to population' [emphasis added] (3).

With the inclusion of public convenience, interest, or necessity and fair and equitable allocation of licenses, wave lengths, ... and station power Government regulation was tolerated, and the FRC arrived at a series of comparative standards it thought fair and elastic from which it would issue applicants exclusive right to frequency for best serving the public interest (4).

Since the number of channels is limited and the number of persons desiring to broadcast is far greater than can be accommodated, the commission must determine from among the applicants before it which of them will, if licensed, best serve the public (5).

But by implementing the public interest standard, the Commission would breach the licensee's right to free speech whereby any authority derived in part from Government is in some respect an exercise by Government itself, and the Courts would maintain that the fulfillment of the public interest requires the free exercise of the licensees judgement and discharged the Commission's responsibility to license by public interest (6).

Herein lies the great inequality whereby the broad provisions originating with radio - the "right of free speech" and "fair and equitable allocation of licenses, wave lengths, ... and station power" have been repealed and we are left with laws that arbitrarily and contrary to public convenience, interest, or necessity forego a

monopoly of spectrum that privilege the rights of licensed users over the great majority.

It is understood and agreed that regardless the vehicle [pipe, wire, radio, cable, satellite, or optic] communication by bandwidth is governed with laws imposed by Congress. It is also understood that Congress shall not make a law breaching the right to free speech.

While Government authority is tolerated by licensed regulation that emphasize First Amendment rights to licensed users, its authority is conversely absent when exercising First Amendment rights for the great majority by making and maintaining fair, efficient, and equitable allocation of licenses, frequency, and station power.

As Justice Douglas concluded in *Superior Films v Department of Education* the First Amendment draws no distinction between the various methods of communicating ideas.

While the right to use the airwaves is conditioned upon Federal regulation "fair and equitable allocation of licenses, wave lengths, ... and station power" is paramount in accommodating free speech for the great majority. In this capacity free speech is significantly constrained for the great majority when a licensee's right is privileged by monopoly, station power, or superior frequency.

Similarly free speech and public interest, convenience, or necessity is breached when ISPs discriminate or prioritize internet access.

Insofar as broadband serves an instrument for communication and as "an instrument for ... purveying commodities" - ISPs have to accept and transmit for all persons on an equal basis without discrimination (7).

Respectively, Internet Service Providers (ISPs) on the last mile Internet connection must provide access to networks owned and operated by others on an equal basis without discrimination as public interest, convenience, or necessity requires.

Mark Taylor explains that fair and equitable access to the Internet should be evidenced by mandating networks to log and publish interconnection data on a city-by-city basis, [with] a view into the level of use (and the congestion, if it is happening) or interconnections to the rest of the Internet. That level of transparency would provide subscribers with useful information on how robustly their ISP is connected to all content and applications available on the Internet (8).

Likewise, ISPs should transport packets neutrally and without prioritization to eliminate preferential treatment and should not discriminate in transmitting lawful network traffic over a consumer's broadband connection (9).

If commercially reasonable practices or paid prioritization are extended to some it gives them an unfair advantage over others. If commercially reasonable practices or paid prioritization is considered, what is the test or standard established by Congress, by which prioritization is to be controlled from breaching public convenience, interest, or necessity or the right to free speech (10)?

If current regulation allows preferential treatment or discrimination, then present legislation is inadequate and any ambiguity should not be solved to embrace operations that breach free speech by inhibiting access to the public airwaves by the great majority and are not convenient to public interest. Where there is ... specific provision relating to a particular subject, that provision must govern (11).

It is now well established that Federal jurisdiction over communication by bandwidth implicates First Amendment rights and requires public interest, convenience, or necessity. And no regulation or condition shall be promulgated or fixed by the licensing authority which shall interfere with the right of free speech by means of radio communications (2). Wherefrom the commissions regulatory responsibility involves making and maintaining fair, efficient, and equitable allocation of

licenses, frequency, and station power and mandating that ISPs on the last mile provide fair, efficient, and equitable access to networks owned and operated by others without discrimination.

As The Commission on Freedom of the Press wrote in 1947, "Civilized society is a working system of ideas. It lives and changes by the consumption of ideas. Therefore, it must make sure that as many as possible of the ideas which its members have are available for its examination."

Net Neutrality:

To Best protect and promote the open Internet, the FCC should ban any and all prioritization between Internet Service Providers (ISP) and content providers on the last mile Internet connection and mandate networks to log and publish interconnection data, agreements, and fees. The FCC should also remove restrictions that prevent cities and municipalities from creating Wi-Fi networks and broadband service. If the FCC cannot find authority to the aforementioned, it should seek a public Redress and adopt a statement of policy addressing the following:

- Does fair and equitable allocation of license, frequency, and station power benefit free speech for the vast majority or public convenience, interest, or necessity?
- Is Spectrum a public utility?
- Would a common carriage policy for broadband benefit the right to free speech for the great majority by airwave?
- Would public convenience, interest, or necessity benefit from a common carriage policy for broadband?
- When a licensee's right is privileged by monopoly, station power, or superior frequency does it disenfranchise free speech by the great majority?
- When a licensee's right is privileged by monopoly, station power, or superior frequency does it disenfranchise public convenience, interest, or necessity?
- If the right to the use of the airwaves is conditioned upon ... license because of the characteristics peculiar to telecommunication, is government abandoning licensing whenever those peculiar characteristics no longer exist (12)?
- Does spectrum monopoly exist?
- Are licensed users privileged with huge tracts of the public's airwaves free of charge? (13)
- When licensed users exclusively control huge tracts of the public's airwaves does it disenfranchise the great majority's right to access the airwaves, free speech, or public convenience, interest, or necessity?
- Are licensed users utilizing the huge tracts of the public's airwaves efficiently and effectively?
- If licensed users are not utilizing the airwaves efficiently and effectively, what recourse does the FCC have?
- Is spectrum monopoly inimical to the free speech rights of a Democratic society?
- Is spectrum monopoly inimical to public interest, convenience, or necessity?
- Does broadband optimize spectrum efficiency by transporting multiple signals and traffic types? For example VOIP replaces the outdated circuit-switch communication with packet-switch communication while transporting additional signals and traffic types.
- If broadband facilitates spectrum efficiency, will spectrum optimization be made available to the public by access, allocation, speed, and/or price?
- Is broadband an instrument for the communication?
- Can spectrum monopolies facilitate broadband congestion?
- Do spectrum monopolies constrain broadband access, speed, or price?
- Is broadband congestion in the United States similar to other parts of the world?
- Are broadband speeds, price, and deployment in the United States comparable to other countries?
- Are last mile ISPs providing fair, efficient, and transparent services to consumers?
- Would the public benefit from fair, efficient, and transparent broadband services?
- Would the public benefit from networks publishing interconnection data logs?
- What commodities do ISPs own and define them?
- Do the commodities belonging to ISPs perform neutral, mechanical, or logistical

services like pipes, wires, or highways?

- If ISPs provide services that are not neutral, mechanical, or logistical, define those services according to the duties performed?
- Can consumers opt out of non ancillary services?
- What is commercially reasonable?
- What is the test, standard, or qualification in determining commercially reasonableness?
- Should colocation caching be mandatory for ISPs?
- Is broadband essential to the U.S. economy?
- Is broadband essential to citizenship?
- Can cities and municipalities create Wi-Fi networks?
- Can broadband access be duplicated on U-NII spectrum or elsewhere without licensing?
- If so, at what rate and by what measure is the FCC setting aside U-NII spectrum for ISP and public use?
- What are the benefits of licensed versus unlicensed spectrum?
- Would the public benefit from greater unlicensed spectrum?

1. Frank Kahn. Documents of American Broadcasting. Appleton Century Crofts; Second (First American Printing) edition (1973), p 3
2. Radio Act of 1927, Public No. 632 - 69th Congress
3. Section 5 of the Act of March 28, 1928, 45 Stat. 373 (47 USCA ? 89)
4. Robert W. McChesney, Telecommunications, Mass Media, and Democracy: the Battle for the Control of U.S. Broadcasting, 1928-1935. New York: Oxford University Press, 1993. p 18.
5. Second FRC Ann Rep, 1928, pp. 169-70
6. 25 Fed. Reg. 7291 (1960) Report and Statement of Policy re: Commission en banc Programming Inquiry; Ass'n v. Douds, 339 U.S. 382, 401, 70 S.Ct. 674, 685, 94 L.Ed. 925 (1950); see, e.g., Public Utilities Comm'n v. Pollak, 343 U.S. 451, 462 n. 8, 72 S.Ct. 813, 820, 96 L.Ed. 1068 (1952);
7. Third FRC Ann Rep, 1929.
8. Mark Taylor. "When the Middl eman and ISP are Aligned." Beyond Bandwidth. Level 3 Communications Blog, 20 May 2014. Web. 24 June 2014.
<<http://blog.level3.com/global-connectivity/when-the-middl-eman-and-isp-are-aligned/>>
9. FCC Order: In the Matter of: Preserving the Open Internet; Broadband Industry Practices (rel. Dec. 23, 2010) FCC 10-201; GN Docket No. 09-191; WC Docket No. 07-52
10. The Great Lakes Statement, In the Matter of the Application of Great Lakes Broadcasting Co., FRC Docket No. 4900, 3 FRC Ann. Rep. 32 (1929); U.S. v Grimaud, 220 U.S. 506, 519, 31 S. Ct. 480, 55 L. Ed. 563; Union Bridge Co. v U.S., 204 U.S. 364, 27 S. Ct. 367, 51 L. Ed 523; Field v. Clark, 143 U.S. 649, 692, 12 S. Ct. 495, 36. L. Ed. 294.
11. US. v Standard Brewery, 251 U.S. 210, 220, 40 St. Ct. 139, 64 L. Ed. 229; U.S. v Jin Fuey Moy, 241 U.S. 394, 401, 36 S. Ct. 658, 60 L. Ed. 1061, Ann Cas. 1917D, 854; Endlich, Interpretation of Statutes, par 216; Swiss National Insurance Co. v. Miller, 53 App. D.C. 173, 289 F. 571, 576; Washington v. Miller, 235 U.S. 422, 428, 35 S. Ct. 119, 59 L. Ed. 295; U.S. v Nix, 189 U.S. 199, 205, 23 S. Ct. 495, 47 L. Ed. 775; Townsend v Little, 109 U.S. 504, 519, 3 S. Ct. 357, 27 L. Ed. 1012
12. Report and Statement of Policy re: Commission en banc Programming Inquiry, 25 Fed. Reg. 7291, July 29, 1960; See: U-NII Order, wireless mesh networks, wireless internet service providers.
13. National Broadband Plan, Chapter 1: Introduction, p3.