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NewsClips

October 5, 2018

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When the Trump administration decided last year to dump net neutrality rules designed to treat all data equally, the states revolted. Thirty legislatures introduced bills to prohibit internet service providers from hindering access to certain sites and charging fees for faster speeds.

LightReading
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Four states, including California, passed laws, and six governors issued executive orders declaring they would not do business with internet providers that violated net neutrality. "People were [upset](#) across the country," said Ernesto Falcon, legislative counsel for the Electronic Frontier Foundation, which supports net neutrality. The Trump administration decided to [fight back](#) Sunday and challenge California's law, the broadest in the nation. It would restore Obama-era rules governing internet access, which barred blocking, throttling and paid prioritization and established a process for filing complaints.

New York Times
[Op-ed: Introducing
the Internet Bill of
Rights](#)

Bloomberg

The broadband industry followed up with a suit of its own Wednesday to block California's law. But the bigger legal fight is being waged

[The Hollywood Empire Strikes Back Against Netflix](#)

TVNewsCheck
[Fox, MLB, TBS Turn Up The Tech](#)

New York Times
[A Breach That Ripples Far Beyond Facebook](#)

Zap2It
[Cable Top 25 for Week Ending September 30](#)

Philadelphia Inquirer
[Voters reported being blocked from Pa. election site — and from obtaining absentee ballots — as early as 2016](#)

before the U.S. District of Columbia Circuit Court of Appeals. Public interest groups, companies and 32 states, including California, have challenged the Federal Communications Commission's decision last year to end regulation of internet providers. A ruling is expected sometime next year.

The Trump administration's lawsuit asks that California's new law, which is supposed to take effect in January, be put on hold until the D.C. Circuit court rules. "It is a smart ask," Falcon said. "And I don't think it is a bad idea." If the D.C. appeals court decides the FCC acted arbitrarily and capriciously, net neutrality could return nationally. The court will also decide whether states can issue regulations of their own.

The Justice Department and industry groups representing broadband and wireless companies contend that California's [new law](#) violates the Constitution by usurping federal law. "Under the Constitution, states do not regulate interstate commerce — the federal government does," Atty. Gen. Jeff Sessions said when the Justice Department announced its suit Sunday. Jonathan Spalter, president and CEO of USTelecom, an industry trade group, said Congress, not multiple states, should set the rules for the internet. "The internet is an interstate service, and states are expressly preempted from regulating broadband," Spalter said.

Supporters of California's law counter that the federal government has exited the business of regulating internet service providers. When there are no regulations, states may impose their own, they say. "Under their police powers, states do have authority to adopt rules, even if related to interstate commerce," said Stanford Law professor Barbara van Schewick, who supports the California law.

A 1978 law passed by Congress that deregulated the airline industry and prohibited states from passing their own regulations was upheld by the courts. But supporters of California's law say the net neutrality case is different. At issue is an action of a federal agency, not a law passed by Congress. The D.C. Circuit Court of Appeals has scheduled a hearing in February on the states' challenge. "What is happening in California is mostly about whether California is allowed to enforce its law before the D.C. Circuit rules," Van Schewick said.

Three other states passed more limited net neutrality rules after the FCC revoked the federal regulations, and none of them has been sued. California's law is substantially broader, though. "The California net neutrality law is the first law that actually brings back all the net neutrality protections that the FCC voted to eliminate," Van Schewick said.

Santa Clara University Law professor Catherine Sandoval, who also favors the California law, said the 10th Amendment of the Constitution gives states police powers to protect and promote the safety of their people. "Almost every sector of California is dependent on an open internet," she said. She and others cited the [case](#) of a Santa Clara County fire protection district whose internet access was hindered in July while fighting the massive Mendocino Complex fire.

The fire department said its data connection had been "throttled" down to 1/200 or less of previous speeds, even though the agency believed it had paid for an unlimited data plan. A Verizon Wireless

representative told the department it had exceeded its data limit and suggested it pay more than twice as much for a better plan. The fire department said the throttling impeded its ability to respond to a crisis and provide essential emergency service. Its complaint was submitted as an addendum to the states' challenge before the D.C. Circuit.

But Verizon said the situation had nothing to do with net neutrality and blamed a "customer support mistake." A spokesperson said Santa Clara had purchased a government contract plan for a high-speed wireless data allotment at a set monthly cost. Users under that plan get an unlimited amount of data but speeds are reduced when they exceed their allotment until the next billing cycle, she said. She said Verizon should have removed the speed restriction when the fire department called because the department is an emergency responder.

Falcon, however, said the Santa Clara situation provided "a very powerful argument" for net neutrality. Without regulation of the practices of these companies, states may have "a serious public safety issue." "The companies will have a difficult fight to explain why an economic burden outweighs public safety," Falcon said. UC Berkeley Law School Dean Erwin Chemerinsky said some courts have found that federal agency actions cannot be overridden by states "but generally preemption is about what Congress intended," not agencies. "The federal government is arguing that the absence of a law preempts state law, and that is an unusual argument," he said.

In its lawsuit Wednesday, the Broadband Assn., an industry group, said California was trying to nullify federal law in violation of the Constitution. "California's attempts to revive — and indeed expand — a repealed federal regulatory regime are plainly preempted," the lawsuit said. The industry said it would be impossible to comply with "a patchwork of inconsistent regulations." — *Los Angeles Times*

After game-show host Alex Trebek made Pennsylvania's only gubernatorial debate [all about himself](#), Clout wondered how he became moderator in the first place. [Gene Barr, president of the Pennsylvania Chamber of Commerce and Industry](#), said his organization tries to book a debate host who can both pose interesting questions and draw a live TV audience. The chamber certainly reached half its goal. "That depends on how you define 'interesting,'" joked Barr.

Barr said his staff brainstormed some names and landed on Trebek, the host of Jeopardy! "At first, to be honest, I wasn't enamored with the idea," he said. "I thought it would be hokey and cheesy, and everything would have to be in the form of a question." Instead of hokey and cheesy, we got preachy. "I think it started out fine," Barr said. "I think as he tried to dig deeper on issues, some of his questioning turned to advocacy."

A source tells us that [Independence USA](#), a political action committee funded by former New York City Mayor and potential 2020 candidate Michael Bloomberg, has booked \$1.2 million in the Philadelphia market for TV ads supporting Democratic U.S. House candidates. Time was reserved for the last two weeks of the midterm campaign. Chrissy Houlahan, running in Chester County's Sixth District, appears to be a beneficiary. The PAC's website [features two commercials](#) backing Houlahan on gun control and women's health

issues. A spokesperson declined to detail how the buy will be allocated. Clout wouldn't be surprised if Democrats Scott Wallace or Andy Kim get a share. — *Philadelphia Daily News*



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