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Net neutrality is about to be imposed on broadband service providers by the Federal Communications Commission.

The FCC has scheduled a vote in two weeks on whether companies like Comcast and Verizon should be treated as "common carriers." The Federal Communications Commission Act has heretofore reserved that category to regulate telephone companies, requiring they not discriminate in their charges based on the type of customer using the phone lines, or the content of what was being communicated.

The classic model of a "common carrier" is a railroad, under the 19th century Interstate Commerce Commission, whose mandate was to prevent preferences given to some shippers of goods over others. Monopolistic railroads were charging different prices based on the shippers' availability of alternatives, and the perishability of the commodity being shipped. After the ICC regulation, a pound of diamonds could not cost more to ship than a pound of coal, and a boxcar of bananas no more than a boxcar of wheat.

In the realm of Internet communication, the "shippers" are companies like Netflix, email service providers and music sharing services. Where an Internet service provider can, it might like to charge more for access to higher-value communications; and the higher-value content provider might

Pennlive.com **Was Jon Stewart's influence on the news boon or bane: Red/Blue America**	want to ask for faster service and offer to pay for it. It's not so much a question of a monopolistic railroad extorting higher prices to ship food that would otherwise rot as it is a mutually advantageous arrangement between a streaming video provider and a broadband company, whereby films could be made available without the aggravation of buffering delays we've all experienced when the action stops at some critical moment. If the differing treatment of customers provides a better product for the ultimate consumers, different prices are not inherently evil. Where differing treatment, however, is directed at eliminating a rival, it is economically harmful. This distinction has been applied for decades under the Sherman Antitrust Act. In the Microsoft antitrust case in the 1990s, the Justice Department alleged that Microsoft was using its Windows operating-system monopoly to exclude competitors of Microsoft's own search engine, which came preloaded on Windows. Microsoft defended itself by saying its search engine ran better than any rival's, as it was more smoothly integrated into its operating system than any outsider's could be. A federal court sorted out the competing positions, and Microsoft accepted a consent decree forcing it to unbundle its browser from its operating system. The availability of antitrust laws calls into question whether we need the FCC to expand its jurisdiction in order to deal with claims of discrimination by broadband companies. When should government intervene to prohibit higher prices for higher-quality service? The answer is not an economic one: it is a political one, under the rubric of "fairness." There is something offensive about a railroad driving up the price to farmers whose produce has to move by rail or spoil. In the case of broadband, it is the perceived unfairness that those with more money will get faster Internet service, a departure from the open access, egalitarian ethos of the Internet since its founding. Antitrust laws might be adequate to patrol against broadband companies entrenching their own monopoly position, but they do not reach these questions of political fairness. That's what the FCC is now proposing to do – but I urge caution. Concepts of monopolization have a fairly solid basis in economic science, and courts have incorporated this science over the past half century. Fairness, by contrast, especially as seen applied by new agencies like the Consumer Financial Protection Bureau, can become quite unhinged from its original purpose in a law. For instance, the CFPB, and the Justice Department, have attacked differing access to credit that banks provide for mortgages or car loans, based on a borrower's neighborhood. Whether this is good public policy, it is unquestionably an expansion by the CFPB (in only its fourth year) beyond the concerns that led to its founding after the financial crash of 2008. Similarly, the danger of net neutrality is not so much the first application that the FCC will make of it, but what further interpretations the FCC might pursue to prevent "unfair" access to the Internet. The FCC used to apply a "fairness doctrine" to political commentary on radio and television, banning too much of one view; net neutrality could be the means of their doing so

	again, regarding access to the Internet. Government regulation, however narrow at the start, seldom stays within its originally intended purpose. – Tom Campbell, *Orange County Register* Op-Ed

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