

ORAL ARGUMENT SCHEDULED FOR DECEMBER 4, 2015

No. 15-1063 (and consolidated cases)

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES TELECOM ASSOCIATION, ET AL.,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION AND

UNITED STATES OF AMERICA,

Respondents.

On Petitions for Review of an Order of the
Federal Communications Commission

**BRIEF OF AMICI CURIAE AUTOMATTIC INC., A MEDIUM
CORPORATION, REDDIT, INC., SQUARESPACE, INC.,
TWITTER, INC., AND YELP INC. IN SUPPORT OF
RESPONDENTS FEDERAL COMMUNICATIONS
COMMISSION AND UNITED STATES OF AMERICA**

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September 21, 2015

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

The undersigned attorney of record, in accordance with D.C. Cir. R.

28(a)(1), hereby certifies as follows:

A. Parties and Amici

Parties and intervenors appearing before the Federal Communications Commission (“FCC”) and in this Court are listed in the Joint Brief for Petitioners United States Telecom Association et al. and in the Brief for Respondents. To date, the following parties have filed notices or motions for leave to participate as amici:

- Harold Furchtgott-Roth
- Washington Legal Foundation
- Consumers Union
- Competitive Enterprise Institute
- American Library Association
- Richard Bennett
- Association of College and Research Libraries
- Business Roundtable
- Association of Research Libraries
- Center for Boundless Innovation in Technology
- Officers of State Library Agencies
- Chamber of Commerce of the United States of America
- Open Internet Civil Rights Coalition
- Georgetown Center for Business and Public Policy
- Electronic Frontier Foundation
- International Center for Law and Economics and Affiliated Scholars
- American Civil Liberties Union
- William J. Kirsch
- Computer & Communications Industry Association
- Mobile Future
- Mozilla
- Multicultural Media, Telecom and Internet Council

- Engine Advocacy
- National Association of Manufacturers
- Phoenix Center for Advanced Legal and Economic Public Policy Studies
- Dwolla, Inc.
- Telecommunications Industry Association
- Our Film Festival, Inc.
- Christopher Seung-gil Yoo
- Foursquare Labs, Inc.
- General Assembly Space, Inc.
- Github, Inc.
- Imgur, Inc.
- Keen Labs, Inc.
- Mapbox, Inc.
- Shapeways, Inc.
- Media Alliance
- Broadband Institute of California
- Broadband Regulatory Clinic
- Tim Wu
- Edward J. Markey
- Anna Eshoo
- Professors of Administrative Law
- Sascha Meinrath
- Zephyr Teachout
- Internet Users

B. Ruling Under Review

The ruling under review is the FCC's Report and Order on Remand, Declaratory Ruling and Order, *Protecting and Promoting the Open Internet*, 30 FCC Rcd 5601 (2015).

C. Related Cases

This case has been consolidated with Case Nos. 15-1078, 15-1086, 15-1090, 15-1091, 15-1092, 15-1095, 15-1099, 15-1117, 15-1128, 15-1151, and 15-1164.

There are no other related cases.

**STATEMENT REGARDING CONSENT TO FILE
AND SEPARATE BRIEFING**

All parties and intervenors have consented to, or do not oppose, the filing of this brief.

Pursuant to Fed. R. App. P. 29(c), amici curiae state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae or its counsel made a monetary contribution to the preparation or submission of this brief.

Pursuant to D.C. Circuit Rule 29(d), amici curiae certify that the significant constitutional issues this brief addresses are relevant to the disposition of this case and differ significantly from the issues that other amici curiae have sought leave to address. The efforts of amici as makers of communications platforms that allow users to create and share Internet content, discussed more fully herein, give amici a uniquely valuable perspective and interest that merits this Court's attention, specifically with respect to the importance of the Open Internet Rules to people around the world who rely on open Internet communications platforms to create, disseminate, and access user-generated content.

DATED: September 21, 2015

/s/ Joseph C. Gratz

Joseph C. Gratz

DURIE TANGRI LLP

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, and Rule 26.1 of this Court, Automattic Inc. (“Automattic”), A Medium Corporation (“Medium”), Reddit, Inc. (“Reddit”), Squarespace, Inc. (“Squarespace”), Twitter, Inc. (“Twitter”), and Yelp Inc. (“Yelp”) respectfully submit this Corporate Disclosure Statement:

Automattic is a company that provides web publishing and development platforms and services, including WordPress.com, and contributes to the WordPress open source software project. Automattic is incorporated in Delaware. Automattic certifies that as of this date it does not have a parent corporation or publicly-held corporation owning 10% or more of its stock.

Medium is a company that provides the Medium.com web publishing platform, which allows people to compose, read, and comment on stories they create and share. Medium is incorporated in Delaware. Medium certifies that as of this date it have a parent corporation or publicly-held corporation owning 10% or more of its stock.

Reddit is a company that operates the Reddit.com platform, an online community where users can start, read, join, and rate discussions on topics they submit and choose. Reddit is incorporated in Delaware. Reddit certifies that as of this date it does not have a parent corporation or publicly-held corporation owning 10% or more of its stock.

Squarespace is a company that provides web publishing and development platforms, including Squarespace.com, for creating high quality websites easily

and affordably. Squarespace is incorporated in Delaware. Squarespace certifies that as of this date it does not have a parent corporation or publicly-held corporation owning 10% or more of its stock.

Twitter is a company that provides platforms that give users the power to create and share ideas, information, and rich media content with each other, instantly. Twitter is incorporated in Delaware. Twitter certifies that as of this date it does not have a parent corporation or publicly-held corporation owning 10% or more of its stock.

Yelp is a company that provides platforms and services, including Yelp.com, which allows consumers to share information, reviews, photographs, and ratings of businesses. Yelp is incorporated in Delaware. Yelp certifies that as of this date it does not have a parent corporation or publicly-held corporation owning 10% or more of its stock.

DATED: September 21, 2015

/s/ Joseph C. Gratz

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562 U.S. 443 (2011)2

GLOSSARY

FCC

Federal Communications Commission

Open Internet Rules

Report and Order on Remand, Declaratory Ruling, and Order, Protecting and Promoting the Open Internet, 30 FCC Rcd 5601 (2015)

INTEREST OF AMICI CURIAE

Amici curiae are makers of platforms and tools for communicating over the Internet: Automattic (the creator of WordPress.com, and contributor to the open source WordPress project), Medium, Reddit, Squarespace, Twitter, and Yelp. The number of people who use amici's platforms is staggering. Together, they have more than a billion users. In a single month, Yelp attracts over 100 million unique visitors, Reddit receives over 200 million unique visitors, over 300 million active users access Twitter, and WordPress.com blogs receive over 5 billion page views.

Amici's platforms let users create, disseminate, and access content they choose. WordPress lets every Internet user publish a blog that any other Internet user can read—almost instantly and entirely free. Newer platforms, like Medium, offer new ways for people to share and access content provided by other users. Companies like Squarespace are setting new standards for online publishing, by empowering users to build beautiful websites, without computer programming knowledge or expensive graphic design software. Reddit and Yelp are places where users can say and read what they want—about online subjects, such as the “memes” that spread virally through Reddit,¹ and offline subjects, such as restaurants and stores that Yelpers so reliably review. Twitter has built tools that employ Internet technology to let anyone with a connection send a message—or

¹ The term “meme” was coined “to explain the way cultural information spreads.” Casey Chan, *What's In a Meme*, Gizmodo (June 8, 2013), <http://gizmodo.com/what-exactly-is-a-meme-512058258>. Internet memes are typically humorous images and videos spread by users through platforms, including those amici provide. *See id.*

Tweet—by smartphone, laptop, or tablet, to a single Twitter user or make a post visible to the world.

Amici operate some of the most popular publishing and communication platforms on the Internet, and see firsthand the power of an open and neutral Internet to promote free speech—especially for those Internet users who have few other options to make their voices heard. Amici respectfully request that this Court uphold the Open Internet Rules to preserve Internet users' ability to communicate and collaborate openly with each other.

INTRODUCTION

Billions of people use the Internet each day to share information and ideas from around the world. In this country, people pay telecommunications providers for access to the Internet, and *access* is exactly what they get. For *content*, they turn to their own creative efforts or those of others through platforms—including those amici provide. Throughout the history of the Internet—at least in this country—access providers have transmitted content that end users request without interposing their own preferences or priorities. As a result, people have never in history been this extensively and powerfully directly connected to each other and the world. That has allowed people to improve their lives and those of countless others.

All of that is at risk if broadband providers get to block or limit access to those voices they decide to disfavor—and that is exactly what petitioners are fighting for the right to do. That risk must not be taken lightly. The fact that broadband providers have fought so persistently to control the speech of others only confirms that is what they will do if given the power. They should not be permitted to do so. Mindful of the billions of people who benefit from the Internet's openness, amici respectfully ask this Court to keep the Internet open to us all. If the Internet does not remain equally open to all connected users, individuals and the public will lose access to critically important information—and to each other.

ARGUMENT

I. AMICI'S OPEN PLATFORMS FACILITATE CRITICALLY IMPORTANT FREE SPEECH BY INTERNET USERS

Our country has enshrined in our Constitution the very benefits that the open Internet promotes. As the Supreme Court has explained, “[t]he First Amendment reflects ‘a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.’” *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (citations omitted). But for the First Amendment to protect open and robust debate, there must be space where it can happen. What the *agora*, town hall, and city plaza have been, the Internet is today. It is the place where people come together to share information, discuss important issues, and build community.

As the Court has recognized, the Internet uniquely enhances the speech of its users in ways traditional media do not. In *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997), the Court explained how the Internet democratizes access to speech by allowing every user to speak to—and be heard by—every other connected user:

Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer.

Id. at 870 (citation omitted). If anything, the speech-enhancing power of the Internet is even greater today than it was when the *Reno* opinion issued in 1997. Since then, user access and platform innovation have only increased through the

development and proliferation of new technologies, including smartphones. The public has never had a forum for speech that is as capable and accessible as the Internet is today. That is why the FCC has required broadband providers to preserve Internet users' ability to speak to and hear each other.

To understand what is at risk if the Open Internet Rules are overturned, it is critical to understand what the open Internet allows people to achieve. The Internet directly serves the values the First Amendment enshrines by providing open spaces, and space for open platforms for citizens to participate in the political discourse that sustains our democracy. While few would have predicted the role the Internet has played, the dynamic nature of Internet communication has facilitated discourse between citizens and with public officials and agencies through blogs, posts, messages, and forums. For example, Reddit hosted the modern equivalent of a fireside chat during President Obama's "Ask Me Anything" interview, which drew more than 10,000 direct public comments to the President in one hour.² Shown below is a picture of the President, speaking to 850,000 people via the Internet:

² See *POTUS IAMA Stats*, Reddit (Aug. 31, 2012), <http://www.redditblog.com/2012/08/potus-iama-stats.html>.



<http://i.imgur.com/oz0a7.jpg>.

Here is a representative exchange between the President and Internet users:

Question: How are you going help small businesses in 2013 and 2014? and what if any bills are you going to implement for small businesses, in 2013, and 2014?

Answer: We've really focused on this since I came into office - 18 tax cuts for small business, easier funding from the SBA. Going forward, I want to keep taxes low for the 98 percent of small businesses that have \$250,000 or less in income, make it easier for small business to access financing, and expand their opportunities to export. And we will be implementing the Jobs Act bill that I signed that will make it easier for startups to access crowd-funding and reduce their tax burden at the start-up stage.

...

Question: . . . Is Internet Freedom an issue you'd push to add to the Democratic Party's 2012 platform?

Answer: Internet freedom is something I know you all care passionately about; I do too. We will fight hard to make sure that the internet remains the open forum for everybody - from those who are expressing an idea to those to want to start a business. And although there will be occasional disagreements on the details of various legislative proposals, I won't stray from that principle . . .³

³ *I am Barack Obama, President of the United States*, Reddit (Aug. 29, 2012), https://www.reddit.com/comments/z1c9z/i_am_barack_obama_president_of_the_united_states/.

That is just one example of direct communication between citizens and elected officials that happens over the open Internet. Twitter is another: by the time of President Obama's last inauguration, all one hundred U.S. Senators participated in the Twitter platform.⁴ So is Medium—that is where the President made history by circulating the text of the State of the Union address to the public before its delivery.⁵ The platforms amici provide directly serve—and strengthen—our democracy because they allow users to communicate and collaborate with each other—whether to spread information about political issues, gather signatures for petitions, or coordinate efforts to get voters to the polls on election day.

The openness of the Internet has also advanced the values of the First Amendment by providing space for speech that might not otherwise exist at all. The fact that Internet service providers carry content to all users without discriminating against or prioritizing certain senders allows amici to empower people around the world to communicate with each other. The freedom from platform discrimination in particular has created space for services available to users at little to no charge, enhancing access for people who could not pay for a faster or wider lane.

⁴ See Amar Toor, *All 100 US Senators are now on Twitter*, The Verge (Jan. 20, 2013), <http://www.theverge.com/2013/1/20/3896648/twitter-usage-among-members-of-us-congress>.

⁵ See *President Obama's State of the Union Address*, Medium (Jan. 21, 2015), <https://medium.com/@WhiteHouse/president-obamas-state-of-the-union-address-remarks-as-prepared-for-delivery-55f9825449b2>.

Because service providers have not discriminated between platforms or end users, everyone's voice can achieve full force over the Internet. For example, the #blacklivesmatter movement spread not because of editorial decisions by news outlets, but because individual Internet users could reach the public with images and videos of events that traditional news media could not or would not cover.⁶ "Black Twitter" has become a focal point for discussions about political and cultural issues affecting people of color, drawing commentary from, and public attention to, some of the nation's leading intellectuals. Empowering and transmitting traditionally less powerful voices is critical to maintaining our democratic society. Those are the very voices that will fall silent first if the Internet is no longer a space in which every voice can resonate.

Just as the lack of centralized control has enhanced diversity among speakers, it has also created new possibilities for individual creativity and social collaboration. Amici, collectively, democratize the creation and distribution of content across the Internet. Medium, Squarespace, and WordPress.com help artists and writers publish their works and reach anyone who wants to listen. These platforms directly facilitate speech by Internet users, allowing their voices to carry beyond the bounds of any soapbox or paper route.

Critically, when people communicate and collaborate over the Internet, the effects are often felt offline. Consumers flock to sites like Yelp where customers

⁶ Phrases introduced by "#" are known as "hashtags," and used to categorize messages for easy access by other users.

share their experiences with local businesses and, through word of mouth, help local businesses flourish. This Court has specifically recognized the value of consumer review websites, including Yelp, in “[f]urther incentivizing a quality consumer experience.” *Edwards v. District of Columbia*, 755 F.3d 996, 1006–07 (D.C. Cir. 2014). Empowering users to share information online also drives collective efforts to help people in other communities: for example, Redditors combined forces to buy classroom supplies for needy schools across the country, toys for a seven year old with late stage Huntington’s Disease, and to build a safety wall around an orphanage in Kenya.⁷

The value of connecting people to each other in real time through amici’s communications platforms cannot be understated. When one Twitter user Tweeted an official in India about his missing sister, the message triggered a political response that led to his sister’s rescue from human traffickers.⁸ When Yelpers

⁷ See Jared Keller, *Redditors Raise \$200,000+ for Charity*, The Atlantic (Sept. 16, 2010), <http://www.theatlantic.com/technology/archive/2010/09/reddit-users-raise-200-000-for-charity-for-colbert-rally/63080/>; Melissa Bell, *Huntington’s Disease kills nine-year old, bullied girl*, The Washington Post (Jan. 13, 2012), http://www.washingtonpost.com/blogs/blogpost/post/huntingtons-disease-kills-nine-year-old-kathleen-edward-bullied-girl-video/2012/01/13/gIQAXRg1wP_blog.html; *Reddit Donates \$80,000 To Orphanage*, The Huffington Post (Jan. 27, 2012), http://www.huffingtonpost.com/2012/01/27/reddit-donates-kenya-orphanage_n_1237016.html.

⁸ See Press Trust of India, *Brother’s tweet to Swaraj saves girl from traffickers in UAE*, Hindustan Times (Aug. 28, 2015), http://www.hindustantimes.com/india-news/brother-s-tweet-to-swaraj-saves-girl-from-traffickers-in-uae/article1-1384948.aspx?li_source=base&li_medium=dont-miss.

complained about meals that made them sick, health departments used that information to identify places repeatedly associated with foodborne illness.⁹

Whether users are government employees in Virginia, Tweeting about whether the snow on the road makes driving unsafe, or community members in Ferguson, Missouri providing eyewitness accounts of events as they unfold, it is often the speed of information sharing that generates the collective strength of ordinary citizens. This effect will become even more pronounced as new platforms evolve, such as Twitter's Periscope platform for live streaming video, further facilitating the distribution of media-rich content.

But the open Internet has not only benefited people whose governments protect free speech and association as ours does. Rather, it has allowed people around the world to bear witness to images and videos that have catalyzed political movements that make progress in undemocratic regimes possible. Former National Security Council Advisor Mark Pfeifle has gone so far as to argue for Twitter to receive the Nobel Peace Prize because of the way it has empowered people in oppressive regimes to share information about their circumstances within and beyond their communities.¹⁰

⁹ See Maria Newman, *Yelp Reviews Help Track Food Illnesses*, N.Y. Times (May 22, 2014), http://www.nytimes.com/2014/05/23/dining/reviews-on-yelp-help-track-illness.html?_r=1.

¹⁰ See Mark Pfeifle, *A Nobel Peace Prize for Twitter*, The Christian Science Monitor (July 6, 2009), <http://www.csmonitor.com/Commentary/Opinion/2009/0706/p09s02-coop.html>.

It was through Twitter that people learned about the murder of a young woman during a protest against the results of the 2009 Iranian presidential election.

As Advisor Pfeifle writes:

Her name was Neda Agha-Soltan, and without Twitter we might never have known that she lived in Iran, that she dreamed of a free Iran, and that she died in a divided Iran for her dreams. Neda became the voice of a movement; Twitter became the megaphone. Twitter is a free social-messaging utility. It drove people around the world to pictures, videos, sound bites, and blogs in a true reality show of life, dreams, and death. Last month's marches for freedom and the violent crackdowns were not only documented but personalized into a story of mythic tragedy. When traditional journalists were forced to leave the country, Twitter became a window for the world to view hope, heroism, and horror. It became the assignment desk, the reporter, and the producer. And, because of this, Twitter and its creators are worthy of being considered for the Nobel Peace Prize.

Id. Mr. Pfeifle's elegant words require one clarification: Twitter was not the assignment desk, the reporter, or the producer—it was simply the window.

Twitter's *users* were the ones who took on the tasks traditional journalists could not. It is hard to imagine a better example of how important it is to preserve the open speech forum the Internet has consistently been—and the open speech platforms that have flourished as a result.

II. THE OPEN INTERNET RULES WILL SUSTAIN THE DEMOCRATIZING POWER OF THE INTERNET

If broadband providers can allow for paid prioritization of speakers and platforms—or block access to some altogether—the Internet will no longer be an open space that everyone in the public can access. The Internet first spread over telephone lines, where common carriage was the rule and the content inspection

techniques of today—and even more critically, tomorrow—were not. Without common carriage requirements, broadband providers will be free to deploy the tools they have and are building to silence or diminish the speech of some of amici’s users, among others. They may do so by targeting content directly from end users or from platforms they speak through. Either way, the result will be that users only get as much choice as broadband providers allow. And broadband providers will be able to influence users’ choices by controlling transmission speeds. As a result, access providers, not users, will get to decide which platforms thrive.

Free or low cost platforms for user-generated content may not survive if they have to satisfy broadband providers’ demands to stay accessible. Even if they survive, they may have to decide whether to constrain their offerings (if certain types or quantities of downstream transmissions incur extra charges) or pass on costs to users to preserve the capabilities they now provide. Passing on increased costs to users imposes its own harm: those who cannot afford to pay will lose access to platforms for speech for which they may have no substitute. New platforms may not get off the ground in the first place if they do not have the money or users to get their content delivered. Indeed, amici began as small start-ups, relying on the combination of low-cost computer technology and the ease and certainty of non-discriminatory access to large numbers of users through the Internet, and without having to pay gatekeepers to connect with those who wanted to listen, or those who wanted to step up and speak.

On its own, opening the door to discrimination against Internet platforms will impose coercive pressures that will facilitate the exclusion of historically marginalized voices. Diminishing the reach of certain platforms will diminish the voices of certain groups of users as well: those who may not be able to afford extra charges to send certain content, those who rely on providers of media-rich content that cannot afford “fast lane” delivery and thus provide lower quality services to users, and others who may not be able to get published by certain media outlets.

Yet the Internet has enhanced access to those voices, and put them on equal footing. As a result, the most compelling content—not necessarily from those with the deepest pockets, most well-known names, or voices favored by carriers—can reach global audiences and contribute to civic discourse in communities both large and small. In recognition of the “dramatic expansion of this new marketplace of ideas,” and the “interest in encouraging freedom of expression in a democratic society,” the Court has already acted to protect the diversity of speech that occurs over the Internet. *Reno*, 521 U.S. at 885.

Alamo Broadband argues that providing broadband access is akin to exercising editorial discretion and that speech transmitted via its pipes may be attributed to it, Joint Br. Pet’rs Alamo Broadband & Daniel Berliner 5, July 30, 2015, ECF No. 1565433, but no Internet user would ever think their access provider was condoning Internet content just because it provided the underlying network infrastructure. Nor would a user ever view a transmission failure as a statement of their broadband provider’s disapproval. That is because users pay broadband providers for *access* and typically turn elsewhere for content.

Making it illegal for broadband providers to block transmissions to users or allow for paid prioritization of Internet highways at their whim does not affect broadband providers' speech. Indeed, ““it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.”” *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 62 (2006) (citation omitted). The same is true here: network infrastructure is a conduit through which speech flows, but impeding the flow of speech is conduct, not speech.

The threat of losing access to an open speech forum is no less pernicious because petitioners are corporate entities asking for the right to wall off the Internet instead of government forces seeking to punish unpopular speech. If anything, the potential harm of blocking and paid prioritization is even greater today than it was when the Court decided *Reno*, because of advances in technology for inspecting the content of transmissions as they traverse telecommunications networks. The threat that network providers may block or deprioritize speech with which they disagree has already proven real: Telus, the leading telecommunications company in Canada, engaged in precisely that sort of behavior when it blocked access to pro-union websites during a labor strike.¹¹

¹¹ See Ian Austin, *A Canadian Telecom's Labor Dispute Leads to Blocked Web Sites and Questions of Censorship*, The New York Times (Aug. 21, 2005), available at http://www.nytimes.com/2005/08/01/business/worldbusiness/a-canadian-telecoms-labor-dispute-leads-to-blocked-web-sites-and-questions-of-censorship.html?_r=0.

Without the Open Internet Rules, the same could happen here. After all, broadband providers are among the least popular companies in America.¹² Lest there be any doubt that people use amici's platforms to criticize Internet service providers in this country, the below text, taken from the WordPress.com blog of Nashville photographer Stacie Huckeba, confirms they do just that:

I have been a customer of Comcast. . . . I used your Xfinity speed test off your website and sure enough, I was barely getting 3 Mbps. . . . I called, spent a half hour on the phone with 3 or 4 representatives and then got hung up on during a "transfer" I called back and this time spent an hour on the phone going through the same thing. I actually finally got to a retention specialist who . . . suggested I get a technician So back I went on hold and . . . I got hung up on.¹³

So do Twitter users, who have devoted a hashtag to criticizing Comcast (#comcastsucks), and Yelpers, who routinely review broadband providers' offerings and facilities. There is no reason to think that broadband providers in this country would act more altruistically than Telus. Rather, it seems highly likely that a company like Comcast might block or throttle access to such content if, in the absence of the Open Internet Rules, it had the ability to do so.

Broadband providers' own arguments confirm that they are seeking to control the speech of others, and will do so if this Court lets them. Otherwise,

¹² American Customer Satisfaction Index, *Benchmarks By Company*, http://www.theacsi.org/index.php?option=com_content&view=article&id=149&catid=&Itemid=214&c=all&sort=Y2014 (last visited September 20, 2015).

¹³ Stacie Huckeba, *Open Letter to Comcast/Xfinity* (June 14, 2014), <https://staciehuckeba.wordpress.com/2014/06/14/an-open-letter-to-comcast-xfinity/>.

broadband providers would have no reason to complain that the Open Internet Rules stop them from “deciding which speech to transmit,” and thus prevent them from blocking or de-prioritizing “political speech with which providers disagree.” Joint Br. Pet’rs Alamo Broadband & Daniel Berliner 2, July 30, 2015, ECF No. 1565433. Whether motivated by profit, preference, or politics, broadband providers have ample reason to try to control and diminish what Internet users can say and hear online. The FCC adopted the Open Internet Rules because the impact of their doing so will be harmful to the speech interests of so many people, including many of amici’s users.

The importance of preserving public access to the Internet is even clearer during times of crisis when it is critical to keep each and every user connected to the same network. At those times, centralized infrastructure and content provision are especially likely to become unavailable for technical or human reasons. Consequently, people often depend on point-to-point communication to send and receive news and location information between remote users of mobile devices. The importance of ensuring access has been demonstrated during Superstorm Sandy, the Boston Marathon bombing, the earthquake and tsunami in Japan, and during the migration from the Middle East to Europe happening right now. To harness the power of decentralized mobile communication over the Internet, FEMA, the State Department, and local governments all incorporate Twitter and other Internet-based platforms.

The capacity of these networks to save lives depends on ensuring the maximum possible number of users can effectively communicate with each other.

It is also critical that Internet users also get to choose which platforms to use. Nobody knows in advance which platforms will be useful and accessible to enough people to make a difference. Nobody knows which tools or features users will want until after someone takes the initiative to build them and make them available. The open Internet facilitates the resourcefulness and creativity of Internet *users* by letting them communicate over a network that is reliable and accessible to every connected user—qualities that are invaluable during times of crisis. Letting broadband providers build walls will impede the flow of information in ways we can foresee today—but also in others we cannot yet imagine.

CONCLUSION

Amici respectfully request that this Court uphold the Open Internet Rules.

DATED: September 21, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,997 words, excluding those parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced serif typeface using Microsoft Word 2010 in 14-point Times New Roman font.

DATED: September 21, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2015, I electronically filed the foregoing *Brief of Amici Curiae Automattic Inc., A Medium Corporation, Reddit, Inc., Squarespace, Inc., Twitter, Inc., and Yelp Inc. in Support of Respondents Federal Communications Commission and United States of America* with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system, which served a copy on all counsel of record in these cases.

DATED: September 21, 2015

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