

BRINGING US TO TIERS: The 2014 Net Neutrality Lectures



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LECTURE ONE: BACKGROUND

Good day and welcome. My name is Mitchell Szczepanczyk; I have been a media producer and media policy activist for more than a decade, and it's my great pleasure to be with you today.

This is a series of four half-hour lectures where I explain in some depth one of the most popular and most important issues of our time, but one which is prone to a lot of uncertainty and confusion. And it's crucially connected to the internet – that great source of economic development, market growth, technical innovation, free speech, and political activism. To quote Federal Communications commissioner Jessica Rosenworcel: "...the future of the Internet is the future of everything. There is nothing in our commercial and civic lives that will be untouched by its influence or unmoved by its power."¹ And it is U.S. government policy over the internet which is the focus these lectures – particularly over those policies that are most commonly known by the name "network neutrality", often abbreviated as "net neutrality".

There are a lot of questions related to the term, which we will strive to answer over the course of these lectures. In this lecture, I would like to answer a number of key questions:

Question one: What is network neutrality?

Question two: Why is it necessary and important?

Question three: What are some violations of network neutrality and have they actually occurred?

Question four: What would happen if net neutrality were abolished?

So, to start, what does the term "network neutrality" or "net neutrality" mean?

A good definition is posted on the website of the man who first coined the term "network neutrality" – Tim Wu, a law professor at Columbia Law School in New York. Let me quote at length from a page at timwu.org which is devoted to defining the term.² Tim Wu writes:

"Network neutrality is best defined as a network design principle. The idea is that a maximally useful public information network aspires to treat all content, sites, and platforms equally. This allows the network to carry every form of information and support every kind of application. The principle suggests that information networks are often more valuable when they are *less* specialized – when they are a platform for multiple uses, present and future.

¹ <http://www.fcc.gov/article/doc-327104a4>

² http://www.timwu.org/network_neutrality.html

“(Note that this doesn't suggest *every* network has to be neutral to be useful. Discriminatory, private networks can be extremely useful for other purposes. What the principle suggests is that there is such a thing as a neutral public network, which has a particular value that depends on its neutral nature).”

“A useful way to understand this principle is to look at other networks, like the electric grid, which are implicitly built on a neutrality theory. The general purpose and neutral nature of the electric grid is one of the things that make it extremely useful. The electric grid does not care if you plug in a toaster, an iron, or a computer. Consequently it has survived and supported giant waves of innovation in the appliance market. The electric grid [that] worked for the radios of the 1930s works for the flat screen TVs of [today]. For that reason the electric grid is a model of a neutral, innovation-driving network.

“The theory behind the network neutrality principle, which the internet sometimes gets close to, is that a neutral network should be expected to deliver the most to a nation and the world economically, by serving as an innovation platform, and socially, by facilitating the widest variety of interactions between people. The internet isn't perfect but it aspires for neutrality in its original design. Its decentralized and mostly neutral nature may account for its success as an economic engine and a source of folk culture.”

Sounds great, right? “[A] maximally useful public information network” that “aspires to treat all content, sites, and platforms equally.” Sounds like something everyone would support? So, if everyone would support it, then – and this brings us to our second question -- why is net neutrality necessary?

It's necessary because net neutrality, as great as it sounds, is not universally supported. There are powerful entities that want to undo this maximally useful public information network, to change it to something over which they can gain exclusive control and exclusive profit. These powerful entities, in particular, are large-scale telephone and cable television providers, which have had a history of vertical integration with internet service providers and consolidation among themselves – where buyouts, mergers, and attrition result in fewer and fewer providers hold more and more of the market.

In the phone market in the United States, we're down (at the time of recording these lectures in June 2014) to just four major providers – Verizon, AT&T, Sprint, and T-Mobile who combined command 90% of the wireless market in the United States.³ In the cable market in the United States, four firms – Comcast, Time-

³ McChesney, Robert W. *Digital Disconnect: How Capitalism is Turning the Internet Against Democracy* (New York: The New Press, 2013), pg. 112.

Warner Cable, Cox, Charter – combined to command 62% of the cable television industry's revenue.⁴

And that concentration is worse when you look at individual consumers. I mention that there are a handful of cable TV and telephone companies holding most of the market share. 20% of American households have a single internet service provider. Of the remaining 80%, more than 96% of those remaining 80% have at most two providers – a monopoly cable TV provider or a monopoly telephone provider.⁵

This concentration affects, or potentially affects the internet and network neutrality, in the following way: If an internet service provider in a more diverse market would not behave in a neutral fashion – that is, if an internet service provider would, for example, start to slow down or block outright unaffiliated content or access to content unless consumers *and* producers paid more for that access – if that were to happen, then an unsatisfied consumer in a diverse market would simply switch to a different internet service provider that didn't behave so egregiously. But in a monopoly or in a duopoly where parties behave like mobsters and make switching to another provider difficult or impossible (because there are no other providers), then the internet service provider has that leverage and can use it to fleece customers or degrade content or worse.

Net neutrality, then, is a matter of bringing a measure of public accountability to these private shakedown-artists. We, as a society, are largely unable or unwilling to take on these monopolies or duopolies – the concentrations of power and the expected consequences of markets, about which will discuss in greater depth in a later lecture. But those private tyrannies are, in the case of the internet, nonetheless performing a public service. Historically, when that happens – when something private fulfills a public good -- that falls under a practice and set of rules referred to as “common carriage”, with such parties being “common carriers”, and net neutrality is an extension of that tradition of law and practice pertaining to the internet.

There are and have been claims by some people – often officials who are affiliated with the Republican Party – who claim and have claimed that network neutrality is just additional bureaucratic red tape, a solution looking for a problem. For example, Federal Communications commissioner Michael O’Rielly, says that net neutrality in any form is “unnecessary and defective”, and doubts that “that there’s an actual problem resulting in real harm to consumers.”⁶ In actuality,

⁴ <http://www.statista.com/statistics/186218/market-concentration-in-us-cable-and-subscription-programming/>

⁵ Robert McChesney, “Digital Disconnect: How Capitalism is Turning the Internet Against Democracy”, pg. 112

⁶ <http://www.fcc.gov/article/doc-327104a6>

there have been a number of cases of violations that can be construed as violations of “neutrality” on the internet and that illustrate specifically what could come to pass if network neutrality were to end.

Before we dive into specific examples of network neutrality violations, it would be useful to note what forms might violations of network neutrality take. Again, Tim Wu – the gentleman who coined the term “network neutrality” – offers a list of four potential violations of net neutrality⁷, which we’ll describe briefly:

Violation number one: Blocking. Internet service providers simply block anyone or anything they don’t like.

Violation number two: What’s called “termination monopoly pricing” -- it’s another way of saying that internet service providers can charge excessive fees to content producers or content providers who wish to gain access to users.

Violation number three: What’s called “Playing favorites”, also called “most favored network” violations. This is where internet service providers don’t block but instead prioritize applications and content which they like and deprioritize that which they don’t.

Violation number four: Transparency failures – when internet service providers don’t say everything that they know to content providers and content consumers – not just about the service options of what’s available, but also about details of the state of the internet at any particular time.

So, Commissioner O’Rielly says that net neutrality advocates “fail...to make the case that there’s an actual problem resulting in real harm to consumers.” It turns out that there are, already, on the record, instances of internet service providers having already kicked the network neutrality hornet’s nest in each of these four violation examples. Let’s go through them again in turn:

Violation number one: Blocking. There are a number of instances in which internet service providers have been caught blocking content. In 2007, Verizon declined a request from NARAL Pro-Choice America to carry text messages⁸, and AT&T muted some politically charged lyrics during a livestream of the musical group Pearl Jam at Lollapalooza⁹. In both instances, AT&T and Verizon backtracked on those actions and addressed the concerns voiced by Pearl Jam and NARAL. But nevertheless blocking did happen, and that highlights the very real concern of potential abuse should network neutrality be abolished.

⁷ Again, http://www.timwu.org/network_neutrality.html

⁸ <http://truth-out.org/archive/component/k2/item/73393:verizon-blocking-naral-text-messages>

⁹ <http://consumerist.com/2007/08/10/att-censors-pearl-jam/>

Violation number two: Termination Monopoly Pricing. In December 2013, Comcast began to throttle internet traffic generated by the streaming video service Netflix. Traffic improved after Netflix and Comcast in February 2014 agreed to a “mutually beneficial interconnection agreement”, even though “terms of [the agreement] are not being disclosed”.¹⁰ Indeed, there’s a video segment on the HBO series “Last Week Tonight with John Oliver” where they track the throttling of traffic and that Netflix deal with Comcast and demonstrate the connection between the two.¹¹ (What’s more, reports have floated that a deal between Netflix and Verizon resulted in no noticeable speed improvement.¹²)

Violation number three: Playing favorites. In 2007, Comcast was caught deprioritizing content that use the internet protocol Bittorrent¹³ – a set of digital rules (a “protocol”) that’s particularly useful for transferring very large files across the internet. Bittorrent is enormously popular and widely used – it accounts, by some estimates, as much as a third of all internet traffic uses Bittorrent; it’s widely used for movie and TV show content “piracy”. And Comcast got caught in selectively interfering with Bittorrent downloads by Comcast customers.

But Comcast was caught not by the FCC or by rival companies but by investigators aligned by outsiders, most notably by nonprofit groups like Public Knowledge and the Electronic Freedom Foundation;¹⁴ Comcast didn’t make what they did readily apparent, which also makes it an example of violation number four: transparency failures. The violation was discovered after the fact. Another example of such a transparency failure is the degrading or blocking of Voice Over IP calls across mobile phone networks¹⁵. Such transparency failures are often explained away as measures to address security concerns.

So we see a definition of what net neutrality is, we have a description of ways it’s violated, and we have concrete examples of ways in which it has been violated. So let’s assume the worst-case scenario. Suppose that the provisions regarding network neutrality on the internet are abolished and that the big internet service providers – primarily the big phone and big cable TV companies – have free reign to carry out the violations we outlined with impunity. What then? What would the

¹⁰ <http://corporate.comcast.com/news-information/news-feed/comcast-and-netflix>

¹¹ Online at <http://www.youtube.com/watch?v=fpbOEoRrHyU>

¹² <http://arstechnica.com/business/2014/06/netflix-got-worse-on-verizon-even-after-netflix-agreed-to-pay-verizon/>

¹³ https://apps.fcc.gov/edocs_public/attachmatch/DOC-284286A1.pdf

¹⁴ <https://www.eff.org/wp/packet-forgery-isps-report-comcast-affair>

¹⁵ B Van Schewick, “Towards an Economic Framework for Network Neutrality Regulation” paper presented at The 33rd Research Conference on Communication, Information and Internet Policy (TPRC 2005). See also <http://coolessay.org/docs/index-168426.html?page=2#3458663>

end result look like? What's most likely to happen?

Internet service providers in the United States would now be able legally to block, gouge producers and consumers, play favorites, and not be transparent in revealing the details of their actions. Presumably, given the profile the issue has gotten, those internet service providers would, as a concession, maintain a policy of neutrality, perhaps for a number of years, until the issue itself would presumably die down over time. Comcast has agreed to abide by net neutrality until 2018, as a concession to their buyout of NBC Universal.¹⁶

But after that, net neutrality – barring no other changes -- will have formally ended. The policy fights will have been concluded, the policy will be in place, the legal recourses in the courts have been exhausted, and organized money will have defeated organized people regarding internet policy with no going back. ISPs will have ended their concession to abide by net neutrality, and they begin acting in their interests. ISPs start to increase their costs for usage and are being applied more widely; only the wealthiest producers can maintain their access to users, while users have their content options reduced markedly.

There are graphics online that envision what this would look like, taking the form of mock advertisements. For example, in one such mock ad from the fictional company TELCO ADSL¹⁷, you get starting internet access of \$29.95 per month, accompanied by the very small legal print known as “mouse type” which says “Includes 500 MB of free transfers to non-peering websites at full speed. Limited to 128 kbps thereafter.” In other words, you can have access for a limited amount, and then the internet would be available at extremely slow speeds.

The ad imagines a variety of optional tiers for things like international news, domestic news, music, online gaming, online retailers, and social networks. Each of these tiers carries an additional price of \$5 to \$10 per month. Mind you, by current Chicago standards even these imagined inflated prices would be lower than what we currently pay. So let's increase the costs to, say, \$200 per month for basic access with tiers at \$25 to \$50 per month. Any sites or resources – by activists, nonprofits, and small scale companies – which are not in these commercially-approved bundles would be counted against your download quota, would be available but only at exceedingly slow speeds, perhaps blocked entirely, and there would of course be no promotion of these resources.

If this sounds eerily like the current arrangement of cable television, it's not a coincidence. Cable TV providers also rank among the major internet service providers. Telephone providers are also getting into the act with their own clones

¹⁶ http://connectedplanetonline.com/residential_services/news/fcc-oks-comcast-nbcu-deal-with-conditions/index.html

¹⁷ http://www.huffingtonpost.com/2014/01/17/net-neutrality-gone_n_4611477.html

of cable television like Verizon's FIOS and AT&T's U-Verse. What's more, with their bundles of cable television channels available in these subscription platforms, what you get *now* with cable television eerily resembles what is envisioned with the internet *later* – if net neutrality is abolished.

There are serious policy reasons why that's the case, which are tied in to the history of the internet, and with key implications to future policy and future crafting of the internet. We will explore that history -- and how it ties in to a key FCC vote scheduled in 2014 – in the next lecture.

LECTURE TWO: POLICY

In the first of this series of four lectures on net neutrality, we addressed some fundamental questions about the design principle and practice known most popularly as “net neutrality” – what it means, why it's important, how it could be violated, and what's apt to happen if it were to be abolished.

The issue of net neutrality has gained increasing attention across the public, with points of high public interest that correlate to key points in the fight over net neutrality. But it was on May 15, 2014, that the FCC – by a 3-2 commission vote – approved to proceed on a docket now formally known as Proceeding 14-28 that would mark the commission's third attempt in seven years at formalizing net neutrality. The previous two attempts were challenged in court by internet service providers and were both defeated. The level of commentary and discussion for the net neutrality docket has now reached amounts unmatched for any docket open for public comment in the history of the FCC going back to the commission's founding in 1934.¹⁸

In this lecture, we'll explore the reasons why this has grown to be such an issue now, the reasons of which are critically tied to the history of net neutrality, and the U.S. government policy and litigation back-and-forth. One useful framework for understanding this is a critical distinction in the communications law, dating to the Communications Act of 1934 that, among other things, led to the formulation of the FCC.

The 1934 Act includes a number of categories of media for which different policies apply. These categories of media are called “Titles”, and for our

¹⁸ Verifiable numbers are difficult to come by. This article -- <http://www.newrepublic.com/article/117777/net-neutrality-comeback-why-fcc-might-save-it-yet> -- quotes Free Press' Craig Aaron's estimate of 3.4 million “users” who “took action”. If that's accurate, that would exceed the estimated 2.3 million respondents (as estimated by then-FCC Commissioner Jonathan Adelstein) – later revised upward to three million -- on the FCC's media ownership rule docket of 2003 (see, for example, http://www.thirdworldtraveler.com/McChesney/Uprising2003_TPOTM.html).

discussion about net neutrality, the focus is on the first two of these Titles. There's Title I, what's called an "Information Service", and Title II, what's called a "Telecommunication Service". Let's illustrate with some concrete examples. Indeed, we've already seen and you already know these examples.

An example of Title I media is cable television –a business pure and simple, where the provider can largely call the shots – the provider has great leverage in deciding what channels are available, for what price, and you as a consumer are basically given the option to accept the terms or go without or find another cable TV competitor if one exists (and as mentioned in the first lecture, for the vast number of Americans there is no competitive choice in internet access).

That's Title I, "Information Service". An example of Title II "Telecommunication" service – is the telephone, a provider of what's long been touted as "universal service". The idea being, you have a telephone and can call anyone else who also has a telephone, with the telephone network allowing you to make your call while providing a strong degree of reliability, without degrading your service or increasing call quality if you pay more. As a result, a great majority of American society had a telephone and telephone access.

To be fair, I am drawing broad strokes here. Cable television which falls under the pro-business Title I does have public service provisions, like the establishment and maintenance of public access channels. Meanwhile, the U.S. telephone industry has had a long sordid history of its own – monopoly control, smashing competitors, and stifling innovation. But for the purposes of discussing net neutrality, this is the distinction that's particularly useful for the analysis to follow, and also what's at stake with the FCC's vote on net neutrality in 2014.

In the previous lecture, we discussed the term "net neutrality" and the definition proposed by the man who coined the term – law professor Tim Wu. In brief, net neutrality is "a network design principle", which fosters "a maximally useful public information network [that] aspires to treat all content, sites, and platforms equally." From the earliest days of the internet in the late 1960s until 2002, that principle of equal treatment was the governing policy for the internet in the United States.

So what changed in 2002? In that year, the Federal Communications Commission carried out a little-known decision that seriously wounded net neutrality¹⁹. The FCC in 2002 by a three-to-one party line vote that got barely any media coverage voted to reclassify cable modems from their Title II status of universal service and public access to Title I, controlled by business for business. This would mean that the internet, which increasingly was being offered as a service by cable companies, was now theoretically on the same legal standing as

¹⁹ http://transition.fcc.gov/Bureaus/Cable/News_Releases/2002/nrcb0201.html

cable television, with all the blatant money-grubbing and poor quality we've come to expect from most cable TV.

The chair of the FCC at the time was Michael Powell, probably best known as the son of former general and Secretary of State Colin Powell. But back in 2002, the same year Powell-led FCC made a little known reclassification decision, Tim Wu wrote an academic paper entitled "Network Neutrality, Broadband Discrimination", which coined the term that would gain widespread usage for the policy of non-discrimination on the internet.²⁰

The FCC's decision to reclassify cable modems was challenged, when a small internet service provider from California with the less-than-imaginative name "Brand X" wanted to use the cable connections owned by the cable providers to provide internet service, but couldn't because of that 2002 reclassification. Brand X then sued the FCC and the suit worked all the way up to the U.S. Supreme Court, when the court ruled in a mixed 6-3 decision in 2005 that affirmed the FCC's decision to reclassify cable modems as a business rather than as a public service.²¹

That decision affirmed the FCC's right to reclassify the internet under the Title I business regulations. Indeed, the FCC in 2005 would go on also to reclassify telephone modems from Title II to Title I, also along party-line votes. But those decisions, as encouraging as the internet service cartel found them, didn't lock those decision into a permanent state. They could be reclassified back, and the fight was now on in Congress. In 2006, the main effort from the corporate ISPs came in the form of the Communications Opportunity, Promotion and Enhancement Bill of 2006, abbreviated the COPE Act. The COPE Act had only lukewarm protections for network neutrality, and net neutrality advocates, myself included, regarded the bill as a step backward for free speech and opportunity using the internet.

The legislative fight over the COPE Act in 2006 marked the first full-throated fight over net neutrality. The COPE Act passed the U.S. House, with Illinois' own 1st district representative Bobby Rush serving as co-sponsor (the first sponsor from the Democratic Party on the bill, in fact). But it was in the Senate when the efforts for the COPE Act derailed. Comparable legislation actually passed out of committee, and with a Republican Senate at the time the COPE Act's Senate Equivalent probably would have passed. But shortly after the Senate committee hearing on the bill ended, its main shepherd, the late Alaska senator Ted Stevens, opened his mouth. Stevens was recorded decrying net neutrality advocates, but the effect was instead to demonstrate his own profound ignorance of how the internet actually functions, famously describing the internet as a

²⁰ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=388863

²¹ <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=04-277>

“series of tubes”. That expression wound up gaining widespread popularity, and became an embarrassment to the bill. It was never brought to a vote in the Senate and the COPE Act died from inaction, thus helping the net neutrality cause.

But the struggle continued at the FCC. Michael Powell had left the FCC in 2005 to join the very industry he supposedly “regulated” (by the way, he currently stands as president of the biggest cable TV lobby in the United States²²). Powell’s successor as FCC chair was Kevin Martin, another one of the commissioners to vote for the Title I pro-business reclassification of cable modems. Kevin Martin approved action to support network neutrality, though given that the actions fell under a pro-business framework, that made it vulnerable to subsequent court challenges by the big internet service providers.

Nevertheless, a challenge to net neutrality was brought to the commission’s attention; indeed, it’s one we saw in Lecture One – the throttling of Bittorrent traffic by Comcast. The FCC fielded the complaint and ruled against Comcast.²³ Comcast instead opted to sue the FCC in response in the hopes of defeating the commission’s net neutrality regulations. Mission Accomplished: In 2010, in the case Comcast v. FCC, the FCC’s net neutrality regulations were struck down.²⁴

By now, Kevin Martin had left the FCC to take his chances on the job market – he now is a consultant with Patton Boggs, a high-powered DC lobbying firm²⁵. The Republicans who had carved anti-net neutrality policies for most of the decade were now out of the majority at the FCC. Barack Obama, who on the campaign trail had claimed himself an enormous supporter of net neutrality. As president-elect he said, “I will take a back seat to no one in my commitment to network neutrality”²⁶. He was now in the White House and there would now be a Democratic party majority at the FCC.

Obama’s appointee as FCC chair was Julius Genachowski, an investor, internet business entrepreneur, and media attorney. Genachowski echoed Obama’s concern with net neutrality, and had a Democratic party majority to work with. But he was still nonetheless swayed by the corporate involvement in media policy. In the summer of 2010, Google and Verizon had struck a net neutrality

²² <https://www.ncta.com/who-we-are/leadership/bio/169>

²³ https://apps.fcc.gov/edocs_public/attachmatch/DOC-284286A1.pdf

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[http://www.cadc.uscourts.gov/internet/opinions.nsf/EA10373FA9C20DEA85257807005BD63F/\\$file/08-1291-1238302.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/EA10373FA9C20DEA85257807005BD63F/$file/08-1291-1238302.pdf)

²⁵ <http://www.pattonboggs.com/professional/kevin-martin>

²⁶ <http://centerformediajustice.org/2010/12/03/i-will-take-a-backseat-to-no-one-in-my-commitment-to-network-neutrality-will-president-obama-stay-the-course-on-network-neutrality/>

policy deal, which would grant net neutrality for landline communications but do without it for wireless communications²⁷. That matters greatly for the future of the internet because the future of the internet is increasingly moving to wireless and moving to mobile, and away from landline and the web.

The other democratic commissioners at the FCC joined Genachowski in approving the policy. They felt that, imperfect as it was, some net neutrality policy is better than none, and that at least with a policy in place steps could be taken over time to improve it. So in December 2010, the FCC along party lines voted into a net neutrality policy into effect. All this time the internet remained in Title I pro-business classification, leaving it vulnerable to attack in the court, with no consideration mentioned of a reclassification back.

Sure enough, a lawsuit against the FCC was filed shortly after they took action. This time, Verizon – who had been a party to crafting the policy the FCC approved – was now suing the FCC to undo their own lukewarm version of net neutrality. And in January 2014, the FCC lost in court, their extant net neutrality policy struck down. The First Circuit court in Washington DC which heard the case *Verizon v. FCC* did affirm the FCC's right to regulate in the interests of net neutrality, but not doing so as a Title I pro-business "information" service.²⁸

By then, Julius Genachowski had left the FCC for greener pastures; he is now a part of the notorious high-powered investment firm, the Carlyle Group²⁹. And in 2013 President Obama appointed as FCC chair Tom Wheeler, a former telecom and cable lobbyist. In the wake of the FCC's court loss to Verizon, Wheeler wound up crafting a policy that was the worst of all worlds, essentially recycling the failed policy that had been agreed to by Google and Verizon, allowing for the establishment of "paid prioritization" among internet service providers, leaving the classification of the internet into the Title I pro-business black hole³⁰. Where the FCC is ostensibly serve as a watchdog, the actual policy is, like much of the FCC's history, that of a corporate lapdog.

Meanwhile, during all this time, concentration among commercial internet service providers has decreased. Small scale ISPs are dying like flies in the wintertime, reducing by 50% during the years from 2000 to 2010, and more than 90% of the wireless internet market is held by just four companies, with more than 60% held

²⁷ Detailed analysis is at <https://www.eff.org/deeplinks/2010/08/google-verizon-netneutrality>

²⁸

[http://www.cadc.uscourts.gov/internet/opinions.nsf/3AF8B4D938CDEEA685257C6000532062/\\$file/11-1355-1474943.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/3AF8B4D938CDEEA685257C6000532062/$file/11-1355-1474943.pdf)

²⁹ <http://www.carlyle.com/about-carlyle/team/julius-genachowski>

³⁰

<http://online.wsj.com/news/articles/SB10001424052702304518704579519963416350296>

by just two companies (Verizon and AT&T)³¹. There are to be sure, various initiatives to try to bring some alternative against the bondage of the incumbent internet service cartel gigabit internet initiatives, community internet efforts, including some underway presently in Chicago, and even large corporate non-ISP efforts along the lines of Google Fiber. Whether or not those efforts succeed remain to be seen.

But one thing is certain: If the legal standing of the internet gets changed, you can bet that the actual practice of the internet, or what most people think of the internet, will also change. The big ISPs even admitted as such. For example, Ed Whitacre, the former CEO of AT&T in an interview with Business Week magazine in 2005, said that users and producers on the internet “would like...to use my pipes for free, but I ain’t going to let them do that.”³²

To be sure, the picture I’ve painted in this lecture has not been not encouraging, with public policy facing loss after loss, big corporations having a disproportionate influence on policy, and those who craft the policy jumping ship to join the very industry at play. But the story I’ve told here represents just one portion of the history of internet policy over the past decade and change.

There is another story to tell, one which has been very encouraging and which represents our best hope for the future. There has been in the past decade a resurgence of media activism and public involvement in media policy the likes of which America has not seen in a generation. It has a number of achievements to its credit, and among those achievements is a dramatic win amid the crafting of the FCC’s net neutrality provisions in 2014. The popular outrage fueling that win is connected to the very legal policy that opened this can of corporate worms – the classification of the internet from Title II pro-public telecommunications service to a Title I pro-corporate information service.

The overwhelming public outcry over the FCC’s policy proposal, in barely a month’s time, forced on to the table the reclassification of the internet back from pro-corporate to pro-public framework that net neutrality so desperately needs. The response forced a massive freakout from the corporate ISPs, who have taken to arms in the policy fight to come in 2014.³³

³¹ McChesney, Digital Disconnect, pg. 112.

³² Accessible via the Internet Archive at https://web.archive.org/web/20080308052233/http://www.businessweek.com/@@n34h*IUQu7KtOwgA/magazine/content/05_45/b3958092.htm

³³ One example of the freakout and veiled threats is at <http://stopthecap.com/2014/05/13/big-telecom-threatens-investment-apocalypse-if-fcc-enacts-strong-net-neutrality/>

Of course, the popular efforts that won that battle aren't perfect – they have its flaws and its weaknesses, but it also has tremendous strength and the potential to grow and mature. We'll discuss that popular movement and its story in this history of recent internet policy in the next lecture.

LECTURE THREE: ACTIVISM

In the previous lecture, we examined the policy dimensions of the recent history of net neutrality, with a particular focus on the years from 2002 onward, extended through various government bodies -- the law and the courts –also acknowledging the role that the big corporate ISPs and their stranglehold on the American internet market.

But while most of the focus of that most discussion on net neutrality is on the legal, policy, and economic back-and-forth, there's another critical component to the saga that is the focus of this lecture. It's the piece of the puzzle which has been instrumental in keeping the struggle raging as long as it has. It has not gotten the widespread coverage and analysis it deserves but its role is nonetheless important and even hopeful. This is the involvement of civil society and the public at large in media policy, particularly on net neutrality.

We'll delve into the inspiring history of media policy activism in the past decade and its connections to the net neutrality saga. But first, a word about the struggle about media policy activism: The crux of public activism on media policy front is that of building wider awareness. Very often, the policies that big corporations push are hated by the public, but very often the public doesn't know about those policies until they're enshrined into law and become impossible to dislodge, and even then the public might not know about those policies. The irony is that the source of the information about these policies – the media – have a vested interest in the outcome, and are wont to downplay or ignore criticizing or even covering those issues. Activism then becomes a race to inform the wider public and potential allies against the looming danger in order to stop disaster before it happens. The hope is that the wider awareness builds outrage that embarrasses the forces of darkness to retreat.

We have been fortunate to see that happen a number of times on the media policy in the past decade, including a number of times in the net neutrality wars. We'll review that history now.

In the previous lecture, I mentioned Michael Powell, the former FCC chair turned cable TV lobbyist who reclassified cable internet modems away from their pro-public stance they had been for much of their history. Around the same time Powell's FCC acted to reclassify in 2002 and 2003, Michael Powell was also orchestrating a dramatic evisceration of the FCC's media ownership rules.

These are the rules that limited media companies how many and of what kinds of media they could own in a community and nationally. That matters in that fewer owners with more media made for a worse media environment – with more commercialism, less localism, fewer independent voices, and less diverse perspectives. Over the previous decades, media policy makers increasingly watered down these rules, and Michael Powell sought to escalate the trend dramatically.

The business community salivated over the prospect, and the public was all but unaware of what was to come, so activists around the country, and I'm very fortunate to count myself among them, worked to sound the alarm in every way we could – with staging protests, holding hearings, publishing op-eds, and also using the internet itself to spread the word. It worked. The resulting outcry didn't stop the FCC in 2003 from carrying through with their plan, but the outcry reached an estimated three million respondents – far more than the FCC had ever gotten on a single docket. That fueled positive Congressional action³⁴ – even with a right-wing Congress – and was acknowledged as the critical factor in a court ruling that blocked the FCC's media ownership revision efforts for more than seven years and which cooled down the business community's collection erection.

What's the connection of this media ownership fight to net neutrality? There are a number of connections. For one, it showed that organizing on media issues is not only possible but also powerful; activism on media policy can transcend the usual political divides and can extend across the political spectrum. For another, the internet (the crux of net neutrality) is increasingly subsuming the media, with more and more media becoming digitized and the internet increasingly upending existing media infrastructure and playing more and more of a role in our lives. What's more, the media ownership uprising of 2003 taught lessons for activists that were used in subsequent struggles.

Network neutrality was one of those struggles, which we'll discuss in much greater detail in a moment. But there were also efforts related to the future of the internet, among them: the struggle over community internet. A Supreme Court ruling in 2004 in Missouri upheld laws by the state government to forbid local communities from setting up their own community internet initiatives³⁵. A number of states had faced the brunt of corporate lobbyists and passed legislation to make illegal the establishment of community internet initiatives. But activists – raising the spectre of corporate dominance of local internet connections -- rallied to respond back, including in Texas, Louisiana, Iowa, West Virginia, Indiana, and

³⁴ See Robert McChesney's *The Problem of the Media* (New York: Monthly Review Press, pgs. 291-294).

³⁵ *Nixon v. Missouri Municipal League*, see http://www.oyez.org/cases/2000-2009/2003/2003_02_1238/

Illinois.³⁶

It was also in the year 2005 that we saw the Supreme Court uphold the FCC's right to reclassify cable internet in the case involving the small-scale internet service provider known as Brand X. So the fight was on for the future of the internet. The vehicle for the pro-corporate ISPs, as we mentioned last lecture, was the Communications, Opportunity, Promotion and Enhancement bill of 2006, abbreviated the COPE Act. The activism on that echoed what we did to combat the FCC's media ownership rules – we wrote about it, we blogged about it, we contacted like-minded allies about it, and we organized around it. One series of actions encompassed a day of coordinated national protests against the COPE Act which were termed the National Day of Outrage which took place on May 24, 2006.³⁷ Here in Chicago a protest was held on Congress Parkway outside what used to be the SBC Center, down the street from the Harold Washington Library Center.³⁸ A rally in New York was held outside the Verizon world headquarters.³⁹ In San Francisco, protesters marched on AT&T Park where the San Francisco Giants play baseball.⁴⁰

The COPE Act, despite the increasing grassroots activism against it, passed by a considerable margin in the U.S. House.⁴¹ Next it had to pass the Senate, and its shepherd was the late Alaska Senator Ted Stevens. We had mentioned that Ted Stevens had shepherded the committee, even defeating a net neutrality amendment that failed to be included on the final bill by an 11-to-11 tie vote.⁴² But the increasing public interest and public concern in the issue was reflected in the questions that were posed by other Senators. That's when Ted Stevens opened his mouth in response. Here's a partial transcript:

Ten movies streaming across that, that Internet, and what happens to your own personal Internet? I just the other day got... an Internet was sent by my staff at 10 o'clock in the morning on Friday. I got it yesterday [Tuesday]... They want to deliver vast amounts of information over the Internet. And again, the Internet is not something that you just dump something on. It's not a big truck. It's a series of tubes.⁴³

That rant would have gone unrecorded had it not been for a single activist with the public interest group Public Knowledge who recorded the audio and posted it

³⁶ <http://www.szc.org/article/108>

³⁷ Archived at <https://web.archive.org/web/20060615040618/http://saveaccess.org/protest>

³⁸ <http://www.chicagomediaaction.org/news.php?id=438>

³⁹ <http://www.democracynow.org/2006/5/25/headlines>

⁴⁰ <https://www.indybay.org/newsitems/2006/05/19/46512.php>

⁴¹ <http://www.commondreams.org/views06/0609-24.htm>

⁴²

http://www.cantwell.senate.gov/news/record.cfm?id=258007&&&search_field=net%2520neutrality

⁴³ https://en.wikipedia.org/wiki/Series_of_tubes

online,⁴⁴ at which point a blog with the magazine Wired reposted the commentary and the reaction spread swiftly across the series of tubes,⁴⁵ reaching the corporate media (even getting a segment on The Daily Show)⁴⁶ and reaching far wider public awareness, making the bill too radioactive to bring to a vote.

Since it was never brought to a vote in the Senate, the COPE Act died from inaction, thus helping the net neutrality cause and keeping net neutrality alive – for the time being. But consider this: Why did senators like Byron Dorgan of North Dakota and Maria Cantwell of Washington goad Ted Stevens into what became a career-defining meltdown? Because of the activism, large and small, at the time by those working more and more to make net neutrality an issue.

The fight over the COPE Act had been a bellwether. As is the case with the history of media policy activism, the COPE Act marked a win in the very hardest of fights: The term and the idea of net neutrality was in wider discourse, more people knew about net neutrality and its importance, and fighting for it became a thinkable issue. That was, and it is critical in any activism.

With the COPE Act defeated, the struggle of terrain returned to the FCC, to ensure that the cop on the beat stayed true to the principles. To its credit, that's what happened under FCC chair Kevin Martin in 2005, who had established the first (flawed) policy of net neutrality. Consumers who had used the protocol Bittorrent to use and share very large computer files, as was mentioned in the previous lecture, began to complain of slowdowns in use and activity. Activists affiliated with various nonprofit groups, including folks with the Electronic Freedom Foundation, Public Knowledge, and others, hearing of complaints from Comcast customers for using Bittorrent, tracked Comcast to see if they were meddling with Bittorrent traffic.⁴⁷ When evidence was found in that direction, a formal complaint was filed with the FCC.

The FCC to its credit, heeded the formal complaint and took action -- but as you'll recall from the previous lecture, Comcast sued the FCC in response in an attempt to strike down the Commission's net neutrality efforts, and given the commission's reclassification of the internet away into a weaker pro-corporate framework, Comcast succeeded in winning its suit.

The milquetoast policy efforts on net neutrality continued into the Obama administration, still leaving the reclassification effort off the table. And unsurprisingly, when the FCC voted in 2010 on a second effort at net neutrality –

⁴⁴ <https://www.publicknowledge.org/news-blog/blogs/senator-stevens-speaks-net-neutrality>

⁴⁵ http://www.wired.com/2006/06/your_own_person/

⁴⁶ <http://thedailyshow.cc.com/videos/uo1ore/headlines---internet>

⁴⁷ <https://torrentfreak.com/eff-tool-hunts-bittorrent-throttling-isps-080802/>

this time with corporate involvement -- the FCC again lost in court. Yet in all this time, the build-up among activists continued under the radar for a reclassification of the internet back to the pro-public Title II framework. At least under Title II, the activists argued, the FCC stood a far better chance to win in court when it did get sued (as it would inevitably be the case).

It was on April 23, 2014, that the Wall Street Journal leaked news that the FCC would surrender to the corporate ISPs, by allowing for what was termed “paid prioritization” in its net neutrality provisions. The freakout by the public was immediate and massive and encouraging. Within a day’s time of the leak, public interest activists got involved in conference calls in starting to chart out subsequent actions. (I know; I was invited to those calls.)

In the subsequent weeks, there were blog posts far and wide. There were activist actions like that announced by one of the co-founders of Reddit of buying a net neutrality billboard in the FCC’s backyard.⁴⁸ There were a host of online videos explaining the policy and its importance. There were multiple net neutrality petitions. There was a round-the-clock encampment of the FCC in the days leading up to its Notice for Proposed Rulemaking.⁴⁹ Here in the Chicago area, there was a protest at the FCC’s Midwest bureau on the same day that the FCC would revisit its net neutrality policy (you can see a documentary video of the protest online)⁵⁰. And there was even reporting about the issue across the internet, although as media analysts discovered there was precious little corporate television coverage on the issue (what else is new?).⁵¹

All told, by the time the FCC had held its meeting for its Notice for Proposed Rulemaking on May 15, 2014, the net neutrality docket had fielded an estimated 3.4 million responses. If that’s accurate it would break the FCC’s all-time record set by the estimated three million responses fielded by the FCC in the media ownership uprising of 2003 – a fight that we won, and that we plainly wouldn’t have won without that massive outcry. What’s more, that’s an outcry that took place in the days before the policy process began, whereas the Powell-led FCC in its 2003 media ownership proceeding was well into its policy machinations and doing everything to stay out of public view.

Did this outcry make a difference? The full story about this latest battle in the net neutrality wars is yet to be written, but there is one very encouraging

⁴⁸ <http://techcrunch.com/2014/04/27/alexis-ohanian-wants-to-put-a-pro-net-neutrality-billboard-right-in-the-fccs-backyard/>

⁴⁹ Links to all of the foregoing can be found at <http://chicagomediaaction.org/news.php?id=709>

⁵⁰ <http://www.youtube.com/watch?v=7cYECKz20PA>

⁵¹ <http://www.fastcoexist.com/3031016/if-net-neutrality-is-such-a-big-deal-how-come-its-not-in-the-news?partner=rss>

development. Title II is back on the table. That is, the FCC – in its final Notice that was approved by a 3-2 vote – has included a reclassification of the internet back into its pro-public-service framework among the options for consideration.⁵² Not long ago, that would have been considered a distant dream. Now, it's up for consideration. And when word of *that* development leaked, the corporate ISPs lost their collective minds. Within a day, there were opinion pieces and blog posts and letters to the FCC from coalitions of the corporate ISPs and their bought-and-paid-for allies threatening the loss of investment in the internet.⁵³

The fight is on for the internet, but as we see in this capsule history the fight has been on for the better part of a decade and longer – from the original ruling in 2002 to the community internet fights in 2005 to the net neutrality wars of 2006 to the net neutrality wars II of 2014.

If the debate is fair, we win. But as we all know the debate under our lock-and-key corporate media and cash-laden politicians is seldom fair. The key to winning this fight, as is the case with many media fights, is increasing public involvement. The opposition knew, what we know, in that they win by trying to ram through policy and locking it in before the public knows about and would act to block it or change it. Therefore, better public policy is directly correlated to more public involvement. And more public involvement is directly connected to more public awareness. That's a truism, I think, and it makes sense: You can't act about something unless you know there's an issue, unless you know what it's about.

And that's the motivation for these lectures, to provide another resource for folks to find out, to learn more, and to encourage people to act. It's how we've kept the fight going for more than a decade. It's how we'll win this fight and other fights to come. And public involvement in these fights have resonance far deeper than just asking the FCC to reestablish Title II classification for internet connections, important though that is. We're presently in the middle of an opportunity that comes maybe once a generation, a critical juncture in which the opportunities for social change are far greater than in ordinary times.

How does that work? What can we do? What are the likely possibilities in the short term? And what are the deeper issues at play? These are all mighty and important questions. And we'll provide some measure of answers to them in the next lecture.

LECTURE FOUR: POSSIBILITIES

⁵² <http://www.fcc.gov/document/fact-sheet-protecting-and-promoting-open-internet>

⁵³ See, for example, <http://www.broadcastingcable.com/news/washington/ncta-no-justification-title-ii/131147>

We have covered a lot in these lectures; we've reviewed the definition and details of net neutrality. We've reviewed the definition of the term, why it's necessary and what's at stake in the fight. We've looked at the history of net neutrality in policy, in the law, in the courts, and in the court of public opinion. We've now come to today, the summer of 2014.

On May 15, 2014, the FCC approved a net neutrality docket – marking the third time that the FCC will attempt to craft policy on net neutrality provisions, with the previous two times being defeated in court. In a significant development, the FCC has included Title II classification – the formal policy involving public service, common carriage and non-discrimination – among the policy options included in the notice for proposed rulemaking. This development is a credit to what is arguably the largest number of comments – an estimated 3.4 million so far -- who commented to the FCC on net neutrality, what appears to be the most of any single docket in the agency's history.

The FCC will accept initial comments on the docket until July 15, 2014. From July 15, 2014, through September 15, 2014, the FCC will accept replies to those initial comments. You can comment through the FCC's website www.fcc.gov/comments, or using the handy online forms available at www.savetheinternet.com, one of the coalitions that has been working on net neutrality. If you do nothing else on this matter, I strongly encourage you to comment, and ask – demand – the FCC reclassify the internet as a Title II telecommunications service.

I'd like to address a point regarding the activism and futility. A lot of non-activists and even a number of activists who disdain getting involved in matters of policy will understandably scoff at getting involved in matters of trying to influence policy. There is reason to be cynical: The FCC, as the record long shows, is more a handmaiden of corporate power than an advocate of public interest, convenience, and necessity. Officials at the FCC, far more often than not, use the FCC as a stepping stone to positions within corporate media and aligned industries, positions that are much higher paid and with far less critical scrutiny or awareness.

But we have also seen that corporate power can be defeated. Recall the media ownership uprising of 2003. The comments that were submitted to that docket – both in their quantity and in their quality – were exactly the reason why the lawsuit that overturned the FCC's media ownership rule demolition was successful. Andy Schwartzman, an attorney who worked on that suit in 2003, recalled the comment by the judges that “a million people” (more like three million people) commented on the docket in some way, and that flood of commentary should matter and therefore they – we -- blocked the FCC's rule rewrite which would have otherwise seen billions of dollars of sweeping mergers and

acquisitions in just a few months.

But ask yourself: how did millions of people know about the docket enough to comment on it, where before the major media (who sought to cash in on the rewrite) were effectively mute on the matter in the run-up to the FCC's vote?⁵⁴ In sum, it was because of growing activist efforts in communities across America who saw what was coming and who raised the alarm in every way they could, predictions be damned. Those activists, myself and others, also caught a number of lucky breaks along the way, and the FCC's short-lived policy victory wound up being a pyrrhic victory and transformed ultimately into a full-fledged defeat.

We could see something similar on the FCC's docket on net neutrality. The numbers are certainly there for a populist-fueled victory, with possibly more to come. And there are promises of a lawsuit, regardless how the ruling lands. The problem for net neutrality advocates is that, as we've seen, using the courts to defend net neutrality, without a reclassification of the internet, are probably not going to work. But fortunately, that's now abundantly clear. What's more, given the threat that a reclassification would have regarding certain public services – the use of Voice-Over IP Telephone for 911 Emergency calls, for example⁵⁵ – it becomes all the more necessary to reclassify the internet to prevent this kind of degrading service for profit. This is why some analysts think that the FCC eventually will come around to reclassifying the internet.⁵⁶

But predictions about the fate of net neutrality aside, we shouldn't rest on our laurels, regardless how the net neutrality wars of 2014 turn out. The reason is that there are deeper issues at play that also tie in to net neutrality, and I'd like to devote the remainder of this lecture to addressing some of those issues. In brief, I'd like to address the reactive nature of political activism, the role and fate of markets in the net neutrality fight and in society more generally, and the critical juncture that we face in our current time.

As we've seen, the fight over net neutrality has been punctuated by intense times of great activity, like the COPE Act of 2006, and the net neutrality wars of 2014, but my point here is that such activism is less active and more *reactive*. It seems that we're always fighting to stop something, usually policies that are driven by corporate diktat; seldom are we setting the timetable or heaven forbid setting the agenda.

Please note -- what I'm about to discuss gets us somewhat removed from the

⁵⁴ <http://ajrarchive.org/Article.asp?id=3500>

⁵⁵ <http://www.911dispatch.com/2014/06/06/senate-hearing-explores-transition-to-ip/>

⁵⁶ See <http://www.savetheinternet.com/blog/2014/01/17/net-neutrality-solution> and comments at http://www.reddit.com/r/IAmA/comments/1v7kdg/net_neutrality_is_dead/

discussion of net neutrality, but the matters are clearly connected. Corporations have that stranglehold on our political process, on the possible fate of net neutrality and by extension the internet and the future of our communications, *and* for that matter on most everything on Earth. (Just ask any environmental activist.) The aim of a corporation that's faithful to its charter is continual growth at the expense of everything else, even if it – *especially* if it -- leaves destruction, sometimes death, in their wake – just like a cancer. But actual physical cancers include at least some potential concern for the cause of that cancer – the carcinogen. Continuing with this metaphor for a moment: If a corporation is a cancer, what is the carcinogen?

There are clearly a number of factors that are at play that cement the prized position of corporations, certainly in the United States. "The Corporation", a documentary film and namesake book by Joel Bakan, delves into some of the history on this. But there is one potential carcinogen, a major factor affecting the oversized influence of corporations and impacting the fate of net neutrality and much else, whose criticism is as big a taboo as any in our day and age: markets.

Markets -- the main allocation mechanism of our economy and the world economy, where buyers and sellers compete against each other, as do buyers against other buyers, and sellers against other sellers, with prices serving as a mark of bargaining power. It is regarded as an article of faith that all this competition engendered by markets is a good thing; that the proverbial "invisible hand" will guide good results out of these competitive interactions. And yet, the candle lit by market faith is blown out by the evidence. We see that across industries, across sectors of the economy, markets concentrate: over time, fewer and fewer producers hold more and more control.⁵⁷ And given the market dynamics at play, that makes sense: in an economy where you either eat or be eaten, it makes sense to be a monster, and a corporation is the political-economic equivalent of a monster.

If criticizing markets for good reason is taboo, then so is calling for the abolition of markets and their replacement with a more participatory economy that won't result in these corporate monsters holding disproportionate sway over the internet and over our lives and over the planet. Yes we should call for -- we should *demand* -- that the FCC reclassify the internet as a Title II telecommunications service. But should we win the net neutrality wars of 2014, that's won't stop the looming threat of corporations hovering over everything, ready to roll back our hard-fought wins. We need to stop playing defense, constantly reacting to everything that corporations do; we need to start playing on offense, by calling for a better economy that would make these life-threatening

⁵⁷ Robert McChesney, "Digital Disconnect: How Capitalism is Turning the Internet Against Democracy", chapter 2, "Does Capitalism Equal Democracy?", in particular the subchapter on Monopoly.

and net-neutrality-threatening corporations shrivel and die.

Getting into the details of what that economy would work, should work, would require another four lectures. But for the time being, I would recommend two books for those interested in exploring this topic: One, the book “Of the People, By the People: The Case for a Participatory Economy” by Robin Hahnel. Two, the book “Real Utopia: Participatory Society for the 21st Century” edited by Chris Spannos – which I should say in the interests of disclosure I helped contribute a chapter to.

I’ll admit that such a proposal – abolishing the markets that spawn corporations in order to help preserve net neutrality -- might seem to some people to be a bit extreme, even unrealistic. To which I would say: Of course it’s unrealistic. “Realism” in this context is just another word for cynicism. Many of the wins of social justice of contemporary times were deemed in advance to be unrealistic. Ripping the veneer of legitimacy off our financial system in 2011 with a ragtag effort called Occupy Wall Street was unrealistic. Stopping the FCC’s media ownership rule demolition of 2003 with an unparalleled mass uprising was unrealistic. Stopping the World Trade Organization’s Seattle round in 1999 with massive and concerted street protests was unrealistic. The list can go on. In fact, I daresay that now is the time, more than ever, to pose the most unrealistic proposals you can think of. And there’s a reason why.

Social change doesn’t always happen in a linear fashion; sometimes it can very dramatic and very deep and very fast. These opportunities for deep social change have to do with what are called “critical junctures”. These are once-a-generation opportunities for deep, dramatic, and quick social change, but these opportunities don’t last very long, “perhaps a decade or two”. I’ll quote at length from a book that discusses the idea in detail: “Communications Revolution: Critical Junctures and the Future of Media” by Robert McChesney⁵⁸:

“The decisions made during such a [critical juncture] establish institutions and rules that likely put us on a course that will be difficult to change in any fundamental sense for decades or generations.”

When it comes to history of communications technology, McChesney further writes that “critical junctures in media and communication tend to occur when at least two if not all three of the following conditions hold:

1. There is a revolutionary new communication technology that undermines the existing system;
2. The content of the media system, especially the journalism, is increasingly

⁵⁸ The following quotes are from McChesney, Robert W., Communication Revolution: Critical Junctures and the Future of Media (New York: The New Press, 2007).

- discredited or seen as illegitimate; and
3. There is a major political crisis – severe social disequilibrium – in which the existing order is no longer working and there are major movements for social reform.

“In the past century”, McChesney continues, “critical junctures in media and communication occurred three times: in the Progressive Era, when journalism was in deep crisis and the overall political system was in turmoil; in the 1930s, when the emergence of radio broadcasting combined with public antipathy to commercialism against the backdrop of the Depression; and in the 1960s and 1970s, when popular social movements in the United States provoked radical critiques of the media as part of a broader social and political critique.”

I believe that we’re in another critical juncture now. Two of the circumstances are undeniably in place:

- “a revolutionary new communication technology that undermines the existing system” – the internet: check!
- “the content of the media system, especially the journalism, is increasingly discredited or seen as illegitimate” – America’s journalism was asleep at the switch on the 2003 invasion of Iraq, the Great Recession of 2008, the great NSA privacy invasion, among many, many other stories, while our extant newspapers are collapsing and journalists are getting laid off in droves: check!

Is there “a major political crisis”? Is there “severe social disequilibrium – in which the existing order is no longer working”? Again this is debatable – what’s the threshold for “severe social disequilibrium”? But it is clear that things are and have been out of whack, and I mentioned just some of the examples of this.

Are there “major movements for social reform”? Again, a debatable point: When does something qualify as a “major movement”? But things do trend in this direction without a doubt. Despite the suppression of the Occupy Wall Street movement, many of those active in the Occupy movement are still active on various initiatives, even if those efforts are not as widely known.⁵⁹ Those efforts are coupled by growing and active efforts on immigrant rights, economic justice and living wage efforts, the environment (particularly the climate crisis), LGBT rights, justice along gender lines, media reform and media justice, and on and on.

So, it seems we’ve come close, if we’re not already at – our trifecta, our hat trick, our triple crown -- the three circumstances that are emblematic of a critical juncture. So, is that it? Will positive societal change now simply play itself out, with net neutrality being one of changes? I’m inclined to say: not quite. While

⁵⁹ For example, the ongoing coverage at <http://www.occupy.com/>

there's a lot of motion on various fronts (no denying that), there's little in the way of coordinated efforts towards some unifying end. These efforts need some center of gravity around which to rotate, to crystallize, to coalesce. Again, Robert McChesney, along with co-author John Nichols, make this point in a book called "Dollarocracy"⁶⁰. McChesney and Nichols write:

"There is more than sufficient demand for reform. And there are more than sufficient reforms under consideration. But to our view...there is an insufficiency of focus. There needs to be a unifying theme that will galvanize the movement and enhance its power. From this enhanced power – and *only* from such enhanced power – can foundational democratic reforms emerge. This is the last great challenge in shaping the current moment for reform into a necessary transformational politics." (pg. 278; emphasis in the original)

McChesney and Nichols suggest as their unifying theme the act of voting that has animated so much political activism throughout American history. I myself have offered here a second potential theme: the abolition of markets and their replacement with a more participatory economy. Doing that, I surmise, would decapitate the corporations that threaten net neutrality and much else besides. No doubt others can and have offered their own themes. To which I say: Let the debate begin. The sooner we can argue through these potential unifying themes during this rare opportunity, this critical juncture, the sooner we can coalesce around one, the sooner we can enhance our growing power, the sooner we can change the world for the better – and help preserve net neutrality.

In the short term, again, I encourage you contact the FCC so ask – demand! – that they reclassify the internet as a Title II telecommunications service. Once again, you can add your comment to the official docket through the FCC's website at www.fcc.gov/comments, or using the handy online form at www.savetheinternet.com. In the longer term, let's have that debate to figure out our unifying theme. I've got my idea; I'd love to hear yours. There may be nothing more important.

That concludes these net neutrality lectures. I thank you for your time and attention.

⁶⁰ John Nichols and Robert W. McChesney, *Dollarocracy: How the Money and Media Election Complex is Destroying America* (New York: Nation Books, 2013).