

Politics of Cyberspace @ JCOGS

Net Neutrality

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Topics

- Common Carrier
- Telecommunications Status
- Defining Net Neutrality
- Arguments In Favor of Repeal
- Counter-Arguments
- ISP Interference w/ Bandwidth
- Legal Liability from Non-Neutrality
- FCC: The Mandate
- Verizon Executive at FCC
- Consolidation – Net Neutrality = Trouble
- Resistance



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Common Carrier Status – 1934

- Shipping companies & telecommunications providers
 - ☐ Telegraph
 - ☐ Telephone
- Forbidden under US law from discriminating among *clients*
- Cannot apply different rules/charges to different clients for *same service*
 - ☐ Only attributes of service count
 - ✓ E.g., Weight, size of package, delivery time
 - ✓ Source/destination of communications
 - ☐ Cannot charge two customers different prices for exactly same service
 - ☐ Cannot speed up service for different *senders* to same *client* who has paid for delivery

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47 USC §153 (11)

The term “common carrier” or “carrier” means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

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47 USC § 202 (a)


It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

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Telecommunications Status

- Common-carrier status applied to
 - ☐ Telegraph
 - ☐ Telephone
 - ☐ Internet Service Provider (ISP)
- E.g., AT&T or Verizon could not discriminate among content providers
 - ☐ Netflix could not pay more for higher bandwidth than YouTube
 - ☐ Could not slow down access to small Websites (e.g., mekabay.com) while speeding up access to big sites (e.g., AMAZON.COM)




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Defining Net Neutrality

Net neutrality is the absence of restrictions placed on the transmission of content by the major ISPs that provide service to millions of homes and offices. It means all packets are delivered on a first-come, first-served basis regardless from where they originate.




From Computer Desktop Encyclopedia
<http://www.computerlanguage.com/>

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Arguments In Favor of Repeal



- Contribute to lively competitive marketplace
- New offerings for consumers
- Ability for suppliers of content to benefit from higher bandwidth by paying fees
- Users could pay less for Internet access
- ISP profits could increase
- High-bandwidth content suppliers could benefit



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Counter-Arguments


- Not all supposedly competitive industries benefit consumers
 - ❑ Consider PHARMA in US
- Since ISPs are no longer common carriers, what will prevent political discrimination among information sources?
 - ❑ How about 30-second wait times for *New York Times* articles v
 - ❑ 0.3 second wait for *Breitbart News Network*?
 - ❑ (Substitute your own preferences)

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ISP Interference w/ Bandwidth



- Madison River v Vonage (2004)
- Telus v TWU (2005)
- Verizon v NARAL (2007)
- Comcast v BitTorrent (2007)
- Verizon Blocks Tethering (2008)
- Comcast & Microsoft (2010)
- AT&T Blocks Apple Facetime (2012)



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Vonage v Madison River (2004)



- Vonage provided landline phone & Internet service to customers in North Carolina
- Madison River: ISP in same area
- VoIP
 - ❑ Voice over IP = telephone via Internet
- Suddenly Madison River blocked *everyone* using VoIP
 - ❑ Vonage felt VoIP via Madison River competed w/ Vonage telephone service
- FCC imposed \$15K fine on Madison River

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Telus v TWU (2005)

- Telus – leading telecom in western Canada
- July 21
 - ❑ Telecommunications Workers Union
 - ❑ Declares strike v Telus
 - ❑ www.voices-for-change.com posts info about strike
- July 22
 - ❑ Telus blocks own customers' access to Website
 - ❑ No notification to anyone
- July 28
 - ❑ Telus stops blocking Website

<http://www.cbc.ca/news/canada/telus-cda-subscriber-access-to-pro-union-website/1.511166>

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Verizon v NARAL (2007)



- > National Abortion Rights Action League
- > Began receiving donations via text message
- > Verizon refused request
 - Barred issue-oriented programs
 - ✓ Abortion
 - ✓ War...
 - Only basic politician-centered fund-raising permitted
- > Coalition of non-profit groups challenged Verizon
- > Verizon backed down
- > But common-carrier restrictions on censorship less stringent for cellular providers




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Comcast v BitTorrent (2007)


- > BitTorrent
 - Peer-to-peer file-sharing
 - Often used for pirated content (violating copyright)
 - Also used for legitimate file transfers
- > Comcast blocked all BitTorrent connections
 - Initially denied it was doing so
 - Eventually stopped (2008)
 - US Court of Appeals ruled against FCC
 - ✓ But Comcast had changed policies about capping data transfers

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Verizon Blocks Tethering (2008)


- > Tethering = using phone as hotspot
 - Other devices can use ISP for 'Net access
- > Verizon
 - Permitted tethering *only* for customers paying for Mobile Broadband Connect Service
 - Pressured Google to remove tethering apps from Play Store
- > FCC
 - Charged Verizon w/ violation of licensing agreements
 - Fined Verizon \$1.25M



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Comcast & Microsoft (2010)


- > Comcast imposed 250 GB/month limit (a *data cap*) on all its users starting 2008
- > But in 2010, signed agreement w/ Microsoft
 - Provided streaming service (movies, games) via MS-Xbox game system
 - Would not count bandwidth usage against data cap
- > X-box owners strongly moved to favor Comcast streaming v Amazon or Netflix
- > Comcast
 - Rescinded policy after major protests
 - But reserved right to impose new caps any time



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AT&T Blocks Apple Facetime (2012)

- > AT&T
 - Phone service
 - ISP
- > Apple's *Facetime* = video-chat app
 - Could substitute for phone calls via 'Net
- > AT&T blocked Facetime
 - Even for customers with unlimited bandwidth plans
 - Unless customers paid for Mobile Shared Data Plan (extra \$\$)
- > Coalition of open-Internet advocacy groups threatened formal complaint to FCC
- > AT&T backed down in 2013



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Legal Liability from Non-Neutrality


- > *Cubby v CompuServe* (1991)
- > *Stratton Oakmont v Prodigy* (1995)
- > *Blumenthal v Drudge & AOL* (1998)



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Cubby v CompuServe (1991) [1]


- CompuServe
 - ❑ Provided thousands of discussion groups
 - ❑ Disclaimed all responsibility for content posted by users
 - ❑ System operators (SYSOPS) governed their own discussion groups (*forums*)
- Journalism Forum
 - ❑ Established by Cameron Communications
 - ❑ *Rumorville* = newsletter in Journalism Forum
 - ✓ Created by Don Fitzpatrick Associates
 - ✓ Published nasty comments about Skuttlebut newsletter (from Cubby Inc. & Robert Blanchard)



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Cubby v CompuServe (1991) [2]

- Cubby & Blanchard sued for libel
 - ❑ Included Cameron, Fitzpatrick & CompuServe
- US District Court, Southern District of NY ruling
 - ❑ Neither Cameron nor Fitzpatrick agents of CompuServe
 - ❑ CompuServe simply provided communications service
- Key finding summarized:





Because CompuServe did not interfere with content in any forums, the provider had no legal liability for that content.

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Stratton Oakmont v Prodigy (1995)

- Prodigy provided bulletin boards
 - ❑ MoneyTalk board run by Charles Epstein
 - ❑ Posted anonymous claims
 - ❑ Stratton Oakmont & president Daniel Porus involved in criminal fraud
- Stratton Oakmont sued Prodigy & poster for libel



- Supreme Court, Nassau County, NY ruling (May 1995)
 - ❑ Prodigy advertised its editorial control over content
 - ❑ Therefore this provider was responsible for libel



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Blumenthal v Drudge (1998)


- AOL Drudge Report on AOL
 - ❑ Aug 1997 – Matt Drudge posted rumors
 - ❑ Claimed Sidney Blumenthal abused his wife
 - ❑ Blumenthal sued Drudge & AOL for libel
- District Court for District of Columbia
 - ❑ AOL *not responsible* for Drudge libel
 - ❑ Cited Communications Decency Act of 1996 (47 USC 230 §230)
 - ✓ Indemnified ISPs against liability for user content
 - ✓ *Thus effectively granted common-carrier status to ISPs*



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FCC: The Mandate

- Regulates interstate & international communications
 - ❑ Radio
 - ❑ Television
 - ❑ Wire
 - ❑ Satellite
 - ❑ Cable
- Enforces US communications law & regulations



<http://www.fcc.gov/About/Commission>

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FCC Goals

- Promoting Economic Growth and National Leadership
- Protecting Public Interest Goals
- Making Networks Work for Everyone
- Promoting Operational Excellence



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Promoting Economic Growth and National Leadership

Promote the expansion of competitive telecommunications networks, which are a vital component of technological innovation and economic growth and help to ensure that the U.S. remains a leader in providing its citizens opportunities for economic and educational development.




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Protecting Public Interest Goals

The rights of network users and the responsibilities of network providers form a bond that includes consumer protection, competition, universal service, public safety and national security. The FCC must protect and promote this Network Compact.




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Making Networks Work for Everyone

In addition to promoting the development of competitive networks, the FCC must also ensure that all Americans can take advantage of the services they provide without artificial impediments.




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Promoting Operational Excellence

Make the FCC a model for excellence in government by effectively managing the FCC's resources and maintaining a commitment to transparent and responsive processes that encourage public involvement and best serve the public interest.




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Verizon Lawyer at FCC

- Ajit Pai appointed Chairman by Trump Jan 2017
- Several years serving as attorney for Verizon
- Consistently argues against Net Neutrality
- Explicitly dismissed value of public comments supporting Net Neutrality




<https://www.fcc.gov/about/leadership/ajit-pai>
<https://ajitpai.com>

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Consolidation – Net Neutrality = Trouble

- AT&T permitted to merge w/ Time Warner
 - ❑ Major broadband / wireless provider
 - ❑ Major media company
- Comcast now bidding to buy 21st Century Fox film/TV studios
- Experts predict
 - ❑ Higher prices
 - ❑ Fewer choices
 - ❑ Fewer views
- AT&T will be able to
 - ❑ Speed access to Time Warner materials
 - ❑ Slow down access to competing media providers



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Resistance

- ACLU
- Center for Digital Democracy
- Common Cause
- Consumers Union
- EFF
- Global Net Neutrality Coalition
- Net Neutrality Activists' Campaign
- Teletruth




<http://www.pbs.org/meyer/meyersamerican/sites.html>

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For Further Reading

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Now go and study

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< http://www.mekabay.com/courses/academic/norwich/cs407/cs407_lectures/index.htm >
or use the abbreviation: < <http://tinyurl.com/ybx2yykx> >.

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