



Net Neutrality Reloaded

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How does net neutrality fit within today's neoliberal politics? In short, it doesn't!

Neoliberalism is a hydra-headed concept dating back to the late 19th century. Though time-worn, it remains a slippery concept that, as Taylor C. Boas and Jordan Gans-Morse pointed out, is employed unevenly and asymmetrically across ideological divides.¹ In short, while it might once have had a well-defined meaning, it's now a slogan in service of a broad spectrum of partisan interests.

Here I use neoliberalism to denote an uncritical vision of unregulated markets, privatization of public assets and resources, and antipathy to public support of social programs that's affiliated with crony rather than laissez-faire capitalism. Under this definition, government largely serves the interests of the power elite and military industrial complex—through corporate welfare (government subsidies/subsidy economics), procorporate tax policies (for example, foreign investment credits), loose monetary policy (for example, quantitative easing), deficit spending, and pro-monopolistic practices—and its legitimacy is measured by its potential contribution to corporate profit.² To be sure, this use of the term has what Boas and Gans-Morse call a negative normative valence, as it's also associated with authoritarianism, corporatism, and

statism. Yet, with few exceptions, the US and other Western countries have been embracing neoliberal principles since the 1980s at considerable public cost.³

The neoliberal mantra's impact on the debate over one of today's most heated policy subjects, net neutrality, should be fairly clear. Net neutrality rests on the principle of the "dumb pipe," wherein network providers provide equal access and pricing to all content providers and customers without regard to the nature of that content. As such, it's inconsistent with discriminatory practices like bandwidth throttling, traffic shaping, source or service blocking, preferential pricing and access, proprietary standards, censorship, and hardware dependencies. The concepts of net neutrality and an open Internet share common ideals and principles, and are met with equal disdain by the current crop of neoliberal lawmakers and economists. Let's be clear: while net neutrality is in the public interest as measured by the principle of the dumb pipe, it interferes with the ability of broadband providers to maximize corporate profits and for this reason faces strong opposition from the providers and their political emissaries.

It was a mistake to view the 2015 Federal Communications Commission (FCC) pro-net neutrality ruling ([apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1_Rcd.pdf](https://www.fcc.gov/edocs_public/attachmatch/FCC-15-24A1_Rcd.pdf)) as definitive. In that ruling, the FCC held that broadband providers should be considered common carriers



under Title II of the Federal Communications Act of 1934 rather than information services under Title I. As I predicted then,⁴ the ruling triggered a strategic change among broadband providers. They challenged the ruling in court, lobbied Congress for more sympathetic legislation, and pressed the FCC to overturn the 2015 decision when its political balance tilted to the right after the 2016 elections.⁵ In a recent address, FCC Chairman Ajit V. Pai set forth a new agenda for the Internet that dismisses net neutrality as we knew it in 2015.

DECONSTRUCTING PAI

No friend to Internet openness, Pai, a former attorney for Verizon, offers a faith-based approach to net neutrality that relies on the self-regulation of broadband providers as a guarantee.⁶ Free markets will ensure such openness and regulation is thus unnecessary, he argues, taking a position that would even make Adam Smith chortle. The idea that the long-term interests of both broadband providers and the public would be coincident is naive in the extreme. Any serious study of the history of monopolistic practices, mergers and acquisitions cycles, leveraged buyouts, and business bankruptcies should convince us that the profit motive supersedes any inclination toward public benefit—net neutrality or otherwise. As Tim Wu, originator of the term net neutrality, stated in a recent paper, evidence suggests that broadband providers have “implemented significant contractual and architectural limits on certain classes of applications” that led to market distortions and restrictions on applications development.⁷ The notion that broadband providers will regulate themselves in favor of net neutrality, Internet openness, and the public interest is absurd. As Adam Smith pointed out over 200 years ago, the government’s

role is to ensure that markets remain free, open, and fair.

Pai’s position is replete with the buzzwords that neoliberals employ to de-legitimize policies they oppose. According to Pai, the 2015 FCC ruling was a “heavy-handed” attempt to “put the federal government at the center of the Internet.” However, Pai gets carried away with his own neoliberal babble. He claims “there wasn’t a rash of Internet service providers blocking customers from accessing the content, application, or services of their choice.” Oh, but there was. Indeed, that was the point of the FCC’s 2010

companies, which Title II didn’t seem to stifle.

Section 202 is the most worrisome to neoliberals: it allows the FCC to prohibit “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”

FCC Chairman Pai offers a faith-based approach to net neutrality that would even make Adam Smith chortle.

Open Internet Order (OIO) requiring bandwidth management transparency and prohibiting blocking, throttling, protocol discrimination, and the like. The broadband industry opposed this ruling to prevent any oversight of its bandwidth management policies; it most definitely sees itself as outside the framework of public utilities. (For those interested in this issue, a good history can be found in the recent District of Columbia Court of Appeals decision *UTSA v. FCC & USA*; www.fcc.gov/document/court-opinion-usta-v-fcc-usa.)

Pai’s core argument, if you can call it that, is anecdotal: after the 2015 ruling, one ISP wanted to expand and another wanted to increase bandwidth, but both were scared off; another group of ISPs couldn’t obtain financing—yadda, yadda, yadda. In fact, all the FCC did in its decision two years ago was to bring some aspects of Internet delivery under the rubric of the same common carrier regulations as the telephone

(transition.fcc.gov/Reports/1934new.pdf). This is what some call the “Internet conduct standard.” The ISPs understand that sections like 201–202, 208, 222, and 254–255 will force them to generate revenues by free and open competition, and not selective bandwidth management.

Simply put, treating customers equally is a suboptimal profit tactic for the broadband industry. The idea that Internet fairness will cost jobs, limit availability, boost competition, and secure privacy is just a smoke-screen. The insistence on equality, for neoliberals, will always be labeled as heavy-handed and anti-consumer. If you hear the same talking points from corporatist politicians, it’s no accident—they’re reading the same pages from the GOP FCC Toolkit (www.documentcloud.org/documents/3728775-GOP-Member-Toolkit-FCC-Open-Internet-Order-5-2017.html). As you peruse Pai’s anti-net neutrality

<ALT>-FAQs

One recent misinformation campaign against net neutrality that deserves special mention has to do with a research project at Indiana University. The campaign was led primarily by FCC Chairman Ajit V. Pai and Fox News reporter Megyn Kelly, both of whom distinguished themselves as pioneers in the new millennium global ignoratti movement.

The project, nicknamed "Truthy," was a federally funded study launched in 2010 of how information propagates on social networks. To quote from its website (truthy.indiana.edu): "Truthy makes use of complex computer models to analyze the sharing of information on social media to determine how popular sentiment, user influence, attention, social network structure, and other factors affect the manner in which information is disseminated. Additionally, an important goal of the Truthy project is to better understand how social media can be abused." Anyone who paid attention to the role of social media in the 2016 US federal elections would likely agree that this is a reasonable topic for study.

However, that isn't the spin Pai put on Truthy in a 2014 *Washington Post* op-ed.¹ According to Pai, "A government-funded initiative is going to 'assist in the preservation of open debate' by monitoring social media for 'subversive propaganda' and combating what it considers to be 'the diffusion of false and misleading ideas'?" The concept seems to have come straight out of a George Orwell novel." In reality, Pai's comments are an example of Orwellian doublespeak.

First, he implied that the NSF's funding of Truthy was tantamount to "the government expressing an interest in deciding whether netizens are spreading misinformation." This remark is beyond misleading—it's absurd. The NSF tries to support any meritorious research it deems likely to produce a public good. The computing industry, and in particular the Internet, has been built on such publicly funded studies. An important subset of these studies have driven US innovation and economic progress for the past half-century. The reason publicly funded research works so well in this capacity is that doesn't have to satisfy the parochial interests of the government in power.

That's why NSF proposals are peer reviewed by academics and not politicians or ideologues. The effects of politicizing research are well recorded in history. Lysenkoism is the poster child of government-directed, agenda-based research, but one doesn't have to look very far for other examples of pathological 'science' in the service of the power elite—from animism, witchcraft, and geocentric astronomy to eugenics, Team B, and the Strategic Defense Initiative. There's a reason N-rays, ESP, polywater, alchemy, cold fusion, occultism, sorcery, and primordial traditionalism aren't emphasized in Western public schools while climate change, acid rain, the harmful effects of smoking, and evolution are. Scholars and scientists are responsible for this because for the most part they have resisted political pressure in the pursuit of knowledge. Left to the devices of ideologues and political influencers, modern education would amount to no more than subcerebral indoctrination. Science only advances when unobstructed by partisan, parochial and myopic interests; it can't be externally directed or forced. Research must occur at its own pace, following the paradigms agreed upon by qualified, thoughtful participants. The government's proper role should be to nurture research—wherever it may lead—to the extent that it can. It shouldn't attempt to pick winners and losers based on political whim.

In his *Washington Post* piece, Pai wrote that "Truthy's entire premise is false. In the United States, the government has no business entering the marketplace of ideas to establish an arbiter of what is false, misleading or a political smear. Nor should the government be involved in any effort to squint for and squelch what is deemed to be subversive propaganda." The appropriate response to this assertion should be that the government did no such thing. The community of scholars, under the auspices of the NSF, concluded that the project had merit and so recommended its funding. If the US is to maintain a leadership role in science and scholarship, work must be left to the professionals, with the understanding that not all projects will have the same perceived value to all citizens. Having unenlightened politicians pick and choose study topics that

manifesto, follow the age-old maxim *cui bono* and be secure in the confidence of your own judgment.

DECONSTRUCTING THE ISSUE

Net neutrality advocates tend to defend it as a public utility—a common good. Not surprisingly, this position also

tends to follow party lines,⁸ though this wasn't always so. Under the George W. Bush administration, the FCC was far more sympathetic to public interests,⁹ and even ultraconservative jurist Antonin Scalia argued that broadband providers should be treated as common carriers.¹⁰ How did a seemingly innocuous topic like net neutrality become

such a divisive issue in the past decade? Three reasons come to mind: the Internet community's naiveté and arrogance, political disdain for privacy and free speech,¹¹ and corporate interests' dominant influence over Congress. The latter two are, of course, intertwined.

The paradigm of high-tech arrogance is John Parry Barlow's 1996

they consider important will guarantee Lysenko-type failures. Partisan politicians aren't the solution—they're the problem.

Pai also exhibited a banal understanding of the Truthy research domain. Anyone who bothered to read the published research available at the time would have recognized that the project was no totalitarian government tool but designed to create models for analysis of social media use. Articles produced by Truthy's research team in print at the time of Pai's remarks included titles such as "Clustering Memes in Social Media,"² "Truthy: Mapping the Spread of Astroturf in Microblog Streams,"³ "Twitter Mood as a Stock Market Predictor,"⁴ and "Truthy: Enabling the Study of Online Social Networks."⁵ (For a complete list, see truthy.indiana.edu/publications.)

But there's more to the story. Truthy became a cause celebre for right-wing trolls. Fox News' Megyn Kelly added to the misinformation mystique by adding "Some bureaucrat deciding whether you are being hateful or misinforming people—what could possibly go wrong?" under the banner of "Feds Creating Online Tracker to Search for 'Hate Speech' & 'Misinformation.'"⁶ Kelly seems to have been as fact-averse as Pai. By this point, the bogus account of the Indiana University research project began to reverberate within the fake news echo chamber. Fox News legal analyst Peter Johnson Jr. labeled the project "1984 in 2014,"⁷ once again failing to distinguish between a government position and public support of research.

The Truthy incident serves as an abject lesson in manufacturing deceit and deploying fashionable nonsense in service of tribalists. The comments by Pai, Fox News staff, and others went beyond situational ignorance: they had the characteristics of carefully orchestrated, agenda-based deception. And by way of complete disclosure, I have no connection with Indiana University apart from giving a few talks there over the years, and I don't know any of the Truthy researchers. My interest is solely to defend the scientific method, the NSF, and government support of science against those "of scanty education and vulgar turn of mind," to use Alexis de Toqueville's turn of phrase.⁸ Academics should take the Truthy experience to

heart: fake news has been weaponized, and the targets include science, scholarship, and the academy itself. Speak out! As Noam Chomsky said in 1967, "the responsibility of intellectuals is to speak the truth and expose lies."⁹ The net neutrality debate is a good place to start.

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Declaration of the Independence of Cyberspace, a desultory diatribe against the controlling elite.¹² This quote is typical: "We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity." While those of us in the computing

community at the time—or today, for that matter—wished we lived in a world where this was true, in fact it was pure hubris and hyperbole. Although their ideas changed the world for the better, computing and network pioneers never commanded any real authority beyond their employer. The same can be said of all the

major intellectual revolutionaries, from Newton to Einstein. The idea that Internet innovators could define their own political and economic reality was naive, and all too many of us drank that Kool-Aid to our distress and discomfort. Once the neoliberals discovered how much money could be made from our DARPA toy, they

had no intention of leaving geeks in charge. Barlow seems to have moderated his “we are the future of the world” position in recent years: “But by virtue of our abdication, a very authoritarian, assertive form of government has taken over ... and the Ayn Rand strain [of libertarianism] is basically dismantling government in a way that is giving complete open field running to multinational corporatism.”¹³ In retrospect, for all of Barlow’s contributions, including cofounding the Electronic Frontier Foundation, his declaration may be his least durable and lasting.

I’ve spoken to the surveillance state’s assault on privacy many times in this column, but here it’s worth calling attention to a recent Congressional Review Act signed by President Trump rescinding an Obama-backed 2016 FCC ruling that sought to expand broadband privacy rules.^{14,15} The continued erosion of privacy protections by the US government is just another facet of the larger net neutrality issue. It’s embarrassing that the country that invented the Internet has fallen so far behind Europe in protecting citizens’ privacy rights (ec.europa.eu/justice/data-protection/reform/index_en.htm). Perhaps the wisest strategy for our industry is to lobby Congress in favor of cooperating with the EU on this issue.

Finally, legislative and regulatory capture by business in the US is nothing new. Journalism professor Ferdinand Lundberg made a career documenting this phenomenon beginning in the 1930s.¹⁶ But now we’ve entered the era of meta-level capture: the capture of lobbying organizations that, in turn engage in legislative and regulatory capture. This so-called “astro-turf lobbying” is a smoke-and-mirrors game that neoliberals play to camouflage self-serving behavior under the guise of grassroots support.¹⁷ Such is the case with the telecom industry’s Multicultural Media, Telecom, and Internet Council (MMTC), which enlists social organizations to nominally

oppose net neutrality in exchange for financial support. The story behind MMTC’s successes would make a good dime-store novel.

So there you have the latest incarnation of the great digital divide: those who are balanced, analytical, and informed versus those who are biased, subjective, and uninformed. Your call. ■

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