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Democracy At Stake in the Digital Age: Engaging in the Net Neutrality Debate
for the Preservation of Free Speech and the Redemption of Public Interest

SUBMITTED TO

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BY

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For

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INTRODUCTION

Inventor of the World Wide Web Tim Berners-Lee claims that the decentralized digital platform, which is reliant upon a free and open Internet, is vital to democracy (Berners-Lee, 82). The Web, according to him, hosts the most exceptional practice of the fundamental rights established in the U.S. Constitution adapted to the current network age: freedom of speech, or the “freedom from being snooped on, filtered, censored and disconnected” (Berners-Lee, 82). Though the Internet and Web are separate entities, the former must be neutral for the latter to uphold principles of free speech, promote a competitive market economy, and continue widespread innovation throughout millions of networks (Berners-Lee, 84). Protection of net neutrality is, therefore, necessary for the Internet, Web, and democracy to thrive (Berners-Lee, 84).

Internet neutrality, or net neutrality, has been debated for decades and has recently become heated due to the widespread use of the Internet and various media coverage. The term “net neutrality” was originally coined in 2003 by Columbia Law Professor Tim Wu who defined the term as a network design principle: “The idea is that a maximally useful public information network aspires to treat all content, sites, and platforms equally” (Zelnick, 9). Basically, all broadband providers — also known as, internet service providers (ISPs) — must treat all online content and applications equally, sending data packets of information to users without discrimination (Lyons, 1029). As such, the major principles of net neutrality are the consumers’ entitlement to access content and use services of their choice on their device of choice as well as the competition among network providers, application providers, and content providers (Friedlander, 915). The enforcement of these principles depends on the policies of the Federal Communications

Commission and the legislation of Congress, which changes with every turnover of administration.

The FCC's role in net neutrality policy is inherent in the agency's responsibility to regulate "all non-federal use of the radio spectrum (both radio and television broadcast), all international communications that originate or terminate in the United States, and all interstate telecommunications including wire, satellite, and cable" (Zelnick, 15). Since the Communications Act of 1934, the Commission has been the independent government agency assigned the "primary authority for communications law, regulation and technological innovation" ("What We Do"). Among other things, the FCC aims to promote innovation and investment in broadband services, to ensure a competitive framework, and to revise media regulation for new technologies to flourish ("What We Do").

The Communications Act of 1934 defined different types of communication services and gave the FCC guidelines for the enforcement of provisions around each service listed under Titles I to VII. Title II, the most relevant section for the net neutrality debate, addresses "common carrier" provisions in which telecommunications service providers and public utilities are required to meet common carrier regulations set by the FCC for the purpose of advancing the "public interest, convenience, and necessity" (Levi, 247). In Section 230, the legislation briefly mentions the Internet and interactive computer services as a "forum for a true diversity of political discourse" and that they have "flourished...with a minimum of government regulation" (Communications Act, 89). Despite this, the Act did not separate the Internet from telecommunication services; rather, it determined the Internet to also be a common carrier under the technological

standard that internet service providers were companies that transported goods or services from one person to another.

The Telecommunications Act of 1996 was the first effort to update the communications law since 1934 and reshaped the broadcasting industry by loosening broadcast ownership rules as well as the telecommunications industry by removing regulatory barriers (Zhong, 239). In essence, Congress distinguished the regulatory jurisdiction that the FCC had over telecommunication and information services.

Telecommunication services, defined as the “offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public,” became classified as public utilities subject to common carrier regulation (Communications Act, 7 & Jacobson, 2014). Information services, on the other hand, became defined as services capable of “generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications,” not subject to strict regulation (Communications Act, 4).

Since the 1996 Act, the Internet has been interpreted an information service, excusing it from the FCC’s jurisdiction (Jacobson, 2014). For example, the 2002 Cable Broadband Order concluded that cable modem services were similar to the Internet, not subject to common carrier regulations (Nunziato, 3). Here, the FCC determined that services should be classified by function, not by facilities; therefore, because cable provides access to a combination of functions, including the Internet, email, the Web, and applications without a separable telecommunications component, it was deemed an information service (Friedlander, 914). In addition, the 2005 *National Cable and Telecommunications Association v. Brand X Internet Services* maintained the stance that

Internet access was an information service because provisions in the Act were vague, and the Court deferred to the FCC's interpretation of a telecommunications service, according to Supreme Court Justice Clarence Thomas (Jacobson, 2014).

The recent convergence of telephone, cable, and internet providers has created controversy over the classification of internet service providers and the FCC's regulatory jurisdiction. As a result, court decisions and legislation that followed the 1996 Telecommunications Act — 2008 *Comcast Corp. v. FCC*, 2010 Open Internet Order, 2015 Open Internet Order — revised the telecommunication laws to better meet public interest. "Public interest," however, is a contentious topic. Who should have a stake in establishing what is and isn't in the best interest of the general population? In the debate of net neutrality, what is in the public interest and who keeps service providers in check?

On one side of the argument, opponents of net neutrality, including major internet service providers (AT&T, Comcast, Verizon) and the telecommunications industry, believe that less government regulation leads to more innovation (Ganley, 454). They argue that the quality of their services would decline if they are not allowed to regulate network traffic for the purpose of efficient network management under the oversight of the FCC. The current FCC board is sympathetic to these arguments, insisting that there has been no evidence of broadband providers exploiting their management powers to discriminate or block access to certain sites and dismissing public fears (Lyons, 2017).

On the other side, proponents of net neutrality — content providers, major tech companies, special interest groups, and the general public — find it completely necessary for the FCC to "guarantee that Internet's core values and social utility remain" (Ganley, 454). These groups do not trust ISPs and telecommunication companies to act in favor of

public interest. They fear that broadband providers will, at some point, stray from the best efforts principle, prioritize certain packets for corporate interest, and distort the free market of content and applications (Lyons, 1035). To prevent this from happening, supporters of net neutrality argue for government (and FCC) regulation of all telecommunication and information services to ensure a level playing field for all players and to enforce principles of transparency, no-blocking and anti-discrimination among broadband providers (Friedlander, 921)

In this sense, net neutrality covers a range of major issues: classification of the Internet, horizontal integration of service providers, and the conflict of private and public interests. But the part that makes net neutrality a major democratic debate is the interpretation of free speech rights in the context of the Internet. As one of the fundamental rights in the First Amendment, freedom of speech is an integral part of American, democratic, and civic society. Free speech is also a defining characteristic of the Internet which makes everyone a publisher, creator, and participant in the public sphere. In recent years, the U.S. Supreme Court has taken a more negative conception of the First Amendment, applying free speech rights only to government censorship and not to private speech conduits (Nunziato, xv). Broadband providers favor this stance, claiming that net neutrality rules would violate *their* First Amendment rights in that they are forced to permit all speakers to use their networks without consideration of network traffic (Lyons, 2017).

However, proponents of net neutrality find this negative conception not conducive to an effective democracy since it allows speech decisions to be determined by a market dominated by a few powerful, private entities (Nunziato, xv). In the eyes of net neutrality

proponents, the greatest threat to free speech in the Internet age are these private gatekeepers who are capable of restricting the dissemination of information and limiting individuals' freedoms to communicate and partake in public discussion, which in the long run, damages the creation of a well-informed citizenry (Nunziato, 140-1). And rightfully so. In contrast to ISPs' and the Commission's claims, there have been incidences of broadband providers engaging in acts of blocking and discriminating online content, validating the public's fears and bringing the net neutrality debate to national attention.

In the following paper, I will examine some of these cases which prove the threats to the online regime and demonstrate the successes of the people in reclaiming public interest and protecting free speech. Chapter I covers the *2008 Comcast Corp. v. FCC* case wherein concerns about Comcast's interference with BitTorrent was raised by public interest groups, and the Court sided in favor of net neutrality, punishing Comcast for breaching the basic principles of an open internet and the provisions outlined in the Acts of 1934 and 1996. Chapters II and III address the forces behind net neutrality policy, highlighting the role and influence of regular internet users in the virtual and physical public spheres. These cases show that net neutrality is not only necessary for the success of the Internet, but the debate that followed these cases are also indicative of a strongly democratic society and essential to its development in the future.

CHAPTER 1

Public Interest Groups, NGOs, and the Redemption of Public Interest

Since January of this year, the Chairman of the Federal Communications Commission, Ajit Pai, has expressed deep policy interests in rolling back regulation for net neutrality. “It’s basic economics,” Pai said in his speech at the Newseum in April, “The more heavily you regulate something, the less of it you’re likely to get” (Kang, 2017). His plan to reverse recent developments in government oversight of high-speed internet service providers jeopardizes the longheld principles of internet freedom. Consequently, his opinion is met with objection across the board, from huge internet corporations (Google, Facebook, Netflix) to the larger public population. The basis of Pai’s argument lies in the false assumption that internet providers such as Verizon Communications Inc., Comcast Corporation, and AT&T Inc. can self regulate and “voluntarily agree in their terms of service to not obstruct or slow consumer access to web content” (Shepardson, 2017). We have seen time and time again in recent years that this is not true; internet providers exist to secure their own competitive advantage and put corporate interests before the public’s. In this sense, Pai’s perception of net neutrality is inaccurate and partial.

His opinion that the current protocols of internet regulation by the FCC is extensive, strict, and infringing is an exaggeration. For one, there has not been an act passed that seeks full government regulation over the Internet. The Federal Telecommunications Act of 1996, which serves as the backbone to all telecommunications and internet policies today, prioritizes the “promotion of competition and the reduction of regulation in the telecommunications industry” (Newman, 158).

Consequently, all following rulings of the Commission have been limited in number, scope, and jurisdiction, minimizing government regulation of the Internet. The FCC's 2005 Internet Policy Statement outlined four internet freedoms that were thought to be important but unenforceable: access to lawful Internet content of choice; ability to run applications and use services of choice; connection to legal devices of choice that do not harm the network; and competition among network, application and services providers, and content providers (Newman, 158). In 2010, the FCC passed the first Open Internet Order which set three general conduct rules of transparency, non-blocking, and anti-discrimination in order to preserve net neutrality. Lastly, the Open Internet Order of 2015, considered the "strongest net neutrality rulemaking in FCC history," echoed the same three principles of the 2010 Order but additionally classified the Internet as a Title II telecommunications service "subject to common carrier regulation and within jurisdiction of the FCC" (Friedlander, 906). Though this most recent policy was significant in that it did enhance the Commission's ability to regulate and set policies for the Internet, it was merely a reversal of the *2005 National Cable & Telecommunications Association v. Brand X Internet Services* decision which sparked the net neutrality debate in the first place (Friedlander, 914 & Jacobson, 2014).

Secondly, the architecture of the Internet itself prohibits full regulation. Even though the 2015 Order gave the FCC jurisdiction over the Internet as a telecommunications service, the Internet cannot truly be subject to full regulation. The Internet is a "loose collection of millions of computers throughout the world that share information and files" and form millions of networks (Krasovec, 1). It is a completely decentralized platform in which "no single entity — academic, corporate, governmental,

or non-profit — administrators,” allowing for the infinite access and constant exchange of information (Krasovec, 17). Because of its inherent characteristics, the Internet cannot be micromanaged by the government, so no policies of the FCC will truly be intrusive to the extent that Pai worries it may become. The need for regulation does not come from a desire to monitor the Internet itself but it comes from a serious concern around self-interested internet providers infringing upon individual freedoms.

Chairman Pai argues that the recent development of Internet regulation, the 2015 Order in particular, is unnecessary and created out of irrational fears of problems that don't exist (Fung, 2017). In his op-ed in the *LA Times*, he dismisses the people's fear of a “digital dystopia of fast lanes and slow lanes, where service providers would treat traffic differently based on payments,” championing internet providers to uphold authentic and well-meaning network management (Pai, 2017). Again, Pai is misinformed. It is not a digital dystopia that people fear, but it is the loss of “public interest” that both online content providers and consumers fear.

Since the days of cable television, public interest has been difficult to define. The broad intent to give all Americans access to diverse programs, opinions, and channels remains constant, but the integration of this ideal into practice, especially in the continuously developing telecommunications industry, has been inconsistent (Ali, 2017). Cable television was controlled by the big three television networks — American Broadcasting Company (ABC), National Broadcasting Company (NBC), Columbia Broadcasting System (CBS) — just as the Internet is largely serviced by Verizon, Comcast, and AT&T. The concentration of power among television networks back then gave rise to a conflict between corporate and public interests: “media and

telecommunication companies [make] money and [acquire] more properties, while the public receives less and less in return” (Ali, 2017). In the same way, ISPs, if given the opportunity, could make the Internet (a public forum) into a “private shopping mall” (Curtis, 2004). The right for Internet users to be in control of the content they view is an issue of public interest with which the FCC was tasked to protect. Accordingly, the Commission’s policies should prioritize what is best for the people and give them the full “opportunity to ‘speak, create, and engage’ with one another online” (Newman, 164). Not only did Pai misunderstand the fear of the people, but he also failed to recognize the legitimacy of their fears. The “fear that ISPs will impinge upon the democratic nature of the Internet by redirecting or blocking certain kinds of content” has already manifested into a reality (Brauer-Rieke, 596).

In 2007, Comcast Corporation, the nation’s largest cable television operator and second largest internet provider, was found guilty of interfering with peer-to-peer (P2P) applications, falsifying network traffic, and slowing the transfer of files on BitTorrent (Svensson, 2007 & Kang, 2008). Though Comcast denied such actions, Associated Press, a multinational nonprofit news agency, and Electronic Frontier Foundation, a non-profit digital rights group, used nationwide tests to confirm the intentional jamming of P2P traffic (Brauer-Rieke, 605). The conflict of interest was clear: Comcast, which offered its own high-quality video content on cable television, felt the threat of BitTorrent and attempted to bolster its own service by obstructing the accessibility and speed of users of competing applications (Gioia, 520). By slowing the transfer of video and other content on BitTorrent, Comcast stifled and undermined competition, one of the primary principles of net neutrality (Gioia, 536). Moreover, Comcast carried out data

discrimination, which violates all FCC policies dating back to the Communications Act of 1934. Section 202 of the Act states the following:

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 of 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. (Lyons, 1046)

In addition to stifling competition and discriminating access to certain sites, Comcast practiced deceptive network management. Comcast's defense centered around the fact that file-sharing traffic was "swallowing too much bandwidth and affecting the Internet speeds of other subscribers" (Svensson, 2007). The company stated that it was merely managing its network. Though P2P applications do take up 50 to 90 percent of overall Internet traffic, the Internet has an underlying mechanism (called the Transmission Control Protocol) to automatically regulate data flow based on congestion (Svensson, 2007 & Brauer-Rieke, 598). In other words, Comcast should not have taken it upon themselves to interfere with traffic for their users.

The significance of this case rests both in the means that the issue was brought to the attention of the Commission as well as the ends of the decision. After AP and EFF released the reports, a coalition of public interest groups, NGOs, and academics filed complaints with the FCC (Newman, 162). Free Press (a media NGO), Vuze, Inc. (an application to download and view video content over BitTorrent protocol), and Public Knowledge were among the few who led the campaign (Gioia, 521). The influence of

these public groups and individuals was unprecedented. They participated in numerous public hearings and collected over 200,000 customer complaints and comments, which caught the attention of the FCC, then a Republican-controlled agency, and helped accuse Comcast of violating the principles of Internet Freedoms (Gioia, 521 & Puzanghera, 2017). The company's infringement of net neutrality was made clear by the proof submitted by the public, and as a result, it was the people that "pushed the FCC and the U.S. Congress to adopt so-called net neutrality rules" (Gross, 2008).

In accordance to its findings, the FCC published a final order and opinion on the case, requiring Comcast to discontinue its blocking practices by the end of the year, to disclose its network management policies within thirty days, and to submit a plan for intended future practices (Brauer-Rieke, 594). Free Press requested an additional declaratory statement from the FCC clarifying that when ISPs intentionally degrade a specific Internet application, it is a direct violation of the FCC's Internet Policy Statement (Brauer-Rieke, 606). This decision made the Commission responsible for the preservation of net neutrality and the prohibition of broadband providers from blocking or slowing content of competitors (Gross, 2008). Congress confirmed this authority of the FCC after Representatives Ed Markey and Chip Pickering proposed the Internet Freedom Preservation Act in 2008, hoping to encourage "openness, competition, innovation, and affordable, ubiquitous broadband service" (Newman, 159). The legislation amended the Communications Act of 1934, tasking the FCC to examine and assess the practices, pricing policies, and network management of broadband networks and report back to congressional committees (Newman, 160).

Despite these early victories, the decision was not upheld to its highest degree in the end. Comcast said they would comply with the Commission's order but took the case to the Court of Appeals for the D.C. Circuit on September 4, 2008 (Brauer-Rieke, 610). As mentioned before, the 2005 *Brand X Internet Services* decision classified the Internet as an information service, not subject to common carrier regulations under the FCC jurisdiction (Jacobson, 2014). Comcast used this interpretation to their advantage, questioning the Commission's lack of jurisdiction to adjudicate dispute. David Cohen, then-Vice President of Comcast, explained in the filing, "We filed this appeal in order to protect our legal rights and to challenge the basis on which the commission found that Comcast violated federal policy in the absence of pre-existing legally enforceable standards or rules" (Brauer-Rieke, 610). The categorization between telecommunications and information services is defined in the Communications Acts of 1934 (and amended in the Telecommunications Act of 1996). Both documents granted the FCC "regulatory power over all forms of electrical communication, whether by telephone, telegraph, cable, or radio," and which is, for this purpose, given sufficiently "broad authority" (Gioia, 522).

In the 1934 Act, there were seven titles or sections in total, but in the debate of net neutrality, only Titles I and II are relevant. Title I addresses General Provisions, which includes information services, defined as the "offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications" (Communications Act, 4). Title II addresses Common Carriers, which includes telecommunication services, defined as the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be

effectively available directly to the public, regardless of the facilities used”

(Communications Act, 7). Title II services were subject to common carrier regulations to ensure that public interest is upheld at utmost priority.

In 2002, cable modem services were classified as Title I information services because the Court interpreted by function, not facilities (Friedlander, 914-5). The Supreme Court affirmed that the “integrated nature of Internet access and the high-speed wire used to provide Internet access [confirms] that cable companies providing Internet access are...information-service providers.” (Gioia, 523). As a result, the Internet was also categorized as an information service which the FCC could not make binding legislation or adjudicate disputes (Gioia, 523).

However, Section 154(i) did grant a “necessary and proper” provision in which the FCC has housekeeping authority and “ancillary jurisdiction” over new forms of communications, authorized by the Supreme Court (Gioia, 524). As long as the FCC grounds the case as a means to reach a congressional policy or goal, regardless of whether it is related to the Act’s grants of statutory authority, the Supreme Court grants the Commission the authority and ancillary jurisdiction over discriminatory and anti-competitive Internet practices, which include unreasonable broadband Internet throttling (Gioia, 541). This expansive interpretation was practiced in the *Southwestern Cable* and *Midwest I* decisions in the late 1960s and early 1970s and the *Computer* inquiries in the 1980s.

In 1968 *United States v. Southwestern Cable Co.*, the concern was whether or not the FCC could prohibit cable companies from importing “distant signals” of broadcast companies and retransmit them through the cable system (Gioia, 526). Congress did not

offer assistance on this issue, so the FCC, knowing that it did not have primary jurisdiction over cable systems under Title I, filed a ruling for their broad authority and ordered Southwestern not to expand (Gioia, 527). The Court approved of the Commission's actions, citing Section 152(a) as justification of the FCC's regulatory power over *all* forms of electrical communication. By this decision, the Court set a precedent that allowed the FCC to employ ancillary jurisdiction if two standards were met: the subject of regulation is covered by Title I, and the assertion of jurisdiction is "reasonably ancillary to the effective performance of [the FCC's] various responsibilities" (Michlin, 916). The decision was taken one step further when the Court also considered the rapid "evolution of broadcasting" and expanded the FCC's administration to cover recently developed wire and radio communications (Gioia, 527). Congress agreed with this verdict, finding that the statutory leeway and expansive powers of the FCC would put the agency in "a better position to understand new technologies and respond accordingly" (Gioia, 527-8).

Four years later, in the 1972 *United States v. Midwest Video Corp. (Midwest I)* attempted to affirm the FCC's jurisdiction over cable television and its order for some cable systems to originate their own programming (Gioia, 528). The Court once again interpreted Section 152(a) to have more broadly defined exceptions for the exercise of ancillary jurisdiction under Title I. In summary, it was deemed appropriate for the FCC to use jurisdiction under Title I when the Commission found the regulation imperative to effectively perform its intended responsibilities, to carry out Congress' regulatory policies, or to uphold the goals of the Telecommunications Act of 1996 (Gioia, 528). Based on the belief that this would increase the number of outlets for "community self-

expression” and the “public’s choice of programs and types of services,” the Supreme Court relaxed the definition of “ancillary jurisdiction” (Michlin, 916).

The same kind of reasoning was used in the inquiries regarding computers in the 80s. Enhanced services, including computers and data processing platforms, had been classified under Title I ancillary jurisdiction; Congress thought that this would allow the FCC to “respond to and promote the important market forces central to those technologies” (Gioia, 531). The *Computers II* inquiry led to the conclusion that the Commission can regulate the information-services sector of AT&T and like sources “if it determines that the market is either ‘not sufficiently competitive,’ or that there are no ‘other adequate consumer safeguards, to ensure that consumers receive reasonably nondiscriminatory access to the Internet” (Gioia, 531). This justified the FCC’s imposition of a structural regulation scheme for AT&T, which required a separate subsidiary, so as to protect public interest and prevent cross-subsidization, monopoly, and unfair advantage (Gioia, 531). Title I authority has, in these cases, been interpreted expansively and permitted the FCC to regulate effectively over new forms of communications and possible harms. So the question is, why didn’t this apply to broadband Internet services like Comcast?

Proponents of net neutrality believe that the same reasoning should be applied, giving the FCC ancillary jurisdiction over ISPs. The Comcast case passes the *Southwestern Cable* two-part test: the subject was under Title I jurisdiction as an information service, and the FCC’s action (admonishing Comcast) was necessary to preserve the legitimacy and purpose of the Commission. Moreover, Comcast’s practice of network throttling created an anti-competitive market and eliminated safeguards for

future discriminatory practices which, based on the *Computer II* inquiry, is reasonable grounds for the FCC to regulate information services. Especially considering that the Act of 1996 does not explicitly prevent the FCC from exercising ancillary jurisdiction over unreasonable network management, the FCC's decision in the Comcast Order should have been effective (Gioia, 541). With its mission of championing public interest in all forms of electronic communication, the FCC can and should have been able to regulate issues like that of Comcast: "such regulation is ancillary to the congressional policies of ensuring a competitive market, promoting the continued development of the Internet, and allowing users to control the information they receive with the applications they chose" (Gioia, 538).

Despite these precedents and arguments made by net neutrality proponents, the *Comcast Corp. v. FCC* decision ruled in favor of Comcast in 2010. The Court acknowledged that the case passed the first prong of the *Southwestern Cable* two-part test — in that Comcast was under Title I ancillary jurisdiction — but the FCC failed to show how the barring of Comcast's interference of P2P networks was necessary for the Commission's "effective performance in statutorily mandated responsibilities" (United States Court of Appeals, 2010). In the end, the Court decided that the FCC lacked the power to create and enforce rules of net neutrality among ISPs. This decision, however, didn't stop the Commission from fighting back and reasserting its commitment to net neutrality with the backing of public support. Later that year, the FCC passed the 2010 Open Internet Order, renewing its mild yet existing efforts to prohibit discriminatory delivery, blocking, and pricing by ISPs (Lyons, 1029).

Public participation in the 2007-2008 Comcast Order and Opinion was crucial: it pushed the Commission to reach a decision that was considered beyond its predisposed powers, made Comcast aware of and renounce its violations, and caused some sort of net neutrality legislation to be proposed in Congress. The people must continue to ensure that the public interest is being served just as Free Press and other democratic institutions — the FCC, media, NGOs, public policy groups — fought against Comcast for the redemption of public interest. “Companies like Comcast and Verizon have shown repeatedly that they can’t be trusted,” Policy Director of Free Press, Ben Scott, expressed, “Without quick and decisive action, they’ll keep blocking, manipulating and interfering” (Gross, 2008). By emphasizing basic net neutrality principles of transparency, non-blocking, and anti-discrimination, the Comcast case became the first Internet network management decision of its kind (Brauer-Rieke, 594). It set out a road map for returning online consumer rights and control of the internet to the consumers (Gross, 2008).

Like all public issues, the issue of net neutrality can only move forward with further sustained, uninhibited, and robust public debate (Newman, 154). The steady increase in online political activism and in Congressional hearings shows promising efforts to advancing the redemption of public interest (Newman, 169). Advocacy democracy, found in industrial democracies, has expanded so that more individual citizens and public groups play a role in the policy processes of government, from providing congressional testimony to swaying votes of congressional members (Kim, 322). As expected, industry representative witnesses outnumber advocacy groups in Congressional hearings, but because these hearings are, by nature, “more likely to be influenced by interest groups,” the rising amount of participation — public advocacy

groups formed about 15 percent of Congressional hearing witnesses in 2011 — is becoming a threat to industry lobbyists (Kim, 323). Since the Comcast case, Congress has maintained its support for and interest in preserving the Internet as “a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity” (Gioia, 527). Advocacy groups and individual citizens should capitalize on this overlap of interests and continue weighing in on the debate around net neutrality, especially under the current government.

Not only is there a need for persistent involvement in government policymaking processes, but there also needs to be an effort to engage with and empower the FCC. At the end of the day, the Commission is the most suitable independent federal agency to address ISPs for unreasonable and discriminatory practices, to ensure an open and competitive broadband Internet network, and to preserve public interest (in forms of convenience, accessibility, diversity) in broadcasting and telecommunications systems (Gioia, 518 & Ali, 2017). Now that the Internet has been reclassified under Title II common carrier jurisdiction via 2015 Open Internet Order, the FCC must maintain its authority and effectively ensure that networks and telecommunications systems abide by regulations and that decisions like *Comcast vs. FCC* does not happen again (Ali, 2017). The Commission, up until this year, had been backed by Congress and the Supreme Court which both grant the FCC full jurisdiction over remedies and regulation for new technologies like the Internet (Gioia, 536). Under Chairman Pai, however, efforts to preserve net neutrality and maintain public interest could face possible pushback. But the people won't sit back and let this happen, especially considering the democratic nature of the issue and the power of the individual online consumer. In the following chapters, I

will discuss how the public has been empowered to respond to Pai's plans and how the interaction between the people and the FCC have played out on the Internet itself to influence policy in Washington.

CHAPTER 2

Satire, Public Participation, and the Turning Point for Policy

After the Comcast Order, the net neutrality policy seemed to be moving in the right direction. Due to the significant amount of pressure of public interest groups and the proactivity of the common people in 2008, the Federal Communications Commission recognized the weight of the issue, and legislation was passed with the intent to return public interest to its rightful owners — the consumers. The consequent 2010 Open Internet Order set rules on phone and cable companies, forbidding them from blocking and discriminating Internet sites and programs (Ammori, 266). Internet service providers were also forced to meet higher transparency and good governance standards.

In 2014, the rule was challenged. Verizon sued the FCC over the 2010 Order for exceeding its statutory authority under Title I regulations. Verizon argued that the Order infringed upon its right to “editorial freedom,” or their right to edit the delivery of packages, and essentially, its First Amendment (Ammori, 266). The basis of their argument lay in the decision made in the *1997 Turner Broadcasting System, Inc. v. FCC* case which required the government to prove the specific purpose of regulating a communication network *before* imposing content-neutral regulation; otherwise, regulation was null and inappropriate (Ammori, 266-7). By rejecting the 2010 Order, Verizon essentially prioritized its corporate or private interests ahead of the public interest and sought to “impose a gatekeeper business model on content — anything that allows Internet service providers to squeeze more profit out of the rush of data” (Aaron, 103).

The D.C. Circuit Court failed to see this and sided with Verizon, striking down the 2010 Order and the specific “guidelines that prevented broadband providers from the creation of ‘fast lanes’ and prohibited selected blocking of traffic” (Faris, 11). The decision forced the FCC to step back and reconsider its net neutrality rules, whether that meant redrafting the rules to be less stringent or reclassifying broadband providers as common carriers subject to regulation under Title II of the Telecommunications Act (Faris, 11). Though the second option seemed politically impossible at the time, the response to the *Verizon v. FCC* decision — in the forms of political satire and the FCC’s online commenting process — made it possible, and net neutrality rules were reintroduced in full force in 2015. In this chapter, I will discuss how satire and the networked public sphere influenced the FCC’s proceedings on net neutrality and how a civil society is essential to the proper functioning of a democracy (Faris, 4 & 32).

Compared to other government agencies, the Commission never received much attention. The issues that the FCC dealt with never got people worked up the same way that the issues of the Department of Education did (McDonald, 2014). For example, there was and continues to be a heated national controversy against the implementation of Common Core, a new, higher standard for English and math proficiency, and standardized testing in school districts across the country (Resmovits, 2015). Especially because of the lack of traditional media coverage on net neutrality and the consequent lack of understanding among consumers of its political and technical complications, the FCC and the issue itself had very little traction (Becker, 5). In fact, the only increase in media coverage on the issue came in 2014 as a result of the *Verizon v. FCC* decision and the *We the People* website, a petition for the reclassification of Internet service providers,

that received over 100,000 signature (Faris, 13). Still, the issue still hadn't captured the full attention and concern of the average citizen. That is, until an episode of *Last Week Tonight with John Oliver*, a late-night political satire television program on HBO, brought the FCC to the center of public scrutiny and allowed people to recognize ISP's violation of public interest (Becker, 5).

On June 1, 2014, not even two months into the show's premiere, John Oliver covered the entire concept of net neutrality in just 13 minutes on his half-hour-long show. He antagonized cable companies, describing the advantaged positions of these large corporations in relation to those of startups and the common consumer, and even commented on the slow pace of U.S. Internet speeds compared to other countries around the world (Becker, 5). Oliver's jokes in this episode, now with over 13 million views on Youtube, were spot on. He called the Internet the "electronic cat database" and emphasized how lackluster the debate of net neutrality is: "The cable companies have figured out the great truth of America," Oliver said, "If you want to do something evil, put it inside something boring" (*Last Week Tonight*, 2014). These satirical touches, however, did not overshadow the weight of the issue. In a more serious tone, Oliver claimed that the Internet was a "level playing field" and that the FCC, by retracting net neutrality rules, was trying to fix a problem that doesn't exist (*Last Week Tonight*, 2014). He framed the issue simply: the agenda of the FCC would create a self-serving, two-tier system wherein ISPs could charge big tech companies to buy into fast lanes and leave other content in slow lanes, killing competition (*Last Week Tonight*, 2014). To ironically demonstrate the power of the free Internet, Oliver ended the segment by calling upon online trolls and all consumers to take action and have their opinions heard:

Good evening, monsters. This may be the moment you've spent your whole lives training for ... for once in your life, we need you to channel that anger, that badly spelled bile that you normally reserve for unforgivable attacks on actresses you seem to think have put on weight, or politicians that you disagree with, or photos of your ex-girlfriend getting on with her life, or non-white actors being cast as fictional characters... We need you to get out there and, for once in your life, focus your indiscriminate rage in a useful direction. Seize your moment, my lovely trolls, turn on caps lock, and fly my pretties! Fly! Fly! (*Last Week Tonight*, 2014)

In February, the FCC opened an online formal comments on proceedings page on its site to receive feedback for its proposal, "Protecting and Promoting Open Internet" (Holpuch, 2014). Anyone with access to the Internet could submit comments, concerns, and suggestions on the suggested net neutrality policy the Commission, under Chairman Tom Wheeler, was aiming to create. The FCC also set up alternative systems to receive public opinion via email (openinternet@fcc.gov) and added a higher capacity to the Electronic Comment Filing System (ECFS) in April (Puzzanghera, 2014). Oliver's call to action in June, however, overwhelmed these systems and eventually caused a malfunction in the ECFS and a shutdown of the FCC website. One day after the episode aired, the Commission released the following tweet to address the website's technical issues:



In the next few days, net neutrality became the “most commented issue in agency history with a total of approximately 3.7 million replies” (Kastrenakes, 2014). Thousands of comments on the website urged the FCC to preserve net neutrality and criticized Chairman Wheeler’s proposal (Lohr, 2014). The Sunlight Foundation, a nongovernmental organization, analyzed over 800,000 comments and found that almost two-thirds of the initial comments supported net neutrality principles (Kastrenakes, 2014). Due to the large inflow of public opinion, the commenting period, which was originally 120 days, was extended to a five-month time frame (Kastrenakes, 2014).

Not only did the *Last Week Tonight* episode cause a spike in comments on the FCC website, but it also led to further and more effective forms of media coverage that mediated the discussion of net neutrality in the public sphere (Becker, 5). The episode had been viewed nearly 800,000 times within two days, and coverage of the episode and net neutrality exceeded 700 stories in the first week of June (Holpuch, 2014 & Faris, 21). John Oliver’s performance successfully opened up the debate of net neutrality to core Internet users, gave them the equipment to fight against ISPs and lobbyists, and instigated a public response that would have lasting policy implications in the form of the 2015 Open Internet Order.

John Oliver’s take on net neutrality provided a rare instance in which political satire had a “government-stopping effect” (Schwartz, 155). It was the unique characteristics of the program that allowed the episode to have the influence that it did: a simple breakdown of an unfamiliar issue, a reliance on

comedic assurance, and the shareability of the platform. Firstly, the segment explained the complex policy of net neutrality in laymen's terms. The 13-minute video helped millions of people understand the issue by employing the perspective of an average person: "Plans are expensive, service is inexplicably spotty and you have little choice. Clearly, the network owners are the bad guys" (Pagliery, 2015).

In addition, Oliver framed net neutrality as a straightforward "people versus corporations" debate to garner anger among the people. He emphasized the evident "old-fashioned cronyism" that exists within the FCC and government: former lobbyists and corporate workers, including Chairman Wheeler, used a revolving door mechanism to get seats in government and to act in favor of corporate interests (McDonald, 2014). Between the years of 1980 and 2012, 21 out of the 26 commissioners and chairs that served in the FCC had been or later became "an employee, consultant, lobbyist, lawyer, or paid board member for corporations in industries they were in office to regulate" (Aaron, 102). This included Michael Powell, who served as Chairman from 1997 to 2005 and later became the CEO of the National Cable and Telecommunications Association in 2011 (Feinberg, 2014). Likewise, Meredith Baker, a former FCC commissioner, cut her four-year term short to become Comcast's senior vice president of government affairs in 2011 (Feinberg, 2014). These players sided with the telecommunications industry and with powerful corporations before, during, and after their terms in office.

Oliver simply offered these facts and proceeded to shape net neutrality as a political battle between Internet users and the “wealthy and politically influential corporate elites” (Aaron, 103). It was a compelling argument, and consequently, it reached a wide audience and inspired them more than most other advocacy campaigns before then (Carr, 2014). Because of the unlimited and constant availability of information in the age of the Internet, it’s easy for people to get away with civic disengagement. It “takes time and energy to seek out, interpret, and remember political information” that individuals just don’t have or the personal will to spend (DiMaggio, 320). Satirical news shows like *Last Week Tonight* lower these behavioral costs and make political information personally relevant, convenient, and easy to understand (DiMaggio, 320). In essence, political satire presents a “second-hand reality” of the the political world on a silver platter to viewers that refines the facts, makes information easier to swallow, and aids the political cognitions of people (Hoffman, 5).

Secondly, the kind of humor in these shows — often referred to as “infotainment” — raises the level of engagement people have with current events and policy issues. By poking fun at political actors and the weaknesses of the federal system, satire itself makes politics and other complicated topics easier to approach and learn about (Becker, 4). Comedy, by requiring more active processing and recognition — not recall — of political facts, aids in the creation of more attentive citizens (Hoffman, 8 & Becker, 2). In the net neutrality episode, Oliver recognizes how dull the issue of net neutrality is right off the bat; he jokes that he’d rather “read a book by Thomas Friedman” or “listen to a pair of dockers

tell me about the weird dream it had” than sit through a net neutrality hearing (*Last Week Tonight*, 2014). In this way, he agrees with popular opinion. His exaggeration of how boring the issue is entertains viewers and validates their disengagement, but he then goes on to dismiss such attitudes and suggest easy courses of action. Comedy, in this case, opened a gate to higher understanding and empowerment of viewers.

Several studies show that “...an increase in perceived learning from late-night comedy television [is] associated with an increase in learning from other forms of television news” (Hoffman, 6). Those who watched late-night television were more likely to turn to other traditional sources of political information and news content, which explained the high-knowledge evaluation of these groups (Hoffman, 9). A growing population of people, especially adolescents, get their news from mass media or online sources (Hoffman, 16). A survey taken in 2000 found that 46 percent of US adults under thirty go online for news at least once a week, compared to the 20 percent in 1998; currently, there’s a hunger for a new medium of news among younger audiences who also seek out traditional sources of political information (DiMaggio, 320). Perhaps it’s because satire is more engaging or that the online component of it allows people to participate in the political discussion and see the “viability, meaningfulness, and diversity of the public sphere,” but people are more aware and more politically engaged (DiMaggio, 320).

Political satire, especially pertaining to certain issues such as campaign finance reform, was even found to be “more effective at promoting issue-specific

knowledge gain and enhancing viewers' perceptions of their own knowledgeability on the issue than exposure to traditional news content" (Becker, 2). Good satire alters previously held conceptions, provides an appropriate language to talk about issues, and urges people to fix whatever's wrong with the system (Schwartz, 155). Because viewers of these kinds of shows expose themselves to more news and have more internal efficacy, or confidence, in their own knowledge abilities, they are also more likely to be politically oriented and civically engaged (DiMaggio, 320). The net neutrality episode, therefore, targeted the right audience with its comedy and call to action.

Lastly, *Last Week Tonight* airs 30-minute episodes once a week rather than every day like other late-night satirical television programs such as *The Daily Show with Trevor Noah* and *The Stephen Colbert Show*. As a result, the producers and writers of the show — many of whom were former journalists for the *New York Times Magazine* and *ProPublica* — are able to spend more time researching, writing, and creating these segments (Becker, 4). This makes *Last Week Tonight* segments "longer and richer in information than prior political satire offerings" (Becker, 4). In addition, people are compelled to take advantage of the show's online format. The show releases full episodes on Comedy Central's website and on a separate Youtube channel, allowing viewers to share such comprehensive, reliable, and entertaining content both horizontally and interpersonally on their own social media sites (DiMaggio, 320). The design of the show itself allows for an increase in the capacity for discussion by handing the responsibility to the public.

John Oliver's argument and call to action in the net neutrality episode raised self-confidence and the sense of responsibility among its viewers. Because citizens who feel informed and confident in their knowledge are more likely to get involved in public affairs, the episode not only increased the quality of discussion around the issue but also pushed viewers to do something about it (Pinkleton, 330 & Hoffman, 10). Oliver, by providing a "language to answer and describe what we see going wrong," altered people's perception and approach to an issue that previously had little buzz (Schwartz, 155). He reminded viewers that the Internet, with its low access barriers to meaningful public speech, empowers every user to be an active publisher and contributor to the political discussion (DiMaggio, 321). Civil society listened and responded appropriately with its most powerful instrument of free speech: the Internet. Certain attributes of satire and the show enabled this early episode of *Last Week Tonight* to be effective in kickstarting public engagement with the net neutrality issue; however, it is the public response that followed which truly caused a government-stopping effect.

Like the Comcast case in 2008, public interest groups played a large role in the debate on net neutrality. Free Press once again used the expertise of its lawyers, researchers, and advocates to conduct independent research and analysis and revealed how the abandonment of net neutrality could harm Internet users and small businesses (Aaron, 104). Despite being outnumbered on Capitol Hill, the organization relied on a small group of advocates and civil liberties allies to represent them in Washington and to connect with congressional staffers (Aaron, 203-4). This type of public outreach was optimized by means of other

organizational allies such as CREDO Action, Demand Progress, and Fight for the Future who helped influence and mobilize millions of activists (Aaron, 104). Many of them provided online forms that made it easy for people to express their opinions to the FCC (Faris, 19). Their efforts in mid-July resulted in a number of comments several times higher than in June, suggesting that advocacy groups had even more success than John Oliver's call to action (Faris, 19). In fact, a Sunlight Foundation analysis of comments concluded that advocacy group efforts accounted for almost half of the comments received in the first submission window (Faris, 20). Around 40 percent of these comments and campaign letters from advocacy organizations managed to emphasize consumer choice or public interest (Lannon, 2014). By pushing for a return to public interest defined by the local public, these organizations reached an audience that was receptive and invested in the fight for net neutrality.

These individuals signed petitions, called congressional representatives, and attended FCC hearings and local rallies (Aaron, 103). Advocates of the net neutrality campaign site *BattleforNet* sent over two million emails, made more than 300,000 phone calls to senators and representatives, and submitted close to 800,000 comments to the FCC (Faris, 21). Offline, people rallied repeatedly outside the Commission's headquarters in Washington, D.C. and participated in public hearings across the country from Minneapolis to Mountain View (Aaron, 104). Advocacy organizations such as the Electronic Frontier Foundation, Public Knowledge, and BattlefortheNet covered these events like traditional media and became some of the "most linked-to sites throughout the controversy" (Faris, 8).

The amount of public activism in government agencies was so great that it even outweighed the extensive lobbying power that Internet service providers had on Capitol Hill. In 2013, Comcast spent more than \$18.8 million on its presence in Washington and became the sixth-highest spender on federal lobbying (Feinberg, 2014). Comcast, Verizon and AT&T combined have spent more than \$500 million on lobbyists and another \$185 million in campaign contributions within the past twenty-five years (Aaron, 101). These efforts explain the continuation of the “revolving door” effect as well as the “growing consolidation of media power into the hands of a very few” in the early ages of the Internet (Aaron, 101). But the outpouring of public comments in 2014 contested these lobbying efforts; the networked public sphere felt empowered and equipped — ironically by the free Internet — to take power back (Faris, 31).

In the fight for net neutrality, the public managed to demonstrate the strengths of the Internet itself. Each individual citizen took action, whether it was leaving comments or reaching out to congress, proving that even the smaller players had a place and a fighting chance against big, powerful corporations. Tim Wu, a professor at Columbia Law School who coined the term “net neutrality,” said that the debate was about “the fear of the Internet becoming too corporatized — no longer this place where even if you start small, you do have a fighting chance” (Lohr, 2014). It was clear on every measure — public activism, social media, comments on the FCC site — that popular sentiment was in favor of governmental action to preserve net neutrality (Faris, 30).

Interestingly enough, Internet companies including Facebook, Netflix, Amazon, and Google also stood alongside advocacy groups and supported pro-net

neutrality regulation. In May 2014, 150 companies wrote and signed a letter to the FCC expressing their support for net neutrality on the basis that these companies aim to provide “basic speech platforms that people [can] use to find out news and share information” (Ammori, 268). The Internet Association, a lobbying organization representing these web companies, also stated its support for enforceable net neutrality rules because the Internet's success as an “engine of economic growth, innovation and democratic values” should not lie in the hands of a few select broadband Internet access providers (Lohr, 2014). These companies took action to demonstrate their commitment to the movement. In September, Twitter, Netflix and Reddit took part in an “Internet Slowdown” protest in which sites displayed the spinning wheel, “an icon for slow loading speed,” and linked different ways that users could take action to defend net neutrality (Rawlinson, 2014). Firms including WordPress, American Civil Liberties Union, Vimeo, Urban Dictionary, Foursquare, and several others also joined the campaign (Rawlinson, 2014).

These efforts didn't go unnoticed. The collective forces of non-traditional media (political satire, in this case) and the efforts of advocacy groups, public activists, and large Internet companies caused a “digitally-mediated social mobilization” that changed the course of government policy (Faris, 4). On November 10, 2014, then-President Barack Obama spoke out in favor of strong net neutrality rules and the reclassification of broadband providers under a Title II utility-like regulation in a two-page White House Press statement and an online video (Puzzanghera, 2017). Obama had been an early supporter of net neutrality;

as a senator, he signed the 2007 bill to write net neutrality protection rules into federal law (Puzzanghera, 2017). His public declaration in 2014 came at a critical time; it was assertive, went against the original proposal of his own agency, and pushed the FCC to enact tougher regulations. As a result, it caused the highest surge of media attention in that year (Faris, 22).

It was clear that Obama's stance was a response to the activism brought forth by John Oliver and civic society. As president, he heard the online and offline outcries and recognized the dedication of the millions of citizens who were "willing to call their Senators and Representatives, file comments with the FCC Commissioners, sign petitions, and argue their case publicly" (Faris, 31). He needed to stick to his commitment to net neutrality and to the American people.

Not only did the social mobilization of the public create a political space and impetus for the President to take a strong stance on net neutrality, but it also changed the mind of FCC Chairman Tom Wheeler (Aaron, 104). The Democratic-led Commission, under Wheeler, passed the 2015 Open Internet Order, approved 3-to-2, which asserted higher government authority over the Internet (Pagliery, 2015). Though split along party lines, the FCC voted to reclassify broadband and the Internet under Title II of the Communications Act, subjecting such sources to common carrier regulations (Aaron, 104-5). The Order protected net neutrality; it gave the Commission full jurisdiction over monopolistic, self-interested network companies and their desire to create a two-lane system that favored a few privileged, rich companies (Pagliery, 2015). The

policy “marks the biggest win ever for the public interest at the FCC” (Aaron, 105).

It’s difficult to pinpoint the exact incentives for individuals to write letters to their political representatives, post comments on the FCC website, and actively participate in public spheres to push for net neutrality (Lannon, 2014). But some credit must be given to the *Last Week Tonight* episode on net neutrality for instilling a higher level of public engagement with the issue, advocacy groups for offering easy channels of involvement, and the support of Internet companies for verifying the importance of net neutrality. Because of the Internet and the consequent networked public sphere, it has become easier to inform, empower, and mobilize members of society and, hence, promote public interest within a democracy.

CHAPTER 3

“John Oliver Effect,” Cyberactivism, and Limitations under Trump

By reclassifying ISPs (and the Internet) entirely under Title II, the 2015 Open Internet Order seemed to have set in stone the core principles of net neutrality — no blocking, no throttling, anti-discrimination, and transparency. It promoted an free and open internet with success. The regulation has resulted in an increase in investment and profitability for the telecom industry or has had no effect on business, despite criticism from large ISP companies (Coldewey, 2017). Moreover, the bill delineated clear responsibilities of the FCC and gave it a range of flexibility within its jurisdiction; the FCC is to continue policing ISP practices, follow antitrust laws, and if need be, use its administrative courts and judges on case-by-case proceedings for violations (Downes, 2015). Not only that, but the 2015 Order also avoided a double standard and set an international example. The United States has always been critical of countries that limit access to online content and interfere with the development of the Internet, such as China, Russia and Iran. The bill demonstrated to the International forum that the U.S. was devoted to the idea of free Internet, information, and speech (Downes, 2015).

As mentioned in Chapter I, since January 2017, this legislation and the principles of net neutrality have been under threat of the new FCC Chairman Ajit Pai. Pai, a former lawyer of Verizon, is yet another representative guilty of using the revolving door to get a seat in the agency and change policy regulations from the inside (Guerrasio, 2017). His objection to the 2015 Order is well-known as he repeatedly expressed his desire to overturn the Title II ruling in his interviews, tweets, and policy proposal, claiming the regulation too “burdensome to providers” (Snider, 2017). As soon as he approved for

office, Pai proposed a new plan called “Restoring Internet Freedom,” which would repeal the 2015 Order and reclassify broadband Internet under Title I information service (McGill, 2017). It was scheduled for a vote on May 18, and the FCC once again opened up a site and time period to receive comments and suggestions on the new policy. Like in 2014, John Oliver jumped on this opportunity once again and incited the Internet community to take action. What resulted was a clear example of the influence and limitations of “satiractivism,” civil society, and cyberactivism, which culminated into a general understanding that the Internet is an entity owned by the people and that regulation around it should first and foremost serve public interest.

On Sunday, May 7, 2017, John Oliver devoted 20 minutes of his HBO show to address net neutrality for the second time. He began by refreshing the audience’s memory on the issue, letting a 30 second clip of YouTube star Tay Zonday (known for his viral video, “Chocolate Rain”) describe what net neutrality is: “[those] pipeline[s] to the Internet is not allowed to arbitrarily pick favorites in terms of the content that you consume” (*Last Week Tonight*, 2017). Oliver then makes jibes at Chairman Pai for his fun-loving, down-to-earth character marked by his giant Reese’s Peanut Butter mug which juxtaposes his “serial killer” rhetoric — Pai had said that he would take a “weed-whacker” to current regulation and that net neutrality’s “days are numbered” (*Last Week Tonight*, 2017). Oliver reels in the audience with these jokes but quickly changes tone when he explains the actual threat that Pai poses to the Obama-era regulations. He calls Pai’s argument — that there is no evidence of cable companies engaging in rampant wrongdoing — “deeply ingenuous” and goes on to utterly repudiate the claim; for example, Verizon, AT&T, and T-Mobile blocked Google Wallet on their phones to

promote their own mobile payment application in 2013 (Milian, 2013). Oliver then ridicules Pai's plans for being as lax as a proposal on *The Bachelor* as well as President Donald Trump's tweet in 2014, which compared net neutrality to the Fairness Doctrine, for being completely inappropriate (*Last Week Tonight*, 2017).

Because of this lack of trust in the abilities of the FCC and Congress under the current administration, Oliver made another call to action: "Every Internet group has to come together like you successfully did three years ago" (*Last Week Tonight*, 2017). He urged viewers to visit the site "GoFCCYourself.com," which was directly linked to the comments section of the FCC's "Restoring Internet Freedom" proceedings, and to express their opinions (Roberts, "John Oliver," 2017). Despite the FCC's attempt to complicate the procedure to leave a comment, Oliver's short URL allowed the number of comments to surpass the record set in 2014 and to breach the FCC site's capacity yet again. The influx of comments this time around came quicker than it had in 2014, and by August, a total of nearly 22 million comments had been submitted — almost six times more than in 2014 (Snider, 2017 & Kastrenakes, 2017). The day after the episode aired, the comment page loaded intermittently with delays, and the site even went down for a while (Roberts, "John Oliver," 2017). The FCC's efforts to upgrade its systems, increase capacity, and create an additional Box.com account for comment filings failed in the face of cyberactivism (McGill, 2017 & Snider, 2017).

The FCC blamed the site's issues on a series of denial-of-service (DDoS) attacks in which random hackers created fake traffic to force it offline (McGill, 2017). FCC's Chief Information Officer David Bray expressed in a statement later that day that "external actors" bombarded the FCC's comment system to make it "difficult for

legitimate commenters to access and file with the FCC” (Izadi, 2017). The agency did not provide any proof of this claim, and security experts found the timing too coincidental and unlikely, especially because the FCC site is hosted by Akamai, a content delivery and cloud provider that prevents and mitigates DDoS (Snider, 2017). All things considered, the most likely cause of the FCC site’s capacity failure is the sheer number of comments that was submitted in response to the *Last Week Tonight* episode.

So what was different about this episode from its predecessor in 2014? What instigated such a far-reaching response from individual citizens? One possible explanation is the strong development and establishment of John Oliver’s character and the growing status of his show *Last Week Tonight* on HBO. The fact that the show airs on HBO itself allows freedom that can’t be seen on other late-night television programs. As a “subscription-based” business model, HBO has no sponsors to answer to; rather, they cater to loyal customers (Pattani, 2016). Oliver crosses lines that other satirists and late-night comedians don’t (or can’t) because he doesn’t have to fear corporate criticism and advertising concerns (Ross, 2014). “The exciting thing is that [HBO] let[s] you do whatever you want,” Oliver said in an interview with *National Public Radio*, “They don't say anything. They're amazing. It's almost a confusing amount of freedom” (“John Oliver,” 2014). In this way, Oliver can honestly criticize all corporate players in-depth. What’s more, the show only airs once a week and doesn’t have any commercial breaks which allows Oliver to extensively cover topics, including those that are not time sensitive, without interruption. The show’s platform, being on HBO, essential frees Oliver “from the pressures that lead others to produce superficial, quick-hit coverage” (Ross, 2014).

Since his last episode on net neutrality, Oliver has also developed his persona of a “half-outsider, half-insider,” and his show has, consequently, grown in viewership. Oliver’s first take on net neutrality, which aired June 1, 2014, was only the show’s fifth episode. Though the episode had been successful in increasing public participation in the net neutrality debate, it was too early for Oliver to have established a lasting, charismatic, and influential character to make a lasting change on the debate and government policy. Now in its fourth season, *Oliver*, an Englishman, is known to have a “viewpoint of an outsider sneakily peering over the hill (in this case across the pond) with his binoculars” which is “refreshing” to American audiences (Ross, 2014). The host — as a foreigner and a comedian — provides a moral compass and an honest takedown of ideas unquestioned by most. Audiences are compelled to hear what he has to say not only because of his outsider logic but also because of his insider ethos. Having married a former U.S. combat medic and received a green card for U.S. residency, he plays to a patriotic advantage by using “I” and “we” language when talking about things that should make the average person angry (Carr, 2017). Currently, the show maintains an average audience of four million people (Carr, 2017). Not to mention, clips of the show are released on YouTube every week which receive an upwards of 13 million views (Carr, 2017).

In addition to the effectiveness of Oliver’s platform and character on the show, another reason for the explosive response in May was in Oliver’s messaging and the timing of such rhetoric. Oliver (and his writers) clearly knew his audience and directed the medium toward these specific groups of internet communities, bestowing them the challenge to come together and take action:

Every subculture must join as one: gamers, YouTube celebrities, Instagram models, Tom from MySpace, if you're still alive. We need all of you — and I cannot believe I'm saying this, but Donald Trump's internet fans on sites like 4chan and Reddit, the most powerful online trolls of all. (*Last Week Tonight*, 2017)

Right from the beginning, when the segment began with a viral video of a goat singing Taylor Swift's "I Knew You Were Trouble," it is clear that the target audience are those who are "in-the-know" or are frequent users of online media. Once he catches the attention of these audiences, he effectively persuades them to take action by respective mediums; he features a YouTube celebrity, calls out Beyonce's Instagram followers, and ridicules reviewers on Yelp. In this way, he makes individuals feel a sense of community, collective responsibility, and individual capability to influence change.

Oliver's messaging reached a large audience via Internet, but the timing also aligned with timely trends that pushed people to follow his directions and contribute to the debate of net neutrality. In the current day and age, the younger generation is more hungry for slow news, or infotainment, and more receptive to satire (Carr, 2017). Oliver denies that his show is true journalism. Instead, he insists that the research and effort that his team puts into understanding complex issues is all for the sake of comedy (Carr, 2017). And that's what makes the show resonate with its audience: it's funny, but it also presents a reality that is both daunting and flawed. The humor in how boring the issue of net neutrality is and how ridiculous Pai's giant Reese's Peanut Butter Cup mug is draws people in, but the fact that ISPs can control the apps on personal phones and the speed of access to Google doesn't settle well with an audience that especially values and practices such freedoms every day. That's where satiractivism comes in. As satire, the show "promotes the possibility of change," sparks curiosity and reflection on an issue, and

leads to “eventual action, civic or otherwise” (Harrison, 25-6). Both episodes of *Last Week Tonight* on net neutrality educated people, gave them a reason to be upset, and handed them the right tools to make a change (Harrison, 30).

Much like in 2014, public advocacy groups were highly active in the movement that John Oliver started. Activist groups similarly built alternative platforms for people to submit comments to the FCC in case the website crashed (McGill, 2017). For instance, Free Press, Demand Progress, and Fight for the Future relaunched BattleForTheNet.com, the same site that was used in 2014, for consistency and simplicity for supporters to get reinvolved (McGill, 2017). This kind of activity by consumer advocacy groups accounted for millions — up to 85 percent of comments defending net neutrality — of “form letter” submissions, or pre-written comments (Romm, 2017). These nonprofit actors and their followers, once again, made up a majority of the pro-net neutrality coalition and support online (Herman, 39). The traction that Battle for the Net gained caught the attention of web users and inspired major tech companies to also partake in a protest against Pai’s proposal (Romm, 2017).

Though large tech companies attempted to promote pro-net neutrality principles on Capitol Hill and organized an online act of protest, their contribution to the most recent fight against the FCC is debatable. For one, despite the size and number of corporations in Silicon Valley that support net neutrality, their inexperience with politics and lack of investment in lobbying limited their role in the debate (Herman, 32). In 2010, major networks — AT&T, Verizon, Time Warner — spent \$19.7 million on lobbying and \$6.9 million on campaign support, whereas major companies — Microsoft, eBay, Amazon, Google — only spent \$4.7 million and \$2.2 million, respectively (Herman, 32).

For years now, they've substantially and consistently been outspent in Washington D.C., so corporate champions of net neutrality have been unsuccessful in terms of direct influence on legislation.

Instead, on Wednesday, July 12, tech companies such as Google, Facebook, Netflix, Amazon, Twitter, and Reddit partook in a "Day of Action" (Johnson, 11 Jul). Similar to "Internet Slowdown Day" in 2014, when a spinning wheel was used to signify slower access on multiple sites, companies either featured a banner with a message about protecting net neutrality or published statements about it (Johnson, 11 Jul). Netflix had a banner on its homepage that read "Protect Internet Freedom" while Reddit featured a message on its homepage that (loaded slowly and) read, "The internet's less fun when your favorite sites load slowly, isn't it? Whether you're here for news, AMAs, or some good old-fashioned cats in business attire, the internet's at its best when you — not internet service providers — decide what you see online" (Johnson, 12 Jul. 2017). There were other popups on sites like Airbnb, OkCupid, IMGUR, Vimeo, Spotify, BitTorrent, and Creative Commons (Lecher, 2017). Even Web inventor Tim Berners-Lee published a video defending current FCC regulations, stating that "if we lost net neutrality, we lose the internet as we know it" (Lecher, 2017).

On the other hand, Tumblr and Dropbox merely released statements of support without changing their homepages (Lecher, 2017). In the same vein, Google and Twitter published separate policy blog posts that urged users to file comments to the FCC through the Internet Association's net neutrality website (Johnson, 12 Jul). Though spokesman for the Internet Association Noah Theran expressed that "the Internet sector will continue to advocate — in every venue available — for enforceable net neutrality

rules that prohibit blocking, throttling and paid prioritization,” the Association has been criticized for only directing comments and exerting pressure on the FCC alone, not using its full potential to pursue lawmakers and a legislative battle (Johnson, 12 Jul. 2017).

Especially under the Trump administration, tech giants in the Valley have been less inclined to aggressively partake in the net neutrality fight (Roberts, “The FCC,” 2017). Many of them rely on the Internet Association to do the fighting for them with hopes that the lobbying body finds a chance to express some sort of discontent with Pai’s direction of policy and not speaking up for themselves and their users (Roberts, “The FCC,” 2017). The protest on July 12 was weak, less confrontational, and more informational. Ultimately, tech companies have made sad efforts to the most recent net neutrality debate because of the uncertainty under the current administration.

Rather, the real thrust of the pro-net neutrality argument lay in the participation of the Internet community, or cyberactivists, called upon by John Oliver. A consequence of the rise of the Internet is a process called “mediatization” in which “society[,] to an increasing degree[,] becomes submitted to, or becomes dependent on, the media and logic” (Powell, 2013). People learn from and use mainstream media to justify their rights and interests, mobilize social movements, and create conflict by bringing the issue to civil society (Powell, 2013). And one of the best places for civil society to be heard today is on the Internet itself. Advocating for “internet freedom” is only possible in this specific society, time, and medium wherein Internet is considered a “core institution for communications, commerce, and politics” (Powell, 2013).

Cyberactivism is possible and effective for several reasons. First, there are lower barriers to collective action on the Internet. Online mobilization doesn’t require extensive

self-identification, authorship, and commitment like most other activities, and as an activist, this is convenient (Herman, 32). Thus, more people are able to (and do) take part in the civic debate and advocacy of public interest on the Internet. Second, because online governance is horizontal, the Internet is able to create a linked network of people without a centralized source of power (Powell, 2013). This type of loose organization allows for more open communication and unfiltered citizen input in policy-making on any issue at any time (Longford, 7). The Internet has made everybody into an “issue generalist,” or a person who mobilizes support around pressing issues (Herman, 32). Anyone can post their opinion on their own social media platform, whether it be on their Facebook or Twitter accounts, no matter how incorrect, immoral, or illogical their arguments may be. It’s one of the greatest strengths of the Internet: “Just by interacting in an online discussion, individuals may contribute to the public good (e.g., spreading information and awareness about an issue)” (Tatarchevskiy, 300).

For this reason, the greatest opponent to ISPs in their fight against net neutrality, especially this year, is the online communicative community. This community is deeply rooted in communicative action, or interactions between individual users that intentionally or unintentionally lead to common understandings, a “collective critique of systematic social problems,” and a plan of action to resolve the concern (Longan, 851). Online conversations — as a result of John Oliver, public advocacy groups, and tech companies’ “Day of Action” — facilitated a political dialogue and a practice of democratic decision-making around the issue of net neutrality (Longan, 856).

This is not to say that there was a universal, pro-net neutrality stance across the 22 million comments. There was (and still is) a fair number of people who stood alongside

Chairman Pai and argued for less regulation, but even this dissent is characteristic of collective action and of a civil, communicative, and democratic community (Loblich, 396). It's the reason why the net neutrality debate, an issue that was little known before the *Last Week Tonight* episode three years ago, has become one of the most popular democratic debates with record-breaking participation by individual citizens.

Cyberactivism and its dissenters reinforce the idea that "individual people are responsible for creating and maintaining web sites" and that the real "value of [online] intellectual property" is claimed by these activists, meaning that people should own, freely use, and regulate the Internet, not ISPs or corporations (Powell, 2013).

ISPs would, of course, argue otherwise. Especially when looking at the comments on the FCC site, these corporations would most likely find the general public incapable of streamlining the entirety of the platform and understanding the gravity of the issue. It's true that not all parts of cyberactivism and collective action of the online community were authentic and contributive to a civil democracy this time around. For example, there were major incidents of "astroturfing" and bot spamming. In essence, a sizable portion of the comments were unoriginal (repeating the same form-letter responses written by public policy groups) or fake submissions (Whittaker, 2017). Around 8.6 million out of the 22 million comments expressed an anti-net neutrality sentiment; however, only about 24,000 of them were unique comments backing Pai's push for repeal, according to an Emprata report (Romm, Molla, 2017). The majority of anti-net neutrality comments were, instead, replicas of the following message:

The unprecedented regulatory power the Obama Administration imposed on the internet is smothering innovation, damaging the American economy and obstructing job creation. I urge the Federal Communications

Commission to end the bureaucratic regulatory overreach of the internet known as Title II and restore the bipartisan light-touch regulatory consensus that enabled the internet to flourish for more than 20 years (Whittaker, 2017).

These messages were suspicious in origin, despite providing a name, postal address, and zip code; the system (or bot) seemed to be cycling through names in alphabetical order and submitting the same response through the FCC's public comment system API (Whittaker, 2017). An online thread on Reddit discovered that the language of this repeated comment matched that of a 2010 press release by the Center for Individual Freedom, a nonprofit conservative policy advocacy organization, and accused the group of using bots to file fake comments to which the CFIF President Jeff Mazzella vehemently repudiated (Whittaker, 2017). Though some suspected that the information came from public voter registration records, a cross-examination with the Federal Election Commission yielded no correlation (Whittaker, 2017).

A significant portion of the pro-net neutrality comments were also fake and lacked legitimacy. Out of the 13 million comments that expressed support for current net neutrality regulations, only 1.7 million were uniquely worded (Romm, Molla, 2017). Many of the emails of the pro-net neutrality comments had domains associated with FakeMailGenerator.com (a site for disposable addresses) or appeared multiple times, which inflated the numbers, and some addresses were even irregular or incomplete (Romm, Molla, 2017). Though it is hard to make an accurate conclusion from the comments due to the lack of authenticity and authorship, the general sentiment seemed to be pro-net neutrality, especially when comparing the number of unique submissions —

24,000 supporting Pai versus the 1.7 million supporting current regulations (Romm, Molla, 2017).

In this case, one of the benefits of cyberactivism — anonymity — simultaneously became its major flaw — illegitimacy. The online public sphere and its communicative community can produce passionate political debates, develop a civil society, and organize a movement, but they can also delegitimize the message's content and sender (Tatarchevskiy, 308). This is why cyberactivism must be supplemented by physical, grassroots action taken by the people (Tatarchevskiy, 309). The voices and opinions circulating on the Internet merely add to the “clutter of information that does not equal democracy” (Tatarchevskiy, 308). No matter how powerful and sizable the virtual argument is, physical action (convening discussions, protests, celebrations) must be taken to have a lasting impact on policy, especially under the current administration (Longan, 860).

The best example of this is the SOPA and PIPA protests in 2012. These Hollywood-backed and -lobbied bills were designed to shut down piracy-facilitating sites for copyright infringement by allowing ISPs to block access to these sites such as Pirate Bay (Homonoff, 2014). Not only did fifty thousand tech companies, including Google, Wikipedia, and Reddit, “black out” their homepages to protest the legislation, but 10 million individuals also expressed their disapproval online and called their government representatives (Karr, 2017). Additionally, millions of people took to the streets of Washington D.C. on a day of mass protest on January 18, 2012 (Karr, 2017). This widescale public outrage influenced Congress to kill the bill, leading to a “sudden and unexpected defeat to the entertainment industry” — something that previously seemed

impossible (Roberts, “The FCC,” 2017). The widespread and popular advocacy of internet-freedom issues found its way around partisan politics and created a common alliance around the desire to protect the free and open internet as well as the customary rights of free speech, inclusion, and equality (Karr, 2017).

Though the sheer number of comments that the FCC has received so far this year proves that cyberactivism is real and powerful, the actual impact of it on the future of net neutrality policy is hard to determine. President Trump doesn’t seem to understand what net neutrality is; his tweet in 2014 reads, “Obama’s attack on the internet is another top down power grab. Net neutrality is the Fairness Doctrine. Will target conservative media.” (*Last Week Tonight*, 2017). Furthermore, Chairman Pai has been ideologically set on deregulation and has continually expressed ending net neutrality as his personal priority since his early days in the agency (Roberts, “The FCC,” 2017). When releasing the “Restoring Internet Freedom” proposal, Pai contended that no “numerical threshold” of feedback will influence his policy decisions (Romm, Molla, 2017). Especially because he has a Republican majority on the Commission and is fully backed by President Trump and Republicans in Congress, Pai has little reason to fear the online backlash (Roberts, “The FCC,” 2017). The unprecedented and unpredictable nature of Trump’s presidency and the rigidity of the polarized status of Washington suggests that it may take more than 22 million comments to protect net neutrality this time around. Similar to the SOPA-PIPA protest and the net neutrality movement in 2014, the online debate might also need to be followed up by more aggressive, action-based participation on the streets of Washington or in Congress.

In the meantime, the cyberactivism initiated by *Last Week Tonight*, joined by public policy groups, and (somewhat) supported by tech companies seems to have had some effect in impeding and slowing down Pai's net neutrality policy. The voting process has yet to take place, so the ball is still in the court for "netizens," or the "politically engaged Internet citizens" who are inclined to do-it-themselves and are activists by nature (Longford, 5). Dialogue that they started on comic and online spaces must also be had in more physical public spheres in order to lead change in public policy (Longford, 8). Maintaining net neutrality principles and regaining public interest will require the people to continue to act as they have in the last three years, to take advantage of the tools they know how to use best, and to erase the boundaries between cyberactivism and real activism.

CONCLUSION

On November 22, the Federal Communications Commission met to share the details of the final net neutrality proposal and will meet again on December 14 to vote on the legislation (Shepardson, 2017). Until then, the debate continues. Internet service providers — Comcast, Verizon, AT&T — are making moves to support and push forward Chairman Pai’s initiative to rollback Obama-era net neutrality, believing that deregulation will spark billions of broadband investment. Proponents of net neutrality argue that Pai’s plan will harm public interest, small businesses, and freedom on the internet (Shepardson, 2017). The deciding factor, once again, lies in the actions of the public and their ability to sway Congressional opinion. Similar to the civic activism and cyberactivism mentioned in the chapters before, people must continue to represent public interest in online forums and physical spaces. This way, they have a fighting chance against powerful ISPs that are now merging into even greater forces against net neutrality. It’s no question that such action had an impact before, but the question is, will it have the same effect on the unpredictable and unprecedented Trump-Pai administration?

Chapter I demonstrated the influence that free press, public policy groups, and the American people can have on government agencies and Congressional representatives. A coalition of these groups filed complaints and comments to the FCC, and individuals contacted their own representatives and participated in public hearings for the redemption of public interest. Such efforts made the FCC and Congress aware of and renounce Comcast’s actions, which upheld net neutrality principles.

In Chapter II, John Oliver's satirical take on net neutrality angered a large audience (on HBO and online) and prompted these well-informed and receptive viewers to take action in protecting net neutrality. The response that the episode received from individuals, public policy groups, and tech companies, which caused the FCC's site to crash and setting the record for most commented issue in the agency's history, pushed President Obama to support strong regulations and consequently, the FCC to pass the 2015 Open Internet Order.

The same empowerment of the public and manifestation of outrage also took place earlier this year when John Oliver covered net neutrality for the second time, as discussed in Chapter III. Though cyberactivism and the involvement of public interest groups and tech companies in a day of action were effective in that it set a new record for comments on the FCC site and pushed back the implementation of the proposed "Restoring Internet Freedom, the political situation this time around limited the amount of direct influence that they had on the actual legislation of net neutrality.

However, the public's obvious discontent with the current FCC proposal to abandon net neutrality seems to have threatened ISPs. So much so that they took action in early November to weaken the legitimacy of state-level net neutrality rules. The broadband industry feared that the pro-net neutrality sentiment was indicative of states "countermanding," or charting its own course for local regulation, after the federal agency's decision is passed (Fung, 6 Nov. 2017). Major ISPs such as Comcast and Verizon have asked telecom regulators to make sure the agency's policies override all state and local regulations, so states don't get in the way of the FCC's authority (Pressman, 2017). Verizon expressed that if not, then "it would impose localized and

likely inconsistent burdens on an inherently interstate service" (Fung, 6 Nov. 2017). The effect of such lobbying and enforcement is yet to be seen, but it is evident that the ISPs felt threatened by the actions taken by the public against the FCC ruling.

More recently, on November 20, the Justice Department filed a lawsuit against AT&T's \$85.4 billion dollar bid for Time Warner, symbolizing a greater skepticism and concern toward ISPs due to the recent net neutrality debate (Kang, 2017). Makan Delrahim, an assistant attorney general for antitrust, said that the Department feared the merger would "create a communications and media behemoth unrivaled in its ability to reach most American homes with wireless and satellite television services and valuable programming such as CNN and HBO" (Kang, 2017). AT&T responded by accepting the challenge to defend the merger in court (Kang, 2017).

The significance of such a ruling rests in the fact that the Justice Department itself was acting in public interest. In essence, the lawsuit argued that such a merger would harm all consumers by raising television bills for AT&T customers, reducing innovative options, and limiting content and availability to all other users (Kovach, 2017). It raises the question of whether or not AT&T, or any other ISPs, can be trusted to provide the "best experience" with its programs and services without interfering with consumers' experience with other companies' services (Kovach, 2017).

The ruling comes as a shock because it is a reversal of opinion since 2011 when Comcast became the first cable company to control a major broadcast network (Arango, 2011). Comcast had very few restrictions in the terms and conditions of the merger, and executives were allowed to participate in management decisions at NBC Universal (Arango, 2011). The recent decision to sue to block the AT&T and Time Warner merger

is a victory for competitive markets in the telecom industry, antitrust laws, and net neutrality.

Unfortunately, the victory may be short-lived. Though there has been consistent pushback to supplement the cyberactivism — mayors of 65 cities, representing 26 million Americans, wrote a letter to Pai in support of net neutrality, several public hearings have taken place, and there have been demonstrations outside the FCC — it has been officially revealed that the FCC will work toward Chairman Pai’s plan to roll back net neutrality regulations (Fung, 20 Nov. 2017 & Fung, May 2017). The proposal will most likely be approved since Republicans hold three of the five seats in the FCC, which means that ISP regulation may be handed off to the Federal Trade Commission for weaker enforcement of net neutrality principles (Fung, 20 Nov. 2017).

The best options now are to either rely on the left’s pressure campaign to “turn every yes-vote into an act of political suicide” and hope lawmakers hold a net neutrality standoff or to continue public activism against the FCC where GOP members can be bombarded by constituents (Fung, May 2017). Some may say that the battle is already lost and that legislative compromise is the only solution to keep net neutrality from “yo-yoing every time the White House changes hands” (Fung, May 2017). But no matter what happens at the December vote, net neutrality will be one of the most democratic issues of our generation. Its relation to First Amendment rights, its goals of redeeming public interest to the rightful owners, and its use of new public spheres to hold and organize civic participation prove that net neutrality has brought out the best in the current democratic society and will continue to do so as the Internet, media, and civic society evolves with time.

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