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A Calm Conversation on Net Neutrality

wes dodson & shoumik dabir

Wes: Welcome all! Over the course of about a week, Shoumik and I are going to have a vigorous but low-key conversation about net neutrality and synthesize some of the popular arguments from both sides, as well as provide our own analysis on the topic. Hopefully everyone will leave this conversation with a better understanding of net neutrality, and in the President Fenves utopia of elite students/philosophers roaming the hallowed speedways of UT, maybe — just maybe — we will challenge your previously held convictions on this issue. Alright, Shoumik, you ready?

Shoumik: Let's do it. The basic premise of my argument is this: since the advent of the Internet, some sort of net neutrality regulations have been in place irrespective of the ruling political party. They have shaped the free and open Internet as we know and love today. Ajit Pai's move to essentially render the FCC an impotent regulatory organization threatens to uproot a longstanding adherence to basic net neutrality and entirely alter the Internet as we know it.

Wes: Alright, so let me digress a little bit and just talk about the technical specifics and then I will outline my argument as well. To get into the topic it is important to do a bit of "de-sloganeering." So the basic question is: Who is being "neutral" toward what "net"? In answer to the first question, net neutrality refers to a regulatory framework that requires Internet Service Providers to not prefer any Internet content over other Internet content. The way that such preference typically manifests is that an ISP will offer one piece of content at a



Shoumik: Or the ISP could block certain Internet content all together, as AT&T tried to with FaceTime in 2012. Unsuccessfully, I might add.

Wes: Yes, exactly. Essentially the neutrality aspect of net neutrality stipulates that ISPs, to borrow a term, practice "content agnosticism." If you are getting Netflix at 50 mbps, then you are also getting YouTube at that speed, and every other piece of Internet content at that speed as well.

Shoumik: Yep.

Wes: To the second question, the "net" refers to the infrastructure that delivers the Internet, so that is the fiber optic cable that actually feeds into your house. This infrastructure is owned by a small group of companies — Comcast, AT&T, and Verizon, to name a few. This cable is what you plug your modem into to distribute WiFi across your house, and the most common simile for thinking about it is as a kind of "pipe" or "highway" that gives you access to the entire Internet.

Shoumik: That's a near perfect analogy. One that the BBC used in their short video to explain net neutrality. So, in their video, they treated web traffic like actual traffic on the road. These highways are owned by ISPs where vehicles from companies like Google, Netflix, Facebook, and Amazon can travel to get to the consumer. This is done at the same speed which means that Google's 14-wheeler cannot crush the small-business moped and get ahead on the road. The government's job, literally and in terms of Internet traffic, is to ensure accessibility to these roads for everyone.

Wes: Right, in terms of the 2014 net neutrality framework, the role of the FCC was to make sure that once you have purchased access to the "Internet highway", everything on it moves at the same speed. However, let's escape the metaphor for a minute and give a brief overlay of the specifics of that 2014 framework.

Shoumik: Sure.

Wes: So ever since the Internet began to be a common household fixture, the FCC has regulated it as an "information service," which means that it was regulated under Title I of the Communications Act of 1934 (no, that is not a typo, yes the regulatory framework for the Internet is derived from a law that predates it by several decades). This was specified in the Telecommunications Act of 1996 which codified the positions of ISPs as information services. Under Title I the FCC has pretty limited power over ISPs, and its main goal was to facilitate the growth of broadband Internet infrastructure. And that was basically the Internet as we knew it for most of its existence.

Then, in January 2015, after a DC Circuit Court judge ruled that it did not have the requisite regulatory authority to enforce net neutrality rules against Verizon, the FCC under Chairman Tom Wheeler decided to reclassify ISPs as "common carriers" under Title II of the very same Communications Act of 1934. This new framework vastly expands the regulatory authority of the FCC over ISPs and treats them as a public utility. Under such a framework the FCC could set prices, 47 U.S.C. 205, and would require ISPs to get a permit before building new infrastructure, as well as give the FCC power to "require by order" and ISP to build new infrastructure, without regard to the financial feasibility of such an undertaking, 47 U.S.C. 214. It should be noted that the FCC in its 2015 decision said that it would not use the full extent of the regulatory authority granted to it by Title II. It is this Title II framework that Chairman Ajit Pai has reversed, returning the classification of ISPs to their pre-2015 status as information services. Anything I missed in the boring technical stuff, Shoumik?

Shoumik: You covered most of it. But unfortunately, the history of Title I and Title II is even more complicated than we realize. The truth is, almost all of the first forty million households in the United States came online under the regulatory protections of Title II. Despite these seemingly "restrictive" regulations being applied to Dial-up and DSL connections — two of the three prominent early methods for connecting to the web — they flourished under the regulatory provisions of Title II. In 2002, however, the FCC started to formally regulate cable companies that provided internet access under Title I, while telephone companies that provided the same service remained regulated under Title II. It was only three years later in 2005 that the FCC decided to deregulate all Internet Access Providers to Title I regulation. And thus began a series of anti-competitive practices by Internet service providers that prompted the 2015 decision to revert to Title II regulation by the FCC. Tl,dr: the Internet started under Title II regulations, flourished under it, and saw nothing but exponential growth.

Wes: That is a fair point. In the early years of household Internet, the FCC was still trying to define the classifications and chose to regulate Internet that was delivered via telephone wire under Title II. And to your point about the flourishing, I think we can attribute that to the incredible consumer demand for household Internet, and I will say that the Internet flourished despite the regulations. But now that we have a common base of facts, let me lay out my argument.

I think in discussions about net neutrality people make two common assumptions. First, that everyone in the U.S. already has pretty fast Internet and that our primary focus should not be encouraging new infrastructure investments. This assumption is in part correct; it is true that most of the U.S. has some way of accessing the Internet at some speed, but there are still many areas of the U.S. where businesses are struggling because they are operating on 25 mbps of source speed, which when distributed as WiFi gets weakened

considerably. Second, I think people make the assumption that any industry with near-monopoly features will always remain in that position. This assumption leaves no room for innovators to enter the market with new ways of delivering Internet, and actually stifles the ability for ISPs already in the market to offer competitive pricing structures that could be used to enter a new market.

Offering ISPs a regulatory framework based on the pinky promise that the FCC won't use all of the regulatory authority granted to it, such as price-setting and forced investments, is simply not an environment which allows companies to make long-term plans for developing infrastructure, as the next administration could easily say, "Well, we made no such promise." Businesses plan on a longer horizon than our four year elections, and we need to offer them a stable legislative framework that encourages growth by existing companies and innovation by new players.

Shoumik: To that point, I agree. It is a very real possibility that the FCC might choose to exercise the full extent of its regulatory powers at any given time. But let's note that so far, they have rightfully refrained from doing so. I think it comes down to choosing between the possibility of ISPs forsaking any adherence to net neutrality principles that have governed the Internet for much of its time or having in place seemingly excessive regulation that guarantees net neutrality, despite much of it being left unused. Also, let's not forget another central argument for the case of preserving net neutrality in its purest form: rural areas too often have access to only one ISP. If that ISP decides to manipulate its content and infringe upon net neutrality ideals, such customers have no choice but to accept the status quo. At the end of the day, net neutrality is about protecting the consumer and ensuring that the basic purpose of internet is met: the unhindered flow of ideas, thoughts, and services.

Wes: To address your first part let's walk through a hypothetical: Stipulation 1: ISPs are still regulated under Title II. Stipulation 2: Ajit Pai has no intention of changing ISPs back to Title I regulation until after 2020 elections.

I am a political consultant at Comcast and am asked whether I think it would be a good idea to pursue an infrastructure investment that will bring 50 mbp fiber optic cable to many rural cities in America that are currently operating at 25 mbps or lower and will take six years. In response I say: Absolutely not, the Democratic candidates for 2020 are already around single-payer healthcare, showing that the typical barriers to nationalization of private companies are eroding, and it looks like they will run on a far more progressive platform than one saw under the Obama. Trump's chances of getting reelected are slim. Given the Title II regulatory framework, the FCC under a progressive Democratic administration is much more likely to use

the full extent of their regulatory authority to set your pricing scheme. I would not suggest infrastructure expansion at this time.

And to your second point, let's not offer a false dichotomy, what is up for debate is not a world where ISPs are regulated under Title II or a world where ISPs are highwaymen throttling the speed of every company that doesn't pay them a fee. It is in the best interest of the ISPs to offer access to most of the Internet at the same speed — a blogpost or Wikipedia page simply does not take up enough bandwidth to even bother trying to slow down — what is up for discussion is instead how ISPs will treat a few of the mega-users on the Internet. And it is not about the uninhibited flow of thoughts and ideas, ISPs have historically shown that they don't care about the content users access and that attempts to slow down speeds are about bandwidth use.

Shoumik: So let's look at the common misconception that Title II regulation hinders investment in infrastructure. And since we're talking about Comcast, the nation's largest provider of Internet, let's look at the facts: in 2015, when Title II regulation was passed, Comcast increased spending on buildings, equipment, transmission lines and the like for cable communications by about 13 percent. And by another 8.6 percent in 2016, making a total of \$7.6 billion. In May 2015, after the passing of Title II regulations, Comcast Cable's then-CEO Neil Smit told investors that "It really hasn't affected the way we have been doing our business or will do our business. And while we don't necessarily agree with the Title II implementation, we conduct our business the same we always have." Pulling back a bit, like I said earlier, Title II laws do create ambiguous rules for that allow excessive regulations by the FCC. But these problems can be easily fixed by comprehensive bills passed by Congress, which I believe, is the best way to solve the quagmire of Internet regulation. In the meantime, however, Ajit Pai's move does nothing but create greater uncertainty.

Wes: Okay so let's breakdown those statistics a little bit. Part of the problem with those figures is that Comcast also delivers traditional TV over coax cable, so not all of that infrastructure investment is going toward fiber optic infrastructure, which means those numbers are a bit misleading in terms of how that investment translates into actual Internet speed gains. Going further, the network upgrades that were included in those plans are specifically geared toward providing ultra-high speed two gig Internet in a few cities to compete with Google fiber, not toward new infrastructure reaching new areas. And while that is great, it doesn't do anything to address the problem of the underserved communities of America, operating at 25 mbps or less. In fact, the very same article that you draw that information from goes on to say that the small ISPs are split on the issue of net neutrality. It states that "Earlier this year, around 70 smaller companies, most of whom provide fixed wireless in rural areas, asked the FCC to overturn the net-neutrality rules because they created additional legal burdens and scared away potential investors."

It then goes on to say "Meanwhile, a second group of about 30 small providers signed an open letter to the FCC saying that they'd not faced barriers to investment and arguing that the net neutrality rules actually help smaller companies by discouraging larger providers from acting anti-competitively." However, a quick look at the 30 ISPs on that letter will show that it is a mixed bag of municipal ISPs, publicly held companies run by cities, and ISPs serving large urban centers, with a few rural providers as well. Again, what we are seeing is that net neutrality protects the already fast speeds of urban consumers at the expense of rural communities, whose small businesses are disadvantaged by slow speeds. I am fine with people in Chicago getting all of their content at two gigs — in fact that is great — but not if it requires a regulatory framework that stifles the ability of rural communities to get anything at above 25 mbps.

ISPs in rural communities should be allowed to set the pricing schemes they want, charging extra for services that clog their fiber optic cables with traffic, and so should larger ISPs, if that is what the market desires. There is no reason that a small business in Goliad, Texas, should have to shoulder the burden that Netflix viewers in the city place on the infrastructure, provided it doesn't want pay for the sheer joy of office party viewings of *The Office*. And, as for the need for Congress to act, I think we both agree on that, though our conceptions of what such a bill should be will likely differ greatly. In fact, I think that would be a great place to end, on a point of agreement. Unless you have anything to add Shoumik, want to go ahead and move to closing arguments?

Shoumik: Net neutrality is a complex matter. It is imperative to look at the details of policy and how regulations have functioned in the past to discern a better path for the future, but I think there are certain underlying principles that we can all agree on that transcend every debate. #1: Increased access to high quality Internet is a good thing. #2: Unhindered access to everything the Internet has to offer is just as important as having basic access. The means to get here may vary, and if Ajit Pai's move helps more people get access to the full services of the Internet, I'll retract all arguments in a heartbeat. Ultimately, being "pro-business" or being "pro-government regulation" is meaningless if it does not help the average citizen. I tried to make the case that net neutrality is important. But if the realm of Internet remains the way everyone has enjoyed it for the past decades — or improves — after the repeal of net neutrality, I'll be the first to congratulate Ajit Pai.

Wes: The issue of net neutrality is certainly complicated, but the solution does not necessarily have to be. America has always valued the freedom of exchange, whether in the marketplace of goods and services or the marketplace of ideas. Underpinning this entire debate is the existing legal framework of the First Amendment, which is more than adequate to ensure an Internet that protects the free flow of ideas, without the stultifying effects of nebulous regulation under a non-elected federal agency. Congress needs to author a

bill that explicitly states how the First Amendment applies to Internet speeds, providing the ability for ISPs to plan on a long horizon and increase the availability of high speed Internet to America's underserved communities.

To your second point, I think that is part of our fundamental divide; I do not think that the ability to stream content from Mega-users at the same speed as other content is as important as encouraging ISPs through the best feature of the free market, the profit motive, to build new infrastructure and give underserved communities, and the small businesses within those communities, access to the Internet at competitive speeds. Businesses understand their markets better than government agencies, and applying one-size fits all regulation to a marketplace with small and large ISPs, each serving consumers with different needs, hinders growth and new infrastructure investment. The free market is the best driver of innovation, and regulating a market like a monopoly is the best way to make sure it stays one — unresponsive to consumers and with lazy infrastructure investment.

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[net neutrality](#), [internet](#), [isp](#), [ajit pai](#)



WES DODSON & SHOUMIK DABIR

Wes Dodson is a co-founder of *The Texas Orator* and a contributing writer on State and National Politics. He champions constitutional liberties and the exercise of reason, all while juggling school and an expensive podcast addiction.

Shoumik Dabir is a board member of *The Texas Orator* and a contributing writer on international affairs, foreign policy, and other important things. He likes long walks on the beach, a good book before bed, a strong cappuccino, and traveling the world. He is also single.

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