

After Net Neutrality



*In June 2016, a US court upheld net neutrality rules in the US, in a victory for public interest and grassroots movements against corporate interests. **Victor Pickard**, Associate Professor of Communication at the Annenberg School for Communication, examines June's historic ruling and asks whether net neutrality is now threatened by corporate capture.*

A major policy event during my stint as a congressional staffer in the summer of 2005 was the **Supreme Court's *Brand X* case**, one of several milestones in a long struggle over what would become nearly a household term: **net neutrality**. The Court's decision reaffirmed (by a majority of 6-3) the Federal Communications Commission (FCC)'s earlier move to "deregulate" cable modem internet as an "information service" (protected under Title I of the Communications Act) instead of a more regulated "telecommunications service" (protected under Title II of the same Act). This deceptively innocuous turn of phrase sparked a series of **policy battles** over the FCC's authority to regulate broadband.

One of my main jobs that summer was to write **Dear Colleague letters**, routine missives circulated among congressional offices that typically dealt with current news events, policy issues, or bills being promoted in Congress. I was tasked with crafting our response to the *Brand X* decision. Under the title "What's Good for Cable Might Not Be Good for America," I argued that the Court's decision left the internet vulnerable to online tollbooths and gatekeepers, which is why we needed a safeguard—a then-obscure concept—known as "network neutrality." The email went out to only congressional offices, but I received a phone call 10 minutes later from an irate lobbyist for the National Cable and Telecommunications Association (**NCTA**), the major trade organisation representing the cable and telecommunications industries. She berated me for sending out such a critical letter, and I quickly learned firsthand how embedded corporate power is within the American political process.

Since that time, NCTA (now headed by Michael Powell, who as FCC chair in 2002 originally endangered net neutrality) has remained a powerful lobbying force, and it plays a key role in steering policy discourse toward its economic objectives. But after many permutations of this debate and several court battles, these corporate interests ultimately **did not prevail** when broadband industry leaders last month **lost their lawsuit against the FCC**.

The District of Columbia (**DC**) **Circuit Court's decision** to uphold **the FCC's 2015 reclassification of broadband** as a telecommunications service was a big deal. It forces internet service providers (ISPs) such as Comcast and Verizon to abide by federal regulations that prevent the slowing down or blocking of internet content, and it forbids ISPs to allow companies to pay for preferential treatment ("pay to play") so that their websites load more quickly. These new regulations also apply to internet services on wireless devices like cellphones. With some finality, the decision settles the debate over whether the FCC has legitimate regulatory authority over the internet.

Of course, ongoing attempts to undermine this authority will persist (as I type this, the Republican-led Congress is trying to **pass a bill that would derail net neutrality**). All signs suggest that Republicans will continue to see overturning net neutrality, which they frame as a fight against government control of the internet, as a key policy objective. But they will have difficulty overturning it in the short-term, and most analysts have concluded that the recent decision **won't be appealed to the Supreme Court**.

Enshrining net neutrality amounts to a rare victory for the public interest—and not merely a clash of corporate titans, with Google and Netflix on one side and Verizon and Comcast on the other.

Some observers credit the **John Oliver bump** or **President Obama's FDR moment**, when both men used their platforms to publicly advocate for net neutrality. While these factors undoubtedly played important roles, such narratives erase the **grassroots organising** that went into a **more than decade-long slog**, keeping the issue alive and connecting a wonky policy debate to larger questions about democracy and equality. Activists helped show what was truly at stake: whether the internet should be entirely governed by unbridled market forces or whether there was a regulatory mandate and democratic imperative for protecting the public interest. In other words, this was really about a **social contract** between government, the public, and information providers.

Going forward there is now a meaningful protection against the abuse of internet monopoly power (complexities related to plans like "**zero-rating**" notwithstanding). But we should also be clear about what this decision does *not* do. While it establishes a crucial safeguard and changes the larger conversation about the role of digital communications in a democratic society, it doesn't strike at the core problem: corporate capture of the internet. The decision doesn't weaken the stranglehold that Comcast and other internet firms hold over broadband. In many ways, it was a defensive victory that undid past damage.

The **history of American media policy** suggests there are three general ways to prevent commercial capture of a communication system:

- Breaking up or preventing media monopolies and oligopolies (e.g., the FCC forcing **NBC to divest itself of a major network in the 1940s**, media ownership restrictions, and **antitrust action against AT&T in the 1980s**).
- Creating alternative public infrastructures (e.g., public broadcasting or community/municipal-owned broadband).
- Mandating strong public interest protections. (e.g., the **Equal Time Rule** or restrictions on advertising).

Compared with most other leading democracies, the US is weak in all three areas. Although net neutrality addresses some structural problems, it applies mostly to the public interest category and does relatively little to directly advance the other two. Indeed, within the broader context of what my co-authors and I termed "**digital feudalism**," in which corporate oligopolies capture multiple layers of the internet, net neutrality is a secondary problem. If actual competition existed in local broadband markets, we could switch to a less greedy competitor when our internet provider began degrading our service. But in most cases we're at a monopoly's mercy. Moreover, internet giants like Facebook and Google hold tremendous gatekeeping control, and their power is only growing.

We shouldn't despair. American history is punctuated with **pivotal moments** when the public awakens to confront concentrated power. These paradigm-shifting movements typically originate at the grassroots and gradually gain expression among progressive political elites. There are signs that, once again, an anti-monopoly movement is beginning to stir. Antitrust has re-emerged in the Democratic Party's platform **for the first time since 1988**, and Senator Elizabeth Warren recently called for a **reinvigorated antitrust programme**, reminding Americans that we've suffered under monopolies before and our history shows us how to combat them.

But **challenging corporate dominance** of crucial infrastructure like the internet will take long-term organising and tremendous grassroots energy. What we know thus far about **Hillary Clinton's tech policy agenda** suggests there's room for improvement, especially in contesting surveillance and corporate capture of the internet. Time will tell whether the same energy that advanced net neutrality can be harnessed to confront the structural roots of internet monopolies.

This blog gives the views of the author and does not represent the position of the LSE Media Policy Project blog, nor of the London School of Economics and Political Science.

