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Net Neutrality

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Law professor Tim Wu introduced the concept of *network neutrality*, more commonly referred to as *net neutrality*, in a 2002 essay that proposed a set of regulatory principles for broadband Internet service providers (ISPs) to prevent these companies from interfering with network traffic by discriminating against certain traffic and providing faster and more reliable service to preferred content, such as content owned by or financially beneficial to the service provider. Wu and other proponents of net neutrality maintain that service providers should only be allowed to discriminate against network traffic if doing so would be necessary to protect the network. This approach to network administration recommends that other forms of service discrimination should be forbidden.

Proponents of net neutrality assert that ISPs are private companies tasked with managing and administering a public good, much like public utilities such as water or electricity, and should be regulated to ensure that the public's interests are prioritized. For the Federal Communications Commission (FCC) to regulate broadband ISPs, broadband Internet must be classified as a *communications service* in order to be identified as a *common carrier* under Title II of the Communications Act of 1934. Opponents of net neutrality, however, counter that broadband Internet should be classified as an *information service* in the manner of cable television, which is not regulated by the FCC.

Advocates for net neutrality often depict the debate as a noble conflict pitting the interests of consumers and online content creators against the greed of large broadband service providers. Those opposed, meanwhile, often describe themselves as being engaged in a righteous struggle against regulations that hamper innovation and investment. Critics also note that service providers adhere to net neutrality principles voluntarily, arguing that federal regulations are unnecessary.

The decision to implement or revoke net neutrality rules is made by the five commissioners leading the FCC, each of whom is appointed by the US president for a five-year term. Commentators on both sides of the debate have argued that elected officials would be better suited to decide the issue of net neutrality than the FCC. A Republican-led commission voted to repeal net neutrality regulations in December 2017, overturning the decisions of Democratic-majority commissions to institute net neutrality in 2010 and 2015.

Regulatory History

As originally written, the Communications Act of 1934 created the FCC to regulate wired (telephone and telegraph) and radio communication networks that cross state or national borders. The act has been amended several times in response to technological developments and shifts in political thinking, notably the Telecommunications Act of 1996, which added provisions for cable television and telecommunications services as well as a framework for deciding how to classify new technologies. Unlike television broadcast over the airwaves, cable television was classified as an information service. In 2002 the FCC declared that this classification extended to high-speed Internet access delivered via cable modem. The following year, a small California-based ISP called Brand X Internet petitioned the FCC to reverse its ruling to compel cable companies to allow other companies access to their data lines in the same way that telephone companies had to allow ISPs access to their data lines. The US Supreme Court upheld the FCC's classification and ruled against the small company in *National Cable and Television Association v. Brand X Internet Services* (2005).

Over the next decade, the FCC encouraged ISPs to voluntarily adhere to the principles of net neutrality through several directives. While serving as FCC chairman in 2004, Michael Powell proposed guiding principles for ensuring "network freedom" to broadband service providers at a widely attended conference in Boulder, Colorado. The FCC followed these guiding principles with its 2005 Internet Policy Statement, another set of voluntary guidelines. When the FCC used this statement to take action against a small North Carolina-based telecommunications company, Madison River Communications, for discriminating against Vonage and other voice-over-IP (VoIP) phone service providers in favor of the company's own VoIP, the company settled the complaint by paying \$15,000 and promising not to discriminate against network traffic in the future. Despite the outcome of the case, legal experts debated whether the FCC was authorized to bring such a complaint.

In 2007 the FCC brought a claim against telecommunications conglomerate Comcast for discriminating against the peer-to-peer filesharing site BitTorrent. A federal court ruled in favor of Comcast, determining that the FCC had exceeded its jurisdiction by requiring Comcast to treat all traffic equally. The FCC attempted to bolster its influence through the FCC Open Internet Order of 2010, which required service providers to be transparent in sharing their network management practices, treat all traffic equally, and refrain from blocking any lawful content. However, a federal court ruled that the FCC lacked the authority to enforce all of the provisions of the order in 2014's *Verizon Communications, Inc. v. FCC*.

The FCC changed the official assignation of broadband Internet access from an information service to a telecommunications service, which identified broadband service providers as common carriers and subjected them to regulation by the FCC, in February 2015. Though this decision, coupled with the Open Internet Order of 2015, granted the FCC a mandate to regulate broadband access as a Title II service, the FCC determined that twenty-seven provisions and over 700 associated regulations that applied to other common carriers would not be applied to broadband service. This order established net neutrality through light regulation as law.

Repeal of Net Neutrality

After Donald Trump was elected president in 2016, many proponents of net neutrality worried that he would appoint members to the FCC intent on repealing the regulations implemented in 2015. Within a week of his inauguration, Trump promoted Ajit Pai to the position of FCC chairman. Pai, a member of the FCC appointed to the commission by President Barack Obama at the recommendation of Republican senator Mitch McConnell in 2012, had spoken openly about his opposition to net neutrality. In response to Pai's appointment and his continued vows to repeal the regulations, organizations that support net neutrality, such as Fight for the Future, Demand Progress, and Free Press, launched public awareness campaigns that ran throughout 2017. Many prominent figures in the tech industry, including inventor of the World Wide Web Tim Berners-Lee and Facebook founder Mark Zuckerberg, as well as mayors of over fifty cities made public comments of support. On July 12, 2017, activist groups organized a Day of Action in which they were joined by many of the most prominent web companies, including Amazon, Dropbox, Google, Mozilla, Netflix, Reddit, Spotify, Tumblr, and Twitter, which issued statements and placed messages of support on their homepages. The Day of Action echoed similar protests in 2014 that called for stronger net neutrality legislation.

A December 2017 survey by the Program for Public Consultation at the University of Maryland's School of Public Policy found that 83 percent of respondents supported net neutrality. Support for net neutrality was shown to defy party lines as 75 percent of Republican respondents, 89 percent of Democrats, and 86 percent of independents affirmed their support. Earlier that year, the FCC offered members of the public the chance to voice their opinion on whether to repeal net neutrality by posting comments on an online forum. Many of the comments left on the forum articulated steadfast opposition to net neutrality. An investigation by Pew Research Center, however, uncovered several questionable elements related to the comments. First, more than half of the comments came from duplicate or temporary email addresses such as "example@example.com," which was attached to over 7,000 comments. Second, large amounts of comments appeared to be uploaded simultaneously on several occasions, numbering over 75,000 comments in each instance. In addition, seven identically worded messages were determined to make up 38 percent of the comments submitted, with unique comments making up only 6 percent. Though many of the dubious comments appeared to show support for the 2015 regulations, proponents of net neutrality accused their opponents, including members of the FCC, of manipulating the forum.

Following his appointment as chairman, Pai made several outreach efforts to garner public support for a repeal of the FCC's 2015 ruling. In addition to writing editorials for major newspapers and appearing on popular news programs, Pai produced a video in which he attempted to dissuade the public's fears by assuring them that his proposal would not inhibit anyone's ability to shop and share photos online. Pai created the video in the tradition of popular YouTube videos, wearing costumes and playing with toy light sabers from the *Star Wars* films. Despite the chairman's attempt at humor, the video attracted widespread criticism for making light of a serious issue. Pai's fondness for creating videos generated controversy again when a video he created for an annual gathering of industry lawyers was leaked to the public. In the video, Pai, a former employee of Verizon Communications, and Verizon's senior vice president Kathleen Grillo perform a scene in which Pai is brainwashed and groomed during his time with the company to later act as the company's puppet in dismantling net neutrality.

On December 14, 2017, the members of the FCC voted to repeal net neutrality. Pai and his two fellow Republican appointees approved the repeal while both Democratic members issued statements expressing dissenting opinions. The decision restored broadband's classification as an information service but continued to require service providers to share its network management practices with their customers and the FCC. Defending the repeal, Pai noted that investment had fallen more than 5 percent among the twelve largest broadband service providers in the two years since net neutrality regulations had been put in place. He argued that the repeal will lead to job creation and increased competition between service providers, which, he claims, will lead to faster, better, and cheaper Internet. Arguments in favor of the repeal have speculated that doing so will help close the *digital divide*, which refers to disparity in access to technology between communities of different means, by encouraging the investment necessary to expand broadband access to more customers, particularly those in rural areas. In response to the repeal, many broadband service providers announced that they would voluntarily continue to abide by net neutrality principles.

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