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CASE STUDY:

What Worked in the Fight for Net Neutrality

August 2015

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In just a few decades the Internet has evolved from a file transfer service for research institutes into a central tool for modern living. As online access becomes ever more ubiquitous in daily life, internet service providers (ISPs) – the companies that make it possible for businesses, consumers and nonprofits to get online – have become a major industry, with estimated U.S. revenues of \$55 billion in 2014.

The United States regulates public utilities and telecommunications providers as common carriers – businesses that offer their services to the general public at published rates. Common carriers typically are allowed to create reasonable rules to help their businesses run efficiently, but are barred from discriminating against customers without a compelling reason.

Since the early 2000s regulators have struggled to determine how companies that provide broadband internet service to consumers should be regulated. Large internet service providers (ISPs) such as Comcast and Time Warner Cable have argued that treating them as common carriers would raise the cost of broadband service and stifle investment in the Internet. On the other side, free speech, civil rights and social change advocates and many companies that deliver content online argue that broadband operators should not be allowed to discriminate against types of information or classes of customers. To achieve this goal, known as net neutrality, they came to agree – although such consensus took significant work on the part of many – that ISPs must be regulated as common carriers. Doing so would also avoid the related problem in which ISPs charge fees for “paid prioritization” such that internet content providers could pay ISPs for “fast lane” access of users to their content.

Despite being severely outgunned, net neutrality advocates won a major victory in February 2015 when the Federal Communications Commission (FCC) adopted rules that regulate ISPs as common carriers and require them to treat all customers equally. The Sunlight Foundation estimated that opponents of net neutrality, led by Comcast, Verizon, AT&T, and the National Cable and Telecommunications Association, spent over \$75 million on lobbying each year from 2009, consistently outspending pro-net neutrality groups by 5-1.¹ Internet Service Providers (ISPs) deployed a vast army of lobbyists. Large ISPs are already suing to block the new rules, so the issue is not settled yet. But activists and funders involved in the campaign for net neutrality see the net neutrality fight as an example of new ways of deploying resources to build and exercise power.

¹ See Sunlight Foundation study, online at <https://sunlightfoundation.com/blog/2014/05/16/how-telecoms-and-cable-have-dominated-net-neutrality-lobbying/>.

Background

In 1996, when Congress overhauled telecommunications law for the first time in more than 60 years, many Americans were still using dial-up service over phone lines to access the Internet. Telephone service, cable TV and cellular phones were separate data delivery industries, and legislators cared primarily about promoting competition in each category. The Telecommunications Act of 1996 created different regulation levels for “telecommunications carriers,” which provided products such as local phone service that Congress deemed essential, and “information services,” which provided services that were viewed as optional. Telecommunications services were treated as common carriers, while information services were regulated more lightly. The law did not directly address ISPs.

Six years later, with home broadband service becoming increasingly popular, University of Virginia law professor Tim Wu wrote a widely-circulated memo called “A Proposal for Net Neutrality” that considered how to balance broadband carriers’ legitimate interests in maintaining workable networks with the goal of preserving equal Internet access for everyone.² Wu had worked in the technology industry and was concerned about abuses such as blocking certain types of Internet traffic, limiting what devices subscribers could attach to the network, and charging higher fees for certain types of applications.

Net neutrality, Wu wrote, would “forbid broadband operators, absent a showing of harm, from restricting what users do with their internet connection, while giving the operator freedom to manage bandwidth consumption and other matters of local concern.” For example, some popular online gaming applications required much more bandwidth than other uses such as email. Wu asserted that carriers could police bandwidth usage by requiring heavy gamers to buy more bandwidth. But they should not be allowed to block users from playing particular games, which would put the game manufacturers at a competitive disadvantage and infringe on consumers’ right to use their internet connections as they saw fit in the absence of public harm.

A few months earlier, the Federal Communications Commission (FCC) had declared that internet service over cable was an information service, not a telecommunications service, and thus was not subject to common carrier regulation. FCC chair Michael Powell, a Republican, contended that applying telephone-era regulations to new technologies would stifle a fast-growing market. This decision set the stage for a decade of controversy over the meaning of Internet freedom as communications technologies converged and media companies merged and consolidated.

A consequential development followed in 2005, when the Supreme Court handed down its decision in *National Cable & Telecommunications Association et al. v. Brand X Internet Services et al.* (often known as the *Brand X* case), which ruled that the FCC could decide how to regulate broadband as an expert agency; thus, the FCC was authorized to make the judgment that broadband was in fact an information service. Although *Brand X* was nominally about whether cable companies must permit their competitors to provide high-speed Internet through their own

² Tim Wu, “A Proposal for Network Neutrality,” June 2002, <http://www.timwu.org/OriginalNNProposal.pdf>.

services (answer: no), the decision was crucial in setting the stage for the debate that would follow. An important moment in the wake of this decision was the 2005 *Business Week* interview with former SBC Telecommunications chief Ed Whitacre, in which he claimed that companies like Google and Yahoo were freeloaders on the ISPs' "pipes."³ This comment was widely interpreted to be against the principle of net neutrality, given Whitacre's suggestion that companies who own the "pipes" should be able to control what flows through them.

The Emergence of Net Neutrality as a Policy Issue

Although the FCC declined to impose common carrier regulation on broadband Internet service during the Bush administration, it could not ignore the growing market power of large ISPs like Comcast and Verizon. In 2005 the agency adopted a policy statement (not a formal rulemaking) that set out four principles designed to encourage broadband deployment and promote an open internet:

- Consumers are entitled to access the lawful Internet content of their choice;
- Consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement;
- Consumers are entitled to connect their choice of legal devices that do not harm the network; and
- Consumers are entitled to competition among network providers, application and service providers, and content providers.

It was in the 2005-7 era that Net Neutrality started to become a major issue of public policy concern. Millions took part in actions during 2005 and 2006 in the wake of the *Brand X* decision, which alerted groups like Free Press to the risks inherent in the new rules that offered cable companies new rights to control their networks. Then, in April 2006, a broad coalition of advocacy causes – including not only Free Press but PETA, MoveOn.org, Common Cause, the American Library Association, and, notably, the Christian Coalition, among others – launched SaveTheInternet.com, hoping to pressure Congress to support strong net neutrality rules. It was, of course, during this time that former Alaska Senator Ted Stevens infamously referred to the internet as a "series of tubes," later lambasted memorably by Jon Stewart. But despite a number of opposing bills being introduced, net neutrality legislation was not successful in this period.

In 2007, subscribers charged that Comcast was selectively blocking applications that they were using to share files online. The company asserted that it had a responsibility to subscribers to prevent bottlenecks caused by some applications, but Public Knowledge and Free Press filed a complaint asking the FCC to investigate. Comcast was caught engaging in such blocking and later investigated and sanctioned by the then-Republican-led FCC.

In 2008 the agency ordered Comcast to stop blocking peer-to-peer file sharing programs and disclose its practices for managing Internet traffic. The company sued in response. In 2010 the U.S. Court of Appeals for the District of Columbia ruled for Comcast, finding that the FCC did not have legal authority to enforce net neutrality rules.

³ <http://www.businessweek.com/stories/2005-11-06/online-extra-at-sbc-its-all-about-scale-and-scope>

Six months later the FCC tried again, issuing an Open Internet Order that barred network operators from blocking legal applications or websites or practicing “unreasonable discrimination” among websites. It also directed ISPs to disclose their methods for managing network traffic. The agency did not reclassify broadband internet as a telecommunications service. Then-FCC chair Julius Genachowski did not want Title II reclassification, and by some accounts had tried to broker an industry compromise behind closed doors; this was very controversial and split the public interest community. Many saw the rules that followed as severely watered-down.

And then Verizon sued the FCC. In early 2014 the U.S. Court of Appeals for the D.C. Circuit struck down the 2010 Open Internet Order. The court agreed that the FCC had jurisdiction over broadband providers, but again held that the agency did not have legal authority – because the ISPs were still being considered “information services” and not communication services subject to common carrier rules – to prevent them from blocking content, discriminating against content providers, or charging fees for faster transmission, a practice known as paid prioritization or “fast lanes.” The decision was issued shortly after Tom Wheeler, a former lobbyist for the cable and wireless industry, succeeded Genachowski as chairman.

Within a few weeks of the *Verizon* ruling Netflix announced that it had agreed to pay Comcast for faster and more reliable access to Comcast subscribers. The deal was not technically paid prioritization – Netflix was paying for a separate connection to Comcast customers, not faster service through existing channels – but the news suggested that content providers were starting to conclude that cutting deals with ISPs for fast service was their best option.

In April 2014 the FCC announced that it would propose rules that allowed paid prioritization. Consumer groups and open Internet advocates sharply attacked the proposal, but momentum seemed to be against them. Comcast, Verizon and other ISPs were lobbying hard against prescriptive rules with support from Republicans in Congress. President Obama had supported net neutrality in his 2008 campaign, but had not weighed in on the issue recently. And given Wheeler’s industry ties, most observers expected him to propose rules that favored ISPs. “No one thought he was going to play sheriff and regulate in a tough way,” says Josh Levy, former internet campaign director for the advocacy group Free Press and currently advocacy director at Accessnow.org.

Campaigning for Net Neutrality and the Growth of Internet Activism

In the spring of 2014, the FCC seemed poised on the brink of implementing a paid prioritization policy for the internet. But in the years since the 2010 legal defeat when the courts ruled the FCC could not promulgate a net neutrality regime, the advocacy and movement landscape had changed considerably.

In the early 2000s only a few groups were active on the net neutrality issue, working mainly in technical and policy forums. As a few funders started investing in Internet issues and working to develop a network, more organizations entered the space with a growing emphasis on public education and advocacy. Free Press was founded in 2003 and, as mentioned earlier, was critical to the earlier fight for net neutrality in the 2005-7 era. Fight for the Future started in

2011, made a big splash with its work in the Stop Online Piracy Act (described below), and started working on Net Neutrality in the years that followed. Also absolutely critical were the new civil rights groups like Color of Change, Presente, 18 Million Rising, and Center for Media Justice (which had been active on these issues for many years prior); these groups saw the Internet as a crucial venue for amplifying the voices of communities of color and connecting disadvantaged communities. These organizations used both netroots and grassroots organizing strategies to engage the public and turn concerned citizens into media reform activists.

A critical moment followed in 2011, when legislators introduced bills in both houses of Congress to combat unauthorized use of movies, songs and other copyrighted materials. The Stop Online Piracy Act (SOPA) and the Protect Intellectual Privacy Act (PIPA) addressed this issue by authorizing ISPs to shut down websites that posted pirated materials and requiring search engines to remove links to those sites. Open Internet supporters viewed SOPA and PIPA as major threats to free speech that would promote censorship and allow ISPs to regulate the Internet. In a preview of what would happen on net neutrality, internet companies and technology experts weighed in on technical problems with SOPA and PIPA, ranging from security threats to constitutional issues. Meanwhile, funders like the Media Democracy Fund helped convene a number of different advocacy groups to coordinate strategy and share information and technical expertise. At the same time, groups like Demand Progress and Fight for the Future engineered new forms of protest action. These efforts culminated on January 18, 2012, when Wikipedia and over 100,000 other websites staged a blackout day to raise awareness of how censorship could affect Internet users. Congressional offices were inundated with phone calls opposing the bills. Two days later, their sponsors indefinitely postponed votes on SOPA and PIPA, effectively killing the bills.

While the SOPA/PIPA battle helped build relationships, moral narratives, and protest tools that would be needed for the net neutrality fight, proving their effectiveness, a number of critical players like civil rights groups were not mobilized in this fight. And when the court ruled against net neutrality in 2010, many mainstream civil rights groups were uncertain of their position on net neutrality, concerned that reclassification of any kind would hurt low-income and communities of color, and mindful that telecom companies were also sources of unionized, well-paying jobs and a conduit for mobility into the middle class. But in the following years, next-wave civil rights groups like Color of Change played a large role in shifting support among the civil rights community and affiliated legislators, getting them to see net neutrality as an issue of economic justice. Incidents like the Ferguson riots in 2014—where the use of social media was critical to enabling coverage of police brutality and the riots unfiltered by large media outlets—further helped persuade these new wave civil rights groups make the case that an open internet was crucial to enabling advocacy on a range of civil rights issues.

Building on the prior experience of SOPA and PIPA, groups like Fight for the Future leveraged new tools for civil disobedience and protest, for example through technologies that enabled flooding voicemails of individual FCC officials, and organizing a mass “Internet Slowdown”—tools that conveners like the Media Democracy Fund helped spread. Meanwhile, policy organizations such as Free Press and the Open Technology Institute worked through insider channels, publishing white papers and filing lawsuits, in coordination with these groups.

Overall, the groups who were the most active from the public interest community at the FCC were Free Press and the Open Technology Institute, as well as Public Knowledge. In lobbying Congress, it was Public Knowledge, Demand Progress, Free Press, and National Hispanic Media Coalition and the Internet Freedom Business Alliance. In terms of online/netroots engagement, many highlighted the work of Demand Progress, Fight for the Future, Daily Kos, Color Of Change, CREDO Action, MoveOn and Free Press. When it came to organizing actions and protests, it was Free Press, Popular Resistance (whose “Occupy the FCC” protest was seen as crucial), Fight for the Future, Center for Media Justice, with support from Common Cause, MoveOn and EFF at key moments. The companies that did the most were Engine Advocacy, tumblr, Etsy, Kickstarter, Union Square Ventures, COMPTTEL, IFBA, Mozilla, and Netflix. In terms of coordination across the network of groups, Media Democracy Fund, Free Press, OTI, Spitfire Strategies, Marvin Ammori (who organized companies), Engine Advocacy (startups), James Rucker (netroots), David Segal at Demand Progress, Freedman Consulting and Jochum Shore.

Negotiating over Title II

When the FCC opened a rulemaking docket in mid-May 2014, it was deluged with comments that urged the agency to reclassify broadband internet as a telecommunications service and write strict rules to preserve net neutrality. Within two months the agency received nearly 800,000 comments, far more than it had seen in any previous rulemaking. In early June 2014, HBO comedian John Oliver did a 13-minute monologue on the issue that compared FCC’s proposed rules to “needing a babysitter and hiring a dingo” – a reference to Wheeler’s prior stint as a telecom lobbyist. Some 45,000 comments poured in overnight, freezing the agency’s system. (Asked to comment, Wheeler noted for the record, “I am not a dingo.”) By mid-September the FCC had received more than 3.7 million comments that skewed heavily toward strict regulation to promote net neutrality; it is worth noting, however, that the bulk of these comments were generated by the Battle for the Net and the Internet Slowdown coalitions, rather than from the John Oliver viewers. A petition created on the White House’s “We the People” website also gathered more than 100,000 signatures.

The sudden explosion of pressure began to shift the policy discussion within the FCC, but the agency had not yet fully embraced a full reclassification of ISPs as Title II common carriers, considering a range of alternative ‘hybrid’ proposals that would approximate net neutrality but through more convoluted arrangements. On November 10 President Obama released a statement that urged the FCC to adopt the “strongest possible rules” that would forbid blocking, discriminating, or offering paid prioritization on the Internet. This statement, which followed some direct pressure on Obama from advocacy groups, called on the FCC to reclassify both fixed and wireless consumer broadband service as a telecommunications service to put these regulations on a strong legal footing. Obama noted that he was asking the FCC “to answer the call of almost 4 million public comments” by adopting strong rules. That statement in turn clearly signaled to the FCC and Congress that Obama wanted rules that would protect net neutrality. Advocates simultaneously engaged lawmakers in Congress to create pressure and space from the legislative side for the FCC to take a Title II policy approach.

In mid-February 2015 Wheeler published an op-ed on *Wired* magazine's website announcing that the FCC would propose "the strongest open internet protections ever proposed by the FCC," and would affirm Internet users' rights "to go where they want, when they want, and the rights of innovators to introduce new products without asking anyone's permission."⁴ The new rules would apply to both fixed and wireless broadband service, and would bar blocking, discrimination and fast lanes.

Open Internet groups celebrated what Free Press called "the biggest victory for the public interest in the [FCC's] history." While acknowledging that phone and cable companies would inevitably challenge the ruling, Free Press president and CEO Craig Aaron wrote, "The fight to protect the Internet has united everyone – grassroots activists, technologists, new civil rights leaders, parents, teachers, students, musicians, artists and millions and millions of Internet users. We've proven that we're a force to be reckoned with in Washington."⁵

What Worked: Lessons Learned on Resources from the Net Neutrality Fight

The net neutrality battle offers a number of insights into how resources may be mobilized effectively to generate power. These resources are not just material, but have to do with the leverage generated by the careful structuring of networks and coalitions, the diversity of partners, the way that collective learning can serve as a resource in later fights, and the strength and clarity of a moral narrative that helps to frame the issue in a fashion that maintains solidarity. We review these in turn.

1. Funders as brokers and cultivators

In the early 2000s, only a few small nonprofits were working on net neutrality. "There was a tiny handful of mainstream but underfunded groups inside the Beltway doing the heavy lifting on litigation and policy around these issues. But there was no [political] base and no one speaking for people whose lives would be dramatically impacted by these policies," says Helen Brunner of the Media Democracy Fund, one of the first grant makers to focus exclusively on communications issues in the digital age.

A select group of funders who believed that the issue was important invested significant money and time to increase the number of groups that focused on Internet rights, raise their profiles, persuade those groups to collaborate, and socialize the topic of net neutrality. Without their sustained involvement, the broad and diverse coalition of activists who generated support for net neutrality in 2014-2015 would probably not have emerged. This is not, of course, to discount the substantial role of grassroots fundraising – particularly among central groups like Free Press and Color of Change – in individual organizations' efforts and in some coalition-building.

⁴ Tom Wheeler, "This Is How We Will Ensure Net Neutrality," *Wired.com*, February 4, 2015, <http://www.wired.com/2015/02/fcc-chairman-wheeler-net-neutrality/>.

⁵ Craig Aaron, "Net Neutrality Victory," February 26, 2015, <http://www.freepress.net/blog/2015/02/26/net-neutrality-victory>.

Philanthropic funding is especially important for Internet advocacy because tech businesses large enough to support foundations are unlikely to fund work that holds their technologies to account or calls for tighter regulation of the tech sector. Private donors like the Ford Foundation, the Voqal Fund and the Media Democracy Fund pursue a broader vision of the public good that considers questions such as keeping technology affordable and making it as widely accessible as possible.

These foundations played different but complementary roles in building up Internet advocacy. Ford, which does not fund 501(c)(4) groups (organizations that spend the majority of their budgets on political activities), took a longer-term approach that focused on filling capacity gaps and encouraging organizations to work in coalitions. It funded leadership training for advocacy groups, polling and focus groups to assess public views on net neutrality, and retreats with professional conveners to build connections among different advocacy communities, such as civil rights and Internet rights groups.

In contrast, Voqal could fund shorter-term actions more quickly, including work by 501(c)(4) groups. As an example, after President Obama issued his statement on net neutrality in November 2014, the Voqal Fund offered rapid response grants ranging from \$1,000 to \$20,000 for immediate projects to mobilize public support for strong Title II regulation focusing on the FCC and Congress. Media Democracy Fund (MDF) shared this multi-pronged approach of annual funding in addition to rapid response dollars channeled through 501(c)(3) and 501(c)(4) arms. MDF meanwhile, played a major role as a convener, linking together insider and policy groups like Open Technology Institute with netroots and grassroots partners and using contractor-based funding to help create a shared staffing resource on research and policy matters.

Although funders provided direction and encouraged collaboration, they did not run the net neutrality campaign. “We did not manage this in a top down way,” says Brunner. “We certainly provided campaign talking points, messaging, polling, and ideas that we knew would work. But people were free to do what they wanted to do. No one needed to ask permission to run a specific initiative. Funders often have trouble letting go of control, but you have to do that if you want a distributed effort.”

2. A network approach to coalition building

One of the pro-net neutrality campaign’s greatest strengths was its loose structure and the range of organizations involved, especially by 2014-15. Organizations like the Open Technology Institute and the National Hispanic Media Coalition worked through inside-the-beltway channels, commenting on regulations and publishing analyses of competing proposals. At the same time netroots advocates flooded phone banks, generating millions of calls and public comments and organizing public demonstrations to show FCC commissioners and President Obama that people cared about net neutrality.

Funders like Ford and MDF helped convene grantees, working with them to create a loose structure with multiple nodes (e.g., Washington-focused groups, netroots, and community organizers). This was reinforced on the ground by many additional independent efforts. As one

organization we interviewed described it, there were three or four standing conference calls each week between lawyers, grassroots activists, and others, segmented by audiences and particular strategies: a civil rights call, a grassroots/netroots call for all the big groups doing online engagement, and a ‘big tent’ call for people who wanted the state of play,” says Steven Renderos, national organizer at the Center for Media Justice.

This broad structure kept organizations aware of the overall situation but left room for many different kinds of actions. Free Press sponsored monthly rallies at the FCC’s office and also used creative tactics such as posting video billboards in favor of net neutrality outside the FCC Chairman’s Dinner (a sort of White House Correspondent’s Dinner event including telecom lobbyists and FCC officials). Artists tweeted haikus about Internet freedom (#InternetHaiku). Activists protested in front of ISP offices across the country. And on September 10, 2014, Kickstarter, Etsy, Reddit, Tumblr, and thousands of other websites joined an Internet Slowdown Day (a joint project of Demand Progress, Fight for the Future, Free Press, and Engine Advocacy) displaying a spinning icon on their home pages that read “Loading ...loading ...loading...” to show how rules allowing fast and slow lanes on the Internet could affect users. Visitors who clicked on the icon were immediately connected to their lawmakers by phone. The action generated more than 300,000 calls in support of net neutrality.

Additionally, as David Segal from Demand Progress described the situation, it was important that there was “legitimate deniability that followed from having an array of actors making their own decisions.” He continued,

It was incredibly important that we didn't have a single coalition spokesperson [with a] centralized architecture, because it meant that tactics and demands didn't regress to a mean, or even worse, fall to a common denominator. And it meant, for instance, that [other groups active in the net neutrality fight] had literally no control over what [groups like Demand Progress] or [Fight for the Future] were doing... and so, if some lawmaker's office was upset by a particular tactic or demand, they couldn't work relationships with or threaten more “inside” organizations so as to rein in the activists. The only way to rein in the activists was to do the right thing and support Net Neutrality.

Similarly, others described to us the significance of finding the right balance between open communication and close coordination.

3. *Connecting diverse constituencies*

A key reason why the pro-net neutrality campaign exercised greater influence in 2014 was its building of diverse, and at times, unorthodox, partnerships. Organizers reached out to groups that had parallel interests. After the campaign against SOPA and PIPA, Josh Levy started contacting organizations that focused on intellectual property and copyright issues. “I thought, ‘What’s the digital rights agenda now and what should be our focus? Let’s name all of the things we want and then figure out some goals,’” he says. That effort led to the Declaration of Internet Freedom, published online in 2013, which has been signed by dozens of advocacy groups,

businesses, publications and technology and media experts (<http://www.internetdeclaration.org/>). “We used this as a platform to bring together copyright, telecommunications, digital human rights advocates, groups that defend freedom of expression, and many others,” says Levy. Open Technology Institute and Free Press, for example, helped connect with conventionally more libertarian digital rights and intellectual property advocates like the Electronic Frontier Foundation (EFF was initially opposed to net neutrality, fearing it as unwelcome government intervention).

New civil rights groups were another key element of the net neutrality coalition. Some legacy civil rights groups, including the N.A.A.C.P. and the National Urban League, lobbied the FCC on the earlier (2010) open internet rules, asking not to impose strict regulation on broadband providers, arguing that doing so would slow the deployment of Internet service to under-served communities. Some of these organizations had received contributions from large ISPs, although they said the donations did not influence their position. But newer groups, including Color of Change, the National Hispanic Media Coalition, and Presente, supported net neutrality, calling it essential to ensure that diverse voices were not stifled online. These groups argued for net neutrality in the media and policy circles from the beginning. They also played a big role in persuading more traditional civil rights organizations and African-American leaders in Congress to shift in favor of net neutrality as an economic justice and civil rights issue. The 2014 protests in Ferguson, for example, provided a vivid example of how critical unfiltered access to social media was for grassroots advocates to make their voices heard; Color of Change, among others, built on this on-the-ground experience to link net neutrality to civil rights groups.

The movement also engaged private sector partners. As a convener, MDF helped activate private business associations and representatives, such as the National Association of Realtors, to show how ‘main street’ businesses depended net neutrality for day-to-day operations. This engagement led to the creation of the Internet Freedom Business Alliance, which organized industry letters to members of Congress and commissioned polls which showed broad public concern about Internet freedom that cut across party lines. Similarly, Internet trade associations like Comptel, as well as venture capital firms and Silicon Valley startups, came to argue against the dangers of ISPs discriminating against online content providers. Media Democracy Fund and Marvin Ammori were essential in brokering these connections, alongside the Open Technology Institute and Alan Davidson. Large tech companies played an ambivalent role, although Netflix and Amazon were more often supporters.⁶ But links with technology companies were also crucial because they could discuss the technical implications of policies like fast lanes, and because as a former telecommunications lobbyist, FCC chair Wheeler took their views seriously. The movement’s engagement with these firms was not without difficulties, however, as many of these firms were on opposing sides of other issues from diversity to job quality. Color of Change, for example, raised concerns about the degree to which organizational links to telecom companies or Silicon Valley for fundraising or through board memberships might compromise organizational independence.

⁶ Google, for example, was more active in the pre-2010-era, at which point it was playing a big-tent broker of diverse tech and open internet advocacy groups. After Google’s partnership with Verizon in 2010 – the accompanying agreement was seen by some as a violation of the spirit of net neutrality in how the pact would allow some prioritization of traffic on wireless lines – the company was markedly less vocal in the 2014-15 fight.

4. *Creating new tools for protest and learning from experience*

Open Internet advocates gained experience, sharpened their arguments, and expanded their coalition during the decade running up to 2014-15. Building on their work around the FCC's Open Internet Order in 2010 and the SOPA/PIPA campaign helped position their coalition for its surprising victory in 2015.

Looking back at 2010, when the FCC issued its Open Internet Order, advocates say they failed to mobilize enough public pressure for strict controls on broadband providers. "We ended up rules that had a weak legal framework," says Renderos. "As some described it, this resulted in a weak legal framework. As a result, organizers needed pressure from the people to counter the lobbying and campaign money from telecommunications companies. After the fact, some organizers heard directly from the Black and Hispanic Caucuses that they hadn't been on the receiving end of much constituent communication from anyone except the telecommunications lobbyists.

Net neutrality advocates also recruited a broader and more diverse swath of tech companies in 2014-15 than in 2010, including more websites and startups and companies from "Silicon Alley" (New York City) as well as Silicon Valley. Startups were more worried about rules that would let ISPs block content or offer fast lanes, since many could not have afforded to pay for fast access.

The fight against SOPA and PIPA was an early opportunity to organize a broad campaign based on a principled argument about free speech and who would control the Internet, and was considered a significant success by most accounts.

The SOPA/PIPA campaign demonstrated that Internet activists were "a tremendously wired constituency," in one funder's words, and were comfortable using new media to connect and communicate their positions. Millions of people protested the bills via email, Twitter and online petitions. "Internet users didn't buy or lobby their way into influence. They used the tools at their disposal – Tumblr, Facebook, Twitter and the rest – to make their voices heard," tech author Larry Downes wrote in a Forbes column. "This was a revolt of, by and with social networks, turning the tools that organized them into groups in the first place into potent new weapons for political advocacy. The users had figured out how to hack politics."⁷

Other campaigns in recent years also helped to set the stage and build new coalitions who would work toward net neutrality, in various configurations: efforts to challenge government surveillance in the wake of the Edward Snowden revelations about the NSA's vast data collection operation, the campaign to stop the AT&T merger with T-Mobile, and organizing in the wake of the Trayvon Martin murder regarding ALEC and the "stand your ground" laws they helped to put in place, as well as in the more recent campaigns around Black Lives Matter and the events over the past year in Ferguson, MO.

⁷ Larry Downes, "Who Really Stopped SOPA, and Why?" Forbes, January 25, 2012, <http://www.forbes.com/sites/larrydownes/2012/01/25/who-really-stopped-sopa-and-why/>.

In total, these prior experiences helped create a toolkit of new modes of protest and direct action which reformers used to tremendous effect in the net neutrality battle, both in “online” and in “offline” organizing. As noted above, groups like Fight for the Future and Demand Progress initiated an Internet Slowdown, mobilizing over 40,000 websites and generating much of the record-breaking flood of comments to the FCC. By creating an “Internet Slowdown” widget with the cooperation of internet companies like Netflix, Etsy and Yelp – and, in the lead-up to the final FCC decision, an “Internet Countdown” widget – Fight for the Future helped to generate over a million calls and emails to the FCC in 2015 alone. Other tools included mechanisms to flood multiple public officials’ voicemails with individualized messages simultaneously; slowing internet traffic into the FCC specifically; and targeting social media campaigns to flood lawmakers with comments from their own districts.

5. Making a complex issue clear and urgent

At first glance, the confrontation over net neutrality looks like a David and Goliath scenario. Verizon, AT&T and other large broadband providers were wealthy corporations with armies of lawyers and long experience dealing with the FCC. They were able to outspend net neutrality opponents considerably, as mentioned at the outset. They could bring in expert witnesses who were well versed in the technical minutiae of managing traffic on the Internet. And most voters neither knew nor cared much about telecommunications policy.

Open internet advocates recognized that they could not beat the telecom giants using the power of money. But polling and focus groups (commissioned by funders) highlighted a strategic opportunity. The fact that very few respondents knew anything about net neutrality meant that they had not formed opinions about it. (And as noted above, subsequent polling showed that many conservative Americans supported the idea of net neutrality as a way to preserve competition.) Net neutrality advocates could frame the debate for much of the public for the first time. And they used this opportunity to recast what was fundamentally a technical problem into an issue of fairness and equality.

As some grassroots advocates saw it, what was most effective about this fight was thinking out clear moral lines that framed the battle in our terms. Other organizations like the Open Technology Institute continued to work behind the scenes on legal analyses and policy reports that complemented advocates’ work. But messages to activists presented net neutrality as a simple question: would the Internet treat everyone equally, or give preference to wealthy and powerful users?

The moral case for net neutrality thus emphasized two key points: first the problem of corporate power—of ISPs and cable companies, for example; and second, the threat this power posed to democracy itself, including the ability to transmit advocacy and stories unfiltered to the public directly. This helped to shift net neutrality from a matter of technical communications policy to a kitchen table conversation across the country.

Framing net neutrality in moral terms provided a ready connection for civil rights groups. In the words of Malkia Cyril, founder and director of the Center for Media Justice in Oakland,

CA, “Net Neutrality prevents legal Jim Crow online. It prevents people without means, who are disproportionately people of color, people without wealth, small businesses, independent artists, regular people, it prevents them from having to be tracked into a subpar and inferior internet experience and internet life.”⁸ Fight for the Future framed the issue in similarly moral terms as a “Battle for the Net” between “Team Cable” and “Team Internet.”

Once net neutrality advocates framed their case in a way that attracted broad public interest, they were able to generate millions of signatures, emails, phone calls and comments that convinced the FCC and the Obama administration that there was strong support for strict regulation.

Conclusion

The fight to maintain an open internet is one of the major policy successes on the progressive side in recent years, and the case has much to tell us about how we can build and mobilize collective resources to develop power. While it is clear that the fight is not over, it is also clear that the hard work done during the broader net neutrality campaign has developed new sources of leverage and enhanced the broader capacity of the movement. To consider this further, it is worth noting the additional fronts that have opened up, in part, on the basis of this critical work.

Most directly, the FCC is now considering a major expansion of its Lifeline program, through which low-income Americans have received subsidies to enable access to telephones and wireless phone access; the proposal currently on the table is to expand the program to also cover subsidies for broadband access. The leverage generated by the enactment of common carrier rules for internet service has now put FCC Commissioner Wheeler in the position to serve as an advocate and defender of equity and access issues. This does not, of course, mean that the Lifeline expansion will be automatic in any sense; it will be a serious uphill battle. As Mike Scurato of the National Hispanic Media Coalition told the *New York Times*, “The [Lifeline] program has been under attack, and the F.C.C. is currently facing incredible political pressure... It wasn’t always this contentious to make sure our neighbors in this country are connected to communications of the day.”⁹

It is also clear that partnerships and strategies developed in part through the net neutrality campaign have helped to generate new resources that may serve as leverage. A (surely partial) list of such efforts includes ongoing civil rights organizing around Black Lives Matter, work to ensure net neutrality outside the U.S. (for example, in India¹⁰), new work to fight against online surveillance and censorship (e.g. OTI, Free Press, and EFF continuing to work together), and the heightened activism taking place in cities across the U.S. to keep up the pressure for greater access to municipal broadband. There were also second events that many saw as spilling over from the net neutrality campaign, such as the collapse of the Comcast-Time Warner merger.

⁸ “Net Neutrality is the Civil rights Act for the Internet,” Voices for Internet Freedom, February 24, 2015, <http://www.internetvoices.org/blog/2015/02/24/net-neutrality-civil-rights-act-internet>.

⁹ See <http://www.nytimes.com/2015/05/28/business/fcc-chief-seeks-broadband-plan-to-aid-the-poor.html>

¹⁰ See http://www.reddit.com/r/Upvoted/comments/37lnre/episode_20_a_neutral_net_part_1/

No campaign is self-contained, and the collective resources that were made available through the struggle for net neutrality will continue to be generative in the years to come.

Appendix 1: Net Neutrality Timeline

- March 2002 FCC classifies broadband as an information service under Title I of the Telecommunications Act, not a telecommunications service, and thus not subject to common carrier regulation.
- June 2002 University of Virginia Law School professor Timothy Wu writes “A Proposal for Net Neutrality,” which receives wide circulation.
- June 2005 Supreme Court hands down its decision in *National Cable & Telecommunications Association et al. v. Brand X Internet Services et al.*, ruling that the FCC has the authority to determine whether cable Internet is an “information service.”
- August 2005 FCC adopts four principles designed to promote an open internet, but issues them as a policy statement instead of conducting a formal rulemaking.
- August 2008 FCC orders Comcast to stop blocking peer-to-peer file sharing programs and disclose its practices.
- Sept 2009 FCC chair Julius Genachowski proposes regulations that would codify 2005 net neutrality principles by requiring ISPs to treat all web content equally with respect to transmission speed.
- April 2010 U.S. Court of Appeals for the DC Circuit rules that FCC does not have authority to order Comcast to stop blocking peer-to-peer file sharing programs; says FCC lacks “any statutorily mandated responsibility” to enforce network neutrality. (*Comcast Corp. v. FCC*)
- Dec 2010 FCC approves Open Internet Order that forbids fixed-line broadband providers from blocking or discriminating against specific websites or applications, with more latitude for wireless carriers, and requires service providers to disclose how they manage networks and system performance. Verizon Communications files suit against the order.
- May-Oct 2011 Senior members of Congress introduce the Stop Online Piracy Act (SOPA) and the Protect Intellectual Property Act (PIPA). The bills are designed to combat unauthorized use of copyrighted material by authorizing ISPs to shut down websites that post pirated material. Open internet advocates argue that the bills promote censorship and allow a few large companies to control internet traffic.

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- Jan 2012 On January 18 Wikipedia, Google and approximately 7,000 smaller websites conduct a service blackout to protest SOPA and PIPA. Two days later, congressional sponsors table the measures.
- Nov 2013 President Obama appoints former telecom lobbyist Tom Wheeler as FCC chair.
- Jan 2014 U.S. Court of Appeals for the DC Circuit strikes down Open Internet Order. The court agrees that FCC has jurisdiction over broadband providers and can set rules governing internet traffic, but overturns anti-blocking and anti-discrimination requirements on the grounds that the agency has classified ISPs as information service providers and therefore cannot regulate them as common carriers. (*Verizon Communications Inc. v. FCC*)
- Feb 2014 FCC introduces a new proposal that cites a different part of the Communications Act as its authority, but does not reclassify ISPs as telecommunications providers.
- Netflix agrees to pay Comcast for faster and better delivery of its content to subscribers.
- April 2014 FCC announces that it will propose new rules that would allow companies to pay ISPs for “fast lanes” (aka paid prioritization) to deliver their content. Consumer and open internet advocates argue that this would raise costs and stifle innovation by putting small startup companies at a competitive disadvantage.
- May 2014 In a letter to the FCC 150 technology companies call the agency’s proposal “a grave threat to the Internet” and urge FCC to issue rules that forbid blocking, discrimination and paid prioritization.
- On May 15, FCC issues new rules for public comment, asking whether and how it should tighten regulation of ISPs, including the question of reclassifying internet service as a telecommunications service.
- July 2014 In two months FCC receives some 780,000 public comments on its proposed rules. Comments lean heavily toward strong regulation that prevents ISPs from blocking, discriminating or offering paid prioritization. At one point the agency’s system freezes when roughly 45,000 comments come in overnight after comedian John Oliver does a scathing 13-minute segment on the issue.
- Sept 2014 The FCC has received over 3.7 million public comments on its proposed rules, more than twice as many as the agency’s previous record. Fewer comments are form letters than in typical high-volume rulemakings. Comments lean overwhelmingly toward strong regulation of ISPs to promote net neutrality.
- Nov 2014 On November 10 President Obama releases a statement that notes the volume of public comments and urges the FCC to adopt the “strongest possible rules” to protect net neutrality. Obama says the rules should forbid blocking, discrimination

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and paid prioritization; require greater transparency; and apply to both mobile and fixed broadband service. To ground the rules, he says the agency should reclassify consumer broadband service as a public utility under Title II.

Feb 2015 FCC chair Wheeler announces that the agency will reclassify consumer internet service, including mobile service, under Title II and issue rules that forbid blocking, discrimination and paid prioritization and require more transparency from ISPs. On February 26, FCC adopts the new rules by a 3-2 party-line vote with Republican commissioners opposed.