

“Net Neutrality”: Strangling the Information Highway with Red Tape

By Fred Lucas

Summary: “Net neutrality” is a solution in search of a problem. The “content providers” like Google that put information on the Internet want the federal government to have the power to regulate the flow of data over the Internet. They want to make sure that other companies called “Internet service providers” (ISPs) like Verizon, that plug customers into the Internet, don’t restrict those customers’ access to content providers. But if a company’s customers want access to the content, why would the company antagonize its customers by denying it? This is just another excuse for government to meddle in things it doesn’t understand.

If Cox, one of the nation’s leading Internet service providers (ISP), stopped allowing its customers access to an online content provider like Google because the world’s preeminent search engine refused to pay certain fees, it is very likely Cox would lose a lot of business to an ISP that continues to carry Google.

Should Verizon Wireless, another ISP, cut its customers off from accessing the movie rental service Netflix – or intentionally cause it to take longer to open its website, many of those customers would take their business elsewhere.

If AT&T customers were unable to use Amazon.com to buy books because of some nefarious deal the telecommunications giant struck with another bookseller to block competitors, there would be an exodus of customers that favored Amazon.



Net neutrality backer Google campaigns for Obama in October 2008: Candidate Obama is shown here with Google CEO Eric Schmidt (center) and Colorado Gov. Bill Ritter (right).

All of these are imaginary instances. But these worse case scenarios are put forward by left-wing activists such as MoveOn.org that have aligned with billion-dollar online companies such as Google to demand more government regulation of the Internet.

The government has traditionally taken a hands-off approach to the Internet, until now.

Should ISPs be allowed to add fees onto certain websites in order to access their networks? MoveOn and other groups favoring regulation say no. They have framed a regulatory proposal that they call “network

neutrality” to prevent such charges because they are afraid that telephone and cable companies will monopolize virtually all Internet service.

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But net neutrality advocates miss the point. Even assuming that there was corporate collusion between an ISP and a company that provides consumer goods online, it would be suicidal for an ISP to take options away from its customers in a highly competitive broadband market. Ninety percent of U.S. zip codes have two or more Internet providers, while 60% have four or more ISPs, according to the Federal Communications Commission (FCC). For instance, residents of the Virginia suburbs outside Washington, D.C. can get Internet service from companies that provide cable and telephone service such as Comcast, Cox, Earthlink and Verizon Wireless.

Six phone and cable TV companies currently serve 65% of the country's 80.9 million broadband users, according to a report in late 2009 by Forrester, a technology research firm. The top four – AT&T, Verizon, Comcast and Time Warner – dominate with about 46% of that share. (USA Today, Dec. 9, 2009)

That is hardly justification for more federal intervention. Supporters of net neutrality say government regulators will make the market more open, but the track record of regulation is to stifle startups and insulate dominant firms from competition.

Editor: Matthew Vadum

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Address:
1513 16th Street, N.W.
Washington, DC 20036-1480

Phone: (202) 483-6900
Long-Distance: (800) 459-3950

E-mail Address:
mvadum@capitalresearch.org

Web Site:
<http://www.capitalresearch.org>

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The Forrester report also says close to 16 million new broadband subscribers will be added in the next five years, half of those in the next two years. If the government leaves well enough alone, the Internet will be accessible to more and more consumers who want it.

Some minority groups worry that the new regulations will inhibit minority access to the Internet. The Alliance for Digital Equality, an advocacy group based in Atlanta, recently sent a letter to the FCC asking it not to take any actions that would impede affordability and accessibility.

“Implementing new network neutrality regulations in a time of economic uncertainty and significant funding issues is extremely disconcerting to members of ADE,” said ADE chairman Julius Hollis in the October letter. “Minorities and low-income communities are those most likely to cut back or eliminate service once cost becomes an issue.”

“ADE would like to avoid a regulatory scenario where communities of color that have traditionally been the last to adopt broadband are forced into becoming the first ones off due to cost concerns,” Hollis continued. “Broadband is no longer considered a luxury and in light of this, we urge the Commission to remain vigilant against forces, including misguided legislation and regulation that may unintentionally make broadband less affordable or accessible to those minority and low-income communities.”

To find out which ISPs serve your area check out the website AllConnect.com, type in a city or zip code and you'll find plenty of providers in most locations, thus providing a competitive landscape for web users.

Despite these concerns, on Oct. 22, the Federal Communications Commission voted unanimously to set in motion a process that could ultimately lead to the enactment of net neutrality regulations. This regulatory framework would essentially prohibit ISPs from imposing charges on content providers, and stop ISPs from blocking or slowing a competitor's online service. The two Republican commissioners – Meredith Attwell Baker and Robert M. McDowell – said they were

voting only to study the proposal and might not vote for a final rule. The FCC will gather information for 120 days before voting on whether to approve a formal regulation.

Federal Power Grab

Bureaucrats and members of Congress who never met a federal power grab they didn't like are happy to get behind this solution to a non-problem. The benign-sounding (or even downright boring) phrase *net neutrality* seems harmless enough. But the rules that the innocuous-sounding phrase would create would likely slow down the web, make it tougher to block spam, and require more government bureaucrats as new government rules tend to do, and discourage investment in high speed Internet. High speed Internet is more than twice as fast as traditional dial-up service and does not interrupt the phone connection. Once a premium service, high speed Internet is now widely available.

Obama appointees to the Federal Communications Commission (FCC) and powerful Democrats in Congress want the federal government to regulate the Internet.

Speaking to the Brookings Institution on Sept. 21, FCC Chairman Julius Genachowski – a former fundraiser for President Obama – made his intentions clear.

“I am convinced that there are few goals more essential in the communications landscape than preserving and maintaining an open and robust Internet,” Genachowski said. “In view of these challenges and opportunities, and because it is vital that the Internet continue to be an engine of innovation, economic growth, competition and democratic engagement, I believe the FCC must be a smart cop on the beat preserving a free and open Internet.”

But there could be a fight ahead in both the FCC and in Congress.

“The premise outlined in Chairman Genachowski's speech is that the Internet is broken and the government has to fix it,” McDowell, the senior Republican FCC commissioner told a Heritage Foundation audience on Oct. 13.

“For the average consumer, are they being frustrated in some way, other than their broadband speed is too slow?” McDowell said. “Can they go to any site and download anything they want? For the vast majority of consumers, the answer is yes. So if you want to envision a place where the Internet helps foster democracy, where it helps foster prosperity, where it can be a tool for raising the human condition, in a free and open manner, if you want to envision that, I think that exists today.”

Clearing Congestion

Teenagers enjoy watching episodes of favorite television shows on their home computer and downloading music from the Internet into their personal computers. Family members exchange photos and video over the Internet or email computerized greeting cards to one another. Some people track their stock portfolios and send instructions to their brokers online.

These types of files – videos, photos, word documents and others – all add to traffic on the information highway. Similar to a real highway, it can be jammed with too much traffic.

As Internet use increases, growing traffic through high speed connections is putting more and more pressure on bandwidth capabilities. (“Bandwidth” is a measurement of the flow of information through the Internet.) The information highway can be clogged by too much traffic, which slows down connection speeds. As more people demand more and more services at higher speeds, the ISPs have to make more financial investments for Internet infrastructure. Figuratively speaking, this means adding lanes to the information highway so that extra traffic can zoom along.

Most of the major ISPs want to offer faster delivery to sites that are willing to pay extra. They say the sites that tend to clog up the information highway – those with the highest volume – should be willing to pay an add-on fee to the ISP. In a free market, one in which there are no net neutrality rules, the ISPs say prices will be determined by competition.

Either way, the ISPs need money to invest in new technologies to avoid clogged highways and keep connection speeds fast for their customers. Instead of passing the costs on to consumers, the ISPs such as AT&T or Verizon intend to ask Google, Microsoft and others to pay extra for the use of its Internet switches and routers. That’s because Google and similar high volume websites create more traffic than smaller sites. Greater traffic slows connections speeds for users accessing other lower-traffic Web sites.

On the other hand, if a net neutrality regulation or law is passed, then it will be much harder for the ISP to recoup more of its costs from Google, Microsoft or other tech giants. The greater likelihood is that the cost of adding lanes to the information highway will be passed on to consumers. Or perhaps the ISP will postpone the investment or not make it at all, which will make internet access and speed slower for everyone.

Left-wing groups like MoveOn and Free Press claim to be fighting for the consumer. But if you are looking for a little guy to root for in this conflict, you won’t find one. The battle lines are drawn largely between the giant tech companies such as Google and Microsoft (pro net neutrality) and the giant telephone and cable companies such as Verizon Wireless and Comcast (anti-net neutrality). Given their choice the anti-corporate left-wing activists have chosen to follow their knee-jerk instincts. Since they assume that government mandates are always good for everyone, they are siding with the tech companies that favor Internet regulation.

It is not unusual for liberals to insist that more freedom can come from more government regulation. That’s why many proponents of net neutrality insist regulation will prevent ISPs from “discriminating” by treating some online traffic different from other online traffic. Regulation will make the Internet more free and fair, these proponents say. The arguments for net neutrality are similar to those for additional regulation of the broadcast industry, such as the Fairness Doctrine and rules promoting more local ownership of broadcast stations.

Some social conservatives also favor net neutrality. They worry that an ISP will try to censor socially conservative messages on the Internet, and so regulation is needed to protect access for conservatives. However, other conservatives say that because net neutrality regulations will prevent ISPs from discriminating among content providers, government rules could make it more difficult to protect children from adult sites.

Congress has considered Internet legislation before. However, this time some Democrats in Congress are working with the Obama administration to enact net neutrality. These lawmakers know an FCC action can easily be overturned when another administration names its own commissioners, but an act of Congress is more difficult to undo. House Energy and Commerce Chairman Henry Waxman (D-Calif.) and Reps. Ed Markey (D-Mass.) and Anna Eshoo (D-Calif.) are pushing a bill to make net neutrality law.

But Republicans have stepped up their opposition. Chief among them is Sen. John McCain of Arizona, who introduced the Internet Freedom Act. McCain stressed that wireless carriers invested \$100 million in net technology to expand the information highway over the last three years, which has led to faster networks, more competitors in the marketplace and lower prices. Wired telephones and networks, by contrast, “have become a slow dying breed” mired in government regulations, the senator said.

The Internet Freedom Act of 2009 “will allow for continued innovation that will in turn create more high-paying jobs for the millions of Americans who are out of work or seeking new employment,” McCain continued. “Keeping businesses free from oppressive regulations is the best stimulus for the current economy.”

Non-Profit Backers

MoveOn.org has been a leading advocate for net neutrality, which might tell you all you need to know about how fair and free such rules are supposed to be. MoveOn.org has 3.2 million members, staying in touch via e-mail and using its power in numbers to raise money for Democrats and push the

party further left. MoveOn PAC Director Eli Pariser once said the Democratic “party doesn’t need corporate cash to be competitive. Now it’s our party: we bought it, we own it, and we’re going to take it back.”

MoveOn started the group Save the Internet, which believes “there is nowhere for consumers to turn.”

The inappropriately named Free Press, which bills itself as a media reform organization, also has consistently advocated greater government regulation of the media in the name of making communication more free. Free Press policy director Ben Scott said in mid-October that the FCC cannot allow opponents to stop the new rules.

“We want to remind members of Congress and the other lawmakers that have come out of the woodwork this week to question Net Neutrality, that the benefits of a free and open Internet to free speech, economic innovation and democratic participation are absolutely invaluable to their constituents in the digital age,” Scott said, without really explaining how net neutrality advances any of those three things.

“Further, this is merely the beginning of a process, not the end,” Scott continued. “We can’t afford to lose sight of the hundreds of millions of Internet users for whom net neutrality will protect free speech and commerce online. They are not lobbyists, and they don’t have deep pockets and PACs. But they are citizens that depend on conscientious policymakers looking out for their best interest.” (Free Press news release, Oct. 16, 2009, available at <http://www.freepress.net/node/73579>)

Free Press gets funding from the George Soros’s charity, Open Society Institute. It also receives money from the Ford Foundation, the Joyce Foundation and other reliably liberal funders. The co-founders of the group are Robert McChesney, a professor at the University of Illinois Urbana-Champaign and former editor of the Marxist magazine *Monthly Review*, The Nation magazine writer John Nichols and campaign finance reform advocate John Silver, the group’s

executive director. McChesney and Nichols have co-authored three books: *It’s the Media, Stupid!*; *Our Media, Not Theirs: The Democratic Struggle Against Corporate Media*, and *Tragedy & Farce: How the American Media Sell Wars, Spin Elections, and Destroy Democracy*.

McChesney holds particularly radical views about regulating the media.

“Any serious effort to reform the media system would have to necessarily be part of a revolutionary program to overthrow the capitalist system itself,” McChesney has said. “We need to do whatever we can to limit capitalist propaganda, regulate it, minimize it and perhaps even eliminate it.”

Common Cause, which has been no friend of the First Amendment as the leading advocate of the campaign finance reform law enacted in 2002, is also a big supporter of net neutrality. The organization leans left, but in fairness, is primarily a government watchdog that has called Democratic politicians to account as well. “Common Cause firmly believes in net neutrality -- the principle that Internet users should be able to access any web content they want, post their own content, and use any applications they choose, without restrictions or limitations imposed by their Internet service providers (ISPs),” the group says on its website.

Public Knowledge is a left-leaning group whose primary focus is on net neutrality and digital issues. “If there aren’t some limits on managed services, it’s the monster that eats the whole pipe,” Public Knowledge President Gigi Sohn said with hyperbolic fervor.

Interestingly enough, Public Knowledge admonished two key Democratic groups in the House, the Blue Dog Caucus of moderate Democrats and the Congressional Black Caucus. “We remain suspicious of conclusions based on slogans rather than substance and of policies that restrict and inhibit the very innovation and growth that we all seek to achieve,” the members of each caucus said in a joint Oct. 15 letter to the FCC.

In a statement the following day, Sohn argued

“The constituents of these members of Congress have fewest choices of providers and access to the least competition. They have the lowest Internet data speeds, they have the diminished opportunity to use the Web to its fullest potential. They [constituents] are being betrayed.”

NARAL-Pro Choice America is also a big supporter, largely because of a run-in with Verizon Wireless. More on that later.

But not all of the support for net neutrality comes from the left.

Roberta Combs, president of the Christian Coalition of America and NARAL president Nancy Keenan co-wrote an op-ed in the *Washington Post* (Oct. 17, 2007) advocating tighter Internet rules. Simply put, Combs did not want to run the risk of an ISP trying to censor a socially conservative message. “We’re asking Congress to convene hearings on whether existing law is sufficient to guarantee the free flow of information and to protect against corporate censorship.”

But other leading social conservative groups, such as the Family Research Council and American Values oppose net neutrality, fearing that a government mandate to treat all Internet traffic the same will prohibit an ISP from offering family-friendly options to customers.

‘Web Fairness Doctrine’

In its drive to push net neutrality, the Obama administration has begun to smear its critics.

White House deputy chief technology officer Andrew McLaughlin even advanced the absurd argument that free speech and network neutrality were “intrinsicly linked.” He referred to the Chinese government’s policy of Internet censorship and said, “If it bothers you that the China government does it, it should bother you when your cable company does it.” (*USA Today*, Dec. 9, 2009)

This irked AT&T’s chief lobbyist Jim Cicconi, who responded:

It is deeply disturbing when someone in a position of authority, like Mr. McLaughlin, is so intent on advancing his argument for regulation that he equates the outright censorship decisions of a communist government to the network congestion decisions of an American ISP. There is no valid comparison, and it's, frankly, an affront to suggest otherwise.

Of course, support for network neutrality comes overwhelmingly from the left, and that seems to fit an obvious pattern.

Free Press, for example, supports broadcast regulations that most conservatives recognize as stealth means of bringing back the Fairness Doctrine, the archaic law that mandated broadcast media air both sides of a controversial issue. Because of the Fairness Doctrine most broadcasters avoided discussing public affairs to avoid government sanction until the regulation was dropped in the 1980s—just when conservative talk radio started to flourish. Free Press supports media diversity and localism rules, which are policies that allow the federal government to dictate ownership rules by ensuring more licenses are granted to women and minorities and require that broadcast media carry local programming.

The left's frustration with talk radio is one thing. But in a world of media convergence, it is almost a necessity that the left control the Internet. "Everything from TV shows to text messages run on multiple networks, making the old broadcast-oriented Fairness Doctrine a less effective means of reestablishing a liberal media monopoly," Adam Thierer, wrote in *City Journal* (Oct. 18, 2007). Thierer is director of the free-market oriented Center for Digital Media Freedom at the Progress & Freedom Foundation. The Center opposes net neutrality legislation.

In fact, once government has its hands in regulating web traffic, controlling content for equality of viewpoints seems a plausible next step. Brian C. Anderson, editor of the Manhattan Institute's *City Journal* has written: "It's thus not hard to imagine a network neutrality law as the first step toward a Web fairness doctrine, with government trying to

micromanage traffic flows to secure 'equal treatment' of opposing viewpoints (read: making sure all those noisy right-wingers get put back in their place)."

Ultimately, such rules could be unconstitutional, said Harvard law professor Laurence Tribe. "For the government to tell that entity that it cannot exercise that right in a certain way, that it must allow the projection of what it doesn't want to include, is a violation of its First Amendment rights," Tribe has said of net neutrality. (*City Journal*, Oct. 18, 2007)



Net neutrality advocacy group Free Press was co-founded by Marxist Robert McChesney, a professor at University of Illinois Urbana-Champaign.

Net Neutrality's Corporate Backers

While the millions of people that Ben Scott of Free Press claims will benefit from net neutrality rules "are not lobbyists, and they don't have deep pockets and PACs," the truth is that many – perhaps most – of the net neutrality supporters do have very deep pockets, political action committees and lobbyists to match their opponents.

Those championing net neutrality are correct when they say they are taking on entrenched corporate interests. But the "broad based" group supporting net neutrality includes mostly large web companies that stand to hold on to a larger market share if new FCC mandates on providers are approved.

The Coalition of Broadband Users and Innovators includes Amazon, eBay, Apple Computer, Yahoo, the Walt Disney Corporation and other big firms that insist the FCC must intervene because the ISPs will "define the Internet for some time, and [allow] network operators to infringe or encumber the relationships among their customers or between their customers and destinations on the Internet."

In fact, corporate backing for net neutrality may be the reason why the Obama administration is so solidly behind net regulations. Few presidents have shown such affection for the symbiotic relationship between big business and big government as Obama.

Executives and employees of Amazon.com contributed thirteen times more money to Barack Obama than to John McCain, and Google executives and employees donated more than \$800,000 to the Obama campaign. Google was the sixth largest contributor to Obama. Timothy P. Carney reported that the total amount is 40 times what Republican John McCain got from Google. Google's CEO Eric Schmidt even went on the campaign trail with Obama in 2008 and was an informal economic advisor. Four Google executives contributed a combined \$100,000 for Obama's inauguration. (*Washington Examiner*, Oct. 28, 2009)

This hardly represents change we can believe in, wrote Steve Forbes, the chief executive officer for Forbes Inc. and a former Republican presidential candidate.

"The FCC in the name of consumer 'fairness' has gerrymandered long-accepted broadband principles to target Google's competitors and give one of the administration's strongest political allies a competitive advantage every step of the way," Forbes wrote. "Political payback for one company at the expense of an entire information economy is impermissible. The old game in Washington of industries lobbying for harmful regulations on their competitors appears to be alive and well."

Forbes states that "Google stands to make windfall profits as its competition is handcuffed by federal regulators and its dominant

advertising-content business model is supported and vindicated by official policy.” “Think of it as the Internet version of rent control,” Forbes wrote.

The coziness between the content providers and the administration reached nearly laughable proportions when the Obama administration’s FCC commissioned a study by Harvard Law School’s Berkman Center for Internet & Society to “conduct an independent expert review of existing literature and studies about broadband deployment and usage throughout the world.”

The taxpayer-financed study delivered the desired findings. But this so-called independent study was conducted by an organization – the Berkman Center – that counts Google and Microsoft as its major donors. They are listed on the center’s website.

Observes Hal Singer, president of Empiris, an economics consulting firm in Washington, D.C., “If you tell a sports club that it must permit anyone to offer personal training on its premises (via a duty-to-deal), then the price of the basic gym membership will rise.” He added, “If you tell an airline that it can’t charge higher fares for first-class seats (via a non-discrimination rule), then the price of coach tickets will rise. Net neutrality means lots of things, but at the end of the day, it means higher prices.”

Why are corporate interests lining up to support it?

“Google had good reason to advocate this, because it is advantaged by a status quo in which money buys privilege. Any move by carriers to selectively boost speeds for fees dulls the advantage Google has secured for itself by building huge complexes of hundreds of thousands of computers,” explained Richard Bennett, a network architect who has testified to the FCC about net neutrality.

“These complexes exploit a flaw in Internet architecture that enables them to seize more

than their fair share of network bandwidth, effectively giving their owner a fast lane,” Bennett continued in a San Francisco Chronicle op-ed (July 9, 2008). “A richly funded Web site, which delivers data faster than its competitors to the front porches of the Internet service providers, wants it delivered the rest of the way on an equal basis. This system, which Google calls broadband neutrality, actually preserves a more fundamental inequality.”

Google CEO Eric Schmidt does not deny that it could gain from FCC regulations, but insists that his company has benevolent motives and is looking out for smaller competitors.

The Washington Post reported (Oct. 23, 2009) that Schmidt conceded the new rules “would benefit the search giant, which is rolling out a number of new services, including voice and video applications that compete with those offered by telecom giants.” However, Schmidt added, “Google is strong enough and with enough revenue to deal with enough of these outcomes. What I’m worried about is the next start up.”

The fact is the marketplace is already robust. Net neutrality would stifle the little guys, argues Christopher Yoo, a Vanderbilt University professor of law.

“Without neutrality, providers could compete on quality of service, giving, say, voice communication a higher priority to make Internet telephony work better, or they could boost the security features of the network, in each case targeting a small subset of the market, like specialty stores in a world dominated by larger, efficient stores offering one-stop shopping.”

Bob Kahn – who unlike former Vice President Al Gore, really did help create the Internet – calls net neutrality a slogan. Kahn, working with the Department of Defense in the 1970s, helped invent the Transmission Control Protocol and the Internet Protocol, which were the technologies used to transmit information on the Internet.

“If the goal is to encourage people to build new capabilities, then the party that takes

the lead is probably only going to have it on their net to start with and it’s not going to be on anyone else’s net. You want to incentivize people to innovate, and they’re going to innovate on their own nets or a few other nets,” Kahn said. “I am totally opposed to mandating that nothing interesting can happen inside the net.” (The Register, Jan. 18, 2007)

‘Scant Evidence’ for Internet Regulation

In June 2007, the pre-Obama Federal Trade Commission determined that consumers could be hurt by net neutrality rules. The following September, the Bush Department of Justice issued an opinion to the FCC also opposing net neutrality rules as a bad deal for the public, saying there was “scant evidence” of anti-competitive activity. The DOJ’s anti-trust chief Thomas Barnett warned that “Imposing regulations in the name of neutrality could, if you’re not careful, inhibit that kind of development and lead to fewer choices for consumers.” He added that it would “restrict competition in an unreasonable manner.” (Bloomberg News, Sept. 7, 2007)

In the absence of hard evidence of anti-competitive practices, the simple cliché pertains: If it ain’t broke, don’t fix it.

“We believe that when the FCC reviews the record and looks at the facts, it will be clear that there is no current problem which justifies the risk of imposing a new set of regulations that will limit consumer choices and affect content providers, application developers, device manufacturers and network builders,” observes Tom Tauke, executive vice president of public affairs for the service provider Verizon Communications. (Investor’s Business Daily, Sept. 22, 2009)

Net neutrality proponents still insist that without regulation anti-competitive corporations will run amok.

The rationale for this argument is based on only three cases, all of which have been addressed under current laws, with no need for new laws.

In 2004, the North Carolina telephone company Madison River Communications

blocked its customers from using the popular Internet telephone service Vonage. Vonage complained to the FCC and almost immediately the commission stepped in. Madison River paid a \$15,000 fine to the FCC to settle the matter and vowed to stop blocking Vonage or any other competitors, as part of the settlement. While Madison River did not admit to violating any rules, this wrong was righted without new regulations. (Rocky Mountain News, July 31, 2006)

A highly politically charged case is the aforementioned dispute between Verizon Wireless and NARAL Pro Choice America. In September 2007, Verizon rejected a request from the pro-abortion group for a five-digit "short code." These codes allow users interested in hearing messages from a business, movement or politician to sign up and receive free text messages. The reason Verizon gave for the refusal is that it "does not accept issue-oriented (abortion, war, etc.) programs."

All heck broke loose, of course. A New York Times editorial (Oct. 3, 2007) gravely intoned, "The Verizon policy was textbook censorship. Any government that tried it would be rightly labeled authoritarian. The First Amendment prohibits the United States government from anything approaching that sort of restriction."

The Christian Coalition was correct to state a telecommunications company could just as easily do the same thing to a pro-life group. Thus, the Verizon policy was probably ill-advised.

Upon reversing itself, Verizon spokesman Jeffrey Nelson said the policy imposed in this instance resulted from an "incorrect interpretation" of a policy "designed to ward against communications such as anonymous hate messaging and adult materials sent to children." Nelson said, "The decision to not allow text messaging on an important, though sensitive, public policy issue was incorrect." (New York Times, Sept. 27, 2007) The matter was resolved through public pressure without the government taking action.

In late 2007, Comcast slowed the traffic for

some subscribers who were downloading large files that were clogging the network. BitTorrent, the creator of a popular file sharing program, allows users to exchange these big files on the Web. Those big files used a lot of capacity which slows down other web traffic. To tackle this problem, Comcast slowed down the transmission of the big files that use BitTorrent. This allowed its other traffic to move more quickly.

BitTorrent obviously was not happy, and cited this as an example of discriminatory policies by an ISP. Neutrality advocates like Rep. Markey eagerly jumped in saying Comcast executives are trying to turn "BitTorrent into BitTrickle." But Comcast and BitTorrent worked out an agreement in April, without a government solution, that allowed file-sharers to use Comcast's network and not slow down the service for other users. (Wall Street Journal, op-ed, April 12, 2008)

That was not good enough for the FCC, which went forward to censure Comcast and ordered it to stop blocking or slowing files. Comcast is appealing the FCC order in federal court.

The Comcast case was not a matter of trying to muzzle a competitor or opposing political viewpoint, but rather a practical matter of keeping online traffic moving.

"The three cases cited time and time again were resolved," FCC Commissioner McDowell said. "There are an incredible number of net communications every day. If we are looking at any misconduct, whether it's intentional or not, as soon as the spotlight is shined on them, it would go away. We have more and more competition. If there is a bad actor out there acting in an anti-competitive way, then consumers would have a choice of other Internet providers."

While these cases were resolved under existing law, a new law or regulation would open the floodgates to lawsuits, warns Thierer of the Progress and Freedom Foundation. "You simply can't put something as amorphous as 'digital non-discrimination' mandates on the books and then expect that regulators won't abuse it – and that means competing teams

of lawyers, consultants, and economists will be hired to try to figure it all out. When they don't, the lawsuits will start flying."

Further, treating all Internet traffic the same could make it tougher to stop illegal content such as copyrighted material, child pornography or other criminal communications, argues the government watchdog group Citizens Against Government Waste (CAGW), in a letter to the FCC from June.

The greatest damage, says CAGW, is that "net neutrality" will expand government.

"Perhaps the most damaging aspect of net neutrality is the potential cost to taxpayers," the CAGW letter said. "In order to regulate the Internet to assure that everyone is receiving equal access to information on the web, the federal government will inevitably need to create an office of monitors to make sure that ISPs are not denying anyone or controlling access to certain web pages. The cost to taxpayers could sky rocket into the tens of millions of dollars."

Fred Lucas is White House correspondent for Cybercast News Service (CNSNews.com).

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Terrence Scanlon
President

PhilanthropyNotes

Alternative energy investor **David Gelbaum**, a huge donor to the **American Civil Liberties Union**, **Sierra Club**, and the **Iraq-Afghanistan Deployment Impact Fund** of the **California Community Foundation**, said the bad economy is forcing him to sharply curtail donations. Gelbaum used to donate \$20 million annually to the ACLU. He blames his investments in “alternative, clean energy companies” which he says have placed him “in a highly illiquid position as a result of the general credit crisis in the American and world financial systems.” In the last four years Gelbaum gave the ACLU \$93.5 million and the Sierra Club \$47.7 million, the New York Times reports.

Congress approved \$50 million for the new Social Innovation Fund, which will underwrite nonprofit groups’ programs and will be administered by the **Corporation for National and Community Service**. The fund will leverage matching non-federal funds to augment innovative programs aimed at helping low-income communities. Will some of the federal money find its way to **ACORN**?

Capitol Hill’s leading nonprofit watchdog, Sen. **Charles Grassley** (R-Iowa) asked 33 nonprofit medical groups, including the **American Medical Association** and **American Cancer Society**, to disclose the donations they take in from corporations. In a letter he asked the groups to provide “additional insights into these relationships as well as any changes in transparency that your organization may be planning for in the future. Operating with transparency sends a message that there is nothing to hide.” Grassley is hoping to find out if groups receive financial inducements from corporations when they lobby Congress on health-related issues.

A year after liberal swindler **Bernard Madoff**’s colossal Ponzi scheme collapsed, left-leaning charities such as **Physicians for Human Rights** report that they continue to struggle. The Cambridge, Mass.-based group’s CEO, **Frank Donaghue**, said his group had to cut 30% from its \$6 million budget and scaled down some of its advocacy efforts. Madoff’s schemes also shut down the liberal **Picower Foundation** and the **JEHT Foundation**.

There are now 1.1 million charities in the U.S. able to offer donors a charitable tax deduction, up more than 60% over the last decade, the New York Times reports. The **IRS** approves a new charity every 10 to 15 minutes. Tax-deductible donations reduced federal revenue by \$50 billion in 2008. “Especially during these tough economic times, it’s troubling to hear we are increasing the number of these organizations at such a rapid pace,” said Rep. **Xavier Becerra** (D-Calif.).

With a nearly \$1.2 billion endowment, Chinese mining tycoon **Chen Fashu**, president of **Newhuadu Industrial Group**, is creating what will become his country’s largest philanthropy, reports People’s Daily Online. The foundation will be organized along the lines of the **Bill & Melinda Gates Foundation** and be run by independent management.

The **John D. and Catherine T. MacArthur Foundation** is providing seed capital for the nonprofit **Chicago News Cooperative** which will produce two pages, twice a week, for the Chicago edition of the financially troubled New York Times. **James E. O’Shea**, a former Los Angeles Times editor, will be editor of the new news gathering outfit.

Goldman Sachs WATCH

Business writer Steven M. Davidoff of the New York Times argues Goldman and other profitable players on Wall Street should be subjected to a windfall profits tax. Since the bank received government bailout money some of the bank’s profits are “really the government’s profits.” Such profits are “a simple wealth transfer from the American taxpayer to the partners of Goldman Sachs,” he writes. “Don’t be fooled by any billion-dollar donation Goldman may announce — the benefits it has received far exceed this number.”

As Congress considers financial regulatory reform, some Wall Street firms are anxious because Goldman keeps committing public relations missteps, the Politico reports. In the current anti-business political climate the firms worry that Congress will “crack down ever harder on the financial sector” as a result. Goldman’s PR mistakes cited in the article include CEO Lloyd Blankfein’s statement that Goldman does “God’s work” and the bailed out bank’s decision to hand out bonuses worth more than \$700,000 per employee in 2009.