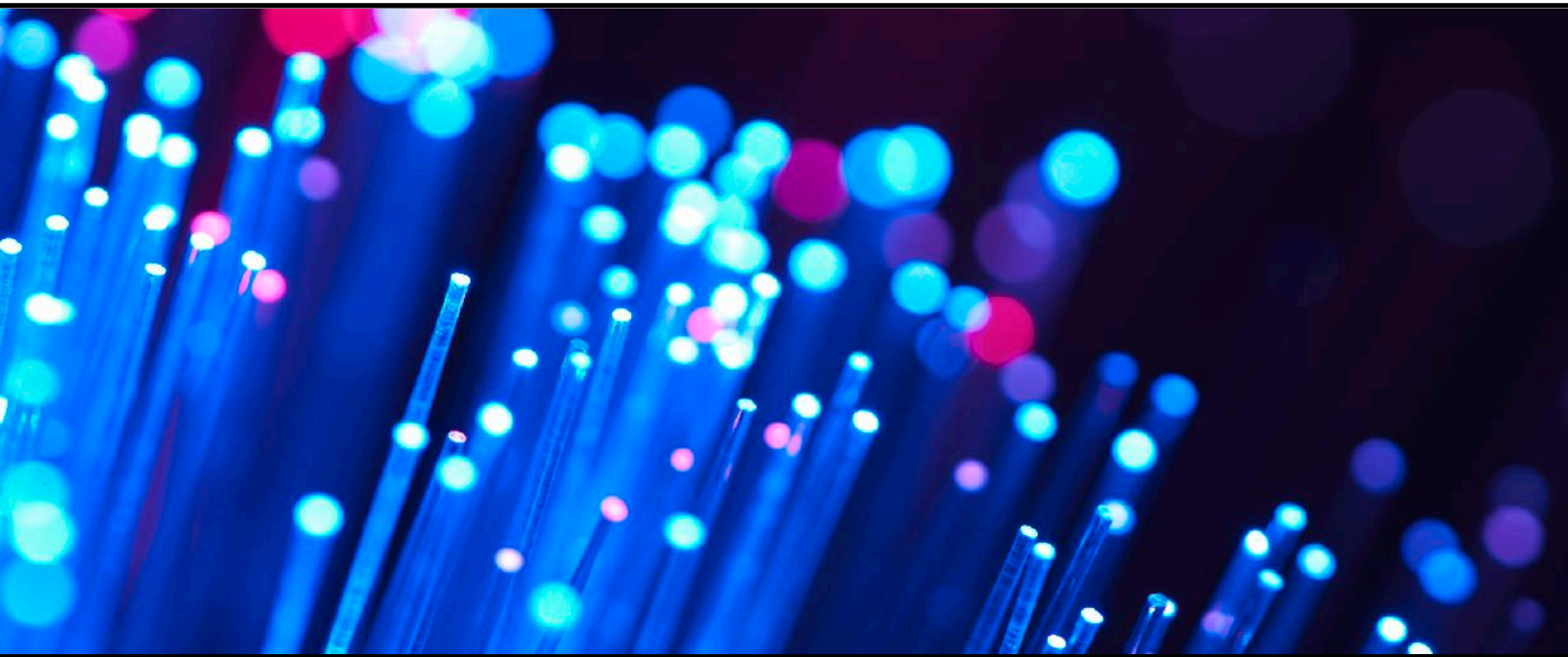




CALIFORNIA
TECHNOLOGY COUNCIL



Rethinking Technology Policy 1: **Net Neutrality**

A Series Exploring American Technology Policy, Priorities, and Methods
August 2017

Rethinking Technology Policy Series

Rethinking Technology Policy 1: Net Neutrality

Regarding FCC Proceeding 17-108

Written by Matthew M. Gardner, Chief Executive Officer

California Technology Council

5001 Great America Parkway #210

Santa Clara, California 95054

These statements, findings, conclusions, and recommendations are those of the author and do not necessarily reflect the views of every member company or the individual employees of member companies.

About This Series

This series of briefs is intended to examine American science and technology policy, priorities, and methods.

About the California Technology Council

The California Technology Council (CTC) is an industry development organization serving innovators from all sectors. With a legacy dating as far back as 1943 (and aspects of the American Electronics Association), CTC serves member organizations primarily through business development, member benefits, and support for a business climate that fosters innovation.

CTC Executive Advisory Board

CHRIS FINAN, Co-Founder and CEO, Manifold Security

MATTHEW GARDNER, Founder and CEO, California Technology Council

STACEY LAWSON, CEO, YGreene Energy Fund

MIKE LEMPRES, Angel Investor

JEFF PETERSON, Chairman, Pressure BioSciences

KINKEAD REILING, Entrepreneur & Co-Founder, Amyris

BROCK SIEGEL, Principal, BIXP LLC

EVAN SIEGEL, President and CEO, Ground Zero Pharmaceuticals

CTC Economic Advisory Board

MIKE AMMANN, CEO, San Joaquin Partnership

DENNIS CONAGHAN, CEO, San Francisco Center for Economic Development

IAN HATHAWAY, Founder, Ennsyte Economics

KELLY KLINE, Chief Innovation Officer, City of Fremont

RYAN SHARP, Associate Director, Venture Catalyst, UC Davis

CTC Fellows

PHIL BOND, President, Bond & Associates

STEPHANIE COUCH, Executive Director, Lemelson-MIT Program

LEIF CHRISTOFFERSEN, Founder, Resource Innovation Consulting

GLYN DAVIS, Vice Chancellor, University of Melbourne

BILL GARNER, Managing Director, EGB Advisors

JOHN HOLADAY, Executive Chairman, ExoCyte Therapeutics

BRIAN MCGOWAN, Principal, Dentons

DENA MINNING, MD, PhD, President & Founder, MedExpert Consulting

PETER RIDDLES, Founder and Director, ViciBio

BART SATTler, Coordinator, Netherlands Office for Science & Technology Network

GARY WARZALA, Chief Information Security Officer, Fifth Third Bank

INTRODUCTION

In the second quarter of 2017, the Federal Communications Commission (FCC), once again, embarked on a process to update rules regarding net neutrality. The FCC and stakeholders went through considerable deliberations in 2014-15.

No small part of the implication of this 2017 reconsideration is the threat to certainty around the business climate in the United States.

This is not a policymaking process befitting of the most advanced technology economy in the world.

By carving out new areas of technology policy where there is a lack of clarity in legislation, the FCC is effectively legislating as a regulatory body.

The California Technology Council finds this process of critical importance to the science & technology infrastructure of the United States that it embarked on an extraordinary board dialogue to weigh these factors. In June 2017, the Executive Board of the California Technology Council ratified a new position:

Net Neutrality is an issue that should not be weighed by the Federal Communications Commission. This issue is of such importance, and the establishment of a permanent update to U.S. law is so critical, that this process should be moved entirely into Congress.

ISSUE 1: Policy and Regulatory Certainty

No small part of the implication of this 2017 reconsideration is the threat to certainty around the business climate in the United States. In essence, by taking up the issue for a second time in less than three years, the FCC is creating a crisis of confidence over the proverbial rules of the road on a major tenet of U.S. technology policy.

Businesses make investment decisions over very long cycles. Especially where infrastructure comes into play, businesses must consider everything about the environment in which they operate prior to deciding to invest billions of dollars.

Any time the rules change around infrastructure industries such as telecommunications, the calculus of investment decisions must be revisited.

While the 2017 process undertaken by the FCC may result in positive changes for the telecommunications business climate, the very fact that this policy area can be revisited at any time by the FCC is a larger issue. Any change in commissioner composition or administrations could lead to yet another consideration of these rules.

Attempts by the FCC to make rules over this area twice in less than three years are precisely the example of subjection of a major area of technology policy to the whim of the present-day political climate.

ISSUE 2: Net Neutrality and Telecommunications Policy Frameworks

There has been no major update to national telecommunications policy since the 1996 Telecommunications Act. The American economy in 2017 is comprised of entirely new industries which were not envisioned in 1996.

Amazon had just been incorporated in 1994. Google was incorporated in 1998. Avaya was established in 2000.

The lack of an update to the 1996 Act leaves a major gap in the overall American technology policy waterfront. Fundamental conditions have changed in such a way that it is time for Congress to establish a new dialogue on this entire area of technology policy.

A key U.S. Senate staffer involved in the process of writing the 1996 Act told the California Technology Council:

“It’s high time that we revisit the ‘96 Telecom Act, if only to get clear direction, certainty and a thorough legislative vetting of the issues that have arisen since that time, such as net neutrality. As a participant in getting the ‘96 Act passed, my hope is that more neutral industry experts instead of just lobbyists will play a bigger role in educating and shaping policy through participation in Congressional hearings, providing useful data and other efforts. Agencies have a role, but there may have been too much reliance placed on the FCC and others being neutral arbiters when new tech policy challenges have arisen since the ‘96 Act. We have seen such a flood of new issues arise that had not been contemplated 20 years ago. Thus, the full attention of government and industry must be brought to bear. It’s an American competitiveness issue.”

It is time for a comprehensive telecommunications policy update.

ISSUE 3: Net Neutrality in a Vacuum

Net Neutrality is not an issue in a vacuum. From Voice over Internet Protocol (VOIP) to e-commerce to seemingly ubiquitous investments in Video on Demand, Net Neutrality has far-reaching implications for businesses, consumers, and students of all kinds, in every corner of the country.

With so many implications, the rules for Net Neutrality cannot be isolated from broad segments of the economy.

The FCC process for making rules is insufficient for consideration of the full set of implications.

ISSUE 4: Technology Advice to Lawmakers

From prior specialty services such as the Office of Technology Assessment to the National Academies, Congress has resources at its disposal to consider societal implications in any major area of policy. The FCC lacks these resources.

In addition, there are expert resources including academic centers, think tanks, and organizations employing retired industry and government executives throughout the country. All sides of such a critical issue can and should be weighed in an extensive process.

Congress is in the best position to invite all of these stakeholders to participate in a comprehensive process.

ISSUE 5: FCC Comment Process as Policymaking

By carving out new areas of technology policy where there is a lack of clarity in legislation, the FCC is effectively legislating as a regulatory body. The FCC is not elected by the people and, therefore, is not an appropriately accountable body for establishing technology policy that could have an impact on every American.

At least one additional concern is the threat to the authenticity of the FCC’s own comment process. Close examinations of the entirety of submitted comments have revealed contributions by the sort of bots and/or foreign influencers to call not only the balance of opinion but also the very process into question.¹

A comment period does not represent the sort of serious, deliberate process one might expect of the most advanced technology economy in the world.

¹ “Another 5.8 Million Fake Net Neutrality Comments Found,” National Legal and Policy Center, August 8th, 2017, <http://nlpc.org/2017/08/08/another-5-8-million-fake-net-neutrality-comments-found-1-5-million-fakes-put-online-public-scrutiny/>
Rethinking Technology Policy I

SUMMARY

The California Technology Council asserts that the Federal Communications Commission is not the appropriate venue for dialogue on a permanent update to Net Neutrality, as well as related aspects of national telecommunications policy.

Net Neutrality is an issue that should not be weighed by the Federal Communications Commission. This issue is of such importance, and the establishment of a permanent update to U.S. law is so critical, that this process should be moved entirely into Congress.

Attempts by the FCC to make rules over this area twice in less than three years are precisely the example of subjection of a major area of technology policy to the whim of the present-day political climate.

The lack of an update to the 1996 Act leaves a major gap in the overall American technology policy waterfront. Fundamental conditions have changed in such a way that it is time for Congress to establish a new dialogue on this entire area of technology policy.

It is time for a comprehensive telecommunications policy update.

The FCC process for making rules is insufficient for consideration of the full set of implications.

Congress is in the best position to invite all of these stakeholders to participate in a comprehensive process.

A comment period does not represent the sort of serious, deliberate process one might expect of the most advanced technology economy in the world.

The most appropriate venue for comprehensive telecommunications policy reform is the United States Congress.