The Federal Communication Commission (FCC) voted in favor of new rules that would effectively end net neutrality as we know it on Thursday morning, the vote fell on along party lines—with Democrats voting in favor and Republicans in opposition.

FCC net neutrality 'fast lanes' plan moves forward in 3-2 vote

Why the Democrats on the Commission gave the new rules their approval is up for debate. Cynics would argue it is related to ***the fact that 80 percent of FCC commissioners since 1980 have taken high-paying jobs in the telecom industry after leaving government service.*** The commissioners themselves would likely posit that the plan's restrictions on ISPs slowing down Internet traffic that doesn't pay a toll (rather than speeding up traffic that does) is enough to keep the spirit of net neutrality in place.

By Fran Berkman on May 15, 2014

The Federal Communications Commission (FCC) has adopted a new rule-making proposal on net neutrality that it says will "protect and promote the Internet as an open platform," but the proposal fell short of the safeguards for an open Internet that many activists seek.

Three of the five commissioners supported the new rules proposal, which largely seeks to reinstitute the FCC's previous net neutrality rules from the Open Internet Order of 2010. The proposal could allow for a so called Internet "fast lane," through which Internet service providers (ISPs) could charge content companies for faster data delivery to customers.

Under the proposal, broadband providers would have to adhere to "commercially reasonable practices" and it will seek public comment and further explore "whether paid prioritization should be barred altogether."

FCC Chairman Tom Wheeler was emphatic that he was very much against paid prioritization, though reports in recent weeks have suggested otherwise.

"There is one Internet: It must be fast, it must be robust, and it must be open," Wheeler said at the meeting. "The prospect of a gatekeeper choosing winners and losers on the Internet is unacceptable."

Commissioners Mignon Clyburn and Jessica Rosenworcel joined Wheeler in support of the proposal, while Ajit Pai and Michael O'Rielly dissented.

O'Rielly called the proposal "hopelessly vague and unclear" and said that he believes network prioritization could actually serve consumers.

The new rule-making process follows a January decision from the U.S. Court of Appeals in Washington, D.C., that struck down the FCC's previous open Internet rules. The court ruled that the FCC does not have the authority to regulate Internet service providers because they are not classified as telecommunications companies and thus not subject to so-called "common carrier" laws.

Thursday's proposal was also noncommittal on if and how the FCC would seek to reclassify broadband providers, though Wheeler has repeatedly said that the option is on the table, and the Commission can still decide later to do so.

The audience, largely filled with open Internet activists, seemed to collectively groan at the part of the proposal that indicated the commission preferred to rely on Section 706 of the Telecommunications Act of 1996 to govern ISPs, as opposed to reclassifying them as Title II common carriers.

Open Internet group Fight for the Future, which camped outside the FCC building for more than a week leading up the meeting, had a mixed response to the proposal's adoption.

After the meeting started with several activists standing up to sound off for net neutrality before being led out of the room, Wheeler tried to emphasize that no final decisions would come down at Thursday's meeting.

"The purpose of what we're doing today on the open Internet is to make sure we hear from everyone and to start a process that fully opens the doors for comment by the American people," Wheeler said. "Disruption doesn't help getting to the point where the American people can provide input into the process."

While the proposal did not offer many hard-and-fast answers, it did include a few new potential safeguards for net neutrality such as the possibility of appointing an ombudsperson to "act as a watchdog for consumers, startups, and other small entities."

The proposal also seeks to build upon previous transparency rules, which compel ISPs to disclose details about how their networks operate to ensure they are adhering to whatever open Internet rules are ultimately put in place.

Now that the proposal has been adopted, there will be a 120-day public comment period before the FCC adopts new rules. Use this form if you wish to submit a comment on the FCC's proposal.

Here's how terrible U.S. broadband service really is

By Micah Singleton (Google+) on May 19, 2014

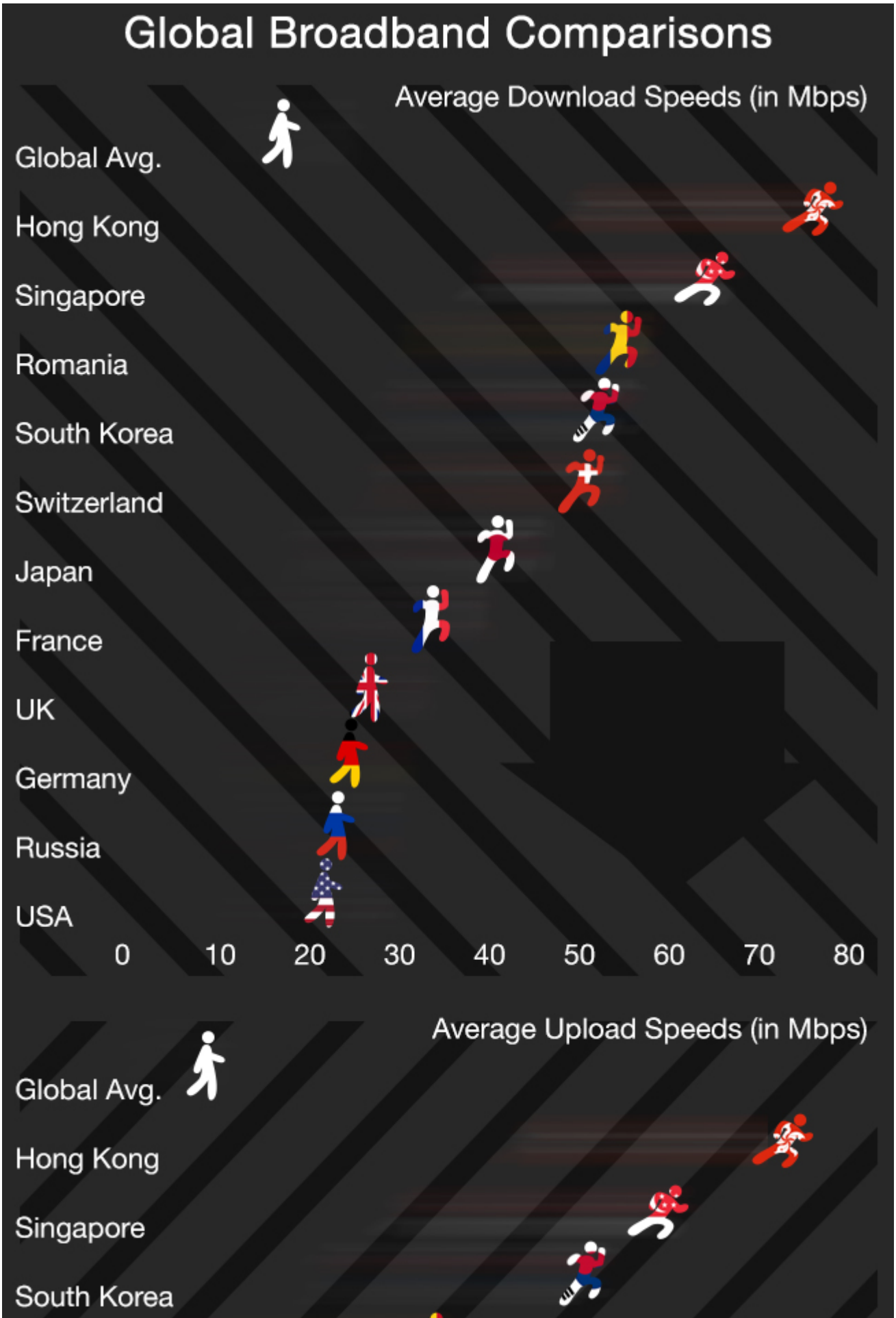
The U.S. has its fare share of issues when it comes to the Internet, between the National Security Agency's mass surveillance and the ongoing battle over net neutrality. With so many entities threatening the fundamental nature of the Internet, improving the quality of America's Internet has, for the most part, fallen off the radar.

If you were to tell someone in Hong Kong or Singapore how much you pay for your broadband Internet service in the U.S. and the speeds you receive in return, they would be shocked. America may have invented the Internet, but we have seriously fallen behind with the speed of our broadband networks and how much we pay to access a utility that has become essential across the world.

The U.S. is ranked 30th in the world in broadband speeds, behind the likes of Iceland, Romania, Bulgaria, France, Russia, and the U.K. To put that ranking in perspective, the U.S. Mens Soccer Team—a sport that 99.1 percent of Americans quit before their 10 birthday—is ranked 13th in the world, and we definitely didn't invent soccer.

We also pay more for much less, shelling out an average of $55 a month for broadband service, while countries with faster connections like France, Russia and the U.K. all come in at under $45 a month. Even the citizens of Hong Kong—which averages the fastest Internet speeds in the world—pay over 40 percent less than American customers, with an average cost of $31 a month for broadband service.

The breakdown of the cost per megabit for broadband continues the disheartening trend for Americans. At $3.50 per megabit, we are lagging behind countries like Russia ($0.98) and Ukraine ($0.90). This infographic shows how far—in every aspect of the Internet—we have fallen behind.


Global Broadband Comparisons
Average Download Speeds (in Mbps)
Global Avg.
Hong Kong
Singapore
Romania
South Korea
Switzerland
Japan
France
UK
Germany
Russia
USA
0
10
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80
Average Upload Speeds (in Mbps)
Global Avg.
Hong Kong
Singapore
South Korea

When it comes to the Internet, the U.S. isn't leading by any means, and it's only getting worse. Companies like **Comcast, who control vast swaths of America's Internet access**—a number that could grow to 120 million Americans if the merger with Time Warner Cable goes through—**has no incentive to bring America back to the forefront of Internet connectivity.**

We have reached a vital point in the short history of the Internet, with a plethora of issues that will define how we utilize one of our greatest achievements for years to come. Our goal shouldn't be to keep the Internet as it is, but to make it better, and change it into what it should be.

Infographics by Jason Reed | Photo via David Monniaux (CC BY SA 3.0) | Remix by Jason Reed

These companies spend the most money to kill net neutrality

BY LEE DRUTMAN and ZANDER FURNAS

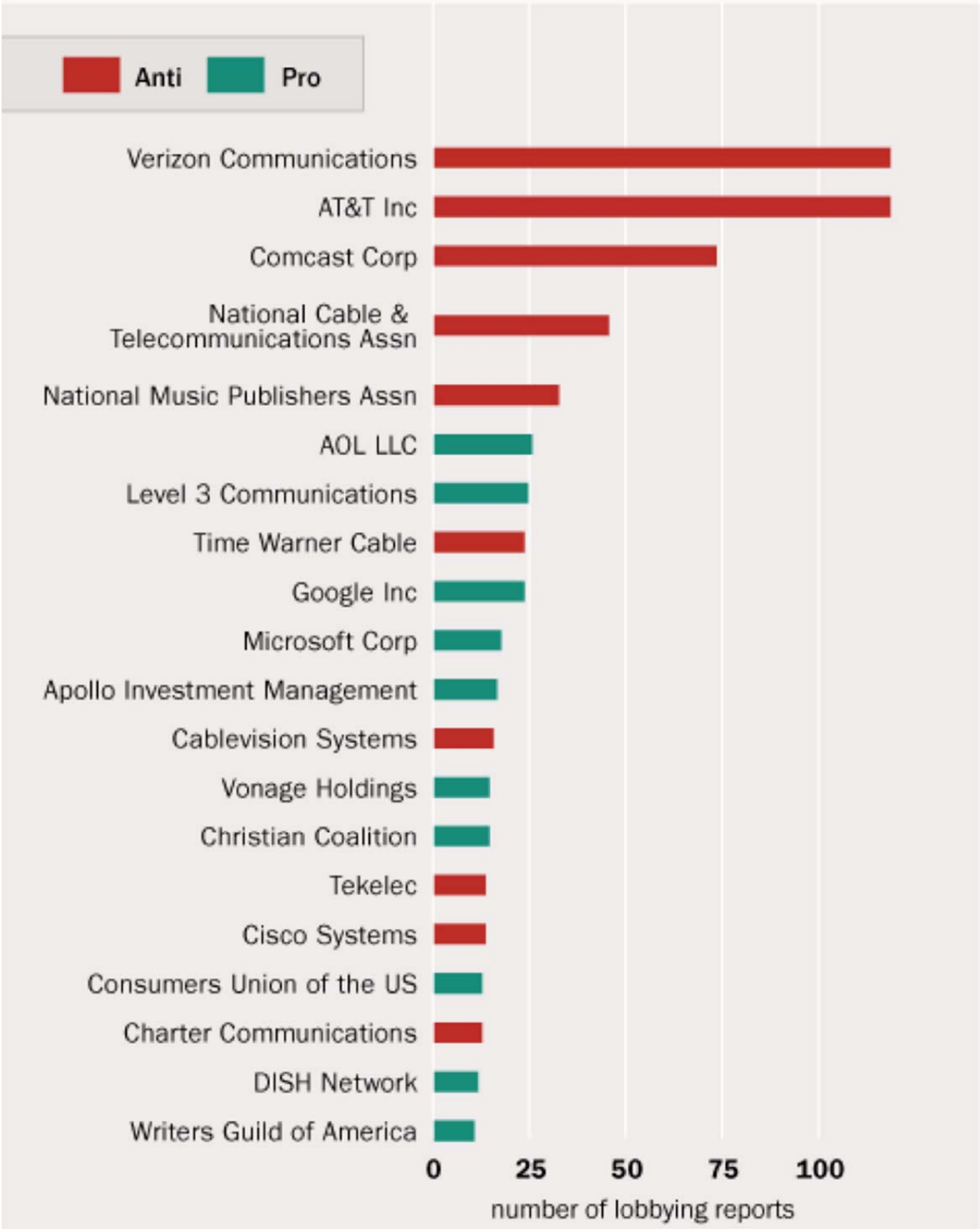
With the Federal Communications Commission's (FCC) decision to move forward with a controversial proposal that threatens net neutrality and the open Internet, lobbying activity looks like it has reached a fevered pitch. But for the companies involved—especially the telecom companies that are eager to be allowed to charge more for a "fast lane" of Internet service—lobbying has been at a fevered pitch for almost a decade.

Going back to 2005 (when the phrase "net neutrality" first shows up in lobbying disclosure reports), the principle's biggest opponents (Verizon, AT&T, Comcast and their allies) have lobbied against net neutrality about three times as hard as the biggest proponents of neutrality (Level 3, Google, Microsoft and their allies).

To better understand the lobbying dynamics around net neutrality, we took the long view and tallied up the 20 lobbying organizations that mentioned "net neutrality" or "network neutrality" most often in their lobbying reports between 2005 and 2013. In the top 20, we found an even split: 10 pro-neutrality organizations and 10 anti-neutrality organizations. But when it came to intensity, the lobbying was far from balanced. The top pro-neutrality organizations filed 176 lobbying reports mentioning net neutrality. But the top anti-neutrality organizations far outpaced them, filing 472 reports that mentioned net neutrality. That's a 2.7-to-1 ratio.

When we arrange the top-20 net neutrality lobbying organizations by amount of reports on the issue (Figure 1), the disparity is clear. The five most active organizations on the issue since 2005—Verizon, AT&T, Comcast, the National Cable and Telecommunications Association and the National Music Publishers Association—are all opposed to neutrality. Verizon and AT&T are heads and shoulders above everyone else, each with an estimated 119 reports mentioning net neutrality.

Lobbying reports mentioning net neutrality, 2005-2013

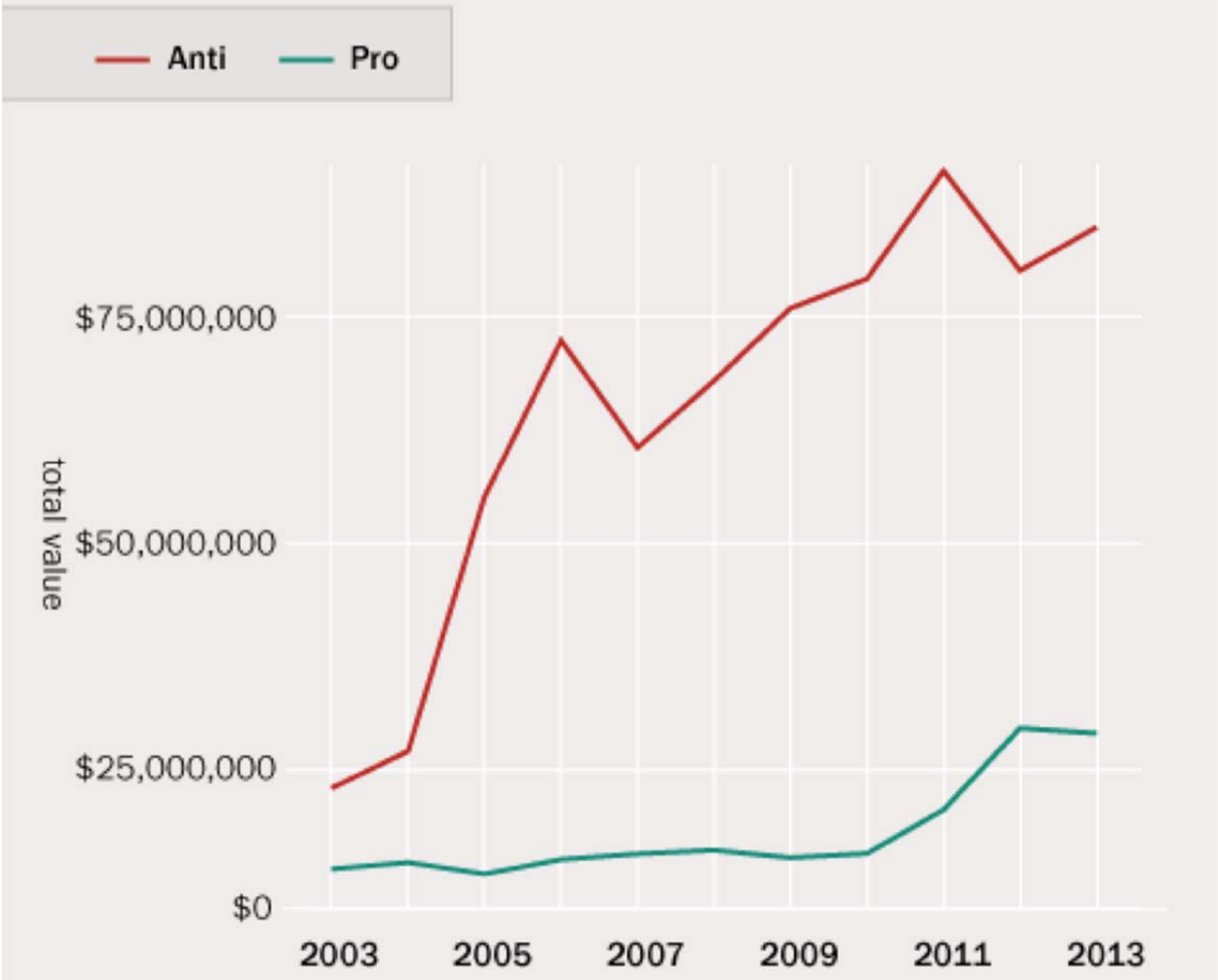


Sources: *Sunlight Foundation, Center for Responsive Politics*

Note: *numbers for the second half of 2013 were extrapolated from activity in Q1 and Q2*

Not only does the anti-net neutrality faction devote more lobbying attention to the issue, but these top organizations also consistently have a much larger lobbying footprint. Figure 2, below, looks at the money that the top pro- and anti-neutrality organizations have spent lobbying since 2003. Consistently, the anti-neutrality groups have outspent the pro-neutrality groups by a margin of more than 5-to-1, although this has narrowed to closer to 3-to-1 in recent years as Google Inc. has increased its lobbying presence.

Total lobbying expenditures of the top 20 organizations with **most reports mentioning net neutrality**



Sources: *Sunlight Foundation, Center for Responsive Politics*

Note: *numbers for the second half of 2013 were extrapolated from activity in Q1 and Q2*

Of the five organizations with vested interests in this issue that spent the most money in 2012 (the last year for which we have complete data), four oppose neutrality. All five, though, spent impressive sums.

Company	Total lobbying expenditures	Position on Net Neutrality
National Cable & Telecommunications Assn	$18,890,000	Anti
Google Inc	$18,220,000	Pro
AT&T Inc	$17,460,000	Anti
Verizon Communications	$15,020,000	Anti
Comcast Corp	$14,680,000	Anti

While the dispute over network neutrality is often thought of as a battle between giant corporations, it's clear from the data that over the lifespan of this issue, the pressure has been far from equal. The leading opponents of neutrality (largely the Internet service providers) have devoted significantly more resources to lobbying than the leading supporters of net neutrality (largely the big tech companies). While the tech companies have been expanded their lobbying presence recently, they are still playing catch-up. The big telecom companies have spent years convincing key decision-makers. We will see soon whether all their intense lobbying has paid off.

Lee Drutman and Zander Furnas are fellows at the Sunlight Foundation, a nonpartisan nonprofit that advocates for open government globally and uses technology to make government more accountable to all.

Note on methodology:

We determined companies' positions on net neutrality based on whether the companies CEOs had signed on to relevant letters to the FCC. If this information was not available, we assessed other public statements of position released by the corporation/organization or its officers. The Christian Coalition has a public statement in defense of net neutrality on its website, as does Dish Network. The most difficult to classify in our top 20 list was Apollo Investment Management. Largely, lobbying on net neutrality by Apollo has been on behalf of its subsidiary, Hughes Network Systems, a satellite broadband provider. A February 2010 trade publication on the Hughes website argues that a pro net neutrality FCC is good for the satellite broadband industry as it "should tend to level the playing field […] by preventing larger terrestrial providers from entering into preferential deals with content providers."

Cisco has an anti-net neutrality statement on its site. Corporate officers at Tekelec have spoken publicly in favor of network management, and against net neutrality, especially in the mobile broadband market, on multiple occasions. The National Music Publishers Association has argued for a non-net neutral approach that will require ISPs to engage in network management to block or throttle traffic that violates copyright.

Lobbying activity was aggregated up to the parent company, rather than looking at individual subsidiaries. For example, lobbying activity by Verizon Wireless was counted as activity by Verizon Communication, its parent company.

All dollar amounts are shown in inflation-adjusted 2012 dollars.

Here is the only way the FCC can legally save net neutrality

BY MARVIN AMMORI

People working on net neutrality wish for a “third way"—a clever compromise giving us both network neutrality and no blowback from AT&T, Verizon, Comcast and others. That dream is delusional because the carriers will oppose network neutrality in any real form; they want paid fast lanes. They have expressed particular opposition to “Title II” of the Communications Act—something telecom lawyers mention the same way normal people might reference the First or Second Amendments. Title II is the one essential law to ban paid fast lanes.

All legal “third way” proposals have struck me as legally flawed and too clever by half. Let me explain why: Current law sets up an either/or, without much possibility of a third way. We have two very different paths and have to pick one.

Laws usually include a definition of some *thing* and then apply rules to that thing. Drug laws, for example, might define what “drugs” are. Insurance or securities laws define “insurance” and “securities.” Then the laws apply rules to the things defined as drugs, insurance, or securities. You can look at the legal definition of drugs and know that peanut butter and automobiles aren’t drugs. Because they’re not drugs, the legal requirements on drugs don’t apply. If an agency has authority over both food and drugs, but decided both peanut butter and Viagra are not “drugs,” then the agency could not apply drug laws to either of them. It would likely have to declare Viagra a “drug” to regulate it as a drug, and peanut butter a “food” to regulate it as a food.

The telecom laws are like that too. In January, a court in a decision called *Verizon v. FCC* struck down the network neutrality rules adopted by the FCC in 2010. The court said that Title II of the Communications Act regulated some companies as “common carriers.” What is a common carrier? A common carrier is a company “forced to offer service indiscriminately and on general terms.” Common carriers cannot engage in “individualized bargaining.” Think about cabs, which are generally common carriers. For example, according to most state laws, cabs are not permitted to refuse to drive anyone and must charge the same prices, instead of discriminating and deviating from their uniform meter. Common carriers have included landline phone companies, mobile phone companies, DSL service (until 2005), and also railroads, grain elevators, and taxi cabs.

These are the parts of Title II that require common carriers in communications to serve everyone and not discriminate among users. (The full provisions provide even more detail.)

Serve everyone on fair terms: 'It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; … All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable.'
No unreasonable discrimination: 'It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications,

regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device.'

According to the court decision in January, services subject to Title II are subject to these provisions.

But service not subject to Title II *cannot be treated as common carriers*. That is the key holding of the *Verizon* decision: “We think it obvious that the Commission would violate the Communications Act were it to regulate [companies that are not subject to Title II] as common carriers.”

Here’s how the Court got there in plain English: It's just like the Viagra example above. Ten years ago, the FCC said that Internet service providers (ISPs) aren’t common carriers. Therefore, the FCC can’t regulate them as if they were.

Here’s the legal jargon version. The Communications Act defines something called “telecommunications services,” and says those services must be offered on a common carrier basis under Title II. Telecommunications services are generally networks that carry data between two points without changing it. Other services, that provide and change information, like Facebook or Yahoo, are “information services.” They are *not* subject to common carrier obligations in Title II. The FCC (oddly) decided ten years ago to treat Verizon, AT&T, and others as *information services*, not as telecommunications services,even when they carry traffic from point A to point B, merely because they also offer things like email and domain name service.

Because the FCC decided that ISPs are not “telecommunications services” by law, Title II’s common carrier requirements of reasonable charges and nondiscrimination etcetera do not apply to Verizon, AT&T, and Comcast right now.

According to the court in January, the operative legal language making it a binary decision is this:

A telecommunications carrier shall be treated as a common carrier under this [Act] only to the extent that it is engaged in providing telecommunications services. (Page 41).

The court interpreted this language as an either/or. Either a service is a telecommunications service (therefore a common carrier) or not a telecommunications service (and therefore not a common carrier). It’s binary.

So, unless ISPs are reclassified as Title II common carriers, then common carrier laws simply cannot apply.

Said another way, if the FCC relies on *any other* provision, then common carrier concepts cannot apply. It doesn’t matter if that other provision is one known as Section 706 of the Telecommunications Act, one known as Section 4(i) of the Communications Act, or one known as Mary Poppins. According to the decision, there is Title II, and then there is everything else, when it comes to network neutrality.

The court’s decision on this point is a really important development. Four years ago, when the FCC adopted its 2010 Order, the FCC didn’t know this binary existed. All it knew was that a few provisions of the law (such as Section 230) could not sustain network neutrality. In 2010, the FCC could believe that perhaps many provisions could work (other than 230 and a few others). It could treat “Title II” as the “big guns.” After the *Verizon*decisionthis January, we realize no provisions other than Title II would work. They’re the only guns.

So we know that (a) Title II services are regulated as common carriers and (b) other services cannot be. A simple binary.

And to finish off the analysis: Is network neutrality a common carrier regulation?

Yes, by law. The court in January made that clear: Network neutrality is a common carrier regulation. It is common carrier regulation because it requires ISPs to offer indiscriminate and general treatment for all websites. Net neutrality means no paid fast lanes and slow lanes. The court said that, with the FCC's 2010 language on fast lanes, "we see no room at all for 'individualized bargaining.'"

Unless the FCC relies on Title II, it *must* permit fast lanes, slow lanes, discriminatory exemptions to bandwidth caps and all the other stuff AT&T, Comcast, and Verizon always wanted.

Still, the FCC Chairman keeps suggesting that the FCC can force the carriers to offer the same terms to everyone and can ban fast lanes under Section 706, without relying on Title II. It's obvious from the January decision that forcing them to offer the same terms would be common carriage and therefore illegal. Any rules not adopted under Title II will either authorize massive network discrimination and "individualized bargaining" between ISPs and all websites—or be struck down.

If we want a rule against discrimination and against new access fees, we need Title II. There is no legal third way.

Marvin Ammori is an American lawyer specializing in net neutrality and other legal issues related to technology and the open Internet. He serves as an Affiliate Scholar of the Stanford Law School Center for Internet & Society and an Affiliate of the Yale Law School Information Society Project. He is also a Term Member of the Council on Foreign Relations and a Fellow of the Americas Business Council Foundation. This article originally appeared on his personal website, Ammori.org.