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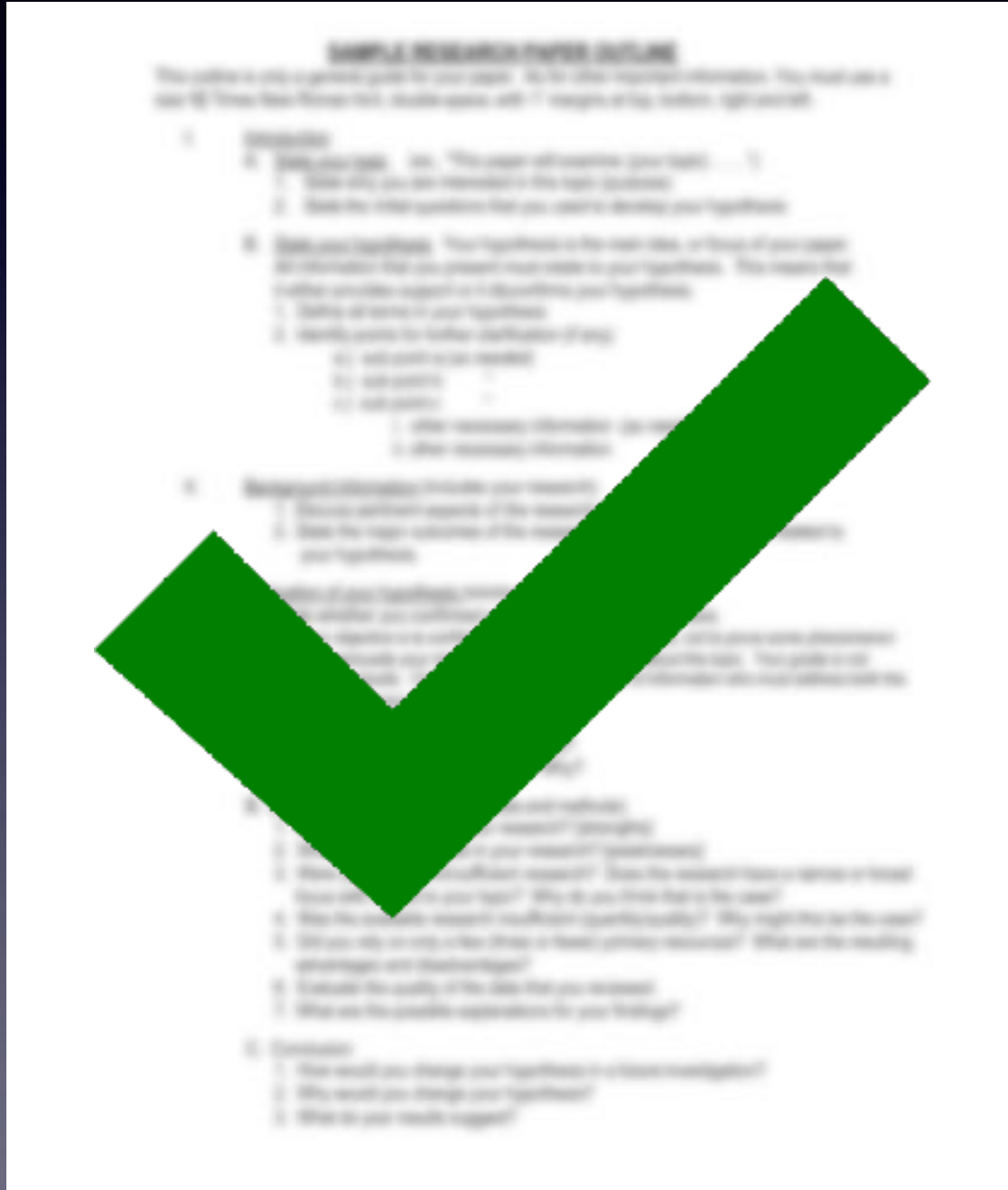
Net Neutrality: WTF is it and why should I care?

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Before we begin...

There is a right way and a wrong way to do this.



What we'll talk about

- What is Net Neutrality?
- Why should you care?
- Who wants Net Neutrality and who doesn't, and why?
- Who is right and wrong in the NN debate, and why?
- Common rebuttals to NN and real-world examples of why each rebuttal is dead wrong
- What can you do?

What we won't talk about

- Whether or not the Commerce Clause applies to ISPs
- The specific definition of legal terms like “information service” and “telecommunications service,” and how the two differ
- The FCC’s mandate (or lack thereof) to regulate ISPs as common carriers
- Other lawyer stuff, because I ain’t one
- I do have lots and lots of links for all of those things, though—email me and I can point you in the right direction to do more research and decide for yourself

Net Neutrality: A definition

Net neutrality is the idea that your Internet service provider (ISP) should act as a connection between you and the rest of the Internet, and nothing more.

It basically says that your ISP should be involved with your connection as much as your phone company is involved with your phone calls, or your electricity company is involved with your electricity.

Net Neutrality: A definition

NN says an ISP should:

- Provide (and charge you for) a connection to the Internet

NN says an ISP should not:

- Charge its competitors more for access to you
- Charge you more for accessing a competitor's services
- Charge different rates for access to different sites or services
- Prevent you from accessing legal content of any kind

Net Neutrality: A definition

- Under NN, ISPs are (were) classified as “common carriers,” subjecting them to the same kinds of rules that utilities like power and water are subject to.
- This was not to prevent hypothetical bad behavior. This was in response to massive amounts of *actual* bad behavior.
- AT&T, Comcast, Time Warner, Cox, and other major ISPs have all previously engaged in massive, egregious, specific examples of behavior prohibited by NN. This is not theoretical.
- All of this has happened before, and all of it will happen again.

Wait, what's this past tense stuff?

- Net Neutrality was the law of the land from mid-2015 until some time next month
- The FCC as constituted under the current administration considers dismantling Net Neutrality to be both one of the agency's core mandates and one of its highest priorities
- The repeal has already happened and will go into effect on June 11
- Lame-duck attempts by Congress to save it will almost certainly fail

What Net Neutrality is not

- It's not government overreach
- It's not subverting the will of the free market
- It's not the government telling you what you can and can't look up on the Internet
- It's not full-on heavy-handed utility-style regulation
- It's not socialism

Why should you care about Net Neutrality?

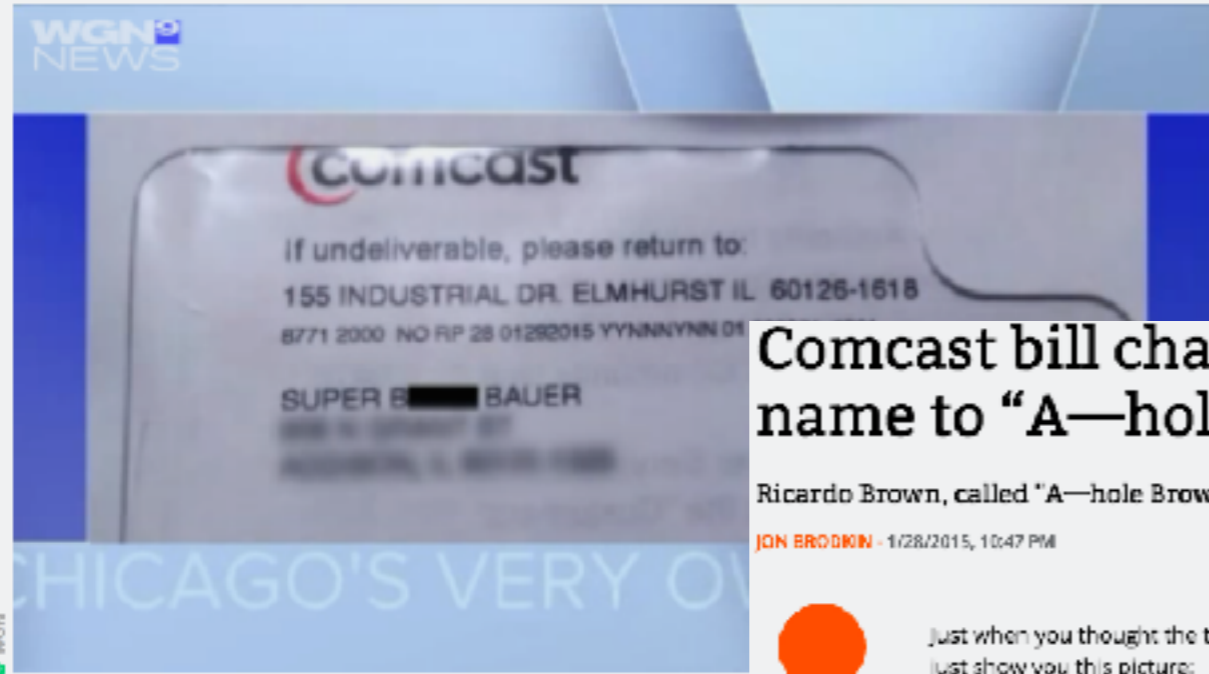
NN helps (helped) prevent oligopolistic companies like AT&T and Comcast from engaging in further anticompetitive behavior and screwing you over.

SHE'S ACTUALLY QUITE NICE —

Comcast customer says she got a bill addressed to "Super Bitch"

Comcast is a repeat offender, also called customers whore, dummy, and a--hole.

JON BROOKIN - 2/5/2015, 9:27 PM



Comcast bill changes customer's first name to "A--hole"

Ricardo Brown, called "A--hole Brown" on bill, gets apology and refund.

JON BROOKIN - 1/28/2015, 10:47 PM



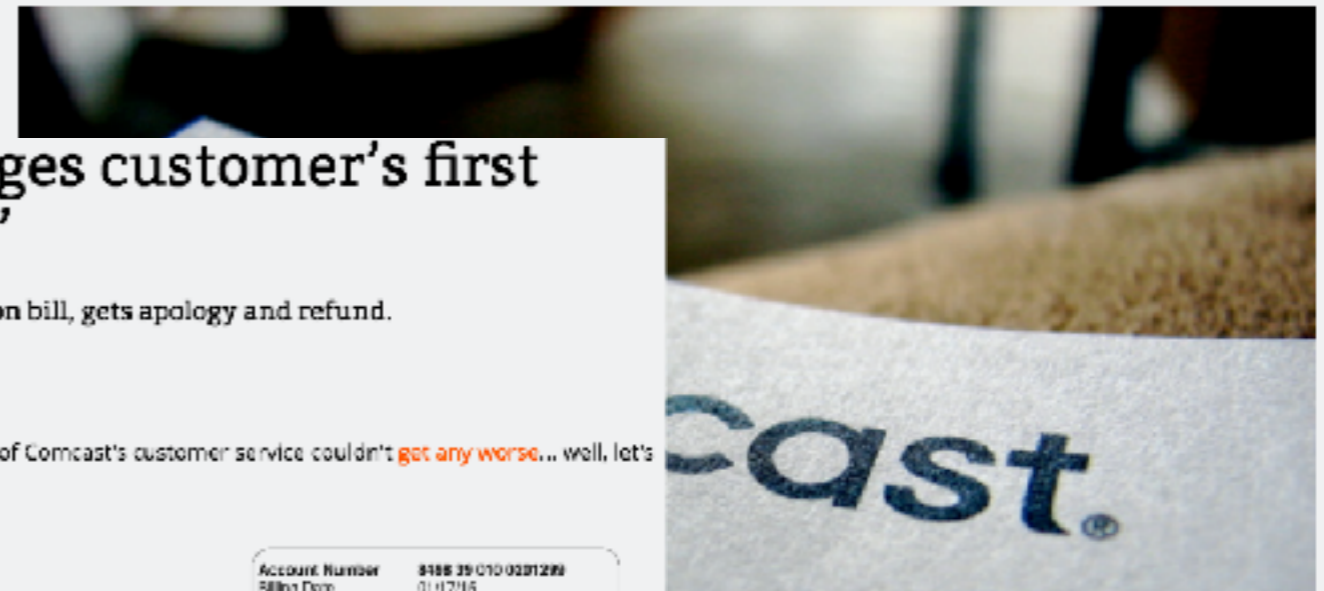
Just when you thought the tales of Comcast's customer service couldn't get any worse... well, let's just show you this picture:

WHAT'S IN A NAME? —

More Comcast customers write in, report name changes of "whore," "dummy"

"Whoever chose to re-name me picked my account out of a hat."

CYRUS FARVAR - 1/30/2015, 11:22 PM



Why should you care about Net Neutrality?

It's important to remember that NN doesn't address hypotheticals or "what if" scenarios. NN was codified into law as a direct response to telecommunications companies *already engaging in egregious, unending patterns of anti-consumer and anti-competitive behaviors.*

Who wants Net Neutrality?

- 83% of Americans opposed the repeal of existing Net Neutrality regulations
- The issue has broad bipartisan support
 - 75% of Republicans opposed repeal
 - 89% of Democrats opposed repeal
 - 86% of independents opposed repeal
- It's one of the few topics on which both (R) and (D) align with overwhelming support

Who doesn't want Net Neutrality?

- Most ISPs & telcos
- Most wireless carriers
- Most companies with large entertainment verticals (which at this point includes several major ISPs and telcos)
- Lobbyists who are paid by those companies
- An annoyingly large number of Congresscritters who are paid by those lobbyists

Why are so many lawmakers against Net Neutrality?

- As with most technical issues, Net Neutrality is complex and nuanced, with lots of “yes buts” and “what ifs.”
- Few representatives have independent understanding of NN and rely on lobbyists to provide them with clarification and positioning (as lawmakers tend to do on most complex issues)

Okay, so why are so many *companies* against Net Neutrality?

- Most directly involved companies are publicly traded & have fiduciary responsibility to increase their share price
- Net Neutrality prevents ISPs, telcos, wireless carriers, and other providers of information services from *some* behaviors that increase revenue
- It's not much more complicated than that, honestly —it's not that these companies are *evil* or anything stupid like that. **They just don't care.**

Key Net Neutrality terms

Common Carrier: a company that is required to transport things—be they people, freight, electricity, information, or whatever—so long as there is no reasonable grounds for refusal.

Telephone companies are common carriers, as are utility companies, some freight companies, and entities like the USPS.

In return for satisfying their obligation to transport things, common carriers are usually indemnified against being held responsible for the things they're carrying. (For example, if someone sends drugs through the USPS and they get discovered, USPS isn't held accountable for shipping drugs—the shipper is.)

Key Net Neutrality terms

Paid prioritization: When an ISP artificially slows all traffic, then allows companies or individuals to pay in order to have their traffic delivered first or faster than a competitor's.

A hypothetical example would be if Comcast allowed Netflix to pay them in order to ensure that Netflix is faster for Comcast customers than YouTube Red or Hulu.

Key Net Neutrality terms

Fast lanes: Similar to paid prioritization—the concept that ISPs would give preferential treatment to persons or companies that want to pay more for their data to reach the ISP’s customers.

It’s important to note that “fast lanes” is a misnomer. It’s not about speeding up certain traffic—it’s about slowing down everything and then allowing those that pay to continue operating at full speed.

Key Net Neutrality terms

Oligopoly: An industry dominated by a small number of very large players. (Like a monopoly, but with two or three companies instead of one.)

Oligopolies tend to informally collude to regulate their markets into stagnation, preventing competitors from arising.

The US ISP and wireless carrier markets are both classic examples of oligopolies. (So are the US airline industry, the US movie studio industry, the US publishing industry, and several other notable segments.)

Key Net Neutrality terms

Title II: The common carrier rules under which ISPs were (for a few years) reclassified in order to come under the FCC's authority to regulate "telecommunications services."

"Title II" is often used as shorthand to refer to the set of rules imposed on ISPs that we collectively refer to as Net Neutrality.

(The term references Title II of the Communications Act of 1934)

Common objections

The primary objection to NN is that it is an egregious example of government overreach and regulatory intrusion into a healthy and functional free market.

- “The government can’t do anything right, and they’ll just screw this up, too.”
- “More regulations are almost certainly bad. Get your government out of my Internet.”
- “There’s nothing wrong with the ISP market and competitive landscape.”
- “NN is just the government telling you what web sites you can and can’t visit.”
- “Complying with these onerous rules kills infrastructure investments for big ISPs.”
- “Complying with these onerous rules will destroy small businesses.”
- “Companies should be allowed to self-regulate in the absence of evidence of bad behavior rather than be made to follow punitive and unnecessary regulation.”
- “Isn’t this socialism?”

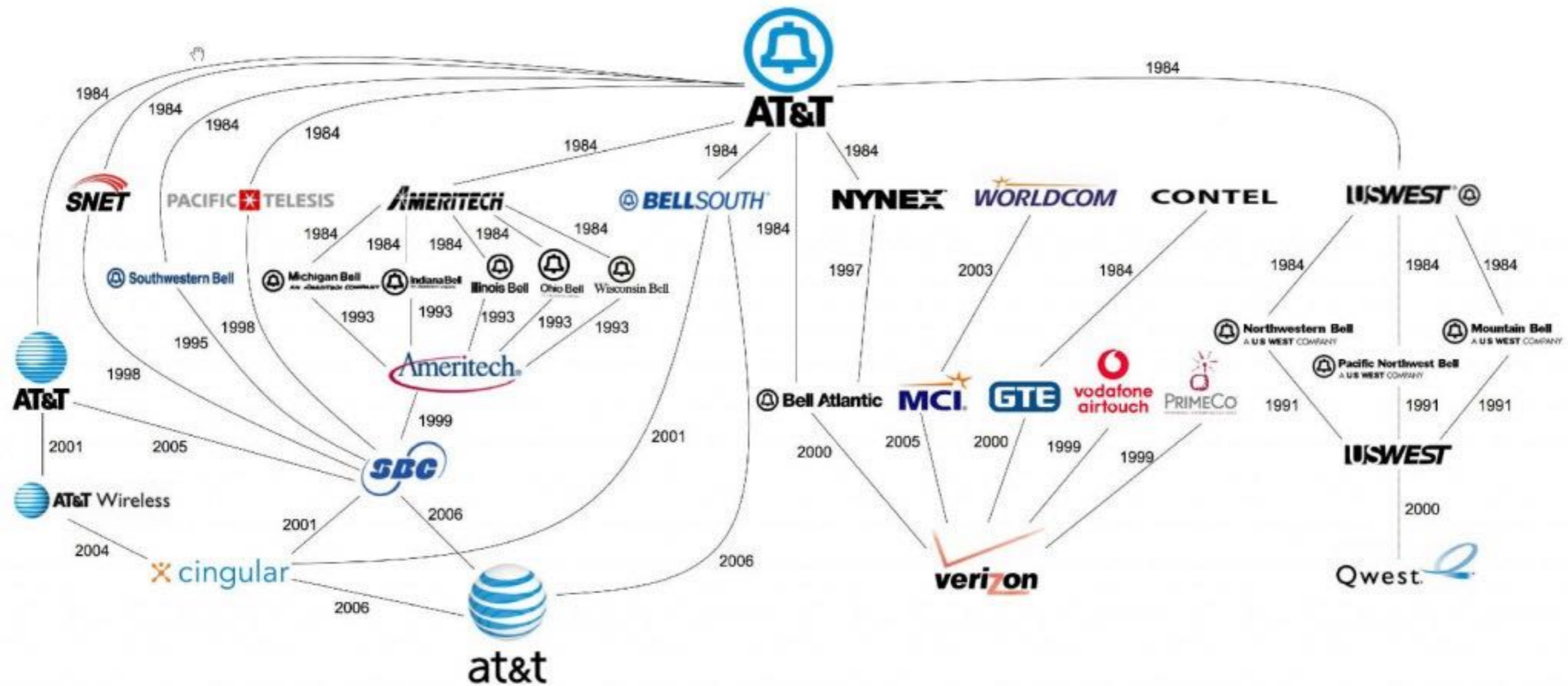
The .gov will screw this up!

- Maybe! But they haven't so far.
- Net Neutrality was the law of the land for several years, starting April 2015
- During that time, consumer protections increased and ISPs faced greater accountability to consumers and regulators
- After three years, 86% of Americans support Net Neutrality as it existed and oppose its repeal

More regulations are bad!

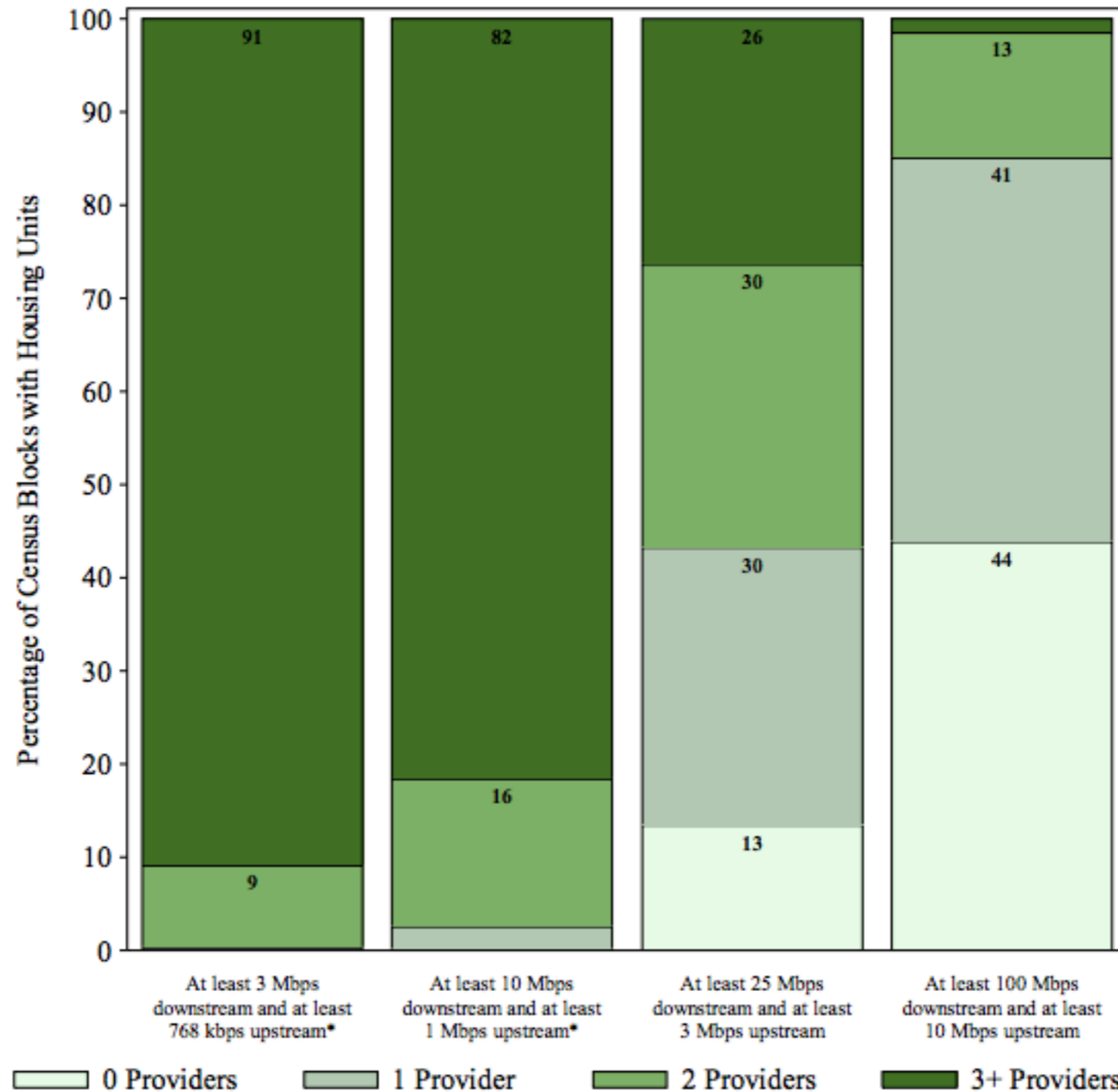
- We're not talking about instituting new laws. We're talking about preventing existing ones from being repealed.
- And, again, Net Neutrality has massive support across every political and demographic segment.

There's nothing wrong with the current competitive landscape!



Letting “the market” choose

Figure 4
Percentages of Developed Census Blocks in which Providers Reported the Deployment of Residential Fixed Broadband as of December 31, 2016



Media verticals dominate

- More than gobbling up each other, many ISPs and telecommunications companies now include substantial entertainment verticals as well
- For example, Comcast owns NBCUniversal, which includes among other brands NBC, Telemundo, Universal Pictures, Focus Features, and Dreamworks
- Comcast also owns a 30% stake in Hulu

Media verticals dominate

- There is a profound and substantive conflict of interest when a company like Comcast owns both the content being consumed and also the means of distributing that content
- Comcast has both the incentive and the ability to, for example, exempt streaming movies made by Universal Pictures from its customers' data caps, while charging extra for customers to watch movies made by Sony Pictures

Media verticals dominate

- Comcast also has substantial incentive to push viewers away from Netflix and YouTube and toward Hulu, since customers watching ads on Hulu translates directly into additional revenue
- Removing media cross-ownership barriers is like turning a bunch of four year-olds loose in a cookie factory. They might *say* they're not going to eat all the cookies, but *they can't help it*.
- None of this is far-fetched. Comcast has already done this kind of thing. Sit tight for a few slides and we'll get there.

No one's gonna tell me what sites I can and can't visit!

- Net Neutrality regulations didn't prevent anyone from visiting anything
- Nor did they allow censorship, redirection, snooping, data collection, or any other nefarious activity
- What they prevented was ISPs and telcos abusing their control of the pipes in order to prioritize their own stuff, or to de-prioritize a competitor's stuff, or to quash political speech they didn't approve of

Net Neutrality kills infrastructure investments!

- In a word: no
- While ISP PR departments and lobbyists continually release statements decrying the death of capital investments in infrastructure, ISPs are legally obligated to tell the truth to their shareholders
- Perhaps unsurprisingly, the truth differs from the twitter rhetoric

In their own words

- In December 2015, AT&T's CEO told investors that the company would “deploy more fiber” in 2016 than it did in 2015 and that Title II would not impede its future business plans.
- In December 2016, Comcast's chief financial officer admitted to investors that any concerns it had about reclassification were based only on “the fear of what Title II could have meant, more than what it actually meant.”
- That same month, Charter's CEO told investors, “Title II, it didn't really hurt us; it hasn't hurt us.”
- Just a few days after the election, Cablevision and Suddenlink's parent company Altice reaffirmed its plan to deploy FTTH [fiber-to-the-home] service to all of its customers and told investors that it remained “focused on upgrading our broadband networks to drive increases in broadband speeds and better customer experience.”

Actual numbers—infrastructure CapEx has never been higher

- Comcast spent \$7.6 billion on its cable segment capital expenditures during 2016, the most the company has ever invested in a single year.
- From 2015–2016 Charter Communications’s pro forma capital investments—including newly acquired Time Warner Cable and Bright House Networks—topped \$14.5 billion, a 15 percent increase.
- Verizon’s capital investment total also increased during the year following Title II reclassification. Verizon’s total two-year post-vote capital expenditures were 3.1 percent higher than they were in the two years preceding the vote, even as the company divested its Florida, Texas, and California systems to Frontier Communications.

Net Neutrality kills small ISPs!

- Not according to small ISPs
- In mid-2017 a coalition of 40 regional ISPs wrote to the FCC in support of Net Neutrality, saying that Title II reclassification presented “no new additional barriers to investment or deployment” to their businesses
- They expressed concerns that removing FCC oversight would further demolish the already tenuous competitive landscape

These rules are crazy and address stuff that ISPs would never do!

- Major carriers, especially Comcast, AT&T, and Verizon, have been caught multiple times in the past 18 years engaging in behavior specifically prohibited by Net Neutrality rules
- In fact, *these instances are exactly why the FCC under its previous commissioner enacted the Title II reclassification in the first place.*
- Net Neutrality isn't "an answer in search of a question." It's a direct response to multiple documented instances of egregious anticompetitive grossness by ISPs and telcos.

Crap they've done

- 2005: North Carolina ISP Madison River Communications blocks customer access to Vonage in order to force customers to use its own VOIP service offering.
- 2005: Comcast blocks customer access to peer-to-peer file sharing (BitTorrent) services without disclosing the block to customers in any way.
- 2007-2009: AT&T blocks VOIP services (including Skype) from being used on iPhones on the AT&T network to force customers to use AT&T voice services.

ISPs behaving badly

- 2007: Verizon prevents abortion rights group NARAL Pro-Choice America from sending fundraising texts to Verizon subscribers, even though the company had previously allowed similar fundraising efforts from groups with other political affiliations

We're still going!

- 2008: Comcast exempts traffic from its own video streaming service from counting against customers' data caps, thus incentivizing consumers to use it instead of competing offerings from Netflix or Amazon, which DO count against the data cap.

It gets worse

- 2011-2013: AT&T, Sprint, and Verizon collude to block Google Wallet from functioning on customers' phones in order to drive customers to their own competing wallet app.
- 2012: Verizon caught blocking customers from using their phones' built-in data tethering function, unless customers pay a \$20 fee.
- 2012: AT&T blocks Apple's FaceTime application from customers' phones unless customers had a specific, more expensive data plan.

It just keeps going

2013: During oral arguments in *Verizon v. FCC*, Verizon attorneys explicitly state the company wants to engage in paid prioritization:

“I’m authorized to state from my client today that but for these rules we would be exploring those types of arrangements.”

Who likes cake?

- Ultimately, Net Neutrality limits a company's ability to double, triple, and sometimes even quadruple-dip on extracting revenue from customers and partners. They want to eat their cake, eat your cake, eat my cake, and eat all the cake at the store, and then also have a bunch of uneaten cakes.
- Here's former AT&T CEO Ed Whitacre explicitly telling us exactly what the ISP lobby really wants:

Business Week: How concerned are you about Internet upstarts like Google, MSN, Vonage, and others?

Whitacre: How do you think they're going to get to customers? Through a broadband pipe. Cable companies have them. We have them. Now what they would like to do is use my pipes free, but I ain't going to let them do that because we have spent this capital and we have to have a return on it. So there's going to have to be some mechanism for these people who use these pipes to pay for the portion they're using. Why should they be allowed to use my pipes? The Internet can't be free in that sense, because we and the cable companies have made an investment and for a Google or Yahoo! or Vonage or anybody to expect to use these pipes [for] free is nuts!



Whitacre is smoking crack

- *“Now what they would like to do is use my pipes free, but I ain't going to let them do that because we have spent this capital and we have to have a return on it. So there's going to have to be some mechanism for these people who use these pipes to pay for the portion they're using. Why should they be allowed to use my pipes?”*
- To be very clear, Whitacre is *not* referring to the money AT&T already charges those companies for AT&T-provided connectivity.
- Whitacre is specifically saying that AT&T should be allowed to collect some amount of the revenue generated by companies using its infrastructure, **above and beyond what the companies already pay to use that infrastructure.**
- This is the kind of insanity only an AT&T CEO could say with a straight face

Who is right and wrong in the Net Neutrality debate?

- Words like “right” and “wrong” are difficult to contextualize in this debate—is it “wrong” for a company to try as aggressively as possible to deliver ever-increasing returns to shareholders?
- Fortunately, we don’t need to get into semantics and metaphysics here

Who is right and wrong in the Net Neutrality debate?

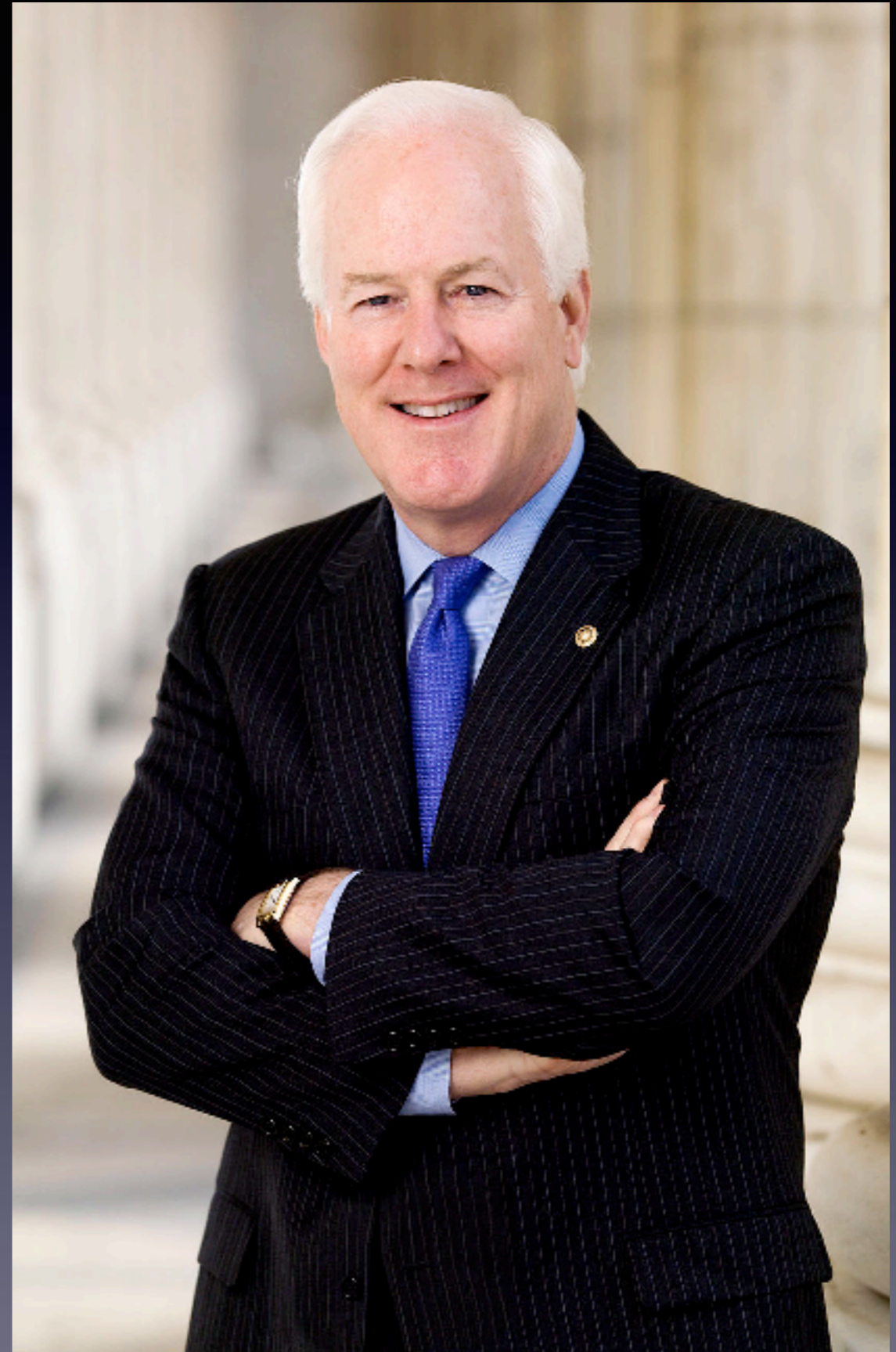
- The reality of your experience as a Comcast or AT&T or Verizon customer is your answer.
- A very small number of organizations control a vast amount of your personal life and data and experiences, and those companies are committed to drawing ever-increasing amounts revenue from that control.
- Net Neutrality prevents companies from engaging in very real abuses—abuses those companies have a long and documented history of happily inflicting.

What can you do?

- Ordinarily this is where I'd say "Call or write your representatives!"
- However, to save you some time, I've already done that and here's the responses I received

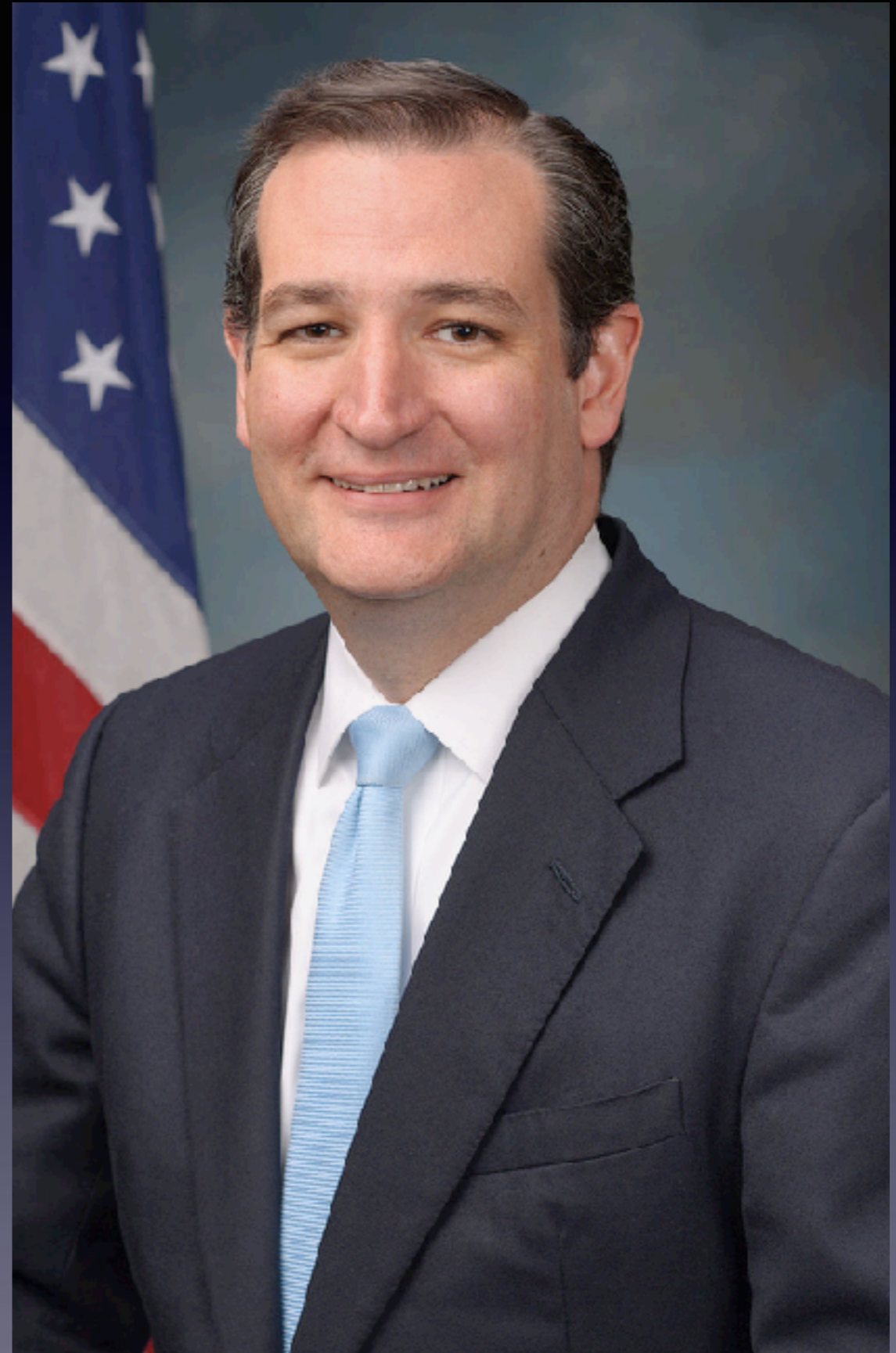
Senator John Cornyn

- “Net neutrality is misnamed. It is government regulation. Why not let the market work?”
- “A top-down regulatory approach can unnecessarily constrain an industry’s ability to create and deliver new products and services to market.”
- Co-sponsored Senate bill to reduce FCC’s regulatory powers over ISPs and telcos



Senator Ted Cruz

- “Net neutrality is Obamacare for the Internet”
- Calls NN supporters “snowflakes” on Twitter
- Co-sponsored Senate bill to reduce FCC’s regulatory powers over ISPs and telcos



Congressman Randy Weber (TX-14)

- Wouldn't provide me with a statement on record when I called his office. Ignored my emails to his PR team. Apparently doesn't like the media very much.
- Refused to hold (or even attend) town hall meetings to discuss Net Neutrality. Apparently doesn't like his constituents very much.
- Co-sponsored House bill to reduce FCC's regulatory powers over ISPs and telcos.



What can you do?

- Basically nothing
- Well, okay, I mean, you can decide how important NN is to you personally, prioritize that importance along with all of the other issues you care about, and decide based on that list of priorities if voting for a pro-NN candidate is something you personally want to do
- But that's about it, because otherwise this issue is going to continue to get worse

About that CRA....

- NN has been heavily in the news this week due to Wednesday's decision by the Senate to force a Congressional Review Act review of the FCC's Net Neutrality Appeal
- This is largely symbolic and the measure will almost certainly be defeated in the House
- If the measure miraculously passes the House, President Trump is widely expected to veto it

What happens now?

- Although NN has massive public support, almost no Republican congresspersons and senators support it & continue to vote against it
- Few Democrat congresspersons are willing to compromise on other issues in order to swing Republican votes on Net Neutrality
- My take: just go ahead and give up on any federal Net Neutrality movement

What happens now?

- The Net Neutrality repeal officially takes effect on June 11
- 21 states have filed lawsuits against the FCC to attempt to block the repeal
- California and New York have passed state level laws that reinstate Net Neutrality within their borders, though those laws will face challenges

What happens now?

- There's just not that much else that anyone can do. The ship hasn't quite sailed yet, but it's steaming toward the end of the harbor and it's bound for sea.
- But remember:

“Never attribute to malice that which is adequately explained by stupidity.”

–Robert J. Hanlon

