

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Framework for Broadband)	GN Docket No. 10-127
Internet Service)	
)	
Protecting and Promoting the)	GN Docket No. 14-28
Open Internet)	

**COMMENTS OF
THE COMPETITIVE ENTERPRISE INSTITUTE**

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EXECUTIVE SUMMARY

On behalf of the Competitive Enterprise Institute (“CEI”), we respectfully submit these comments to the Federal Communications Commission regarding its notice of proposed rulemaking in the matter of protecting and promoting the open Internet. CEI is a nonprofit, nonpartisan public interest organization that focuses on regulatory policy from a pro-market perspective. In Part I, we reprint an [article that was recently published](#) by Wayne Crews on Forbes.com. In Part II, we link to a fifteen-part series, *Before Net Neutrality Ends the World*, also by Wayne Crews.

I. THE STINKER THAT IS NET NEUTRALITY

Seemingly everything that could possibly be said about net neutrality has been said by proponents and opponents alike over the past decade. Yet, today is the deadline to file on yet another Federal Communications Commission (FCC) [proposed rule](#).

NPR put it like this in [an article](#) supporting [the Internet Association’s](#) call for “[enforceable rules](#)”:

At issue is how to maintain equal access to the Internet for all consumers, without priority for certain content providers who can afford to pay more to send their content (like Netflix movies) to users at faster speeds.

That [association](#) is composed of Google, Facebook, Amazon, Netflix and numerous others.

The pushing of this policy is short-sighted corporate rent seeking and harmful to future generations and iterations of what the Internet will become. And today’s corporate neutrality advocates will increasingly sit in the regulatory crosshairs of tomorrow as content and infrastructure increasingly overlap, and payback is sought.

I remember filing comments to FCC in [2008](#) and again in [2010](#). Recently I dissolved myself in Pandora and wrote a [15-part series](#) called “Before Net Neutrality Eats the World.”

I maintain that we instead should *seek the separation of state and telecommunications*, which I sum up as follows with respect to neutrality:

Open networks can and should co-exist with those blocked and managed and fiddled with in every way imaginable. If FCC cannot defend that scenario, and is inherently unable to articulate why those advocating compulsory “dumb pipes” are the genuine enemies of openness, access to information and free speech, it is unsuited for a leading role in communications policy.

I’m glad to see that Congress is attempting to strip FCC authority to regulate the Internet this week, but of course that’ll go nowhere in the Senate.

[Judge Laurence Silberman](#) colorfully dissented from the January appeals court decision that opened the way for this new FCC broadband regulatory grab.

So much for the terms [in section 706 of the Telecommunications Act] “promote competition in the local telecommunications market” or “remove barriers to infrastructure investment.” **Presto, we have a new statute granting the FCC virtually unlimited power to regulate the Internet.** This reading of § 706 ... “would **virtually free the Commission from its congressional tether.**” The limiting principles the majority relies on are illusory.

Back in 2002, my then-Cato Institute colleague Adam Thierer and I referred to phenomena like net neutrality as infrastructure socialism in our book [*What's Yours Is Mine*](#), since others are so reluctant to name what things are.

One simply doesn't create a universal regulatory superstructure to deal with potential rifle shot access or pricing problems that are themselves rooted in FCC's decades old monopoly regulatory legacy, the former granting of exclusive franchises, the residue of the government's own abolition of competition.

This is an old, old story. Once upon a time, we debated “neutrality” on the Windows desktop, on the electric power grid, even on Google search results. I opposed them all.

But thanks to Search Neutrality regulation, all search results now appear first.

OK, kidding, but net neutrality advocates [need to answer questions regarding the obliteration of property rights in network assets](#), which is as damaging a policy as search neutrality would be.

Our very system of free enterprise seems too young for there to be appreciation of infrastructure liberalization and the vital importance of market pricing of the flows on that infrastructure. As “[Splinternets](#)” and tiered pricing and “discrimination” (so-called) increase, the “background hum” of the Internet rises for everyone and access proliferates.

The federal government's appreciation of infrastructure is abysmal. The administration can't even OK a gas pipeline, when there should be dozens. It thinks the solution to California's water crisis is some combination of magic, desalination and strict environmental mandates rather than [pricing and liberalization](#).

Collective farming is no fit for modern world, nor is the pinched vision of net neutrality. The Internet should not be the C&O Canal or creaky National Road of the 21st Century. Neutrality might be appropriate to the Flintstones in Bedrock, but not us.

Neutrality also has an even more distressing side than the corporate-welfare-for-billionaires aspect, which is to enable left wing supervision and control of content. Early versions of attempted influence over content included the “public spaces” effort, a [PBS for the Internet](#).

We've seen iterations of it in FCC's "Future of Media" campaign, which I filed [testimony](#) on also. A recent FCC trial balloon sought to ensure that newsrooms were reporting the way the government thought they should.

Former FCC commissioner Robert McDowell [noted](#) neutrality's broader designs in quoting one proponent's claim that only "the FCC is equipped to deal with issues like regionalism, like localism, like diversity." McDowell explained that "These words were likely not selected randomly: They have legal significance at the FCC in regulating."

Critics of neutrality mean well but they are wrong to call the public utility model "obsolete," it was a stinker from the beginning.

Telecommunications and electricity were both competitive in their beginnings, and competition was banned. It was a struggle to overcome that in recent decades, to create what we have now.

Government regulation of infrastructure delays innovation. We might have had the Internet we have now decades ago were it not for FCC.

The policy prescription is separation of state and communications, not Bedrock.

II. BEFORE NET NEUTRALITY EATS THE WORLD: A SERIES

[Part 1: Net Neutrality vs. Infrastructure Wealth](#)

[Part 2: An Alternative Case for Agency Neutrality](#)

[Part 3: The FCC's Disdain for Markets](#)

[Part 4: FCC Order Creates Political Vulnerability for All Market Participants](#)

[Part 5: The Fallacies Motivating Net Neutrality](#)

[Part 6: Does "Market Failure" Demand Neutrality Regulation?](#)

[Part 7: Mandatory Dumb Pipes? But Why Sacrifice Genius?](#)

[Part 8: The Essential Elements of Non-Destructive Rulemaking](#)

[Part 9: How to Expand Consumer Choice and Access to Content](#)

[Part 10: Who's Discriminating Online?](#)

[Part 11: The Inappropriateness of Compulsory Transparency](#)

[Part 12: Why Net Neutrality Threatens Homeland Security and Cybersecurity](#)

[Part 13: What FCC Should Do Now](#)

[Part 14: What Should Congress Do?](#)

[Part 15: Can We Please End This. Please.](#)