

REMARKS OF FCC COMMISSIONER MICHAEL J. COPPS (RET'D)
“NETWORK NEUTRALITY & BEYOND: THE LONG ROAD AHEAD”
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Thank you for your kind welcome, and thank you to both the Public Interest Advocacy Centre for its invitation to be here this evening and to the University of Ottawa’s Centre for Law, Technology and Society for providing this very fine venue. It is great to be back in Ottawa, and a special honor to be delivering the inaugural Howard Pawley Memorial Lecture. I hope my remarks will be worthy of this distinguished gentleman and his life of public service.

Several years ago, while still a member of the Federal Communications Commission, I came to Ottawa under considerably different circumstances. I was here to encourage an open internet and my strong belief that network neutrality was the *sine qua non* of an open internet. I was here to encourage a more robust approach to the issue in your country. History takes strange and not always wondrous turns, however, and here I am back in Ottawa as Canada moves smartly ahead while the current majority at our FCC is on the brink of wiping out all the net neutrality progress its predecessor FCC made just a couple of years ago. Maybe the past isn’t always prologue and the arc of history can move downward as well as upward.

For full disclosure, I will give you my conclusion first and then tell you how I got to it. My conclusion is that the future of successful self-government hangs importantly on this issue. If we cannot get net neutrality right, we can forget about the transformative democratic potential of the net. Network neutrality is the necessary, but not the sufficient, foundation of an open internet. And anything less than a truly open internet would be a tragic denial of the awesome potential of digital technology to transform our lives.

OK—back to the beginning. When I was appointed to the FCC in 2001, I thought I had landed the coolest job in Washington. I would be working to bring the wonders of modern communications to every corner of the land, working with mind-expanding technology innovators and meeting with edge-of-the-envelope entrepreneurs, as well as Americans around the country and from all walks of life, about what was needed to get us where we needed to go. After a week or so on the job, I learned that wasn’t going to be the bulk of my job. Immediately legions of media and telecom CEOs, lawyers, and lobbyists descended upon my office trying to convince me of the “wonders” of more and more industry consolidation. They talked about economies of scale and efficiencies of production that would, they claimed, wipe away the chaos of competition and the confusion of diversified ownership. They were talking to a Commission majority only too anxious to do their bidding—a Commission far too beholden to the special interests and one wedded to a discredited ideology of unconstrained free markets and the beauties of self-regulating monopolies and/or oligopolies. So as soon as the FCC approved the merger proposed by those first CEOs who walked through my doorway, along came the next company’s top brass, arguing that because we had approved the first merger, we had to approve this new merger too, just to keep things “fair.”

The consolidation bazaar went on, usually over my objections and, to be fair, under the leadership of both parties, with a few exceptions, those exceptions being a bit more frequent under Democratic than Republican Administrations. But not frequent enough!

With the Trump Administration's arrival and the appointment of a new FCC Chairman fervently in love with free market ideology and closely aligned throughout his career with big telecom and media interests, the prospect is for more—many more—mergers and acquisitions. Instead of putting the public interest first, a duty imposed on the Commission by Congress in the controlling Communications Act of 1996, where the term “public interest” is mentioned more than 110 times, special interests are in the saddle, riding roughshod over the common good. So today we see a proposed Sinclair-Tribune broadcast deal on the cusp of being approved. It is a merger that will give Sinclair access to over 72% of U.S. households, end-running the current statutory limit of 39%. The Commission is already changing its rules in order to permit the proposal to pass, and apparently it is willing to ignore the Congressionally-mandated cap. Chairman Ajit Pai is busily seeking a way around this limitation. We can go into it in more detail later if you like, but Sinclair has a long history of stretching, bending and evading FCC rules as it goes about building its empire.

This merger is just plain awful for the public interest—or, as the Canadian coinage would have it, the “national identity”—not only because it would raise prices on consumers, but because it would significantly erode whatever is left of our democratic discourse. Sinclair comes replete with an ideology and without a reputation for balanced news and information. It actually writes editorial comments in its suburban Baltimore headquarters and then demands that its stations around the country read them on-air. Sinclair's acquisition of Tribune would hammer another nail into the coffin of independent journalism in communities around the country. In its place we would have Sinclair's Trumpist take on current affairs. So much for accountability journalism.

While I was deploring the damaging results of traditional media consolidation in radio, television, and cable when I was appointed to the Commission, it struck me that the next-generation's media—the internet—was in danger, too. Back in the early 2000s, not many citizens were worried about the net traveling down that same road of consolidation, commercialization, and content control. Most people thought the internet was too dynamic for that to happen. Control was at the edges, with consumers and innovators, not at the center. Somehow the rules of market development and centralized gate-keeping didn't apply in this brave new world of digital technology; it was exempt from history itself.

Then along came mergers that belied this exuberance. One of them in particular should have brought the FCC to its senses. I am talking about the 2011 Comcast-NBCU deal which combined a giant of internet distribution with a giant of content. This combination made it oh so clear that the internet was as open and vulnerable to consolidation as were the radio, TV, and cable companies of the previous generation. If the control of both distribution and content does not represent monopoly, I don't know what would. The historian in me thought we had decided that issue in the United States a century ago, back in the Progressive Era of Teddy Roosevelt and Woodrow Wilson that saw the tide of anti-monopoly translated into laws and regulations. The great jurist Louis Brandeis said it best: “We can have democracy in this country, or we can have great wealth concentrated in the hands of a few, but we cannot have both.”

My colleagues at the FCC at that time, during, I should add, a Democratic Administration, all voted to approve the Comcast-NBCU marriage. I was the sole dissenter. I am as proud of that vote as any that I cast during my 11 years there.

Yet today the bazaar remains open—open as never before—and most experts predict an unprecedented level of mergers and acquisitions in the months and years ahead. As an aside, AT&T appears to be on the verge of acquiring Time Warner’s entertainment conglomerate, yet another troubling combination of content and carriage. The FCC will apparently absent itself from considering this deal because Chairman Pai claims it doesn’t fall within the Commission’s jurisdiction. So much for those 110 mentions of the public interest in the Communications Act!

The control of content and distribution on the broadband internet confers unprecedented gate-keeping power on big operators. Without public interest oversight, they have little to fear. So, if the current FCC eliminates the network neutrality rules approved by the FCC under then-Chairman Tom Wheeler’s guidance in 2015, there will be precious few constraints on Comcast, Verizon, and AT&T, the major Internet Service Providers in my country. What’s at stake?—a consumer’s freedom to access the content of her choice, to run the applications she chooses, to attach the devices she wants, to organize in causes she believes in, and to be protected from consignment to the slow lane so the monopolists can sell fast lanes to their affiliates and friends who can afford to pay more. In that kind of world, we just won’t see as many start-ups or new apps from innovators, or creative new content from independent programmers. Consumer sovereignty will be an oxymoron; and the open internet’s potential as a tool for renewed democracy will be consigned to the what-might-have-beens of history. That’s a lot to lose! Tom Wheeler’s rules should have settled the matter.

The FCC’s assault on the internet began in 2002, when the Commission, under the chairmanship of Michael Powell, decided to call broadband an “information service” rather than a “telecommunications service.” In effect, he and his majority were claiming that broadband wasn’t really telecommunications at all. Believe me, I am not making this up! I voted against this 2002 action. Initially applied to cable modems, thereafter the “information services” definition was expanded to include the rest of telecommunications beyond cable. The distinction is in one way technical and in many ways arcane. Not so in reality, however. Long story short, telecommunications and advanced telecommunications like broadband clearly fall under a section of our Telecommunications Act, Title II, which provides the FCC with authority to regulate them in the public interest. Information services are elsewhere in the Act in a different and much more amorphous section of the law. It was all very shocking to me, but now it’s the big FCC issue again. It’s an issue in spite of the fact that three times now, our Federal District Court of Appeals has said it is OK to regulate broadband under Title II, but that the FCC cannot regulate it as an “information service.” What’s not clear about that?

But now Chairman Pai is intent on eliminating the Wheeler Commission rules and taking the FCC out of the regulatory picture. But public opposition to his plan for eliminating the rules is growing. Record-breaking numbers of messages, more than 20 million of them, more than in any previous proceeding, have flooded into the Commission, many copied to Congress, and polls show upwards of 70% of Americans in favor of keeping the Wheeler Commission rules. On this

issue, as on so many others, opinions inside the fabled Washington Beltway bear little resemblance to what most citizens are thinking. Special interests and discredited ideology trump what citizens clearly want their communications ecosystem to look like. You know, net neutrality is such a no-brainer. I don't believe it would even be an issue without the big money interests and the power they wield in our nation's capital. But they have that power, so the future of net neutrality in the United States is under dire threat, from our FCC and possibly Congress, too.

What does it mean for Canada? Well, we know for sure that what happens in one of our two countries often affects what happens in the other. Certainly if the U.S. backtracks to a Neanderthal, non-regulated net neutrality regime, it won't be helpful to Canada's recent embrace of a powerful legal framework. On the other hand, as other nations increasingly see the go-it-alone policies of the Trump Administration unfold, they increasingly understand that their way doesn't have to be Trump's way, and that perhaps other options are better. The CRTC and your new government agree, as far as I can see. You have looked closely at the matter, you understand the need, and you have set an encouraging policy direction. Keep at it. Nothing in life or politics is necessarily forever, so you in Canada need to be vigilant, committed, and involved in order to keep the forces of net neutrality darkness at bay. And keep in touch with those in our country who applaud what Canada has done on net neutrality. I know, for example, that PIAC has done this, and one great example is its work with the Benton Foundation in the United States. Its current head, Adrienne Furniss, is the daughter of Charles Benton, the late founder of that excellent organization and a champion of the public interest whose memory brings to mind the public interest dedication of your own Howard Pawley.

As an aside, we owe the term "network neutrality," and much of the thinking that has supported our campaign for internet freedom, to a great Canadian-American, my friend Tim Wu. Canada and many other nations, like Brazil in our own hemisphere, are embracing it, and leaders around the world increasingly understand that there cannot be an open internet without it. The European Union is moving toward this, too. It is an issue that should have been settled long ago. I say this because there are so many other, and in many ways more profound, challenges with which the internet confronts us. While the FCC in my country plays ping-pong with net neutrality, these other challenges go unaddressed. They are too important to go unaddressed.

In their important book, *People Get Ready: The Fight Against a Jobless Economy and a Citizenless Democracy*, Robert W. McChesney and John Nichols bring us face-to-face with the centrality of the internet to each and every human being on this planet. Other scholars, and I believe many citizens, too, are awakening to these challenges. But we are already late—very late.

As already inferred, consolidation is one of these huge challenges. Those few who have the power to control where we can go on the net, to decide whose sites will survive and whose will not, who can charge what they will for access to a public good, who can derail innovators and entrepreneurs who do not practice corporate-think, have power that no company or special interest should have. Not in your country and not in mine. A consolidated media and telecom world is totally and completely out-of-synch with any successful system of democratic self-government.

Then there is the commercialization of the net. Too often, fake news supplants genuine news; infotainment replaces deep-dive journalism; shouted opinion displaces facts; and We, the People, become nothing more than products to be sold to advertisers instead of participating citizens in a viable democracy.

Right now we lack a model to support real online journalism. Yes, there are sites that have learned to survive, but we have come nowhere close to replacing online what has been lost in traditional news media. It is estimated that in the U.S., we have lost somewhere between one-third and one-half of our newsroom employees. One question we could ask ourselves is this: what is the responsibility of the big internet companies themselves—think Facebook and Google—to support journalism while they are making billions of dollars running ads next to news that others provide? We must find a way out of this void, because an uninformed electorate is bound to make worse decisions than one that is truly informed. I don't think I need to say much more about this given what's happening in the United States.

There are copyright issues in an environment that has permitted too few to control the cultural heritage of nations. Granting copyright holders and their proxies and progeny up to 175 years before their works can become public is as blatant as bank robbery, only more-lasting. Allowing huge business interests to lock us out of our rightful heritage ought to be unthinkable.

There are huge privacy issues to talk about. When somebody can send you, individually, a political ad that nobody else receives, without disclosing who is paying for that ad, a transparent system of government is threatened to its core. When an illegitimate source can flood us with dangerous misinformation, our judgment is imperiled. When companies can hide behind algorithms and conceal their operations from public interest oversight, who is in charge? When almost every aspect of your personal life can be breached, is anything really “personal” anymore?

Another question: what is the role of artificial intelligence on the internet in our future? We have often disproved the Luddite theory that new technologies can cost jobs and lead to economic and political turmoil. But are we really sure that won't happen in this dawning era when AI seems poised to take over much of the daily work society needs to do? How do we deal with a future where the internet may do much of the work you and I do now? Think about it and ask yourself what this could mean for your job, your profession, your and your children's future. McChesney and Nichols warn what can happen when a society is unable to “embark upon the necessary discussion about a digital revolution that may be every bit as disruptive as the industrial revolution.”

No one, obviously, has answers to these questions. We don't even know all the questions that need to be asked. But I am here to say we need to get about the job of considering them. And the way to do it, in both the United States and Canada, is through an inclusive, national conversation. An FCC so wrapped up in Internet 101 issues will not be the instigator of this kind of dialogue. A Congress that can't decide an issue after 50 or 60 votes on the healthcare issue is likewise incapable of enough vision to enable a discussion demanding some sense of vision on the future of the internet. That leaves it up to us—communities, citizens, public interest groups,

innovators, and independent media. The vision and ideas we need will come from the bottom up, not from the top-down. It's the We, the People, that I mentioned earlier.

One more observation on the media. Downsized and diminished as it is, it still retains the obligation to inform people, in both our nations. Its silence can only translate into more of its own diminishment, at its expense as well as ours. My country's Founding Fathers understood the importance of keeping the people informed. Theirs was a bold new experiment in government with no assured outcome. That's why they built postal roads and subsidized the printing and circulation of newspapers. I think they would be horrified to learn that over 225 years later, so many of our current leaders have walked away from this democratic imperative.

We *should* be in a golden age of media. We might have gotten to such a golden age had we not allowed the consolidators to kill independent media, not encouraged Wall Street expectations to smother Main Street needs, not permitted commercialization to supersede real news and information, and not let our U.S. government default on its public interest responsibilities. I believe more and more people in your country and mine, regardless of party persuasions, are becoming concerned about this. You and I in both our great nations must harness this concern and turn it into policy. No one is going to do this for us. We can have that golden age, we need that golden age, and we will get there not separately, but together. It will be a tough climb, but a climb worth making. Let's put on our mountain-climbing boots and get on with it.

Thank you very much.