

**Wrong, Unsupported, and Irrelevant:
A Reply to Winseck and Pooley’s
“A Curious Tale of Economics and Common Carriage
(Net Neutrality) at the FCC”**

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As a nonpartisan coalition of tech companies, founders, funders, and nonprofits determined to help make the new economy a reality, CALinnovates welcomes a robust debate on the issues of today and of the future. Our organization engages in matters of public policy debate if and when certain criteria are met. In particular, issues must support pro-investment policies, foster an environment of regulatory certainty, drive the implementation of 21st century infrastructure, promote consumer choice, or champion pro-competition policies. Our “Third Way” approach to policy making works for some, and frustrates others who want us to be binary.

A year or so ago, CALinnovates was pleased to work with two well-known academic economists associated with esteemed universities steeped in federal communications policies and procedures: Dr. Gerald R. Faulhaber, professor emeritus of business economics and public policy at the Wharton School of the University of Pennsylvania and Penn Law School, and Dr. Hal J. Singer, senior fellow, George Washington School of Public Policy; adjunct professor, Georgetown’s McDonough School of Business; and principal, Economists Incorporated.

The professors published a paper, supported by CALinnovates, that noted the FCC had eschewed rigorous cost-benefit analysis on an ongoing basis throughout its regulatory proceedings—“A Curious Absence of Economic Analysis at the Federal Communications Commission: An Agency in Search of a Mission.”¹ This paper wasn’t based on a leap of faith; a former FCC chief economist called the commission an “economics-free zone,” and while he was chagrined that his quip gained so much attention, he clarified to say he felt a “fair amount” of the economics used to justify the Open Internet Order “was wrong, unsupported, or irrelevant” (Brennan, 2016, p. 2).

Despite the issue’s vast appeal to CALinnovates, economic analysis applied to regulatory proceedings isn’t front-page, above-the-fold news that graces the Sunday edition of *The New York Times*. As such, the paper went generally unnoticed by the press despite being entered into two different FCC dockets and passing peer review for publication in the *International Journal of Communications* (IJoC).

One year later, from CALinnovates’ perspective, the paper was validated by the FCC’s action to create an Office of Economics and Data. But it also struck a chord with the two college professors from

¹ See <http://ijoc.org/index.php/ijoc/article/view/6102/1967>

Muhlenberg College (PA) and Carleton University (Canada) who took umbrage with the paper's findings. That would be normal in the course of academic discourse. What was unusual was the professors' efforts to disparage the organization that sponsored it.

CALinnovates works on telecommunications issues, but if you read professors Dwayne Winseck and Jefferson Pooley's ad hominem-fueled attack (labeled a "rebuttal" to Faulhaber, Singer, and Urschel's paper in the IJoC), that is all CALinnovates cares about. In fact, CALinnovates vigorously engages in advocacy efforts on a wide variety of technology-related public policy issues at the local, state, federal, and international levels, from Internet governance, health care, education, and the environment to the gig economy, the future of work, and cybersecurity. Check out our work on music copyright issues, for example, of which we are extremely proud and clearly successful.² Apparently, CALinnovates' strong advocacy work on FCC economic policy resonates with a variety of different stakeholders across North America, known and unknown. In the case of the known, or at least semi-veiled, in Winseck and Pooley, a disagreement on net neutrality stances seems to be fueling their angst.

As mentioned, CALinnovates has long advocated for a Third Way approach to solving this decade-long battle royale. From the beginning, CALinnovates has supported the principles of net neutrality. We believe net neutrality forms the foundation of free expression, competition, investment, and economic prosperity online. But we have serious concerns about the foundation on which net neutrality currently teeters as well as the ongoing uncertainty of the regulation based on the whims of who is the FCC chairman at the time.

On the principles, CALinnovates doesn't support applying a rigid 1934 law as the basis for 21st century Internet regulations. Moreover, we are concerned that a changing of the guard at the FCC and the White House will leave us all trapped inside a monotonous game of ping pong. That's bad for consumers, innovators, and businesses alike.

Rigid thinking, such as that exhibited by the rebuttal authors, fails to grasp that by digging in one's heels and adopting a "my way or the highway" approach to this intractable issue, there is but one solution—no net neutrality at all. But guess what? If professors from American and Canada haven't yet figured out that the Trump administration intends to sweep Title II into the dustbin of telecommunications history, they're doing the public a great disservice. If net neutrality is as important to the professors as it is to CALinnovates, then it is logical to believe Winseck and Pooley and CALinnovates all desire the same end game. That is what CALinnovates hopes for by advocating for a legislative solution that would lock the policy into a bipartisan law that would withstand the test of time.

Perhaps we'll never know what motivated Winseck and Pooley to form such an odd-couple team to attempt to topple, or at least sideline, a California-based technology advocacy coalition from the high-stakes net neutrality debate through personal and professional attacks, but one thing remains clear:

² See, e.g., <http://www.calinnovates.org/calinnovates-letter-doj-supports-innovators-future-music-streaming/>

CALinnovates will continue to deliver bona fide results, bringing its “irreverent,” “trademark brio” to “every corner of the Web” (Winseck & Pooley, 2017, pp. 2705, 2707) on behalf of its members and the greater technology community, as the nation continues its digital transformation. Our research and work stands up because we back it with data, instead of personal attacks—something perhaps Winseck and Pooley should learn to mimic.

References

- Brennan, T. (2016, June 26). Perspectives of FSF scholars. Is the Open Internet Order an “economics-free zone”? *The Free State Foundation*, 11(22), 1–4. Retrieved from http://www.freestatefoundation.org/images/Is_the_Open_Internet_Order_an_Economics_Free_Zone_062816.pdf
- Winseck, D., & Pooley, J. D. (2017) A curious tale of economics and common carriage (net neutrality) at the FCC: A reply to Faulhaber, Singer, and Urschel. *International Journal of Communication*, 10, 2702-2733.