

THOMAS HAZLETT, *THE FALLACY OF NET NEUTRALITY* (2011).

Encounter Broadside, 2011

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Reviewed by Andrew Thompson

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The Fallacy of Net Neutrality

“The FCC mistakes the benefits of market processes for a planned industrial structure, imposing new rules to ‘protect’ what evolved without it.”¹

Thomas Hazlett, a professor of law and economics, in his book, *The Fallacy of Net Neutrality*, argues that the FCC net neutrality (NN) regulations created risks to technological innovation and economic growth.² Hazlett instead argued that competitive forces drove internet firms to create diverse data networks which naturally upgraded in scope, speed, and quality, a benefit for consumers in general.³ Hazlett goes on to argue that NN rules restrict how companies may price and package computer network services.⁴

Author Thomas Hazlett earned his Ph.D. in Economics from UCLA and currently holds the H.H. Macaulay Endowed Chair in Economics at Clemson University. Hazlett conducts research in the law and economic fields, specializing in the Information economy. In the past, Hazlett was the Chief Economist at the Federal Communications Commission. Hazlett has authored literature pieces published in law reviews, such as *The Law and Economics of Network*

¹ See Thomas W. Hazlett, *The Fallacy of Net Neutrality*, 2, (Encounter Broadside, 2011) (concluding that a truly open internet allows consumers and investors to choose among many models and discover efficiencies).

² See *Id.* at 3 (comparing the internet to a fragile ecosystem and tough regulations pose a threat to technological innovation and economic growth).

³ See *Id.* at 3 (advising the role market forces play in improving the internet).

⁴ See *Id.* at 4 (finding the rules prohibit price bundling and bargains because they discriminate).

Neutrality, which was co-authored with Joshua D. Wright, and published in the Indiana Law Review. Most recently, Hazlett authored *The Political Spectrum: The Tumultuous Liberation of Wireless Technology, from Herbert Hoover to the Smartphone*, which was published in May 2017.

The Fallacy of Net Neutrality criticizes the FCC's NN regulations, claiming the NN regulations miss the efficiency of price regulation while regulating the internet.⁵ Hazlett argues that the most important factor related to NN is the impact on investment decisions by network providers.⁶ The author is of the belief that natural market forces support innovation, investment in infrastructure, and that the interplay of competitive forces will benefit the general public more than NN regulation. Hazlett uses examples such as America Online, the Apple iPhone, and Japan's NTT DoCoMo as evidence to prove that natural market forces, and anti-competition regulation will better suffice for regulating the internet than NN. *The Fallacy of Net Neutrality* is composed of four parts: Part I The New Network Neutrality Rules; Part II Competition Destroys The Internet. *NOT*; Part III Evidence-Based Public Policy; and Part IV The Anti-Trust Alternative To "Network Neutrality". Part III is further broken down into sub-sections: *A. Methodology*; *B. "Walled Garden" of the Internet; America Online; Apple iPhone; NTT DoCoMo*; and *C. Broadband Regulation Slows Network Development: The Evidence*. Part I discusses the NN regulations, how the regulations treat the Internet, and what the new NN regulations accomplish. The author finds that the NN regulations generally mandate that Internet Service Providers not block access to legal websites or discriminate the way traffic flows on the

⁵ See *Id.* at 10 (finding that NN rules are developed via an engineering theory of Internet structure but are then slapped on economic activity).

⁶ See Hazlett *supra* note 1 at 13 (claiming that if infrastructure growth slows, the impact on internet services providers will be supplying inferior choices to consumers).

internet.⁷ In Part II, Hazlett looks at Metro PCS, a mobile network that competes with larger carriers by offering discount prices and short-term contracts, and how Metro PCS offered free, unlimited YouTube videos.⁸ The author found that under the \$40 per month plan, which was offered inexpensively via a 2G network, consumers benefitted from this plan and how NN regulations unfairly find this practice in violation of regulations, it will deter the open internet instead of preserving it.⁹ Part III looks into how the NN regulations regulate prices, which may stifle innovation and investment of Internet Services Providers.¹⁰ Lastly, in Part IV, Hazlett recommends that anti-trust law is superior as a framework for keeping the internet open.¹¹

Hazlett's main argument is that the FCC regulations do more to hinder the open internet than would anti-trust laws.¹² The author seems to have valid arguments, citing research that disproved the FCC's idea that there is no evidence that open internet obligations have discouraged investment.¹³ Hazlett strongly believes that internet innovations are advanced by entrepreneurs, seeded by venture capitalists, and then brought to the mass-market by equity investors in capital markets.¹⁴ Hazlett's approach is to be critical of the FCC NN regulations by focusing on how the FCC did not rely on empirical evidence, but instead observations, to conclude why internet services have improved over the years.¹⁵ One of the FCC's arguments for imposing NN regulations is by finding that great innovation has been produced at the network's

⁷ See *Id.* at 5 (describing that consumers make all the choices on a platform that treats all internet services providers alike, granting the consumers power and protection).

⁸ See *Id.* at 6 (stating that with its \$40 per month plan, Metro PCS allowed consumers unlimited access to YouTube).

⁹ See *Id.* at 13 (holding that by firms expanding output of alliances with other companies will lower market prices and benefit consumers).

¹⁰ See *Id.* at 15 (constraining pricing and packaging decisions of Internet Service Providers will be harmful to consumers).

¹¹ See Hazlett *supra* note 1 at 53 (claiming that those who wish to profit from the internet do not harm the internet).

¹² See *Id.* at 40 (questioning whether the FCC NN regulations enhance consumer welfare).

¹³ See *Id.* at 19 (claiming the FCC ignored such evidence that disproved their theories).

¹⁴ See *Id.* at 20 (finding that business models continuously change but innovation emerges from the interplay of competitive forces).

¹⁵ See *Id.* at 18 (finding the FCC jumps to conclusions, but that their argument for NN regulations is counter-productive).

edge and that imposing NN protects successful services and content providers from blocking or discriminating against consumers.¹⁶ However, Hazlett points out that this confuses the argument being made, because the innovation of edge markets has increased due to supported investment in network infrastructure and that the FCC regulations discourage investment.¹⁷ The book seems to be written for higher level students, academics, and professionals of the in the broadband-services industry. Throughout the book, Hazlett uses language and discusses ideas that novices may not be in tune with without a prior understanding of NN. Hazlett develops the book orderly through the use of examples to back up his ideas. First, Hazlett looks at America Online, which was the first internet service to be delivered to the mass market.¹⁸ By 2002, AOL had 34 million paid subscribers and was condemned as a “walled garden” that stifled consumer choice, application innovation, and internet development.¹⁹ But Hazlett is of the opinion that AOL became so dominant not because of the “walled garden” it had created, but from competition among other internet service providers such as CompuServe, Prodigy, and @Home.²⁰ Next, Hazlett turned to the mobile networking industry, specifically the Apple iPhone.²¹ Hazlett argues that the mobile industry utilizes vertical integration, with Apple embedding the Mac operating systems on iPhones and limited phones to application downloads from the iTunes App store, but

¹⁶ See Hazlett *supra* note 1 at 18 (concluding that mandated pricing controls enhance edge innovation and overcome disincentives of investors to invest in network facilities).

¹⁷ See *Id.* at 18-19 (determining that it is evident the FCC ignored evidence that their regulatory scheme would discourage investment).

¹⁸ See *Id.* at 24 (asserting that prior to AOL, the internet demand was lukewarm).

¹⁹ See *Id.* at 24-25 (referred to as the rationale behind the FCC’s NN regulations).

²⁰ See *Id.* at 26 (declaring unregulated competitive forces created growth and innovation in integrated internet service providers).

²¹ See Hazlett *supra* note 1 at 26 (discussing that although the mobile marketplace was only launched three decades ago, it is the premier industry in the communications sector).

that this is beneficial to consumers because firms need to compete to discover preferred packages and pricing menus to sell their product.²²

Overall, Hazlett provides his audience with an alternative view to NN, one that recently has been at the forefront of the FCC beginning to rollback NN regulations.²³

²² See *Id.* at 31-32 (finding when suppliers compete, firms such as Google found a way to license their operating system to Samsung, HTC, and Motorola, which gives consumers options).

²³ See Alina Selyukh, *FCC Votes To Begin Rollback of Net Neutrality Regulations*, NATIONAL PUBLIC RADIO, archived at <https://perma.cc/W435-75KP> (2017) (arguing the current FCC NN regulations slowed the telecom industry's investment in building innovative products).