net neutrality issue

Analyzing the Network Neutrality Debate
Through Awareness of Agenda Denial

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Public policymaking is a set of processes. One is *agenda-setting*, in which initiators frame issues to seek their placement on the policy agenda. Another is *agenda denial*, which consists of tactics used by opponents to prevent issue initiators from attaining success at any stage in the set of policymaking processes.

The current network neutrality debate is a clear example of agenda conflict, whereby proponents seek to get the issue of network neutrality on the agenda and opponents seek its denial. Opponents' framing of network neutrality represents strategies of agenda denial. Cobb and Ross (1997) identify four levels of strategic choice of agenda denial along a cost continuum from low- to high-cost strategies. This paper identifies opponents' arguments against network neutrality in terms of the strategies of agenda denial described by Cobb and Ross, and shows that opponents' strategies are consistent with the results of the case studies reviewed by Cobb and Ross.

This paper asserts that awareness of strategies of agenda denial assists evaluation of opponents' arguments and provides a better understanding of the political dynamic of the overall network neutrality debate. In particular, such awareness can facilitate the construction of counterarguments, and yet, at the same time, reveal the difficulties that proponents face in exposing the analytical flaws embedded in many of the opponents' strategies. Awareness of agenda denial can also enable policymakers, if so inclined, to better distinguish meritorious claims, whether by proponents or opponents, from rhetoric. It can also be used to encourage policymakers to reconsider their use of strategies of symbolic placation.

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Introduction

Public policymaking can be considered a set of processes that include the setting of the agenda, specification of alternative policy choices, an authoritative choice among those specified alternatives, and the implementation of the decision (Kingdon 1995, pp. 2-3).   A successful policy outcome requires success in all these processes. With regard to the first process, the agenda "is the list of subjects or problems to which governmental officials . . . are paying some serious attention at any given time" (Kingdon 1995, p. 3).

"*Agenda-setting*, the politics of selecting issues for active consideration, can be examined from a variety of perspectives" (Cobb & Ross 1997, p.3).   Much of the agenda-setting literature emphasizes how individuals and groups, or initiators, try to gain access to decision makers through issue expansion, that is, by framing issues to appeal to a larger audience. Cobb and Ross (1997, p. xi) focus on *agenda denial*, that is, "the political process by which issues that one would expect to get meaningful consideration from the political institutions in a society fail to get taken seriously." Agenda denial concerns tactics used by issue opponents to keep issue initiators from attaining success at any stage in the set of policymaking processes.

The current network neutrality debate is a clear example of agenda conflict, whereby proponents seek to get the issue of network neutrality on the agenda and opponents seek its denial. The lack of a consensus as to the definition of network neutrality is symptomatic of the ongoing battle to frame the debate.

Opponents' framing of the network neutrality issue represents strategies of agenda denial described by Cobb and Ross (1997). This paper asserts that awareness of the strategies of agenda denial assists evaluation of opponents' arguments and provides a better understanding of the political dynamic of the overall network neutrality debate.   In this way, network neutrality proponents may more effectively construct counterarguments and policymakers may better distinguish meritorious claims from rhetoric.

The Framework of Strategies of Agenda Denial

Although resource differentials between issue proponents and opponents may be an important factor affecting agenda success or failure, in many circumstances this explanation is insufficient.   This is because agenda conflicts "are also about competing interpretations of political problems and the alternative worldviews that underlie them" (Cobb & Ross 1997, p. 4). For this reason, Cobb and Ross emphasize the importance of symbolic and cultural strategies used by issue opponents to define issues and their proponents in ways that make active consideration of issues less likely. In particular, Cobb and Ross identify four levels of strategic choice along a cost continuum.[1]

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[1] The continuum of strategies is discussed in chapter 2 of Cobb and Ross (1997). A table outlining these strategies is conveniently provided in Table 2.1 on p. 42.

Low-cost strategies stress the non-recognition of the initiator position. The key element is non-confrontation, consisting of varying forms of denial. Such strategies include refusal to recognize that a problem exists ("ignorancing") or outright denial that a problem exists. A variant of denial also includes anti-patterning which defines the problem as an isolated incident. Another low-cost strategy is to refuse to recognize the existence of groups advocating the issue.

When non-confrontation is insufficient for agenda denial, some *medium-cost strategies* are of the *attack-posture* which attack either the issue or the initiating group. One of the key elements of these strategies is allocation of blame. For an initiating group of low legitimacy, opponents seek to discredit the group. Tactics include linkage with unpopular groups, questioning the ethics or behavior of leaders, blaming the group for the problem, or using deception (e.g., releasing false information). For an initiating group of high legitimacy, opponents seek to discredit the issue itself. Examples include stating that the issue is not of public concern, such as advocating reliance on the marketplace. Others include disputing the facts of the case, raising fears of the general public, or even claiming victim status (role reversal). There are also a myriad of ways in which opponents focus on the problem definition by stressing issue characteristics that buttress their view, such as: claiming a socially significant impact that is negative; claiming a negative spillover; claiming high complexity so that people cannot understand the issue; or claiming that current policy is adequate. Attack strategy also includes the use of deception, such as lying, spreading false rumors, planting false stories, or distorting one's position with a scientific façade.

An alternative set of *medium-cost strategies* consists of *symbolic placation*. Such strategies seek to symbolically placate the initiating group by admitting the existence of the problem but blocking any consideration of the initiating group's proposed solution. In this way, opponents set aside vocabulary of adversarial conflict and attempt to address the initiating group's grievance through visible but not very significant action. These strategies are more commonly used by public officials. Tactics include creating a committee or commission to study the problem, postponement, and superficial actions that make no difference. Other tactics include showcasing or tokenism, where opponents focus on one small part of the problem to show commitment to deal with it, or co-opting of initiating leader or group symbols.

Finally, *high-cost strategies* consist of threats or violence. These strategies are usually more costly to initiators than to opponents, at least in the short run. Tactics include electoral threats or withholding of support, economic threats, legal threats or actions, and even physical threats or actions.

In their research, Cobb and Ross's working assumption is that an opponent seeks the desired result at the lowest possible cost but will progressively turn to higher-cost strategies, or terminate its opposition, in face of the lack of success. Cobb and Ross analyze strategies of agenda denial in seven case studies. [2] The results provide insights as to how agenda denial strategies are in fact used.

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[2] The case studies include agenda conflicts before the Securities and Exchange Commission, the Food and Drug Administration, Congress, and local government in Texas. An overview of the results is provided in chapter 10 (Cobb & Ross, 1997).

First, they find that medium-cost strategies are the most commonly used. Affected groups primarily use medium-cost strategies of attack, against the legitimacy of the initiating groups or the issue itself. For initiating groups of low legitimacy, attacks were directed against initiators that link them to negative images. For initiating groups of high legitimacy, one of the most common issue attacks was the opponents' claim that the problem identified by the initiators was not a public problem but one that the private sector should solve. Other common attack strategies were those that associate the current policy with positive outcomes and the proposed new policy with negative ones that raise threats and fears, emphasizing costs and (un)fairness. Additional issue attack strategies include stressing procedural flaws (e.g., lack of jurisdiction), providing only partial information or misinformation, and disputing the information provided by the initiators. Medium-cost strategies of symbolic placation were also used but primarily by government opponents. The most prominent were creating a commission to study the problem and showcasing (giving the appearance that the problem is being addressed).

Second, low-cost strategies were used in three cases, the most frequent of which was to deny that the problem exists. However, even in the case in which the opponents' resources greatly overwhelmed those of the initiators, as discussed in chapter 8, opponents were eventually forced to use medium-cost strategies.

Third, the high-cost strategies were the least used of any category. They appeared in only one case involving the introduction of RU 486, where opponents threatened economic boycotts against the pill's European producers and threatened the use of violence against these companies as well as clinics and doctors participating in clinical trials. For a variety of reasons, Cobb and Ross assert that high-cost strategies are not often used. For example, such strategies are often counterproductive and create the potential for backlash against an opponent.

Strategies of Agenda Denial in the Network Neutrality Debate

Opponents' arguments against network neutrality can be identified in terms of the strategies of agenda denial described by Cobb and Ross. In so doing, this section shows that the strategies used by network neutrality opponents are consistent with the results of the case studies reviewed by Cobb and Ross. Although this section does not assert that it has exhaustively identified all opponents' arguments against network neutrality, it does attempt to provide arguments representative of those in the debate with which the author is familiar.   Identification of further arguments and their associated strategies of agenda denial to augment this analysis are, of course, encouraged.

Before describing specific strategies of agenda denial used in the network neutrality debate, it is helpful to first review proponents' characterizations of the debate. It is to such characterizations that the opponents' strategies are intended to respond. Below is an illustrative list of proponents' arguments.

- Prevention of discrimination is at the heart of the network neutrality debate (Comstock 2006). *[3]

- Network neutrality is about who will control innovation and competition on the Internet (Citron 2006).*

- Network neutrality is the preservation of limited elements of openness and non-discrimination that have long been part of our telecommunications law; i.e., preservation of the original architectural design upon which the Internet evolved (Cerf 2006).*

- The Internet depends on basic common carrier rules to ensure the availability of the transmission capacity over which Internet applications reach businesses and consumers (Comstock 2006).*

- A common rationale behind the various proposals of network neutrality is to design rules that explicitly forbid network operators and ISPs to use their power over the transmission technology to negatively affect competition in complementary markets for applications, content and portals (Barbara van Schewick 2005).

- Net neutrality is the principle that permits any consumer to visit any web site, attach any device, and access any content over the Internet. It also ensures that any application, content, or service provider can reach any consumer without blocking, degradation, or impairment (Windhausen 2006).

- Congress should enact FCC Chairman Powell's Internet Freedoms and prohibit access-tiering (Lessig 2006).*

In response, opponents have offered numerous arguments against network neutrality. Such arguments can be identified in terms of the type of agenda denial strategies they represent. A list of prominent opponents' arguments and the associated type of strategy of agenda denial are provided in Table 1.

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[3] Throughout this article, the symbol "*" refers to the testimony of the referenced individual in *Net Neutrality: Hearing Before the S. Comm. On Commerce, Sci. & Transp.*, 109th Cong. (2006), provided in the list of references.

Table 1. Agenda Denial Strategies of Network Neutrality Opponents

Opponent's Argument	Strategy of Agenda Denial
There is no problem that requires legislation (McCormick, 2006;* McSlarrow 2006*).	Low-cost Strategy • Denial that a problem exists
Proponents' concerns are largely hypothetical; Madison River Communications' blocking of Vonage was an isolated event (Cattuso 2006).	Low-cost Strategy • Anti-patterning: Concerns are isolated incidents
Internet upstarts such as Google, MSN, and Vonage want to use the network operators' pipes for free (BusinessWeek Online, 2005, quoting Edward Whitacre, CEO of AT&T, formerly SBC).	Medium-cost Strategy: Attack group legitimacy • Questions ethics, behavior of proponents
Network neutrality is a classic case of political "rent seeking", with unpredictable consequences for both consumers and its chief advocates (Singer 2007).	Medium-cost Strategy: Attack group legitimacy • Questions ethics, behavior of proponents Medium-cost Strategy: Attack issue • Problem definition: Socially significant impact that is negative (harmful economic consequences) • Raise fears of the general public
Net neutrality would prohibit broadband networks from offering different customers different deals; net neutrality would not permit network owners to allocate capacity efficiently, such as through priority servicing. (Cattuso 2006)	Medium-cost Strategy: Attack issue • Problem definition: Socially significant impact that is negative (harmful economic consequences)
Vibrant competition is more than sufficient to ensure consumers are not blocked from access to the legal content, applications and devices of their choice. Rely on competition. (Cattuso 2006; Dixon 2006;* Sidak 2006;* McCormick 2006;* McSlarrow 2006*).	Medium-cost Strategy: Attack issue • States that the issue is not a legitimate public concern: rely on competition

Net neutrality is unnecessary and destructive economic regulation that would derail the evolution of a full access, competitive and innovative Internet for consumers (Sidak 2006)*; strict neutrality rules would put roadblocks in way of raising capital for new investments (Cattuso 2006).	Medium-cost Strategy: Attack issue • Problem definition: Socially significant impact that is negative (harmful economic consequences)
Even if a network owner does abuse its power, existing competition law, with its decades of precedent, is more than sufficient to address the problem (Cattuso 2006); as measured by consumer welfare, net neutrality mandates would do more harm than good in the absence of demonstrated market power abuses by broadband providers (Dixon 2006)*.	Medium-cost Strategy: Attack issue • Problem definition: clear precedent, current policy is adequate
Net neutrality rules would invite endless uncertainty and litigation (Cattuso 2006).	Medium-cost Strategy: Attack issue • Problem definition: use ambiguity to raise fears
Broadband network operators commit not to block, impair, or degrade content, applications, or services (McCormick 2006)*.	Medium-cost Strategy: Symbolic Placation • Invokes a community norm
FCC adopted of a legally unenforceable Policy Statement to ensure that broadband networks are widely deployed, open, affordable, and accessible to all consumers. (2005)	Medium-cost Strategy: Symbolic Placation • Address the issue through visible but not very significant (here, not legally enforceable) action
FCC opens a Notice of Inquiry (NOI), seeking comment on its 2005 Policy Statement (2007).	Medium-cost Strategy: Symbolic Placation • Postponement (an NOI is viewed as a postponement relative to the option of an NPRM)[4]

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[4] *See* Concurring Statements of FCC Commissioners Copps and Adelstein, excerpts of which are provided later in this section.

Consistent with the results of the case studies reviewed by Cobb and Ross, medium-cost strategies are the most commonly used strategies of agenda denial in the network neutrality debate. Only a few are used, and only by affected groups, to attack the legitimacy of the proponents as a group. It is not surprising that such attacks are being sparingly used as the attack by Edward Whitacre published in BusinessWeek Online (2005) – essentially accusing companies, such as Google and Vonage, of being freeriders – has generated tremendous backlash.[5] Furthermore, Whitacre's statements[6] are being used by proponents as evidence to support their claims that the network operators intend to block on-line companies, a fear for which network neutrality rules are sought (Windhausen, 2006).

Most of the medium-cost strategies are used, and by affected groups, to attack the issue of network neutrality itself. As with the case studies, the most common issue attack – as indicated by the number of opponents asserting it – is the opponents' claim that the problem identified by the initiators is not a public problem but one that the private sector should solve. Other common attack strategies are various ways of associating the current policy with positive outcomes and the proposed new policy of network neutrality with negative ones that raise threats and fears, emphasizing harmful economic consequences and ambiguity of unpredictable effects.

Medium-cost strategies of symbolic placation are also being used, but primarily by government opponents. The FCC has thus far offered two acts of symbolic placation. The FCC has adopted a legally unenforceable Policy Statement to ensure that broadband networks are widely deployed, open, affordable, and accessible to all consumers (*Wireline Broadband Access Order* 2005). Through the United States Telecom Association, industry opponents are riding the symbolic coattails of this Policy Statement by committing – albeit in a legally unenforceable manner – to not block, impair, or degrade content, applications, or services. The FCC has also recently opened a Notice of Inquiry (NOI), seeking comment on its 2005 Policy Statement. As a procedural matter, the opening of an NOI rather than a Notice of

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[5] In addition, proponents such as Google, MSN, Yahoo and Vonage are corporations with considerable resources. However, Cobb and Ross' analysis of agenda denial is intended to provide greater explanatory power than merely a comparative assessment of resources available to issue proponents and opponents.

[6] Whitacre gave the following statement in a response to a question published in a BusinessWeek interview (BusinessWeek Online 2005).

> **How concerned are you about Internet upstarts like Google, MSN, Vonage, and others?**
> How do you think they're going to get 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!

Proposed Rulemaking (NPRM) is considered a dilatory step, essentially constituting a form of postponement. This view is expressed in the statements of the two Democratic Party commissioners. In his Concurring Statement, Commissioner Copps asserts that, with issuance of an NOI:

> We proceed too leisurely here. Rather than strike out and unflinchingly proclaim this agency's commitment to an open and non-discriminatory Internet, we satisfy ourselves with a tiny, timid step. Let's be frank. Putting out a Notice of Inquiry is not the way to sail boldly forth. History shows that Notices of Inquiry like this have a way of disappearing into the regulatory dustbin, putting off decisions that need to be made now. These are no longer new and novel questions. We adopted our Four Principles of Internet Freedom [in the 2005 Policy Statement] nearly two years ago. And these issues come back to us in just about every major merger that comes before us—and there have been a lot of those!
>
> We should be building on what we have already approved and going with at least a Notice of Proposed Rulemaking with a commitment to move to an Order within a time certain . . . .

Commissioner Adelstein conveys a similar sentiment in his Concurring Statement.

> Of particular concern is the decision to cast this item as a Notice of Inquiry . . . [T]he time is ripe for an NPRM. Fairly or not, NOIs are often perceived as the Commission's way [of] delaying and downgrading an issue. But we cannot stick our head in the sand on this. The future of the Internet is simply too important. We will need to keep this issue at the fore and move quickly if we are serious about addressing Internet Freedom. For these reasons, I can only concur in this item.

Also consistent with the results of the case studies reviewed by Cobbs and Ross, a few lost-cost strategies are being used. They include the denial that a problem exists as well as anti-patterning (claiming that the concerns are isolated incidents). However, these strategies alone have been unable to contain the issue of network neutrality. Thus, the opponents are making extensive use of medium-cost strategies previously described.

Finally, thus far high-cost strategies are not being used. Although, should the adoption of network neutrality rules become more likely, threats of litigation by opponents should be expected. Escalation to such higher-cost strategies would be consistent with the historically frequent legal challenges by industry opponents to changes in telecommunications policies by Congress as well as the FCC.

Counterarguments to Strategies of Agenda Denial in the Network Neutrality Debate

Various counterarguments are being posed in response to opponents' strategies of agenda denial. Although it is beyond the scope of this paper to conduct a comprehensive survey of proponents' counterarguments, those provided in Windhausen's report (2006) are illustrative.

Some counterarguments are directed at opponents' low-cost strategies.   For example, John Windhausen (2006), the former president of CompTel, authored a report used by Public Knowledge that describes numerous specific instances of blocking or discrimination by network operators, both in the U.S. and internationally. These examples are provided to counter opponents' claims that no problem exists or that any problems are isolated incidents.

In the same report, Windhausen also responds to numerous opponents' medium cost-strategies of issue attack. He responds to opponents' assertions that network operators already have an incentive to keep their networks open so that a law or regulation is unnecessary, that network neutrality will prevent network operators from managing their networks, that a network neutrality rule will create burdensome regulation that discourages deployment of broadband networks, and that network neutrality will prevent network operators from creating different tiers of service that will allow them to earn a return on their broadband investment.

In so doing, Windhausen refers to historical regulatory experience. For example, he asserts that (Windhausen 2006, p. 37):

An openness rule need not conflict with legitimate network management functions. Network management is perfectly compatible with Net Neutrality:

- Telephone companies have for decades capably managed their networks for telephone (and, more recently, dial-up Internet) services despite operating under common carriage rules that are much more demanding than a simple openness requirement.   The telephone companies simply built these common carriage requirements into their business plans and designed their networks accordingly.

- An openness rule does not mandate that the network operator give access to illegal or harmful traffic. Users generating spam, viruses, or excessive congestion can be blocked or shut down just as the telephone companies have always been allowed to block prank telephone calls….Critical network management capabilities can be built into any rule to enforce openness.

Windhausen also refers to research by academics. For example, he refers to research by Dr.-Ing. Barbara van Schewick (2005) to respond to opponents' argument that network operators already have an incentive to keep their networks open so that making a law or regulation is unnecessary (Windhausen 2006, p. 35).   Van Schewick's paper is a theoretical analysis of incentives of network operators to discriminate in upstream markets in order to maximize profits. She finds that there are a variety of circumstances under which a network operator may have the ability and incentive to discriminate against independent applications in spite of competition in the market for Internet services. He also refers to research by Mark Lemley and Larry Lessig who assert that another reason for networks to discriminate is

that it is standard business practice to sign contracts and sell service to lock in large customers (Windhausen 2006, p. 35).

As previously discussed, network neutrality proponents have countered Whitacre's medium-cost strategy of attacking the legitimacy of a group of proponents by asserting Whitacre's statements as evidence of the intention to discriminate.   Furthermore, both FCC Commissioner Copps and Adelstein highlight concerns with the FCC's strategy of symbolic placation by opening an NOI rather than an NPRM.

Further Analysis of the Network Neutrality Debate Through Awareness of Strategies of Agenda Denial

In a previous article, Cherry (2006) asserts that the discourse of the network neutrality debate is misleading in several ways.   In particular, Cherry asserts that an "essentiality of access" analysis – the historical alignment of differing access problems to associated legal principles set forth in earlier work (Cherry 2003) – can be used to disentangle the myriad claims embedded in the network neutrality debate.

> [Cherry (2006)] shows how the lineage of "essentiality of access" legal principles have been misrepresented in the discourse of *network neutrality.*   More specifically, the discourse of *network neutrality* is mischaracterizing the law of common carriage – mirroring the general discourse of deregulatory policies in telecommunications – in a manner that conflates the legal bases for addressing access problems for end user customers and competitors.   As a result, there is an unsubstantiated over-reliance on antitrust principles to address provider-to-customer access problems.   Furthermore, the discourse suffers from a lack of analytical integrity in failing to evaluate policy recommendations for network neutrality in terms of policy sustainability (p. 484, italics in original).

With reference to opponents' strategies of agenda denial, Cherry (2006) asserts that opponents' medium-cost strategies of issue attack contain serious analytical flaws.   Perhaps most fundamental, opponents misidentify the original regulatory regime of common carriage as statutory rather than the common law.   This misidentification masks the historical reality and significance of nondiscrimination principles of (common law) common carriage that underlie the development of essential communications and transportation infrastructures, including the physical networks upon which the Internet evolved. Furthermore, this misidentification mirrors the analytical flaws uniquely found in the general discourse of deregulatory policies for telecommunications as compared to transportation networks (Cherry 2005).   As a result, the ability for network neutrality proponents to correct opponents' misidentification of the relevant foundational legal regime for telecommunications is particularly challenging.

Yet, understanding opponents' mischaracterization of the law of common carriage exposes analytical flaws of opponents' arguments underlying their strategies of issue attack.   In this regard,

opponents conflate the legal bases for access by end-users and competitors in complementary markets, and assert an unsubstantiated over-reliance on antitrust principles to address provider-to-customer access problems. When combined with the recognition that policy recommendations related to network neutrality need to be evaluated in terms of policy sustainability, awareness of these analytical flaws provides support for rebutting opponents' arguments that network neutrality would not permit network operators to allocate capacity efficiently, that nondiscrimination will be adequately addressed through reliance on competition, that network neutrality would block the raising of capital by network operators for new investments, and that existing antitrust law is sufficient to address proponents' concerns.

Consideration of policy sustainability also reveals other critical long-term problems triggered by the FCC's elimination of common carriage obligations for broadband network operators in both its *Cable Modem Declaratory Ruling* (2002) and *Wireline Broadband Access Order* (2005). For example, Cherry (2006) asserts that the sustainability of certain free speech objectives may be in jeopardy.[7] As a result, deeper inquiry into constitutional issues, such as the constitutional rights of natural persons as opposed to corporations, need to penetrate the network neutrality debate.

> The failure to apply common carriage obligations to broadband service poses the question of whether free speech objectives, such as viewpoint diversity, are sustainable. If antitrust principles are insufficient to substitute for the functions that common carriage and public utility obligations have served in providing access, then free speech rights of individuals will be sacrificed to serve economic interests of corporate owners of broadband facilities.

> For this reason, Cherry [2003] stresses that broadband access issues require deeper inquiry as to the constitutional rights of natural persons as opposed to corporations (Cherry 2006, p. 507) (footnote omitted).

Furthermore, Cherry (2006, p. 508, emphasis omitted) asserts that "[t]he effects of deregulatory broadband policies on the financial sustainability and ubiquitous deployment of the postal system has not been raised in the network neutrality debate, but needs to be included as part of the general evaluation of policy sustainability problems." These problems arise because increasing substitution of electronic

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[7] As the inaugural issue of the *International Journal of Communication* is being finalized, the Federal Trade Commission's (FTC) Internet Access Task Force issued a staff report, "Broadband Connectivity Competition Policy" (June 2007), summarizing the Task Force's findings with regard to network neutrality regulation. Time constraints do not permit an analysis of this Report in this paper. However, it is important to note that the Report acknowledges assertions, including those of Cherry (2006) discussed here, that free speech objectives may be at risk in the absence of network neutrality regulation,. *See* Report, at p. 60 n. 268. Nonetheless, given the FTC's jurisdiction is to enforce federal antitrust and consumer protection laws, the Report states that it does "not attempt to balance consumer welfare (… in the economic sense) and free expression. Instead the Report focuses on the consumer welfare implications of enacting some form of net neutrality regulation" (p. 4, footnote omitted).

communication over the Internet for first class mail threatens the financial viability of the United States Postal Service (USPS), and recommendations for the USPS to become more Internet-dependent increase its reliance on a non-common carriage broadband infrastructure.

These longer-term negative effects related to the failure to address network neutrality concerns – pertaining to free speech objectives, the respective constitutional rights of natural persons and corporations, and the financial viability and ubiquity of the USPS – also present counterarguments to opponents' issue attacks. Significantly, they challenge opponents' assertions that imposition of network neutrality, rather than its absence, will produce unpredictable or negative consequences. Instead, the burden within the debate may need to shift to opponents to justify their claims that failure to impose network neutrality will likely *not* create greater negative consequences. Similarly, they also challenge the adequacy and wisdom of the FCC's strategies of symbolic placation.

Concluding Remarks

The network neutrality debate is a clear example of agenda conflict, whereby proponents seek to get the issue of network neutrality on the political agenda and opponents seek its denial. Awareness of the strategies of agenda denial provides a means for understanding the political dynamic of the overall network neutrality debate. In particular, such awareness can inform evaluation of opponents' arguments and facilitate construction of counterarguments. In so doing, it can also enable policymakers, if so inclined, to better distinguish meritorious claims – by proponents or opponents – from rhetoric. It can also be used to encourage policymakers' reconsideration of strategies of symbolic placation.

Consistent with the results of case studies reviewed by Cobb and Ross (1997), thus far opponents' arguments are dominated by medium-cost strategies that attack the legitimacy of the network neutrality issue. The most common strategy is the argument that the problem identified by proponents is not a public problem but one that the private sector (competition) should solve. These strategies are supplemented by medium-cost strategies that attack the legitimacy of a group of proponents or offer symbolic placation, as well as by low-cost strategies that deny that a problem exists or claim that the concerns are isolated incidents.

Proponents have offered various counterarguments. Some utilize data to rebut opponents' low-cost strategies. Others refer to historical regulatory experience or academic research to counter arguments underlying opponents' medium-cost strategies.

The significance of the analysis in Cherry (2006) is augmented by the current paper's framing of the network neutrality debate in terms of agenda denial. This framing emphasizes the difficulties proponents face in exposing the analytical flaws embedded in opponents' medium-cost strategies of issue attack while highlighting the importance of doing so. Furthermore, it illustrates why the network neutrality debate needs to be broadened to consider other critical long-term problems triggered by the *absence* of network neutrality rules. For this reason, opponents of network neutrality should bear – and policymakers should seek to impose – a greater burden of justifying claims that failure to network neutrality will likely *not* create greater negative consequences.

It is hoped that this analysis of the network neutrality debate will encourage others to consider their analyses of network neutrality from the perspective of agenda denial. In this way, evaluation of proponents' and opponents' arguments or construction of new arguments may follow new lines of inquiry or benefit from improved focus.

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