

That Time Telco Lobbyists Sent Me All Their Talking Points About Trying To Shift The Blame To Internet Companies

from the *oops* dept

It's not every day that big telco lobbyists email me their internal documents about how they're going to try to shift all the negative press about themselves and try to flip it onto internet companies. But it did happen yesterday. In what was clearly a mistake a top exec at the telco's largest lobbying organization, USTelecom, emailed a 12 page document of talking points yesterday, asking the recipients to "review the document for accuracy and other thoughts" in order to help USTelecom President Jonathan Spalter for when he goes on C-SPAN next week. I found it a bit odd that I would be on the distribution list for such an email -- especially when 13 of the 15 recipients of the email were US Telecom employees. And me. The one other non-US Telecom person works at a firm that provides "subject matter experts" and "in-depth legal analysis."

The talking points are not all that surprising, if you're at all familiar with the telco industry, so there aren't really any huge smoking guns here, but they do cover a huge range of issues, from net neutrality, competition, privacy, cybersecurity, and more. Amusingly, on the net neutrality front, there's a section on "Verizon Throttling Fire Responders." Tragically, that appears to be one of the few sections in the document that they hadn't yet filled in yet - - perhaps because the industry still doesn't have a good response to Verizon **throttling fire fighters** in California as they were battling wildfires.

One thing that's clear, however, is that the big telcos **really** want to play up the recent attacks on social media companies ("edge providers," as they like to say), and throughout the document there are statements about taking advantage of the current political attacks on those companies. For example, in the "Privacy" section, the talking points for Salter appear to be for him to try to pivot to

making it about Facebook and Google as quickly as possible, saying they are the bigger risks:

Privacy

MESSAGE: Here is the modern reality of consumer protection: the greatest risks are posed by companies on the internet's edge. Privacy is a shared responsibility -- and the burdens and obligations can not rest solely with ISPs and must be applied equally across the internet ecosystem.

- *The increased scrutiny of Facebook and other edge providers offer a significant opportunity for Congress to implement clear and consistent rules that apply equally to all companies in the internet ecosystem. And when they begin the process of establishing best practices for privacy, they will need to look no further than broadband providers.*
- *For years, our members have embraced strong consumer privacy policies, because they understand the success of any digital business depends on earning their customers' trust.*
- *Consumers and companies alike deserve one set of protections and rules of the road. This is the best way to ensure consumer protection while also providing the necessary flexibility for a competitive and innovative marketplace.*

Let's just say that's laughable. Google and Facebook may be no great shakes on privacy, but the telcos are **far, far worse**. First of all, they have much greater visibility into everything that you do, because it **all** goes through their pipes. You can avoid Google and Facebook if you want. Not so much your ISP. Second, these

companies have terrible, terrible histories when it comes to privacy issues, much worse than Google and Facebook.

Telcos have historically sucked up **all your clickstream data** and sold it to databrokers, while pretending it was no big deal. The telcos have regularly used incredibly sneaky and intrusive spying practices (way beyond anything Google and Facebook have done) including **deep packet inspection** and **undeletable supercookies**. And who can forget when the telcos wanted to **sell you back your privacy**, and raise your subscriber fees \$30/month if you didn't want them to snoop on all your internet activity? And who can forget that it was just weeks ago that Verizon launched a VPN **without any privacy policy** at all?

And let's not forget their super cozy relationship with the NSA. After the Snowden leaks five years ago, the internet companies all were quick to highlight what they were doing to prevent the NSA from snooping on you. They revealed long-hidden lawsuits fighting back against the NSA. They pushed for greater transparency and legal reform, they published transparency reports... all while the **telcos went silent** (and when they finally -- years later -- were pressured into releasing transparency reports, those reports left out key details on surveillance support). That's because it was shown that they were **extra cozy** with the NSA, even giving them full access to their equipment. Section 702 "upstream" collection involves the NSA directly tapping into telco backbone connections and sniffing through everything. We only found about all of this because an AT&T technician literally **walked into EFF's offices** one day and spilled the details (later confirmed with Snowden documents). And rather than admit to helping the government violate the 4th Amendment, the telcos ran to Congress to **get guaranteed retroactive immunity** for supplying warrantless wiretaps.

So, sure, the privacy failings of Google and Facebook are worth pointing out and discussing. But they're child's play compared to the telcos. For the telcos to pretend that **they** are the ones who

"embraced strong consumer privacy policies" is laughable. This isn't a talking point. It's pure propaganda.

There's a brief section later in the document, suggesting that they play up Trump now fighting with Google, and suggest that's a good point to drop in the "same rules for edge" providers meaningless argument:

Trump/Google Drama

People have spent years clamoring for ISP net neutrality. We need same rules of the road for edge.

I'm sure that sounds good to whoever came up with it way back when, but as people have explained for the better part of a decade, it makes no sense at all. Access providers and edge providers provide very different types of services, and "the same rules" don't make any sense at all. The telcos and the folks at US Telecom *know this*. They only bring this up because **they think the viewing audience is stupid** and will nod along with "same rules for everyone." But, in reality, they know that what they are advocating for is basically handicapping internet companies.

On net neutrality there's the usual nonsense, falsely claiming that they "strongly support net neutrality" even as they immediately cheer on the FCC order that literally wiped out net neutrality:

MESSAGE: Our nation's broadband providers strongly support net neutrality—without 1930's-era regulations—and with consumer protections that are consistently applied across the entire internet ecosystem.

This is blatantly untrue. The telcos fought multiple earlier attempts to enforce net neutrality that did not use "1930's era regulations." What happened was that Verizon's lawsuit over earlier rules (which did not rely on those regulations) resulted in the court

effectively saying "to have net neutrality, you have to use those rules." So, we would have had net neutrality without those 1930s-era regulations if US Telecom and its members hadn't sued over the older rules.

Not surprisingly, they also want to push the **silly argument** that just because they didn't immediately make the internet turn to shit the day after the FCC repealed the rules, it proves that we didn't need the rules (I will again remind you right here -- for no particular reason -- that the section on how to respond to Verizon violating those old net neutrality rules in throttling the fire department's wireless connection... is left blank in the document).

Since the FCC's Restoring Internet Freedom Order, the internet as we know it is still thriving, growing, open and continues to spin on its axis. The predictions that ISPs would engage in anti-competitive throttling, blocking, and prioritization, have not happened.

Again, the telcos aren't going to rush out bad practices all at once - especially not while the repeal of the rules is still in court. But, again, it should be noted that during a previous fight over these rules, in court, Verizon's lawyer flat out admitted that without these rules, the company had every intention of throttling traffic.

And, of course, the telcos strategy when the questioning gets tough on net neutrality is to try to do this judo move and attack the big internet companies instead:

It's ironic—but not unexpected—that the companies which have become the internet's most powerful gatekeepers are fighting for an open internet that exempts them from the very rules for which they are advocating.

First off, this is not ironic. Second, it's not accurate. Google and Facebook are hardly the most powerful "gatekeepers." Nor are they

the ones pushing for open internet rules. That's been left mainly to smaller internet companies who can't get into bed with the telcos like Google and Facebook are able to do. Third, the whole idea that the rules are somehow different for them makes no sense. These rules are about providing access to the internet. There is no "net neutrality" for edge providers that makes any sense.

Not surprisingly, the telcos are **freaked the fuck out** about state regulators stepping in to reimpose net neutrality rules. And, on this, I don't blame them. Well, no, that's not correct, I **totally** blame them. I blame them for pushing the FCC to drop the federal rules opening up this vacuum into which the states are now stepping. I agree that having the states take this on is a bad idea that will lead to a mess of different rules across the country, but, hey maybe the telco lobbyists **should have thought of that** before asking the FCC to kill off these wildly popular rules that had a very light touch. But, still, they've got their new talking points and they're sticking to 'em:

- *Broadband is and will continue to be regulated at the federal level*
- *Precedent at the FCC, and in the courts, have recognized the dangers of individual state mandates and have embraced state preemption to avoid piecemeal approaches to internet regulation.*
- *[Pending passage] The regulations signed into law by Governor Jerry Brown put short-term political gain ahead of long-term economic development and growth of California's internet economy.*

Well, no. Broadband has long been regulated at the state and local level thanks to public utility commissions, local franchise laws and more. And, hey, **you had** broadband regulated at the federal level under the 2015 open internet order, which included state pre-emption **but you gave that up** when Ajit Pai repealed it and gave

up the state pre-emption bit when he took the FCC out of the broadband regulation game.

Ooops. Maybe you jokers should have thought of that before.

As for the California bill -- what?!? Long term economic development in California especially depends on a free and open internet -- the kind where Verizon, AT&T and your other members are unable to kill new startups with excessive tolls and fees, not to mention limited services.

There are then some talking points about just how painfully expensive it is for the telcos to serve rural residents -- which no one denies. But, it's pretty funny to watch these massive telcos, with billions in profits and a long history of squandering government subsidies use these talking points to talk about why they just need more cash from the government:

- *Delivering broadband to sparsely populated rural areas is a costly and challenging endeavor that requires significant upfront investment.*
- *That is why federal support is essential for network providers to meet deployment challenges in high cost areas.*

Oh, but not only do they want cash from the government, they most certainly **DO NOT** want that cash to go to programs that would create competition in the marketplace. Oh no.

- *Federal investment must be used to fill the gaps in truly unserved areas, not create false market competition by allowing electric utilities with established monopolies to extend their market power over this already fragile market. Together, we should be laser-focused on serving the unserved and maximizing the federal support to do it, while avoiding*

duplication and overbuilding, and ensuring efficiencies wherever possible.

Sounds like *somebody* is still quite a bit ticked off about **massive success stories** like Chattanooga, where the local electric utility built an amazing competitive network that not only provided better, cheaper service in that city to under-served residents, but also forced the incumbents to up their own game as well.

It's doubly hilarious that a key talking point in this document is literally "we don't want competition" when much of the other document keeps trying to push the lie that there's robust broadband competition.

They also talk up having states give them money, such as this:

- *In New York, officials just completed a \$500 million broadband auction to deploy high-speed service to 99 percent of its residential structures.*

One would hope that the C-SPAN interviewer would follow up this point with a question about why NY would trust any of these companies when US Telecom member Verizon promised to bring fiber to 100% of New York City in 2008 and then **didn't**. Seems like we should be fairly skeptical of the 99% claim now.

It also is unlikely to surprise anyone that US Telecom is really, really, really against the requirements for very limited **local loop unbundling**, which has helped enable a smidgen of competition in certain areas (I only have the broadband I have today thanks to local loop unbundling). These are the rules that made the big telcos have to allow third party service providers to use their networks at wholesale rates to offer competing services. It's a great way to create competition at the service level, rather than doing it more wastefully at the infrastructure level. The telcos

have done a good job making it more and more impossible for competitive carriers to make use of it, but they really want the rules gone entirely. And they say they're no longer needed due to a completely fictional "tremendous competition in the communications market." Don't laugh. They think they're serious:

- *Today, more than 20 years later, there is tremendous competition in the communications market, but these rules are still on the books.*
- *We have asked the FCC to review whether these rules are still necessary. If the FCC agrees they are, we hope the commission will forbear from these outdated rules like they have with many other no longer relevant regulations.*
- *Ending these rules will allow broadband providers to invest in the future of their networks rather than being tied to the past.*

So, let's be clear. There is barely any real competition in the broadband market, let alone "tremendous" competition. Ending those rules won't magically allow providers to invest in future networks. They will limit competition, meaning there's less reason to invest.

There's some nonsense about how the FTC will be a great protector of consumers from the telcos now that the FCC has taken itself out of the game. Of course, as we've discussed over and over again, the FTC's mandate is much more limited and does not cover most of the aspects of net neutrality that are important. Furthermore, the FTC has neither the resources nor the expertise to really play in the telco market.

There's some more stuff in there, but those are the highlights. Congrats, US Telecom, you get your draft in-progress talking points out there. If you want critiques of your future talking points, feel free to cc: me again.

