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Brookings Intersections Podcast:
Net Neutrality, the FCC, and the Digital Divide

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PITA: Hello, and welcome to Intersections, the podcast where we discuss the angles on policy issues, part of the Brookings Podcast Network. With us today, Nicol Turner-Lee is a fellow with the Center for Technology Innovation, and Evan Swarztrauber, the communications director at TechFreedom. Thank you both for being here today.

TURNER-LEE: Oh, thanks for having us.

SWARZTRAUBER: Thank you for having me.

PITA: I've asked you here to talk about what's next for net neutrality, for the FCC, and the general future of internet access. So, kind of a big and broad topic. We have a new FCC chair. The FCC had, in 2015, established some of their principles for this net neutrality issue, which talks about whether Internet service providers can block or discriminate between different types of internet traffic, whether they can throttle high usage and some other issues involved in there about open internet access. And they reclassified Internet service providers as a telecom industry, the same as, no different, than the telephones. Can you talk a little bit to our listeners about what that means, what some of the controversy was there about whether Title 2 applies to them or not, and just sort of set that scene for them, please? Nicol, would you like to start?

TURNER-LEE: Sure. You know, I think – and thanks again for having us on this conversation here at Brookings. We have a particular interest in this topic at the Center for Technology Innovation, where I reside, so this is actually very timely and very relevant. So here we are again. You know, Adrianna, and Evan knows this, we've had this conversation. In 2010 we had the initial rollout of net neutrality rules that faced

pushback from that particular FCC chairman. You know, we went through the last four years under the Wheeler commission at the FCC sort of regurgitating this conversation and codifying it into rules that were upheld by the court.

And now we're at a stage where those rules will be once again re-evaluated in the chapter of this book, possibly, not for certain, based on where the final decision and rule-making lands up and this will be very interesting because what, as you've insinuated, what we've seen is that Internet service providers under the last version of the rules were reclassified under Title 2. And what that means, as you mentioned, is that the regulations that apply to previous telephone companies actually apply to them as well, which you know in the case of net neutrality has always had this worrying tension between how do you regulate those entities that fall within the purview of the Federal Communications Commission, which are ISPs? And then how do you simultaneously respect an ecosystem that is rapidly changing, where our engagement online doesn't have a start and a stop? I wish it did because I would tell my 14 year old child to turn off his internet. It is part of this evolving way of how we live, learn, and earn in our society.

So with the appointment of the now-installed FCC chairman Ajit Pai, who is being charged with the repeal of those rules, it will be curious to see, you know, what type of regulatory posture we find ourselves in after this long-winded debate on how do we protect and preserve an open Internet, which I think – and Evan, you jump in – I think for the most part people overwhelmingly agree that the internet needs to be a vehicle for people to have entry. Whether you are a big company, or a small company, an individual or an established entity, everybody needs to partake in some benefit that the

Internet provides, which is I think the foundation for these rules. So Evan, I'll stop and kind of let you chime in here too.

SWARZTRAUBER: Yeah. The debate has not been between net neutrality and no net neutrality, right? That's a simplistic view, that's the extremes, you can have fringe arguments that no regulation is ever appropriate, right? You could find some libertarians and conservatives who just say the government shouldn't be involved in net neutrality at all. And then you have folks that want to nationalize the Internet. So we have fringes in all the debates. But really the controversy around title 2 has been the FCC's authority over broadband. There are certain things we can all agree on. I'm sure Nicol and I agree: don't block lawful traffic. You can imagine a worst case scenario where Comcast, which owns NBC, is now blocking Disney content in order to help itself. No one wants to see that happen. If you look at Comcast and Disney's websites I'm sure there are policy statements against that. No one wants to see malicious throttling where Comcast is just slowing down the Disney connection so you get really frustrated and that affects the preferences you have for your television shows. We don't want that either.

The debate has always been about the margins. How much authority does the FCC have as an agency? What is its legal authority? Does it have the authority to reclassify broadband? My organization said no, and we joined the lawsuit. What is allowed in terms of network innovation? Can an edge provider pay an Internet provider to prioritize content, or the other way around? Can a provider pay ESPN a premium to get their content? And there are certain services that I think would benefit from paid participation, like live video sports. How frustrating is it when your video just keeps buffering? Or, anyone who plays online video games is ready to throw their X-Box

controller at the screen because the damn thing won't work consistently. So there are certain services that we would like to maybe see some innovation in. And while the Internet providers hadn't even begun to explore that area, the FCC came down with a hammer and said not at all. So those kinds of things might be able to be policed on a case-by-case basis, but in general the core concepts of net neutrality – of just no blocking, no throttling, free and open Internet, don't discriminate – I think everyone can get behind that. The question is what rules do we have to get there. And I think these rules were too strong, they were too draconian, and the current chairman of the FCC agrees with that.

PITA: I think he did, just recently, lifted the FCC investigation into the zero rating policies.

TURNER-LEE: He did.

PITA: Right. Do you want to explain that a little bit?

SWARZTRAUBER: Right, so here's one of the controversies in net neutrality. You can have all the things I said earlier that everyone agrees on, but then zero rating is already an example of something where there's a lot of disagreement, right?

TURNER-LEE: And explain zero rating, so people who are listening – why don't you say what that is?

SWARZTRAUBER: Opponents like to call it zero rating because it sounds bad. Supporters like to call it free data because that's actually what it is. And a really easy example is T-Mobile. This is one of the four major nationwide carriers. And if you watch any video on T-Mobile with a partner and this is – I mean there so many partners, if you

watch Netflix, HBO anything you could probably think of, maybe, aside from YouTube – this won't count against your data. So let's say you get four gigabytes of high speed data a month and then if you're a T-Mobile subscriber they might kick your speed down once you use up all the four. That four gigabytes will never be touched by video. So you can stream all the Netflix you want, all day, every day on T-Mobile's 4G LTE network, and then still have that four gigabytes left over. Now if you're taking a very strict interpretation of net neutrality, everything on the Internet must be treated exactly the same. All bits created equal, all bits treated equal. This is a problem because you've got T-Mobile favoring video over photos or you're allowing people to use unlimited Netflix but not unlimited Facebook. Now, I would say this is innovation. This is competition. This is one offering. Other carriers might have other offerings. But there are a lot of folks who say no you cannot be favoring the video and it's going to give Netflix an advantage over the obscure video platform that doesn't have a partnership with T-Mobile. So there's a lot of controversy there and the FCC was going to police these things on a case by case basis. That kind of had a cloud of uncertainty over the market. As Commissioner O'Reilly said, people are just too afraid to be innovating here. With the FCC closing its investigation now under Chairman Pai, you're probably going to see more of these offerings and more of different variations of these services.

TURNER-LEE: And I think it's important to sort of highlight why we were in a state – I think Evan has laid it out nicely in terms of net neutrality being sort of this protective umbrella of legal jurisdiction by the FCC to manage potential consumer harms, right? That they hypothetically forecast it could come by having an Internet that was without any type of restraint. And what you saw with the zero rating report from the

previous commission was this assessment, which is actually always supposed to be the case of this case-by-case assessment of each program. In fact, T-Mobile's program was rated to be less harmful to consumers when you looked at how they allowed people to partition free data to get access to video. But all of these questions bring up the larger framing of, how do you ensure that you have a balance of an Internet that allows for the type of innovation freedom, I think what you're talking about, Evan, right?

SWARZTRAUBER: Permission-less innovation, right.

TURNER-LEE: Permission-less innovation, but at the same time also provides a landing space for consumer protection, right? And so I think that's where we're going to probably see the continued tension on these two faces, because in the end free data is good. But you know the other question becomes, is it available across all platforms which I think you know is sort of hinted at in the FCC report. Open internet is great, and these bright line rules of no throttling, no discrimination, etc., transparency – most people agree on. But what does that look like in, you know, how do you, again, make sure that consumers aren't harmed in the end by this permission-less economy that sometimes doesn't adhere to, you know, other rules outside of the Internet? So I think as we move forward it will be curious to see how Chairman Pai handles this convergence and manages this tension so that you continue to see people benefit the way that they have from the Internet as a medium, as a productive medium.

PITA: Speaking about whether the FCC has this authority, about whether a lot of these rules should come from the FCC, or they should come from the FTC the trade commission, and then of course Congress is involved as well because there's the Communications Act of 1934 and the Telecommunications Act in 1996 that are the laws

that backup a lot of this and obviously some of that predates the Internet, either completely or the Internet as we know it – can you explain sort of how all these different entities kind of work on this together?

TURNER-LEE: Can I go in first? I mean, I honestly think that we need to frame it sequentially. I do believe, and I've said this for a long time, that we need to go back and modernize the Communications Act to provide the clarity over jurisdiction. So it's one thing – a lot of the debate has been, we need to reform the agencies and then maybe get to the Act. I think this is an administration that really should be focused on modernizing the Act. Because the Act was rooted in, you know, the old telegraph and old telephone services, and the Internet is far away from that model that we have seen. And because the Act has not outlined and mirrored the new economy you, you know, result in a couple of things. One is regulatory permissions in favor towards companies that are not governed by the Act, so that's the first thing. And you also create these silos without being technology-agnostic to how the digital ecosystem actually works. So I think if it was my opinion and I could wave my magic wand, it would be to start with Telecom Act rewrite and bring that back to the table is first and foremost. When you get into the various agencies, as – we had a forum here at Brookings with FTC commissioners Mignon Clyburn and McSweeney – what they discuss, I think, is an interesting point to bring up as well which is, you know, how do you determine which agency has what jurisdiction? One, based on who they have actual authority over now. So by taking somebody's authority away from the FCC, for example, and giving it to the FTC are you really – is it a zero sum game because they don't have authority over those entities anyway, right, or they have very minimal marginal authority?

The other piece is does the FCC actually understand the ecosystem, the way it's structured, of what they're dealing with. And I think Senator Thune came out not too long ago and said that perhaps instead of calling it this redistribution of authority, we should look at modernization as the tone for this type of reform, because maybe what we're trying to do is to make these agencies much more relevant and updated to how these issues are actually discussed. But I would say start with the Telecom Act first. That would be my opinion as a linear thinker. If you start there, you actually can unfold a lot of conversation that would give us more insight as to how these agencies should actually be modernized versus trying to come in and revamp the agency without having a clear sense of how you want the ecosystem to actually intersect.

SWARZTRAUBER: Yeah, we have an outdated view of our tech space in general, in particular, telecom. And just so listeners are aware, the 1934 Communications Act authorized the FCC. That same law is the source of the legal authority that the past FCC Chairman Tom Wheeler chose for the Internet. Now I'm not saying all old laws are bad and don't apply. The Fourth Amendment should apply to your email protection, and just because it's old doesn't mean it doesn't apply. But of course there are some laws that just you can't teach new tricks. And from '34 to '96, no meaningful update, right? Because we had AT&T monopoly, and when you have a monopoly of course government is going to be involved, but then we broke up that monopoly. And in '96 we're still looking at dial up Internet, the very early stages, but Congress says "No, we got it. We're going forward." And of course there needed to be updates, but here we are in 2017 and there hasn't been.

TURNER-LEE: And there hasn't been an update.

SWARZTRAUBER: And net neutrality has been one of the reasons. It's a thorny issue, this issue of the FCC legal authority has really held things up. And if you talk to people in Congress, they might say revisiting our communications law includes net neutrality, or maybe net neutrality should be solved separately. I don't know all the politics here, but one of the reasons we haven't had an update is because of this partisan issue of net neutrality. And there are other things that need to be fixed that are so much less partisan, that are so obvious. Spectrum – giving up government spectrums so that we can have more spectrum for mobile broadband. But until this very partisan issue is resolved, either as part of an update or not, it's hard to see a way forward. And we might see a situation where the current chairman just decides that net neutrality is just in a holding pattern. We haven't seen Title 2 get struck down, all the news reports about the death of net neutrality – this monster Ajit Pai is going to come in and destroy your internet – hasn't happened yet. And that might be because the FCC wants to give Congress a chance to look at this rather than coming in and undoing something immediately, in the most partisan way, that will piss everyone off.

TURNER-LEE: Well that's an interesting point, right, because you have, you know, how do you solve the net neutrality debate? We don't know. I mean, there's various ways that the chairman could go. You know, one is taking – going back to the court and convincing them that the argument that the agency put before them is no longer sound, and that is going to require a lot of, you know, putting together – you know, preparation and vetting the argument that's going to stand before the district court of appeals and say, “hey,” you know, “we retract.” So we're actually curious if that's going to work.

You know, the other part of it is the FCC can go back and say, “we believe in the entire order but we think we should remand and take – or vacate the Title 2 authority.” That’s another way that the FCC could go, and say we think that that’s not a vital way that we could actually enforce this. For the listeners, there other vehicles like Section 7 or 6 authority within the Communications Act where they could actually still uphold those principles that we’ve outlined.

But I think Evan brings up another point which is, you know Congress can also decide and just create a statutory authority around net neutrality and create it as a separate legislative action, and take it off the table. You know the question then becomes, telecom has traditionally been bipartisan, right, and can we solve this in a bipartisan fashion so we can move on to the other things that are very important to the ecosystem? I’m not sure if we’re at a stage, you know, given the current landscape of how the GOP and the Democrats have been interacting with one another, if they would see this as a viable option. And that’s why I think again, this – I like what you’re saying in terms of this being sort of the pit bull in the room that nobody wants to go near, but they’re going to have to. And you’ve got to decide if the pitbull is going to be friendly to everybody or if its going to be friendly to one side. But the key thing, it has to be resolved in a way to get to the Communications Act.

SWARZTRAUBER: And I’m optimistic for bipartisan reform. I mean, part of the reason is this. During the FCC’s proceeding where Chairman Tom Wheeler, a Democrat, was in agreement with President Obama, a Democrat, and they were moving forward, and they were going to vote three to two in a partisan way and pass the rules with no Republican support, even in that environment Republicans were still trying to

make a deal. And I might even describe that deal as 70% of what Democrats wanted and maybe 30% of what Republicans wanted. It was essentially, give the FCC authority over net neutrality, but you don't get Title 2. You don't get this boundless discretion over broadband to police anything that might be bad, which was in the order – the general conduct standard is what is what they called it. Now, despite Donald Trump winning, Republicans having unified control of government and the FCC, Chairman Upton – or sorry, now Chairman Greg Walden still wants to do a deal. Now it might not be 70/30 but it could be 50/50. And I think he is recognizing the folly of having communications policy switch back and forth between administrations. It is absolutely crazy that you can have Chairman Wheeler, all of his so-called achievements: net neutrality, broadband privacy, just completely undone by an election. That's not how we should do things.

TURNER-LEE: Ok, that's every place. That's happening throughout the whole government.

SWARZTRAUBER: Exactly! But how do we avoid that, right? What lasts longer than a regulation is a law. So how do we get there? And I think that Republicans are totally down with the basics of net neutrality: no blocking, no malicious throttling, no malicious discrimination, transparency. These are not controversial ideas. That issue of the authority is controversial, but I think we can get there because there are Democrats like Senator Bill Nelson, Frank Pallone – another Democrat, House Commerce. They've wanted to work with Republicans, but the problem was the issue got so partisan. The FCC told Congress to stay out of it. President Obama told Congress to stay out of it. Now the politics have changed. And if Democrats don't come to the table, that says something about what the incentives are. Are the incentives to complain and raise

money off of this issue for another four years – it's very lucrative – or is the incentive to get the job done? And then we can move on to the completely common-sense bipartisan telecom issues like spectrum, right? And we won't get there until this very thorny issue is resolved.

TURNER-LEE: No, and I agree and that is the last thing on this as you can see this issue took a lot of oxygen out last year, it's going to take a lot of oxygen out of this radio conversation, it just doesn't stop!

[laughter]

But I think, I think the compromise that we should see, or at least try to see between the two parties, is how will consumer enforcement and protection – if somebody can answer that question, I think you will see a shoe-in when it comes to bipartisan consensus on this issue. You know I think the biggest threat if you were to look at the appeal of civil society to this issue has been protection, right? And so as we move forward I think we're going to see this across every cabinet, every vessel of government perhaps, in this new administration is, where do consumers fit, where does civil society fit? How did they feel that they are assured some value when it comes to, you know, not being harmed along the way?

So I agree with you, I think there's a way because there are very active political leaders that want to step up to the plate. But there has to be a little bit of something given on the table for people who want to do that, which is why I think Chairman Pai is such a good choice for this FCC chairman from his ability to think through these issues, as a previous and current communications lawyer. It will be his test of consensus,

particularly with the FCC, that is now majority ruled, and the FTC, and Congress, and the White House, to be able to make that decision to want to do something differently.

PITA: When we're talking about these modernization issues and walking through legislative action that takes a while, what role does the speed of technological change play in this? You know the Telecom Act was written for the Internet as it existed in '96 because they had no way of envisioning what the Internet would look like now, and is that one of the hang ups about writing laws that might apply 10 years from now, when you don't know what 10 years now is going to look like?

SWARZTRAUBER: Yes. When I was saying that we had an outdated view of communications that's what I was getting at. It's these silos, and if you asked, you know, Chairman Wheeler to describe the communications market he would say "Well you have radio in this bucket and you have newspapers in this bucket and then you have television in this bucket, and then the Internet in this one, and maybe a few other buckets cause we love buckets." When you really think about the Internet of today, that's all blurred. This podcast is similar to radio. Should we regulate it differently than radio? I don't know. Do you have a license? I mean, broadband. You have broadband companies like Verizon buying Yahoo and AOL to try to compete with Google and Facebook in the advertising market. Should Verizon be held to a different standard when it's collecting your data than Google? If they're competitors that sounds kind of silly. The problem is the FCC has titles – Title 1, Title 2, Title 3, Title 4, going to 6, maybe even beyond that – and it views these markets as completely siloed from one another. And that's how we have crazy rules where like a failing newspaper can't be bought by a radio station because we're still looking at the market like it's 1975, and that

would be too many voices owned by the same guy. Just to say that “this is 2017,” insert “It’s the” current year. You know, it’s a cliché but it’s true. And these walls are being torn down and it doesn’t make sense to view the communications market like it’s 100 years ago. It’s modern. Everyone’s competing with everything. This is seamless stuff. The antenna that you buy from Amazon so you could watch NBC for free? That’s competing with the NBC app that you’re watching on your – like, broadband. Everything is competing with each other. So the FCC needs to modernize its view of communications and that needs to come from Congress.

TURNER-LEE: Right. And it needs to be technology agnostic, right? So we don’t come back and say we have to modernize it in five years because the market has changed. So I think you’re right. I think part of the challenge is getting Congress to complete some of those market studies that were on hold for a long time to understand, you know, not only what the state of the marketplace is but what the state of entry into the marketplace is. There are tons of new innovators and creators that can’t get into the marketplace because we don’t know what the barriers to entry are, and that’s part of the responsibility of the FCC, to update us with those metrics so that we understand what those – how to navigate those and to create full opportunity. The proposal that I put on the table is technology agnostic. You know, it should be a key term that sort of floats through this. And we also need to understand these new players that have entered the marketplace that may not look the same as the other companies that have been traditionally playing. And what role do they play? We’re looking at, here at Brookings, this whole conversation of universal service contribution. That’s under reform this year, right, and there is a big conversation about that. How do we begin to bring all these

players into the ecosystem the way that they're working, while at the same time respecting that they have various entry points? It's not just like the telephone or the telegraph anymore.

SWARZTRAUBER: Yeah, and government is going to have to adapt to changing circumstances. We're not saying that there's a perfect solution here, a panacea, but one way to future-proof the FCC is to just say focus on the actual harm that is being committed. I would argue that Title 2 happened because we like hypothetical harms run the show. It was all about what could happen, what will an Internet provider do, what could they do, what might they do? Not what have they done. You know, you can point to maybe two instances of serious net neutrality violations over the twenty-one year period that we call the commercial Internet. That's not a lot. And that certainly doesn't necessarily justify 300 pages of regulation. But how do we future-proof the agency? We say show that consumers have been harmed. That's it, just prove that they've been harmed or prove that the data is sensitive. It's not about who has your data. It's about whether the data is sensitive. It's silly to say Verizon has data and it's crazy different than Google having your data just because Verizon's a broadband provider. What really matters? Are they handling sensitive data in a good way? Is their data security good? Are they not committing fraud? These are the things that people care about. And I think when three million people signed petitions to the FCC to come down with a heavy regulation of the Internet, I'm not sure that's exactly what they wanted. I think they wanted better service, faster speed, more options. And that is the most obvious place for bipartisan agreement in telecom policy. If you remove the awful divisive issue of net neutrality you can get people from my organization, TechFreedom, agreeing with people

from Public Knowledge – and we're often seen as polar opposites – because we all want more deployment and better service and job creation. But there are these partisan things that just get in the way.

TURNER-LEE: Right, and I think that's where the data, too, will help us understand, right, how the marketplace has changed as well.

PITA: All right. So I want to shift the conversation from talking about what's going on to about why this matters for people. The issues of net neutrality are usually explained, when newspapers or TV, they're explaining to people, they explain it for that individual user like “Oh are you able to stream Netflix and Skype with your friend while you're watching the latest you know Luke Cage or Stranger Things episode at the same time? How much usage do you have?” Obviously there's also issues of businesses and schools and what that means for economic growth in different regions, particularly in regions where –they used to be manufacturing hubs, manufacturing is out, so what can they do to bring in new technology? So Pew Research Center had done a lot of work on studying the digital divide and who's on the internet and who is not. They found that 13 percent of Americans do not use the Internet. And that's from a mix of, supposedly, lack of interest, ease of use, and affordability were the three factors. But they found who were affected by that divide are disproportionately comprised of seniors, rural residents, the less educated, and lower-income populations. Can you to start out talking about some of these different populations, what's going on with internet access, and what it means for – why it's important that they be able to get hooked up?

TURNER-LEE: Yeah, you know, this is a – everyone knows this is a near and dear issue to my heart in terms of digital divide. I've been studying this for over 20

years. You know, I think the Pew Research Center really showed us who are the people right now that, regardless of what you do, they're not getting online. And from a research perspective, many of those people could almost go back and fit the characterization of Michael Harrington's *The Other America*. They are poor, they are people of color, they are the disabled, they're rural Americans who are probably trying to get by and by each day with keeping their lights on and do not see how broadband is actually an efficient tool for their daily use. And that's a problem, I mean that is something – there's been millions of dollars that have been put towards the digital divide, closing the digital divide. There have been public-private sector partnerships that have come out of mergers and acquisitions that have provided a national footprint of a low-income broadband cost solution. We're working on, hopefully, a project here Brookings to give a national footprint of what communities have been served as a result of that.

There are issues of language and whether or not we have an Internet that is accommodating to people who are foreign born. There's an issue of accessibility, right, whether the Internet accommodates people who cannot see or hear or experience those modes of communications. And those are issues that fall way beyond, in my opinion, the FCC. Those are life issues that we as a country have to figure out how to address, which is, you know, why, when we look at the digital divide – programs that are focused on universal service, that actually break down the cost-prohibitive nature of having access – I mean, to some of us, \$9.95 or \$13.95 or some of us pay \$180, right, for the bundle services, may not be a lot. We are the digital elite. To folks who do not have that money, who may have a smartphone that has to be turned off – which is why I

was talking about a zero rating or free data – simply because they have to pay their mortgage or their rent over their phone. The rippling effect of that means that my child cannot complete their homework, or I can't apply for benefits, or I can't even call the utility provider to set up a payment plan. And so universal service becomes so much more important, Adrianna, in this ecosystem.

Last year we did have the Lifeline program that was extended from telephone service. Much like what Evan is talking about, as we see an evolving ecosystem, telephone and cord cutting among telephone lines is much more rapid. People want to go mobile. That happened with Lifeline, historically, which was actually authorized under Reagan to provide – I want to just put the record straight, not Obama phones but -- subsidized access and discounts to phones, right, was extended to broadband. And what that meant, as of December 31st, was that Lifeline subscribers could actually use those subsidies and discounts towards broadband provider service. Just last week, several companies were asked to stop providing Lifeline benefits, which is, you know, in my view, somewhat problematic because universal service has to be matched with any type of regulatory incentive for build out. Given that 13 percent of people that are just not getting online, there's a reason for that. And when you break that subsidy you break that lifeline, which is what the program is named after, or that chain for them to actually get access – which we need to revisit under Chairman Pai's leadership and sort of appeal to his senses as a person who's come out of the gate on digital divide to say the public benefit and public interest matters for those communities. So yeah I think that these are real figures that we have to come face-to-face with and we have to realize, as we become more civically engaged community, it's not just about people getting on

Facebook – even though they just reach the 2 billion mark, I believe it was, of subscribers – but it's about people being able to engage in a new information economy that has transferred from print media to something that is beyond our wildest dreams. And when you're cut off from that mode of communication, you know, you're not only cut off from what the president is saying daily on Twitter, but you also cut off from your ability to manage your blood pressure; to, again, have your child do their homework; to your ability to remotely manage your energy resources or your electric bill. You're cut off from your ability to apply for public benefits. You move from being cut off from a society that used to be in line to one that's online.

So I could keep going because I'm an evangelical when it comes to fighting for the digital divide, but that unfortunately has been one of those areas, too, that has had some ultra-partnership come into play when it comes to the types of programs to actually solve it. So I would hope that we would see us do a little better.

SWARZTRAUBER: I've already told the listeners to not believe the headlines that say that this is the death of net neutrality, it's the death of universal service, the Internet's about to go to crap, everything's awful, right? I have my own views on what Donald Trump's election means for America, but when it comes to telecom policy this is not gloom and doom. Digital divide is going to be priority number one for Chairman Pai.

TURNER-LEE: Yeah, we saw that.

SWARZTRAUBER: Before the election he was talking about gigabit opportunity zones. Post-election, we're still talking about gigabit opportunity zones. This is the FCC being proactive, going to cities and saying why is it that there's no private investment

here? Is it that there's too much regulation? Maybe if you were to relax some of these restrictions, the FCC will give you a little bit of a head start and then companies will come in and build. The issue that we've had on what should otherwise be a very bipartisan issue, again, is the FCC's legal authority. The last administration tried to go to states and cities and say the FCC is going to nullify your laws about whether cities can build their own broadband networks. Now, I don't think that cities should be building their own broadband networks to compete with the private sector in the vast majority of cases. There are some instances where the market has failed and you've tried everything you could, you tried building conduits, you tried building fiber, you tried putting out RFP's, requests for proposals, and private companies just wouldn't come in. Maybe we're talking about a Native American reservation or some glacier town in Alaska. If that local government wants to then spend taxpayer dollars to get Internet to people, that's OK. My issue is when that's the go-to solution, when you look at a broadband market and say the only problem here is that the government hasn't built the network. Let's try a couple of other things first. This is a heavily regulated market. This is not just the free-wheeling, capitalist, Ayn-Rand world that you might believe it is. We're dealing with street digs, we're dealing with pole attachment, we're dealing with permits, we're dealing with NIMBY. There are people who don't like the noise of construction and they're willing to say I don't want Verizon FiOS in my building because you guys are going to make noise. We're dealing with a lot of stuff here. It's not a perfect market and we should be trying things like cutting red tape, simplifying the rules, maybe figuring out if cities are gouging the companies. That's something the FCC can do. The FCC can study all these cities across America and figure out which are the cities that are just

gouging the companies and preventing more buildout. We should all do this. But with the muni-broadband thing off the table – which I think it will be under Chairman Pai, the FCC is not going to be going around evangelizing about government-run broadband and how wonderful it is – we can get to these bipartisan things. Dig once. Every time a street is dug, broadband conduits should be put in. It's cheap and it reduces the cost of deployment by so much. I mean it's just as simple as it's cheaper to dig a street once than twice. That's why we call it dig once. And sometimes the government might build some of these shared infrastructure, like dark fiber, in instances where the economics are hard. This is really expensive stuff, people. It cost over a trillion dollars to get to where we are today, and it's going to take more to get us to 5G and even better speeds. But we have to have an all-of-the-above approach. I think the last FCC focused too much on government-run fiber networks. I think this FCC is going to have a more holistic approach, saying, you know, what works in rural America might be different than what works in urban America, and let's try a variety of public private partnerships to get to what we all want to see, which is more speed, more service, more options, better service.

TURNER-LEE: Right. And if I could just say, on that, I think you're on to something there and – I have opinions about municipal broadband, having been somebody who worked on a municipal broadband project 20 years ago when Earthlink was actually going around the country, building community broadband. There are, you know, fiscal challenges, there are challenges with regards to building a consumer base. It's possible, and I agree with you, there are cases where you need municipal broadband because there is just no way that a provider will come there. But I also think,

as we're looking at and I've seen, actually, to your point, a lot of agreement. I mean, Commissioner Clyburn, again, was here last week and talked about getting rid of some of the regulatory barriers to rolling out at the local level. And I think it's also a conversation for local leaders and national leaders – those of us in DC to come together with local leaders at the municipal level to have this conversation. Because like you said, 5G rollout will require this coordination of services at all levels to make sure it actually works. You can't just have federal policy that says X but have local mayors who don't understand the significance of that. So hopefully we'll see more of that.

But I also want to say – and I hope Chairman Pai might be listening to this, or somebody on his staff – you know, you still need to have healthy universal service programs. And we really need programs that address – I believe what Evan is right on point, you know – the buildout or the marketplace buildout requirements necessary to make sure that companies are incentivized to come to those places that they haven't – not necessarily wanted to – but couldn't afford to or didn't bring back an ROI for them, so they just didn't. It's been years! You know, we've known that this has been a challenge in last-mile buildout. But we also have to deal with people. And as we move forward in this new FCC – which again we're all very hopeful with regards to Chairman Pai's ability to actually change the parameters of what's acceptable – that we still need to factor in public interest, and it's very important for rural communities, again, that you may never see a pole, you might see a fall. And if that rural community doesn't have the money, or that rural family or household doesn't have the money to afford that, they need some kind of way to get access. Because at the end of the day you can build it, but it doesn't necessarily mean they're going to be able to come. And in the case of

what we've seen historically, it's not necessarily because they don't want it but that 13 percent of Americans maybe can't afford it, right. And so, again, I would hope to see much more of match policymaking with regard to that, particularly in an agency that gets it and where telecom policy has been bipartisan, and we shouldn't ignore that fact.

SWARZTRAUBER: I think Republicans have some legitimate concerns on the universal service front. I don't think they're opposed to the idea of, you know, taxpayer money being used to help this public good. I think we can all agree that more people online is better. But one thing to note, just because someone doesn't have internet does not mean they can't afford it. We can't always make that assumption. There are some people in this world who might be able to afford Internet, look at the product, and say, "You know what? I'm good!" And we have to be OK with that, we have to respect their choices. Now when they don't know about it because no one's told them – and that's a digital literacy problem or it's a usability thing, I don't know how to use it, and that's fine. We just have to recognize that. I think the way that you look at that Pew study you mentioned – it depends on how you look at it. You can say this means everyone is broke and can't afford Internet, or no one knows what the Internet is and doesn't want it. But if we can get to some of those concerns about fraud and abuse and not having a budget cap, I think Republicans will be on board. And under Chairman Wheeler, then-Commissioner Pai was very close to an agreement with Commissioner Clyburn on expanding Lifeline subsidies for broadband in exchange for capping the program.

TURNER-LEE: Eh. [laughter]

SWARZTRAUBER: His argument was that a multi-billion dollar program should have a cap, it should not be limitless. Now this is – and I see that Nicol disagrees, and

this is a healthy debate that we need to have, but just to remind the listener – universal service was authorized by Reagan. It's still the law. Just because Republicans take power does not mean that all subsidies go away. It is their duty under the law to still do universal service. The question is, how do we get there? And I think there's a lot of room for common ground, and just the fact that two people who don't see eye-to-eye on a lot, Commissioners Clyburn and Pai, they're still on the commission together and maybe they can pick up where they left off with that Lifeline compromise.

TURNER-LEE: Yeah, and I would just put out there, just in the spirit of healthy collaboration and compromise, there are some issues that probably should take up oxygen and others should not, right? And that Lifeline universal service conversation was collaborative up until a certain point – we know that there was a debacle when it came to compromise at the last hour. But I think, you know, the order that was written, you know, was strong enough to actually go back and audit what, you know, the ability of that program to reach an extended audience without having fraud, waste, and abuse. I mean, the challenge of that program – you know I wrote a paper on this one – was not necessarily waste and abuse, it was really the cost of administration and the allocation of expenses in rolling out that program. So again, as we move forward, I think it goes kind of back to what we started this conversation with. There are issues that are taking up oxygen that need to be deflated, right? And then there are issues that we should think about that harmonize the ecosystem in a way that's more productive. And the third bucket are issues that require further discussion so that we can walk away with good policymaking that doesn't exclude big portions of populations that can't benefit or big portions of individuals. So I think if we can get those three buckets, I think we're actually

on to a great FCC – this particular administration, you know. But it's a matter of thinking about, again, matching this buildout with public interest and seeing how we can have an even flow of growth versus, you know, so much of this but less of this that I'm not sure where that will end up.

SWARZTRAUBER: Yeah, we shouldn't be so at odds about what is in the public interest, right? It's a little crazy that there are some people like me who think that customers getting free stuff is good, and then there are others who say that it's bad. And I know it's –

TURNER-LEE: It's a public interest.

SWARZTRAUBER: It's more complicated than that, of course but look, you know, you look at the numbers, and correct me if I'm wrong, Nicol, that African-Americans use social media on their phones at a higher rate than white Americans. So when there is an offering that allows them to potentially use that data for free on their phone, maybe they don't need a home wired connection anymore. This is a substitute. They're saving money. These are good outcomes for consumers. I just don't want to see the FCC clamping down on that over politics, which is what happened with net neutrality. I think we can move past that. But I, of course, believe that the positions I take are in the public interest. Otherwise I wouldn't take them. And just don't believe the framing, or it's always this side is pro-company, this side is pro-consumer. It's not that simple. And there's a lot of room for common ground here.

TURNER-LEE: Oh I agree. I agree, and I think if we go into another four years where it becomes this dogmatic division between groups based on if you're progressive

or what your party is, we're going to have four years of the same thing that the net neutrality debate did, which is, again, no room to discuss the innovation, the possibilities of the digital ecosystem and the benefits that it actually creates for the economy and for society in general.

PITA: I think that's a good spot to end on. Either of you have any final thoughts you want to offer on the subject?

SWARZTRAUBER: I remain optimistic. I think that if people like me and Nicol can have differences of opinion on so many things, but really get along a lot on telecom, I think there's a reason for that. This area used to be very bipartisan. I think we've strayed from that in recent years, but I see no reason why we can't get back to that. I think the will in Congress is there between Democrats like Bill Nelson and Republicans like John Thune. I think that we're going to have a nice partnership between Chairman Pai and Commissioner Clyburn and whoever the Democrat and Republican end up being who make the FCC five again. I hope that they come with the same spirit of bipartisanship. I see no reason to have a repeat of 2014.

TURNER-LEE: Oh yeah I agree. If we have a repeat of 2014 I'm going to go back and retreat to that space, which is my desk, for most of the day.

[laughter]

SWARZTRAUBER: Yeah, I think we're all sick of talking about this. I'm glad we were able to introduce the listeners today, but I mean, we've had the same conversation for a decade!

TURNER-LEE: Yeah exactly, and I think the listeners – just as my closer – the listeners need to know that the telecom space is just as important as any other vertical that we actually have under our current purview, right? It's as important as transportation, it's as important as energy, it's as important as what happens to the Department of Justice. It's one of those elements that we take for granted, and yet we use it in such capacity to greater depths than we've ever imagined our communications resources to be. And so, again, if this agency can do what it's done so far over bipartisan Chairmen Michael Powell, Bill Kennard, Reed Hundt over the years to create the type of tools that people actually benefit from today, it can only get better if we have that conversation. So I agree with Evan. If we go back, we've done ourselves a disservice with this industry, of regressing the progress.

PITA: And therefore doing a great economic disservice to the country as well.

SWARZTRAUBER: Right. And look forward to policies that are geared towards rural America. I mean, we all heard the refrain after the election that there are people who are left behind. And while I do not believe that restricting trade and immigration is going to bring back factories, one thing I do know is that more broadband can only help. And if there are people who have not been able to adapt to things like the gig economy or take advantage of new opportunities, it's because every job you apply for is online. So we can at least agree, and I think that the FCC and Congress will be looking at, how do we build out more broadband to those extreme parts of rural America where the economics are very difficult?

TURNER-LEE: And I would say, too, on that – and I know, Adrianna, that you want us to get off your microphone – but I was going to say –

PITA: There's too much to talk about, that's the problem. There's so many things to get into!

[laughter]

TURNER-LEE: But I was going to say that that opens up the door, I think, for more inter-agency cooperation around skills needed to compete in this new economy. We're going to have a challenge. I think Evan hits it on the nose. It's like, you can bring back the old car manufacturing but the car is made differently. So –

PITA: Everyone needs to understand robotics and how to work computers.

TURNER-LEE: It's a whole different ball game, and I think it's going to be very important for this administration to actually think about ways to have more cooperation between agencies, that it's not just the FCC or the FTC that has their finger on, you know, the telecom and media industries and the high tech, but it's –

SWARZTRAUBER: Department of Interior,

TURNER-LEE: Everybody, that's right.

SWARZTRAUBER: How do you use the land, you know, am I allowed to build here, you know. Those kinds of questions.

TURNER-LEE: Cybersecurity is an area, you know, that we need to be looking at. Department of Labor in terms of workforce competencies. So, you know, the genie in the bottle says that hopefully we'll move beyond these issues; get to issues and advance buildout and deployment, right, spectrum and more wireless capacity – that we'll see more programs that are innovative that allow consumers to have a public

benefit, right? But at the same token we'll see agencies that step up to the plate and see that broadband actually is integrated and not on the periphery of the things that they do.

SWARZTRAUBER: Every issue is a tech issue.

TURNER-LEE: You got it. And it's playing out in the tech space, too, so you've got to take it seriously.

[laughter]

PITA: All right. Well, thank you both, Nicol and Evan, very much, for explaining all of that for our listeners and for really going in-depth on a lot of these things that there is – there's so much meat there to be getting into. I want to let our listeners know that they can follow either of you on Twitter. There's @drtturnerlee for Nicol and @sayreevan for you. And they can follow Intersections as well as the rest of the Brookings Podcast Network @policypodcasts. So thanks very much for listening.

TURNER-LEE: Thank you.

SWARZTRAUBER: Thank you.