

## IP時代の通信政策をめぐる制度設計に関する日米比較研究

—ネットワーク中立性をめぐる政策議論を事例に—<sup>†</sup>

## A Comparative Study between Japan and the U.S. on Telecommunications Policy

## Systems in the IP Era: A Case of the Policy Debate over Network Neutrality

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現在日米両国では、急速な技術革新により、ユニバーサル・サービス基金の改革や地上デジタル化に伴う周波数の跡地利用など、共通の通信政策課題に直面している。しかし、両国においてその政策展開はかなり異なるのである。そこで、本研究は、IP時代の日米両国において、通信政策の展開において生じる差異はどのような要因で起きるのか、ネットワーク中立性をめぐる政策議論を事例研究として、利益集団政治の観点から分析したい。本稿では、どのようなアクターが政策議論に参加し、またどのように議論に参加したのか、という点をマッピングすることを試みた。その結果、アメリカでは「ブロードバンド事業者対コンテンツ事業者」というビジネス対立だけではなく、その背後に政府がブロードバンド市場に介入すべきなのか、そしてインターネットは引き続き非規制であるべきなのか、というイデオロギー対立が存在することが明らかになった。そしてそれが政策展開をより複雑化し、議論の終結に時間をかける要因となっている点を指摘した。一方日本では、総務省の「ネットワークの中立性に関する懇談会」では、SNSの利用やパブリック・コメントの実施など、形式的にはかなりオープンな形がとられたが、議論への参加者を類型化すると、アメリカのように多様な非営利団体・市民団体の参加は見られなかった。本稿は結論において、日本とアメリカの通信政策の展開に生じる差異は、通信政策形成に携わる利益集団の種類の差異から来ている点にも注視する必要があると述べている。

With the rapid technological innovation, the U.S. and Japan are confronting the same kind of telecommunications agendas such as Universal Service Fund reform and use of spectrum after Digital TV transition. However, they experience the different policy development. So, I would like to argue where the differences in both countries come from, and this paper will analyze the differences of interest group politics on telecommunications with a case of network neutrality debate.

This paper shows there are an ideological conflict as well as the conflict between broadband providers and contents providers in the U.S. I indicate that these conflicts cause the complicated and prolonged discussion. On the other hand, in Japan, the Council on Network Neutrality used SNS and public comments, and the discussion was theoretically open to anybody interested in the issue; however, few nonprofit organizations or citizen groups participated in the debate in comparison with the U.S. case. In conclusion, it can be said that pictures of interest group politics in telecommunications are quite different in both countries, and that we should pay more attention to the typology of interest groups when we see the differences in development of telecommunications policy in the U.S. and Japan.

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## **Introduction**

With the rapid technological innovation, regulators and scholars in the U.S. and Japan are confronting the same kind of telecommunications agendas such as Universal Service Fund reform and use of spectrum after Digital TV transition. However, they experience the different policy development. So, I would like to argue where the differences come from in the IP-era, and this paper will analyze the differences of interest group politics on telecommunications with a case of network neutrality debate.

Network Neutrality is an issue raised in the U.S. about seven years ago in 2002. It contains a number of meanings and the definition varies; however, the main concern is that broadband providers should not block or delay any contents that consumers want to download on their broadband networks although broadband providers claim that they should have rights to manage their own networks.

Now this issue is controversial not only in the U.S. but also in Japan. Although the substance of the debate in the U.S. is not the same as that in Japan, we are confronting the same problem as how the government should envision the regulatory framework for the future

broadband market. To compare the network neutrality policy debate in the U.S. and Japan, this paper will try to show how current interest group politics are different between the U.S. and Japan.

Comparing with the Japanese case, in the U.S., there is a complicated political conflict about network neutrality because it is not as simple as that between application providers and broadband providers. The debate in the U.S. involves a diverse of groups that are very partisan. Most of the supporters to make new rules of network neutrality in the Congress are the Democrats, and most of the Republicans oppose to do so. Also, there is a wide range of interest parties including churches, conservatives groups such as Christian Coalition and American Conservative Union, and liberal groups such as Moveon.org and Free Press.

From interest group politics theory, the more groups come into the process, the more complicated the process becomes. AT&T, which was once the world's largest corporation and had monopolized the telecommunications industry, had been a dominant actor in the telecommunications policy process before the AT&T divestiture in 1984. Because of the

AT&T breakup and competition for the long distance telephone market, new companies freely entered some markets and a number of fractious issue networks developed<sup>1</sup>. Since the early of 1990's, with the rise of the Internet, many new political actors, such as the American Library Association(ALA) as well as teachers unions, which used to have less interest in telecommunications policy, came to participate in the telecommunications policy network in the U.S<sup>2</sup>. In fact, the interest from these participants into the telecommunications policy leads to the establishment of the E-rate program which is the universal service support mechanism for schools and libraries<sup>3</sup>.

Therefore, using the same case study, it will be worthy to analyze the U.S. telecommunications policy network in comparison with the Japanese case. This paper will focus on who participates, and how they participate in the policy-making. In my hypothesis, the differences of interest groups cause the differences of the debate over network neutrality between the U.S. and Japan. These are problems that this paper will tackle.

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<sup>1</sup> Berry, (1971) , p.208.

<sup>2</sup> See Kiyohara, (2008a). The book was published funded by The Ohira Masayoshi Foundation.

<sup>3</sup> See also Kiyohara, (2008b), pp.31-47. The paper provides a comparative analysis of the development of Universal Service Fund in the U.S. and Japan, and indicates that in the U.S., a diverse of new interest groups affects the E-rate program which provides schools and libraries with discounted Internet access services and telecommunications services.

The paper is organized as follows. The first section introduces the theoretical background to analyze the U.S. policy development in a comparison with the Japanese case. The second section provides the summary of the network neutrality debate in the U.S. and Japan. The third section will show who participates, and how they participate in the policy debate in both countries. The paper will indicate that more diverse interest groups and civic participation as well as grassroots movements are active in the network neutrality debate in the U.S. from a comparative aspect with the Japanese case. In conclusion, when we compare the telecommunications policy debate in the U.S. and Japan, we should take the differences of interest group politics into consideration as well as the differences of institutions and market situations.

This research makes use of public documents such as the Federal Communications Commission (FCC) website and other government including the Ministry of Internal Affairs and Communications (MIC) Research Papers, and some coalitions' websites; newspapers such as *Washington Post*; and some interviews with those who are closely related to the network neutrality debates in both countries. The theoretical background on this paper is also based

on my dissertation published as a book in 2008, “*Gendai America no Telecommunication Seisakukatei Universal Service Kikinn no Kaikaku* [Telecommunications Policy Process in the U.S. Universal Service Reform] .

## **Theoretical Background**

### *Interest Group Politics*

This study builds upon the framework of the so-called interest group politics and issue network, and policy network to explain the differences of the network neutrality debate between the U.S. and Japan. Although I recognize that institutional aspect is also important for comparative policy analysis, when we compare the policy-making structure in telecommunications field between the U.S. and Japan, it seems that many previous studies may focus too much on the institutional fabric as well as market situations.

Of course, there are some important institutional differences between the U.S. and Japan. For example, the policy-making structure in the U.S. is decentralized, and there has been always a conflict on the regulatory jurisdiction between the FCC and state regulatory agencies because of the Communications Act of 1934 (revised as Telecommunications Act of

1996). However, in Japan, we can see the central governance structure, and the MIC has jurisdiction over regulation and promotion in telecommunications and information policy. There is no conflict between the central ministry and local governments like in the U.S. Also, I admit some differences on the roles of Advisory Committees that the FCC and the MIC hold. In Japan, the Advisory Committees play a very important role in the MIC policy-making process in comparison with the FCC case. Therefore, I will not say that institutional differences are not important policy determinants.

However, since the beginning of the 20<sup>th</sup> century, political scientists such as Arthur Bentley and David B. Truman have propounded the theory that interest groups or pressure groups are at the core of politics and policymaking in a complex, large, and increasingly specialized governmental system<sup>4</sup>. Despite the acknowledgement, there have been few studies on interest groups in the telecommunications area since the 1990's. Rapid technological innovation has eroded the barriers between broadcasting, telecommunications, cable TV, and the computer industry, which enforces competition across platforms<sup>5</sup>.

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<sup>4</sup> Cigler & Loomis, (2002), p.4.

<sup>5</sup> Galperin, (2004), p.14.

These changes are part of the reasons that affect the universe of interest group politics in telecommunications. Since the middle of 1990s, the emergence of the Internet and the broadband environment has been having a great influence on interest group politics in the field. The number of new companies involved in telecommunications such as Microsoft and Google has been increasing, which participate in the policy-making process as powerful political actors. As Clyde Wilcox indicated in his book, “The Interest Group Society Fourth Edition”, in the U.S., “the telecommunications issue network has grown much more complex. The range of companies that are involved in telecommunications has increased dramatically, and as a result there are now many peripheral issues that have created webs of groups with special interests in small portions of telecommunications policy<sup>6</sup>”. Therefore, this paper will analyze the telecommunications policy-making process from the aspect of interest group politics.

#### *Issue Networks in Telecommunications Area*

Hugh Heclo has suggested the concept of “issue networks” that are composed of

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<sup>6</sup> Berry & Wilcox, (2007), p.167.

“a large number of participants with quite variable degrees of mutual commitment or of dependence on others in their environment<sup>7</sup>”. He also explains an issue network consists of “a shared-knowledge group having to do with some aspect of public policy<sup>8</sup>”. He argues that we should pay more attention to the fairly open networks of people that increasingly have an influence on government, a change from the closed iron triangles or subgovernments we used to see<sup>9</sup>. Since Hecló’s model, more political scientists have come to analyze the policymaking process from the perspective of issue networks. To explain the telecommunications issue network, I would like to introduce Jeffery M. Berry’s definition of the telecommunications issue network. He is the author of “Interest Group Society third edition” in 1997.

Berry compared issue networks in 1984 and 1994, indicating that the former was “characterized by well-defined industry niches and interest group coalitions [that] were built largely around these industry clusters<sup>10</sup>”. At that time, the telecommunications issue

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<sup>7</sup> Hecló, (1978), p.102.

<sup>8</sup> Hecló,(1978), p.103.

<sup>9</sup> Hecló, (1978), p.88.

<sup>10</sup> Berry, (1997), p.213.

network was formed primarily focusing on telephone equipment and services<sup>11</sup>. There were some consumer groups in the issue network, but neither think tanks nor public interest groups were active there.

On the other hand, 1994 was characterized as a fully integrated market model. Berry indicates that “the large-scale integration of different companies into business alliances” was the prominent characteristic by that year<sup>12</sup>. Cable TV companies such as Time Warner and TCI (the nation’s largest owner of local cable TV companies at the time) wanted to enter the telephone service market, and telephone companies sought new business alliances in a different market. What caused this business mood in 1994 was all different markets could now provide the same services on the Internet, the “information super highway” of the future<sup>13</sup>.

Although Berry’s study usefully illustrates how the telecommunications issue network was transformed, he does not analyze the function of each actor in the issue networks.

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<sup>11</sup> Berry, (1997), p.209.

<sup>12</sup> Berry, (1997), p.211.

<sup>13</sup> Berry, (1997), p.211.

Building on Berry's work, in my book<sup>14</sup>, I analyzed how actors affected each other and how, to understand the transformations in the telecommunications issue network, one must examine the entire universal service policy process since the 1990's.

*From Decentralized Policy Networks to Policy Network Convergence*

Next I would like to introduce what I described as transformation of the telecommunications policy network in my book. I think it is more appropriate to use the policy network to focus on the entire telecommunications policy area instead of on a particular issue. I demonstrated that telecommunications policy network has been transformed from a decentralized policy network model into a policy network convergence model as the Internet has diffused among the public in the U.S. since the early 1990's<sup>15</sup>.

A decentralized policy network is characterized as several policy networks separated by policy areas; political actors in each policy network do not frequently enter another policy network. Figure 1 shows a decentralized policy network. In this model, even in the telecommunications area, each business market and regulations for telephony,

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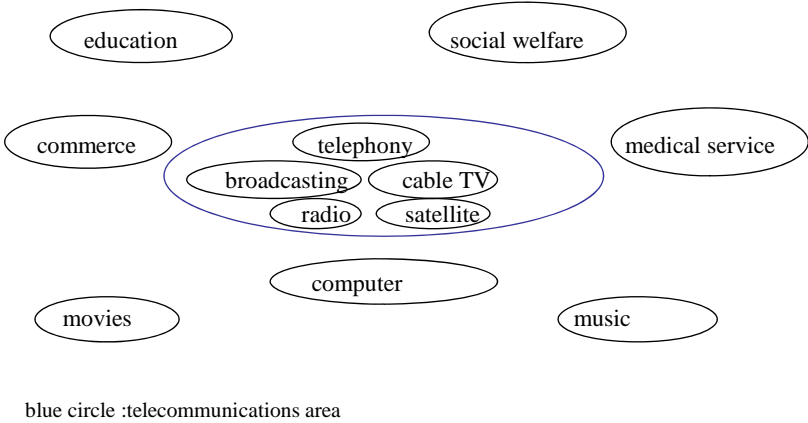
<sup>14</sup> See Kiyohara, (2008a).

<sup>15</sup> See Kiyohara, (2008a).

broadcasting, cable TV and satellite are clearly separated (by so-called pipes). It is similar to Berry’s telecommunications issue network in 1984.

**Figure 1**

The Decentralized Policy Network Model (Before the Emergence of the Internet Society)



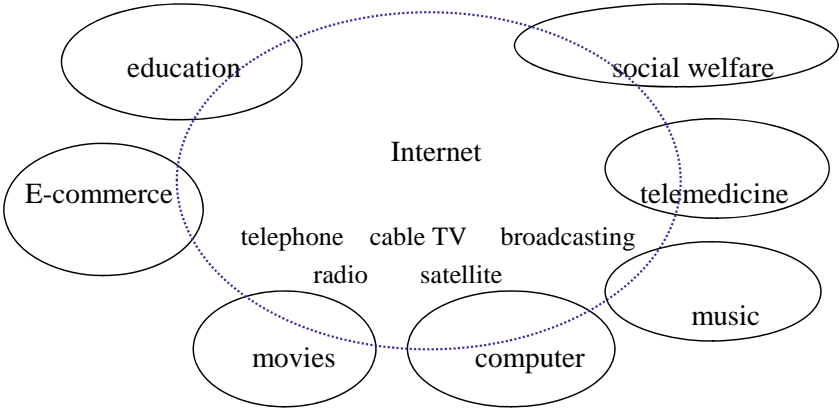
On the other hand, Figure 2 shows policy network convergence. In this model, the boundaries between policy networks are more permeable than in a decentralized policy network. Cable TV operators developed interest in entering the telephone business, and telephone companies in entering the cable TV market, since they could foresee all telecommunications services converging on the Internet. Also, education groups such as

teachers' unions and PTAs as well as think tanks, libraries, and rural communities now pay more attention to telecommunications policy than before. Most of them used to have almost no interest in the telecommunications area because this area was thought to be highly technical and not terribly relevant when only the school principal had a telephone in his or her office. For example, the ALA used to lobby only for the funding for libraries and be interested just in copy right issues. However, since the 1990's with the rise of the Internet and new issues related to the Internet, telecommunications policy suddenly seems relevant to education and libraries. Then, the ALA established the Office for Information Technology Policy (OITP) in 1995. In other words, in the policy network convergence model, many actors that had been politicized in different policy networks now participate in the telecommunications policy network without regard to boundaries between policies. Some groups form a coalition to fulfill their goals, and others enter as countermovements in the policy network. Some business groups lobby the Congress and the FCC actively with plentiful political resources and a well represented legal counsel. Some think tanks just educate the policymakers and the people. The converged policy network is not only

composed of diverse coalitions. The important point is that many political actors which play important roles in other policy areas such as teachers unions and the ALA enter into the telecommunications policy network as active actors. Thus, the policy process becomes composed of many more political actors, which will make the process more complicated and decentralized.

**Figure 2**

The Policy Network Convergence Model (In the Development of the Internet Society)



Blue circle: telecommunications area

In my book, with some cases on reforming the universal service mechanisms, I proved my hypothesis that the transformation of the telecommunications policy network (from

decentralized to converged) affects the substance of universal service policy in the U.S. In this paper, I use this concept as the premise to explain the differences of interest group politics in telecommunications between the U.S. and Japan.

## **The Summary of the Debate over Network Neutrality in the U.S. and Japan**

### *(1) A Brief History of the Network Neutrality Debate in the U.S.*

The FCC has regulated various communications pipes such as broadcasting, cable, and telephone networks for many years based on the Communications Act of 1934 (revised as Telecommunications Act of 1996). However, digitization and popularization of broadband services have dramatically changed the telecommunications market since the middle 1990s. Every communication service becomes converged on the IP network. For example, large cable operators, such as Comcast, provide broadband services, cable TV services, and Internet telephone services called as triple play. On the other hand, big telephone companies, such as Verizon, provide not only voice telephone services but also broadband services as well as video services on their FTTH (Fiber-To-The-Home) networks. Changing the telecommunications market with digitization brought about a new issue, which is network

neutrality.

Since 2000, the issue of “open-access” arose because cable companies which provided broadband services were de-facto monopoly operators in each local market. AOL, which used to be the largest Internet service provider, strongly led the campaign to advocate for the FCC to regulate broadband operators not to block any special contents on their networks<sup>16</sup>. The open-access issue became more controversial and led to the debate over network neutrality. On November 18, 2002, Microsoft, Amazon.com, eBay, Yahoo! and other liberal nonprofit organizations like Media Access Project, and trade associations such as the National Association of Manufacturers formed a new coalition as Coalition of Broadband Users and Innovators. The coalition sent a letter to the FCC and said, “...network operators cannot infringe or encumber the relationships among their customers or between their customers and destinations on the network. Adherence to this principle has led to the development of a competitive market for data processing, content distribution, Internet access, interactive services, and the development of devices attached to those offerings.” Then, the

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<sup>16</sup> *National Journal*, June 7, 2003, pp.1784-1785.

coalition urged the FCC to “bring this fundamental rule forward, into the broadband era<sup>17</sup>.”

In other words, they asked the FCC to establish new regulations that cable operators would not exclude any content providers such as Amazon.com and Disney Channel from their own networks. Moreover, they used the word, “network neutrality”, in the press release. They said, “The coming age of broadband is posed to offer additional economic growth, but network operators can defeat these benefits if they do not respect the Internet’s principles of network neutrality and nondiscrimination<sup>18</sup>.” This was the first time that network neutrality became a policy agenda in the U.S.

Gradually, the debate over network neutrality got more attention from application and content providers, broadband providers, and liberal nonprofit organizations. Then, the FCC Chairman Michael Powell (Republican) delivered an address on February 8, 2004, when he showed his idea for four “Internet Freedoms<sup>19</sup>.” Four freedoms contained; 1)freedom to access content, 2)freedom to use applications, 3)freedom to attach personal devices, and

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<sup>17</sup> Coalition of Broadband Users and Innovators to the FCC, November 18, 2002.

<sup>18</sup> Coalition of Broadband Users and Innovators, *Press Release*, November 18, 2002.

<sup>19</sup> Hart, (2007), p.6.

4)freedom to obtain service plan information<sup>20</sup>. Later, the FCC adopted Policy Statement on network neutrality in August 2005. The statement provided four principles of broadband network to preserve and promote the open and interconnected nature of public Internet, which was modified the previous Powell’s ideas. Here are the four principles:

(1) consumers are entitled to access the lawful Internet content of their choice;

(2) consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement;

(3)consumers are entitled to connect their choice of legal devices that do not harm the network;

(4)consumers are entitled to competition among network providers, application and service providers, and content providers.

The policy statement also says, “All of these principles are subject to reasonable network management<sup>21</sup>”. This requirement is important for broadband providers because they use this as their authority to manage or control their own broadband network.

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<sup>20</sup> Hart, (2007), p.6.

<sup>21</sup> FCC, *Press Release*, August 5, 2005.

Since then, the debate over network neutrality in the U.S. is based on the FCC's four principles. Although the FCC has not established new regulations on network neutrality based on the Policy Statement, on April 16, 2007, they issued a Notice of Inquiry to gather more information on "the nature of the market for broadband and related services, and to ask whether network platform providers and others favor or disfavor particular content, how consumers are affected by these policies, and whether consumer choice of broadband providers is sufficient to ensure that all such policies ultimately benefit consumers<sup>22</sup>". Additionally, the FCC held Public En Banc Hearings in Stanford University and Harvard Law School in 2008.

On the other hand, there are a number of arguments such as if the FCC has jurisdiction to establish new regulations on the network neutrality debate, or if the Federal Trade Commission (FTC) also has the jurisdiction based on the FTC Act and if the FTC should continue to be involved in this issue. The FTC Chairman Deborah Platt Majoras (Republican) formed the Internet Access Task Force in August 2006, and the Task Force

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<sup>22</sup> FCC, *Notice of Inquiry*, April 16, 2007.

discussed issues on net neutrality. As a result, in June, 2007, the FTC issued the Staff Report on Broadband Connectivity Competition Policy. In the report, the FTC articulated “policy makers also should carefully consider the potentially adverse and unintended effects of regulation in the area of broadband Internet access before enacting any such regulation<sup>23</sup>.” Also, the FTC in the report said that they would “continue to devote substantial resources to maintaining competition and protecting consumers in the area of broadband Internet access, using a variety of tools<sup>24</sup>.” In other words, the FTC urged politicians not to rush to make new regulations on network neutrality and articulated they would play a positive role in the network neutrality debate. That not only a single agency can lead the network neutrality debate is one of the characteristics in the U.S.

There is another important characteristic in the debate over network neutrality. As Jeffrey A. Hart described, in the U.S., the network neutrality debate has become more and more a partisan debate<sup>25</sup>. In 2006, the Republican-controlled Congress tried to reform the comprehensive Telecommunications Act of 1996 including the network neutrality issue and

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<sup>23</sup> FTC, *Staff Report*, June 2007, p.11.

<sup>24</sup> FTC, *Staff Report*, June 2007, p.12.

<sup>25</sup> Hart, (2007), p.20.

the cable franchise bill. Many bills related to network neutrality were introduced at that time. For instance, Senator Olympia Snowe (R-ME) and Senator Byron Dorgan (D-ND) proposed the Internet Freedom Preservation Act of 2006 (S.2917) as an amendment to Senator Ted Stevens' (R-AL) major reforming Telecommunications Act (S.2686). However, by a narrow margin, that was defeated in an 11-11 vote at the Senate Commerce Committee on June 28, 2006. All 10 Democrats on the Committee voted for the amendment with Senator Snowe. After all, in the Republican Congress, none of the rewritten telecommunications bills were passed.

As a result of the Midterm Election in 2006, the Democrats took control of the Congress which they had not controlled since 1994. That should be a big political transformation to affect the policy debate because Democrats such as Senator Byron Dorgan and Senator Hillary Clinton (NY) favored new regulations protecting network neutrality. In contrast, most Republicans except Senator Olympia Snowe opposed the new regulations.

Besides, during the 2008 Presidential Election campaign, Democrat presidential nominee, Barack Obama was known for strongly supporting network neutrality legislations.

In November, 2007, he delivered a speech at Google headquarters in California. Regarding network neutrality, he said, “I will take a backseat to no one in my commitment to network neutrality<sup>26</sup>.” Also, he repeatedly articulated that he strongly supported “the principle of network neutrality to preserve the benefits of open competition on the Internet<sup>27</sup>.” On the other hand, Republican presidential nominee, John McCain opposed against network neutrality regulations because he believed a more market-oriented approach was suitable for the telecommunications market. Therefore, it seemed obvious which candidate won in November would affect the network neutrality debate in substance. In fact, the winner of the 2008 presidential election, President Barack Obama picked Julius Genachowski as FCC Chairman in early March, 2009. Genachowski was Obama’s technology advisor during the presidential campaign, and wrote his technology and innovation plan for the campaign which included the phrases that “strongly support the principle of network neutrality<sup>28</sup>”. So he is seemed to move forward with the Democratic plan for more network neutrality regulations<sup>29</sup>.

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<sup>26</sup>“Obama unveils Innovation Agenda at Google”, November 14, 2007.

<sup>27</sup>“Barak Obama: Connecting and empowering all Americans through technology and innovation”, Obama’08.

<sup>28</sup> *Washington Post*, March 4, 2009.

<sup>29</sup> *CNET*, March 3, 2009.

(2) A Brief History of the Network Neutrality Debate in Japan

In Japan, the MIC has regulated and promoted the information and telecommunications industry. Following the U.S. debate, the MIC has assumed leadership on the network neutrality debate. There is one of the differences between in the U.S. and Japan. In the U.S., the decision-making is decentralized, so that, the FCC, FTC and Congress have tried to settle the issue or step in the agenda; however, in Japan, only the MIC is the government body that plays an important role to discuss the issue.

When did the debate start in Japan? Probably, there were some arguments before the issue became policy agenda at MIC. The first time seems to be in September, 2005 when Yasuhiko Taniwaki, a government officer at MIC, introduced the U.S. network neutrality debate in his book, “Yugo suru Network Internet Taikoku America wa yomigaeruka?” (Converged Network, Can the U.S. come back as Internet Big Power?) To my knowledge, around that time, big telephone companies, NTT and KDDI, started to pay attention to the network neutrality debate in the U.S.

On October 31, 2006, the MIC released press news it would form the Council on

Network Neutrality, inviting 12 specialists. Toshihiko Hayashi, a professor of The Open University of Japan, was the leader of the Council, and most of them were famous professors or associate professors. The press release delivered that the MIC would like to start the Council on November 15, 2006, and discuss how the MIC should make a new framework on network neutrality. Here were four issues which the Council would debate;

- (1) The basic architecture for the next generation IP based Network
- (2) the framework for sustaining equality on the use of the network
- (3) the framework for ensuring fairness on sharing the cost of the network
- (4) the framework for a competition model accommodating the transformation of the network structure

They announced that they would like to gather information from interested parties, and release the Final Council Report in summer, 2007<sup>30</sup>. The MIC held eight meetings for the Council for ten months. Although the MIC didn't invite interested parties as the formal members, they invited 22 entities as observers from interested parties such as NTT, KDDI,

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<sup>30</sup> MIC, *New Release*, October 31, 2006.

Yahoo!, Microsoft, Apple, Google, and Nippon Television Network Corporation. Some trade associations such as Telecom Service Association (TSA) and Japan Internet Providers Association (JAIPA) were also invited as observers. The MIC held four hearings to invite these observers and listen to what they thought of the debate. Also, the MIC started to use Social Networking Services (SNS) called iSpring to share the information and opinions for the Council with experts and telecommunications carriers. However, no consumers groups and citizen groups were invited to the Council as observers.

From June 22 to July 23, 2007, the MIC invited Public Comments on the Draft of the Council Report on network neutrality. Theoretically, anybody could file the comments. It was considered as the epoch-making manner of the Council held by the MIC because it was fully open to anybody interested in the debate<sup>31</sup>. Not only telephone companies and Internet Service Providers but also Nippon Keidanren and TSA filed comments although there were no public comments from consumers groups and citizen groups except Rojina Tea Party which was an academic group. After that, on September 20, 2007, the Council released

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<sup>31</sup> Interview with Toshihiko Hayashi, November 6, 2008.

the Final Report on network neutrality. In the report, the Council provided three principles for network neutrality;

(1) consumers are entitled to use IP network flexibly, and access content application layers as they like.

(2) consumers are entitled to connect devices that adjust the technology standard by law on IP network as they like, and they can communicate between devices.

(3) consumers are entitled to equally use communications layers and platform layers for a fair price.

Moreover, the report said, “when the IP network is managed [according to the] three principles, we can agree network neutrality is ensured<sup>32</sup>”.

The report indicated the debate over network neutrality should be discussed from the aspect of competition policy, and that the MIC should ensure competitive neutrality and technological neutrality when developing the policy on the broadband market. In addition, the report suggested the government should take a new step for the network

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<sup>32</sup> MIC, *The Report*, September 20, 2007, p.7.

neutrality debate called Phase II based on the report<sup>33</sup>. Following the report, the MIC launched the Internet Policy Council in January, 2008 to continue the discussion of network neutrality from the aspect of fairness of sharing the network cost<sup>34</sup>.

### **Mapping the Network Neutrality Debate, and a Comparative Analysis**

In this part, I will show the mapping to who participates in the debate over network neutrality in both countries, and give a comparative analysis on the telecommunications policy network.

#### *(1) In the U.S.*

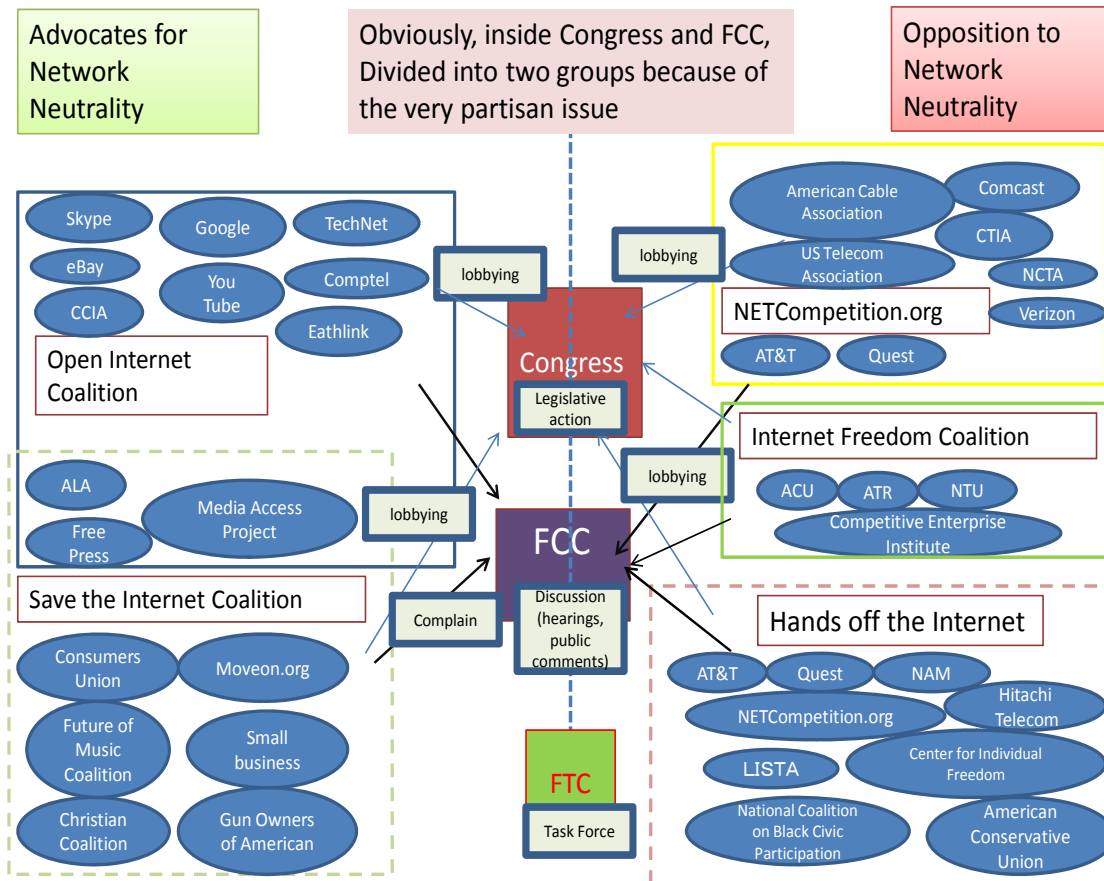
We can see that this debate was split into two groups by ideology. The term of ideology here means if the government should more involve in the broadband market when changing the market environment. Advocates for network neutrality argue the government should do something to ensure the network neutrality principles not only for content business but for freedom of speech. On the other hand, opposition activities represent that the Internet should remain unregulated.

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<sup>33</sup> MIC, *The Report*, September 20, 2007, p.2,8.

<sup>34</sup> MIC, *News Release*, January 24, 2008.

**Figure 3 Mapping on the Debate over Network Neutrality in the U.S.**



As Figure 3 shows, there are two big coalitions that advocate for network neutrality; they are the Open Internet Coalition, and Save the Internet Coalition. They urge the regulators and policymakers to prevent telephone companies and cable companies from delaying or blocking any contents that consumers choose. The Open Internet Coalition has 74 members, and most of members are software and application companies such as Google, Skype and eBay including small businesses. Also, the coalition includes some

nonprofit organizations such as Free Press, Media Access Project and the ALA.

Save the Internet Coalition was formed by the liberal advocacy group, Free Press, and the coalition has more than 850 groups which are a variety of members from liberal groups like Moveon.org to conservative groups like Christian Coalition and Gun Owners of America. There are no big application companies in the coalition, but it is formed by a great number of nonprofit organizations (public interest groups), small businesses, professors, church affiliations, and Internet Service Providers. That is one of the strengths for the coalition, according to Free Press, the coalition coordinator. Jen Howard, associate communication director at Free Press, told me that the great number of the members meant the Congress could not ignore them, and the Congress had to pay attention because there were grassroots movements behind the coalition<sup>35</sup>.

Moreover, as Figure 3 shows, there are three big coalitions that oppose against network neutrality regulations; NETCompetition.org, Internet Freedom Foundation, and Hands off the Internet. First, most members of NETCompetition.org are big broadband

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<sup>35</sup> Interview with Jen Howard, March 13, 2007

network operators such as AT&T, Verizon, Comcast as well as business interest associations like NCTA and CTIA, and US Telecom. The coalition believes that a market-oriented approach will be more beneficial for the consumers rather than government interference.

Second, the Internet Freedom Foundation “opposes three basic threats to Internet Freedom; (1) taxes, (2) regulations, (3) any attempt by the United Nations to manage the Internet<sup>36</sup>. The coalition is formed by 37 conservative and anti-taxes groups such as the American Conservative Union (ACU), Americans for Tax Reform (ATR), and National Taxpayers Union (NTU). Such an ideological coalition also participates in the debate over network neutrality in the U.S.

Third, Hands off the Internet has 45 groups and more diverse kinds of groups. Most of them are broadband network operators such as AT&A and manufactures such as National Association of Manufactures (NAM). However, some nonprofit organizations are members of the coalition, too. They are conservative groups like American Conservative Union and Citizens Against Government Waste, and minority groups.

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<sup>36</sup> Internet Freedom Foundation website

Although we see both sides' coalitions mixing some liberal and conservative groups, it is obvious that there is an ideological conflict on point of views how the government should involve in the current broadband market, that is, more regulations or unregulated. Also, as described in the previous part, Congress is split into two because of ideology. Therefore, the structure of the conflict is more complicated than the conflict between two business industries in the U.S.

Moreover, in the FCC, there had been investigating into the Comcast broadband network management practices since Free Press and Public Knowledge filed a complaint to the FCC in November, 2007. Comcast was accused of delaying their customers' broadband connections when they used peer-to-peer applications such as BitTorrent. Finally, on August 1, 2008, the FCC voted 3-2 (1 Republican Chairman, Kevin Martin, 2 Democrats Commissioners, Michael J. Copps, and Jonathan S. Adelstein) and concluded "Comcast Corp.'s management of its broadband Internet networks contravenes federal policies that protect the vibrant and open nature of the Internet<sup>37</sup>".

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<sup>37</sup> FCC, *News Release*, August 1, 2008.

In the U.S., as explained already, the policy-making process is decentralized. Therefore, interest groups can lobby the Congress and the FCC as well. Besides, the FTC also has authority to monitor the broadband market. In short, there are plenty of chances for interest groups to lobby and file complaints in the debate over network neutrality. Of course, that is one of the reasons it takes more time to settle the issue. Not only for that has the complicated debate been caused by complex interest groups politics. The Congress and the FCC are easily split into two groups; however, liberal groups such as Moveon.org sometimes form coalitions with conservative groups such as Christian Coalition for ensuring free of speech in the digital age. A wide range of political actors are getting involved in telecommunications policy, which is one of the important factors prolonging the debate over network neutrality in the U.S.

## (2) In Japan

On the other hand, the mapping on the debate over network neutrality in Japan seems simpler than the U.S. case.

## **Figure 4 Mapping on the Debate over Network Neutrality in Japan**

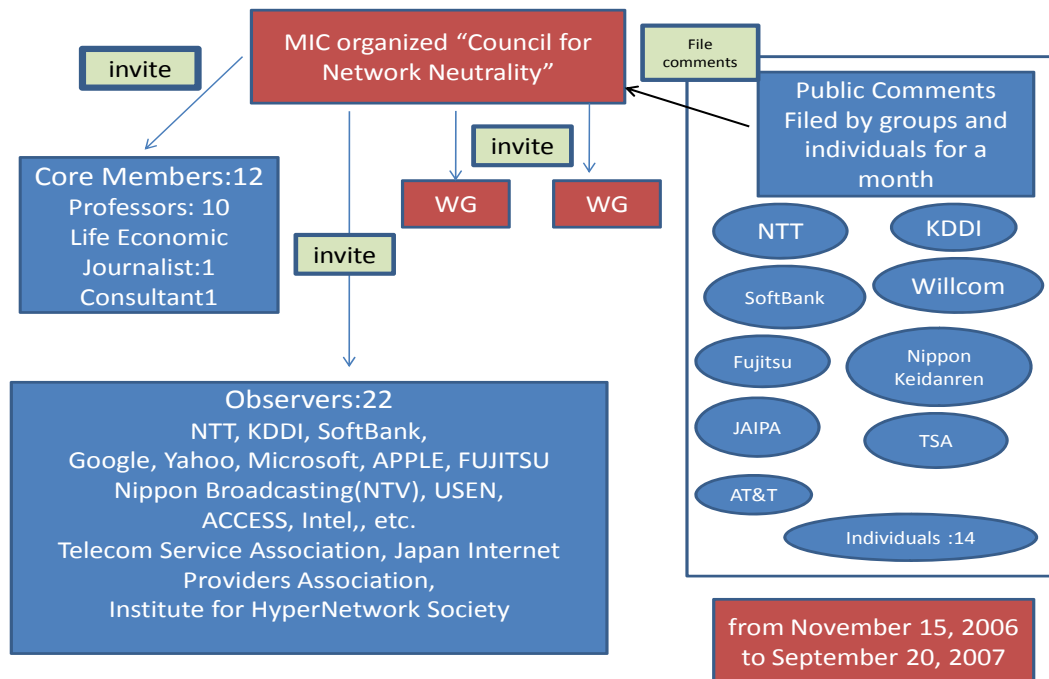


Figure 4 shows what kinds of the groups and companies participated in the debate over network neutrality in Japan and shows how participants were involved in the debate.

One of the important characteristics in the Japanese case, all groups, companies, and members of the Council were invited by the MIC. The MIC formed not only the Council for Network Neutrality but also two other working groups under the Council<sup>38</sup>. Therefore, it

is obvious that the MIC assumed strong leadership on how the government should treat this issue. Furthermore, the MIC set a deadline for completing and settling the issue.

Thus, the structure of the debate was very different from the U.S. case because the U.S.

<sup>38</sup> MIC, *News Release*, September 20, 2007.

institutions provide the great number of groups with a lot of opportunities for lobbying.

Therefore, I admit we can see the differences of the institutions in telecommunications policy-making between the U.S. and Japan.

However, as described in the previous part, the MIC tried to debate the issue with more experts in telecommunications using SNS called iSpring. There are 94 members (individuals) in the Forum on Network Neutrality in iSpring. Most of them are experts in business, the MIC officers, and professors or academics. It is not easy to evaluate how iSpring could function in the MIC initiative on the debate over network neutrality; however, it was the first time to use SNS to share the opinions outside the Council and government so we can regard their trial as revolutionary<sup>39</sup>. Besides, the MIC released the Council Meeting Summary each time to the general public on their website, and asked those who were interested in the debate to file public comments before they finish writing the Final Council Report. In short, there must have been a systematical limitation for the general public to participate in the debate because although core members and observers were invited by the

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<sup>39</sup> However, it was less useful than expected according to Toshihiko Hayashi. He indicated that iSpring had needed a good moderator to lead the discussion on network neutrality. (Interview with Toshihiko Hayashi, November 6, 2008)

MIC, there were still some opportunities for anybody else to pay attention and contribute to the debate.

Despite this, as you see Figure 4, there are few kinds of interest groups involved in the debate in Japan. Here is the typology of the groups that were invited to the Council and filed the public comments to the MIC.

(1) Telecommunications companies: NTT, KDDI, and SoftBank, Willcom, and AT&T

(AT&T filed the public comments.), KVH, HOTnet

(2) Software and application companies: Google, Yahoo!, Microsoft, Apple, Gourmet Navigator, Inc.

(3) Broadcasting and content providers: Nippon Broadcasting (NTV), USEN, J Stream,

(4) Internet Service Providers: Internet Initiative Japan, Japan Internet Providers Association, eAccess, eMobile,

(5) Consultation Companies: D4DR Inc.,

(6) Manufactures and technology development companies: Fujitsu, INTEL, ACCESS, IntecNetCore, InfoCity,

(7)Nonbusiness groups: Institute for HyperNetwork Society (think tank related to the MIC), Mobile Content Forum, Nippon Keidanren (the biggest business association in Japan), Telecom Service Association (related to the MIC)

There are some nonbusiness groups but they cannot be regarded as public interest groups or citizen groups because they have strong connections with the business industry and the MIC.

#### A Comparative Analysis

As indicated in Figure 2, in the U.S., new political actors from other policy areas such as computers, music, and social welfare participate in the telecommunications policy network. Not only consumers groups, but also many groups which are originally not involved in telecommunications become members of the coalitions on the network neutrality debate. For instance, the Future of Music Coalition join the coalition from the policy related to musicians and a number of ideological groups such as the Christian Coalition and education groups for the specific racial community such as Latino Information and Science Technology Association (LISTA) also jumped into the debate over network neutrality. In

the U.S., as I showed in the book<sup>40</sup>, the telecommunications policy network has converged with other policy areas. It can be said that the debate over network neutrality also shows this model.

On the other hand, as explained already, only the high-tech industry including content providers participates in the telecommunications policy network in Japan. What I would like to mention here is no citizen groups participated in the policy debate over network neutrality in comparison with the U.S. As a result, the substance of the debate focused on making the vision to develop the broadband market by ensuring equal access and creating a mechanism to share the cost equally. For example, many participants of the debate in Japan discussed the dominant regulation and network open requirement to NTT East and West in the future broadband market. That is one of the reasons the MIC assumed leadership of what they would discuss, but there is another reason, that is to say, participants of the debate were almost limited to the telecommunications providers and those related to the telecommunications industry. The telecommunications policy network in Japan has not

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<sup>40</sup> See Kiyohara, (2008a).

been converged as much as in the U.S.

## **Conclusion**

To return to the question posed in the introduction, regarding the network neutrality debate, there was a clear difference of interest group politics between the U.S. and Japan. A diversity of groups involved in the telecommunications policy network from other policy areas causes an uncertain policy-making process in the U.S. It takes more time to settle the issue, and the political conflict such as the 2008 presidential election edges into the policy debate over network neutrality. On the other hand, a small variety of groups involved in the telecommunications policy network causes fast-tracking conclusion on the debate in Japan. Almost only a year was needed to discuss the intense network neutrality debate, and the focused point would not be diffused to other points such as an ideological conflict in the U.S. Therefore, with the synchronic analysis in the broadband age, it can be said that pictures of interest group politics in telecommunications are quite different in both countries.

However, it should be noted that this study has examined only who participates and how they participate in the debate over network neutrality. For the next step, it will be

necessary to analyze how the differences of interest group politics affect the substances of the policy debate. Therefore, notwithstanding its limitations, this study does suggest the telecommunications policy network in the U.S. is broadened in comparison with the Japanese case, and that we should pay more attention to the typology of interest groups when we see the differences in development of telecommunications policy in the U.S. and Japan.

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