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► **To cite this version:**

Félix Tréguer, Melanie Dulong de Rosnay. The Political Defence of the Commons: The Case of Community Networks. *TripleC: Communication, Capitalism & Critique*, 2020, 18 (2), pp.560-574. 10.31269/triplec.v18i2.1108 . halshs-02897517

HAL Id: halshs-02897517

<https://shs.hal.science/halshs-02897517>

Submitted on 12 Jul 2020

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The Political Defence of the Commons: The Case of Community Networks

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Abstract: This article reflects on experiences of political advocacy which have been led by Community Networks activists in Germany, France and Spain to support the sustainability of bottom-up initiatives aiming at building community-owned telecom infrastructures, or “telecommons”. While pointing to the diversity of action repertoires used by various Community Networks across Europe, the article points to the potential of these instances of political advocacy to democratise both telecommunications and policy-making in the telecom sector, an area that is prone to both eviction of small actors and regulatory capture by special economic interests. It also suggests that their repertoires offer a set of reproducible tactics available to very small actors without dedicated advocacy staff or budget. Speaking to the inventiveness of grassroots initiatives, the article concludes by analysing the potential and pitfalls of political advocacy for small-scale social movements working for the political defence of the commons, and communities which are under risk of enclosure and capitalist co-optation.

Keywords: commons, political advocacy, telecommunications, regulation, social movements

Acknowledgement: This research has been supported by the European Commission, H2020-ICT-2015 Programme, Grant Number 688768 ‘netCommons’ (Network Infrastructure as Commons, 2016-2018).

1. Introduction

Whether it is to reform outdated copyright and intellectual property laws surrounding crops and medicine regarding access to knowledge (Kapczynski and Krikorian 2010), to secure basic rights for squatters (Finchett-Maddock 2016) and people involved in cooperative housing, or to legalise urban gardening or renewable energy co-ops, commons-based initiatives often have to face an inhibiting if not outright repressive regulatory environment (Peñalver and Katyal 2010). Against that reality, activist movements working to build and defend the commons need to engage in political advocacy to change a legal environment which has been designed to support individual property rights (Dulong de Rosnay 2016) and defend capitalist institutions.

In the course of an interdisciplinary project on Community Networks (CNs) – communities building and maintaining telecom infrastructures as a commons (De Filippi and Tréguer 2015; Belli 2017) – we have looked at recent mobilisations led by these organisations around regulatory and political issues in Europe. These often stemmed from the work of voluntary people endowed with strong technical skills but facing a rather hostile regulatory environment impeding the development of their project. We sought to document instances in which these groups moved to the legal and political realms. In other words, drawing on Stefania Milan’s concepts (2013), we aimed at seeing how “beyond” initiatives – first focused on building alternative socio-technical space *beyond* the political system – moved to interact with law-makers and other

power-holders, either from the outside of the political system by means of protests, demonstrations or other campaigning tactics, or through direct engagement in the rule-making process similar to lobbying or advocacy (what Milan calls “insiders”).

In this article, we reflect on the importance of advocacy for the Commons movement, with illustrations from political advocacy led by Community Networks activists in Germany, France and Spain to support the sustainability of these bottom-up initiatives aimed at building community-owned telecom infrastructures (these cases are covered in detail in the research report from which this article stems, see Tréguer and Dulong de Rosnay 2018). While laying out a few definitions and offering an overview of the advocacy landscape in telecom regulation, we illustrate the analysis with observations from the field to identify various advocacy tactics and to point to the potential of democratising policy-making in the telecom sector, an area prone to regulatory capture by special interests. We conclude by stressing the possible value and potential of this reproducible set of tactics for other small actors working on the commons with neither dedicated advocacy staff nor budget, while pointing to their limits and pitfalls in the current socio-political context.

2. Political Advocacy for the Commons: Notions and Examples from the Field of Telecom Policy

Traditional approaches in political science usually refer to advocacy as “the act of pleading for or against a cause, as well as supporting or recommending a position” (Hopkins 1993, 32). More specifically, advocacy refers to what is commonly labelled “lobbying”, that is engaging with decision-makers to influence the political system. Of course, lobbying has a negative connotation; its meaning charged with the undue influence exerted by corporate (and other) actors to influence policy outcomes, sometimes through illegitimate, secret or even illegal means in order to obtain either undue advantages or even rules that protect particular interests.

Of course, advocacy can be practised by a full-fledged social movement – that is movement defined by “sustained campaigns of claim making”, its “repeated performances”, its “organizations, networks, traditions, and solidarities that sustain these activities” (Tilly and Tarrow 2015, 234). But advocacy is not only the product of such organised political movements; it can also stem from loosely connected and informal networks, or even isolated actors. As little-organised as they may be, however, commoners’ movements do share a “set of opinions and beliefs in a population which represents preferences for changing some elements of the social structure and/or reward distribution of a society” (McCarthy and Mayer 1977, 1217).

2.1. Defining Political Advocacy

When commoners engage in advocacy, or what we might also call ‘grassroots lobbying’ or ‘counter-lobbying’ since they are mostly opposing regulations designed by and for major operators, they do so in ways that differ from corporate lobbying in various respects. For one thing, non-profit actors engaging in advocacy can legitimately claim to be promoting some version of the “public interest”, or at least “counterbalancing the bias toward privileged groups by advancing the collective interest of the general public and under-represented groups” (Powell and Steinberg 2006, 308). Of course, considering the antagonistic and pluralist nature of politics (Mouffe 1999), different notions of “public interest” will clash with each other, even in the non-profit sector.

But while non-profit actors do not normally act in the view of maximising business or their own private interests, policy-makers often focus on the promotion of commercial interests as a narrative in order to support a narrow understanding of regulation

and an end-goal of 'growth' or 'employment'. They may not be aware of, or care about, alternative socio-economic models that respond to different conceptions of the public interest, and which are sometimes more in tune with the alleged specific goals of a given public policy, for instance inclusiveness regarding Internet access.

By virtue of being driven by community and public interest needs rather than commercial interests, such advocates will enjoy forms of legitimacy that might increase their ability to mobilise other similar groups of volunteer citizens and build coalitions (Dulong de Rosnay 2016), whereas corporate actors will be only rarely able to gather such 'disinterested' grassroots support. To sum up, political advocacy seeks to influence policy-makers to adopt laws, regulations or decisions which will serve, and/or not hamper, the interests of a particular group.

But who do we mean by policy-makers? The terms can refer to lawmakers in parliaments, government officials and other administrative bodies from the executive branch, but also regulators of administrative bodies and judges in the courts: all those who occupy privileged positions in the policy-making process and whose decisions will affect the interests that advocacy seeks to defend or derail. All these institutions manage the legal rules that shape social interactions and are meant to balance competing interests. In the telecom sector, applicable law is organised around various topics like data flows (with issues such as privacy or intermediary liability) and economic regulations (competition law) that CNs have a direct stake in (with other topics like network neutrality falling in between these two broad categories).

If, following Lessig (1999), the technical infrastructure itself has a similar structuring effect on actors' actions and interactions, technology is also often over-determined or shaped by the law or other forms of regulation. So it is not only parliaments as law-making institutions that can be targeted by advocacy, but also those institutions and bodies acting as technical standard-making institutions (e.g. the Internet Engineering Task Force, the International Telecommunications Union, an expert working group of the European Commission, etc.).

Advocacy by or on behalf of CNs is often aimed at resisting or promoting specific regulations regarding the adoption and use of a given technology. Various centres of power regulate the telecom ecosystem. Among these centres of power, many are tied to government, influenced by it or by powerful actors that have established stable relationships with people in government (like companies and trade groups that dominate the telecom industry). The task for CNs' political advocates of the telecommons challenging dominant telecom policies is to engage with institutions, with a view to pushing them to adopt different legal and technical regulations.

But by doing so, challengers question and contest different ideologies and normative beliefs that underlie the adoption of existing legal and technical regulations. Dominant ideologies refer to the prevailing structures of representation that determine the way antagonism around specific policy options plays out at the institutional level; that is, how the policy rationales governing legal and technical code-making processes emerge and evolve.

Ideology is of course a central notion for political advocates in devising strategies, because for many of them influencing the evolution of these long-term structures of representation and power is often the best way to achieve the significant political change they call for. However, these ideologies evolve slowly and are often hard to grasp, all the more considering the fact that they tend to be obscured either by intent or neglect in the actors' tactics. Additionally, they often get lost in the complexity of the legal and technical regulations that are usually the immediate focus of short-term strategies of grassroots political advocates.

In Community Networks' advocacy, an interesting initiative aimed at reversing dominant ideologies and their framing of Internet regulation was the German CN Freifunk's campaign entitled "*Freifunk statt Angst*", which means 'Freifunk (which translates to 'libre or free radiocommunication') instead of fear'. Launched in 2010 at a time when copyright lawsuits were multiplying in Germany, the campaign's goal was to repeal stringent rules on secondary liability (*Störerhaftung*), a draconian liability regime according to which the administrator of a WiFi Internet access point is liable for violations – e.g. copyright infringement – committed by people using that access. This legal regime aimed to scare people into securing their WiFi with passwords rather than keeping them open and offering them as a shared resource to other people in their vicinity. Against these securitarian calls to restrict access to WiFi hotspots and requiring users to authenticate, Freifunk played on the activist motto of freedom instead of fear, tackling dominant post-911 securitisation processes to advocate free and open WiFi. After lawsuits and other campaign initiatives, a petition was launched in 2016, supported by an anti-*Störerhaftung* broader coalition. It eventually succeeded in amending the law in May 2016.

A similar counter-hegemonic critique can be seen in a text published by Oriane Piquer-Louis, then head of FFDN (the French federation of CNs), regarding the initial proposal introduced in 2016 for a large overhaul of telecom regulation in Europe. In the course of an EU-wide campaign where European Community Networks along with digital rights groups and academics who formed a coalition to amend the proposal, Piquer-Louis criticised the business-centric neo-liberal ideology embedded by EU telecom policy and instead insisted on its wider political stakes:

The word "consumer" comes back over and over again [in the European Commission's proposal], throughout the whole legislative text (159 occurrences in the version from September 2016, without even counting the numerous amendments. The word "citizen" only appears 27 times in 238 pages). Clearly this text is not about citizens, but about "consumers". I don't know about you, but I wouldn't like my civil rights to be limited to consumer rights. It is pretty shocking, to see yourself be relegated from citizen to an individual pushing a shopping cart through a supermarket. I thought I was more than that, as a European citizen, and mostly: I thought [the] Internet allowed me to do a little bit more than just pushing a virtual shopping cart (Piquer-Louis 2017).

2.2. Political Opportunity Structures, Political Identities, Action Repertoires

Engaging in political advocacy does not necessarily require significant resources, and this should be conveyed to newcomers to political activism, who might be impressed by the authoritative character of the institutions involved. An open letter or a picketing operation in front of the Parliament conducted by a group of a dozen people can be very effective under certain conditions. Part of these conditions have to do with the political systems, and what political sociologists call a "structure of political opportunity" (Meyer and Staggenborg 1996).

By these terms, they refer to a set of variables that make a political system open to challengers. According to Tilly and Tarrow (2015, 240), the openness of political systems (or "regimes") is characterised by the following features: a multiplicity of independent centres of power, the openness of these centres of powers to new actors and to claim-making, the unstable nature of the political alignments prevailing in each of them, and the availability of influential allies or supporters for challengers. The tactics of political advocates will be determined by the political opportunity structures.

In this spirit, Mahoney (2008) compared variations in lobbying activities in Washington D.C. and in Brussels: how actors approach specific legislative debates, choose their arguments and set up advocacy tactics. Highlighting the differences between the two political systems, she characterises the EU system – where most of EU telecom law is crafted – as an “elite pluralist” one, where the political opportunity structures have been shaped by both corporatist and statist traditions.

The role of the Council of Ministers (also called the EU Council), which shares the role of co-legislator with the European Parliament, is important in this regard, considering the fact that despite its fundamental importance in the policy-making process, its procedures are much less transparent and open to external actors compared with traditional parliamentary processes (Hillebrandt, Curtin and Meijer 2014). In theory, this lack of transparency tends to make EU political opportunity structures more closed to the claims of challengers. In practice, that means that resources will be devoted to institutions more open to relaying contentious claims. This is why during the two successful telecom policy campaigns waged by representatives and allies of Community Networks at the EU level – the battle to protect Network Neutrality (2013-2014) and that on Telecoms Package to create policy space for Community Networks (2016-2018) – the focus of their advocacy efforts were directed at the European Parliament, not the EU Council (Tréguer and Dulong de Rosnay 2018). An understanding of the structure of power relations, in addition to information on the functioning of the law-making process, agenda and timing, will be useful for new actors to demystify the black box and focus on points where a contribution of the civil society can make a difference.

Tilly and Tarrow (2015) also stress how opportunity structures affect political identities, the names and values attached to a given political actor, which in turn determine advocacy practices, or “action repertoires”, that is the array of actions that are available to a given political actor that wishes to engage in advocacy. According to Tilly and Tarrow:

Repertoires draw on the identities, social ties, and organizational forms that constitute everyday social life. From those identities, social ties, and organizational forms emerge both the collective claims that people make and the means they have for making claims. In the course of contending or watching others contend, people learn the interactions that can make a political difference as well as the locally shared meanings of those interactions. The changing interaction of every-day social organization, cumulative experience with contention, and regime intervention produces incremental alterations in contentious performances (2015, 140).

The range of strategies and tactics that shape a movement’s “action repertoire” can be “constructive” like the sort of formal, insider interactions present in the policy-making process. Action repertoires can also fall into “outsider” tactics, either taking place “within a regime’s prescribed and tolerated forms of claim-making” – what Tilly and Tarrow would call “contained contention” (2015, 62) – or breaking political routines and prescribed boundaries (“transgressive contention”). For various and rather obvious reasons, corporate lobbying usually avoids resorting to such defiant tactics. Community Networks are not among the commons-based initiatives most prone to transgressive action repertoires, but they can resort to it if needs be. In 2018, after setting up a local autonomous network next to Vic in rural Catalonia, a small group of volunteers of Guifi.net – Europe’s largest and most impressive Community Network – started looking for a gateway to connect them to regional and global networks. They learned that

two public infrastructures existed, including one public fibre owned by the Catalan government.

Public authorities were open to the idea of helping Guifi to interconnect on fair conditions, but discussions dragged on for months. So in 2012, Guifi's activists decided to increase the pressure on the Catalan authorities and test their goodwill. They announced that they would hold a 'tractor protest' the next Sunday, farmers in the area would drive their tractors on public roads to slow down the traffic and delay people driving from Barcelona to ski resorts in the Pyrenees. The call to protest came as a surprise to the authorities who pledged to speed up the process, and a few months later, the local Guifi network was finally interconnected with the public network, thus benefiting from an affordable gateway to the rest of Guifi networks and the broader Internet.

3. Community Networks and Telecom Policy: Moving from Corruption to Democratic Governance

How important is policy for the sustainability of alternative communication networks? Comparative historical research we conducted within the same project suggests that it is paramount (Trudel and Tréguer 2016; Tréguer, Trudel and Dulong de Rosnay 2020). For instance, in the context of the US telephone independent movement at the turn of the 19th century, we saw how the independents' demands for interconnection to the dominant network of the time, that of AT&T, resulted in the adoption of a 'common carrier' status for telecommunications operators in the USA. Paradoxically, this new policy indirectly legitimated AT&T's dominant position but, for some time at least, limited their power and cemented the idea of a universal network open to all – a notion still alive in today's debate on Net Neutrality (Nunziato 2009; Wu 2011). For the Free Radio movements that spread across Europe in the 1960s and 1970s, legal battles and policy advocacy were also key to their struggle against state-owned monopolies over radio broadcasting (e.g. Johns 2011; Lefebvre 2011).

Closer to our immediate concerns, policy advocacy was also key for the first generation of CNs in the 1990s (Tréguer 2017). In France, the successes and failures of the French Data Network, France's first public Internet Access Provider (IAP) created in 1992, were immediately tied to changes in telecom regulation that were enacted with much bigger players in mind (Tréguer and Trudel 2019). Conversely, the French "Digital Rights" milieu that formed in the mid-1990s allowed for positive cross-fertilisation between advocacy activities and the development of alternative infrastructures (Tréguer and Pétrin 2018). The other case study on first-generation CNs was focused on Consume.net, a WiFi-based wireless community network born in London in the late 1990s. To ward off legislative proposals aiming to outlaw the formation of wireless networks over the public realm pushed by the incumbent British Telecom (BT), Consume.net partnered with existing advocacy groups to reach out to policy-makers and stop the proposals (Trudel and Tréguer 2016).

Recent research into the governance of Community Networks has stressed the importance of organisational processes able to produce shared objectives for the community (Crabu et al. 2017). In this context, the development of advocacy capabilities can play an important role in formulating and enacting that shared vision. By bringing into play discussions within the community on what specific proposal it should put forward on, say, the issue of data retention, advocacy work can engage a virtuous process where community members will be invited to question their own technical practices in relation to legal interpretations and how much they conform to the proclaimed social and political value of the community (i.e. regarding privacy).

Beyond that, through mobilisations around or against specific policy proposals, the community can enact itself in another field – the policy field – where its political values will need to be debated and spelled out in the face of legal risks and uncertainties regarding its exact meaning and purpose. Foes and allies will need to be found, and the community as a whole will need to acknowledge the value of legal and policy skills that may not otherwise be recognised as important compared to computer and network engineering skills. Such mobilisations can help build mutual trust and recognition within the community, and between the community and its allies (Diani 1997). Among potential allies that will need to be identified, some might even be highly visible institutions who may support the claims of CNs, thereby bringing them more legitimacy and recognition (for instance regulatory authorities, municipal and regional authorities, local businesses, libraries, international organisations¹ or international standard-making bodies like the Internet Governance Forum or UNESCO).

This process – which social movement scholars call “certification”, i.e. “when a recognized external authority signals its readiness to recognise and support the existence and claims of a political actor” (Tilly and Tarrow 2015, 103) – recently happened in the world of CNs. Following engagement with netCommons, a three-year European research-action project focused on CNs that ended in 2019 (and in which both authors were involved), UNESCO’s “Freedom of expression” bureau decided to expand their decade-old policies in favour of community media to the telecom sector: “Internet universality indicators” released in 2018 will now assess every country’s performance based on the existence of an appropriate “legal framework for establishment of community networks” (UNESCO 2018).

3.1. What Community Networks Can Bring to Telecom Policy Objectives

Of course, the model of community and municipal broadband networks can do much more than ‘filling the gaps’. As Michalis (2016) insists, “it is precisely the potential of municipal and community networks to provide real competition to private commercial operators that critics focus on”. Indeed, not only have they satisfied connectivity needs that were not met by market players, but they have built models yielding impressive results on a number of policy objectives associated with broadband policy.

In rural areas, a network like B4RN in Lancashire in Britain, for instance, has connected more than 4000 homes, farms and other facilities to its fibre-optical network, offering speeds of 1 Gb/s at affordable prices, gathering members who provide capital to the cooperative through loans and community shares and an impressive amount of volunteers who help the core team to keep costs low. The take-up of 65% is impressive by industry standards. Similarly, in Greece, Sarantaporo.gr has connected 14 remote villages in Northern Greece, through volunteering and help from participants from the urban wireless network AWMN, based in Athens. Many similar examples exist across Europe of rural communities managing to find *ad hoc* organisation and financial models that allow them to serve their connectivity needs much faster and more efficiently than a market player would have done, in a much more affordable way and often without any public support coming from national authorities or EU funds.

¹ “The UNESCO “Internet universality indicators” released in 2018 (UNESCO’s Internet Universality Indicators: A Framework for Assessing Internet Development, 2018) assess country performance based on the existence of an appropriate “legal framework for establishment of community networks”, thereby creating another incentive to develop telecom policies favoring CNs” (Boucas et al. 2018, 37-38).

However, the success of CNs does not have to do only with the fact that they offer better broadband connectivity than incumbents. They do so in a way that brings positive externalities and social justice to the affected communities. This is the case, for instance, when Tetaneutral, a wireless CN based in Toulouse in Southern France, decides to offer an Internet access service for free. While the suggested price range is between 15 and 30€ per month, the organisation explains on its homepage that “members can contribute according to their means and their conscience” and that no proof will be required. More generally, many CNs give preferential subscription fees to unemployed people and students (De Filippi and Tréguer 2015; Navarro et al. 2016). In Germany, Freifunk communities across the country have been partnering with organisations defending the rights and well-being of refugees and immigrants, providing Internet connectivity to various housing centres and other spaces connected to help groups and charities. The effort was even covered by the magazine Newsweek in 2016. According to the magazine:

The group’s work with refugees in Berlin began in 2012, when refugees were occupying Oranienplatz, a public square in the Kreuzberg district, to demand better treatment. The occupation had no information technology infrastructure, and so Freifunkers decided to get the refugees internet. In December 2013, Freifunk connected its first refugee shelter, the Gerhart Hauptmann School. As the refugee crisis grew in 2014 and more shelters began opening, Freifunk expanded its network. It has connected more than 30 shelters in Berlin and more than 200 across Germany (Lopez 2016).

CNs foster social inclusion, but also strive to educate users about the information and communication technologies they use. Active volunteers regularly host workshops and seminars to train technically-minded people to discover news tools and allow them to join a development team, but also sessions that reach out to people with very few technical skills. Through the latter, newcomers can learn basic notions of computer security or understand crucial concepts such as Net Neutrality. These are the kinds of activities that policy-makers may want to learn about, so as to better grasp the positive impact of CNs. .

But despite impressive achievements, to this day, the legal landscape remains rather hostile, even if there are encouraging signs that it might be changing. As Maria Michalis has shown, even now policy-makers at the European level tend to only see CNs as playing a “gap-filling” role; that is, intervening where market actors are failing to provide (decent) connectivity (Michalis 2016). This remains true even though the European Commission (2016) recognises that “such projects have generally been very successful in driving the take-up rate among the end users and in building financially sustainable cases”.

3.2. Regulatory Capture in the Telecom Policy Landscape

Advocacy, by strengthening CNs and allowing them to grow even if current laws have not been designed with their model in mind, can fuel these positive externalities. But by systematising policy interventions at the national, European and international levels, CNs can also bring structural changes in the way telecom policy is made, perhaps in order to also consider the interests of the commons by design, from its inception.

For a long time now, telecom policy has indeed been characterised by the alliance between large telecom companies and the state. In the USA, the issue of regulatory capture in the telecom sector – when a regulator meant to act in the public’s interest

eventually acts in ways that benefit the industry it is supposed to regulate – was most notably addressed by Ronald Coase in his 1959 article on the Federal Communications Commission (Coase 1959). At the time, Coase criticised the FCC's licensing procedures on spectrum allocation for being inefficient and giving too much leeway for the state to pick and choose licensees. Rather than a “tragedy of the spectrum commons”, Coase advocated for property rights and market pricing mechanisms as better alternatives for determining spectrum allocation.

First in the USA and then in Europe and beyond, this line of criticism eventually sparked a wave of regulatory reforms based on proprietary incentives. These reforms gave way, among other things, to the ‘auction frenzy’ which began in the 1990s and persists to this day. But, as expected, increased privatisation failed to eliminate harmful corporate influence on policy-making. On the contrary – and even though some economists might argue that this is due to the remaining presence of ‘too much’ regulation – corporate regulatory capture remains a fundamental feature of regulatory economics in general, and of telecom policy in particular (Levine 1990; Laffont and Tirole 1991; 2001).

At its most extreme, regulatory capture takes the form of outright corruption. Bribery is indeed relatively widespread in the telecom sector. An EU report on corruption shows that businesses find corruption to be most prevalent in the construction and telecom sectors. In past years, cases or allegations involving politicians and companies in the telecom sector have surfaced in France, Austria, Poland, Ireland, and Portugal. In the Arab world, Africa, Latin America and Asia, there are also several cases of corruption involving European companies such as Orange/France Telecom, TeliaSonera, Siemens and Alcatel-Lucent (European Commission 2014).

Apart from its illegal manifestations, regulatory capture generally takes more subtle forms, namely a bias on the part of regulators in government or national regulatory authorities leading to lenient regulations, undue subsidies, or decisions unduly favouring the regulated firms. Such bias often stems from mutual acquaintances or even friendships built over time by attending the same universities and conferences, and meeting regularly to discuss the regulatory issues in which firms have a stake in, but also as a result of individuals shifting back and forth from government to industry to work as executives or lobbyists – a phenomenon known as the ‘revolving door’. For instance, the current CEO of Orange, Stéphane Richard, is the former chief of staff of the then French Minister of the Economy Christine Lagarde (subsequently managing director of the International Monetary Fund, and now of the European Central Bank). In Spain, incumbent operator Telefónica hired several former high-ranking public officials as consultants, such as the former Minister of the Economy, Rodrigo Rato, also head of the IMF from 2004 to 2007, who was sentenced to 4.5 years in prison in 2017 for accounting fraud.

Bias in policy outcome is also due to the fact that governments often retain golden shares in their former monopolies, as communication networks remain a strategic asset and a purveyor of taxes and employment, and can also be a non-negligible source of revenues – the French government, for instance, typically draws around €1 billion annually from its 26% share in France Telecom/Orange. All of this leads to what a French minister euphemistically defined as “friendly pressure” on business leaders in the telecom sector (quoted in Reuters 2014), but may also lead to political interference in the functioning of the National Regulatory Authorities, which researchers have found to undermine investment by introducing instability and uncertainty in the regulatory framework (Cambini and Rondi 2011).

Meanwhile, grassroots and non-profit networks, who provide flexible and cheap Internet access as commons to local communities in spite of the hostile regulatory framework, have remained well below the policy radar. The narrow priority of many policy-makers has been to move towards greater consolidation in the telecom sector so as to facilitate the advent of powerful pan-European operators, as incumbent firms have been calling for competition regulators to further ease oversight on mergers. According to trade groups like ETNO, dismantling pro-competition policies will help spur investment and innovation (Fuchs et al. 2016).

According to a report by the Commons Network, a European NGO promoting public policies favouring the Commons, this speaks to a wider issue with EU policies:

At the moment, almost all EU economic policy is focused on the promotion of purely commercial actors and the unidimensional view of people having the exclusively individual aims of selling, owning or buying goods or services. The dominant paradigm is rarely evaluated by applying clear indicators of social and ecological well-being to judge the success of an economic endeavour (Bloemen and Hammerstein 2017).

Against this reality, it is clear that telecom policy can greatly benefit from forms of advocacy that go against the interest of incumbent actors and promote alternative, commons-based models for the deployment and operation of telecom networks, which we describe in this article and have proposed to call “telecommons”. CNs have both the expertise and the legitimacy to join in technical and legal debates over broadband policy, to make the underlying political issues more salient, and to bring an informed view of the effects of existing policies on the ground. In sum, they bring a dissenting view that can only open up new policy paths, and stimulate a debate to ensure that telecom policy stays in tune with the public interest.

4. Conclusion. The Commons at a Crossroad: A Time of Opportunities and Challenges

In some cases surveyed above and in a more detailed report on the advocacy action repertoires used by Community Networks (Tréguer and de Rosnay 2018), we have shown that, despite their loosely coordinated structure, European Community Networks and their allies have proved able to use various action repertoires, and to use openings as opportunities to enact policy change to preserve telecommons. Such repertoires we exemplified in this article (and addressed at length in the original research report) could inspire other movements. They include a diversity of advocacy action: mounting disruptive and playful protests, adapting traditional models of demonstrations, lobbying regulators, organising advocacy campaigns, building coalitions throughout the Commons spectrum, playing the ‘expert card’, with engineers and lawyers participating in policy and technical forums or experimenting with strategic litigation against surveillance and censorship laws. Recent regulatory changes at the European level, which require telecom regulators to take into account the special policy needs of Community Networks (Tréguer 2018), proved that relatively little effort can achieve significant change, especially in a timely opening of a structure of opportunity where traditional stakeholders are caught by surprise.

In concluding this article, we would like to highlight some opportunities and challenges for the political and legal defence of the telecommons in particular, and of the commons as a whole in the current socio-historical context in Europe. Thanks in particular to the determination of CN practitioners and activists around the world, CNs are

coming into focus in places where telecom policy is being crafted, places where they had historically been completely neglected. This creates many avenues to acquire and transfer knowledge about how policy changes can best serve their goal, perhaps towards a knowledge commons of policy advocacy techniques which could be implemented beyond telecom law. There is a mounting momentum.

This widening structure of opportunity is only made stronger by the fact that, 30 years after the publication of Elinor Ostrom's *Governing the Commons* (1990), there is a growing recognition of commons-based modes of production and service provision as a viable policy path in multiple areas of the political economy and society. At the level of the European Union, the Commons Network – the already-mentioned think-tank advocating for commons-based policies in Europe – has been working to highlight the potential of commons-based policies for giving a new impetus to the European project as a whole. According to one of the co-founders of the initiative, Sophie Bloemen:

The crisis of the European Union begs for new, unifying and constructive narratives – alternatives to the right-wing populist and nationalist wave that is getting fiercer every day. A 'commons' approach holds the potential for a unified vision towards an alternative economy, a Europe from the bottom-up, and an ecological economy and way of life. The idea of jointly stewarding shared resources, community, and a generative economy can find resonance with a diverse range of citizens (Bloemen 2017).

There is a sign that in the institutional field, commons-based models are getting some recognition. In 2016 for instance, in addition to the previously mentioned UNESCO example, the European Committee of the Regions adopted an opinion report in which it correctly identifies some of the core characteristics of commons-based economies, such as a:

peer-to-peer approach in which every user can be a provider and consumer at the same time, or even be involved in the platform governance [...] If the actors involved do not just share a resource but collaborate to create, produce or regenerate a common resource for the wider public, the community, they are co-operating, they are pooling for the commons (Brighenti 2016).

For various movements of the digital commons, the past years have seen some successes, with a growing accommodation of commons-based models by the regulatory landscape (e.g. public sector information, open data, scientific publications; albeit that incorporation in positive law is closer to accepting open access provision than supporting proper and full governing as commons). In the telecom sector, too, the new regulatory framework in Europe (the European Electronic Communications Code or EECC) has for the first time recognised Community Networks as deserving a special regulatory treatment (Boucas et al. 2018, 37-38; Tréguer 2018). These are of course very modest and fragile signs, but they suggest that the commons could, in the years ahead and as a broad movement, develop better advocacy capacities, and get the recognition they deserve from policy-makers.

At the local level too, public policies aimed at promoting commons resources are getting traction, but have also shown their limits. In Spain for instance, citizen platforms seized municipal power in Barcelona, Madrid and Valencia, the country's three largest cities, with the local elections in May 2015. But even where these new local governments explicitly sought to promote commons-based alternatives to digital policy – most

famously in Barcelona – many activists grew frustrated by what they saw as administrative inertia and a lack of political will – or worse, as the instrumentalisation of social movements by city officials (Levi 2018). Four years later, these local governments were mostly disavowed when voters cast their ballot for the municipal elections of 2019.

In turn, a mounting challenge looms for the commons movement: that of co-optation by states and capitalism – precisely the entities that self-governed commons communities were supposed to offer an alternative to. The commons have always been an ideologically diverse movement (Papadimitropoulos 2017; Broumas 2017). And that was part of its strength. Papadimitropoulos sees three major political currents supporting the commons: the liberals, who anchor their defence of the commons through liberal theory and as a middle way between the state and the market; the reformists, who argue for the gradual adjustment of capitalism to the commons with the aid of a “partner state”; and finally the radical anti-capitalists who favour the commons “against and beyond” capitalism (Papadimitropoulos 2017).

That heterogeneity makes the movement vulnerable to its progressive incorporation in institutional networks, which could undermine its fundamental premises. In many mainstream discourses, whether by reformist politicians or the neo-liberal economists that advise them, the word ‘commons’ is increasingly popular, not without semantic appropriation (e.g. Tirole’s common good), or forms of “commonswashing” (Dulong de Rosnay, Antoniadis and Tréguer 2019). In parallel, we are witnessing a new stage in the financialisation of public policies (Chiapello 2017). Given the fact that public policies often embed techno-economist tendencies reaped with metrics and contracts, the commons movement looks like an easy target for this gradual colonisation by financial and quantitative reasoning, which are intensifying in the non-profit sector and might soon submerge many of the initiatives that had first appeared as radical attempts at changing the world.

Resisting these powerful trends, too, require debate and organising. But by engaging with policy-making institutions while fighting bureaucratic inertia, by obtaining certification from mainstream actors while keeping its radical edge, by articulating political advocacy with on-the-field efforts to foster the self-reliance and autonomy of local and transnational communities, the commons movement can remain one of the most promising alternatives to the current economic and political order.

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