CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON TECHNOLOGY IN GOVERNMENT

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November 20, 2009
Start: 10:11 am
Recess: 1:33 pm

HELD AT: Council Chambers
City Hall

B E F O R E:
GALE A. BREWER
Chairperson

COUNCIL MEMBERS:
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Council Member Letitia James

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CHAIRPERSON BREWER: Good morning, I'm Gale Brewer, and I have laryngitis, but I'll do the best I can. It's getting better. I'm Chair of the Committee on Technology in Government. And I'm delighted that we're all here. I'm going to start with a PowerPoint introduction, and then I'm going to thank the many people who are making hearing possible. So, let's just start, thanks to Colleen Pagter with the Committee on Technology in Government, this is an oversight hearing establishing strong network neutrality principals in order to protect the internet. And we have a proposed resolution, 712-A, and for those who are concerned, there's always room to make changes. As you know, the internet was created to be an open network that gives consumers choices over internet activities. It was designed as an end-to-end network that passes information between the end-users without interference from the network provider. As you all know, internet protocol or IP, also emerged with the design of the net as a way to separate the network providers from the services that run on the net. 40 years ago the FCC, the Federal

Communications Commission, decided that companies providing communication services could not interfere with or discriminate against information services. In 2002, the FCC tried to take away these nondiscrimination protections, and the decision eventually ended up at the Supreme Court in 2005, in the case of *NCTA v. Brand X*, which you're all familiar with. After the court ruled in favor of the FCC, giving them the authority to make decision and rules for broadband internet lines, the Commission leveled the playing field for telephonic cable companies by deregulating internet services. Network neutrality has been defined as the principal that internet users should be able to access any web content they choose, and use any applications they choose, without restrictions or limitations imposed by their internet service provider. Recently, companies that provide internet access have been considering, haven't done it, turning away from this network neutrality rule, and embracing a tiered access approach, where websites that pay extra to providers would load faster than others. I guess kind of like the U.S. postal versus FedEx.

Telecom executives believe that a new payment program would help the companies invest in more bandwidth, in order to improve download speeds for customers. Opponents to the tiered approach believe that the payment plan would hurt competition by discriminating against those smaller companies who cannot compete with the bigger firms. Discrimination, we feel, would also hurt innovation, which is considered to be key to the internet. In 2005, the FCC adopted a policy statement that outlined four principals to preserve and promote the open and interconnected nature of the internet, but they do not carry any enforcement power. More recently, in October 2009, the FCC voted to move forward with a process of codifying rules by seeking public input on six proposed principals that apply to all platforms for broadband internet access, including wireless networks. And then in July 2009, Congressman Markey from Massachusetts and Eshoo from California introduced the Internet Freedom Preservation Act of 2009, HR3458. This Act seeks to set policies regarding the internet and mandates that internet access service providers "not provide or sell to any content, not, or sell any content application or service provider any offering that prioritizes traffic over that of any other such providers." And then in October '09, Senator McCain introduced the Internet Freedom Act of 2009, Senate 1836, which blocks the FCC from proposing, promulgating or issuing any regulations regarding the net. Our resolution number 712-A argues that network neutrality promotes competition and innovation among internet servers and content providers. It advocates that Congress pass HR3458, and that the FCC create enforceable protections for network neutrality in order to ensure that the internet will continue to foster innovation, increase competition and spur economic growth. This resolution differs from the original resolution. We had a hearing about a year-and-a-half ago, by removing references to outdated congressional bills, and adding references to HR3458, and S1836, which are before the Congress, while also including the current actions by the FCC. So that's the discussion that's going to take place today. Before I go forward I want to say a couple of things. We have an amazing array of people who've put this hearing together; obviously led by not only Colleen, but also Jeff Baker, who's Counsel to the Committee, and from our office, Kanahl Mahatra [phonetic], Lauren Klein, Sam Wong, Sophia Gury [phonetic] and Monica Landrove. And of course the fact is that the IT office of the City Council, led my Chris Law, has been very helpful. Eunic Ortiz from the Speaker's Office, and the indomitable Joely McPhee [phonetic] from the Internet Society. Sam will talk to you a minute about how he is tweeting and where you should find it, but because of all the wires, go that way, 'cause all the wires, they'll trip over them. Sam would you just talk for a minute about what you're doing.

SAM WONG: Sure. So, in order to make this conversation more dynamic, we're using Twitter. So if you have your laptop, feel free to use the wireless internet, with the codes up there, on the PowerPoint. And the Twitter account is at NYCCTECHCOMM. You can also pick up a slip from the Sergeant-at-Arms, right there, and then if you're tweeting, please use the tag code "netneutrality" as one word, and also #reso712A.

And you can also submit your questions and all comments to the Committee via email, at nycctechcomm@gmail.com. Alright.

CHAIRPERSON BREWER: Alright, thank you very much. Our first panel is Fred Wilson from Union Square Ventures, Art Brodsky from Public Knowledge, and Timothy Carr from Free Press. Come join us here at the table, don't trip over anything. And we'll set the clock at three minutes, but you can certainly go over a bit if you want. [pause] Whomever would like to start, go right ahead. Thank you.

FRED WILSON: Hello? Great. Hi, everybody. My name's Fred Wilson, and I am an investor in technology companies. We, I have a firm with two partners called Union Square Ventures. And before that I had another venture capital firm called Flatiron Partners. I've been investing in technology companies here in New York City for almost 25 years. I got my start in the business in the mid-'80s. And the interesting thing to me about this hearing is the impact of the internet on New York City's economy, I think is important and growing more important every day.

When I first got in the venture business in the mid-'80s, we used to fly to Silicon Valley and Boston to invest in companies; when I started my first venture capital firm in the mid-'90s, about half of our investments were in New York, but the other half of our investments were in other parts of the country. At Union Square Ventures, 20 out of our, maybe 22 out of our 30 investments are here in New York City. And the reason for that is that New York City has a very vibrant startup culture, and that reason for that is the internet. And the reason that the internet is empowered such a vibrant startup culture is that it is possible, without asking anybody's permission, to connect a server to the internet, and develop a business on the internet. It's the way the internet has always worked, it's the open architecture of the internet, and it's a very powerful force for innovation. And the issue around net neutrality is simply that we cannot allow anybody in the internet ecosystem to ask for permission from a developer to build a website. And that in effect is what the infrastructure providers would like to do. They would like to control what applications run on their networks, they would like entrepreneurs to come to them, pay them for the right to run those applications. And that's the way it's worked in the mobile phone business, until Apple has started to make some changes. And I think we will see Android make even more changes. I think mobile, the mobile ecosystem is starting to look more and more like the internet ecosystem, but it's not yet today quite there. And if you look at the number of applications that have been built for the internet, versus the number of applications that have been built for other technology platforms, it's not one order of magnitude, it's like three or four orders of magnitude. The internet is a completely open playing field, where anybody can build anything they want. And that is why we have companies in this country, like Google and Amazon and eBay, that are hugely successful, powerful global businesses. And we're starting to create some of those here in New York. And it's important, I think for the government here in New York, to support this ecosystem, both by doing things locally, that can help these companies succeed, but also by speaking broadly out for maintaining the existing architecture of the internet, and not allowing anybody to dictate what can or cannot be run on an internet based network. And ideally, it would be great if we could create the same architecture for the mobile internet. Thank you.

CHAIRPERSON BREWER: Thank you very much. Whoever would like to go next.

ART BRODSKY: Good morning, my name is Art Brodsky, I'm with Public Knowledge, and I want to thank the Committee for allowing an out-of-towner to come up and participate in your proceedings this morning. It's a lot of fun to be up in New York. I sort of never miss a chance to come up. What I'd like to do is two things this morning. One, to second what Fred said, because what this Council could do is vitally important to the City of New York, to the economy. It's important to all the internet users, it's important to all the internet developers, to have an open, vibrant and non-discriminatory internet. And to the extent that you can influence the Congress of the United States through your voice up here, in this Committee and the Council as a whole, you'll make a very good contribution to preserving that open environment which is so important. I'd like to tell you a little story about a new story I read from my local hometown paper. It's called "Using the Web to Adjust the Color on TV." And this is about a fellow named Jonathan Moore who runs a website called rowdyorbit.com. And what he does is put African-American and Latino and other content online. This is an illustration of a little web series called "Chick," where a black woman decided she wanted to be a superhero. And so she made herself a little series of movies, and Jonathan put it online. So, I talked with Jonathan the other day before I came up here, and he said, "Art, I'm totally down with net neutrality," because without net neutrality, he couldn't get his content out. His actresses and the people that do all the things for his site, couldn't get their content out. And that's why this is so important, it's not for the Amazons, for the Googles, for the cable companies, it's for the people who want to create and who want to build businesses, and who want to sustain the open and nondiscriminatory internet. And it's for the users who don't want to be caught in the middle of a power struggle between content providers who may find themselves in the slow lane, because they can't afford protection money for the fast lane, and the big infrastructure providers, the telephone and the cable companies. So my last bit this morning is just to say, "Don't be distracted." You'll hear a lot of things about the need, about the threats to the economy from net neutrality, you'll hear a lot of probably some engineering mumbo-jumbo about how you can't a have a nondiscriminatory internet. The jobs issue is a red herring. I just read this morning that Verizon is laying off another 8,000 people, in addition to the 8,000 they already laid off this year. It has nothing to do with net neutrality. Companies do what they do when they want to do it. And the networks are very good at being managed, they can be managed in a net neutral environment. All net neutrality means is you can't play favorites. That's my simple and easy message for you this morning, thank you again.

CHAIRPERSON BREWER: Thank you, and

we will put your entire testimony into the public record. Thanks. Next.

TIMOTHY KARR: Thank you. I'm Tim Karr, the Campaign Director for Free Press. We're really grateful for this opportunity to testify again on behalf of a net neutrality resolution in New York City. We hope the City will set an example for others to follow. There's, when we first heard about this hearing, we talked amongst some of my colleagues and we decided to ask our activists in New York City whether they thought this wan an important proceeding. So, on Tuesday, we went out and asked them to sign onto a letter encouraging the New York City Council to pass this resolution. And in the last little over 48 hours there have been 4,200 signatures on that, all from New Yorkers. A copy has also gone to our 13 members of Congress in the House, and I'm submitting a copy to you today. So, you'll see a great deal of passion today, around the issue; because much is at stake for the tens of millions of Americans who rely upon the internet every day. Despite the debate, I don't believe anyone on this panel or in this room would dispute two notions.

First, over the past 40 years, the internet has emerged as an unprecedented tool for spreading innovative ideas, increasing public participation in our democracy, fostering economic opportunity, even in the most overlooked communities. Second, I don't believe we would disagree that we need sound public policies to encourage faster, more open and affordable internet access for everyone in the country. The right policies will continue to advance the most democratic communications technology ever devised. The wrong policies will jeopardize this openness and hasten the global decline of U.S. broadband services. We need to pass the right policies right now. A lot has changed since I testified before you on net neutrality in 2007. We now have a president who has repeatedly pledged to take a backseat to no one in his commitment to net neutrality. President Obama has appointed the principal architect of his net neutrality agenda, Julius Genachowski, to head the FCC. House Speaker Nancy Pelosi, Commerce Committee Chair Henry Waxman, have all been outspoken in support of the FCC's efforts to pass a strong net neutrality rule. And perhaps most importantly more than $1.6 million people across the country have contacted their elected representatives, urging them to support net neutrality. Unfortunately, though, a lot has stayed the same in the past two-and-a-half years. In the first three quarters of 2009, ATT, Comcast, Verizon and their trade groups, have spent nearly $75 million and hired more than 500 lobbyists to discredit an open internet. And that's just the money we know. They have also funneled untold sums to phony front groups, think tanks and populist sounding PR campaigns. As we've seen with the healthcare and global warming debate, any effort of reform will come under a relentless assault from deep-pocketed institutions that prefer the status quo. The money against net neutrality is being spent to lock in incumbent control in America. The present phone and cable duopoly provides 97 percent of fixed broadband connections into American homes. More and more users are starting to use these connections to create and share media. And in response, these same companies have moved rapidly to reverse engineer the openness that's the hallmark of the internet. The history, however, is clear, and you've gone over it much already, but I think it's important to note that the internet was born in a regulatory climate that guaranteed strict nondiscrimination. Internet pioneers like Vince Cerf and Tim Berners Lee, intended the internet to be an open and neutral network, and nondiscrimination provisions have governed the nation's communications networks since the 1930s. But after intense corporate lobbying, the FCC had pulled the carpet beneath these principals in 2005. So we are faced today with a rather urgent situation where we need to determine what the future of the internet holds. Will the future be continue, will the internet continue to be user driven and user powered, as it was originally intended, or will we increasingly allow this very powerful corporate lobby to pick away at the principals and freedoms that we've had from the beginning. Now some will argue before you today that the internet has prospered free of regulation. This is a red herring. The internet was always had a baseline consumer protection written into law. The real question isn't should we regulate--without forward thinking broadband policies, America's economy will suffer--the real question should be for whom do we create this policy. The phone and cable companies have held Washington policymaking process in their grip for too long, but for all of their talk about deregulation, these giants work aggressively to force through regulations that either protect their market monopolies and duopolies, stifle new entrants in competitive technologies in the marketplace, and increase their control over the content that travels over the web. So we need to act today to protect the open internet as the essential infrastructure of our time. It is the social tool with which we will build a more prosperous, open, and just nation. Free Press is encouraged by the Council of the City of New York efforts to adopt Resolution 712-A. It will have far reaching implications. Thank you.

CHAIRPERSON BREWER: Thank you very much. We've been joined by Council Member de Blasio, Council Member James. I want them both to know that we are streaming and tweeting this, and I hope when you're Public Advocate, you can figure out how to do that, too. [laughter]

COUNCIL MEMBER DE BLASIO: [off mic] You authorized that announcement, right.

CHAIRPERSON BREWER: Thank you.

COUNCIL MEMBER DE BLASIO: [off mic] You're Gale Brewer and you approve that message.

CHAIRPERSON BREWER: Yes. [laughter] Anyway, thank you, all three, it was an inside joke, it's a long story. But thank you very much. One of my questions would be, and I hope my colleagues will have questions, too. Can you sketch out what ground rules you'd like to see, if any, govern the internet of the future? Because I think we all do want what generally is conceived of as, as much opportunity for vision and people who can figure how to make the world better, which is what I think the internet does. There are a whole series of people, yeah.

ART BRODSKY: I'd like to take that on. First, and congratulations to Councilman de Blasio in your new responsibilities. Looking forward to a more consumer-friendly City, continued consumer-friendly City next year. Let me make one important distinction, that when we talk about net neutrality, we're not talking about regulating the internet. And we think of the internet as all the websites from Jonathan Moore's Rowdy Orbit up to Google and Yahoo! and everything else. What we're talking about is traditional rules on carriers, on phone companies, and slopping over into cable companies, that as Tim said have been, for the most, for some degree, under regulation for decades. Nondiscrimination is a, was a fundamental part of the Communications Act of 1932, for the lawyers in the room, Section 201 and 202. And it's only in the last four years that that's been wiped away. What we want to do is bring back a very basic, simple, conservative, well-established concept of nondiscrimination, where you can't play favorites online. It's as simple and easy as that. And I think the rules that the FCC has proposed are a good way to go, they allow reasonable network management, they allow for cooperation with law enforcement, they allow phone and cable companies to filter out spam for their email customers. So, we, the concept of what we want to do is very clear, and there's no reason not to move ahead.

CHAIRPERSON BREWER: Okay, does anybody else want to add to that.

FRED WILSON: Yeah. A lot of people think that net neutrality means that we want to regulate what the carriers can charge for access. And in my opinion we should not do that. We should allow a carrier to charge whatever they want, and compete in the marketplace with the other sources of access to the internet. And if somebody wants a 50 megabit circuit, because they want to watch streaming video in HD quality, then, you know, that's going to cost more than a dialup connection, certainly. And I don't believe that we should regulate that side of the internet. And that is how the network operators will make money. They argue that net neutrality will not allow them to make money, but of course that is a specious argument. There's plenty of opportunity for them to make money on the access side, and they should not be allowed to filter or discriminate or in any way stop any application from running on their network, as long as it is not a harmful application, like a virus or spam or things like that. Of course we should filter that out. But any legitimate application, like the one that was just described here, or anything, needs to be allowed to operate on the open internet.

CHAIRPERSON BREWER: Okay. Thanks. Council Member James.

COUNCIL MEMBER JAMES: Just one question. My whole career has been built on equal access for all. So to what extent will this have on providing access to low income families and individuals in this country.

ART BRODSKY: That's a great question. And I think that there are two parts to the answer. The first part is, it will have a great effect in the sense that if you put someone in the middle between the consumer and the user, where there is no one now, someone in the middle that says, "This website will run faster than that website," you harm the equal access particularly from the small businessman. And that's from my friend Jonathan who did this website that I mentioned, with, you know, the African-American and Latino content. He won't be able to get the same customer eyeballs on his site, and build his business as somebody who can afford the managed services, or other whatever they want to call it, that the phone companies put in the middle. So this is very important, to maintain the equal access that, as Fred and Tim have said, has been the hallmark of the internet, the characteristic of the internet, since we started.

TIMOTHY KARR: And just to add, I think a part of your question is also about just getting access in communities that are still left off the grid. And one argument that has been put forward is that net neutrality will thwart the necessary investment needed to build out into low income, inner city communities. And we looked at the numbers, to see if that was indeed true, and in a study that Free Press released last month, we found, in looking at AT&T, AT&T merged with Bell South at the end of 2006, in there the FCC attached a net neutrality condition to that merger, for two years. So we looked at AT&T over those two years, and just to see if they indeed, because of net neutrality curtailed investment. And we found that their capital expenditures actually went up over the two years. And in fact, after the net neutrality conditions expired at the end of 2008, was the only time that we saw that investment in network build out, network services decrease. So, if those numbers tell you anything, it means that net neutrality, you know, either has no relationship with the network build out, creating access for communities, or if it has any, it's a positive relationship.

ART BRODSKY: You know, I mean, companies do what they want to do. I mean, if you look at Verizon, they're selling off all of northern New England. Has nothing to do with net neutrality. I mean, they're laying off people in Little Rock because of the Alltel merger, has nothing to do with net neutrality. And they build out and improve facilities in neighborhoods unfortunately on the whim of what they want to do, because a lot of the potential regulatory power to do that has just gone away over the past few years. I mean, in an ideal world, perhaps, some years back, a state commission or a Federal Communications Commission, could direct a company to say, "Hey, your facilities are lagging in Harlem," or "Your facilities are lagging downtown," you know, "fix it up." And in some cases, years ago, they were able to do that. They can't now. But don't, if they're not doing it now, don't blame it on regulation or potential regulation.

COUNCIL MEMBER JAMES: Obviously, I will support any position, any bill that will advance access for all, as opposed to construct barriers. So, if, I will speak with my chair member, my chairwoman, and she will advise me accordingly, and I will vote my conscience, but obviously I will be led by the leadership of Council Member Gale Brewer, who is the internet guru in the City Council. Thank you.

CHAIRPERSON BREWER: Thank you. One question would be, obviously, you talked a little bit about the users and the analysis of you could charge more for faster. But what about a like a YouTube situation, where there's a lot of content? Should they be paying more or not? Again, it's the other side of the coin.

ART BRODSKY: YouTube and Google are paying untold millions already. It ain't cheap to put all that vide online. And the fact that as former then SBC chairman, then later AT&T chairman, after SBC swallowed AT&T, but before the AT&T swallowed Bell South, I have to keep all these straight, Chairman Ed Whitacre famously said, you know, "These people are using my pipes for free." Now I will note that he started the net neutrality debate before the ink was dry on the first of the series of mergers. So, we sort of know where their head is at and what comes to that. YouTube is paying millions. Nobody's using any pipes for free. As Fred said, as a consumer, I decide what connection I want at my house. Businesses also pay for it. You know, they pay for lots more to put all that video online. So, a lot of money is being spent. The earnings are there. And I think for them to say that, you know, somehow folks are taking advantage of the internet and putting up content for free is just another red herring.

FRED WILSON: Well, I think that really the way to think about this is, as high bandwidth applications come online, YouTube would be a classic example of a high bandwidth application. Consumers are going to need to increase the amount of bandwidth that they purchase from their carriers. And the carriers can charge more, for more bandwidth, and they do charge more for more bandwidth. So I would argue that YouTube is making money for carriers, not costing money for carriers. The issue here is that the carriers want to do, is they want to control their networks, they want to control who can access the networks and they want to eke out as much profit as possible on those networks. And I think we as a society have an obligation to ourselves and all the citizens, not to allow that to happen. And so, there is an economic model, it has existed for 15 years now on the internet in its commercial phase, it's well understood, everybody making money, and the argument that they're going out of business because people are using their pipes for free is, in my mind, not correct.

CHAIRPERSON BREWER: And something similar of course, is cable and phone companies, should they be permitted to protect, this is from their perspective, their core businesses by charging content providers, or by managing video or voice data VOIP? Or is that something--it's sort of exactly what you were talking about. And I think I know your answer, but I wanted to hear it.

FRED WILSON: Well, I think that's, I think that's the nut there. In particular, what you're looking at, these vertically integrated companies that are also in the business of providing cable video services--

CHAIRPERSON BREWER: Correct.

FRED WILSON: --in addition to high speed internet.

CHAIRPERSON BREWER: Correct.

FRED WILSON: And what we've seen over the last couple of years, as more and more Americans get high speed connections, is that they're taking control of their own media experience. They're creating videos, they're sharing videos, they're downloading them--they're sort of becoming their own media moguls.

CHAIRPERSON BREWER: And turning off the television.

FRED WILSON: And yeah, there is a term called "cutting the cord," which terrifies a lot of these legacy companies, because they do see a convergence of all things media, to a single high speed internet connection. And unfortunately, their solution to that, rather than building demand to meet the, or supply to meet the increase demand, more people want high speed internet, they are trying to constrict it in a way that will prohibit people from using video, via the internet, and turn them back to their legacy products. Now, this sort of, this stifles the sort of innovation that made YouTube such a great revelation for people. So we are very, very strongly against the notion that they should constrict people's use in any way.

ART BRODSKY: And let me just add a historical note, since I've been in this business far too long. I started right before the divestiture took effect in 1984. We've seen all this before. This is not new, when you talk about discriminating against competing products. And for years and years, using telephone that were not manufactured by Western Electric were verboten. For years and years, using any other services were verboten. It took, you know, government lawsuits, it took the FCC to say, "Yes, you can use other equipment, no you should not favor your affiliates." So this is, these are things with which the government has dealt for years, and can continue to do so in the future, whether it's new telephones or whether it's VOIP.

FRED WILSON: You know, I would just like to call out attention to the notion that we should protect somebody's business. To me that is a bad idea. Businesses compete with each other, times change, technology changes, businesses come and go. The idea that we would protect anybody's business, and create regulations to protect any business, to me, is a crazy idea. Let new businesses flourish and let old businesses die. That is the way that we will get the greatest amount of innovation in our society, and that will be the way that we will get more people on the internet, create open access, create more access. Any time we think about protecting any business, we're thinking wrong.

CHAIRPERSON BREWER: And following that Fred, on that Fred, I think what you're trying to say is that having a stable regulatory environment will spur economic development and internet startups. Is that what you're basically stating?

FRED WILSON: Not arguing for a regularly environment that protects anybody's businesses. We have that in many sense. I think regulations today protect telcos and cable companies, and gives them monopolies. And that is not the way to create innovation. What we want to do is create everything we can do to allow hundreds, thousands of competitors, out there in the marketplace, competing for our business. And that will create the greatest set of services for us and society at large. So, this is what the carriers are trying to do, they are trying to protect their monopolies, protect their profits and protect their business. And I think we should not allow that to happen.

CHAIRPERSON BREWER: Okay, so net neu--

ART BRODSKY: Can I just take that from a different angle? When the internet started in 1998, we were under common carrier regulation. And one of my great props, which I didn't schlep with me today, 'cause it's sort of heavy, is a book I keep in my desk about yea thick, of internet service providers from ten years ago. There were 5,000 of them.

CHAIRPERSON BREWER: I know, I still have mine.

ART BRODSKY: Oh, good for you. And that's the point that, you know, regulation can, in the right environment, foster business, and foster creativity, by giving everyone an equal chance to play.

FRED WILSON: An interesting thing about common carriage is also it, common carriage obviously applied originally to transportation and then the communications sector became, it applied to the transport of information. But what common carriage has become in the internet age is really a great engine for free speech. And we've talked, we've talked about startups, we've talked about commerce and economic opportunity. But I think it, there's an equal opportunity component to net neutrality, which is that it does foster free speech in ways that we've never seen before. In fact, you know, the internet, an open internet, has made the First Amendment a living document for so many people, over the last two decades, that-- and net neutrality and common carriage are the reasons that that stays protected.

CHAIRPERSON BREWER: I want to thank this panel very much for your insights, and I really appreciate your being here today, particularly traveling and all of your history on this topic, 'cause I know how long it has been. Thank you. Our next panel is John Mayo; Howard Simmons, Simons, I'm sorry, from the Cable and Television Table, Telecommunications Association of New York; and Lawrence Spiwak. Thank you. [pause] [background noise] Where are you from, students? Where are you from? Borough of Manhattan Community College. Congratulations, we love CUNY. Thank you for being here, this is a Committee on Technology in Government, and we're delighted to have you, you're welcome to join us, there's seats in the balcony or you can find seats here. Thank you for joining us. And whomever would like to begin. I'm sorry about my voice.

HOWARD SIMONS: I guess that's on, I guess I'll--by consent of our panel here, I guess I'll start, if it's okay with you, Madam Chairman.

CHAIRPERSON BREWER: Of course.

HOWARD SIMONS: My name is Howard Simons, I am here today representing the Cable Telecommunications Association of New York. And I'd like to just make a couple of points and then hopefully get into questions with you. First, I think it's important to acknowledge that the reason that New Yorkers have broadband, high speed internet access, is because of the investment of billions and billions of dollars by cable operators, and by phone companies, in the City. In New York City alone, Cablevision and Time Warner Cable, have invested billions since 1995 to bring high speed access here, it didn't just materialize. The prior panel, I mean, I think has, I think has done somewhat of a disservice to the debate by setting this up as a discussion between almost between good and evil, and that's not really the debate. And I know you recognize that, having been involved in this issue for many, many years. It really is a very difficult debate, over the role of government in a sphere of the economy where up to now the government has not been very much involved at all without much seeming detriment to the public, and indeed I think the consensus is that the government's light touch in this field has been one of the primary factors in bringing the benefits of open internet to the public. Our concern, as an industry, is that a change in that role of the government could enact the most serious law of all, and that's the law of unintended consequences. That in the desire to codify openness and internet freedom, the actual outcome may be much different. Not because, necessarily, providers will invest less or differently, although I think that could be the outcome, but because the role of the government here is both unnecessary and where we fear counterproductive. Unnecessary because all of the goals embodied in your resolution, and in the net neutrality principals, are already the policy of cable and other internet service providers. The advancements that the prior panel spoke of, the programming, YouTube, the program that Mr. Brodsky spoke up, those are all available today because there is an open internet. To listen to the prior panel, you would think we were in dire jeopardy of facing some sort of closed system that was going to undermine innovation. And just the opposite is true. Every cable broadband subscriber today can access the content that she or he seeks over the internet. Cable operators don't block content. Cable subscribers can attack any gaming device, any computer to the internet. There's not a problem with that. Cable subscribers can run any application, access any service over the internet. There's not problem with that. The idea that we face a crisis that requires government intervention is totally contrary to the facts, and so in addition to a net neutrality regulation being unnecessary, we also fear it's counterproductive. Because the ambiguity and the uncertainty that regulation will inevitably introduce will slow investment, or at least deter investment, redirect investment, make it much more difficult for network operators to run their businesses because every, every dispute or ever judgment call will become a dispute, will become a government dispute. I'll just give on example and then I'll stop. The prior panel said, "Look, we understand network management is complex, nothing will, nothing will deter network management, nothing will deter the ability of network operators to protect against spam and viruses. But in fact, there was a very real debate over how to manage the network, in order to prevent those things from occurring, that led to a sanction of Comcast because of a judgment they made in how to manage the network in a way that was not content specific. Those kind of judgments in a world where net neutrality is legislated, those kind of disputes will become commonplace. And making disputes commonplace and involving the government in those kind of decisions will slow the very kind of investment and deter the very kind of dynamic advancements that I think you want, and we want, for our customers.

CHAIRPERSON BREWER: Thank you very much. And thank you for all the service to New York that you do.

LAWRENCE SPIWAK: Thank you, Madam Chair, my name is Larry Spiwak, I'm with the Phoenix Center. It's a pleasure to be back in New York. I actually just, for the record, I'm a graduate of Cardozo School of Law up the street. I have actually even worked for the New York City government when I was in school and I used to live right across the bridge there on Carol Gardens, so it's was really great to be back.

CHAIRPERSON BREWER: Glad to have you here.

LAWRENCE SPIWAK: Let me take a different way of skinning the cat on this. If you look at my record, I've been a very vocal proponent of the FCC having a strong authority to deal with problems and making sure that we have an open internet. My issue is not necessarily with the FCC doing it, but the process in doing it. I think the current system works because I think it's a very careful, ex ante approach, where you can look at it, see if somebody did right/wrong. My issue is with moving from a careful sort of scalpel ex ante, ex post approach, to a sort of blunt ex ante non-discrimination role. And let me tell you why. Because if you look at the rules that are being proposed, you look at the legislation, they essentially say you've got to build your way out of congestion. And when you do that, inevitably what that means is that these rules will end up leading to higher transaction costs, higher prices for consumers, less innovation, and more likely increased industry consolidation. Let me give you just two points, that sort of brings in the concept. If you go back to 2000, and the auction of the 700 megahertz spectrum, you had two blocks of spectrum. One was encumbered, one wasn't. Verizon bought the encumbered spectrum, with the openness requirements, AT&T didn't. Verizon paid about 40 percent less in their bid for the encumbered spectrum. Why? Because they accounted for about a 32 percent reduction in profitability in using that spectrum in their bid. Now that's fine, they paid less. But here's the thing, if you take a rule that's, that will reduce industry profitability by 32 percent, and apply it across the board, that means somebody's going to go bust. So if your rationale that we need net neutrality and nondiscrimination rule because there's insufficient competition, you're actually going to make things worse. Now, secondly, you're actually going to make things worse. Now, secondly, as you all are probably aware, with the Recovery Act, the United States is going through this giant zeitgeist of a national broadband plan, and it's very worth social goal to make sure that all Americans have ubiquitous coverage at affordable rates. Fantastic. Friends of mine are working on that right now. If you have a rule that by definition will raise entry costs and lower firm profitability, then by definition you're going to get less deployment. And we've done a bunch of work at what--more importantly is you end up, these smaller firms out in rural America, or even smaller firms in urban areas, are going to bear that brunt much more disproportionately if they have to build their way out of congestion. So what does that mean? It's going to mean that the subsidy's going to go up. The FCC's broadband team just calculated that to build on network, one network, would be 100 megabits, would cost approximately $350 billion. There's probably more to it than that. So you're talking about a huge subsidy. But you know who's going to end up paying that subsidy? Not the people out in the farms, but people in urban areas. So, prices, by definition, are going to go up. So the point, my point here is that we have to be very careful with the cost benefit of what we're doing. My only suggestion here is that we let the process work, let my friends at the FCC go through this process, and not add to the hyperbole, but focus on what is an exceedingly complex issue. Thank you.

CHAIRPERSON BREWER: Thank you very much. Next.

[pause]

JOHN MAYO: Good morning. My name is John Mayo, I am a Professor of Economics, Business and Public Policy at Georgetown University's McDonough School of Business, and I'm also the Executive Director of the Georgetown Center for Business and Public Policy. I have been studying telecommunications regulation and antitrust issues for 25 years. I've served as an advisor on economic matters to state and federal regulatory agencies, the Department of Justice Antitrust Division, and various private companies. Today it's just a pleasure to be here testifying on an issue that is of key policy interest. Let me get to the point. I will urge you to pause and indeed to not pass this resolution. And I do so for four reasons. First, economic research indicates that net neutrality regulation may create, in fact, more harm than good. As an example of that, we have done some research at the Georgetown Center for Business and Public Policy that looks at the issue of the digital divide. This is an issue that's been raised by many people very concerned that the penetration rate and the deployment and adoption by lower income citizens and minorities, is lower than for other Americans. We find that net neutrality regulation will actually raise prices and harm the penetration and adoption of broadband services by the very citizens that we'd like most to help. So that is, I think, a problem. Number two, I think net neutrality regulation focuses on successful markets rather than on failing markets. This is a market, the internet, that by all accounts, I think both in the first panel and the second panel, has been wildly successful. A decade ago, we had three million broadband subscribers in America; today we have 65 million broadband subscribers. Affordability and accessibility of broadband is greater than it's ever been today, and firms are spending tens of billions of dollars every year deploying more broadband than they ever have before. Now, the proponents of net neutrality regulation will tell you that the solution to this is to impose pricing regulation. But I will tell you that economists are virtually unanimous in seeing government regulation of pricing as a last resort in failing markets, rather than a first resort in successful markets. Third, codification of the net neutrality regulation principals, would be, I think, effectively unnecessary. We have three, at least three, federal agencies right now, already focused on this issue: number one, the Federal Communications Commission; number two, the Federal Trade Commission; and number three, the FCC--all focused on these issues with authority under the existing laws today. Finally, I think the resolution is effectively backward looking. The real threat by all account, the real threat of the internet is to keep up with the exploding demand that has accompanied the transition from text based messaging to video based messaging. There's going to be a tremendous demand for the internet, and supply has to keep up with that. There's a very real and serious concern that this measure would reduce the investment propensities of incumbent companies. With that, let me stop and I'll look forward to your questions.

CHAIRPERSON BREWER: Thank you all very much. One of my questions for Mr. Mayo is I know you mentioned that the digital divide would be enhanced, so to speak, if we have this kind of net neutrality. So my question is, are you just stating that because you think the investment would decrease? Or what's your reasoning for the digital divide to be, in a sense, enhanced, which is what we don't want.

JOHN MAYO: Very, very good question, and in fact separate from my testimony I've provided the exact--

CHAIRPERSON BREWER: I have.

JOHN MAYO: --study to you, and I'll commend it in professorial fashion to you, to read it.

CHAIRPERSON BREWER: Thank you.

JOHN MAYO: The gist of the answer

to your question, though, is that, is something that makes a great deal of common sense, and that is that minorities and low income citizens are the most price sensitive of all consumers. If we are going to invest, the numbers are very big and there's some disagreement about how much. But let's call it $100 billion to $300 billion to keep up with that investment. Someone's going to pay for that, and if we allow for pricing flexibility, as opposed to a one size fits all pricing approach, then it turns out that we will allow for greater accessibility by those low income, price sensitive consumers. And again, I'll suggest that you read the study--

CHAIRPERSON BREWER: I will.

JOHN MAYO: --and I'll be happy to answer follow questions from you.

CHAIRPERSON BREWER: I will, thank you very much. My other question is, this issue of competition, is always hard to get your hands around, because as I think the previous panel stated, there used to be, or you did, maybe, there used to be $3 million subscribers, - - I'm sorry, 5,000 service providers, and now we have a lot fewer. And I think that, I was just wondering, how do you look--and then there are not a lot of cable companies, I like Time Warner and Cablevision, I certainly think they provide great service. But there isn't a lot of competition, I don't even know if FIOS is competition. So, how do you think that the issue of the incumbents, so to speak, I don't think that there's much competition there, so maybe there does need to be competition for the consumer, using the net. And I'm just wondering how you would answer that question. 'Cause you do want more competition, and I think that's what America is all about.

JOHN MAYO: Sure. In the spirit of not, since you raise a monopoly question, I'll not monopolize the panel, I'll be very brief and let my colleagues also speak to that.

CHAIRPERSON BREWER: Thank you. I think you came the furthest, though, maybe, so you--

JOHN MAYO: But, thank you. Again, great question. The real notion of competition, and I've been studying this, again, as an economist for 25 years. The real notion of competition is not necessarily given by the structure of the market. That's a beginning place, it's a nice place to start. But it's not the end. The real end of looking at competition is in prices, output, and innovation. And on those scores, this has been a wildly successful market. Should we stop being vigilant? Absolutely not. But I think by all accounts this is a market that has worked swimmingly well to this point. Consumers have benefited tremendously. And the fact of the matter is, even though there are a relatively small number of players, they are pounding each other brutally to get your business, and to keep it.

CHAIRPERSON BREWER: Somebody else want to answer?

LAWRENCE SPIWAK: Just to echo that, I mean, I think, you know, this is not sort of the wheat [phonetic] business, this is a business with huge fixed and some costs. So the number of firms is necessarily going to be few, and it's, you know, one of those hallmarks of our work has just been sort of recognizing realistic expectations of industry structure. I think the policies that have be put in have to make sure, to me, I always tee it up as the policy, and this is the difficult point is, how do you get firms to compete against each other and to invest rather than engage in some sort of anticompetitive conduct, or joint conduct, like colluding, or worse yet, exiting the market. And I think that's where, if we're kind of near equilibrium for a lot of these firms, for a lot of these markets, probably two per wire line is pretty much what you're going to get; four for wireless is pretty much what you're going to get. You know, we have to be very careful, if we start making tarrifing, you could be promoting collusion; that's why the FCC got rid of it 15 years ago. Again, this is a very, very difficult thing, but this is not a traditional market, so the fact that few firms may be in fact evidence of intense competition, as John was saying.

HOWARD SIMONS: Yeah, I would just, I would just underscore two points. One is, if you look at the behavior of the market participants, they behave very much as you would want them to behave in a competitive market:

increased investment, increased speeds, increases in speeds without increases in price, everything you'd want to see, you just go around the City and you can see the competition between the cable companies and FIOS behind them. You see the wireless providers investing in third and fourth generation wireless. So, while there may not be 5,000 players, as there were back in the '90s, there are two, and if you could wireless, two-and-a-half, three providers acting very much like they're under the spur of competition in what they are investing in the City, and what they're delivering to subscribers.

CHAIRPERSON BREWER: The other issue, of course, is do you think that a Google or a MySpace or any other innovator that is doing extremely well now, would be able to be a startup today, and move into the future? There would not be, have to be any, they wouldn't have any challenges or impediments under the current situation, what you're talking about now. And do you think that any regulations would be needed to be able to be sure that such a company could grow in the future, could be in--we don't have garages in New York City, but it could be in an apartment.

HOWARD SIMONS: Porches, porches.

CHAIRPERSON BREWER: We have porches.

HOWARD SIMONS: Porches, right, yes. Be on the porch. On the stoop.

CHAIRPERSON BREWER: On the stoop, I like the stoop.

HOWARD SIMONS: On the stoops, right. The--I don't think there's any evidence of any impediment. I mean, we talk about Google and Yahoo! and they got started. But if you look in more recent history, you see the same thing over and over again, whether it's Twitter, or Facebook, or other similar innovators, they've gotten into business, they've grown exponentially. Facebook grew, has grown, grew a lot faster than the prior generation of online services. I really think it's the, it's the other, it's the other side of the coin on, on the competitive behavior of the market participants. There's no evidence, despite the sort of doom and gloom from the first panel, there's no evidence that there are impediments to innovators coming in, and I don't think that there's any evidence that the service providers, the network operators, would impose those impediments, because they want to drive penetration, they want people to use their service, they want people to buy the faster speeds. You look at the increase in video use on the internet, it's driven exponentially. There's just no evidence that there's anything other than a very healthy ecosystem out here, where providers want innovators, and innovators are able to get to the consumers over the networks.

JOHN MAYO: I just simply would add that out of this dizzying array of what has happened over the last decade, I think there are two points on this that you can take away and take to the bank. Number one, the internet has facilitated the emergence of entrepreneurial organizations. That's just a fact. Number two, the incentives on the part of the infrastructure providers is very much aligned with that, that growth of those entrepreneurial enterprises, because those are the companies that will use their networks. So, in this particular instance, the interests of the entrepreneurs and the infrastructure providers are very much aligned.

CHAIRPERSON BREWER: I mean, given that, do you, that's why I wondered, do we need to, is--then why would there be a problem in kind of codifying what the current situation is? Which is what I think we're trying to say.

HOWARD SIMONS: Well, I think there's a, I think there's a big difference that occurs when you take policy and responsible government oversight, and turn it into a binding rule. And what happens is the binding rule becomes something that gets litigated, something that gets leveraged, in business negotiations. Don't do, if you don't do what I want, I'm going to go to the government, I'm going to invoke the FCC, I'm going to invoke the Public Service Commission. And that tends to distort the negotiations, and I think deter exactly what you would like to see continue here in New York, and even accelerate. In the '90s, the FCC under President Clinton, came up with this phrase of "vigilant restraint." And that worked. It wasn't that the government turned its back on these very important issues, and the deployment of broadband, it was the government basically put everybody on notice that they were going to be watching. And I think that that light touch struck the right balance between, you know, totally walking away from it, by the government, which I don't think would be responsible for the government. And taking rules and making them into binding statutes. Binding statutes, I mean, you know, you write binding statutes. Binding statutes, once they're enacted, take on a life of their own and really change the character. And I guess I would put to you the question of whether it's necessary, given the facts on the ground in New York and elsewhere, whether it's necessary to ratchet up the guidelines and the vigilant restraint that's worked well, ratchet those up and take on that additional character and weight that binding statutes always have.

LAWRENCE SPIWAK: And just, and just to echo that point, both what Howard and John said, I mean, there is existing law on the books, and it is being enforced. Respectfully speaking, the proposals on the table go far beyond what Title II is.

CHAIRPERSON BREWER: Okay.

LAWRENCE SPIWAK: Far beyond. They prevent you from pricing things out, which Title II--it's not discrimination. The case law 60 years, 70 years, is undue discrimination, which usually means treating people in a similar class of services for, of like services that--similarly situated customers for like services. That's not what these rules do. These rules prevent you from pricing things out; they force you to invest your way out of congestion, which will impose huge costs; they will set new standards that have heretofore never done; the Markey/Eshoo bill actually tells the FCC how to granularly regulate the network. The FCC has never done that. Part 68, which was standard technical interfaces, this is Part 68 on steroids. So this is far beyond what we have ever done. And that's the point, and speaking as a lawyer, I mean, once there is a rule that people start debating what the rule is, and what is this, what is that, and it gets to be a mess. And that's why these ex ante rules are so problematic, rather than trying to take a more measured approach. I mean, if it was me, I would set it up some sort of rocket docket at the FCC, with some sort of rebuttable presumption, where then the burdens of a proof shift, much like the FCC did for program access. That's a much more constructive, case by case specific approach, than sort of this blunt nondiscrimination, inventing all new series of law. And that's my fundamental problem with this.

CHAIRPERSON BREWER: How do you answer then people who--I understand what you're saying, 'cause the term that, you know, vigilant constraint, or the notion that you don't want to use a blunt instrument, etc. But how would you, I mean, one of those aspects might work for those who are concerned that the future might hold something different than the open policy that exists now. That's what people are worried about. And I think you know that. In other words, everything's okay now, but we're not going to be around forever. Different group of people might be around, and that's--how do you answer that question.

HOWARD SIMONS: Well, I--

CHAIRPERSON BREWER: You know,

'cause you've heard the arguments a million times.

HOWARD SIMONS: Sure, I mean, I--I understand that concern. I think that things are okay now in part because of the structure of this vigilant restraint, and ongoing oversight that we have. And that is not going away. The New York City Council, the Federal Communications Commission, is not going away. And I think all of the companies, certainly in the cable association, and probably all the broadband providers, I can't speak for them all, are well aware that the government is constantly--this is a big issue, this is an important issue. And whether it's the City Council or the FCC or Congress or the other participants in the ecosystem, they're going to be there, and we know that.

CHAIRPERSON BREWER: They're much more important than we are.

HOWARD SIMONS: Well, they're, the--I think it's useful to have this examined at all levels of government.

CHAIRPERSON BREWER: Yeah.

HOWARD SIMONS: But I think the notion that things could change and then what, I think presumes that in fact you and others, other levels of government, are going away, which is not the case. I mean, we're, we are, and I've been dealing in this stuff for 30 years, long before there was an internet. And ten years ago, you know, it was the same question. What if, what if things change, it'll be bad. And in fact what's happened since 1998 is the explosion in broadband, the growth that we've talked about here--the openness, the lack of evidence of anything other than openness. And things, this notion that you have to legislate 'cause things could change, I think presents really kind of a false endpoint. Things, you're going to be here, and that vigilant oversight is going to continue. I don't think things are going to change in a regard that requires you to legislate.

CHAIRPERSON BREWER: Okay. You know, there have been, not to bring up, but there have been some instances in the past, not with your companies, but you know, some companies, it was always feared that that could happen in the future, whether it was content limitation. And so that puts a, you know, puts a fear into people.

And you know that, so--

HOWARD SIMONS: And I know that, and I think I know what you're talking about. I was a here a couple of years ago testifying--

CHAIRPERSON BREWER: Yes.

HOWARD SIMONS: --in front of the, in front of Assemblyman Brodsky, just after that incident.

CHAIRPERSON BREWER: That must've been fun.

HOWARD SIMONS: It was a lot of fun. [laughter] But not on behalf of that entity.

CHAIRPERSON BREWER: I know.

HOWARD SIMONS: So it wasn't that bad.

CHAIRPERSON BREWER: Just testifying--

HOWARD SIMONS: Wasn't that bad for me. But it was, this is more fun.

CHAIRPERSON BREWER: [laughs]

HOWARD SIMONS: The--and again, I think there are going to be incidents, there are always going to be incidents that arise, there are always going to be hard cases or bad cases. But in fact, each one that's come up, whether it was the NARAL incident or whether it was, whether it was Madison River Telephone Company, or even whether it was Comcast, the questions over Comcast management of P-to-Ps [phonetic], you know, those come up, they get addressed, we move on. And I think to say that those isolated incidents are the rule that requires legislation, I think misstates their importance. They are important because what they show is that when something comes up, the system deals with it, without having to have this infrastructure of legislation in place.

CHAIRPERSON BREWER: Right, alright, does anybody want to add anything else? Otherwise, I want to say thank you very much for this panel. All of your testimony will part of the record. And I really appreciate your making the effort to be here today, and I'm glad you're in New York City.

JOHN MAYO: Thank you very much.

CHAIRPERSON BREWER: Those of you who traveled here.

JOHN MAYO: Thank you.

CHAIRPERSON BREWER: Thank you so much. The next panel is Joshua Breitbart, from People's Production House; and Justin Doy from Blip TV; and Matthew Rosenberg, One Blue Brick. [pause, background noise] Whomever would like to start, go ahead.

JOSHUA BREITBART: Good morning. It's great to be here, thank you very much for holding this hearing on this important issue. As you know, it's a great privilege to testify. My name is Joshua Breitbart, I'm the Policy Director for People's Production House. As you know, People's Production House provides media education to a wide range of New Yorkers. And including, actually, net neutrality, where this year, including net neutral--lessons on net neutrality as part of our media literacy courses in public schools. And you know, we're really seeing that this is a grassroots issue. Tim Karr from Free Press talked about the huge response they've gotten to this issue from New Yorkers. We've had many of our community partners joined us in endorsing this resolution, including Good Old Lower East Side, New Immigrant Community

Empowerment, Families for Freedom, Picture the Homeless. The Haitian Times, as I believe you know, published an op ed I wrote on this issue. And also, you know, we've seen the growth in attendance for, on this issue, from 2007, when we were last discussing a resolution along these lines. It's really not a hard sell, this issue, of all the media policy issues, because it really hits home for the immigrants we work with who use Skype to communicate overseas, for people that we work with that are just now getting online and putting their content up there. And the two issues that I really want to, well, the one issue that I really, that I speak to in my testimony, that I also spoke to in 2007, is the importance of extending net neutrality protections to wireless networks. I've spoken to this Committee many times about why that's important, about how many people rely on wireless connections, and how critical it is that we create an equivalence across different means of connecting to the internet. And we're seeing progress in that the FCC is recognizing that with its proceeding on, on this issue. And would encourage the Committee to take whatever action it can to endorse net neutrality principles applying to wireless networks. What this issue really comes down to is do we see the internet as essential infrastructure or private property. I think that that's really what we saw in the distinction between the first two panels. And I think that, you know, given all the vital services that the City is putting online, how crucial it is to all businesses, how crucial it is to our democracy, to the function of government, it really is essential infrastructure. And you know, at that point, it's really just not, it's not enough for the providers, as the, you know, the gentleman from the cable association said, to simply trust them to be stewards of this network. The--it's a--it's essential infrastructure and the, so I just wanted to address some of the things that they said. You know, in terms of, you know, that they, we have these issues and we move on from them, you know, I wonder why it was that Comcast denied at first that they were engaging in the network management practices, when they were terminating bittorrent transmissions? And so much, and the resolutions that are, the regulations that are being considered, really are about making the network management practices transparent. And I think that that's really critical for, not just for the democracy considering this essential infrastructure, but also just for consumers to compare different services and different network management practices. You know, this is not a situation where we would get into unintended consequences, because in fact you know, we, our system that we have now is basically a legacy of a net neutrality like system, and I think that's really important to preserve that. You know, the companies that are asking us to trust their, you know, their best judgment in regulating this essential infrastructure, are required to maximize their profit for their shareholders, to maximize the profit of, that they've invested in the infrastructure, and to leverage that to benefit their content offerings over their competitors content offerings. So, they, the result of having no net neutrality basically encourages them, it's a disincentive for them to invest in new networks because it gives them the opportunity to squeeze penny after penny from their aging infrastructure, rather than providing an infrastructure that would really be first rate and competitive on a global scale. I started the clock late, so I'll end now, and you know, if you have any questions, I'm happy to address those.

CHAIRPERSON BREWER: Thank you very much. We've also been joined at the panel by Professor Nicholas Economides, who's at New York University Stern. Thank you very much, Professor. Who would like to go next?

JUSTIN DAY: Good morning, my name is Justin Day, and I am a cofounder and CTO of blip.tv, and internet based digital media business based here in New York City. We focus on providing hosting and distribution for independent web shows. We started in 2005 and we currently have 20 employees, and expect to have 60 employees by 2011. Internet startups are very difficult, especially bandwidth hungry ones, such as ours. Nearly half of our existing costs, including employees, go to bandwidth alone. Larger players, like Google already enjoy significant advantages due to their economies of scale. Double dipping for edge access could effectively price us out of the market. Even the threat of double dipping introduces uncertainty that makes it difficult for us to budget, us to raise money, or for us to make distribution deals critical for the continued success of our business. As our content competes with television, you know, there's a threat that these cable companies or telcos, could simply shut us off, under the guise of regulating the network. If were to make, if we were to start this start up now rather than in 2005, we might decide to focus on international traffic rather than on domestic traffic, or we might decide not to start up at all. What we're not, what we're asking for is not protection, we're just asking for equal access to the internet. We urge your support for this important resolution. Thank you.

CHAIRPERSON BREWER: Thank you. Next.

MATTHEW ROSENBERG: Hello, my name's Matthew--excuse me, my name's Matthew Rosenberg, and I'm one of the cofounders of One Blue Brick. We create influencer driven experiences, and we're proudly a New York based start up. The issue of net neutrality is a deeply personal issue for me. It affects us not only as builders and creators, but as users of the internet as well. We as a company have experienced firsthand what happens when the carriers insert artificial barriers against us developing new products. Right now we're working on a mobile tool that we're hoping to launch in November, in December, utilizes SMS or text messaging. And currently to have access to text messaging, you have to go through the carriers. So we're paying to play with the carriers, as well as our users are going to have to pay, to be able to send the SMS messages. It's a double charge. And this kind of double charge is something that we would see on the internet if net neutrality, if this kind of law, isn't passed. And a small business like ours, just like with blip.tv and many others in the New York based area, wouldn't be able to compete. But I also see this issue as something bigger. To me, personally, the internet really represents the best of the United States, the best of what we as Americans are all about. It's free, it's open, it's democratic, it's equal for all. And I look at what the resolution today, and what they're trying to pass in Congress, is not a law but a set of principals similar to the Declaration of Independence. You know, we'll be setting an example to the rest of the world that the internet is free, that information is free, that knowledge is free and that people are free. I think the internet has really changed the world and brought humanity forward, and I hope this kind of law protects it for generations, for future generations, and for the rest of the world. Thank you.

CHAIRPERSON BREWER: Thank you very much. Professor? I'm sorry, I have laryngitis, it sounds awful, but it's not, I’m alright.

NICHOLAS ECONOMIDES: Hello, I'm Professor Nicholas Economides. I teach at the Stern School of Business of NYU, and I'm really honored to be part of this panel. I came here to tell you that we need to formalize the net neutrality tradition of the internet by passing strict net neutrality law, to protect the public interest. The majority of the Earth's population is connected by a global telecommunications network, the internet. It's the most successful network in human history. Unlike traditional information networks, such as newspapers, radio and TV, the internet is based on interactive telecommunications. It's allows, it allows for revolutionary, real time participation of users. With almost a billion connected computers, and now so deeply embedded in our life, the most surprising aspect of the internet is that it's so new, it's only 16 years old. It has created massive innovation, at the edge of the network, where companies and individuals innovated without asking for permission by the network operators, from the network operators. Companies like Facebook, Amazon, Twitter, Google and many others would not exist but for the internet. All centrally run networks, like if you remember Compuserve, Prodigy, early AOL, which did not allow innovation at the edge of the network, have died, or changed to be internet based. The internet's extraordinary success and innovation has spurred, the innovation it spurred, have been based on openness and nondiscrimination. Net neutrality means nondiscrimination. Content from anyone, and of any type, will be treated equally, by the internet. So why do we see some network operators wanting to kill net neutrality, when it resulted in such a successful network with so much significant impact on economic growth? Because some network operators want to put their interests above the interests of the public. These companies do this for two reasons: first of all, to promote their own traditional telecom and video services, that compete with new ones that have been provided over the internet. For example, voice over IP telephony and Skype, threaten traditional voice phone service. Video downloads over the internet threaten cable TV video. The second reason that some network operators want to kill the internet is their hope that they will make more money through discrimination, by taxing the innovators on the other side of the network. Killing net neutrality is proposed by telecom and cable companies which have very tight control of the access of residential users to the internet. The vast majority of U.S. residential users have only two providers of internet service: a telecom service and a cable TV company. In a truly competitive market, starting discrimination would lead to a loss of market share and profits to rival providers who do not discriminate. But this is an imperfect market. Telecom and cable companies are to profit from discrimination because of limited competition in local internet provision. On the internet, the U.S. has fallen to number 15 in broadband internet penetration, behind many European countries, Canada, and Korea, largely because of high prices that U.S. companies have been able to charge for internet connectivity. Without protection of net neutrality, consumers will have fewer choices in content, video and telephone service. While Google may afford the tax to be charged by telecom and cable companies for preferential treatment, the next Google won't be able to afford the payments that will be demanded by the telecom and cable giants. Smaller new companies, as well as individuals and nonprofit organizations, who create their own content, will be put in the slow lane, that the telecom and cable companies will create for all those who cannot afford to travel the toll road of the information highway.

Abolishing net neutrality will be devastating for innovation, choice and diversity of content on the internet. Users of the internet worldwide will lose. And if internet innovation is hampered in the United States, the rest of the world will not stay still. Viviane Reding, the European Commissioner in charge of media oversight, recently made it clear that the European Union will protect the neutral internet. Failing to protect nondiscrimination on the internet in the U.S. will leave us way behind Europe in the technology innovation race. Fortunately, the Federal Communications Commission recently proposed to formalize the nondiscrimination tradition on the internet, and preserve net neutrality and its tremendously positive effects on innovation. It is good public policy, it will protect consumers and the public interest, and it will preserve and enhance the competitive position of the United States in innovation. The proof of its wisdom is a tremendous success in innovation of the internet so far. I urge you to support a strict net neutrality rule on the internet. Thank you.

CHAIRPERSON BREWER: Thank you, Professor, your students must love you.

NICHOLAS ECONOMIDES: Thank you.

CHAIRPERSON BREWER: [laughs] My question, to start with, would be for Mr. Rosenberg and Mr. Day, which is the previous panel said that there could be a way of handling things like the NARAL issue, which as you know, provided challenges to NARAL getting out their message. So, the question I have is, do you think that those incidents would be isolated in the future? Do you think that there would be a way to deal with them individually? Or do you think we need a broader instrument as we have discussed in the resolution? In other words, I think the concern of the previous panel is that the resolution is too much of a blunt instrument, and that individual incidents, as the one that happened with NARAL, and there were a couple of others, are isolated and we don't need to have a blunt instrument to deal with that. So I'm just wondering how you would respond to that.

MATTHEW ROSENBERG: Personally, I think that--

CHAIRPERSON BREWER: And would the FCC be able to resolve it, because of course you could go under, perhaps, by the time the FCC resolved whatever incident it was. I don't know. What do you think?

MATTHEW ROSENBERG: For me, personally, I think whatever the FCC does, you know, I'm not a politician, I'm simply a guy doing a start up. But I really look forward to the idea of a set of principals that will guide the internet for the future. Something that won't over regulate it, but it will simply protect startups like each of ours and allow future individuals like myself to innovate freely on the internet. I think that anything, if anything we're seeing the pace of innovation on the internet and changes happening so rapidly, and every day you're seeing things that are, that are being started that are threats to the cable companies, to the people that are providing that support from the cable to your door, that are giving you that access to the internet. So I think that there needs to be that equal playing field principle. Again, I think the law needs to be open and just for everyone, but something that allows that freedom of the internet to be.

MATTHEW ROSENBERG: I'm not an expert in the law either, but I will tell you that we rely on equal access to the, to the edge of the internet, in order to make our businesses work. You know, if the cable companies and telcos need to rate shape their customers, so long as they do that across applications and across, you know, as long as they do it equally, you know, we'll innovate to catch up. But what we're worried about is a situation where larger companies like Google can pay for better access, thus effectively eliminating us from the whole picture.

CHAIRPERSON BREWER: Mr. Breitbart, I know there was a discussion earlier about digital divides, something that you care about and I care about, trying to erase the digital divide. So do you have any sense that--there was a comment that, you know, codifying net neutrality could hurt our chances of eliminating the digital divide. I was wondering if you comment on that.

JOSHUA BREITBART: Yeah, I'd be happy to, I'd also love to hear what the Professor thinks about that, as well. I mean, I think the first thing to realize is that, you know, we've, that closing the digital divide is, you know, now widely accepted as an essential priority for this entire country. But without net neutrality, what the previous panelists are basically proposing is not even the internet, it's more like television. And I don't think that, you know, that's really, you know, what we're talking about, when we're all agreeing that we want to extend the internet. As the Professor said, the internet is a two way medium, and it's really, the net neutrality protections are really essential for preserving that aspect of the internet. So, to the extent that we are promoting policies to extend, you know, essentially universal access to the internet, we need to be talking about internet that has, that's a two-way medium, that's an even playing field that has transparency in how it's managed, so that there can be entrepreneurs, so that there can be, you know, a real exchange of content and that kind of vibrancy. They--you know, there is obviously a lot of, you know, sensitivity around the cost issue. But it really is about a value proposition, not just a price point. And if you had a, you know, a cheap service that was, you know, not the freedom and abundance of the internet, that's not going to be as worthwhile to spend one's money on. And that's what we see, you know, and that's, you know, again why it's so important to extend net neutrality protections to wireless networks, since wireless service is so much more widely adopted at this point than landline broadband networks. I'll also say that, you know, they tried to, they dropped the $350 billion number, you know the FCC said it's $20 billion to $350 billion depending on the quality of service. I certainly want everybody to have the top tier of that. I don't really see that, you know, these corporations are saying that they're willing to put in $350 billion worth of private investment. You know, we're fortunate in New York, you know, we're a great a City where the prime cable market and we have Verizon, you know, basically on the hook now to run fiber optic network to every single household in this City. And that's great for us, and that's going to be great for some other large cities, but it's not, you know, that's not the, that's not what they're proposing. If we could have a, you know, if they're promising that level of deployment nationally, and are willing to sign a franchise agreement or contract for that kind of universal service, you know, then maybe we could be having a conversation about how their private investment is going to close the digital divide.

CHAIRPERSON BREWER: Professor, just on this issue of digital divide, I was wondering if you could comment. I don't know if you were hear earlier, but there's a feeling that the net neutrality codification could limit our hope to get rid of the digital divide.

NICHOLAS ECONOMIDES: Well, digital divide is an important issue. The internet as we mentioned, as other people mentioned as well, is a revolutionary medium, a two-way interactive telecommunications medium, which should be available to all. And diversity is a crucial aspect and goal of the internet. So, I tend to believe that here we're kind of mixing apples and oranges. I don't see why killing net neutrality in any way is going to promote wider access. I said in my speech, and I'll say it one more time, the U.S. has high prices for internet access. We, that's why we are number 15 in penetration, which is a shame. I mean, the internet was created here, it was definitely an American invention, and now we are way behind many countries. Most people get ashamed when I say we're behind France. But [laughs] but I won't go into the French discussion, French fries and so on. That was a different administration. So, but the bottom line is, we want to have lower prices. There is concentration at the local level, at the last mile. This concentration allows the providers to have high prices. It also allows them to try to propose killing net neutrality. We should not really allow them to kill net neutrality. Can we really force them to have lower prices? It's more difficult. But they are not the same, they are not part of the same equation.

CHAIRPERSON BREWER: The other question is, again, trying to play both sides here, do you think that net neutrality rules will consolidate the market, discourage competition, and slow down infrastructure investment, which of course is what we hear constantly. Now, Professor, you certainly addressed that in what you said earlier, but that is the--

NICHOLAS ECONOMIDES: Well--

CHAIRPERSON BREWER: --the comment that comes from those that are concerned about it.

NICHOLAS ECONOMIDES: Well, I have studied competition and monopoly for some time, and I have participated in many proceedings, some court proceedings, some regulatory proceedings. One of the arguments that you hear from monopolists, when everything else fails, is to say, "If you give us more money, we will invest more." I mean, I don't know what to say. I mean, this is the last thing you can, people can say. Okay, we're monopolists, too bad, but you know, if you give us a bit more money, then we're going to invest. Or who knows if they're going to invest? I mean, they might give it to the shareholders. I don't really know, nobody can confidently say, even the executives of companies, that if they make more money, they're going to invest the money. And not give it to the shareholders as profits. I don't, I don't think this is a credible argument.

CHAIRPERSON BREWER: Do you think that having the stable, well regulated environment, could in fact lower transaction costs and spur investment, which is obviously what we all want.

NICHOLAS ECONOMIDES: Having, having rules is crucial. If we don't have rules, we'll end up going to court, fighting antitrust cases. To give an example, Microsoft was investigated for seven years, and then it took a number of other years for the final resolution of the case. This is not internet time. You would like to be able to have resolutions quickly, even quicker than the FCC. It's important to have rules, so people know how the game is played. If we say, "Well, let's not pass any rule, but let's see what happens," maybe the next CEO of one of these companies is going to come, like Mr. Whitacre, and say, "I want to kill net neutrality." We can't really work that way. And the people who invest, and these guys here, who might be the next Google, I don't know, but if they are the next Google, you wouldn't like them to be taxed heavily five years from now, or ten years from now, just because we don't have rules. I mean, it would good for them to know.

JOSHUA BREITBART: Yeah, and I mean I would just say that, again, it's about, you know, making sure that we have a clear set of rules and transparency, and that it's not everything being, you know, being handled by, you know, if you want to start your company up you have to go arbitrate it on a case-by-base basis with your, you know, with your cable provider. That seems to me like a, it would greatly hinder start ups, and you know, that's what we heard from my co-panelist here, from Mr. Wilson on the first panel. You know, and that's, you know, that's the focus really on the content side, and you know, that's really where these protections would foster continued innovation and vibrancy.

CHAIRPERSON BREWER: Okay. I want to thank this panel, I hope you are the two new Googles in the future. We knew you when. And thank you, all four of you, very, very much. What excellent testimony.

NICHOLAS ECONOMIDES: Thank you.

CHAIRPERSON BREWER: Thank you.

JOSHUA BREITBART: Thank you.

CHAIRPERSON BREWER: The next panel is Charles Davidson, who's with the New York Law School; Robert Puckett from the New York State Telcom Association; Rich Carnes, who is from the Songwriter's Guild of Arts of America, Arts and Labs; and Gordon Chambers. [pause, background noise] Whomever would like to start. I know there's an additional songwriter, that's fine, we love songwriters. So, whomever would like to begin. You, yeah, just push the button.

ROBERT PUCKETT: Since I'm closest to the mic, I'll start first.

CHAIRPERSON BREWER: Great.

ROBERT PUCKETT: In the interest of time, I'll keep my remarks short. We have a large panel here. My name is Bob Puckett, I'm with the New York State Telecommunications Association, my members, Verizon, AT&T, Sprint and many of the other telecommunications carriers across the state. I'm here today on behalf of my membership to oppose the resolution. Certainly, comments have been made about how great the internet is and that's what makes America, etc. And we've also discussed and heard about the Googles of the world, the Facebooks. And even a lady who wanted to be a superhero on the internet. Well, it's all happened without regulation of the internet. And now is not the time to start imposing regulation on the internet. And certainly, my members are investing heavily in the network. Verizon was not on the hook to invest billions in New York City, they made that decision because of the fierce competitive marketplace we now have, between my members, the traditional telephone companies, and the cable TV providers in the state. It's not a question of being on the hook, it's just decision they made to be competitive. And they've lost half of their market share in the landline business. So I don't know if that quite qualifies as a monopoly anymore, but that's the status of our industry today. So, certainly we oppose the resolution, and while we are fierce competitors with the cable TV industry, my members--

CHAIRPERSON BREWER: I had no idea.

ROBERT PUCKETT: Ha. I certainly echo the comments made by the panel earlier from their representation. As the one gentleman commented, what these rules actually do would cause you to build yourself out of congestion. And thinking about it, somebody mentioned earlier the internet, the highway, the super, the information superhighway, well that's exactly what it is. And no different than vehicular highways, we need to be able to manage those highways effectively. As you know, folks manage their transportation systems, this is a transportation system, they manage it through pricing, they manage it through certain vehicles can only go on certain parts of the highway, certain vehicles pay more, commercial trucks pay more for highways. Why? Because they put more stresses on the network. The economic value they get out of that highway is higher. So, those sorts of things are all out there and all contained in these debates about network neutrality. As provides of networks, we need to be able to manage our networks no different than anyone else manages any other networks. So, with that I'll turn it over to other panelists.

CHAIRPERSON BREWER: Thank you very

much.

CHARLES DAVIDSON: Thank you, thank you Madam Chairman, for inviting me here today. My name is Charles Davidson, I'm the Director of the Advanced Communications Law and Policy Institute at New York Law School. In my former life, I was Commissioner on the Florida Public Service Commission. The ACLP's focus over the past two years has been on broadband. Our research has found pervasive gaps between broadband adopters and non-adopters. For example, we've got approximately 38 million seniors in the United States, but only about 30 percent of them have adopted broadband at home. There are approximately 50 million people with disabilities in the United States, but only about 25 percent have adopted broadband at home. Less than half of African-American adults and households, earning less than $20,000 a year have adopted broadband at home. And while the number of schoolchildren using broadband is increasing, the number of educators who've incorporated it into the classroom is still really low. So, increasing the adoption rate is essential, because of the truly transformative nature of this technology. And it's hard to really address that in just a couple of minutes. We submitted a report to the FCC on barriers to broadband adoption, and it's before you. And it's just broadband can do amazing things for folks. For seniors, it's being increasingly use to provide end home medical care remote monitoring, something I personally am looking into for my stepfather. For people with disabilities, it's a vital tool that's enabling just an array of educational and employment opportunities. And for schoolchildren, there are studies, a number of them, that have shown positive links between accessing broadband and higher academic performance. A critical component of all this has been the emergence of wireless broadband as an enabler. People with disabilities cite internet connectivity, email and text messaging on their phone, as the most important aspect. It's a critically important device for folks with disabilities. African-Americans are the most avid users of mobile data services. In the energy sector, wireless broadband's going to be a part of the backbone of our nation's smart grid. Unfortunately, in the wireless sector, there's just not enough spectrum out there for innovators. The FCC predicts a fairly significant spectrum gap in the near term. As such, it's really important from our standpoint that wireless providers have the freedom to be able to manage their networks, to protect against slowdowns, congestions and outages. Physics dictates that there's just a limit to how much traffic a carrier can have on their network, but that traffic is increasing day after day. So in this environment, network management, as opposed to say just being a dumb pipe for sending and receiving information, really is essential to ensuring reliability. Ultimately, across the board, it's our position that network managers need the latitude to manage their networks--to do so properly of course, but to develop protocols, traffic management protocols, and to focus on how to facilitate this increasing universe of new applications and services. So for example, broadband telemedicine and broadband enabled education services are bandwidth heavy and they're growing. As a matter of social policy, we need to make sure that those applications can be prioritized where needed. At that point in time, for example, where there's heavy network congestion, or heavy traffic, or other issues, I think we as a society want to ensure that the more important broadband services can remain reliable. You know, I'd pose a question, if there's a conflict, for example, in transmitting a video based communication between two deaf users, and the download of an HD movie from Netflix or somewhere, what do want to ensure gets priority at that point in time where we need to possibly manage the traffic? So, in closing, I would urge the Council to really focus or perhaps refocus efforts on what it can do to help spur broadband adoption. I think net neutrality is in many respects a counterproductive topic that takes sort of attention away from what I think is the pressing issue of spurring broadband adoption for seniors for people with disabilities for minority communities, for children. And as City Council Members, everyone is really uniquely positioned to take, you know, unique action to help bring broadband to the constituents. And if you can get one, two, ten, twenty more folks adopting broadband in your community, you really are doing a good deed. So, with that, I'll close, Madam Chair.

CHAIRPERSON BREWER: Thank you very much, and of course we love Michael Santorelli. You know, he used to sit up here, he was a staff member, so we like Michael Santorelli.

CHARLES DAVIDSON: Yeah, well thank you, and Michael does excellent work. I like him a lot, so--

CHAIRPERSON BREWER: Me, too.

CHARLES DAVIDSON: --your loss was our my gain.

CHAIRPERSON BREWER: That's correct. Thank you. Who would like to go next?

GORDON CHAMBERS: Hi, good afternoon, Madam Chairwoman, I'm Gordon Chambers, a singer/songwriter living in Brooklyn, New York, in fact in Letitia James's district.

CHAIRPERSON BREWER: You're very fortunate.

GORDON CHAMBERS: Yes. She's a great woman.

CHAIRPERSON BREWER: Yes.

GORDON CHAMBERS: And I have worked all over the world as a songwriter, having collaborated with artists like Anita Baker and Whitney Houston. But I'm very proud that I live in New York, because New York, of course, is the, where some of the greatest songs have ever been written, and where, this is the cultural center, arguably, of America, if not the universe. So I've come here to really talk about an issue that's very dear and sensitive to songwriters' hearts, which is the issue of piracy. And the actual reality that piracy is really killing the ability of songwriters to effectively create our passion and make a living, and the degree that it's, you know, the piracy exists in the landscape of the internet, so it's important that that conversation be brought into any discussion around net neutrality. So I just brought some facts that I'd like to share. According to the International Federation of Phonographic Industries, in 2000 global recorded music sales were at $30 billion. But 2008, these same global sales had fallen to $18.4 billion. This eight year period coincides with the rapid expansion of unlawful file sharing.

According to the Bureau of Labor and Statistics, songwriter incomes have dropped 32 percent between 2003 and 2006 alone, for the lucky few who still have jobs, and every music major publisher has had to lay off at least half or sometimes all of their songwriters in ten years since the piracy has began decimating the music industry. The unfortunate reality of this current situation is that the digital world of online piracy is rampant and undeniable, and unlawful. Piracy has deeply and materially harmed the songwriter community, yet certain organizations specifically asked the FCC to prevent the companies that owned the private networks from address the problem of piracy. Network neutrality supporters claim to want to fight piracy, yet they do not propose a viable alternative to the current legal regime that would curb the massive looting that has decimated the artistic community. Most oppose proposals to enhance criminal liability or criminal penalties for copyright pirates, and even refuse to have the internet service of the pirates temporarily suspended. Instead, they suggest that ISP should shame them, "with warming letters."

Songwriters believe that it's foolhardy to trust the personal ethics of thieves to solve the persistent problem of illegal downloading. I and many fellow songwriter colleagues of mine choose to live in the most expensive City in America, New York, because we feel it's the center of great American culture. Some of the best songs in American songbook have been first written or performed in New York, even Alicia Keys and Jay-Z. So I ask the members of this Council to pay attention to what makes New York a unique and world class City, it's the artists that live here and we want to protect our ability to do what we love, bring this passion that we have to the world, and continue to live in New York. So please, we ask that you don't sell us out for the silicon chip technology industry out west. Protect us.

CHAIRPERSON BREWER: Thank you, thank you very much.

GORDON CHAMBERS: Thank you.

CHAIRPERSON BREWER: Who--that's great, who's next?

PHIL GALDSTON: Good morning. My

name is Phil Galdston, and I'm just one of thousands of songwriters who not only give New York its justly deserved title of arts capital of the world, but who contribute significantly to its economy. Thank you for the opportunity to testify in opposition to current proposals by the FCC to expand and codify certain network neutrality principals. Given the poor policy choices made by the FCC, in its current proposed regulation, I strongly urge the Council to avoid any endorsement of Resolution 712-A. Mr. Chambers, my colleague and collaborator, has testified how digital looters have severely damaged the music industry, and the songwriting profession in particular. It's the belief of the songwriting community that the current proposed FCC rule would worsen the situation by creating a legal safe harbor for those who steal valuable intellectual property, and preventing network operators from taking actions to prevent such misconduct from occurring on the networks they own. I think the key point here is that the FCC is proposing to enshrine forever rules governing the internet that are responsible for the devastation Mr. Chambers has just described. And it's important to note that while these rules require that all lawful uses be treated in "a nondiscriminatory manner" they ignore whether or not the usage is unlawful. The tragic result is that the property created and owned by songwriters like me is discriminated against, and this is anything but neutral. Comments to the FCC have clearly illustrated that 70 percent, 70 percent of the volume of traffic on broadband networks is peer-to-peer, file sharing generated by just five percent of the network's users. What's more, an astonishing 90 percent or more of such traffic represents unlawful theft of copyrighted works. The current situation which permits a small percentage of looters to control a vast majority of a communication network's bandwidth, for the purpose of committing illegal acts, is simply unacceptable to songwriters. And we believe it should be unacceptable to anyone who respects the rule of law, including lawmakers. The FCC's efforts to perpetuate this system, which it should be noted are causing frequent and significant slowdowns in service to the law abiding users they purport to represent is difficult to fathom. Now songwriters love the First Amendment, we thrive on it, we couldn't be here without it. But we're looking to anyone who can help combat the outrage of unauthorized and illegal use of our work. At the same time, we care deeply about our audience; while creating a new song can be very personal, in many cases we write as much for our audience as for ourselves. Therefore, we're committed to helping to forge solutions that protect our rights and those of music lovers. The greatest risk of harm to our audience, the consumers of music, comes from regulatory and legislative proposals such as those of the FCC, that prevent responsible ISPs from managing the networks. If ISPs are unable to do so, or if they have no economic incentive to do so, music makers will continue to suffer from a loss of income and a drastic reduction in opportunity, and our audience will suffer as my colleagues and I, many of us creating right here in New York, find it no longer viable to make a living as songwriters. Although technology created the illegal file sharing monster we face every day, technology can be developed and employed to detect and deter those practices that are illegal. Simply put, in the same way American society wages war on other illegal behaviors, we must fight technology with technology. Unfortunately, the current net neutrality regulatory proposals would smother any effort to use technology to deter the rampant looting of the work of songwriters. So I hope this Council will pause before endorsing these rules, and consider their impact on songwriters, music lovers and the City of New York. Thank you.

CHAIRPERSON BREWER: Thank you very much. [pause]

RICK CARNES: Madam Chairwoman, Members of the Council, thank you for the opportunity to share with you the concerns of songwriters about the proposals by the FCC to impose network neutrality regulations on the internet. My name is Rick Carnes, and I'm a professional songwriter, and the President of the Songwriters Guild of America. The SGA is the oldest and largest national association of songwriters. We were founded right here in New York back in 1931. I am here today speaking on behalf of the Arts and Labs Coalition of which SGA is a founding member. I will begin my remarks by saying that in order for broadband networks to be as healthy as a platform of commerce as the railroads and energy utility companies were in the past, the standard rules of commerce must be acknowledged and protected. These standard rules of commerce include respect for property, the discouragement of theft of property by users of the platform, and meaningful remedies in the event that theft occurs. The internet does not current recognize or enforce these standard rules of commerce. The internet today is like a cyber-Somalia, where pirates run rampant as hordes of anonymous looters commit the greatest theft of intellectual property in all of recorded history, costing thousands of American jobs, not just for songwriters, but for the entire American creative community, a great portion of which resides right here in New York City, our nation's cultural capital. And I'm saying that even though I'm from Nashville. Unfortunately, the proponents of network neutrality principles simply ask for more of the same internet with perhaps even greater restrictions on the ability of network operators and users of the network to enforce the standard rules of commerce. Of these six so-called "network neutrality rules" the FCC has put forward, I wish to limit my comments today to only two of the rules, one existing and one proposed rule. The first existing rule states, "Consumers are entitled to access to the lawful content of their choice." Unfortunately, this rule entirely ignores the fact that internet users are also able to freely access the unlawful content of their choice. The internet, no the intent of this rule's good, in that it ensures that our fans will be able to have unfettered access to our music. But we see no evidence that consumers are having any problem accessing legal content on the internet. In fact, there's more legal content online today, than we could've even imagined ten years ago. And at a price of 99 cents or less, which is less than a single would've been back in the '60s. So why is the FCC imposing regulations where there seems to be no problem, while ignoring the massive problem of piracy, that has destroyed the jobs of more than half of the professional songwriters in America? I would like to state from personal experience that my music publisher just ten years ago had twelve songwriters on staff full time, we had a creative director and two song pluggers. That was the year that Napster began the massive looting of music on the internet, and now that very same publisher has no songwriters, no creative director, and no song pluggers--a direct result of the current configuration of the internet. We would also like to comment on the proposed fifth rule which states, "A provider of broadband internet access service must treat lawful content applications and the services in a nondiscriminatory manner." Once again, this rule prohibits discrimination in lawful content only. This will force legal services to compete with pirate services on a level playing field, without being able to distinguish their legal products in ways that piracy cannot. Far from being nondiscriminatory, this rule discriminates against my rights as a songwriter to go into the marketplace and make a deal with a network service provider to deliver my music as part of a premium service that offers better, faster, safer experiences in getting music than they would get from illegally downloaded music. For ten years, the U.S. government hasn't moved to end the scourge of online music piracy, because they haven't wanted to stifle innovation on the internet. Our lawmakers told us, "Be patient and trust that the marketplace would find a solution for illegal downloading." It is very confusing and disappointing to now see the FCC intervene to propose regulations that would stifle those very same innovative services that might help us compete successfully against piracy. The SGA believes that the last best hope to fight piracy is for the networks to get smarter, faster and more creative in the ways that they deliver our music. So in closing I would like to say in their current form, both the FCC rules and Congressional House bill 3458 would do more harm than good to the creative community. So we respectfully ask that the Council vote not to adopt Resolution 712-A. Thank you very much.

CHAIRPERSON BREWER: Thank you very much. I guess my question to the songwriters is, what if, in other words right now, the piracy is rampant. And under any net neutrality proposition, sounds like it would be just as bad. So, do you have proposals that you have sent to the FCC that would enable you to get the remuneration that you so well deserve? In other words, is there something that you propose that would eliminate this piracy? It's a huge question, I don't know--

RICK CARNES: Well, we--

CHAIRPERSON BREWER: I mean, it's a horrible situation.

RICK CARNES: Yes.

CHAIRPERSON BREWER: I have many friends in your situation, so I know.

RICK CARNES: Yeah, good, I-- Actually, we could propose all sorts of regulations to, you know, to filtering to, you name it. But we're not. We agree with the Congress, that technology got us in this mess, and technology can get us out. We do believe that a faster, better, safer, premium service of some sort of music being delivered in partnership with network providers, for instance, could actually help fight piracy. We are no proposing that.

What we're saying is, if you eliminate that possibility with the blunt instrument of network neutrality principles, then that would discriminate against our chances to survive. Okay?

CHAIRPERSON BREWER: Okay. Does anybody else want to add to that, any of the songwriters? Okay. That's helpful. Thank you very much. Mr. Puckett, I think, you know, you've heard some of the net neutrality supporters talk, and they're concerned that providers are going to use the network management to protect content. You know, obviously video and phone services. I just was wondering, how do you respond? 'Cause you've heard this many, many times, I'm sure. And that seems to be their main concern.

ROBERT PUCKETT: To protect content--

CHAIRPERSON BREWER: Oh, no, the content, your content, in other words not you, but the video and phone services, the telcoms, they have content which is excellent, right? But we also, the net neutrality folks who have startups and, you know, all different kinds of opportunities out there, they're worried that they won't be able to be the next opportunity to make their mark in the world. And you know, it's that, it's that back and forth that never goes away.

ROBERT PUCKETT: Right. I think, I think where we are today shows that that doesn't happen. With all the innovation that has occurred on the internet, without network neutrality principles. Now, just so happens it sounds like maybe the pendulum swang a little too far in that direction, according to the songwriters we're hearing from, but certainly it's been a free and open internet to this point in time, without regulation, without oversight of content. So, I think the proof is in the pudding, and in the history that we've seen so far.

CHAIRPERSON BREWER: Alright, do you want to respond to that, also?

CHARLES DAVIDSON: I just wanted to really add one point, in a bit of a, I guess, a personal example. You know, there's always, there's always, I suppose, in the minds of some, the risk that the sky is falling in on Chicken Little, always, you know, at times Google, with every billion it amassed has been saying that, that the sky is falling in on consumers, and it hasn't happened yet. With regard to video, I think the fact that we have fairly robust competition, at least in a lot of markets, will act to deter any type of anticompetitive, you know, practices in that regard. So, if cable for example, wanted to, you know, somehow discriminate in its content, folks might move to DirecTV, or they might move to video services offered by Verizon. And there are new forms of competition coming onto the market. So, and here's for where the personal example comes in, I had like probably a lot of people, the, you know, premium channels on cable, you pay $30-$40 bucks or something for a package of HBO, Encore, Showtime, etc. Well, I dropped all that, and I actually signed up for Netflix, which is on demand, streaming videos you can watch on your TV on your DVD player for like $8 a month. And they've got TV shows on there, they've got, you know, the last season of Encore, they've got "Sopranos," "Law and Order," movies, everything. So there's so many options out there for people, there's not a one-size-fits-all solution. And I think that that, the competitive nature of the market has today acted as a good check on anti-competitive practices, and I believe it will continue to do that, because for the company that engages in whatever we would call the improper practice, they're going to lose customers to someone else.

CHAIRPERSON BREWER: Well, that's interesting because of course the big issue is there used to be a lot of providers, and now there are fewer, but the fact of the matter is what you're saying is that there's enough competition so that we won't, we have enough, even though it doesn't seem like there's the same number, you feel like there is enough competition.

CHARLES DAVIDSON: Well, I do, and there might be some market variances, but this is not a market that provisioning of, you know, network programming, video services, phone, it's not a market that lends itself to, you know, the 5,000 competitors that maybe we saw after the 1996 Telecommunication Act was passed. And I'll tell you, that time I was practicing law here in New York, with a firm, and one of these, you know, 5,000 business plans we saw come in, they were shocking. People were entering the market with no plans, seeking venture capital. They can provide this, they can do that, and we had, because, I think of regulatory mandates and fiats, this development of a huge tech bubble that burst--telecommunications firms fired people, the bubble just burst in large part because of regulation. And I think when we sort of took a step back from that and said, "Okay, we're going to take a light approach to regulating broadband and use services, we see the market, you know, reemerging. We took a light, hands-off approach in the wireless arena, and we've seen that sector thrive. So there's always room for things to be done better and for more services to be delivered to more consumers, but I think the nature of the market is such that we're not anywhere really in the country going to see, you know, multiple cable providers, multiple telcom providers, multiple wireless providers. We're not, we might not have 15 competitors in an area, it just, it doesn't make sense from an economic standpoint, it's, I think we're going to have, you know, somewhat of a more concentrated market structure, than you might in, you know, the market for restaurants or grocery stores.

CHAIRPERSON BREWER: And do you think that there could be a situation where there isn't an opportunity to be part of the net and emerge as a major provider because there could be situations placed on somebody. In other words, a company that's trying to emerge, there's that, that constant struggle between the ones that are emerging and the ones that exist. And the ones that are struggling to be number one or number two are always feeling that they're going to have constraints put on them. And I thought that, when we're talking about net neutrality, we're all worried about your songwriters, so you made your point, don't worry, but aside from that issue, I do think that there's a lot of concern that the current telcom companies are a challenge to the future. Right now there's no problem, so people worry about the future. And so the idea of just making sure that things are as they are is what I think people are trying to see, that maybe the project is wrong, the process is wrong, I don't know. But that, that's the fear.

CHARLES DAVIDSON: Well, and, you know, I would be the first to be out there, I'm a huge proponent of the First Amendment, I'd be the first to be out there if I ever felt that my, you know, speech was being restricted, if I was not able to access, you know, websites of my choice. I would have that concern. So I can sort of understand in a vacuum, and I think the approach would be, and one of the speakers addressed this, would be to deal with issues and disputes and problems as they arise, sort of ex post. The problem with sort of trying to anticipate and deal with that is, situation, the situation changes on a daily basis, all the innovation, new technologies, you know. I think the music industry tried to do that initially, and digital rights management became this huge issue. I mean, it's just hard to sort of plan and map everything out. So I think being vigilant, being vigilant and always keeping an eye open for abuses is a very good thing. But I think putting a lot of rules and regulations out there, is a tough situation. It creates an uncertain environment. And I'll tell you, coming here, I mean, I was a staffer in the Florida legislature, and I, you know, I never, I had to check on the form do I support or oppose, and you never want to oppose something that a government body is doing. But I'll tell you, I think, sort of on check, this whole net neutrality discussion really is a threat to consumer welfare when we're talking about these new broadband technologies. I will tell you straight out, my personal preference would be if at some point in time and congestion in the network, a network owner has to make a choice between prioritizing for a few seconds my stepfather's remote telemedicine monitoring situation, versus somebody else's download of awful music or video, choose, you know, choose that application. And I just think that's the reality we're going to be in. No matter how big the pipe, no matter how much bandwidth, we're always going to be at capacity because there are going to be these great folks who've been in the room with the business plan, coming up with new content applications that will eat up that capacity. You know, networks have to be managed for security purposes, for traffic congestion, for jitter [phonetic], for these new applications. And I think we have to give a good hard look to what are those areas and applications that realistically we're going to have to make sure are prioritized. Emergency operations, that's an easy one, everyone would say if you're trying, if you, do you prioritize an emergency application or a bittorrent simultaneous download of lots of videos, well you prioritize the emergency.

CHAIRPERSON BREWER: Yeah, yeah, in this City, the emergencies is in a completely different spectrum, so.

CHARLES DAVIDSON: [laughs]

CHAIRPERSON BREWER: It's okay, don't worry about it.

CHARLES DAVIDSON: So, but that's, you know, that's probably more than you needed to hear, but those are my thoughts on the question.

CHAIRPERSON BREWER: I appreciate it. And I want to thank this panel very much. And we will be in touch. Thank you. The next panel is Hannah Miller from Media and Democracy Coalition; Jennifer Mercurio, we know Jennifer; Jean Look from the Future of Music Coalition; and

Chris Keeley from Common Cause.

[pause]

HANNAH MILLER: Hello? None of us have laryngitis, so we're okay.

[pause]

CHAIRPERSON BREWER: Whomever would like to start.

HANNAH MILLER: Hi. Hello, everyone, my name is Hannah Miller, I'm with the Media and Democracy Coalition, we're based in D.C. We're a coalition of over 30 nonprofit organizations, including many that are here in this room today, that work to advance public interest in media policies in a bunch of different areas. I came here today to applaud the New York City Council Committee on Technology in Government for taking leadership on such a crucial issue as net neutrality. New York City is so dominant in industries that need stringent, nondiscrimination regulation--TV, film, finance, international trade, web, nonprofit and so on--and a strong statement in support of net neutrality here can serve as a beacon to other cities. Without net neutrality, fixed and mobile internet users are going to be able to access fewer sites, use fewer applications, view fewer music video or multimedia files, while probably seeing their rates continue to rise. If incumbents are permitted to destroy the nondiscriminatory nature of the internet by favoring some content over others, they will essentially be picking winners and losers in today's online society. In a situation that brings to mind the phrase, "made famous by *Brown v. Board of Education*, separate but unequal." The Media and Democracy Coalition supports the six principles put forth put forth by FCC Chair Julius Genachowski, and argues for the strongest possible rules that will preserve the innovative, open nature of the internet. But we would also like to suggest that the Committee may also want to demonstrate support for other policies that would spur more competition and innovation in the broadband marketplace. This summer, the Federal Communication Commission commissioned Harvard University to, Berkman Center for the Internet and Society, to examine which regulatory frameworks would result in the best possible outcome for next generation broadband. They studied the broadband markets and policies of 14 different countries, and came to the conclusion that it was the open access principles of these networks which allowed multiple ISPs to compete over the same broadband infrastructure, that contributed to the growth of affordable, ubiquitous broadband. Open access policies, and there are many, and net neutrality is one of many of these, promote competition, innovation, and consumer choice, by maintain-- mandating that carriers share their network with other entities that want to provide services. That's not unlike the system that brought competition to local and long distance telephone service years ago, here in the United States. The nation studied, and the FCC commissioner report, largely started with regulatory frameworks as light as our own, but over the last ten years, they have required carriers to open their networks to competitors, not only to develop their own infrastructure, but their IT industries as well, on a national level. I encourage all of you on the Committee, and hopefully later the City Council, to read the Berkman Center report and become a part of the fight for open access provisions. These 14 nations had a choice between the interests of a handful of telecommunications companies, or the economic wellbeing of society as a whole, and in all 14 it turned out to be no contest. I hope we choose as wisely. Thank you.

CHAIRPERSON BREWER: Thank you.

CHRIS KEELEY: Good afternoon, now, Council Member Brewer. My name is Chris Keeley, I'm Associate Director of Common Cause/New York. As you know, Common Cause is a government watchdog organization dedicated to increasing public participation in the public discourse, through the government procedures, bringing the public into the process. And for that end, to that end, Common Cause firmly supports net neutrality, firmly supports this resolution before the Committee today, the proposal before the FCC, and the legislation before Congress right now. As the Chair and the Members of the Committee know well, the expansion of the internet in recent years has fostered the development of an entirely new dynamic of democratic participation. It's allowed for new heights of citizen involvement and access to information, it's created, in effect, a new town square. It's allowed people to come together without regulations, to share their ideas, to go back and forth, to start to collaborate independent of actual, physical space. According to the FCC proposal that's currently pending, Congress has recognized that the internet offers a forum of true diversity of political discourse. This is what we're talking about, it goes right from the White House down to the local PTA, it's cultivated public debate and democratic participation. And what has allowed this, one of the reasons, one of the things that have allowed this to happen, is net neutrality; is that principle of nondiscrimination. That we are going to allow this discourse to take place under its own guise. And to that end, to those ends for democratic participation, that's why Common Cause sees this as a critical public infrastructure. Joshua Breitbart from People's Production House mentioned that earlier, and that is absolutely where we stand. This is a critical public infrastructure. That we can talk about the information superhighway, we can talk about regulating or not regulating that, as they may, as it may go forward, but even when private, even when state roads are taken over by private institutions, it's still the state that regulates it. It's still that state that manages the speed limits, and it's still the state that does not allow for a private fast lane for those who can afford it, and then a slow lane for those who cannot. That is discriminatory, and that's something that in this sort of situation with this sort of critical infrastructure, that's something that we would very vehemently oppose, and we would hope that Council would, too. We--As we're talking about the government access in this scenario, it's important to also note, as was discussed a little earlier, that there is still a very broad digital divide, right here in New York City, around the country, we know it's elderly populations, we know it's rural populations, low income individuals, and even beyond that. We applaud the Chair's work on this front, we look forward to your continued efforts on this. One thing that I would like to highlight as it relates to this Committee, again, is this Committee's done a very impressive job of putting forward forward-thinking resolutions, forward-thinking laws. Local Law Eleven, bringing government work online, so that anyone can see it; considering things like webcasting City Council Committee reports, Council hearings, I should say. Even informally doing things like Twitter today, doing things like webcasting it live. People can then pull it up later on; that this brings people into the process. And by creating tiered access, it's going to, it has the potential to, create major obstacles for individuals to be able to participate directly with their local state and federal governments. So, again, just to wrap up, we support this resolution wholeheartedly. And hope that the Council, that the Committee and the full Council will pass it, will pass that through. Thank you.

CHAIRPERSON BREWER: Thank you. Jen.

JENNIFER MERCURIO: Good morning, or good afternoon, Chair Brewer, and thank you for putting forth 712-A, as well as holding this hearing. ECA, the Entertainment Consumers Association, which I am here representing, is very much in support of the sentiments in 712-A, as well as the FCC's moving forward in protecting network neutrality. I'm Jennifer Mercurio, I'm the Vice President and General Counsel of the Entertainment Consumers Association, which represents the over 150 million Americans who play video games in America, and over 50 percent of whom, so that's over 65 million Americans, who play and/or download video games from online sources. We know from the work we've been doing for a very long time, that the internet being open has fostered not only new industries among strictly tech companies, but has also fostered new industries within the video game world itself. Even accessing video games collaboratively through the internet and through a net neutral environment, has brought us to a completely new place with PlayStations and other consoles like Xboxes, where one can now access Facebook and other social networking sites where one, even on the social networking sites, one can play video games. I was, I don't want to take up too much time because it's, with my testimony, because you have it in front of you. I would like to do a couple of counterpoints, just to certain things that have been said earlier. One thing I would like to state is that it seems that most people, regardless of which side of the issue one is on, most people agree that what we have now is pretty darn good. And that having a network neutrality of some sort is a good thing, even the industry folks have been arguing that it fosters innovation. Once again through the video gaming world, we can point to countless sources of innovation that have come about and new things that are emerging literally every day. This week, there are certain things that came out about Xboxes and PlayStations that are dependent upon accessing and playing on the internet, and having a net, having net neutrality in place. So it seems as though, even though everyone's in agreement, that a net neutral world is fabulous, that it, for some people it's frightening that the FCC might promulgate rules to go along with a net neutral environment. However, the reason that we are now all here before you, the reason that you have drafted and are putting forth 712-A, the reason that the FCC and President Obama are so very into having net neutrality rules promulgated, is because we are seeing, not in isolated instances, but a general shift by the ISPs, to charge people more and more money, either through capping or through tiering, for things that people have been able to access universally in the past. So, I'll stop there. I would like to counterpoint some of the other issues that have been raised, but we are very supportive of 712-A, and thank you very much for drafting it.

CHAIRPERSON BREWER: Thank you. Next.

JEAN COOK: Members of the Committee and fellow speakers, it's a privilege to appear here today to talk about net neutrality, which is an issue that has enormous bearing on those in the creative community. My name is Jean Cook, I'm a musician. For half my life, I've been making music in New York, making recordings and performing, and was living in Letitia James's district until just a couple years ago, when I moved to Washington D.C., to become Interim Executive Director of Future of Music Coalition. FMC's a national, nonprofit education, research and advocacy organization for musicians and composers. FMC works to ensure that artists are able to develop audiences through essential platforms like radio and the internet. We also care deeply about developing appropriate compensation structures for artists, as we continue this rocky transition to a largely digital environment for music. When the original Napster appeared nearly a decade ago, the traditional music industry was confronted with a troublesome new reality. Reproduction and distribution was no longer something exclusive to the big labels and their industry partners. It was now in the hands of the masses. Clearly, this had major implications for copyright and intellectual property, but as FMC said at the time, and still believe, the only viable alternative to an illegal Napster is a legal one. Since then, we've advocated for a legitimate and robust digital music marketplace that fairly compensates artists and allows for innovative ways for discovering music. In the remainder of the decade we've seen remarkable examples of using the open internet to connect with audiences and advance their careers on their own terms. Musicians are collaborating, selling merchandise, booking tours and building fan bases via the web. The band OK Go’s homemade YouTube video became an international sensation and led to the band winning a Grammy Award for best short video. Singer/songwriter Erin McKeown, she holds virtual concerts around her house that her fans can watch live online from all over the world. And even though Alex Shapiro, a composer, lives in a remote island off the coast of Washington state, she's still able to make a living off of commissions from, among other places, her Myspace page. Meanwhile, there are countless legal services such as Rhapsody, Pandora, iTunes, eMusic, MOG and Lala, to name a few, that make it incredibly easy for listeners to seek out music. And for me, as a classically trained musician and somebody who comes from the jazz community, there are incredibly useful niche music discovery sites such as Kalabash or Arkiv Music, which make it possible to delve deep into catalogues of music from around the world, and classical music. These services are now on the same playing field as the most mainstream services. These successes are models for a new industry, and they would not have been possible without open internet structures. Net neutrality gives essentially everyone a license to innovate, and we see the results from the artists whose creativity is fueling music 2.0, as well as the technologists who are designing amazing new ways to experience music. In the emerging digital marketplace, there are far fewer middlemen or gatekeepers that are holding artists back or imposing conditions on them in exchange for access to listeners. As the digital music marketplace matures, we're keenly aware of the dangers facing the independent and niche music communities if new gatekeepers such as the telecommunications companies were to be given control over what you can experience on the internet. Although artists have thus far had the benefit of open internet structures that gives them access to the same essential technology as the best funded companies, there have been troubling instances where telecommunications companies have behaved in a manner that raises serious concerns for artists' ability to not only reach potential audiences, but also enjoy their right to expression. One example of the latter came in 2007, when the band Pearl Jam performed at Lollapalooza. AT&T had the exclusive right to the online broadcast of that concert, and during an improvised segment, singer Eddie Vedder made statements critical about the then president George W. Bush. AT&T censored this portion of the broadcast, leaving viewers at home wondering what he was saying. Although this isn't necessarily a perfect example of non-net neutrality, it does illustrate what can happen when one ISP has sole control over the distribution of content and is allowed to make its own calls about what is or isn’t acceptable speech. With new FCC Commissioners in place it finally appears that expanded net neutrality principles will become part of the rules of the road for the internet. The transparent process the Commission launched with its October 22nd "Notice of Proposed Rulemaking," rightfully recognizes that there are a great number of stakeholders, including creators and the public, whose voices must be considered as the FCC goes about crafting net neutrality policies. It's important to remember that these proposed rules apply only to lawful content, sites and services, which leaves room for discussion about ways to prevent the unlawful sharing of content. This is an important distinction. Ensuring compensation for rights holders is hardly incompatible with net neutrality. There are currently conversations about possible technological solutions to the illegal transfer of copyrighted content, but such discussions need not compromise the goal of establishing clear and transparent rules for net neutrality. In fact, net neutrality is critical to continue to nurture and support innovation, and legal licensed services as an alternative to piracy. In our quest to ensure proper compensation for creators and rights holders, we must be careful not to compromise what makes the internet such an incredible platform for innovation, expression and entrepreneurship. On behalf of FMC, I'm pleased that the Committee is giving this matter the attention it deserves as the FCC undertakes a thorough and open process that will hopefully ensure that the internet remains an unprecedented space for creativity, commerce and the exchange of ideas. Thank you.

CHAIRPERSON BREWER: Thank you all very much. Jen, I have a question, 'cause I know that the video game industry is now huge. How do you combat piracy, if at all? Is that something that is a problem, or is that not an issue in your industry?

JENNIFER MERCURIO: [off mic] Piracy--

CHAIRPERSON BREWER: Need to use the, you know, or illegal--

JENNIFER MERCURIO: Yeah, sorry.

CHAIRPERSON BREWER: Illegal downloading or whatever.

JENNIFER MERCURIO: Yeah.

CHAIRPERSON BREWER: People find to do.

JENNIFER MERCURIO: Intellectual property piracy is an issue across all content industries. Within the video game industry, the video game world, the industry association, the Entertainment Software Association, ESA, has a quite robust antipiracy unit, that will go after pirate rings whether in the U.S. or around the globe, as does the MPAA for movies, and the RIAA for music. The Entertainment Consumers Association that I work with, is, it's purpose is to empower consumers, and empowering consumers to understand what is and what is not piracy. Which no one has really quite honestly done. So we recently launched a gamers for digital rights, to begin teaching the public more about what piracy is and is not. What is IP, what is intellectual property, what do you own? Even with a video game, if you're downloading a video game, do you own that video game or do you just, do you own some bits of that video game? Or is it solely a license? Because in, historically different things have existed at different times regarding one's rights. So, to circle back to your question, it's an issue, it's an issue across the media spectrum. And it's an issue that anyone dealing within any content industry, any organization or company must--

CHAIRPERSON BREWER: Well, it seems to me that what you're saying is that the codifying of net neutrality isn't one way or the other. The real issue is that you have to have all these other opportunities in place in order to be able to curtail any theft of intellectual property. In other words, there's just many other layers that you need to keep the pirates away.

JENNIFER MERCURIO: Correct. And one, just to respond to that particular point in two ways, one of which is, what we have found is that as people get more access, as things are better known, as the public knows more what their rights are and how to properly use them, they are more willing and able to act in an appropriate manner, not realizing in most instances when something is just, you know, they're unintentionally doing something, when they realize that there must be an intent to move in a bad way, a bad direction, they generally move away from that. The other way that I would respond to that, is that the FCC itself, in promulgating, or promulgating certain rules, but then also in responding to issues that certain corporations have had in the proposal of the two additional rules, is that the FCC staff, and I'm sure you, that most people here know this, the FCC staff has put out some guidelines and developed guidelines, regarding reasonable network management, which is kind of the loophole that one can use to scoot around these rules, or work within this framework, to protect the ISPs or corporate interests more. And some of those rules are exactly to block unlawful content, which would be childhood porn and pirated--

CHAIRPERSON BREWER: Piracy.

JENNIFER MERCURIO: Yeah, exactly. So, they're there, these rules are there to assist in these kinds of things. And my presumption is that under the network neutrality universe, there are ways that corporate interests can move forward to protect intellectual property owners, other rights owners, and other, you know, lawful uses, as opposed to the unlawful uses.

CHAIRPERSON BREWER: Ms. Cook, thank you very much for your testimony. Some of the song writers had a different perspective. Were you here when they were speaking? Do you guys talk to each other? [laughs]

JEAN COOK: Yes.

CHAIRPERSON BREWER: Okay. So there's some opportunity, then, to figure out how we could work on a resolution that took into account their concerns and certainly what you had to offer. Okay, thank you very much. Okay, and then the other issue I have for the panel is: Do you think that the codifying of net neutrality will help us, as far as we can, to erase this digital divide? Which is something that bothers me tremendously. Have you had any thoughts about that? Maybe others.

HANNAH MILLER: Yeah, I've actually, I do think there's a relationship. You know, I think the net neutrality fight is made out to be much more technical and confusing than it actually is, because it's, in the end, this is really about consumer choice, and the affordability of information, pretty much. So, as you, you know, there's two issues there, one is the affordability of access. As access becomes more expensive, you see less people going online, of course, so that's always the reason. But the other thing is, once you get online, what kind of information people will have access to if we don't enact these rules, are going to be entirely determined by how much you can pay. And you know, that's, I mean, we have discrimination in every single segment of our society--in housing, in healthcare, in employment. This is, this, unless we enact these rules, we'll just see a replication of that inequality on the internet, and that is something that, it's the most democratizing influence we've ever had, this is one of them, as a society, and to throw it away would be terrible. But I encourage the other panelists to address that.

CHRIS KEELEY: On a related note, just talking about the broader discrimination, I was mentioning to somebody in the back of the chamber earlier, that listening to some of the conversations that were going on in some of the earlier panels, it struck me, it gave me almost cold sweats thinking back before I joined Common Cause, I was with an organization, we worked around subprime mortgage lending issues. For five years, I was working on that. And the testimony on those days in 2002/2003/2004, they sounded an awful lot like this. And it boils down to two words: trust us. And I think that there is a place for reasonable government regulation, and I think that codifying net neutrality principles is one of those reasonable government roles, that that is a role they should be taking. That said, I think there could be some clarification of the reasonable network management definitions. But "trust us," just doesn't cut it.

CHAIRPERSON BREWER: Okay. Jen. Go ahead.

JENNIFER MERCURIO: I also just wanted to add that to a certain degree, universal broadband, which is more of the access and the infrastructure aspect of the discussion that we've all been having, is separable from network neutrality, in that the laying of the broadband so that people in rural communities or disadvantaged communities can get the computers and then get onto the internet, that's one issue, at least in my mind. And then, the network neutrality issue that we're all talking about mostly today, is more about, as other panelists have said, keeping it all free, open and equal, which is what we all like right now. And keeping the costs on a level playing field, so that if someone in a rural community, let's say, don't know of one in

Manhattan, per se, but you know, someplace else, someone in a rural community is trying to get a job because unemployment is at a, you know, 25 year high, they're trying to get a job, that they won't be kicked off, because they haven't paid enough money to their ISP, and they can't get adequate access. So, I just wanted to reiterate the separation between the broadband, which the federal government is also paying the ISPs to lay, to a certain degree. They are underwriting studies to be done about how to do it. So the ISPs are very happy for government assistance in that way, and yet seem troubled by keeping the actual internet free and open for all Americans.

JEAN COOK: I would like to add on to the whole idea of "trust us," as well. When you go back to the example from my testimony about what happened with Pearl Jam, the only reason why we figured out what had happened, was because they had a number of fans who were at the show, and they also made their own recordings and put them up on YouTube. And then people noticed, you know, people are watching the broadcast just kind of figured, "Well, you know, maybe my connection's just not very good right now." It was only when people were able to compare side-by-side the official broadcast and the broadcasts by the fans, that they realized very kind of strategically the words that were blocked were the ones that were critical of the administration. When asked, when AT&T was asked about it, they denied that they had done anything. When they were pressed further on it and there was more pressure put on them, then they said that it was the, it was an error that was made by an overzealous editor. Now, if this is what they're talking about when they say that, you know, "We'll just kind of figure these things out on a case-by-case basis," what really concerns me, as an artist, is that it's very difficult to tell when these things are happening. It wasn't until the Pearl Jam case came out that other artists looked at their own broadcasts from other festivals and realized that it had also happened to them. This is the kind of burden that I'm not sure that we really want to place on the creative community, or on the public.

CHAIRPERSON BREWER: I want to thank this panel very much, and we look forward to continuing the discussion. Thank you. [pause] The next panel is James Vasile from Software Freedom Law Center; oh gosh, Jehangir Khattak, New York Community Media Alliance; Lowell Peterson, the Writers Guild of America, East AFL/CIO; Spencer Brown from I-Beam; and Emma Lloyd, if she's also here, from I-Beam. [pause] Whomever would like to start, whenever you're ready.

LOWELL PETERSON: Good afternoon, Madam Chairman, Lowell Peterson, I'm the Executive Director of the Writers Guild of America East. Appreciate the opportunity to speak in support of Resolution 712-A. Let me tell you a little bit about who we are. We are the folks who shut down Hollywood about a year-and-a-half ago. We write the comedy, variety and late night; we write the big screen movies; we write episodic TV, sitcoms, public television--Nova, Sesame Street, Frontline; we write news for ABC, CBS, a little bit of FOX, and radio; and increasingly we write for digital media. And the reason we shut down Hollywood was this. Writers have to participate in the digital world, and that's why we support the concept of net neutrality and support this resolution. What the internet in particular does is eliminate the barrier between the creator and the audience. We know what it's like to work for big studios, that's where most of the work, and big networks, that's where most of the work is. We know what it's like to have somebody else decide what gets produced and what gets aired. And our members increasingly like not doing that, going directly to the audience with inspirational stories and funny bits, and news items that wouldn't run on network TV, is very important to our members, who are committed to the life of creating these stories, and getting them heard. Our concern is that without net neutrality, what will happen in the digital world is similar to what is currently happening in the, for lack of a better word, analog world--which is that there are a handful of majors that control access. We don't, we think that would be a squandering of a major opportunity, what digital technology offers, what the internet offers, is something very different from that. Nobody knows what the business models will be, nobody knows exactly how it will be monetized, but we do know what will happen if we allow large, powerful institutions, ISPs, studios, etc., to control the flow of information. And it is not good for creators, it is not good for writers. I think the issue of theft is one that is very important to our members, as well, and we've heard a lot of people talk about it. There is nothing at all inconsistent about supporting net neutrality and opposing theft. I'm against car theft, I don't think that we're proposing to limit the number of car dealerships as a way to eliminate car theft. There are technologies, there are regulations, that can take place, that do not involve handing control of the internet over to a handful of corporate interests, that will protect our members against theft. And we look forward to working with folks on that. We do, we think, though, that equating net neutrality with support for piracy is simply a non sequitur. I have a lot more to say, but the hour is late.

CHAIRPERSON BREWER: That was fabulous, thank you very much. Next.

EMMA LLOYD: Hi, my name is Emma Lloyd, and I'm the Director of Technology at I-Beam, and I'd like to thank you for inviting I-

Beam here today. Spencer Brown is actually a student resident at I-Beam, and he actually wrote a testimony, he wanted to speak, but unfortunately had to leave. So, I'd actually like to read his testimony for him. So, "My name is Spencer Brown, and I've been born and raised in Manhattan. I'm 16 and go to Bard High School, early college. I'm also a student resident at I-Beam, a nonprofit art and technology center, dedicated to exposing audiences to new technology in media arts, and demonstrating new media as a significant genre of cultural production, encouraging collaboration and inviting the public to share in the spirit of openness--open source, open content, and open distribution. As a way of life, I was born in '93 and almost all of my cognizant life has existed with the internet. It has defined my habits, my techniques and my lifestyle. In my experience with the internet, it has functioned as a gateway to an otherwise unreachable audience and community. As a young adult, this is priceless. As a student, the internet works as the ultimate research database. On the surface, it's because it grants access to an incredible, vast well of information. But what makes it so innovative and useful is the fact that it's possible to investigate further than what is actually just available as a first look. That is to say that it's possible to discover a community around a certain topic, and create discussion with people. As a teenager, the internet works as a platform to reach others with whom, without whom it would not be able to explore. For me, this is extremely important, because it gives the ability to share my ideas, products and opinions on a more level playing field. As an artist, the internet is the ultimate studio, audio, library, full database and gallery. For me, it's possible to access content on a level with which the freedom and openness of the access to the internet would never be conceivable. The internet also works in the production aspect of my art. I use it find a community with whom my work is significant and I can get specific critics or ideas to expand my work. Today most of the internet uses the consumers, with only a smaller amount using the internet in creative ways. If we do not make sure that the internet is kept open and accessible, which people, and people can communicate and explore freely and effectively, we will lose one of the most influential and important tolls currently in society. The internet has created something which has never been done before, and this is the creation of a way for people to share their ideas with the world in a quick, easy and effective method. Never before has it been possible for a New York teenager to get critical comments on his work from people all over the country, in a matter of minutes. To conclude, an open and non discriminatory network is the very heart of the internet. It's why we have the internet community that we have today. If this is not preserved, the internet as we know it will disappear. The control over what consumers and creative individuals see and do online will pass from the consumer and creative user to the telephone and cable companies, removing its usefulness as a creative source."

CHAIRPERSON BREWER: Thank you, and tell him to say hello to Catherine Snyderman, who's in his class. Catherine Snyderman [phonetic]. Thank you, go ahead.

EMMA LLOYD: Thank you.

CHAIRPERSON BREWER: Whoever's next.

JAMES VASILE: Thank you, Chairperson Brewer, for inviting me here today. My name is James Vasile and I am here today on behalf of the Software Freedom Law Center, a pro bono, nonprofit law firm exclusively devoted to representing people who make free and open source software. And that's software that is distributed with source code and permission to share, copy, modify that software and that code. Wikipedia, Firefox and Open Office are notable examples of free software used by many New Yorkers every day. I'm here today for two purposes. One is to urge passage of the resolution, and two is to invite the Council to take a step further than 712-A, and require net neutrality and other consumer protection provisions be included in the franchise agreements that are currently being renegotiated with the broadband cable providers in New York City. So, first the resolution: I urge the Council to view the Internet Freedom Protection Act not as a limitation on the operations of broadband providers, but instead as what it really is, which is a consumer protection measure. It's a consumer protection measure designed to protect New Yorkers from anti-competitive, and anti-consumer practices. Other people have come up here today to talk about what some of those practices might be, but I'd like to sort of talk about some concrete examples of what that scenario might look like, how that would actually play out. And what degradation of service means in actual practice in the future, would be, you know, New Yorkers faced with the frustrating, nonsensical choice between different providers providing different kinds of service and different types of content. So, you might be faced with a choice of, you know, Time Warner, who has an exclusive deal with, say, Facebook, for Verizon, which has an exclusive deal with MySpace, and choosing a service provider suddenly becomes also choosing what services you're going to be able to consume, or how much you're going to pay for those services. You might be faced with a situation where Verizon degrades third party voice over IP service, such as Skype, which tons of New Yorkers use to communicate with people all over the world. There's a lot of immigrants in New York who use Skype to talk to people back home. And they do it at very, at a very low cost. Now Skype competes pretty heavily with services like Verizon's FIOS service, which includes a voice component. And without net neutrality, there's no reason why Verizon couldn't refuse to carry Skype traffic. There's no reason why Verizon couldn't degrade Skype traffic to the point where it's either less desirable or completely unusable, simply to prevent it from competing with Verizon's own services. So, people have come up here today, representatives of the broadband ISPs, and said "We don't need to worry about these nightmare scenarios, we don't need to worry about these examples, because, look, we've been here forever, and we haven't done these kinds of things." And I’m here to tell you that that simply isn't true. In 2007, Comcast actively disrupted peer-to-peer file sharing network. Now this is pretty commonly known and there was a lot of outrage over it, but there's other, more subtle instances of people, of companies, discriminating between different kinds of content. And price discriminating between their customers. For example, with Cablevision service, you can't get outbound port 25, which is an email port that allows you to send email using certain kinds of services. You can't get inbound port 80, so you can't actually surf web pages over the web with a dynamic IP address, if you're a Verizon customer. These sorts of problems allow, these sorts of provisions allow the broadband ISPs to price discriminate between customers and charge people who want to send email more money, people who want to surf web pages more money. And that's the kind of thing that is starting to happen more and more, in the broadband market. And without net neutrality principles to prevent it from furthering, we're starting to take those steps down the slipper slope. So, Resolution 712-A is a move towards preventing us from going down the road to discriminatory services.

CHAIRPERSON BREWER: Start to wrap up. I know you had wanted to talk about the franchises, but start to wrap up.

JAMES VASILE: Sure, let me, the-- the franchise agreements that govern, that allow the various ISPs to serve broadband in New York lapsed in 2008. Those agreements are currently, they've been replaced by temporary agreements, and a long term agreement is being renegotiated with DOIT. Now, once that agreement is finalized with the City, the agreement comes to the City Council for approval, which means you guys have the power to decide to--

CHAIRPERSON BREWER: We don't see it.

JAMES VASILE: You don't see it.

CHAIRPERSON BREWER: No, it's the Borough President's representatives, and the Mayor's representatives. And maybe the Public Advocate. Yeah.

JAMES VASILE: What I would urge is that the City Council take steps to make sure that the franchise agreements that are put in place include net neutrality guarantees, and other consumer protection measures, specifically what I'd like to see is limitation, no limitations on connecting devices to the network, no limitations on static IP addresses, which they currently charge extra for. And--

CHAIRPERSON BREWER: That needs to go before the Franchise Review Commission, just so you know. I mean, I hear you, we could have some influence.

JAMES VASILE: Mmhm.

CHAIRPERSON BREWER: But that's definitely, the Borough President has a rep, as well as all of the Mayor's people. So, just so you know. But you can continue, I'm just letting you know.

JAMES VASILE: That last thing I would like to see is an end to limitations on sharing of bandwidth. Right now, people who buy bandwidth from their ISP are prohibited by their agreements with the ISP from sharing that bandwidth with other people. And that plays out in very concrete, real world ways. I mean, landlords who want to plug in a wireless router to offer wireless internet to their tenants, to attract potential tenants, are currently prohibited from doing that. Nobody would countenance GM preventing people from lending their cars to other people. If you buy bandwidth from Time Warner, from cable, from Verizon, you should be able to do with it as you see fit. And that includes making the best possible use of it and sharing it with other people. So these are the kinds of consumer protection measures I would urge the Council to support. Thank you.

CHAIRPERSON BREWER: Thank you very much. Next, sir.

JEHANGIR KHATTAK: Thank you. My name is Jehangir Khattak, I am the Communications Manager, at the New York Community Media Alliance. We are a not-for-profit organization that works for the promotion of ethnic and community media in New York and New Jersey. And today I am here to support Resolution 712-A because we feel that it's very important for the immigrant communities and the minority communities, and the media that is representing those communities. NYCMA is very closely working with this media sector, which is pretty large in New York. To catch up with the emerging technology curve in the information sector, we have been organizing training sessions for more efficient use of web based tools for reporting and encouraging publications of this media sector, to better organize their web presence. We are also actively working to educate this media sector on the importance of net neutrality and other media policy issues, by planning a forum in collaboration with People's Production House and other partners next year. We feel that there are social justice implications for these communities when they cannot connect the dots between the realities and access to the internet. For example, what does it mean if popular Skype is no longer available for low cost? And what does it mean for students who lack internet access? And what about their academic success? Also, what does it mean if news from the home country can only accessed through the internet, and the internet is no longer available because it is no longer affordable to go online? These are not simple questions. These are the possibilities which will adversely impact the communities if net neutrality is lost. Net neutrality is the beginning of a larger conversation on the future of internet. The larger goal is affordable and open internet access for everyone and everywhere. Net neutrality recognizes that the internet is an essential infrastructure for economic, social and political activity, and not just a private commodity to be controlled by corporations. That's why we do not just support the calls for new FCC regulations to break the monopoly of few companies, but also want more serious efforts to create greater understanding of the issue of net neutrality itself. We appreciate the City Council's resolution and strongly support it in the community, as well. Thank you for your time.

CHAIRPERSON BREWER: Thank you all very much. I really appreciate it. And Mr. Peterson, we may be in touch for further information, so thank you so much. Just hours late, and my voice is going. Thank you very much. The next panel is Ben Kallos, from Open Government Foundation; Colleen Gibney from ITAC; and Michael Posinsky [phonetic] from Infocom. - - And there's one more panel after this, and then that's it. [pause] Welcome. Whoever would like to start.

BEN KALLOS: If I may?

CHAIRPERSON BREWER: Ben always wants to start first.

BENJAMIN KALLOS: Yes, please. Good morning to the greater technology community. Council Members Fidler, Gerson, James, Liu, Sanders and de Blasio, thank you for recognizing the importance of this issue, and for sponsoring this resolution. Council Member Brewer, Council and Committee staff members, Kunal and Sam, thank you for your amazing work on this Committee, and commitment to continuing to address issues of importance to the technology community like network neutrality. You guys do a lot of hard work and you deserve recognition. My name's Benjamin Kallos, I'm here before you today as a Cofounder of the Open Government Foundation, a New York State nonprofit, which aims to bring greater transparency, accountability and openness to government by making information available online for all to see. We're here today in response to the Committee's call for testimony on two issues. First, will the network neutrality principles as articulated effectively obtain the goal of maintaining a free and open internet? Second, commenting on Resolution Number 712-A of 2007, which asks the Federal Communications Commission and Congress to set firm network neutrality regulations. At this point, as the Chair will appreciate, I will depart from our written testimony in order to avoid repeating points made by experts more knowledgeable than myself, in favor of brevity. We seek to limit the scope of this conversation to that which has been set out by the FCC Notice of Proposed Rulemaking on October 22, 2009, which seeks only to discus the addition of nondiscrimination and transparency to its 2005 internet policy statement, best summarized as "any lawful content, any lawful application, any lawful device, any provider" in order to maintain the internet as free and open. We also hope to suggest a more proactive approach by the City Council in tackling these issues. Regarding nondiscrimination principle, it should be noted that the FCC states in their notice that cable and phone companies provide broadband internet, have a conflict of interest due to online competition and the implementation of this principle is necessary to protect the interests of the end user and the public. While this principle would seek to eliminate the bulk of current traffic shaping, by cable and phone companies, they're still empowered to engage in reasonable network management, which still might involve traffic shaping, and that's been alluded to in other testimonies. What drew particular attention from our organization is the sixth principle, which seeks to provide accountability for the broad, reasonable, network management powers it's providing through transparency. This principle, in further detail, requires that the provider of broadband internet access must make available relevant information regarding network management practices to the consumer who purchases their service, to content application and service providers who must ensure their offerings function on the internet and to the commission. What is groundbreaking about this principle is the opportunity to codify a concept of accountability to both the end user and the fellow community, in a broad departure from typical accountability that is only regulating agencies. As a nonprofit dedicated to transparency, accountability and openness, we strongly support these two new principles, which together would scale back behavior that currently threatens a free and open internet. We also believe the codification of principles would also help to begin an era of transparency, accountability and imparting the concept of responsibility of a service provider to the consumer and the larger global community. With regard to a pro--more proactive approach by the City Council, I will join my colleagues at the Free Software Foundation in calling on the City Council to work with the franchise process. While the FCRC and the Mayor are heavily involved in it, it is authorized by authorizing resolutions of the City Council, the last of which was passed in 2008, provides for five year and fifteen years and so on and so forth, but as of last year, Deputy Mayor Robert Lieber announced that they gave Verizon, a phone company, a cable television contract, where they could offer cable television over their lines, in exchange for adopting concepts introduced by Comptroller William Thompson for the cable consumers bill of rights for improved customer service protections, $10 million to NYCTV, and most importantly, bringing fiber optics to every street in New York City by

2014, with 50 percent of the City--

CHAIRPERSON BREWER: Ben, you got to wrap up, though, come on, if you can.

BENJAMIN KALLOS: No problem. We suggest that the Council take a look at this approach and use your implementing resolution to make that available. With regard to the resolution itself, you're empowered to speak on behalf of over eight million residents, and we suggest that you speak directly to the Notice of Proposed Rulemaking. The resolution was drafted in 2007, and the Notice of Proposed Rulemaking has specific issues, it actually has over 150. So, if the resolution could be more geared to that, and the enacting clause strengthened to specifically mention the proposed principals, all six of them, oppose the implementation of manager of specialized services; and also include a requirement of communicating it to the FCC so that it gets, becomes part of the public record; and to the Congressional delegation and senators. Thank you again for considering network neutrality, we look forward to continuing to work with the New York City Council to make the world a little bit more transparent, bit by bit.

CHAIRPERSON BREWER: Thank you very much. Next.

COLLEEN GIBNEY: Good afternoon, Madam Chair. My name is Colleen Gibney, and I am the Technology Practice Project Manager for ITAC, the New York City Industrial and Technology Assistance Corporation. ITAC is an economic development organization with 21 years of helping New York City's small tech firms and manufacturers. I'm going to abbreviate my remarks greatly, just one point I wanted to bring to the forefront. We strongly support the Committee's efforts to formalize strong network neutrality principles, and I want to speak for one stakeholder that hasn't been represented today, which is the advanced manufacturing sector. My key issue to bring to the Council's attention today is that net neutrality benefits New York's advanced manufacturing sector, both today and where we want them to do. ITAC has worked with advanced manufacturers for over 20 years in New York, and should a tiered system come into operation, these companies, who often operate under lien budgets, would find that they would need to pay more to maintain a basic web presence. A free and open internet will continue to allow these companies to build new web strategies, including manufacturing on demand that will enable them to compete with larger players, both domestically and internationally. And some of this is a down the road problem, but we want to keep things available because we need these manufacturers to grow and to become advanced and use precision technologies, and to become part of very sophisticated supply chains, including military supply chains, which are very demanding. And we're talking about a relatively high use of bandwidth. Those large telecommunications and cable providers who would seek to end net neutrality, or would seek to prevent regulations to support the current model, have spent a great deal of money to have their concerns, and their wish to expand and protect their revenue models, reflected in Washington. The small and to midsize technology in manufacturing companies with whom ITAC works, do not have lobbying budgets. So we need to ensure that those companies get every chance to move forward on a fast and open highway, we don't want to lose our best job opportunities at the side of the road. Thank you.

MICHEL BIEZUNSKI: My name is Michel Biezunski, and I'm working for Infoloom. I'm a member of the XML community, and I'm working, I've been creating, I created the topic map standard, which is a way to improve the navigation within the internet. So, I'm not going to repeat things which have already been said, especially now, but what I want to say is that I am strongly in support of the net neutrality resolution. And the reason is to foster innovation, especially about something which I think is big and it's going to happen. And we should make sure that it can happen the way, the way it can happen. It's about cloud computing and it's more specifically about who owns the clouds. Cloud computing is a metaphor, which is intended to evoke large number of computers cooperating together to do very complex tasks very rapidly. Google and Amazon rely on them. The thing is that they own their own cloud. And the technology allows people to actually form voluntary association among internet users, and create disruptive applications which can have benefits for the society as a whole, and we don't know what they are now. And everybody would be basically able to share resources, including their internet telecom resources, and I think that's big. It's coming, and we should let it come. For example, we can take example of bittorrent, which is peer-to-peer protocol, and it allows many computers to voluntarily participate in the distribution of data to other computers. There's not centralized control over the distribution process, and it's a way to, using the web to allow data to be distributed via resources that the telecom companies would like to restrict in a way that ordinary internet user would be unable to join forces. The problem with the telecom companies that what they want is to be able to slow down traffic emanating from individual and businesses that don't have business relationship with them, and they want to be in control. And then they want to charge whatever they want, and they want to basically be the master of the internet. And a company, I mean, a protocol like bittorrent would die if there would be, there would be no network neutrality, and it's just one example among a lot of others, many of them have been mentioned today. Another thing I want to say is about more, like, historical context, is that the Arpanet and TCPIP, which are the ancestors of internet, were developed as a telecommunication network without any single point of failure, in which the information would be automatically rerouted among whatever pathways remain after a nuclear attack, 'cause that was the point at that time. And the problem is that the control that the telecommunications want to put on the networks would prevent this, the strengths which makes the success of the internet to continue. Because we would be in a position where we would create another instance of an environment where there would be companies to big to fail. And which probably is not the best thing to do right now. Well, the other thing is, and I will finish with that, is that the society needs plentitude and telecoms need scarcity. Once upon a time, there was too much bandwidth, and when the fiber optic networks came online, during that period, prices fell, and the telecom business model was under heavy pressure, they found new ways to create artificial scarcity, to support their old model, to be the toll takers on the information highways. So, basically what they want to do is they don't want to be a utility. And I think that's what exactly they should be. So I think that's basically the, what's at stake in this discussion, and that's why I support network neutrality.

CHAIRPERSON BREWER: Thank you very much for waiting, also, all three of you. How many companies do you think ITAC is working with that could be in this situation? Or is it hard to guess?

COLLEEN GIBNEY: Well, ITAC is one of three providers for the small business innovation research program, to help companies seek federal funding. And we're also engaged through that process with the Defense Department and NASA and these agencies that are SBIR participants. So, currently, without having the database at hand, I would say that we're working with at least 25 companies that are at the significant level now where they are sophisticated enough that the supply chain would be extremely meaningful to them. There is a military head craft manufacturer in The Bronx, there are lighting manufacturers and glass manufacturers and all different kinds of technologies. We're seeking to increase this number, and we're also seeking to encourage innovators to consider advanced manufacturing as away to start businesses here, particularly in the areas of green technology, as well, which sometimes has a manufacturing component. So, while it doesn't seem like a huge number, we are talking about significant job opportunities, because some of these companies have 50 to 100 employees in many cases, and these are long term employees, and they would like to grow rather than shrink. So they need to be part of large supply chains.

CHAIRPERSON BREWER: Thank you all very much. I really appreciate your waiting. Okay, the next panel is Dimas DeJesus, from LISTA. Joely, you're going to have to get up if you want to testify. And Jay Sulzberger. Oh, gosh. Is Charles, I'm sorry, Jay Sulzberger. Is Charles Sanders still here? He's gone. Okay. [pause, background noise] Mr. DeJesus, why don't you go ahead and thank you very much for waiting such a long time.

DIMAS DEJESUS: Thank you. Good afternoon, Councilwoman Brewer and City Council Members. It's a honor to wait this long to speak my mind. But I'll make it quick, I am Dimas DeJesus, I am the LISTA New York Tech Council President. LISTA is an organization committed to our goals of educating, motivating, and encouraging the use of technology for the empowerment of the Latino community. We hope to harness the power of technology to conquer the digital divide, while developing Latino technology professionals for the future. And it's coming very quick. As an organization that serves our local community in the New York, to those who are among the most severely impacted by a lack of access to technology, we urge you to keep your number one focus on the need to get everyone connected. We are concerned that some of the regulations on the internet could, as applied, inhibit the goal of universal access, and leave disenfranchised communities further behind. We are also concerned that other proposed regulations could inhibit investments being made by companies employing hundreds of thousands of workers, and connecting millions to the opportunities that broadband technology affords to those in our community, from distance learning to applying for jobs online. Every day in America, access to broadband becomes more essential to improving personal economic outcomes, expanding the availability and quality of healthcare, and increasing educational opportunities for students and teachers alike. Yet, today, only 40 percent of Hispanic households are connected to high speed internet service, placing three-quarters of Latino homes on the wrong side of a new digital divide. The consequences for our communities under a system of net neutrality regulations would be far reaching, the core concept of an open internet operated transparently, is highly desirable, and we support it wholeheartedly. But the New York City can't afford to get this wrong. Depending on how it is defined, interpreted and applied, it's conceivable that some of the elements of net neutrality may be particularly detrimental to groups that we represent. Therefore, LISTA makes a request that any resolution considered by this Committee would be the product of a careful and empirical analysis of the impact that any net neutrality regulations would have on people with disabilities, low income, minority, multilingual, elderly, and young Americans. This Committee mission needs to ensure that net neutrality would not delay bridging the digital divide by altering consumer pricing, and discouraging broadband adoption and deployment. We hope that your resolution would not reflect presume conclusions until such an analysis is complete. In conclusion, we should continue to focus on deployment and adoption of broadband technologies that can deliver great economic opportunity for everyone, especially those in greatest need for it. The Council should focus its energy and resources on moving us closer towards the development of a broadband plan, ensuring the deployment to those without access, and providing to those who have yet to adopt the benefits with solid information on the transformative power of broadband technology in today's global online economy. Thank you very much.

CHAIRPERSON BREWER: Thank you very, very much, well said. Joely, or Jay, who's going next? Jay?

JAY SULZBERGER: Sure, okay [laughs] Actually, Mr. DeJesus has actually said a few things and I was going to say something else, but well [laughs] we know the track record of, for example, the telephone companies in getting special deals with the government and promising to provide by the late '90s all sorts of broadband connections, all sorts of places. They didn't do it. We don't need any more studies, the answer is you give 'em money and they eat it up, and they don't do what they promise legislatures. But if one wants a study, one should see what happened to that money, and Bruce Kushnick is the fellow who's been looking into this. Okay, I didn't think I would say that. I just want to repeat what James Vasile said, but I want to particular thing, one or two things to say. The arguments of the second panel, on which Mayo, Simons and Spiwak were, I think I've got the names right, basically the same arguments that we've been hearing for many years, and many areas of the economy, for example banking, after all they wouldn't do anything so stupid as to cost the taxpayers a trillion dollars and increase our unemployment rate to what, I don't know what the present number is, but suffice it to say it's higher than it was before we deregulated them.

CHAIRPERSON BREWER: Jay, if you could stick to the, you know--

JAY SULZBERGER: Sure, okay, well, let's specifically deal with the claim that the telephone company and the cable company would never do anything in favor of their own, to advantage themselves unfairly. I remember in the early '90s a friend of mien wanted to put a modem on his telephone line to connect via dialup to the net. And he had to go to the PSC, so he wasn't charged $500 a month for a dialup connection through the telephone company. And actually, late last night, I inquired as to the cost of getting from the cable company in Morningside Depths, where I live, their package of services, and here's how it works. If you do the triple play, which is on its face a gross conflict of interest, because there exists telephony services over the internet, plus they provide you their own telephone service. Well, they'll give you high speed internet at a relatively decent rate, it's still overcharging, but as long as you take their telephone thing in the triple play. But if you just want the internet and cable TV, they strongly suggested to me, I don't know if this is a fact, that you wouldn't be able to use the over-the-internet telephone things. I don't know if this is true, it may be false, my accusation here. But whether or not the specific accusation is, it's a conflict of interest. The claims of the second panel that they would never do any such thing are disproven, and they've been disproven again and again. Thanks.

CHAIRPERSON BREWER: Thank you.

JAY SULZBERGER: Thank you.

CHAIRPERSON BREWER: Joely.

JOELY MCPHEE: Hi, my name's Joely McPhee [phonetic], I'm the Secretary of ISOCNY, we're the local chapter of the internet society. I had to consult to see what the internet society's policy is on this is, and they are in fact somewhat agnostic. And I just extracted this: "The Internet Society believes that the debate over such issues as network neutrality roles mask a more important discussion related to the future of user centricity of the internet, and the preservation of the underlying principles that have made it the success it is today. The guiding principles for decision making must be the preservation of one, openness; two, transparency; three, edge based intelligence; and above all, four, user choice. It's important that the future commercial offerings ensure that the internet's available as a tool for use, as well as a medium for viewing content. As the landscape changes, what is clear is that a user's ability to choose among providers is as important, and has a direct bearing on, as their ability to choose among subscription service packages. So, what we're saying is that if people had choice, then this would be irrelevant. And then what you come to in this situation is where, you know, formerly the telephone company was a dumb pipe, all they did is voice; now, they're in the content business. At the same time, we have the cable company and they're in the content business. And they're having to provide, you know, this facility to other people that are in the content business. And when one wonders if, you know, is ultimate, you know, before we had loop on bundling, where, you know, and so we could have other internet service providers, and that's out the window. So, possibly at some, you know, that this is really a red herring and it's what's really is going to be the big fight is going to be structural separation down the line. But after that, I just want to sort of mention a few things that, to illustrate the thing. One is, you know, Tim Woo, calling the term network neutrality, and I've read the stuff he wrote around the time and he talks about how in the beginning of the movie industry, everybody was making little movies for everybody else, and then eventually they, you know, they came up and one guy bought all the theaters and they formed this-- So they controlled the content and the distribution, and so that, you know, and that did it. And in the radio business, Sarnoff, you know, there was lots of little radio stations, and then once they made the networks and they controlled the thing. And we take it for granted now, but the internet is this diverse thing, but there's no real reason why the same thing, you know, will not happen again. Two, Whitacre, who was the guy who, you know, Woo is the one guy on the one side with Whitacre on the other side, who said, you know, he wants Google should pay for using his pipe. I believe this is what in internet terms we call a troll, where someone makes a controversial statement just to stir people up, you know, that he's looking for money or something somewhere, and he wasn't really serious, he was just, you know, stirring the pot. Three, the Comcast thing, you know, which is known as the egregious example. Well, you know, this in fact was, could be construed as reasonable network management, with the peer-to-peer thing. You know, that it, there was a technical thing that they were opening, that TCP had opened so many connections, an analogy is if you had a buffet and there's only a certain number of plates, well what this application does is it takes all the plates, there might be lots of food on the table, but no one else can get the plates. This is only a problem with Docsis one [phonetic], which is like, you know, the old style and current style in New York form of network connection, is, you know, it doesn't bother Verizon or the people on ADSL, 'cause they don't have that same restriction. The problem was that they didn't tell their customers, and so transparency is really, is, you know, is the thing that's really important. You know, the internet society is in its thing, it says that, you know, tiered pricing and so on, you know, it's perfectly acceptable and it's possible that, you know, that innovation, you know, on the edges and intelligence in the middle, you know, is something which you wouldn't want to restrict. And I think this is something you really have to think about in this, is are you restricting innovation in the center. And then we come to a thing where right now there is innovation in the center, and that as we're seeing in the recent Arpa [phonetic] report, that Google, now that they were talking about tier one, what's going on on the backbone, that Google now has their own backbone, and in fact instead of people peering with them to take traffic, they're actually, the traffic's kind of flowing the other way, because they have so much thing. This is still another reason why, you know, the people who have the pipes, are trying to look into get into content, because that's where all the money's going, in advertising to the, you know, to the pipes. And so this is an economic problem rather than a discrimination or a social content problem that's really what's going on here. So I still say it's a bit of a, it's a bit of a red herring. And then the Berkman report that just went down to the FCC, that looked at what's going on around the world and did the biggest analysis ever, was showing that P-to-P is on the way down, 'cause as people's bandwidth go up, you know, they don't need to go P-to-P, they can just get the stuff, you know, that it's, the people are downloading stuff more and accessing, you know, this is more, you know, it was when the content wasn't there that people were having to exchange content. Now that content is there, you know, that they're doing that more. And the what, the other thing is applications, you know, were at the edge, are no longer at the edge. More and more those applications are online, people don't use their own email program, they use gmail, they use things like this, so the things are on there, so it's much more about what's going on in the middle, than what's going on on the edge. And restricting access to things like that. And one egregious example in New York I'd like to point out, is like Attorney General Cuomo caused Time Warner and Comcast and all these companies to block access to Usenet, you know, which is, I think, under these regulations, that will hopefully be, you know, knocked down. And I guess that's - -

CHAIRPERSON BREWER: Okay. Joely, thank you very much, it's great to end with you, 'cause you certainly put a lot of time in with us, and I appreciate it. I want to conclude by thanking everybody who participated, this was a huge effort, both by the speakers and by the staff. And to also say that I think we've had a dialogue back and forth, and we will try to craft something that is appropriate to the discussion and to the current situation, both locally and nationally. So I want to thank everybody, and we look forward to further discussions. Thank you very much, this hearing is now concluded. [gavel]

C E R T I F I C A T E

I, JOHN DAVID TONG certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature John David Tong

Date December 7, 2009