



3RD ANNUAL "TAKE BACK YOUR INTERNET" SXSWi (UNOFFICIAL) PARTY

# Is Net Neutrality Really Open Internet?

## SPEAKERS

### **Marvin Ammori**

AMMORI GROUP AND AFFILIATE SCHOLAR AT STANFORD LAW SCHOOL CIS

Marvin Ammori is a lawyer, activist, and scholar best known for his work on network neutrality and Internet freedom. He advises a wide range of leading technology companies including Google, Dropbox, WordPress.com, and Tumblr on matters including copyright, surveillance, and telecommunications. He was the lead lawyer on the Comcast-BitTorrent case, the most important net neutrality litigation in the USA.

### **Edward Henigin**

CTO OF DATA FOUNDRY

Edward Henigin has worked in the Internet industry since 1994. As the CTO of Austin-based Data Foundry, he is a technical expert on how the commercial and consumer Internet function. He recently was a panelist at the Open Internet Forum hosted by FCC Commissioner Ajit Pai.

### **Chip Pickering**

CEO OF COMPTTEL

Chip Pickering represents competitive communications service providers in his role of CEO of Comptel. Pickering was a six-term Congressman, representing Mississippi's Third District where he served on the House Energy & Commerce Committee, where he was vice chairman from 2002 to 2006 and a member of the Telecommunications Subcommittee.

### **Gigi Sohn**

FCC SPECIAL COUNSEL FOR EXTERNAL AFFAIRS

Ms. Sohn has served since 2001 as the President and CEO of Public Knowledge and from 2011-2013 as the Co-Chair of the board of directors of the Broadband Internet Technical Advisory Group (BITAG). She has served on the board of the Telecommunications Policy Research Conference (TPRC) and on the Advisory Board of the Center for Copyright Information. In October 1997, President Clinton appointed Ms. Sohn to serve as a member of his Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters.

### **James Waterworth**

VICE PRESIDENT, CCIA EUROPE

James Waterworth advises European CCIA members and policy makers on intellectual property, international trade and internet regulation. He has more than a decade of experience in technology policy having held government affairs posts for Nokia, Cable and Wireless and Telefonica in Brussels and London.

## MODERATED BY

### **Rob Pegoraro**

TECHNOLOGY COLUMNIST

Rob tries to make sense of computers, consumer electronics, telecom services, the Internet, software and other things that beep or blink through reporting, reviewing and analysis - from 1999 to 2011 as the Washington Post's tech columnist, now for a variety of online and print outlets. He writes a weekly Q&A column for USA Today and another about tech policy for Yahoo Tech.



**Rob Pegoraro TE:** Welcome welcome welcome to the third annual Take Back Your Internet party/panel by Golden Frog. This topic, apparently I've been writing about this for ten years. Am I that old actually? And things have changed a whole lot in just the last year so it's going to be exciting to break down how that happened and what comes next. We'll introduce our panels in just minutes but the organizer has asked me to remind you all that the hashtag here is #takebackyourinternet. We apologize for the length of that. You can send us questions via Twitter and somebody, not me I think is going to be looking at those.

We'll try to answer them when we get to them. There are some sponsors who helped make this possible. There's SpiderOak, zero-knowledge cloud storage. I believe they're on the Blackphone. Data Foundry, based right here in Austin and Giganews, the world's leading Usenet provider. I remember using Usenet. And I think there are a few advocacy groups here: The Electronic Frontier Foundation, Center for Democracy and Technology, Engine Advocacy, and the i2Coalition and the folks on the panel. To my left is Marvin Ammori. The cheat sheet here says "famed internet lawyer." You wrote this didn't you?

**Marvin Ammori:** I didn't write that.

**Rob Pegoraro TE:** Somebody actually described him as the net neutrality whisperer. I think I said you were the Keyser Söze of net neutrality. There's Edward Henigin, CTO of Data Foundry, Gigi Sohn, the Special Council for Public Affairs at the Federal Communications Commission, Chip Pickering, CEO of Comptel, James Waterwort, Vice President of the Computer and Communications Industry Association in Europe. And I'm Rob Pegoraro. I do a column on policy for Yahoo Tech. I also do a Q&A column for USA Today.

You may see me writing at The Wirecutter every now and then, and here I am. One last note here, we thank you for coming out at this time. I like to joke that the worst panel time slot is right before the reception and in this case we've solved that by having the reception and the panel be at the same time. Please remember to tip your bartenders. That is a form of paid prioritization we are okay with. I think we got to start. We've had this historic FCC vote which I ... How much money would you put on that happening a year ago? A dollar?

**Marvin Ammori:** You'd have ... I would have put money on it but it was very unlikely.

**Rob Pegoraro TE:** So it's happened and the question we have to ask next is "what's next?" By which I mean who's going to sue to [overturn 00:02:43] to try to get these regulations overturned first? Will it be a cable company, will it be Verizon? If it's Verizon, what will the rest of big telecom be muttering behind their backs since it was Verizon's suit that arguably brought us to this point, by getting some not very strong net neutrality regulations thrown out in court and forcing the FCC to start over. I like to ask multi-part questions, what if the FCC's losing streak in net neutrality court cases continues? Then what? Do you want to take the lead on that?

**Gigi Sohn:** Well look, all I know is this, somebody is going to sue. I'm not sure it's going to be one of the big companies because the last two times they sued and lost it didn't work out so well for them. So it may well be one of the trade associations instead and that makes things interesting because the trade associations don't all speak with one voice. So the Wireless Industry Trade Association has members who think Title II isn't so bad right? Sprint and T-mobile. I wouldn't presume that any particular company or any particular trade association is going to sue. I can't imagine nobody is going to sue but it actually makes a difference who sues and who doesn't.

If the big companies sit this one out it actually looks different to a court than if the trade associations do. But I'll also say this, nobody is thinking about losing because the FCC has done the thing that the supreme court and the last court that struck down our 2010 rules, the DC's Circuit Court of appeals, that's a federal court of appeals in Washington said that we could do. We could reclassify broadband internet access as a telecommunications service if we also wanted to adopt the strongest possible net



neutrality rules. So I'm not really worried and I was very heartened to see, I think it was in New York Times, law professor named Jim Spader in North Western, not a fan of net neutrality basically say, "The FCC is on really solid ground so we're planning on winning."

**Chip Pickering:** Rob just to follow up on what Gigi said and to give those in the audience a little bit of a broader context, I'm a former Republican member of congress. Gigi is a great advocate for consumers' public interest and now at the FCC a loyal and faithful Democrat. Net Neutrality, historically, has been a bipartisan national consensus that started in the FCC of Michael Powel as a policy statement of principals. Then Kevin Martin, another Republican commissioner tried to enforce those principals.

That's the first step of getting us where we are today, where the current chairman has to give the strongest, most sustainable legal rules possible so that they won't be overturned. But Comcast challenged a Republican commission authority to be able to enforce net neutrality principles. You then had, in 2010, chairman [Genachowski 00:05:58] with a broad national consensus of almost every internet public interest and incumbent provider agree to these sets of rules except Verizon.

Verizon challenged it, the court struck down most of the rules but not all and so today we're where we are because of Comcast and Verizon. It was not something that this chair or commission wanted to do but left with no choice but to have the strongest possible, most sustainable rules and I really commend the chairman. He did it in a light touch, flexible way that's based off the wireless model and it came through a Republican active congress, 1996 that allows him to use the most light touch, flexible way of doing these rules in a legally sustainable manner.

**Marvin Ammori:** How many of you live in D.C.? How many of you work in technology and build things? You should probably know that the net neutrality decision a few weeks ago was pretty epic, amazing and completely unexpected. There's a huge disconnect between Washington D.C. and the rest of the country. It's like the Hunger Games where there's The Capitol and then the Districts. A year ago...

**Chip Pickering:** Marvin organized the insurgents.

**Marvin Ammori:** It all began at South by Southwest a year ago actually, so if you live in D.C. you're just surrounded by telecom lobbyists. There are more of them than there are at Starbucks or McDonald's, they're just everywhere. You can't even hire a law firm that isn't conflicted. There's this feeling that no one cared about net neutrality and when you come out to the public, you guys, I remember last year at South by everyone was like, "Oh net neutrality is so important, how do we help?" This is really the community that I think led the way. What happened a few weeks ago was very simple rules saying, if you follow closely, "no blocking."

Comcast, AT&T, Verizon, can't block websites. They can't discriminate and treat some better than others, creating fast lanes and slow lanes. If you have a startup there's no way you could afford a fast lane, competing with Google or Facebook or eBay. No paid prioritization, no deals where in order to compete with a big guy you got to cut a deal with Comcast and Verizon and Deutsche Telekom next. The internet will stay open and neutral.

Had you guys not spoken up, had we not won, we were barreling toward a future where there would have been a decision December 18th where the FCC's proposal would have been constrained by the carriers and permitted fast lanes, permitted all this terrible stuff. Right now you'd be spending your entire South by trying to make deals with Verizon ventures and Comcast ventures so that your businesses would be able to grow. We averted that and it was largely because of this community.  
(Applause)

**Edward Henigin:** Okay everybody else is saying something so I feel like I got to say something too. Except for James, James



I guess you're next. I have a totally different perspective than everybody else on the panel. I'm with Data Foundry and we're an operator so we look at this as a black box. Things happen out there and I don't always know what's happening on the inside or how it's happening. These guys they know how the sausage is being made and I don't know how the sausage is being made. All I see or what's happening to us in the real world.

So frankly I'm a little superstitious and I see patterns and I expect whatever patterns I've seen in the past are going to continue in the future regardless of how I know how they happen. I'm going to tell you from my operator experience, the Dark Triad, you're asking who was going to sue. Well the dark triad is Comcast, Verizon, and AT&T. In all of my years as an operator those are the three who have consistently always been a major problem. Then what ... I finally got some of the economic terms to understand is rent seeking.

What they want to do is they want to lock up this monopoly of their end users and they want to collect whatever tax, whatever rent they ... in their economic term is rent. They can get off of everybody else in the world who wants to do any traffic or transaction with all of these eyeballs they have locked up on their network. So the short answer to the question is who's going to sue? Well if it's not Comcast, AT&T, and Verizon because maybe they are thinking they're too slick and they're not going to come at it head on, maybe it's a trade group that they control.

**Rob Pegoraro TE:** Comcast has a lot on their plate in D.C. right now.

**Edward Henigin:** Comcast has a lot of their plate in D.C. right now. Good. Pile more on their damn plate. I have no sympathy for those guys. Anyway, I think you can tell. That's my perspective. That's what I'd say is to watch out. If there's some sort of legal action that comes and it comes for some group called "Freedom for Internet Fighters" go look in who's funding them and "oh my gosh, is it Verizon funding them, no kidding!" That's the cynic and the superstitious guy in me who is saying it from my experience in operating that's what I expect to see. Now hopefully, I mean I'm feeling more better and better about it everyday that we'll beat them off but we'll see how it goes.

**James Waterwort:** Maybe we can carry on the audience participation that Marvin started. We know who lives in D.C. and we know who works in technology. Who's not from the U.S.?

**Audience Member:** Here.

**James Waterwort:** Not very many. I thought this was a pretty international festival. Well you'll all appreciate the two hands that came up but even those who are from the U.S. we'll still appreciate this that the news gets better. Marvin said that a year ago it was almost inconceivable that we'd get the rules that we've got in the United States. Well two years ago, when we started working on it in Brussels where I live and work in the European legislative process, it was inconceivable that we would get pro net neutrality law.

While we haven't quite finished yet, it'll be finished before this summer we will get pro net neutrality law across the whole of the European Union as well. So we're going to go from having 330 million people covered by net neutrality to close to a billion because that'll be another 500 million people covered. So that's a pretty good almost 50% of the world's economy covered by net neutrality rules and I'd say that's pretty important. I don't think you should be so pessimistic Rob all right? Maybe people will sue but I think you should have started on a more optimistic note. This is good news.

**Rob Pegoraro TE:** Expecting litigation rarely leads you astray

**Chip Pickering:** Well death, taxes, and litigation are always with us.



**Gigi Sohn:** I want to pick up on what James said, and also what Marvin said, because you did start on a down note and it is amazing that four million people weighed in to the FCC. This was a public driven process. I was walking here a little late because this guy stopped me, he recognized me and he said, "My god, for once democracy worked," and I've heard that from an awful lot of people. (Cheers) People are really cynical, people are super cynical about what happens in Washington.

I'm pretty cynical myself but this was a case where the big dogs were going to win and the public just got outraged and a lot of things are driving that okay? People are concerned about consolidation, they think their broadband is slow, they think they pay too much, and they're sick of it. I think a lot of that had to do with them participating in this net neutrality thing. So everybody should give themselves a round of applause because you guys really did this, this was a public uprising.

Let me also say this okay? It's just started. I know you hate to hear that. You've been working your asses off for 13-14 months and you got a great result but it's not over okay? The same companies that are going to sue are going to try to use other means to take this victory away from you. So the same groups and I know a lot of them around here fight for the future and EFF and others, they're going to ask you to weigh in again. And we're going to need you to weigh in again and again and again. So sorry, party tonight but then get back to work tomorrow.

**Marvin Ammori:** Can I add to that note? Fight for the Future will ask you to weigh in, so will Demand Progress, so will EFF, but there are a lot of interesting moments where nobody asked for someone to do something and out of the blue it happened. I can give one example where I knew an entrepreneur in San Francisco, it was probably April or May and he e-mailed me and said, "We've got to get John Oliver talking about this." And I was like, "Why John Oliver? He's just on HBO, no one watches HBO." He had this new show, it wasn't all that popular.

I was like, "Look dude, you are this relentless entrepreneur who knows people in Hollywood. Just email everyone you know, do whatever you want and we'll see what happens." Then a few weeks later there was this John Oliver skit that was amazing. And there were other moments like that when we just organically, someone came up with some meme or plugged in or was doing meetings we didn't know about. So people like you are the folks who don't need to be told what to do, although we'll tell you when we need help. But you guys can do things on your own and it was amazing.

**Rob Pegoraro TE:** So looking ahead, how many alleged violations do you think we're going to see over the next year? How many cases will actually come up of companies trying to get around these rules?

**Gigi Sohn:** I think very few right? This is under litigation. People are going to be on their best behavior. The fact of the matter was, when the 2010 rules were in place for almost four years there were very few violations or allegations of violations. What did happen was we got dozens of complaints that had to do with interconnection right? People's Netflix was loading slowly and Netflix was fighting with both Comcast and Verizon FiOS, and that's one of the reasons why our new rules now include traffic exchange between networks because that turned out to be the problem.

I anticipate that, particularly given that this ... Look if we lose, which I do not believe we will, we could be at this again and everybody's going to be on their best behavior. So I'm sure there'll be some allegations and informal complaints but I think the companies are really not going to test ... not going to push the envelope. They may on some of the things we didn't flat out ban right? Things like zero rating sponsored data. We didn't flat out ban those, we said you can bring a complaint. So there may be some testing but I think that companies are going to be pretty mellow and not try to push the envelope too much.

**Chip Pickering:** Rob, I was just going to agree with Gigi. I don't think on the bright line rules of no paid prioritization, blocking, throttling, those types of clear rules, I don't think that you'll see many abuses or problems. One reason they'll be on their best behavior is that they have mergers before the FCC as well, whether it's Comcast, Time Warner or AT&T/DirectTV, all



those reasons will have a deterrent effect but I do want to commend the FCC for extending the FCC authority to the point of interconnection. As Gigi just talked about the battle has just begun but many of the battles are going from the end user last mile, to now the point of interconnection. The John Oliver skit, the buffering that you might see that goes around and around as you're trying to [inaudible 00:18:35]...

**Rob Pegoraro TE:** [inaudible 00:18:33]I know all about that experience

**Chip Pickering:** Yeah, if you're trying to access Comcast it goes directly and if you're trying to get your Netflix it is very slow. Well that's a perfect example of what both of the rules on the end user last mile and the point of interconnection is intended to have a open, free, competitive market. And the interconnection issues will be the next battlefield I think of making sure that we do have over-the-top streaming, all options, both in the business market and the residential market, and not have a bottleneck gate-keeper at the point of interconnection that would be a barrier to many of the things that we want as we access the internet.

**Rob Pegoraro TE:** Let me flip that question around. Had the FCC ... Had we history taken a different course, how many of these offences would we be complaining about, and complaining the FCC couldn't do anything about, if the regulations that were on the table a year ago were the ones we wound up with?

**Marvin Ammori:** Maybe three days after the Verizon decision last January, when the FCC's previous net neutrality rules were thrown out, there were three days that passed without any net neutrality rules. One of my friends, who's a lawyer for a San Francisco tech company, called me and let me know that they'd already gotten an outreach from a big telecom company with a new innovative pricing plan that they wanted to discuss with them. They were ready to pounce on the idea of being able to cut deals with some tech companies versus others to move higher up the stack.

I think there would be a lot ... There'd be no complaints because there'd be no rules. But there would have been a lot of violations. What the carriers want to do is find a little loop-hole. Like "Oh we're trying to figure out a way to throttle Netflix within this part of the network, not that part of the network," and hope it's legal or "We won't create fast lanes or slow lanes but we'll sell you a bucket of data and then we'll let some of the data not count if you have Facebook or ... so I'm going to pay up to be exempted from the data cap like Netflix.

Twenty days into your month all of the sudden YouTube will cost you money but you can stream Netflix for free. Huge advantage for whoever gets those deals and AT&T is introducing some of them. It has this sponsored data idea which wasn't outright banned. When Gigi says there might not be any complaints because there might not be any violations, there's still some stuff going out there about interconnection and bandwidth discrimination and it's possible that consumer groups decide to just file a complaint and bring the fight right to the carriers and get this taken care of sooner rather than later.

**Gigi Sohn:** Let me tell you what would've happened if we'd not had rules. When Verizon challenged the 2010 rules their lawyer got up in open court and basically said, in response to a question from one of the judges, "If these rules were not in place, yes we would strike these paid prioritization deals." They basically flat out said it. So I think you absolutely would have seen paid for priority fast lanes.

Fast lanes ... Now many, many, many people who weighed in at the FCC, millions, said we want Title II reclassification, which was just startling to me because I expected a lot of people to say we want strong net neutrality rules, but to ask for the thing was amazing. Even those folks who didn't ask for Title II reclassification they said no fast lanes. That was the thing that was just una ... people were united around. And that would have been the thing, in my mind, that the ISPs absolutely would've engaged in, had we not had rules.



**Edward Henigin:** From my perspective, when we talk about fast lanes, Fast Lanes it sounds like a nice thing right? It's a shake-down. I think I almost re-raided that fast lane white washes what they actually want to do. It's a shake down. It's the difference between the fast lane and the slow lane will be the difference between functioning and not functioning. It's not the fast lane and the regular lane, it's the, "Oh you want it to work or what?" I just want to say that.

**Rob Pegoraro TE:** Now we switched to a different mic. The advantage is that I can end this debate by dropping the mic. At heart, this is a discussion not just about potential abuses and regulation, but competition. And in one respect the the net neutrality rules, there were a number of people who wanted them to be stronger and it required things like unbundling. Requiring broadband providers to wholesale their connection so other people could offer service over those, which is a commonplace thing in wireless but unthinkable in residential broadband. The FCC took that off the table, there's no unbundling, no line sharing like there was with DSL. What can and should the FCC do to boost competition? We know there's the municipal broadband policy to try to overturn state bans on that and I will get to that in a second. What else is in the toolkit to try to address that?

**Gigi Sohn:** I guess I'm answering that question. Importantly, one of the Title II rules ... Just to explain, what we did when we reclassified broadband internet access as a telecommunications provider ... As telecommunications service under Title II of the Communications Act, was at the same time we said, "Look, Title II has a lot of sections that don't really shouldn't apply in a broadband world," and this is similar to how mobile voice has been regulated for over twenty years okay? We don't apply all of the Title II because some of the provisions are just not applicable or not in the public interest.

We did the same thing here. One of the sections, Section 224 of the Communications Act that we did apply, we did not forbear from, requires competitors to get fair access to poles and to conduits. And this is something that Google Fiber very much wants and has had trouble where it's wanted to build out. We think that ... It's not the be all-end all. It's not like community broadband. It's not the panacea to competition but it will certainly help competitors compete.

The other place where we want to do a better job of incending competition is in our spectrum policy. We've set aside a lot of unlicensed spectrum, that is spectrum that nobody has a license to and that anybody can build to as long as they share. In addition, we've got a huge spectrum auction coming up, I don't want to explain all the details. But our rules would limit the amount of spectrum any one company can own. So we're trying, through spectrum policy, through what we've done in net neutrality rules and through community broadband. But we are ... We need more ideas for how to incent facilities-based competition.

**Chip Pickering:** Rob, just to give a perfect example of what we need, you look no farther than Austin, where you have Google Fiber that has entered and what has happened ... This is a great example of what happens to investment when you have competition. Time Warner responded, AT&T is building, others are building fiber in Austin and now you're getting multiple networks. Wherever our nation has adopted a policy that has spurred multiple networks, first in long distance, then in wireless, bringing satellite to compete against cable, it always caused new networks, more networks, multiple options, and a functioning market versus a monopoly or duopoly market. If we can have what we have in Austin everywhere around the country that solves a lot of the issues that we have around open internet or any of the other contentious regulatory issues, because the market begins to function and work. (Applause)

**James Waterwort:** Let me give a different perspective. I'm not going try to preach exactly what the FCC should do, because you're all more familiar with the situation here, but one thing that strikes me linking the open internet/net neutrality debate with telecom's competition is, the analogy of going to the doctor. If anyone here is ill and you go and see your doctor the doctor is probably going to do two things at the same time. They're going go try to understand what the disease is, what the problem is and how they're going to cure that, and they're probably going to treat the symptoms as well.



They're probably going to give you something to make you feel better before you've been treated for that disease. That's a little bit the question here with competition in telecoms and what you as a business or as a consumer can do, what you can get to. Open internet rules are important in treating the symptom of the lack of competition. So the more facilities based competition you can have, or sometimes not facilities based competition, something like a special access regime or a wholesale regime the better, the more choices you've got in terms of who you're going to go to to get your broadband access. That's an extremely important part.

**Marvin Ammori:** So all sound a slightly different note, which is, or similar to that, which is we need net neutrality, we need rules that say no blocking, no fast lanes, no discrimination, no throttling and we also need competition in broadband. We need both and the reason why is because, it's sort of complicated economics around the fact that even if you can choose your ISP on day one, once you've chose Comcast the only way for Netflix to get to you is through Comcast.

You have a year long contract, you've not going to switch to Verizon mid-stream to try to get Netflix. You don't get two different subscriptions. And there are lots of things competition solves but we don't take away fuel efficiency rules just because car companies compete with one another. You don't take away non-blocking rules just because you have a few phone companies competing. In some European countries, despite competition among mobile carriers, all of them are blocking Skype. So you have to make sure you have both the belt and the suspenders.

An argument that seemed to be pretty common in D.C. was from AT&T and Verizon and Comcast was, "Just de-regulate us and let us make a ton of money gouging consumers and then we'll take it and reinvest it. We'll provide this awesome broadband experience if you just let us gouge consumers." It turns out that never works. Instead, the competition works. Google shows up and all of the sudden AT&T is like, "We're going to do that too." Time Warner says, "We're going to do that too." Competition is how you get high speeds, low prices, better customer service maybe. I think that's a lesson that D.C. should learn.

**Rob Pegoraro TE:** You were [saying 00:30:21]?

**Edward Henigin:** I just want to illustrate this. Un-bundling. I love unbundling.

**Marvin Ammori:** Explain it to people.

**Edward Henigin:** Yeah, right unbundling, what is that? Well, gosh. Unbundling ... I think Gigi really said it, access to poles and conduits so that a new entrant can come in behind the existing incumbents and more cheaply build out to the same areas. Unbundling is a step in the right direction, I'd love to see it further. I just want to ... This is my favorite prop, I've got Boardwatch magazine. Everybody in the audience who's ever read a Boardwatch magazine please raise you hand.

All right, all right, all right everybody buy those people drinks because they're the grey-beards, and get them talking about the old days. We started texas.net dial-up ISP in 1994. We are one of the first in the country. Ron, Caroline, visionaries on what the future was going to be. I told my parents I got out of college and said, "I'm going to go work for an ISP." They said, "what?" In 1997, I've got a Boardwatch magazine here and at least every single ISP that you could go connect to in the country.

They're broken down by area code, with advertisements and independent testing and maps. In area code 512, which was the second market we launched, we launched in San Antonio and we came to Austin shortly in 95, we came to Austin. In 1997, the 512 area code had 50, five zero, 50 ISPs that you could choose from. When they talk about competition now people are like, "Oh yeah, let's have three. Maybe four." Come on! How many choices do you have for jelly?

**Rob Pegoraro TE:** [Brisket 00:32:15]





**Edward Henigin:** Why? I mean it's like I want the Google ISP, yeah okay, great. I mean it's like ... It's a feudalism. What we have now is a feudalistic thing where you pledge your allegiance to one feudal overlord and this one feudal overlord will protect you and go to battle for you against another feudal overlord. We're just the peons down and the monsters are fighting, the big giants are fighting each other. It's like, come on! What about us?

**Rob Pegoraro TE:** I do remember the days of line sharing. I used a DSL provider called Speak Easy Network, which is based in Seattle. They resold Verizon's copper, they had great service at the time when Verizon's DSL was kind of a real hairball from what readers told me. All those independent DSL providers went away. Yeah because the FCC guarded the [embamling 00:33:12] requirements in 2005 right?

**Gigi Sohn:** For DSL 2005.

**Rob Pegoraro TE:** Yes. Yes anyways moving forward I mentioned municipal broadband, the FCC just voted to overturn regulations hindering that in North Carolina and Tennessee. Are those, another [downer 00:33:29] question for me, is that action going to stand up in court as well because in previous we had some disagreement between someone sitting next to me and someone sitting 10 feet that way?

**Gigi Sohn:** Look we put forth our strongest argument all right? What we've done just to step back a minute, is we got a petition from the Electronic Power Board of Chattanooga, Tennessee which built the country's first gigabit network and also a petition from the city of Wilson North Carolina. They are not, because of restrictions in their state laws they are not allowed to expand beyond their footprint. There was a woman who came ... We voted on these preemptions the same day that we voted on the neutrality.

There was a guy from Tennessee who came and the chairman made him stand up and told the stories. His name was Richard Thwarton, he lives three quarters of a mile from where EPB the Electronic Power Board is allowed to provide service. He pays \$316 a month for a combination of mobile hot spot, satellite service and TV. If he lived three quarters of a mile closer he'd pay \$133 a month right? I mean it's an amazing story and not the only one.

The fact of the matter is we've made the best argument we can make. There is some supreme court precedent that's not friendly to us but we think our argument is sustainable. Let me say this with no disrespect to the lawyers at the FCC, I think we have a very good chance of winning. Even if we don't win, what we've done is if we've raised this issue to a national platform. We've already seen ... We are already starting to see activity catalyzed in places where they have restrictions and where they don't have restrictions.

For example Connecticut, the state of Connecticut put out an RFP for Request For Proposals to build a gigabit network throughout the state. 100 of 169 towns are interested. People believe that community broadband is an idea whose time has come. They are sick and tired of monopoly and duopoly and they want to build their own and they want to decide what kind of network, what kind of broadband competition they want.

Regardless of ... The court cases are going to take time but we've already had people from three other states come to us asking us whether they should file a petition. If we do win, I do expect there'd be a steady stream of petitions from other states asking us to pre up. Now we've got to judge them on the facts right? All the laws are different but trust me their ... Texas is one place. The City Council of San Antonio, I met with about three or four of the City Council members. They are champing at the bit to build community broadband and they maybe one of the states knocking at the door if we succeed.

**Marvin Ammori:** Big picture, there are cities that want to do, municipal city owned, fiber high speed internet and what



happened is companies like Horizon, AT&T, the unholy triad of Comcast, Verizon and AT&T went to the state level and I don't know, how many states? Twenty something?

**Gigi Sohn:** It was 19 states.

**Marvin Ammori:** 19 states.

**James Waterwort:** Texas included.

**Marvin Ammori:** Texas included and just said past state level laws saying UCDs can't build these networks so you need permission or ... all these different limitations. Then the FCC went one level higher and preempted the state laws to then permit some of the cities to do good stuff. They did it the same day as net neutrality order. Had they done it any other day it would have been major national news and an amazing shock like "wow! The FCC did something amazing for consumers," and it was unnoticed because of the importance of the net neutrality order but thinking...

**Gigi Sohn:** It was on purpose.

**Marvin Ammori:** Yeah, well.

**Gigi Sohn:** You're going to do two controversial things, try to bury one right?

**Marvin Ammori:** Anyway thank you FCC, nice work.

**Edward Henigin:** I'm curious about is the judicial challenge the bigger danger or a legislative challenge a bigger danger? Really I'm curious Chip has a perspective on that.

**Chip Pickering:** The question is the legislative challenge or the judicial challenge?

**Edward Henigin:** Yes.

**Rob Pegoraro TE:** Which one is bigger?

**Marvin Ammori:** You mean for open internet or municipal fiber?

**Edward Henigin:** I mean for the Municipal Fiber

**Marvin Ammori:** Okay.

**Rob Pegoraro TE:** Even at ... in congress.

**Chip Pickering:** Give you a little bit of history. I got to work on as a senate staff for the 1996 Telecom Act which ended all monopolies, created competitive internet connection and it really laid the ground work for what we've seen in the wireless and other competitive options that we do have over the last 20 years. As congress looks at a possible re-write and they are beginning to discuss that, around the country you have these different state legislative bodies that have preempted municipal entry. It really does get back to the questions how do we solve the last mile like of competition? How do we go from a scarcity of last mile broadband wired in, wireless to an abundance? We now have something that we haven't had in the last 20 years.



Broadband Internet Service is an economic driver that whether you're in Austin, Texas or in Laurel, Mississippi or Small Town, South Dakota, a co-op of municipality, small cable company, a Kansas regional fiber company, they are wanting to go out and deploy fiber networks last mile to the home and to the business and that is a new good development. If we remove barriers, share their infrastructure, have continuing competition policy and the last mile special access and open internet, we can have an abundant supply of broadband versus the scarcity that happens when you allow monopolies and duopolies to dominate.

**Rob Pegoraro TE:** Let's turn our attention to interconnection. That's the [vegas 00:40:00] part of the open internet rules, where the FCC basically says, "We realize this is an issue." I remember chairman [Wheeler 00:40:08] at this event last January saying that his wife was complaining about Netflix performance. Saying, "You're chairman of the FCC, will you please do something about this." How is this going to play out? It seems like the FCC has a lot of power to ask plenty of questions. On the other hand I guess some of the worse cases have been resolved by cheques are getting cut, money is getting transferred one way or another. Do we ... Is this a problem that get solved in any meaningful way over the next year?

**Gigi Sohn:** I don't ... I mean I don't think it gets resolved but what's critical here is for the very ... [inaudible 00:40:49]

**Rob Pegoraro TE:** We're all crypted item microphones tonight.

**Gigi Sohn:** The fact of the matter is for the very first time the FCC has the authority to entertain complaints if Netflix and Verizon or Netflix and Comcast, or Cogent and Comcast have a battle over this. That wasn't the case before. As I said before, when I first got to the FCC I would see informal net neutrality, light complaints come in every week and they were almost all about Netflix taking too long to buffer. I do suspect that if the ISPs try to extract a lot of money for interconnection or if they congest their ports, if they send Netflix traffic to congest the ports or just level three traffic to congest the ports, I think we will see a complaint.

I mean that maybe one of the exceptions so that we won't see complaints. We've decided not to apply the bright line rules to interconnection for a number of reason, but we do say that the title to [prohabition 00:41:54] against unjust and unreasonable practices, rates, terms and conditions does apply and you can file a complaint. Again this is, I don't want to call it radical but it's something that the FCC has never asserted jurisdiction over before so it's a really big deal.

**Chip Pickering:** Let me also just say that a year ago no one thought that it'd be possible to have interconnection included in the open internet rule. We've made tremendous progress and the commission showed clear courage in being able to address us and include it in the order. I do think it solves not only the present but long term problems and it gives us our processes, our standard and a way to make sure that the market continues to function and the interconnection as well as the last mile remains open.

**James Waterwort:** Gigi just following up on your point, I'm interested to know how easy it'll be to ... it would be potentially be to find some abuse and to know where it's abusive. One of the reasons I ask this is we eventually had an action ready in Europe where the European competition authorities did a raid about a year and a half ago. They put on their [ball clovers 00:43:02] and go and see companies at about 7:00 O'clock in the morning when they are not expecting it and they went to raid the offices of three major telecoms firms on exactly this issue to do with IP interconnection. A year later they came back and said, "We're not pursuing your case." They haven't been extremely clear about what they didn't find, but I wonder whether you think it'll be an easy thing to do.

**Gigi Sohn:** Imagine if the FCC did that? Oh my god!

**James Waterwort:** It's fun, I understand it's fun.



**Gigi Sohn:** I can't even imagine a jack booted FCC enforcer [inaudible 00:43:36] be this horrible!

**Rob Pegoraro TE:** Could it involve black helicopters? You need black helicopters here.

**Gigi Sohn:** I think we would prefer evidently presentations by the parties. The open technology institute, the new america foundation actually has done quite a bit a study on these interconnection issues and came to a number of conclusions. We actually still have an open proceeding looking at the Netflix congestion both on Comcast and Verizon networks but I think we'll stick with lawyers submitting pleadings and we'll get away from the [Ball Clover 00:44:09] raids.

**Edward Henigin:** I want to talk about interconnection a little bit again from the operators perspective which is very different from the policy makers perspective. We've been ... I'm ... Data Foundry sister company Giga News use their news groups. I spend a lot of time working the Giga News networks and we had a lot of traffics flowing to consumer ISPs. We were engaged mono e mono with the tactics that the major Last Mile ISPs were using to try to shake us down to pay them to seek rent from us to deliver traffic to their customers.

What they do, they are very ... their tactics are very well known in their operators community where they will window down the number of connections that they have that you can reach them through a third party. The few that they have, that let you connect to them from a third party , they will slowly let them fill up until maybe there's one port over here that's not congested and if you can get you traffic to route that way then you're doing great but you can't count on that.

Then that port fills up and another port opens up and then now your traffics gone through the congested port. You got to re-route it through the un-congested port. You're playing [inaudible 00:45:38] with them. You reach out and say, "Can you all fix this [pairing 00:45:43] that you have so we have place to send the traffic to?" They'll say, "Well why don't you just ... Here let me give you a proposal. We'll give you a port just pay us. We'll give you a port that's not congested." This is really similar I think to the Fast Lane, Slow Lane which is why I'm really sensitive to the Fast Lane thing because I ... They've done it before just with straight ports and now they'd be, "Throw me the [Bria 00:46:08] patch, okay we'll do Fast Lanes." Make it sound like it's some benefit to you because it's fast.

**Marvin Ammori:** It's like the lines at South by Southwest actually. If you have the VIP line, if you pay and other people that don't pay. I mean what they've done is they've congested all the connections into the big networks, pretty much a lot of them. The traffic being sent that isn't paid, doesn't work, it's congested. When they were trying to shake down Netflix, they ended up putting Netflix in the back of the line and said, "come pay for VIP." What they ended up doing is they harmed all the other traffic on the network that Netflix was using.

If Netflix was going through network known as Level 3 or a network known as Cogen, a million other sites were also going through that network like hospitals you name it and if you go into, if you have a researcher [Adam Lin 00:47:02] who just goes into chat rooms and figures out who's complaining, not only to the FCC but trying to figure out what's going on. There were tons of different businesses that had been the collateral damage of Comcast trying to shake down Netflix for a few extra bucks.

If you let them create a fast lane or the charge, they just ... All it does is create a slow lane that's totally unusable or very unusable. Even if you were at home paying 50 Megabits a second from Comcast, you're like dude how come Netflix loads at only 1 Megabit per second. It's because they hadn't paid yet. They are pinching the straw on the other end. It's a huge problem and I could imagine action.

**Rob Pegoraro TE:** I should give [inaudible 00:47:46] came in through the VIP door it was sure to learn that way. One of the questions before we turn this over to you all, how does this play out next year in the election? That this seems to have become a



part as an issue where really it wasn't for a long time. I know what you think, you first Chip.

**Chip Pickering:** As Republican, to be honest it grieves me to see most of my party align more with the incumbents which is really ... There's a free market type person. I look at the incumbents who simply want to have their markets in their own and that their old business models protect it. Instead of having free market competition that is disruptive, the open internet if you think about it, if we were to get a bit of denying and have a dream of a perfect pre-market, the internet is a perfect free market.

The democracy that Gigi talked about is far as being able to have 4 million people actually have an influence on something that was technical, the same in regulatory in Washington base. That is an example of the free expression and the power of an open free network and platform. As we go forward when I'm beginning to see and what I sense and believe is, the internet economy and the internet value system. The internet principles are going to overtake the old networks and the old models and it's going to re-shape politics on both sides of the aisle and eventually the Republicans will go from being a traditionalist institutionalist status quo.

Protecting of the old models in their old ways to joining the new way, the new economy, new principles and it's just going to take us persuading, engaging, informing, getting data foundry to bring Republicans down to see their wonderful facility in Austin that is, talk about investment and innovation. It is the hub of the internet, probably one of the best facilities you could ever have any place in the world that we got to tour today with Gigi and the rest of the team here. Those types of things and efforts will eventually bring the entire country, both parties into a consensus.

**Gigi Sohn:** I'd just like to give a shout out to Data Foundry and to Ron and to Andy and to Ed because they do God's work I mean I love Andy says to me, "Oh I had lunch with [inaudible 00:50:23] today and we couldn't just convince him and we got up on the stage with [Ted Crews 00:50:27]." God bless you guys. I may be a Democrat though not quite as hard lined as Chip would like to make me out to be, but the fact of the matter is it gives me no joy that this has become a part of the initiative okay? They first time the internet rose up and affected policy was the [Super Pepper Battle 00:50:47] That Super Pepper were two very bad laws that held, [booo! 00:50:52] Super Pepper, that Hollywood proposed that really would have broken the internet. Just to protect their copyright. This was bi-partisan in fact the Republicans had to drag the Democrats right?

**Rob Pegoraro TE:** True.

**Gigi Sohn:** It was people like [Darrel Isa 00:51:07] and folks like that [Jerry Maraine 00:51:09] from Kansas and others who said this is bad and the Democrats finally got a clue alright? That was ... That's what we'd really like to see and we do have ... we don't only have folks like Chip, there's a group called the Internet Freedom Business Alliance which includes a lot of Conservative groups, but we cannot yet seem to get a policy maker in Washington to say that net neutrality in particular titled to is important.

I don't know if people saw what happened when Ted Cruise called net neutrality "Obama care for the internet." He got excoriated, he got scorched on his Facebook page and that ... These folks need to know that their constituents wanted open internet and that's really important to them. Again God bless Data Foundry and [Scott McColos 00:51:59] also there. I love those [A-Tube 00:52:01] talk. He sounds like a good old Liberal when he talks but he ain't. Those guys who are at the bleeding edge and I believe that one day you guys will be vindicated because your party will come around. Otherwise it's going to be bad for them in elections going forward.

**Marvin Ammori:** I'm sure some of you noticed grumpy cat flying over the skies taunting Ted Cruise for his wrong position on net neutrality a few days ago. That was fate for the future in demand progress. One thing that shocked D.C. was that people were calling them about this issue like Tumblr, [Atic 00:52:41], [Ecstator 00:52:41], Vimeo, these [inaudible 00:52:43] groups



drove hundreds of thousands of calls. Usually they get calls and it's don't mess with my medicare, don't mess with my social security.

Maybe other calls about pipeline, immigration, guns, I mean there's a generational shift happening and people who were born and raised with the internet, this is open data to connect with anyone. To them taking away open internet is like taking away the previous generations social security, the medicare. This is something we as ... Free expression right? These are privacy right? They can open the internet [inaudible 00:53:22] to what we believe that people pick up the phone and call congress men, call the FCC, they take action. That is transformational and I think any presidential candidate or a party who's on the wrong side of history will have to switch or die.

**Edward Henigin:** I just want to say Andrew McFarland and Andrew Staples and some other folks in Golden Frog worked really hard to pull this panel together. You may have noticed that we're all agreeing up here, we didn't plan to have everybody on the panel agreeing but all the people who think the other way, who disagree, they wouldn't come. They were invited.

**Audience Member:** It's not true.

**Audience Member:** It's not true.

**Edward Henigin:** That's not true.

**Audience Member:** [inaudible 00:54:18] panel [inaudible 00:54:19].

**Edward Henigin:** Okay, I guess we had one didn't make the cut. Maybe we'll talk more about that a little later but seriously we've ... Andy McFarland spends a lot of time on both sides of the aisle. He gets incredulous looks and people give him that nervous laugh at him when he goes from one side of the isle to the other and says, "Oh I just talked to the guy over there," and they say, "Really you talked to him isn't he a neanderthal," but he talks to everybody and we work with everybody and Andy tried to get dissenting voices on this panel of example now withstanding. We couldn't get somebody to come up here and disagree and fight with us. My point is that there is a [C change 00:55:06] happening and we are on the right side of history and do you stand in front of it at your own peril.

**Rob Pegoraro TE:** Let's on that note. Perhaps some of you have questions of your own. Do we have a microphone floating around or do you all just need to...

**Audience Member:** It's right here.

**Rob Pegoraro TE:** All right good.

**Marvin Ammori:** Just come up here.

**Rob Pegoraro TE:** Please yes. There maybe a question too from Twitter that we have coming our way. All right.

**Audience Member:** I was actually really interested in the answer to ... I don't feel like I got answered very well. The ... What's the bigger challenge? The Judicial side of the fight or the Legislative side of the fight?

**Gigi Sohn:** Of which fight?

**Marvin Ammori:** For open internet?



**Audience Member:** Yeah, yeah for the open internet because I mean you said this is not the last battle we're going to have to keep fighting, have to keep showing up but yeah is it going to be on the judicial side or the legislative side?

**Marvin Ammori:** I can try ... The FCC has lost twice in court already. When they didn't use their strongest authority known as Title II. They were using scraps of authority. All along we knew that if they used Title II they would win. I actually had the honor and discomfort of arguing the first case we lost alongside the FCC General Council. It was a blow out, we had our head handed to us and we knew we had to go to Title II. Now that we have Title II, I think we are going to win. There is a really much of a role for you guys unless I can figure out a way or one of us can figure out a way to have you guys file an Amicus Brief like 10 million people strong. That'd be fun.

**Gigi Sohn:** That wouldn't be better it's not impossible right? I mean could do that and would have a lot of meaning.

**Marvin Ammori:** When it comes to congress, those people are elected, they care about what their voters think, what their constituents think. Congress ... The carriers of all these are obvious and they spend more money than the oil companies or big farmer or defense contractors. They have been ... DC is crawling with these guys, giving the opposite view, trying to get congress to reverse what the FCC did. That's where you guys could have the biggest impact and that's probably where we're most vulnerable. I think ... I think everyone would probably agree.

**Chip Pickering:** There are two risk variables here. You have the legal risk and by using Title II, I believe that you really reduce the legal risk of what the FCC just adopted. In doing, the strongest possible rules, you get the strongest possible backlash from the other side and so you've increased the political risk. The engagement that everybody used so effectively with the FCC now on this to go to the members of congress, republican and democrat to do exactly what you did at the FCC but with the other institution, the Legislature branch.

Tom Weiver, the chairman is about to go through two weeks of hearings before congress over the next two weeks. The support that you can provide him will have a very strong impression. Everyone remembers [Super Pepper 00:58:15] and that was in a very effective outpouring of public will and sentiment. There'll be a possible 1996 reform of the Telecom Laws also before congress.

You could have open internet as part of that legislative process. This ongoing battle, which I believe that we will eventually prevail both legislatively, politically, legally and on the regulatory side but is ... We are in the last stages, in the last battles of this decade long war. The mayor's on our side, the public is on our side and that will be reflected ... Congress is like a market as well. The market place is shifting, the values are shifting and congress will begin to reflect that and as you all stay engaged, I believe that we will prevail on this policy in both branches and in any venue.

**Rob Pegoraro TE:** Who's next?

**Audience Member:** Oh, thank you. Hi my name is Mike, I just want to thank you for being here and I'm going to ... I hope you don't mind me asking a question that reaches beyond US policy. I was reviewing some recent casual survey on residents in Thailand and more of them use Facebook than access the internet. That's their perception of what these resources are. I'm thinking considering what many companies ... many US companies are pursuing with this whole emerging market in 3rd world nations, is there a response to this? People who's perception of what these resources are solely through a cooperation but not of what this ... What we perceive as to be the World Wide Web or other internet resources?

**James Waterwort:** I think it depends on the country and how much bandwidth there is, what kind of computing devices people have. If they have something that is very low powered, you going to have a very different situation from someone who's



got several computing devices like probably everyone in this room. Not quite an answer to your question but linking your question and the discussion we're just been having, one of ... Well I'm talking about the subject elsewhere in the world.

I know when we talk first about the open internet, but second about the open global internet because it may not, may or may not be particularly aware of the fact that there's a number of places around the world where people would like to fragment the way the internet works. That could be because of industrial reasons, it can be often because of government control particularly some of the more Autocratic regimes around the world would like to see compulsory local storage of data.

For example because I want to be out to inspect that data and find out what you're up to. A second part of this fight is not only having an open internet where we live in the United States or in Europe but also having a global internet because that's how we ensure that people have maximum access to information. Not just in terms of which websites they are going to, but in terms of having opportunities beyond their national borders.

**Marvin Ammori:** I can answer the question directly. Also, if any of you want to get involved, just e-mail me marvinammori@gmail.com. Find me at Twitter add ammori we'll figure out a way to plug you in. What's happening around the world is there are some countries, usually generally very poor countries with very low connectivity and people don't realize why they should use the internet. Some companies like Wikipedia and Facebook have this partnerships in these countries where they say because bandwidth is so expensive, what we are going to do is cut deals with phone companies so that Facebook and Wikipedia etcetera don't count against any bandwidth cap.

If you're a poor person in one of these countries, you think the internet is Facebook because that's what's free for you when you pay the monthly fee. There are a lot of different ways to think about this exemption to the bandwidth cap and there're probably three categories. One category is where there's an exemption and no fee paid by Wikipedia or Facebook to the phone companies.

**Rob Pegoraro TE:** Also like T-Mobile's Music Freedom [inaudible 01:02:49]

**Marvin Ammori:** In the US we have T-Mobile's Music Freedom. If there was a payment from Wikipedia to these carriers, that would have caused all of the fast lane, slow lane problems. You keep the bandwidth cap really low and then you just start extracting money from big companies to jump over right? Really big problem. I think that should actually have been banned by the FCC. I think that's a easier case, then where the carriers try to do that especially in the US where we have a more robust market. We're not a 3rd world country, I think that should have been banned. Then there are other situations where they do it without a fee.

If you look at the Wikipedia model it's only in really poor countries, there's no fee, it's non exclusive both directions and you can debate what's better and what's worse but what the carriers really want are exclusive deals where they auction off exclusivity. In countries that have this kind of exemption from data caps, we have far lower data caps, much lower and when they ban it, the data caps get doubled like in the Netherlands. I believe seven countries that have non-[inaudible 01:03:53] have abandoned these kind of zero rating deals under certain situations. I think it's a problem but I do see why it could be different, how Wikipedia does it in certain 3rd world countries. That's what you're asking and it's a very good question.

**Rob Pegoraro TE:** Who's next?

Audience Member: Thank you. Hi my name's [Audrey 01:04:13], I had a question about the FCC really and how these problems have been set up by media consolidation and the lack of enforcing some of the rules that have been in existence for years that just the administrations have watered down or ignored like Time Warner, [inaudible 01:04:33] back in the 90's. Now





Comcast, NBC Universal and now they're taking over Time Warner and so on and so on and we're getting this giant.

If ... Because at the end of the day it's the content. The ... Having wires on the ground is one thing that's great but what you send over it, movies, music, people want things offered. Then who controls that drives ... that's the last way again the tripod there controlling that pipe that gets it to your house, then you really have total [multifunction 01:05:01], control over what's going on. How can we roll some of that immediate consolidation back or is that just Pandora's Box and it's just done?

**Gigi Sohn:** Yeah I mean I think it's hard to roll back media consolidation, I'm no fun of it myself. I spent 25 of my years career trying to top consolidation not being very successful I might add. I think what we want to do with the FCC is create opportunities for new players through spectrum policy, through community broadband, through things like poll attachments. At the same time looking very hard like we've got two big transactions in front of us. Comcast, Time Warner Cable, ATT Direct TV. I can't say much more than other than we are looking at it, but we are looking at them very very hard.

I know you guys don't follow this but we've been asking for tens of thousands of pages of documents from those companies and we're looking at the programming contracts that they enter into, that the AT&T and Comcast enter into with programmers. We're looking at these transactions harder I think than any FCC has ever looked the transactions and I'll say another thing, we have an enforcement bureau that is run now by a prosecutor. In the past, our enforcement bureau has been not all that important to the agency. Chairman Wheeler cares deeply and has hired this guy from Kamala Harris in Carlifornia's office. He's a prosecutor.

He's already gotten several, tens of millions of dollars, well actually several hundreds of millions of dollars from couple of big companies for slamming and [gramming 01:06:47], that's basically third party charges that you didn't ask for that land up on your bill or sometimes telephone companies just switch you to another telephone company without your authorization. If we find Verizon for a violation of our privacy rules. This guy is hard to try and really looking for cases to bring when our rules are violated but I would say that's the exception not the rule. Chairman Wheeler's [motto 01:07:12] is competition, competition, competition. These transactions are going to be looked at with the finest tooth comb that have ever been put to a transaction before.

**Chip Pickering:** Let me just add, the chairman's also looking at how you define over the top services as a competitor to traditional video and content. As you all see it was streaming companies like Netflix or Hulu or there's HBO and Amazon and that really is the new competitor of course on the content side. The commission is taking steps. Congress needs to do something called [Retrance Reform 01:07:49] so that you change the old laws of how the broadcasters negotiate with different distributors for their content.

That would help re-pay our broken market in video programming and video content. The other big thing is, the cost of video is so high for our new entry deploying new networks. That they're not building those networks because you need not only internet service but video offerings. They have to be bundled together. If we can fix the video market, it will help deploy new networks because it lowers the cost of a key input, programming content. That's something that we're trying work, to achieve in a broad reform [congressionally 01:08:36] and to work with the FCC to repair that market.

**Edward Henigin:** Just real quick I think there's a little bit of an interesting twist happening in the world today where sure you got the agglomeration of content or content or whatever you want to call it, media. At the same time we also have a rise of the [coat 01:08:56] cutters who are going left, right and every which direction they get their medias. I almost wonder if the timing ... It looks like it's all big, bad and scary but the reality is they're going to be irrelevant in a couple of years anyway I don't know. I think it's something to watch.

**Rob Pegoraro TE:** We have time for at least one or two more questions. Please be [quick 01:09:19]



**Audience Member:** Hi I'm David. You mentioned earlier that municipalities San Antonio and in Connecticut were interested and they're doing their own local gigabit networks. Recently [inaudible 01:09:33] Texas [banning 01:09:34] fracking and I'm not here to debate the merits of that, but almost immediately the Texas legislature started a bill to prevent municipalities from banning fracking. If others...

**Rob Pegoraro TE:** That's why we're going to vote to require it.

**Audience Member:** What's that?

**Rob Pegoraro TE:** They didn't vote to require fracking.

**Audience Member:** Right. I guess my question is obviously if the local broadband takes off, I would imagine the dark triad is going to start lobbying at the state level to try to prevent that from taking off. Do you think that they'll be successful in those efforts or?

**Gigi Sohn:** I don't think so and I'll tell you why. This is one of the other effects of our decision to preempt the North Carolina, Tennessee laws. I think it would be impossible now for the highest piece to run to the run to the state legislatures under color of night because that's what they do right? They started to get these laws passed about what? Six, seven, eight years ago when nobody understood how important it was.

Since ... I'd say in the last two or three years since people have become aware A, of the lack of competition they have locally and B, of the success of the of all these networks. The ISPs haven't even tried. They did try Missouri okay, actually a bill was introduced to the Missouri legislature, get this, that would prohibit the public sector from engaging in any business the private sector engages in. They went whole, they went whole hard...

**Rob Pegoraro TE:** It's illegal to have public process? Public schools?

**Gigi Sohn:** That would be transportation, postal, whatever. For the most part, this is one of those things that for many years nobody knew was going on, now people are looking for it and I just don't think ... I think it will be very very difficult to get one of these laws passed again. Just to clarify, San Antonio wants to build but they cannot because Texas has one of those restrictive laws.

**Edward Henigin:** San Antonio might be, could be an entity that would go bring their complaint or petition the FCC and the FCC now might assert the same logic and authority as it did in the recent two cases and overturn the Texas law. The real key there being, you ask mum for something and she says no and you ask dad for something and he says yes and rule in that household maybe what dad says goes. In this case the Texas legislature can want whether we won but when the federal authority over rules them, uh, nothing they can do.

**Rob Pegoraro TE:** All right.

**Audience Member:** That's actually the perfect leading to my question. How likely are large companies hardly the telecommunications companies with also multinational properties likely to try new something TPP to do an end run around various open internet things? Just in general. TPP the Trans Pacific...

**Gigi Sohn:** Partnership Agreement.

**Audience Member:** Yeah.



**James Waterwort:** What is does [inaudible 01:12:38] mean?

**Chip Pickering:** It's a treaty, it's a treaty.

**Audience Member:** It's a treaty and so...

**Gigi Sohn:** Yeah [inaudible 01:12:42] partnership agreement.

**Audience Member:** It's being negotiated...

**Chip Pickering:** Yeah what's the [end run 01:12:44] reference that that I'm supposed...

**Gigi Sohn:** Yeah I don't know what that [end run 01:12:46] does.

**Marvin Ammori:** No it's an end run so the question is just that an abstract level, the carriers we're trying to win at the cities, controlling them and [killing 01:12:55] companies and then they'll try to move up to the state if they don't win at the city and they'll try to go to the federal government if they don't win at the state level. If they loose at the federal level they go to the [tribune 01:13:04] level. They fight at every level and so the question is generally I guess will the carriers go to the federal level or the international level? They always do, I don't know how they would an open internet though.

**Audience Member:** This is actually... Includes your [inaudible 01:13:18] GPP but...

**James Waterwort:** It could work the other way round because there's a number of international carriers very interested in having special access to the US who would like to use treaties to to put pressure on the US to change it's rules. I think it could work the other way round imposing pressure of [credit 01:13:35] composition on the US market maybe.

**Chip Pickering:** Actually we're working with companies like Softbank and Vodafone, British Telekom to open up the US market to more competition.

**Rob Pegoraro TE:** Yes sir.

**Audience Member:** Hello, my name is Cole [Pericon 01:13:54]. My question was with the new powers of FCC, we all know our favorite agencies like the IRS where you can get a conflict or you need resolution and it can take years tons of money to reach that. I know Comcast and folks like that have the [clause 01:14:15] to address things and tied up in court forever but for a smaller entities that are trying to do that and have to go through FCC to get their neutral ground ... I think that just counts to a lot of the smaller businesses and I don't know if having [inaudible 01:14:32] with FCC control over their net would really fix that.

**Marvin Ammori:** Luckily that's not what happened but ... you can go ahead.

**Edward Henigin:** Well I do want to say that there is a risk that I'm concerned about and that is that if the regulatory scheme is set up such that I as a business have to prosecute a complaint at the FCC which means hiring lawyers and going out as a fight, that could be very expensive for me. In a larger entity it may not have ... have a problem with that but if it's half a million, a million or more, I don't know how much they go for Scott McCullar who does this stuff.

He knows exactly what we're talking about. It can be expensive to go prosecute a complaint at a regulatory body but it depends, I don't know how it's going to play out here, that's something as an operator we are paying attention to that. We are paying attention to how languages is written and how it reads to what our strengths are and what level of resources it's going to take to



go and get something decided in our favor. Yeah it's a concern.

**Gigi Sohn:** I think the experience of the 2010 rules that we had for four years is very destructive. They basically self regulate. Having rules on the books tampers the ISPs from doing bad stuff. I really think we did not see a run on the banks so to speak when the 2010 rules came out. These rules are very similar to the 2010 rules except they are under stronger authority, tied to authority. The interconnection is a little bit different, there I think you may see complaints but that's not going to be the little guys right?

Those are going to be Netflix, Level 3, Cogen these are not small companies okay? I still think even that area ... in that area having rules, applying title to the interconnection will moderate bad behavior but certainly when it comes to the bright line rules and the connection to the consumer, I really don't think that there're going to be a lot of complaints and a lot of [relegation 01:16:44] going on. The companies are ... The companies have rules their ... They have clarity which they didn't have before and I think that will moderate bad behavior.

**Edward Henigin:** I think the bright line, bright line rules are going to be much stronger in terms of dissuading the bad guys from doing the bad things. I think on the inner connection side, you're back to that futile system where if you pledge your religions to Cogen and Cogen goes to battle for you you're good but if you pledge you religions to somebody else who's not willing to go to battle for you then you have a problem. Fingers crossed but we got to watch. We got to keep our eyes open and don't take it for granted and work it through.

**Rob Pegoraro TE:** Yes sir.

**Speaker 8:** Yes does anyone else have some questions, we're trying to let it go but I think maybe some of the panel wants to go but, any other questions come forward now, hold your peace. Come on up ma'am

**Audience Member:** All right I installed a tool called UniPro and I ran it on my local connection on Time Warner Cable and it showed me a list of sites that are blocked. Actually censorship events here in the United States here in Austin, websites that I can't get to that I didn't even know until I ran this tool that checks against tour and then checks against my local connection right? My question is, will net neutrality protect me so that I can view these sites mp3search.com, all these sites that are blocked on my local connection or is it just for these co-operations?

**Gigi Sohn:** It's absolutely for you okay? I mean the FCC is tares with protecting the public interest not protecting particular cooperate interests and we look at the effect that it has on the consumer and also on the edge provider. The whole purpose of this exercise is to protect the consumers access to the broadest amount of information possible. That's job one. We also know that the public has thrived and loves these applications and services right? That's what you want access to so the only way you're going to be happy as a consumer, is if these edge providers can do their thing without having various permission from ISPs.

**Audience Member:** [inaudible 01:19:23] freedom.

**Rob Pegoraro TE:** Hello.

**Audience Member:** The FCC among other things in it's order has just announced that they can use [inaudible 01:19:29] even without doing a competition analysis which means that when the republicans take over FCC, they could use that precedent to get not only this order but anything else they want in ... anywhere in the act. That's on the one hand. On the other hand, the FCC keeps promising that they only want to use title to just for net neutrality not for a host of other problems, but of course some



other commission whether it's a democrat or a republican commission isn't going to be bound by that promise.

They could use title too for anything. My question is given that this could be a political football in either way and that the FCC could do much more or much less depending on who's in power and that the FCC may just loose completely on all of this not least because it wouldn't take the time to put out one more notice and spend a month getting a final round of comments, why wouldn't we be better off with legislation that is narrowly tailored to net neutrality harms, doesn't invoke title to, doesn't let the FCC re-write the entire Communications Act however it sees fit?

**Rob Pegoraro TE:** Bit of definition for [inaudible 01:20:35] when the FCC can say where there's all these rules that are entitled to the Communications Act, we're not going to apply this to this case because they were written for voice service and they don't affect broadband.

**Marvin Ammori:** There's been an effort recently after the FCC's strong order and instead of the signalling that they would go in that direction. There's been an effort now to pass legislation perhaps. Now just to be clear, the people who are mainly pushing for legislation have been opposed to net neutrality for a long time. They are seen as opponents of net neutrality. All over a sudden they say, "Oh, let's do legislation." The discussion draft and the kind of proposals out there had what I would consider to be loop holes. If they were legislation written by Marvin Ammori and Chip Pickering I would vote for it because I would have written it.

That is actually more permanent than an FCC solution. I do think that the FCC what they have done is strong and will stand up in court and when it comes down to it, when you have a majority, you can do things right? If you can convince the majority of the commissioners to adopt a really strong rule, then they will do it. Going forward we've got to make sure that we can continue to persuade congress and the FCC that they should be on your side, not on the side of Comcast and Verizon to the [inaudible 01:22:04] view.

**Gigi Sohn:** I'll just say a couple of things. First of all it's not ... The next FCC cannot just snap their fingers and undo what we've done. They'd have to engage in a proceeding and this was a long and painful one and that proceeding would have to be subject to judicial review. It's not just that easy for the next FCC to either re-regulate or de-regulate for that matter, that's number one okay?

Number two is, nobody said we classified just to do net neutrality okay? We are preserving our ability to protect privacy in the broadband world. I think people want that. We're preserving our yeah ... Do people want their privacy to broadband world? Okay? We're preserving our ability to protect people from ISPs ripping them off through slamming and cramming and hidden fees. Do people want that? Do people want to be protected from third party fees that they didn't pay for?

**Edward Henigin:** I do.

**Gigi Sohn:** Do people want the ability to go after telephone companies who just switch you to another telephone company? We want to do those things and we think the American people want us to do those things. Let me say one other thing [Barry 01:23:22] and this responds to your tweet from my a South by Southwest panel this morning. Okay let me explain to you how administrative law works. The FCC puts out a proposal for rules, that's what we did in May of 2014. It was very popular okay? But we put our proposals, we said, "we did propose that we follow a different legal path through Section 706 of the Telecommunications Act of 1996," okay? Which net neutrality upon is now loved, they used to hate it but now they love it okay.

You [probably have this 01:23:58] proposal but we also said the same time, Title II is on the table. If we were to go the Title II route, tell us what we should fobear from and also by the way we're considering applying net neutrality, open internet rules to



mobile for the first time. Tell us how we can do that. All of that was laid out in a noticed proposed rule making in May 2014. To say now that what we did is completely contrary to our proposal is just false. We laid out two ways to go. [inaudible 01:24:37] Genachowski originally was going to go Title II and he want to 706. I didn't hear anybody complain, well I complained about it when I was public acknowledged.

**Rob Pegoraro TE:** I'm [inaudible 01:24:46] something about it too.

**Gigi Sohn:** We didn't see process fail, okay? That's the whole point of public comment. Even though we had a presumption that we were going to go a certain direction, four million people told us to go in a different direction. Not all four million but the vast majority of them. We can change our mind, that makes us a good agency, not a bad agency. The FCC has never put out a full proposal for common when at the same time it circulates to the other commissioners.

Let me just explain how it works. Three weeks before we vote, wow! Everybody is quiet now. Three weeks before we vote on an item, it circulates to the other commissioners. It comes to the chairman's office, it goes to the other commissioners so they can deliberate and figure out whether they want to offer edits. Never in the history of this agency has that been made public at the same time.

Maybe that would be a good thing to do in the future, but to all over a sudden in this particular matter, snap your fingers and do it differently than it's been done for 80 years, no. Okay? There's no process foul here, we did what we've always done and we did it in the right way in compliance with the laws that govern this kind of rule making. I'm proud of my agency, I'm proud of my boss and I'm proud of the public. I got nothing more to say. Nothing. Could we be done?

**Marvin Ammori:** Thank you everyone this has been an amazing panel. We're done?

**Rob Pegoraro TE:** We'll have one question from Twitter. We have to wrap it up that way. Someone just said, "Is this going to allow us to protect privacy better?" I did notice that the FCC did not forbear Section 222 remember? Ain't that right?

**Gigi Sohn:** Yeah, listen to what we've done okay? We did not forbear so in other words we are applying the part of the Communications Act Section 222, who gives a damn what the number is right? That allows us to protect privacy and we've done that in the online, but we did forbear from the actual rules that implemented Section 222 why? Because those rules were for telephone and it doesn't make any sense in a broadband world to try to protect the same information there were in the telephone system. In April we're going to have a workshop to try to figure out what does it mean to protect privacy in a broadband network world. We're going to need a lot of public input because we are eventually going to do a proceeding to adopt new rules. That's the next step there.

**Rob Pegoraro TE:** Will the Verizon super cookie be part of that discussion by any chance?

**Gigi Sohn:** Rob don't ... Yeah it is, I can't say that. I mean come on. We don't even have the rules yet and you're telling me to adjudicate, no I'm not adjudicating don't ask me that question.

**Edward Henigin:** Sounds like a yes to me.

**Chip Pickering:** Let me just say this real quickly, the FCC and the staff ... A lot of people look at Washington and public service very skeptically than they should. It is well deserved [inherent 01:27:52] but in this case the FCC, though is really one of the most open, most participatory and as Gigi talked about, it's not only the last year this has been a 10 year process.



Through multiple chairmanships, multiple commissions both republican and democrat to get to this decision point with the strongest legally sustainable rules possible. I can tell you having worked with Gigi and the rest of the FCC staff, they were working untold hours, they had unlimited access and meetings, they were in constant discussions and negotiations with people on both sides of the issue.

Even the commissioners disagree in the senate we're doing a great public service. This was actually I think an opportunity to see American government function and function well and come out with good rules and good decision for something that really is one of the most valuable American inventions and contributors to our country in our lifetime. I'm very proud to commend the FCC for what they've done but also to congratulate all those who participated in the process. Thank you.

**Rob Pegoraro TE:** I want to thank all you all and all of you for asking your questions, if you have others that [bite 01:29:26] I'm going to be around for a little while you can ask me. You going to be around a little bit?

**Marvin Ammori:** I'll be around and I should just say what an amazing panel [inaudible 01:29:34] all star panel that you guys [inaudible 01:29:37]

**Rob Pegoraro TE:** The moderating was only okay.

**Marvin Ammori:** No, and even ... I mean it's just amazing that we are able to do this. Thank you for the organizers, the Golden Frog, to everyone else, just really an honor to be on this panel.

**Rob Pegoraro TE:** All right. Thanks.

**Audience Member:** It's like having Deja Vu, did I see this panel last year here or?

**Rob Pegoraro TE:** That was not us.

**Audience Member:** You were not but a lot of these voices were...

**Audience Member:** You're imagining [inaudible 01:30:10]

**Audience Member:** No, I'm imagining that.

**Marvin Ammori:** I don't even know what I spoke out last year.

**Audience Member:** Okay.