



Testimony of **Timothy P. Karr, Campaign Director, Free Press**  
Before the **New York State Assembly**  
Regarding **Network Neutrality and Wireless Freedom**  
**Oct 17, 2007**

Free Press is grateful for the opportunity to testify before members of the New York State Assembly today. As public and consumer advocates, we strongly support policies that ensure that cell phones and Internet remain open to new ideas, free speech and innovation.<sup>1</sup>

We strongly oppose any effort -- private or public -- to allow gatekeepers onto communications networks to filter the free flow of information that is so fundamental to our democracy. We are encouraged that the State of New York has taken the lead on the vital issues of Net Neutrality and hope that other states will follow.

The path that elected officials choose on Net Neutrality will determine whether digital communication remains a crucial engine for economic growth, democratic participation and free speech in this country.

There is a great deal of passion and debate surrounding this issue as much is at stake for hundreds of millions of Americans who rely upon the Internet and mobile phones in their daily and professional lives. Despite the debate, I don't believe anyone in this room would dispute these two notions:

First, over the past 15 years, the Internet and cell phones have emerged as unprecedented tools for:

- spreading innovative ideas and entrepreneurship,
- increasing public participation in our democracy, and
- fostering economic growth, even in the most overlooked communities.

Second, I don't believe that we would disagree that for the promises of digital communications to be met, we need sound public policies that encourage faster, more open and affordable access, while protecting free speech for everyone.

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<sup>1</sup> Free Press is a national, nonpartisan, nonprofit organization with more than 350,000 members working to increase informed public participation in crucial media and communications policy debates.

The successful drafting and implementation of the right communications policies are vital to the future of our country. It is one of the most important challenges legislators face today. The right policies will continue to advance the most democratic communications technology ever devised. The wrong policies will jeopardize these prospects and continue the decline of U.S. communications services.

We need to pass the right policies very soon.

### **U.S. Broadband Falling Behind**

The release earlier this year of data from the Organisation for Economic Cooperation and Development (OECD) is not encouraging. The findings place the United States 15th out of 30 OECD nations in per capita broadband use. The U.S. slipped from the fourth place ranking we held in 2001. Worse, our growth rate over the past year ranks us 20th out of the 30 countries.<sup>2</sup>

Consumers in other countries enjoy broadband connections that are far faster and cheaper than ours. For example: U.S. consumers pay nearly twice as much as the Japanese for connections that are 20 times as slow.<sup>3</sup> In essence, Americans are paying a lot more and getting a lot less.

New York State ranks 8th out of 50 states in household level broadband penetration, with just under 52 percent of homes subscribing in 2006.<sup>4</sup> This reasonably good ranking, however, mask the many pockets of under and un-served areas outside of heavily populated New York City, the Hudson Valley, and university towns.

To regain our Internet leadership, we must make careful decisions and craft broadband policies that benefit us all. This worthy ambition was stated by President George W. Bush, who in 2004 set a goal for the United States to have "universal, affordable access for broadband technology by the year 2007." The president also said that we ought to make sure that "consumers have got plenty of choices when it comes to purchasing the broadband carrier."<sup>5</sup>

Earlier this year, The New York State Assembly attempted to help more citizens of this state get online. The Assembly bill, called the "Omnibus Telecommunications Reform Act" would have created a broadband authority, expanded universal service, fostered more broadband competition and protected Net Neutrality -- the vital principal that keeps the Internet free of discrimination by network owners.

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<sup>2</sup> Organization for Economic Cooperation and Development, "OECD Broadband Statistics to December 2006", <http://www.oecd.org/sti/ict/broadband>.

<sup>3</sup> S. Derek Turner, "Broadband Reality Check II," Free Press, Consumers Union, and Consumer Federation of America, August 2006, Available at <http://www.freepress.net/docs/bbrc2-final.pdf>

<sup>4</sup> FCC Form 477 Data, June 30, 2006

<sup>5</sup> Remarks by President George W. Bush, March 26, 2004, Albuquerque, N.M. Available at <http://www.whitehouse.gov/news/releases/2004/03/20040326-9.html>.

This innovative piece of legislation had broad support from members of the public interest community, consumer advocates, rural advocates, labor and small, medium and large businesses.<sup>6</sup> It didn't have the support of one gaggle of lobbyists though -- those working for Verizon Communications Inc. As you all know, they wield considerable influence in the halls of Albany, and by the end of this year's legislative session, the Assembly had gaveled to a close with the Telecommunications Reform Act nowhere to be found.

Using similar anti-consumer lobbying tactics, phone and cable companies had narrowly managed to derail similar legislation, introduced in the U.S. Congress in 2006.<sup>7</sup> With that sort of political muscle, it is no wonder that this legislation failed? But there's one thing Verizon and its lobbyists hadn't factored in: the public.

### **The Grassroots Campaign for Net Neutrality and Free Speech Everywhere**

For millions of Americans a broadband and wireless marketplace that lacks real choice and consumer freedom is unacceptable. Over the last 18 months, an unlikely grassroots coalition of small businesses, consumer advocates, librarians, civil libertarians, journalists, bloggers, YouTubers and others joined together under the banner of "SavetheInternet.com" to demand a more open, neutral; and affordable Internet for everyone. In 2006 we collected more than 1.5 million petitions, organized rallies and in-district meetings in more than 30 states and sent a forceful message to all elected officials that our right to choose what we watch, where we go, and what we say online and over our cell phones must not be sacrificed.<sup>8</sup>

This deep and broad public concern was sparked once again in 2007, when Verizon Wireless, one of the nation's largest wireless telecommunications carriers, arbitrarily moved to block a series of pro-choice text messages on the grounds that the subject matter was too "controversial or unsavory."<sup>9</sup>

Soon thereafter, public activists exposed what many of us had failed to read in the fine print of our AT&T customer agreements. Deep in its "terms of service" for high-speed services, the company buried language that allowed it censor and cut off broadband customers for conduct that "tends to damage the name or reputation of AT&T, or its parents, affiliates and subsidiaries."<sup>10</sup>

That both carriers altered their policies after this censorship was exposed to the public should offer little comfort. Free Press has sifted through the agreements of several Internet and cell phone access providers -- including Verizon and AT&T's -- and still

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<sup>6</sup> Philip Anderson. "Unfinished Business: Pass the Telecom Reform Act," The Albany Project, June 25, 2007. <http://www.thealbanyproject.com/showDiary.do?diaryId=928>

<sup>7</sup> Timothy Karr. "Fight for Internet Freedom Moves to the Senate Floor," June 26, 2006. <http://www.savetheinternet.com/blog/2006/06/28/fight-for-internet-freedom-moves-to-senate-floor/>

<sup>8</sup> SavetheInternet.com Coalition. "Net Neutrality Back in the Spotlight," April 24, 2007. <http://www.savetheinternet.com/=press18>

<sup>9</sup> Timothy Karr. "What's the Biggest Threat to Free Speech in America?" Huffington Post, October 1, 2007. [http://www.huffingtonpost.com/timothy-karr/whats-the-biggest-threat\\_b\\_66708.html](http://www.huffingtonpost.com/timothy-karr/whats-the-biggest-threat_b_66708.html)

<sup>10</sup> Ibid.

found explicit language that reserves their right to cut off, modify or permanently cease to provide services to anyone "without prior notice and for any reason or no reason."<sup>11</sup>

As U.S. Senators Byron Dorgan (D- North Dakota) and Olympia Snowe (R- Maine) wrote yesterday in a letter to FCC Chairman Kevin Martin, "these recent events demonstrate that we need effective regulations to protect consumers and ensure an open and vibrant communications platform."<sup>12</sup>

Indeed, most Americans expect their phone companies to simply get us connected and deliver our messages, not censor them. This begs the obvious question:

*If the phone company can't tell you what to say on a phone call, then why should they be able to tell you what to say in a text message, an e-mail or anywhere else?*

To Senator Dorgan and Snowe's credit they have pressed the Federal Communications Commission (FCC) to determine whether existing constitutional, legal and regulatory limitations prohibit a wireless telecommunications service from discriminating against or blocking the sending of text messages "based on the political content of the text message or the political affiliation of the person originating the text message."<sup>13</sup>

This is a step in the right direction, but there's more our legislators ought to do to protect free speech for everyone, everywhere.

It's clear that the fundamental democratic principles of free speech and open communication are too important to be entrusted to corporate gatekeepers like these. Lawmakers need to take decisive action to protect the free flow of information over 21<sup>st</sup> Century communications. The most important free-speech principle in communications law is nondiscrimination; and its most important application is Net Neutrality.

### **The Modern Marketplace of Ideas**

Put simply, Net Neutrality is the guiding principle that preserves the free and open communications. Net Neutrality means no discrimination. As a rule it prevents Internet and cell phone providers from speeding up, blocking or slowing down digital content based on its source, ownership or destination.

With Net Neutrality, the network's only job is to move data — not choose which data to privilege with higher quality service. Without Net Neutrality, our digital network owners, which in America are predominantly DSL and cable companies, can interfere with user choice by giving special priority to the Web sites, text messages applications and services that they prefer.<sup>14</sup>

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<sup>11</sup> Ibid.

<sup>12</sup> Sens. Byron Dorgan and Olympia Snowe, Letter to the FCC Chairman Kevin Martin, October 16, 2007, [http://www.freepress.net/docs/dorgan\\_snowe\\_letter.pdf](http://www.freepress.net/docs/dorgan_snowe_letter.pdf)

<sup>13</sup> Ibid.

<sup>14</sup> Professor Timothy Wu. "Network Neutrality, Broadband Discrimination," 2 J. Telecom. & High Tech 141 (2003). [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=388863](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=388863)

The history is clear. The Internet was born in a regulatory environment that guaranteed strict nondiscrimination. Internet pioneers like Vinton Cerf and Sir Tim Berners-Lee always intended digital communications to be on neutral networks. Nondiscrimination provisions have governed the nation's communications networks since the 1930s. With the Internet, the physical wires were regulated separately from the content flowing over them. The reason was simple: to keep monopoly and duopoly owners of infrastructure from using their power to distort the free market of services and ideas on the Web.<sup>15</sup>

This protection worked brilliantly. For two decades, digital communications have thrived with low barriers to entry, equal opportunity and consumer choice. Under Net Neutrality: college kids working out of their garage created Google; a hobbyist conceived the idea for eBay; An Israeli teenager wrote the code for Instant Messaging. Innovation thrives in an unrestricted free marketplace where ideas rise and fall on their own merits.<sup>16</sup> Remove Net Neutrality, and the market tilts in favor of network gatekeepers.

This is precisely what companies like Verizon and AT&T want – so much so that they have made discrimination a fundamental part of their business models.

### **The End of Neutrality?**

In 2005, the Federal Communications Commission pulled the carpet from beneath this marketplace of ideas, removing the nondiscrimination protections that guaranteed Net Neutrality. Soon thereafter, the top executives of phone and cable companies announced their intention to change the Internet forever. In the pages of the *Washington Post*, *BusinessWeek*, *Wall Street Journal* and elsewhere, they spoke of plans to become content gatekeepers and begin discriminating against content providers that don't pay them an added access fee.<sup>17</sup>

Let's be clear. No one has been getting a free ride from the network owners. It has been the standard for broadband providers to bill their customers for access to cell phones and the Internet. These paying customers include all of us who buy a monthly subscription, but they also include every Web site and service -- from my cousin Dean's blog to CNN.com -- that pays to put their content online. Everybody already pays. What these executives were proposing was a scheme to ransom off access to their customers to the highest bidders — to add another toll, charging sites to be first-in-line to a user's connection. They now have this power over cell phone services. They're seeking the same power over all communications including the Internet.

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<sup>15</sup> Free Press, "Why Consumers Demand Internet Freedom," May 2006.  
[http://www.freepress.net/docs/nn\\_fact\\_v\\_fiction\\_final.pdf](http://www.freepress.net/docs/nn_fact_v_fiction_final.pdf)

<sup>16</sup> Professor Lawrence Lessig. "Testimony of Lawrence Lessig on 'Network Neutrality'," February 7, 2006 at a Full Committee Hearing of the Senate Committee on Commerce, Science and Transportation.  
<http://www.aei-brookings.org/admin/authorpdfs/page.php?id=1254>

<sup>17</sup> See for example: "At SBC, It's All About 'Scale and Scope'," *BusinessWeek Online*, November 7, 2005; Jonathan Krim, "Executive Wants to Charge for Web Speed," *Washington Post*, December 1, 2005; Dionne Searcey and Amy Schatz, "Phone Companies Set Off a Battle Over Internet Fees," *Wall Street Journal*, January 6, 2006; Timothy Karr, "AT&T's New Boss Wants Your World Delivered to Him," *Huffington Post*, April 27, 2007.

If successful, phone and cable companies would prompt a fundamental shift in the neutral way digital communications were intended to work. In essence, they want to take away the most basic and crucial communications tenet of nondiscrimination -- a user's freedom to connect online or via their mobile device to any content of his or her choosing.

This would be a stunning disaster for users and producers of Internet content. The egalitarian Internet is far too valuable and far too successful to be sacrificed to create an extra stream of revenue for a small cartel of cable and telephone gatekeepers.

### **Internet Policy: Who Benefits?**

Some before you today will argue that the Internet should be free of regulation. This is a red herring. There have always had baseline consumer protections written into communications law. The real question isn't: "Should we regulate digital communications?" Without forward thinking broadband policy, America's broadband and wireless sector will fall dangerously behind that of other nations.<sup>18</sup> The real question should be: "For whom do we create this policy?"

The phone and cable companies are among the most prolific spenders on Washington lobbyists, campaign contributions, P.R. firms and paid junkets.<sup>19</sup> They spend hundreds of millions of dollars in Washington to create special rules that are written in their favor. For all their talk about "deregulation," the cable and telephone giants work aggressively to force through regulations that:

- protect their market monopolies and duopolies,
- stifle new entrants and competitive technologies in the marketplace, and
- increase their control over the content that travels over the Web

2006 was the first that a well organized public fought the powerful phone lobby to a stand still. We came together and called for communications policies that put the public's interests before those of the network providers.

It's now up to our elected officials to pro-actively reinstate Net Neutrality under the law. Without this anti-discrimination legislation, phone and cable companies will have both the incentive and ability to discriminate against content services transmitted over the Web and via our cell phones. Free Press strongly encourages the New York State Assembly to protect free speech for everyone, everywhere.

Net Neutrality is the rule that has proven as a crucial engine for free speech, economic growth and public participation. It must be re-established as the cornerstone of all modern communications policy. Thank You.

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<sup>18</sup> Richard Hoffman. "When It Comes To Broadband, U.S. Plays Follow The Leader," *InformationWeek*, 15 Feb 2007. <http://www.informationweek.com/story/showArticle.jhtml?articleID=197006038>

<sup>19</sup> The Center for Public Integrity, "Well Connected." <http://www.publicintegrity.org/telecom/default.aspx?act=archives>