



## **Open Internet, Innovation, and Economic Development:**

### **A Media and Technology Policy Forum**

National Press Club, Washington DC

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#### **OFFICIAL EDITED MEETING TRANSCRIPT**

#### **Forum Participants:**

*Ralph B. Everett, Esq., President and CEO, Joint Center for Political and Economic Studies*

*Dr. Nicol Turner Lee, Vice President and Director, Media and Technology Institute, Joint Center for Political and Economic Studies*

*Chairman Julius Genachowski, Chairman, Federal Communication Commission*

*Commissioner Michael Capps, Commissioner, Federal Communications Commission*

*Dr. Bill Lehr, Research Scientist, Computer Science and Artificial Intelligence Laboratory, Massachusetts Institute of Technology*

*Sylvia Aguilera, Executive Director, Hispanic Technology and Telecommunications Partnership (HTTP):*

*Susan Crawford, Esq., Professor of Law, University of Michigan Law School*

*Craig Settles, Founder and President, successful.com*

*David Sutphen, Esq., Co-Chair, Internet Innovation Alliance*

*Christopher Yoo, Esq., Professor of Law & Director, Center for Technology, Innovation, & Competition, University of Pennsylvania Law School:*

*Commissioner Mignon Clyburn, Federal Communications Commission*

*Joseph Miller, Esq., Policy Counsel, Media and Technology Institute, Joint Center for Political and Economic Studies*

*The Honorable Michael Powell, Former Chairman, Federal Communications Commission, Co-Chair, Broadband for America*

*Nicholas Economides, Ph.D., Professor of Economics and Executive Director, the NET Institute, New York University*

*Dr. Robert Atkinson, President and CEO, Information Technology and Innovation Foundation:*

*Catharine Sandoval, Esq., Professor of Law, Santa Clara University*

*Simon Rosenberg, President and Founder, NDN*

*Rick Cimerman, National Cable & Telecommunications Association*

**[Session begins]**

**Ralph B. Everett, Esq., President and CEO, Joint Center for Political and Economic Studies:** Welcome, and thank you so much for coming this morning. I really appreciate you all braving the weather today to get here. I've heard three or four stories about people sitting in traffic for over an hour, and they said they would not miss this event. I am very happy to have you here today. As many of you know, the Joint Center is celebrating our 40<sup>th</sup> Anniversary this year in 2010. This is one of a series of events that we will be doing throughout the year, and we really appreciate all of your participation.

Many of you may not know that the Joint Center was founded after the passing of the Voting Rights Act. At that time, there were very few African-Americans elected to office, and the organization was founded in order to provide training for the folks who had been elected, and also to help others who had been thinking about running for office. Today, we have emerged as one of the leading research

institutions in the country that focus on issues of concern for African-Americans and people of color. A common thread that runs through all we do is basically summed up in one word: opportunity. What can we do to ensure that everyone in this country has the opportunities to achieve their dreams?

In our view, the expansion of access to broadband and the adoption of the new digital communication technologies are central to the questions before us, and that is certainly true when it comes to communities of color. That's the reason why a little less than two years ago, we launched a new Institute within the Joint Center for Political and Economic Studies to focus on the new media and communication technologies that have the power to transform lives and communities, and bring hope to people. This Institute is under the leadership of Dr. Nicol Turner-Lee and is moving forward in many areas. Many of you in this room attended our announcement last week where we released a groundbreaking report on the state of broadband adoption in minority communities, and if you haven't read it, I encourage you to go to our website, [www.jointcenter.org](http://www.jointcenter.org) and download a copy. It's one example of our work, and it's a fascinating report about gains that many people of color are making in broadband technology. It also points out some information about laws and opportunities in the community, and we are here today to talk about those communities; particularly how the Open Internet might be used to expand opportunities and prosperity to make a better life for all Americans.

Today, you will see that we have assembled some of the best minds in this country, and I really want to thank all of them for being here. I want to thank the FCC Chairman, Julius Genachowski, for being with us. He has been at other Joint Center events and I might say to you Chairman that you'll be at many others this year. Now all of you heard that, so next the time I call him I'm going to make sure that he shows up. I also want to especially thank my long-time friends, Commissioner Copps and Commissioner Clyburn. We will also be joined by former FCC Chairman, Michael Powell, who is the Chair of our Advisory Committee, as he will be on the program a little bit later. Many of you know that up until

a few weeks ago another former FCC Chairman, Bill Kennard, was the Vice Chair to our Board of Governors and had a lot to do with our thought-process that went into creating this Institute that we now have. I'm glad to have all of you here today, and I am looking forward to a very lively discussion.

Prior to introducing the Chairman, I'd like to bring up to the podium Dr. Nicol Turner-Lee, Vice President of the Joint Center and Director of the Media and Technology Institute. Most of you know her, and some of you are new friends of hers. Within the last six months that she has been here, she has become our first Director. And since she is the first, she is also the best Director of our Media and Technology Institute. You have her bio in front of you, and I'm not going to read bios today because I am sure that many of you have studied the bios. I'm pretty sure that you can cite the Chairman's and Commissioner's bios better than they can, because you already know everything about them. I'm not going to do that, but I do want to say a few words about Nicol Turner-Lee. Like the President, she hails from the great city of Chicago, by way of New York. She is on a mission to provide research and data to improve the lives of all Americans, and in no small way, to influence the decisions that some of our policy folks make by providing them with the research they need. With that, let's welcome Dr. Nicol Turner-Lee.

**Dr. Nicol Turner Lee, Vice President and Director, Media and Technology Institute:** Thank you Ralph, I appreciate that introduction. It has been an honor and a privilege to work at the Joint Center. I have had a long career, and committed my life to creating broadband access for people of color in low-income communities. I just have to say, in thinking about what Ralph said by calling me the "Best Director," that when I was teaching in my classes, my students would say, "Dr. Lee what do you think about our class this year?" I would say to them, "you were the best class ever," then go onto the next class that I had to teach, and when they would ask, I would tell them "you were the best class ever." So I don't know if I should take being the "Best Director ever" as a compliment... [laughter]. But seriously, I just want to tell

everyone good morning again and thank you for being here, and I also want to acknowledge our audience that is watching the live stream. Just for housekeeping purposes, I'd ask that you please mute your cell phones, and if you have a question, we ask that you speak into the microphone.

We are so honored to have this opportunity with technology to show this to the world our work. The last time we had an event, I understand that thousands of people actually watched our webcast from somewhere else, while we convened physically in one location. The power of technology is definitely a plus. I also want to acknowledge, before we get started, a very important person that walked into the room, Robert Steele. Please stand up. Robert is the President of the National Association of Black County Officials. I wanted to acknowledge Robert, as he is also from Chicago, and has been very active in watching this debate; particularly how it impacts constituents. I'm sure there are others in the room, and we'll be acknowledging you throughout the day. Yesterday, we were joined by Mary Louise Grant, the Mayor of Sea Pleasant, Maryland, and also the first President of the National Conference of Black Mayors. Again, we are excited because we are opening up a discussion that will impact everybody here. Equally, with Ralph, I would like to acknowledge the Chairman for being here today. This is our second invitation to him. I think after I first started at the Institute – in the first six weeks—I asked him to come, and he did. Commissioner Copps has been a great supporter of the institute too, and he was also at our very first event. And our very own Commissioner Clyburn; she was just with us last week. I am very honored that you've come twice in a row and I haven't scared you away yet. And of course, thank you to the dignitaries who are also here with us today.

So why are we here? I want to put this question out on the floor so that we have a dialogue today that actually leads us to good public policy. Today, we have come to have a very important discussion on the Open Internet. For the sake of clarity and transparency, these are the rules that

govern the Internet and net neutrality. We are here to take this dialogue into a very interesting direction, one that engages us to think about what that topic means, particularly to groups, and in this case, underserved communities – especially minority communities which will be much of the focus today. I say this as we get started – that we are not centered on the Joint Center taking a side today. We have convened some of the best legal, academic, and policy experts to help us all understand this debate; particularly as we go into an Internet that becomes *our* Internet – one that brings in more people, that develops robust content, and engages people at various entry points. I think it is very important that the Joint Center care about people not being left behind in this debate by using dialogue to educate, inform, and advise the development of good public policy. As a think tank, we feel this is an obligation to our stakeholders. Ralph mentioned that the Joint Center is a 40-year old organization. It started with 1,500 Black elected officials, and is now hailing more than 11,000 policymakers, county officials, mayors, and congressional leaders across the country. We also serve some of the largest and poorest communities around the country, and they need to know how this Internet will look for them as well. We feel it is an obligation to our constituents to host a panel of this sort.

The final reason we are here is regarding the report we released last week that Ralph mentioned, the National Minority Broadband Adoption Study. This report shows increasing rates of broadband adoption among upper-income, college-educated minorities and we felt that we needed to report that because according to the Pew study, African-Americans' growth on the web was statistically insignificant. In that same report we published, the majority of people that are heavily reliant upon broadband are those that are less educated, have lower incomes, and who, in huge numbers, go to the Internet for jobs and public benefits. They also need to know how to get into the game. They rely upon their libraries and their schools. Today, we will hear about this because we need to ensure that they have broadband too. At the Joint Center, we know people need an "on-ramp" to the Internet, not just

for content, but an on-ramp to get connected. That's one of the things that we are also committed to at the Joint Center; it is our obligation and duty to make sure that these voices are not left out and their behaviors are accounted for in research to help inform policy.

Today's session is a discussion: it's about Open Internet, it's about net neutrality, and it's about communities of color. I'll say that again because it's obvious, and Ralph and I talked about this earlier, that there are many cans of worms that can be opened today. Today, it is about Open Internet and net neutrality and communities of color—particularly low-income communities, and that's very appropriate for the Chairman and the Commissioner, given the report that was just released by the FCC.

More specifically, this conversation is about the future of *our* Internet, not the Internet that is assigned to the privileged classes, but the Internet that will hopefully reach out and become everybody's. We say that the Internet of tomorrow is – regardless of your race, your class, your creed, your education, your ability, it's everybody's, and that's why we also care about this topic. It's about finding the on-ramps for more participation. I'm not going to say much more because I have convened some of the brightest, talented, most objective folks from many sides to talk about it. What was exciting to me is their willingness to say "yes" and come join us today. So I leave you with that, and ask you to listen. We will have a chance for questions and answers, but *listen*. It's as I tell my seven year-old all the time, "put on your listening ears because you never know what you might find out from your Mommy." So, put on "your listening ears" and figure out what can be generated and where we go next. As people who care about the constituency that we are going to talk about today, we believe we are all obliged to do that today. We're obliged as a public policy institute to show, guide and point forward to the Internet that we'd like to see. Thank you all, again, for being here. I want to acknowledge, before I forget, all the wonderful Joint Center staff that have been involved with this: my colleagues at the Institute, the Commissioner staff that have been helpful in bringing people together, and all of our panelists who

changed their schedules to be here today. So with that in mind, I'm going to turn it back over to Ralph because you know, I wanted to introduce the Chairman, and we got into this little fist-fight over it in the office...[laughter]. Even though I won, I'm actually going to have Ralph come back up and introduce the Chairman and then I'm going to introduce Commissioner Capps and we'll get started with our first panel.

**Ralph B. Everett, Esq.:** We want to thank Nicol for setting us straight in terms of the intent and I'd also like to thank her for allowing her boss to introduce the Chairman. I really appreciate that. As I said earlier, we are very fortunate to have the Chairman of the FCC here with us today, Chairman Julius Genachowski. And I say fortunate, because all of you know that he is one busy man. This month, on March 17<sup>th</sup> to be exact, the Commission will present to Congress its long anticipated National Broadband Plan. It's been about a year since Congress directed the FCC to come up with a plan for extending broadband services to every American and that is no small feat. Since that time, the FCC under Chairman Genachowski's leadership, has been hard at work holding workshops, reviewing thousands upon thousands of pages of comments and proposals, meeting with many of you in this room and the public, discussing and reviewing, testing ideas...you get the point. He has been very, very busy. So the Joint Center through the Media and Technology Institute is proud to have contributed to the process. We have participated in many of those workshops to help to put a spotlight on concerns of people of color when it comes to advancing broadband access and adoption in our country, and it is a very worthy goal.

Mr. Chairman, the nation is very fortunate to have someone with the ability, your intellect, and your industry knowledge leading this process. You are someone who believes, as we do, that Communication Technology has the power to transform people's lives and give them the opportunity to achieve the American Dream, and we thank you for that. We look forward to reading the plan on the 16<sup>th</sup> or 17<sup>th</sup> of March. We are encouraged by what you have had to say recently. We have followed you

and all the publications, and studied your remarks very carefully, and we are mindful of all the hard work that you and your team have put into this event. We are very hopeful at the Joint Center for Political and Economic Studies that today you might tell us about some of the plans or relay to us thoughts about Open Internet and its principles, and how they can be leveraged to expand opportunity in communities of color. So with that said, we are just so happy at the Joint Center for Political and Economic Studies to have you here...let's give a warm welcome to the Chairman...

**Chairman Julius Genachowski, Chairman, Federal Communication Commission:** Thank you Ralph for that kind introduction, and thank you Dr. Nicol Turner-Lee for putting this event together, and for your ongoing leadership on media and technology policy issues. I'd like to acknowledge the presence of my colleagues, Commissioner Copps and Commissioner Clyburn, who have each worked very hard on these issues.

I'm very pleased to be here at this event. The Joint Center is an increasingly important force on media and telecom policy issues. It's data-driven and forward thinking; focused on facts and empirical research, rather than partisanship and rhetoric. It works to address gaps in our understanding of key policy issues. Just last week, the Joint Center released the National Minority Broadband Adoption study, a comprehensive survey of acceptance and use of broadband, particularly among African Americans and Latinos. The study has some good news about affluent minorities—high rates of broadband adoption among African Americans and Hispanics with college degrees. The study also showed that college-educated minority Americans who make over \$50,000 are adopting broadband at the fastest rate of any group. At the same time, the study confirmed areas of real concern: lagging broadband adoption for lower-income, older and less educated blacks and Hispanics, with only about a third of them or less regularly using the Internet.

That begins to tell us why today's discussion matters. Broadband is our generation's infrastructure challenge, like roads, canals, railroads, telephone service, and electricity were for previous generations. It's the foundation for our economy and democracy for the 21st century. A "Plan to Connect America" is what Congress asked the FCC to develop, connecting all cities and towns; all businesses, large and small; all schools, all libraries, all hospitals, all Americans. But the U.S. is lagging behind globally. Only 65% of U.S. households have broadband. In comparison, adoption in Singapore is at 88%, and in South Korea, 95%. We ranked 6th in a recent study looking at innovation and competitiveness across the globe, but we were 40th—out of 40 countries—in our rate of change in innovative capacity. That's the canary in the coalmine.

And, within the U.S., some communities are lagging behind others. African Americans, Latinos, seniors, and rural Americans all have adoption rates significantly lower than the national average. Moreover, the costs of digital exclusion are growing. Today, with more and more job postings only available online, you simply can't apply for many jobs without broadband. As schools increasingly use online resources as part of their curriculum, you can't get a first-rate education without broadband. As health information and medical records move online, you can't fully control your healthcare without broadband. As the most effective business applications and services increasingly move to the cloud, you can't run a successful small business without broadband. On a trip to Erie, Pennsylvania last year, a farmer told me that for most of his career he never thought the Internet would matter to him. But today, he said, you can't be a farmer without high speed access to the Internet to check the weather, crop information, and other resources only available online. Today, without broadband, you can't be a farmer, a teacher, or a small business owner. You're at a serious disadvantage in our economy.

So the FCC has been developing a National Broadband Plan, which we'll be releasing in two weeks. The plan will present a strategy—a series of recommendations and initiatives—to fulfill the

promise of a connected America. We'll put forward policies to increase inclusion and accelerate broadband adoption and use, including among minority and low-income communities. The goals of these policies include ensuring that every young person in America is digitally literate when they leave high school, and that every American household—no matter where you live, what your income, or what community you're part of—has meaningful access to broadband. We took a step forward on inclusion last month when the FCC gave schools that receive federal broadband funding more flexibility to allow community use of the schools' broadband access.

Our broadband plan will also lay out policies to drive innovation and investment in and on the broadband platform. The benefits of broadband Internet for innovation and economic development are unparalleled. But we'll lose those tremendous benefits if the Internet does not remain an open platform, where Americans can innovate without permission, with low barriers to launching small businesses and creating jobs. For that reason, we've been working on a complementary initiative—our Open Internet proceeding.

Internet openness is key to a healthy business ecosystem, particularly for startups and small businesses, which are America's engine of growth and opportunity. Small businesses employ more than half of all private sector workers, and nearly all Net job creation in the U.S. between 1980 and 2005 occurred in firms less than five years old. Small businesses are particularly important to minority economic development. The most recent data from the Small Business Administration show that minorities owned more than four million small businesses. Startups and small businesses have great opportunity as a result of the Internet, but they are also the most sensitive to barriers to entry on the Internet. Let me quote from my colleague, Commissioner Clyburn, talking about the Open Internet earlier this year: "We are faced with one of those rare moments in time, where a sea change is actually possible for groups that have traditionally been marginalized by the structure of the communications

marketplace. . . . Together we must ensure that people of color – and all Americans – can participate as owners, employees, and suppliers online.”

The Open Internet also enables new and diverse voices to launch content ventures and attract and build an audience. Ruth Livier was an actress in Los Angeles who wanted to tell stories in Spanish and English about a modern Latina making her way in contemporary America. She tried traditional media outlets with no success. Then, two years ago, she created the Web video series YLSE—which she writes, acts in, and produces—and which has now built an audience approaching half a million viewers with zero marketing dollars. In the process, Livier became the first person admitted to the Writer’s Guild of America for work in new media. As she explained at an FCC workshop in December: “For minority content creators, the low barriers to entry on the Internet have allowed us to take initiative, create, produce, and distribute our stories and develop financially viable businesses. But [this] . . . is dependent upon [the] ability to reach an audience unimpeded and unencumbered by gatekeepers and filters.” And Livier is just one example. Take another: Jonathan Moore founded Rowdy Orbit, a growing online platform for professionally produced Web content for minority audiences. Moore’s total expenses for launching this venture? Less than \$1,000. This is another business that could only have been launched on the Open Internet.

So the question is: how best to ensure the Internet remains open so that businesses like these can continue to start and grow, and voices like these can continue to thrive? To answer that question, we started our Open Internet proceeding late last fall, putting forward a draft proposal for six high-level rules of the road to protect the Open Internet, and inviting public comment. For the most part, I’ve been encouraged by the response we’ve gotten. We’ve seen growing common ground on key issues, including the value of openness, the need for the FCC to provide greater clarity for the marketplace around these issues, the benefits of transparency by broadband providers, and the importance of ensuring continued

Internet openness to incentives to innovate and deploy capital. The record is also making clear that an Open Internet can coexist with broadband providers managing their networks and earning a return on investment, and that commonsense rules of the road can promote predictability, certainty, and a healthy market for innovation and job creation.

Today's forum provides an opportunity to move beyond false choices, and to discuss constructively how the Open Internet can best be preserved. I believe this is a particularly important conversation for minority and low-income Americans, and for anyone presenting a diverse programming idea or point of view, all of which benefit from an Open Internet with low barriers to entry and participation.

**Dr. Nicol Turner-Lee:** Thank you, Chairman, for those opening remarks. I think it sets the tone for what we want to talk about today. You know, clearly we all agree that minorities and small businesses are the cornerstone and the gateway to this new ecosystem that is developing, and our hope today is to explore some of those challenges. Again, as we look at both sides of the equation this morning, it is really about doing that and preserving the integrity of what we have today. With that, I'm going to now introduce Commissioner Copps and I'm going to pull your bio because there is so much to say about you, Commissioner Copps. I actually want to do a special acknowledgment to Commissioner Copps. When I first took my job, it was the report on rural broadband that the Commissioner had commissioned to the FCC that caught my attention, and I remember doing a Congressional Black Caucus panel and sharing that work, which peaked my interest in being more committed to this issue. I wanted to personally thank you and I know that I've said that to you before.

The Honorable Commissioner Michael Copps was nominated for a second term as a member of the FCC on November 9, 2005 and sworn in on January 3, 2006. His term runs to June 30, 2010. Commissioner Copps served from 1998 until January 2001 as the Secretary of Commerce for trade

development at the U.S. Department of Commerce. In that role, he worked to improve market access and market share for nearly every sector of the American industry, including information technology and telecommunications. Commissioner Copps has devoted much of his time to building private- and public-sector partnerships to enhance our nation's success in the global economy. From 1993 to 1998, Mr. Copps served as Deputy Assistant Secretary for Basic Industries, a component of the Trade Development Unit. Mr. Copps moved to Washington in 1970, and served for over a dozen years as Administrative Assistant and Chief of Staff. From 1985 to 1989, he served as Director of Government Affairs for a Fortune 500 Company. From 1989 to 1993 he was Senior Vice President for Legislative Affairs at a major national trade association. He is a native of Milwaukee, WI; received a B.A. from Walford College and a Ph.D. in United States History from the University of North Carolina at Chapel Hill. He taught history at Loyola University from 1967-70. He and his wife have five children and is a proud grandfather of five grandchildren with one on the way. With that in mind, please welcome FCC Commissioner Michael Copps.

**Commissioner Michael Copps, Commissioner, Federal Communications Commission:** Thank you for coming out on this cold, rainy morning. Two special thanks: first to the Joint Center, and its President and my friend of 33-plus years, Ralph Everett. Ralph has brought dynamic energy, real focus and new luster to this already illustrious organization by his vision, his knack for knowing how to get good things done, and his one-of-a-kind credibility in this town. And then to my friend of more recent vintage, Julius Genachowski, who is bringing energy, focus and vision to the FCC. In just a few weeks, you will see what I've said translated into a Broadband Plan for America—a strategy to energize the deployment and adoption of broadband all across this country, a plan with the potential to open doors of opportunity those previous generations couldn't even dream about. This plan will be harvested from the deepest, widest, most open and transparent proceeding I can remember at the Commission. It is a plan our

country urgently needs, and it is thanks to Chairman Genachowski that America will take delivery of it on March 16. Good news is that, even before release of the Plan, we are beginning to harvest the fruits of this work. Julius and the FCC Broadband Team have already succeeded in getting us to look at broadband ...well, broadly. They have educated us to see it not as a technology sector unto itself, but as part of the solution to just about every major challenge confronting the nation today, such that we begin to understand how a really good plan for the ubiquitous deployment and universal adoption of broadband will enable us to better tackle job creation, energy dependence, environmental degradation, inadequate healthcare and the closed doors of economic and social opportunity that continue to hold back millions of our fellow citizens. Increasingly, we realize that broadband is the Great Enabler that can fuel America's resumed forward march. And I'm happy to see the Joint Center also encouraging us to think holistically and synergistically about broadband. Indeed the title of this morning's event is "The Open Internet, Innovation and Economic Growth." Like love and marriage or the horse and carriage, you can't have one without the other.

Our challenges are so immense and so immediate, and one of the starkest is the lack of digital inclusion. Last week's Joint Center Report on National Broadband Minority Adoption helps us understand more about where we are in this country. While we see continued adoption among minorities, we also learn—and this is a quote from the Report: "Those Americans who stand to gain the most from the Internet are unable to use it to break the cycles of social isolation, poverty, and illiteracy." So those segments of the population most weighed down by economic and social hardship are the very ones denied the digital access they need to improve their lot. They're not part of the growing digital information ecosystem of the Twenty-first century. They are African-Americans, Hispanic Americans, Native Americans, disabled Americans, poor Americans, rural Americans, inner city Americans—let's just say—too many Americans.

There's one very good thing all these Americans have going for them, however. Her name is Mignon Clyburn, and in her first months at the FCC she has demonstrated a level of commitment and tenacity on the issues of equal opportunity and digital inclusion that have made her a true champion of those who need a champion most. She's fighting the good fight, she's making a difference, and I hope everyone here recognizes the extraordinary job she is doing. With so many individuals and communities still left behind, perhaps we shouldn't be surprised that the Internet that's taking shape doesn't yet look quite like the diverse America so many of you in this room are trying to nurture. As recent scholarship is beginning to show—and this may sound blunt, but I think there's more than a little to it—the folks who are most active and who are the major players on the Net are, more often than not, better off economically and more highly educated than the rest of us. And, they are also more often White and male than the nation as a whole. One very stimulating book on this subject is Matthew Hindman's [The Myth of Digital Democracy](#). On top of that, it is companies with scale and power who configure the routes and determine where we all go—or are directed to go—when we log on in search of whatever it is we're searching for. It can all work great if you know what you're doing. You can unlock undreamed of treasure troves of good and wonderful things. It can be, for such people, the Great Enabler I talked about earlier. But to know what you're doing there, or to know what's happening **to** you when you're on the network, we need to have a handle on what those who design and manage it are doing. This is where the openness and transparency of broadband infrastructure comes in. Naysayers claim that the Open Internet dialogue is “a solution in search of a problem.” But how far do you have to look to understand that more and more of the network is controlled by fewer and fewer big-time players, much like what we saw happen with traditional media? And **that** experience makes me worry about similar harms being inflicted on new media. Should we have no interest or concern about strategies that combine distribution and content on the Internet? Can you tell me that minority and women's voices on the Internet are getting through to major audiences—**really being heard**—like the big corporate sites?

Should we just take it for granted that the small “d” democratic potential of new information technologies will somehow be magically realized without questions being raised about how they are designed and managed?

Openness begins with transparency, but from what I can see right now, closed doors are blocking our view. And before going on, let me be clear about this—the open Internet discussion I want to see is **not** about content regulation—it is about the freedom to go to the legal content of your choice. Going forward, it’s also about getting a shot at actually being heard. It’s important stuff. It’s about making sure our communications and information infrastructure serves our democracy. It’s about prying open doors of opportunity—broadband opportunity, yes, but fundamental economic and social opportunity—for all. It’s about finally putting behind us those gaps of race and wealth and class and gender that have held so many back for so long. What must be at the very epicenter of the new ecosystem are openness, transparency and freedom. So let’s begin there. Let’s work together united in commitment to as much openness and freedom as the ecosystem will allow—and I suspect that’s a lot more than we currently have. I just don’t “get” that somehow it’s wrong-headed to worry about discrimination on the Net. I don’t get that there should be no concern about writing blank checks to allow companies to decide all for themselves—deep down beyond where anyone else is ever allowed to look—what is legitimate for them to do and what is not. I work in what is supposed to be—and is on the track to again become—a consumer protection agency. Its mission is not to hear no evil and see no evil. If it ever comes to that, we’ll be doing evil. I also want to briefly note that having an Open Internet applies not just here at home, but it’s something we want to encourage around the world. I would commend to your attention what Secretary of State Clinton said so eloquently in her truly remarkable speech a few weeks ago: “On their own new technologies do not take sides in the struggle for freedom and progress, but the United States does. We stand for a single Internet where all of humanity has equal

access to knowledge and ideas, and we recognize that the world's information infrastructure will become what we and others make of it."

Coming back now to our own country and to the more immediate discussion, I was pleased that Chairman Genachowski decided early in his tenure to launch a proceeding on the Open Internet—formerly and inelegantly referred to as Net neutrality. It's central to the ecosystem I've been talking about. Everyone in this room should be pulling together to make it happen. Let me put it plainly—no one will benefit more from the opportunities of open networks than those who have suffered lack of opportunity for generations. Anyone looking to open the doors of opportunity, to foster digital inclusiveness, and to make the availability of modern telecommunications a right of all Americans needs to be on-board on this issue. It would be a lost opportunity of historic and tragic proportion for diversity groups and civil rights organizations to join forces, even inadvertently, with those whose end game has nothing to do with creating the kind of open and transparent networks the country needs. This is the time for those who believe in expanding opportunity to pull together, not to pull apart. Finally, a quick word on another, sometimes overlooked, component of the new information technology ecosystem. I noted with great interest the Joint Center's finding that "keep[ing] up with the news" was one of the primary online activities cited by the non-adopters when considering what they would do online. This is a higher percentage, I might add, than those who said they would go online to shop! Our civic dialogue will increasingly take root and grow in the digital realm. The future town square will be paved with broadband bricks. This is why I have made it a priority to emphasize the importance of news, information and civic engagement in the scope of our forthcoming broadband plan.

You know, happy outcomes on the Internet are not guaranteed and nothing here is on autopilot. There are some who say "don't worry, new media will take care of itself." But Mrs. Clinton is right: it will be what we make of it. Watchdog reporting and quality journalism don't just tweet out of thin air. Just as previous information infrastructure build-outs, from newspapers to broadcast, were guided by

visionary public policy to ensure that citizens would have the news and information they needed to make informed decisions, so must we ensure that the new information infrastructure serves this large and all-American purpose today. Our democracy relies on a well-informed citizenry, and this transition we are in right now needs to be handled with great care. Even while we contemplate how to make sure the new ecosystem sustains—and hopefully enhances—the news and information citizens need, we must understand the forces that did such damage to present-day news media. And let’s not be cavalier in writing-off traditional media as quaint relics of a bygone era. Even as the migration to digital media begins, experts tell us that the overwhelming bulk of news and information—probably in the area of three-quarters of it—originates with present-day newspapers and TV stations. So we need to come to grips with ***present-day media challenges*** because that’s where most of our present-day news is coming from and will continue coming from, perhaps for years. Fortunately for you, we don’t have time for me to talk about the many bad private sector and public-sector decisions that accelerated the decline of newspaper and broadcast news, but I do hope we will pay them the attention they deserve even while we are pondering the migration to digital. Under Chairman Genachowski’s leadership, the Commission recently issued a Public Notice entitled “The Future of Media and Information Needs of Communities in a Digital Age.” It affords us the chance to act on these questions—the sooner the better, as far as I’m concerned. I hope the Joint Center and everyone here will respond to the questions raised in the Public Notice.

Already, citizens have begun to weigh in about this on our website. From Los Angeles: “Our local media is dying. We need to preserve local ownership.” From Newark, Delaware: “Need more voices. More unbiased media outlets. More jobs in media.” From South Lake Tahoe: “We need more local, real news.” The people get it; we need to get it, too. All these issues are tough issues, no question. I don’t pretend there are a lot of easy answers. But, at their core, they’re not new and unprecedented either. The challenge to build broad information infrastructure and to guarantee the flow of news and

information all across the land long predates broadband. It's actually a very old challenge. Thomas Jefferson, George Washington and James Madison put it front-and-center. And they figured out ways to get the job done—because they knew their fragile new democracy depended on it. Today our technology is new, but our democratic challenge is exactly the same—to build an information infrastructure that meets the needs of the people. Universal broadband, an Open Internet, and robust journalism must all come together as we write the next great chapter of America. Thank You.

**Dr. Nicol Turner-Lee:** Thank you Commissioner Cops, and again, we appreciate the comments of the Chairman and Commissioner Cops as we get ready to explore some of these issues. I want to explain as we have more to join in, what we hope to accomplish today. What we heard, what we all can acknowledge is this -- that values the principles of an Open Internet are what many strive for. We know at the Joint Center, that who best can know what it means to be included but our people of color, Native-Americans, African- Americans, Hispanics, Latinos; those who fought the good fight back in the day to ensure that democracy was at the core of our participation in education, employment and in other areas. We stand today in this similar conversation, as I segue from comments from Commissioner Cops, and by the same token, we've also heard today that there are challenges and disparities in access for new entrants to the Internet. People still do not know the value and benefit of broadband just for basic functions. I like what you said Commissioner Cops: how the mainstream heavy-user has explored all the ways that Internet can be transformative, compared to Ms. Johnson in rural South Carolina or rural upstate New York, who cannot figure out how to get online. So that's why we're here today, and I want to stress on behalf of the Joint Center, that when we empower these communities it's about empowering all Americans. So keep in mind the communities that the Chairman and the Commissioner have put in place for this dialogue, because they mean as much to the growth and innovation of this country. We all carry the American label whether we are Native-American, African-American, Hispanic-

American. I like that as a starting point for where we work from; this notion of *all* Americans being included.

So now, I open it up for this listening dialogue that we are about to have, that we are all anticipating our scholars to talk about. I'm going to ask us to acknowledge our dignitaries that addressed us this morning and I'm going to ask Bill Lair and our panelists for the first panel to begin to take their positions. I will ask my staff to come and help with their name tents as I introduce our panelists as they come up, along with our moderator today, Dr. Bill Lehr, who is very different; let's acknowledge him as he comes up. For those of you who are also watching via webcast and aren't here, we will also be putting together a proceeding of this event that will be online.

Dr. Bill Lehr will be the moderator for our first panel: "How Can Open Internet Principles Impact Innovation Amongst Those Who Have Not Yet Adopted Broadband?" Dr. Lehr is a research scientist and a computer scientist in an artificial intelligence laboratory of the Massachusetts Institute of Technology. His bio is in the program and he is a dear friend and he a recognized scholar who will lead a group of people that we will have on the platform in just a moment. That group includes Sylvia Aguilera, who is the Executive Director of the Hispanic Technology and Telecommunications Partnership, Sylvia can you come on up as I call your name. Susan Crawford is also here, who is a Professor of Law at the University of Michigan Law School and was the former Special Assistant to the Administration. Glad to have you, Susan. Craig Settles who is founder and President of a successful.com, it is the leading innovator of municipal broadband. Also, we have David Sutphen who is the Co-Chair of the Internet Innovation Alliance and partner in the Brunswick group who has a vast experience in media and communications. And lastly, we have Christopher Yoo, who is a Professor of Law and Director of the Center of Technology, Innovation, and Competition at the University of Pennsylvania Law School. So let's start with Dr. Lehr,

who will kick off the panel. The way this will work is we will start with our panelists giving some opening remarks, and then we intend to have time for Q&A. Thank you.

**MODERATOR**

**Dr. Bill Lehr, Research Scientist, Computer Science and Artificial Intelligence Laboratory,**

**Massachusetts Institute of Technology:** Well certainly it is a real honor and a pleasure to be here because I've got such esteemed panelists with me. Because time is very short, I'm just going to bask in their reflective glow without making any remarks of my own. One thing that we're going to do here is we're going to allow each of them to offer some opening comments and hopefully we'll hold those to five minutes each, and then open it up to some Q&A. The focus on this whole question of Net neutrality and, how specifically, it affects communities of color and people that may find themselves on the wrong side of the digital divide. I'd like to sort of allow each of them an opportunity to certainly make their closing comments. I'm hoping today for a very lively discussion and we have a very interesting and diverse set of views here. So with that let me turn it over to Sylvia.

**Sylvia Aguilera, Executive Director, Hispanic Technology and Telecommunications Partnership (HTTP):**

Good Morning. Thank you very much for the opportunity to be with you this morning to talk about the impact of the FCC's Open Internet Proposal on communities of color. I commend the Joint Center for taking on this issue as it relates to the digital divide because for months the discussion about net neutrality has focused on the perspectives of industry players and network activists, and have excluded the perspective of those who do not have the privilege of being online with them. All in all, this debate has ignored the very real concerns that have been expressed by our esteemed civil rights leaders. Not enough consideration has been given to unserved and underserved communities in this proceeding.

In the past couple of weeks, both the FCC and the Joint Center have issued studies that underscore the great concerns that civil rights organizations have expressed regarding the codification of proposed network regulations and the need for greater attention to be paid to those in the digital divide. There should be no doubt that HTTP and its members and other civil rights organizations with which we have worked support an Open Internet. The Internet has evolved in a way that it's directly a function of its openness and the ability of innovation to emerge organically. The current environment has not only given rise to some of the greatest technological innovations that humankind has ever seen, and has allowed innovation to evolve and be adopted by the masses at inconceivable rates. In fact, I've heard in recent days, many policy analysts referring to the Internet as an ecosystem. And I wonder, as a policy analyst myself, why it is why we would want to intervene in an ecosystem that is working for us.

What does this have to do with our community? It is precisely our communities, those on the wrong side of the digital divide, that have the most at stake with continued unfettered innovation. By introducing new technologies and efficiencies to the marketplace, innovation helps make technology more accessible, allows for greater competition, promotes investment in infrastructures and jobs, and creates a greater range of products and price points from which end users can choose. Our primary concern as advocates is closing the digital divide. We believe that the current Internet environment along with a stronger push by policymakers who address gaps in broadband adoption and access will be the winning combination for our communities. Why? Let's give you an example. Studies show that Hispanics embrace innovation in telecommunications. We over index in wireless Internet use and once we are online, we engage in social media and online entertainment in greater rates than other populations. Once online, our Hispanic children spend more time on online social networks than other groups. It is an open environment that has allowed that, and has allowed innovation to flourish. Rather than focus on policy that will negatively impact innovation and that seems to be designed to address

some imagined dark future of the Internet, we have urged policymakers to address what we see on the pages of recent studies that were issued in black and white: a very real digital divide. Thank you.

**(Applause)**

**Susan Crawford, Esq., Professor of Law, University of Michigan Law School:** Good Morning everybody, it is great to see you. I wanted to be clear that I have no consulting relationships or client relationships with anybody. I speak for myself. I happen to be employed at the University of Michigan, and I'm not sure that I speak for them, but it's good to be here and it's great to be back in Washington and part of the Joint Center's role here as convener of a forum focusing on the facts. It is extraordinarily important; it's a terrific contribution, and I'm very glad to see it. And so speaking of focusing on facts, I thought I would raise just three points here: three questions, and I will make them as fact- and reality-based as possible.

The Chairman and the President have made clear than an Open Internet is crucial for all Americans for economic growth and opportunity or everyone. And when it comes to people of color and challenged communities, the disabled, and other groups that need this economic opportunity to come their doorstep, there is nothing like an Open Internet to open those doorways and make those new opportunities come alive. I want to announce the presence of a consensus and here is the consensus: The Open Internet is the greatest gift to business that we've seen in a long time. The ability for anyone with a good 21<sup>st</sup> Century idea to write to a standard platform, to launch a business without asking permission is absolutely transformative and that's what an open, neutral Internet has made possible so far. The widest possible encouragement of business activity without prejudice, without discrimination, and without again, having to ask permission. The low-barrier entries for people of color who want to be represented in media are astonishing. The possibilities that the Internet provides for not only content participation, but also the innovation and the new business development that the Chairman talked

about are again transformative. There must be consensus about this. There has never been a development quite like this for small businesses, people of color, and all Americans. Why would we risk these opportunities that now exist, in favor of giving a few opportunities to a few companies to discriminate in favor of their own content or their choices, that's what's at risk with the Open Internet proceeding. So the choice is, the question is, why risk what we've got—this gift to business that exists with the de facto neutral infrastructure we have at this point.

My second fact-based question: the data from the FCC and the Joint Center released recently show that we've got a tremendous digital divide problem in this country. Rural, poor, minority groups simply don't have the access we'd like them to have. A big element for low adoption in these groups, a major element cited by both reports, is price. Quite simply: access to the Internet is too expensive. Another key element is relevance and skills, and the adoption suggestions that the Commission plans to make in its National Broadband plan coming up on the 16<sup>th</sup> will address some of those issues. But let's focus on price, because this is an enormously consolidated high-speed Internet access industry. There are about four or five players who serve most of the market place. These are very high-margin businesses, generating enormous profits at the moment. They tend, particularly on the telephone side of business, they tend to redline; they tend to not go into areas that are poorer, rural, more expensive for them to serve. Why would we hand them the legal authority to discriminate to make even more profits? Will they suddenly become benevolent and start reaching out into communities that they haven't served so far? Will they suddenly make it affordable for poorer countries, poorer parts of the country to have Internet access? It's just a question, because I think we should be focused on these facts. These are very concentrated, quite powerful, and already quite profitable companies who have so far not made that choice. So that's my second fact based inquiry. The first one is that we've got this great avenue for business, the second one is we've got some incredible consolidation in this industry

and a real risk that these actors will discriminate in favor of their own content and against other content.

And then finally, I wanted to raise the question of false choices. the Chairman has mentioned this at times. This discussion is often framed as Google versus carriers, and framed as regulation versus investment. I want to suggest to you that both of these ideas are slightly odd framings that don't capture the subtlety of the discussion, and may not even be in fact accurate. What's going on with the Commission's efforts to have a net neutrality proceeding, complimentary to the National Broadband plan but not part of it, is that we see the opportunities for small businesses and non-incumbent players, made possible by the Internet. And it is *that* segment that we should be focusing on—small businesses, new entrepreneurs, anybody with a new idea, and their ability to access a standard platform. This is what is at issue with the net neutrality proceedings. So, the Google versus carriers choice is false, or might be false. I consider that it might be false. The second choice that may be false is the one between regulation and investment. We have a de facto neutral Internet in place for several years here in the United States and the carrier policies are making lots of investments. Their investments are skyrocketing. The problem that they want to remove is to make sure that there's no possibility for non-discriminatory requirements to be placed on them. Again, remember that everything that the Commission is suggesting is very balanced; it's looking at reasonable network benefits, the ability of carriers to offer advantaged services, and this is quite a straightforward and balanced discussion being held by the Commission. There is nothing radical going on here, unless by radical you mean, at the root. A non-discriminatory obligation is at the heart of U.S. Telecommunication policy; it has been ever since the beginning. The idea that we need to have a neutral general-purpose network is at the center of the social welfare obligation. The Commission has to provide to all Americans equal opportunities. Thanks very much.

**(APPLAUSE)**

**Craig Settles, Founder and President, successful.com:** Good Morning. I am in the business of helping organizations develop their strategies for implementing effective broadband technologies in their communities. In that role I address business issues, I address political issues, financial issues, and so forth. I'm going to tackle this issue of Open Internet in a somewhat sideways direction so bear with me for a little bit.

There's a lot of discussion about the affordability question. You know, how do we tackle the affordability of Internet for low-income individuals? I'm a market person, technically since '86, but my relatives would say that I've probably been a marketing person since leaving the womb. From a marketing perspective, the issue isn't affordability—the issue is value. What do they value that will make them part with their money? If the alcohol industry and the cigarette industry have taught us anything, it's that you can create a value perception that will suck billions of dollars out of what is termed a low-income population. So if we can extrapolate from there and talk about what is the value that we instill in people for broadband, that is basically how I feel you attack the issue of affordability. How do you get people involved with the Internet? And to me one of the great value propositions is the ability of the Internet to affect or impact personal and community economic development. In my research and blogging and talking to dozens and dozens of communities, there are three areas that I feel need to be addressed in creating that value proposition. The first is, you create an army of home-based entrepreneurs, where you take the people who are retired or disabled, recently unemployed, and you define them some skill, some marketable skill, whether it's making knickknacks, or whether is the knowledge that they have when they work for 20-30 years in some industry, and you create the ability for them to market that talent—to market that product on the Internet. You take these people that may be negative on the balance sheet of public service by extracting public assistance, which is fair and

good—don't get me wrong, but you want to turn them into financially positive income centers. The way you do that is you put those home-based businesses on the Internet.

The second avenue is you attack the small business operation; the heart of growth and the heart of employment in small and disadvantaged communities, be they rural or urban. You use the Internet to open new markets, to open new opportunities and help them run more effectively as a business. And by that, you create economic energy within community. And the third area is the training and the development of a new workforce, be they the teenager who may be on the street who needs a path out, or whether it is again the person who is a need end job, who has done manual labor most of their lives. You use the Internet to give them skills and insight and access to resources that enable them to move from a dead-end career to a positive career. So now, if I look at those three elements of economic development and create a value proposition for the Internet, lets talk about the Open Internet and what that means. I'm going to twist this around, not a positive perspective, because I want to look at one of the things that I personally fear in an uncontrolled environment. A very popular marketing concept, if you will, among the telecom industry, is the Walled Garden. In the Walled Garden Business Model, you basically say that only people who sell applications and sell content are the ones that we allow, and the money that they generate—we dictate that. The price that people pay—we dictate that. Within this Wall of Garden, this is how you do business. So if I look at the Internet and all of a sudden, now I'm looking at Wall Garden structure, let's talk about how that impacts these three areas of economic development.

One of the principles of Net neutrality is that you cannot discriminate what people get access to, or limit getting access to what they need. If I'm a home-based business, and I can't access all the resources I need to make that business effective, that's a detriment. If I can not put my business online because I cannot afford some access fee or again, using that Wall Garden concept, I don't want to be in

a position to have sell on someone else's terms, this is a negative. Right? This is not advantageous to my business. The ability to be able to run applications that I want to able to run as a small home based business is, right? This concept, this principle, this Net neutrality principle that you will be able to get to the application that you want to get to, that is key, that is critical to have that access if you want to see economic development happen. Another principle of Net neutrality is that there will be competition. If you look at an interview or a report done last year by the Pew Internet group, it says that if you have more than one competitor, you reduce the cost of Internet access by 15% and if you have four or more competitors in an environment, you can reduce the cost of access by 30%. So the ability to have vigorous competition is key to that affordability, if you will. It opens up the value proposition.

In closing, one of the more ridiculous anti-net neutrality arguments I hear is that this is not yet an issue for people who are not yet on the Internet. This is not something that the FCC should be spending time with because there are more important issues to spend time with and I vigorously disagree with that argument. The Internet is about information; it is about access to information; it is about using information. Information denied is opportunity denied. Information denied is advancement denied; it is political participation denied. If we want the Internet to have the value proposition that it is supposed to have, then realize that we cannot have an environment where that can be cut off, where opportunity can be cut off. It is basically, in my mind, the equivalent of telling someone, "Here is your bus out of the place. You are now on to a better place. But you can get on this bus, and we may regulate you to the back seat." Thank you very much.

**(APPLAUSE)**

**David Sutphen, Esq., Co-Chair, Internet Innovation Alliance:** My name again is David Sutphen. I'm the Co-Chair of the Internet Innovation Alliance and I want to thank the Joint Center for including me in this panel discussion. I guess I'd like to kind of take a step back and to say that, just as an initial matter, we

shouldn't lose sight of everything that has been accomplished in the last ten years. I mean, when you think about where we were ten years ago with respect to broadband Internet, we were nowhere. Although we clearly have places and people that we still need to get connected, we have made immense progress in a relatively short period of time and I think it's important for people to keep that in mind. As I look and think about these issues, I guess I'm struck by a variety of things that my co-panelists have said, and by Commissioner Genachowski and Commissioner Copps, but particularly Chairman Genachowski. What I'd like to have people think about is at the end of the day we're in a situation in which Susan talked about, where an amazing kind of innovative platform exists via the Internet. I'd like to think about the number of entrepreneurs and businesses that have been started that the Chairman talked about; pointing to two individual entrepreneurs, people of color, who have been able to start these amazing businesses and reach people.

We also hear about the investment that's been going on, and so for me, I take a step back and say: ok, on one hand we're saying that the investment climate is working on the other hand we're saying that there are opportunities for entrepreneurs to grow and to start businesses. That leads me to ask the question: what's wrong?

I spent four years as Senator Kennedy's General Counsel doing all of his civil rights work and working with the NAACP Legal Defense Fund and the Lawyers' Committee for Civil Rights, so I've spent a significant part of my career thinking about civil rights issues. When I think about this—I acknowledge what Susan and others have said about price being an impediment for communities that aren't yet connected—but we recently did a poll with Cornell Belcher who was one of a President Obama's pollsters during his campaign. 900 Hispanics and African Americans were surveyed, and interestingly, our poll results came back and on the question: "what is the single most important thing that would incentivize you to get connected if you're not already connected?" The answer was "digital literacy". If

you look at the FCC's report last week of a 900-person survey by phone, price was the first issue, but the second was digital literacy. I don't see the value as the issue. I don't disagree with the fact that price is important, but if you ask anybody whether you'd rather have something for free, or pay more for it, they're going to say free. I'm not saying it's not an issue that our community and these communities need to deal with, but I think there's a little bit of a distraction to focus on that exclusively. If you get to the other two issues, digital literacy and not seeing the value, I think it goes a little bit to what Craig was saying, which is that there is a disconnect in our community right now. If you talk to people of color about what they want, we want a good education, we want opportunity for our kids, we want to stay connected; we want to be a part of our community. Yet they don't see that there is a connection between achieving all of those things that matter to them and being connected and having a broadband connection.

Also when you look at digital literacy, I'm of the view that I'm blessed. I mean, I went to good schools, I spend all my time on the Internet, I've got wireless devices—you name it. But the fact of the matter is there are still very, very, very few people of color who are entrepreneurs in the technology space. I mean, Larry Irving is back there and he is probably one of the few that's tried it. Part of the reason for that is there is an "innovation divide", and a kind of literacy divide when it comes to technology. It may be the case that Hulu and Twitter and Facebook and Google have been started, but it's hard-pressed to name one that's been started in the last ten years, run by a person of color. That has absolutely nothing to do with the Open Internet. That has everything to do with the fact that there are not enough people of color who are exposed to this amazing ecosystem. I actually disagree with Craig, I mean, my view is that talking about the value of entrepreneurialism and minorities starting small businesses—I completely and totally agree with that idea. Believe me, I would one day love to be one of those entrepreneurs. But the point is, we have a huge group of people in our community who are not

connected at all. And my view is that's like telling a kid who lives in Southeast, who's never been to the Corcoran that you can go grow up and be Van Gogh one day when they've never even been to the museum in the first place. So my view is we need to get people on the trip to the museum and then for the people that are already on and walking around and who go to the museum everyday; metaphorically speaking, we should be talking to them about being an entrepreneur, and starting small businesses and getting connected.

What I'm worried about is that we're at a very difficult place as a country with respect to our economy, and communities of color are the ones who are suffering the most as a result of the rise in unemployment rates, and how difficult it is to find a job. And yet, we're in this situation. Believe me, I appreciate the challenges that Chairman Genachowoski and Commissioner Clyburne and Commissioner Capps and the rest of the FCC face. Think about President Obama when he ran for President; he ran on a platform of rolling back President Bush's tax cuts. Well has he done that? No. And one of the reasons why he hasn't done that is because, guess what, we're in a different place now than we were when he ran. So this idea that this was something that President Obama said he cared about... well, I'm not saying that he doesn't care about it. The analogy is about hard choices: if it's the choice between getting the Broadband Plan right and focusing on Open Internet, I'm choosing getting the Broadband Plan right. I also think that we shouldn't fool ourselves into thinking that you have to make tough choices when you govern. As I look at this issue as a whole, I completely agree that if we could get everybody who has been spending all of this time worried about Open Internet principles focused on the digital literacy and value proposition gap -- we would go a long way toward solving the problem. That doesn't mean that we can't simultaneously figure out a way to address those market failures that Susan referred to, which may have something to do with decisions that businesses make. But also, it has something to do with

the fact that the economic proposition doesn't work, and that's where government and private industry need to be working together to close the gap. With that, I'll sit down.

**(APPLAUSE)**

**Christopher Yoo, Esq., Professor of Law & Director, Center for Technology, Innovation, & Competition, University of Pennsylvania Law School:** Well thank you for again, for everyone at the Joint Center and for Nicol for inviting me. I wanted to mine the Joint Center report and some of the comments that were made to see if we could draw some insights, because I think that there are a number of surprises in there and I wanted to talk about them. One of the first surprises of the report is that as a headline, the comments were surprisingly negative. If you add them up, and there are different ways for you to count them so people can interpret the various comments in a lot of different ways; but by some counts as seen reported, as many as  $\frac{3}{4}$  of the comments submitted to be negative. Secondly, it was a surprise to me that it was not a partisan issue. A large number of state representatives, and a large number of mayors, which tend to be smaller city mayors, filed in opposition. The number of politicians who did so, were overwhelmingly democratic. I believe there was only one Republican filing among the state representatives. Unlike what happened in 2006, when this issue was first debated in the House and Senate, it was starting to break straight down party lines, and what we started to see was much richer and complex in nature. But what's also most interesting to me is that, in fact, it was a large number of participants in small towns: mayors, chambers of commerce, and a large number of minority organizations: NAACP chapters, Arab organizations, Hispanic organizations filing positions.

The answer about the position—it creates a sort of a puzzle. Why is that? I think that the reality is that the next generation of bandwidth will be fundamentally different from the last one. In the previous one, we leveraged legacy investments in cable television networks and telephone networks. We are able to do so fairly cheaply on the scale of \$400 to \$800 dollars per subscriber in the shift from

dial-up to broadband. The next wave is going to be fundamentally different. It's going to be about laying fiber out into neighborhoods, which has an estimate of about \$4,000-\$8,000 dollars per subscriber. You have wireless broadband, which doesn't provide you with as much bandwidth, but has a price tag well in excess of a \$1,000 dollars a subscriber and it's going to be a lot more expensive. What we started to realize is that, in fact, there's a difference. The question is how can we lower that cost. One of the fundamental problems is about going to wireless. Wireless is something that is largely up for debate; it is fundamentally technologically different, has limited bandwidth, interference problems, shared local problems, and congestion problems that are unlike anything that's happened with cable and telephone services. In fact, they're the most heavily managed networks around because they have to be, because without it they won't function properly. The second thing that is really interesting is the trade off between what I would call a cap-ex solution versus an op-ex solution. You can either build bigger pipes or you can manage your networks better. The problem is, building bigger pipes requires a lot of upfront capital at a time when that is extremely dear to come by. If you extract the \$4,000-\$8,000 dollar subscribers for FIOS, as an estimate looking at 100 billion households in the U.S., we're talking about a price tag on the order of half a trillion dollars; of which we have \$7 billion dollars in the Stimulus plan. This is a very nice down payment but is not going to get us there, and it's going to be much, much harder to bail those people out.

So we talked a little bit about price and there's a direct impact on price. If we limit the ability to take operating expenses and manage networks, that's going to actually raise the price tag. It's interesting, I mean, the only problem is its "one size fits all" pricing creates winners and losers. The winners are high-bandwidth users. The winners are people who are the least price-sensitive because they're the ones who will be least affected by pricing. Low-bandwidth users end up paying the same amount of the cost to subsidize the high-bandwidth users, and anyone who understands the economics

of raising prices says in fact if you allow one size fits all pricing, the ones who count are the most price-sensitive, and they have the most to lose. In fact, you see a bunch of very interesting arguments emerge.

The other thing that is kind of interesting is when you actually read what engineers say about the Internet, is that, they say that there are a lot of things that it doesn't do well. It doesn't do security well. It doesn't do mobility well. It doesn't do multitasking or interactive video well. In fact, these are precisely the kinds of applications that are relevant now, as we're moving past email and downloading web pages. These cutting edge applications are in-demand more than an ever. Interestingly, for the discussion that we have today: these are also—according to the Joint Center's report, and according to Ms. Aguilera's research—the kinds of applications that tend to be used more by communities, by minority communities. Things like video and things like mobility are much more prominent. But what's also interesting is that there's a wonderful set of literature going back to looking at the original Internet. It was originally a military application and they didn't design it for efficiency. They didn't design it for cost, and they didn't design it to decide—in this big shared network that we have—who is using what so that we could actually charge it back to the person who is actually benefiting from it. We are starting to see innovations there.

But the other thing that's really interesting is what the engineers have to say: that the Internet has trouble evolving. There are 30 engineers who say that the Internet is stuck. We got this great thing that was built 30 years ago, and we may not be able to grow it constant. There are some really interesting proposals about how we might get to a cheaper, more functional Internet. One is, there are two of them out there. One's a small English ISP called Plus Net. Plus Net gets the highest consumer service rating in all Britain. Highest consumer satisfaction ratings -- how do they do it? They prioritize traffic based on eight classes and they offer different classes of service. They disclose very clearly what they're doing, they explain what they're doing and that allows them to provide a service cheaper. They

take things like interactive video that have to go without hiccup and give it the highest priority and things like email where if shows up a ½ second late, you won't even notice it, and they give it the lowest priority. In fact, they're able to deliver a cheaper higher-value solution to their consumers. The other wonderful program from INTF is something called Ledvac. It's something that I've talked about as have others. It's a scavenger class of Internet service, which basically means, it only picks up the scraps that no one else is using on the Internet. If anyone else needs it, it gets out of the way, what it is, it is worse than best efforts Internet, it's a worse service than what the Internet provides today. But if you have an extremely low-priority need, which is often like backing up your hard drive at night, where it can happen tonight, tomorrow, it can happen over a span of days, this is an amazingly efficient solution for using the Internet. The computer industry is extremely interested in this; because that it is the kind of heavy use that can happen on a long scale that would be very useful at a local level.

The last comment that I'll make is we asked: why risk what we've got? I guess the answer to me is that the network has been tremendously successful and optimized for how we use networks in the past. What I see is that the modern needs we have for the Internet are very different. The technologies and priorities are different, but the applications and the things that we want the network to do are very different. We actually may need a different architecture. We've heard about small businesses starting on the Internet, and in fact, what we may see is new small businesses that depend on the things that the Internet doesn't do well, like mobility, like multitasking, like interactive video; things that will be frustrated if we don't allow the network to follow a natural evolutionary path that adds capabilities to things that it doesn't do well now. If that's the case, the bigger risk may be in standing still because the rest of the world isn't standing still, and we may need a new Internet to meet those challenges.

**(APPLAUSE)**

**Dr. Bill Lehr:** Thank you to all of our panelists for those very wonderful comments. If I were sitting here weighing in on the FCC's Net neutrality rules, I would say it looks like we have, one, two, three in favor of the rules and one, two against the rules. If anyone wants to disagree with that characterization, please do! Let me just ask our panelists to focus more on the implications of the rules for communities of color and those who are alongside the digital divide. If you could very briefly say how you think approving the rules, should the rules get passed, how that's actually going to contribute to promoting adoption and use of the Internet in these days. So does anyone want to take a shot at that?

**Sylvia Aguilera:** I'll take a shot at that and bring the discussion back to innovation, which I think is the title of this panel, and focus on what innovation and the Internet really means and what it requires for us to innovate on the Internet. It's not just one factor, it's the provision of Internet service—that's one factor of innovation. It's the hardware that we use to get on the Internet and benefit from all the services and content, and it's the applications as well. All three of those things need to be working well and working together. In fact, some of the greatest innovations that we've had recently have been in wireless, and a good point was made that our communities *do* use wireless more. One of them, for example, is smartphones, that requires—when they work at their best—a collaboration between the hardware company, the content providers and the Internet service provider. Under network neutrality, if it's implemented, I worry that the type of collaboration that's necessary to really get the best service out to the end user is not going to be possible under Net neutrality.

**Susan Crawford:** You've asked what the effects of adopting the proposed time limit principles would be. The very simple answer is that developers of content and developers of new applications would have a predictable low barrier to entry environment, period. That's it. There's a lot of blurring talk about ecosystem here. Be very careful, there is a difference between transport like the sidewalk and then the conversation that happens as you are walking along the sidewalk. The new neutrality rules would keep

the sidewalk standardized so that anyone walking along it, introducing a new program, new application, new use of the Internet would be able to do that without asking for permission from carriers.

**Craig Settles:** I think that there are a couple of issues that I have with a lot of this discussion about Net neutrality. I think people that are hyperventilating the most on both sides of the discussion speak as if we already have rules. You know, the discussion starts, “these rules are bad because of this”. “These rules...”, there are no rules yet, we don’t know what they are. We know there are principles being used and information being gathered to create a set of rules. People are damning and praising net neutrality without having seen what the rules are, which I think is a little bit silly... understandable, but nevertheless... The other thing is, I think people automatically assume that regulation is bad. They automatically assume that regulation is active participation of government, in your back pocket running your affairs. Not all rules and regulations are structured that way. We have rules against redlining, not because every insurance company redlines, but in the event that one does, you put them back in order and you offer the community redress. You have discrimination rules not so that you can run someone’s board or run their manufacturing plant, but if they step out of line and discriminate, you have recourse to take action and you have redress for the people who have been injured. And I feel the same way about this Net neutrality discussion, in that, there are rules needed not to run businesses online but to say that if I, as an independent business person go online, I’m not going to have my tweets monitored. I’m not going to have my text messages denied because I disagree with someone’s pet project who happens to own the Internet pipe where I’m accessing the Internet. If I sense of find discrimination on access or capacity, I will have redress to correct the problem.

**David Sutphen:** I just want to say that the challenge of this debate, and all policy debates like this, is that they are so complicated. No one agrees with what the term net neutrality means and no one agrees what it means to manage a network. So I think there are some people would say that it is ok to manage

a network theoretically, but you have to treat all content the same. So in my view, I probably do have a problem with that definition of network management because it means that somebody's heart monitor video that's being streamed across the Internet by their doctor has to go at the same rate as somebody's email. And to Professor Yoo's point, that probably not the most efficient way for the system to work. So and I think to Craig's point, getting greater clarity about what some of these things mean matters. There is no doubt in my mind that there are some folks who support Open Internet who are of the view that everything should be treated the same regardless of what it is, content-wise. I just don't think that's a smart or efficient way to think about innovation. I mean, at the end of the day, think about the energy debate that we're having right now in our country. It's all about smart grids. Well, the idea that you're going to have a smart grid and dumb pipe working together is not striking me as a thoughtful approach to the issue. And think about communities, disability communities. We had a dinner last week with folks representing a lot of the key disabilities organizations and they mentioned that there is a lot of hope for the future with the idea of cloud computing. Now you go on the Internet and there is a code attached to certain things that you do. Let's say that I'm blind or deaf. If I log onto a computer at home, at the library, or at the office, there would be something that would travel with me on the Internet that would know who I am and know that I'm visually impaired or hearing impaired and therefore a site needs to be delivered to me either all in audio or in video. Well guess what, you need a smart pipe to do that. You need a smart pipe that's going to say ok, this is the person that is hearing impaired, therefore this particular website needs to be streamed to them in video instead of in audio. So you know I'm presuming that that people what say that's fine, but I think that's part of the problem—we can't get clarity behind those things.

**Christopher Yoo:** Speaking directly on how it affects minority communities: minority communities' access via wireless actually discriminates based on the basis of the application. If you walk across the

room holding a cell phone, you will get hot responses and cold responses as you go. If you're in a spot with slow bandwidth it will hold, it will keep your new voice calls because that is the thing that is most urgent, and it will hold your email. It discriminates exclusively on the basis of application. There are a lot of wireless providers who officially ban video because video is the thing that sucks up so much bandwidth. I had this experience coming down for the first time yesterday when I rode the Acela train. For the first time, the Acela is offering free wi-fi. People were talking about it, and asking about it now that they finally have it. There was a card in the seat back pocket that says please use this to only do your email, don't download video. It's a shared resource. Why? Because there is only so much bandwidth, and if a couple of people in that car start downloading video, it sucks up the bandwidth so that nothing else runs. So, they are making a decision based on the application.

**Dr. Bill Lehr:** Let me try a slightly different angle: there's a whole bunch of other proceedings from the FCC. Looking at possible future applicability and rules, things like wireless, and whether or not wireless is actually competitive and has special access. The topic is not as sexy as the whole Net neutrality debate but I would just ask you to pick your favorite of these other proceedings that you think is the most important, and why, and how it relates to the concern of minorities and/or the Net neutrality debate. We'll start with Sylvia.

**Sylvia Aguilera:** There are so many proceedings and filings pending at the FCC that have direct impact on the ability of minorities and minority-owned small businesses and women-owned small businesses to succeed, that have gone unaddressed, that it is actually impossible for me to pick one right now. It's been—aside from this issue of Net neutrality and dealing with the development of a national broadband plan—years of frustration that we thought would end with this Administration, but actually have been exacerbated because of the lack of attention that is being paid to the concerns of minority communities.

So I'm not going to prioritize one after the other. I would just really appreciate the opportunity for our communities, with the respect to the FCC, to be heard on the issues that are important.

**Susan Crawford:** Well I'm alarmed to hear that your communities aren't being listened to with respect and I hope you'll air that as fully as possible because certainly my impression from the Administration is that, that isn't their goal. But if that's happening that's a tragedy. For the minority communities' standpoint, the work on adoption seems to be extremely important. What are the digital literacy skills that are needed, how much attention should we spend on anchor institutions—all of that is being addressed in the National Broadband Plan. I'm kind of junkie for this stuff so it all seems vitally important. Another issue for all communities is this special access question, which is really interesting. The idea that midpoints are seven times, or eight times as expensive as they might be based on cost, and the cost is allowed to soar, making a bottleneck for Internet transitions between the city and the backbone is huge. Making that more coherent and reasonable would change the entire landscape. So, I'll pick the National Broadband Plan on adoption, and also work for all communities on special access.

**Craig Settles:** I would take the issue of universal service reform and looking specifically at the concept of lifeline. The Universal service fund had its origins back in the 1930's, and was based on the concept that we would bring telecommunications to areas where it doesn't exist currently. To revamp that concept to say that all communication now is digital—whether it is voice, whether it's data or what have you; we need to figure out ways to get it into areas where it currently is not available is a vital concern. I look at the structure of Universal Service Fund and its very programs. If I look at E-rate, or I look at Lifeline—each of these programs, and we reform those to address the current technological issues of the blurring of the line between voice and data, then we are driven by the concept of getting this capability into those areas that do not have it. By default, you are addressing minorities, you are addressing rural areas, poor areas, and poor constituents and so forth. I think that they can be the next major beachhead after

the Broadband Plan, after the Stimulus Program is finished, to where we attack, where we tackle those issues important to the communities that are underserved or unserved currently.

**David Sutphen:** I guess my reaction to the question, and maybe you're not supposed to do this, would be to say that I think maybe the more relevant question for this discussion is which of the proceedings—if the underlying assumptions are wrong, is going to have the worst impact for what we're trying to achieve. Obviously the FCC is not going to do anything that it doesn't think is going to help this issue, so the question becomes, if they happen to be wrong—whether it's because of changes in technology or just misreading the marketplace, which has the greatest risk. I think that's maybe a better way to think about it. I think on the affirmative side, in the way you asked the question, and I would say that the National Broadband Plan is the most important. I also think that it's just really important for you and the Commission and anybody who cares about this issue to think and look at it. I mean there are a lot of numbers out there, and you know, some of them are kind of conflicting. But, I think it's fair to say that everyone would agree that wireless seems to be a promise of a bridge over the digital divide. And there was one statistic that really stuck out to me, in one of the most recent Pew studies, which broke down the kind of regular Internet users, broadband users, Internet users at home, and wireless Internet users by income and education level. What I was really struck by is that for regular broadband users there was a 22% gap between those with high school diplomas and those without high school diplomas in terms of their regular usage. In other words, if you don't have a high school diploma, you are 22% less likely than people with high school diplomas to regularly access the Internet at home. That gap was one percent with wireless. What that tells me is that are people who have the least educational opportunities and probably the lowest incomes who do not have a huge a gap between those who are in the next rung above them. That tells me that there is something good there. If you were to go to the top level; the gap among highest income earners, I think it was a difference between home broadband was 60% delta

versus 30% for wireless. That tells me that there is a solution there, or part of a solution, and we need to think very carefully—whether it's in the context of the National Broadband Plan or the Open Internet stuff, that what we're tweaking or tinkering with doesn't screw with something that seems like it's working.

**Christopher Yoo:** Two really easy answers to this: one obvious one though, probably the most important proceeding from the FCC for minority communities, is community ownership. That's a mammoth undertaking going on at the FCC right now. What's fascinating to me is just as the filing for network neutrality shows, there are some interesting linkages between building out network neutrality, which minority communities have really brought to the table and really focused in on. There's some other accepts of media ownership, for example. The one part of media ownership that was attempted was to drop the newspaper and local television ownership rule, and that was opposed because it would hurt newspapers. Now we're trying to find a place to weaken that rule because we need to save newspapers. It was predicated that they would be viable. We have to think about complex ways of how this all interacts and that's important. The less obvious one, and the less on people's mind is radio is spectrum reform. As we talked about today—the future of wireless, particularly for our American communities, more than anything else, if you want to talk about cost and availability, is about freeing up more spectrum for broadband. Those are probably the two biggest challenges facing the FCC.

**Dr. Bill Lehr:** Ok, I'm going to try one more question so we can get a little bit more closely on schedule. Let's have fairly quick answers to this one folks: supposing we look forward two or three years from now, what do you think the issue for broadband and the minority communities is going to be? Just sort of make your prediction. Will we still be arguing the same thing or you would say no, I think we're going to solve this, but I think there are other things that are going to happen? Whoever wants to take that...

**Sylvia Aguilera:** Well from our perspective, I think that the digital divide is most impactful to recently arrived segment of our population, the Spanish-speaking and the Spanish-dominant segment of our population. So for us, we suspect that's going to be our ongoing battle. We hope that we make progress in the digital divide, but we know that's going to be our main focus of our work from here forward, in terms of that issue.

**Susan Crawford:** There's a deep concern about underrepresentation of minorities in traditional media. If that world is carried over successfully, and Internet video never takes off, I think that would be a great concern for minority communities. So the risks of verbal integration of broadband carriers with content providers and the effect that will have on representation of minorities is extraordinarily important.

**Craig Settles:** I think the struggle that will always be there, whether we're talking two years or five years, is always going to be one of access to resources, right? The Internet, its content, and its applications are all a resource. As long as you have a case where X person has ten times more money than Y person, Y person is going to have a struggle to get to same level of resources that the first person with more money has. That is, I think, a fact that we always have. So whatever the resource of the day is, five years from now, the question of who can afford it and who can get to it, it's still going to be there and it's going to be driven by people's economic status.

**David Sutphen:** I mean I'm an optimist, so I presume we're going to be in a better place in two to three years than we are now. But I think that for those, for whatever reason, whether it's lack of access or still being unconvinced of the value of adoption, then we're going to be talking about more than the divide. But the concrete digital disadvantages that come, and the harm, because it's been alluded to before about applying for jobs online; you can already identify concrete problems. Things like booking travel, where if you are not connected you actually pay more money; now and I think that trend is going to actually increase, not because anybody is trying to undermine people in our community but just because

the efficiencies are so great. And I think that's going to become a real concrete challenge, so hopefully we will keep our eye on that one.

**Christopher Yoo:** I'm really humble about predicting the future. I tell my students all the time in 2001, we would have been talking about the AOL-Time Warner merger as the end of history. As it turns out, it was just the end of 200 million dollars in shareholder value. (Laughter). If I had to predict the hot button issue for three years from now, I think we'll get past some of this stuff. I'm an optimist as well. I think it will be online privacy, and that the ability of what people do with data and the way it gets out there is going to be a tremendous interest to all American communities, in particular, minorities.

**Dr. Bill Lehr:** With that, let me thank Ralph Everett and Dr. Nicol Turner Lee for inviting us all here and organizing a wonderful panel. And let me thank my panelists here for some really interesting perspectives on these issues. I look forward to the Coffee Break.

**(APPLAUSE)**

**Dr. Nicol Turner-Lee:** It is my job to keep us on track so we're going to have to recoup some time. We're not going to have a coffee break, but refreshments are in the back, so please manage yourselves accordingly. I want to us to keep moving and I know that there are some people that may have questions, so I'm actually going to save the Q&A for the end. For those panelists that are still here, and our moderator, they can answer any questions that you may have burning in your mind. We also have questions coming through the webcast as well. So at this time, I'm going to ask Commissioner Clyburn to come up and provide some remarks as we prepare for the second panel, which is on economic policies. She needs no introduction outside of her bio in the booklet. She has been one that has already been referenced by Commissioner Copps as someone who cares about issues related to the Internet and the minority community. Please welcome Commissioner Clyburn.

**(APPLAUSE)**

**Commissioner Mignon Clyburn:** Good Morning everyone. I would like to thank the Joint Center, particularly my homeboy—we say that, Ralph Everett, and Dr. Nicol Turner-Lee in particular for organizing today's event. The Joint Center has once again performed a great service to this nation by gathering some of the top minds in the country to discuss an issue of utmost importance to the future of the American economy and the empowerment of those who have traditionally been left behind. Ensuring that our Internet remains ours and remains open is a priority for this Commission. It is important, however, that we continue to discuss the issue carefully so that we can develop optimal rules that benefit all Americans. To the best of my knowledge, the Internet today is generally open. The fifth principle we propose is attempting to protect this openness. Our aim and effect is to preserve the status quo. Some have raised concern, however, that Open Internet rules would drive up the cost of broadband and thus hurt broadband adoption. We have already heard that but if we are simply protecting what largely already exists, an Open Internet, why would rules to the same effect cause cost to go up? Nothing in that motive of proposed rulemaking suggests that we would be imposing additional costs on network providers. Perhaps then, the point really is that if network providers are committed to discriminate then this new revenue stream would actually lower consumer prices. In other words, by charging content providers for priority access to the Internet, network providers will pass that revenue on as cost savings directly to consumers. Is there any serious suggestion however that this is likely to occur? I have yet to hear such a commitment from providers and I would be interested to hear the panelists in the next session weigh in on that issue.

Earlier this year at a speech at Howard University, I spoke about why the Open Internet is essential in ensuring something akin to a level playing field for people of color. Whereas people of color have been effectively shut out of owning radio and television properties, the Internet offers a fresh and

extremely rare opportunity to get into the game. With broadband, economic opportunity is just a good idea and a mouse click away. I believe passionately that we can't afford to let this once-in-a-lifetime window of opportunity close. I have yet to hear anyone questioning the notion that an encumbered Internet would disadvantage minority entrepreneurs; and historically disadvantaged groups are the ones who actually stand to gain the most from a toll-free Internet. But what I'm hearing is that, despite this likely setback, it is simply more important that folks about debate broadband. In other words, some people believe that we can't have an Open Internet and widespread adoption at the same time, and they're forced to choose and worry about the economic piece later. This rationale, in my mind, has at least two problems. First, we do not need to toss economic opportunity under the bus in order to promote universal adoption. As Chairman Genachowski noted earlier, this is a false choice. As I noted earlier, I have yet to see a convincing model whereby our rules preserving an Open Internet drives prices up for consumers. An aggressive adoption campaign should know it must accompany an Open Internet. These elements go hand in hand. One helps people get online and to be digitally literate, and the other enables them to be the CEO of their company, perhaps, for the first time. There is a great symbiosis here that should not be lost. Second, there is no "later". I say this because we have already seen this play out. People of color have tried for decades to dig ourselves out of the hole created for us in radio and television, but to no avail. Our experience in that medium, or in those media, should be all the motivation we need to seize this truly remarkable opportunity.

Again, I would like to thank all of you and the Joint Center for holding this event and for all the panelists that traveled here to join us today. Your efforts will undoubtedly help us to develop better rules as we move forward to preserve an Internet that is *open* and is *ours*. I thank you.

**(APPLAUSE)**

**Dr. Nicol Turner-Lee:** Thank you, Commissioner Clyburn. As our next panel gets ready, I'd ask that they come up: Joe Miller, Policy Council here at the Media and Technology Institute, Dr. Robert Atkinson, Nicolas Economides, the Honorable Michael K. Powell, Simon Rosenberg, and Kathy Sandoval. I just want to take a moment to pause over what we've been hearing as we go into this next panel. Obviously we're hearing that this was very relevant to the panel title: "Open Internet, Innovation, and Economic Development". We're hearing a lot of ideas around that. But I think that some of the things that we're hearing, which are interesting as we go into the next panel, are about the economic aspects of the principles and how we should form policies. There's a heck of lot going on right now at the FCC, that if not done right, may have detrimental impact on these communities that we talk so much about, those that have been left behind. And I think interestingly enough, the other thing that we're hearing, is while we have a gateway of opportunity, this opportunity presents a gift to small minority businesses. You know clearly folks, the economic recession has been tough and I want to bring us to that reality for minorities as well as small business owners. They're having a hard time right now with the general challenge we currently have to getting market share. So we've got to look at that, and I think some of that came out of this last panel, as we're looking at this innovation divide.

This panel will address some of the news that we've gotten out of Silicon Valley about the declining numbers of entrepreneurs that many companies, those in leading management roles, and some of our greatest innovators around technology are seeing. So let's bring that idea back to the center of the conversation again. While we have so much that we can talk about regarding the rules and the regulations, let's go back to the heart of people who, if you take out broadband, are not necessarily participating at the level that we want them to anyway. That does go back to what as David suggested: getting the basics right before we start delving into something deeper. That's what I've heard so far on both sides of the panel, that there's both good and there's potential impact and harm on these

communities of color. I'm going to pass things off to Joseph Miller, Esquire now. I'm very proud of him. He's our Policy Counsel at the Joint Center, and is working with us very diligently. He is also a scholar in telecommunications policy issues—a legal scholar in that area, an avid reader, and someone who has been paying close to attention to this on various levels from the Joint Center. He is joined by Dr. Robert Atkinson, who is President and CEO of Information Technology and Innovation Foundation, and Nicolas Economides, who is a Doctor of Economics and Executive Director of the Net Institute at the Stern School of NYU. Also joining is the Honorable Michael K. Powell, who will be offering closing remarks. Michael is our National Chairman for our Advisory Committee for the Media and Technology Institute, and is alongside Simon Rosenberg, President and Founder of NDN. And finally, Katherine Sandoval joins us from St. Clara Law School where she is a Professor of Law. With that, I will pass it over to Joseph Miller, and again we will have Q&A at the end of this session.

#### **MODERATOR**

**Joseph Miller, Esq., Policy Counsel, Media and Technology Institute, Joint Center for Political and**

**Economic Studies:** Thanks Nicol, I'm a little bit more low-key. Nicol likes to make sure that, Esquire, E-S-Q., appears after my name, but I don't [laughter]. Good morning and thank you again for joining us here. Our second panel is designed to focus on the economic aspects of the Open Internet with respect to minority communities. We are all very familiar with the arguments for those who are for Net neutrality principles who argue that they are necessary to protect innovation, which goes against the view, generally, that it will stifle infrastructure investments. Our discussion today will be a little more forward thinking, and we will begin from the presumption that the Commission will announce a robust Open Internet framework when it releases the National Broadband Plan on March 17<sup>th</sup>. Today we ask: if Open Internet principles are the hammer, what are the nails? We heard a lot of the barrier themes faced by minority communities, especially low-income minority communities, and so, it underscores the need to look at this disparity from a behavioral point of view and ask how a micro-economic approach can

inform policies and stimulate innovation from unlikely places. We'll do an eight-minute presentation from each panelist and then we'll launch into our discussion, and we'll start with Mike Powell.

**The Honorable Michael Powell, Former Chairman, Federal Communications Commission, Co-Chair,**

**Broadband for America:** Thank you. Good Morning. It is good to be with all of you. If you'll indulge me first a personal privilege, because I'm tired of asking and answering what my wagon is, and I think it's important to say something at the outset. I'm the Chairman of America's Promise, which is an effort to end the dropout crisis in high schools in the United States. We did an event yesterday with President Obama and I want to say that all that we are talking about is irrelevant if we don't reverse the trends in our schools, where our kids are not even graduating. One-third of American kids are dropouts out from high school. If you're Black or Latina or Latino, it is 50%. So broadband or not, if that trend continues, this country cannot figure out being a critical nation or a critical empire in the information economy.

The second thing that I've got to say is that I'm an enormous supporter of the Open Internet. I am somewhat credited though, and I think overly so, for first talking about the four principles that form the basis of the Net neutrality conversation that continues to this day, and has for over the course of nearly a decade. I believed firmly then that we saw elements of an infrastructure and an ecosystem that would prove to have enormous benefits to the American people and the American economy, and I still believe that. But as we have discovered, I have never been involved in a more muddled discussion in my public-policy life. The ambiguity surrounding these issues as to what we are talking about is stunning at times, and it allows people to collapse arguments into big labels and banners. I would only suggest the way that I often think about it for clarity: the first thing I have to weigh is the question of openness from the standpoint of virtue. This Internet by its own construction and its own evolution, evolved into a historically unique way, one that we celebrate; which is the creation of an IBM structure for any machine of any type to speak to each other. It was an innovation that took the intelligence out of the

central role of the network; in which an institution, corporation, or a government would control the intelligence of that network. And responding to the periphery of the network were smart devices in the hands of publishers, consumers, and innovators, so the public of the world could play a central role.

David Eisenberg used to call it, a decade ago, the rise of the stupid network. The stupid network inherently has morphed into what we're talking about in openness. And combined with digitalization and laws so that devices get cheaper, we have created for the first time in the world's history, a platform that allows for very, very low cost production, creation, and most importantly distribution. So you see a flourishing of innovation and entrepreneurship because the traditional barriers of the tangible world, the traditional barriers of the Industrial Age, have been radically altered by the cost of the low barriers for entry to that infrastructure, and Amen, let's celebrate. That it is an enormous virtue, by the way, we should all be cognizant of. What we're for—I've rarely had a conversation with anybody, carrier, or public interest advocate, who disagrees with that proposition—who does not want to see it fundamentally preserved.

So, we should know what we're about and what we're not about. Everybody is *for* this. I think that it doesn't serve anybody's purpose, from an ideological position, that we're constantly choosing one or the other and not really being *for* it. Of course we are. And by the way, I would argue that there are a lot of incentives, even on the business side as to why this is in your self-interest and not just in your heartfelt philanthropic interests. When you hear the term Net neutrality, my view is that what you're really talking about is a discussion of what role, if any, the government should play in using its regulatory authority and the force of law to intervene in the contours of that ecosystem, good or bad. Whether it's "to preserve the status quo", one should always ask what about the status quo needs preserving? I want to make clear, that the point is, let's be honest about what we're talking about: what we should be examining aggressively, what role the government has, and what benefits it can bring.

Don't ignore the potential for unintended and harmful consequences of that intervention. We're talking about a system that isn't perfect but does work relatively well. I would take issue with the idea of where we rank in the country, and I'll talk about that in a minute.

Quickly, to suggest that you haven't seen the most flourishing innovation development in the history of the world in the last decade, and a significant amount of which has taken place in the United States of America; it is the United States of America where Google rose. It is the United States of America, where Facebook rose. The United States of America brought MySpace, Twitter, and so many innovations that are celebrated globally. The critical development and the exciting services that people use were developed and flourished in the ecosystem that we currently have flourishing there. So I am personally proud of American innovation. And as we think about wireless, it is in the United States where the Apple iPhone has changed the smart grid world, and it is in the United States where the Android platform is bringing new innovations. The U.S., in my opinion, is at the innovative front-edge of changing that ecosystem for the better. We should be excited about that.

One thing I would always say as reform regulators, I would always suggest to you the caution—with all due respect to my good friends that make this argument—that the rules are needed for *clarity*. I've rarely encountered a regime, which had the benefit of being clear. Just understand, and I'm not even going to be taking a position on that, you might be kidding yourself with the potential that an agency can do that well. There will be definitional problems. You will create an enforcement mechanism where people are allowed to constantly challenge everything being done out in the marketplace, and can demand that the government weight in on issues constantly. That is a rule-making proceeding—or an enforcement proceeding, or some sort of obviously hideous craft in which the government may take, five months, six months to make a decision. More often, if I have to be honest about the nature of the organs of the FCC, these things take a long time. I'm not sure if that will clarify or make the sidewalk

clear. I do think that we should at least pushback on the notion that what we have now is lack of clarity, and that a significant role of government will produce substantially more clarity. I'm not certain of that.

I'm also a big believer in the Heisenberg Principle. I don't believe that it is ever true that the government observes the problem, just like the Heisenberg principle, or attempts to intervene, or measure. They want to change the nature of the system itself. And by the way, no regulator sets out intending to do that, necessarily. But it is always a consequence of their role; they will change the nature of both innovation choice, and change the nature of business model choices. They will change the nature of what's done and what's not done. And they should be humble enough and honest enough and be cognizant of the reality of their distorted impact on markets. Some of those may be good, but we shouldn't only celebrate the start of static pronouncements about the value of this stuff. We should not be ignorant to the secondary consequences, which often prove harmful or retarding. To segue if I can...so what does any of this have to do with underserving minority communities and I love the title, God knows what you're supposed to do with it---Economics, Open Internet Principles, and Serving the Unserved. That's a triple witching, in terms of complex ambiguity, but I'll try. Dr. Nicol! You did a good job with that! [Laughter].

The first thing I want to say about the underserved community is let's also not diminish what the real problems are. The real problem is adoption. Just put aside for a second everything that we're going to talk about on infrastructure. All these ratings that people like to talk about, being 15<sup>th</sup> in the world, for example, on the OECD. Remember the OECD measurement is a subscription set of criteria. The United States has more Internet users, in total number, than any country in the world. Absolutely true. What the United States doesn't have as per capita, based on subscription of penetration rates: it ranks lower. Right? I think the math means that if you substantially increase adoption rates then you would substantially increase the U.S.'s ranking in the world, if that happens to be super important to you, in

and of itself. But when you typically look at minority communities, the problem is even more pronounced as not being online, even when it's available. Why is it?

You know I still think that this community, including me, doesn't think long and hard enough about why such a high cross-section of the country is not finding the value that all of us who love this stuff, who come again euphorically pronouncing "the-greatest-innovation-of-the-history-of-mankind-and-you're-completely-disadvantaged-without-it!" Why is such a huge percentage of the population apparently in disagreement, or haven't yet come to the same conclusion? This country would do itself a great service if it mostly addressed, and significantly addressed, that question. I would say one caution about paternalism: this a free society. Just because I like to do Facebook, doesn't mean that I have the right to demand that my neighbor do it if he doesn't want to. And I do think, I've sort of always felt a little uncomfortable with adoption discussions, because at the end of the day, you're supposed to provide the opportunity, provide it an affordable enough rate, and I would hope that for the betterment of the country that all consumers could see the value in that. But they get to choose.

What it really is, is that you have to win them, not demand that they use it. You have to win them. The first part of adoptability seems to me, it's about relevance and value. And when you look at the Pew Internet studies, what is really astonishing to me is when you really poll people who are not online, access isn't hugely the most significant factor. It's almost this terribly disturbing answer about relevance, value, and they're not persuaded of the value of the Internet. Now that's a failure, let's be honest, that's a failure of the content, applications, and services industry. For all we can get excited about Google or Facebook or whatever great services, I'm a fan of all of them, but we have yet to probably deliver the kind of content and services that are the highest relevance to these communities and the way that they see the value in paying for it. I think that there is a lot to be mined there.

Government is really good at preaching to the industry. What *it's* doing is failing at providing government 2.0 services across this country and communities everywhere. It is ridiculous that the single-mother who is holding down a job, maybe two jobs, has to take off all day in the city of Washington to go register at the DMV when in another state you can do that online in ten minutes. Government documents, voting...what thing is it that a user has no ability to disenfranchise themselves from. They can choose not to watch YouTube; they cannot choose not to pay their taxes. They cannot choose not to send their children to school. They cannot choose to steward the obligations of citizenship, which is a relationship between you and the government. How good is the government of this country doing in providing goods and services online that are compelling and important, that might move that needle up there substantially. So that's important.

But of course, there's more to it and I commend the Chairman, he's talked about that. The cost of the hardware and the infrastructure to move on with that issue—the literacy, well, you have to have a different level of knowledge to be an effective user. This is not television. We should remember that. This is not couch potato. This is not anything that you can sit down and passively be entertained by. The Internet requires your participation. It requires you telling the machine what to do. How many times have most of us sat there, and by the way even more so than in days gone past before search algorithms, and just stared...thinking, what should I do next? Maybe I'll go to Amazon, see what's going on over there. I felt like when I was a teenager, just wandering from block to block to see what's up. I mean a huge part of the Internet is like that. You stare blankly. It won't do anything until you tell it to do something. It won't go anywhere until you choose to go. Literacy is the issue.

To move on quickly, then there's the issue of affordability. You heard Commissioner Clyburn talk about it, but put aside for a second whether it's affordable or not. I would say it's interesting to see the price-point compared to all the other kinds of goods and utility services that are delivered in this

economy. I mean, I like the price of my broadband, but I tell you what, it is a heck of a lot less than the price of my electricity, and this winter, my electric bill. My heating bill is in the neighborhood of \$200 and \$250 a month. My water bill comes close. A lot of my costs are substantially higher than broadband. Put that aside for a second because I do think that there are affordability challenges, particularly in underserved minority communities. Can Net neutrality cause prices to rise? I have to respectfully disagree with Commissioner Clyburn; I think that it can. Because even by the Commission's own admissions in some of these filings, understand what you're fundamentally saying in at least one version of Net neutrality. You're saying that certain kinds of business models are disallowed, including models that may spread cost around different elements of business communities rather than the consumer. The only one left—if you really had a non-discrimination principle—who absorbs the cost, is the consumer and the end-user. Because you're not allowed to charge Google, and you're not allowed to charge anyone else you have to; all costs are born by the end-user. And by the way, an Economist would say that this is efficient. Maybe so, but if you are an adoptability deficient that large, you'd want it stable.

Now there's an argument about: "well, it's not like that now, so why would it happen later?" There's a big piece missing of why it will, because we want a substantial increase in magnitude of cost, infrastructure, and investment. We're not asking the network to stay still. The Chairman talks about a hundred megabits a second in a hundred million communities. That's a major capital expenditure. Google would like to see one gigabit per Internet. That's a massive capital expenditure. So affordability does matter, and I think that if you're going to commit to a regime that says legally only the end-user pays, you have to worry about *that* minority community and you have a right to worry about that. And part of people suggesting that they're somehow, "just for sale," if they have a legitimate concern. They deserve to at least have that concern taken on as Americans.

The last thing that I would say is about business entrepreneurs. I agree entirely that this is the opportunity of the century for minority businesses to get online. And they're particularly important if they are going to provide content that is relevant to the communities who are trying to increase adoption for them. But let's be clear: the biggest problem of minority entrepreneurship is capital access. If you look at minority firms, they start up with less capital, they get less capital invested, they don't get to scale, and they don't get to grow. What is—what minorities frequently do in an effort to deal with that problem, is to strike strategic partnerships and relationships with other providers to help with their capital investments, right? I'm not saying that it's right or wrong, but if I was on the board of a small entrepreneur company and we were building a local community portal for minorities, it would be natural for me to think about whether I could partner with Comcast to make that a viable product. I worry that Net neutrality would say that's illegal. Look at the minority businesses, like TVOne. TVOne was able to be produced because infrastructure providers and distributors invested substantial sums to make that a viable product. Do we need to prevent that from happening? Finally, I would say if I'm a new business, my big competitive fret is not the infrastructure provider, right? But we sit around in management worrying about the big web guys. If I have a new web business, I've got to go up against Google, Facebook, Amazon, Microsoft, those are companies that are juggernauts in their space, with 80% market share in their niches. Here is the last point: they also own, by virtue of their wealth, enormous access to personally owned infrastructure that gives their services and application enormous advantages. Google has the largest data center, I think, in the world. Amazon has one of the largest storage facilities in the world. They have access to supercharge their products and services that a small entrepreneur doesn't. Isn't one possible option that they should be able to have strategic partners with infrastructure providers that might provide them with competitive heft to go against the bigger guys, and should we be worried about that? I don't know the answer, but I think they are legitimate questions, and thanks for having me.

**(APPLAUSE)**

**Joseph Miller, Esq.:** This kind of reminds me of my previous life as a Jazz musician, so we're going to run this more like a jam session. Hopefully, we'll have a lot of the right notes here, and since there's no real rhyme or reason to the order of the speakers, next up we'll have Nicholas Economides.

**Nicholas Economides, Ph.D., Professor of Economics and Executive Director, the NET Institute, New**

**York University:** Good Morning. I'm Nicholas Economides, Professor of Economics at New York

University and Executive Director of the NET Institute, which does research on issues of networks, and

more importantly on the Internet. Let me start with some numbers. You have seen this many times

before: the U.S. is number 15 in Internet penetration. What does that mean? I mean, this can mean

many different things and have many explanations. But one thing is for sure, that despite of the great

innovation that I also believe the United States has benefited from on the Internet, it is still not doing

that well. When I present this chart, especially in Washington, the biggest objection was not that the

U.S. was number 15, but that it is below France. [Laughter]. So things have changed; it's not the biggest

objection anymore. The next slide is going to show that even countries, many countries, with lower per

capita income are doing better than the United States. You can disregard Luxemburg, it's a tiny country

with a lot of bankers, and a very high per capita income. So disregarding Luxemburg, you can see that

most countries that are doing better than the U.S. are lower, and again if you look at minorities, the

minorities are doing worse in terms of penetration than the average user.

In certain times, I remember in '94 and '95, all the people in the telecom conferences would say: well, this is a great opportunity for minorities, the existence of the Internet, because they can leapfrog to the front. They have all the disadvantages in traditional media, but here we have availability of information and a way for everybody to get it. So there was great hope that minorities would benefit tremendously from the Internet and equalize the various disadvantages that they had. But when we see

where we are today, there's also disappointment. On the demand side, we see Internet penetration for minorities, and even if you adjust for demographics and you adjust for income, still the penetration is lower for this group than the average in the United States. On the supply side, we also see less minority-produced content and applications, and you also see less content made for different minority groups.

The fact that we see these weaknesses on both sides of the Internet; on the demand and the supply side, is not surprising because of the interactivity that exists with the Internet. In many groups—for any group—higher adoption leads to higher demand for the content, and this reinforces adoption. and so and so on. So these two things go side by side. It's like the chicken and the egg problem, and there is no simple way to improve one without improving the other. But if you do manage to improve one, you will improve the other as well. Now about net neutrality: does net neutrality legislation help or hurt minorities? Essentially the FCC proposes to codify the present, the regime. Net neutrality proposes non-discrimination toward the content side of the market. It would have to be—it is important to clarify, that this is not non-discrimination across the board, it is non-discrimination towards the *content* side of the market. So rather than a discrimination scheme, for example, pricing according to bandwidth for those consumers there is no doubt that this is a wonderful thing.

Here is the diagram that you might have seen before. It is essentially trying to say what's going on. You have the Internet back on in the middle and you have an ISP. I put AT&T in as an example, facing toward residential customers. Residential customers pay some subscription price, symbolized as "p" on the chart. On the other side, you have content and application providers and they have their ISPs, and AT&T would like to impose some fee, theoretically, to the application and content providers. Not only these very big ones; like Google, Yahoo, or Microsoft, but also small businesses, minority-owned businesses and so on and so on. One version of the discrimination would be to impose some fee on everybody and another may be to impose differential fees, symbolized on the chart as S1, S2 and so on,

depending on what kind of prioritization each one of these businesses get. Now behind this, keep in mind that nobody is able to do this, unless they have market power. So AT&T and anybody else that is on this side of the network will not have been able to do anything like that unless it had market power. The second thing to keep in mind is this: although we focus on the very big guys, the big guys like Google, Yahoo, MSN and so on who might be able to afford whatever fees that are there, this proposal essentially is to be able to charge millions and billions of possible clients and producers of content and applications on the Internet. Some of them might not be able to afford it. The proposal is to provide people to pay fees for residential access networks, and if Net neutrality is a bonus, it makes it much more difficult for small and minority businesses. The non-profits by default, by definition, don't have so much money. Individuals, small businesses, and minority businesses would be significantly disadvantaged. For minorities, if Net neutrality is a bonus, then the access network will decide who is going to be the winner on the other side of the market. They would have the opportunity to decide who is going to be the winner in service, who is going to be the winner in content, who is going to be the winner in minority content and so on.

Now one of the things that I keep hearing in this debate is that if discrimination is allowed, more money will be raised, and because more money is going to be raised for the access network, these access networks are going to expand the bandwidth and the mobility of broadband. But in fact, if we allow prioritization, we will create a very perverse incentive for an access network. Because if an access network has a low quality good, let's say, a slow good, and a high quality good—the fast good, it has incentive to make the high quality good more desirable and one way to do it is to make the slow good worse. And this is not a very, I mean, I don't need a Ph.D. to explain this to you, it's very well understood. You have two goods, you want to make one of them more viable, you degrade the low one. Now, how do you degrade the low one? You degrade the low one by creating artificial congestion. This

is a serious concern that if we allow prioritization, there might be artificial congestion, and the goal for the networks to invest more in broadband might be going in the opposite direction. So if we allow discrimination, the biggest loser will be innovation—both by minority groups and others, because there would be a reduction on the positive network effects that we see on the Internet. Network effects means that as we have more innovation on the provider side, there is more subscription on the consumer side and vice versa. These positive flows are going to be diminished, and because of the reasons that I told you before, diversity of content would also be diminished because all content providers, especially the small guys and the minority guys, would be unable to pay the fees that might be accessed by the access networks.

Could there be a saving grace with this? I mean, is it possible that creating discrimination will have some positive effects on penetration or adoption of minorities? I think that's unlikely. First of all, access networks may not decrease prices. There is no guarantee that just because an access network is going to get more money from the content side that it will cut costs to consumers. In fact, I can show varied mathematical models in which this is not true. So there is no guarantee of that goal. There is no guarantee that minorities are going to be paying less. But even if you have a model in which, after discrimination, prices to consumers fall—that doesn't necessarily mean that consumers are better off. Consumers care about how much content is up there, and if discrimination has diminished the content that is there, then you have taken away satisfaction from the consumer—even if you give them slightly lower prices. And this, I think, is going to affect more minorities for two reasons. First of all, because they are poorer and therefore they cannot afford to pay these access fees; and second, because minorities by definition are smaller markets. They have smaller markets than the majorities and therefore the ability to sustain diversity is limited. Even if this is created and has lowered the barriers of

entry for production of content for everybody, and that's great for minorities, we shouldn't really increase the barriers to entry by allowing these fees to be posted. Thank you very much.

**Joseph Miller, Esq.:** Mr. Atkinson, your remarks please.

**Dr. Robert Atkinson, President and CEO, Information Technology and Innovation Foundation:** Thank you, it is really a pleasure to be here and I appreciate Nicol and Joseph for inviting me. I want to make a controversial statement and say that I'm for a Closed Internet. (Laughter). I want a closed one. Obviously, I'm kidding. But my point is, framing the debate as Open is really not the right way to frame it. Everyone wants an Open Internet. One speaker earlier alluded to a Wall of Gardens. Well the last time there was a Wall of Garden on the Internet, it was AOL. There has never been a Wall of Gardens on the Internet in this sort of post-AOL world. So this is a little bit like a debate about, "I'm for an Internet that supports motherhood." Yes, we are for that kind of Internet. The other thing this debate reminds me a little bit about is it is sort of akin to saying, "you know, we better start regulating our highways because we could have rule that says no Toyotas." Now maybe that's a good rule. But seriously, you could have a rule that says if you have an Obama bumper sticker, you're not allowed to drive, or if you have McCain bumper sticker, you have to pay more. Republicans are richer. (Laughter). But let's just say we did that—no prioritization on the roads. You know, what does that mean on the road? That means ambulances have to sort of stay there and you can't turn your siren on, because you don't have priority. It would mean that HOV—if you have two people in the car, you can't get special treatment. It would mean that if you're in a bus rapid transit, you can't have special treatment. So we have this network, called the road network. We allow discrimination on it, if you will, we allow prioritization on it, but we don't regulate it. It works because of the way the norms work and what we've done. So let me suggest in that frame, there are really three parts or three sets or separate sub-issues of the Net neutrality

debate. Part of the frustration that I have with this debate is we never really sort of break it down, piece by piece, and look at each thing separately. Let me do that very clearly.

The first piece is what you call blocking degrading: an ISP says that you can't go to this site, we're not going to let you. Or if you go, we're going to make it terrible. The second is the issue of pricing, which several of the speakers have alluded to. The third issue is the issue of managing a network or determining how the actual network works. Let's talk about all three in three possible scenarios. One scenario is where you can imagine the worst possible abuse in each of these cases. Then there's a scenario where you can ban it completely so you don't ever have to worry about any possible abuse. And the third scenario, which I would say is the right one, is you'll have a whole lot of good things and whole lot of bad things. So let's talk about total abuse. You can imagine that there is some kind of idiot out there who owns a small ISP who doesn't think good minority websites should be allowed, and he's just going to ban them. You can certainly imagine that. You can imagine, as Professor Economides did, that there would be ISP's that would impose a mandatory charge on any application or content provider who wants to get to their customer. I think Professor Economides suggested that AT&T wants to do this. I missed that press release because I have never heard an ISP say that they want to impose a charge on ITIF and an application would have to pay to get to an AT&T customer in Texas. I have never heard that, but that would be bad. We would all readily admit that if that was the regime, that would be very, very bad, particularly on minority businesses because they tend to have less money that we've heard.

And the third would be, lets just say, managing the network in any possible way. Like, for example, banning any VOIP applications, that would be very bad. That would be particularly bad for low-income consumers for whom VOIP is a low-cost alternative. But look at what's happening: none of these things has ever happened in the U.S., with the exception of Madison River. The Madison River case, which is a VOIP blocking case, was immediately drafted, and rightly so, by the Commission. So not only

has none of this ever happened; but I would also argue, none of this will ever happen. The incentives for ISP's are all in the other direction. The amount of public outcry, uproar, the congressional hearing that would occur a week later, the FCC's hearings and oversights, the informal punishment that the FCC would impose, to me, all suggests that for consumers—this is really about nothing.

Also, a couple of other people alluded that we can't really trust ISP's because of their past behavior, and redlining was brought up. We did a study about three years ago, a very informal study, that we presented at the Mid-Atlantic Regulatory Utility Commissioners Conference where they had a panel. The Chairman of the PUC of the District of Columbia asked me to present on this question: Is there a digital divide in the inner-cities, with regard to the supply side, not the demand side? In other words, is there broadband available in these inner cities. So we did a very informal study, but we looked at the six lowest—the six poorest Census tracks in the District and Baltimore, and the poorest three in the District and the poorest three in Baltimore. We randomly identified twenty households and then we went online and asked, "do these households have access to broadband?" We had no idea whether they would subscribe, we just simply said, can they subscribe? And what we found was that in 100% of the homes, in all six areas, they could subscribe to broadband and in between 85%-90%, depending on the census track, could subscribe to both cable and DSL. This was three years ago, before fiber. So that suggests that there isn't redlining. Also with the issue, with race, is that they have enormous profits, and we can't trust them. This goes to another point that Professor Economides made about, well, that they would just take the money. We've done some back of the envelope calculations which suggest that if we were to slash the profits of AT&T, Comcast, Verizon, and Time Warner, and all the other ISP's; just say, passed a law that says "your profits will be cut by half," which I'm not advocating by the way. But if you did that, the price of broadband would go down by \$1.00 a month. So we don't have a system in the U.S. where prices are related to excess profits or exorbitantly high prices. What would we do if we were

talking about the impact on low-income and minority communities? Well, first of all, it certainly could have the potential of blocking—having ISP's take an aggressive role in blocking malware sites. We saw that recently with, I think it was AT&T, or maybe it was Comcast. Somebody just recently blocked a malware site and they got criticized enormously for doing it. Well look, if I can afford Symantec software, which is about \$40 for your subscription; but if you're a low-income user and you're not using, and you're not being able to pay for McAfee or Semantic, you *do* want your ISP to be blocking malware sites.

Let's talk about low-income, two-sided pricing. First of all, I think the key point here is that I have never seen a proposal for mandatory two-sided pricing, which Phil Weiser and I wrote about it in our report almost four years ago now, called "The Third way and Net neutrality." We talked about two-sided pricing, voluntary two-sided pricing and there we do have to say that the economics suggest that if you do voluntary two-sided pricing—if someone wanted to pay extra, they'd get best efforts without having to pay. But if you want to pay extra; let's say you're a minority business and you have an application that needs packet prioritization, you're going to try and compete with somebody else that doesn't need it. You need it because you are trying to do something that has latent sensitivity to it. Under a strict Net neutrality regime, you are shut out of that marketplace. You cannot buy that service voluntarily. The notion somehow that added value—added revenue—logically will reduce cost on the part of ISP's wouldn't go to either reduce prices or expand supply. To me, this flies in the face of all economic logic and evidence. If that was the case, what we should see is ISP profits continuing to rise every year, year after year, as prices go up and as costs go down. We would expect to see, if that is the case—that if they have that pricing power right now, to basically to take voluntary two-sided pricing and just throw it right down to the bottom line. If they have that pricing power now, then why don't they raise prices 25% on the regular broadband? It will go to profits. I mean, name a company out there

whose stockholders are not telling them, “We want you to have a very profitable quarter.” Well if you can do it, why don’t you do it? The reason they don’t do it because there is competition that is constraining prices, otherwise companies would. There is no company in the world that would not raise prices if they could get away with it.

The last part is about network management. Let’s just say that hypothetically, we say that we are going to really severely limit network management. Let me cover, very quickly, what I think, perhaps the proposals are. Well one thing you would do, for example, is you would make the e-book reader a much more expensive proposition. Right now, if you buy an e-book from Barnes & Noble or Amazon, which by the way when you buy an e-book, you can buy books for 15%-25% less, so it seems to me a pretty useful thing for low-income communities. That e-book reader gets really cheap wireless service because it sends you the e-book at lowest—at the time the network’s not good...what Christopher is talking about. You know, you don’t need to get those packets across the network when people are talking on the phone. So it looks at those little intercedes and sends it. Wireless management. Take the Joint Center report, which by the way, if you haven’t read it, is a very excellent report and I commend them on it. But one of the very interesting findings—there are a number of them in there—but one was that more African-Americans exchange photos over wireless Internet. Well one of the reasons that you can do that and they don’t charge you a lot of money to do it is because they put voice in front of the line. Well if you can’t do that then you’re not competing with image packets. Then you’re going to have to raise the price of image packet transport.

How about gaming? The Joint Center report talked about how minority groups are more likely to own gaming consoles, but one of the developments in gaming is that you want to do interactive, multi-user gaming and often times when you do that online, you want applications that have very low latency. You don’t want to kill someone and have it take ten milliseconds to go there because you are now dead.

(Laughter). You can't do that. You can't have a gaming company offer to you to pay an ISP a little bit of extra money so that you get to have killing in real-time. Or maybe it is an educational game in which you can fix someone's broken ankle in real-time.

The last thing I'm going to say is that I have to talk about the OECD data. You've probably done more work on that than anybody. First of all, we're not 15<sup>th</sup>, we're 12<sup>th</sup>. The reason we're 15<sup>th</sup> is because it's on a per capita basis. We should not measure this on a per capita basis—we only have one broadband line to our homes. We don't have four because I have four people in my house, we only have one. The reason why Europeans are higher in this is because they have smaller household sizes. So we're 12<sup>th</sup>. Is that better? Yeah it's better! But look, the real reason why we're behind, the number one factor of why we're behind on the OECD boils down to one thing and I'm happy to share our research on it if you want our report. It's on a website called "Explaining the International Broadband Leadership." It's Computer Ownership. If we had the same rate of computer ownership as the Japanese, the Koreans, the French, we would go up to about 5<sup>th</sup> or 6<sup>th</sup>. The reason why we don't have computer ownership goes to the point of the digital divide and the need to really focus our attention there. We just recently wrote a report earlier in the Fall on policies for the digital divide, where we argue we need to have subsidies through schools for low-income families. Low-income families with kids in school: you get discounted computers; you get discounted Internet access. Or to fund much more aggressively community organizations that are working in low-income communities to address these questions of computer ownership, computer training, computer literacy. That's what I really think the focus should be on.

Last thing I'll say, I can't resist my sort of broad, generalized, overly, overly broad statement; but I think there are three big choices in this entire debate. One is what I would call "advocate." In other words, solutions to the market, I don't think that's the right choice. The second is I always say is "regulate." I think there are some real risks to doing that. Now that's not to say—and I think that maybe

Susan and I 100% agree on our sort of poor vision of what the system should look like. My concern is that if we try to codify, we end up sort of precluding some of the good and some of the bad, and it is hard to be that surgical. I would much rather see a system where we have very active public-private partnership of oversight, a little bit what the EU just announced. We have an event on Friday that we're doing, and I encourage you to go to on our website: Public Knowledge and Silicon Flat Irons. It's a panel looking at a discussion on how do you go about doing this issue of setting these rules and how do you create a system that will be flexible enough to allow innovation, but have enough teeth to really prevent of stop some of things that could wrong. So with that, I would say that facilitating is the key goal that we should all be focusing on. Thank you very much.

**(APPLAUSE)**

**Joseph Miller, Esq.:** Ok, I'm going to have to be politely rude here and ask that our next panelists limit themselves to five minutes. This will give us enough time for questions. We'll start with Professor Sandoval.

**Catharine Sandoval, Esq., Professor of Law, Santa Clara University:** Thank you very much to the Joint Center for the invitation to be here, for the opportunity to talk about these important issues. What I wanted to talk about is as we look at the whole issue of minority communities and access to the Internet—net neutrality; I think first of all it's important to frame these issues in terms of some of the policy principles that helped to bring us where we are today and that have really profoundly shaped both the Internet and access to it. Those would include common carriage, the requirements for common carriage—which is the requirement of non-discrimination against packets or traffic over the network, and also universal service. So, from its inception, the Internet was protected by the FCC's common carrier rules that required non-discrimination against data traveling across the telecommunications network. You know, it's interesting with the Internet, there becomes this sort of

lore of the Internet that it was born free of regulation, that it has flourished free of regulation. And in fact, actually, the opposite is true. It was born in an environment protected by the regulation of common carriage that prohibited discrimination. I've actually argued in an article I wrote called "Disclosure, Deception, and Deep Packet Inspection: The Role of the Federal Trade Commission Act's Deceptive Conduct Prohibitions in the Net neutrality Debate" that the Internet's architecture assumes common carriage, it assumes non-discrimination, which is part of why we're having so many of the issues we're having today.

And, so, the FCC also had required facilities-based carriers such as telephone companies to sell Internet access to independent service providers, which was another important means of competition and also access. Another important point that I think we need to keep sight of is that the Internet was built on a foundation of universal service policies. Congressional, FCC, state public utility commission, and also industry policies ensured wide deployment of telephone networks, including service to rural, low-income, and minority communities. This infrastructure has been absolutely critical. Cable companies were also subject to universal service rules within their franchise areas. This required cable service to all communities within the cable franchise. So as Professor Yoo was mentioning, this also laid the foundation for the widespread availability of wire-line telephone and cable-based Internet access, except in places where, for example, you have no cable, which happens a lot—even in areas in the Silicon Valley, like in the hills of the Silicon Valley, let alone once you get ten miles outside of Fresno. This legacy of universal service also helped to develop the backbone for wireless Internet.

Where are we, then, today? Since 2005, Internet companies are no longer subject to common carrier rules requiring nondiscrimination. Also, commensurate with that, beginning in about the mid-2000s, many states adopted statewide video franchise laws that did not include universal service permissions. This also raises a number of issues for the future. Some of these issues are: will Internet

users in communities have access to the content of their choice? Will high-speed Internet construction reach all communities, especially as more and more states have basically adopted regulatory network that doesn't require universal service? And, is wireless Internet a complement to or a substitute for wire-line Internet and how should it be regulated?

One of the things that the FCC has asked for is examples, analyses, and statistics. In my research, I was looking at this question of do we need network neutrality pools, and looking at what are the ISPs actually doing and how is it affecting consumers? So I would submit, an analysis of ISP service provider promises regarding Internet access as compared to their practices is crucial to an examination of Net neutrality policy. We have to look at whether current market practices provide sufficient information on consumers, application, and content providers. One of the things that I found, I analyzed basically ISP promises: what are they telling us that we're going to be able to get as compared to their practices; which required a very detailed examination—and was sometimes really difficult to find in their terms of service or access abuse policies. One of the things that I found was that, particularly in the wireless world, maybe ISPs promise unlimited Internet access but their fine print indicates that access is not unlimited. And in fact, in the wireless world, we see two predominant, contrasting models for wireless ISPs. One set promises unlimited data service but that imposes significant limitations on legal applications such as peer-to-peer, which also includes some Voice-Over-Internet Protocol services such as Skype, which is both VOIP and a carrier platform. And then the other model offers varying levels of bandwidth packages, and allows a range of uses subject to general limits on uses causing a high burden to network capacity. One of the things I looked at is the iPhone, and this is an example of what I call “where does unlimited mean limited?” One of the things that I would mention about this is that, when I published my article “Disclosure, Deception, and Deep Packet Inspection” in November and had looked at some of these issues, I wanted to do an update. So to find out what is the status of what iPhone and

AT&T are actually promising to their consumers in terms of data access, I searched on the web, went to the iPhone store on the web, and it was really interesting because, before it would even allow me to find out about the terms of what extent of data access they were offering or promising or the terms of service, it required a credit check. So think about that.

One of the things that I've never seen anyone address when we talk about pricing as an issue for underserved minority communities, is what is the issue of access to credit? Particularly when you have states like mine, California, we've got twelve percent unemployment, huge foreclosure crisis, and a lot of people have problems with their credit. This is because you have a two-year contract to even get the iPhone, and that you can't get the iPhone if you don't have good credit. But I think it's also a real problem that you can't find out about the terms, at least through their main site, without going through a credit check, which is also a hit in and of itself to your credit. You know, I'm a relatively sophisticated user, but it took some doing to find another site where I could actually find their terms without going through a credit check and taking a hit on my own credit. What happened and what iPhone promises – and AT&T promises – is that the data plan for the iPhone includes unlimited data in the United States. But when you go to their separate terms of service, which can take some doing to find, they specifically prohibit uses that cause extreme network capacity issues including peer-to-peer file sharing and also downloading movies using peer-to-peer file sharing. Another example of this is MetroPCS. They advertise their MetroWEB as “your unlimited connection to the Internet.” But when you actually look at their terms of service it prohibits uploading, downloading, or streaming of music, movies, and games, VOIP, and peer-to-peer file sharing. T-Mobile broadband: they offer unlimited talk, text, and web for \$139 a month or they have another plan for 750 minutes which also offers unlimited web access. And then, once again, in their separate terms of service they prohibit use of peer-to-peer file sharing that broadcasts to multiple services or recipients. Contrast that, these unlimited service offerings that, in

fact, are really limited with other offerings, such as Verizon Mobile, which has plans ranging from 250 megabytes to five gigabytes with various pricing. VOIP is actually specifically permitted and they say it's ok to upload, download, or stream audio, video, and games, and they prohibit use of data that interferes with other users' services or network capacity. It's another model of doing this. Comcast, which I found out has mobile service, simply, basically, has a bandwidth limit and then charges initial amounts for each megabit consumed above that bandwidth limit. Sprint Mobile also reserves the right to terminate service for any use that adversely affects the network and reserves the right to limit throughput speeds for data transferred if the use exceeds five gigabits a month. There is no specific limitation on peer-to-peer.

The implications of this for net neutrality are that some ISPs promise unlimited Internet access but, in fact, impose material limits on peer-to-peer and other programs. It is certainly true that network capacity is a real concern particularly on wireless and also on shared-usage service such as cable. But this promise of unlimited Internet access is inconsistent with the limits that they are imposing on illegal applications, and I've suggested that's actually something that the Federal Trade Commission Act does ban. It's important to realize that also, peer-to-peer and video have become widespread uses on the Internet. So, speaking in terms of the Joint Center study, where they are finding that a lot of minorities are using the web to look up information about jobs, look up information about health. Perhaps there isn't, especially among the older generation, not as much usage of video. But, I'll tell you, when you work with young people, there's a lot of usage of video.

I also see a day where you look at things like one of the unintended consequences of the transition to digital television, in that, in places like Los Angeles, there are now 70 digital television channels available over the air. There's enough competition in digital television and over the air that many people are actually cancelling their cable service and seeing a real alternative. I think here that

the Internet can also be a platform for speech free of the gatekeepers, characteristic of broadcast or cable. I won't go through the rest of my slides in the interest of time, but let me say that some of these same issues that I've identified in wireless are also an issue in cable, where some of them have made promises about general levels that you can use five megabits, for example, but they also reserve the right to interfere with particular applications or to do whatever they believe is necessary in the name of network management. I think that's also going to be critical for the FCC to define what is reasonable network management and also to make clear that carriers cannot induce their subscribers to contract out of the FCC rules. Nor should they be able to escape these rules by one of the provisions that I found, that is, universal in all of these contracts is that most ISPs reserve for themselves a unilateral right to modify their contract at any time, in any way. Some of them say that they may notify you or they may post it on their website or some other appropriate location, wherever that is. They assert that your continued use of the cell phone constitutes acceptance, or your continued use of the service, such as cable, constitutes acceptance. As a professor of contracts, let me tell you, there are a number of defenses to that. In contract, the whole notion of freedom of contract is abhorrent to the idea that one side can unilaterally modify the terms and impose it on the other side. There are a number of particular contract doctrine defenses I would be happy to talk about. As we look at transparency, we also have to look at how can we create policy so that consumers and marketplace providers, occupation developers, really know what they're getting and do not face undue discrimination. This is going to be important for maintaining access to content and a platform for free speech and for innovation and economic development. Thank you very much.

**(APPLAUSE)**

**Joseph Miller, Esq.:** Thank you. Thank you, Professor Sandoval, and we will discuss in the question-and-answer session how to look at some of those policies. And last, and certainly not least, is Mr. Rosenberg, if you could come up, please, for your remarks.

**Simon Rosenberg, President and Founder, NDN:** I will try to keep it brief because I know lunch is soon, and I'm very grateful for the opportunity to be here. I just want to commend the Joint Center for conducting this great conversation. I would like to speak very briefly and not to repeat so much of what's been said, just pull back for a moment and talk about two big trends that are also important to keep in mind as we continue to inform this great conversation that is taking place. First of all, what is happening when we look at the economic impact of all this, as we talk about the broader macroeconomic concepts in the United States, is that we are going through an enormous transition to our economy itself, in that, we are moving to a period that Fareed Zakaria has called: "we're witnessing the rise of the rest." We have seen now global competition itself intensify, for our businesses, for our workers, for all of America. I think that part of the strategic context in which we're operating now, is that since this new age of globalization has been ushered in, which is why arguably the moment, was China's ascension into the WTO. You know, America hasn't been able to produce rising wages and standard of living for its workers over a ten-year period of time during which, for example, [comment directed at Powell] when you were in office at the FCC, there was robust economic growth in the United States. So one of the backdrops to the challenges that we have is that it is unclear in this new globally competitive age, in the "rise of the rest," that we know how to create rising standards of living for all workers. At this point, certainly, we haven't been able to do it for what we call "the lost decade" these last ten years. The issue of creating economic opportunity for underserved communities and for people of color is intensified by the greater challenge we have by the inability to do this for all American workers. And the challenge that is posed to us as policymakers, secondly, on a more optimistic note, is

that we are seeing this incredible explosion around the world of the ability for people to connect to what I call the “global communications network.”

You can call it the network, the Internet, but I think that as we look at what’s happening today, there are four times as many people in the world who have access to the global communications network through a mobile device than they do through a traditional Internet. The rates are exploding: 60 percent of everybody alive today, anywhere in the world, regardless of socioeconomic status, has access to the global communications network. It is based on rates of growth. If you can get to six million people and 90 percent penetration globally sometime in the next ten years... What an extraordinary moment in history where we are now—at a point where everyone in the world, essentially, will be. Getting that last ten percent is going to be a challenge in every society around the world; here in the United States, and certainly in the developing world. But the rates of growth in adoption are staggering all around the world. There is a fundamentally different ecosystem being built on which the 21<sup>st</sup> century global economy is going to flow than anything we could have imagined ten or 15 years ago here in the U.S. and around the world. I think that the reason why this conversation is so important here in the U.S. is that every civil society is going to be fighting this out all across the world. This is a consequential conversation because there’s no way to imagine the life success of any child anywhere in the world that did not have access to this global communications network, and the ability and the facility to learn how to use it.

So just two fundamental, quick takeaways as to help inform what has been a remarkable conversation. One is that, I think, we have to focus as much of our energy on the idea of knowledge and digital literacy – education, learning, and digital literacy – as we are in every other part of this conversation. Because if people are connected, the question is what will they be able to do with it? How are they going to have – because there’s no doubt that the world that my kids, my three kids will

be living in, is a much more technology-dense, much more complex, much more globally competitive, a universally wired world than the one that I grew up in. I think our students and our workers are going to need more knowledge and learning and education, as well as digital groups. There just simply has to be a greater national commitment by our political leaders to push forward in the years ahead and I think that the event you did yesterday with President Obama was an enormously important contribution to this debate. But so much more has to be done. I'm proud that my organization, three years ago, came out and called for such a national commitment to strategy. Alec Ross, as many of you know, is one of the co-authors of one of our major papers on this. There's much more that can be done. I mean, it's a shame that countries like Uruguay and Libya have a national commitment to giving every kid in their country a laptop while we still have not even really begun to have this conversation in a serious way in the U.S. This second thing I just want to end with is this idea of what is going to be the Internet and this global communications network. I mean, I bought a Kindle recently and I resisted it. My wife was committed to it and I figured I didn't need another device. But, if you really think about where this is all headed in five or ten years, I mean, we're going to have this series of screens in our lives, right? One of them is going to be for cooking in our kitchen that's produced by the Food Network. Another one's going to be for reading books and another one is going to be for drawing plays on a soccer field that's produced by ESPN. Whenever this is going to be is this – the whole connectedness that we're going to have is going to become ubiquitous. It's going to become common. It's not going to be sitting at a computer the way we think of it now. It's going to be flowed into our lives in ways I don't think we've even really begun to imagine, and it's going to be much more wireless than wired, right? joke with my friends in the cable business that the idea of the cable, or being connected in a landline way is a very 20<sup>th</sup> century concept in many ways because increasingly our interaction with this global communications network is going to be mobile. And I think that has to really inform the terms of this debate, which is why the idea of principles, I think, is so important. The rapidity of change, both in the way networks are

developing and the way they're being used in civil society, is staggering and extraordinary. The pace of change that is taking place, I think, is creating tremendous opportunities.

The third point, and I'll end with this, is I think the great challenge that we really have underlying all this is that, in the 21<sup>st</sup> century, all that we know – learning, communicating with friends, the way we manage our health, the way we conduct commerce – are going to go through radical transformation. They're going to be increasing the way people interact with government – [comment directed to Powell] we talked about this earlier, Michael – is that, it's going to be increasingly done through connectedness to mobile things that may look like an iPad that Apple put out or this, [gestures at a blackberry] it may look like this.

But how do we manage that transition, and how do we make sure that America gets to take advantage of the unbelievable opportunity that is going to take place is really one of the great governing challenges of our time. Because there's much more opportunity here, I think, in front of us than there is challenge, in many ways—in terms of what can be realized about building an economy, a workforce, an education system, the students...on top of this extraordinary human event that we're all going to witness. For the first time in all of human history, we're all going to be connected as never before. I'm excited that I'm going to be able to witness this, and certainly look forward to working with all of you in the future. Thanks.

**(APPLAUSE)**

**Joseph Miller, Esq.:** Great, thank you very much. So, that was 40,000 feet. I think before we close, we should start to discuss – and I disagree with Mike Powell that we're being circumspect, that these are circumspect questions to ask – is raise the questions: do microeconomics play a role, assuming an Open Internet regime, and how should they inform public-private partnerships to bring innovation and jobs to

minority communities? I open it up to the panel: anyone who wants to answer that question, please feel free. Questions from the audience?

**Rick Cimerman, NCTA:** I just, first, wanted to start out with the belief that I am the first man to talk about it—certainly with the press. Look a little more closely at the FCC adoption study that was released last Tuesday as well as the Joint Center’s study, because the headline of the report was, “36 percent say barrier to adoption is cost” and it specifically references the cost of the service. But when you actually look at the report, only 15 percent say it’s *cost of service*. Nine percent said it’s unwillingness to engage in a long-term contract or concern about installation fee. Ten percent said it’s the cost of the hardware – and, of course, plenty is available without a long-term contract. But 22 percent said it was digital literacy, and 19 percent said relevance. Cost of the service is much lower as an adoption barrier than, I think, any report we have seen, not to delve into any specifics.

Secondly, I would say that for cable, common carriage was never the basis of the Internet. We were never treated as a common carrier; we were treated as a cable service prior to the Portland case where they tried to impose open access conditions. We thought it was a cable service, the cities thought it was a cable service. The statute explicitly prohibits imposing common carriage obligations on cable service providers to the extent they offer cable service. Common carriage is not a rule of non-discrimination, but unjust discrimination. And I think that’s a hugely significant difference in probably the thousand pages of comments that the FCC had in its proceeding on non-discrimination versus some other kind of discrimination. But the actual question is: why do we think that the FCC, if they’re trying to help the small guys, is going to get it right? Here, if we look at the fence-in rules for television that was to help small video producers, the end result was it helped the prime time studios. If we look at the resale rules and other rules, ultimately, it kept cable out of the phone business as implemented by the FCC for quite some time and, ultimately, only helped the Bells. So, why do we think the small guys are

going to be helped by net neutrality rules rather than just locking in Google's dominance? And, maybe first, former chairman Powell, as an FCC commissioner and Chairman, I think you know best about perhaps, the limits of FCC power, if you can impress that.

**Michael Powell:** Well, I will say, at least in my experience—this is an enormous word of caution here—which is, the minute the government gets itself tangled into which business or corporate interest is going to get an advantage or disadvantage, it's out of its element. Right? I think the government's role is to act only on the fundamental end, on behalf of consumers. Now, one of the reasons I was a big fan of the original four Net neutrality principles – and I do believe there should be principles, and I do believe there's a light role for government in respect to overseeing them – but those principles were written in terms of the consumers' rights and perspectives. When you start saying discrimination/non-discrimination again, I'll take a view on it, but you're beginning to now talk about relationships between corporate interests. And there's always a danger that, either intentionally or inadvertently, the Commission ends up putting its finger on the scale between companies that ought to battle it out in the market race and who, by the way, are more than capable of doing so. Let me just be callous and say, if you're talking about Google versus AT&T, well, let them have at each other. I don't know why, necessarily, the government should be involved in who has a higher value argument. I'm just using them as an example. But if you look at the fact that, if Net neutrality means “should I protect consumers from harm,” or something that we agree is harm, you know, I'm all for it. And, by the way, it may not be the FCC. Maybe it's the Federal Trade Commission. Maybe this needs be a more enlightened view of how government plays its role across the board in this respect. But I do think any Chairman that's ever sat in that seat knows and should be cautious that you can inadvertently be drawn in to essentially biasing one corporate vision of the marketplace over another person's corporate vision.

Really, the consumer is being used, in some ways, as a pawn for that, and maybe small business sort of falls into that category.

**Catharine Sandoval:** Yes, just in response to those questions, I think it is important to recognize that, when the Internet was born, it basically was an application of the telephone network that was protected by common carriage. Then later on as the cable networks offered Internet, it basically, at least, the general principles of reasonable non-discrimination, if not the actual rules of common carriage. This is what I mean by saying that the architecture of the network actually assumed common carriage and non-discrimination. I think you also hit the nail on the head in terms of talking about unjust discrimination because, I think, part of the issue with these clauses is, basically, anything that they want to do raises a question about unjust discrimination that could be anti-competitive. You know, to the extent that you're able to slug down somebody else's downloaded video, that customer might conclude, well, Internet video just doesn't work. Or this site doesn't work, or this application is bad; as opposed to understanding that this is really a problem of network congestion. And, so, I think that it's important for consumers to understand what the source of the problem is and what the issue is, so that we don't have that level of confusion. Then it also doesn't create a problem with competition. I mean, I'm not saying that people should cancel one service or another, but, I also teach anti-trust laws, so, you know, I'm all for competition and making sure that people are not in a position to erect barriers to competition. I think this is also how small businesses are helped by Net neutrality rules because we don't want to just leave it up to certain gatekeepers who are also facilities-based providers to basically decide who can have access. That's been the beauty of the Internet is that, through the open protocol, that anybody could get access.

**Joseph Miller:** Ok, great. Thank you very much. We're going to have to give it back to Dr. Lee...

**Nicholas Economides:** Let me just say one thing about this issue...just one thing...

**Nicol Turner-Lee:** Now you're affecting his paycheck ...

**[LAUGHTER]**

**Nicholas Economides:** Essentially, the Internet is a transmission network and it can be viewed as cable, and can be viewed as telephone. Cable has a traditional monopoly. Telecom had a traditional monopoly and now is more liberalized. But we shouldn't let this new network that has been so successful, we shouldn't let the carriers who happen to have this position for whatever reason they happen to have it, to determine the future of the other side. And the other side is content service. So I think this proceeding is about that. And I think that's a major problem. I mean, I don't know if it's going to be efficient, if it's going to be done right by the FCC, but I think it's an important problem, so I think it's worth doing.

**Nicol Turner-Lee:** Ok, you know, just for fairness, Dr. Atkinson has the last, final seconds.

**Robert Atkinson:** Time me. Less than ten seconds.

**Nicol Turner-Lee:** [to Miller] Ten seconds, Joe!

**Robert Atkinson:** The professor from California alluded to the point that the Internet has always been an open network that wasn't based on discrimination and that's just simply not true. It's always been. That's why they have protocol called DiscServer that's been a network based on discrimination from the get-go. A report we just issued by Richard Bennett, who's been involved in designing original Internet protocols, is on our website called "The Internet and End-End Principles" and makes that point quite clear.

**Nicol Turner-Lee:** I want to thank all of you for being here. Obviously there needed to be a part-two or more time in the schedule for this. I just want to summarize briefly where we went with this discussion today:

We listened to from the Commissioner, the Chairman, to the Commissioners, and to our esteemed panelists. Open, or the concept of open, is not and should not be an alienating concept. I think you heard from everybody that there is universal approval for the concept of Open Internet. We are fooling ourselves when we get to these debates around open—to pit providers against consumers, Blacks against Whites, Internet novice users to seasoned users—and that came out really well. I think another thing that came out of the panel is that government obviously aspires to its openness, but I think what we heard today from our scholars, our legal experts, policymakers, etc., is that we need to proceed with caution. We need to be clear to do it right—to accommodate infrastructure issues as well as human capital desires—adoption as well as innovation, so that we don't replicate the same divides that we currently see.

As the Joint Center who has hosted this event today? what I want us to think about is the other ways to address society. It was not our intention for people to leave here angry. It was not our intention for people to leave out in a way that says, "hey, what did this accomplish?" We think, as its been said, that we need to "get the basics right" for the Broadband Plan. I think that was one of the best comments that I heard today: "go back to the basics and get the basics right." As said by former Chairman Powell, we need to ensure that whatever we do, we don't stifle the growth and achievement of our young people of this nation, our workers, and our institutions that are the crux of what we are trying to do in our society. We want people to be successful and productive, and that is our response to this, because the people that are on the fringe are the ones that are in the most need.

Let us somehow think about developing a conversation and disentangle what's at the core of this. That might potentially mean that there may be a middle ground, and I don't know what that middle ground may be, but it may be a dialogue that is for the better rather than for the worst. We don't want, and I say this on the behalf of the Joint Center stakeholders, a situation that we cannot take back. So we leave you with that today.

We will have an edited transcript of this proceeding available in the next couple of days, NextGenWeb has also archived this, and it will be on this website to look at. We thank the panelists for traveling far and few to get here and participate in this. I also want to acknowledge, if they could just stand up, my staff as well as Joint Center crew—from our marketing person to our Chief Operating Officer—she runs everything: thank you Cynthia Roderick for bringing this together. Thank you to my boss for letting us bring together such an esteemed group of folks. Thank you for being here, and enjoy the rest of your day.