

**Remarks of Gigi B. Sohn
Counselor to the Chairman
“The Future of Local Internet Choice”
CLIC Day
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Minneapolis, MN**

Thank you, Jim and Joanne. It’s great to be here with all of you today. Just for the record, even though we’re in Minnesota and he’s now a Nobel Prize winner, I won’t be quoting any Bob Dylan lyrics. Frankly, if I were going to quote a musician from this state it would be Prince...because, of course, I prefer the genius who was 5 foot 2.

Seriously, I am honored to receive the National Champion for Local Internet Choice Award. And I am humbled to be recognized alongside the other award winners, each of whom have been remarkable leaders in the nationwide effort to give communities the power to decide their broadband futures.

Special congratulations to the honorees – and all of you – who wrestle with this issue at the state and local levels. Yes, it’s important that lawmakers and public servants like me try to make good policy. But you, my friends, are working every day in the trenches – in state legislatures, city council rooms, comptrollers’ offices and in actual trenches building gigabit networks that serve your communities. You are the heart and soul and muscle of this movement. I share this award with all of you working day to day to ensure that all Americans can benefit from what high-speed broadband enables.

It’s been an amazing three years at the FCC, and with the election just three weeks away, it’s a good time to reflect on what we’ve accomplished. So in keeping with the theme of the day, I’d like to talk about how far the movement for local Internet choice has come and where I see it going in the future. It is indisputable that during these three years, enormous progress has been made. But even so, we have a long way to go to until **all** local communities have the authority to make their own broadband Internet choices.

So let’s talk about where local Internet choice was three years ago. From my perspective, it was a movement struggling to get attention – from governors, from mayors, from Congress, and from the FCC. Chattanooga, Tennessee, Wilson,

North Carolina and Lafayette, Louisiana were the three shining examples of municipalities who had piggybacked on their existing utilities to provide outstanding gigabit broadband service. As you all know well, each of these cities had to fight to build these networks, and each are still constrained by state laws that prohibit them from expanding beyond their current footprints.

But much has happened since then to change that dynamic. I'd like to highlight three things. First, in January 2014, the U.S. Court of Appeals for the District of Columbia Circuit struck down the FCC's second attempt to adopt rules that would preserve an open Internet – commonly known as network neutrality. These rules would have prohibited broadband Internet service providers from favoring certain content, applications and services that ride over their networks. The court said that the section of the Communications Act the FCC used as its legal foundation for those specific rules did not give it the power to adopt them.

The FCC's subsequent effort to adopt rules to protect an open Internet started a year long, very public debate about how broadband should be regulated. The response was resounding – from the media, from policymakers and from nearly 4 million Americans – that one cannot participate fully in our society and our economy without access to high speed broadband Internet.

I'd like to think that this nationwide debate opened the eyes of many in state, local and federal government and in industry about the importance of broadband to the lives of everyday Americans. Much of what we hold dear in our democracy – education, health care, economic opportunity, civic participation and the free flow of information – is enabled and enhanced by broadband.

Second, at the same time that this national debate about net neutrality was taking place, the FCC was presented with petitions from Chattanooga's EPB and the City of Wilson, asking us to pre-empt the state laws that prohibit them from expanding. The petitioners asked the FCC, under its statutory mandate to "remove barriers to infrastructure investment," to pre-empt the restrictive provisions of the Tennessee and North Carolina laws.

On February 26, 2015, at a standing room only FCC meeting filled with cameras and great emotion, the agency voted both to adopt network neutrality rules by reclassifying broadband Internet access as a "telecommunications service" under Title II of the Communications Act, and to pre-empt the Tennessee law and most

of the North Carolina law. Eva Van Hook from Bradley County, Tennessee stood as Chairman Wheeler explained how she has to drive her son 12 miles to church to do his homework because the Tennessee law prevents her from getting faster and cheaper service from Chattanooga EPB. Richard Thornton stood as Chairman Wheeler told of his frustration with paying \$316 a month for a patchwork of slow services, but being unable to take advantage of EPB's services provided just one mile away. These two decisions gave a national, and indeed an international, platform to the fundamental importance of broadband access, and to the need for localities to be empowered to decide how to best serve their citizens.

Third was the work of local choice advocates like you, with an important assist from the philanthropic community. You showed other cities and towns the economic and social successes of Chattanooga, Wilson and Lafayette and convinced them to move forward. You expanded the conversation beyond "muni" broadband that relied on a pre-existing utility network, to "community broadband," which encompasses many flavors of local choice, including public-private partnerships of the kind we are seeing in Holly Springs, North Carolina, Urbana/Champaign, Illinois and Garrett County, Maryland. You proved false the old saw that community broadband resulted in nothing but "failures" and you successfully elevated the fact that the vast majority of these systems are built because incumbents refuse to provide adequate broadband service or indeed in some cases any service at all. You demonstrated through empirical and anecdotal studies that community run broadband networks lead to greater economic development, rising home prices and greatly improved citizen welfare.

Foundations chipped in to start CLIC, under the strong leadership of Jim Baller, Joanne Hovis, Chris Mitchell and Catherine Rice, Ashley Stelfox and the Next Century Cities Coalition, which can boast a membership of over 150 mayors from cities big and small, Democratic and Republican, urban and rural. Deb Socia has done an incredible job getting mayors to weigh in on a wide variety of broadband policy issues affecting their communities. For the first time, there are specific organizations dedicated to promoting local Internet choice.

And what were the results from these three events? First, by our count, over 50 new community broadband projects have begun since February 2015. These projects are popping up across the country, including in California, Idaho, Texas,

New Mexico, Wisconsin, Ohio, Maryland, South Carolina and Maine. Second, few states have tried to pass laws that would restrict community broadband, and the two that were introduced – both in Missouri – quickly failed. Third, communities in states that have restrictions on community broadband but allow for such networks if the communities vote for them in referenda, are doing so. In Colorado, for example, 44 cities and counties voted to override the law restricting community broadband. And fourth, community broadband projects that were supposed to be scaled back or thrown on the trash heap have come back strong. Kentucky Wired, the Kentucky statewide broadband project, which most believed was going to be scaled back because of a change in state leadership, is back on track. And UTOPIA, the much-maligned 11-city fiber project in Utah, is financially stable and growing at its fastest pace ever, despite a barrage of opposition from industry and its state legislature.

But let's talk about the elephant in the room - the one result in the past 3 years that was a setback for local choice. Of course I'm talking about the August decision by the US Court of Appeals for the 6th Circuit's overturning our order preempting the restrictive state laws of Tennessee and North Carolina. While the court did not disagree that our cause was noble, it did disagree that we had the power under the Communications Act to pre-empt the state laws. The decision in this case has led to at least one community – Pinetops, North Carolina – having to cease service being provided by Wilson Greenlight. The sad case of Pinetops, a rural community with many low-income residents, has been well documented by the New York Times.

So where do we go from here? Doubtless, the 6th Circuit decision hurts. I'm guessing that had the FCC won, several communities in states with restrictive community broadband laws would have petitioned us quickly for similar relief, and others would have gone to their state legislatures and threatened to do the same. Maybe that strategy would have led to the pre-emption or repeal of some of these laws.

What the 6th Circuit decision means to me is not that the battle is over, but that the battlefield and the battle plan must shift. The battlefield is no longer the FCC and the courts, but state legislatures. And the battle plan is no longer to file convincing petitions and briefs. It is for advocates for local Internet choice to

bring every local mayor, city council, business, school, college, library, chamber of commerce and citizen together to convince state officials that for the future of those cities and towns and by extension, the state itself, localities must have the ability to determine their own broadband futures. And if you'd like, Chairman Wheeler will be happy to help. As he said on the day of the 6th Circuit decision: "Should states seek to repeal their anti-competitive broadband statutes, I will be happy to testify on behalf of better broadband and consumer choice. Should states seek to limit the right of people to act for better broadband, I will be happy to testify on behalf of consumer choice." Trust me, you'll never get a more passionate and persuasive advocate than Chairman Tom Wheeler.

Without a doubt, this new battlefield is much larger and the battle will be much harder, longer and more costly. But victory will be sweeter and less vulnerable to legal challenge if local stakeholders make their voices heard.

I'd like to talk about two other issues that I think are critical to the future of local Internet choice, and indeed any expansion of broadband. The first is arcane and incredibly important – pole attachments. As my friends Blair Levin and Susan Crawford have written, unless cities and towns can get predictable and affordable access to old-fashioned utility poles, building gigabit networks will be difficult and costly. Some cities possess their own poles, but often they are controlled by utilities or incumbent Internet service providers who have no incentive to make them available to municipal competitors at a fair price.

When the FCC reclassified broadband Internet access service as a "telecommunications service," it made mandatory non-discriminatory access to poles for broadband providers. The FCC also has rules to avoid high costs and delays, but they don't benefit cities and counties and they cover a little more than a third of the 130 million poles in the US. Moreover, even if a city is able to get an agreement to place fiber on these poles, the process for actually getting the pole ready for a new attachment can also be costly and time consuming. This "make-ready" process is ripe for gaming by those who disfavor competition.

While there are no easy answers to the pole attachment problem, it must be addressed, and soon, if communities and competitors are to be able to build new networks.

The second issue, which I'm very excited about, is the building and leasing of dark fiber networks around the country. A growing number of cities have built or are interested in building dark fiber networks and then leasing capacity on those networks to retail Internet service providers. Huntsville, Alabama, Santa Cruz, California, Westminster, Maryland and Chairman Wheeler's hometown of Columbus, Ohio are just some of the communities that have built these networks and are making them available to last mile broadband Internet access providers. As Blair Levin has said – this public-private model is a win-win-win. It allows a city to do what it does well – civil engineering – while leaving things like marketing and operating a fiber network to private industry. Meanwhile, local citizens and businesses benefit from gigabit broadband. What these partnerships also do is share the financial risk of building and maintaining these networks. This shared risk results in shared incentive by both the city and the provider to succeed.

Equally exciting is the possibility for more broadband competition. In Huntsville, Google Fiber is leasing capacity on a non-exclusive basis, inviting others to do the same. Ting is doing the same in Westminster. Under this kind of open access model, big companies like Comcast, AT&T and Charter could provide internet service outside of their franchise areas, while smaller companies like Sonic.net and Ting could provide service to consumers without the cost and burden of building the fiber network. Dark fiber networks open up new opportunities for robust competition in residential Internet access.

In closing, I'll paraphrase just about every State of the Union address – “the state of local Internet choice is strong.” This is true despite the setback dealt by the 6th Circuit. Many challenges lay ahead, but so do many opportunities. If the past three years serve as precedent, I know that the passionate, knowledgeable and resilient advocates of this movement will overcome the challenges and take advantage of the opportunities. Let's keep working together until **every** community can determine its own broadband needs without barriers. Thanks again for this wonderful honor and for all the support you have given Chairman Wheeler, the FCC and me for the past three years.