

Oral Testimony of Kyle McSlarrow
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Before the U.S. Senate Commerce Committee regarding “Network Neutrality”
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Mr. Chairman, Internet service is a relatively immature marketplace. Ten years ago, most of us had not heard of an Internet browser. Five years ago, the phenomenon of peer to peer networking, with its huge implications for bandwidth consumption, was an unknown. It was only last year that for the first time more American households had broadband than dialup. And competition is exploding. In 2000, according to the FCC, nearly 50 percent of zip codes in America had either one or no broadband providers, and only 21 percent had four or more providers. Four years later, those numbers were completely reversed. Over 50 percent of zip codes had four or more broadband providers, and in fact 24 percent had seven or more providers.

Thus the business models that are developing right now are really in their infancy. Given the explosion of the Internet and its importance to our competitiveness, the creation of jobs, indeed our quality of life, the right call is to let the marketplace develop as it has without government regulation. A very heavy burden should be placed on those who would have the government intervene for the first time.

I think we can all agree that consumers should have reasonable expectations from the companies that deliver high-speed Internet service to them. So, let me be clear: NCTA’s members have not, and will not, block the ability of their high speed Internet service customers to access any lawful content, application, or services available over the public Internet. As the FCC and Chairman Martin have noted, this commitment should be consistent with tiers and terms of a customer’s service plan, and subject to an operator’s ability to manage its network. We have prevented, and will seek to prevent, harm to the services we provide our customers, and of course meet the needs of law enforcement. As an association that includes programmers as well as operators, we are also mindful that lawful access includes respect for the rights of content owners.

As the industry that largely created the residential broadband market, we fully embrace and will seek to protect a vibrant Internet.

Putting so-called Net Neutrality principles into law may sound warm and fuzzy but they are not “neutral” in any real sense. They represent a choice and a departure with serious consequences.

Mr. Chairman, in 2002, this committee held a hearing in which proponents (including some who are here today) pushed this concept. Net neutrality proponents were saying then, that unless you did something, “the Internet as we know it will come to an end.”

And where are we four years later? Companies like Google have come out of nowhere to build a global empire with a market cap of over \$100 billion, and if you consider other companies which push net neutrality like Yahoo and Amazon.com, you are talking about some of the most successful companies in the world. It is obvious that they were wrong four years ago . . . all of them have flourished. The irony is that they flourished in large part because cable companies, telephone companies, and wireless providers have invested billions in building a broadband infrastructure that supports their business model.

Right now, innovation is exploding down the broadband highway, and perhaps unwittingly, proponents of net neutrality have chosen the right phrase . . . they would risk throwing all of that into “neutral” . . . and freezing innovation and investment. One has to ask, why?

While these companies will tell you that they are just looking out for the next generation of entrepreneurs, that claim is, in my opinion, disingenuous. To the contrary, now that these companies have achieved a leadership position in the marketplace, they want to foreclose any new business model that would enable new entrants to challenge them.

The large Internet companies have succeeded with the current network architecture and have made a great contribution to our nation; but who is to say what the next network architecture might look like? With net neutrality, and little or no incentive to invest in capital intensive networks, we will likely never find out. As some have noted, by not allowing experimentation, you force all networks to compete only on size and price, which benefits only larger players, limiting the many types of competition and innovations that are emerging today.

Just as Google and Yahoo! have an incentive to invest in new broadband platforms like broadband over power lines (BPL) and WiFi, broadband providers may have incentives to invest in entrepreneurs who have a new application which might compete successfully with today’s Internet market leaders, in order to bring more customers to the network.

What is really going on here is that companies that started as entrepreneurs and innovators are now so invested in the status quo that they fear – not cable or telephone broadband providers—but that next idea, the next search engine that takes off. What they are asking you to do is to freeze the Internet in place, with their position in the marketplace locked in.

There are many possible outcomes of doing so, but the one thing I am confident of, is that it would not be the consumer who benefits.

Mr. Chairman, thank you. I look forward to answering any questions you may have.