

Remarks of Gigi B. Sohn
Office of Chairman Wheeler Special Counsel for External Affairs
Federal Communications Commission
At the One Community Annual Meeting
September 10, 2014
“The Art of the Possible”

Thank you Lev, for that lovely introduction. And thank you, One Community, for this fantastic honor and for showing the country and the world the transformative power of gigabit broadband networks. I’m just a humble public interest lawyer turned public servant – the true “broadband heroes” are folks like you, in cities and towns across the country, who are building these incredible networks and changing people’s lives in the process.

This is quite an audience – wow, I’m impressed. Just to hear me? Are LeBron James or Johnny Manziel around here somewhere? Or is someone wearing an Apple Watch?

Winning an award like this gives me a moment to reflect on what has transpired since I joined the tiny public interest communications law firm Media Access Project a little over 25 years ago. In those days, my colleague Andy Schwartzman and I (and it was usually just Andy, me and a part-time assistant) were fighting to preserve the Fairness Doctrine, which required broadcasters to cover controversial issues fairly. And we were trying to stop the FCC from raising its media ownership limits. At the time, TCI was the cable behemoth people were concerned about, and we worked hand-in-hand with Motion Picture Association of America President Jack Valenti in an effort to prevent repeal of the Financial Interest and Syndication or “fin-syn” rules. Those rules prohibited the broadcast networks from having an ownership interest in the programming broadcast on their stations, and were integral to the success of independent producers and programming like Hill Street Blues, The Cosby Show, LA Law and Roseanne.

If you are at all familiar with the fate of the Fairness Doctrine and the fin-syn rules (they were both repealed) or the media ownership rules (they were raised first by the FCC and then by Congress), you’re probably thinking...boy, she wasn’t very good at her job! But I mention these issues only to note how much our communications landscape has changed. I spent my professional life in the late 1980’s and early to mid 1990’s focusing on increasing the public’s access to broadcasting and cable – two communications networks that pretty much give complete control to the owners of those networks, thanks to the laws that govern them. There were some exceptions, of course. Broadcasters are required to provide equal time to opposing candidates for political office, and used to be required, among other things, to give time to a person attacked during the discussion of a controversial issue. Cable operators are required to set aside channels for public, educational and governmental access and also for commercial entities that wouldn’t otherwise get access to their systems. These rules gave members of the public some small measure of access, but it was very small. When the 1992 Cable Act passed and required Direct Broadcast Satellite systems to set-aside a modest percentage of its channels for noncommercial programming, I thought I’d died and gone to heaven! But then a failed attempt at a public interest set-aside for what was then called “advanced telecommunications” in the 1996 Telecommunications Act brought me right back to earth.

While those were formative years for me as a public interest communications lawyer, they were also extremely frustrating. It seemed that my colleagues and I were consigned to pestering, prodding and cajoling Congress and the FCC to adopt new rules to require public access to closed communications networks, or at a minimum, to not eliminate the few rules that provided access. Little did we know, the world of communications networks was about to undergo radical change.

Enter the Internet. When more and more people started using dial-up Internet access in the mid to late 1990's, I don't think they could have imagined what the future would look like less than two decades later with the high-speed broadband Internet access of today. Controlling your lights and home security systems from afar; engaging in complicated surgery and heart monitoring; taking college courses with the best professors in the country if not the world; transferring millions of dollars with the click of a mouse; and of course, binge watching "House of Cards." But for folks like me who have been toiling to open up closed networks to the public for decades, what makes the Internet so earth shattering is that it turns our old system of command and control communications networks on its head. For the first time, rather than begging for scraps of access from the largest media companies, it is *possible* to put the power of those networks into the hands of ordinary people, so that they can speak and be heard without permission.

But notice that I used the word "possible," which ties nicely into the theme of this meeting – "The Art of the Possible and the Future of Broadband in America's Future." While the Internet makes *possible* the ability for everyone, and not just the most powerful among us, to speak to millions unfiltered, we are still much too far from that goal. My boss, FCC Chairman Tom Wheeler, has from his very earliest days talked about the need to extend the values citizens have come to expect from their communications networks, that is, universal access, interconnection, consumer protection, public safety and national security – to *all* networks, regardless of the technology. Chairman Wheeler calls this the "Network Compact," and he has tasked the agency with ensuring that our broadband networks embody those values.

So what has the FCC done so far and what are we doing now to make the possibility of a universally accessible, affordable and open Internet a reality? Let me say first that we've spent a very busy first ten months on this goal, and it's only going to get busier. Among other things, the FCC has provided hundreds of millions of dollars to connect rural areas to broadband, and will soon be funding "rural broadband experiments" that seek to bring very high speed, scalable broadband to those areas. As we look to at the next phase of this "Connect America Fund," the agency has proposed raising the minimum download speeds that funding recipients must provide - from the current 4 Mbps to 10 Mbps or even higher. In another proceeding, we also have asked more generally whether we should raise our benchmark definition for "broadband" from the current 4 Mbps download speed to 10 Mbps or higher. The FCC has for the first time made it possible for 10 million students to have access to Wi-Fi in their classrooms and libraries, and we have made other changes to the 18 year old E-Rate program that will get us closer to the President's goal of connecting 99% of schools and libraries with 100 Mbps speed in the next 4 years. We have adopted rules that will allow for smaller competitive wireless companies to get access to more spectrum in our first-of-a-kind incentive auction. Those rules will also allow for greater use of unlicensed spectrum. For the uninitiated, this auction will allow over-the-air broadcasters to sell their spectrum back to the FCC, which will then auction it to wireless broadband companies. The goals are to have greater competition in wireless broadband access, greater innovation in unlicensed wireless devices and more robust wireless networks.

But this is just the very beginning. The FCC wants to improve the E-Rate program further so that more schools and libraries can have access to the best available broadband networks. We're trying to think of ways to extend our vitally important Lifeline program to broadband, and we could really use your help in figuring out how to do that while ensuring that the program continues to protect the most vulnerable among us. And last Thursday, Chairman Wheeler announced his Agenda for Broadband Competition, the principles that will guide future policymaking to promote greater competition in broadband Internet access. While it may seem obvious to many of you, for an FCC Chairman to say publicly that meaningful competition for real high-speed broadband Internet access (which he defines as a minimum of 25 Mbps) is lacking and that public policy should help protect, encourage and create competition is a very big deal.

But I want to highlight three of our most important matters and ask for your participation in all of them, because together, they will help determine the future of the Internet as a driver of innovation, economic growth, civic participation and free expression. First, as many of you know, the FCC has proposed to put back in place open Internet or “net neutrality” rules. In a fact that is sometimes forgotten, in January the federal appeals court in Washington DC struck down rules that the agency adopted in 2010 to prevent broadband providers from limiting consumers’ access to a free and open Internet. The FCC is planning on adopting new rules that we want to survive the next inevitable court challenge. Net neutrality rules are critical to ensuring that the Internet remains the amazing network of networks that changed the nature of my work – user controlled, without interference from a middleman seeking to pick winners and losers.

The deadline for submitting reply comments on this issue is next Monday the 15th. As of early this afternoon, 1,477,301 comments have been submitted in the net neutrality proceeding. For those of you keeping score, that is the highest number of submissions made in a specific FCC matter, surpassing the number of complaints filed in response to the infamous Janet Jackson “wardrobe malfunction” at the 2004 Super Bowl. That number is sure to increase significantly today because of a campaign by many of the nation’s top communications policy advocacy organizations and Internet companies. As a person who toiled for years getting anybody to notice the highly technical and legalistic world of communications policy, I can tell you that this kind of excitement and public participation is a huge thrill. If you have already submitted comments, thank you. If you haven’t and can give us some ideas of how we can craft rules that will preserve what the court called the “virtuous cycle”: edge-provider innovation and investment drives end-user demand for more and better broadband technologies, which in turn drives broadband providers to further invest in their networks.

The second matter will really put to the test the Chairman’s vision of a living, breathing network compact. Telephone companies are retiring their old “time division multiplexing” networks – which primarily run over copper -- and are moving to Internet protocol or “IP” networks that use a variety of means of transmission, including fiber and wireless. This transition can bring many benefits, but also raises this core question: What obligations will attach in an all-IP environment? Will 911 calls be required to go through with the same reliability as old landline networks? Will carriers be responsible to serve far-flung places like rural Alaska, the foothills of the Rockies or the Upper Peninsula of Michigan? Will AT&T be required to complete a call from a Time Warner Cable customer and vice versa? What about protections against privacy violations and fraudulent billing? We’ll need your help to determine what rules should stay and which should go to ensure the preservation of the critical values that have been part of our communications networks for over a century.

Finally, and as many of you in the audience know, the Commission is considering two petitions that ask the FCC to pre-empt state restrictions on municipal broadband. The petitions were filed by the EPB of Chattanooga, Tennessee and the City of Wilson, North Carolina, which own municipal broadband systems. The petitions ask us to pre-empt state laws that the cities tell us prevent them from expanding beyond their footprints. Initial comments were submitted at the end of last month and reply comments are due on September 29. We believe that incentivizing competition—and unleashing the power of competitive high-speed broadband in support of education, health care, public safety, civic participation and economic development—is a job for governments, communities and industry at every level. But the petitions raise questions that must be decided by a careful examination of the facts and the law. So again, we welcome whatever insights you might have about your experience here in Northeast Ohio and how it might inform our decision-making going forward.

So for this FCC and indeed for our country, what is the Art of the Possible? It is high-speed connectivity to every school and to every device in the classroom. It is universal access and affordability to real broadband in the most populous cities and the most isolated rural towns. It is vibrant competition

in every form of broadband, wireline and wireless. It is residents of local communities deciding for themselves whether to build their own broadband systems, partner with a commercial broadband provider or simply entice commercial providers to compete with incumbents. And it is the preservation of the Internet that changed the way we look at communications networks – free (as in freedom, not as in beer), open, and controlled by you and me.

But we'll need your help and the help of others who care as deeply about these networks as we do to turn this possibility into reality. The public apathy and lack of understanding of communications policy issues that marked the first half of my career played right into the hands of the "haves." We cannot let that happen at a time when access to the broadband Internet has become such an integral part of everyone's lives. The Art of the Possible starts with you. Thank you again for this wonderful honor.