

TUNE IN TO THE
SOUND OF DEMOCRACY

Justice Talking Radio Transcript

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Renew your driver's license. Pay a parking ticket. Enroll in community college. These things are now easier to do on the Internet than they are in person. As more public services move online, what happens to those who don't have access to the Internet? Some communities are hoping to bridge the digital divide by providing free wireless service. But should municipalities be competing with private businesses like phone and cable companies? Upcoming legislation seeks to settle the old conflict between a free market and the public good. And it may forever decide who gets access to the Internet and what kind of Internet it will be.

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MARGOT ADLER: From NPR, this is Justice Talking. I'm Margot Adler. Today we're talking about the future of the Internet—how changing technology, corporate mergers and increasing consumer demand will change the Internet as we know it. Many places around the country are considering going wireless so everyone can get access to the Internet. Since many of these proposals have yet to get off the ground, the jury is still out as to what the benefits of these plans might be. And we'll talk about the digital divide in America.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. We're talking about the Internet today, a resource that many feel they can't live without. As technology evolves, will the Internet remain open and public? Or will it be controlled by a handful of companies? Later in the show, we'll hear how Philadelphia is trying to become the first city in the country to become wireless. And we'll hear from two people who strongly

disagree about how the Internet should be regulated and who should be creating technology policy.

But first to give us some background on these complicated technical issues is Jonathan Krim. He is director of strategic initiatives at washingtonpost.com and a former Washington Post reporter who covered technology. Welcome, Jonathan.

JONATHAN KRIM: Thanks.

MARGOT ADLER: So many of us rely daily on the Internet. Tell us a little bit about how the Internet came about.

JONATHAN KRIM: Well, the Internet originally was a project of DARPA, which was a government agency. And it was largely used as a network first to communicate amongst scientists and then educators more broadly. And then finally, with the advent of some of the tools that we now take for granted, like browsing and graphical interfaces, it became probably the most important utility since the telephone.

MARGOT ADLER: Now, the Internet has evolved and grown over the last ten years. How is it regulated?

JONATHAN KRIM: Very lightly. The Internet was very much the product of non-ownership for a long, long time. And it was felt that the most efficient way to get the Internet built out was to not treat it the way we treated legacy utilities, like electricity and water and the telephone wires, and instead have it be as much as possible an open platform in which companies could innovate and deliver services. Now, this worked fairly well when the only way to get to the Internet was over the telephone wires, because the telephone wires were regulated to the extent that you couldn't control the content that was moving over those wires. The Internet is now at the point of being a lot more sophisticated than that. It's being delivered both over cable lines and over a certain portion of telephone wires, a higher frequency portion. And it is increasingly an extremely large economic engine. And so the owners of the networks and the pipes that bring the Internet into your house are trying as much as possible to monetize that.

MARGOT ADLER: And who makes the light Internet regulations that we have?

JONATHAN KRIM: Well, partly the FCC, the Federal Communications Commission, and to a certain degree Congress, although Congress has not gotten very aggressively involved. And there are occasionally court cases that involve the Internet. But for the most part, it falls to the jurisdiction of the FCC.

MARGOT ADLER: And what role does it play? I mean, what role has the FCC played in doing this?

JONATHAN KRIM: The FCC has played a fairly hands-off role. For a while, there were rules that said that telephone companies had to make their telephone lines accessible to

other companies that wanted to provide Internet connectivity over phone wires. The interesting thing that happened was that while that applied to phone companies which have been regulated for 80, 90 years, that was never the case for the cable operators. So a few years ago, the telephone companies began lobbying very aggressively to start to get the government to remove the requirement that they share those lines.

So if you're a cable customer and you have Internet connectivity, your only option, unless the cable company chooses otherwise, is that cable company for your Internet service. Again, when we were in the phone line world of Internet provisioning that could happen for anyone. The phone company could not keep any competitor out. That has now changed. And the FCC changed its rules under pressure from the phone companies and with the support actually of many members of Congress who agreed with the phone companies; that because they owned those networks, they should be able to decide whether other companies can come in and provide services on those networks. And they should be able to charge those fees.

Now, there are a lot of consumer groups and others who believe that that was a huge mistake and that we are now moving towards effectively a duopoly of Internet service provision, the cable operators and the phone company. And that will not provide, in their minds, a very competitive market.

MARGOT ADLER: Now, you've begun to explain this already, but why don't we go into the Supreme Court's Brand X decision and what its implications really are for the Internet?

JONATHAN KRIM: Well, it was a huge case because in that situation, the challenge was to the cable operator's ability to keep competitors out. And what that case was about was consumer organizations and competitive Internet providers saying wait a minute, we have a problem here. The phone companies have to share their line. Why shouldn't the cable operators have to share theirs? And the court ultimately did not agree and thought that it was perfectly okay for the FCC to treat these technologies differently, especially because the FCC was already moving in the direction of removing that sharing requirement from the phone company.

MARGOT ADLER: Now, explain a couple of things that we're going to be talking about on this show. First of all, broadband: What is it?

JONATHAN KRIM: Broadband essentially is higher speed Internet access. It means that the pipe that carries digital signals is larger and can move them much more quickly. And so particularly for what is known as rich media—anything that has a lot of graphics, anything that has video, anything that requires broadband in order to work properly—the more broadband there is, the better the computing experience is.

MARGOT ADLER: And what's the difference between broadband and DSL?

JONATHAN KRIM: Well, DSL's a form of a broadband. DSL is the broadband version that is being offered over telephone lines.

MARGOT ADLER: As opposed to the cable.

JONATHAN KRIM: As opposed to the cable lines, correct. And so what the phone companies have found a way to do is use a certain part of the copper wire to carry broadband signal as well as phone signal, and they basically split those signals when it comes into your house. And it's the same with the cable operators over their coaxial lines.

MARGOT ADLER: Coaxial?

JONATHAN KRIM: Coaxial lines are the lines that cable operators use to bring their signal into your house, as opposed to those narrow copper wires that you're used to with the phone.

MARGOT ADLER: Let's take another term that's been floating around. Net neutrality: What does it mean?

JONATHAN KRIM: Very important issue. So now that we have a situation in which there is largely a duopoly of Internet service providers in most markets in the country, you either have a choice between cable or phone company provisioning of Internet service. The question now becomes: Can those operators discriminate not only who provides you Internet connectivity, but what signals are actually moving across their networks? So let's take a very crude example. You use Google as your search engine. And I use Yahoo as my search engine. Now, in a world where Net neutrality is not a requirement, your Internet service provider, let's say cable company X, could cut a deal with Yahoo that says I'm going to deliver Yahoo's digital packets to Margot Adler before I'm going to deliver Google's, or at a slower rate. And for that, Yahoo's going to pay me some money. And maybe if Google doesn't like that and wants to pay me even more money, then I'll put Google first. Now, that's a very crude example of Net neutrality. But where it really begins to play in a major way is in services that require a great deal of bandwidth, or businesses that directly compete with other services that cable operators and phone operators provide.

Now, one of the rallying cries of opponents of this has occasionally been that they're going to block entire sites. They're going to stop delivering content that they don't like and so on and so forth. I actually don't think that that's a realistic problem. And I think if the carriers make the mistake of doing that, they will invite the kind of regulation that they don't want.

MARGOT ADLER: Coming up later in the show, we're going to hear about Philadelphia's plan for municipal WiFi. Explain first of all how a municipal wireless service would work.

JONATHAN KRIM: The way it's being rolled out now is that there are essentially nodes, which are small pieces of equipment that can be placed in public places, most usually

street light poles, and these nodes help to push the signal around the city. And you have to deploy a lot of them because their signal reach is not very great. When you go to a Starbucks, let's say, and you're in a hotspot there, that hotspot doesn't extend very far outside the store. So what you're essentially doing is creating hundreds of hotspots around a city so that virtually wherever you're standing or sitting, you're in the reach of that hotspot.

MARGOT ADLER: What are other communities around the country planning in terms of citywide wireless Internet?

JONATHAN KRIM: Well, this is the model that they are considering—whether or not to either contract out to private enterprise or run a network themselves that provides Internet access to much of the city, if not all of the city, at reduced rates. This is being looked at for a couple of reasons. Number one: to bring access to communities that cannot currently afford broadband prices. Also, it creates a level of connectivity that the city government can use at a very efficient level for a lot of government services.

MARGOT ADLER: Are there any other important aspects of the changing nature of the Internet that you want to talk about?

JONATHAN KRIM: Well, there's one sort of real tragedy here that doesn't get talked about very much. And there isn't a solution for it right now. If you think about the platforms that come into the house that have the potential to carry Internet service, one of them that never gets talked about is satellite television, which is a very active competitor of cable companies and will be a competitor of the phone companies as they move into providing television service over their Internet lines. The problem is no one has been able to figure out how to make Internet service work efficiently and effectively over satellite.

MARGOT ADLER: Thanks for talking with me, Jonathan.

JONATHAN KRIM: It was a pleasure.

MARGOT ADLER: Jonathan Krim is director of strategic initiatives at washingtonpost.com and a former Washington Post reporter who covered technology policy. Coming up: Is it a pipedream for cities around the country to become wireless? We'll hear Philadelphia's story. Stay with us.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. Many cities around the country are considering going completely wireless so all city residents can access the Internet. Philadelphia could be the first city to do this if all goes as planned. Bruce Schimmel has this report.

BRUCE SCHIMMEL: Philadelphia's Mayor John Street has declared that broadband Internet is an essential utility, as critical to the city's 1.5 million residents as electricity and water.

Street says that easy access to information in the 21st century is a fundamental right. But Philadelphia almost lost its right to start its own high speed system. In the fall of 2004, the city's wireless steering community was wrapping up a planning session late one Friday afternoon when it heard some discouraging news.

ED SCHWARTZ: ...and suddenly, we learned that there's a bill in the legislature being pushed by Verizon—at the last moment in the legislative session so they could sneak it through.

BRUCE SCHIMMEL: Ed Schwartz is a former city councilman who uses the Internet to help neighborhood leaders work together. The last minute bill would make it nearly impossible for cities in Pennsylvania to compete with their local telephone company.

ED SCHWARTZ: We would have to ask them permission to setup a citywide network for Internet access. And if they didn't give that permission, we could do nothing about it.

BRUCE SCHIMMEL: Schwartz says he bolted from the planning committee like Paul Revere. That weekend, he unleashed thousands of emails to Philadelphia activists asking them to call Verizon and complain. Schwartz recalls a phone conversation that he had where he warned one telephone company executive.

ED SCHWARTZ: This is the biggest economic development venture the City of Philadelphia has announced in thirty years. We're getting great press. Do you want to be known all over the world as the company that tried to kill it?

BRUCE SCHIMMEL: Verizon spokesperson, Eric Ray.

ERIC RAY: Verizon raised serious questions about municipal WiFi deployment because we think that cities are in a difficult situation. They can't keep up with the technology. And they may not be able to provide the service as well as others can.

BRUCE SCHIMMEL: The bill passed, but legislators allowed Philadelphia to go ahead with its broadband. However, other cities in Pennsylvania, like municipalities in other states, still cannot compete with phone companies who say that such competition will stifle innovation. But Philadelphia argues that its municipal WiFi will be a boon to development.

Still, the scheduled arrival of the city's system by 2007 is not being celebrated by one local Internet entrepreneur, Tom Christy. Christy says that the city's plans are interfering with his own. Christy is building his own wireless technology he says gets faster as more users sign on. But unlike the city's system, which will cover all of Philadelphia, Christy's company is currently concentrating on more affluent areas.

TOM CHRISTY: At some point in the future, we probably will cover up the whole city. But it's not cost effective to do that from day one.

BRUCE SCHIMMEL: To finance building out the system for all, telephone and cable companies say they need the freedom to market ultra-fast broadband speeds and offer consumers exclusive content. But Christy is concerned that these super-high speed lanes, which lead to selected sites, will result in an Internet that's no longer open to all.

TOM CHRISTY: It's like walking down South Street and only being allowed to buy from certain shops because the Internet provider doesn't allow you to access the shops that you would choose to.

BRUCE SCHIMMEL: Telephone and cable companies insist that they will not block any web sites. They say they're committed to being Net neutral. But phone and cable companies also oppose regulations that several other countries have adopted which would mandate Net neutrality.

DIANA NEFF: In the 21st century, knowledge is power.

BRUCE SCHIMMEL: Dianah Neff heads the City of Philadelphia's wireless program.

DIANA NEFF: Actually, knowledge has always been power, but the access to that has been restricted to a handful of people. Today, that doesn't have to be the case.

BRUCE SCHIMMEL: The Reading Terminal Food Market is a wireless hotspot a few blocks from Independence Mall. The market is popular with Philadelphians from all over the city. Neff says that the Internet should also be a public place where all people can mix freely. Otherwise, Neff says it's discrimination.

DIANA NEFF: It's not along the race lines. It's discrimination of knowledge and who has access to what. And again, you bring in the class system. If you have enough money, you can get access to anything you want. But if you don't, you're again limited to that second class citizen.

BRUCE SCHIMMEL: Neff negotiated the city's deal with EarthLink, one of the country's largest Internet providers. EarthLink will build and own the network, but Philadelphia residents will have access to cheap WiFi everywhere in the city. Philadelphia's Dianah Neff says that Philly's deal with EarthLink offers a model for other cities that closes the digital divide and promises Net neutrality.

ERIC RAY: Verizon's absolutely committed to Net neutrality. We've been doing it ever since the Internet has evolved, and we do it today. We're not going to change that.

BRUCE SCHIMMEL: Once again, Verizon's Eric Ray.

ERIC RAY: Verizon right now today is building the most advanced fiber optic network in the world in the U.S. It's an expensive process and needs to be funded by selling services over it.

BRUCE SCHIMMEL: But unless these ultra-high speed lines come to every doorstep, some are concerned that this next generation of Internet will only further widen the current digital divide. Philadelphia wireless says it's found a middle ground between public good and private enterprise. Other cities like Boston, San Francisco and Chicago, who are also thinking about municipal WiFi, will be watching to see what becomes of Philadelphia's experiment. For Justice Talking, this is Bruce Schimmel.

MARGOT ADLER: As we just heard, Philadelphia is already working to provide wireless Internet to its residents. Other cities around the country have similar plans. San Francisco is planning to work with Google to provide free WiFi. On today's Justice Talking, we're going to talk more about municipal WiFi, but we aren't limiting our debate to just that issue. We want to talk about broadband and the future of the Internet and whether a digital divide continues to exist in America.

To help pull apart these complicated issues and explain what's at stake, David McClure and Art Brodsky are with me in Rancho Mirage, California. We're here with an audience of communications and media experts, and we'll take their questions later in the show. Let me introduce our guests. David McClure is the president of the U.S. Internet Industry Association, a trade group of broadband and Internet providers. Art Brodsky is the communications director of Public Knowledge, a public interest group that works on telecommunications and intellectual property issues. Art and David, welcome to Justice Talking.

DAVID MCCLURE: Thank you, Margot.

MARGOT ADLER: In a controversial decision, the Supreme Court ruled that cable companies, unlike phone companies, are not common carriers. Just what is a common carrier? And what does this decision mean for the future of the Internet? I'll start with you, David.

DAVID MCCLURE: Common carrier is one of those concepts leftover from the old age of telephony, regulated telephony. It defines...

MARGOT ADLER: That is, telephones.

DAVID MCCLURE: Telephones, yes. To be really honest, I'm not sure outside of the realm of telephones how much it has to do with the broadband networks that we're looking at for the future. It does have to do with how we regulate what is essentially a communications network that is intended for the common good.

MARGOT ADLER: And Art, what do you think the Supreme Court decision did or did not do?

ART BRODSKY: What it did, basically, was lift a lot of the protections for consumers that they've had over the years, and lift the regulations that, frankly, allowed the Internet to grow. This concept of common carrier means that you can carry anybody's traffic, anywhere, anytime, on a non-discriminatory basis. It's a concept that goes back to the 1880s, to the railroads, and was adapted later for the telephone network. So it's not something new or squishy or lunatic or anything. It was a basic principle of how society operated.

MARGOT ADLER: Now, the telephone companies have invested billions of dollars in wiring the country for telephone service over the years. So shouldn't they have the right to make money off that investment?

ART BRODSKY: Sure, and they have. I don't see any of them being poor anymore. During the old days, or to some degree the current days, they had almost a guaranteed profit for most of the time from, let's say, the '30s and '40s forward, they had what's called rate of return regulation, where they'd go in and meet with the government and figure out what the costs were and figure out cost plus, ten, twelve percent, six or eight percent, whatever it was. So they made their money.

MARGOT ADLER: Now, I realize I didn't let David respond to the question about the implication of the Supreme Court decision. I had no idea if you wanted to go there.

DAVID MCCLURE: Well, I will go there, in part to say that Art and I are not in disagreement with the basic premise, which is if you're going to have broadband networks that are carried over copper wires, they should be regulated in the same manner. So if you're going to say cable companies that carry a broadband signal over copper wire get treated one way and telephone companies that carry broadband over a copper wire are treated differently, there's something fundamentally wrong with that. Now, where this is going to sort itself out and on which side, I think it's towards deregulation, not more regulation. And probably I'd be in support of that. But the fact is we have to have the same regulations for the same services over the same kinds of networks.

MARGOT ADLER: But David, am I right to believe that the United States government decided that Americans needed access to telephones? And when the wiring of America happened, they subsidized a large part of it with billions of dollars. So if I think of it that way, I start thinking, well, shouldn't the government have a right to demand that all Internet service providers share these telephone and cable lines equally?

DAVID MCCLURE: Well, except that the government built the telephone system. The government didn't build the cellular system. It didn't build the cable system. It didn't build the satellite systems. I'm not aware of a nickel they put into the WiFi industry. So all of a sudden we're saying that because we invested in a telephone network, and because telephone networks no longer exist, they're all broadband companies, we'll just take over those as well and pretend that we paid for them as well.

ART BRODSKY: Pardon me.

MARGOT ADLER: Art, how would you respond to that?

ART BRODSKY: The government did not build the telephone networks. The companies built the telephone networks under a ruling which stood for many years basically granting them a monopoly. So you can't say that the government is now losing these other networks because they never owned them in the first place.

MARGOT ADLER: But where do you stand with this view about regulation and non-regulation when it comes to broadband, when it comes to cable?

ART BRODSKY: The principle of common carriage, as I said, is one that's been around for a long time. I think it ought to be applied in a lightly regulated way going forward. Because if you talk with consumers, with people who offer services that are competitive with the phone companies (such as Vonage, which offers VoIP, the voice over the Internet, Internet telephony—you see their commercials on TV all the time), what they're in now is a netherworld. They're not sure what they can offer. They're not sure how complaints would be resolved. What the Supreme Court's decision—what's called the Brand X case—and the subsequent FCC decision decided was that the old rules didn't apply. But we don't know what will apply.

MARGOT ADLER: So we don't know what the new rules are.

ART BRODSKY: Right.

DAVID MCCLURE: Basically, that's true. One of the things we do know is that both the Congress and the Federal Communications Commission are very committed to the idea that however we proceed, we must proceed cautiously to ensure that consumers aren't harmed and that we don't damage the long-term interests of this broadband infrastructure that we're hoping to create.

MARGOT ADLER: Well there have been a lot of recent articles in *The Nation* and *Salon.com* talking about the end of the Internet and claiming that there's going to be a commercialization of the Internet and that the Internet as we know it is going to disappear. Is that hyperbole? Is it overblown? Is it true, David?

DAVID MCCLURE: The Internet as we think we used to know it, which is the Internet from around 1983, is rapidly disappearing, and it's not going to come back. Why? Because we're demanding more of it. We never envisioned in those days that we'd have video streaming of full length feature movies over the Internet, that we'd have peer-to-peer networking, or voice over IP—that we'd have a whole raft of advanced services that the old Internet was just never built to accommodate. So in that respect, we're going to move forward. Will it be a move to the better or to the worse? I think we'll have to see. But we are going to see the Internet as we used to know it probably will come to an end.

MARGOT ADLER: Art, do you agree? And what do you think it's going to mean?

ART BRODSKY: The Internet as we knew it was fabulous. It started out as this data network from the Defense Department that got used to open protocols bolstered from underneath by common carriage. It developed into a model like nothing the world has seen. We started out just doing these little text things. Some of you remember the old days of Bitnet or CompuServe or Prodigy, you know, when my goodness, you could see a picture. And I remember when I went to a press conference when real networks came out, and you could hear sound. All these things developed, and there was no one in between the customer and the service provider. That was the old Internet. That's the way the new Internet should be, only better. But what we fear is that that's not what is going to happen, because what the industry is talking about now is interposing themselves between the user and the service provider, doing away with what they call the end-to-end architecture, where the intelligence is on both ends—at least the service provider; I don't know about all the users. But at some point, interposing themselves in the middle will basically destroy the philosophy of what we've had that's worked very well if we're not careful.

MARGOT ADLER: And the philosophy that we've had is sort of that you can go anywhere and do anything?

ART BRODSKY: There are two points. There are two ends of it. One is, from the consumer end if I'm sitting at home on my computer, I can go anywhere. I can do anything. I can access any service. And I can create and send out. That's what's new. The other end is from the service provider. They can get to any customer, offer any service, and invent anything new. And people can try it out. And maybe you can build a business.

MARGOT ADLER: And what are your worst fears?

ART BRODSKY: The fear is that when you get a person like the chairman of AT&T saying that companies like Google and Yahoo are using my network for free, that they're going to interpose themselves somehow between the customer and the service provider. When you get officials from Bell South and Verizon saying they're going to start charging service providers different fees to access the network and maybe they won't give everyone the same chance to pay those fees and access the network—that's what scares me.

MARGOT ADLER: David, do you think those fears are real? What are your fears and hopes?

DAVID MCCLURE: I'm not sure those fears are real at all because consumers dictate this market, not telephone company executives. Let's take for just a moment the anti-telephone rhetoric out of the conversation, and it becomes a lot clearer. Let's talk about the good old days of the Internet. You remember that IP...

MARGOT ADLER: IP being?

DAVID MCCLURE: I'm sorry. Internet Protocol, the basic building block of the Internet, was designed to make sure that nothing was assured. That's not going to work very well in a world where you have to make 911 calls over VoIP service. Frankly, if we can't guarantee some level of reliability, that call's inner mechanisms may not get through. The signal may not get through. But again, the Internet we built to be survivable as a defense network was not designed for advanced broadband applications. So somehow, we've got to move beyond our fears that someone might make a profit and beyond our fears that somehow, somebody's planning something nefarious. Much of what we're talking about and much of the rhetoric flying on both sides, if you sit down and very carefully analyze it, simply doesn't make sense.

MARGOT ADLER: You're listening to Justice Talking. We're talking with David McClure from the U.S. Internet Industry Association and Art Brodsky from Public Knowledge. Coming up: more of our debate on what the future of the Internet holds.

UNIDENTIFIED MALE: I, for one, am aghast that the whole conversation of the future of the Internet has been hijacked by those who can't shake the history of a telephone industry that no longer exists.

MARGOT ADLER: Stay with us.

MARGOT ADLER: This is Justice Talking. I'm Margot Adler. On today's show, we're talking about municipal WiFi, the digital divide and the future of the Internet. We're asking: Whose Internet is it? The government? Private industry? The public? Our guests are David McClure and Art Brodsky. Art Brodsky is the communications director of Public Knowledge, a public interest group that works on telecommunications and intellectual property issues. David McClure is the president of the U.S. Internet Industry Association, a trade group of broadband and Internet providers.

Now, before I let David respond, I want to ask the question to you that would be sort of the consumer question out of this. Do you believe that telecommunication companies are going to start preventing people from going to websites and networks or steering them in certain directions? Let's start with you, Art.

ART BRODSKY: It would be blatantly obvious if, for example, we used the apocryphal "go log onto L.L. Bean and not to Eddie Bauer." That's what they've said they're not going to do. But what they can do and what they said they want to do is such that L.L. Bean's website might not be as responsive as Eddie Bauer's. And that's where the consumer would have to say, gee, this one is better. And it may not be as responsive because of some exclusive commercial arrangement that the network operator has made with the company. So to the extent that it degrades the consumer's experience down the line and hurts the service provider at the other end, that's what we'd like to prevent.

MARGOT ADLER: Okay. David, now you can get in on all these issues.

DAVID MCCLURE: I don't know what it is we're preventing. Because whatever it is we're going to hope we might be able to prevent is an idea. And I for one am aghast that the whole conversation of the future of the Internet has been hijacked by those who can't shake the history of a telephone industry that no longer exists. We're all framing this only within the realm of what AT&T did before and after they broke it up. I'm sorry. That's over. Let me tell you what the future is.

ART BRODSKY: Who is it that AT&T just bought a couple of...

DAVID MCCLURE: They bought another telephone company. And I believe, though I may be wrong, I believe that nobody's going to be injured.

MARGOT ADLER: You're listening to Justice Talking. We're talking with Art Brodsky from Public Knowledge and David McClure from the U.S. Internet Industry Association.

BILL HERMAN: My name is Bill Herman. I'm a student at the University of Pennsylvania. I would like to refute what you're saying, David, which is that it's just some futuristic possibility that's not really technically possible or feasible, because we've already seen examples of network discrimination, specifically in Voice over Internet Protocol where Vonage has had trouble with several different broadband providers getting their traffic through, where those broadband providers have specifically blocked Vonage traffic because they are themselves telephone companies and want to get that money from telephone calls rather than voice over Internet calls.

DAVID MCCLURE: Well, let's make sure we know what we're talking about here. We're not talking about lots of examples. We're talking about one example: Madison River Communications, a small rural telephone company that allegedly blocked traffic for Vonage. The FCC stepped in, investigated, fined. It was over, period. And by the way, that's exactly how the system is designed to work. But I'm also pointing out to you that that kind of blockage is not the norm in the industry. And it's not endorsed by any major members in the industry.

ART BRODSKY: Can I just throw in one little note here?

MARGOT ADLER: Yes, Art.

ART BRODSKY: Madison River was decided before the FCC put out its order conforming DSL, digital subscriber loop, to the cable broadband system, putting it into the netherworld. At the time the Commission did it, they had the authority to do that and it was just an enforcement proceeding. Nobody is sure right now if somebody brought that kind of case whether it would have a similar outcome.

DAVID MCCLURE: Well, let's bring one then. Let's do a test case.

ART BRODSKY: Bring it on.

DAVID MCCLURE: I'd like to see it, Art.

MARGOT ADLER: Let's go to another question here on Justice Talking.

MILTON MUELLER: This is Milton Mueller. I'm from Syracuse, New York. Let's assume for the moment that I buy your argument that if the market is competitive, no company's going to be stupid enough to tell people what sites they can go to and what they can't go to and what they can't go to because they'll lose business. Does that still mean therefore that you're going to be opposed to entry by entities such as municipalities or maybe even it's just me setting up a wireless entity. From the good of my heart, I'm setting up a wireless network and connecting people to the Internet, therefore taking customers away from you. Are you going to pass a law that prevents me from doing that?

DAVID MCCLURE: No. I'll do something even simpler, sir. I'll design a service so superior to yours that your customers will flee from you to buy mine. And that is exactly the strategy that I think most of the larger companies are pursuing. Let's lay this whole WiFi business to rest. WiFi is a thirty foot technology. It is not a last mile technology.

MARGOT ADLER: What does that mean by the way?

DAVID MCCLURE: What I mean is that the signal is designed to go effectively thirty feet. I used to say 100 feet like the literature, but I called tech support at a few of the WiFi companies and the tech support guys say that beyond thirty feet, we're not guaranteeing anything. It doesn't go through trees. It doesn't go through concrete. It doesn't go around corners easily. You can turn your back and lose your signal. And most importantly, it's not broadband. If you talk to the folks at Tropost, they'll tell you that with any city manifestations you're going to get guaranteed best a little above dialogue. In better circumstances, maybe more, but then the economic model falls apart. What you heard from Philadelphia is absolutely the truth. The reason they're doing it, the reason why so many cities are looking at it and more are jumping on everyday is it's good press.

MARGOT ADLER: I don't know. When I go into Bryant Park and can turn on my computer, it's wonderful.

DAVID MCCLURE: That is wonderful. How many people like you do that? Because I'll tell you what Orlando found. Orlando found they couldn't get enough people to log on everyday to even pay for it. Many coffee shop hotspots are discovering the same kinds of issues. You're talking about a technology that today, and it could change, today is used by about two percent of the American population, an affluent two percent I'll point out. There are other better technologies.

MARGOT ADLER: David, why is the industry lobbying against it so hard?

DAVID MCCLURE: Where?

MARGOT ADLER: There are fourteen states that have passed some kind of law. So who's behind those laws?

DAVID MCCLURE: Absolutely. We lobbied for...

MARGOT ADLER: Who?

DAVID MCCLURE: We are. I am, right here.

MARGOT ADLER: So? So you're lobbying.

DAVID MCCLURE: Read the laws. Those laws are designed to protect taxpayers from municipalities that walk in and say we don't care what it costs. We don't care if it's going to go bankrupt. We don't care if there's no business model. We don't care if anybody ever uses it because it's good press. And by the way, taxpayers will just pick up the bill for it.

MARGOT ADLER: Are these laws protecting consumers?

ART BRODSKY: I'm glad that the phone companies are looking out for the wellbeing of our cities. I hadn't recognized the philanthropic nature of their lobbying endeavors, so maybe now I'll have a less cynical outlook. Although, after being a reporter for twenty-five years, the cynicism sort of ingrained. WiFi may or may not be a good idea. Cities certainly don't want to go pouring millions of dollars down a rat hole. However, it's not the phone company's job to tell them not to do it. If a city wants to build a WiFi network the way some cities have municipal power, municipal water, municipal anything, that should be their job to do. And if it fails, then they should take the heat for it. It's not something that should be imposed on them from the outside by someone who fears a competitor. Although, granted, from Dave's description, they're not much of a competitor. So we wonder what all the heat's about.

MARGOT ADLER: So what would WiFi achieve?

ART BRODSKY: It depends on what you want it for. I mean, for a lot of people it is an economic development tool to get people outside to places like Bryant Park or downtown Alexandria. For other people, it's to fill in a market failure where parts of town have not been wired for high speed and to get it out into different neighborhoods.

MARGOT ADLER: I should say that you're listening to Justice Talking and we're talking with Art Brodsky from Public Knowledge and with David McClure from the U.S. Internet Industry Association. Let's take some more questions from our audience right now, here on Justice Talking.

MONROE PRICE: I'm Monroe Price from Philadelphia. I have a question for David. What, other than allowing companies to do what they can do to build a bigger and faster

broadband, should be the elements of a broadband policy? And should it have consumer protections built into it?

DAVID MCCLURE: The bottom line is this: There are lots of things we need to do. What built the telephone system in this country was that we put in place a system of universal service. Right now the Congress is debating whether or not we should expand universal service to cover broadband so that we do have some subsidies into rural areas. Yes, absolutely, we must reform universal service. We need to address the digital divides. And I say divides because there's not one. We like to think there's one economic divide, sort of vaguely based on color or economic or social status. There's not. There are at least five different divides. There are divides with seniors. There are geographic divides, rural versus urban. There are divides that are culturally based. Because, frankly, if you can't read, you can't use the Internet very effectively. If you don't have a computer, if you've never learned how to use a computer, then Internet access is worthless to you. So we've got to heal those divides.

MARGOT ADLER: If we have five digital divides, and that sounds pretty clear to me, what do we do? Where do we go to heal that?

DAVID MCCLURE: Communities. We've got to go into the community. And there are organizations doing that today. Net Literacy out of Indiana is one of them that we as an organization work very closely with. But we also don't have a coherent idea—and this is where Art and I agree, even if we're on separate sides, different sides—we don't have a clear idea of how we want to regulate all this. We keep trying to regulate it like we used to regulate other things and that's not working very well. So we have to put some serious consideration into how we want to regulate this. What does a light regulatory touch even mean?

MARGOT ADLER: Art, digital divide, what does it look like now?

ART BRODSKY: The fact of the matter is that right now broadband passes 90 percent of the houses, through either cable or through telephone or other providers. It's the take rate that's so low.

MARGOT ADLER: The what?

ART BRODSKY: The number of people who are actually using it, subscribing to it, taking the service, is very low. To bridge that divide, whether it's an inner city divide, whether it's a rural divide, whatever it is, they could start by lowering the price. That'd be one way. And people have to find something useful on there. When you put out a network, people will go to it not because it's a jazzy network, but because there's good stuff for them to do, new applications to do, whether it's gaming, whether it's telemedicine, whatever. And to the extent that the price comes down, the utility gets better, that it becomes more like an appliance, you'll see that divide close.

MARGOT ADLER: Let's go onto another question here on Justice Talking.

JACK CHO: I'm Jack Cho. I'm from Hong Kong. I just wanted to share one quick comment that this debate has a huge global relevance to people around the world. I came to the United States several years ago to appreciate the American system with openness, with democracy as the central part of the value system. And it's my view, and I think it's shared among most of my friends in China and the Asian Pacific, that openness and Net neutrality are some sacred principles we cannot afford to lose.

MARGOT ADLER: Anyone want to answer that?

ART BRODSKY: Let me make one other observation about what can drive usage of the network and that's competition. Now, Mark Cooper from the Consumer Federation of America made the observation that back in the dial-up days there were 15 Internet service providers per 100,000 customers. There were thousands, maybe 6,000 of them. These days there are statistically fewer than two. You don't have a whole lot of choice. And we hope that that will change over time. We don't know that it will change over time. But until it does change over time...I mean, our view is that the openness and the consumer protections need to stick around.

DAVID MCCLURE: It's interesting that you talk about that, Art, because you and I were both there for the battles in the late '90s and early thousands where everybody was saying there's no competition for the telephone companies. We've got to have competition for the telephone. And while everyone was blathering about it in Washington, the cable companies quietly went out, spent a hundred billion dollars of their own money, created their own networks and guess what? Today, they are competing in telephony. And they didn't do that just because of government policies. They did it because the marketplace drove them that way, which is as it should be.

MARGOT ADLER: Let's go onto another question here on Justice Talking.

PAULA CHUCKER: Hi, my name is Paula Chucker, from Northampton, Massachusetts. And my question is to Dave. You gave examples of good corporate citizenship, the role of NGOs, public/private partnerships, which are, of course commendable. I wonder if there are examples of regulatory alternatives that don't necessarily work based on this charity model of solving the digital divide. And is there room for policy interventions that might be pro-poor, but not necessarily pro-market?

DAVID MCCLURE: I believe there are, and the biggest one I'll raise is the reform of the universal service system so that it includes broadband, so that we can begin to apply some of the federal funding that you and I are going to pay for by the way. We'll pay for it through additional taxes on our other broadband bills. But it will allow us to have the money to build out to rural areas where there isn't a good economic justification, where companies can't go because to build out fiber is going to cost, what, a trillion dollars or more in this country? Where are we going to get the money from? Well, we're looking for the broadband companies to come up with it. Well, it's your network. You invest the trillion dollars, kind of like we did with the cable company. If we look at just one side of

the issue which is, oh my God what happens if there aren't more than three or four different kind of broadband, then I think we're going to lose sight of the fact that we've got a lot of building to do, and we're going to have to go to a lot of places. And we're going to have to be very creative about how we do it. The one thing that frightens me in all of these discussions is that we're at the point now where we want to close off consideration of ideas, just ideas. We want to close off consideration of ideas about how to do that in the name of some regulatory sacred cow, and that's wrong.

ART BRODSKY: Let's take a look at the concept of regulation. In the bad old days when the broadband companies, before they became broadband companies, were telephone companies, there was real regulation. We're talking about—and I'm going to get highly technical and obscure for a reason, okay?—it's what's called Title II under the Communications Act, which regulates what we've been calling common carriers. And I used to deal with this stuff day in and day out. In common carriage, you have this rate of return, which meant figuring out what your costs were and separating the costs of your network and doing business between interstate and intrastate, traffic sensitive costs and non-traffic sensitive costs, filing tariffs, all that stuff with the FCC and state commissions. That is regulation. We're not talking about that here. In the future of broadband, what we're saying is the basic principle is fair play.

MARGOT ADLER: Art, David, thanks for joining me on Justice Talking. Art Brodsky is communications director of Public Knowledge, a public interest group that works on telecommunications and intellectual property issues. David McClure is president of the U.S. Industry Association, a trade group of broadband and Internet providers.

To find out more about the future of the Internet, you can go to our site on the Internet, justicetalking.org. While there, tell us what you think about these issues and about our show. You can also sign up for our podcasting service. I hope you'll tune in next week. For Justice Talking, I'm Margot Adler.
