



### **INTERNET NEUTRALITY TASKFORCE**

The delegates to the LWVUS Convention in 2006 adopted a resolution that stated: “Resolved that the League of Women Voters of the United States support the concept of Internet Neutrality by: Calling upon Congress to protect equal access to the Internet.” This resolution was based on the LWVUS position on Citizens Right to Know/ Citizen Participation.

In order to provide essential background information and supporting material for this interpretation of position, the Internet Neutrality Taskforce was formed. Requests for applicants for the taskforce were sent out in the fall of 2006. The following members applied and were selected for the taskforce: Sharon Ailsleger, LWV Wichita, KS; Tom Carson, LWV California; Christine Horrigan, LWV Connecticut; Mary Morgan, LWV of Houston, TX; and Linda Thurman, LWV of Baton Rouge, LA. Each of these members brought unique qualifications and experience within areas relevant to the topic. Sarah Diefendorf and Judy Duffy of the LWVUS Board served as board representatives to the taskforce.

The taskforce was asked to develop materials in response to the following questions:

- What are the essential features of the Internet that make it an effective tool for political discussion, education and participation?
- How can these essential features best be protected and enhanced?
- What are the threats to these essential features?
- How does the issue of “Internet Neutrality” interface with other telecommunications policy, both technically and politically?
- How can protections for political participation be designed to enhance rather than retard technological advancement?
- How can the legitimate, commercial interests of the providers of electronic communications be differentiated from the essential tools of political discussion, education and participation?
- How do the interests of cable, broadcast, telephone, Internet and other communications providers intersect or compete?
- How should the providers of electronic communications be compensated for providing “public” services?
- Who is funding the lobbying effort in favor of and against “Internet Neutrality?”
- What sources did the task force consult in responding to these questions?

The taskforce met by conference call and communicated regularly by e-mail. The discussions proved that the topic was complex and controversial. Varying opinions were held by the members of the taskforce, causing the timeline for the taskforce’s work to be extended past the stated deadline of June, 2007.

Since there was no agreement within the Internet Neutrality Taskforce as to how one paper could be completed as a unified response to the questions, they are presented here as “Majority” and “Minority” reports with subsequent rebuttals. The following four papers are the products of the taskforce, for the information of League members.

The LWVUS will continue to monitor Internet Neutrality as we do other non-priority advocacy issues. State and local League members may follow the issue at the state and local levels. To act on this issue using the national position, Leagues should follow the usual procedure: Leagues must first clarify the action that is contemplated; cite the relevant LWVUS position to support the action; indicate that it is a priority for the state or local League; and contact the Grassroots Lobbyist at LWVUS for guidance.

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Neutrality Task Force, for the use of League members.*

## **INTERNET NEUTRALITY TASKFORCE** **“MAJORITY” REPORT**

### **Introduction**

Delegates to the 47<sup>th</sup> National Convention of the League of Women Voters voted to amend the proposed program by adopting the following resolution:

*Resolved, that the League of Women Voters of the United States support the concept of Internet Neutrality by calling upon Congress to protect equal access to the Internet.*

During the debate on the resolution, delegates noted the importance of maintaining a neutral Internet in order to provide voter education, open government up to the public, offer a robust marketplace for goods, services, information, and ideas, promote civic engagement, and fuel an engine for democratic discourse. This taskforce was created to provide a bank of new information and guidance needed by the LWVUS Board and staff, and to League members generally, in order to take action on Internet neutrality.

Despite its pervasiveness in our lives, few Americans understand what the Internet is and, perhaps equally importantly, what it is not. The Internet is a collection of interconnected computer networks, linked by copper wires, fiber-optic cables, wireless connections and other “hardware” that transmit data using the standard Internet Protocol (IP). “It is a ‘network of networks’ that consists of millions of smaller domestic, academic, business, and government networks, which together carry various information and services, such as electronic mail, online chat, file transfer, and the interlinked Web pages and other documents of the World Wide Web.”<sup>1</sup> The Internet and the World Wide Web are not synonymous. The World Wide Web is accessible via the Internet, as are many other services including e-mail.

### **An important distinction for League member understanding**

Software applications, such as Instant Messenger, You Tube and Google, run “on top” of or over the Internet; however, they are not the Internet. The distinction lies between the infrastructure (the Internet) and applications (Google). As part of the “net neutrality” fight, cable, telephone and related manufacturers have argued that search engines like Google and Yahoo are gateways onto the Internet because they may appear to stand between the user and his or her ultimate destination on the World Wide Web. This argument attempts to merge “search neutrality” with “Internet neutrality.” The majority of the taskforce rejects this view for several reasons. First, it ignores the critical distinction between infrastructure and applications. Second, it runs counter to the history, guiding principles, and the legal and policy precedents applicable to the Internet. Third, legislation introduced to ensure that Internet neutrality remains a guiding principle of the

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<sup>1</sup> <http://en.wikipedia.org/wiki/Internet>

Internet has not included “search neutrality.” Fourth, the resolution adopted at the 2006 Convention was specifically limited to Internet neutrality. Whatever the merits of “search neutrality,” they are beyond the scope of this report which is limited, by necessity and design, to *Internet* neutrality.

### **Statement of Principles**

The League of Women Voters believes that a vibrant democracy depends upon the informed and active participation of its citizens at all levels of government. Access to information is the lifeblood of democracy and open government. Over the past two decades, the Internet has emerged as an essential vehicle for free speech, journalistic expression, commercial innovation and democratic participation.

The League of Women Voters believes that a non-discriminatory, unrestricted, open – or *neutral*--Internet is an essential vehicle for free speech, political discourse and expression, dissemination of news and information, and democratic participation. At the 2006 Convention, the delegates voted to support government protection of Internet neutrality, interpreting the League’s positions on Citizens’ Right to Know/Right to Participate and Individual Liberties as applicable to Internet neutrality.

### **History of the Internet and its fundamental design principles**

The Internet’s origin can be directly traced to the U.S. Department of Defense’s DARPA (Defense Advanced Research Projects Agency) Internet Program launched in 1969. The fundamental design was to be a “network of networks” based on independent digital hardware and software protocols (the TCP/IP suite). The premise of this design was to make the network neutral (i.e. unaware) with regard to the content and applications it supports. This very neutral, non-discriminatory design permits the decentralized and open Internet the public has come to expect and has prompted the growth of activity on the Internet from 18,000 websites in 1995 to 100 million in 2006.<sup>2</sup>

However, neutral design alone cannot and does not guarantee an open Internet. The Federal Communications Commission (FCC) put safeguards in place over 25 years ago that precluded underlying network providers from discriminating against consumers’ freedom to use the network and against application service providers, some of whom might compete with applications being offered by the network providers. Protecting and ensuring an open, neutral Internet requires both:

- A neutral architectural design; and
- Regulatory non-discrimination safeguards.

Unfortunately, in 2005, the FCC removed these safeguards when it deemed broadband Internet service an *information* service, instead of a *communication* service.

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<sup>2</sup> See CNN’s report from Netcraft (<http://news.netcraft.com>), an Internet monitoring company at <http://www.cnn.com/2006/TFCH/internet/11/01/100millionwebsites>.

## **Criteria for Internet Neutrality**

Below are essential concepts of a neutral Internet that we believe Congress and the federal government should protect:

- With respect to any Internet service offered to the public, an Internet service provider and/or network operator should:
  - Provide **equal access** to all Internet content, applications and services and should not block, impair, degrade or otherwise interfere with any person's ability to access, use, send, post, receive or offer any lawful, content, application or service made available via the Internet;
  - Treat any content, application and/or service made available via the Internet in a **reasonable and non-discriminatory manner**; and
  - Treat any content, application or service made available over the Internet in a manner that is at least equivalent to the access, speed, quality of service and bandwidth that such Internet service provider offers to **affiliated content, applications, or services** made available via the public Internet.
- Consistent with the foregoing requirements, an Internet service provider should be allowed to take reasonable steps to:
  - Protect the security of the network;
  - Manage the network in a manner that does not distinguish based on the source or ownership of content, application or services;
  - Offer users services at different prices based only on defined levels of bandwidth or the actual quantity of data flowing over a user's connection;
  - Offer consumer protection services;
  - Handle breach of contract issues; and
  - Prevent violations of state and federal law.
- Network operators should interconnect with one another on an open basis, in the sense that no network operator is denied the opportunity to interconnect.
- Users should have the freedom to connect to the Internet at different speeds and service levels, according to their needs and budgets.

## **The importance of the Internet as a vehicle for citizens' political discussion, education and participation in the democratic decision-making process**

Free speech and political expression are flourishing on the neutral Internet. It is clear that more and more Americans are turning to the Internet for news and political information, that Internet users have more exposure to political arguments and hear more challenging arguments, that Internet users rely not only on mainstream news sources, but also on political material from government websites, candidate sites and alternative news sources, and that the Internet has become a powerful political organizing tool.

In 1997, the Supreme Court in the case *ACLU v. Reno* acknowledged the importance of the Internet to free speech and civic life.

It [the Internet] provides relatively unlimited, low cost capacity for communication of all kinds....This dynamic, multifaceted category of communication includes not only traditional print and news services, but also audio, video, and still images, as well as interactive, real time dialogue. Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther that it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer. As the District Court found, ‘the content on the Internet is diverse as human thought.’<sup>3</sup>

Because the barriers for entry are so low, even marginalized voices and ideas that are not heard through other mediums can find an audience on the Internet. The court concluded that speech on the Internet deserved the highest level of Constitutional protection.

The Internet has had a profound impact on social and political discourse in this country, most of it positive. According to a December 2006 survey by the Pew Internet & American Life Project, 70% of American adults (approximately 141 million people) use the Internet. Sixty seven percent of Internet users go online to get news, 66% have visited a local, state or federal government website and 54% look online for news or information about politics or upcoming campaigns.<sup>4</sup> “While most campaign Internet users say convenience is a major reason they use the Internet, more than half cite the Internet’s breadth of information and perspectives as a major reason for their online activity.”<sup>5</sup>

The trend towards using the Internet for news and information about politics is accelerating. The number of online users who got some news or information about politics in August 2006 was nearly two-and-a-half times larger than the number of Americans using the Internet for that purpose in July, 2002.<sup>6</sup>

### **Important features of the Internet that need protection**

The Internet by its very design has always been neutral and non-discriminatory. Unlike traditional telephone and cable networks where applications and content are managed, the Internet was designed to be unaware of the actual applications for which it is used. It is an open platform for the free flow of information, ideas, and commerce. The Internet embodies the following principles: consumer choice, market competition, economic opportunity, and technological innovation.

The most important features of the Internet can be summarized as follows:

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<sup>3</sup> *ACLU v. Reno*, 512 US 844, \_\_\_\_ (1997).

<sup>4</sup> “Internet Activities,” *Pew Internet & American Life Project* at [http://www.perinternet.org/trends/Internet\\_Activities\\_1.11.07.htm](http://www.perinternet.org/trends/Internet_Activities_1.11.07.htm).

<sup>5</sup> Rainie et.al. Election 2006 Online,” *Pew Internet & American Life Project*, p.iv, 2007 available at [http://www.pewinternet.org/pdfs/PIP\\_Politics\\_2006.pdf](http://www.pewinternet.org/pdfs/PIP_Politics_2006.pdf)

<sup>6</sup> Horrigan, John. “Data Memo,” *Pew Internet & American Life Project*, p. 1, August 2006 available at [http://www.pewinternet.org/pdfs/PIP\\_Politics\\_2006.pdf](http://www.pewinternet.org/pdfs/PIP_Politics_2006.pdf).

- A. **Non-discriminatory routing of packets of data**
- B. **User control and choice over service levels**
- C. **Ability to create and use new services and protocols without prior approval of network operators**
- D. **Non-discriminatory “peering” or exchange of data traffic among large, national or worldwide Internet trunk lines**

In describing just how significant these features are to the proliferation and acceptance of the Internet in every facet of life, Daniel J. Weitzner in *The Neutral Internet: An Information Architecture for Open Societies* states that, “These principles taken together constitute the social contract among Internet service providers that has been indispensable to its great openness and success. They are equally important regardless of whether the service is broadband or narrowband, wireless or wire line, fiber optic, copper pair or coax.”<sup>7</sup>

The goal of any legislative effort should be to identify and preserve the essential, open, non-discriminatory features of neutrality while not constraining changes in non-essential aspects of the Internet.

**A. Non-discriminatory routing of packets of data.** The essential element of the Internet is the ability for everyone to connect and have their traffic routed to the desired location. Non-discriminatory routing enables Internet users to find the blogs they are looking for, e-commerce sites to know they can reach a world market, and political campaigns to be confident they can reach potential voters. Any network claiming to offer Internet service needs to enable users to deliver data to any part of the Internet and must accept, on behalf of its customers, data from any other Internet user or service. Non-discriminatory routing means similar packets of data travel across the Internet in a similar fashion but it does not mean that every single packet is treated necessarily in the same way. There can be different routes for different packets only if those routes are not used to discriminate, e.g. slow down or block access, based on content or against a particular speaker.

Today, adherence to the non-discriminatory routing principle is universal. Without this adherence, the Internet would lose its uniquely open and democratic character.

**B. User control and choice over bandwidth and service levels.** Today the Internet offers nondiscriminatory routing so that each and every user can send and receive traffic to or from any other location on the Internet. Every user pays for the cost of connecting to the Internet at the level of service appropriate to his or her own needs. By doing so, one is able to have access to the entire Internet. A key component of the operation of the Internet is that each user is able to purchase differing levels of service while still remaining connected. For example, some individuals may opt for dial-up service because it is less expensive even though they know it’s slower; others are willing and able to pay for a faster cable connection to the Internet. Every participant may not necessarily be able to connect at the same speed or with the same quality of service yet the freedom to buy the bandwidth that one can afford means that hundreds of millions of people around the world have been able to participate in the Internet even if not at high

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<sup>7</sup> Weitzner, Daniel. *The Neutral Internet: An Information Architecture for Open Societies*, p.3, 2006.

speeds. Keeping decisions over speed and quality of Internet service in the hands of the consumer has been vital to extending the reach of the Internet.

**C. Ability to create and use new services, applications and protocols without prior approval by network operators.** The design of the Internet separates the underlying networks (e.g. cable or telephone lines) from the services (e.g. e-mail or search engines) that ride on top of them. The rules of the road on the Internet (Internet Protocols) are completely indifferent to both the underlying physical networks and the applications and devices using those networks. The Internet allows users to create new services, applications, and devices without receiving permission or even consulting with network operators. In less than a decade of commercial operation the Internet has grown from an environment which supported only a small number of services (email, file transfer) to a network that supports the World Wide Web, instant messaging, Internet telephony services, streaming video and peer-to-peer file sharing, to name a few applications. This innovation was made possible due to the underlying open design architecture that fosters the creation of new services without the agreement and/or negotiation with network operators.

Creation of new services has always been viewed enthusiastically by Internet service providers since it increases the demand for Internet access.

**D. Non-discriminatory *peering* or exchange of data among large, national and worldwide Internet trunk lines.** The Internet is connected globally through a complex set of voluntary interconnections, known as peering arrangements,<sup>8</sup> among the world's largest Internet service provider networks. These arrangements ensure that every Internet service provider is able to offer access to, and receive traffic from, every address on the public Internet. Just as Internet service providers must maintain neutral, non-discriminatory relationships with users and content providers, so too, it is also important that they maintain open interconnections with other networks.

### **Government Regulation of the Internet**

The neutrality of the Internet is rooted in its design and history and has been fundamental to its unique ability to foster free expression, democratic participation, economic activity, and innovation.

Originally, the Internet rode on top of the telephone network. "The essential elements of today's Internet are similar to, and to some extent flowed from, the nature of the telephone networks, upon which the Internet was originally based and which were legally required to be neutral under "common carrier" regulations."<sup>9</sup> As common carriers, the telephone networks could not legally discriminate against others and were required to allow other Internet service providers to access and interconnect to the network.

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<sup>8</sup> According to Wikipedia, "[p]eering is a voluntary interconnection of administratively separate Internet networks for the purpose of exchanging traffic between customers of each network." For more information go to [http://en.wikipedia.org/wiki/Peering\\_agreement](http://en.wikipedia.org/wiki/Peering_agreement).

<sup>9</sup> Center for Democracy & Technology, *Preserving the Essential Internet*, p. 3, June 2006.

When Congress voted to permit commercial traffic onto the Internet in 1992, the committee report on the legislation specifically noted that the change did “not alter the goals or characteristics” of the network. Congressman Rick Boucher, chairman of the House subcommittee that developed the legislation, noted during the hearing on the bill: “It is essential as the network is structured that all commercial providers of network services receive equal treatment and that Government policy in managing the network not favor any provider or set of providers over others.”<sup>10</sup>

The Internet has thrived since the 1992 legislation because of an overarching regulatory framework mandating non-discrimination and ensuring openness. Until recently, the underlying telecommunications networks used to access the Internet have rested on pro-competition safeguards that ensured openness. FCC safeguards allowed end users to choose any Internet service provider and utilize any legal device they desired. Internet service providers were allowed to purchase retail telecommunications services from the incumbent local exchange companies, or ILECs, on nondiscriminatory rates, terms, and conditions. These safeguards could be said to constitute a “Law of Nondiscrimination” governing the Internet’s on-ramps.

In 2005, the regulatory environment shifted dramatically. The Supreme Court in *NCTA v. Brand X* “upheld an FCC decision that cable broadband Internet access is an information service, not a telecom service subject to common-carrier regulation requiring equal access to lines.”<sup>11</sup> The decision opened the door for telephone and cable companies providing high-speed broadband Internet service to claim that they should be compensated for the use of their “pipes.” Common carrier rules continue to apply to dial-up Internet service providers.

### **Paying for the Internet: Compensation of network operators**

No one owns the Internet. Those companies who lay cable or provide telephone lines or satellite connections, over which Internet traffic travels, provide the infrastructure hardware but do not own the Internet or the right to control its data. They receive compensation for their services by charging monthly subscriptions to users—large and small. Moreover, these network operators also receive a variety of public subsidies. These subsidies include the use of public rights of way, use of public airwaves, tax breaks, and Universal Service Fund fees<sup>12</sup>—fees that are charged to consumers in order to bring telecommunication services at reasonable rates to rural and low income households, as well as libraries, schools, and health care providers.

Network users “*already pay for the network services that we use in rough proportion to the cost of those services*.” Today network costs are allocated between users (who pay for their own access to the Internet) and large services (like Amazon, who pay a much higher price for their

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<sup>10</sup> “NCLIS (the US National Commission on Libraries and Information Science) urge Congress to take all necessary action to ensure Net Neutrality,” 11/7/2006 available at <http://www.nclis.gov/news/pressrelease/pr2006/NCLISNetNeutrality-2006-14.pdf>

<sup>11</sup> MacLean, Pamela. “Battle Building over Net ‘Tollgate,’” *National Law Journal*, September 6, 2006 available at <http://www.freepress.net/news/print.php?id=17515>. The decision in *NCTA v. Brand X* may be found at 545 US \_\_\_, 128 S.Ct. 2688 (2005).

<sup>12</sup> See United States Government Accountability Office, Report to Congressional Committees, GAO-06-426 Telecommunications, May, 2006 available at <http://www.gao.gov/new.items/d06326.pdf>.

Internet connection because they put a lot more traffic load on the Internet).”<sup>13</sup> According to Media Access Project, Internet users and content providers pay network operators approximately \$10 billion each year for access and service over a neutral Internet.<sup>14</sup>

### **Current and potential threats to an open and neutral Internet**

In the wake of the *Brand X* case, “net neutrality” proponents have identified several potential threats posed by a handful of companies who see financial opportunities in advancing an “un-neutral” or discriminatory Internet. Changes to the Internet as we know it could include blocking of content, applications and opposing points of view, dividing the Internet into slow and fast lanes based upon ability to pay, giving preferential treatment to affiliated content and services, degrading transmission services, restricting Internet telephone and other innovative services, limiting diversity, and engaging in monopoly pricing and other predatory schemes.

The “net neutrality” debate was spurred by an article in *Business Week*, November 7, 2005 featuring an interview with Edward Whitacre, former CEO of SBC Telecommunications (now AT&T).

*Business Week:* How concerned are you about Internet upstarts like Google (GOOG ), MSN, Vonage, and others?

*Whitacre:* How do you think they're going to get to customers? Through a broadband pipe. Cable companies have them. We have them. Now what they would like to do is use my pipes free, but I ain't going to let them do that because we have spent this capital and we have to have a return on it. So there's going to have to be some mechanism for these people who use these pipes to pay for the portion they're using. Why should they be allowed to use my pipes?

**The Internet can't be free in that sense, because we and the cable companies have made an investment and for a Google or Yahoo! or Vonage or anybody to expect to use these pipes [for] free is nuts! [Emphasis added]**<sup>15</sup>

After extensive debate concerning the merger of AT&T with BellSouth, the following concession by AT&T regarding Internet neutrality was filed with the FCC on December 28, 2006 by Robert W. Quinn, Jr., Senior Vice President of Federal Regulatory for AT&T Services:

#### **Net Neutrality**

1. Effective on the Merger Closing Date, and continuing for 30 months thereafter, AT&T/BellSouth will conduct business in a manner that

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<sup>13</sup> Weitzner at 4.

<sup>14</sup> Yowell, Angie Pete. “In Defense of a Democratic Web,” *Daily Texan*, December 5, 2006 available at <http://www.freepress.net/news/19542>.

<sup>15</sup> “At SBC, It’s All About “Scale and Scope”,” *Business Week Online*, November 7, 2005 at [http://www.businessweek.com/@@n34h\\*IUQu7KtOwgA/magazine/content/05\\_45/b3958092.htm](http://www.businessweek.com/@@n34h*IUQu7KtOwgA/magazine/content/05_45/b3958092.htm).

comports with the principles set forth in the Commission's Policy Statement, issued September 23, 2005 (FCC 05-151).

2. AT&T/BellSouth also commits that it will maintain a neutral network and neutral routing in its wireline broadband Internet access service. This commitment shall be satisfied by AT&T/BellSouth's agreement not to provide or to sell to Internet content, application, or service providers, including those affiliated with AT&T/BellSouth, any service that privileges, degrades or prioritized any packet transmitted over AT&T/BellSouth's wireline broadband Internet access service based on its source, ownership or destination.

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This commitment shall sunset on the earlier of (1) two years from the Merger Closing Date, or (2) the effective date of any legislation enacted by Congress subsequent to the Merger Closing Date that substantially addresses "network Neutrality" obligations of broadband Internet access providers, including, but not limited to, any legislation that subsequently addresses the privileging, degradation, or prioritization of broadband Internet access traffic.<sup>16</sup>

The question of what happens when the concessions sunset remains a mystery, subject to intervening developments.

Besides the alarms set off by the former chairman of AT&T, John Peha of Carnegie Mellon University has identified two other factors that have helped give rise to the controversy over net neutrality. First, "the technology has been changing giving networks extensive abilities to treat some classes of traffic differently from others."<sup>17</sup> New technology has emerged enabling network operators to examine in detail the packets of data that flow through the Internet. "Between deep packet inspection and flow classification, it is cost-effective for a network operator to gain unprecedented knowledge about what is happening on the network, and to selectively improve or degrade service for some."<sup>18</sup> These technologies can also be used to examine in detail what a user is doing and charge accordingly.

The second factor identified by Peha is that "**competition** for consumer access to the Internet has been **declining**."<sup>19</sup> [Emphasis supplied] Due to the consolidation in the service provider area consumers have far fewer choices for high speed Internet access. A January 2007 FCC report shows that existing cable and DSL (telephone) companies together control services to 95% of all broadband residential end users.<sup>20</sup> Furthermore, although the FCC states that 60 percent of zip codes in the U.S. are served by four or more broadband providers, often those providers do not

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<sup>16</sup> [www.fcc.gov/ATT\\_FINALMergerCommitments12-28.pdf](http://www.fcc.gov/ATT_FINALMergerCommitments12-28.pdf)

<sup>17</sup> Peha, John. "The Benefits and Risks of Mandating Network Neutrality, and the Quest for a Balanced Policy," 34<sup>th</sup> *Telecommunications Policy Research Conference*, p.2, September, 2006.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> *Id.* at 2.

<sup>20</sup> Federal Communications Commission, "High-Speed Services for Internet Access: Status as of June 30, 2006," p. 3, January 2007 available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-270128A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270128A1.pdf).

cover the entire zip code. Once there were more than 7000 Internet service providers offering dial up access.<sup>21</sup> Today “most consumers currently have one or perhaps two last-mile broadband providers to choose from.”<sup>22</sup>

To date, most of the Internet neutrality deliberations have occurred at the federal level, either in the courts or at the FCC. However, the debate over the need for Internet neutrality protections has recently migrated to state and local venues. On June 13, Maine became the first state in the nation to enact an Internet neutrality resolution.<sup>23</sup> New York’s legislators have introduced a bill protecting Internet neutrality for New York residents.<sup>24</sup> With cities and towns throughout the country considering municipal broadband installations, Internet neutrality becomes an issue for local League engagement.

## **Conclusion**

The Internet, now an essential part of the nation’s communications and information infrastructure, has flourished under common carrier rules which provided non-discrimination safeguards and the principle of “Internet neutrality.” The majority of America’s adults use the Internet, not only for its convenience but also for the breadth and depth of information and perspectives available online. And in large part, they are going online to get news, access government websites, and search for information about politics and upcoming campaigns. In the broadest meaning of “Internet neutrality,” users go wherever and do whatever they want online. Whether unfiltered or processed news, educational or personal communication, the Internet, as we currently know it, provides a platform for free speech and information to a larger, geographically wider, and more demographically diverse audience than any other medium.

The 2005 *Brand X* case, which allowed the reclassification of broadband cable Internet as an information service, rather than a communications service, jeopardizes the protections that consumers have unknowingly relied upon and set the stage for the telecom industry to contemplate sweeping controls on data that pass through their cable and telephone lines.

We believe that it is crucial to protect the four essential features of the Internet: non-discriminatory routing of data, user control and choice over service levels, ability to create new services and application without approval from network operators and open interconnections between provider networks. The explosive growth of the Internet during the period of safeguards demonstrates that appropriately crafted “Internet neutrality” legislation can ensure that the Internet remains a platform for free speech, democratic participation and the widespread dissemination of information, while continuing to facilitate innovation and competition.

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<sup>21</sup> Center for Democracy & Technology, *Preserving the Essential Internet*, p. 7, June 2006.

<sup>22</sup> Peha at 2.

<sup>23</sup> See <http://www.freepress.net/statetracker/=ME>. To read the bill and resolution, go to <http://janus.state.me.us/legis/LawMakerWeb/summary.asp?ID=280024544>

<sup>24</sup> To read the Assembly version of the bill, go to <http://assembly.state.ny.us/leg/?bn=A03980&sh=t>

## APPENDIX A

### Recent Legislative Initiatives

#### 2007 Bills

##### **Internet Freedom Preservation Act (S 215):**

Under the legislation, Internet network operators would not be able to "block, interfere with, discriminate against, impair or degrade" access to content or prevent users from attaching devices of their choosing to the network. Network operators also would be barred from making special deals with content providers to ensure speedier delivery or improved quality of service, and would be required to offer all Internet material on an "equivalent" basis.

To amend the Communications Act of 1934 to ensure "net neutrality" – amended the previously introduced Internet Freedom Preservation Act, introduced by Senators Snowe (R-ME) and Dorgan (D-ND) in May, 2006; this bill includes a new Section 12 in Title I for broadband services (and also keeps it out of existing common carrier, Title II, and cable, Title IV sections.) Major areas addressed:

- i. Section 12(a) – imposes non-discrimination by requiring that a provider treat services the same regardless of affiliation and that any prioritization it provides must come free to the non-affiliated content or service provider. [So, a provider can prioritize VoIP packets as long as they prioritize all VoIP packets regardless of source and in exactly the same way.] Providers can charge a user for more bandwidth but Comcast cannot charge a user extra to prioritize XYZ's VoIP while Comcast VoIP gets automatic prioritization. Nor can Comcast charge XYZ for premium treatment of VoIP. This section also prevents providers from deliberately constructing networks to make it impossible to comply.
- ii. Section 12(b) – a network provider can offer users various parental protection and anti-spam options, can offer different prices based on throughput ("customer tiering"), can take appropriate security measures, and can address breaches of terms of service.
- iii. Section 12(c) - distinguishes any service available here from any service "regulated under Title VI (which addresses cable)". For example, if you want to claim all the rights and privileges of being a cable service (such as access to programming under the 'program access rules'), then you cannot also claim you are simultaneously a 'broadband service' and avoid the franchise fees and other obligations of a cable service. Chose one or the other.
- iv. Section 12(d) – requires a provider to offer stand alone broadband service and prohibits providers from requiring subscribers to take additional services (such as cable video or voice). This does not prevent them from offering bundled services with price "discounts".

- v. Section 12(e) sets a 180-day deadline for the FCC to issues rules implementing this provision; it includes a process for aggrieved individuals to file a complaint and sets a 90-day deadline for the FCC to resolve the complaint.
- vi. Section 12(f) – provides that enforcement is primarily through Title V which is the section dealing with fines and other punishments by adjudication.

S 215 is currently in committee.

#### **Wireless Innovation Act of 2007 (S 234):**

Introduced by Senator John Kerry (D-MA). Bill would direct FCC to move quickly to free-up unused broadcast airwaves and make them available for wireless broadband use. Bill is awaiting committee assignment.

#### **Wireless Innovation Act of 2007 (HR 1597):**

Introduced by Representatives Jay Inslee (D-WA) and Nathan Deal (R-GA) would direct FCC to move quickly to free up unused broadcast airwaves and make them available for wireless broadband use. Bill is in committee.

#### **Serving Everyone with Reliable, Vital Internet, Communications and Education Act of 2007 (HR 42):**

Introduced by Representative Nydia Velazquez (D-NY). Bill would maintain and expand the Lifeline Assistance Program and the Link Up Program. I would also require FCC to study and report on issues related to providing broadband service to low-income users and in underserved areas.

#### **2006 Bills**

The COPE (Communications Opportunity, Promotion and Enhancement) Act of 2006, HR 5252; passed on 6/8/2006 in the House

Network Neutrality Act, HR 5273; Amendment to COPE Act introduced 5/2/2006; did not pass.

Internet Freedom Preservation Act, S.2917, introduced 5/2006; did not pass; reintroduced January, 2007 (see above)

Internet Freedom and Nondiscrimination Act of 2006, S2360, introduced 5/18/2006.

## APPENDIX B

### Glossary

**Internet Service Provider** - An Internet service provider (abbr. **ISP**, also called **Internet access provider** or **IAP**) is a business or organization that provides to consumers access to the Internet and related services. In the past, most ISPs were run by the phone companies. Now, ISPs can be started by an individual or group with sufficient money and expertise. In addition to Internet access via various technologies (dial-up, DSL and more, see 'ISP connection options' below), they may provide a combination of services including Internet transit, domain name registration and hosting, web hosting, and co-location. Internet Service Providers include network operators.

**ISP connection options** - ISPs employ a range of technologies to enable consumers to connect to their network. For "home users", the most popular options include dial-up, DSL (typically ADSL), Broadband wireless access, Cable modem, and ISDN. For customers who have more demanding requirements, such as medium-to-large businesses, or other ISPs, DSL, Ethernet, Metro Ethernet, Gigabit Ethernet, Frame Relay, ISDN, ATM, satellite Internet access and SONET are more likely. With the increasing popularity of downloading music and online video and the general demand for faster page loads, higher bandwidth connections are becoming more popular.

**Internet transit** consists of two bundled services: the advertisement by an Internet service provider (ISP) of routes to a customer's Internet Protocol addresses to the other ISPs who constitute the rest of the Internet, thereby soliciting inbound traffic from them on behalf of the customer; and the advertisement of a default route, or a full set of routes to all of the destinations on the Internet, to the ISP's customer, thereby soliciting outbound traffic from them.

In the 1970s and early 1980s-era Internet, the assumption was made that all networks would provide transit for one another, since all were ultimately publicly funded by the United States government's National Science Foundation. In the modern private-sector Internet, two forms of interconnection exist between Internet networks: transit, and peering. Transit is distinct from peering, in which only traffic between the two ISPs' downstream customers is exchanged over the peering connection, and neither ISP can see upstream through the other's transit providers to the rest of the Internet.

A **co-location centre (collocation center)** ("colo") or **carrier hotel** is a type of [data center](#) where multiple customers locate network, server and storage gear and interconnect to a variety of telecommunications and other network service provider(s) with a minimum of cost and complexity.

**Data packets** - In information technology, a **packet** is a formatted block of data carried by a computer network. Computer communications links that do not support packets, such as traditional point-to-point telecommunications links, simply transmit data as a series of bytes,

characters, or bits alone. When data is formatted into a packet, the network can transmit longer messages more efficiently and reliably.

If a network does not guarantee packet delivery, then it becomes the host's responsibility to provide reliability by detecting and retransmitting lost packets. Subsequent experience on the ARPANET indicated that the network itself could not reliably detect all packet delivery failures, and this pushed responsibility for error detection onto the sending host in any case. This led to the development of the end-to-end principle, which is one of the Internet's fundamental design assumptions.

**Content delivery** describes the delivery of digital media "content" such as digital audio or digital video or computer software and games over a delivery medium such as broadcasting or the Internet.

Content delivery has two parts:

- delivery of finished content for digital distribution, with its accompanying metadata
- delivery of the end product to the consumer

Specialist networks (both commercial and academic) known as "**Content Delivery Networks**" (see below) have emerged to distribute digital content on the Internet. Alternative technologies for content delivery include **peer-to-peer file sharing** (see below) technologies.

Content can only be delivered if it exists. If it does not exist, several techniques and methods can be used for content creation or content regeneration.

**Content Delivery Network** (CDN) is a term coined in the late 1990s to describe a system of computers networked together across the Internet that cooperate transparently to deliver content (especially large media content) to end users. The first web content based CDN's were Sandpiper and Skycache followed by Akamai and Digital Island. The first video based CDN was iBEAM Broadcasting.

CDN nodes are deployed in multiple locations, often over multiple backbones. These nodes cooperate with each other to satisfy requests for content by end users, transparently moving content behind the scenes to optimize the delivery process. Optimization can take the form of reducing bandwidth costs, improving end-user performance, or both.

The number of nodes and servers making up a CDN varies, depending on the architecture, some reaching thousands of nodes with tens of thousands of servers.

Requests for content are intelligently directed to nodes that are optimal in some way. When optimizing for performance, locations that can serve content quickly to the user may be chosen. This may be measured by choosing locations that are the fewest hops or fewest number of network seconds away from the requestor, so as to optimize delivery across local networks. When optimizing for cost, locations that are less expensive to serve from may be chosen instead.

Often these two goals tend to align, as servers that are close to the end user sometimes have an advantage in serving costs, perhaps because they are located within the same network as the end user.

A **peer-to-peer** (or "**P2P**") computer network relies primarily on the computing power and bandwidth of the participants in the network rather than concentrating it in a relatively low number of servers. Peer-to-peer networks are typically used for connecting nodes via largely *ad hoc* connections. Such networks are useful for many purposes. Sharing content files (file sharing) containing audio, video, data or anything in digital format is very common, and real-time data, such as telephony traffic (such as VoIP or Voice over Internet Protocol), is also passed using P2P technology.

Some examples of peer-to-peer networks are Usenet, Napster, Gnutella or Freenet, among others.

**Search engines** - A **search engine** is an information retrieval system designed to help find information stored on a computer system, such as on the World Wide Web, inside a corporate or proprietary network, or in a personal computer. The search engine allows one to ask for content meeting specific criteria and retrieves a list of items that match those criteria.

Without further qualification, *search engine* usually refers to a *Web* search engine, which searches for information on the public Web. Other kinds of search engine are *enterprise search engines*, which search on intranets, personal search engines, and mobile search engines. Different selection and relevance criteria may apply in different environments, or for different uses.

There are a wide variety of search engines available for several specific uses:

10 – General search engines	3 – Multi-media search engines
16 – Open source search engines	4 – Code search engines
16 – Meta search engines	7 – Medical search engines
15 – Regional search engines	3 – Property search engines
8 – Answer-based search engines	4 – Business search engines
10 – Job search engines	9 – Comparison shopping search engines
6 – Blog search engines	5 – Geographic search engines
6 – News search engines	3 – Legal search engines
16 – Desktop search engines	

Challenges facing search engines – with the proliferation of the World Wide Web, search engines continue to face many challenges, such as:

1. The Web is growing much faster than any present-technology search engine can possibly index see distributed web crawling. In 2006, some users found major search-engines became slower to index new webpages.
2. Many webpages are updated frequently, which forces the search engine to revisit them periodically.

3. The Web search queries one can make are currently limited to searching for key words, which may result in many Type I and type II errors positives, especially using the default whole-page search.

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Neutrality Task Force, for the use of League members.*

## **INTERNET NEUTRALITY TASKFORCE** **“MINORITY” REPORT**

### **A. POSITION SCOPE/DEFINITION**

The basic premise for the concept of Internet neutrality, and therefore the current LWFVUS position, should be that every user on the Internet have completely unfettered access to any website available on the Internet. Accordingly, the LWFVUS position supporting Internet neutrality should be designed to be as broad as possible, addressing actions by any and all entities which could hinder or block such unfettered access.

Contrary to this expected more expansive approach regarding protection of Internet users, the majority of the Task Force has concluded that the LWFVUS Internet neutrality position should be severely narrowed so as to address the activities of only one type of entity. If the majority's approach is accepted by the LWFVUS Board of Directors, almost all Internet users will remain unprotected against a number of significant risks from entities which have already clearly demonstrated the ability and willingness to block or hinder website access.

To better exemplify what has happened, consider the case of a task force formed to address homicide which proceeds to redefine the term “homicide” to only include homicide by men, and to create a new term, “femicide,” to cover homicides committed by women. If the task force then limits its focus to this redefined threat of homicide, and refuses to consider what it has defined as femicide, it is obviously will not do an adequate job of addressing its subject and protecting potential victims.

This is exactly what has happened with the Internet Neutrality Task Force. The majority has decided to limit the proposed scope of the LWFVUS position by developing a very narrow definition of the meaning of the term “Internet neutrality,” focused on the technical side rather than the user side. Other important aspects of this issue are segregated into a new term, “search neutrality,” which the majority concluded should not be addressed by the LWFVUS position.

In the majority's view, the LWFVUS position should only be directed at activities of the so-called “Internet service providers,” the entities which provide users with access to the Internet via telephone, cable, wireless, municipal WiFi, satellite, etc. These providers include companies such as AT&T, Comcast, Time Warner Cable, AOL and EarthLink. There have been only a very few alleged incidents of website blockage by such providers, and all of the major providers have made public pledges that they will maintain Internet neutrality (in its broader sense) in their operations. There is no doubt that the actions of these entities should be addressed by the LWFVUS position; but the position should by no means be limited to this type of entity.

The majority has acknowledged that other types of entities possess the ability to block or hinder consumer access to websites, including software developers like Microsoft and search services such as Google or Yahoo. The software developers provide the basic software interface (e.g., Internet Explorer) which enable the user to access websites once they are connected to the Internet. And the search services have become increasingly vital and essential (if not absolutely necessary) to almost all users' realization of the benefits of the Internet, given the millions of available websites.<sup>1</sup> Without the use of search engines, Internet users could not even find many websites which would be essential for their participation in the democratic process.

There has been substantial public coverage of the fact that search services have demonstrated their ability and willingness to censor website access as part of the way they conduct their business. For example, Google and Yahoo have acknowledged that they cooperate with foreign governments in order to censor their citizens' access to prohibited websites, and in fact these search services constitute a vital element in implementing such censorship. The most frequently cited example of this collaboration is China, but that is only the largest of the increasing number of countries which impose such censorship, supported by search services. The search services have stated that they accept this censorship as necessary to doing business in certain foreign jurisdictions. (Google recently fought off an attempt by its shareholders to prohibit such cooperation.) While the Task Force did not find it necessary to address the potential for government censorship in the U.S., there is no reason to doubt that the search services could and would utilize other forms of censorship in the U.S. if such censorship similarly enhanced their business and increased their profits.

The majority attempts in part to justify their scope limitation by noting that the proposed legislation which has been under consideration in Congress is limited to only broadband providers. But there is a very obvious reason for this limitation. The push for this legislation is largely fuelled and financed by a coalition of businesses, a coalition which very prominently includes search services like Google and Yahoo. (The proposed legislation is but one facet of a major commercial struggle between the coalition partners and the Internet service providers.) This coalition would hardly support legislation which would regulate it own members, to their perceived detriment, so of course the proposed legislation has been written so that they are not affected by its terms. Accordingly, this line of argument provides no support for limiting the scope of the LWVUS position.

The argument that if a search service did engage in censorship, etc., then the user could switch to a different search service, just doesn't hold up under scrutiny. First, the same argument can be generally made with respect to the Internet service providers, admittedly with somewhat greater practical difficulty. Secondly, it ignores the fact that a user is highly unlikely to know for a very long time that he or she was being censored and thus could not make the choice to change services. Thirdly, with two or three search services totally dominating the market, it is not even a practical solution. And finally, and most importantly, why should such censorship be allowed at all?

It has been surprising and disappointing, to find that the Task Force could not agree on the basic definition of Internet neutrality, which is the key and most basic element of this LWVUS position. The majority is advocating a conclusion that very significantly limits the

whole concept of user protection, thereby radically reducing the prospective value of the position in attempting to protect Internet users. There is no logical basis for this limitation of scope, and LWVUS would likely be subject to ridicule in trying to defend such a halfway measure. The LWVUS Board of Directors should reject this limitation and adopt the broader scope for its position and future advocacy.

## **B. COMPETITION**

The Task Force majority reached the totally incorrect conclusion that there is declining competition in the market for Internet access services. The author whom the majority cites as the source for its conclusion<sup>ii</sup> did not in fact present any evidence for his conclusion, just stating it as an unsupported personal opinion.

Actually, the composition of the Internet access environment has been changing even as the number of users has been increasing. For example, total broadband access (as opposed to dialup services) has risen from less than 5% in June 2000 to 42% in February 2006.<sup>iii</sup> Further, Internet service providers providing broadband access through owned or leased telephone systems have been very successful in competing in this growing marketplace against those providing access through cable systems. And driven by the new penetration by the DSL telephone access, average broadband prices dropped 8% in the two year period ending December 2005.<sup>iv</sup>

The Federal Communications Commission (FCC) issues a semiannual report about broadband services across the nation. In its report for the period ended June 2006, the FCC found that cable access had 55% of the market, while telephone access had 40%.<sup>v</sup> The FCC reported that the total number of providers of broadband services throughout the country had increased from 160 in June 2001 to 1,323 in June 2006.<sup>vi</sup> And clearly, the number of technologies available for broadband deployment has also increased, to include not only cable modem and DSL telephone, but also wireless telephone, power lines, satellite, and municipal WiFi.

The FCC's report also included information regarding the percentages of zip codes which had broadband lines in service from varying numbers of providers.<sup>vii</sup> Thus, the percentage of zip codes which had no broadband lines in service dropped from 22.2% in June 2001 to 0.7% in June 2006. On the other hand, the percentage which had broadband lines in service from four or more providers (thus a much greater availability for the user) increased from 27.6% in June 2001 to 76.1% in June 2006. This increasing trend was fairly steady through the five year period.

The United States General Accountability Office (GAO) issued a report to Congress, GAO-06-426,<sup>viii</sup> regarding broadband deployment in the United States. In commenting on the FCC's semi-annual report described above, it noted that the FCC's statistics were not designed specifically to judge certain aspects of the competitiveness of this marketplace, but indicated that there is no other similar official data available to compare to the FCC's report. However, the GAO did appear to agree with the FCC's conclusion that broadband deployment by multiple Internet service providers was extensive:

“...for many, if not most Americans, the burgeoning broadband marketplace is characterized by competitive choice in broadband access and creative and ever-expanding applications and content. Many would consider the rollout of broadband infrastructure as a success story of entrepreneurial initiative.”<sup>ix</sup>

In a June 2007 report, Broadband Connectivity Competition Policy, the staff of the Federal Trade Commission staff also addressed the state of competition:

“While there is disagreement over the competitiveness of the broadband Internet access industry, there is evidence that it is moving in the right direction. Specifically, there is evidence at least on a national scale that: (1) consumer demand for broadband is growing quickly; (2) access speeds are increasing; (3) prices (particularly speed-adjusted or quality-adjusted prices) are falling; and (4) new entrants, deploying Wi-Fi, Wi MAX, and other broadband technologies, are poised to challenge the incumbent cable and telephone companies. Although this is merely a high-level snapshot of a dynamic, evolving marketplace, such evidence challenges the claims by many proponents of network neutrality regulation that the broadband Internet access market is a cable-telephone duopoly that will exist for the foreseeable future and that the two primary broadband platforms do not compete meaningfully.”<sup>x</sup>

The Task Force majority was repeatedly asked for more substantive evidence for their conclusion, and/or for their reasons for disbelieving or challenging the U.S. governmental statistics described above, but they did not respond and nothing specific has been included in their report.

In light of the foregoing, the LWVUS Board should not accept the majority’s conclusion without a much more complete study of this important issue.

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<sup>i</sup> See, for example, John Battelle, The Search: How Google and Its Rivals Rewrote the Rules of Business and Transformed Our Culture, (New York, Portfolio, 2005).

<sup>ii</sup> Paha, John. “The Benefits and Risks of Mandating Network Neutrality, and the Quest for a Balanced Policy,” 34<sup>th</sup> *Telecommunications Policy Research Conference*, p.2, September, 2006.

<sup>iii</sup> John B. Horrigan, “Home Broadband Adoption 2006,” Pew Internet & American Life Project, P.2, [http://www.pewinternet.org/pdfs/PIP\\_Broadband\\_trends2006.pdf](http://www.pewinternet.org/pdfs/PIP_Broadband_trends2006.pdf).

<sup>iv</sup> Ibid., P.7.

<sup>v</sup> “High-Speed Services for Internet Access: Status as of June 2006,” Federal Communications Commission, January 2007, Chart 8, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-270128A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270128A1.pdf).

<sup>vi</sup> Ibid., Table 7.

<sup>vii</sup> Ibid., Table 15.

<sup>viii</sup> <http://www.gao.gov/new.items/d06426.pdf>.

<sup>ix</sup> Ibid., P.38

<sup>x</sup> Broadband Connectivity Competition Policy, <http://www.ftc.gov/reports/broadband/v070000report.pdf>, P.156.

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## **REBUTTAL OF “MINORITY” REPORT**

The Net Neutrality Task Force majority rejects the minority report’s central objection to the majority report as well as its secondary, tangential argument. First, the minority claims that the concept of Internet neutrality should be expanded to include “search neutrality” and implies that the net neutrality issue is merely a fight between two large industries—Internet service providers and Internet-based businesses. In a less relevant argument, the minority also discounts the seriousness of threats to an open, unfettered Internet, presumably because competition among Internet service providers is sufficient enough to protect consumer choice, and recommends further study. The majority rejects both these views.

### **Position Scope/Definition—Infrastructure vs. Software Programs**

The majority has approached the scope of the entire Internet infrastructure based on information, definition and articles written by acknowledged industry leaders and legal scholars. The minority seeks to expand the pro-Internet neutrality position—which supports every user’s unfettered access to Internet websites—to mistakenly encompass software developers like Microsoft and search engines like Google within the scope of the LWVUS position. The majority of the task force believes the minority misunderstands, or misrepresents, the difference between the infrastructure of the Internet (composed of hardware and software) and the applications which ride on the Internet such as search engines.

The minority’s arguments, similar to those of the telecoms, are red herrings that distract from the real issue. Not surprisingly, it is the telecoms that have the most to gain from an un-neutral Internet and are the most opposed to Internet neutrality. The minority offers solely personal opinion and no proof whatsoever that “the search services could and would utilize other forms of censorship in the U.S. if such censorship similarly enhanced their business and increased their profits.”

More importantly, the minority overlooks the fact that when a user wants to search for something, she has a choice of over 200 search engines. Users are not tied to a specific search engine, nor do they have to pay for any of them. Changing search engines is a matter of a few key strokes. If a search engine were to block access to a Website, a user could simply try another one. Additionally, the use of a search engine is an option. A user can be on the Internet for hours, days and weeks without using a search engine. One can use the Internet without a search engine but not vice-versa. In contrast, most residential users have only two choices for Internet service: the phone company or the cable company. Changing Internet service providers is cumbersome, costly and time-consuming. If your Internet service provider blocks access to your favorite candidate’s website, what choices do you have?

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The minority further attempts to justify its position through a false and misleading analogy. The minority asks readers to “consider the case of a task force formed to address homicide which proceeds to redefine the term “homicide” to only include homicide by men, and to create a new term, “femicide,” to cover homicides committed by women.” A better analogy would be to say that the task force is formed to address homicide and then someone decides that the task force also needs to expand the scope to include genocide, germicide, etc. While those may be worthy topics to investigate, it is beyond the scope of the original intent, not to mention distracting and non-productive.

Finally, the minority attempts to misleadingly classify the fight over net neutrality as a fight between two “big business” interests—phone and cable companies versus Internet-based businesses like Google and Yahoo. This argument serves to distance League members from net neutrality’s importance to League’s principles and values as well as to ignore the enormity of the concerns among small business owners, good government groups, journalists, academicians, and the average citizen. We reject the minority’s framing of the issue. The SaveTheInternet.com Coalition, which supports Internet neutrality, consists of more than 700 organizations. Those organizations are as diverse as MoveOn.org, the Christian Coalition, the American Library Association and Gun Owners of America. A better characterization is that the fight over Internet neutrality is a fight between the telecoms and everyone else.

### **Competition**

The minority’s second argument trivializes the threats to the Internet by arguing that consumers can switch to an alternate Internet provider if their current provider blocks their favorite Websites or Web-based service. Whether sufficient competition exists for consumers to exercise options in their choice of Internet service providers is irrelevant to LWFUS support for an open, neutral Internet. The majority of the Net Neutrality Task Force explicitly put a premium on the considerations of free speech, democratic participation, access to information and freedom of expression during its research and development of its report.

However, given that the minority focuses on the numbers, we must reply. The minority’s argument—that competition is alive and thriving among Internet service providers—is based upon incomplete interpretations and representations in the reports that it cites. To make its argument, the minority relies upon three government reports: (1) Federal Communications Commission’s report on *High-Speed Services for Internet Access: Status as of June 2006*, (2) a report from the Government Accountability Office to Congress, GAO-06-426, regarding broadband deployment in the United States, and (3) a June 2007 report by the staff of the Federal Trade Commission entitled *Broadband Connectivity Competition Policy*. The minority’s interpretation of these reports is incomplete, at best. Competition may be virtually non-existent for many consumers.

Although the FCC report states that the number of broadband service providers has increased from 2001 to 2006, the FCC report makes no attempt to distinguish between numbers of

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independent providers and those that are affiliates of larger companies. As of June 2006, 82% of ADSL service (the most popular version of DSL service) was provided by just four companies: AT&T, Bell South (now owned by AT&T), Qwest, and Verizon, and their affiliates. Those same companies, together with other incumbent local exchange carriers, control 82% of the mobile wireless market. According to the FCC report, ADSL and mobile wireless made up 52% of all high-speed Internet lines. Cable modems accounted for another 44% of the lines.<sup>x</sup> Although the number of technologies available for broadband deployment has increased (as noted by the minority), the marketplace for deployment of these new technologies is still dominated by ADSL, cable and mobile wireless, which collectively make up 96% of high-speed Internet lines.

The minority position also leans heavily on the FCC's zip code analysis in its efforts to argue that adequate choice in Internet service providers exists for most consumers. The FCC Zip code analysis—which includes any zip code where at least one broadband provider serves at least one subscriber—has been widely challenged. Although the FCC has reported that ADSL and/or cable modem connections—the dominant technologies—were reported for 88% of the zip codes, as noted in the footnote, only 57.8% of zip codes have a choice between ADSL and cable modem for subscribers. “In 24.2% of ZIP codes, there are ADSL subscribers reported but no cable modem subscribers, and in 5.9% of ZIP codes there are cable modem subscribers reported but no ADSL subscribers reported.”<sup>x</sup> These figures suggest that many subscribers continue to face monopoly, or at best, duopoly conditions.

Although the minority also finds comfort in the 2006 GAO report, the GAO report raises concerns—echoed by others—regarding the validity of the FCC's methodology and analysis. “However, for its zip-code level data, FCC collects data based on where *subscribers* are served, not where providers have deployed broadband infrastructure. Based on our analysis is [sic] appears that these data may not provide a highly accurate depiction of deployment of broadband infrastructures for residential service in some areas.”<sup>x</sup> The GAO report notes that the problem is particularly acute with respect to rural areas.

Finally, the minority quotes selectively and at length from the June 2007 staff report of the FTC, *Broadband Connecticut Competition Policy*, in an attempt to make its point. The minority fails to mention that the FTC itself raises caveats about the FCC's data<sup>x</sup> and fails to include the remainder of the FTC staff report:

***“We nonetheless recognize that what appear to be positive national trends do not necessarily signify vigorous competition in every local broadband market in the United States. In rural markets, in particular, consumers may have relatively limited options for obtaining broadband Internet access.... In any case, there appears to be substantial agreement on the part of both proponents and opponents of network neutrality regulation that more competition in the broadband Internet access area would benefit consumers. Thus, to the extent that policy makers are not content to wait for the market to increase competition, they should consider various ways of increasing competition in the provision of broadband Internet access.”<sup>x</sup> [Emphasis supplied].***

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FTC staff also note that their job was not to balance free expression with economic consumer welfare, but instead to focus on the economic welfare implications of regulating Internet neutrality.<sup>x</sup> Conversely, the majority of the Net Neutrality Task Force explicitly put a premium on the considerations of free speech, democratic participation, access to information and freedom of expression in its approach to the final report.

In making its competitiveness argument, the minority also fails to note that the United States' dismal record on broadband penetration (percentage of homes connected) generally. According to a recent report by the international Organization for Economic Cooperation and Development, the United States ranked 15<sup>th</sup> among 30 *developed* nations in broadband penetration (down from 12<sup>th</sup> only a few months earlier).<sup>x</sup> Among all nations, the United States ranked 24<sup>th</sup>.<sup>x</sup> American consumers also pay more for high-speed Internet than consumers in other developed nations.<sup>x</sup>

Finally, the minority completely overlooks the anti-competitive impact of a non-neutral Internet on content and application providers. In a non-neutral environment, network operators would be able to give priority to affiliated content and block access by other providers. This is essentially a "cable TV" model, whereby Internet service providers would control the content available to users. They would also be able to limit the applications and devices available to users, thereby "locking" users into certain applications and services. Giving preferential treatment to affiliated content and limiting the devices and applications available to users are examples of anti-competitive conduct that stifles innovation.

### **Conclusion – Staying Focused on the Goal**

Competition (or lack thereof) is neither the main focus nor the chief consideration behind the LWVUS' position on Internet neutrality. We reiterate our belief that it is crucial to protect the essential open, neutral nature of the Internet and that the explosive growth of the Internet before 2005, during a period of regulatory safeguards, demonstrates that appropriately crafted "Internet neutrality" legislation can ensure that the Internet remains a platform for free speech, democratic participation and the widespread dissemination of information, while continuing to facilitate innovation and competition.

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## **COMMENTS ON THE REBUTTAL TO THE “MINORITY” REPORT**

In its rebuttal to Task Force Minority Report, the majority continues to completely miss the central issue of this debate. As stated in the Minority Report:

“The basic premise for the concept of Internet neutrality, and therefore the current LWVUS position, should be that every user on the Internet have completely unfettered access to any website available on the Internet. Accordingly, the LWVUS position supporting Internet neutrality should be designed to be as broad as possible, addressing actions by any and all entities which could hinder or block such unfettered access.”

The resolution adopted at the Convention was proposed as an amendment or extension of two existing positions, both of which focused on the protection of the rights of the individual. The Internet neutrality resolution should be approached in the same light—it should be focused on the protection of the individual using the Internet, not about the Internet itself. Essentially all of the majority’s comments attempt to refocus the debate back on the Internet infrastructure, and therefore are not relevant to the central issue with which LWVUS should be concerned. Accordingly, there is no need to amend any of the language of the Minority Report, and the recommendations made therein to the LWVUS Board remain totally valid.

The majority has also misinterpreted the matters addressed in the Minority Report about competition, and tries to extrapolate some hidden meaning to what is stated therein. None of this is correct—the comments are strictly factual in nature. The only point of the Minority Report is that there is in fact vigorous competition in almost all aspects of the Internet, contrary to the majority’s statements, which remain totally unsupported by any factual data.

The majority’s suggestion to include additional material from the June 2007 report by the Federal Trade Commission staff is not supportable. In fact, it is very easy to agree with much of what the staff has said in this proposed additional material. However, this material largely addresses two issues (broadband penetration in rural areas and governmental advocacy of competition) which the Task Force specifically decided not to consider as part of its work. Therefore, it would be totally inappropriate to include material on these issues in the Minority Report.

The conclusion of the majority, to “remain focused on the goal,” is absolutely correct—it’s just that they are focused on the wrong goal. We strongly believe that the LWVUS position should be focused on protecting the individual user on the Internet, from any and all threats, from any and all sources. That is what the Minority Report is advocating, and the LWVUS Board is urged to remain focused on that goal.