

PREPARED TESTIMONY OF LAURENCE BRETT (“BRETT”) GLASS
OWNER AND FOUNDER, LARIAT
A WIRELESS INTERNET SERVICE PROVIDER SERVING
ALBANY COUNTY, WYOMING

HEARING ON:
“ENSURING COMPETITION ON THE INTERNET;
NET NEUTRALITY AND ANTITRUST”

BEFORE THE COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON INTELLECTUAL PROPERTY,
COMPETITION, AND THE INTERNET

Tuesday, 15 February 2011
2141 Rayburn House Office Building

Chairman Goodlatte, Ranking Member Watt, and Members of the Committee:

Thank you very much for inviting me to testify. It is a great honor for me to be the first of my relatively young industry to testify before Congress. I hope that there will be many more opportunities for myself and my colleagues to communicate with our nation's decision makers regarding Internet policy.

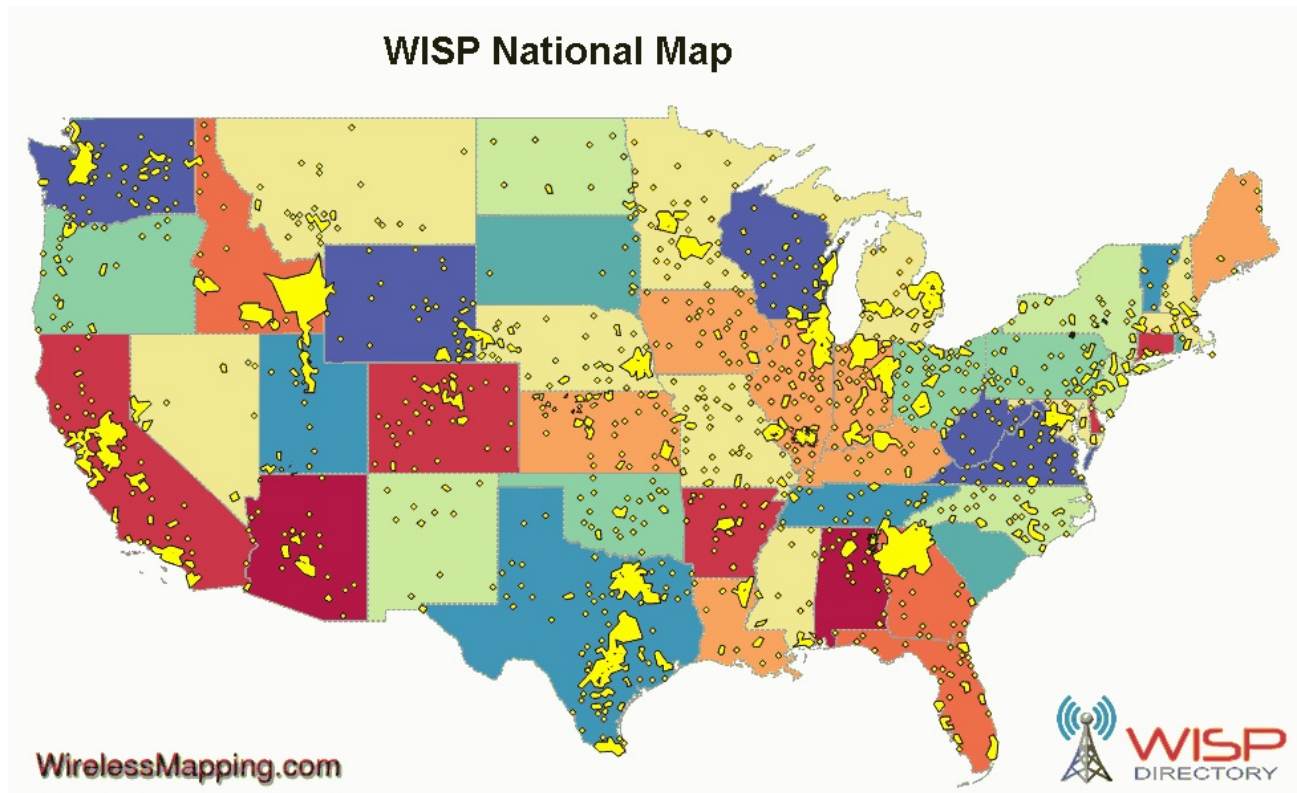
First, some background. I am an Electrical Engineer. I received my Bachelor of Science from the Case Institute of Technology in 1981 and my Master's from Stanford in 1985. While at Stanford, I worked on fixing bugs in the brand new network called the Internet, and also on digital radio technology which laid the groundwork for Wi-Fi. I have designed computer chips, written popular computer software, and penned more than 2,500 published articles for technology-oriented magazines such as BYTE, InfoWorld and PC World.

In the early 1990s, I moved from Palo Alto, California to the beautiful, small college town of Laramie, Wyoming. Laramie is roughly the same size as Staunton, Virginia, though it is more isolated. When I arrived, I discovered that there was no ready access to the Internet outside of the University campus. Working with others who also wanted access, I founded LARIAT, the world's first fixed wireless Internet service provider, or WISP. LARIAT began as a nonprofit cooperative whose purpose was to teach, promote, and facilitate the use of the Internet.

Fast forward 11 years, to 2003. The Internet was well established, and the membership decided that they no longer wanted to be members of a co-op. They simply wanted to buy good Internet service from a responsible local provider. So, the Board prevailed upon me and my wife – who had served as caretakers of the network and had built most of the equipment with our own hands – to take it private. We did, and we've been running LARIAT as a small, independent ISP ever since. After all these years, our passion for bringing people fast, affordable Internet service hasn't changed. Nothing can beat the sense of achievement we feel when we hook up a rural customer who couldn't get broadband before – or when we connect a customer who has decided to "cut the cord" to the telephone company or cable company. We have very slim margins; our net profit is less than \$5 per customer per month. But we're not doing this to get rich. We're doing this because we love to do it and want to help our community. We at LARIAT have always been the strongest possible advocates of consumer choice, of free speech, and of inexpensive, high quality access to the Internet. It's our mission and it's our

passion. And while I now have more help, I still climb rooftops and towers to install Internet with my own hands, to train employees, and to check the quality of every job.

Now, since LARIAT started, the incumbent telephone and cable companies have also gotten into the broadband business. We compete gamely with them within the city limits, but our services, unlike theirs, extend far into the countryside. As we grew, others saw what we'd done or independently came up with the same idea. Some even set up shop in our town, forcing us to compete harder and innovate more. We estimate that there are now between 4,000 and 5,000 independent wireless ISPs like ours, as shown on this map:



The map, compiled by wireless consultant Brian Webster, understates WISPs' coverage. It shows the service areas of only about 40% of all WISPs, and it's about a year old; our industry has expanded dramatically since that time. WISPs now serve more than 2 million people and reach approximately 70% of all US homes and businesses, including many with no access to DSL or cable. We create local high tech jobs, and we stimulate the development of other businesses in our communities. Because WISPs don't use fiber or wires for the "last mile," we can cost-effectively serve areas where there is no business case for any other form of terrestrial broadband.

We also provide vigorous competition in areas where other kinds of broadband do exist. For example, a WISP called DC Access serves many homes and businesses here on Capitol Hill and provides the free Wi-Fi on the Supreme Court steps, a few blocks from this chamber. If you stop for refreshment at Ebenezer's coffeehouse, near Union Station, you can open your laptop and browse the Web thanks to this same provider.

Unfortunately, I am here to tell you today that the "network neutrality" rules enacted by the FCC will put WISPs' efforts to provide competitive broadband, and to deploy it to rural *and urban* areas that do not have access or competition, at risk. Firstly, the rules address prospective harms rather than any actual problem. Contrary to what some advocates of regulation say, ISPs have never censored legal third party Internet content. Customers would quickly move to competitors if they dared to try. Secondly, even before the rules were issued, the Commission's NPRM created uncertainty, which, in turn, drove away investors. The final rules are vague, permitting "reasonable network management" but not fully defining what the word "reasonable" means. As FCC Commissioner Robert McDowell pointed out in his well written dissent, this lays the groundwork for protracted, expensive legal wrangling that no small business can afford. And such factors as the political agendas of the Commissioners who happen to be sitting at that moment may determine the outcome.

The rules also allow anyone – whether or not he or she has service from the provider in question – to file a formal complaint alleging violations. Even now – before the rules have taken effect! – groups here in Washington, DC have filed complaints against MetroPCS for offering an affordable smartphone service plan which prohibits a few bandwidth-hogging activities. There are other plans available for those who do not like those terms, and the minor restrictions are more than worth the fantastic deal users get. But MetroPCS, one of the shrinking number of competitive mobile wireless providers, must answer the complaint and may be forced to stop offering service plans that customers willingly choose and enjoy.

My own company, which is much smaller than MetroPCS, could suffer a similar fate. Our most popular residential service plan comes with a minor restriction: it does not allow the operation of servers. Mr. Chairman, most Internet users would not know what a server was if it bit them, and have no problem uploading content to a Web site such as YouTube for distribution. Business customers that do need to operate servers can obtain that capability by paying a bit more to cover the additional cost of expensive rural bandwidth. But if the rules take effect and the FCC decides against MetroPCS,

we'll almost certainly be forced to shift everyone to the more expensive plan. We will therefore be less competitive and offer less value to consumers.

We will also hesitate to roll out innovative network management practices and services, for fear that the Commission would find fault with some aspect of them. For example, selling priority delivery of data – even for a new high tech service, such as telepresence – is strongly disfavored by the rules. This is the equivalent of telling UPS or FedEx that they cannot offer shippers overnight delivery, because it is somehow unfair to those who use less expensive ground service.

Such undue micromanagement is not necessary in a competitive market. Even in our small, remote community, there are 10 facilities-based broadband providers, and many more non-facilities-based providers who deliver service via DSL lines. The resulting market discipline is far more effective than static rules could ever be.

There are other problems in the rules, but due to limited time I can only mention one more. That is that the rules are not evenhanded. There are carve-outs for mobile carriers, who are claimed to be part of a nascent industry that faces significant challenges. But ironically, these exemptions were not extended to fixed wireless providers such as WISPs. Mobile phones' market penetration is far higher than that of WISPs, who are still working diligently to achieve similar market share and recognition. And WISPs' customers expect higher performance than mobile customers, even though our service is delivered over noisy, shared unlicensed spectrum. If mobile wireless providers deserve special consideration, then WISPs certainly do as well.

In any event, in my FCC filings, I urged the Commission to take measures to promote competition rather than imposing onerous regulations which would require us to ask permission to innovate. But the majority rejected this approach in favor of onerous regulations which address a "problem" that does not exist.

I therefore urge Congress – which is the ultimate source of the FCC's authority – to set things right. Rather than excessive regulation, which would extinguish small competitors like WISPs and create a duopoly requiring constant oversight, we should facilitate competition, crack down on anticompetitive tactics, and then allow markets to do the rest. Only by adopting this approach can we allow American small businesses to create jobs, innovate, and prosper while solving a very *real* problem: providing ubiquitous broadband access to our nation.