

**REMARKS OF COMMISSIONER MICHAEL J. COPPS**  
**“FREE MY PHONE”**  
**NEW AMERICA FOUNDATION FORUM**  
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Good Morning and thanks to my friend Michael Calabrese and the New America Foundation for holding another of its forums that have done so much to serve the public interest. It’s an honor, and somewhat humbling, to speak before this distinguished panel and what is obviously an expert audience. I’ll try to be brief because I’m just as eager to hear from the luminaries gathered here as you are.

Over the week-end, I was remembering back to 1970 when I first went to work in the United States Senate. Our fanciest piece of work-saving equipment was an old robo machine that cranked out pretty awful-looking mass mailings. Everything else was typed by hand and when Selectric typewriters came along, we all fought tooth-and-nail to be one of the lucky few to get one. When the Senator dictated even a minor change to a speech draft, his personal secretary had to retype the entire text. When we needed to phone back to the state, we had a WATS line, but initially we shared it with a more senior Senator, I think Richard Russell from Georgia, and when he wanted on, Senator Hollings had to get off. I started out doing research and when Senator Hollings wanted information—which was usually instantaneously—I had to call around, beg for help from a small and over-worked Congressional Research Service, or otherwise figure out how to get it Lone Ranger style. It was truly antediluvian—before the technology flood and the knowledge tools that have transformed everything.

Four years ago, New America hosted a forum on cyberspace (as we called it then, for you young folks out there), giving me a chance to think out loud about the challenges regulators and legislators would face in maintaining the Internet’s openness. Looking back, it’s been every bit as challenging as I predicted. But well worth the effort, I think, because the Internet today *is*—for the most part—the fertile field for innovation, democracy, and self-expression that many of us hoped it would be. That’s today, of course—but today never comes with guarantees for tomorrow, does it?

So I am grateful that New America is always pushing us in Washington to think about how to keep technology open and free. Today it is pushing us to think about openness in the wireless world. Just about a year ago, New America brought a paper by Professor Tim Wu to Washington’s attention. Tim explained why the time has come to apply the *Carterfone* and Internet Openness principles from the *wireline* to the *wireless* world. The idea is simple: wireless customers should be able to use *any* device or application they want, to reach *any* legal content they want, so long as they don’t cause harm to the network. It sounded right to me, and in March of last year I called for an FCC rulemaking on the issue.

Note that I said it’s a simple idea—I didn’t say it was uncontroversial. Quite the opposite. Critics rushed to tell me that third-party handsets just wouldn’t work for wireless—they would lead to more dropped calls, less spectral efficiency, and maybe even bring down whole cellular networks. (Sound familiar? These are variations on the very arguments raised 40 years ago to *Carterfone* itself.) Critics also argued consumers

didn't want network openness—they were more than happy with the services they had, and additional choices would just confuse them.

That didn't sound quite right to me and, as it turns out, it didn't sound right to some of the nation's leading consumer technology columnists either. Even though we inhabit very different ecosystems, they were—quite separately—concluding that the cell phone market looks a lot worse than other parts of the personal electronics market. And, boy, were they right! When I buy a new computer, I get to choose exactly what I want: a personalized bundle of processor, hard drive, video card, display, networking device and so forth, plus whatever software I wish to load. Wherever I can get a Wi-Fi or Ethernet connection, I can reach the content I want: *Business Week*, the *Wall Street Journal*, the FCC's homepage, or the millions of videos on YouTube. It's a fantastic world of choice—and we need to keep it this way.

Now let's look at the cell phone market. For the most part, we're limited to the handful of phones that our particular carriers have selected for us. Most of those devices offer precious little choice over applications or content. And, even more amazing, though my device may be branded Nokia, Motorola, LG or whatever—it's the *carrier* (not the handset manufacturer) that has the final say on its features. That is why, as Chairman Martin demonstrated at an FCC open meeting, the European version of a leading manufacturer's popular phone comes *with* Wi-Fi, yet the identical model here in the U.S. comes *without* Wi-Fi—simply because the U.S. carrier wanted to protect its business model. How on earth do American consumers benefit when a perfectly good feature is disabled so their carrier can protect its revenue stream?

In addition to the downsides for consumers, the carrier veto handicaps entrepreneurs (which then in turn further harms consumers). When Google's founders had an idea about how to build a search engine, they bought some server space literally using their credit cards (this was in 1998), put their product on the Web, and you all know the rest. When a wireless entrepreneur has a great idea, he or she has to pitch it to the handful of carriers—and if they say no, it never leaves the ground. The *New York Times* reports that European wireless designers think our system is nuts. Maybe they're right.

Now let's fast forward a few months from early 2007, when talk of wireless *Carterfone* first hit Washington. All of a sudden, the rhetoric shifted 180 degrees. It was downright seismic. In Congressional hearings, the FCC's own 700 MHz auction rules, and the front pages of many of the nation's leading newspapers—all the talk was about a new wireless *Carterfone* world. And the latest shoe to drop is that most major carriers have publicly stated that open platforms and open access are, in fact, the models of the future. No longer do we hear about awful harms to networks, gone are the predictions of consumer indifference. Instead, we now have industry-led efforts to create open platform standards. We have leading carriers adopting open access programs—and even asserting that they have been pro-open access for years.

Sounds good. I hope it is as good as it sounds. But we have to ask: has the reality shifted as much as the rhetoric? In 2009, we will start doing case-by-case review of complaints about the 22 MHz of “open platform” 700 MHz spectrum. That will be a good opportunity for the FCC to start looking at the details of these issues. Better yet, we

could also act at any time to declare general principles for open wireless platforms in response to a petition for rulemaking pending at the Commission right now—something I would enthusiastically support. But if we're talking real-world and what is most likely for 2008, it's that most of the action will be in voluntary industry-led initiatives.

And I won't object strongly to that—at least for now. We've seen with Wi-Fi, for example, that enlightened FCC spectrum policies and industry-led product development can deliver enormous benefits to consumers without too much regulation. But I (and I hope others) will certainly be watching carefully to see how the market develops. I would also like to see the FCC staff watching closely—monitoring is a better word. Not many people categorize me as a Reaganite, but I always liked the sage counsel he gave us when he said, "Trust but verify." The real proof will be in the pudding. If voluntary initiatives bring consumers the kind of choice and freedom that they've come to expect in other parts of the technology marketplace, then I will be fully supportive. If not, then I see and will push for a greater Commission role in protecting consumers and entrepreneurs from the power of the giant telecom providers that now dominate the wireless market.

In particular, I will be looking at a few key areas.

First is price. There are a thousand different ways that a carrier can use pricing plans to discourage consumers from using third-party devices and software. The only limit is the creativity of its marketing department. The simplest example is, of course, a connection charge for bringing your own handset to the carrier. But there are also more subtle ways. If I want a data-only plan because I intend to use VoIP, I shouldn't have to pay a price close to that for traditional voice-plus-data. That's what happened at times in the wireline world with standalone DSL—and we must not let this anti-consumer tactic infect the wireless world.

And then there's the issue of handset subsidization. If a carrier charges \$50 per month for service (based on a 2 year contract with a huge early termination fee) to recover the cost of subsidizing a handset, then I should get a *better* rate if I bring my own phone. And I shouldn't have to accept an early termination fee, either. While I certainly cannot enumerate today every pricing tactic that would cause me concern, I hope these examples give an idea of how I will approach this issue.

Second is consumers' freedom to take the phone from carrier to carrier and to access the applications and legal content of their choosing. This is especially important as mobile handsets become platforms for all sorts of IP-based services. At home, using my PC, I get to choose between iTunes and Amazon.com, Google Maps and Mapquest, and Flickr and Shutterfly. I should have that same freedom of choice on my wireless handset, too—that's good for consumers and good for entrepreneurs. In fact, it is precisely this layered model that has made the Internet so great. When I switch my broadband provider at home, I don't have to buy a new computer. I get to use all my old software, and I can still access the same content on the Internet. It is high time wireless users and entrepreneurs get to take advantage of this freedom, too.

In other words: no blocking, no locking, and no discriminatory degradation of service. This last point is worth emphasizing. It's easy to see why blocking a particular application is bad for consumers, but carriers can also achieve the same result more

stealthily, *i.e.*, by using their control over the network to selectively degrade the consumer experience for particular applications. If carriers start unreasonably discriminating between IP packets in order to steer me towards or away from a particular VoIP, mapping or photosharing application, for example, that would be a serious departure from my definition of openness. Carriers can't reduce the sound quality of my voice call to L. L. Bean as opposed to Land's End right now, and I see no reason why they should gain a comparable ability as we move to an IP-based world.

Third is the question of equipment and software certification and industry standard-setting. Entrepreneurs need freedom to innovate without permission. Certification should be quick, inexpensive and preferably performed by an independent lab—no one carrier or manufacturer should have undue influence over the process. That's how Wi-Fi works, and it's been a big success. Carriers and manufacturers should also strive to avoid proprietary formats and interfaces, in favor of using industry-wide standards. I recognize, of course, that there may be other models for making the process work well. But the further you get from the independent, standards-based model—which we know works—the more concern there is likely to be, and more scrutiny, too.

Fourth is the wholesale market. As many of you know, I would have favored a condition in the 700 MHz auction to mandate wholesale access. This would allow entrepreneurs to sell wireless devices *and* service directly to the public, without first requiring customers to “bring their own access.” I believe that a mandate in this direction could have kick-started a more vigorous wholesale model, with great benefits for consumers and entrepreneurs alike. I was told in response that carriers could, and would, do so on their own. Well, in 2008, I'd like to see that happen. Already, with Amazon.com's Kindle device, we may be seeing movement in that direction. I'd like to see more. And I would also like to see some rigorous FCC investigation of just how well the wholesale market is functioning.

This is an exciting time in the wireless market and consumers have a lot to be looking forward to in 2008. Cell phones allow us to leave our offices and our homes and still be in voice contact with people who need us. The next generation of wireless handsets should let us put the entire functionality of the modern office or home office in our pockets. I really hope that, when I open my *Wall Street Journal* and *Business Week* in 2009, our next panelists will be telling me that the wireless marketplace is every bit as vibrant as the rest of the consumer electronics marketplace. But it will take work from all of us here—industry, legislators, government, academics, and journalists—to reach that happy place. Like all of you, I am excited to be part of the journey

Thank you.