

STATEMENT OF COMMISSIONER MICHAEL J. COPPS
FCC *EN BANC* HEARING ON
BROADBAND NETWORK MANAGEMENT PRACTICES
CAMBRIDGE, MASSACHUSETTS
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Thank you, Chairman Martin, for convening this very important hearing. Let me also thank Congressman Ed Markey, the distinguished Chairman of the House Subcommittee on Telecommunications, not just for being here today, but for the years of dynamic leadership he has given on the full gamut of issues that the Federal Communications Commission oversees. His knowledge, experience, good judgment and just plain brilliance are a national treasure, and I thank him for the fight he wages every day for consumers, innovation and competition. Nowhere is this more evident than when it comes to the fight for open wireless and wireline networks. Thank you also to Senator Kerry for his splendid leadership on these issues in the Senate Commerce Committee and to the rest of the Massachusetts delegation which brings you such effective representation in the nation's capital.

I have long advocated that the Commission get out beyond the beltway to hear from the American people on issues that affect every citizen in the land. The future of the Internet is obviously such an issue. Chairman Markey's Internet Freedom Preservation Act proposes that the FCC convene at least eight public broadband summits this year. We should recognize a good idea when we see one, and, really, I see no reason for us to wait for a new law to get this going. It's something that should be standard operating procedure for a regulatory agency charged with important responsibilities.

Before we begin hearing from our panelists, consider for a moment where we are in charting the future of the Internet. While we discuss and debate, network operators are making choices, *right now*, that will determine how Americans communicate today and in the future. They are deciding, *right now*, how the Internet is going to be managed. Some of their choices may be right, some may be wrong—that's what we're going to start learning about today. These are hard and complex questions. But the undeniable truth is that these critical choices are indeed being made. And—at least until the FCC opened this inquiry a few months ago—they were being made in a black box that the American people had precious little opportunity to peek into. There's an old Washington axiom: Decisions made without you are usually decisions against you. That kind of business-as-usual decision-making doesn't cut it for something this important.

If anyone is uncertain that these choices are being made, or thinks that Net Neutrality is a theoretical and not a practical debate, then let's take a quick look at what we learned in 2007.

That was the year one of the nation's largest wireless providers rejected a pro-choice text message as too controversial. In response, the leading pro-choice *and* pro-life organizations wrote an op-ed in the *Washington Post* asking: who put cell phone companies in charge of deciding which ideas Americans hear about? Also, at an FCC

meeting last year, Chairman Martin held up two phones from a leading phone manufacturer: one sold in Europe *with* Wi-Fi, the very same phone sold here in the U.S. *without* Wi-Fi. The reason? A U.S. carrier required the manufacturer to disable this feature. Then we read about how a leading network operator bleeped the Web broadcast of a performer who criticized the President's stand on Iraq. And we learned that standard consumer broadband form contracts apparently contain (or at least contained, past tense) provisions prohibiting customers from criticizing their broadband providers. Now we have allegations (that we'll hear a lot more about today) that a network operator is blocking or degrading peer-to-peer file-sharing programs.

I'm not saying that any of these practices are unlawful. We're still learning all the facts. But I am saying that choices like these, when you add them all together, are determining *what kind of Internet* we are going to have in the future—what we can say over the Internet, how we say it, where we can go, what information we will encounter, and how we will access it. And let's bear in mind that the Internet is the communications network that is quickly becoming the backbone for all the other communications networks that Americans use. In other words, *how this all turns out is a very, very big deal.*

So I say we start with the following question: Do we believe in a marketplace free of unreasonable discrimination? For me, and I believe for millions of consumers, innovators and entrepreneurs the answer is easy—absolutely yes, period, full stop. This is why I keep saying that the time has come for a specific enforceable principle of non-discrimination. This principle should allow for reasonable network management, but make crystal clear that broadband network operators cannot shackle the promise of the Internet. The principle of non-discrimination is in the Markey Bill, just as it is in Title II of the Communications Act, and it needs to be added, as quickly as we can add it, to the FCC's Internet Policy Statement.

After establishing a non-discrimination principle, the next step is admittedly more difficult. We live in a world of limitations, although technology always finds ways to pull us beyond those limitations. But, clearly, complicated network architectures, Internet viruses, and capacity limitations raise real-world, complex and valid questions. Our job is to figure out when and where you draw the line between discrimination and reasonable network management. To put meat on these bones, the Commission should establish a systematic, expeditious, case-by-case approach for adjudicating claims of discrimination. That way, over time, we would develop a body of case law that would provide clear rules of the road for those who operate on the edge of the network, namely consumers and entrepreneurs, and those who operate the networks. It's an approach that echoes easily off the walls of the nation's oldest law school—because it's in the ancient tradition of the English common law, the tree that grows from the roots up.

And as we go down the road of adjudicating claims of network management, let me close by stating that, if history is any guide, we need to proceed carefully and with some healthy skepticism. For as long as the FCC has existed, entrenched, powerful network operators have argued that harm will inevitably result from decisions that cut

into their profits and reduce their absolute control over the network. In the 1950s and '60s, the government was told that the entire phone network could be compromised if innovations like *Hush-a-Phone* and *Carterfone* were attached to the end of the telephone line. In the early '80s, the Department of Justice was told that breaking up Ma Bell would leave the United States literally unable to respond to a nuclear threat. More recently, we were told that forcing telecom carriers to accept enforceable network neutrality rules would jeopardize their financial future as they reconsolidated. And late last year we were told that wireless carriers couldn't make an open access model work—until these very carriers changed their mind and came out in favor of just such a model.

So, yes, I am happy to acknowledge that there are difficult issues and hard choices ahead of us. But they are not choices that should be made unwittingly, or through inaction, or behind closed business or government doors, or in order to protect any particular business model, or apart from putting at the forefront the public interest. The choices that are made, given the life-changing impact of the Internet, need to be made in public, with the consultation of government and scholars, and in service of protecting the American people and the cause of openness and freedom on the Internet. If we actually get it right, I believe the wonders of the Internet that we have seen in the last decade will not hold a candle to what the future will bring us—and by us, I mean every citizen in the land. It is in that vein I come here, and toward that end that I look forward to listening and learning from our experts today and then working together on behalf of policies that can open the doors of opportunity wider than ever before to all of us.