

STATEMENT OF FCC COMMISSIONER JONATHAN S. ADELSTEIN
EN BANC HEARING ON
BROADBAND NETWORK MANAGEMENT PRACTICES
Boston, MA – February 25, 2008

Mr. Chairman, I commend you for holding this hearing and developing a truly informative agenda. This exercise is valuable for the Commission, as well as for everyone who cares about the future of the Internet. Our colleagues at the Federal Trade Commission, an agency with far less oversight of communications, held its own hearing on network neutrality and issued a report over 8 months ago. It is high time we do so at long last ourselves.

I would like to thank Chairman Ed Markey and State Representative Daniel Bosley for their support of today's public hearing. Chairman Markey's new bill helps focus all of our deliberations, and we thank him for his strong leadership. Thanks also to the Harvard Law School and the Berkman Center for hosting us. The Berkman Center has been committed to developing an understanding of the impact of the Internet on our society, so this is a perfect setting for today's discussion. I'd also like to extend a warm welcome to each of the panelists for agreeing to testify and share their expertise with us today. Most importantly, thank you to everyone here for participating.

It is entirely fitting that we conduct this hearing in Boston, the cradle of the American Revolution, in which so many sacrifices were made to secure our freedom. The American colonists enjoyed the measure of freedom they were given under British rule. When that power was abused, they rose up to defend the liberties they held so dear.

Even as our Nation was young then, the Internet is young today. So, too, Americans cherish the freedom they experience on the Internet, and resent any impingement upon it. Respect for the free flow of information was bred into the very fabric of our country from its founding.

Just as it took the establishment of a constitution to secure Americans' freedom from government intrusion, now is the time to establish enduring principles to protect our citizens from losing their freedom on-line. We need to establish an effective Internet Bill of Rights that can secure Internet freedom for generations to come. Let's declare our own independence: we hold the truth to be self evident that we are endowed with the unalienable right to liberty on the Internet.

We must preserve the open and neutral character that has always been the hallmark of the Internet. The beauty of the Internet is that nobody's in charge and everybody's in charge. Its open nature has enabled those with unique interests and needs to meet and form virtual communities like no tool before it. It also means that consumers are being empowered as citizens and as entrepreneurs. They are increasingly creative in the way that they use these new technologies. We will hear today divergent views about the impact of some of those applications, like peer-to-peer sharing, so I look forward to that discussion.

We are fortunate to have an outstanding panel of witnesses, including Danny Weitzner, Co-Director of MIT's Institute of Decentralized Information Group. I'd like to read a passage

from one of his colleagues at DIG, Sir Tim Berners Lee, a founder of the World Wide Web. He observed that:

“The Internet is increasingly becoming the dominant medium binding us. The neutral communications medium is essential to our society. It is the basis of a fair competitive market economy. It is the basis of democracy, by which a community should decide what to do. It is the basis of science, by which human kind should decide what is true.”¹

This highlights why it is so critical to maintain the potential and promise that the Internet holds for enriching our economic and social well-being.

We take up this subject against a landscape of changes in technology, market structure and legal framework, which have the potential to alter dramatically consumers’ on-line experiences. Over the past decade, we have seen considerable investment by providers in new broadband facilities, growth in the number of broadband users, and an explosion of new applications available to consumers. But, over the past few years, we have also witnessed a dramatic consolidation among the nation’s leading broadband providers. We’ve seen the formation of the largest broadband provider in the nation, last mile providers have purchased backbone providers, providers are clustering their service territories, and we’ve seen new combinations of content and services. We all have high hopes for the development of alternative technologies like wireless to promote greater competition in the broadband access market. Right now, though, we see a broadband market in which, according to FCC statistics, telephone and cable operators control over 93 percent of the residential market. For many consumers, there is no meaningful choice of providers.

Independent observers, like the Congressional Research Service, have determined that leading broadband providers -- which control the last mile connections to the home -- may have the ability and incentive to discriminate, and to limit the choices available over the Internet. Others, such as Cardozo Law School Professor Susan Crawford, have observed that “all of these providers are competing with the internet in some way - they are all (or are becoming) old media and old telecom companies that want to maintain control over their distribution channels. The internet disrupts this control, and so they are competing with it.”²

We now face important questions about our role in preserving the unique characteristics of the Internet. Those questions, quite candidly, are made harder by the Commission’s recent efforts to reshape the legal framework that we have operated under since the dawn of the Internet. By largely deregulating broadband Internet access, the Commission has moved outside of the scope of the traditional protections afforded under the Communications Act, calling into question the framework of protections for this rapidly evolving ecosystem of communications.

We have taken the notable and important step of adopting a statement of Internet policy principles. They are designed to preserve and promote the open and interconnected nature of the Internet. While the statement was an important step, I believe we must add a new principle to address incentives for anti-competitive discrimination so as to ensure the continued vibrancy of the Internet. Commissioner Copps and I have worked hard to address concerns about the impact

¹ Tim Berners-Lee “Neutrality of the Net”, Decentralized Information Group (May 2, 2006).

² Susan Crawford, viewed at <http://scrawford.net/blog/> (Feb. 20, 2008).

of consolidation on broadband Internet access, culminating in explicit commitments from both AT&T and Verizon to abide by the FCC's Internet Policy Statement. Moreover, AT&T has made the significant commitment to maintain a neutral network and neutral routing in its wireline broadband Internet access service. These accomplishments notwithstanding, it is critical that we remain vigilant and continue to explore comprehensive approaches to this issue.

It is clear that Americans view the Internet differently than they do other mediums. Consumers want to be able to choose an independent VoIP provider, or to be able to access video clips, and not just video programming from the largest media companies. Consumers don't want the Internet to become another version of old media, dominated by a handful of corporate giants.

Against this backdrop, we take up the complex subject of broadband network management. We will also hear today concerns about practices for provisioning wireless text messaging short codes. These codes are an increasingly popular means of communicating, having quadrupled in use during the past two years, according to some sources. As we train our focus on these practices, it is worth noting that the Commission has pending before it several proceedings – petitions for declaratory ruling and for rulemaking, and formal complaints – which touch on the very issues highlighted here today. Allegations in these proceedings raise serious questions about whether current practices are consistent with the Commission's Policy Statement, and more broadly about the nature of their impact on the development of innovative on-line applications. Broadband providers, and we will hear directly from several today, counter that reasonable network management practices are necessary to ensure high-quality, reliable on-line experiences. We also have teed up before us questions about the role of transparency and disclosure between providers and consumers, an area that warrants further exploration.

The term itself, "network management," has legal significance in that the Internet Policy Statement specifies that broadband providers can engage in *reasonable* network management. Yet, the network management exception to the Internet Policy Statement cannot be read to eviscerate the very principles, themselves. So, among the many questions raised here are whether network management practices being deployed today are fostering or stifling the goals of the Commission's own Internet Policy Statement. I come to today's hearing with an open mind about those specific proceedings, and the practices and services at issue today. Indeed, I look forward to learning more from our witnesses' considerable expertise in this area. At the same time, it is certainly clear that decisions being made today about the architecture of the Internet will affect its character for years to come. So, it is important that we make our expectations clear.

Finally, it is worth reflecting briefly on the relationship between openness and our broadband challenge. Some have questioned whether policies that promote an open Internet are compatible with giving network providers the incentive to build out their facilities. The U.S. faces a significant challenge in deploying affordable, high-speed broadband connections to all Americans. Despite progress, we face deficits of availability, affordability, and capability when compared to the global broadband leaders. I firmly believe that preserving the vibrant quality of the Internet and promoting high speed access to the Internet are goals that go hand-in-hand. It is the richness of the Internet environment that delivers the value of broadband. As those Internet opportunities multiply, one thing is clear: access translates to opportunity. Leaving millions of our citizens without access to affordable and high performance broadband Internet access

disadvantages them and fails to draw on all the resources our country can bring to bear in a global economy.

So, I am pleased that we have this opportunity enhance our understanding of the truly dynamic environment of broadband Internet access and to shine a spotlight on how we can best maintain the potential and promise of the Internet. I hope years from now we can look back at today as a formative one in the development of an Internet Bill of Rights that protects every American's Internet freedom for generations to come. With that, I look forward to hearing more from all of you.