OPENING STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

***En Banc* Hearing on Broadband Network Management Practices**
Cambridge, Massachusetts
February 25, 2008

Thank you, Mr. Chairman. And thank you, Chairman Markey, not only for your presence here today but for your leadership on issues at the heart of the FCC's mission. It's a pleasure to be here in Boston, a stone's throw from where my grandfather, Joseph Augustine Shea, grew up in Somerville, Massachusetts in the 1890's, without even a phone, let alone the dream of the Internet.

Today we focus on the positive and constructive economic disruption caused by the vibrancy of new media. Our "new media economy" has grown past babyhood and is now squarely within its adolescence. And just like our own gangly and awkward adolescence, the new media economy is working through growing pains. Each day, we witness new record levels of Internet usage by consumers. In fact, comScore reported that Americans viewed an eye-popping 10 billion online videos in the month of December alone, a record number. comScore attributed the spike in online activity to the Hollywood writers' strike causing a dearth of fresh content in the traditional media sector. Viewers are increasingly seeking alternatives and online video is stepping in to satisfy that demand. YouTube alone consumes more bandwidth today than the entire Internet did in 2000. In short, consumers are tugging hard on existing broadband networks. And I am optimistic that the economic environment created by these new dynamics will bring consumers new benefits unimaginable just a few years ago.

During the course of the Internet's short life as a publicly used network of networks, it has evolved and improved as consumer habits have changed. For instance, when the Internet was only about email and static websites, dial-up sufficed. As consumers discovered the benefits of interactive services offered online, in addition to the ability to download music and other bandwidth-intensive applications, network operators offered cable modem and DSL services more widely.

Now that we are clearly in the midst of a competitive, market-driven on-demand world for video content, we face a new transition and all of the stresses, strains and anxieties that transition periods bring. But history has taught us time and time again that competitive markets are far better able to satisfy consumer demand than government micromanagement. The government, and especially unelected bureaucrats such as myself, are incapable of replicating the billions of independent decisions that are made each minute in the private sector—nor should we try. The law of unintended consequences always has the last word.

Accordingly, it is absolutely essential that broadband network and service providers have the proper incentives to deploy new technologies. In order to entice network operators, or potential builders of new networks, to raise the capital necessary to build better networks, they must be able to pay back their investors. That's the only way new networks will get built. It is equally as important that consumers have the option of pulling the content of their choice anytime, anywhere and on any device. Anyone who tries to frustrate that consumer demand does so at their own peril.

Discussions regarding net neutrality have been vigorous and healthy over the past several years. The dialogue has heightened awareness of issues that are vital to the future of the American—and global—economies. Consumers, network owners, content providers and many others, all have differing and important points of view of whether and to what extent the Internet should be regulated.

In adopting Section 230 of the Communications Act, Congress expressly stated that, "It is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." With this firmly in mind, in 2005, the Commission adopted a *Policy Statement* that sets forth four broad principles that "encourage broadband deployment and promote the open and interconnected nature of the Internet." It specifically states that consumers are entitled to: (1) access to Internet content; (2) run applications and use services of their choice; (3) connect legal devices that do not harm the network; and (4) competition among network providers, application and service providers and content providers. All four principles are subject to reasonable network management—whatever that means. And we are exploring the meaning of that term today. In the one case where specific allegations involving conduct that violated a statutory provision were made, the *Madison River* case, the Commission acted swiftly and decisively to prohibit the misconduct.

Amid the continuing debate about network management practices, on March 22, 2007, we adopted a *Notice of Inquiry* to examine the status of broadband market providers and how consumers' interests could be best protected. More recently, we have received two petitions alleging that specific network practices managing peer-to-peer traffic violate our *Policy Statement* and seeking adoption of rules that would define reasonable network management.

Thus far, the Commission has relied on its *Policy Statement* and checks and balances provided by competitive pressures to assure that the broadband marketplace is functioning as it should. We continue to be attuned, however, to developments in the marketplace that might frustrate consumer demand and to be prepared to take remedial action that addresses genuine problems that arise, if necessary—as we have in the past. This forum gives us the opportunity to explore new market conditions, network developments and potential challenges. I look forward to hearing from our witnesses and engaging them in an active dialogue.