

**STATEMENT OF FCC COMMISSIONER JONATHAN S. ADELSTEIN  
EN BANC HEARING ON  
BROADBAND NETWORK MANAGEMENT PRACTICES  
Palo Alto, CA – April 17, 2008**

It's entirely appropriate that we convene this hearing on the future of the Internet here at Stanford, which has fueled so much of the innovation that has made the Internet the powerful tool it has become today. Mr. Chairman, I commend you for holding this hearing, especially here as we had discussed, and developing such an informative agenda.

The outstanding panelists we invited, as well as the people from this area who will have the opportunity to testify, will improve our understanding of the dynamic environment of broadband Internet access. There is nowhere better than Silicon Valley to shine a spotlight on how we reach the full promise of the Internet.

I would also like to thank Stanford University, the Law School, and the Center for Internet and Society for hosting us. Stanford is not only my alma mater, but is, in my unbiased opinion, the finest institution of higher learning the world. Bias aside, it does feel appropriate that I'm returning to Stanford to continue my studies about this topic. I am especially glad not to be paying tuition this time around.

You are fortunate to be represented by a delegation in Congress – Senators Boxer and Feinstein, and Rep. Eshoo – who truly understand the importance of maintaining America's leading technological edge.

Today we will hear from legal scholars, technology experts, entrepreneurs, and industry representatives. We will also add important new voices including representatives of families and children, as well as the creative arts community. They each bring a needed perspective, and I would like to thank all of them for joining us today.

The vast range of broadband users means that we cannot hear at one time from all of the affected communities. We could fill many more panels with countless numbers of innovators located here in Silicon Valley, alone. Broadband touches so many communities that I am particularly glad that we will have two full hours of public testimony. This will allow us to hear directly from consumers about their expectations. There are over 35 thousand comments filed in the FCC's docket on these issues – the vast majority from public citizen commenters. So, there clearly is deep public concern about these issues.

Consumers have come to expect and will continue to demand the open and neutral character that has always been the hallmark of the Internet. The movement for Internet freedom is tapping the same American spirit that fueled the movement against media consolidation. In an age when traditional media markets are dominated by a handful of giant conglomerates, there is optimism about the rise of broadband. There is a sense it can restore decentralized, locally-rooted and entrepreneurial voices to the media landscape that are reflective of the best aspects of the American media before the rise of consolidation. Consumers are saying, "don't tread on me." Any network provider that treads on freedom does so at their peril, and the government

that looks the other way does so at its peril.

That is why it's so welcome that we are looking at this squarely today. Basic decisions are being made about the development of Internet that will shape it for years to come. The beauty of the Internet is that nobody is in charge and everybody is 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 has also empowered consumers as citizens and as entrepreneurs. Consumers are increasingly creative in the way that they use these new technologies – nowhere more so than here in Silicon Valley.

As a result, high speed access to the Internet is revolutionizing the way we work, learn, seek medical advice, gather our news, engage in public discourse, interface with government, socialize, and almost every aspect of the way we live.

At the same time, we are all making our way through a sea of changes -- in technology, to the communications marketplace, and to our legal framework -- that are literally reshaping consumers' on-line experiences. There are many positive developments. 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 there are also warning signs that should not go unheeded. Over the past few years, there has been dramatic consolidation among the nation's leading broadband providers. We have 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 desperately need greater competition in the broadband marketplace. Effective competition will provide real incentives for broadband providers to maintain neutral and open networks. We all have high hopes for the development of alternative technologies like wireless. But the FCC's own statistics show that telephone and cable operators control over 90 percent of the residential market. Our recent 700 MHz auction largely dashed hopes of a nationwide third channel into the home and solidified the hold of the largest incumbents. For many consumers, there is no meaningful choice of providers.

With a limited number of broadband options, our attention is all the more important. 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 have observed that the large broadband providers also face conflicting incentives, as Internet access increasingly competes with their historical lines of business.

Against this backdrop, we have allegations that broadband providers are exercising increasingly greater control over the applications and content accessed by their customers. The Commission has pending before it several proceedings – petitions for declaratory ruling and for rulemaking, and formal complaints – which argue that broadband providers have intentionally and secretly degraded applications in a way that undermines the open and interconnected character of the Internet. We also will hear concerns about the provisioning of wireless text messaging short codes, where we have seen providers refuse service to groups that were deemed “controversial.”

We now face difficult questions about our role in preserving the unique characteristics of the Internet. Those questions 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. The effect of those decisions is that we have cast doubt about the rules of the road and left open questions about what protections apply.

To our credit, the Commission has taken the important step of adopting a statement of Internet policy principles, designed to preserve and promote the open and interconnected nature of the Internet. Yet, as we saw at our hearing at Harvard Law School, not all broadband providers believe we have the ability to enforce our own Policy Statement. These issues are simply too important to leave this question unanswered.

I also believe that it is time for the Commission to strengthen and enhance the Policy Statement. We need to add a “fifth principle” to our Policy Statement to address incentives for anti-competitive discrimination. 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 do not want the Internet to become another version of old media, dominated by a handful of corporate giants. We also need a strong commitment to monitoring and enforcing compliance on a case-by-case basis. These would be significant steps toward reaching the full promise of the Internet.

As the Commission has eliminated its traditional safeguards, new questions are also emerging about consumers’ rights in this broadband world. The recent allegations have raised concerns about level of transparency and disclosure between broadband providers and their consumers. I come to this issue with a strong presumption that broadband providers should provide clear and accurate information – in plain English – about their policies and how they affect consumers’ use.

As consumers shift from a narrowband to broadband world, we also must confront new questions about how to protect consumer privacy. A recent article documented a growing practice by which broadband providers – using deep packet inspection -- can track almost every keystroke of their on-line users. Providers hope to capitalize on a treasure trove of information about their customers’ interests and habits. But it is far from clear what consumers are told about these monitoring practices and what protections are in place to safeguard their interests. Given the highly personal uses of the Internet – from managing bills and investments, seeking medical information, exploring religious beliefs, or conducting a job search -- this trend should give all consumers pause.

As we contemplate these uses of the Internet, I also look forward to hearing from my friend Jim Steyer, founder of Common Sense Media. Common Sense Media has worked to improve our understanding of the impact of our media and the Internet on the social, emotional, and physical development of our nation's children. More than ever, we must teach our children to be media savvy and that includes on-line media. We need to empower parents with the tools to manage their children's Internet experiences. These efforts are critical and they are also fully consistent with efforts to maintain an open and neutral Internet. In the on-line world, we need to put the consumer – and the parent -- in control.

Before we turn to today's panel, we must also take note of developments since our first hearing. At the top of the headlines, Comcast and BitTorrent announced an agreement to work together to address network management problems. I am encouraged that broadband providers are listening to the chorus of consumer calls for open and neutral broadband Internet access, and I look forward to learning more about this today. The FCC (through its oversight on these issues), consumer groups (through their vigilance and advocacy), and industry (through a renewed effort at collaboration) can all take credit for these developments.

I am also interested in the status of broader industry discussions and learning more about whether the agreements we have heard about are company-specific solutions or ones that will benefit the broader community of on-line innovators. We have also heard recent reports about progress in the collaborative P4P discussions and I would like to hear greater discussion of the role of industry bodies.

Recognizing the complexity of the task before us, I am reminded of Judge Learned Hands' observation that, "The spirit of liberty is the spirit which is not too sure that it is right." That is why we are here to learn, because it is so important to get rules that govern these networks right. 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. Internet freedom, like liberty itself, is a cherished right that deserves our vigilance and protection. With that, I look forward to hearing directly from our panelists and the public. Thank you, all, for engaging with us today.