

STATEMENT OF  
COMMISSIONER MEREDITH A. BAKER  
CONCURRING IN PART, DISSENTING IN PART

Re: *Preserving the Open Internet*, GN Docket No. 09-191; *Broadband Industry Practices*, WC Docket No. 07-52

I believe in the Open Internet and the free flow of lawful content over the Internet. Of course, we all do. The unrestricted flow of information on the Internet has enabled unprecedented innovation and investment in communications technologies and services, and brought immeasurable benefits to consumers of all kinds. I don't want to do anything that would jeopardize that.

I think we must cast a watchful eye to the nascent Internet ecosystem, a complex and rapidly evolving force that empowers whole new ways of doing business, new technologies, new ideas, and new jobs. I don't want anything to get in the way of that.

I also believe that we must never cease to find ways to create incentives for investment across the Internet, an economic engine that is just beginning to demonstrate its power to transform the way we live, to energize our economy and to solidify our leadership internationally.

I believe very strongly that openness must thrive across the Internet as a whole. We must find ways to enable innovation and investment from end-to-end—not just applications at the edge but also the network's vibrant, dynamic and technologically evolving core. This is important because if innovation and investment are confined to corners of the Internet, consumers will suffer.

I am particularly sensitive to the fact that all actions that we take at the Commission are carefully watched, not only here, but also abroad, to gauge the future of the Internet. When I think of an open Internet in the international context, I think of the importance of the free flow of all types of lawful information over the Internet, which the United States has championed since the early days of the Clinton Administration.

It is the openness we sought to preserve in rigorous discussions with the leaders of other countries around the world while I was at NTIA, and the openness we upheld during the World Summit on the Information Society process and the openness we fought hard to capture in the Tunis Commitment.<sup>1</sup> I believe that those freedoms—that openness—are no less relevant today, and the role the United States plays in defending them remains critical. We cannot retreat. On this there is no disagreement at this Commission and I make this point lest the rest of the world should get the wrong idea.

I dissent in part today because, as a threshold matter, I am not convinced that there is a sufficient record to establish that a problem exists that should be addressed by Commission rules. As I have said previously, we should not adopt regulations to address anecdotes where there is no fact-based evidence that persuasively demonstrates the presence of a problem. My concerns about the need to regulate are heightened in several of the areas that are covered by the item before us today.

We must be particularly careful before we risk extending any Internet principles to mobile broadband, which is rapidly becoming the driving force in Internet uptake and use. We need to look hard at what we are proposing to call “specialized” or “managed” services, and whether codifying rules will

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<sup>1</sup> Tunis Commitment, World Summit on the Information Society, September 2003-October 2005, ITU Doc. WSIS-05/TUNIS/DOC/7-E, Nov.18, 2005, available at <http://www.itu.int/wsis/docs2/tunis/off/7.html> (last visited October 21, 2009).

thwart or encourage their development. We need to know much more about the parameters of reasonable network management before we consider acting, and the same is true for the concept of discrimination.

I also think that important questions are outstanding about our legal authority to regulate broadband Internet access services that we need to explore. We need to better understand the law, engineering, and economics. Before imposing new rules, we need to carefully think through all potential unintended consequences that could harm consumers by increasing prices, impeding innovation, eliminating choices, and/or reducing quality of service.

For these reasons, when we began this process three weeks ago, I was prepared to dissent with respect to this entire initiative. But I am not there today. Although I am not convinced that rules are necessary or useful at this time, I am now equally convinced that it is reasonable to take a step back and ask tough and probing questions about the Internet as it exists today and about where we want it to be tomorrow. And I realize that this is the start of the process.

I hope for broad and substantive participation in this proceeding, so that we will have a solid record that will provide us with a complete and accurate understanding of the Internet ecosystem. I support that effort and I think the item includes thoughtful questions to direct the debate to come. I want to thank Chairman Genachowski and his staff for their good faith efforts to make this a better document. I commend the Chairman for putting action behind his commitment to a cooperative approach at the Commission and his emphasis on fact-based policy analysis founded on evidence in an open and transparent record.

I hope this will set us on a constructive road for working together to make better communications policy in the months and years ahead. There are already encouraging signs that this will prove to be a productive approach outside the Commission as well. As a member of the minority at the Commission, I appreciate that we have demonstrated that we can disagree without being disagreeable where our policy perspectives just cannot line up.

I particularly want to acknowledge the steps that the Chairman is proposing to ensure that there is an ample record upon which we can move forward. I note, in particular, the extended comment period that has been proposed, as well as the establishment of a technical advisory process to make sure that the steps that we take in the future are informed by the laws of physics, not merely the laws of politics. I look forward to having the chance to hear from the business people—both large and small—from the inventors and the technical experts, and to working together to achieve a broad-based consensus with respect to the way forward. With input from a broad range of parties who are willing to roll up their sleeves and work together, I believe we can find the right way.

Finally, I would be remiss to not recognize the tremendous job that the staff across the Commission—in the Bureaus, in the Chairman's office in my office and the offices of the other Commissioners—have done to move this document forward. It reflects real progress over the past few weeks and the kind of constructive collaboration that I hope will become the hallmark of the workings of this Commission.

While I remain skeptical about the need for regulation here, I also remain open to new ideas and look forward to reviewing the record to be developed here. I believe the document before us today outlines a thoughtful process to develop a record to inform our next steps. It is balanced and comprehensive. It asks good, pertinent questions and offers suggestions about a flexible approach in the future that is worth considering carefully and at length. Thank you.