

Remarks of Commissioner Meredith A. Baker  
State of the Net Conference  
January 26, 2010

Good afternoon and I appreciate the opportunity to be here with you today to kick off this year's State of the Net Conference. I love this conference. Tim always puts together a great schedule and this year doesn't disappoint. Each year this event brings together both sides of the debate, and today is no exception.

I want to use my time today to update you today about two proceedings that have been grabbing headlines lately—the National Broadband Plan and the Open Internet proceeding.

As you are undoubtedly aware, the extended deadline for the Commission to complete the National Broadband Plan is March 17th. The Recovery Act set out an ambitious goal with an aggressive deadline for developing a National Broadband Plan. Congress directed us to develop a Plan that ensures that every American has access to broadband capability. By statute, we must address deployment and adoption, as well as a broad array of national purposes, from civic participation, to energy independence, and job creation.

Many of these issues fall within the traditional scope of the Commission's work, but many do not. It would be a big job even with all the time in the world!

Under the leadership of Chairman Genachowski, the Commission has embraced transparency and has implemented a fact-driven process to encourage broad participation and to develop an ample record. The public record of this proceeding now includes responses to a Notice of Inquiry, 30 public notices, 36 staff workshops, 9 field hearings, and a blog that is part of the record for the first time. I applaud these efforts to open up the Commission's process and bring it into the Twenty-first Century. We are the Federal *Communications* Commission—we should be a model of how to use new communications media to facilitate civic participation.

I look forward to the Plan's recommendations in all of the areas outlined by Congress—but I would like to briefly highlight two for you here. First, I think Universal Service and Intercarrier Compensation reform will be critical to achieving broadband for all Americans. Untangling these issues has been perplexing the Commission for decades. The historic questions – of how do we ensure universal service, promote competition, and remove implicit subsidies all at the same time – were hard enough. But now, how do we ensure universal broadband to all Americans on top of that? I firmly believe that following the National Broadband Plan, we will have an open window of opportunity to finally address these thorny issues—a window when the political, economic, and social “stars” align for real reform. Hard choices will have to be made and not all vested interests can be satisfied. But I believe we must repurpose the more-than-\$7 billion Universal Service Fund for the broadband era.

The second is an area of particular interest to me: spectrum policy. Some data show that less than 15 percent of Americans go online today with mobile broadband. But, among the key 18-29 year old demographic, 93 percent use mobile broadband. To keep this trend on track, the United States needs a comprehensive approach to spectrum policy that expands upon proven flexible, market-oriented policies that facilitate spectrum access, wireless innovation, and competition. Our policy should achieve two overarching objectives: make the best use of the spectrum that is available today and get as much additional spectrum into the market as possible to meet the current and future demands of wireless consumers. A spectrum framework must include a comprehensive inventory and database of how government and industry use spectrum today; a reexamination of some of our rules to allow for more flexibility and secondary markets; and an update of our existing spectrum allocations and service rules. I

think spectrum policy will be, and should be, central to the National Broadband Plan as wireless becomes a primary point of access to the Internet for more and more Americans everyday.

The other proceeding that you have no doubt seen in the headlines of late is the Open Internet proceeding – often referred to as net neutrality. Even if you haven't been following this proceeding closely, it may have been following you, with issue ads on TV and radio. And many of you have probably received mailings – by snail mail of all things – about the impact this could have on the future of broadband. In broad terms, this Notice asks whether the FCC should impose rules on network operators about whether and how they manage traffic on their networks.

Once again, I must applaud the efforts of the Chairman to adopt an inclusive and fact-driven process. That said, on the substance, I have serious reservations about moving forward on the course set out in the Notice. I support the open Internet and the free flow of lawful content over the Internet, and I do not think that we can tolerate anticompetitive conduct that harms consumers. It is not clear to me, however, that there is a systemic failure that warrants government intervention in the market to achieve those goals. I have grave concern that net neutrality regulation risks distorting the market and creating effects we cannot predict. Most importantly, I am worried that a shift in regulatory direction at this stage could be detrimental to investment in broadband and innovation on the Internet.

Although some Americans remain unserved, and those gaps must be addressed through the National Broadband Plan and Commission policy, our broadband industry has deployed broadband to about 90 percent of U.S. households under prudent, deregulatory policies that have created powerful incentives for investment and innovation to the benefit of American consumers.

But despite my reservations, I remain open to listening and learning about the views of all sides of the net neutrality debate, brought into clear focus at recent workshops on Innovation and Transparency. I have learned so far that while there is broad agreement on the need to keep the Internet open, there is certainly a divergence of views on the best way to do it.

I have found that there is no agreed definition of “net neutrality” and different people often end up talking past one another because they don't have a shared concept of what we mean by “net neutrality.” There seems to be broad consensus that networks must be managed to control spam and prevent unlawful content, but there is not as much agreement as I would like to see about the role of network operators in protecting intellectual property on the Internet. There is broad agreement that consumers should be empowered to control their Internet experience and the benefit to consumers should be the focus of any rules that we may adopt. And perhaps most surprisingly to me, while the most extreme net neutrality advocates want to see a network of heavily regulated dumb pipes where innovation is isolated to the edge, many recognize that quality of service can be advantageous, even necessary, for consumers. Even though some advocates fear theoretical abuses, they concede that the Internet experience today wouldn't be what it is without network management by our network operators.

And I think a particularly promising area of potential consensus is transparency. To me, transparency is what the Open Internet is all about. Done right, transparency rules could obviate the need for other regulations of network management altogether by empowering consumers with information to make more informed choices about broadband.

Hanging over all of this discussion is a question of the FCC's jurisdiction. The D.C. Circuit has a case before it to address the Commission's legal authority over broadband services. The court's action may undermine the legal basis for potential Commission action in the Open Internet Notice. I believe we should wait to see what the court says about our authority before pressing forward. Further, I do not believe we should entertain calls to reclassify broadband service as a heavily regulated Title II service to

try to shoehorn these offerings within our known jurisdiction. Since 2002, the Commission has pursued a light regulatory touch with regard to broadband Internet access services under Title I. This approach has reduced regulation and created incentives for investment, which has fostered over \$100 billion in broadband investment. We should not revisit that decision now.

So with that, I will wrap up. As we move forward with the Commission's broadband agenda this year, we must get these policies right because they are critical for the future of the Internet ecosystem, broadband for all Americans, and our nation's economy. Thank you for having me here today and I'll be happy to take a few questions.