

REMARKS OF FCC COMMISSIONER MICHAEL J. COPPS
OPENNESS AND INNOVATION IN THE DIGITAL WORLD?
STANFORD LAW SCHOOL
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Thank you, Barbara van Schewick, for your very kind words of introduction—and for all the good things you do in pursuit of open, dynamic and ever-innovative telecommunications. It is a pleasure to see you again and to be here at Stanford, home of the Center for Internet and Society. Many thanks as well to the Churchill Club, TechNet (particularly Betsy Mullins) and the Center for Democracy and Technology for giving me this opportunity to discuss the currents and cross-currents facing the Federal Communications Commission as we begin implementing the National Broadband Plan. I would be remiss if I did not also express my appreciation to Markham Erickson of the Open Internet Coalition for his leadership in Washington and for the Coalition's sponsorship of this event. His voice—and the voices of others like him—are critical right now as we are in the midst of a pitched battle to protect the continued openness and innovation of the Internet space from potential gatekeeper control by big telephone and cable companies.

I have come to Silicon Valley to hear directly from the innovators and entrepreneurs who have relied on the openness of the Internet to provide users throughout this country and around the globe with the powerful innovative tools of the digital world. And I come here worried about what happens tomorrow if we permit access to the Internet to become more tightly controlled by a handful of gatekeepers. This is not a new issue for me—it's something I've been warning about since I took my oath of office as Commissioner over nine years ago. My job is to make sure the public interest—the interest of all Americans—is reflected in our Nation's communications policy. I realize that I have my perspective and you have yours and that we may not always see eye-to-eye on every issue, or even agree on the proper role of government in tackling problems. Often in Washington, though, it is the confluence of interests, more than lock-step agreement on every issue, that delivers results. I believe the preservation of an open Internet is just such a circumstance, where your interests to foster opportunities for innovation and enterprise coincide with mine of protecting the ability of consumers to chart, to the fullest extent possible, their individual online experiences.

Of course, coming here to Stanford and the Valley and to other high tech neighborhoods is always a welcome opportunity for me to imbibe some of the intellectual excitement and vibrancy that your community always seems to display. There is a very special energy out here on this latest American frontier. Almost a century and a quarter ago, the great historian Frederick Jackson Turner declared the last American frontier closed. How wrong he was—I guess it just goes to show that even the brightest among us can get it all wrong. *You* are America's new Frontier.

I must tell you that it made a huge impression on me when I first came out here after joining the Commission and realized that your approach to problem solving wasn't exactly the same as Washington's approach to problem solving. While in most respects that was good, in other ways, it was, well . . . challenging. In fact, it was as if we were sometimes speaking two different languages. In those earlier years of the Digital Age, communications between us had

not even reached the analog stage. Behind the two-way lack of communication was a two-way lack of credibility and trust. That meant that your views were not being effectively represented in the nation's capital and that our understanding of the world didn't have much currency or effect out here. I didn't like that part of what I saw then, and I've spent a lot of time since trying to open and feed meaningful lines of communication between us.

The good news is that things have changed. By-and-large, your enterprises are significantly better represented now than they were in 2001. The not-so-good news is that things haven't changed enough. Not nearly enough. So one reason for my coming out here this week is to emphasize the need to work harder at working together when our interests coincide. Wouldn't it be nice if our dialogue advanced at the same pace as our technologies advance? Without that, many of the opportunity-creating hopes and dreams of the Digital Age will fall far short of their great potential.

That potential is so huge. Getting broadband infrastructure deployed ubiquitously *is* the great infrastructure challenge of our time—and one upon which the innovation and creativity of Silicon Valley will ride. For openers, speaking of things that we can do together, Washington and the tech community have an urgent educational challenge to meet. We need to ensure that people understand how broadband is not technology for technology's sake—it is important because it really can be our “Great Enabler.” This is technology that intersects with every great challenge confronting our nation—improving energy efficiency, halting climate degradation, improving healthcare for all our citizens, educating our young (and our old, too), helping the disabled realize their full potential, creating new public safety tools for first responders, and opening the doors of economic and social opportunity for all. But broadband connectivity is about even more than that. Increasingly our national conversation, news and information, our knowledge of one another, will depend upon the Internet. That is why I worked so hard for the inclusion of a strong Civic Engagement chapter in the Commission's recent National Broadband Plan, and it is why the Commission is looking so closely at the future of journalism in our society. Each of these challenges that I just mentioned has a broadband component as an important part of its solution. None has a solution without that broadband component. None has a solution without broad public understanding of how important this is. And none has a solution without Washington policy-makers understanding how great the nation's stake is in all this.

I think we are beginning to make some progress. The National Broadband Plan put together under Chairman Genachowski's leadership helped frame the issues in these terms. Many of you have helped on this, too. But to get the public and policy support needed to build this Twenty-first century infrastructure, we need to do much more. People need to realize that meeting the broadband challenge is really something important in their lives and for their futures. And they need to understand that a competitive nation cannot tolerate digital divides between haves and have-nots, between those living in big cities and those living in rural areas or on tribal lands, between the able-bodied and persons with disabilities. And they need to remember that this Nation has a long history of successful infrastructure-building to draw on.

If you course back through the annals of America's past—all the way back to the very beginnings—you will find that earlier generations met and mastered their own great infrastructure imperatives—things that had to be built if the country was to continue its forward

march. So those generations built roads and bridges, turnpikes and canals, regional and then transcontinental railroads, an interstate highway system, nationwide electricity grids and nearly universal plain old telephone service. They did this, more often than not, by working together—private enterprise in the lead, to be sure, but encouraged by visionary public policy. That’s how we built the place! But somehow, when it came to the roads and bridges and highways of the Twenty-first century—broadband—we forgot those lessons and fell victim to a strange and totally unhistorical assumption that broadband would get built without any special effort, absent any enlightened public policy encouragement, and that business would build it out even in places where business had no incentive to go. That cost us a lot. We lost precious time. We lost golden opportunities. We fell behind other countries. We paid the price in jobs, education, health, energy—you name it.

Change came, finally and belatedly, in 2009. The opportunity to set a new course made one of its occasional—I think cyclical—visits to our land. We have a moment in time now to do this right. But speaking from four decades of experience in Washington, it’s not a slam-dunk just because great new people are at the helm. It is just not going to get done without a qualitatively and quantitatively better effort on both your part and mine.

Working smarter means pulling together more than we have. We’ve started down the right road now. The new President and Congress, in the American Recovery and Reinvestment Act of 2009, called for development of a National Broadband Plan for America, something I had been pushing for since I arrived at the FCC in 2001. And it was music to my ears when the legislation put the FCC in charge of developing the actual plan, which happened with the most open and in-depth proceeding I had ever witnessed at the Commission, under Chairman Genachowski’s excellent leadership. He and our entire FCC Team searched out traditional and non-traditional stakeholders of all types, on the premise that if we’re going to have a broadband plan *for* the American people, it ought to be a broadband policy *of* and *by* the American people too. Our Broadband Team listened, learned, analyzed, wrote and presented Congress with its Plan in March of this year. It provides the template the country needs. While each Commissioner would have probably had his or her own emphasis or timetable here or there in the Plan, at last we had the visionary policy needed to sustain a national commitment to a national infrastructure build-out.

But, of course, the story doesn’t stop there. It *begins* there. Unfortunately, as if the basic job of implementation isn’t enough of a challenge, new roadblocks have since been thrown in the way.

The one drawing most attention right now involves a fundamental challenge to the authority of the Federal Communications Commission. Just over two months ago, a federal appeals court placed itself in the middle of the Commission’s work with its now famous—or infamous—decision overturning our exercise of authority over Internet access services pursuant to Title I of the Communications Act. I will not bore you with the arcane details of the Communications Act and Title I versus Title II, but you need to understand what is at stake.

Over much of the past decade, the FCC took American consumers on a costly and damaging ride, moving the broadband transmission component of Internet access services

provided by dominant telephone and cable companies outside of the statutory Title II framework that applies to telecommunications carriers. This was a major flip-flop from the historic—and successful—approach of requiring nondiscrimination in our communications networks. Instead, to advance the interests of a powerful few over the interests of consumers, innovators and entrepreneurs, the Commission moved away from any real oversight by classifying Internet access service as an unregulated “information service,” subject to only vague ancillary authority under Title I. I didn’t buy it then—and now a federal appeals court has agreed that the aberrant Title I treatment doesn’t work. This now threatens to put important elements of the National Broadband Plan on hold, or, worse, to squander an otherwise golden opportunity to get about the job of broadband deployment and adoption.

I do want to make just one other point in this regard. One of the arguments being made against the Commission’s authority to move back to a Title II classification is that there have been no “changed circumstances” that are supposedly needed before we could do this. No change in circumstances? It strikes me that the changes we have seen throughout the country and globally due to the Internet have been little short of revolutionary. I certainly don’t need to tell this audience that the market for broadband technologies and services has undergone more than a few seismic changes over just the last decade. Back then, many Americans were still getting used to the Internet, and independent Internet service providers, like AOL and CompuServe, were the names of the game. Since then, it is a few huge access providers that have become the only real broadband game in town. Resellers and competitive local telephone companies have been driven from the field for the most part. Competition—as envisioned in the 1996 Telecommunications Act—in the Internet access services market is simply not adequate.

We must now reflect these changed market realities in our policies and get back on course by treating Internet access services—the gateways to the Internet—as the telecommunications service they are, subject to the most basic of nondiscrimination and transparency safeguards. Chairman Genachowski has announced his intention to launch a proceeding next week to examine the options—continuing down our failed Title I path; applying the full range of Title II requirements and safeguards; or a proposed “third way” of applying a limited number of fundamental provisions of Title II to Internet access service. Frankly, I would have preferred plain and simple Title II reclassification through an immediate declaratory ruling, accompanied by limited, targeted forbearance from certain provisions—wiping the slate clean of all question marks. The quicker we can bring some sense of surety and stability to the present confusion emanating from the *Comcast Decision*, the better off consumers—and industry, too—will be. I nonetheless welcome the Chairman’s efforts to bring Internet access providers back under some form of Title II oversight to protect consumers and innovators from unjust and unreasonable discrimination. It was a travesty that we moved these providers beyond meaningful oversight in the first place, which caused consumers, small businesses and the country enormous competitive disadvantage.

Where this brings us now is right to your backyard. Because our ability to safeguard an open, dynamic Internet is under siege by some of the most powerful interests in the country. If the Commission fails to reassert its authority—authority that I believe it clearly has—then the days of the Open Internet will be succeeded by the Age of the Gatekeepers. Make no mistake about it. This is not going to be an easy fight. The big telephone and cable companies are doing

everything they can to prevent the reclassification of Internet access services. They have redeployed their troops at the FCC, throughout Washington and in the blogosphere. These opponents of reclassification make arguments that range from the frivolous to the nonsensical. My personal favorite is that somehow empowering consumer choice and protecting Internet freedom and allowing innovation to flourish by preventing special interest control over access to the Internet amounts to a government takeover of the Internet. That's such hogwash. But, sadly these simple (and false) messages are resonating. As Speaker Pelosi warned just last week, the technology community needs to “do a better job of educating members about [the reclassification] issue.”

Has it struck you, as it has me, that those who are most vocal in saying this is all about government wanting to regulate the Internet are really, when you get to the nub of it, asking the Commission to pick winners and losers and to choose existing models and business plans over new innovation and real entrepreneurship? They can talk “competition” all they want but the race to combine distribution with content spells economic constraint as clearly as it ever did in our nation's history. I recognize that some of you worry about anything that hints of oversight of anything that touches the Internet—even when we are talking about access to the on-ramps upon which your businesses rely. For what it's worth, I believe your future lies in openness and transparency. And I know the benefit for our citizens lies there too. Think about the alternative. If the FCC does not assert its authority to exercise basic Title II oversight, consumers could be denied access to your service, you would be denied access to them, and there won't be *anybody* who can do *anything* about it. This isn't about government regulating the Internet—it's about making sure that consumers and innovators, rather than a handful of entrenched incumbents, each control their own online experiences.

Allowing a powerful duopoly—in many places a monopoly—to exercise unfettered control over high-speed Internet access does more than just create technology and economic risks; it poses a real threat to the future of our democracy. We are late in understanding the profound civic implications of broadband as we begin to migrate so much of our national conversation to the Internet. America's future town square will be paved with broadband bricks. It must be accessible to all—not the province of powerful gatekeepers, tollbooths and walled gardens. It must reflect the diverse voices of this diverse land. Sustaining democracy by effectively informing all of our citizens in the Digital Age goes to the core of what we are trying to achieve in the National Broadband Plan. I am pleased that some Silicon Valley leaders are speaking out on this, and encouraging experiments with new platforms, business models and technology tools.

But an increase of technology does not by itself guarantee a more informed citizenry. A 2009 study indicates that, as a country, we now consume in excess of 1.3 trillion hours of media per year. Yet the production and distribution of essential news and information have never been more in doubt. A recent Pew Research Center report shows a fifty percent decline in network news reporting and editing capacity since the 1980s, and a 30 percent drop for newspapers since 2000. New media has not found the model to replicate online what has been lost offline. Maybe it will, maybe it won't. But there is a cautionary lesson to be learned from what has happened to our traditional media.

In less than a generation, a media landscape that had openness, competition and public interest value—real journalism, for example—as its hallmark has been transformed into a market controlled by a handful of players, too often providing little more than infotainment and program homogenization. Newsrooms have been shuttered, reporters taken off the beat and fired, and investigative journalism put on the endangered species list. Some try to tell us this is the natural result of changes in technology and markets, but the facts tell another story. Truth be told, in the case of traditional media, whether newspapers or broadcasting, it was bad choices by the private sector (through heedless consolidation that saddled companies with unmanageable debt) and even worse choices by government (through the FCC’s evisceration of the public interest protections that had undergirded the country’s media landscape) that visited such harm on the American people, on our democracy and, ironically, on even the media companies themselves. We cannot afford to have the same ills befall new media. Ensuring that all citizens have access to worthy media, to the news and information our democratic dialogue requires, is not a new challenge for our country. Washington, Jefferson and Madison understood that a democracy depended on an informed citizenry, and established postal subsidies to ensure the widest possible production and dissemination of newspapers—the broadband of their day. They did this, by the way, at huge expense to the federal government. Technology changes, but our democratic challenge remains the same.

So this is the time to apply a healthy dose of Silicon Valley innovation and creativity to help us meet all of these challenges. It’s decision time. I am looking to you, and I believe millions of American consumers and citizens are looking to you, to be fully engaged across this whole gamut of issues. I had the honor many years ago of working for the great Senator from the State of South Carolina, Fritz Hollings, and one of the many lessons he taught me resonates still: “Decisions without you are usually decisions against you,” he said. Remember that.

Tough odds? Truly. Time away from your regular job? Absolutely. Game worth the candle? You bet. Realize, please, that the call you’re hearing isn’t coming just from me, or even primarily from me. It’s coming from the promises of all the good things new technology can bring us. It’s coming from citizens who have been held back too long, but can now hope for better lives. It’s coming from the spirit of those who came before us and figured out how to be successful builders of America. And it’s coming from those who will harvest what we plant and nourish today.

We’ve got another frontier to tame. And you, my friends, must be its pioneers.

Thank you.