

Statement of
Chairman Julius Genachowski
Federal Communications Commission

**Hearing on “Ensuring Competition on the Internet: Network
Neutrality and Antitrust Law”**

**Before the Subcommittee on Intellectual Property, Competition, and the
Internet**

Committee on the Judiciary

U.S. House of Representatives

May 5, 2011

Chairman Goodlatte, Ranking Member Watt and members of the subcommittee. Thank you for the opportunity to be here.

This is my first time testifying before this subcommittee since becoming Federal Communications Commission Chairman in 2009.

Prior to my appointment, I spent more than a decade in the private sector, working as an executive at Fortune 100 company, and also as an investor.

I saw in the private sector the importance of high-speed Internet – of wired and wireless broadband – to our country’s economic success, and to addressing so many challenges our nation faces, from education to public safety.

The importance of communications to our economy and to all Americans is why the Communications Act has long given the FCC authority in this area.

So we are working hard at the FCC on universal service for broadband, on reducing barriers to private sector broadband buildout, and on unleashing spectrum so that we can lead the world in mobile and address the looming spectrum crunch.

I also saw in the private sector the importance of the Internet’s freedom and openness to its powerful success as a platform for innovation and economic growth, as well as for free expression.

I learned that no central authority, public or private, should have the power to pick which companies or which ideas win or lose on the Internet.

I also learned in the private sector that certainty and predictability are critical to encouraging private investment and innovation, as is flexibility for companies in sectors characterized by fast-moving technologies and markets.

When I arrived at the FCC, the agency had – on a bipartisan basis – adopted measures to ensure Internet freedom and openness, and enforced those measures.

But unfortunately, the ad hoc process by which the prior FCC sought to protect Internet openness generated uncertainty among Internet stakeholders.

This uncertainty and other issues created a real schism within the broadband economy between Internet content and application entrepreneurs on one hand, and broadband providers on the other, a battle that was counterproductive for our economy and global competitiveness.

Meanwhile, there were incidents in which Internet service providers blocked or degraded lawful online content, and FCC action was required to bring these practices to a stop.

This occurs in a market where more than 70 percent of Americans live in areas with only one or two fixed broadband providers.

That's why, in 2009, we launched a fair and open Administrative Procedures Act process, with the goal of establishing a framework that would be good for all parts of the broadband economy – for consumers of Internet services, for innovators and entrepreneurs building new products and services on the Internet, and for Internet service providers. A framework that would increase certainty and predictability in this important but historically contentious area.

That was our goal, and I believe we achieved it. Our sensible, high-level framework to preserve Internet freedom has generated broad support from stakeholders who, in the past, couldn't find common ground.

The rules of the road are strong and balanced, built on the Commission's prior steps in this area, and rooted in the Communications Act.

The rules fit on one page, and boil down to four things.

First, transparency, so that consumers and innovators can have basic information to make smart choices about broadband networks and how to develop and launch the next killer apps. Empowering them with information will reduce the need for government involvement.

Second, no blocking of lawful Internet content or services, so that consumers can be free to access lawful content or services, and so startup and other Internet companies can be free to reach Internet consumers. Our framework makes clear that it does not protect unlawful content that violates, for example, intellectual property or child pornography laws.

Third, a level playing field – a fair non-discrimination principle, so that consumers and markets are picking winners and losers online.

And fourth, flexibility for Internet service providers —flexibility to manage broadband networks, recognizing legitimate differences between wired and wireless technologies; flexibility to deal with congestion or harmful traffic, to pursue innovation in business models, and, of course, to earn a meaningful return on investment.

Some people think the framework we adopted doesn't go far enough, and others think it goes too far. I believe it gets it right.

One of the nation's leading venture capitalists described our framework in terms used by many other investors and companies in the broadband economy: "This effort is a pragmatic balance of innovation, economic growth, and crucial investment in the Internet."

It's not regulation of the Internet; it's a light-touch framework to preserve the dynamic, free and open nature of the Internet.

Virtually all major investment analysts agreed that our framework was good news for the broadband economy. Since our action, investment has accelerated in both early-stage companies and in broadband networks.

And that's what we want to see – massive private investment throughout the broadband economy – in startups creating online products and applications, and in the companies building broadband network infrastructure.

And we want to see the open Internet grow and strengthen as a platform for small businesses to seize the opportunities of cloud computing, lowering their costs and expanding to new markets. That's what our framework

achieves.

We completed the Internet freedom order in December, and to undo our framework would increase uncertainty, decrease investment, and hurt job creation.

Some argue that, rather than acting, the FCC should have allowed antitrust laws to be the sole remedy for violations of Internet freedom.

In my view, while critically important, antitrust laws alone would not adequately preserve the freedom and openness of the Internet or provide enough certainty and confidence to drive investment in our innovation future.

As we heard during our FCC proceeding, antitrust enforcement is expensive to pursue, takes a long time, and kicks in only after damage is done. Especially for start-ups in a fast-moving area like the Internet, that's not a practical solution.

Some have suggested that Congress adopt new antitrust laws addressing Internet openness. But that too would be a problematic approach, ill-suited to the fast-changing nature of Internet technology. As the Supreme Court has pointed out, while statutes are hard to change in light of new developments in network technology or markets, expert administrative agencies have flexible processes for dealing with the unexpected and are, accordingly, better suited for handling this particular issue.

The Supreme Court decision in *Trinko* raises additional uncertainty about relying solely on antitrust laws as a remedy in the context of communications services. Indeed, writing for the Court, Justice Scalia observed that antitrust laws can be particularly difficult to apply to technical communications issues and emphasized the comparative advantages of the FCC as an expert agency on communications issues.

To conclude, while the FCC was divided on the particular issue of open Internet rules, the fact is that we resolve more than 95 percent of our votes on a bipartisan basis.

We are now focused on promoting universal access to broadband and unleashing spectrum – initiatives of critical importance to our 21st century economy and our global competitiveness, to expanding opportunity broadly,

and to addressing major issues from education to public safety.

I look forward to working with my Commission colleagues and with Congress to harness the opportunities of communications technologies for our economy and all Americans.

Thank you, and I look forward to your questions.